

# **Don't Leave Them Out: An International Comparative Analysis of Parental Leave Policies for Multiple Family Structures**

by

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B.A., Mount Royal University, 2019

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We acknowledge and respect the lək̓ʷəŋən peoples on whose traditional territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

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## Abstract

This thesis explores how unequal social and material privileges are reinforced through seemingly progressive public policy. In a multi-national comparison, I investigate how queer families fit within parental leave policy compared to their heterosexual counterparts, the extent to which various national parental leave policies support or exclude queer families, and how Canadian leave policy can be modified to better affirm and accommodate queer families. I define *queer families*, or multiple family structures (MFS), as those family units whose composition is “non-normative.” Based on this context, there are two main objectives of this work: The first is to interrogate normative understandings of the family and the formation of public policy via Queer Theory by providing a theoretical overview and tracing the socio-historical significance of the family, especially throughout the development of early capitalism. The second goal is to produce an overview of parental leave policy across various comparable countries—Canada as the primary source of analysis, and the United States, the Netherlands, New Zealand, and Sweden as cases for comparative analysis. This work contributes to the dearth of existing literature analyzing leave policy for MFS with a particular focus on the limits and shortcomings, as well as the seemingly best practices, of respective leave practices. I find that the extent to which MFS are accommodated for in leave policies is varied: Although queer families may be eligible for leave in these various countries, this inclusion is often limited to particular types of family units—typically those that more immediately resemble the traditional nuclear family. I conclude by posing policy suggestions based on international best practices to guide future Canadian policymaking in the direction of better accommodating “non-normative” families.

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## List of Abbreviations

**AFAB:** Assigned Female<sup>1</sup> at Birth

**AMAB:** Assigned Male<sup>2</sup> at Birth

**FMLA:** Family and Medical Leave Act

**LGBTQ+/LGBTQ2S+:** Lesbian, gay, bisexual, transgender/trans\*<sup>3</sup>, queer, two-spirit, “plus” (denoting any other identities that align with this community)

**MFS:** Multiple Family Structures

**PSB:** Parental Sharing Benefit

**RCSWC:** Royal Commission on the Status of Women in Canada

**TNB:** Transgender and non-binary

**QLT:** Queer Legal Theory

**QPIP:** Québec Parental Insurance Plan

**QT:** Queer Theory

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<sup>1</sup> The use of the term “female” is often used synonymously with “woman” or “mother,” especially throughout leave policies and related literature. It should be noted that not all AFAB people are women, and that gender and sex are widely understood to exist on varying spectrums.

<sup>2</sup> The use of the term “male” is often used synonymously with “man” or “father,” especially throughout leave policies and related literature. Not all AMAB people are men, and gender and sex are widely understood to exist on varying spectrums.

<sup>3</sup> The use of an asterisk following the word *trans* has historically indicated the inclusion of broadly trans-gender and gender non-conforming identities. Tompkins (2014) expands on this, stating that “[p]roponents of adding the asterisk to trans argue that it signals greater inclusivity of new gender identities and expressions and better represents a broader community of individuals. *Trans\** is thus meant to include not only identities such as transgender, transsexual, trans man, and trans woman that are prefixed by trans but also identities such as genderqueer, neutriox, intersex, agender, two-spirit, cross-dresser, and genderfluid” (27). Both *transgender* and *trans\** will be used throughout this work.

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## Chapter 1: **Introduction**

Central to any discussion of leave policy is the phenomenon of carework—as are the ideas regarding the extent to which carework is compensated, who is entitled to compensation, and what social, historical, and legal factors determine this compensation. We may understand carework as consisting of relational and personal activities for the purposes of maintaining emotional and physical wellbeing—carework can be paid or unpaid (International Labor Organization 2018; European Institute for Gender Equality 2016). The extent to which carework is acknowledged in policy systems across different jurisdictions varies internationally. In terms of who is taking part in parental carework at the local level, Statistics Canada reports that from 2012-2017, 88% of mothers and 46% of fathers took some type of parental leave following their child’s birth or adoption (2021a). This research, along with most of the related literature, is based on the experiences of heterosexual families, and thus interactions with national leave systems by queer parents remain relatively unknown. However, individuals from the LGBTQ+ community and their families are rapidly growing as demographics: As of 2021, approximately one million people identified as gay, lesbian, and bisexual in the Canadian population (Statistics Canada, 2021b), an estimated one in 300 Canadians identify as trans\*/transgender or non-binary (Angus Reid Institute 2023), and 12% of same-sex couples were living with children in 2016 (Statistics Canada 2017). Because these are populations that are growing each year (Statistics Canada 2021b), it is integral that further research is developed to address how these families fit into and interact with family policy systems.

Research shows that parents often struggle with various social and familial demands, and that parental burnout is a reality for many. Furthermore, these struggles are amplified along racial and class lines (Abramson 2021), and especially so following the impacts of the COVID-19 pandemic (Mikolajczak and Roskam 2020). Much of this same research has focused on the realities of cis-heterosexual mothers (often with biological children), and their struggles; in this context, the heteronormative, monogamous nuclear family unit—although a relatively recent historical phenomenon—seems to be at the heart of the problem. However, queer people have also long developed enduring kinship systems that challenge this nuclear unit. In this way, analyzing the kinship networks of queer families may provide insight for future policymaking that can better meet the needs of queer parents, as well as cis-heterosexual parents.

The goal of this work is to capture a comprehensive image of how queer families fit into the mosaics of parental leave policies internationally, as severely lacking among existing familial policy analyses is more understandings of the particular lived experiences and respective needs of queer families—or more broadly, non-normative families. I investigate the extent to which cross-national parental leave policies support or exclude queer families, with a particular focus on how Canadian leave policy can be modified to better affirm and accommodate queer families. Because much of the related literature focuses on heterosexual-parented households, a central interest of this research is to investigate the extent to which family units operating outside of heteronormativity could access the benefits of parental leave. This thesis therefore contributes to the existing literature by centring the realities of queer parents and supplementing this dearth of policy analyses on the needs of marginalized families.

I engage Queer Theory (QT) to frame my research aims and questions; this epistemological approach does not seek to focus exclusively on queer people but is instead

utilized to destabilize normativity and interrogate naturalized identities. I conceptualize “queer-parented” families in two ways: As families with parents who identify as queer, or those whose identity can be understood through adjacent identifiers like lesbian, gay, transgender, non-binary, gender-fluid, etc., as well as families existing outside of monogamous cis-heterosexuality. This conceptualization is based on the above notion of destabilizing normativity—of which the very existence of alternative family structures represents, regardless of whether these families understand their organizations as doing such.

As mentioned, there is a significant amount of research and policy analysis that addresses how parental leave<sup>4</sup> could be more equitable for heterosexual parents (Harrington et al. 2019; Castro-García and Pazos-Moran 2015; see *Literature Review*). Many studies primarily focus on the ways policy can be altered to better promote gender equality between women and men (Maume 2015; Ray, Gornick, and Schmitt 2010; Haas and Hwang 2008), and are thus generally heterocentric in scope. There exists to a lesser extent research that assesses how queer families fit into and qualify for leave policies. In Canada, there are two primary parental leave systems that exist at the national level: Maternity leave and parental leave. Accessibility to these leave systems is variable; although queer families are not explicitly accounted for in Canadian family policy, they are also not explicitly excluded from accessing leave benefits—which can leave queer and non-normative family units on ambiguous legal grounds. It is therefore necessary to investigate how exactly queer families fit into parental leave policies in Canada and compare the Canadian leave system to family policy in other seemingly progressive or comparable nations in

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<sup>4</sup> “Parental leave policy” refers to the legislative structures and systems that delegate financial aid for new parents and caregivers. Furthermore, when the phrase parental leave is henceforth used throughout this paper—unless utilized as a specific jurisdiction does so—it is implied that this refers to leave policies *in general* for parents and caregivers, as well as a form of leave policy for parents and caregivers that is simply not related to one’s gender identity.

order to elucidate the best practices, and shortcomings, of policy. The analysis of these countries' best efforts and practices can serve as a source of inspiration for future Canadian policymaking and as a foundation to critically assessing current family policy systems.

Based on the above context, the research questions that guide this research are as follows:

- 1) To what extent do Canadian parental leave policies support queer families?
- 2) To what extent do other comparable national jurisdictions accommodate or omit queer families in parental leave policy?
- 3) What are some of the best practices in caregiving policy?
- 4) How can Canadian leave policy be modified to better accommodate the needs of queer families?

To answer these questions, and to guide a critical analysis of the material impact of parental leave policies on families, this work utilizes QT and various tenets of Queer Legal Theory (QLT)—thus departing from liberalist understandings of progressivism and identity politics that primarily consider progress-based rights as indicators of social advancement. Sloodmaeckers and Bosia (2023) explain how from “[w]ithin a progress-based narrative, sexual and gender minority experiences are meant to improve across space and time in a linear and similar fashion” (3); this is evident through the eventual granting of rights to vulnerable populations according to hegemonic standards. For example, progress-based narratives may suggest that women’s rights and opportunities should advance to meet those of men; QT and QLT illuminate this as an example of how heteronormativity is legally embedded and allow for an extension beyond progress-based policies. There is, however, significance in the role of advocacy under historically liberalist beliefs that undergirded advances in the rights of parents as

workers; as will be presented below, these conditions inform the contemporary context and must not be ignored. Therefore, the ideas presented throughout this analysis should be seen as a further molding of these foundational articulations—the initial ideas and activisms used to advance policy leave systems are built upon with ideals of QT and QLT to make suggestions for creating leave policy that is more accessible to more kinds of parents, especially queer parents, caregivers, and their families and kin.

A critical analysis that investigates the comprehensiveness of parental leave system is necessary for multiple reasons. Existing research suggests that paid parental leave contributes to lower rates of infant mortality and infants with low birthweight, “longer parental lifespan [...] and improved mental health,” in addition to higher rates of “long-term achievement” among children (Burtle and Bezruchka 2016: 1). Furthermore, the social and economic implications of leave systems impact families in diverse ways; leave systems are not neutral institutions but are instead imbued with ideas (and ideals) of the family structure and childrearing processes based on historical and political contexts. Due to a great deal of cross-national parental leave policies being created upon heteronormative foundations—that is, on the notion that families are headed by cisgender,<sup>5</sup> heterosexual mothers and fathers—this means that the needs of queer families have been sidelined. Despite gaps in the literature regarding queer families and their interactions with benefits of parental leave, some research suggests that “LGBTQ employees who are citizens of countries with paid leave will experience fewer issues related to getting time off for adoption

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<sup>5</sup> Cisgender, or cis/cis-, refers to individuals whose gender identity aligns with the sex they were assigned at birth. A person who was assigned *female* at birth (AFAB) and identifies as a woman is cisgender. A person who was assigned *male* at birth (AMAB) and identifies as a man is cisgender. This is different from *transgender*, or *trans*, which refers to individuals whose gender identity does not align with the sex they were assigned at birth. AFAB people who identify as a man or non-binary/genderfluid are transgender. AMAB people who identify as a woman or non-binary/genderfluid are transgender.

or caring for sick child(ren) than LGBTQ employees who are citizens of countries without paid leave” (Huffman, Smith, and Howes 2020: 272), emphasizing the significance of enacted family policy.

However, parental leave policies in various countries that have accessible criteria for non-heteronormative families are quite nuanced, in that the benefits are not always equally accessible for all LGBT or queer families. As an example, many scholars have reported how biological lesbian mothers often have more access to parental leave compared to nonbiological mothers within the context of heteronormative parental leave policies (Evertsson and Malmquist 2023; McInerney, Creaner, and Nixon 2021; Bermea et al. 2019; Goldberg 2010). As presented throughout Chapter 5, particular jurisdictions are often limited in their acknowledgements and accommodations queer parents and families; without careful attention to the complex needs of different communities, seemingly progressive policy that seeks to be inclusive can conversely remain quite exclusive. Moreover, this does not impact queer parents singularly; rather, leave policies with exclusive and narrow eligibilities impact all parents and families who do not align with hegemonic ideas about parenthood and family structures. For instance, a cis-heterosexual woman who wants to be a parent and cannot get pregnant for various reasons and may seek out alternative childrearing options is also impacted by inadequate leave policies that do not consider the multiple lived experiences of parents. We can also ask, does this legislation make room for and consider the needs of someone who can and wants to become pregnant, but may not identify as a woman? Such considerations are integral to understanding the gaps and strengths of leave systems and are not only beneficial to queer families, but to any family that does not fit the mould of eligibility criteria.

Through a cross-national policy comparison of 5 countries, this thesis contributes to insights and literature on queer families navigating parental leave systems. From this cross-national comparison, I specifically generate policymaking suggestions influenced by critical QT to advance existing Canadian legislation on leave policy. Chapter 2 offers a theoretical exploration that elucidates the potentialities of QT with respect to the future of parental leave policy in Canada. Chapter 3 introduces and expands on existing literature regarding parental leave policies and systems and explores how queer families fit into them. Chapter 4 outlines the methods of data collection and modes of analytical approaches used throughout this thesis. Chapter 5 presents these data in tables and outlines the findings from the five countries included for analysis in this work; the analysis and discussion section build on the data from the tables. I also include a short historical discussion on the evolution of parental policy that has led to the contemporary structures to contextualize this data for each jurisdiction. From here, the best practices that exist within the respective countries are determined and utilized to emphasize the stronger pillars of existing policy. Chapter 6 includes a discussion on the findings from Chapter 5. Chapter 7 presents suggestions for Canadian policymaking based on the preceding analysis that builds on the tenets of QT and QLT in order to expose gaps in our leave policy system. Finally, Chapter 8 concludes with a discussion on the limitations of this work as well as the potentials of policymaking for queer families in particular, but also for any kind of family forms that do not adhere to a nuclear family structure.

## Chapter 2: Theorizing Queerness

### Queer Theory

The term *queer* encompasses multiple ideas in this work, and it holds meaning beyond its reference to the LGBTQ2S+ community. In addition to LGBTQ2S+ individuals parenting together, I conceptualize *queer* families as families whose very structure/organization challenge monogamous heteronormativity and the nuclear family structure. In this way, a queer family can also be a single-parented family, families with multiple (co-)parents, caregivers, intergenerational household families,<sup>6</sup> or “blended” families—that is, families whose makeup is a combination of previous or other familial groupings. Queer Theory (QT) employs the word *queer* by utilizing it as a lens through which we can view social and cultural systems and institutions that reproduce power and oppression. Sometimes this involves investigating sexuality as a means of oppression, but it also means uncovering the various processes within political or economic systems that reinforce social privileges and disadvantages. Operating through the framework of QT and guided by tenets of Queer Legal Theory (QLT), homophobia and heteronormativity are assumed “to be a part of everyday life, no matter how enlightened the institution or particular individual might claim to be” (Lugg and Murphy 2014: 1186). In line with this, this research departs from the notion that progress-based policies are sufficient in the context of parental leave policy, as this conceptualization of equality is only considered from

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<sup>6</sup> In particular cases, Greek jurisdictions guarantee grandparents various parental benefits (Ray, Gornick, and Schmitt 2010).

within the context of systemic heteronormativity. For example, enacting liberal policies that establish *paternal* or *parental* leave alongside *maternal* leave have been seen as progressive as these policies indicate a valuing of the role of fathers *alongside* mothers in childrearing (Haas and Hwang 2008; Brandth and Kvande 2002). However, these laws are inherently heteronormative and function to make queer families and their needs invisible—this ultimately has grave material impacts for non-normative families in general. Regardless of instances where particular queer people may benefit from such policy, the law ultimately remains heteronormative as it is only then applicable to those queer people who best conform to existing regulations, and these existing regulations tend to solely outline the rights of fathers and mothers.

Thus, the term “queer” has multiple functions in this work. In terms of identity and representation, *queer* is used as an all-encompassing term that represents individuals identifying as lesbian, gay, bisexual, transgender, non-binary, or through other non-normative genders or sexualities. It is also used to interrogate socio-cultural normativities. Another function of queerness in QT is through that of its potential and possibility; as Browne (2006) suggests, one can think about *queer* as “a fluid set of possibilities and contestations” (888) and, in this sense, to *queer* or to be *queer* is to destabilize normative notions about *being* in the world. José Esteban Muñoz, a prominent scholar of QT, conceptualizes and explains that “the principal benefit of queerness is its potential for the future” (Muñoz as cited in Heston 2013: 251). In this sense, queerness, as a site of potential, is one that can be used to navigate the future of family policy in order to investigate and transcend the bounds of normative social systems.

## **Multiple family structures (queer families)**

There are various and multiple kinds of family and kinship structures that contrast the nuclear family system. As mentioned, we may consider queer families as not just LGBT parents, but any non-normative kinship grouping—this includes single parents, polyamorous and multi-parent families, intergenerational households, and so on. The reason they can be considered queer—for the purposes of this work—is because they present non-normative familial networks and are fluid in the structure of their kinship. Queer and non-traditional family forms are interesting for many reasons, but particularly so because they pose as sites of possibility and potential for overcoming some of the persistent challenges experienced in nuclear families (see *Unpaid Labour*, page 28). Because queer kinship networks are various in makeup and flexible in definition, scholars understand queer families to be excellent models of social resilience (Bermea et al. 2018; Sheff 2016). Bermea et al. (2018) identify the ways in which “[m]any queer stepfamilies [...] demonstrate high levels of adaptability in the face of stigma, shown in the way they undo normativities and create family, both of which are linked to enhanced resilience” (358). The phenomenon of chosen family, as explained below, explicitly exemplifies this, as resilience entails “families reshap[ing] themselves in response to shifting social conditions” (Sheff 2016: 261). Because of this resiliency and adaptability, queer kinship networks are great examples of the possibility in embracing diverse familial functioning and composition. For example, the notion that, in a nuclear family, two people are solely responsible for childcare—with one person typically having more responsibilities for this care (see *Unpaid Labour*, page 28)—is contrasted by the very existence of families with one caregiver, or more than two caregivers. Thus, discussing the potentialities of queer families is not just a conversation for and

in the interest of queer people, but rather for any individuals and families who do not conform to or benefit from the monolithic, nuclear family structure.

