

**AVAILABLE BUT NOT ACCESSIBLE:
THE TRIPARTITE SYSTEM OF
MATERNITY AND PARENTAL LEAVE
PROVISION IN CANADA**

By

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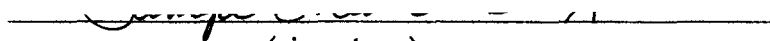
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Available But Not Accessible: The Tripartite System of Maternity and Parental Leave Provision in Canada

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Abstract

This project provides a descriptive and critical analysis of the tripartite system of maternity and parental leave provision in Canada. It examines inequalities in access to leave and levels of protection, factors creating these divisions, and resulting outcomes. Policy changes which could address some exclusions, are considered

Since the advent of major welfare state and labour market restructuring during the past decade, no research has provided a detailed examination of women's access to and use of the full range of maternity and parental leave provisions in Canada. The shifting context of these provisions, taking into account labour market restructuring, evolving family structures, and current trends in Canadian social policy reform, is explored. The project draws from Richard Titmuss' conceptual schema of social divisions of welfare, and Nancy Fraser and Linda Gordon's analysis of dependency discourse. To trace the evolution of Canadian maternity and parental leave policies and highlight emerging inequalities, the study analyses a number of sources including statistical reports, policy documents, summaries of policy debates, and transcriptions of House of Commons sessions.

This project reveals major inequities in access to EI maternity and parental benefits, employment standards job protection, and occupational maternity and

parental leave provisions. The current system not only fails to successfully create equality for employed women, it creates clear divisions among women based in part on race, ethnicity, and immigrant status. Some groups of women are more likely than others to be situated in those parts of the labour market providing employment unlikely to qualify them for maternity and parental leave provisions which are based solely on women's labour market position. The discrepancy between a changing labour market on one hand, and legislation on the other, means that fewer women are now eligible for paid benefits and job protection yet those who have remained eligible are now enjoying better benefits. This analysis of the tripartite system of providing for maternity and parental leave demonstrates that supports for childbearing are highly inequitable because of the intersection of programmatic and economic structures. Yet access is framed in a way that suggests provisions are directly related to individual "effort."

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Chapter 1 Introduction

On October 13, 1999, as part of a proposed National Children's Agenda, Canadian Prime Minister Jean Chrétien told the Canadian people that his government would

extend Employment Insurance maternity and parental benefits from the current maximum of six months to one full year. To make these benefits more flexible to meet the different needs of families. To make them more accessible by increasing the number of parents eligible for support (National Children's Agenda Caucus Committee, 2003).

But Chrétien's use of the words "flexible" and "accessible," and his promises of "increasing the number of parents eligible for support," gives a false impression of current federal initiatives. His government's implementation of the Employment Insurance (EI) Act had already ensured that fewer members of the paid work force were eligible for maternity and parental benefit support than under the previous Unemployment Insurance (UI) Act (Canadian Labour Congress, 2000). Extending parental benefit duration from six months to one year and a small reduction in the labour force attachment required to qualify may *appear* progressive but in fact, these reforms stand to have a negligible impact, improving benefits only for those who remain "eligible" and doing nothing to help those who do not have work that meets the government's criteria of adequate labour force attachment. The person most likely to qualify for EI

maternity and parental benefits is also the most desirable citizen in the eyes of the government; the full-time, full-year, well-paid employee. The less desirable, and therefore less “deserving” citizen, as evidenced by current policy, is the woman who does not qualify for EI maternity and parental leave, does not have provision for job protection during leave because of her labour market position, and does not have a male partner to support her.

Paradoxically, extending parental benefit duration actually creates greater disparities in the provisions available to families. Most of those ineligible for EI maternity and parental benefits still get nothing and those who were *already* eligible now get more. The federal government appears to have prioritized leave length while paying only minor attention to access. In this initiative, the federal government reduced the required hours of work from 700 to 600 only after the EI Act of 1996 had already increased labour force attachment requirements from 300 to 700 hours¹ so contrary to appearances, there was no significant lessening of eligibility criteria as the reduction scarcely makes a dent in the problem of unequal access to maternity and parental leave. Placing emphasis on leave length does make sense politically however. Lengthening leave duration is easy for people to understand, and, because it looks good in the public eye, glosses over access and equality issues, costing the government little. The general impression that access is fairly equal then helps justify variations in the amount

¹ About 10,000 fewer women were able to access maternity benefits in 1999 than was the case under the UI Act because of the increase in labour force attachment requirements from 300 to 700 hours (Canadian Labour Congress, 2000).

paid based on individual “work effort.” The message being sent by government in taking this approach must be considered. Whether intentional or not, policy that makes supported maternity and parental leave more available to a certain segment of the population makes a judgement about who “should” be procreating. Such a policy renders some children more “deserving” of parental involvement at the beginning of life than others and some women more “deserving” than others of assistance in the balancing of productive and reproductive activities.

Extending EI parental benefits also brings new potential for confusion. In announcing the extended benefits, the federal government failed to clarify that while longer benefit duration might be available to some, the federal government is not in a position to guarantee job protection because most workers are subject to provincial or territorial employment standards (ES) legislation² for access to job security. One year of combined maternity and parental benefits may in fact now exist, but for many, these benefits are not *accessible* because of the qualifying conditions for EI and job protection through ES. As will be demonstrated in the following chapters, these inequities in access to leave are further compounded when occupational provisions, the third tier of the system of providing for maternity and parental leave, are taken into account.

² Depending on where a worker is situated in the labour market, job protection is determined by provincial or territorial employment standards legislation or the *Canada Labour Code*.

The Tripartite System of Maternity and Parental Leave Provision

In Canada a tripartite system provides maternity and parental leave. This system comprises social insurance (EI), employment standards legislation (job protected maternity and parental leaves), and occupational welfare (employer sponsored leave provisions and top-up benefits). Ostensibly, current maternity leave policies intend to assist women to become mothers without any negative effect on their capacity as paid workers. Parental leave intends to encourage changes in the sexual division of labour within the family by making it possible for both men and women to take time away from paid work to parent. However, because these benefits are not enjoyed universally, their equality enhancing impact is questionable. In 2000, only 54% of all new mothers in Canada received EI maternity benefits (Marshall, 2003). Who is excluded from support is not fully known. HRDC does not collect details of the race, ethnicity, or immigrant status of EI maternity and parental benefit recipients, there are no statistics on who is eligible for employment standards job protection for maternity and parental leave, and there is a dearth of information about occupational provisions for maternity and parental leave. Without this data there is no definitive way to know who is supported and who is excluded but we do know that access to provisions is determined by labour market position in all parts of the tripartite system and that inequality in access is in turn justified based on this position by privileging certain positions over others within the labour market hierarchy. We must question why some mothers and their children are

considered more deserving than others. Families that receive higher levels of support are perceived as those who have earned it but as the following analysis will demonstrate, this is a perception based on the way provisions are delivered, not any real difference in the “social need” that the benefits are intended to address. Richard Titmuss’ (1963) argument that there are social divisions of welfare and that these act as an agent of stratification, helps elucidate inequalities in the tripartite system of maternity and parental leave provision in Canada. The way provisions are structured and delivered creates personal responsibility for what is socially constructed thereby deflecting attention away from government obligation to mediate against these inequalities.

The Research Problem

This project is intended to redress some of the gaps in existing research by providing a critical social policy analysis of EI maternity and parental benefits, employment standards legislation at federal and provincial/territorial levels, occupational provisions for maternity leave, and the interplay among the three components of the existing system. Access to benefits, levels of protection, and resulting outcomes will be examined in order to enhance our understanding of maternity and parental leave in Canada and the ways in which existing policies contribute to social and economic inequality. Possible policy changes intended to address some exclusions, reduce inequalities, and advance women’s social position and the balancing of “productive” and reproductive roles will be considered.

This research project traces the evolution of Canadian policies in support of maternity and parental leave and highlights inequalities emerging within the present system as a whole. The project's primary focus is the tripartite system of maternity and parental leave provisions. As a secondary focus, the recent extension of parental leave provided through the federal EI program will be examined. This project will question the significance of the impact of the federal extension given that it constitutes an amendment that increases benefits for some while doing little to make benefits accessible to all. More specifically, it will be argued that the positive impacts of this federal government initiative are negligible at best, and gloss over the issue of equality of access.

To date, Canadian studies of maternity and parental leave focus mainly on paid federal provisions with little analysis of inconsistencies based on jurisdiction, and even less focus on employer leave provisions (Townson, 1983; Schwartz, 1988; Moloney, 1989; Trzcinski & Alpert, 1991; Iyer, 1997; Marshall, 1999; Marshall, 2003). Existing research reveals inequities and inconsistencies, highlights the importance of maternity and parental leave policy, and engages in some comparative analysis with other nations, but fails to capture the full extent of inequity in the present Canadian system as a whole. The full range of provisions for maternity and parental leave, and the impact of welfare state and labour market restructuring in the last decade on women's access to and use of these provisions, are not examined in detail in existing research. Evaluating

policy mostly on the basis of coverage presents a skewed picture because accessibility is largely ignored.

