

Grace and her ex-husband have two children who are in secondary school. Until recently, before the children started to spend part of the day in school, Grace stayed home in order to spend more time with her children and take responsibility for most of the family's domestic responsibilities. This was a decision that made economic sense for the family, as Grace's income as a secretary was significantly less than her ex-husband's business income, and the cost of child care remained high in relation to her employment income. The couple is now divorced and Grace is supporting the family through a combination of employment income and child support, the latter of which will only continue while the children remain in school. Grace is an only child. Her aging widowed mother has significant health problems associated with a back injury from which she never fully recovered. Her mother experiences chronic pain associated with sciatica and decreasing mobility. Her health has recently worsened such that Grace spends more and more time helping her mother with appointments, meals and other household tasks, and increasing amounts of time driving back and forth between her home and her mother's apartment. After only two years of full-time employment, Grace has been forced to cut back on her hours of work because there are simply not enough hours in the day for taking care of her children and her mother as well as full-time employment.

CHAPTER 1 – Background and Project Overview

I. Introduction

Taking care of dependent or vulnerable adult family members, rather than contracting the work out to third parties outside the family, is the norm in many cultures around the world. This practice is known as family or informal caregiving. Family caregivers look after aging parents, children with disabilities, and people coping with mental health issues, addictions and chronic illnesses. Caregivers manage medical care, assist with intensely intimate elements of personal care, and provide a range of services including emotional support, meals, housework and mobility assistance – all tailored to the particular needs of a loved one and organised around the other demands paid work, family and community impose on a caregiver's time and energy.

Balancing paid work and unpaid caregiving in a healthy manner presents individuals who participate in the paid workforce with an enormous personal challenge. Energy and time are finite resources. The potential implications of caregiving include emotional stress, health deterioration, exhaustion, social isolation – outcomes captured under the umbrella term “caregiver strain” – as well as work-related consequences such as a reduction in employment income, pensionable earnings and opportunities for career development. There exists a large body of literature on this conflict between the demands of work and family out of which has emerged the expression “work-life balance”. Although parenting was the central theme of

early writing on work-family conflict, adult caregiving forms a growing aspect of family-related responsibilities.

This legal research and law reform paper exists at the nexus between paid work and unpaid caregiving. It brings together research on family caregiving and work-life balance and integrates legal analysis to examine how the laws of British Columbia currently respond to the needs of working caregivers and explore how legislation could be revised to be more supportive of family care.

Family caregiving is a complex social phenomenon embedded within a more complex network of workplace and family values. Law reform is neither capable of affecting a revolution in the valorisation of family care, nor able to resolve all of society's concerns in relation to supporting family caregivers. However, integrating support – symbolic, financial or otherwise – can ease the burden on caregivers in many practical ways, facilitating the balance of work and caring responsibilities, permitting caregivers to get more time to care, and replacing lost income associated with prioritizing care. Law and culture exist in a dialectic relationship. Thus, while culture informs law, law is part of the moral and social fabric of a culture, such that the recognition of family caregiving in legal institutions has the potential to alter social practices and increase the value attached to care.

There is no single law in BC or Canada that addresses the circumstances of caregivers. Rather, the law of caregiving is impacted by diverse legal provisions found in employment and labour law, human rights, pensions, tax policy and health law. The system is a patchwork quilt sewn into the fabric of our legal system over the years and law reform has been an exercise in patching holes. There is yet to be a broad investigation of the overall effectiveness of this ad hoc framework in BC or Canada. It is time to question whether the law has evolved commensurate with social change and determine whether modernization is required. This paper provides an answer to this question. Although further study will be necessary to translate some of the conclusions of this report into legislation, this paper is the first step in the law reform process.

II. The Social Framework: Recent Changes Impacting Family Caregiving

Various changes in social and labour force demographics concurrent with an evolution in the structure of both families and the health care system fuel the present growing crisis of caregiving.

Community care has become an increasingly large component of the Canadian long-term care strategy as a function of de-institutionalization of aspects of health care service delivery, a rapidly aging population, and a desire on the part of older adults and people with disabilities to “age in place” and maintain as much independence and autonomy as possible. Given the costs associated with professional or quality care, the limited number of spaces in care facilities, and reluctance to leave the long-term care of a loved one to strangers, many families opt to provide care through a family caregiving relationship.