### *Chosen family*

The notion of *chosen family* describes a phenomenon that LGBT+ and queer peoples have adopted in constructing and choosing their families or kin. This is an alternative mode of forming social bonds and relationships “outside of biological or legal (bio-legal) bonds” (Levin et al. 2020: 1) and has functioned as a means of survival for queer people who are rejected and outcast from their families and communities of origin. Although this way of relating to others seems different from embracing so-called ‘families-of-origin,’ Pain (2020) reminds us that “[c]hosen families operate similarly to families-of-origin, such as sharing regular meals, offering emotional and material support, and spending holidays together” (280). The primary difference between these kinship structures is ultimately reflected in the fact that chosen families are autonomous in the creation of their makeup. Whereas ‘biological’ families are understood to be connected through biogenetic similarities, chosen families are actively created (Weston 1997); this familial creation occurs when individuals make the decision to care for those who are not biogenetically related as one would for a biological family member. Chosen families and queerness in general are thus characterized by their multiplicities and as “those persons, ideas, and practices that push the bounds of normalcy” (Heston 2013: 246).

In this way, policy that recognizes and validates relations based solely on biogenetic ties consequentially prohibits queer families from thriving within society. Leave policy that functions from heteronormativity through nuclear families-as-default creates particular social disadvantages for queer families; however, we may see how queer families—in their

multiplicity—pose as “site[s] of resistance to heteronormativity” (Pain 2020: 278). Although queer families face particular disadvantages and oppression as a result of cis-heteronormative landscapes that shape our social institutions and cultural infrastructure, it would be remiss to characterize the existence of queer families as passive and solely as victims. Alternatively, scholars assert that the adaptive techniques employed by queer families to navigate social crisis illuminates the agency that non-normative families have in creating their lived realities (Sheff 2014 as cited in Pain 2020: 278).

### *Becoming a queer parent*

Becoming a queer parent is an *active* choice; though the process of becoming a parent is embedded with unique social and economic challenges for all kinds of people, there are unique oppressions faced by queer parents that are not directly experienced by cis-heterosexual parents. Queer relationships often demand queer—or non-normative—forms of childrearing, and family decision-making among queer parents is often a complex sequence of events that necessarily inform the resultant stage of being a parent. This is not to say that cis-heterosexual people do not have bodily autonomy, or that they do not make active choices about their reproductive and childrearing journeys. All forms of childrearing, whether pregnancy, IVF, surrogacy (see pages 34-35), or adoption, pose unique challenges to complex populations and individual bodies, and thus there is no objection or invalidation of the struggles of becoming a parent faced by any parent, queer or not. Rather, the choice of becoming a queer parent requires the navigation of added layers of institutional validation as a means of obtaining the right to rear children.

Queer families—and all families—deserve policy that allows them to thrive materially and ensures they can engage in meaningful childrearing and early childhood development. It is in

this way relevant that there is a focus on *paid* leave due to the magnitude of consequences from taking extended unpaid leave for families that are particularly disadvantaged economically, such as queer families. For example, in the context of becoming a parent for a trans\* person, a lack of adequate information and confusion regarding the bodies and communities of trans\* people can contribute to them facing discrimination in workplace (especially for people who are not “out” or “passing”), in their communities and in media (the complications of feeling “seen” [Holtby et al. 2015]), and in the medical context (confronting a lack of comprehensive health- and reproductive care for trans people specifically, and transphobia in healthcare systems more broadly; doubly so for transgender people of colour [Howard et al. 2019]). Thus, the enactment of progress-based rights may afford specific advances in the realm of state-recognized identities (such as marriage equality for people in LGBTQ+ communities), but the preceding contexts of becoming a queer parent entail far more barriers that are not addressed through rights-based equality and symbolic advances alone. Comprehensive and affirming healthcare for trans\* and other non-cisgender people (intersex people, for example) at all stages of life is essential, and this remains a struggle for trans and queer people to this day (Levin et al. 2020). For trans\* and queer people to raise children meaningfully and resourcefully, it is of utmost importance that there is a greater awareness and education around the reproductive journeys of queer people and how individuals get to the point of being a parent. Policy must be informed by the various landscapes that contextualize the transformation into a parent, such as socioeconomic challenges and social discrimination that characterizes the lived realities of these groups.

### *Chosen family in non-queer relations*

The notion of chosen family is not limited to LGBTQ+ communities. Though thus far chosen family has been framed within the contexts of queer communities, I will briefly focus on how non-queer people also choose family (even if it may not be labelled as such) to exemplify the applicability of the notion of chosen family. Even countries with more conservative social policy like the United States represent instances of historically enacted public policy that recognized the importance of chosen family. In fact, “the U.S. government first recognized the importance of chosen family during the Vietnam War—permitting federal employees to take funeral leave for the combat-related deaths of chosen family” (Robbins et al. 2017). Here, leave<sup>7</sup> was extended to spouses, children, parents, siblings, grandparents, or “[a]ny individual related by blood or *affinity whose close association with the employee is the equivalent of a family relationship*” (U.S. Code of Federal Regulations; emphasis added). This policy—codified in 1968—is meaningful for multiple reasons. First, it establishes the importance in honouring social relations that we form in moments of strife, reflecting the tendency for queer peoples to seek one another out following exile from ‘families-of-origin.’ Young men facing mandatory conscription in this highly criticized and devastating war were able to find and make *family*—or kinship—among other men in the military, and these relations were acknowledged as deserving of legal recognition. Second, the prioritization of men’s relationships with other men to the extent of being codified into U.S. law before the 1970s exemplifies the potentiality of leave policy, and public policy in general, even within contexts of social conservatism. Although this was not an explicitly “queer” law, nor was it intended to aid in advancing rights for queer people—a major demand and movement at this time (for historical context, see Ashley 2015; Stryker 2008)—this

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<sup>7</sup> Funeral Leave, Fed. Reg., Vol. 34, No. 163 (August 26, 1969) (codified at 5 C.F.R. pt. 630)

law is an example of the law being inadvertently queered in order to meet various needs related to a particular social context. Ultimately, this exemplifies that the *potential* for a more comprehensive policy landscape, for more kinds of family structures, is possible and sometimes necessary.

### **“Progressive” politics and the implications for queer liberation**

By *queering* the approaches to advancements in policy, one can challenge the limits of progressivism vis-à-vis policy to understand who is underrepresented or not considered within the realm of institutionalized benefits. Whereas liberally progressive policy may seek to advance equality within policies regarding the rights to parental leave for mothers and fathers in heterosexual relationships (or queer parents in homonuclear dynamics—see page 73), queering policy requires asking about the impact these policies will have on single parents, multi-parent families, gender non-conforming and trans\* parents, non-biologically-related caregivers, and so on. Queering policy reform also requires stepping outside of the bounds of heteronormativity and demands of social assimilationism among LGBTQ+ populations particularly (Walters 2014). Kondakov (2023) suggests that the “obsession with progress” by assimilationist ideologies can be “understood as characteristic of the *straight time*, into which this LGBT movement is being incorporated by aspiring to a ‘gay utopia’, a normative neoliberal version of the future where rights are guaranteed on the premise of being good gay consumers” (107; emphasis added). Being a “good consumer,” of course, implies that social advancement and security is based on aligning oneself with normativity within the context of capitalist economic organizations. *Straight time* is juxtaposed to “queer time” (Kondakov 2023) through which the potentialities of queerness are actualized. *Queer time*, as Kondakov (2023) explains, “runs in other directions –

backwards and sideways – and such a perspective illuminates various possibilities” (107). Thus, it is implied through this that policy reform that is to be substantial in its efforts to include multiple family structures can and should take on *any* form or course necessary to address the needs of its intended demographics, as opposed to simply adhering to regularized conceptualizations of progress that are often oppressive for those identities that transcend normativity. To apply this to future policymaking, perhaps parental leave should focus less on gender identity (and less on achieving better kinds of leave for women specifically, for example), and rather focus more on the material needs of people who are caregivers for children—with special attention to the ways in which vulnerable populations are disproportionately impacted.

### *Queer Democratic Framework (QDF)*

Coined by Bethy Leonardi and Michele Moses (2021), some key ideas of the Queer Democratic Framework (QDF) include engaging with an intersectional understanding of identity (Crenshaw 1991 as cited in Leonardi and Moses 2021), as well as upholding the importance of theory informing tangible changes in the everyday lives of individuals—and in the case of this work, families. Although Leonardi and Moses utilize the QDF for the purposes of education policy analysis, this framework offers rich insights for creating policy that moves beyond abstract democratic principles and liberalist notions of equality. They suggest that liberal theorists’ understanding of autonomy and recognition politics—or the notion that oppressed groups being granted legal rights in accordance with hegemonic rights is an indicator of socio-political progression—must be *queered* in order for policy to be more just. Queering our visions of democracy requires moving beyond normative notions of equality that only consider the needs of those identities, relationships, and communities that exist in binaries, and not those that are

more fluid and complex. This is in line with the goals of advancing parental leave for all families in general, but queer families in particular. Queering normative understandings of social systems involves the destabilization of these structures in a way that allows for a reimagination of policy. As a way to understand how policy can evolve to help multiple family structures—queer or not—queering parental leave systems involves both remolding present public policy and allowing space for future policy to evolve with the diverse needs of families.

In terms of enacting policy in relation to the needs of systemically marginalized populations, Leonardi and Moses state that the QDF can appreciate the necessity of political recognition while demanding that the nuances within diverse communities must be addressed to create policy that helps more kinds of people and groups, and that “a focus on recognition via group membership without attention to intragroup differences obscures deeper questions about autonomy and how political and social structures delimit who/what is visible and sayable to begin with” (2021: 12). It is necessary that policymakers become attune to the complexities of queer identities as a way of assuring that the needs of queer families are met, versus for the purposes of validating an abstract, individualized, monolithic queer identity that is often accepted based on its approximation to hegemonic<sup>8</sup> identities. This is particularly important for how queer families benefit from parental leave policy. For example, and as seen throughout the leave system within the Netherlands, some queer families benefit while others remain excluded. Here, there is no acknowledgement of the multiple ways to be queer; rather, leave policies tailored exclusively to lesbian mothers in the Netherlands suggests that there is one legally accepted and recognized version of queerness. Benefits strictly for lesbian mothers will inevitably produce disproportionate levels of financial aid for people who give birth or are primary caregivers but do

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<sup>8</sup> That is, white, cis-heterosexual, able-bodied, upper-class people.

not identify as a woman in a relationship with another woman; this leaves some of the most vulnerable groups—transgender and non-binary (TNB) parents, for example—without adequate parental leave supplements (Bower-Brown 2022).

Ultimately, queering analyses of existing policy as well as the approaches to future policymaking aids in highlighting the various dimensions of legislation that are laden with disadvantage for non-normative populations. Inquiries that are oriented to expose the extent to which policy is transformative for diverse populations (and if these systems fundamentally maintain hegemonic ideals of family and kinship) are beneficial as they can systematically determine the limits and potentials of policy.

## Chapter 3: Literature Review

Maternity and paternity leave generally contain policies directly aimed at *one* parent's use to supplement extended time away from work for the purposes of childcare. Analyses that evaluate *parental leave*—as a distinct structure beyond those of maternity and paternity leave policies—tend to focus on this policy system as one that offers supplemental parental leave benefits in addition to the benefits received from the respective maternity and paternity policies. Parental leave is often viewed as a supplemental and equitable policy structure due to its applicability to either parent in duo-parented families. A great deal of the existing literature regarding parental leave policy focuses on cis-heterosexual-parented families. Within this literature, there is an emphasis on the role and impact of maternity and paternity leave policies for cisgender mothers and fathers. For systems of leave policy to be more universal to more kinds of parents and caregivers, departing from the focus placed on developing maternity and paternity leaves alone, there must be an emphasis placed on the importance of enacting policies that are less about the gender of the parents and caregivers as a means of determining eligibility. Alternatively, these policies should be more about the physical, social, and economic demands that are concomitant factors of childrearing, and should ask what measures must be put in place to meet the needs of those who are caregiving, regardless of gendered and parental status.

The characteristics of parental leave policy can reflect the respective social and political values of a given country. As presented throughout, countries with more socially progressive policy often present national images of being generally liberal, whereas more socially

conservative countries have paralleling conservative policy that seeks to replicate traditional social norms. However, these representations of national identity do not necessarily reflect the actual extent to which these countries' leave policy is progressive or conservative. Although liberal policies may be proposed as methods for achieving equality between various groups, these policies can inadvertently result in the codifying of normative understandings of gender and family (Leonardi and Moses 2021). Liberal policy may seek to be inclusionary but without consideration to the multiple, diverse experiences of those from within the same community, these policies may work to include certain individuals while continuing to exclude others. In other words, blanket policies that seek to be inclusive that paint the diverse communities in a monolithic light are less effective and impactful for more kinds of family forms.

What follows is a systematic review of literature and analyses of the structure and purposes of parental leave policies, as well as the ways various family forms fit into and benefit from these systems.

### **Characteristics of parental leave policy**

The structure of parental leave policies contains a combination of specific criteria regarding leave use and eligibility, along with propositions for material supplements for parents and caregivers. Material supplements include financial aid and benefits (related to time away from work), as well as “in-kind support, and flexible working time arrangements” (Thévenon 2011: 60). Identifying the foundational characteristics of parental leave policies, Thévenon (2011) proposes six primary aims that can be understood as the bases of most family-support policies across the world. These aims include: “1. Poverty reduction and income maintenance; 2. Direct compensation for the economic cost of children; 3. Fostering employment; 4. Improving

gender equity; 5. Support for early childhood development; 6. Raising birth rates” (58-9).

Thévenon notes that the ways in which various countries legislate these aims range and vary in the extent and degree to which they are enacted (2011: 60), and this is relevant in the endeavour to mould existing policy. Kamerman (2000: 1) suggests that the difference in policy across jurisdictions “is philosophical” and that differences in social values across various nations are expressed through disparate and varying aims of policy. Although heteronormative in scope, Kamerman notes that cross-national differences in policy:

[... have] to do with the extent to which the policy is designed to: [... S]upport family work and child rearing and to create an incentive for women to leave the labor force when children are very young; or[,] facilitate women’s work outside the home and help reconcile work and family life, by protecting and promoting the well-being of children while their parent(s) are in the labor force. (2000: 1)

The needs of families undoubtedly fluctuate with changes in the social, political, and economic contexts that they experience; as these landscapes change, so must policy to meet the demands of populations. To identify some of the more salient characteristics of any given parental leave structure, some of the following questions can be used based on evaluations of the literature:

1. *Who is eligible for leave?* One or both parents? Are non-parent caregivers included in the eligibility? Adoptive parents? Single parents? Multi-parent/caregiver families? Is eligibility based on a yearly earned income amount? Does being a full- or part-time worker impact eligibility?
2. *What is included in your leave?* Is time away from work paid? Are there any financial supplements in addition to a standard wage replacement?

3. *How can leave be utilized?* Are leave benefits non-transferable? Can leave periods be allotted to meet familial needs, or must leave time be taken consistently/all at once?

Using these inquiries to analyze any given parental leave structure allows for a greater understanding of what characteristics create leave structures, the values that are inherent to the enactments within this system, and what kinds of families have access to parental leave and the benefits therein.

### *Child benefits and general wellbeing*

Parental leave is a sociologically relevant and pertinent point of discussion for several reasons. A reason why it is necessary to direct attention to comprehensive parental leave is due to the implications of social bonds that are formed as a result of benefiting from time spent with family. The need for quality care structures in place for children are always necessary to ensure their growth, as is the evolution of these structures. A great deal of research focuses on the benefits for children that are the result of parents being allotted comprehensive and accessible leave. Margolis, Hou, Haan, and Holm (2018) highlight the relationship between the use of paid leave benefits and the positive impacts on emotional and physical health for both children and mothers, in addition to the positive socioeconomic impacts of having access to paid leave.

Waldfogel (2001) asserts that “[t]he birth of a new child, and the first few weeks, months, and years of the child's life, are a time when the tensions between the obligations of work and child rearing are particularly acute” (100). It is also during these moments of initial “closeness and contact” where parents and caregivers “constitute an important source of care” as a means of meeting the needs of childrearing and fostering feelings of safety and security, especially during

early childhood (Hofer and Hagemeyer 2018: 306). In this way, having the opportunity to take time away from work to care for and bond with one's child is a necessity for the purposes of early childhood development. Where there are instances of queer families being excluded from leave eligibility, there must be a consideration of the extent to which queer families have access to the integral moments of early childhood bonding. All families need access to adequate leave benefits in order to create the context for strong social bonding to occur; gaps in leave accessibility may thus result in less social support for queer populations to take part in family building.

### *Parental benefits*

There are various social benefits for parents that are highlighted in the literature alongside the benefits of leave for children. For instance, and as an extension of the positive impacts of social bonding for children, many scholars illuminate the benefits that leave serves for purposes of social and emotional bonding between children and biological, chest-feeding mothers (Gault et al. 2014; Galtry and Callister 2005). Research has shown that paid maternity leave is associated with increased physical and mental health for both biological mothers and their infants (Sayres Van Niel et al. 2020). Other scholars emphasize that the enactment of paid leave is variably experienced in conjunction with social factors including socioeconomic status, ethnicity and experiences of racialization, marital status, and one's employment conditions (Aitken et al. 2015; see also Margolis et al. 2018). A study on parental leave use among disadvantaged fathers in the U.S. found that those fathers who did have access to and utilized (unpaid) leave showed a greater involvement in their child's life five years after their child's birth (Pragg and Knoester 2015: 1180). The authors of this study assert that because

disadvantaged<sup>9</sup> fathers have a “greater likelihood of having experienced, and subsequently becoming, disengaged fathers” (Pragg and Knoester 2015: 1182), parental leave policies that address the specific needs of various populations can interrupt these cycles and alternatively promote greater social bonding among families. The finding that parental leave positively influences fathers’ engagement in childrearing is somewhat echoed by Seward, Yeatts and Zottarelli’s (2002) report. They trace paternal engagement with leave in both the U.S. and Sweden, and their findings indicate that although child-parent bonding was higher among fathers who *did* take leave than among those who did not, these differences were not significant.

