

# Feminism, Federalism and Families: Canada's Mixed Social Policy Architecture

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## ABSTRACT

*In 2018, with a self-declared feminist prime minister, a federal commitment to gender-based budget analysis, and a Cabinet composed of ministers who are 50 percent women, Canada's social policy architecture is being transformed. This transformation is taking place alongside the rise of a reactionary conservative populism abroad and on the heels of almost a decade of federal Conservative social policy based on "family-values" in Canada. Despite its comparatively progressive character, Canada's social policy architecture remains nested in a liberal welfare state model, with potentially deleterious outcomes especially for mothers, lower income, and racialized women. Further, populist discourses around families, and the social and tax policies associated with them, remain popular among many voters. Such approaches are often regressive and may entrench inequalities, yet they continue to flavour some of Canada's policies related to families. This article explores some of the consequences of Canada's family policy incoherence. It examines key federal family-related policies over the last decade, including the Liberal government's recent extension of parental leaves to eighteen months, its income-based targeting of childcare spending, and its 2018 Gender Equality Budget. This exploration: (1) offers a dynamic theoretical framework for understanding gender in relation to law and social policy; (2) considers why families and federalism are complex political and policy terrain; (3) catalogues Canada's mixed family policy architecture; and (4) recommends that a feminist future in Canadian social policy will require deviation from the current trajectory to include recalibration of parental leaves and an orientation to childcare as a public good.*

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## I. INTRODUCTION

In 2018, with a self-declared feminist prime minister, a federal commitment to gender-based budget analysis, and a Cabinet composed of ministers who are 50 percent women, Canada's social policy architecture—particularly, in relation to families—is being transformed. This transformation is taking place alongside the rise of a reactionary conservative populism abroad (particularly following the UK and US elections in 2016) and on the heels of almost a decade of federal “family-values” Conservative social policy in Canada. Assessing Canada's family policy trajectory, then, requires context and historical perspective. Despite its comparatively progressive character, Canada's social policy architecture still remains nested in a liberal welfare state model, with potentially deleterious outcomes especially for mothers, lower income, and racialized women.<sup>1</sup> Further, the broad resonance of populist discourses around families, and the social and tax policies associated with them, remain popular among many voters. Such approaches are often regressive and may entrench inequalities, yet they continue to flavour some of Canada's policies related to families, even those with overt equity aims.

To explore the consequences of Canada's family policy incoherence, I offer a genealogy of key federal family-related policies in Canada over the last decade, culminating with a discussion of the potential, and dangers, of the Liberal government's extension of employment insurance-funded parental leaves to eighteen months and its income-based targeting of childcare spending. This genealogy serves several purposes: first, it offers a dynamic theoretical framework for understanding gender in relation to law and social policy; second, it considers why families and federalism are complex political and policy terrain; third, it catalogues Canada's mixed family policy architecture; finally, it recommends that a feminist future in

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<sup>1</sup> See e.g. Rianne Mahon, Christina Bergqvist & Deborah Brennan, “Social Policy Change: Work-Family Tensions in Sweden, Australia and Canada” (2016) 2 *Social Policy and Administration* 165; Hadas Mandel, “Configurations of Gender Inequality: The Consequences of Ideology and Public Policy” (2009) 60:4 *British Journal of Sociology* 693; Hadas Mandel, “Rethinking the Paradox: Tradeoffs in Work-Family Policy and Patterns of Gender Inequality” (2011) 14:2 *Community, Work and Family* 159; Ann Orloff, “Gendering the Comparative Analysis of Welfare States: An Unfinished Agenda” (2009) 27:3 *Sociological Theory* 317; Mary Daly, “What Adult Worker Model? A Critical Look at Recent Social Policy Reform in Europe from a Gender and Family Perspective” in Christopher Pierson, Fracis G Castle & Ingela K Naumann, eds, *The Welfare State Reader*, 3rd ed (Malden, MA: Polity Press, 2014) 348; Mary Daly & Kirsten Scheiwe, “Individualisation and Personal Obligations: Social Policy, Family Policy, and Law Reform in Germany and the UK” (2010) 24:2 *Intl JL, Pol’y & Fam* 177.

Canadian social policy will require deviation from the current policy trajectory to include recalibration of parental leaves and an orientation to childcare as a public good.

## II. SOCIAL REPRODUCTION, LAW, AND SOCIAL POLICY: A THEORETICAL LENS

The concept of social reproduction, developed by feminist political economists, offers an important theoretical lens to social policy and law. With intellectual origins in the early modern political economic thought of John Stuart Mill, the concept's roots grew in Karl Marx's and Friedrich Engels's work on the dynamics of capital accumulation, were deepened in feminist engagements with the domestic labour debates in the 1970s and 1980s, and theorized more fully in the 1990s and 2000s by feminist political economists working across disciplines.<sup>2</sup> At the broadest level, social reproduction refers to the daily and generational work that is needed in any society to ensure social, cultural, and economic survival.<sup>3</sup> This reproduction varies historically and culturally but, invariably, "involves putting together the necessities of life, including shelter, food, culture, intimacy, affection, socialization and security, among others."<sup>4</sup> Sometimes referred to as "care," social reproduction is conceptually complex. It operates at the micro (individual or household), meso (states, firms, markets), and macro (economy, international relations)

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<sup>2</sup> Some of the terminological confusion around the concept of social reproduction stems from the transdisciplinary engagement with the concept. Feminist legal scholars, sociologists, geographers, philosophers, political scientists, and economists have engaged significantly with the concept. A sampling of the breadth of engagement can be found, e.g., in Nancy Fraser, "Contradictions of Capital and Care" (2016) 100 *New Left Review* 99; Kate Bezanson, "Return of the Nightwatchman State? Federalism, Social Reproduction and Social Reproduction in Conservative Canada" in Katie Meehan & Kendra Strauss, eds, *Precarious Worlds: Contested Geographies of Social Reproduction* (Athens: University of Georgia Press, 2015) 25 [Bezanson, "Return of the Nightwatchman State"]; Isabella Bakker, "Social Reproduction and the Constitution of a Gendered Political Economy" (2007) 12:4 *New Political Economy* 541; Shirin M Rai & Georgina Waylen, eds, *New Frontiers in Feminist Political Economy* (Abingdon, UK: Routledge, 2014); Diane Elson, "Economic Crises from the 1980s to the 2010s: A Gender Analysis" in Rai & Waylen, *ibid.*, 189.

<sup>3</sup> Kate Bezanson, "Mad Men Social Policy: Families, Social Reproduction, and Childcare in a Conservative Canada" in Rachel Langford, Susan Prentice & Patrizia Albanese, eds, *Caring for Children: Social Movements and Public Policy in Canada* (Vancouver: UBC Press, 2017) 19 [Bezanson, "Mad Men Social Policy"]; Antonella Picchio, *Social Reproduction: The Political Economy of the Labour Market* (Cambridge, UK: Cambridge University Press, 1992) at 1.

<sup>4</sup> Kate Bezanson, "Caring Society v Canada: Neoliberalism, Social Reproduction, and Indigenous Child Welfare" (2018) 28:1 *J L & Soc Pol'y* 167 [Bezanson, "Caring Society"].

levels<sup>5</sup> and refers to both processes (for example, it reflects class, gender, and race relations in a particular period and economic system) and specific tasks (cleaning, bathing a dependent other, or preparing food).<sup>6</sup> Social reproduction is dynamic—that is, it exists both in relation to (and usually in conflict with) economic systems, and it is adaptable, transferring and shifting responsibility for its tasks and (de)stabilizing its processes in accordance with historical, political, and social changes.<sup>7</sup>

In capitalist economic systems, the work of social reproduction is often classed, gendered, and racialized; this reflects the fact that its labours, whether paid or unpaid, are almost always performed by those in structurally unequal social and economic positions. Capital, and, in particular, its neo-liberal variant, does not care who undertakes the labours that create, sustain, maintain, reproduce, and socialize workers and norms of employment, but it requires that it be done as cheaply as possible. Pre-existing relations of inequality are thus ready conduits for this work. As I have argued elsewhere, social reproduction involves the day-to-day work of maintaining and reproducing people and their labour power, including creating space for building capacities such as learning, caretaking, and playing.<sup>8</sup> It may be shaped by having to cope with discrimination and racism. It requires the teaching of social norms integral to the activities of an economy. It is bound up with negotiations over power and resources within households, usually between men and women, often characterized by an unequal division of labour and a gender-specific socialization process. It extends beyond individual households to include volunteer work, intra-household care work, and local initiatives about shared social space or services. Social reproduction may rely on income support such as that provided through the welfare state. In short, social reproduction involves the work that

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<sup>5</sup> Diane Elson, “The Economic, the Political and the Domestic: Businesses, States and Households in the Organisation of Production” (1998) 3:2 *New Political Economy* 189.

<sup>6</sup> Kate Bezanson, *Gender, the State and Social Reproduction: Household Insecurity in Neo-Liberal Times* (Toronto: University of Toronto Press, 2006) at 25, 32 [Bezanson, *Household Insecurity*].