Unpaid family caregiving has thus become a key component of Canada's publicly-funded health care system. Recent statistics indicate that over 1.4 million Canadians over the age of 45 combine aged care and paid work – a figure that represents only a fraction of caregivers, excluding, as it does, the care of adult children with disabilities, illnesses and mental health issues.¹ As our population continues to age, more and more British Columbians will find themselves caring for parents, grandparents and other older adults. Many caregivers will join the “sandwich generation”, who provide care simultaneously for both young children and parents. *One of the questions motivating this study is how to support caregiving labour in the face of an aging population.*

Although many people will say they “choose” to care for their family member, the notion of choice occupies a complex position within a discussion of caregiving. Lack of choice may be a function of the manner in which social expectations and current legislation reinforce the division of caregiving labour and influence other caregiving decisions. There are generally various pressures on a caregiver to sustain employment or assume care.

An aspect of this lack of choice is connected to the reality that in Canada care remains overwhelming the work of women.² The language of choice has historically been invoked to rationalize this gendered allocation of unpaid labour: i.e., when women leave the work sphere or reduce hours of paid employment to become full-time caregivers they do so “voluntarily”. However, this rhetoric disguises constraints on choice.³ *One of the problems this project tackles is how to reform the legal system to enhance the choices available to working caregivers.*

Family caregiving became the tradition in Canada long before women entered the paid work force in large numbers in the last century. As women are now just as likely as men to maintain paid employment outside the home, there are fewer family members able to assume the responsibility of family care without also assuming the challenge of juggling workplace and domestic responsibilities. High rates of divorce mean women are providing care with less support from their family infrastructure, and lower rates of fertility concentrate the care of an increasing community of care recipients on the resources of fewer caregivers. Delayed parenting means women are increasingly balancing caring for children and parents during the same phase of their lives.

Work is a “deeply gendered activity”.⁴ Academic literature on work-family balance posits the notion that law and policy take advantage of the family caregiver, by virtue of being premised on the concept of an ideal worker breadwinner who is unencumbered by caregiving responsibilities and supported at home by the unpaid domestic labour of a spouse

¹ Kelly Cranswick, *General Social Survey, Cycle 16: Caring for an Aging Society*, 89-582-X1E, Housing Family and Social Statistics Division, Statistics Canada, 2003, online: <<http://www.statcan.ca/english/IPS/Data/89-582-X1E.htm>>.

² Pyper, Wendy, “Balancing Career and Care”, *Perspectives on Labour and Income*, Statistics Canada Catalogue no. 74-001-XIE, (November, 2006), online: <<http://www.statcan.ca/english/freepub/74-001-XIE/0020474-001-XIE.pdf>> [Pyper].

³ Joanne Conaghan, “Work, Family and the Discipline of Labour Law,” in Joanne Conaghan & Kerry Rittich, eds., *Labour, Law and Family* (London: Oxford University Press, 2005) 19 at 30 [Conaghan, “Work”].

⁴ Kerry Rittich, “Feminization and Contingency: Regulating the Stakes for Work and Women” in Joanne Conaghan, Richard Michael Fischel and Karl Klare, eds. *Labour Law in an Era of Globalization* (Oxford: Oxford University Press, 2003) 117 at 122, cited in Conaghan, “Work”, *ibid.* at 29.

(generally the female partner). While this norm is increasingly less representative of the circumstances of most workers, “in various guises the ideal worker is assumed in the way in which work is organised, in the scheduling of hours, the design of jobs, the allocation of tasks and responsibilities, in the ways in which commitment and performance are recognised, and in the increasingly time-unburdened character of many jobs”.⁵ It is built into the construction of labour over the life-course that is reflected in legal and social institutions but this norm is rarely rendered explicit.

Equitable policy development to support caregivers may thus require a shifting of the paradigm underlying legislation. As Belinda Smith writes:

State intervention in the market is needed to transform the ideal worker from one who is unencumbered to one who participates in both paid work and caregiving. Such cultural change cannot simply be mandated, but law can play a significant role in challenging entrenched practices that reflect and constitute the norm, and promoting innovation to develop alternatives.⁶

Although caregiving policy is often characterized as a women’s issue, gendered norms can have negative consequences for the broader community, limiting the participation of men in family life and reducing the social security system’s tax base by reducing women’s presence in the labour force. Still, caregiving policy more directly impacts women. *One of the concerns underlying this paper is how to recognize the gendered nature of family caregiving without further reinforcing this inequitable division of labour.*