In general, a great deal of the literature on the experiences of heterosexual parents and their families in the context of parental leave shows that oftentimes, mothers take more leave time away from paid labour than do fathers (Harrington et al. 2019; Kaufman 2017; Pragg and Knoester 2015; McKay and Doucet 2010). This is inextricably related to class dynamics, as other research shows that middle-class fathers with higher levels of education are more likely to take-up leave time than are working class fathers (Saarikallio-Torp and Miettinen 2021). Moreover, research from the Swedish context exemplifies a connection between fathers taking their portion of leave time and an increased sharing of domestic labour and involvement in childrearing (Haas and Hwang 2008), reflecting literature that outlines the benefits of parental leave time for mothers (Hofer and Hagemeyer 2018; Kamerman 2000).

Relatedly, research regarding the extent to which parents experience a full range of benefits from parental leave policy is generally limited to the experiences of heterosexual-parented families. Due to the disproportionate emphasis on the needs of cis-heterosexual parents

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<sup>9</sup> Disadvantaged is described by the authors as individuals/fathers who “possess relatively low levels of education and income. They also are disproportionately racial– ethnic minorities and unmarried” (Pragg and Knoester 2015: 1158).

in contrast to queer families in leave policy, literature regarding how diverse family structures navigate leave systems are still developing, and existing analyses are mostly and understandably restricted to the few jurisdictions that do explicitly address queer families in policy (countries such as Sweden and the Netherlands). In this way, there is research that shows how various jurisdictions can exemplify some of the best practices in parental leave while continuing to rank low on cross-national leave comparisons. For example, Robson (2010) poses that countries such as the Czech Republic and Hungary outperform Canada in terms of wage replacement rate (7) and points out that paid paternity and parental leave is longer in Iceland and Hungary, respectively, than it is in Sweden (33)—a country that is considered to have one of the most comprehensive parental leave policies in the world. However, it must be noted that queer people and diverse families continue to face active discrimination and criminalization in both Hungary and the Czech Republic. For example, although same-sex<sup>10</sup> marriage was codified in 2005 in the Czech Republic (Danish Institute for Human Rights 2009a), both queer parents and single parents currently do not have access to adoption rights or IVF processes (Beňová et al. 2007). These nuances suggest the need to highlight particularly *who* is benefitting from seemingly progressive policy.

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<sup>10</sup> A note on the use of “same-sex”: It is used often throughout the literature to describe a nondescript non-heterosexual relationship. For the purposes of this work, it is understood that same-sex relationships refer to relationships between cisgender people (those whose gender identity matches the sex [female or male] they were assigned/assumed at birth) who are either lesbians, gay, bisexual, or queer.

### *Economic benefits*

A great deal of literature on parental leave policy emphasizes the financial or economic benefits of leave for employees and employers. This discussion of financial benefits of parental leave has less to do with the importance of individual workplaces considering the implementation of parental leave policies and more to do with illustrating the results of mandating paid or unpaid leave policy. In the case of the worker, financial benefits tend to revolve around paid time away from work, or other supplemental financial aid in lieu of wage labour. For the employer, the financial benefits of parental leave were not always so clear. Historically, and from the lens of cis-heteronormativity, women as workers were (and in some cases, continue to be) seen as a risk to the demands of the employer due to the conflation of womanhood and motherhood and responsibilities therein, thus resulting in advocacy and policymaking for the enactment of legal protections that worked to prohibit discrimination against pregnancy and childrearing (Remmers 1989). Contrastingly, ample research has shown that parental leave does not necessarily come at a cost to employers and businesses. Rather, paid leave is said to “[lead] to negligible costs to employers in terms of temporary employee replacement costs or overtime paid to existing employees and has few if any costs—and potentially gains—in terms of employee morale and productivity” (Gault et al. 2014: 10; Core and Koutsogeorgopoulou 1995). Accordingly, parental leave can be seen as a neutral-to-beneficial policy system for employers to implement in workplaces, ultimately supported by federal legislation.

The alternative to the preceding suggestions for enacting paid leave is keeping leave unpaid for parents and caregivers. Unpaid leave policies suggest that time away from work for the purposes of childrearing is not to be supplemented to any extent—the employee must

consequentially choose between continuing to work while being a new parent or taking time away from work and have their income supplemented in some other way such as unemployment insurance, or through the income of their domestic partner(s), family, and so on. Many leave policy systems internationally consider the partners of primary caregivers—which are typically implicated to be biological mothers in this legislation<sup>11</sup>—pertinent in discussions of financial supplements for childrearing where leave is unpaid. However, these conditions do not always reflect reality. Rather, there are multiple and diverse experiences in becoming a parent and the parenting journey; this notion contrasts the idea of the monolithic primary caregiver and in turn suggests that financial aid should be available for any person doing carework.

Relatedly, an element of many leave structures internationally is non-transferrable benefits, which imply that *only* the parent who is eligible to use these benefits, can use them—their partner(s) or other caregivers cannot. However, research regarding leave use among heterosexual couples has shown that, as employees, parents seem to value benefits when they are made available to both parents as it allows them to make freer choices about the timeline of their leaves (Ray, Gornick, and Schmitt 2010). These conditions are also relevant to the needs of the employer. In a study with over 1200 heterosexual parents in the U.S., Harrington et al. (2019) identify that these parents as “[e]mployees highly value paid parental leave—it enhances loyalty to their employers and their identity as caregivers” (4). In this way, paid leave is understood as mutually beneficial to both employees, in that they can supplement their own time away from work, and to employers, because the costs of temporarily replacing a worker remain low and employee interest in returning to work remains high. Additionally, these considerations

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<sup>11</sup> For examples of this see Chapter 5, especially page 55 and the “female presumption.”

regarding non-transferable paid leave are helpful for multiple kinds of parents, as they decentre the phenomenon of the mother-as-primary-caregiver and instead supplements caretaking and childrearing wherever (and with whoever) it occurs.

## **Unpaid labour**

Inextricably connected this discussion of supplementing labour and time away from paid labour is the phenomenon of unpaid labour. Unpaid labour can be understood as emotional labour, household labour, or any kind of physical work, mental or emotional exertions that occur outside of wage labour for the purposes of relationship maintenance and familial/community support. Parental and household labour typically goes unpaid and occurs within both public and private spheres of social life for the purposes of familial maintenance (Lachance-Grzela and Bouchard 2010). In light of this, this work and the characteristics that structure its division between parents—that is, conceptualizations surrounding *what* constitutes “work”, who *should* do/does what work, and so on—tend to be under-accounted for and made invisible (Ciciolla and Luthar 2019; Gutiérrez-Rodríguez 2013; Himmelweit 1995; Luxton 1980). Traditionally, and based on heteropatriarchal assumptions, mothers have assumed greater domestic labour workloads due to historical economic organizations that situated men’s labour output exclusively in the public spheres of work (Gornick and Meyers 2009; Thane 1992; Luxton 1980). This public sphere of labour is based on wage-earning action, as opposed to the private, domestic sphere contexts that are characterized by unpaid and usually unnoticed labour. Although these spheres continually overlap with the contemporary prevalence of “working from home,” the historical relevance of these individual spaces provides a contextual basis upon which dynamics of labour under Western economies can be better examined.

Hidden work includes acts of care and emotion work (Luxton 1980), which can be understood in relation to “activities relevant to the emotional wellbeing of other family members and giving [...] emotional support” (Hjálmsdóttir and Bjarnadóttir 2020: 272). Social reproduction,<sup>12</sup> or “the day-to-day work [...]—household labour, physical and emotional caregiving, and other work to meet human needs” (Bahn et al. 2020: 696)—accounts for a large share of the unequal amount of labour expected of women particularly. Although childcare demands can fall under the umbrella of household responsibilities, other labour performed within the home includes (but is not limited to) cleaning, cooking, finance management, pet care, and so on (Bureau of Labor Statistics 2018). In addition to these basic necessities, emotional work is also imperative to this conversation; this type of labour can look like “soothing frayed nerves, assisting children to build their confidence, and listening to family member’s troubles”; “kin-keeping” or “maintaining contact with family members living outside the household, organizing kin gatherings, and buying gifts for relatives” (Baker 2001: 111) is also a kind of emotional work. Baker (2001) emphasizes that these forms of emotional labour have traditionally been performed by and expected from women exclusively, ultimately based on historical and traditionalist expectations about gender roles and various socio-cultural “scripts” (Emmers-Sommer 2014). Lachance-Grzela and Bouchard (2010) highlight how, within the heteronormative context, women in North America are responsible for over 60% of routine household tasks [...] and are “also in charge of managing, planning, and organizing these tasks” (768). There thusly exists an unequal division of labour (DOL) that is emphasized through perceived gendered roles and disproportionately impacts women and mothers in heterosexual relationships.

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<sup>12</sup> For more on social reproduction, see Laslett and Brenner 1989; Stack 1974.

Unpaid labour is often performed in conjunction with paid labour. Emotional labour (naturally unpaid) can occur while simultaneously labouring for wages (see Hochschild 1979). It can also happen in the home, away from spheres of paid labour. Considerations surrounding the work one does in conjunction with unpaid labour are relevant here, as Eichler (1981) highlights that not all emotional labour is done equally. For example, a single, childless individual who “works from home” will likely have different experiences with performing emotional labour than a mother whose job requires physical labour (for example, construction working, cleaner, etc.) in the public sphere for wages and who must leave work to then cook, clean, and sooth frayed nerves of children in a separate space. Although the heteronormative nuclear family structure has historically been seen as a structure that balances these economic considerations, as presented above, the unpaid labour underpinning these contexts is often unseen and is thus under- or not accounted for when having discussions about labour and leave entitlements.

### **“The Family”**

Understandings of the origins of the nuclear family have typically focused on its existence as concomitant with the rise of industrialization (Greenfield 1961). This familial structure generally includes two parents and a child, but within the context of heteronormativity more specifically it consists of the ties between a father, a mother, and their biological, dependent children. This understanding of family thus posits two assumptions: First, it assumes heterosexuality as the norm, and second, it asserts that bloodlines determine kinship and familial relations. Historically, family sociologists held the family as a social unit reserved for the needs of “procreation, status placement, biological and emotional maintenance and socialization” (Sussman and Burchinal 1962: 232). In addition to this, proponents of functionalism traditionally

idealized the nuclear family as the kinship formation that best maintained the aforementioned processes, and a measured response to the social and material conditions of a given industrialized nation (Parsons 1943). This family structure thus arose under the specific socio-economic conditions related to industrialization and is deeply connected to the early formations of capitalist organizations of the economy. In Meg Luxton's *More Than a Labour of Love* (1980), she underlines that “[b]ecause workers retain possession of their [own] labour power, they, rather than their employers, are responsible for reproducing it” (15); this, in turn, generates the need to “create” the private sphere wherein the recuperation needed to continue labouring could occur. Because these economic organizations demanded that men (exclusively) sell their labour to receive income, women subsequently became responsible for ensuring that these men—their husbands—were able to continue exchanging their physical work for pay. These responsibilities involve emotional and care work as described above, which includes things such as household errands like cooking and cleaning, as well as childcare and emotion management. Western legal systems also generally assume individuals as responsible to their state-recognized relations (such as marriage), and to those whom they are “biologically” connected to (this implies birth children/parents; however, adoption is much more contemporarily prevalent)—biological connection being determined through genetics and DNA. These articulations regarding *who* is considered in conceptualizations of family are pertinent to situating the context from which policy is created.

Margrit Eichler (1983) poses powerful, critical ideas about the normative family structure in her assertion that “who is included in the definition of family is an issue of great *importance* as well as great *consequence*” (as cited in Albanese 2018: 13; emphasis added). It is imperative that an analysis of “the family” recognizes the resultant social and material

consequences of naming *who* counts as family. Such material consequences, for example, range from who is eligible to claim insurance and tax benefits, to who is eligible to “sponsor family members in immigration [and who is eligible to] claim Indian status” (Albanese 2018: 13), and of course, who is eligible for parental leave. Eichler (1981) posits the notion that various dimensions create the structure of the “monolithic model of the family;” these include the legal, procreative, socialization, sexual, residential, economic, and emotional dimensions (368-70). Describing how engagement with these dimensions among family members ranges in intensity from low to high, she illustrates how the monolithic model of the family that demands all dimensions are engaged with at the same intensity produces an “[a]ssumption of congruence”:

That a family consists of two legally-married sexually-cohabiting adults who have children together whom they parent, that it constitutes an economic unit in which either one spouse (formerly always the husband-father) or both spouses (husband-father and wife-mother) are responsible for the economic support of their dependent children and each other, and that it is a social group in which all members live together and love and nurture each other is so commonly understood that it seems almost frivolous to raise any questions about this conglomeration of characteristics. [...] The assumption of congruence leads to the foregone conclusion: families provide emotional support and love for each other. (371)

The normative expectations that are imbued and reinforced onto familial organizations and interactions are thus quite problematic for individuals and families that do not or cannot

interact with these familial dimensions to varying extents. This is particularly true for queer people who find refuge in chosen family—which involves actively having to *choose* family (Weston 1997) by seeking out emotional support and love from those beyond families-of-origin after being forcibly expelled or choosing to leave for one’s safety; evidently, families are not necessarily universal sites of support or love. Because of this, and in line with Eichler’s (1981) assertions, when multiple family structures become problematized for their diverse makeup and expression, there is a lack of regard for the material issues that individuals consequently face when their familial experiences are non-normative.

### **Queer families**

There are social and material benefits for raising children in ways that are supported by existing leave policy that cis-heterosexual nuclear families benefit from in a heteronormative society. When policymakers consider the processes of becoming a parent from an exclusively heteronormative perspective—and address only the needs of women who give birth as well as the partners of those who give birth (usually husbands)—the needs of diverse and queer family forms are sidelined. Queer parents face specific material and social challenges associated with becoming a parent that non-queer parents do not (Alksnis, Gray, and Desmarais 2013: 293). Examples of such challenges, much like the populations experiencing them, are diverse and multifaceted. The Social Research and Demonstration Corporation (2021) outline that economic precarity is characteristic of many queer populations, adding that “[i]n addition to earnings, LGBTQ2S+ individuals have distinct outcomes related to other labour market characteristics, including access and attainment, formality and precarity, type, sector, and location of employment” and face “challenges related to discrimination, concealment, and social or

workplace exclusion” (7-8). This precarity can be particularly problematic in influencing access to parental leave when leave policy is contingent on consistent employment or income ceilings. Moreover, for queer populations, to *become* a parent (see page 12), pregnant, or to go through the process of adopting a child can be very expensive and time consuming. Pfeffer and Jones (2020) highlight how although trans and cis people endure similar processes for the purposes of childrearing, trans people often face major struggles that are not necessarily faced by cis-heterosexual people:

Trans people, like cis people, have a number of possible pathways to becoming a parent and building families: adoption; giving birth to biologically related offspring with or without the use of assisted reproductive technologies; gestational surrogacy using one’s own or donor gametes; fostering or guardianship of children who are or who are not biologically related; and step-parenthood in the context of blended families. Across each of these pathways, trans people and their partners may face additional struggles and challenges due largely to social stigma and discrimination against trans people. (200)

In addition to the challenges faced by “immediate” caregivers and parents, there must be a consideration of the rights of those who aid in a queer parent’s childrearing process, such as surrogates. Surrogacy can constitute a necessary part of becoming a parent for *any* person that cannot individually or physiologically rely on sexual reproduction, and especially queer families who may seek out alternative childrearing strategies. Although sometimes a “route to parenthood” for queer parents, Heston (2013) highlights how surrogacy is “often prohibitively expensive” (255; 261). Currently, Canadian legislation entitles surrogates to *maternity* benefits, but not *parental* benefits (Government of Canada 2023b); implicit in this legislation is the

conflation of becoming pregnant and maternity or (a kind of) motherhood and thus a centring of cisgender pregnant people. This cis-centrism is problematic as it conflates gender identity with ability to become pregnant; contrastingly, there are cisgender women who *cannot* get pregnant and non-cisgender people who *can* get pregnant. Although benefits for surrogates should more so be determined on the basis of how comprehensive leave resources are and less on the basis of how these regulations are labelled, imposing definitions about maternity and parenthood that determine access to financial aid silos any parent that does not fit this conceptualizing, queer or not. For example, this conceptualization can impact the accessibility of leave benefits to a surrogate who is not a woman (such as a transgender man or an AFAB non-binary person).

Thus, there are overlaps in the processes of childrearing between queer and non-queer individuals; however, the added layer of social oppression against trans\* and other queer populations magnifies the struggles that naturally accompany childrearing. In this way, it is clear that “[w]hen queers do families in a way that is inconsistent with heteronormativity, they are considered illegitimate and difficult to understand” (Bermea et al. 2018: 358), and that this is ultimately represented in legislation that excludes them. Access to financial and social benefits rely on conformity to hegemonic ideals, and queer families inherently disrupt the possibility of conformity. This suggests a “complex relationship between law, culture, and daily interactions,” underlines how heteronormativity is inscribed into the conceptualization of parenthood, and how “LGBQ people are often disempowered and overlooked as parents of their children due to these heteronormative assumptions” (Gahan and Almack 2020: 511).

### *Division of Labour (DOL) – Queer families*

Research focusing on queer parents and their household patterns alludes to the notion that domestic labour is more equally divided among queer couples than it is among their heterosexual counterparts (Goldberg et al. 2020; Moberg 2016; Patterson, Sutfin, and Fulcher 2004; Dunne 2000). For example, Goldberg et al. (2012) emphasize that lesbian and gay couples divide and negotiate responsibilities like childcare and general housework in a more egalitarian way. This makes sense if we consider literature suggesting that, rather than totally embracing dualistic imaginations of motherhood and fatherhood and the gendered characteristics inherent within, queer couples more often “adopt a range of nontraditional norms and practices that, in effect, destabilize the traditional marital form” (Green 2010: 399). Green (2010) builds on this notion of destabilized marital norms to elucidate the ways in which alternative family forms and less gendered, but more negotiated DOL can encourage novel ways of approaching childcare that both strengthens familial bonds and enables more equity in care responsibilities.

