

*Report on the NAWL Pan-Canadian Workshop on
Improving Maternity and Parental Benefits outside Québec*

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For the last three years, NAWL has been exploring ways of improving maternity and parental benefits for women living outside Québec. The NAWL Working Group has had several in-depth discussions on this issue, did extensive research on existing literature in Québec, Canada and abroad, and has consulted widely with women across Canada.

On May 10, 2007, NAWL organized a workshop with activists from women's groups and labour to discuss a series of law reform proposals that the Working group had developed. We were most fortunate to benefit from the expertise and generous contributions to our thinking from the participants in this workshop, and we wish to express our gratitude, in particular, to the participants who took the time to prepare presentations that helped us focus our thinking and our analysis.

We are very pleased to have come out of these discussions with a strong consensus on several recommendations to improve the maternity and parental benefits regime under the *Employment Insurance Act (EI Act)*. We have also started to identify areas for future discussions, toward the development of a complementary universal benefits program that would benefit low income women, and women who are not attached to the labour market. Finally, all participants agreed that improving maternity and parental benefits is an important, but not a sufficient step: it is also essential to ensure that universal, quality childcare and early education programs be offered to all children. Indeed, mothers need financial support when they take a caregiver role but they also need a way to get back into the work force and balance work and care giving responsibilities. Ensuring that parental responsibilities are shared, and that mothers maintain financial independence as well as access to the workforce are key to fostering women's real equality, in the family and in society.



Remembering our struggles: How Women won Maternity Benefits

Laurell Ritchie, National Representative of the Canadian Auto Workers (CAW) presented a historical overview of the evolution of the laws and policies related to maternity and parental benefits. She reminded us that until 1971, there were NO maternity and parental benefits in Canada. During the 1960s and 1970s, women's groups and unions formed coalitions and alliances to mobilize around the issue of maternity benefits.

The first Canadian government report to discuss the possibility of adopting maternity benefits was the *Report of the Study for Updating the Unemployment Insurance Programme*, published in 1968. This report introduced the concept of paid maternity leave as a form of work “interruption” and it did not presume that women would simply quit their job once they were pregnant, which was in itself a significant step forward for women's rights. Following this report, the *White Paper on Unemployment Insurance* and the *Report of the Royal Commission on the Status of Women in Canada* were both published in 1970 and discussed similar ideas. These publications, as well as other international legal instruments, paved the way for the introduction of a maternity and parental benefits regime in Canada.

In 1971, following recommendations made in the Royal Commission Report, maternity benefits were included in the federal *Unemployment Insurance Act (UI Act)*. The *UI Act* initially provided for a maximum of 15 weeks of maternity benefits: benefits had to be taken 8 weeks before the week of the birth, and 6 weeks after birth. However, the *UI Act* disintitiled pregnant women from receiving basic unemployment benefits, restricting them to special maternity benefits during a portion of their pregnancy. And in order to qualify for maternity benefits, women workers had to meet stricter conditions than for regular unemployment benefits.



In 1979 the Supreme Court decided that this differential treatment was not discrimination against women (*Bliss v. Canada (Attorney General)* [1979] 1 S.C.R. 183). Stella Bliss was told that she was not entitled to maternity benefits under *UI Act* because she did not meet the stringent requirements; yet, she was not entitled to regular benefits because she was pregnant. The Court ruled that she was not discriminated against because she was a woman. Rather, these were simply special rules for pregnant persons - “any inequality between the sexes in this area is not created by legislation *but by nature*”. Therefore, the *Canadian Bill of Rights* protection against sex discrimination did not apply.

Despite objectionable decisions like this one, between 1971 and 1996 maternity benefits were increased and became more accessible, as a result of the long-standing activism spearheaded by women in unions, and staunchly supported by women’s groups. In 1975, women acquired the right to use these benefits any time during the period surrounding the birth. In 1983 (with Bill C-156) the government introduced 15 weeks of adoption benefits. In addition, maternity benefits were simplified and adjusted to conform to the *Canadian Human Rights Act*. The *UI Act* was amended to provide for 15 weeks of parental benefits for one or the other parent that adopts a child.

In 1989, the Supreme Court overturned the infamous *Bliss* decision. It recognized, in the *Brooks* case, that “pregnancy discrimination” is a form of sex discrimination because of the basic biological fact that only women have the capacity to become pregnant:

It is difficult to conceive that distinctions or discriminations based upon pregnancy could ever be regarded as other than discrimination based upon sex, or that restrictive statutory conditions applicable only to pregnant women did not discriminate against them as women. It is difficult to accept that the inequality to which Stella Bliss was subject was created by nature and therefore there was no discrimination; the better view, I now venture to think, is that the inequality was created by legislation, more particularly, the *Unemployment Insurance Act, 1971*. [...] Distinctions based on pregnancy can be nothing other than distinctions based on sex or, at least, strongly, “sex related” (*Brooks v. Canada Safeway Ltd.* [1989] 1 S.C.R. 1219).