The concept of “family” is also broader than might be considered at first glance. Family caregiving includes the care of parents, children, spouses, siblings, aunts, uncles, grandparents, people related by birth or marriage, legal or common law, and also friends and neighbours who assume caregiving responsibilities. Families are increasingly fragmented by virtue of separation and divorce. Diverse social arrangements are emerging, only a fraction of which are recognized by legal institutions. The definition of “family member” and eligible caregiving relationships vary across different legislative provisions, sometimes even within a single statute. Other requirements in relation to eligibility such as residency or degree of financial dependency more indirectly create a disparity of access to benefits as between various relationships of love and care. Ultimately not all caregiving relationships are equal before the law. *Our definitions of family are shifting and it is important to consider whether the law is sufficiently modernized to recognize current notions of family.*

III. The Ideological Framework: Theorizing Family Care and the Meaning of Work

There are a number of respects in which the scope of this project has been circumscribed. Caregivers form a vast and diverse group and this paper considers but a subset of the community of caregivers.

⁵ Sara Charlesworth, “Managing Work and Family in the ‘Shadow’ of Anti-discrimination Law” (2005) 23(1) *Law in Context* 88 at 96.

⁶ Belinda Smith, “Not the Baby and the Bathwater – Regulatory Reform for Equality Laws to Address Work Family Conflict” (2006) 28(4) *Sydney Law Review* 689 at 704.

First, the care relationship is one of dependency and inter-dependency, and the concept of a “family caregiver” has meaning only within the context of this relationship. Measures that improve the circumstances of care recipients may improve the lot of caregivers and vice versa. Alternatively, there may be tensions between the needs of caregivers and care recipients. This study is concerned with the circumstances of caregivers and the recognition of their unpaid labour specifically and thus focuses on measures that target caregivers directly. This fragmentation of the caregiver/ care recipient dyad is an artificial but analytically useful distinction. However, it does mean that some measures that impact on working caregivers indirectly are not discussed in this paper.

Second, although aspects of this paper will be relevant to the experience of parents caring for infants and under-age children, the care of adults implicates different laws, values and beliefs. An emphasis on adult care allows us to interrogate how we as a society do or should value the work of family caregivers of adults. Although there remain significant problems with the Canadian approach to supporting childbearing, parenting and infant care, there is greater recognition of this aspect of caregiving in current public policy and law, manifest in the isolation of the parent-child relationship in employment standards, tax policy and pensions law. Other forms of caregiving remain slightly less charted territory.

Third, this project explores how the law treats family caregivers who maintain a labour force attachment. This includes caregivers who are employed or self-employed, caregivers who work full or part-time, caregivers who have taken leave from employment in order to provide care but intend to resume work when possible, caregivers who would be working if combining care and work was better facilitated within the employment sphere, and caregivers facing pensionable earning consequences as a function of caregiving. Although some of our suggestions for reform could have implications for retired caregivers who are not interested in working outside the home, these individuals are not the subject of this paper.

Although an analytical lynchpin of this study, “work” is a delicate term in the caregiving context. For there is no question that the labour of caregivers is work in the sense of the effort expended, the time involved, the degree of difficulty. In this paper “work” generally denotes paid employment; however, the problem of recognizing caregivers raises challenging questions of how we value unpaid work in general and care work in particular. *Care/Work* considers these questions insofar as they impact on legislation and law reform with respect to family caregiving labour. Our focus on working caregivers arises out of the desire to both give proper consideration to the urgent problems facing the community of employed caregivers, and to situate care conceptually within a theoretical framework that juxtaposes employment and caregiving as categories of “work”. The purpose of this approach is to highlight the differential treatment of two types of productive labour embedded within our legal system, allowing us to reflect on whether this distinction is either fair or consistent with Canadian values, and explore how this distinction imbues public policy in relation to family caregiving. In the end, properly recognizing family caregiving labour may require the law and society to begin a values shift.

Although various parameters circumscribe this project, this paper is relevant to everyone: at any time any one of us not already involved in family caregiving may be compelled to assume

caregiving responsibilities. From the point of view of caregivers, law reform will enhance quality of life; from the perspective of the state, reform may insulate the labour sphere from the loss of workers otherwise associated with an aging population, declining birth rates, and increasing demands for family-based care.

IV. The Legal Framework Governing Family Care

Care/Work examines and evaluates the current laws governing leave, accommodation and other entitlements potentially available to family caregivers balancing paid employment and care. This study considers how employment standards, employment insurance law, tax policy, health law, human rights, labour law, and pensions law support, or fail to support, working family caregivers. The focus of this project is the laws of BC and Canada and the circumstances of BC workers. However, this paper compares BC to other provinces and countries in order to investigate how the laws might be reformed to better respond to the needs of BC's caregivers. Each chapter also discusses approaches adopted in different countries.