Evertsson and Malmquist (2023) outline research findings showing that “gay fathers on average have a more egalitarian division of work and care compared to heterosexual couples” in addition to engaging in more discussions of household labour negotiations with their partners (243); this, as Evertsson and Malmquist suggest, may be a result of gay fathers feeling “the need [...] to create a new fatherhood role outside the normative constraints of heterosexual parenting” (2023: 243). Tornello’s (2020) report on the DOL among TNB parents contains a wealth of knowledge on the familial systems and DOL that exist beyond cis-heteronormative units. Tornello found that trans and non-binary couples “reported wanting – and actually having – an egalitarian division of household and childcare labor. In addition, discrepancies between how these couples actually and ideally wanted to divide this labor were relatively minimal” (2020:

10). Furthermore, Tornello asserts that “greater discrepancies between actual and ideal division of unpaid labor have been linked to individual wellbeing” (2020: 1). Because the discrepancies between the ideal and actual DOL are minimal, this suggests that the wellbeing of TNB individuals is not being greatly impacted by their negotiations of household labour.

### *Contrasting queer egalitarianism*

There is also conflicting literature suggesting evidence that queer families and their divisions of labour often replicate heteronormative household structures and duty negotiations. Some research indicates that “[i]t is possible that lesbian mothers are more likely to strive for egalitarian childrearing than straight couples, though this rarely happens in practice, just as gay couples strive to equally share housework though the empirical data suggests unequal housework is the reality” (Heston 2013: 250). Goldberg et al. (2012) emphasize this contradiction, noting that same-sex couples “may be aware of dominant assumptions that they “should” be more equal than heterosexual couples and therefore report greater equality than exists on a day-to-day basis” (824). Furthermore, Lazarus and Mandel outline that “[g]ay partners [...] become less egalitarian as the relationship matures or when they become parents” (2023: 3). In light of this literature that contrasts the notion of greater rates of equality among LGBTQ+ partners with DOL, future research should seek to further identify more experiences and negotiations of labour among diverse queer populations to further elucidates patterns of egalitarianism or inequality.

## Chapter 4: **Data, Methods, Methodology**

This cross-national policy analysis is conducted upon the methodological approaches of Queer Theory (QT) and Queer Legal Theory (QLT). QLT as an analytic approach assumes the “central tenet of all critical-oriented analyses [...], that power, status, and privilege are inequitably distributed, typically along lines of historic marginalization,” and that such lines of marginalization “are always at play in governmental and organizational settings” (Lugg and Murphy 2014: 1196). Here, the goal of data collection and analysis is to assess how queer families are affirmed by or excluded from leave policy. Utilizing QT and QLT, this research “starts from nonessentialised sexual and gender identities, viewing them as temporary, fluid and indeterminate,” and “criticiz[es] law, practices and policies that seek to exclude, categorize, subordinate or eliminate anything that does not fit into binary concepts of sexuality and gender” (Banović 2022). Ultimately, these analytic approaches help illuminate the ways power and privilege are deeply implicated in the creation and existence of policy. The critical nature of QT and QLT creates possibilities for uncovering and interrogating the neutralized, and often inequitable, social conventions that undergird legislation.

### **Data**

The inclusion of the U.S., the Netherlands, New Zealand, and Sweden is for the purpose of comparison to the Canadian context—understanding the best practices across the legislation of various “comparable” nations illuminates how the Canadian system ranks when considered

alongside others and gives points of reference for future policymaking. “Comparable” within this context implies that there exists some degree of similarity between the social, political, or economic systems between these countries. With the exception of the U.S., these nations are “comparable” in the sense that they are generally understood to promote political liberalism and progressivism, adequate measures of social insurance benefits (Seward, Yeatts, and Zottarelli 2002), and project corresponding national images found on these premises (Andersson and Hilson 2009; Bauder 2008).

Related to this, then, is a hypothesized contrast between progressive national images and suggestions of adequate benefit systems and the resultant lived realities of vulnerable communities in particular. The inclusion of the U.S. is for the purpose of posing a hypothesized contrast to the leave systems in the remaining nations. Due to the privatization of healthcare systems in the U.S., it is inferred that the social insurance benefits within leave policies for American parents are also exclusive in nature. This echoes research showing that among other countries with the highest GDP, the U.S. is “alone” (Kamerman 2000) in the context of its underfunded and underdeveloped national parental leave system (Wong et al. 2019; Robson 2010). The inclusion of these countries should not imply that these are the only jurisdictions with relevant or “progressive” leave policy; there are many other countries that have enacted “progressive” legislation within the realm of maternal and parental leave policies. However, this “progressive” legislation usually exists within the heteronormative context, and thus functionally only exists for cis-heterosexual mothers and fathers. Although common across various nations, there are many jurisdictions that employ excellent maternal leave policy systems that simultaneously lack adequate structures that address the needs of caregivers and parents who are not biological mothers. Countries where LGBTQ+ rights are explicitly prohibited were not

included in this analysis; however, queer peoples face discrimination across the world regardless of “legal” status or legislative inclusion.

Canada creates the context in which this thesis is written, and the analyses of best practices in leave policies in other countries are utilized to compare against Canadian legislation as a means of making suggestions for future, more comprehensive leave policy. The U.S. is presented as an example of a country that has one of the most inadequate leave policy structures while being one of the wealthiest nations in the world. The Netherlands presents a case where social liberalism conflicts with a fiscally conservative economic system to pose contradictions within leave policy legislation. There is a dearth of analyses on New Zealand leave policies and their impact on queer parents especially compared to that which exists regarding Australia, a neighbouring country that shares many similar legislative structures and leave systems. Sweden is considered to have one of the best parental leave systems in the world and was chosen as a means of providing points of potential inspiration for Canadian policymaking.

These countries were also chosen on the basis of initial research of best practices in leave policy for queer families. Best practices are those existing legislative regulations surrounding leave policy that are seen as most optimal for more kinds of families. There are several countries that have seemingly progressive leave policies—including extended time off and financial benefits—but LGBTQ+ peoples cannot get married in these countries. Quantitative data (Wong et al. 2019) shows that four of these listed countries (Canada, Netherlands, New Zealand, Sweden) offer equal or near equal parental leave periods to heterosexual, same-sex female, and same-sex male couples. However, such data only addresses the nominal nature of rights afforded to various family forms; there is no consideration of the extent of the implementation of these benefits, or the lived experiences of the families these policies are created for. Though rights

may be written into legislation, the impact it has on the groups it is intended to benefit must be further considered.

## **Methods**

Online governmental/legislative and archival resources were utilized as sources of data collection as they contain historic as well as current and sometimes<sup>13</sup> up-to-date, codified information regarding policy. A systematic review of English-language legal documents from third party and governmental resources was conducted as a means of compiling comparative analysis data. The primary utilization of governmental data and resources (alongside scholarly literature) is for the purpose of anchoring this work in existing legislation that is currently influencing the realities of families.

Using NVivo software, I identified and coded for major themes and best practices in leave policies across the five countries. Drawing on national leave policy and guided by my methodological approaches, I coded for: *who* is included in (and thus who is left out of) parental leave policies in each country by determining who qualifies as a parent/caregiver, how gender identities show up in leave policy and the extent of gendered language (women, men; she, he, they; parent, caregiver; mother, father), and what kinds of benefits exist for those who are eligible. Legislative data were also used to cross-nationally identify patterns or differences in wage replacement rates, income ceilings, and legal definitions and ramifications of various familial organization and kinship structures. These findings were organized into tables that display categorical data regarding respective national leave policies.

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<sup>13</sup> See *Limitations*, Chapter 8.

## **Methodology**

Using an intersectional feminist framework alongside and Queer Theory, this study aims to uncover and interrogate the neutralized, seemingly progressive but often materially inequitable conventions that undergird familial leave policies. I pay particular attention to the ways in which legal jurisdictions determine the idealities of the childrearing process, and how such idealities are based upon cis-heteronormative foundations. Intersectionality examines the interconnections of various social identities as a mode of more comprehensively understanding social life and experiences (Fotopoulou 2012; Crenshaw 1991). In her seminal work, Kimberlé Crenshaw (1989) provides a definition of intersectionality, focusing on the impacts of multiple and seemingly disparate oppressions converging to reproduce further disadvantages for particular communities. Furthermore, Crenshaw highlights the ways in which discrimination and oppression against vulnerable populations are often judicially thought to be of “unidirectional” cause (1989: 139). To counter this, and within the context of discrimination against Black women, Crenshaw underlines that social and legal processes must consider the gendered and racialized realities of Black women in conjunction, as opposed to in isolation. In the context of this research, I utilize intersectionality as a means of acknowledging how people variously experience and “are differently embedded in locations created by [the] cross-cutting hierarchies” of gender, sexuality, race, and class (Zinn and Dill 1996: 327; Lokot and Bhatia 2020).

I am interested in making sense of how various family structures fit into and benefit from parental leave policy, as well as analyzing how various social expectations woven into policy are structured within gendered ideas of familial carework. Kathy Charmaz (2006) suggests that “texts are products. The processes that shape them may be ambiguous, invisible, and perhaps,

unknowable” (40); as a means of attempting to address the nature of texts—such as leave policy—Charmaz alternatively suggests the following questions to guide such a critical analysis:

- *Which contextual meanings does the text imply?*
- *How does its content construct images of reality?*
- *What, if any, unintended information and meanings might you see in the text?*
- *How is language used?*

As such, these questions are utilized to inform this comparative analysis of parental leave policy structures. Following this investigation of respective policy (textual data) in the included nations, various best practices in current policy are highlighted throughout Chapter 5 to illuminate existing measures and legislation that may act as a foundation for future policy to evolve upon.

## Chapter 5: Findings

What follows is a presentation of data representing cross-national leave policy systems, as well as the evolution of parental leave policy in the following countries, respectively: Canada, the United States, the Netherlands, New Zealand, and Sweden. In this section, I provide historical overviews of policy development, discuss the significant findings from Table 1 and Table 2, and highlight the respective best practices in parental leave. Although this section does not claim to be a completely comprehensive recounting of the advancements made by activists and advocacy in family and childcare rights, I highlight the development and structure of family leave systems across the selected countries to assess the ways in which leave policies accommodate or omit multiple family structures, or, queer families.

### *Table 1—Parental leave policy across the world*

Table 1 contains an overview of the properties of parental leave policies across five countries: Canada, the U.S., the Netherlands, New Zealand, and Sweden. Namely, it asks, is parental leave paid? How long is leave? What is the wage replacement rate? What supplements and benefits are given through this leave system? Who is eligible for leave in this country?

### *Table 2—Census definitions of family, by country*

Table 2 contains governmental census definitions of *family* across Canada, the U.S., the Netherlands, New Zealand, and Sweden.

I chose to focus on the census definitions of family across various countries as a relevant measure of how these countries conceptualize normative kinship forms. Understanding how governing bodies conceptualize a family structure elucidates the kinds of families that are being considered when policy is made, and which families are not. Through these texts and understandings, it is possible to understand how respective jurisdictions uphold ideals and impose meanings of reality onto society (see page 42-43).

**Table 1 — Parental leave policy across the world**

	Paid leave?	How long is leave?	Rate of wage replacement	Supplements and benefits	Income-related criteria	Who is eligible? Types of carers (parents, partners, etc.)	Type of employee (federal, self-employed, etc.)
Canada	Yes	35-76 weeks*	55% with standard leave; 33% with extended leave	Maternity benefit; standard parental benefit; premium parental benefit	Must have worked 600 hours in the 52 weeks before applying for parental leave	Birth parents; adoptive parents; partners of parents	Federal; public; self-employed*
U.S.	Yes*	Up to 12 weeks	Not enough data	Family and Medical Leave Act (FMLA)	Must have worked for their employer for at least 12 months at a minimum of 1,250 hours, and must work at a location where the company employs 50 or more employees within 75 miles	Birth parents, adoptive parents, partners of parents	Any employee who meets the eligibility requirements under the FMLA can take leave. Private sector employees may have access to leave if their employer has created a benefits plan.
Netherlands	Yes	Pregnant employees have at least 16 weeks; paternity leave is 1-5 weeks	Less than 25%	Parental leave; Paternal / partner leave; childbirth leave; additional paternity / partner leave	Leave is calculated based on a maximum of 26 times the number of hours the employee works per week	Birth parents; adoptive parents; partners of parents	Federal; public
New Zealand	Yes	0-52 weeks	~50%	Parental leave benefit; unpaid leave benefit	Tiered upon whether the employee meets the 6- or 12-month criteria*, or whether they are self-employed	Birth parents; adoptive parents; "primary carers" of children; partners of birth parents and "primary carers"	Federal; public; self-employed
Sweden	Yes	Up to 68 weeks	77.6% - 90%	Parental leave benefit; temporary parental benefit; pregnancy cash benefit; temporary leave in connection with a child's birth or adoption	Compensation is tiered based on income, but as an employed person you are automatically eligible	Birth parents, adoptive parents, partners of parents	Federal; public; self-employee; unemployed persons and students are also be eligible for compensation

**Table 2** — *Census definitions of family, by country*

<i>Country</i>	<i>Definition of family</i>
Canada	"[A] married couple and the [biological or adopted] children, if any, of either and/or both spouses; a couple living common law and the children, if any, of either and/or both partners; or a parent of any marital status in a one-parent family with at least one child living in the same dwelling and that child or those children. All members of a particular census family live in the same dwelling. Grandchildren living with their grandparent(s) but with no parents present also constitute a census family" (Government of Canada 2021).
U.S.	"A family is a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together" (U.S. Census Bureau 2021).
Netherlands	--- See page 72.
New Zealand	"A family is two or more people living in the same household who are either a couple, with or without children, or one parent and their children" (Statistics New Zealand 2013).
Sweden	""Family" means spouse, partner, registered partner and children living at home" (Swedish Tax Agency 2007: 4).

## Canada

### *Parental leave development*

The structures of supplemental benefits under parental leave in Canada have historically differed and continue to differ at the provincial and federal levels. At a national level, scholars generally agree on three milestone years in the development of parental and caregiving leave policy in Canada: 1971, 1990, 2001 (Margolis et al. 2018; Doucet, McKay, and Tremblay 2009). Although maternity leave was more formally introduced in 1971 for all working mothers<sup>14</sup> in Canada, British Columbia became the first province to introduce a form of maternity leave in 1921 with the *Maternity Protection Act*, or *An Act concerning the Employment of Women before and after Childbirth*, 11 GeoV, c.37 (Altschul and Carron 1975: 481). This Act not only provided childcare benefits for birth mothers in the workforce but also functioned to legally protect them from any kind of wrongful dismissal that could arise due to their taking time away from work to do childcare. This Act proposed that working women be entitled to a leave of absence from employment for up to 6 weeks preceding, and a mandatory 6 weeks following “confinement” (Altschul and Carron 1975: 481), or, childbirth.<sup>15</sup> Another defining benefit within the Act allotted birth mothers up to an hour during the working day to nurse her child at work (Canadian Labour Congress). Although these legal regulations may seem inadequate within the contemporary context, this early emphasis on the need to allot time away from work for

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<sup>14</sup> The phrase “all working mothers” needs clarification. Maternity leave, as it was codified into policy, meant that a *birth mother* had the right to compensation and protected work leave. However, this does not necessarily ensure that every working mother is able to access such benefits in practice—this will be elaborated on further into the discussion.

<sup>15</sup> The Government of Canada (2023) acknowledges that although the term *confinement* is “less precise” than its French translation *accouchement*—used in medical contexts to describe the end of pregnancy during the third trimester—it generally refers to the “concepts of delivery or childbirth.”

childcare was in many ways a precursor to more solidified labour laws across the country that were reshaped to consider the needs of workers that were also parents.

*Minimum Employment Standards Act, 1964*

A significant and noteworthy event before the federal enactment of maternity leave in 1971 was the *Minimum Employment Standards Act* c. 8, passed in 1964 in New Brunswick. Among various other labour rights within this provincial Act were protections for birth mothers as individuals in the workforce. Sections 11, 12, and 13 of the *Minimum Employment Standards Act* address and prohibit wrongful employment dismissal of birth mothers and set precedents for time away from employment for childcare (Canadian Legal Information Institute 2023):

**c. 8 s.11:** An employer shall not employ or keep in his employ a female employee during a period of six weeks from the time of being delivered of a child or a longer period on production of a medical certificate.

**c.8 s.12:** An employer shall permit a pregnant female employee to be absent from her work for a period up to six weeks before her time of delivery on production of a medical certificate stating her delivery will probably take place within six weeks.

**c.8 s.13:** Where a female employee is absent from her work in accordance with section 11 or 12, her employer shall not give notice of dismissal for reasons arising from her absence until the employee has been absent for a maximum period of sixteen weeks.

These Act sections illustrate some foundational articulations regarding the importance of the time needed for childrearing, as well as the importance of childrearing not being penalized but instead given some kind of compensation. In accordance with these earlier cases of types of parental leave policy being enacted, this “compensation” mostly implied time away from

physical labour, not financial assistance. Because birth mothers needed time to physically recuperate after giving birth, and employers needed employees physically able to labour, creating laws that acknowledged this kind of mutual dependence was necessary. Quite importantly, these early articulations of leave policy did not establish any financial compensation to account for time taken away from work. It follows that creating policy aimed at women specifically as parents and withholding financial aid for extended periods of time worked to deepen gendered financial imbalances with lasting impacts on the socioeconomic statuses of women. There have, of course, been considerable advances in the social and economic statuses of women since 1964, and although Canada soon after 1964 federally legislated paid maternity leave, there remain gaps in the parental leave benefit system that continue to impact many populations of families.