The work of Nitya Iyer and Katherine Marshall was particularly useful in conceptualising the material for this project. Iyer's 1997 study, *Some Mothers Are Better Than Others: A Re-examination of Maternity Benefits*, examines accessibility but focuses on EI maternity and parental benefits only. Iyer examines EI maternity and parental benefits as a feminist policy, defining feminist policy as a policy that attempts to "reduce inequality between men and women in a way that is respectful of and attentive to differences among women" (1997:170). She concludes that the program fails as a feminist policy in that it is "gravely deficient" in assisting "women to become mothers without being penalized in their capacity as paid workers" (1997:170). Iyer demonstrates that the typical recipient of EI maternity benefits is a white, middle-class woman employed for pay on a full-time basis with a higher than average income or a partner who is the primary income earner. This is particularly notable in the context of a labour market in which non-standard employment is increasingly prevalent. Women of colour, particularly immigrant women and First Nations women, tend to be concentrated in non-standard employment and, therefore, comprise the group least likely to qualify for these benefits (Iyer, 1997). Compounding this is the fact that among those who do qualify, "immigrant women of colour, Aboriginal women, and women with disabilities are disproportionately likely to earn incomes that yield extremely low levels of maternity benefits" (Iyer, 1997:170).

Katherine Marshall's work (1999; 2003) also focuses on the EI maternity and parental benefit program highlighting the relationship between leave length and access to paid benefits, and the impact of the federal government's extension of federal parental benefit duration from 10 to 35 weeks on leave length. In her 1999 study, *Employment After Childbirth*, Marshall used data from the Longitudinal Survey of Labour and Income Dynamics (SLID)³ to demonstrate that all women who took a six month maternity and parental leave received some paid benefits while only 40% of women who returned to work after only one month received any paid benefits (Marshall, 1999:19). In addition, 80% of self-employed workers, who have no provision for paid benefits or job protection, were back to work within one month (Marshall, 1999:19). She concluded that access to paid benefits is a major deciding factor, if not *the* deciding factor, for many women in determining whether a maternity leave is possible. More recently, in *Benefiting from Extended Parental Leave*, Marshall (2003) reports that the extension of EI parental leave has increased the median time mothers take off work from 6 to 10 months, however, mothers in non-standard employment are almost five times more likely to return to work early as compared to women with more "standard" employment. This suggests that it is women with "standard" employment who are benefiting most from these reforms. Marshall also found that women with lower earnings returned to work

³ SLID is a longitudinal household survey that began in January 1993. Respondents entered the survey and remained for six years, completing detailed questionnaires each year on labour market activity and income (Marshall, 1999).

more quickly and while reasons for this were not theorized directly, this is perhaps due to low EI payments which for many, would make a long leave financially impossible. While Marshall asserts that extending parental leave has had a “major impact on new mothers and fathers” (2003), she also acknowledges that only those mothers receiving paid benefits extended their stay at home following the parental benefit amendment.

Significance of the Research

The following analysis raises concerns about the value our society places on the parenting activities of citizens in different social locations. It shows that the current tripartite system of maternity and parental leave provision does not create equity successfully for women in the labour market vis à vis men, but does create clear divisions among women based in part on race, ethnicity, and immigrant status. Programs which tie access to maternity and parental leave provisions exclusively to a narrow definition of paid work serve families with dependent children poorly and sends contradictory messages to women about their role in Canadian society. On one hand, government attests to the benefits of active, involved parenting; on the other, certain government initiatives inhibit many people, certain groups in particular, from obtaining the means through which these objectives can be met. The recent extension of federal parental benefits has improved the protection available to some, and the existing tripartite system is far better than no system of provision at all, however, the current system is fragmented and serves particular people better than others. The

objective of maternity and parental leave provision in Canada should be to provide support to *all* families with newborn children. Therefore, maternity and parental leave must be put on the national agenda so that current policies are examined, and reforms initiated.

This project contributes to this analysis but is limited in scope because of lack of data, particularly in the area of occupational provisions for maternity and parental leave. It is argued that in order to improve the system's equality enhancing potential and reduce the inequality which results from the current system, a number of possible changes should be opened up for debate. Possible alternatives to consider include a universal flat-rate benefit not linked to labour force participation. Alternately, enhancing current provisions through EI by relaxing eligibility requirement and increasing benefit levels, extending coverage to self-employed workers and introducing a gender-specific paternity benefit should be considered.

Conceptual Framework

Instead of transforming the gendered division of labour, the current means of providing for maternity and parental leave creates and reinforces systemic inequalities. In order to examine how this works, the social divisions of welfare, as laid out by Richard Titmuss (1963), is a useful framework. Canada's system of maternity and parental leave provision does not fit perfectly within

Timuss' framework⁴ but his argument that the way welfare is delivered acts as an agent of stratification is a useful tool in understanding the dynamics of the more and less visible means of providing for maternity and parental leave and what the consequences of this might be. Titmuss argues that failure to recognize *all* kinds of assistance as "welfare" allows, or perhaps even encourages, the development of distinctive social policies for different groups in society (1963). Federal maternity and parental benefits, provincial and territorial leave provisions, and employer maternity and parental leave and benefit provisions all have the ostensible objective of supporting families' reproductive activities but the way provisions are delivered varies, resulting in considerable variations in access. Provisions for maternity and parental leave through EI have a high public profile, and, while EI is considered less stigmatising than social assistance, EI maternity and parental benefits are a government benefit. Therefore, they are considered a form of welfare, particularly in government rhetoric about the unaffordability of social programs. Occupational provisions and top-ups are less-visible, provide more generous benefits than EI and ES, tend to be available to those in more secure and highly paid jobs only, and are not framed as a form of "welfare" in mainstream discourse.

Nancy Fraser and Linda Gordon (1997) provide a feminist post-structural analysis of dependency discourse providing insight into the way social identities

⁴ There is currently no fiscal welfare provision for maternity and/or parental leave in Canada, and maternity and parental leave provisions within employment standards legislation does not fall within the social, fiscal, or occupational welfare categories.

are imposed on individuals rendering some women more deserving than others. Central to Fraser and Gordon's thesis is the understanding of language as not only a tool to describe social life, but an active force in shaping it. Words and phrases carry unspoken assumptions and meanings that powerfully influence the way people and their actions are regarded by society. The result is the making up of a body of "common sense" beliefs that are taken for granted; and because they are taken for granted, they generally escape critical scrutiny (Fraser & Gordon 1997:122). This privileging of certain interpretations of how people should live and behave is generally to the advantage of dominant groups in society and to the disadvantage of subordinate groups. Because these beliefs become part of a society's dominant thinking, people stop debating or questioning them. Existing maternity and parental leave policies privilege certain interpretations of social life while other interpretations and opinions about what is just and what is possible, are de-legitimized. Fraser and Gordon's analysis of dependency discourse in relationship to the "welfare system" is useful here in understanding the implications for women who bear children in Canada, of the privileging of certain labour market positions.

Our perception of those in need of certain benefits has a profound effect on the way we provide collective support, and the extent to which we support certain members of our society. Government interventions support the reproductive activities of some women much more fully than others. Like Titmuss, Fraser and Gordon argue that these distinctions are not based on any

fundamental difference between the kind of “needs” these benefits provide for, but rather, are politically constructed premised on whose “needs” are deemed to matter (Fraser and Gordon, 1997).

There are numerous reasons gender equity is not realized in the workplace and divisions based on race, ethnicity and immigrant status continue to be created and reinforced. Women are still paid less than men for equal work, women still carry the bulk of responsibility for the care of a home and family, and women still make up the bulk of voluntary sector workers. What is clear is that it will take more than simple tinkering with policy to change these inequalities. While fundamental structural changes are needed in how production and reproduction are organized (Fraser, 1997) an analysis of policy can show why such structural changes are needed and the direction that the changes need to take. Currently, social programs in general, and programs in support of maternity and parental leave in particular, work to constrain individual choices about the way women and families can live but have not succeeded in closing income and occupational gaps between men and women in the labour market. Also, in failing to be responsive to changes in the labour market and the make-up of society, these policies, ironically, create new class divisions between women, the very people for whom these policies were intended to create equality.

There is no inevitability to the way we provide for maternity and parental leave in Canada and the resulting inequality of access. Access is dictated by the way policies and programs deliver provisions. Responsibility for access is placed squarely on the shoulders of individuals, primarily mothers, who might seek or need the provision. This emphasis on individual “achievement” in terms of labour market position allows governments to justify insufficient provisions and obscures the extent to which inequalities are tied to structural changes in the economy and government social programs, instead of individual effort. Examination of maternity and parental leave provisions in other nations (Dixon, 1999; McRae, 1991; Schwartz, 1988; Kamerman & Katz, 1992) and consideration of alternatives for Canada demonstrates that it *is* possible to have a more equitable system, given the political will. At present, such will is demonstrably lacking.

The inequalities found within the tripartite system of maternity and parental leave provisions in Canada raise a number of questions about whom governments judge fit to procreate and whose children are deserving of extended parental involvement at the beginning of life. Yet such inequities tend to be hidden, and, therefore, are not part of public discourse when initiatives are introduced and existing policies reformed. In addition, government and media pejorative rhetoric about certain groups of people helps shape public attitudes, thus helping to justify giving certain people less. For example, Fraser and Gordon (1997) argue that in the U.S., the label “welfare mom” conjures up the

image of a black mother living in poverty and because welfare dependency is framed pejoratively, we begin to regard women living in this position very negatively. As this negative view becomes generally accepted, policy makers can force increasing numbers of people into a lower social position unopposed.