<sup>7</sup> RW Connell & James W Messerschmidt, “Hegemonic Masculinity: Rethinking the Concept” (2005) 19:6 *Gender & Society* 829; Barbara Cameron, “Social Reproduction and Canadian Federalism” in Kate Bezanson & Meg Luxton, eds, *Social Reproduction: Feminist Political Economy Challenges Neoliberalism* (Montreal and Kingston: McGill-Queen’s University Press, 2006); Bezanson, “Return of the Nightwatchman State,” *supra* note 2; Tithi Bhattacharya, ed, *Social Reproduction Theory: Remapping Class, Recentring Oppression* (London: Pluto Press, 2018).

<sup>8</sup> Bezanson, *Household Insecurity*, *supra* note 6 at 26-7.

must be accomplished in order to ensure that people survive and develop and to ensure that the economic system is perpetuated.<sup>9</sup>

Since social reproduction is in tension with the aim of profit maximization, it requires mediation, typically by states, families/households, and markets.<sup>10</sup> States such as Canada mediate this tension by underwriting certain costs and supports, such as health care. This mediation is also often left to markets to provide for a price, to the third/charity sector, or to families (and generally women) to provide via their own labours.<sup>11</sup> Family provision is usually the least expensive way to meet these costs and services and is often reinforced by discourses of obligation and care. Such mediation thus compels the creation and stabilization of class, gender, and racialized orders to undergird and normalize it, and social policy and law are implicated both in the replication of such orders and also in their disruption.<sup>12</sup> Understanding the nexus between state, market, family, and charitable sectors as contributors to social reproduction exposes the gendered and other equity dimensions of law and social policy.

States thus play a significant role in creating the conditions under which social reproduction takes place.<sup>13</sup> They do this in multiple ways, including in how they regulate labour markets and capital and in how they create, comply with, and enforce various legal regimes, including women's reproductive rights, international financial transactions and immigration. In relation to Canada's family policy architecture, the federal (and subnational states) frame the conditions of social reproduction via social policy and welfare state entitlements and via the enforcement of obligations within families such as child support. Canada's complex system of federalism assigns most of the policy work of social reproduction—social assistance, education, labour, the environment, and so on—to provincial and territorial governments; yet federal spending and

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*; Picchio, *supra* note 3; Bakker, *supra* note 2.

<sup>11</sup> Adrienne Roberts, "Gendered States of Punishment and Welfare: Feminist Political Economy, Primitive Accumulation and the Law" (London: Routledge, 2017); Bezanson, *Household Insecurity*, *supra* note 6.

<sup>12</sup> Elsewhere, I note that historically in Canada: "These class, gender and racialized orders required mediation and to different extents repression, whether in the form of direct suppression and state violence, in the form of legal structures that denied access to reproductive freedom or in the over-incarceration, denial of services to and/or surveillance of poor or racialized groups. In the case of indigenous peoples in Canada, it took racist expression in, among other things, Residential Schools whose ostensible aim was to resocialize children into white settler culture and to destroy the capacities for social reproduction in communities." Bezanson, "Caring Society," *supra* note 4 at 168.

<sup>13</sup> Bezanson, *Household Insecurity*, *supra* note 6; Picchio *supra* note 3.

program development in certain areas such as health care set frameworks and conditions for building pan-national social security and even identity.<sup>14</sup>

The work of social reproduction is often not visible, in part because its material inputs are those accounted for in systems of national accounting and policy formation. These inputs might include some combination of wages, rent, income transfers from governments, subsistence, gifts and charity, barter, and transfers and credits such as tax credits or subsidies for childcare provision.<sup>15</sup> The transformation of these inputs into outputs of material necessities, emotional and social sustenance, and goods is often achieved through gendered labour. Put more concretely, we tend to recognize the elements of social reproduction when they are absent or broken: a child taken into custody by the state, generational abuse, violence, and incarceration.<sup>16</sup> The architecture of social reproduction, operating at many levels and with different instruments, requires investment; failure to support households/families can create threshold effects on, and depletion of, care economies, often resulting in higher spending in corrections and policing.<sup>17</sup>

Law and social policy are often called upon to mediate tensions and, at times, crises in care systems and economies. This mediation can be seen, for example, in family law through the enforcement of (often-gendered) family obligations or custody, in employment law through requests for family accommodation or through income replacement schemes such as maternity and parental leaves, and in a range of policy structures related to social assistance (welfare) and health, job protected caregiving leaves, education and childcare, and gender-based violence initiatives. Analyzing family-related policy through a social reproduction lens reveals the material consequences of the institutional practices and ideologies that have characterized the platforms of both progressive and conservative parties.

### III. FAMILIES AND FEDERALISM

Families—in their actual, varied, diverse forms and in the imagined societal ideal of what they could or should be—figure centrally in political

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<sup>14</sup> Bezanson, “Return of the Nightwatchman State,” *supra* note 2.

<sup>15</sup> *Ibid.*

<sup>16</sup> Bezanson, “*Caring Society*,” *supra* note 4.

<sup>17</sup> Shirin M Rai & Kate Bedford, “Feminists Theorize International Political Economy” (2010) 36:1 *Signs* 1; Diane Elson, “Recognize, Reduce, and Redistribute Unpaid Care Work: How to Close the Gender Gap” (2017) 26:2 *New Labor Forum* 52; Shirin M Rai, Catherine Hoskyns & Dania Thomas, “Depletion” (2014) 16:1 *International Feminist Journal of Politics* 86; Judy Fudge, “Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction” (2014) 22:1 *Feminist Leg Stud* 1.

campaigns and policy platforms. The Harper government (Conservative Party of Canada), which was in power federally in Canada from 2006 to 2015, ran on a platform of “standing up for families.”<sup>18</sup> The Trudeau government (Liberal Party of Canada), which has been in power federally since 2015, anchored its electoral strategy to “growing the middle class,” promising more robust supports for Canadian families.<sup>19</sup> Although disparate, the Conservative vision of a heteronormative traditional family form and the more progressive heterogeneous family forms imagined by the Liberal government share an emphasis in policy terms on mediating the tension between social reproduction and capital accumulation usually via women’s labour. Both governments, with vastly different ideological orientations to equality issues, have pursued family-related policies with at times convergent—and, elaborated further below, potentially deleterious—gendered and other outcomes.<sup>20</sup> These convergences in policy consequences stem in part from institutional path dependence—that is, from enacting policies that follow Canada’s historical liberal welfare state policy preference for caring work to be done privately in households and/or paid for in the market.<sup>21</sup> These convergences also result from the challenges of

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<sup>18</sup> Conservative Party of Canada, *Stand Up for Canada: Conservative Party of Canada Federal Election Platform*, (Ottawa: Conservative Party of Canada, 2006), online: <[http://www.cbc.ca/canadavotes2006/leadersparties/pdf/conservative\\_platform2006\\_0113.pdf](http://www.cbc.ca/canadavotes2006/leadersparties/pdf/conservative_platform2006_0113.pdf)>.

<sup>19</sup> Liberal Party of Canada, *Real Change: A New Plan for A Strong Middle Class* (Ottawa: Liberal Party of Canada, 2015), online: <<https://www.liberal.ca/wp-content/uploads/2015/10/New-plan-for-a-strong-middle-class.pdf>>.

<sup>20</sup> Rianne Mahon, “Childcare, New Social Risks and the New Politics of Redistribution in Ontario” in Keith Banting & John Myles, eds, *Inequality and the Fading of Redistributive Politics* (Vancouver, UBC Press, 2013) 3; Kathleen Lahey, “The Politics of Income Splitting, Sex Equality and Sex Role Stereotypes” in Rachel Langford, Susan Prentice & Patrizia Albanese, eds, *Caring for Children: Social Movements and Public Policy in Canada* (Vancouver: UBC Press, 2017) 37; Lindsey McKay, Sophie Mathieu & Andrea Doucet, “Parental-Leave Rich and Parental-Leave Poor: Inequality in Canadian Labour Market Based Leave Policies” 58:4 *Journal of Industrial Relations* 543.

<sup>21</sup> See e.g. Kevin Farnsworth & Zoe Irving, “A New Era for Social Policy? Welfare States and the Financial Crisis” in Stephen McBride, Rianne Mahon & Gerard W Boychuk, eds, *After ‘08: Social Policy and the Global Financial Crisis* (Vancouver: UBC Press, 2015) 59 at 61; Linda White, “Must We All Be Paradigmatic? Social Investment Policies and Liberal Welfare States” (2012) 45:3 *Canadian Journal of Political Science* 657; Jane Jenson, “Broadening the Frame: Inclusive Growth and the Social Investment Perspective” in McBride, Mahon & Boychuk, *ibid*, 40; Johannes Kiess et al, “Path Dependency and Convergence of Three Worlds of Welfare Policy during the Great Recession: UK, Germany and Sweden” (2017) 33:1 *Journal of International Comparative Social Policy* 1.

developing coordinated family policy among constitutionally prescribed decentralized jurisdictions (federal, provincial/territorial, and Indigenous).<sup>22</sup>

The architecture of Canadian federalism, in which the majority of social policy delivery is delegated to provinces and territories, is the chief structural reason that Canada has no coherent family policy.<sup>23</sup> In this constitutional arrangement, subnational governments have the “messy, fleshy stuff”<sup>24</sup> of “a local, private nature”<sup>25</sup> such as health care, housing, childcare, education, social assistance/welfare, labour, and environmental regulation, among others. The inputs into, conditions underlying, and regulation of social reproduction, where taken up by states, are usually, thus, a provincial/territorial responsibility. Provinces/territories, then, can be thought of as “having” women, children, and families because they “have” social services.<sup>26</sup> Yet federalism and policy jurisdictions are permeable, and there is considerable interplay between the federal state and provinces/territories via transfers and funding.<sup>27</sup> Additionally, the federal state administers significant family, child, employment, and childcare tax credits, transfers, and deductions as well as pensions and employment insurance (covering maternity, parental, and caregiver