### *Paid maternity leave*

Paid maternity leave for birth mothers was ultimately introduced into Canadian public policy in 1971. This Act<sup>16</sup> provided a new “maternity leave for employees in jobs under federal jurisdiction (s.17)” (Altschul and Carron 1975: 488) by proposing that mothers with at least 20 hours of insurable weeks of employment were now entitled to 15 weeks<sup>17</sup> of benefits at 67% their wage rate (Warskett 2007 as cited in Doucet, McKay, and Tremblay 2009: 36). Altschul and Carron (1975) outline that this maternity leave enactment follows advocacy by the Royal Commission on the Status of Women in Canada (RCSWC); RCSWC was created in 1967 as a liberal feminist-led coalition that pressured the federal government to address the status and oppression of women in Canada (Government of Canada) and other marginalized groups. Some

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<sup>16</sup> Canada Labour Code, S.C. 1970-71-72, c.50

<sup>17</sup> According to the *Code*, maternity leave is now 17 weeks in length [R.S.C., 1985, c. L-2; s. 206 (1)].

of the main principles that guided the demands of the RCSWC included the government—and society more broadly—acknowledging that childcare should be a shared task split between parents (in a monogamous, heteronormative context) instead of delegated to one person (mothers). RCSWC heavily emphasized that maternity leave was so necessary for women due to the importance of childbirth—from pregnancy to delivery. Though this notion would automatically assume the criterion of who is entitled to parental leave as AFAB women *who can give birth*,<sup>18</sup> the goals of the RCSWC were solid foundations to start discussions about leave policy. Additionally, having financial and material supports in place for persons undergoing an intensive physical process such as childbirth was necessary, especially in a period where precarious working-class rights and widespread labour exploitation was creating mass unrest (see Milligan 2014). This context in many ways parallels the contemporary moment; given the current impacts following a major pandemic that disproportionately affects mothers (Landivar, Ruppner, Scarborough, and Collins 2020), as well as an ever-increasing cost-of-living in post-pandemic contexts (Statistics Canada 2023), parent labourers need strong governmental supports and assured (and adequate) childrearing assistance.

Following the first major principle guiding the RCSWC demanding that “women should be free to choose whether or not to take employment outside their homes”, two additional principles of their parental leave advocacy are relevant to this current discussion:

*“The second [principle] is that the care of children is a responsibility to be shared by the mother, the father and society. Unless this shared responsibility is acknowledged and assumed, women cannot be accorded true equality. ...*

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<sup>18</sup> Not all people who are AFAB have the capacity to bear children. For more on how this conflation can be problematic, see more below.

The third principle specifically recognizes the child-bearing function of women. It is apparent *that society has a responsibility for women because of pregnancy and child-birth, and special treatment related to maternity will always be necessary.*” (Bird et al. 1970: xii; emphasis in original)

The addition of “society” to the list of those responsible for the care of children poses a stark contrast to monogamous normativity that posits two parents being solely responsible (to varying, often unequal extents) for their biological children. Though the above feminist advocacy is clearly framed within heteronormative understandings of the family, there remains within it an underlying notion of the collective responsibility for the work of childrearing that is posed as an integral part of addressing women’s social oppressions. Furthermore, despite this thesis functioning from the standpoint of Queer Theory and thus departing from the liberal feminist values that undergirded the RCSWC, this advocacy must be seen as integral to setting precedents for compensating childcare labour and understanding the multiplicity of familial experiences. In line with this, RCSWC did not silo their advocacy into that which would only address the needs of white, upper-class, cisgender, heterosexual women. Instead, they articulated the need to address the rights of gender and sexual minorities—such advocacy immediately preceded the decriminalization of homosexuality in Canada.<sup>19</sup> RCSWC advocacies were important precursors to initiating societal discussions about the rights of families who fall outside of hegemonic

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<sup>19</sup> It is important to note that this decriminalization was conditional and not absolute. More precisely, homosexuality, when “engaged in” in private by two consenting individuals 21 years old and over, was decriminalized (Tremblay 2015: 12). As Tremblay (2015) notes, this decriminalization did not prevent the policing of gay sexualities due to existing homophobic provisions in the Canadian *Criminal Code* that, in practice, maintained the criminalization of non-heterosexuality.

identity boundaries and discourse specifically surrounding the rights of non-birth parents, biological fathers, adoptive parents, and ultimately queer parents.

### *Parental leave for non-birth parents*

Leave rights were extended to adoptive parents (in heterosexual marriages) in 1984, and to biological fathers five years later in 1989. This “paternity leave” in Canada eventually evolved into the broader (currently existing) *parental leave* policy in the 1990s (except for in Québec where paternity leave still exists alongside broader parental leave for fathers) that in its iterations aimed to further provide leave benefits to non-birth parents and primary carers. In 1990, the Federal government officially legislated 10 weeks of parental leave benefits which could be used in conjunction with respective maternity and paternity leave policies in place. In a similar fashion just over 10 years later, the government legislated 25 extra weeks to paid parental leave in 2001, meaning that parental leave (alone) could be 35 weeks long. Combining their 15 weeks of maternity leave with this new parental leave of 35 weeks meant that mothers could now potentially be entitled to 50 weeks of leave, thereby “doubl[ing] their total compensated care time” (Doucet, McKay, and Tremblay 2009: 36). Currently, and according to Table 1, parents in Canada may be eligible to take leave anywhere from 35 to 69 weeks for the purposes of childcare at a wage replacement of 55% of their earnings with standard leave, and 33% wage replacement with extended leave.

***Table 3*** — *Maximum leave durations in Canada for birth and non-birth parents, according to standard or extended benefits*

### Maximum leave duration

<b>Standard benefits</b>	<i>Birth parents: 50 weeks</i>
	<i>Non-birth parents: 35 weeks + 5 weeks (PSB)</i>
<b>Extended benefits</b>	<i>Birth parents: 76 weeks</i>
	<i>Non-birth parents: 61 weeks + 8 weeks (PSB)</i>

In line with these benefits, another implemented policy that proposed an increase in paid time away from work is the Parental Sharing Benefit (PSB), which was introduced in March 2019 by the Canadian government for non-birth parents to “receive extra weeks of Employment Insurance (EI) parental benefits so that they can share the joy and work of raising their children more equally” (Government of Canada 2019). Here, two-parent families now have access to a top-up benefit of an additional 5-8 weeks of childcare leave (see Table 3 for maximum leave durations). In accordance with the PSB enactment, the Government of Canada states that although parents can now share a total of up to 40 weeks of standard benefits or 69 weeks of extended benefits, one parent’s time away from work cannot exceed more than 35 weeks with standard benefits or 61 weeks with extended benefits (2023).

Another noteworthy childcare policy that the Canadian government implemented on July of 2016 was the Canada Child Benefit (CCB). The CCB was introduced into legislation to replace both the Universal Child Care and Canada Child Tax Benefits that were in enacted to financially aid and supplement parents of children under the age of 18 (Government of Canada

2023a); the benefit is income-related<sup>20</sup> and thus benefits may be disproportionate. Additionally, some individual provincial jurisdictions provide additional financial aid for childcare outside of federal supplements. The only province that does not have additional childcare benefits is Manitoba. The Canada Revenue Agency also does not directly administer Québec’s Child Assistance Payments (CAP), but the program mirrors existing benefit programs in the provinces that do supply additional childcare benefits (Government of Canada 2016; Government of Québec n.d.). The CCB is delegated to those who are “primarily responsible for the care and upbringing of the child” (Government of Canada 2022); the Government suggests that the parent primarily responsible for childcare should be the one applying for this benefit, and that being primarily responsible for a child looks like “supervising the child’s daily activities and needs; making sure the child’s medical needs are met; arranging for child care when necessary” (2022). A particularly interesting feature of this benefit program is the regulations around who is considered a primarily responsible parent. In the eligibility criteria and general information regarding the benefit, the Canadian Government explicitly states that female parents are assumed to be those who are primarily responsible for childcare:

When two individuals who are spouses or common-law partners reside in the same home as the child, the **female parent** is presumed to be primarily responsible for the care and upbringing of all the children in the home. She should be the one applying for the CCB. The female presumption is a legislative requirement and only one payment per household can be issued under the Income Tax Act. No matter which parent receives the CCB, the amount will be the same.

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<sup>20</sup> Adjusted family net income.

However, if the **other parent** is primarily responsible, they should apply and attach a signed letter from the female parent stating that they are primarily responsible for the care and upbringing of all the children in the home.

If the child resides with same-sex parents, only one parent should apply for all the children in the home. (Government of Canada 2022; emphasis in original)

Although this reflects the reality of many mothers in heterosexual-parented families (Gornick and Meyers 2009), it is problematic that this assumption is an undefined “legislative requirement”; by federally mandating that *females* are presumed to be primary caregivers in all family forms, this policy works to further anchor and materialize unequal, gendered divisions of labour, which, in turn, impacts the populations it is created for. The use of the term *female* instead of *woman* or simply *parent* suggests an emphasis in the understanding of the gendered role of caregiving, especially within the context of cis-heteronormativity. This policy directly excludes and effectively makes invisible all non-female relationships, including those between gay or queer men, as well as gender non-conforming and TNB people.

Additionally, the regulations in the CCB surrounding custody are also quite problematic; the Government of Canada indicates that individuals with children whom they see less than 40% of the time are not eligible for this benefit; only parents whose children spend more than 60% of their time with them are eligible to apply (2022). These measures of time spent between parents and children—like the above “legislative requirement” that posits females as primarily responsible parents—are somewhat vague and unclear. Furthermore, the realities of custody oftentimes pose particular challenges to queer parents (Mezey 2013; Ross and Dobinson 2013);

an understanding of how such social forces impact queer families must be foundational to the design of leave policy.

Advancements in leave policy were and continue to be significant in the context of labour rights and traditional views of childrearing. However, it is necessary to problematize seemingly progressive policy that can inadvertently maintain societal oppression against systemically marginalized groups, specifically queer families; although a *potential* collective leave of at least 35 weeks seems like an adequate benefit for new parents, such criteria are always within the heteronormative context. Furthermore, it may not be the case that heterosexual parents are *actually* receiving optimal childcare benefits to the extent that parents in other countries do even though Canadian leave policy functions from heteronormative foundations. In fact, Canada consistently ranks low on country cross-comparisons of leave policies that are seen as optimal for new parents who are heterosexual (Chzhen, Gromada, and Rees 2019; Wolff 2019). From this, it is clear that such policies will not be optimal for non-heterosexual parents either.

### *Queer families in Canadian policy*

Preceding its launch, the Government of Canada promoted the Parental Sharing Benefit (PSB) as applicable for non-birth parents in general, but also for “same-sex couples” in particular (2018). This is a somewhat of a milestone as well, as before the legislation of the PSB there was no explicit mention of how queer families fit into the Canadian parental leave structure. Furthermore, queer parents curious about their access to leave benefits may not find explicit information from online governmental resources to the extent that there is information available for heterosexual birth mothers and fathers regarding leave eligibility. The language used to describe eligibility criteria throughout official Government of Canada legislation remains

gendered and within the confines of the nuclear family structure; this of course impacts queer families but in practice results in any families that do not align with narrow policy criteria being negatively impacted—even if the policy, in writing, was created to include them. To counter this ineffectiveness in policymaking, it is important for governments to consider how criteria should account for the multiplicity of identity and family structures; this is especially necessary for queer families, but, again, aids all kinds of families. Consider, for example, the use of “mother/maternity” versus “birth parent” throughout leave legislation under federal jurisdiction and the use of feminine pronouns throughout the *Code* when describing those entitled to leave - [R.S.C., 1985, c. L-2]. Another example of how Canadian legislation remains within the confines of the ideals of the nuclear family is the centering of shared benefits—such can be an illustration of how seemingly progressive policy can actually work to further marginalize groups. Though it is important non-birth parents are recognized in leave policy, single parents and non-monogamous parents cannot access shared benefit plans like married birth parents can.<sup>21</sup>

One recent example of the Canadian government heading toward a more comprehensive understanding of multiple family structures is the recognition at the federal level (Government of Canada 2022) of the 2017 legal decision that recognized two Ontario women who are friends—and had never been in a romantic relationship—as co-parents (Bakht and Collins 2018). This was a landmark case, and its implications suggest the capacities of our legal system in acknowledging multiple family forms. Along with this, the census definition of “family” (see Table 1) evidently recognizes multiple structures by acknowledging the role of multi-generational caregivers and single parents. This Government therefore has the capacity to acknowledge multiple family structures in its policy; its supposed commitment to Gender-Based Analysis (Government of

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<sup>21</sup> There is evidence that this is slowly changing—see Bakht and Collins (2018) below.

Canada 2022) as a means of informing policy must be more adequately utilized to transform current leave policy in ways that explicitly thread queer families into it.

### *Québec*

A Canadian province with its own respective leave policy containing flexible criteria, Québec's parental leave legislation offers valuable practices that includes a wider spectrum of families in its eligibility. Québec as a jurisdiction must be separately assessed, as it often contrasts the rest of Canada in its implementation of public policy.<sup>22</sup> At the provincial level, Québec's parental leave policy offers an insurance plan to new parents that has been deemed quite beneficial for families in comparison to their benefits at the federal level. The Government of Québec began articulating its intention to enact provincial family policy in various ways starting in 1996, contrasting the needs of employees and their new families with reforms in employment insurance being made by the federal government at the time that "tightened the eligibility requirements and at the same time reduced its accessibility" (Government of Québec).

These articulations ultimately culminated in the implementation of the Québec Parental Insurance Plan (QPIP) into public policy in 2006.<sup>23</sup> The structure of QPIP is seen as more "generous" by some (McKay, Mathieu, and Doucet 2016: 551) due to its offering a wider range of support and benefits to parents in ways that the federal structure falls short. For example, with the introduction of QPIP came the widening of the socioeconomic margins for the eligibility of parents entitled to benefits. In accordance with provincially-specific criteria, any parent earning \$2000 or more in the year before becoming a parent also became entitled to the benefits of

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<sup>22</sup> Québec follows *civil law*, different from the *common law* that the rest of the country is governed by.

<sup>23</sup> For more on the historical development of childcare in policy leading to the creation of QPIP, see Doucet, McKay, and Tremblay (2009).

parental leave (Government of Québec). These eligibility conditions contrast the rest of Canada as illustrated in Table 1. Whereas the criteria for parental leave in Québec is based on a kind of “flat-rate” (McKay et al. 2016: 552) eligibility, benefits for parents throughout the rest of Canada are contingent upon reaching a particular number of hours worked.

This contingency can be problematic for several reasons. Eligibility criteria that are based on working a particular number of hours become an issue for those who engage in non-standard employment where hours are not always guaranteed, and where working set hours consistently every week for a year leading up to becoming a parent is not always a possibility. In the context of this research, and as previously established, this tiered criterion is especially problematic for populations that struggle with precarious labour patterns and income insecurity, such as queer people (Owens et al. 2022).<sup>24</sup> Canada’s federal benefits require that in order to get at least 35 weeks of parental leave, a parent must have worked for at least 600 hours in the 52 weeks prior to applying for this leave. We may consider that, if the current federal minimum wage is \$16.65 per hour of work, a new parent working for minimum wages must make at least \$9990 to be eligible for parental leave. This steep difference in socioeconomic margins compared to Québec’s \$2000 flat-rate eligibility creates barriers for new parents in the rest of the country struggling with poverty and precarious employment.

### *Best practices*

Following this overview of Canadian and Québécois jurisdictions, some of the best practices in leave policy based on the notion of applicability of such benefits to diverse Canadian families are as follows:

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<sup>24</sup> See literature review for more on queer populations and the precarity of labour.

1. Québec’s “flat-rate” eligibility: This eligibility criterion widens the margins of which families can access leave benefits by considering the needs of families with varied socioeconomic status in its policy.
2. Promotion of policy that directly applies to multiple family structures: Using explicit language and ideas about diverse family forms and directly acknowledging queer families and their needs is conducive to creating more inclusive benefit eligibility.
3. The broad nature of the definition of “family” by the Canadian government: This census description of how a family is recognized by the Canadian government is a good practice in creating policy that allows for multiplicity in understandings of family structures by departing from a nuclear family-centered definition.

## United States

In the United States, formal benefits providing new parents with some kind of supplementary financial aid or assured time away from work has only recently become a reality for many working-class people. Like the Canadian context (and most countries with parental leave in place), early U.S. policy within the realm of parental leave and benefits focused on provisions in place for *birth mothers* throughout the duration of their pregnancy to childbirth. Also similar to the Canadian context is how U.S. policies can oftentimes differ between state and federal jurisdictions; at the state level, various jurisdictions<sup>25</sup> had already implemented some form of parental leave before the enactment of federal maternity leave. At the federal level, the *Pregnancy Discrimination Act* (PDA) of 1978 was the first act to enter U.S. legislation that, in writing, prohibited any “discrimination on the basis of pregnancy, childbirth, or related medical conditions” (U.S. Department of Labor n.d.(b)). In line with this Act outlining protections for pregnant women, it also prohibited discrimination against those who had had or were considering an abortion, further extending the precedents set out under *Roe v. Wade* [410 U.S. 113; 1973] that challenged the constitutionality of criminalized abortion laws in 1973. In effect, the PDA prohibited the discrimination of *pregnant women* by employers on the basis of protections under the *Rehabilitation Act* of 1973. Although the DOL clarifies that pregnancy itself is not a disability, potential impairments following childbearing and childbirth are seen as possibilities that must be considered and are thus protected as disabilities are (n.d.(b)). Anthony (2008) outlines that although the PDA prevented “employers from treating pregnancy any worse than a disability, the law did not require employers to provide any benefits to pregnant women that they

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<sup>25</sup> States with paid family leave include: California, Colorado, Connecticut, Delaware, District of Columbia, Hawai‘i, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island, Washington.

did not already provide to other disabled employees” (466). This Act, then, did not contribute to an advancement of supplementing time away for caregiving but rather functioned as a form of discrimination prohibition *without* financial supplement, thus maintaining both unequal gender socioeconomic ceilings, and traditional understandings of familial labour.

