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Brief of the Income Security Advocacy Centre to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) on the Impact of Recent Changes to Employment Insurance and of Access to the Program

May 13, 2016

Introduction

The Income Security Advocacy Centre (“ISAC”) is pleased to offer our comments and recommendations on issues that constitute the core focus of this committee: the impact of changes to the Employment Insurance program (“EI”) introduced by the previous government, and the causes of the current low rates of access to EI benefits. Our brief explores the barriers low-income unemployed workers face in accessing the program, which workers are disproportionately impacted, and the unsuitability of the program’s eligibility requirements to the realities of the current labour market.

EI is a key piece of Canada’s social safety net. It is meant to offer a base of benefits to workers across Canada who may enter a period of unemployment, while they transition back into the workforce.

However the EI program as it is today is not working. Unemployed workers have serious and increasing difficulties in accessing EI benefits. With shifts in the labour market, an increasing amount of workers are in temporary, part-time or precarious employment. Onerous EI eligibility requirements prevent these workers from qualifying for benefits. And even if they do qualify, the benefits calculation method works to their disadvantage compared to higher-earning individuals. Further, migrant workers effectively excluded from the EI program because of the conditions imposed by their work permits, despite contributing to the program.

Lastly, those workers who are eligible for benefits are facing increasing barriers to the application and appeal process because of severe deficiencies in the Service Canada and Social Security Tribunal appeals process.

While some very positive changes to the program were announced in the recent Federal Budget, there is considerably more to do. The government must consider labour market realities and the changing needs of workers in re-establishing EI as a relevant program and a crucial social safety net for workers.

I. Temporary and Precarious Workers Face Serious Barriers in Accessing EI

As a national contributory program, EI should provide reliable income security for Canadian workers facing unemployment regardless of the character of their employment. Currently, the program does not do this. It thereby fails the very workers who need it most.

EI regular benefits are generally available only to permanent employees who have worked a sufficient number of hours of insurable work in their respective economic region. Self-employed persons and independent contractors generally do not qualify; neither do workers who only have access to temporary or part-time work that does not provide them with sufficient qualifying hours.

Many groups, such as the Good Jobs for All Coalition and the Canadian Centre for Policy Alternatives, have recommended lowering the insurable hours requirement to 360 hours in all regions in Canada.¹ We support this call, and feel that such a change would undoubtedly be an improvement over the current high threshold that workers have to meet; however, we also submit that a deeper and more thorough analysis of the causes leading to under-enrolment in the EI program be undertaken. Simply put, EI is not in keeping with the realities of today's job market – where temporary and precarious work is on the rise, and regular full-time employment is increasingly hard for many Canadian's to achieve.

¹ Good Jobs for All Coalition, Fix Employment Insurance, April 5, 2013: <http://goodjobsforall.ca/fix-employment-insurance/>; Canada Centre for Policy Alternatives, *Time to Move On: Alternative Federal Budget 2016*, at p. 59

Severe changes have taken place in Canada's job market over the past several decades.

Temporary or precarious work is quickly and increasingly becoming the norm. This trend was noted by the Department of Human Resources and Skills Development Canada in 1998, and has only continued since then.² Today, about 20% of jobs in Canada are part-time and 14% are contract or seasonal.³

A CIBC Economics review of employment quality in March of 2015 indicated that “employment quality has been on a clear downward trajectory over the past 25 years” and that “the level of quality, as measured by our index, is currently at a record low.”⁴ In this index, permanent, full-time positions are considered higher quality than temporary, part-time work, or being self-employed. This review concludes that the continued long-term decline in the quality of work in Canada's labour market is “more structural than cyclical”.

Systemic change in the Employment Insurance system is required to accommodate for that structural change and adequately respond to the needs of workers in today's labour market.

For the precariously employed and low-income workers, the barriers to EI can be extremely difficult to overcome. Because they experience more frequent periods of unemployment or work less regular hours, they have difficulty meeting the required qualifying-hour threshold within the six month period leading up to their period of unemployment. The higher the qualifying hours and the smaller the period in which those hours can be achieved, the less likely they are to access benefits.