Existing legal recognition of the circumstances of family caregivers fall into roughly three categories: (a) employment leave provisions; (b) measures that offset income loss; (c) workplace flexibility innovations. This trio of approaches is the subject of this paper.

Employment leave provisions may be grounded in legislation such as employment standards or employment insurance, contracts such as collective agreements between employers and trade unions, individual employment contracts between employees and employers, and employer workplace policies. Leaves allow workers to take a break from work while they focus on care, sometimes with financial subsidy. Measures to offset income loss include tax deductions, benefits and credits, as well as pensions and direct stipends or wages paid to the caregiver in recognition of caregiving labour. These approaches address the short and long-term financial consequences of caregiving. The concept of “workplace flexibility” denotes measures such as opportunities to change work hours or location, telecommuting and access to reduced hours. Such arrangements allow workers and employers to identify creative solutions to balancing workplace and family caregiving responsibilities. The accommodation of family responsibilities through flexibility is grounded in employment or human rights law, depending on the jurisdiction.

Care/Work addresses the regulation of work-life balance in the context of family care and the recognition of caregiving labour through public systems that compensate, or ought to compensate, caregiving labour. The study does not cover every contractual response to care. In particular, this paper does not explore the compensation of caregiving labour through measures that do not involve state regulation, such as private family care agreements according to which a family member agrees to pay her family caregiver, often in a delayed manner through estate planning.⁷ *Care/Work* is also not concerned with the payment of caregivers through trust funds and employment relationships. These solutions implicate

⁷ For further discussion of this issue see British Columbia Law Institute, *Report on Private Care Agreements between Older Adults and Friends or Family Members*, (2002), online: <<http://www.bcli.org/bclrg/publications/18-private-care-agreements-between-older-adults-and-friends-or-family-members>>.

different laws and raise different public policy issues as they do not involve either state regulation or public funding. In this sense this paper accepts, to some extent, a distinction between public and private.

However, *Care/Work* also problematizes the public-private distinction that underlies our laws. For it challenges the current inadequate recognition or valuation of family caregiving labour that arguably arises out of its existence within the private sphere of the family as compared to the public sphere of the workplace. As feminists have pointed out for years, public policy has long presumed the presence of unpaid domestic labour without which markets could not operate. Addressing the work-life balance issue and coming to terms with the sheer volume of family care required in Canada may require an acknowledgement of some forms of unpaid labour. It may demand, as Lisa Philipps proposes, a re-conceptualization of the relationship between paid and unpaid work as one of interdependency, in the form of a “unified image of the worker, as someone who crosses the market, household, and state sectors, undertaking both paid and unpaid responsibilities.”⁸ Ultimately, in the context of care, the distinction between public and private is slippery, for “if the care economy is overburdened” costs will spill over into the public sphere.⁹ As Terrance Hensley explains, notions of private and public embedded within law and public policy must shift in accordance with shifts in cultural demographics:

There was a time when a matter, such as work-life balance, would have been considered a private concern for families to work out. But when the economy, as well as families’ ability to live at prevailing community standards, depends on the supply of two workers per family, and when the fertility rate continues to drop, private risks tend to be defined as public crisis.¹⁰

Care/Work strives to move public policy incrementally forward in the direction of reconceptualising the relationship between paid work and unpaid care.

This legal research and law reform paper canvasses federal, provincial and territorial laws and studies approaches taken in the UK, Australia, New Zealand, France, the Netherlands, Germany, Norway, Sweden and the United States – countries selected because their legal systems bear some resemblance to the Canadian system and because our cultures maintain some overlap in terms of values. Each country we reviewed has adopted a unique approach to responding to the phenomenon of family caregiving through legislation. Canada emphasizes indirect subsidization of care labour through personal income tax refunds. Other countries subsidize care more directly through pensions, stipends or wages. Each approach emerged out of a particular social and historical context. *Care/Work* explores the values underlying Canadian legislation to assess the appropriateness of the Canadian response and test the compatibility of international responses to the Canadian context. The goal is to approach this problem with creativity and innovation as well as respect for Canadian values and institutions. The aim is to craft a workable solution.

⁸ Lisa Philipps, “There’s Only One Worker: Toward the Legal Integration of Paid Employment and Unpaid Caregiving”, in Law Commission of Canada, ed., *New Perspectives on the Public-Private Debate* (Vancouver: UBC Press, 2003) 3 at 31 [Philipps, “One Worker”].