Research Methods and Data Analysis

This research involves analysis of existing statistics, policy documents, summaries and text of policy debates, as well as discourse, particularly in the political arena. The analysis is interpretive in order to provide insight into the social, political and economic context in which these policies emerged, are currently situated, and are being reformed. This interpretative analysis involves a critical examination of text as a political, economic and social narrative in order to reflect upon the role that ideology plays in social policy creation and reform. In focusing on the system of maternity and parental leave provision, this study examines the EI Act, select instalments of UI Acts, employment standards legislation both at the federal and provincial/territorial levels, and provisions in Canadian collective agreements. In addition, the study considers various analytical reports of the EI/UI program, Statistics Canada data of EI maternity and parental benefit recipients, and past analyses of maternity and parental leave provisions in Canada. Finally, transcriptions of House of Commons Sessions, and submissions made to government in response to UI reform in 1970, are examined (Appendix A). Collectively, the analysis presented in this study reveals who Canadian maternity and parental leave provisions are best serving,

the extent to which policies have met their equality enhancing objectives, and the ways in which they fail to meet these objectives.

Organization

In the remaining five chapters, this study will identify the context in which these policies are situated and examine in detail each component of the tripartite system of providing for maternity and parental leave in Canada. Particular attention will be paid to highlighting inequalities within each part of the system and examining the dynamics of the integration of each component of the system with the others. Chapter 2 provides the social, political, and economic context for undertaking a critical social policy analysis. Chapter 3 provides an analysis of Employment Insurance provisions. Chapter 4 examines employment standards legislation Canada. Chapter 5 examines employer leave and benefit provisions, and Chapter 6 summarizes and integrates the analysis of the preceding five chapters.

Chapter 2

Economic, Social, and Political Context of Maternity and Parental Leave in Canada

This chapter examines the economic, social, and political context of Canada's tripartite system of maternity and parental leave provision. In particular, this chapter provides a historical overview of maternity and parental leave in Canada, labour market restructuring, the heterogeneity of women's position in the labour market vis à vis men, and in relation to one another, increasing variation in family structures, income polarization, the feminization of poverty, and a political climate driven by neoliberal ideology. It will be shown that labour market restructuring, occupational and income polarization, and policies premised on assumptions about the way people live and work, all create barriers to women's access to maternity and parental leave resulting in considerable inequality among women bearing children in Canada.

A Brief History of Maternity and Parental Leave in Canada

Job-protected maternity leave was first introduced in Canada more than 80 years ago; more than 30 years ago paid federal maternity benefits were entrenched within the UI Act; and over 20 years ago paid maternity leave was first negotiated in a Canadian collective agreement. In 1921, British Columbia passed Canada's first maternity leave legislation granting women six weeks of leave (Morris, 2000). In 1970, Grace MacInnis, federal MP for Vancouver-

Kingsway, introduced a private bill in the House to provide maternity leave (Carter & Daoust, 1984) and the federal government subsequently introduced 15 weeks of paid maternity benefits in the UI Act 1971. In 1981 the Canadian Union of Postal Workers successfully fought for the first negotiated paid maternity leave in English Canada⁵ (Canadian Union of Postal Workers, 2002). Recognition of women's increasing role in Canada's paid labour market and the corresponding need to legislate greater equality for women provided impetus for the struggle for, and subsequent implementation of, each of these provisions. These reforms sought to achieve, or at least enhance, equality between men and women within the paid labour market by making it possible for women to take time away from work to have children while retaining their jobs, and in some cases seniority, benefits, and wages. Current policies supporting maternity and parental leave have evolved from these original reforms and initiatives.

Theoretically, maternity and parental leave provisions today are still predicated on a desire to promote gender equity in the paid labour market and therefore society at large. But despite the continued existence of each of these provisions and numerous reforms intended to enhance protection, equality has not been achieved. Compounding this inequality is a loss of focus on women's issues both by governments and the mainstream media over the last decade. The sense that equality is something that was fought for and won by a previous

⁵ The "Common Front" of public sector workers in Quebec negotiated paid maternity leave in the late 1970's under the René Lévesque government (Canadian Union of Postal Workers, 2001).

generation of women appears to be pervasive and women's equality has been largely removed from policy agendas and mainstream discourse (Brodie, 1996). The 1990s and beyond have seen an erosion of the social safety net in Canada in general, but women's services are particularly hard hit. We see a loss of funding for women's organizations and services and programs that women rely on at national and provincial levels with particular evidence of this first in Alberta, then Ontario, and now British Columbia. It is in this context that in 2000, Mike Harris, Premier of Ontario, argued that his government had no plans to amend the *Ontario Employment Standards Act* to align with extended EI parental benefits arguing, "quite frankly, that hasn't been an area of significant pressure where women have spoken out" (Hubley, 2000). At the same time, the Harris government was depriving women's services of resources demonstrating a lack of commitment to women's equality.

Women and Labour Market Restructuring

Women's labour market participation and recent labour market restructuring is central to maternity and parental leave provisions. The gender balance in the paid labour market changed considerably over the past 50 years. In the early 1950's, 11% of married women worked outside the home for pay (Townson, 1987:1). By 1996 61.6% of married women were active in the paid labour market (Scott & Lochhead, 1997:6) comprising 45.2% (Scott & Lochhead, 1997:6) of the paid work force. In 2002, 71.5% of women with children under 16 were employed for pay outside the home (Jackson, 2003:31) up from 39% in 1976

(Zukewich, 2000). Also in 2002, 64.9% of women with children under the age of 6 were employed (Jackson, 2003:31), more than double the figure in 1976 (Zukewich, 2000). Overall, in 2002, 73.3% of employed women with one or more children under the age of 16 were full-time workers in the paid labour market and 70.8% of employed women with a child under the age of 6 had a full-time job (Jackson, 2003:31).

Women's labour force participation rates climbed steadily until the 1990s, with a slight drop in the early 1990s during economic recession (Zukewich, 2000:99). In 2002, 56.4% of all women in Canada were employed compared with 67.4% of men (Jackson, 2003:2). In fact, the labour force participation rate of women in Canada is now one of the highest among OECD countries (Jackson, 2003:6) surpassed only by Scandinavian countries where almost 75% of women are employed (Jackson, 2003:6). But despite major growth in women's labour market participation since the 1950s, occupational polarization between men and women remains and the paid work that many women do is neither well paid, nor prestigious, nor secure (Vosko, 1996:256; Zukewich, 2000:103).

Many women work in non-standard or "precarious" jobs for low wages, limited working hours, limited access to benefits, and limited prospects for advancement (Jackson, 2003:8). Women are much more likely to work part-time than are men. In 1999, 28% of all employed women in Canada worked part-time compared to only 10% of employed men (Zukewich, 2000). Women are also

more likely than men to work for small firms (Jackson, 2003:9), a significant fact in the context of maternity and parental leave because, as is demonstrated in subsequent chapters, part-time workers and those working for small firms are less likely to have access to maternity and parental leave than are full-time workers employed by large firms.

The past several decades, and the 1990s in particular, witnessed major labour market restructuring in Canada. Although women were always disproportionately represented in non-standard employment, restructuring has led to an overall shift from full-time, full-year employment towards non-standard employment. Non-standard employment includes part-time and temporary employment, holding multiple jobs, and self-employment. What is referred to in this study as self-employment, is generally not the starting up of successful businesses that are creating jobs in the paid labour market. Instead, self-employment in many cases refers to “own account” employment. For example, garment workers who work from home are classified “self-employed” by the federal government, but the piecework inherent in this occupation is extremely low paid and often results in hourly wages far below minimum wage (Gupta, 1996:46). Wages as low as the equivalent of \$3.50 per hour have been reported (Jamal, 1995:30).

Temporary, contract, and part-time jobs now comprise the fastest growing segment of the Canadian labour market (Yalnizyan, 1998:x). Since 1975 the

number of part-time jobs in Canada doubled (Armstrong 1997:46). A generation ago, two thirds of the labour force worked full-time whereas now only one-half of all workers have a full-time job (Yalnizyan, 1998:x). The concentration of women in non-standard employment, particularly low-level non-standard employment, has serious implications for women and families. One in three women are employed in sales and services jobs, the lowest paid occupational group, compared with 1 in 5 men (Jackson 2003:16). Of women found in business, finance and administrative occupations, 89% are in secretarial, administrative and clerical jobs while men in this occupational category are much more likely to be in professional jobs (Jackson, 2003:16). Access to benefits through many social programs is dependent upon an individual's labour market position so it is significant that women tend to be concentrated in jobs with lower wages, less desirable working conditions, and poor benefits.