The first explicit broadly *parental* leave policy to enter U.S. legislature was the *Parental and Medical Leave Act (PMLA) of 1986* wherein employees became entitled to “parental leave for specified periods in cases involving the birth, adoption, or serious health condition of a child” (S.2278; 1986). If it had passed, the Act would have guaranteed up to 18 weeks of unpaid parental leave for birth parents and adopting parents, in addition to temporary medical leave if necessary following childbirth and childcare (American Federation of State, County and Municipal Employees—AFSCME 1986). However, the bill “died” before a House vote because Democratic leadership “decided the bill was not ready for a vote and should be reintroduced in 1987” (Wisensale 2001, as cited in Anthony 2008: 469). Ultimately, it would take six additional years until significant parental leave policy at the national level—the *Family and Medical Leave Act*—began to materialize.

### *Family and Medical Leave Act*

Following tumultuous debate and legislation proposals in the years leading up to its enactment, the *Family and Medical Leave Act (FMLA)* was enacted in 1993 following the advocacy of many feminist-led groups. Under this Act, certain public sector workers were now entitled to up to 12 weeks of *unpaid* leave a year (U.S. Department of Labor n.d.(a)); this new Act finally included men as parents alongside women and at the time was dubbed a “gender neutral” approach to parental leave (Women’s Bureau, U.S. Department of Labor 1993; Anthony

2008). Anthony (2008) suggests that an integral element relied on by advocates of the FMLA until its eventual passing in U.S. Congress was the importance of the rights of men (as fathers and caregivers) and children in the context of leave, arguing that the importance of the FMLA “to women was not valuable enough to warrant its passage, but instead required demonstration of how useful the law would be for everyone else” (470). This approach is alternatively quite beneficial for establishing leave for parents as it de-centres the “female worker” from discussions on leave policy, and subsequently enables discourse around caregiving structures that may not always resemble the nuclear family with birth mothers as the primary caregiver. As addressed above, it is critical to acknowledge that “the gender-neutral *presence* of a policy does not automatically produce equality any more than the gender-neutral *lack* of a policy does” (Anthony 2008: 474; emphasis in original). Material realities of oppression against non-nuclear families undoubtedly remain within jurisdictions where proposed legislation is based on the foundations of cis-heteronormativity, regardless of the criteria outlined within policy that may suggest otherwise. Ensuring that caregivers—regardless of gender identity, sexual orientation, or family composition—are able to financially support themselves and their families requires creating policies based on comprehensive understandings of the needs of diverse populations within the country.

Through more recent amendments to the FMLA in October 2020, employees in the U.S. are now entitled to up to 12 weeks of *paid* parental leave. In terms of what is written into the actual policy, both birth and adoptive parents are entitled to supplemental time away from paid work. According to Table 1, any employee who meets the eligibility requirements under the FMLA can take parental leave. Workers are eligible for parental leave as outlined under the FMLA if they:

- 1) Work for a covered<sup>26</sup> employer,
- 2) Work 1,250 hours during the 12 months prior to the start of leave,
- 3) Work at a location where 50 or more employees work at that location or within 75 miles of it, and
- 4) Have worked for the employer for 12 months.

(U.S. Department of Labor)

It must again be noted that this discussion focuses on government-funded leave benefits; it is explicitly stated throughout the Department of Labor (DOL) and respective local State online resources that employees should inquire directly with their employer regarding leave policy from the company itself as supplemental to (or replacements for) government aid. Beyond understanding this as symptomatic of a country lacking a national healthcare system (Huffman, Smith, and Howes 2020: 272), protections that do in fact exist within federal legislation have not always equated into workers receiving such benefits. According to key findings by the National Partnership for Women and Families (NPWF) based on the DOL's surveys on FMLA utilization, "[f]ifty-four percent of workers with family incomes below \$62,500 reported that they did not receive any pay while on leave, compared to just 18 percent of workers in higher income families" (2013: 2). Furthermore, among the workers who *did* receive some kind of paid benefit, there was significant financial struggle; such policy becomes inadequate when 84% of workers indicate that they are forced to reduce spending during their government leave to remain financially stable, and more direly, when 15% of employees are forced to go on public assistance

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<sup>26</sup> "Covered" employees are those who are protected under the Fair Labor Standards Act (FLSA). According to the FLSA those who are generally considered *covered* employees include those who work for Federal, State, or local governments, hospital and other healthcare workers, educators, among various other organizations (n.d.(c)).

during their leave (NPWF 2013: 2). It is clear from these figures that many working-class parents would benefit greatly from federal government assistance—as opposed to relying on private company insurance—if such benefits are enacted in ways that ensure direct financial support.

### *Queer families in U.S. policy*

The structure of the FMLA falls short for a majority of those who require its benefits the most. Based on research primarily centering the needs and experiences of heterosexual parents, it is clear from the above context that these policies also will not benefit queer families. Because the possibility of marriage for LGBTQ+ communities in the U.S. was only recently legislated in 2015, other rights are symmetrically delayed, wherein queer populations face multiple hurdles in accessing parental leave due to the cis-heteronormative standards that inform and define this legislation at the national level. The structure of the FMLA currently and predominantly benefits family structures where parents can financially rely on a single income for the span of early childrearing. To contrast, and according to the U.S. Census Bureau, queer couples with children are more likely (72.4%) to have both individuals employed compared to their heterosexual counterparts (65.6%)—among both married and unmarried groups (Taylor 2020). Although the context of queer couples being more likely to have dual-income households is not necessarily indicative of greater financial stability, queer couples with children also experience living in poverty at twice the rate that heterosexual couples with children do (Gates 2015). This issue is further pronounced when considering the ways in which racialized queer families are implicated within it: In the U.S., 52.3% and 37.7% of African-American children living with same-sex fathers and mothers, respectively, live in poverty compared to the 15.2% of African-American children with heterosexual parents living in poverty (Badgett, Durso, and Schneebaum 2013 as cited in Goldberg et al. 2020). Policy that is created with the intention of alleviating economic

hardship during times of need must consider the ways in which social factors join to reproduce complex realities that marginalized families must navigate.

### *Best practices*

- 1) Department of Labor's Guide to Best Practices in Leave: The *Office of the Assistant Secretary for Administration & Management* (OASAM) division within the DOL outlines best practices that should be followed by employers as means of respecting the rights of childbearing employees. However, these outlined best practices are specifically crafted for the needs of birth mothers alone, thus excluding many parents from these discussions of paid childcare protections. OASAM refers to those protected under these best practices as “female employees” and “women,” and specifies that “Title VII prohibits employment decisions that discriminate against employees with caregiving responsibilities, which includes child care, if the decisions are based on sex or another protected characteristic” (Department of Labor, n.d.(a)). Other such “protected characteristics” under Title VII as it was enacted in 1964 include race, religion, and national origin. It was not until June 2020 that Title VII was expanded to include the prohibition of discrimination against individuals on the basis of sexual orientation or “transgender status” (Department of Labor 2021). OASAM suggests that employers “should avoid reliance on common stereotypes or biases about caregivers that may result in unlawful conduct” (Department of Labor, n.d.(a)) which is both an integral element to promote as a best practice, and an example of the gap between legislated policy and tangible material impact. It is necessary that

the federal government sets out policies with protections and benefits for parents by addressing how the cis-heteronormative foundations that undergird these policies reinforce common stereotypes of “the caregiver”—which, in turn, minimizes the number of parents that can benefit from these policies. Ultimately, outlining precedents for employers within the context of leave and discrimination is necessary and a best practice of the DOL. However, these precedents are far from accurately representing the diversity of families within the U.S. that struggle to access leave benefits the most.

## The Netherlands

Leave policies in the Netherlands are unique in that they, in some ways, explicitly recognize multiple family forms while at the same time offering varying—and oftentimes inadequate—supplemental benefits to financially aid new parents. Before the federal enactment of parental leave in 1991, only married pregnant women were entitled to an unpaid 12 week leave through the *Sickness Benefit Act* in 1930 (Plantenga and Remery 2009: 176). After changes to this act in 1990 that increased the amount of time leave to a total of 16 weeks, parental leave in the Netherlands was enacted in 1991; this policy was originally enacted as an unpaid entitlement of protected time away from work for parents for up to six months. Plantenga and Remery (2009) note that central to foundation of the Dutch leave system was the importance of “enabl[ing] young parents to work part-time during a period of heavy care responsibilities” and in this way, leave benefits were thus initially “structured as a part-time right” (47). As a government that is explicitly interested in advancing the rights of women and queer people (Government of the Netherlands 2018), women’s participation in the workforce remaining steadfast was integral to the Dutch government’s creation of parental leave. Dutch leave policy poses the expectation that new parents should be able to support themselves through part-time work versus through a reliance on a central leave benefit system.

With more recent changes to parental leave legislation in 2022, employees looking to take time away from work for childcare are now entitled to “partially paid” leave for up to 9 weeks as well as 17 weeks of unpaid leave (Rijksoverheid n.d.) for a potential total of 26 weeks of childcare leave. Through this entitlement, employees receive 70% of their daily wages as a supplementary benefit—however an employee may continue to receive paid leave at their regular wage at the discretion of individual employers (Rijksoverheid n.d.(a)). In the context of the

properties of leave policies, Dutch leave eligibility is quite broad and inclusive in that the criteria are based on the notion of simply being an employed parent versus on the basis of socioeconomic status. In contrast, it may be recalled that Canadian and American leave policies rely primarily on income-based criteria as prerequisites for leave qualifications to varying extents. Dutch employees are alternatively entitled to various leave periods wherein eligibility is calculated at 26 times the number of hours one works weekly. In other words, the average hours worked each week is multiplied by 26 to determine the amount of time for which one is eligible to take leave; this leave structure therefore ensures prolonged and protected time away from work for the purposes of childcare for any employed<sup>27</sup> parent. In terms of parental leave eligibility under Dutch jurisdiction, individuals may take leave if they:

- 1) Are the official parent of their child(ren)
- 2) Are an adoptive or foster parent
- 3) Have a child/foster child that is less than 8 years old

(Government of the Netherlands n.d.(a))

However, parental leave in the Netherlands is largely unpaid, and before the implementation of the *Work and Care Act* in 2001—which included within it varying maternity and paternity benefits<sup>28</sup>—leave was completely unpaid at a maximum leave period of six months. Moreover, and according to the above regulations, a parent working an average of 40 hours a week—or, “full-time”—will only be entitled to 1040 hours, around 43 days, of leave. The Dutch

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<sup>27</sup> The circumstances of unemployed parents or parents who are unable to meet financial needs are addressed under the Work and Social Assistance Act (WWB), wherein protections within the Dutch social system “guarantees a minimum income for people who are not able to support themselves independently” (Blommesteijn and Mallee 2009: 5).

<sup>28</sup> These benefits included: 16 weeks of paid maternity leave, two days of paid paternity leave, and provisions for families with adoptive parents (Plantenga and Remery 2009: 48).

government explicitly acknowledges that because parental leave is largely unpaid, it is possible that employees will need to rely on public financial assistance; defined as “special assistance” (Rijksoverheid n.d.(b)), the government provides supplementary benefits to specifically aid parents who are facing financial difficulty as a result of time away from work for the purposes of childrearing. The potential financial disadvantages of prolonged time away from work have thus been considered as a significant aspect of early childrearing for new parents within the Dutch parental leave policy structure; though this is an attempt by legislating bodies to remedy the consequences of employment leave on working-class families, the financial struggle following unpaid leave deeply impacts new parents. This confirms understandings of the contradictory nature of Dutch governing powers wherein seemingly progressive policies are enacted to address social issues that are found on queerphobic beliefs (Danish Institute for Human Rights 2009b), while economic conservatism remains at the centre of legislation processes (Otjes 2022). Although Dutch leave policy offers protected time away from work as a way to consider the demands of childrearing, the lack of financial supplemental benefits for parents (specifically those who are not birth mothers, as is discussed below) is problematic for many working-class, non-nuclear families and works to reinforce the stressors of childrearing. This, of course, has implications for the accessibility of leave among queer parents in the Netherlands which will be expanded on in the following section.

### *Queer families in Netherlands policy*

In general, Federal legislation acknowledges the particular oppressions faced by queer peoples and highlights its commitment to creating laws that “abolish the criminalization of homosexuality; [fight] anti-LGBTIQ+ discrimination; [and promote] the social acceptance of LGBTIQ+ persons” (Government of the Netherlands n.d.(b)). The Netherlands became the first

country in the world to legally acknowledge and codify same-sex marriage in 2001, and there is evidence of governmental commitment to creating beneficial laws for queer populations throughout various Dutch leave policies. Unlike the leave eligibility criteria of many other countries, the Netherlands grants parental leave to any persons who fit the criteria of being a birth parent, adoptive parent, partner of a birth or adoptive parent, or a “duomoeder”—a birth mother’s female partner (Government of the Netherlands n.d.(c)). Interestingly, there is no corresponding distinction in eligibility for male parents with male partners; although this does not impact access to leave eligibility for gay men, it indicates some centralization on the importance of birth mothers and their partners, especially. In addition to this, the language around “female” partners is pertinent and problematic for diverse family structures as it privatizes leave rights for the benefit of cisgender parents.

Although there is no explicit census definition of the “family” in Dutch legislation, the Government of the Netherlands explicitly states that according to leave policy, a *parent*—that is, the persons eligible for parental leave—is either a “mother” or a “father.” A mother is someone who either gives birth to a child, a woman who is married to a birth mother, a woman who has adopted a child, or a woman whose “parentage is officially recognized by a court;” in line with this definition of who a mother is under Dutch law, a father is a man who is in relation to a birth mother, a man who has adopted a child, or a man who has been legally recognized as a father by Dutch courts (Government of the Netherlands 2018: 5). Relevant to this discussion is the explicit recognition of queer relationships woven into these definitions of legally validated caregivers, paralleling the goals of the Dutch government to eradicate anti-queer discrimination. However, because these caregiver designations are highly gendered and favour female-caregiver-centric models of family structure, queer families that do not fit to these specified definitions may find

parental leave inaccessible. This, in turn, functions to reinforce parental leave schemes that are based on more traditional understandings of gender, sexuality, and familial responsibility.

The Netherlands is the only country in this analysis that acknowledges queer relationships in its definitions of parents and caregivers. However, this acknowledgement is a seemingly common inclusion criteria among “progressive” leave policies across various nations—research shows that among 33 OECD countries that provide paid leave, lesbians receive the same amount of leave time as their heterosexual counterparts in over half (19) of these countries (Wong et al. 2019). More precisely, lesbians and women in relationships with other women tend to be validated in leave policy to an extent that other kinds of queer people do not (Evertsson and Malmquist 2023). Although under-discussed in related literature, scholars argue that this is indicative of “homonuclear” families (Zanghellini 2013; Sifris 2009; Summerfield and McHoul 2005). Here, lesbian couples with a birth mother are acknowledged as a valid family form within childcare legislation, and queer parents who are not birth mothers are not—in this way, this parallels the nuclear family structure idealization. It is seen as a sign of progress in social attitudes when queer relationships are validated in public policy, and any subsequent material impacts of such progress for queer communities and families cannot be understated—however, enacting policies that effectively validate familial structures that parallel traditionalist family ideals will inevitably alienate families with diverse makeups both socially and economically. Additionally, unpaid leaves are highly problematic for many working-class parents, and especially for racialized queer individuals that continue to face unique social and economic barriers in the Netherlands (European Union Agency for Fundamental Rights 2020). Enacting progressive policy that departs from female-caregiver-centric models as default by

creating policy based on the knowledge that the needs of families will be multi-faceted due to their various structures will benefit more kinds of families.

The Dutch leave system thus offers points of inspiration for the potential of leave policy in general, but also poses ambiguous and at times contradictory legislation that mitigates the accessibility of leave benefits for more kinds of parents. Some scholars have argued that this ambivalence surrounding Dutch leave policy is related to both the liberalist ideal of personal responsibility, in addition to the prevalence of European political parties based in Christian Democratic foundations upon which social issues are addressed (Plantenga and Remery 2009: 188). Though there is a clear commitment to advancements for marginalized groups by Dutch governing bodies, there remain foundations within leave policy that centre traditionalist understandings of family form and expectations of individual responsibility for care work.

### *Best practices*

- 1) Creating leave criteria based on employment status, versus on the number of hours worked or income: This kind of eligibility allows more kinds of workers to access protected leave as it decentres income as the primary determinant of leave eligibility and instead moves toward criteria that acknowledges the idea that any worker, regardless of income, may at some point need accessible parental leave. However, this can be problematic for populations with precarious labour patterns.
- 2) Integrating queer family forms into childcare policies: Netherland's leave policies and legal definitions of family structure aim to foundationally acknowledge and legally validate multiple family forms. However, it is necessary that a government committed to eradicating anti-queer discrimination ensures the integration of queer

families into leave legislation beyond queer families with *birth mothers* (specifically), as this works to re-centre family forms that parallel the idealized nuclear family structure and reinforce the subsequent social and material privileges therein.

## New Zealand

New Zealand is comparable to the Netherlands in the sense that its legislating bodies paint a contradictory image that seemingly encourages social and economic progress for marginalized groups, while simultaneously creating policies that inform an inadequate leave system for the benefit of new parents (Ravenswood and Kennedy 2012)—which, in turn, disproportionately impacts these same marginalized groups. Although rates of social acceptance of queer peoples are generally high in New Zealand and comparable to the other countries in this analysis (Flores 2019), there is little research on how queer families fit into parental leave policies in New Zealand. Despite data suggesting higher levels of social inclusion for queer people in New Zealand (Flores 2019), the government has been criticized for the lack of adequate provisions in place for the prevention of gender-based discrimination (OECD 2020). The financial benefit leave system in place for new parents, queer or heterosexual, is considered greatly underdeveloped (Ravenswood and Kennedy 2012; Forbes 2009; Callister and Galtry 2006). Out of all OECD countries with enacted paid parental leave,<sup>29</sup> New Zealand was among the last to implement nationally legislated leave policies—accompanied by its neighbouring country Australia, and the U.S. (Ravenswood and Kennedy 2012: 197).