It was also in 1989 that the federal government provided for 10 weeks of parental benefits and for the first time, made benefits available to birth fathers (with Bill C-21).

However, in the 1990s, the federal government changed the rules for unemployment insurance to make it more difficult to become eligible for benefits. In addition, the duration of benefits was shortened. In 1996, the federal government's entitlement to benefits shifted from one that was based on the number of weeks of work, to one that was based on the number of hours of work. Under the old scheme, an individual needed between 12 - 20 weeks (of at least 15 hours of work) of insurable earnings within the qualifying period to become eligible for full benefits (including maternity benefits). After 1996 a claimant needed a minimum of 420 to 700 hours (according to the regional unemployment rate) of insurable earnings to qualify for regular benefits, and 700 hours to qualify for maternity and parental benefits. Anyone working less than 14 hours a week would probably not be able to accumulate the required number of hours within the qualifying period of 52 weeks.

However, in response to the improvements that the Québec government introduced with the adoption of the *Act respecting parental insurance* in 2001, the federal government increased the maternity and parental benefits period to 50 weeks. The government also reduced the number of hours required to qualify for these benefits to 600 hours.

Problems with the Current Federal Regime

Despite the significant victories that women have won over the years, first with the introduction of maternity and parental benefits, and later with the gradual improvements to these benefits, there remain several significant problems with the current system. Some of these problems are illustrated by the personal experience of workshop participants.



For example, when two years ago one participant gave birth, she was a student. Despite having worked for several years prior to her returning to university, she did not qualify for employment insurance (EI). She was forced to take care of her baby all day and to do paid work all night, in addition to her studies. Childcare was not easily accessible either. She was on a waiting list and finally, after nine months, her baby went to childcare. Soon after this, she mentally and physically collapsed for a full month. Her experience as a student/mother was horrible. To her great frustration, many people still like to blame her because, after all, it was her choice to have a child. These people do not want to see the problems in the current EI regime and in the childcare system. That's where the problems lie, problems that prevent women from making the choice of having children without compromising their health and living in poverty.

When another participant had her first child, she had access to benefits but not to affordable childcare. Given her limited options, she became self-employed and worked from home. Living in Québec, eventually she was able to secure a 5\$/day childcare space for her daughter. However, when she had her second child, she needed to go on sick leave with pregnancy complications. But because she was self-employed (this was before Québec's parental insurance scheme came into effect), she had no access to sickness benefits of any kind. In spite of the fact that she was told by her doctor that she should be on bed rest for a significant part of her pregnancy, she continued to work from home, using a speaker phone and headset to answer calls from her clients while lying in bed. After her second pregnancy, she had access to maternity benefits based only on a fraction of her previous income, because most of her income still came from contracts she did as a self-employed worker. Her partner tried to take parental leave but that too was complicated, as his employer initially refused to let him do so. Eventually, she managed to find affordable, quality childcare for her two children and was better able to manage her caregiving and professional responsibilities. Not an easy process! As the above stories reveal, many women are currently excluded from accessing maternity and parental benefits under the EI regime.



Michelle Harris Genge, of Women's Network PEI, provided participants with a summary of their research and focus group findings on the problems plaguing the current regime. Some women are excluded because they fail to have worked the required number of hours during the qualifying period. Others are excluded because they have an alternative work structure, are contractual, self-employed or seasonal workers. And for those who are eligible, there exist other problems: the EI regime imposes a two-week waiting period before having access to benefits, from the time the claim is made. Canada is one of the only countries in the world to impose such a delay.

Another problem stems from the fact that EI payments are simply not high enough for women who have lower paying jobs, particularly for women working at minimum wage. Since 1991, the combined maternity and parental leave was extended to one year but many women who are eligible don't take leave because they can't afford living on 55% of their salaries for a year. They need their full salaries just to survive. Adolescent mothers, students, low income mothers, immigrant women, Aboriginal women and women who live with a disability often suffer the most from the gaps in our current regime.

In the Atlantic Provinces for example, the average weekly parental benefit is \$292 or \$14,600 per year, which is almost \$10,000 less than the Low Income Cutoff of \$24,390 for Atlantic Canada (based on 2003 statistics). In this context, it is difficult to imagine how extending the maternity and parental leave period, as the Conservative government is rumored to be considering, would do any good for women. In fact, such an initiative would simply keep women in poverty, for a longer period of time. We need to find other solutions to these problems, including higher benefits and better access to childcare.