There is also a significant wage gap between men and women in all OECD countries. In Canada the average woman earns only 81.6% of what the average man earns⁶ (Jackson 2003:21). Wage inequality reflects occupational segregation based on the historical devaluation of unpaid work traditionally undertaken by women. Its invisibility, and the lower status accorded these caregiving activities within the paid labour market, reduces the status accorded to occupations associated with women. Lower status is in turn used to justify lower wages. The

⁶ According to *OECD Employment Outlook, 2002*, "research has consistently shown that the greatest part of the wage gap can not be 'explained' by factors such as educational level and job experience of women" (Jackson, 2003:18).

jobs available to women, and particularly those from visible minority groups, are often labelled “unskilled,” thereby justifying lower wages and undesirable working conditions (Gupta, 1996:8; Jamal, 1995:28). This gendered division of labour keeps women concentrated in segments of the labour market most likely to have non-standard employment with its consequent reduced income and minimal job security.⁷

While women are more likely than men to be at the lower end of the labour-market hierarchy, visible minority women are more likely than other women to work in non-standard jobs being paid low wages (Chard, 2000; Jackson, 2003). These women are relegated to the lowest paid and lowest status jobs in the paid labour market despite the fact that “workers of colour” have higher levels of education compared with the labour force as a whole (Jackson, 2003). The 1996 Census reveals annual average earnings of all visible minority workers in Canada 15% lower than the national average for all workers (Jackson, 2003:23). Among women, in 1996 “workers of colour” had average annual earnings of \$14,634 compared with \$16,612 for all other women workers

⁷ Some recent studies misleadingly indicate that the polarization of earnings between men and women is declining. Instead, what we are really seeing is the erosion of men’s wages and working conditions (especially those of younger men) and gains for a particular group of women – those from the baby boom generation. Over the past 20 years, women’s earnings increased slightly while the earnings of men stagnated. Some studies overestimate women’s progress in closing the wage gap because women’s current position is measured against their past position vis à vis men instead of comparing women to their current position vis à vis men. Because women started with lower average earnings, any gains made become magnified in comparison to similar gains made by men. In addition, of the gains women *have* made, most are restricted to the baby boom generation. Young women may *appear* better off relative to young men today, but this gain can be attributed to a decline in young male wages relative to older male and female wages and not a real improvement in young women’s earnings (Scott & Lohead, 1997:8).

representing wages of 11.9% less for women workers of colour than other women workers (Jackson, 2003:23). In addition, in 1996, among women with university degrees, only 36% of visible minority women worked in professional occupations compared to 55% of non-visible minority women. During the same period, 44% of visible minority women with university degrees worked in clerical, sales, or service jobs, compared with 25% of other women with a degree (Chard, 2000:219). Statistics Canada reports “visible minority women may be doubly disadvantaged, encountering barriers not only because of their gender, but also because of their race or colour” (Chard, 2000:219). These figures suggest that visible minority and immigrant women are more likely than other groups of women to be concentrated in those segments of the labour market least likely to provide maternity and parental leave support.

Women and Unionization

In 2002, 31.9% of women in the labour market in Canada were covered by collective agreements (Jackson, 2003:25). Women working in the public sector were more likely to be unionized than women working in the private sector, who tended to be under-represented in the most highly unionized jobs. The unionization rate of women in the private sector is 14.5% compared to 23.8% for men (Jackson, 2003:25). The rate of unionization among women is very low in the worst paid parts of the economy. For example, only 8% of women employed in accommodation and food services are unionized (Jackson, 2003:25).

Unions have played a major role in narrowing the wage gap between women and men. Unionized workers tend to be paid more than comparable non-unionized workers and union membership has a more significant impact on women's wages than on those of men. While non-union women make \$14.08 per hour, or 76.5% of non-union male earnings, union women make \$19.52 per hour, 91.1% of union male earnings⁸ (Jackson, 2003:26). In addition to higher levels of pay, unionized workers also have better access to employer benefits. Among women, 69% of union workers have an employer pension plan compared to only 38% of non-union women and 54% have access to EI supplements for maternity and parental leaves compared with only 25% of non-union workers (Jackson, 2003:27). The rate of unionization among women workers of colour was only 22%, well below the 31.9% for all women (Jackson 2003:27).

Women, Family Structures and the Labour Market

Although social programs still tend to be predicated on the assumption that the nuclear family is the dominant family form, "the term 'family' now encompasses a number of overlapping though distinctly different types of relationships" (Luxton, 1996:3). Families are smaller, the childbearing years are more compressed, more mothers are working full time for pay outside the home, the number of lone-parent families (mainly headed by women) has increased and

⁸ It should be noted that while union membership raises wages, there are differences between union and non-union workers other than union membership. Union members tend to have higher levels of education, and work in larger firms and in occupations and industries with higher pay than do non-unionized workers (Jackson, 2003:26). When controlling for these factors, economists find "that the union wage advantage as a percentage of non-union wages is smaller" than it appears (Jackson, 2003:26).

same-sex couples are now recognized by the law and are raising children. While women's labour force participation has increased, the birth rate has fallen over the past several decades. The average number of children per family in Canada is now 1.8, down from 2.3 in the 1970's and 3.9 in the 1960's (Iyer, 1997:168).

Lone-parent families in Canada increased at a rate of three times that of husband-wife families from the 1970's to the 1990's (Lynn, 1996:3). In 1996, 19% of families with children were headed by lone-parents (83% of which were headed by women), compared to 10% in 1971 (Almey, 2000:32). Although the percentage of lone-parent families has increased, the percentage headed by women has remained fairly consistent since the mid 1970's (Almey, 2000:33).

Among women with children under 16 living at home, lone mothers are less likely to be employed than mothers in two parent families but the proportion of lone mothers with jobs has increased from about 50% in the mid 1990's to 61% in 1999. In comparison, 70% of mothers in two parent households were employed in 1999 (Zukewich, 2000). As a group, female lone-parents are economically less well-off than both male lone-parents and women with a heterosexual partner. Poverty is more prevalent for this family type because of lower labour force participation rates, reliance on social assistance with low benefits, and lower wages paid to women in relation to men (Boyd, M., 1988; Zukewich, 2000).

Restructuring of the labour market, and government policies which value more “regular” work patterns and assume that most people live in nuclear families, affect women most seriously yet the dominant discourse around restructuring and social policy reform remain cast in largely gender-neutral and aggregate terms, such as “imperatives of deficit reduction, international competitiveness, efficiency, and export led growth”(Orloff 1993:34). The federal government’s use of the word “irregular” for work that is not full-time, full-year, suggests that such workers are deviating from the norm. This language places blame on individuals who do not have “regular” work despite the fact that “regular” work is increasingly unavailable. Certain easily definable groups have no choice but to work in low status, low wage, unstable jobs, making it impossible to enjoy even basic security, much less the prosperous life enjoyed by more privileged members of society.

Neoliberal Social Policy Reform in Canada

Beginning in the 1950’s and continuing through to the 1980’s, the public sphere in Canada grew considerably in terms of available social programs, government intervention in the market, and redistribution of income (Armstrong, 1997:52). But the 1990’s ushered in an era of renewed and more vigorous emphasis on individual responsibility. The terms “debt” and “deficit” became central to debates around social policy reform and social programs. Recipients of certain social programs were scapegoated as governments tried to explain why we had a debt and deficit “although this emphasis on the spending

side of the deficit offers only a partial and limited view of how the Canadian debt was created" (Pulkingham & Ternowetsky, 1996:329). Reforms begun in the 1990's are informed by neoliberal ideology which asserts that "the problem with the welfare state is that it imposes collectivism, undermines individualism and prevents the market from working efficiently" (Pulkingham & Ternowetsky, 1996:4). At the same time, government says little or nothing about social benefits which are provided through the tax system and which confer a disproportionate share of benefits to the wealthiest families and individuals.

As labour market restructuring has increased the need for government transfer-payments, government social policies (in particular, income security policies) became less generous. The current direction of social policy reform reflects an attitude that families' economic problems are a result of structural changes within the family instead of structural changes in the economy. This ideologically driven "blame the victim" mentality is used as justification for considerable inequity.

When we situate the causes of "social unrest" in families rather than in, say, late capitalism, government policies or spending cuts or priorities, we not only privatize the problems people experience but also redefine them as being of the people's own doing, rather than the doing of governments, big business, or massive historical changes (McDaniel, 1998:183).

Women face a double burden in the name of "fiscal responsibility" as rhetoric about the lack of affordability of our social programs deflects attention from the off-loading of responsibility for the young, elderly and disabled, onto

families. As programs are cut, women take on more unpaid caregiving responsibilities (McDaniel, 1998:183; Pulkingham & Ternowetsky, 1996:6).

Women undertake the majority of unpaid work in Canada; approximately 65% in 1992 (Zukewich, 2000), yet the significant contribution this work makes to society is largely ignored or unknown. Depending on the valuation method used, it is estimated that the unpaid work performed by women accounts for between 32% and 54% of GDP (Zukewich, 2000) but this work goes largely unrecognized and unrewarded.

Despite the increase in women's paid labour market participation during the same period, women's share of unpaid work hours remained quite stable since the early 1960's (Zukewich, 2000). The offloading of responsibility for the caring of citizens onto individuals, through social security reform, has major implications for women and their children in terms of economic and health deficits. For example, because of illness or lack of affordable day care, women may be compelled to give up paid work in order to look after family members who have no access to other forms of help. Social policy reform, therefore, has a disproportionately negative effect on women, and women in non-standard employment, and non-unionized jobs are particularly at risk.

Revenues which governments fail to collect in the form of tax shelters for corporations and our most wealthy citizens do not enter into the debates around social policy reform. The real problem is *where* governments direct resources, not

lack of money (Pulkingham & Ternowetsky, 1996), although recent policy debates and media representations of them paint a very different picture. Many hidden government interventions which tend to benefit those higher in the social and economic hierarchies, are left largely intact, without stigma, and do not even enter into debates about where to make spending cuts. The false message conveyed is that our social programs are unaffordable and must be made more “efficient” if they are to be sustainable; resources are limited and must be used more efficiently. This duality of treatment clearly represents a value judgement about where resources should be directed.

