Improving Maternity and Parental Benefits for Women outside of Québec:

Proposals for Law Reform

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Introduction

According to NAWL's vision, 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.

Presently, a parent's right to temporarily absent herself (or himself) from work as well as the modalities of return to work are covered by provincial employment standards legislation or, in the case of workers in sectors under federal jurisdiction, by the *Canada Labour Code*.

Unless parents live in Québec, maternity and parental benefits are granted through the federal regime set up by the *Employment Insurance Act* (EI Act). As of 2001, in order to be eligible for these maternity and parental benefits, a person must have accumulated 600 hours of insurable employment during the last 52 weeks. Women that have given birth are eligible for maternity benefits, while either parent, including adoptive parents, is eligible for parental benefits. With the exception of the few who qualify for the family supplement, benefits represent only 55% of insurable income and are taxable. Maximum insurable earnings are $40,000 per year, for a maximum weekly benefit of $423. A waiting period of two weeks is imposed on one parent, usually the mother, as she is almost always the first parent to draw benefits. (For a more in-depth analysis, see NAWL's discussion paper on maternity and parental benefits, available at www.nawl.ca).

Society as a whole benefits in a particular and unique way from childbearing and childrearing. The Supreme Court decision in the *Reference re Employment Insurance Act* underlines this fact, stating that, "Children are one of society's most important assets, and the contribution made by parents cannot be overstated." According to the Court, "An interruption of employment due to maternity can no longer be regarded as a matter of individual responsibility". At the same time, the decision states that: "the social nature of unemployment insurance requires that Parliament be able to adapt the plan to the new realities of the workplace".[1]

As of January 2006, the Québec Parental Insurance Plan offers much more generous benefits to a much broader group of new parents, including self-employed parents and the second parent in same-sex families. We think it is time that some key elements of the Quebec plan were introduced into the EI Act so that mothers and fathers in the rest of Canada can benefit from similar improvements (see Section 1).[2]

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[1] *Reference re:* Employment Insurance Act *(Can.)*, [2005] 2 S.C.R. 669, para. 54 and 66. Available on line at: http://scc.lexum.umontreal.ca/en/2005/2005scc56/2005scc56.html. Accessed May 31, 2006.

[2] When we use the term "mothers", we are referring to co-mothers in same-sex families as well as mothers in opposite-sex families. Similarly, the term "fathers" includes co-fathers in same-sex families as well as fathers in opposite-sex families.

In 2005 and 2006, NAWL initiated a pan-Canadian consultation about how to improve maternity and parental benefits under the EI Act. We started dialogue within the women's movement and the labour movement about the issues at stake, both within and outside of Québec. Our consultation took the form of a series of one-day workshops with feminist activists, trade unionists, working mothers and caregivers as well as a summit meeting with a group of stakeholders and selected experts on maternity and parental benefits in February 2006. Finally, in May 2007, we held a workshop with key leaders from the women's movement and the labour movement. The proposals in this paper are the result of the broad consensus reached during this on-going consultation process.

We 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 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.[3] 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. (For a more in-depth discussion of the financial implications of this expansion, see NAWL's paper *Thinking About How to Finance New Parental Benefits* (2007), available on-line at www.nawl.ca).

During our consultations on maternity and parental benefits, many participants insisted that all mothers need support, whether or not they have been doing the kind of work that allows them to qualify for EI benefits. We came to the conclusion that a complementary universal support program (Section 2) that reaches mothers who do not qualify for benefits under EI or receive inadequate benefits under that program is also essential. This kind of support program relies on the Federal Government's spending power to support families with new babies or newly adopted children. At the same time, we recognize 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.

Finally, it is impossible to examine the practical difficulties associated with the current maternity and parental benefits program without touching on the question of employment standards governing leave and the right to return to work after maternity and parental leave. Even if these standards generally fall under provincial jurisdiction, the Federal government should show leadership on this question by setting an example through the standards set out in the *Canada Labour Code* (Section 3).

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[3] *United Nations Committee on 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 . Site visited June 2, 2006.