⁹ D. Elsen, *Gender Budget Initiative: Background Papers* (London: Commonwealth Secretariat, 199) at 8, cited in Philipps, “One Worker”, *ibid.* note 8 at 7.

¹⁰ Terrance Hunsley, “Informal Caregivers: Balancing Work and Life Responsibilities” (2006) 8(3) *Horizons* 3 at 9 [Hunsley].

V. Methodology, Structure and the Role of Story-Telling in this Report

The scope of *Care/Work* is broad, including a number of areas of law, many of which are quite complex. Holism demands such breadth but complexity limits the nature of our conclusions. In some instances our suggestions for reform are detailed, connecting to specific subsections of legislation; in others, they are broad and preliminary, implementation necessitating further refinement and study.

Care/Work is built on an extensive literature review including consultation papers, government reports and study papers. It is also influenced by a survey of BC caregivers conducted in five languages, as well as interviews with BC employers selected because they have been recognized locally, provincially, or nationally for their responsiveness to work-life balance. The work of the project is also informed by an advisory committee of professionals working in the areas of human rights, employment law, immigration, pensions, social welfare and family care. As much as possible our conclusions have been tested through formal and informal consultation.

As we discuss in greater detail in Chapter 2, caregiving encompasses a wide range of activities. It includes short, long-term, fluctuating and intermittent care work, the care of adult children and aging friends and family relations, people recovering from surgical procedures, cancer treatment regimes and addictions treatment, as well as the care of people with degenerative conditions characterized by increasing care needs culminating in palliative and end-of-life care. Working caregivers also differ by virtue of their employment circumstances.

In order to ground our thinking in the reality of caregiving and represent family caregivers in all their diversity, this paper employs the strategy of story-telling. Each chapter begins with a caregiver story. These stories are fictitious in the sense that they are fabricated composites crafted from reviewing literature on family caregiving and responses to our caregiver survey. Many respondents took the time to tell their own story of struggling to balance work and care, and this information has greatly informed our assessment of BC legislation and policy. However, each of the caregiver stories in this paper is an invention.

Each chapter of *Care/Work* is introduced by a caregiver story that links with some of the issues raised within that particular chapter. This paper includes eight chapters. Chapter 2 provides the socio-demographic context of family caregiving. Chapter 3 reviews the law of employment leave. Chapter 4 considers the law surrounding the accommodation of employee caregiving obligations in the workplace. Chapter 5 examine income tax provisions of relevance to caregivers. Chapter 6 explores the availability of direct payments to caregivers in recognition of the value of their caregiving labour. Chapter 7 considers the implications of family caregiving activity on pension security. Chapter 8 contains our conclusion including suggestions for reform. In a sense the placement of each story is arbitrary: each caregiver presents a number of needs and her circumstances are impacted by a number of areas of law.

The eight stories come together in Chapter 8. In our concluding remarks we rely on these portraits to present the weaknesses of the existing legislative regime and frame options for

reform. These stories by no means represent caregivers in all their diversity. However, they should present many different types of caregiving relationships, such that our review of legislation and policy is both comprehensive and connected to the experiences of family caregivers.

VI. The Value of Care: How Value and Values Inform this Project

In many respects *Care/Work* is a valued-based inquiry. Therefore, a discussion of values and valuation is in order at the outset.

The term “value” bears many meanings. Derived from multiple linguistic sources (Middle English, Anglo-French and Latin) meaning worth, the word “value” denotes both “something intrinsically valuable or desirable” and “the relative worth, utility, or importance” of a thing, measured in monetary terms or otherwise.¹¹ The “value” of something is the “regard that something is held to deserve; its importance or worth.”¹² Finally, “value”, in the plural form, (values), refers to “principles or standards of behaviour.”¹³ All of these meanings are implicated in this study of caregiving.

Caregiving is valuable. Firstly, the subject of this paper is the question of how the legal system of British Columbia values or should value family caregiving labour. *Care/Work* begins with the proposition that family caregiving has worth, instrumental as it is to the functioning of families, relationships, communities and the health care system. Although family caregiving is also arguably an intrinsically valuable activity, this point is not explored in this paper. This review of law examines the legal system to determine whether it accords value to caregiving. In order to answer this question we examine how its value is manifest in various laws (tax policy, pensions, employment law, labour law, human rights). Worth may be reflected in monetary terms (for example, in the form of the amount of a tax credit) or be evident in other respects in which the law recognizes caregiving (for example, entitlement to employment leave to prioritize care responsibilities). The issue is whether the laws recognize the importance of care to the function of the family and the state.