Without systemic change to address these new realities, the program will continue to fray at the ends, as a larger proportion of Canadian workers become systemically excluded from qualifying for benefits when they face unemployment. In 2011, the Mowat Centre's Employment Insurance Task Force Report found that fewer than 50% of unemployed workers in Canada qualify for EI.⁵ That proportion has only decreased since. Even those workers who do get benefits often do not

² HRSDC Strategic Policy and Research. 1998. An Analysis of Employment Insurance Benefit Coverage. October 1998. Ottawa: Human Resources and Skills Development Canada: <http://bibvir1.ugac.ca/archivage/000868689.pdf>

³ Canada Centre for Policy Alternatives, *Time to Move On: Alternative Federal Budget 2016*, at p. 57

⁴ CIBC Economics, *Canadian Employment Quality Index*, March 5, 2015: http://research.cibcwm.com/economic_public/download/eqi_20150305.pdf

⁵ Mowat Centre for Policy Innovation, *Making it Work: Final Recommendations of the Mowat Centre Employment Insurance Task Force*, University of Toronto, 2011: <http://www.mowateitaskforce.ca/sites/default/files/MakingItWork-online.pdf>

have them for their entire period of unemployment. Indeed, about 25% of all EI claimants today run out of benefits before they can find a new job.⁶

This trend also includes considerable regional disparities. In Ontario, as of 2010, less than 40% of unemployed workers were receiving EI – the lowest coverage rate of any province.⁷

Many of these workers are from vulnerable groups who are overrepresented in low-income employment, such as women, racialized people, people with disabilities, and new immigrants.⁸

Changes to the EI eligibility requirements by the previous government for new entrants to the workforce created further barriers. New entrants to the Canadian labour market, or anyone who has not worked in Canada for the previous two years, were required to work 910 hours insurable hours to qualify for benefits, compared to 420 to 720 hours for those who have worked longer than two years.⁹

This government's recent budget announcement of the removal of the new-entrant requirement is welcome. However, this only begins to address the broader and deeper problem outlined here. Unless this government is willing to re-evaluate how individuals qualify for EI, taking into account the realities of a 21st-century economy, the program will continue to deteriorate and the number of Canadians not included within its purview will only grow.

Recommendation 1: Canada should amend Employment Insurance eligibility requirements to ensure that the precariously employed have meaningful access to the program.

II. EI Regular Benefit Rates are too Low, and are Calculated in a Manner that Perpetuates Disadvantage for Women and the Precariously Employed

The base amount of EI benefits is low – granting only 55% of average earnings over the previous six-month period. This can include periods of underemployment or actual unemployment, during which the employee may have had little to no earnings.

⁶ Canada Centre for Policy Alternatives, *Time to Move On: Alternative Federal Budget 2016*, at p. 58

⁷ Mowat Centre for Policy Innovation, *Making it Work: Final Recommendations of the Mowat Centre Employment Insurance Task Force*, at p. 11

⁸ Law Commission of Ontario. *Vulnerable Workers and Precarious Work*, Toronto: December 2012, at p. 19: <http://www.lco-cdo.org/vulnerable-workers-final-report.pdf>

⁹ *Employment Insurance Act*, S.C. 1996, c. 23, at ss. 7(2) – 7(3)(b)

This formula drags down the amount of EI benefits payable to those with intermittent and/or low income. Accordingly, this method of calculation has a negative effect on the income security of the precariously employed and on low-income earners –those who need these benefits most.

This is a growing problem, as low-wage jobs are increasingly common in Canada today. A recent study by Statistics Canada shows that the jobs with the most vacancies in Canada are in sectors that have the lowest pay.¹⁰ The implication for unemployed workers seeking EI benefits is clear: low benefit rates will leave many in labour market's most in-demand sectors struggling to bridge themselves through a period of unemployment.

The method in which benefits are calculated also disadvantages women, who continue to suffer a considerable wage gap in Canada.¹¹ From 2012-2014, women in Canada received about 14% less per week than men in EI benefits.¹²

While we note that the EI Family Supplement does provide some added benefits to many low-income families whose net income is under \$25,921 per year, this program is simply not enough to remedy the disparities resulting from the manner in which EI benefit payouts are calculated. It does not address those who make above the \$25,921 cut off, and it does nothing for single individuals living from paycheck to paycheck or women suffering from the gender pay gap.

The differential impact of the low-base amount of EI benefits is particularly unfair given that individuals with low income contribute a higher proportion of their own income to EI. Since the maximum insurable earnings for EI is set at \$50,800, an individual making under \$50,000 per year is contributing 1.88% of their total income to EI, while an individual making \$100,000 per year is contributing only 0.95% of their income to the program.

Recommendation 2: Canada should amend the calculation of Employment Insurance Regular Benefits rates to ensure an equitable distribution of benefits to unemployed workers – including women and the precariously employed.