1. Improvements to maternity and parental benefits under the *EI Act*

For several years, the Women's Network of PEI has been campaigning for improvements to maternity and parental benefits. The Women's Network of PEI has set out a series of principles to guide reform of maternity and parental benefits. NAWL enthusiastically supports these principles. Many of NAWL's recommendations echo those of the Women's Network.[4]

What's more, a number of groups including the Canada Labour Congress (CLC) have been campaigning for improvements to the EI Act as a whole. The CLC recommends lowering the eligibility requirement to 360 hours in all regions of Canada, eliminating the two-week waiting period, increasing the benefit level to at least 66% of regular income and increasing the $423 maximum weekly benefit. NAWL wholeheartedly endorses these recommendations. They represent a critical step in eliminating the barriers that prevent many women workers (including many working mothers) from receiving all types of benefits under the EI Act. And although they are targeted to all workers, these recommendations would greatly improve access to maternity and parental benefits for new mothers.

However, regardless of the evolution of general EI reform, NAWL recommends that the current maternity and parental benefit regime be expanded without delay through the development of specific rules within EI for maternity and parental benefits.

A closer look reveals that the EI Act already contains specific rules for maternity and parental benefits. In 2001, the government extended the duration of parental benefits and lowered the eligibility requirement to 600 hours for access to maternity and parental benefits.

However, in spite of women's increased labour market participation, far too many mothers are not eligible for these extended maternity and parental benefits. Self-employed women are just one example.Even if women employees have contributed to the EI Fund for years, they may not be able to qualify for benefits when they need them most. And benefits are so low that not all mothers can afford to take the maximum leave period. Women in precarious employment and with low incomes such as single mothers, women of colour, women with disabilities and Aboriginal women are particularly vulnerable to the inadequacies of the EI Act.

The Federal government should amend the EI Act to allow for **more generous maternity and parental benefits (section 1.1)**. This would help reduce the huge economic penalty women working outside the home pay when they have children. As we explained earlier, the Federal government should contribute directly to financing this much-needed expansion to the maternity and parental benefit regime.

[4] The PEI Women's Network's publications are available on their web site at: http://www.wnpei.org/pb_main.html. Accessed June 2, 2006.

And what good is a maternity and parental benefit program if many women in paid work are not eligible for the program? The maternity and parental benefit program should also be more inclusive, allowing for **better access to benefits** (**section 1.2)**, including for self-employed women.

1.1 Better maternity and parental benefits

The Federal government should amend the EI Act to allow for more generous maternity and parental benefits. Amendments to abolish the waiting period for workers receiving maternity and parental benefits and convert this two-week period to a period of eligibility for parental benefits should be adopted. The benefit level should be increased to 70% and the maximum yearly insurable earnings should be raised. Finally, benefits should be calculated on the basis of the best 12 weeks of income in the last year in all regions of Canada.

1.1.1 Eliminate the waiting period

Presently, before a new mother can begin receiving maternity benefits, she must sit out a two-week "waiting" period where she receives no benefit at all from EI.

Historically, the waiting period for EI benefits was justified as a way to discourage unemployed workers from immediately applying for benefits, without first searching for another job. But since new mothers are supposed to be looking after a child rather than searching for a job, there is no valid reason to maintain the current two-week penalty period for maternity benefits.

The waiting period has also been justified by an argument of administrative convenience. This argument is that if income is lost for a period of less than two weeks, it is inefficient to process a claim. Once again, this does not apply to maternity and parental benefits where all claims are likely to last longer than two weeks. In fact, the waiting period currently simply increases the financial burden on new mothers.

The Québec Parental Insurance Plan does not impose any waiting period on new mothers and fathers.

NAWL recommends that the two-week waiting period be abolished for maternity and parental benefits under EI.

1.1.2 Convert the waiting period to a period of parental benefits

Abolishing the two-week waiting period shouldn't shorten the duration of mothers' (or fathers') eligibility for benefits.

NAWL recommends that the two-week waiting period with no benefits be replaced by two additional weeks of parental benefits.