<sup>22</sup> *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, ss 91, 92. It is important to note here that s 91(24) of the *Constitution Act, 1867* gave the federal government social and administrative policy jurisdiction related to Indigenous peoples, while social policy is the purview of subnational governments otherwise. While Crown-Indigenous relations, particularly regarding governance, are undergoing significant revision, particularly in light of the creation of two new federal ministries and a new framework for the recognition and implementation of Indigenous rights, the recent legacies of family policy failures within federal jurisdiction remain unresolved. See Joanne Smith, “Trudeau Pledges ‘Full Recognition and Implementation of Indigenous Rights’,” *Huffington Post* (14 February 2018), online: <[http://www.huffingtonpost.ca/2018/02/14/trudeau-pledges-full-recognition-and-implementation-of-indigenous-rights\\_a\\_23361841/](http://www.huffingtonpost.ca/2018/02/14/trudeau-pledges-full-recognition-and-implementation-of-indigenous-rights_a_23361841/)>. In 2016, the Canadian Human Rights Tribunal found that the federal government had discriminated against Indigenous children on reserve by failing to provide services and supports for child welfare comparable to those available provincially to children off reserve. See *First Nations Child and Family Caring Society of Canada v Canada (Minister of Indian Affairs and Northern Development)*, 2016 CHRT 2.

<sup>23</sup> For a good comparative historical discussion, see Philip Girard, “Why Canada Has No Family Policy: Lessons from France and Italy” (1994) 32:2 *Osgoode Hall LJ* 579.

<sup>24</sup> Cindy Katz, “Vagabond Capitalism and the Necessity of Social Reproduction” (2001) 33:4 *Antipode* 710.

<sup>25</sup> *Constitution Act, 1867*, *supra* note 22, s 91.

<sup>26</sup> Caroline Andrew, “Federalism and Feminism: The Challenge for Women’s Urban Safety” in Melissa Haussman, Marian Sawyer & Jill Vickers, eds, *Federalism, Feminism and Multilevel Governance* (Surrey, UK: Ashgate, 2010) 83 at 87.

<sup>27</sup> See e.g. the annual series *How Ottawa Spends*, online: <<http://www.carleton.ca>>.



leaves).<sup>28</sup> While the confederation compromise of assigning much of the state's mediation of social reproduction to provinces/territories (though retaining the federal role for Indigenous peoples), the federal government in Canada plays an indispensable part both in setting national standards for policies and in transferring funds and/or sharing aspects of policy governance with subnational governments.<sup>29</sup> The federal state, and its approach to federalism and families, thus contributes to shaping the broad conditions of social reproduction.

The vision for federal-provincial/territorial/Indigenous relations has shifted considerably over the last decade, and family-related policies have reflected ideational shifts in federal approaches to federalism. The Harper period was marked by an approach termed "open federalism," while the Trudeau era appears to be a return to a more collaborative or bilateral federalism. The Harper government embraced a strict watertight-compartments approach to jurisdiction—that is, it adhered to a strict interpretation of federal and provincial constitutional policy responsibilities.<sup>30</sup> It sought to centralize "most market-enabling policy capabilities at the federal level," limiting fiscal room (including via tax cuts) for social policy initiatives.<sup>31</sup> This market enabling federalism served

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<sup>28</sup> Feminist scholars of multi-level governance suggest that having multiple levels of government involved in myriad aspects of social policy is mixed; significant differences in public service level, provision, and access between provinces/territories results in standard of living variances and inequalities across the country, however, experimentation with policy at a provincial level (such as childcare, for example) can serve as models/best practices for policy formulation in other jurisdictions and can provide multiple entry points for equality informed activism. See Marian Sawer, "Gender Equality Architecture: The Intergovernmental Level in Federal Systems" (2014) 73 *Australian Journal of Public Administration* 361; Gabriele Abels, "Multi-Level Governance: Tailoring a 'Favourite Coat' to the Needs of 'Gender Fashion'" in Gabriele Abels & Heather MacRae, eds, *Gendering European Integration Theory* (Opladen, Germany: Barbara Budrich, 2016) 99; Haussman, Sawer & Vickers, *supra* note 26; Fiona Mackay, Meryl Kenny & Louise Chappell, "New Institutionalism through a Gender Lens: Towards a Feminist Institutionalism?" (2010) 31:5 *International Political Science Review* 573; Louise Chappell & Deborah Brennan "Introduction: Gendering the Intergovernmental Relations Agenda" (2014) 73:3 *Australian Journal of Public Administration* 357.

<sup>29</sup> For an important discussion of social reproduction, constitutionalism, and federalism, see Cameron, *supra* note 7 at 45. I note here that there is also provincial delegation to municipalities and local governments; see also Tammy Findlay, "Childcare and the Harper Agenda: Transforming Canada's Social Policy Regime" (2014) 71 *Canadian Review of Social Policy* 1.

<sup>30</sup> Bezanson, "Return of the Nightwatchman State," *supra* note 2 at 32.

<sup>31</sup> Adam Harmes, "The Political Economy of Open Federalism" (2007) 40:2 *Canadian Journal of Political Science* 417 at 424.

to provincialize “market-inhibiting policy capabilities such as labour [market regulations] ... and certain forms of ... social spending.”<sup>32</sup> Put differently, this kind of approach understood most matters of social reproduction as provincial and local, while the federal role was reserved primarily for the military, commerce, and corrections.<sup>33</sup> Consequently, open federalism largely located the costs of caregiving in privatized families or in markets to provide for a price and reduced fiscal room for transfers for new or existing social programs. It entrenched provincial/territorial variations in social citizenship including in social services, labour standards, and environmental regulations, further decentralizing Canada as one of the most decentralized federations in the Organisation for Economic Co-operation and Development (OECD). Questions of identity also permeated this version of federalism, further fragmenting shared pan-Canadian identity to the extent that it is tied to social programming that fosters solidarity, replacing it to some degree with symbols of the military and monarchy.<sup>34</sup> Also infused in this approach, and elaborated in federal family-related policies, was a view that the (usually nuclear, heterosexual) family unit was the principal site for collective identity.<sup>35</sup>

The Trudeau government approach departs considerably from its predecessor. Where Prime Minister Stephen Harper adopted a minimalist approach to intergovernmental relations, foregoing provincial first ministers’ meetings in favour of ad hoc bilateral negotiations, Prime Minister Justin Trudeau has revived the larger meetings and deployed collaborative (federally driven and, in the case of childcare agreements, province-driven bilateral) federalism.<sup>36</sup> Additionally, an emerging form of “reconciliatory federalism” holds some “promise of a new type of cooperative federalism that respects the sovereignty of the provinces *and* Indigenous peoples.”<sup>37</sup> The significant challenges of jurisdictional

<sup>32</sup> *Ibid.*

<sup>33</sup> Bezanson, “*Mad Men* Social Policy,” *supra* note 3 at 22; Tom Kent, “The Federal Spending Power Is Now Chiefly for People, Not Provinces” (2008) 34:1 *Queen’s LJ* 413 at 425.

<sup>34</sup> Jane Taber, “Harper Spins a New Brand of Patriotism,” *Globe and Mail* (19 August 2011), online: <<https://www.theglobeandmail.com/news/politics/ottawa-notebook/harper-spins-a-new-brand-of-patriotism/article618385/>>.

<sup>35</sup> *Ibid.*

<sup>36</sup> Jason Fekete, “Chairman of Group of Premiers Takes Shots at Harper for Skipping Meeting,” *Ottawa Citizen* (30 January 2015), online: <<http://ottawacitizen.com/news/politics/harper-under-fire-for-skipping-first-ministers-meeting>>; “PM to Meet First Ministers, Indigenous Leaders,” *CTV News* (7 September 2017), online: <<https://www.ctvnews.ca/politics/pm-to-meet-first-ministers-indigenous-leaders-oct-3-1.3579268>>.

<sup>37</sup> Guy Laforest & Janique Dubois, “Justin Trudeau and ‘Reconciliatory Federalism,’” *Policy Options* (19 June 2017), online: <<http://policyoptions.irpp.org/magazines/june-2017/justin-trudeau-and-reconciliatory-federalism/>> [emphasis added].

autonomy for social program delivery remain, but some developments, notably federal funding for the development of a publically supported system of early childcare education and care<sup>38</sup> and major investments in social housing,<sup>39</sup> signal a renewed collaboration.<sup>40</sup> The contribution of the federal government to major cost-shared provincially/territorially delivered social programs, including family-related programs, and equalization payments was about 26 percent of the federal program spending in 2015–16; thus, provinces and territories continue to bear majority responsibility for social program funding.<sup>41</sup> The Trudeau government’s version of federalism appears to seek to reanimate the use of social programming to foster national identity and redress some disparities in social service provision provincially/territorially. In federal family-related policies, this approach to federalism takes an expansive and pluralistic view of families and adds a dimension of gender-based analysis to policy formulation.

