

*To Look and to Play/Regards et jeux* Reflexive Essay

In my paper, I use the phenomenon commonly referenced as the “motherhood penalty” as an entry point through which to understand the tension between work norms in legal private practice and the developmental needs of the child. Reflecting on the unique pressures that lay at the intersection of work and motherhood gave me a new lens, the feeling of blinking and seeing an x-ray of the world, with a fresh layer of power dynamics and inequalities laid bare in a flash. The discrepancy between daycare or school hours and work norms in private practice often necessitates significant outsourcing of care to either the other parent or non-parental forms of care. Carrying out an extensive literature review to lay the foundation for this work was a rewarding, grounding process; all the nebulous threads I could not fully grasp prior to this exercise were suddenly made visible and granted a definite shape.

At first, a paper about motherhood and the legal profession may not appear sufficiently linked to the topic of children and the law - in my view, however, the two are inextricably linked. If the legal profession and the billable hour measure success and opportunities for advancement by a quantitative measure of the hours devoted to work, that necessarily implies that all those hours, the late evenings, the emergency revisions on weekends, are time taken *away* from the child. I grounded this zero sum dynamic between the model of the ideal worker and the realities of parenthood by looking to early childhood development; importantly, I want to note that my paper is not anti-daycare. The availability of non-parental care is vital to women’s participation in the workforce. As the Quebec example has shown, however, universal programs must be mindful of the magnitude of demand and develop their centers accordingly. This research felt especially timely, since Ontario, the last province to hold out on the federal \$10-a-day childcare deal, signed on to the deal as I was working on this paper.

Early childhood development has demonstrated that caregiver responsiveness and continuity are the two most important things for the healthy emotional development of a young child. It is worth noting that neither an immensely overworked parent nor a low-quality care

situation is likely to consistently embody these two attributes - it is for this reason that quality, affordable care must be developed with the needs of the child in mind. Caregiver turnover must be reduced to a minimum, and balanced caregiver:child ratios must be maintained to ensure that responsiveness is not eroded by caregivers juggling too many children at once.

Most striking to me was the findings from a study that measured cortisol levels in children in parental vs center-based care; while cortisol levels in children at home started off at a baseline and dropped through the day, cortisol levels in children at daycare started off at a baseline and *increased* through the day. Perhaps more worryingly, a longitudinal study found that differential responses to cortisol were maintained even well into the teenage years of these children.

It is important to acknowledge the immense potential of harnessing this knowledge to inform workplace norms and childcare infrastructure. It is not that daycare is in and of itself harmful to children - rather, it is the age at which the child enters daycare, the hours they spend in care, and the quality of the care that make it detrimental to the full social and emotional flourishing of the child. CPEs in Quebec, for example, which require a rigorous level of training and are focused on independent play to support the curiosity and patience of children, richly meet the needs of children and are not marked by the risks summarized above - it is only regrettable that the shortage of CPEs in Quebec has led to the development of a two-tier system in which the gap is bridged by many other forms of non-parental care, some of which may be less rigorously vetted.

Interestingly, the lessons we learn from maternal discrimination in the workforce map more broadly onto a societal deficit in both valuing and bolstering caregiving as well; those who bear the burden of care work remain devalued and in some instances, stigmatized, even though it is precisely their contribution to childrearing that makes the rigorous schedules of private practice tenable for lawyers with families. In building out the subsidized childcare system across provinces, we must keep in mind that although the rich and dimensional developmental needs of children are not immediately measurable, care centers must be thoughtfully developed an

available in sufficient numbers in order to prioritize the longterm social and emotional health of the children in their care.

Working on this paper has given me a better understanding of the complicated dynamics at play and instilled the drive to continue dissecting the insights and potential that remain largely untapped in centering the needs of the child as the lodestar that governs our re-imagining of work. Private practice in law is one of the most illustrative examples of how pretending that all employees can present as unencumbered ideal workers drives out promising individuals who can produce quality, creative work, even without billing skyrocketing hours. As I mention in my paper, the key is not for women to work like they do not have children; it is for *all* parents to work like they *do*.