The Québec Model

Marie-France Benoit is a union advisor at the *Service de la condition féminine* (status of women service) of the *Confédération des Syndicats Nationaux* (CSN), and she represented the *Regroupement pour un régime québécois d'assurance parentale* (Regroupement), a coalition of 16 community organizations, feminist groups, family associations and unions. Marie-France provided participants with a summary of the work that was accomplished by the Regroupement.

Through the 1990's, many organizations in Québec started fighting for a distinct regime tailored to respond to the needs of Québec women. They proposed the adoption of Québec legislation, that would significantly improve on the provisions of the federal *EI Act*. In September 1997, the *Comité national de la condition féminine* of the CSN, sent a letter to the provincial government to press it to reopen discussions relating to maternity and parental benefits. The successful campaign that was developed by the *Regroupement* used the slogan: “*Enfanter n'est pas chômer*” (which can be roughly translated as: “Having a baby is no vacation”). Consensus was formed between women's organizations, unions and many other social groups on the focus of the campaign, i.e. maternity and parental benefits, and the law reform proposals that were put forward. During the fall of 2000, following the *Sommet du Québec de la jeunesse*, Bill 140 was tabled and a parliamentary commission was struck. Almost all of the organizations that testified before the Commission supported the Bill, including the *Conseil du patronat du Québec*, representing employers. Only small self-employed workers' organizations disagreed with the proposed Bill. As a result, the *Loi sur l'assurance parentale* was adopted unanimously by all political parties represented in the Québec National Assembly on May 25, 2001.

The adoption of this legislation was followed by a vote on a motion to request that the Canadian government negotiate with the Québec government in order to transfer the



portion of the EI funds used to pay maternity and parental benefits to parents living in Québec, to the Québec government. The *Regroupement* also lobbied the Chrétien government to negotiate in good faith, but they met with resistance and delay from the federal government. In order to force a change of attitude, the Québec government requested that the Québec Court of Appeal examine the constitutionality of the federal provisions on maternity and parental benefits within the *EI Act*. They argued that this was essentially a social program, supporting Québec families, and that it was thus not within federal jurisdiction. While the Québec Court of Appeal ruled that this was indeed within provincial jurisdiction, the Supreme Court of Canada was of the opinion that the current maternity and parental benefits provisions in the *EI Act* were constitutional¹.

In the course of this litigation, the federal and the Québec government finally reached an agreement, and the Québec parental insurance regime took effect as of January 1, 2006. Now, Québec had its own regime, which means that the province pulled out of the federal EI regime, but only with respect to maternity and parental benefits.

The main characteristics of the Québec regime are the following:

- To be eligible, a worker must have earned a minimum of \$2,000 during the last 52 weeks
- The new regime covers self-employed workers
- The maximum for insurable earnings is 59,000\$/year (this is based on the annual maximum insurable earnings set by the *Commission de la santé et de la sécurité du travail* (CSST) for victims of employment injuries in 2007. From the *Regroupement*'s perspective, this gain was significant because it put an end to the practice of comparing maternity leave to unemployment)

¹ For more information on this case, please refer to NAWL's analysis in the document entitled *The Québec Appeal Court decision on the Constitutionality of Maternity and Parental Benefits as Employment Insurance Benefits* by Rachel Cox (2004), available on our website.



- It provides for 55 weeks of benefits (when combining maternity, paternity and parental benefits)
- The 2 week waiting period has been eliminated
- Maternity benefits are provided for 18 weeks, at a wage replacement rate of 70%
- A 5 week paternity leave at 70% is provided, which only fathers (or second parents in same-sex relationships) can take and which cannot be transferred to the birth mothers
- Parental leave of 32 weeks is provided (7 weeks at a salary replacement rate of 70% and 25 weeks at 55%)
- Adoption leave of 12 weeks at 70% and 25 weeks at 55% (for a total of 37 weeks) is provided
- There is also an option to have a higher wage replacement rate over a shorter period of time: maternity leave of 15 weeks at 75% combined with paternal leave of 3 weeks at 75% and parental leave of 25 weeks at 75% (a total of 43 weeks) (or adoption leave of 28 weeks at 75%).

One thing is clear: the 70% wage replacement rate is a huge victory, especially for lower income parents. The Québec regime is one of the best in the world!