Neoliberalism promulgates the ideology that a healthy market benefits everyone and minimal government intervention in its activities is touted as the only alternative and best way for countries wanting to compete in a global economy. But the free market creates great income disparities; without government intervention the effects are devastating for increasing numbers of people. In 1973, the richest 10% of families made 21 times more than the poorest 10% of Canadian families yet by 1996 the wealthiest 10% of Canadian families with children under the age of 18 earned 314 times more than the poorest 10% (Yalnizyan 1998:xi). Income polarization of this kind had been unprecedented in Canada since income security programs were introduced. Until the early 1990’s, the patterns of after tax and transfer income distribution, while polarized, was

fairly stable (Yalnizyan, 1998:xi).⁹ The middle class, defined as those families with income between \$24,500 and \$65,000 per annum, has not benefited from recent changes either. In 1973 this group represented 60% of families with children under 18 but comprised only 44% of families in 1996 (Yalnizyan, 1998:xi). Income varies widely by family status with lone-parent families headed by women having the lowest incomes of all family types. Families headed by female lone parents in Canada had an average income of \$25,400 in 1997 compared with two-parent families with an average income of \$64,800 and lone-parent families headed by men with an average income of \$39,400 (Lindsay, 2000:137). None of this suggests that a free market economy with minimal government intervention is a good thing for most Canadians although it has certainly been a very good thing for the top 10%.

Neoliberal thought gained momentum during the Mulroney era and was instrumental in the implementation of policies designed to maximize exports, reduce social spending, and enable market forces to restructure national economies by entering into free-trade agreements (Brodie, 1996). The implementation of these policies means that our governments are aiding the shift to a global economy.¹⁰ The neoliberal worldview was put at the top of the

⁹ It is important to distinguish between market income polarization and income polarization after taxes and transfers. What has grown is polarization of market income but until 1995/1996, government transfers diminished this polarization. The 1990's have seen the erosion of these programs making government transfers much less effective at diminishing polarization.

Canadian political agenda by the 1985 *Macdonald Commission Report* (Brodie, 1996). The report asserted that the *only* viable economic development strategy left to Canada was free trade with the United States and a neoliberal economic agenda. The report argued that Canada would be left behind if we did not adopt a market-driven development strategy, create new opportunities for private-sector growth, and facilitate adjustment by reducing regulations on industry (Brodie, 1996:8). While masked by gender-neutral discourse, there are direct links between this type of restructuring and the intensification and feminization of poverty. As a group, women are disproportionately affected by social welfare spending cuts and by the reduction of the public sector both as employees and recipients of social services. The effects of restructuring are unevenly distributed among women with the heaviest toll on immigrant women, women from visible minority groups, disabled women, lone mothers, and lesbian women (Brodie 1996: 8). The neoliberal vision of a minimalist state, along with global capitalism, is threatening women's equality and reopening class divisions among women in different social locations.

Neoliberal rhetoric attests to the benefits of reduced government intervention in the lives of families and in the market, and greater reliance on the marketplace for many of the necessities of life Canadians value. A neoliberal agenda promulgates an ideology that childbearing and childrearing is the

¹⁰ But the global economy as touted by the neoliberal thinkers is global only in relation to the movement of capital. Labour remains largely restricted to the country in which it was born and, therefore, cannot flee to optimally congenial environments as can capital.

responsibility of individual families. Therefore, childbearing without the personal “means” to fully support it is framed as irresponsible. Interestingly, it is often those who do not qualify for any government support who are viewed as irresponsible because their need is visible. Private solutions to childcare (e.g., live-in caregivers) are encouraged and supported through government programs, while collective solutions like childcare subsidies are increasingly eroded or eliminated despite the fact that increasing numbers of citizens cannot benefit in any way from these private “solutions”. Hence, our welfare state supports and legitimizes the reproductive and childrearing activities of some women while stigmatizing the activities of others (Iyer, 1997; Ursel, 1992).

Notwithstanding these restructuring and policy trends, the popular perception seems to be that paid benefits and job protection are available *and* accessible to all or most women working outside the home who have a child. But access to maternity and parental leave provisions is *not* universal. Accessibility is determined by labour market position making the means by which we provide for maternity and parental leave very exclusionary (Iyer, 1997). Maternity and parental leave provisions in Canada are delivered in a society increasingly dominated by corporate power and led by governments who tell us that they have “limited choices.” In fact, it is the citizens of this country whose choices are being increasingly restricted, and for many, the choice of having children implies also the choice of living in poverty.

Chapter 3

Maternity and Parental Benefit Provisions within the Employment Insurance System

Employment Insurance (EI) maternity and parental benefits are one component of the tripartite system providing for maternity and parental leave in Canada and are housed under the umbrella “Special Benefits.”¹¹ The majority of women who receive financial support during maternity or parental leave are collecting EI benefits making it the most visible and arguably the most important component of the system for many people.¹² This chapter examines the evolution of the UI/EI system since its inception in 1940, paying particular attention to the original implementation of maternity and parental benefits within the program and subsequent reforms. Debates surrounding key points in the implementation of the program including House of Commons Sessions, submissions to government by various special interest groups, and analytical reports about UI and EI are examined. This analysis includes a discussion of the contradictions within the existing system, the current state of the program, and the implications of expanding maternity and parental leave provisions within an increasingly contracted system of provisions for unemployment. The

¹¹ Employment Insurance (EI) “Special Benefits” consist of Maternity, Parental, and Sickness Benefits.

¹² While the right to maternity and parental leave is very important in and of itself, financial compensation, for many people, is the factor that determines whether or not taking the leave or not is possible.

implications for gender equity and equality among women also will be considered. The role of EI maternity and parental leave benefits in reinforcing inequalities in Canadian society will be examined and the winners and losers within the present system will be identified. This analysis will demonstrate that there is great inequity of access to EI maternity and parental leave and polarization in levels of support. Some women are much more fully supported than others because of the way provisions are delivered and certain identifiable groups are excluded from support or qualify for low levels of support only.

Unemployment Insurance and the Implementation of Maternity Benefits

Prior to the inclusion of maternity benefits in the Unemployment Insurance (UI) Act of 1971, paid maternity benefits were extremely rare in Canada. Benefits that *were* available were provided to employees by individual employers or as provisions within collective agreements. In 1967 only 55% of employers had any provision for maternity leave, and only 10% of the women covered by these maternity leave policies received any income during their maternity leave (Woodsworth, 1967:20).

The current EI program evolved from the experience of the Great Depression of the 1930's when unprecedented numbers of unemployed citizens caused a major shift in attitudes towards the unemployed in Canada. The suggestion that there was something inherently "wrong" with individuals who were out of work became less widely accepted. Individual responsibility for

unemployment began to give way to more collective attitudes toward social support and pressure was put on the federal government to implement some kind of unemployment insurance system.¹³

This shift in focus to more collective responsibility for support during unemployment provided the impetus for the federal government, under William Lyon Mackenzie King, to appoint a Royal Commission to review the dynamics of the divisions of power between the federal and provincial governments. Until this time, employment issues were exclusively under provincial jurisdiction. The Commission recommended that the federal government implement, and have authority over, a federal social insurance program designed to deal with employment issues (Human Resources Development Canada, 1995). On July 10, 1940, with unanimous approval from all the provinces, the federal government amended the British North America Act (BNA) to reflect this change in authority, and on August 7, 1940 the federal *Unemployment Insurance Act* took effect (HRDC, 1995).

The *Unemployment Insurance Act of 1940* was designed “to promote the economic and social security of Canadians by supporting workers from the time they left one job until they obtained another” (HRDC, 1995) and was very restrictive in its first inception. UI was based as much as possible on private

¹³ Until this time, relief for unemployed workers was under the jurisdiction of the provinces. However, the mass unemployment of the Great Depression made it clear that most provinces did not have the financial capacity to adequately provide assistance to the unemployed in times of crisis.

insurance principles, the use of the word “insurance” being “a carefully considered description of the intended nature of the plan” (HRDC, 1995). The Act contained no special provisions for illness, injury or pregnancy and no provision for payment of benefits upon retirement. Many unemployed workers who were capable of and available for work were excluded due to a number of rules in place in order to determine the kinds of employment that would be insurable. For example, in order to ensure that “insurance principles” could be maintained (HRDC, 1995), UI excluded from coverage jobs that were seasonal or with high rates of turnover, and jobs from which lay offs were extremely likely. Jobs deemed appropriate for coverage were those with a “moderate” risk of unemployment (although the meaning of “moderate” was never clearly articulated). “Administrative efficiency” was also a factor in deciding which occupations to cover (HRDC, 1995). The complexity of premium collection, the settlement and administration of claims, the effectiveness of the placement service and control mechanisms, were all taken into account (HRDC, 1995). A number of jobs were explicitly excluded including those in fishing, forestry, agriculture, transportation, teaching, health care and government. Part-time work and seasonal work were also excluded (HRDC, 1995). In its first full year the UI program covered only 42% of the Canadian labour force (HRDC, 1995).