## **Annotated Bibliography**

### JURISPRUDENCE

*Fraser v Canada (Attorney General)*, 2020 SCC 28.

Fraser introduced a deeply contextualized and purposive inquiry into the disadvantages experienced by working mothers. Through the prism afforded by the majority decision in this case, it was possible to draw the links between motherhood, work, and the implications of inequality and oppression for the child - all qualities that are inextricably interwoven but are curiously often discussed in separate spheres, as though there were not a children's rights case to be made for women's equal treatment and advancement in the workplace.

### SECONDARY MATERIAL: MONOGRAPHS

Leach, Penelope, *Child Care Today* (Toronto: Vintage Canada, 2009).

This book offers startling insight into childcare policy, weaving in insights about child development and how childcare can be re-imagined to support the needs of the child. I was especially moved by an excerpt where a mother is speaking to her child after picking her up from daycare. She asks if she had fun playing in the garden, or having a picnic, and the child simply responds "I done crying." The author emphasizes the importance of low staff turnover

as a key to allowing childcare centers to be a safe, secure space for children - caring for the child, when traced back to its roots, also means caring for the caregiver.

Tougas, Jocelyne, *Reforming Quebec's Early Childhood Care and Education: The First Five Years*, (Toronto: Childcare Resource and Research Unit, 2002).

This source discusses key lessons from the first five years of the Quebec example of universal childcare specifically, giving insights into how the CPE (centre de la petite enfance) model reduced turnover and increased job satisfaction among its staff members. Notably, they introduced a career ladder that determines their level of pay, so that there would not be disparate compensation for the same responsibilities between centers. Allowing caregivers to be well-compensated, valued, and cared for (as in, not under-staffed) was key to maintaining a healthy childcare environment, both for caregivers and the children in their care.

#### SECONDARY MATERIAL: ARTICLES

Baker, Michael, Jonathan Gruber & Kevin Milligan, *Non-cognitive deficits and young adult outcomes: The long-run impacts of a universal child care program*, by Michael Baker, Jonathan Gruber & Kevin Milligan, *National Bureau of Economic Research*, 2015).

The authors of this paper thoughtfully inquire into the long-run impacts of lower-quality childcare. Despite mainstream narratives that suggest that children are resilient and that they will flourish as long as they have the essentials (safety, supervision, and well-rounded meals), this study shows a greater focus must be placed on the development of non-cognitive skills. An absence of this consideration was found to be associated with worse health, lower life satisfaction, and higher crime rates later in life, particularly in boys. This study affirms that while high-quality childcare can improve outcomes for children, low-quality childcare can have a lasting negative effect, well into the adolescent years.

Cunningham, Keith, "Father time: Flexible work arrangements and the law firm's failure of the family" (2000) 53 *Stan L Rev* 967.

The author of this paper beautifully and incisively dissects contemporary dynamics wherein the lawyer-fathers' desire to spend time with their children is trumped by economic

considerations and workplace norms that pressure him to devote the majority of his time to work. The article rightly notes that common narratives about accommodating fatherhood are restricted to anecdotes about being present at childbirth, and soon cordon off childrearing as a responsibility for the primary caregiver (often the mother), while the father is seen to have done his part and now expected to be fully available for work. It also highlights the other side of the coin; the pressure for male lawyers to be “always on” not only hurts their ability to be involved at home, it also stigmatizes work-life balance as a “women’s issue.” This article presents a strong argument for revising the working model of the law firm, which in its present iteration is near-impossible to reconcile with the needs of the family.

Lamb, Micheal E & Catherine S Tamis-Lemonda, “The role of the father” (2004) 4 The role of the father in child development 100–105.

The authors in this article advance a powerful argument for de-stigmatizing *and* de-gendering the notion of care, highlighting the multi-faceted benefits to children that stand to be gained when fathers play an active and engaged role in childrearing. Children who enjoy “secure, supportive, reciprocal, and sensitive relationships” with both parents were found to have lasting psychological benefits that contribute to the child’s wellbeing.