1.1.3 Increase the benefit level to 70% of regular income

Currently at 55%, the benefit level in Canada is one of the lowest rates in the world, both in developed and in developing countries.[5] Ideally, there should be no economic penalty for women when they temporarily stop work in order to bear and raise children.

On a short-term basis, mothers in the rest of Canada should at least have parity with mothers in Québec, who now benefit from a 70% (or 75%) income replacement rate for at least half of their weeks of benefits.[6]

The idea of collective responsibility for children – one that goes beyond the responsibility of individual workers and their employers – dictates that this top-up of the current benefit should be financed by the Federal government (see NAWL's paper *Thinking About How to Finance New Parental Benefits* (2007), available on-line at www.nawl.ca).. And in all fairness, since Québec has already set up a more generous benefit, it should have the right to an equivalent financial contribution from the Federal government.

NAWL recommends that the current benefit level be increased to 70% for maternity and parental benefits.

1.1.4 Increase the maximum yearly insurable income for all benefits

Until recently, maximum yearly insurable earnings under EI had been frozen for over a decade. In fact, they were higher in 1995 – $42 380 – than they are today! Since the yearly maximum determines the maximum weekly benefit, the weekly benefit had also been capped for over a decade.

As of January 2007, maximum yearly insurable earnings are set at $40 000. The weekly maximum benefit is $423/week. This means that mothers (and fathers) earning more than $40 000/year end up with an extremely low rate of income replacement.

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[5] See the PEI Women's Network "Summary of International Best Practices" (Appendix A) available at: http://www.fls-ntf.gc.ca/en/sub_fb_30.asp. Accessed May 31, 2006.

[6] In fact, under the Québec parental insurance plan, a mother who gives birth to a child can choose between two options. Option 1 allows for 18 weeks of maternity leave at 70% of income, 7 weeks of parental leave at 70% of income, 25 additional weeks of parental leave at 55% of income, plus 5 weeks of paternity leave at 70% of income. Option 2 allows for 15 weeks of maternity leave at 75% of income, 25 weeks of parental leave at 75% of income, plus 3 weeks of paternity leave at 75% of income. RQAP web site, http://www.rqap.gouv.qc.ca/souple/index.asp, accessed February 14th, 2006. This site also explains benefits for adoptive parents.

In Québec, the maximum weekly benefit is now $850, based on a 75% benefit rate for the same level of maximum yearly insurable earnings as for workers' compensation, that is, $59 000 in 2007, indexed annually.

NAWL recommends that the maximum yearly insurable earnings for the purposes of all EI benefits be increased immediately and then indexed annually.

1.1.5 Calculate benefits based on the best 12 weeks

Benefits are calculated on the basis of a person's income over the last 14 to 26 weeks in the annual reference period.[7] It is therefore possible for a person to be eligible for benefits but to be entitled to 0$ of benefits, for instance in the case of a seasonal worker.

The current method of calculating the amount of weekly benefits can have a discriminatory impact on women in several ways. To name just one example, a woman who has accumulated the hours that allow her to qualify for benefits because she worked steadily, part-time, over the last six months will receive much lower benefits than a man who has accumulated his hours by working full-time plus overtime hours over a much shorter period.

Furthermore, in order to qualify for full EI benefits, it is necessary to work the equivalent of two more weeks than the number of weeks required for eligibility (12 to 20 weeks) in your economic region (the *divisor rule*). This rule was set up to penalize workers that just work the minimum number of weeks necessary to qualify for employment insurance. However, it ends up penalizing mothers who have struggled hard to accumulate enough hours to qualify for maternity and parental benefits.

The Québec parental insurance program calculates benefits in a way that penalizes women less because it takes into consideration women's part-time employment patterns and family responsibilities outside of work hours. Women in the rest of Canada deserve as much.

Pilot Projects using the "Best 14 Weeks" for calculating the level of benefits are now underway in 23 different regions of Canada.[8]

NAWL recommends that maternity and parental benefits be calculated on the basis of the "Best 12 Weeks" in the last year in all regions of Canada.