A new, somewhat expanded, *Unemployment Insurance Act* was established in 1955 (HRDC, 1995) as higher unemployment led to increased demands on the program and increased expectations for assistance from government. The

decade of the 1960's in particular witnessed a general trend in Canadian social policy towards more generous income security programs and increasing employment opportunities. This is reflected in the expansion of UI coverage to 68% of the workforce (HRDC, 1995), a 26% increase in coverage from the 1940 Act. Throughout the 1960's, UI was the focus of several studies, which, in tandem with the social policy trends at the time, set the stage for a major expansion of the program (HRDC, 1995). This expansion was laid out in the 1970 White Paper on Unemployment Insurance, *Unemployment Insurance in the 70's*, written by the Honourable Bryce Mackasey, Minister of Labour.

The first complete revision of UI took place in 1971 when the federal program was broadened "to cover virtually the entire paid workforce"¹⁴ (Torjman, 2000:1). The need for expansion was justified based on changes in the labour market which meant that the "traditional stability of jobs could no longer be taken for granted" (HRDC, 1994). Mackasey's White Paper argued that more fully integrating UI with employment policy and moving away from strict insurance principles was in the public interest and that emphasis should be placed on economic opportunities and income redistribution. In this vein, the UI program shifted from an emphasis on income replacement to a strategy of balancing the objectives of providing a safety net for those in need, while still maintaining incentives for people to work (HRDC, 1994). In addition to expanded coverage and relaxed qualifying conditions, benefits for sickness,

¹⁴ Nevertheless, many part-time workers were excluded because of qualifying conditions.

maternity, and retirement were introduced under the umbrella “special benefits.”

When first proposed in the White Paper, sickness and maternity benefits in particular met with considerable opposition. Groups representing employers, for the most part, argued that *if* sickness and maternity benefits were to exist at all, they should not be housed within UI. In fact, central to debates around the implementation of sickness and maternity benefits was whether or not UI was the appropriate vehicle for payment of such benefits. Maternity benefits, it was argued, were not in keeping with genuine insurance principles because maternity is not an *unforeseen circumstance* and therefore not a risk one could (or should) be insured against. In addition, concerns were raised about abuse.

The Department of Labour, under Mackasey, invited groups representing employers and employees, to submit responses to the proposals laid out in the White Paper. Generally, there was widespread support for the idea of maternity benefits as the number of women entering the paid labour force continued to grow. The means by which to provide maternity benefits was contentious however. The *Vancouver Board of Trade*, the *Canadian Association of Equipment Distributors*, the *Canadian Trucking Association*, and the *Quebec Employers Council* for example, while not objecting to maternity benefits per se, objected to it as a form of UI. The *Public Service Alliance*, while not outwardly objecting to providing for maternity through UI, was concerned that “pregnant women

would plan to enter the workforce with the sole view of collecting a fifteen week benefit” and suggested up to a year long qualifying period “in order to prevent the wilful planning of a return to the workforce by a woman only to obtain the substantial pregnancy benefit” (House of Commons, 1970a: 73). *The Canadian Welfare Council's* submission, on the other hand, gave support for the recognition of maternity as a cause of unemployment eligible for UI calling it “long overdue and most welcome.” On the other end of the spectrum, *The Regina Chamber of Commerce* (among others) questioned the need for *any* sort of maternity benefit and did not support proposals to entrench maternity benefits within UI arguing that “[I]f there is a real need in this area, which we doubt, financial assistance should be available from some other source” (House of Commons, 1970b:100).

After all briefs and opinions had been received, presented, and reviewed, the Honourable Bryce Mackasey, Minister of Labour, addressed the *House of Commons Committee on Labour Manpower and Immigration* on November 3, 1970. It was his view that “the arguments against sickness and maternity benefits have been directed mainly to the extension of unemployment insurance into these areas rather than directed to the need to deal with these situations according to the best political and social principles” (House of Commons, 1970c:48). He continued by saying “whenever earnings from employment are interrupted by reason of sickness or maternity, it is the interruption of income, not the sickness, that is particularly adverse to the interest of the insured. The proposed plan,

therefore, does meet the conditions necessary to a plan of unemployment insurance” (House of Commons, 1970c:49).

Between December 3, 1970 and December 16, 1970, *The Standing Committee on Labour, Manpower and Immigration* presented its first report on the White Paper on Unemployment Insurance to the House. Contained in the report was the committee’s position on the issue of maternity and sickness benefits. The report stated that “one point raised in the Committee hearings dealt with the possible advantages in locating sickness and maternity loss of earnings benefits in a program and/or institution apart from Unemployment Insurance” (House of Commons, 1970d:26) but went on to say that “in our view, no persuasive arguments were set forth for separate facilities” (House of Commons, 1970d:26). In fact, the committee argued that “[t]hese additional benefits represent an adjustment in the economic security system to recognize the contingencies generated by a world in which women are a large portion of the labour force” (House of Commons, 1970d:27). Without any “persuasive” arguments suggesting a better alternative, the federal government entrenched sickness and maternity benefits within UI (HRDC 1995).

On June 27, 1971, the new *Unemployment Insurance Act* took effect bringing more extensive coverage of the workforce and making regular UI benefits more accessible than before. Stricter qualifying conditions for maternity leave were maintained however. Coverage was extended to previously excluded groups,

for example, teachers and civil servants. About 93% of the paid labour force was covered under the new program (HRDC, 1995). While this was a considerable improvement, self-employed workers, those earning less than one fifth of the maximum insurable earnings in a week or 20 times the applicable provincial minimum wage in a week, and workers over the age of 70 were still excluded. Under the 1971 Act, to qualify for benefits, an insured worker had to have worked eight or more insurable weeks (equivalent to at least 120 hours) in the 52 weeks before the establishment of a benefit period or the period since the last benefit period began, whichever was shorter. In contrast, maternity benefit claimants had to have worked 20 insurable weeks (equivalent to at least 300 hours) in the qualifying period and also had to demonstrate that a minimum of 10 of these weeks were worked in the 20 week period between the 31st and 50th weeks before the expected date of their child's birth (HRDC, 1995). This became known as the "magic 10 rule" (HRDC, 1995). The federal government argued that more stringent requirements were in place to ensure that women would not enter the labour force solely for the purpose of collecting maternity benefits (and perhaps to appease those who had been against the inclusion of maternity benefits in the UI Act). Those who *did* meet these qualifying conditions received a maximum of 15 weeks of maternity benefits which were to be collected in the 15-week period beginning eight weeks before the expected date of delivery and six weeks after the birth actually occurred. Any of the 15 weeks not collected during this time were lost. Some women found themselves in a position where

they did meet the qualifying conditions for regular UI benefits but were not able to qualify for maternity benefits. These women were automatically “disentitled” from regular benefits beginning eight weeks before the expected week of birth, however, because they were deemed to be unavailable for work during this time. This meant that some women needing maternity benefits received nothing even though the same labour force attachment would have secured regular UI in the event of layoff.

The new UI program demanded higher federal government subsidies than anticipated as “unemployment rates were persistently above the threshold for federal support” (HRDC, 1995). This, combined with widespread concerns about abuses of the system, meant that amendments to UI since the 1971 Act tended to restrict eligibility and benefits. As the focus of social policy reform in Canada shifted from program expansion to cost reduction, a number of changes were introduced to the program in order to “allocate resources more rationally” while still “maintaining the spirit” of the 1971 Act (HRDC, 1994).

The Expansion of Maternity and Parental Benefits Under UI

Amendments to UI throughout the 1970’s generally tightened eligibility requirements and made regular UI less accessible but during this same time period, maternity provisions were expanded and made *more* accessible. On January 30, 1976, the federal government passed an amendment making it possible for women to draw maternity benefits in the period between eight

weeks prior to the expected date of birth and 17 weeks after the week of birth. This expansion of time reduced discrimination against women who wanted to work closer to their due date or right until the birth of their child but did not want to forfeit any of their 15 weeks of maternity benefits. This reform also created the opportunity for women to take more time off work *after* the birth of the child instead of before the birth. In the 1983 UI Act, maternity benefit rules were again amended and were simplified to allow “greater flexibility and fairness” for women (HRDC, 1995). The “magic 10” rule was eliminated and the benefit period for maternity benefits was made more flexible in consideration of premature or delayed births. The rule excluding pregnant women from collecting regular UI benefits in the eight-week period prior to the expected date of birth was also eliminated and adoption benefits were introduced for the first time. Effective January 1, 1984, 15 weeks of maternity benefits could be collected by an adoptive mother or father beginning the week of the child’s placement in the home (HRDC, 1995). In 1989, further amendments expanded benefits for birth parents and, for the first time, made benefits available to birth fathers.¹⁵ However, the amendment also reduced the benefits available to adoptive parents who now found total provisions reduced from 15 weeks to 10.¹⁶

¹⁵ The same-sex partner of a woman collecting EI maternity leave does not qualify to receive EI parental benefits.

¹⁶ Adoptive fathers had been eligible for UI paternity benefits since 1984, but biological fathers were not. This inequity was instrumental in the introduction of parental benefits.