Federalism, as we have seen, shapes institutions and policy instruments, but visions and ideas—the ways in which political actors “interpret problems and identify solutions”—also shape the social architecture of welfare regimes.<sup>42</sup> Approaches to families and federalism are thus important to the politics of redistribution in Canada. Although the significant shift in the conceptualization of the role of gender equality and family form, as well as renewed intergovernmental cooperation on family-related policies, suggest a break from a more hands-off federal role in pan-Canadian social policy, two important cautions bear greater consideration: first, a significant

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<sup>38</sup> Childcare comes in a host of forms (e.g., custodial or educative) and is delivered in a range of sites (private homes or in centres) by different actors (family members, paid in-home caregivers, or early childhood educators). A system of childcare delivery, usually with goals, indicators, and care and education components and usually with a public management role, is referred to both as early childhood education and care (ECEC) and early learning and childcare (ELCC). The 2017 federal framework agreements with provinces and territories for public spending on childcare refer to ELCC, while ECEC is commonly used in childcare research in Canada.

<sup>39</sup> Peter Zimonjic, “New Strategy Aims to Build 100,000 New Units, Repair 300,000 and Cut Homelessness by 50%,” *CBC News* (22 November 2017), online: <<http://www.cbc.ca/news/politics/housing-national-benefit-1.4413615>>.

<sup>40</sup> Provinces have not waited for an increased federal spending/governance role in key areas of family-related policy. Notable and significant recent investments have been made, for example, in early learning and childcare by Ontario, Prince Edward Island, Manitoba, and, in 2018, British Columbia.

<sup>41</sup> Canada, Department of Finance, *Federal Support to the Provinces and Territories* (Ottawa: Government of Canada, 2015), online: <<http://www.fin.gc.ca/fedprov/mtp-eng.asp>>.

<sup>42</sup> Jane Jenson, “Historical Transformation of Canada’s Social Architecture: Institutions, Instruments and Ideas” in Keith Banting & John Myles, eds, *Inequality and the Fading of Redistributive Politics* (Vancouver: UBC Press, 2013) 45.

portion of the Canadian population continues to prefer the ideology underlying Conservative approaches to family policy and, second, federal policy choices, despite a focus on gender equality, may continue to encourage a dual earner–female carer norm. A genealogy of federal family-related policies, to which we now move, begins to unpack these cautions.

#### **IV. FAMILY-RELATED FEDERAL POLICY: FROM CONSERVATIVE AND NEO-LIBERAL TO RENEWED SOCIAL INVESTMENT?**

##### **A. The Harper Period: “*Mad Men*” Family Policy?**

One of the most significant shifts in family-related policy in Canada over the last decade came in 2006, when the Harper government cancelled the previous Liberal government’s bilateral agreements with provinces for building a national system of early learning and childcare. In lieu of childcare spaces, the new government put in place the Universal Child Care Benefit (UCCB), which, initially, was a \$100 per month (taxable) benefit for each child under the age of six. Additional policies followed with a similar emphasis aimed at transferring money directly to parents rather than using the federal spending power for social program development or funding. These included a series of modest tax credits for children’s sports and, later, arts participation, pension income-splitting for seniors, and culminated with a controversial family income-splitting policy.<sup>43</sup> The Harper government also considered, but did not enact, an extension to parental leaves for up to two-and-a-half years, which was recommended as a measure to decrease demand for non-family-based childcare.<sup>44</sup>

These instruments of “family values” conservatism, coupled with a neo-liberal economic approach, resonated with many Canadians, and the Harper government was twice re-elected, in part on the strength of the popularity of these cash-for-care and tax policies. The policies themselves

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<sup>43</sup> See e.g. Kate McInturff & David Macdonald, *Time to Grow Up: Family Policies for the Way We Live Now* (Ottawa: Canadian Centre for Policy Alternatives, 2015); Ken Battle, *The Choice in Child Care Allowance: What You See Is Not What You Get* (Ottawa: Caledon Institute of Social Policy, 2006), online: <<http://www.caledoninst.org/Publications/PDF/564ENG.pdf>>; Michael J Prince & Katherine Teghtsoonian, “The Harper Government’s Universal Child Care Plan: Paradoxical or Purposeful Social Policy?” in G Bruce Doern, ed, *How Ottawa Spends 2007-2008* (Montreal and Kingston: McGill-Queen’s University Press, 2007) 180.

<sup>44</sup> Canada, Ministerial Advisory Committee on the Government of Canada’s Child Care Spaces Initiative, *Child Care Spaces Recommendations: Supporting Canadian Children and Families: Addressing the Gap between the Supply and Demand for High Quality Child Care*, Report from the Ministerial Advisory Committee on the Government of Canada’s Child Care Spaces Initiative Submitted to the Honourable Monte Solberg, PC, MP Minister of Human Resources and Social Development (Ottawa, 2007), online: <[http://publications.gc.ca/collections/collection\\_2007/hrsdc-rhds/HS4-29-2007E.pdf](http://publications.gc.ca/collections/collection_2007/hrsdc-rhds/HS4-29-2007E.pdf)>.

produced significant immediate material consequences: high-income families and single earner, usually male, families benefited the most. Longer-term negative and regressive consequences included women's labour market exit, lack of childcare services, and continued low wages in the care sector.<sup>45</sup> Yet this populist approach—its direct rewarding of the (usually traditional) family unit with income to spend as they pleased—symbolically recognized carework. When public funding for childcare is pitted politically against cash-for-care policies, the emphasis in childcare is often on supporting (usually) a mother's labour market participation and not on recognizing unpaid care done by families. This can feed cultural "mommy war" tensions between stay-at-home parents and working parents. Beyond this, families increasingly experience what Brigid Schulte calls "the overwhelm"—workplaces that have an ideal of an adult worker unencumbered by non-work responsibilities, alongside escalating cultural expectation of parents (particularly of mothers) and insufficient social supports and transfers.<sup>46</sup> This overwhelm is nested in a self-help climate that individualizes responsibilities for social problems. Solutions to structural issues surrounding work–life balance are, for example, reduced to undertaking better personal scheduling (termed neo-liberal performativity). Absent important social policy architecture such as affordable and accessible childcare and given persistent gender wage inequalities in the paid labour force, the policies related to the imagined family in Conservative approaches appeared to recognize the identity and struggles of the family unit. Moreover, developing and implementing complex federal/provincial/territorial policies and programs takes time and can have less immediate appeal compared with the reliable translatability of a tax credit or monthly cheque.<sup>47</sup>

The ideas about gender, motherhood, and families that informed the Harper government's policies, and accented its approach to federalism, were both deeply socially conservative and neo-liberal. The neo-liberal element was broadly consistent with Canada's historical approach to welfare state policy development in which the household is the preferred site of social reproduction; it is cheapest to familialize this labour, irrespective of the racialized, gendered, or class-based features of divisions of paid and unpaid caring work. Canada's welfare state form falls within

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<sup>45</sup> Bezanson, "Mad Men Social Policy," *supra* note 3 at 29.

<sup>46</sup> Brigid Schulte, *Overwhelmed: Work, Love and Play When No One Has Time* (New York: Sarah Crichton, 2014).

<sup>47</sup> Bezanson, "Mad Men Social Policy," *supra* note 3 at 29.

the cluster of liberal welfare states, along with nations like the United Kingdom, the United States, and Australia.<sup>48</sup> Linda White notes that

liberal welfare states have in the past been “residual” in that governments tend to provide social supports on the basis of need, rather than universally. Responsibility for social reproduction is largely conceived of as a choice, and thus the responsibility primarily of the family and, in the absence of family, the market. Liberal welfare states have thus traditionally been less generous than other industrialized states in terms of public funding of social services and in terms of the overall availability of these services, and they have tended to have deeper social stratification.<sup>49</sup>

Welfare states, as we have seen, make choices about the distribution of supports to social reproduction, allocating principal responsibility at different times to the public sector, the private market, families, and the volunteer sector. In the Harper period, the mediation of social reproduction skewed significantly to the market and families. The policies themselves increased the possibility of labour market exit for women in higher-income households by permitting income splitting with a higher-earning spouse but did not provide sufficient income transfers in the form of the UCCB (\$100), in order to purchase childcare or reduce employment for lower income households who wished to do so.<sup>50</sup> Additionally, the 2008 recession resulted in significant budget deficits and cuts in social spending

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<sup>48</sup> Urie Bronfenbrenner, “Child Care in the Anglo-Saxon Mode” in Michael E Lamb et al, eds, *Child Care in Context* (Hillsdale, NJ: Lawrence Erlbaum and Associates, 1992) 281; Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton, NJ: Princeton University Press, 1990); John Myles & Paul Pierson, “Friedman’s Revenge: The Reform of ‘Liberal’ Welfare States in Canada and the United States” (1997) 25:4 *Politics and Society* 443; Julia O’Connor, Ann Shola Orloff & Sheila Shaver, *States, Markets, Families: Gender, Liberalism and Social Policy in Australia, Canada, Great Britain and the United States* (New York: Cambridge University Press, 1999).

<sup>49</sup> White, *supra* note 21 at 661.

<sup>50</sup> The Harper government did continue to fund the Canada Child Tax Benefit, an income tax benefit weighted more generously to lower-income households. However, the Universal Child Care Benefit was funded in part by removing the young child supplement money (\$249 annually for low- and modest-income families) from the Canada Child Tax Benefit. See Kate Bezanson, “Childcare Delivered through the Mailbox’: Social Reproduction, Choice and Neoliberalism in a Theo-Conservative Canada” in Susan Braedley & Meg Luxton, eds, *Neoliberalism and Everyday Life* (Montreal and Kingston: McGill-Queen’s University Press, 2010) 100.

for all levels of government, compounding an already constrained redistributive policy landscape.