¹⁰ Statistics Canada. Job Vacancy and Wage Survey, fourth quarter 2015. Released May 12, 2016 – PDF

<http://www.statcan.gc.ca/daily-quotidien/160512/dq160512a-eng.pdf>

¹¹ Canadian Centre for Policy Alternatives, *Narrowing the Gap: The Difference That Public Sector Wages Make*, October 2014, at p. 7-10, at:

https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/10/Narrowing_the_Gap.pdf

¹² Government of Canada EI Monitoring and Assessment Report 2013/2014, Annex 2.2, at:

file:///C:/Users/d_rohde/Downloads/MAR_201314-EN_09_2015.pdf

III. Migrant Workers Face Severe Discrimination in Accessing EI

The EI system also discriminates against most foreign workers in Canada. While temporary foreign workers in Canada pay into the EI system through premiums, they are routinely unable to access the benefits of that program.

As long as a migrant worker (either under the Temporary Foreign Worker Program or the Live-In Caregiver Program) has worked sufficient hours to qualify for EI, then they can technically apply to receive EI benefits should they lose their employment. However, to receive EI benefits, an individual must show that they are “ready and available for work”. Generally, an individual has to show that they are currently in Canada and working under a valid work permit.¹³

Accordingly, temporary foreign workers who are issued a temporary work permit for a restricted period or one that restricts them to certain employers are often unable to access these benefits when they lose their jobs.

Additionally, as of December 9, 2012, Canada changed its regulations to expressly limit EI parental benefits to those individuals who are authorized to remain in Canada at that time.¹⁴

Migrant workers, such as seasonal agricultural workers, who have left Canada but are likely to return at the beginning of the next growing season, no longer have access to parental benefits. However, all other Canadian workers are eligible to receive parental benefits even if they leave the country, because workers on parental leave are expected to be caring for their child not looking for work in Canada.

Only migrant workers are treated differently. This change was regressive and disappointing, as parental benefits were the only EI benefit that many migrant workers were able to access. As a result, most migrant workers are no longer eligible for any employment insurance benefits, even though they pay into the program with each pay cheque.

Recommendation 3: The Employment Insurance Commission and Citizenship and Immigration Canada should work together to amend both the Employment Insurance regulations and the temporary visa requirements to provide temporary foreign workers with equal access to employment insurance benefits without discrimination.

¹³ Digest of Benefit Entitlement Principles, at s. 10.2.4: http://www.esdc.gc.ca/en/reports/ei/digest/ch_10/proof.page#a10_2_4

¹⁴ Employment Insurance Regulations, SOR/96-332, s. 55(4) <<http://canlii.ca/t/52hlc>> retrieved on 2016-01-26; New Release (December 6, 2012), at <http://news.gc.ca/web/article-en.do?nid=711069>

IV. Service Canada and the Social Security Tribunal create additional barriers to accessing EI

When a worker loses their job, it is essential that applying for income replacement through the EI program be fast and easy. If that application is denied, there must also be a fast, easy and fair process for appealing that decision. This goal is not being met. There are barriers at both the application stage and the appeal stage that are undermining access to the program.

A. Service provided by Service Canada is inadequate

Unsurprisingly, applications for regular EI claims have been higher since the 2008 recession. However, Service Canada has not kept up with the new pace of claims.

- Service Canada's target for the timeframe in which benefits are delivered is extremely modest: its goal is for 80% of applications to receive their first payment within 28 days of filing a claim. Even this modest target is not being met. In Ontario, Service Canada fails to achieve its own standard in 30% of cases. Further, Service Canada itself acknowledges that many workers are waiting months to receive their first payment.¹⁵
- In 2015-2016, 10.3 million callers were unable to reach a Service Canada agent. Over one million calls were abandoned – i.e., the caller hung up while waiting to reach a representative.¹⁶
- There is also a serious risk that those callers who are able to get through will be given incorrect information. According to the 2014/2015 Employment Insurance Monitoring and Assessment Report, 23% of the errors resulting in overpayment and underpayments to claimants were caused by Service Canada.¹⁷

All of these administrative problems point to failures in training of Service Canada staff and chronic under-staffing. Unemployed workers bear the burden of these failures.

Recommendation 4: Service Canada should be provided with the resources required to answer 100% of calls in a timely manner, to pay out all successful applications within 30 days and to reduce the number of errors made in processing applications.

¹⁵ Canada, "Government of Canada launches consultation to improve Employment Insurance services" (May 12, 2016) (Accessed May 12, 2016 at: <http://news.gc.ca/web/article-en.do?nid=1064209&tp=1>).

¹⁶ Canada, "Government of Canada launches consultation to improve Employment Insurance services" (May 12, 2016) (Accessed May 12, 2016 at: <http://news.gc.ca/web/article-en.do?nid=1064209&tp=1>).

¹⁷ Employment Insurance Monitoring and Assessment Report 2013/2014: <http://www.esdc.gc.ca/en/reports/ei/monitoring2014/index.page>

B. The Appeals Process is Inconsistent with Basic Principles of Procedural Fairness

Three years ago, the prior government made profound changes to the appeal process for Employment Insurance claims. These changes were made with no consultation or notice to stakeholders apart from a 30 day timeline to comment on the proposed regulatory changes, a good portion of which ran during the Christmas holidays.