The 1990's ushered in a period of significant social policy reform in Canada in which many social program provisions, including UI, were eroded. In addition to the introduction of parental benefits, a number of other changes were made to UI during this time period. To begin, the government privatized the program by ceasing financial contributions to it. Under the 1940 Act it had been financed through a tripartite system with government, employers, and employees sharing UI costs and contributing equally. The 1971 Act had introduced a different financing arrangement in which only employers and employees would contribute to the plan provided the unemployment rate was less than 4%. When the unemployment rate was 4% or higher, the government would contribute to the UI fund but amendments in 1989 saw the end of government contributions completely (HRDC, 1995) turning it into a program financed by employers and employees only. Further amendments to UI in 1993 reduced benefit levels from 60% of earnings to 55%¹⁷ and introduced complete disqualification for voluntarily leaving employment or being fired for misconduct.¹⁸ In addition, claimants were required to report to UI agents more frequently, and in greater detail, necessitating the release of more personal

¹⁷ Weekly insurable earnings are determined by looking at a claimant's total earnings in the rate calculation period: the 20 weeks prior to the interruption of earnings. Once the weekly insurable earnings are determined, these earnings are divided by one of two numbers - whichever is higher: 1) the number of weeks during the rate calculation period in which the claimant had insurable earnings, or 2) the number as determined by an HRDC divisor table in accordance with the unemployment rate in the region in which the claimants lived during the week in which the interruption of earnings occurred.

¹⁸ Previously, quitting a job or being terminated had resulted in a delay in the start of benefits, not complete disqualification.

information in order to remain eligible for benefits. Further amendments, introduced in 1994, reduced the duration of claims and made it more difficult to qualify for benefits (HRDC, 1995).

Maternity and Parental Benefits and the New Employment Insurance System

In 1996 the first major overhaul of the program since 1971 took place with the implementation of the Employment Insurance (EI) Act, demonstrating a major shift in thinking from the 1971 objectives. Despite the way government and other proponents presented the new system, it appears that the focus and purpose of the reforms was not to create a system that provides better protection for unemployed workers in the face of a changing labour market, but to diminish its capacity to operate as a form of social security. Thus, on the one hand, the federal government framed the reforms in positive terms. Words such as “encouraging,” “better-targeted,” “strengthening” and “development” (HRDC, 1994:42) suggest that proposed reforms would create a system that better serves everyone. In fact, the motivation appears largely to be driven by a concern that the UI system encouraged dependency, and since dependency is “bad,” the UI system had to be changed to decrease the growing dependency (Pulkingham, 1998). In proposing UI reform the federal government acknowledged changes in the labour market. However, instead of focusing on protecting workers from the reality of a decline in standard employment and in the standards of employment, the government emphasized that workers must “prepare themselves for work in

a changing world” (HRDC, 1994:29). Following the prevailing individualist neoliberal inspired market-driven policy prescriptions, the government proceeded with an agenda designed to “encourage” people to work. It accomplished this by reducing the level of social security protection the system provides arguing that “jobless workers receiving UI benefits can afford to reject work and wage rates they might otherwise have been forced to accept, and additional people are attracted to join the labour market by the prospect of receiving UI benefits once their qualifying period of work is over” (McBride, 1992:161).

The federal government, through EI, intends to contribute to greater “labour market flexibility” by making workers more dependent on the labour market. The failure to acknowledge that the decline in labour force participation in the 1980’s and 1990’s is related to lack of labour demand, not lack of labour force supply, is central to UI reform and significant in terms of the message it sends. The federal government argues that under the new system there will be greater incentives for people to work harder and longer which is in keeping with “the goals of independence and self-sufficiency” (HRDC, 1994:29). The statement that “Canadians want to work, and place a high value on the dignity, independence and self-respect that work brings” (HRDC, 1994:29) is eminently reasonable and arguably true, but ignores the reality that workers cannot work if there are no jobs. In other words, the argument does not account for the structurally differentiated labour market and glosses over the fact that eroded

working conditions and low wages make dignity, independence, and self-respect exceedingly difficult to obtain.

The federal government justified Unemployment Insurance reform arguing that the program was out of date, discouraged labour force adjustment, had rules that were open to abuse, discouraged job creation, and excluded those in non-standard work. In addition, the government stated that the system was not financially sustainable¹⁹ and needed to emphasize individual responsibility and self-sufficiency (HRDC, 1994:42-43). It was with these factors in mind that the Employment Insurance system evolved.

Employment Insurance was implemented in two stages, in July 1996 and January 1997, representing the most major restructuring of the program since the *Unemployment Insurance Act 1971* was implemented. The federal government shifted the program back towards more restrictive insurance principles, establishing a new benefit structure and new rules for frequent claimants. EI introduced tighter eligibility requirements for new entrants and re-entrants to the labour market and maximum weeks of eligibility were reduced from 50 to 45. An hours-based system was introduced, replacing the original weeks based system, and a new premium structure was instituted (CLC, 2000). In addition, a "clawback," requiring repayment of benefits "if a claimant's income for a

¹⁹ The 1999 Auditor General's Report revealed that the EI surplus had grown by \$7.3 billion during that fiscal year to \$21 billion. This was much higher than HRDC's Chief Actuary deemed necessary for the purposes of keeping the EI fund secure. By the end of 2003 the surplus is expected to reach \$45 billion (HRDC Actuary Service Projections, 2002).

taxation year exceeds 1.25 times the maximum yearly insurable earnings” (HRDC, 2001b) was introduced. The amount of the repayment is determined when income taxes are filed and is “30% of the lesser of a) the total benefits paid to the claimant in the taxation year, and b) the amount by which the claimant’s income for the taxation year exceeds 1.25 times the maximum yearly insurable earnings” (HRDC, 2001b).

On the surface the change from a system of insurable weeks to one of insurable hours suggests that the government recognizes the needs of part-time workers excluded under the old system. Because a large number of these workers are women, the government even went as far as to suggest that women would benefit more from the reforms than other groups.

Hedy Fry, in her capacity as Secretary of State for the Status of Women, declared publicly that EI, because of its extension of coverage to all part-time workers, is a primary example of the federal government’s enactment of its recent commitment to adopt a ‘gender lens,’ (gender based analysis) in policy formation (Pulkingham, 1998:30).

Extending coverage to part-time workers was touted as a positive and progressive change in the context of a changing labour market increasingly reliant on part-time, non-standard work. This was a primary means by which the government “sold” the reforms to the Canadian people. By changing the way premiums are paid so that each and every hour of employment is insurable, all those who work less than 15 hours per week and previously were excluded under the old system, are “covered” creating the illusion of increased fairness.

The reality, however, is that EI makes it much more difficult for many women to qualify for benefits. Women are particularly hard hit because in addition to labour market changes that increased the prevalence of part-time and temporary employment, women traditionally have more erratic work patterns than do men, more commonly taking breaks in their labour force participation for reproductive and child rearing purposes (Vosko, 1996:266). The shift from insurable weeks to insurable hours entailed people having to work more hours in order to be *entitled* to receive benefits.

In this context, coverage refers to those workers who contribute to the system, while entitlement refers to those who are actually able to collect benefits. The distinction between coverage and entitlement is important as many part-time workers now pay into a system that will not benefit them. Others were already paying but are now paying a higher percentage of their income into the system because they now start paying on their first dollar of earnings yet they will never accumulate enough hours to be eligible to collect benefits. It is the lowest income earners who are hardest hit. The discrepancy is startling: 90% of the labour force is *covered*, but only 33% of the unemployed are *eligible* (Pulkingham, 1998). Therefore, because premiums are being paid to the EI fund, and fewer benefits are being paid to workers, the EI surplus is growing and is expected to reach \$45 billion by the end of 2003 (HRDC, 2002) yet entitlement *and* benefit rates have been cut.

In addition to extending *coverage* to part-time workers, EI makes benefits dependent on how frequently a worker uses the system. This is referred to as the “intensity rule” and applies to “regular” users who, with each subsequent claim, face a reduction in benefits and/or more stringent eligibility criteria. But by virtue of changes in the labour market, claims are likely to be more frequent, not because people do not *want* to work for long periods of time, but because long term employment is increasingly unavailable. Consequently, a growing number of EI claimants will be labelled “regular” users. Reforms to UI/EI have not served the Canadian people. Instead, “as measured by their outcome, they fit nicely into a corporate agenda. They increase the insecurity of workers on the one hand and, on the other, lower the cost and security of labour” (Pulkingham and Ternowetsky, 1996:333).

UI reform can be described as a form of “social policy by stealth.” In its original form, the term, coined by Ken Battle, refers to the “engineering of cutbacks through partial rather than full indexation of benefits and entitlements” (Battle & Torjman, 1996:53). Janine Brodie argues that the dominant discourse surrounding restructuring is more concerned with the actual size of the welfare state than with its underlying ideals (Brodie, 1996:17). She argues that changes to our social programs are generally achieved through a series of budget cuts that can be referred to as “social policy by stealth” (Brodie, 1996:17). The problem, however, is that in taking this approach, governments are able to make significant changes to social policies Canadians fought long and hard for by

making “complex revisions of regulations and repeated budget cuts” (Brodie, 1696:17) with no public consultation or participation.