[7] This total is then dived by a denominator that varies between 14 and 26 weeks according to the regional unemployment rate and the number of weeks in which there was insurable income.
[8] For more information, visit the HRSDC web site at :
http://www.hrsdc.gc.ca/en/ei/employers/information14weeks.shtml. Accessed May 31, 2006.

1.1.6 Modify the Family Supplement Program

Currently, the EI Program offers a Family Supplement to low-income families with dependent children. If annual family net income in the previous year was less than $20 921, the weekly EI benefit will be increased by $11.63 for a first child, $7.79 for a second child and $6.35 for each additional child. This supplement is gradually reduced until it disappears at an annual family net income of $25 921 in the previous year.

As Professor Ruth Rose points out, there is no connection between the fall in income resulting from the unemployment and entitlement to the family supplement benefit. In reality, the benefit is paid only to families that have chronically low incomes (below $20,921 in the year previous to the unemployment for a full benefit and between $20,921$ and $25,921 for a partial benefit).

The Canada Child Tax Benefit is a monthly benefit for low-income families with children (it has nothing to do with EI). However, even when family income drops considerably because one or both breadwinners have interrupted their work to look after a new child, the adjustment of the Child Tax Benefit can take from 7 to 19 months to kick in.

NAWL recommends that a family supplement be paid to all EI beneficiaries, regardless of family income. This would take into account the interaction between EI benefits and the time it takes for the Canada Child Tax Benefit to kick in.

1.2 Better access to benefits

Access to benefits should be broader and more equitable. Mothers and fathers with 360 hours of insurable earnings should be eligible for maternity and parental benefits. Entitlement to maternity and parental benefits should not be cancelled out for parents that have received regular EI benefits in the same year. Fathers (and by fathers we also mean co-fathers in same-sex families) should be encouraged right from the start to participate actively in rearing their children through benefits designated specifically for them. Mothers should be allowed a reach-back period in order to qualify for maternity and parental benefits. And self-employed parents should also be able to receive benefits when they temporarily stop working in order to look after a new child.

1.2.1 Lower the eligibility requirement to 360 hours for maternity and parental benefits

EI has evolved around the model of a traditional, male worker with a stable, full-time, year-round job, who doesn't interrupt his work to take care of other people, as is often the case for women workers.

To the extent that women are over-represented in jobs that do not conform to this norm such as part-time, occasional and on-call work, the negative effects of the 1996 EI reform

in terms of eligibility are more acute for women.[9] These negative effects are felt even more strongly by doubly disadvantaged women workers such as immigrants, racialized women, Aboriginal women, women with a disability as well as women with several young children and women living in a region of high unemployment.[10] In response to the negative effects of the 1996 reform on many vulnerable workers, we recall that the CLC has called on the government to lower the eligibility requirement to 360 hours in all regions of Canada.

Presently, the eligibility requirement for maternity and parental benefits is 600 hours, in all regions of Canada. Eligibility requirements for regular benefits vary from one region to another (420 - 700 hours[11]).

In other words, in certain regions of Canada, it is easier to qualify for regular benefits than it is to qualify for maternity and parental benefits. This is both absurd and inequitable.

NAWL recommends that in all regions of Canada, the eligibility requirement for maternity and parental benefits be 360 hours.

1.2.2 Respect a distinct entitlement to maternity and parental benefits

Presently, if a person has received regular benefits during a reference period of 52 weeks, the number of weeks for which she or he is eligible for maternity and parental benefits is reduced by the same number of weeks.

Conversely, if a person has received maternity or parental benefits during a reference period of 52 weeks, the number of weeks for which she or he is eligible for regular benefits is reduced by the same number of weeks. If new parents happen to be laid-off in the year following their maternity or parental leave, they can find themselves in dire straits.

Parents should not be penalized because they have taken maternity and parental benefits or had to draw benefits because of a previous lay-off. The purpose of maternity and

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[9] Canada Labour Congress. 2003. "Analysis of Falling Unemployment Insurance Protection for Canada's Unemployed". On line at: http://www.unemployed.ca/Falling%20UI%20Protection%20for%20Canada%27s%20Unemployed.pdf. Site visited May 3 2004. This data concerns regular employment insurance benefits.