Much like other OECD nations, New Zealand's timeline of paid leave legislation begins with employment protections in place for working mothers. Significant among the initial enactments of parental leave policy within New Zealand legislation was the *Maternity Leave and Employment Act* of 1980 which entitled (birth or adoptive) mothers to unpaid, protected time away from work for up to 26 weeks (Ravenswood and Kennedy 2012: 198). This leave

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<sup>29</sup> As of 2022, all OECD countries offer some paid parental leave excluding the following: Colombia, Costa Rica, Israel, Mexico, Netherlands, Switzerland, Türkiye, U.K., and the U.S. (OECD 2022).

entitlement evolved into the *Parental Leave and Employment Protection Act* of 1987 which became a “gender-neutral” (thus allowing entitlements to be shared among two parents) benefit, increased leave time by another 26 weeks for a total potential leave time of 52 weeks, and implemented an unpaid two-week paternity leave supplement (Forbes 2009).

Twelve weeks of paid parental leave was eventually established through the enactment of the *Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act* in 2001. Also known as the *Primary Carer Leave*, under this act and according to Table 1, employees are eligible for leave on the condition that they have worked at least 10 hours a week for the past 6 or 12 months before taking leave. In addition to this regulation exists two other tiers of criteria: the 6- and 12-month employment criteria. Under these tiers, employees will have had to have worked for the same employer for the duration of these weeks to qualify for leave; parents’ eligibility is determined upon the total amount of hours worked for the same employer over 26 weeks (6 months) or 52 weeks (12 months).

### *Legal definition of family*

Noteworthy for this investigation is New Zealand’s governmental census conceptualization of the family unit itself. The government of New Zealand utilizes gender-neutral terms to define family—in a way that also departs from nuclear family ideals—as well as who is eligible for parental leave. Statistics New Zealand defines a family as “two or more people living in the same household who are either a couple, with or without children, or one parent and their children” (2013). This understanding of what makes a family considers multiple kinds of family formations in a way that differs from other countries in this analysis (see Table 2). For example, the New Zealand governmental definition validates any family form that

primarily consists of two or more individuals in one household—there is no particular emphasis on how familial figurations occur to the same extent that there is emphasis in the Canadian and American census definitions of family—that is, relations that are “biological,” or by adoption. New Zealand leave policy conditions are instead determined by whether an individual gave birth or will “be the primary carer of a child” (Government of New Zealand 2022). Additionally, these terms of eligibility for leave are not framed through gendered terms, or through an any reference to any social identities beyond being an employed citizen of New Zealand. Ultimately, and according to the Government of New Zealand, any person is entitled to leave so long as they:

- 1) Work for a New Zealand employer
- 2) Are newly in connection to the care of a child.

### *Queer families in New Zealand policy*

Research on queer families and their interactions with parental leave in New Zealand is very limited. As previously established, New Zealand<sup>30</sup> no longer has exclusive regulations surrounding *maternity leave*. Instead, the country’s leave policy has evolved into a broader *parental leave* system which aims to broaden the range of family types entitled to supplementary benefits; in terms of the needs of queer families, this is a necessary, preliminary element of an adequate leave system. This evolution in policy generally works to benefit queer families in that it removes gender-exclusive conditions that determine financial aid. However, and as seen in other countries in this analysis, New Zealand’s leave system mandates that an employee must work a particular number of hours a week to be eligible for benefits. This is problematic for

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<sup>30</sup> As well as Sweden, see below. Other countries with this kind of leave system include Australia, Iceland, and Norway (OECD 2022).

populations with precarious working patterns as it assumes that parents will be able to maintain stable employment for at least 6 months; this is not the reality for many queer parents. Although New Zealand has been touted for its social advances in LGBTQ+ rights through acts such as marriage equality since 2005 and enacting more gender-neutral leave legislation, there remains disproportionate discrepancies between queer and non-queer populations in terms of employment, precarious labour patterns, and homelessness (Fraser, Chisholm and Pierse 2021). Thus, the material realities of queer people exemplify the ineffectiveness of existing policies that may be created with the intention of advancing systemically marginalized communities.

### *Best practices*

- 1) Gender neutrality as a foundation for leave criteria: In order to broaden access to leave benefits for more families, it is necessary that policy acknowledges the diverse makeup of families—whether parents are LGBTQ+ or not. New Zealand’s selection criteria for parental leave are broad which allows for the compensation of care work to any person who does it, as opposed to delegating caregiving duties to particular parents—mothers—by making financial benefits gender-exclusive; this is a best practice in crafting policy for moving beyond a cis-heteronormative foundations. Additionally, using language such as “carer” versus parent also moves policy toward embracing MFS beyond the nuclear family. However, to ensure that this legal acceptance of queer families generates *material* benefits for new parents, there must be a consideration of how precarious labour patterns disproportionately impact queer families; ongoing, continuous employment as the prerequisite to taking leave will remain problematic for queer people who face higher rates of job precarity than non-queer people in many OECD countries (Kinitz et al. 2021).

## Sweden

Analysts and scholars agree that the Swedish parental leave system is one of the most comprehensive in the world (Duvander et al. 2022; Hagqvist 2017; Kamerman 2000). Before federally enacting paid parental leave for all parents in 1974, Sweden implemented maternity leave in 1937 for birth mothers at an 80%<sup>31</sup> wage-replacement rate (Schwartz 1988: 8). Sweden now guarantees birth and adoptive parents equal leave benefits, and it is acknowledged as one of few countries that has utilized gender-inclusive/neutral terminology throughout leave policy (Wong et al. 2019: 537) and has done so historically. There is a great deal of literature on and analyses of the Swedish leave system (Duvander and Löfgren 2019; Evertsson 2016; Duvander, Ferrarini, and Thalberg 2005; Sundström and Duvander 2002; Schwartz 1988). For this analysis, there will be a focus on the primary features of Sweden’s parental leave system, how it contrasts the Canadian system, and how it provides points of inspiration for any country interested in increasing the quality of caregiving within multiple family structures.

Sweden was the first country to implement policy that allowed a mother or a father to take parental leave; introduced in 1974 with a 90% wage replacement, this would be the first leave structure in an OECD country that appeared to underline the importance of parental care, regardless of gender in dual-parent households. Currently, parents have the option to take a full- or part-time leave which are “designated in days (or partial days), including weekend days, so that parents can decide how to best organize their work time and care time” (Doucet, Mathieu, and McKay 2020: 16). Rates are “subject to an income ceiling” but the standard wage-replacement rate in Sweden is now 77.6%; with the allowance of other financial top-ups, some

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<sup>31</sup> Schwartz (1988) states that although an 80% wage-replacement rate was written into policy, the actual range of wage-replacement could have been from 50%-100%.

parents can claim up to 90% wage-replacement (Duvander et al. 2022: 2). Even before top-ups, this wage-replacement rate is over 20% higher than the Canadian standard rate (55%). Swedish parents and caregivers can choose to take their leave time as they see fit—until the child’s eighth birthday or until they have finished their first year of schooling, parents can use their leave time continuously or over time integrals (Doucet, Mathieu, and McKay 2020: 16). Parents ultimately have 480 leave days (Swedish Institute 2022)—with additional potential for the transfer of leave allowance between parents. Alternatively, leave starts in Canada as soon as someone becomes a parent or caregiver and is continuous—that is, benefit payments cannot be paused or used at later times in their and their child’s life. Sweden’s leave structure provides access to financial aid for more kinds of families and is founded on a history of evolving parental policy to meet the needs of caregivers and children. An example of this was the 1995 implementation of specific, non-transferrable leaves for mothers as well as fathers; this was a novel structure that through respective policy sought to address the role of men as fathers<sup>32</sup> in childrearing.

As stated above, Sweden’s enactment of paid parental leave in 1974 is touted as being the world’s first “gender neutral” leave system (Suwada 2017; Axelsson 2014; Duvander et al. 2005). However, gender neutrality in this context simply implies that both mothers and fathers are granted shared leave benefits and, conversely, does not mean that any parent regardless of gender can access parental leave benefits. This is problematic for queer families as the foundations of this system are ultimately based in heteronormative monogamy where the rights of mothers and fathers, exclusively, are considered; it is particularly problematic for gender non-

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<sup>32</sup> There is a great deal of literature on fathers and fatherhood within the context of the Swedish parental leave system. To read more, see Duvander and Cedstrand 2022; Ma et al. 2019; Haas and Hwang 2018; Duvander and Johansson 2014; Wells and Sarkadi 2012.

conforming parents and non-parent caregivers who do not fit into mandated binary categories of caregiving.

While the characteristics of the Swedish parental leave system proposes gender neutrality and the structure differs from other nations in that its financial supplements are robust, research suggests that gendered wage gaps persist in Sweden, primarily due to ongoing traditionalist ideas regarding carework, as well as the role of varied (usually unequal) leave take-up among parents (Evertsson 2016). Additionally, leave uptake differs across social demographics; in a report on leave uptake among Swedish fathers, Ma et al. (2020) found that foreign-born and low-income fathers are less-likely than other demographic groups—such as Swedish-born citizens and middle-class parents—to take extended periods of leave. This finding is particularly salient for policymakers to consider as creating comprehensive leave policy necessitates an investigation of the role of intersecting socio-political identities and access to and use of parental leave. The varied attitudes and values informed by the lived experiences of parents who are immigrants, for example, will undoubtedly influence understandings and practices of caregiving, gendered expectations during parenthood, and so on. Although financial aid is being made available, uptake is not being ensured; even with the availability of financial incentives for extended parental leaves, gendered inequality in childcare expectations remains stable (Nygård and Duvander 2021: 302).

### *Legal definition of family*

Under Swedish legislation, the term “family” is defined by “[a] spouse, partner, registered partner and children living at home” (Swedish Tax Agency 2007: 4; see Table 2). There is some ambiguity for queer families in this definition, in that there is an emphasis on

dual-parenting, while there is a lack of recognition of non-romantic relationship forms that also engage in carework, such as multigenerational households and non-biological kin (friends, non-primary partners, etc.). This definition is not explicitly gendered, but it also does not necessarily depart from nuclear family-oriented understandings of familial forms. Although moving away from gendered language is important and necessary in order to make leave policy more accessible to queer parents, continuing to enforce the notion of a normative family form works to reify homonuclear<sup>33</sup> families, or families with parents who identify as LGBTQ+ but conform to the expectations of the nuclear family.

### *Queer families in Swedish policy*

Sweden is generally seen as an exemplar for queer rights. Before the enactment of legalized marriage, lesbian and gay couples were granted the right to adopt in 2003 (Swedish Institute 2023). Same-sex marriage was legalized in May of 2009; this legislation was transformed into a “gender-neutral” marriage law soon after. Additionally, in 2011, the Swedish constitution was amended to include the prohibition of any sexual orientation-based discrimination (Swedish Institute 2023). Currently according to Swedish legislation, any partner in a female or male same-sex relationship is eligible for parental leave (OECD 2022: 6). Non-biological, adoptive dual-parents are eligible for five to 10 days of leave, and the adopted child must be younger than 12 years old. However, and like New Zealand and the Netherlands, the progressive nature of this policy has not always translated into material gains for queer populations. Aldén, Hammarstedt, and Swahnberg’s report (2020) suggests that although there is evidence that Swedish gay men have higher rates of job satisfaction than their heterosexual

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<sup>33</sup> See page 73 for more on homonuclear families.

counterparts, gay men in general, “like lesbians [,] find their job more mentally straining than heterosexuals” and “[face] other stressors at work than heterosexuals do” (69). Other research has shown that although Swedish leave policy enables gay parents to have greater equality when dividing childcare, this is only accurate for those in a higher socioeconomic bracket (Evertsson and Malmquist 2023). Although legal inclusions of queer populations have remained persistently higher than the OECD average since the 1990s (OECD 2020), the lived experiences of individual gay, lesbian, and queer people in Sweden generally indicate a reality of continued discrimination based on gender and sexuality (European Union Agency for Fundamental Rights 2020).

### *Best practices*

1. “Gender-neutral” benefits system & legal conceptualization of family: Swedish leave policy departs from explicitly gendered terminology and instead concisely recognizes family as any kinds of grouping of people with or without children. This helps make leave policy more accessible to queer families especially as it becomes the goal of this policy to financial aid any person who is doing childcare, which does not demand a normative identity as eligibility.
2. Flexible benefit structure: Giving parents and caregivers the autonomy to decide how to organize their financial aid is beneficial for both families and employers. Families can determine the most effective financial plans based on their and their child’s needs, all the while being in dialogue about such decisions with their employer to determine plans for leave time as well as plans to return—the employer is thus also empowered to make decisions for the company or organization based on the schedules and needs of their workers.

3. High wage-replacement rate: Research shows that the effectiveness and use of the benefits of policy are higher more often when “benefits are paid at a high replacement rate” (Margolis et al. 2018: 451); Sweden’s parental leave benefits have had a consistently high wage replacement rate since its implementation in 1974 (Statistics Sweden 2020). This practice in leave policy is particularly important for queer and particularly trans\* and gender non-conforming parents who experience disproportionate levels of poverty (DeFilippis 2016) and will thus greatly benefit from financial aid during childrearing.

## Chapter 6: Discussion

This thesis offers a cross-national comparison of parental leave policies with the aim of better understanding the implications of parental leave for queer families within the Canadian context; a comparative analysis of international leave structures helps elucidate the potential of the Canadian parental leave system for all families—but especially queer families. In general, queer parents face are more likely to disproportionate levels of discrimination, precarious labour, and poverty (Owens et al. 2022; Kinitz et al. 2021; Gahan and Almack 2020; Peters 2018; DeFilippis 2016; Gates 2015), and the findings in Chapter 5 exemplify that across various countries, queer parents are less likely to receive comprehensive parental leave benefits to the extent of their cis-heterosexual counterparts. The following discussion will provide a general overview of how these countries discuss and delegate leave, and the extent to which such policy structures have made room for the particular needs of queer parents and their families; moreover, there will be a discussion on the similarities and differences between these leave systems, as well as on the most pertinent elements of the findings.

### *Similarities*

Although there are clear differences between the various national leave systems analyzed in this work, there exist overlaps in the foundational characteristics of leave structures that offers insight into underlying social patterns. To begin, the timelines of parental leave in most countries (with the exception of Sweden) begin with an enactment of some kind of protections or financial

supplement around maternity, or for mothers specifically. Historically, protecting the needs of working women who were pregnant was a necessary point of advocacy. In the face of developing labour laws (especially within the context of Canadian history throughout the end of the nineteenth century to the early twentieth century), the advancement of policy that directly addressed the needs of working birth mothers—such as job protection, wage compensation, and freedom from gender-based and childcare-related discrimination—was necessary. Women and mothers have also historically assumed and performed greater amounts of household labour than do fathers in the same households, which underlines the need for policy to directly address this inequity. The development of early leave policy on the foundation of maternity-based protections therefore cannot be discounted but must instead be seen as a necessary response to the needs of women within the context of cis-heteronormative discrimination and oppression, as well as a precursor to the potential horizons of more inclusive policy. The diversity in early Canadian maternity-related legislation, in addition to the contemporary variances across individual jurisdictions, exemplify the flexibility and ongoing nature of policy—it (ideally) reflects and responds to the needs of any given society, which understandably change and vary over time based on various socio-political or economic demands. Ultimately, the historical context of parental leave, albeit gendered, is significant as it allows for further advancing policy to address the needs of those who fall outside of cis-heteronormative bounds.

Acknowledging queer identities is of course a necessary first step toward a more universal policy, but patterns of the sole inclusion of lesbians, or specifically cisgender women in relationships with other women, without the inclusion of other kinds of queer peoples into leave benefits works to further align this policy with systemic heteronormativity. As exemplified throughout familial and leave legislation in the Netherlands, queer legal inclusivity can

oftentimes be limited and instead quite *exclusive*—to distinct identities, specifically lesbians or (cisgender) women in “same-sex” relationships. The above comparative analyses illuminate the tendency for policymakers to formulate legislation with the intention of addressing the needs of diverse groups, yet alternatively, these policies culminate in the subsuming of multiple kinds of identities into a monolith—this monolithic identity becomes the sole recipient of leave benefits while some of the most deeply impacted individuals and families remain without aid.

Related to this is the issue of precarity, which influences the lives of all kinds of groups, but especially queer populations across all nations. The ways income is tied to the receipt of leave benefits is important for many reasons, namely due to the fact that the financial demands of childcare tend to impact people of lowest socio-economic status the most. Individuals who have more disposable income are able to better finance childrearing by being able to afford childcare necessities, but also because the threat of becoming unemployed and losing income is not present in the ways it is for low-income populations. Because tying one’s income to tiered financial system ensures that financial aid will be tiered and will recreate existing economic hierarchies. Queer people face disproportionate economic disadvantages regularly, and therefore will undoubtedly experience greater financial burden with the responsibilities of childrearing (Owens et al. 2022; Gates 2013). Policymakers, then, must consider how discrimination and oppression impacts employability—for example, transgender individuals in the workplace may not find the support and acceptance they need from their peers in the workplace; this stressor is added to the responsibilities of becoming a parent reproduces greater levels of distress that may not exist for cis-heterosexual parents. Furthermore, there must be a consideration of how multiple intersecting identities influence the realities of individuals. This means that there must be attention paid to the fact that the discrimination queer peoples face is not simply due to their being queer when it is

also related to being racialized, disabled, from a lower socio-economic class, immigrant status, and so on. Additionally, what *kind* of work someone does is relevant and impacts accessibility to financial leave benefits as well. For instance, what about parents who, out of necessity, can only work part-time? Or, parents who are self-employed, or who do “illegitimate” work? Age is also a relevant factor in the discussion of precarity and its influence on leave accessibility.

Policymakers must consider how demographical shifts in attitudes toward labour and employment demands more comprehensive policy that evolves with these attitudes. The younger generational cohorts of today have not necessarily been engaging or interested in the traditional job market in ways that previous generations have (Bieleń and Kubiczek 2020). Thus, policy that is to be created for the benefit of this newer generation of caregivers and their families should centralize the values of this cohort in ways that will ensure access to comprehensive policy structures, thus leading to more prosperity among multiple family forms.