Caregiving is inadequately valued by current legislation. Secondly, *Care/Work* explores the related question of how the law values care. This is not a matter of attaching specific numbers to caregiving labour. Studies of the aggregate value of caregiving in Canada have diversely valued caregiving, at \$6 billion in 1999,¹⁴ at \$6-9 billion in 2002,¹⁵ and finally at \$25-

¹¹ Merriam-Webster's Online Dictionary, s.v. “value”, online: <<http://www.merriam-webster.com/dictionary/value>>.

¹² Compact Oxford English Dictionary of Current English (United Kingdom), s.v. “value”, online: <http://www.askoxford.com/concise_oed/value?view=uk>.

¹³ *Ibid.*

¹⁴ Janet E. Fast & Judith A. Frederick, “Informal Caregiving: Is it Really Cheaper?” (Paper presented at the International Association of Time Use Researchers Conference, Colchester England, 6-8 October, 1999)[unpublished].

¹⁵ Janet E. Fast, L. Niehaus, J. Eales & Norah Keating, *A Profile of Canadian Chronic Care Providers*, Final Report Submitted to Human Resources and Development Canada, 2002.

26 billion in 2009,¹⁶ generally employing the cost of labour replacement in the public market as a measure of worth. These numbers are useful in marking the scope of caregiving in Canada and BC, but they do not indicate a reasonable approach to valuing or recognizing this labour in BC. As Joke Swiebel writes, speaking more broadly with respect to the larger category of unpaid work, “[i]t is hardly thinkable, however, that all work would be paid – or what amounts to the same thing – that unpaid work would not exist. Unpaid work is an essential element in the social fabric and an important factor for the quality of life.”¹⁷

The other problem with valuing care time in this manner is the challenge of delineating the boundaries of family caregiving:

Those advocating for unpaid caregivers have frequently argued for time budget studies, and successfully argued for census counting of care time. The purpose is to make the care more visible so it can be valued and supported. Although the purpose is laudable, the solution of counting care time is problematic. Care time is hard to count in part because it is hard to define and the boundaries are so unclear... those who provide care often do not define it as care time.¹⁸

The challenge of how to recognize caregiving as socially useful raises some difficult questions in terms of valuation. For, from the perspectives of caregivers, the cost of care is greater than the market equivalent of care labour:

While many of the costs of caregiving include very real out-of-pocket financial and time expenditures (e.g. forgone opportunity, unpaid labour career interruption, time lost from work, financial loss, and especially for women, job loss)[,] emotional and physical costs to caregivers are often characterized as ‘hidden costs’ since they are less visible and do not directly factor into the ‘costs’ of the public health care system.¹⁹

Care/Work considers where the legal system might be used to place value on care in order to support the activities of unpaid working family caregivers. It comments on whether current levels of monetary recognition, manifest, for example, in tax initiatives, might be generally too low. This paper raises factors that might be brought to bear on the determination of value and indicates where future study is needed to determine numbers. However, in a fluctuating economy, where law reform is time-consuming, identifying numbers is of marginal utility.

This analysis is informed by a set of values. *Care/Work* is not a value-neutral inquiry. A number of principles inform our assessment of legislation and underlying policy. These values serve as an analytical starting point as values which we submit should underlie caregiving policy.

¹⁶ Marcus J. Hollander, Guiping Liu and Neena L. Chappell, “Who Cares and How Much? The imputed economic contribution to the Canadian healthcare system of middle-aged and older unpaid caregivers providing care to the elderly” (2009) 12(2) *Healthcare Quarterly* 42.

¹⁷ Joke Swiebel, *Unpaid Work and Policy-Making: Towards a Broader Perspective of Work and Employment*, Discussion Paper No.4, (United Nations Department of Economic and Social Affairs, 1999) at 1.

¹⁸ Pat Armstrong, *Thinking it Through: Women, Work and Caring in the New Millennium* (Halifax: Healthy Balance Research Program, 2001) at 46.

¹⁹ Linda Duxbury, Christopher Higgins & Bonnie Shroeder, *Balancing Paid Work and Care Responsibilities: A Closer Look at Family Caregivers in Canada*, (2009) at 35 [Duxbury, Higgins & Shroeder].

Diversity. Family structures are varied. Caregivers care for children, parents, grandparents, spouses, siblings, aunts, uncles, friends and neighbours, including people related by blood, marriage or other union, people who live in the same residence and people who live apart. Law and public policy should respond to family caregiving in all its diversity and not privilege one arrangement over another. In other words, rules ought not to exclude certain types of caregiving relationships.