[10] See Richard Shillington, 2003, « Access to Maternity Benefits." On line at : http://www.shillington.ca/publications/Maternity_Benefits.pdf, pages 9 and 11. Site accessed May 19, 2004. See also Monica Townson, 2003, *Women in Non-Standard Jobs, The Public Policy Challenge*, Ottawa, Status of Women Canada, page 34.

[11] See the HRSDC site at: http://srv200.services.gc.ca/iiws/eiregions/uirates.aspx. Accessed February 13th, 2006. The maximum number of weeks of regular benefits also varies from one region to another (36 - 45 weeks) whereas for maternity and parental benefits combined, 50 weeks of benefits are available in all regions of the country.

parental benefits is different from the purpose of regular benefits; entitlement should be kept distinct too.

NAWL recommends that entitlement to maternity and parental benefits be distinct from entitlement to other benefits under EI. The need for income replacement because of parenting should not have to compete with need for income replacement because of lack of work.

1.2.3 Designate benefits for fathers and co-parents

Experience shows that in countries where benefits are specifically designated for fathers (or the benefits are lost), more fathers take parental leave.[12] Where children have two parents, in order to encourage participation of both parents in caring for the child, we need designated benefits for each parent. (Where children have just one parent, the single parent should be able to use these designated benefits.)

The Québec parental insurance regime reserves five weeks of benefits for a second parent, usually the father but sometimes the co-mother or co-father in same-sex families.

NAWL recommends that an additional five weeks of benefits be available for fathers or a second parent, in same-sex families.

1.2.4 Allow a reach-back period

EI is based on the notion of workforce attachment. However, we have to recognize workforce attachment in the context of women's patterns of employment and women's role in childbearing and rearing.

Allowing a reach-back period is a way of making sure that eligibility requirements do not exclude women who have temporarily stopped work to raise children or to return to school. This kind of measure involves allowing women who do not have the required number of hours in the previous year to return to hours of work carried out up to 5 years previously in order to qualify for maternity and parental benefits. Often these mothers have contributed (or will contribute) to the EI Fund for years, yet they are unable to access benefits when they need them most.

There is a precedent for allowing a 3 to 5 year reach-back period to qualify for benefits under EI. This is currently the case for self-employment benefits.[13] Why should access to

[12] "Plus de papas poussettes?", Jacinthe Tremblay, *La Presse*, 19 septembre 2005, P. 2, La Presse Affaires.
[13] For the current Self-Employment Program under EI, "Eligible participants are those who, pursuant to the Employment Insurance Act, are unemployed individuals (…): 1. for whom an unemployment benefit period has been established or has ended within the 36 months prior to the date of requesting assistance; or 2. for whom a benefit period that included a maternity or parental claim has been established within the 60 months prior to the date of requesting assistance, after which the individual remained out of the labour market in order to care for a newborn or newly adopted child and is now seeking to re-enter the labour

self-employment benefits be more generous than access to maternity and parental benefits?

NAWL recommends that EI Act allow a 3 to 5 year reach-back period for women to qualify for maternity and parental benefits. Measures to ensure that women using the reach-back provision are not penalized in terms of the amount of their benefits should also be adopted.

1.2.5 Extend coverage to self-employed mothers and fathers

Self-employment for women is expanding rapidly. Women's self-employment accounts for much of the growth of solo or own-account self-employment.[14] 48% of self-employed women earn less than $20 000/year and immigrant women and women of colour are over-represented amongst the low-income self-employed.[15] Moreover, in 2000, most self-employed women returned to work within a month of giving birth.[16] Coverage for self-employed women in the event of having or adopting a child is essential.

Self-employed mothers and fathers (including the second parent in same-sex families) are covered under the Québec parental insurance plan.

Self-employed women in the rest of Canada should benefit from parental insurance too.