The resulting changes have created a process that takes longer than the previous process, is at odds with basic principles of procedural fairness and stacks the odds against unemployed workers:

- The new process has introduced a new legal hoop that claimants have to jump through before they can bring an appeal: they have to ask the EI Commission to “reconsider” the decision. The average time for Service Canada to complete reconsideration is 38 days.¹⁸
- Further, around 50% of reconsideration decisions are reversed, which suggests significant errors are being made at the initial application stage. There needs to be improved quality of initial decision-making so that unemployed workers are not thrust into the appeal process unnecessarily.
- The Social Security Tribunal was rushed into existence and was not prepared to handle the backlog of cases that it faced when it opened its doors. It has taken years for the Tribunal to reach what it is calling a “steady state.” First level appeals are heard by only one person, instead of three (as was the case at the “Board of Referees”).
- The structure of the appeal process is highly unusual, and deviates from accepted legal norms. Appellants are required to submit all of their evidence and legal submissions at the very first stage of the process, before they have even been informed of the case against them or given full disclosure of their file. At any other Tribunal, the claimant has a chance to see the evidence against them so that they can respond in an informed way. The current process undermines their ability to properly assess their chances on appeal, and of properly holding those who initially decided their claim accountable.

¹⁸ Canada, “Government of Canada launches consultation to improve Employment Insurance services” (May 12, 2016) (Accessed May 12, 2016 at: <http://news.gc.ca/web/article-en.do?nid=1064209&tp=1>).

- Many EI hearings are conducted by phone, even when the claimant asks for the hearing to be done in person. This is a serious problem for cases in which credibility is in issue and poses a problem for low income people who may not have access to a phone.
- Lastly, it takes considerably longer to complete an appeal than it did under the former system. The Tribunal's service standard is to have final decisions in 85% of cases within 90 days of the appeal being filed. Three months is an extremely long time for any unemployed worker, and particularly for ones with low-income and/or less assets to rely on during their period of unemployment.

These changes to the appeal process appear to have been instituted with little to no regard for unemployed workers within the system, who deserve a fair and responsive procedure. These procedures should be amended to provide adequate access to this crucial piece of Canada's social safety net.

Recommendation 5: The legislation governing the process at the Social Security Tribunal should be amended to provide that appellants receive disclosure of the case against them early in the process, and that they are not required to provide their evidence and legal submissions until full disclosure has been made.

Recommendation 6: The Social Security Tribunal should be given the resources it requires to hear and decide EI cases more quickly and fairly.

Summary of Recommendations:

Recommendation 1: Canada should amend Employment Insurance eligibility requirements to ensure that the precariously employed have meaningful access to the program.

Recommendation 2: Canada should amend the calculation of Employment Insurance Regular Benefits rates to ensure an equitable distribution of benefits to unemployed workers – including women and the precariously employed.

Recommendation 3: The Employment Insurance Commission and Citizenship and Immigration Canada should work together to amend both the Employment Insurance regulations and the temporary visa requirements to providing temporary foreign workers with equal access to employment insurance benefits without discrimination.

Recommendation 4: Service Canada should be provided with the resources required to answer 100% of calls in a timely manner, to pay out all successful applications within 30 days and to reduce the number of errors made in processing applications.

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Recommendation 6: The Social Security Tribunal should be given the resources it requires to hear and decide EI cases more quickly and fairly.

The Income Security Advocacy Centre

The Income Security Advocacy Centre (ISAC) is a community legal clinic located in Toronto with a provincial mandate funded by Legal Aid Ontario. ISAC works closely with Ontario's 60 geographically-based community legal clinics, which assist low-income Ontarians in their local areas to resolve the problems they encounter with accessing benefit programs and services in their daily lives.

ISAC's litigation and advocacy work addresses federal income security programs, including Employment Insurance and the Canada Pension Plan; as well as the Social Security Tribunal adjudication process. In 2013, ISAC represented 102 seasonal agricultural workers in a test case on access to EI parental benefits. In 2014 ISAC provided a brief to the Senate Committee on Bill C-31 on changes to the Guaranteed Income Supplement and spousal and survivor allowances.

ISAC plays a leadership role to Ontario's legal clinics, by providing advice, support, and training, as well as by co-chairing province-wide inter-clinic working groups concerning EI and CPP Applications. ISAC has engaged in stakeholder consultations and meetings with the Chair of the SST on Tribunal procedures; with the federal government on CPP disability issues; and with the Office of the EI Workers Commissioner.