## **B. The Trudeau Period: A Dual Earner–Female Carer Model?**

The election of the Trudeau government marked a significant ideational departure from the family values norms and open federalism that characterized the Harper period. A self-declared feminist government, the Liberals have embraced a broad understanding of families, gender, and gender identity and have prioritized intersectional gender-based analyses of budgets and policy development.<sup>51</sup> The chief family-related policies they have enacted include rescinding the UCCB, adding the UCCB funding to the Canada Child Benefit and indexing it to inflation, rescinding the family income-splitting policy of the Harper era, reinvesting in social housing, adding new funding for early childhood education and care and negotiating agreements with subnational governments to administer it, revamping compassionate care leaves, and extending parental leave benefits to eighteen months from twelve months. It also announced plans to revamp pay equity for workers in federally regulated workplaces<sup>52</sup> but retained gender-regressive pension income-splitting policy from the Harper era.<sup>53</sup>

Expert-led and evidence-based social policy formulation, often absent or sublimated during the Harper era, has been revived in the Trudeau period. The agenda on gender (and, to a differing extent, racialized and

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<sup>51</sup> Ellen Wulforth, “Justin Trudeau Says to Raise Sons to Be Feminists Like Daughters,” *Global News* (17 October 2017), online: <<https://globalnews.ca/news/3797971/justin-trudeau-raise-sons-feminists-like-daughters/>>; Joanna Smith, “Liberals to Dig Deeper, Aim Higher on Gender Equality in Federal Budget,” *CBC News* (18 February 2018), online: <<http://www.cbc.ca/news/politics/gender-equality-budget-2018-1.4541358>>; Peter Zimonjic, “Liberal Detail \$40B for 10-Year National Housing Strategy,” *CBC News* (22 November 2018), online: <<http://www.cbc.ca/news/politics/housing-national-benefit-1.4413615>>; CBC News, “Liberal Government to Boost Canada Child Benefit,” *CBC News* (23 October 2017), online: <<http://www.cbc.ca/news/politics/liberal-government-canada-child-benefit-boost-sources-1.4368019>>.

<sup>52</sup> Andy Blatchford, “Budget to Cost Pay Equity in Public Sector and Regulated Jobs,” *CBC News* (23 February 2018), online: <<http://www.cbc.ca/news/politics/budget-pay-equity-cost-1.4549789>>.

<sup>53</sup> There are important gender dimensions to tax policy. In Canada, legal tax scholar Lisa Philipps has noted that income splitting generally transfers tax liability to the lower-income household member (usually women) without transferring access to that income or to the asset. See Lisa Philipps, “Income Splitting and Gender Equality: The Case for Incentivizing Intra-Household Wealth Transfers” in Kim Brooks et al, eds, *Challenging Gender Inequality in Tax Policy Making: Comparative Perspectives* (Oxford: Onati Press, 2011) 235. This tax policy is politically very popular and therefore unwieldy to rescind or amend.

class-based) inequality is ambitious and includes a commitment, announced in Budget 2017, to subject all proposals to the federal Department of Finance to a gender-based analysis + (the plus indicating an intersectional lens). Such an analysis was first brought to bear in the intergovernmental social housing strategy announced in late 2017, with the result that 25 percent of funding was earmarked for supports for women and girls. With the prime minister noting famously that “poverty is sexist,” the Liberal approach thus far has also taken note of certain income inequality dimensions to family-related policy, enhancing significantly the non-stigmatizing Canada Child Benefit that weights income transfers most heavily to those with lower incomes and decreases incrementally with income earned.

A significant focus in policy development concerns the persistence of a gender wage gap in the Canadian labour market, along with gender disparities in leadership/boardrooms and in certain science-based research sectors.<sup>54</sup> An economic imperative—needing more women in the paid labour force in order to sustain long-term economic growth—animates this policy focus. In 2016 following a visit to Canada, Christine Lagarde, head of the International Monetary Fund asserted that increasing women’s labour force participation is good for economic growth and that there is considerable room for improvement in Canada.<sup>55</sup> A profile of Canada’s labour force shows that an increase in well-educated women has not translated into proportional labour market participation; women’s overall participation rate remains 10 percent below men’s; women experience a vexing gender wage gap above the OECD average; and women make up only one in four senior managers. The result is that Canada’s real gross domestic product (GDP) is 4.5 percent lower than where it might be if more women, especially the pool of well-educated women, were in the labour force.<sup>56</sup> Increasing growth, Lagarde noted, potentially does more than help the economy overall; it raises standards of living and tackles poverty.<sup>57</sup>

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<sup>54</sup> Joanna Smith, “Liberals to Dig Deeper, Aim Higher on Gender Equality in Federal Budget,” *CBC News* (18 February 2018), online: <<http://www.cbc.ca/news/politics/gender-equality-budget-2018-1.4541358>>.

<sup>55</sup> Christine Lagarde, “To Boost Growth: Employ More Women,” *IMF Blog* (blog) (14 September 2016), online: <<https://blog-imfdirect.imf.org/2016/09/14/to-boost-growth-employ-more-women/?hootPostID=388522602a64fe9591ed1282da9d719a>>.

<sup>56</sup> *Ibid.*

<sup>57</sup> My analysis of Lagarde’s work first appeared in a blog on the news site *rabble.ca* at Kate Bezanson, “Canada’s Women Lagging Way behind in the Workplace—and We Can Do So Much Better,” *Rabble.ca* (12 October 2016), online <<http://rabble.ca/taxonomy/term/36622>>. Portions of that article are replicated here.



This analysis informs budget and spending priorities for Canada. A briefing note prepared for Finance Canada and obtained by the Canadian Press estimates that “closing the labour-market participation gap between women and men by half over 15 years would raise the country’s potential long-term economic growth by an average of 0.25 percentage points per year over that period.”<sup>58</sup> Such an approach is required to offset the effects of Canada’s aging workforce, and certain policy levers significantly affect women’s labour market participation. Canada’s social policy architecture plays an important role in the kinds of decisions individuals and families can make to balance work and care; Employment Insurance (EI)-funded paid parental leaves and certain tax measures have had positive effects on women’s labour market participation rates, but Canada (outside Quebec) remains a consistent low spender on early childhood education and care.<sup>59</sup>

Although anchored in a progressive analysis of gender (and other) inequalities, the family-related policy approach that appears to be developing in Canada remains somewhat neo-liberal or what some scholars have called social investment.<sup>60</sup> It is also fairly consistent with Canada’s liberal welfare state architecture.<sup>61</sup> Social investment perspectives, present in the policies of the former Liberal government of Paul Martin (2003–2006) and ubiquitous in many provincial policy approaches, converge “around ideas for modernization of social models via labour market involvement of all adults and new forms of investment, especially in human capital and include early childhood education and care.”<sup>62</sup> A social investment frame centres on developing active labour market policies to encourage robust adult labour force participation (sometimes called an adult worker model) rather than “decommodification” (redistributing benefits).<sup>63</sup> Mothers and children, then, are a significant focus of social investment policies, and women’s lifetime economic security is understood as being located in their labour

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<sup>58</sup> Andy Blatchford, “Federal Budget 2018 Aims to Increase Workforce Participation of Women,” *Global News* (21 February 2018), online: <<https://globalnews.ca/news/4039678/federal-budget-2018-women-workplace/>>.

<sup>59</sup> See e.g. Martha Friendly, “Taking Canada’s Child Care Pulse: The State of ECEC in 2015,” *Our Schools/Our Selves* (Ottawa: Canadian Centre for Policy Alternatives, Summer 2015) at 7.

<sup>60</sup> Rianne Mahon, Christina Bergqvist & Deborah Brennan, “Social Policy Change: Work-Family Tensions in Sweden, Australia and Canada” (2016) 2 *Social Policy and Administration* 165.

<sup>61</sup> Certain measures under consideration—such as certain use-it-or-lose-it leaves and universal childcare—may disrupt this adherence.

<sup>62</sup> Jenson, *supra* note 42 at 55.

<sup>64</sup> *Ibid.*

market attachments and not related to state transfers or dependence on a male wage. As White explains,

[a] big part of this social investment strategy focuses on encouraging labour force attachment for all, including mothers (see Lewis, 2001). Thus, instead of encouraging dichotomous male breadwinner-female caregiver roles, all should be encouraged to participate in the labour market. Policies that help sustain continuous or long-term attachment, such as maternity leave benefits, thus become part of the social investment mix ... Another part of the social investment strategy focuses on children and their learning opportunities. Children are the core of a social investment strategy from a population health perspective, an anti-poverty perspective and a human capital development perspective. By investing in services, governments provide the means to allow parents to participate in the labour market, as well as balance work and family life, stave off poverty and social exclusion, and prepare all children for the future so that they can be productive adults themselves.<sup>64</sup>

Two key, interrelated policies—maternity/parental leaves and childcare—reveal that there are opportunities to develop policies based less on instrumental labour market concerns and more on building social solidarity and social policy as a public good. The latter requires an ideational shift, but, as we shall see, the conditions for such a shift may be present.