NAWL recommends that maternity and parental benefits as well as sickness and compassionate benefits be made available to self-employed workers. In 2004, the Parliamentary Standing Committee on Human Resource, Skills Development, Social Development and the Status of Persons with Disabilities[17] and in 2005, the Standing

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force.". HRSDC site: http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/epb/sid/cia/grants/self-emp/desc_self-emp.shtml&hs=uxp, accessed February 14th, 2006.

[14] Leah Vosko (editor), *Precarious Employment, Understanding Labour Market Insecurity in Canada*, McGill-Queen's University Press, Montreal & Kingston, 2006, page 67.

[15] "Ten Ways of Seeing Precarious Employment, Report to the Community-University Research Alliance on Precarious Employment", Toronto Training Board, Toronto, 2005.

[16] Web site of Canadian Council on Social Development. *Perception*, Vol. 23, No 4 (Spring 2000), Maternity leave, parental leave and self-employed workers: Time for action!", http://www.ccsd.ca/perception/234/ml.htm. Accessed February 14th, 2006.

[17] *Restoring Financial Governance and Accessibility in the Employment Insurance Program*, Parliamentary Standing Committee on Human Resource, Skills Development, Social Development and the Status of Persons with Disabilities (Raymonde Folco, Chair) December 2004. See Recommendation 22: **"**In view of the growing incidence of self-employment in the Canadian labour market, the Committee recommends that the government consider developing a framework for extending EI coverage, both in terms of regular and special benefits, to self-employed workers." Parliament of Canada web site: http://www.parl.gc.ca/infocomdoc/documents/38/1/parlbus/commbus/house/reports/humarp03/03-cov2-e.htm. Accessed June 12, 2006.

Committee on the Status of Women[18] made similar recommendations on coverage of self-employed workers under EI.

2. Universal Support Program for Children

Canadian society has an obligation to provide a decent standard of living for all children, whatever the earning capacity of their parents. In Québec, proposals are currently being put forth for a complementary program that would ensure a minimum income for all mothers with new children. This program would involve a top-up of parental insurance benefits for mothers with very low benefits and a minimum benefit for mothers who are not eligible for any parental insurance benefits.[19] Mothers who are not eligible for any parental insurance benefits include students, women who have not yet returned to work after having a previous child, unemployed women, women who are still teenagers themselves, women with health problems, women who are unpaid farm workers and women who are receiving social assistance. In the rest of Canada, these kinds of mothers also need a universal support program.

We will briefly describe some recent proposals for supporting the families of young children (section 2.1) and outline some principles that a universal support program should respect (section 2.2).

2.1 Recent proposals

In Québec, the *Association féminine d'éducation et d'action sociale* (Aféas) is proposing a minimum weekly benefit for all new mothers based on 70% of the minimum wage[20] for a 40-hour work week (70% x $8.00 x 40 hours = $224/week). Mothers who are not eligible for benefits under the Québec Parental Insurance Plan (QPIP) would receive this benefit. In 2006, 20 000 new mothers were excluded from the QPIP because they didn't earn at least 2 000$ in the relevant time period. Mothers receiving less than this amount under the parental insurance regime would receive the difference between this minimum amount and their maternity or parental benefit. According to the Aféas' calculations, all mothers (or fathers) whose annual income is between $2 000 and $16 120 would be eligible for this top-up benefit.

Aféas presents this benefit as an equitable measure for women who give birth or adopt a child, regardless of their professional activities during the year before childbirth or

[18] See the Report of the Standing Committee on the Status of Women at: http://www.parl.gc.ca/infocomdoc/38/1/parlbus/commbus/house/FEWO/report/RP2148183/FEWO_Rpt05/FEWO_Rpt05_Pg01-e.htm. Accessed June 1, 2006.
[19] For a discussion of funding of a Universal Support Benefit, see NAWL's paper *Thinking About How to Finance New Parental Benefits* (2007). Available on-line at www.nawl.ca.
[20] As of May 1st, 2007, the minimum hourly wage in Québec is $8.00. HRDSC site: http://www.sdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/clli/eslc/01Employment_Standards_Legislation_in_Canada.shtml&hs=lzl. Accessed August 27th, 2007.

adoption. According to Aféas, women are generally on the paid labour market at different times of their lives. Women should not be penalized if they have had to withdraw for a certain time, often to raise their children or because of lack of work.