Lefebvre, Pierre, Philip Merrigan & Francis Roy-Desrosiers, “Quebec’s childcare universal low fees policy 10 years after: Effects, costs and benefits” (2011) 11:01 Cahier de recherche/Working Paper.

This article highlights that quality of care plays a strong role in determining whether childcare is beneficial or detrimental to the child. It provides an overview of the economic benefits that were undeniably made possible by the universal childcare system whilst also noting that the outcomes of the program had “negative” effects for children in the 5-year-old group and worse so for kids even younger than that. The study affirmed that time spent in care, quality of care, and the age at which the child enters non-parental care are key determinants of developmental outcomes for the child.

Reichman, Nancy & Joyce Sterling, “Parenthood status and compensation in law practice” (2013) 20:2 Indiana Journal of Global Legal Studies 1203–1222.

This article powerfully examines the double bind that affects parents (and especially mothers) who work as lawyers. It acknowledges the “cultural superschema” at play in the persistent inequalities confronted by women, explaining that just as they are “pushed from work,” they are also “pulled toward the home” as a result of prevailing gendered social norms. It ties this social reality into the legal profession, noting how parenthood can affect compensation and curtail the career trajectory of the mother-lawyer. Looking to the problem of the “motherhood penalty,” it notes that the penalty has been found to increase with the birth of every additional child. This provides a helpful lens through which to understand how the invisible labor of raising children is rewarded morally by society but penalized financially, causing the needs of children to remain largely unspoken or brushed under the carpet in an attempt to avoid professional setbacks.

Ruprecht, Karen, James Elicker & Ji Young Choi, “Continuity of care, caregiver–child interactions, and toddler social competence and problem behaviors” (2016) 27:2 Early education and development 221–239.

The authors of this study strongly advocate for continuity of care, highlighting that it is one of the most important determinants of healthy development for toddlers. It also affirms the importance of higher staff:child ratios as being vital to involved caregiving. It asserts that secure attachment is correlated with continuous and sensitive caregiving, which leads to improved behavioral outcomes in the long-run. Instead of moving children to new classrooms as they hit a new age milestone, the authors suggest maintaining the child-caregiver bond for longer periods of time, allowing a secure attachment and feeling of trust to be nurtured. This longer-term arrangement also allows caregivers to develop a more thorough understanding of the needs and nuances of each child and to respond accordingly.

Vermeer, Harriet J & Marleen G Groeneveld, “Children’s physiological responses to childcare” (2017) 15 Current opinion in psychology 201–206.

This study looked at a very simple metric that revealed a rich array of insights. It observed that cortisol levels in children who are at home in parental care begin with baseline levels of cortisol that drop through the day, while children in non-parental, center-based care begin the day at a baseline level and *increase* through the day. It connected this phenomenon to the

quality of care, noting that this was largely mitigated in environments of high-quality non-parental care. Interestingly, these cortisol rises were more prominent in toddlers and preschoolers than infants. It is likely that while infants are able to regulate through sleep, feeding, and rocking, toddlers and preschoolers are more likely to remark on the differences between the home and center environments.

#### SECONDARY MATERIAL: ELECTRONIC SOURCES

Yglesias, Matthew, “Quebec gave all parents cheap day care — and their kids suffered as a result”, (24 September 2015), online: *Vox*  
<<https://www.vox.com/2015/9/24/9391625/quebec-daycare-study>>.

This well-researched and accessible article provides a robust and informative overview of universal childcare in Quebec, acknowledging the gains to women’s participation in the workforce whilst also recognizing the harms of the “two-tier system” that developed as a result of a shortage of spaces in CPE centers. It highlights that it is in fact *non-cognitive* skills that are vital in early childhood education, and that any successful childcare model must be designed to nurture these skills (such as patience, empathy, independent play, curiosity).