### *Differences*

A primary difference between the U.S and the other countries in this analysis is that leave here has recently become paid, but there is little to no data on how *accessible* this has been for workers, and if the leave has been comprehensive in terms of financial aid. Leave in the U.S. is also shorter than every other country except for Netherlands. This is an interesting and complex finding as it highlights another relevant point of leave policy: Some countries can, in some ways, have outstanding leave options while simultaneously offering options that are seemingly worse than the countries who are ranked the lowest on comprehensive leave systems. The Netherlands clearly outperforms the U.S. in its explicit recognition of lesbian mothers in its leave legislation,

but at the same time ignores the needs of non-lesbian mothers. The impact on queer families, then, becomes strained.

### *Points of Interest*

Québec presents unique data points as it presents a case of progressive policy existing within Canada, but not for all of Canada. This is primarily due to the fact that various socio-historical individual jurisdictions usually do not have a monolithic legislative body. Though there is a conversation to be had regarding the non-transferability of leave systems (see below), there must also be a discussion about the gaps between the benefits offered to new parents in Québec versus those which are offered in other provinces.

Another interesting subject within the data is the “duomoeder” benefits in the Netherlands. This is an example of what occurs when policy aims to be progressive without adequately acknowledging the multiple nuances that impact the experiences of identity. This can be understood as a kind of “*exclusive inclusivity*,”<sup>34</sup> wherein the goals of policy aim to include historically disadvantaged groups but ultimately work to further the exclusivity of legislation.

### *Takeaways*

Although this work calls for a reworking of Canadian leave policy to better meet the needs of queer families, there must also be a discussion on the non-transferability of leave systems. Furthermore, this work does not suggest that current leave policy must simply be abandoned. Due to the specific socio-political and historical contexts of any given country, leave

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<sup>34</sup> There is seemingly no widely utilized nor established understanding of this concept as it is understood in the context of this work. *Exclusive inclusivity* refers to the ways in which the benefits of public policy can be varied and disparate for individuals within diverse populations and can contribute to creating further disadvantage within these same communities.

policy is and must continue to be (more intentionally) informed by the specific social conditions that influence the needs of families. Historical, socioeconomic, and political patterns do, of course, exist across similar regions, but there ultimately exist marked socio-historical differences between the countries in this analysis that renders the idea of a direct transfer of leave systems between countries impossible. Because policies are intertwined with the specific social characteristics of a given society, it is impractical to suggest that Canada or any other country adopt the exact leave structure of another nation with a more comprehensive leave system. For example, it is impractical to assume that Sweden's parental leave structure can be implemented in Canada or the U.S. as there are foundational differences between the historical contexts of North America and Europe that illuminate varying contemporary social issues and demands. Consider, for instance, that Canada as a nation was created upon the foundations of settler colonialism (Government of Canada 2017). This—alongside having particularly catastrophic impacts on Indigenous populations socially, economically, and environmentally—has undoubtedly influenced the trajectory of parental leave due to Indigenous ways of recognizing family structures that vastly differ from Western ideals (see Tallbear 2013; Watts 2013). This history of settler colonialism does not exist in Sweden, for example, and thus the historical contexts that provide the basis upon which legislation is built will differ. Though there may be comparable roots in the influence of Christianity in both nations, the socio-political landscapes of these nations ultimately differ, thus making the complete transfer of policy systems between countries impossible.

When crafting policy for diverse, vulnerable groups, policymakers must be attuned to the multiple lived experiences of the population for which the policy is being created. In addition to the needs of queer families, reworking parental leave policy in ways that account for multiplicity

in familial life benefits diverse family forms whose experience does not necessarily conform to normalized understandings of “family.” Chapter 7 outlines suggestions for reworking leave policy based on the above findings and discussions.

## Chapter 7: Policy Suggestions

Drawing upon the above analyses and the respective best practices in parental leave structures across various countries, the following section will explore suggestions for future parental leave policymaking. This section and the subsequent suggestions for evolving policy will also address a primary question that undergirds this work: How can Canadian leave policy be modified to better accommodate the needs of queer families? These policy suggestions will be framed from within a *Queer Democratic Framework* (QDF) and will build on existing best practices in policy across various nations to determine how Canadian policymakers can improve leave structures for more kinds of families. Crafting this policy in materially inclusive ways ensures support for queer parents, but also for working poor parents, young parents, disabled parents, and all parents that navigate their social worlds through the intersection of systemically marginalized identities.

Families need access to financial aid while engaging in childcare work, and analysts agree that OECD countries are financially capable of enacting these robust leave systems; Kamerman (2000) draws on Core and Koutsogeorgopoulou's (1995) report wherein they suggest that "in the OECD countries, [...] if the costs of maternity, paternity, and parental benefits were added together, they would constitute only a small portion of GDP. They exceed one percent in only Finland and Sweden and reach 2 percent only in Sweden" (10). Sweden has some of the most comprehensive leave structures and the costs of it remain generally low, thus confirming the possibility of implementing more adequate leave policy that supplements diverse family

forms. When evolving policy, it is necessary to consider the financial realities of families and the role this plays in accessing leave benefits; Doucet et al. (2020) underline that the take-up of parental leave is lower among the majority of low-income mothers in Canada (excluding Québec) and contrasts this with a trend indicating that parents with household incomes \$60,000 or greater are more likely to take-up leave. While it is necessary that low-income families have *access* to post-leave benefits, it is equally as pertinent that they are taking-up and receiving this financial aid. Margolis et al. (2018) suggest that policymakers interested in lowering familial stress and increasing family bonding should create policy plans particularly crafted to ensure that disadvantaged populations are actually taking the leaves to which they are entitled (464). As stated above, leave policies are more effective when “benefits are paid at a high replacement rate, stigma and sanctions associated with the receipt of the benefits are low, and if eligibility criteria are fairly wide” (Margolis et al. 2018: 451); as presented among countries with best practices in parental leave systems, eligibility criteria must be broader in a way that allows more kinds of families to access benefits. Demonstrating this, Sweden’s leave structure has a high wage-replacement rate of almost 80% with wide eligibility margins, making it an exemplary system of leave benefits that can and should be used as inspiration for designing future policy.

### *Queer Democratic Framework*

If leave policy is to move beyond abstract goals of validation and recognition, it is ultimately necessary that the foundation of future policy interrogates the link between economic contribution and eligibility for leave. Policymakers must assess the role of economic precarity among particularly disadvantaged populations and understand the barriers that impact access to resources as multifaceted and instead move toward assessing the material needs of families,

regardless of identity and family makeup. As demonstrated in the above countries, queer populations face disproportionate economic hardship in comparison to their heterosexual counterparts. Additionally, it will be important for policymakers to consider the realities of queer families in the context of the existing leave structures. For example, and specific to Canada, there are two main benefit plans: Standard and extended. Upon an analysis of precarious labour among queer peoples, policymakers should consider how likely it is that queer families—and families of lower SES in general will be eligible for and/or take-up extended benefits. Child-parent bonding over extended periods (especially when parents can choose when to take their leave portions) is desirable for many families, but extended benefits are undoubtedly less accessible to those who cannot take prolonged time away from work due to precarious labour patterns. Policymakers must be considering questions of this nature—ones that directly build on the lived experiences of queer families.

### **Policy snapshot**

What follows are concise suggestions for policymakers interested in evolving leave policy to benefit more types of families.

- 1) **Language matters—*caregiver's leave*:** Like Sweden's parental leave, any person who is responsible for caring for a child is eligible for caregiver's leave; and like many of the countries addressed in the above analysis, parental leave can be used bridge the gaps between maternity and paternity leave with a broader benefit system by increasing the accessibility of these benefits to more kinds of parents or caregivers. This is not to suggest that the physical and emotional demands of birthing people should be neglected; contrarily, it is important that

people who give birth can access high-quality, accessible postnatal resources when they need them. However, the conflation between maternity and birth giving is problematic as it conflates gendered concepts—maternity, motherhood—with a naturally non-gendered phenomenon—childbirth. Non-normative family forms must be considered when making policy that addresses the needs of diverse populations; for example, TNB parents who do not conform to normative/binary identities, poly-partnered parents and partners who are primarily involved in childcare, intergenerational households that divide carework, and single parents with or without care networks. To better embrace these family forms in policy, it is best to avoid gendered terms and ideas and to move toward the notion that caregiving can also be—and is often—done by people who are not primary parents, such as relatives, “godparents,” and any other person who would be otherwise considered unrelated to the child.

**2) Remove the requirement of continuous employment:** Policy analysts suggest that the Canadian federal government follows in the steps of the provincial governments of British Columbia, New Brunswick, Nova Scotia, and Québec by eliminating the expectation of ongoing employment from the eligibility criteria for leave (Doucet and de Laat 2022). Queer people experience higher levels of precarious work than do their heterosexual counterparts (Owens et al. 2022). This is often due to things like workplace discrimination—especially for transgender<sup>35</sup> people (Mizock and Mueser 2014)—which also leads to overall poor mental and physical health (Kinitz et al. 2022), in turn further impacting one’s overall ability to work. These discriminations can be faced in tandem with other social oppression—such as

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<sup>35</sup> Even more especially so for pre-transitioning, non-“passing,” or, non-conforming people.

those faced by racialized or disabled communities, for example—and such intersections can work to further impair one’s ability to engage in continuous employment.

3) **Flat-rate eligibility and a high-to-complete wage replacement:** In line with removing continuous employment from leave eligibility criteria, enacting eligibility based on a flat-rate income earning makes leave accessible to more kinds of families, especially those of lower socioeconomic statuses. Québec’s flat-rate eligibility sets it apart from the rest of Canada because it widens the margins of who can access parental leave. Policymakers interested in increasing the general welfare of new parents and caregivers (as well as their children/dependents) must consider mandating leave eligibility that considers the economic hardships faced by specific groups in society, especially queer people. Additionally, scholars argue that offering high wage replacement is an integral practice for improving parental leave systems (Gornick and Ray 2009). The Swedish jurisdictional context exemplifies the possibility of a leave system that offers high-to-complete wage replacements for parents and caregivers. While keeping in mind Core and Koutsogeorgopoulou’s (1995) report on the generally minimal costs of implementing robust leave systems, there is evidence suggesting the possibility (and success) of comprehensive benefit plans that are accessible to both caregivers as well as any fiscal demands under federal legislation.

4) **Promoting higher leave take-up:** Ultimately, it is crucial that policymakers are crafting policy in ways that promote higher rates of leave take-up among parents and caregivers. To ensure parents are actually receiving their entitlements, making applications processes straightforward and accessible to as many laypeople as possible will be necessary;

government jargon in critical information and application forms can be confusing to general audiences and may deter individuals from attempting to navigate the application process. To counter this and ensure greater leave take-up, resources that make policy more accessible to the general population must be created and actively distributed. Romig and Bryant (2021) suggest that a necessary step in adequate policy enactment is proper administration:

“Reaching the workers who need leave most requires targeted outreach, a simple application process, and swift benefit payments” (16). Additionally, looking to research in countries with generally comprehensive leave systems such as Sweden highlights the fact that the enactment of adequate policies is ineffective without proper promotion of leave uptake, especially among parents who are not biological mothers: Findings from Haas and Hwang’s (2008) report ultimately outline that the “full potential of Sweden's parental leave policy for degendering the division of labour for childcare will not likely be met until fathers are strongly encouraged by social policy to take a more equal portion of parental leave” (85). Increased leave uptake among more kinds of parents will require policy *creation, enactment, and promotion*.

- 5) **Flexibility in scheduling leave:** Queer families would benefit from a re-design of policy that allows for flexibility in leave times. With greater flexibility for when a caregiver may go on leave, parents and caregivers will be able to determine an adequate payment program that is tailored to their familial needs, versus adhering to a standardized leave structure that does not adequately take into consideration the realities of multiple family structures. For examples of flexibility in scheduling leave, see Sweden’s *best practices* (page 84-85).

## Chapter 8: Conclusion

By using Queer Theory as a lens for critical analysis, this work explored how queer families fit into parental leave policies and underlined both the gaps and best practices in current leave structures. Upon these considerations of the gaps and best practices exhibited in contemporary leave systems, suggestions for the transformation of Canadian parental leave policies were given. This analysis of parental leave contributes to existing sociological discussions concerning the inadequacies of existing policy that in turn disproportionately impact vulnerable populations, particularly queer families. The following concluding thoughts will discuss the future work that remains in relation to these current discussions, the shortcomings of this work, and the ultimate takeaways and implications of this analysis.

### **Areas for Future Research**

#### *Mapping advocacy around parental leave*

As previously stated, the discussions presented throughout this analysis can be understood as an extension of historically liberalist advocacy. For instance, there should not be a disregard of the advances for biological mothers before other kinds of mothers, as well as advances for biological fathers before other kinds of fathers as a measure of establishing policy in heterosexual relationships, but rather a recognition of the limits and potentials of policy; historical advocacy that has assured working parents their rights is rich, and oftentimes exemplifies the possibilities of policy in the face of discrimination and oppression. Future

qualitative researchers may be interested in expanding the landscapes of historical activism that surround family policy, with a particular focus on the implications for queer families in these processes. Ultimately, queering policy reform requires a departure from the goals of progressivism, and instead requires that the fundamental issues that create barriers for parents are addressed in ways that account for the needs of different kinds of family structures; the landscapes of activism that have coloured the evolution of family policy are important contextual tools for understanding the social and cultural conditions of policy change.

### *Ideal leave length*

Some scholars have suggested that six months is an ideal leave length time for both parents (in a duo-parent dynamic), where within this time period mothers can “recover from childbirth and [...] breastfeed” and fathers can “maximize shared time input into the child” (Galtry and Callister 2005). However, this research is extremely cis-heterocentric in scope and imposes many assumptions about the realities of childrearing in its conceptualizations of ideal leave structure. Research should address what an ideal leave system that meets the needs of non-nuclear or non-normative family units looks like. It is equally necessary to assess if the desire to return to work following the start of childcare is influenced by economic pressures, wanting to measure up to the ideals of being a “good,” “valuable,” or available worker, and so on. Therefore, a pertinent question for future research to ask is: What would an adequate leave period look like for parents, without the threat of financial instability? Perhaps, for a given caregiver, an adequate leave period means being off for a month—or a year—before returning to part-time work while receiving part-time financial supplements. Future research could involve interviewing parents across Canada to determine how long ideal leave periods should be on

average. If it is determined that leave lengths are generally disparate, and various families require widely different time periods, then perhaps Canadian policymakers should consider a leave structure that offers more flexibility in individual leave plans to allow for greater autonomy in the decision of time away from work.

### *The potentialities of leave policy*

As presented throughout this thesis, Queer Theory offers a means of critically navigating oppressive legislation that is naturalized through the values of heteronormativity. In other words, gaps in parental leave policy are oppressive because they contribute to the overarching system of queerphobia, a consequence of which is naturalizing heteronormativity through legislation.

Future research that further evaluates the potentials of family leave legislation in its characteristics, eligibility, and format through the queering of policy analysis would be an asset to what is currently lacking in the literature. A contemporary example of a nation exploring the potentials of family policy is Cuba. In September 2022, Cuban legislative bodies enacted an updated Family Code that set forth regulations for family leave rights, including child's rights and the recognition of unpaid labour primarily performed by women, LGBTQ+ families, domestic violence, disability, and old age rights (Chathukulam and Joseph 2023; Santana and Guanche 2022). Chathukulam and Joseph (2023) note the significance of this Code being enacted albeit within the context of high levels of stigma associated with queerness in Catholic Cuba, and how it underscores the importance of legally acknowledging underpaid work (21-22). Queer rights in this newly modified Code are generally limited to the institutions of marriage and adoption; however, these are substantial advancements in policy that replace the confines of the original Code of 1975. This advancement in queer rights—although approximating normative

progressivism—exists alongside the acknowledgement of the needs of other marginalized groups, which includes an emphasis on “community-building” and the encouragement of “open-minded, supportive parenting” (Mitra 2023). These factors together illuminate Cuba’s Code as on a “horizon imbued with potentiality” (Muñoz 2009: 1) and provide points of inspiration for the future of family policy around the world. This context also suggests that policymakers *can* transcend the tendency of solely enacting progress-based rights for vulnerable communities, and instead focus on enacting laws and regulations that are based on a legislative foundation that acknowledges and centres the value of carework and the caregivers who perform it.

### **Limitations**

This policy analysis exists with many limitations. It primarily relied on governmental data from English-language sources, and where possible, through translation of documents from Dutch and Swedish and because of this, there is a possibility of mistranslations or miscommunications. However, a majority of documents utilized throughout this analysis that existed in either Dutch or Swedish usually included accompanying English translations or corresponding English documents. Oftentimes, there were discrepancies between policy data between governmental resources, non-profit research organizations, academic sources, and international organizations with policy databases (such as the OECD). Discrepancies are seemingly a result of information being outdated—this makes sense as policy is continually and often evolving. Furthermore, because a great deal of the literature addressing the structure of policy is cis-heterocentric in scope, many of the lived experiences of different queer and marginalized communities are underrepresented or absent from the data and thus from this analysis.

## Concluding remarks

Related to the potentialities of leave structures and policy that addresses the needs of families in general, it is helpful to reflect back to Eichler's (1983) idea of familial legitimacy—or, more specifically, *who* gets counted as family in normative conceptualizations. She poses the alternative to a “who” definition of family to a “what” definition, wherein “we would then recognize, reward, and legitimize families for *what they do together and for each other, rather than recognize and privilege only those who take the “proper” form*, regardless of what happens behind closed doors” (Albanese 2018: 13; emphasis added). Although not explicitly queer in her epistemological approach, Eichler's call for altering our understanding of what a family is ultimately a form of queering institutional definitions and conceptualizations of family that centralizes the importance and value of carework—instead of identity—in discussions of family rights.

Addressing the needs of multiple family structures is possible when non-normative kinship is foundational to social and institutional conceptualizations of family. Conversely, the needs of diverse families are invisibilized through the naturalization of monolithic family forms. Although LGBTQ+ families face particular kinds of systemic discrimination, all family forms—including those headed by cis-heterosexual, monogamous parents—benefit from queering the bounds of social insurance systems and family policy. As family forms continue to evolve and diversify in composition, so must public policy in order to meet emerging needs. Queering our social systems allows for an ongoing transformation of our current conditions, wherein the needs of multiple family structures can be adequately addressed and met through comprehensive policy.

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