A second Québec group, *Regroupement Naissance-Renaissance*, is proposing a more modest complementary program involving a one-time birth payment of $2 000 for the -- now greatly reduced -- group of mothers that are not eligible for benefits under the Québec Parental Insurance Plan.

Finally, in fact, the Harper government's so-called Universal Child Care Plan which provides $100 a month of taxable benefits for each child under six, is a third example of a universal support program, albeit a rather meager one. (Although this measure is being billed as a "child care benefit", it is actually a type of Family Allowance that has nothing to do with providing child care services). The $1 200/year measure illustrates how universal benefits can be taxed back in a way that actually ends up creating iniquities for low- and middle-income families. For example, a couple with two children in which one parent earns $150 000/year and the other only $5 000/year will benefit from the entire $2 400 after taxes. In contrast, a lone-mother family with two young children and an annual income of $28 000 will only keep $1 643 of the amount she received.

2.2 Basic Principles for a Universal Support Program

The principal of vertical equity implies that support increases as family income decreases. The principal of horizontal equity recognizes that all families with children have greater needs than individuals or couples without children. A universal family support program should strike a balance between these two principles.

At the poverty level, we calculate that each child in a family costs about $5 000 per year. The child benefit should be at least this much.

NAWL hopes to initiate further discussion of options for a universal support program with our community partners in the near future.

3. Improvements to Employment Standards governing maternity and parental leave

As we stated earlier, it is impossible to examine the practical difficulties associated with the current maternity and parental benefits program without touching on the question of employment standards governing the right to take leave and then to return to work (section 3.1). Employment standards in the Canada Labour Code are lacking and outdated (section 3.2). This also raises the question of the Federal government's role in establishing standards for maternity and parental leave, while keeping in mind Québec's right to determine its own employment standards. Indeed, in many respects, the Québec legislation on employment standards is a model for the rest of Canada.

3.1 Employment standards governing maternity and parental leave

Standards governing the right to maternity and parental leave and the right to return to work generally fall under provincial jurisdiction. This leads to iniquities between mothers in different provinces of Canada.

For example, to qualify for maternity or parental or adoptive leave, a mother or father[21] must normally have completed a specific period with one employer. Ontario requires 13 weeks of service; Newfoundland and Labrador as well as Prince Edward Island require 20 continuous weeks. Saskatchewan requires 20 weeks in the 52 weeks preceding the requested leave. Manitoba permits an employee to take maternity leave after seven months of continuous service. Alberta, Nova Scotia and the three territories all require 12 months of service.[22]

In our view, no previous service time should be required in order to be eligible for maternity, parental or adoptive leave, as is now the case in British Columbia, New Brunswick and Québec. Anything less amounts to allowing discrimination against mothers that runs contrary to women's equality rights under the *Canadian Charter* as well as Canada's international law obligations. With the changing nature of the job market and the growing number of women in precarious employment, continuous service requirements have an extremely detrimental effect on women who bear or adopt children.

The **service requirement** is just one area of employment standards law that is problematic. Other areas that need reform include the **length of leave** provided for with job protection. Mother or child (particularly multiple-birth children) may have health problems. Certain families may prefer having a parent provide care to a child (or children) for the first years of life. Leave should be allowed for up to two years after the birth or adoption with full job protection.

Job protection is another area that engages women's equality rights. The notion of job protection should be standardized to include the right to the same position or to an equivalent one if the position has been abolished, the right to wages and promotions to which the mother would have been entitled is she had been at work, the right to maintain and accumulate seniority as well as the right to continue to participate in employer pensions and insurance plans by paying the employee premiums only. Anything less is clearly discrimination against women under section 15 of the *Canadian Charter*.