## **V. MATERNITY AND PARENTAL LEAVE POLICY UNDER THE TRUDEAU GOVERNMENT**

Since the 1970s, Canada has had federal employment insurance for maternity leaves, expanding in the early 2000s to up to one year of combined maternity/parental/adoption leaves and in late 2017 to up to eighteen months.<sup>65</sup> Provinces and territories, to varying extents, have amended their labour codes to ensure job protection for those who qualify for, and opt to take, child-related leaves. Quebec, in the early 2000s,

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<sup>64</sup> White, *supra* note 21 at 663.

<sup>65</sup> See Ann Porter, *Gendered States: Women, Unemployment Insurance, and the Political Economy of the Welfare State in Canada, 1945-1997* (Toronto: University of Toronto Press, 2003); McKay, Mathieu & Doucet, *supra* note 20.

introduced its own maternity and parental leaves program called the Quebec Parental Insurance Program (QPIP).<sup>66</sup> The QPIP covers many more families than does the EI parental leave regime, has lower eligibility criteria, a higher income replacement rate, and includes a dedicated use-it-or-lose-it leave for fathers. Table 1 shows the differences between the two programs.

Table 1: Parental leave in Canada and in Quebec, 2015

	Canada EI	Quebec Basic Plan	Quebec Special Plan
Eligibility	600 hours	\$2,000 earnings	
Self-employed workers	As of 2011	Covered	
Waiting period	2 weeks per couple	None	
<b>Weeks by wage replacement rate (% of average earnings)</b>			
Maternity	15 at 55%	18 at 70%	15 at 75%
Paternity	None	5 at 70%	3 at 75%
Parental (shared)	35 at 55%	32 (7 at 70% + 25 at 55%)	25 at 75%
Total weeks per couple	50	55	43
Adoption (shared)	35 at 55%	(12 at 70% + 25 at 55%)	28 at 75%
Low income (net annual income <\$25,921)	Up to 80%	Up to 80%	
Maximum insurable earnings (2015)	\$524/week \$49,500/year	\$894.22/week \$70,000/year	

*Notes: (1) Only birth mothers are entitled to maternity leave in both plans; (2) both jurisdictions recognize same-sex relationships; (3) QPIP also has a plan for adoptive parents, whereby the total number of adoption benefit weeks (37 weeks—12 weeks at 70% + 25 weeks at 55% of income—under the basic plan and 28 weeks at 75% of the income under the special plan) may be taken by one of the two adoptive parents or shared between them. Source: Lindsey McKay, Sophie Mathieu & Andrea Doucet, “Parental-Leave Rich and Parental-Leave Poor: Inequality in Canadian Labour Market Based Leave Policies” (2016) 58:4 *Journal of Industrial Relations* 543 at 551.*

Extending parental leaves from twelve to eighteen months was a feature of the Trudeau Liberals 2015 electoral platform, implemented in the fall of

<sup>66</sup> Diane Tremblay, “Quebec’s Policies for Work-Family Balance: A Model for Canada?” in Bonnie Fox, ed, *Family Patterns, Gender Relations*, 4th ed (Toronto: Oxford University Press, 2014).

2017. The extension has raised significant concerns for at least five reasons: (1) the income replacement rate for the extension is flat—that is, individuals can take twelve months at 55 percent income replacement or eighteen months, spreading that same income at 33 percent and making it accessible only to higher-income families; (2) the leave period is too long, as international data suggest that longer leaves, especially at lower replacement rates, have the effect of encouraging women’s labour market exit, thus reducing their lifetime earnings, extending the motherhood penalty in earnings, and contributing to women’s lifetime risk of poverty;<sup>67</sup> (3) the extension of the leave to eighteen months may be in lieu of needed heavy investments in early learning and care, thus again refamilializing the work of caregiving to individuals and, because women make up the majority of leave takers, to mothers; (4) the eligibility requirements remain high, with over 30 percent of mothers not currently eligible for EI leaves; and (5) the 2017 changes made no provision for dedicated paternity/second caregiver leaves that might encourage a sharing of caregiving in households.<sup>68</sup> Dedicated second caregiver leaves have significantly increased the number of fathers taking leaves in Quebec, with 79 percent of fathers taking some period of paternity or parental leaves in 2013, with only 9.4 percent of fathers outside of Quebec claiming or intending to take parental leave in the rest of Canada.<sup>69</sup>

This model is in many ways consistent with the Harper-era approach to leaves, familializing the work of social reproduction in homes to be done by mothers who can afford such a leave. It does not encourage a redistribution of care work among parents; instead, because the eligibility for an EI leave requires regular labour market attachment, it encourages a dual earner and female caregiver norm.<sup>70</sup> Workplace norms that discourage fathers/second caregivers to take leaves are not disrupted by

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<sup>67</sup> Hadas Mandel, “Winners and Losers: The Consequences of Welfare State Policies for Gender Wage Inequality” (2012) 28:2 *European Sociological Review* 241; Michelle Budig et al, “The Motherhood Penalty in Cross-National Perspective: The Importance of Work-Family Policies and Cultural Attitudes” (2012) 19:2 *Social Politics* 163.

<sup>68</sup> Budget 2018 does make provision, starting in 2019, for a use-it-or-lose-it leave. See the postscript at the end of this article for an analysis of the leave.

<sup>69</sup> Andrea Doucet et al, “Canada Country Note” in A Koslowski, S Blum & P Moss, eds, *International Review of Leave Policies and Research 2016* (April 2017), online: <[http://www.leavenetwork.org/fileadmin/Leavenetwork/Country\\_notes/2017/Canada\\_2017\\_final.pdf](http://www.leavenetwork.org/fileadmin/Leavenetwork/Country_notes/2017/Canada_2017_final.pdf)>; McKay, Mathieu & Doucet, *supra* note 20.

<sup>70</sup> See e.g. Kai-Uwe Müller, Michael Neumann & Katharina Wrohlich, “The Family Working-Time Model: Towards More Gender Equality in Work and Care,” *Journal of European Social Policy* [forthcoming], online: <<https://doi.org/10.1177/0958928717753581>>.

this policy extension.<sup>71</sup> Taken as a whole, the policy fits within a social investment liberal welfare state frame, pursuing a gender policy aimed at keeping women in labour markets (at least to access paid leave entitlement) while retaining a preference for care to be provided privately in homes or, if needed, purchased on the private market.

## VI. CHILDCARE POLICY UNDER THE TRUDEAU GOVERNMENT

Leaves and childcare go hand in hand, and there have been initial important investments in early childhood education and care. Budgets 2016 and 2017 announced \$7.5 billion for early learning and childcare to be transferred to provinces and territories. A portion of the funds was to be devoted to Indigenous childcare initiatives, spread over a decade beginning in 2017. Estimates suggest this could yield 40,000 new subsidized childcare spaces to the roughly 550,000 regulated childcare spaces in Canada, with additional funding to follow should the Liberals be re-elected.<sup>72</sup> The investments in childcare are essential in terms of increasing system-wide capacity, potentially decreasing exorbitant fee costs, and encouraging women's labour market attachment. However, the proposed investment falls considerably below the international benchmark of 1 percent GDP spending, placing Canada at around 0.3 percent spending on early learning and childcare.<sup>73</sup> In mid 2017, a federal Multilateral Early Learning and Child Care Framework was announced that includes principles of accessibility, affordability, quality, flexibility, and inclusivity.<sup>74</sup> However, the framework "does not set goals, objectives, targets or timetables, nor does it identify initial benchmarks on which to

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<sup>71</sup> The criticisms of this extension, in concert with the Budget 2017 commitment to gender-based analysis+, have caused some reflection on the part of the Trudeau government. It is anticipated that Budget 2018 will include a use-it-or-lose-it leave similar to the one in Quebec in order to address the normatively disjunctive consequence that this policy encourages adult worker/female carer outcomes. It remains unclear whether the other criticisms I have noted around access, eligibility, income replacement level, and duration of leave will be addressed.

<sup>72</sup> Canada, Department of Finance Canada, *Budget 2017: Building A Strong Middle Class* (Ottawa: Finance Canada, 2017), online: <<https://www.budget.gc.ca/2017/docs/plan/budget-2017-en.pdf>>.

<sup>73</sup> Childcare Resource and Research Unit (CRRU), *Early Learning and Child Care: How Does Canada Measure Up? International Comparisons Using Data from Starting Strong II*, Briefing Notes (Toronto: CRRU, 2006); Canadian Centre for Policy Alternatives, *Getting There: Alternative Federal Budget 2018* (Ottawa: Canadian Centre for Policy Alternatives, 2018) at 40, online: <<https://www.policyalternatives.ca/afb2018>>.