Gender-sensitivity. This means analysis which takes into account how policies affect men and women and relationships between men and women, including the distribution of different kinds of labour. In the caregiving context the challenge is to recognize the existing gendered nature of family caregiving without creating laws and policies that reinforce this inequitable division of labour. How do laws construct women as caregivers?²⁰ How can laws encourage greater sharing of care between men and women? How do facially neutral laws oppress women by ignoring the social pressures on them to provide care?

Choice. As much as possible the law should mitigate against people being conscripted into full-time unpaid caregiving through lack of alternatives or support for combining work and caregiving. People should not be coerced into caregiving. Care is constructed as a labour of love but this does not mean the choice to care is unhindered. How can we use law reform to enhance choice?

Equity and personal security. This paper endeavours to be conscious of the manner in which measures are regressive or reinforce poverty and is built on the assumption that in a social welfare state individual poverty is a negative. Do laws privilege caregivers possessing greater personal income? Do laws recognize the long-term financial consequences of caregiving and their role in producing or exacerbating poverty?

Holism. Although various legal provisions are isolated for examination, the overarching question is, how do the various provisions interact to reflect on the value accorded to caregiving labour? Do the existing laws of BC adequately support family care?

One of the challenges of the current patchwork approach to family caregiving policy is that it does not render transparent the values underlying existing law and public policy. A principled approach to assessing current laws thus requires a kind of excavation of legislation. Our aim is to underscore hidden values and assess their appropriateness in the context of current health policy and existing trends evidenced in labour and social demographics.

Value is both the question and the answer. The above discussion reflects our starting place in terms of our study of *Care/Work*. In our conclusion we return to the problem of valuation.

²⁰ Pat Armstrong and Olga Kits raise this important question in their paper, *One Hundred Years of Caregiving*, Law Commission of Canada, 2001 [Armstrong & Kits].

VII. Why this Study Paper is Needed

The last 10 years has seen a proliferation in studies on the economic, health and employment consequences of family caregiving on the caregiver. Research indicates that caregivers experience deleterious effects on their own health and well-being, often as a result of the stress associated with balancing multiple demands arising from the combination of caregiving and paid employment.²¹ Given the impact of care work on caregivers, it is not surprising that caregiving responsibilities are associated with negative impacts on paid employment. Studies generally suggest that the impact of caregiving on labour force participation is to require caregivers to reduce the number of hours of paid employment rather than withdraw completely from the paid labour force, except in instances of especially intense caregiving needs.²² Caregivers who remain in the labour force are more likely to report reduced work hours, increased absenteeism, more interruptions at work, and more missed job opportunities than those workers without caregiving responsibilities.²³ While public (paid work) and private (domestic work) are often seen as separate, they are more often “connected and in conflict”.²⁴

In consultations, caregivers consistently indicate the following problems with the system of support for caregivers in Canada, all of which are mirrored in the BC legal framework:

1. inadequate financial support for caregivers through existing tax initiatives;
2. overly restrictive and inadequate compassionate care leave provisions;
3. lack of encouragement of workplace flexibility innovations and accommodation of family caregiving responsibilities;
4. absence of pension security for caregivers; and
5. absence of income support for caregivers whose caregiving responsibilities compromise their earning capacity.

Our limited survey of BC caregivers revealed similar themes. Financial strain was a prominent issue: close to 60% of respondents felt they should be somehow financially compensated for their unpaid labour and 75% of caregivers stated that a caregiver allowance would significantly improve their lives. 65% would benefit from improvements to available

²¹ Christina Lee, “Health, Stress and Coping among Women Caregivers: A Review” (1999) 4(1) *Journal of Health Psychology* 815 [Lee].

²² Jane Jenson & Stephane Jacobzone, “Care Allowances for the Frail Elderly and Their Impact on Women Care-Givers”, *OECD Labour Market and Social Policy Occasional Papers*, No. 41 (OECD Publishing, 2000) at 17 [OECD].

²³ Maaik G.H. Dautzenberg, Jos P. M. Diederiks, J. P. M., Hans Philpsen, Fred C. J. Stevens, Frans E. S. Tan and Myrra J. F. J. Vernooij-Dassen, “The Competing Demands of Paid Work and Parent Care” (2000) 22(2) *Research on Aging* 165; Benjamin B. H. Gottlieb and Monique A. M. Gignac, “Family Support and Care of the Elderly: Program and Policy Challenges” in Sharan L. Kagan and Bernice Weissbourd, eds., *Putting Families First: America's Family Support Movement and the Challenge of Change* (San Francisco: Jossey-Bass Publishers, 1994); Benjamin H. Gottlieb, E. Kevin Kelloway and Maryann Fraboni, “Aspects of Eldercare that Place Employees at Risk (1994) 34(6) *The Gerontologist*, 815; Robyn I. Stone and Pamela Farley Short, “The Competing Demands of Employment and Informal Caregiving to Disabled Elders” (1990) 28 *Medical Care* 513.