The right to **paid leave for medical visits during pregnancy** is one way of reducing the transfer of the costs of having children to individual mothers. Similarly, the right to start

[21] This includes the second parent in same-sex families, where same-sex spouses are recognized under applicable provincial law.
[22] Source: "Length of Maternity, Parental and Adoption Leave in Employment Standards Legislation", available on the HRSDC web site at: http://www.hrsdc.gc.ca/asp/gateway.asp?hr=/en/lp/spila/clli/eslc/06Rate_of_Maternity_Parental_and_Adoptoin_Leave.shtml&hs=lzl. Accessed May 31, 2006.

adoption leave before the actual adoption when the mother (or father, including the second parent in same-sex families) has to travel to a foreign country to pick up the child would also greatly assist adoptive families.

Finally, **paid leave time for family responsibilities** recognizes that mothers (and fathers) continue being mothers (and fathers) even when they have returned to work. The transition from parental leave to paid work can be a difficult time for new parents and their children. This is particularly so when children are sick and unable to attend childcare, or have medical or other important appointments, as is often the case for disabled or adopted children. Outside of urban centers, parents and children often have to travel to go to these appointments.

Sweden provides a bank of paid leave time of up to 60 days, available from birth until children are eight years old, to allow parents to better reconcile their work and family responsibilities. Québec employment standards already allow for 10 days of leave time annually for family responsibilities.

These are a few examples of areas in which employment standards have a crucial role to play in supporting mothers and fathers of young children who are on the labour market. Outside of Québec, the Federal government has an important role to play in ensuring that mothers and fathers across Canada benefit from the same support in terms of the right to leave time, to job protection and to return to work. The *Canada Labour Code* should be a model for the provinces and territories to follow. Unfortunately, this is far from the case.

3.2 Reform the *Canada Labour Code*

The *Canada Labour Code* requires six months of continuous service in order for employees in federally-regulated workplace to be eligible for maternity and parental leave. This requirement is higher than in the majority of jurisdictions in Canada, including British Columbia, New Brunswick and Québec, where there is no service requirement for maternity and parental leave.

Length of leave and job protection provisions in the Code are inadequate. No paternity leave (paid or unpaid) is available to new fathers, nor to women whose same-sex spouse gives birth or adopts a child. Contrary to the vast majority of jurisdictions in Canada (all except Alberta, Manitoba, Terre-Neuve), the Code provides for no leave (paid or unpaid) for family or parental responsibilities.

A pregnant or nursing worker whose working conditions pose a danger to her or her child and who cannot be reassigned only has a right to leave without pay. This is a flagrant violation of women's right to equality in the workplace as well as a clear example of how employers are allowed to require that individual women bear the costs of dangerous workplaces.

Amendments to the *Canada Labour Code* are essential in order to bring federally regulated workplaces in line with women's equality rights guaranteed by the *Canadian Charter*. These amendments would also mean that the *Canada Labour Code* would reflect stated Canadian policy – much touted by the government in international forums – in support of children and families with young children.

Once the Federal government has reformed the *Canada Labour Code*, it can begin to play an important role in encouraging provinces to bring provincial employment standards on maternity and parental leave up to a decent and uniform level across the country.

Conclusion

In Canada, becoming a mother has a dramatic effect on women's economic well-being. If these women are -- or become -- single mothers, they and their children risk a significant drop in their standard of living. For women who already have low incomes such as many Aboriginal women, women with disabilities and women of colour, the outcome can be grim.

As we previously stated, no single initiative will be sufficient to correct this situation. However, improving maternity and parental benefits under EI is one critical place to begin reforming the law in order to stop making women pay such a high price for becoming mothers. Employment standards are another problematic area because the law inadequately protects mothers (and fathers) who temporarily stop working to take care of young children. Amendments to the *Canada Labour Code* are long overdue, as are efforts to harmonize provincial employment standards legislation with respect to maternity and parental leave.

NAWL believes that if the recommendations put forward in this document were implemented, this would be a good first step towards a social policy that is genuinely supportive of families with young children in Canada. In the meantime, mothers continue to pick up the slack, at the price of their own economic independence.