<sup>74</sup> Canada, Employment and Social Development Canada, *Multilateral Early Learning and Child Care Framework* (Ottawa: Government of Canada, 2017), online: <<https://www.canada.ca/en/employment-social-development/programs/early-learning-child-care/reports/2017-multilateral-framework.html>>.

calculate metrics. The framework does not set requirements with respect to public or parliamentary accountability beyond the public posting of action plans and progress reports.”<sup>75</sup>

There are four interrelated concerns about the Trudeau government’s approach to childcare. First, the government has encouraged targeting spending, asking provinces and territories to funnel new federal childcare dollars to those most in need of help, particularly low income families, single parent families, and families with a child with special needs.<sup>76</sup> Second and related, a targeted approach misses an opportunity to establish a universal approach to childcare that the international policy consensus says yield the greatest results, particularly if the aim is advancing women’s labour market attachment and economic security.<sup>77</sup> While targeting supports to lower-income families is seemingly positive, the approach can make childcare a welfare measure. Because subsidized childcare services are delivered in a variety of settings—some centre based, some regulated in-home care—and run by a range of agents (not for profits, for profits, some municipally or college/university run), with funding and eligibility administered often by municipalities, targeted childcare access can further enmesh vulnerable families in what is often already a demoralizing and heavily scrutinized social welfare system. And because certain families and not others gain access to spaces and cost reductions, it can dilute the possibilities for social solidarity and a cross-class, cross-family buy-in to public services. Universal publicly funded childcare (available based on need/demand) that is affordable, accessible, high quality, and not for profit assists parents to work (and reduces poverty), creates jobs for early childhood educators (disproportionately women), and potentially improves social and learning outcomes for children. Such an approach views childcare as a shared social good rather than a labour market policy.

A third concern is that infant and toddler care is the most expensive and the least available form of childcare. The extension of parental leaves to eighteen months echoes the recommendation from the Harper period to use leaves (almost exclusively, maternal leaves) to decrease demand for childcare. This comes with the negative motherhood wage penalty and other income and labour market attachment consequences noted above. Finally,

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<sup>75</sup> Canadian Centre for Policy Alternatives, *supra* note 73 at 41.

<sup>76</sup> Jordan Press & Joanna Smith, “Liberals Look to Target Child-Care Funding to ‘Vulnerable’ Families,” *Globe and Mail* (7 April 2017), online: <<https://www.theglobeandmail.com/news/politics/liberals-look-to-target-child-care-funding-to-vulnerable-families/article34626803/>>.

<sup>77</sup> See e.g. Organisation for Economic Co-operation and Development (OECD), *The Pursuit of Gender Equality: An Uphill Battle* (Paris: OECD Publishing, 2017), online: <<http://dx.doi.org/10.1787/9789264281318-en>>.

there is no substantive national framework for goals, targets, and timetables for childcare and no national legislative framework protecting childcare as a social good for Canadians (similar to Canada's only other social democratic national welfare state policy—health care). The confluence of these factors makes it susceptible to revocation and retrenchment by the political or ideological orientation of future governments.

Canada has had a stop-start relationship to the field of early learning and care, and provinces, notably Quebec, Ontario, Manitoba, Prince Edward Island, and British Columbia have made significant investments in building their systems. In 2006, the OECD ranked Canada last of fourteen nations for childcare. The organization noted that Canada has a “patchwork of uneconomic, fragmented services, within which a small ‘child care’ sector is seen as a labour market support, often without a focused child development and education role.”<sup>78</sup> There are significant challenges to building a childcare system and, as with parental leaves, the aspirational aims of investing in work–life balance appear to be constrained by instrumentalist social investment approaches. Yet, despite these cautions, two key pillars of social policy related to gender equality—parental leaves and childcare—are firmly on national and provincial/territorial agendas, ensconced in a broader consideration of gender-based analysis.

## VII. CONCLUSION: FEMINIST FUTURES?

The current political climate in Canada favours important progressive renovation of Canada's social policy architecture for family-related policies, with significant implications for gender equality. The social investment frame that animates current policy initiatives, however, requires revision if it is to move to an approach that views leaves and childcare as social goods rather than as labour market activation for mothers in particular. The introduction of a use-it-or-lose-it father or second caregiver leave is an important step in using social policy to encourage greater sharing of caregiving, both in infancy and over the life course.

Targeting of (rather than universalizing) early learning and care along with parental leave extensions at low rates of income replacement replicate and, to some extent, converge with Harper-era policies. These policies have social class-based effects. In the domain of childcare, class effects

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<sup>78</sup> OECD, *OECD Country Note: Early Childhood Education and Care Policy in Canada* (Paris: OECD, 2004), online: <<http://www.oecd.org/canada/33850725.pdf>>; OECD, *Starting Strong II: Early Childhood Education and Care* (Paris: OECD, 2006), online: <<http://www.oecd.org/education/school/startingstrongiinearlychildhoodeducationandcare.htm>>.

are evident insofar as childcare can become, in essence, a welfare measure. Similarly, long leaves are inaccessible to lower-income families because of very low replacement rates, consequently reserving longer leaves for higher-income households. Thus, higher-income families, in policy terms, are more able to address the social reproduction dilemma via providing parental care for longer periods of time. These policies, in concert, appear to continue to encourage a dual earner–female carer model. They have the potential outcome of increasing the motherhood penalty in earnings for women, may encourage women’s labour market exit or part-time re-entry absent childcare supports, and may thus increase women’s lifetime risk of poverty. Investing robustly in a publicly managed universal system of early learning and care counters some of these problematic, gendered outcomes. It also invests in women’s paid care work with expansions in the sector likely coming with more jobs and concomitant wage increases for early childhood educators.

The collaborative federalism currently evident in the Trudeau government’s approach may assist in building dialogue and a best practices model for childcare program delivery among the provinces, as some provinces have moved to develop important universal access-oriented policies in early learning and care. But a national framework requires strong benchmarks and goals and, crucially, a legislative framework that protects expansions and investments in the early learning and care sector, similar to those enjoyed in health care. The undoing of the nascent system of early learning and care by the Harper government underlines the importance of inoculating crucial social policy frameworks from changes in ideological approach to families and care. Conservative family-related policy tools, including their capacity to recognize and reward the unpaid work done in families in caring for children, remain popular. Creating systems that foster cross-class solidarity and understand investments in early learning and care as a social good while also supporting accessible income-enhanced parental leaves is a crucial choice that supports the goals of gender equity. For law and social policy, the social reproduction frame outlined here and applied to federalism and family-related policies offers a dynamic methodology to understanding the ways in which caring work is shifted among states, the market, families, and the not-for-profit sector and its gendered and other outcomes.

### **VIII. POST-SCRIPT: FEDERALISM, FAMILIES, AND FEMINISM IN THE 2018 BUDGET**

As this article was going to press, Budget 2018 was introduced. On 27 February 2018, the federal government tabled its budget, widely hailed as



a gender equality budget.<sup>79</sup> To illustrate, the word gender was mentioned 358 times in the 367-page budget, compared to twice in 2016.<sup>80</sup> In addition to announcements in a range of policy areas (detailed below), a commitment to addressing gender wage disparities, and efforts aimed at increasing women's labour market participation, the budget contains a fifty-eight-page chapter dedicated to gender equality.<sup>81</sup> One of its most significant features is its "Gender Results Framework," which is the result of the Budget 2017 commitment to develop a gender-based analysis+ (GBA+) that aims to enshrine GBA+ legislatively to ensure all future budgeting processes adhere to its principles. Extending the key question posed in this article, does Budget 2018 signal a shift in Canada's social policy architecture in relation to family-related policy and gender equality? How does it address the social reproduction dilemma?

### A. GBA+: The Gender Results Framework

Budget 2018 elaborates a "Gender Results Framework" around six pillars: education and skills development, economic participation and prosperity, leadership and democratic participation, gender-based violence and access to justice, poverty reduction, health and well-being, and gender equality around the world (see Appendix 1: Gender Results Framework). The framework proposes matrices and indicators aligned with each category to benchmark, track, and measure success or shortcoming.<sup>82</sup> The GBA+ framework is thus self-reflective and iterative. It notes that the "plus" component is a crucial, though not fully elaborated, framework as yet:

The Government also recognizes that identities are complex. Not all women experience inequality, and not all men experience privilege. Binary notions of gender do not work for all Canadians, and race, class, sexuality, and ability—

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<sup>79</sup> Sarah Boesveld, "Key Takeaways from Justin Trudeau's 'Gender Equality' Budget," *Macleans* (27 February 2018), online: <<http://www.macleans.ca/politics/ottawa/federal-budget-2018-gender-equity/>>; Mélanie Marquis, "Le budget de l'an trois du gouvernement Trudeau, un exercice féministe," *L'actualité* (27 February 2018), online: <<http://lactualite.com/actualites/2018/02/27/le-budget-de-lan-trois-du-gouvernement-trudeau-un-exercice-feministe/>>.

<sup>80</sup> Michelle Zilio, Tom Cardoso & Matt Lundy, "Federal Budget Highlights: Twelve Things You Need To Know," *Globe and Mail* (27 February 2018), online: <<http://www.Theglobeandmail.Com/News/Politics/2018-Federal-Budget-Highlights/Article38116231/>>.

<sup>81</sup> Canada, Department of Finance, *Budget 2018: Equality + Growth: A Strong Middle Class* (Ottawa: Finance Canada, 2018), online: <<https://www.budget.gc.ca/2018/docs/plan/budget-2018-en.pdf>>.

<sup>82</sup> *Ibid* at 220.

among other facets—all intersect to profoundly impact how gender is experienced in daily life. The Government acknowledges that this budget—though ambitious—does not solve all complex inequalities, but it is an important step forward in data, analysis and resources.<sup>83</sup>

It promises to invest in gender and diversity data gathering and analysis as part of its broad commitment to building and sustaining GBA+ via dedicated investments of \$6.7 million over five years for a new Statistics Canada Centre for Gender, Diversity and Inclusion Statistics.<sup>84</sup> The GBA+ framework and process, its data gathering, its prospective legislative entrenchment, and, centrally, its iterative approach, has significant implications for combatting inequalities across a host of axes, including in the labour market and in the balancing of work and care.