Proposals for Improving the Maternity and Parental Benefits under the Current *EI Act*

After reviewing the significant reforms that have been introduced in Québec, and bearing in mind the reforms that have been proposed throughout the years by organized labour and women's groups, participants agreed that the following measures would significantly improve the current maternity and parental benefits regime under the current *EI Act*:

- Abolish the 2 week waiting period for workers receiving maternity and parental benefits;



- Convert this two-week period to a period of eligibility for parental benefits;
- Increase benefit levels for maternity and parental benefits (and all other benefits) to 70% of regular earnings;
- Raise maximum yearly insurable earnings;
- Allow a 3 to 5 year “reach-back” period to qualify for maternity and parental benefits;
- Calculate benefits on the basis of the best 12 weeks of income during the reach back period (during the last 3 to 5 years) in all regions of Canada;
- Lower the eligibility requirement to 360 hours for maternity and parental benefits;
- Respect a distinct entitlement to maternity and parental benefits so that the right to these benefits is not affected by receipt of regular benefits (and vice-versa);
- Designate benefits for fathers and second parents;
- Extend coverage to self-employed mothers and fathers.

For a more detailed discussion of these proposals, please refer to the updated version of NAWL’s law reform proposals, written by Rachel Cox, lawyer and NAWL Working Group member, which will be available soon on the NAWL Website.

Improving maternity and parental benefits and creating a paternity benefit in the Employment Insurance plan would cost a certain amount. Such benefits would, in the normal logic of the plan, be financed by employer and employee contributions. However, given that the EI fund has an enormous accumulated surplus, it would be possible to finance these benefits partly or entirely without increasing the contribution rate in the immediate future. For an extensive discussion on how to fund these proposed new maternity and parental benefits, please refer to the document entitled “*Thinking about how to Finance New Parental Benefits*”, available on the NAWL website.



Complementary Universal Benefits for all Mothers

Despite the many positive aspects of regimes such as the Québec one, it is important to recognize that many parents may still be excluded if they are not participating in the paid labour market, or if they earn very low incomes. One of the solutions to this problem would be the adoption of a complementary universal benefits program, for all mothers.

Hélène Cornellier presented the AFEAS proposals towards such a program: weekly benefits would provide a minimum income equivalent to 70% of the minimum wage for a 40 hour week, to all mothers and fathers. This special universal regime would complement regular benefits received under the Québec legislation or under the EI Act, in cases when parents earn very low incomes, in order to reach this minimal amount.

Professor Lorna Turnbull from the University of Manitoba fully supports exploring options for a complementary universal program. She explains that when she had her first child, she realized how economically vulnerable she was. She continued to feel this vulnerability as she had her two other children. In our society, independence is calculated in economic terms, and we need to ensure that all mothers have a minimum income that they can control. A universal benefit for mothers would increase women's autonomy and make women safer from violence in the home and at work. Ensuring that mothers receive adequate income support will also decrease child poverty. We should not continue, as a society, to force women to quit work, lose control over their income, live in poverty and perform invisible care giving work when they have children. A complementary universal parental benefit would acknowledge that most mothers are workers in the paid labour market, at most times in their lives.

This kind of support program relies on the Federal Government's spending power to support families with new babies or newly adopted children. It would be normal for the government to finance its cost from general revenues as it does with other family benefits. In this case, the cost for Quebec parents also needs to be included. Finally,



NAWL recognizes Québec's right to determine its own social policies and thus to opt out of any such program with full financial compensation, if it so wishes.

Conclusion

Society as a whole benefits in a particular and unique way from childbearing and childrearing. Every mother should receive income replacement and material support during the first years of caring for a child. Bearing and raising children should not impoverish women, as is now the case. No single initiative is sufficient to drastically improve the situation of all mothers in Canada. Nonetheless, several areas of the law cry out for reform by the Federal government.

We therefore recommend that the current federal benefit regime be expanded through the development of specific rules within EI for workers who apply for maternity and parental benefits. This would bring Canada into line with the 2003 recommendation of a United Nations Committee on the Elimination of Discrimination against Women. This committee recommended that Canada reform maternity and parental benefits so that they cease to be a source of inequality for women.² And given that society as a whole benefits from the work parents do raising young children, we recommend that the Federal government contribute directly to financing this much-needed expansion to the current maternity and parental benefit regime.

² United Nations Committee on the Elimination of Discrimination against Women's *Concluding Observations on the Occasion of Canada's 5th Report* (CEDAW/C/CAN/5 and Add.1), 603th and 604th sessions, January 23, 2003 (see CEDAW/C/SR.603 and 604), para. 382. On line: http://www.fafia-afai.org/images/CEDAW_UNrecs_to_Canada_2003.pdf (accessed: June 2, 2006).