²⁴ Judith Phillips, “Working Carers: Caring Workers” in Miriam Bernard, Judith Phillips, Linda Machin, and Val Harding Davies, eds., *Women Ageing: Changing Identities, Challenging Myths* (Routledge: London, 2000) 42 [Phillips, “Working”].

tax credits and over 45% requested pension reform. 16% of caregivers were compelled to accept lower-paying positions as a function of caregiving.

Just over 8% were able to access paid leave for caregiving. The same number received employment insurance at some point. However, close to 25% indicated they required time off work in order to meet their caregiving obligations, and a significant number used up sick time (25%) and vacation time (35%) in order to get that time off work.

And while the survey revealed that a number of caregivers have benefited from various arrangements that accommodate their caregiving responsibilities, lack of work flexibility remains a pressing issue: over 25% of workers indicated they would benefit from greater flexibility and close to 20% changed jobs to be better able to meet the demands of care.

By way of solution, some reports propose financial compensation of caregivers for the short and long term financial consequences of caregiving combined with the increase in caregiving expenses.²⁵ Most reports highlight the financial strain associated with caregiving and indicate a need for revisions to existing measures designed to respond to losses of income associated with caregiving, including a need for a refundable tax credit.²⁶ Some propose that caregivers be provided with a salary²⁷ or advocate for the creation of a direct federal compensation program for caregivers.²⁸ Most reports also recommend expansion of Compassionate Care provisions to include care for individuals who are not facing imminent death, or creation of other legislative protection for long-term family leave more broadly.²⁹

There exists a very strong demand for law and policy reform with respect to the impact of caregiving. A number of the options for reform highlighted by *Care/Work* are not unique to this project and are rather informed by an existing body of research into the needs of caregivers. In these areas *Care/Work* adds a detailed analysis of existing legal provisions to explore how to follow up on the broader directives for reform expressed in consultations with caregivers. In the arena of work-place flexibility, which is rarely dealt with in much detail in family caregiving material but consistently highlighted as a key manner in which caregivers could be supported to manage the balancing of work and care, *Care/Work* explores how the laws of BC might be revised to integrate the call the reform – a enterprise

²⁵ Chantal Abord-Hugon & Celine Romanin, *Amélioration des conditions de vie des personnes aidantes francophones dans les communautés francophones et acadiennes du Canada*, Rapport Finale, Alliance des femmes de la francophonie canadienne, (2008) at 22 [Abord-Hugon & Romanin].

²⁶ *Ibid.*; VON Canada, *Program and Policy Perspectives on the Interplay of Risk Factors and Negative Outcomes Among Family Caregivers: Key Informant Report* (Human Resources and Skills Development Canada, 2008), prepared for Human Resources and Skills Development Canada [VON Canada]; Canadian Home Care Association. *Consultation on Family Caregiving...From the 2008 Home Care Summit: The Power of People*, 2008 [Canadian Home Care Association]; Rajnovich, Beth, Janice Keefe & Janet Fast, *Supporting Caregivers of Dependent Adults in the 21st Century: A CRPN Background Paper* (Ottawa: Health Balance Research Program, 2005) [Rajnovich et al]; Human Resources and Skills Development Canada, *National Conference on Caregiving: Results of Public Engagement on Unpaid Caregiving*, n.d, online: <<http://www.hrsdc.gc.ca/eng/cs/sp/sdc/socpol/conferences/caregivers/page04.shtml>> [HRSDC].

²⁷ VON Canada, *ibid.*

²⁸ HRSDC, *supra* note 26.

²⁹ Federal Labour Standards Review Commission, *Fairness at Work: Federal Labour Standards for the 21st Century*, by Harry Arthurs (Ottawa: Human Resources and Skills Development Canada, 2006) [Arthurs Report].

that does not appear, at the time of writing, to have been taken on by anyone working in this area.

Overall, *Care/Work* will provide a picture of how and where the laws of BC can be revised to reflect the concerns of caregivers. We intend this project to provide a snapshot of where BC stands as compared to the rest of the country and the world, and ultimately, to serve as a springboard to further critical discussion and law reform in this area.