## IX. KEY INVESTMENTS

The budget makes significant initial investments in key areas related to pay equity for federally regulated workplaces, pay transparency, gender-based violence and harassment initiatives, gender and justice, apprenticeships, women in leadership, and women in science, technology, engineering, and mathematics, among others. It elevates Status of Women Canada to a full department and invests in community women's organizations. It reworks, reforms, and enhances an important benefit—the Canada Workers Benefit (formerly the Working Income Tax Benefit)—which supplements the earnings of low-income workers, proposing to automatically enrol those eligible for it. It recognizes that important tax benefits that are available, such as the Canada Workers Benefit and the generous Canada Child Benefit, do not reach certain individuals and families, particularly Indigenous families in northern or remote areas; it has prioritized outreach to ensure that these entitlements have a greater redistributive impact.<sup>85</sup>

Among its most anticipated announcements is the addition of a use-it-or-lose-it parental leave for a second caregiver, called the Parental Sharing Benefit. This benefit is available to two-parent families (not to other second carers and not to single-parent families). It increases the total duration of available leave by five weeks if the second parent agrees to take a minimum of five weeks leave over the one-year leave period and by

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<sup>83</sup> *Ibid* at 219.

<sup>84</sup> *Ibid*.

<sup>85</sup> *Ibid* at 32, 34, 41, 44, 86, 196, 246, 248, 272.

eight weeks over the eighteen-month period. It retains the same replacement rate and leaves eligibility criteria intact. Provinces and territories will need to amend their respective labour codes to extend job-protected leave to parents (see Table 2).

Table 2: Parental leave regime

<b>Current EI parental leave regime</b>	<b>Budget 2018 parental leave regime</b>
One year plan Either parent takes or shares 35 weeks at 55% average weekly earnings	One year plan If the other parent takes five weeks, parents can share the 40 weeks at 55% average weekly earnings
Eighteen month plan Either parent takes or shares 61 weeks at 33% average weekly earnings	Eighteen month plan If the other parent takes eight weeks, parents can share the 69 weeks at 33% average weekly earnings

Source: Canada, Department of Finance, *Budget 2018: Equality + Growth: A Strong Middle Class* (Ottawa: Finance Canada, 2018) at 46–8, online: <<https://www.budget.gc.ca/2018/docs/plan/budget-2018-en.pdf>>.

Recognizing the growing economic consequences of an aging workforce, Budget 2018 anchors national long-term economic prosperity to women's economic equality, labour market participation, and leadership. It highlights structural barriers to women's greater labour market participation and acknowledges a gender wage gap that owes at least in part to an unequal distribution of, and support for, care work. The addition of the use-it-or-lose-it leave is nested in an acknowledgement of the potential for shared care work to alter often gendered care work arrangements and an emphasis on permitting women to return to the labour market potentially earlier.

The emphasis in Budget 2018 weighs on the labour market activation side, focusing on measures to get more women into the labour market, into leadership positions, and into fields in which they are underrepresented. A provision that has received scant attention is Budget 2018's provision that allows mothers to work part-time while on maternity leave (sickness claims are also included) without having their benefits clawed back.<sup>86</sup> For mothers who are small business owners, for example, the latter may be exceptionally important, and for low-income mothers, it will allow them to supplement EI earnings. However, the broader issue of raising income replacement rates or increasing eligibility for leaves is not addressed in the budget, meaning that its benefits flow more to higher-income two-parent

<sup>86</sup> *Ibid* at 249.

households. Moreover, as will be elucidated below, it extends a mixed and at times incoherent social policy architecture, individualizing responsibility for the inputs into social reproduction (such as working while on a claim) without necessarily providing adequate supports for leaves or care. The most glaring absence is childcare. While investments were made in 2017, childcare is largely absent in this budget. This absence, along with no talk of a universal (non-targeted) system of care, leaves the biggest lever for women's economic participation largely untouched.

## **X. FAMILY POLICY ARCHITECTURE: VARIETIES OF LIBERALISM?**

Budget 2018 remains a largely dual earner–female carer approach, although the addition of the use-it-or-lose-it leave and the promise to develop a framework for a national pharmacare program disrupt this categorization somewhat. The absence of movement on childcare, the continued focus on targeting childcare, and the sustained low replacement rates for parental leaves suggest a variation on the social investment paradigm, despite the elaboration of crucial GBA+ analysis and frameworks. Using its iterative potential, Budget 2019 could decamp some of this path dependent entrenchment. Funding maternity and parental leaves at the Quebec QPIP levels and lowering eligibility thresholds would make leaves not only more affordable and accessible to more families but also would likely encourage greater uptake from second parents (often fathers) for whom low replacement rates may serve as disincentives to take leaves. Decreasing the motherhood wage penalty is thus aided by better-funded leaves, if they allow women to re-enter the labour market earlier and share care work. However, absent childcare, and given costs, barriers to access, and quality issues, leave policy change efforts will not yield significant gender equality gains on their own. The state's role in underwriting some of the work of social reproduction—defamilializing the social reproduction dilemma—is largely unmet in Budget 2018.

Budget 2019 will come in an election year, and leaving the gains made towards the development of a national system of early learning and care unprotected legislatively risks undoing the significant progress made in the 2017 and 2018 budgets. Enshrining early learning and care in a statutory framework comparable to the *Canada Health Act*,<sup>87</sup> such as was proposed in 2006 in the *Early Learning and Child Care Act*,<sup>88</sup> is the next step for the GBA+ framework laid out in Budget 2018.

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<sup>87</sup> *Canada Health Act*, RSC 1985, c C-6.

<sup>88</sup> Bill C-303, *Early Learning and Child Care Act*, 1st Sess, 39th Parl (2006) (defeated after second reading).

**APPENDIX 1: CANADA’S GENDER RESULTS FRAMEWORK**

<p align="center"><b>Canada’s Gender Results Framework</b>  <i>Canada’s economic future depends on people having equal opportunity to reach their full potential, regardless of gender.</i></p> <p align="center"><b>Gender Equality Goals for Canada</b></p>	
<b>Education and Skills Development</b>	<p><b>Equal opportunities and diversified paths in education and skills development</b></p> <ul style="list-style-type: none"> <li>• More diversified educational paths and career choices</li> <li>• Reduced gender gaps in reading and numeracy skills among youth, including Indigenous youth</li> <li>• Equal lifelong learning opportunities for adults</li> </ul>
<b>Economic Participation and Prosperity</b>	<p><b>Equal and full participation in the economy</b></p> <ul style="list-style-type: none"> <li>• Increased labour market opportunities for women, especially women in underrepresented groups</li> <li>• Reduced gender wage gap</li> <li>• Increased full-time employment of women</li> <li>• Equal sharing of parenting roles and family responsibilities</li> <li>• Better gender balance across occupations</li> <li>• More women in higher-quality jobs, such as permanent and well-paid jobs</li> </ul>
<b>Leadership and Democratic Participation</b>	<p><b>Gender equality in leadership roles and at all levels of decision-making</b></p> <ul style="list-style-type: none"> <li>• More women in senior management positions, and more diversity in senior leadership positions</li> <li>• Increased opportunities for women to start and grow their businesses, and succeed on a global scale</li> <li>• More company board seats held by women, and more diversity on company boards</li> <li>• Greater representation of women and underrepresented groups in elected office and ministerial positions in national and sub-national governments</li> <li>• Increased representation of women and underrepresented groups in the judicial system</li> </ul>
<b>Gender-Based Violence and Access to Justice</b>	<p><b>Eliminating gender-based violence and harassment, and promoting security of the person and access to justice</b></p> <ul style="list-style-type: none"> <li>• Workplaces are harassment free</li> <li>• Fewer women are victims of intimate partner violence and sexual assault</li> <li>• Fewer victims of childhood maltreatment</li> <li>• Fewer women killed by an intimate partner</li> <li>• Increased police reporting of violent crimes</li> <li>• Fewer Indigenous women and girls are victims of violence</li> <li>• Increased accountability and responsiveness of the Canadian justice system</li> </ul>
<b>Poverty Reduction, Health and Well-Being</b>	<p><b>Reduced poverty and improved health outcomes</b></p> <ul style="list-style-type: none"> <li>• Fewer vulnerable individuals living in poverty</li> <li>• Fewer women and children living in food-insecure households</li> <li>• Fewer vulnerable individuals lacking stable, safe and permanent housing</li> <li>• Child and spousal support orders enforced</li> <li>• More years in good health</li> <li>• Improved mental health</li> <li>• Improved access to contraception for young people and reduced adolescent birth rate</li> </ul>
<b>Gender Equality Around the World</b>	<p><b>Promoting gender equality to build a more peaceful, inclusive, rules-based and prosperous world</b></p> <ul style="list-style-type: none"> <li>• Feminist international approach to all policies and programs, including diplomacy, trade, security and development</li> </ul>

*The Gender Results Framework is aligned with the Government of Canada’s policy of GBA+, ensuring that gender is considered in relation to other intersecting identity factors. Wherever possible, and with a view to collecting better data, intersecting identity factors will be considered in the above indicators.*

Source: Canada, Department of Finance, *Budget 2018: Equality + Growth: A Strong Middle Class* (Ottawa: Finance Canada, 2018) at 221, online: <<https://www.budget.gc.ca/2018/docs/plan/budget-2018-en.pdf>>.