The word “cuts” was not central to debates surrounding the implementation of the EI Act. The government instead argued that the system was not succeeding at getting people back into the workforce and was instead creating disincentives to work. At the same time, government rhetoric suggested more women and young workers²⁰ would benefit as a result of the reforms. In fact, fewer people are now entitled and those who are entitled receive less money per week and fewer weeks of benefits than they would have under the old system. In 1989, 74% of the unemployed received UI after losing work but 10 years later only 37% of those finding themselves jobless qualified (CLC, 2000). The situation is even worse for women and young workers with only 30% of women and 19% of those aged 15-24 qualifying after losing work (CLC, 2000). Over a million workers have lost protection since 1993 (Public Service Alliance of Canada, 2002). Meanwhile, the federal government amassed a considerable surplus in the EI fund from which over successive years, it has taken billions of dollars to pay down the debt and deficit.

With the implementation of the EI Act in 1996, on the surface it did not appear as though maternity or parental benefits had been eroded. Benefit rates

²⁰ Calculating insurable hours of work instead of insurable weeks was purported to be of benefit to part-time workers who had not qualified under the previous system. As women and younger workers are disproportionately represented in part-time employment, it was thought that these groups would benefit most from the changes.

for special benefits are not subject to the intensity rule; reductions based on the number of weeks of benefits paid previously and new-entrants and re-entrants to the labour market are not expected to have worked more than other claimants in order to qualify for special benefits. But the legislation did impose more onerous qualifying conditions for maternity and parental benefits. Previously, a claimant qualified for benefits if he or she had 20 weeks of insurable employment of at least 15 hours per week. This meant that it was possible to qualify for benefits with 300 hours of insurable employment. The conversion from insurable weeks to insurable hours, however, meant claimants had to work at least 700 hours in order to qualify. As indicated in Chapter 1, effective January 1, 2001, the federal government reduced required labour force attachment to 600 hours but it is still substantially higher than the 300 hours needed previously. This means that if a claimant worked 15 hours per week it would take 40 weeks of work to meet qualifying conditions, far more than the 20 weeks of work required under the old legislation.

When first proposing UI reform in 1994, the federal government acknowledged that “changes in the labour market have increased the number of working Canadians who are not covered by insurance under the existing UI rules” and that “[t]his particularly affects women and youth, who tend to predominate in non-standard work” (HRDC, 1994:43). As we have seen, however, more working Canadians may be “covered” under the new EI program but fewer are eligible. A large number of these “casualties” are women and

youth. Women in non-standard employment and young workers under the age of 25 are discriminated against the most. In 1997, only 31% of unemployed women in Canada received UI, down from 70% in 1989. Young women aged 15-24 were hardest hit dropping from 49% in 1989 to only 15% in 1997 (Canadian Labour Congress, 1999). It seems that the very people the government was professing to help through the reforms are the ones being hurt most seriously. Traditional full-time, full-year employment is most rewarded in an environment where increasingly, this kind of employment is disappearing. This brings us back to notions of “deserving” versus “undeserving” poor. Those who “deserve” EI are those who put in the most “work effort,” as measured by full-time full-year paid employment. Consequently, through EI, in a changing labour market the government creates fewer and fewer people who are “deserving” and many more who need.

The Contradictions of Expanding Maternity and Parental Benefit Provisions In Employment Insurance

Part of the 2000 federal election platform of the Chrétien Liberals was the promise to retract some of the more punitive changes entrenched within the new EI Act. Many of these changes are commonly believed to have resulted in the Liberals losing a lot of support, particularly in Atlantic Canada, during the previous federal election. With the exception of some minor changes, and the major extension of parental benefits, these are not changes the Liberals pursued. Effective January 1, 2001, the EI Act provides 15 weeks of paid maternity benefits

which can be collected by the child's birth mother and 35 weeks of paid parental benefits which can be collected by the natural or adopted mother or father of the child or shared between them.²¹ Mothers must collect maternity benefits around the time of the child's birth (eight weeks prior to the expected date of birth to 17 weeks after the expected or actual date of birth, whichever is later). Any of the 15 weeks not collected within this window are lost. Until January 1, 2001, any income earned during the collection of maternity or parental benefits was deducted dollar for dollar from the benefit for that week whereas those collecting regular EI benefits are permitted to earn up to 25% of their weekly EI benefit or up to \$50 per week, whichever is higher, before any deductions are made from their EI payment. As of January 1, 2001, maternity and parental benefits were brought in line with regular EI benefits allowing earnings of up to 25% of the weekly benefit rate with no penalty. The only exception to this is when the employer has a registered Supplemental Unemployment Benefit (SUB) plan and tops up the benefit in which case there is no deduction from the EI payment. Although SUB plans will be examined in more detail in Chapter 5, because they are a form of occupational welfare used to supplement EI maternity and parental benefits, the issue of differential treatment of income from SUBs and allowable earnings while on EI will be considered here.

²¹ Prior to 2001 a maximum of 10 weeks of EI parental benefits were available.

Women with access to SUB top-ups receive income from their employer in addition to EI without having to engage in paid work. This enables mothers to focus on childcare. Mothers without access to SUB plans, but with need for additional income because of inadequate EI payments, must engage in paid work and are, therefore, not able to perform unpaid childcare exclusively. There is inequity in legislation that allows a mother to receive a top-up with no penalty to her EI payments, while others have to work to supplement their income. This means during maternity leave, the income gap between women with access to SUB plans and women without access, will actually be greater than it was while these same women were working.

Given the existence of SUBs and unequal access to them, and the real need for many new mothers to supplement their EI payments in order to survive financially, allowing earnings of up to 25% of the weekly benefit rate to match the allowable earnings while on regular EI may be the best the government can do *within* the existing system. But maternity and parental benefits are inherently different from regular EI benefits because on regular EI, a person is actively looking for work. The purpose of EI maternity and parental benefits on the other hand is to provide women with time away from the paid labour market in order to bond with and nurture a newborn child. In this vein, the real problem is not the fact that there were no “allowable” earnings during an EI maternity or parental benefit claim, but rather, the fact that for some women, benefit levels are so insufficient that paid work is necessary. There is inequity in a system that

provides some women with far less support than other women receive just because their jobs fall within a particular “less desirable” category in the labour market hierarchy. There should be equity in the benefits paid to women during maternity and parental leave regardless of labour market position.

Under the current system, some new mothers get 100% wage replacement of a high income, while others get only 55% of a much lower income and others get nothing at all. This means that some women are supported to stay home with their children and get full or near full wages while other women have to work to supplement their incomes during this period and still receive less. A socialized program that provides the same benefits to all women on maternity leave from paid work would reduce this inequality. Rather than allowing more income from earnings to enable women to earn more to supplement their EI, and rather than encouraging a system that provides some women with supplemental maternity benefits while other women have no such provision, government should provide adequate benefits to new mothers *without* expecting them to work and make the same benefits available to *all* women taking time off from paid work for a maternity and parental leave. Since all women on maternity leave are doing the same job, it is difficult to justify differentials in levels of pay. In fact, for poorer women, the job of parenting a newborn may be more difficult as conveniences such as cars, nannies, housecleaners and diaper services are much less likely to be available than they are for middle and upper class women. Yet under current legislation, women without access to such conveniences are

also those most likely to receive lower levels of income support for maternity leave or no income support at all. This is justified based on the current means of delivering paid maternity and parental leave as part of the EI system which frames the benefit as “income replacement” instead of a social benefit, thereby justifying tying weekly benefit rates to income during paid work.

The question of whether maternity and parental benefits should be provided through EI or through another program was considered when maternity benefits were first introduced in UI in 1971 and should be revisited. By providing maternity and parental benefits through EI (and its precursor, UI), the government recognizes the needs associated with maternity and parental obligations only in relation to women’s role as labour market participants and only for those labour market participants deemed to have a “sufficient” attachment to the labour force.

Maternity and parental benefits provided through EI are not universally available to women working for pay in Canada. As the preceding analysis has shown, the current EI program is very exclusionary. Benefits may in fact be available, but for many, they are not accessible. Women most likely to be excluded from EI maternity and parental benefit support are those women engaged in non-standard employment and as the previous chapter demonstrates, visible minority women (particularly immigrant women) and First Nations women are disproportionately represented in this category. Further

compounding the existing inequality, many women who cannot access the benefit pay into the system. Thus, the premiums of those parents, primarily women, who cannot claim the benefit, subsidizes the reproductive activities of more economically privileged men and women who *can* take the benefit.

As the next chapter will demonstrate, EI maternity and parental benefits are only part of the picture. Job protection, maintenance of seniority and benefits, and paid benefits above what is provided by EI are also important components of the system providing maternity leave support to working parents in Canada. This is particularly true in a society that measures the value of its citizens based upon their contribution through paid employment above all else. It will become evident that the inequality entrenched within EI, the disadvantaged position of women in general, and certain women in particular, is exacerbated even further when the other components of the system (provincial employment standards legislation and occupational welfare) are taken into account.

Chapter 4

Maternity and Parental Leave Provisions Within Labour Standards Legislation

Maternity and parental leave provisions come in two forms: paid benefits (income replacement) and a job protected leave of absence from paid employment. Exits from the paid labour market for childbearing and childrearing purposes put women in a disadvantaged position *vis à vis* men making legislation designed to buffer these negative effects crucial, yet the issue of job protection is often overlooked by researchers and governments. In Canada, Employment Standards (ES) legislation determines whether a person's job is protected during a maternity or parental leave. The legislation a person falls under is determined by place of residence or the sector in which the person is employed.²²

This chapter examines the role of Employment Standards (ES) in maternity and parental leave. It demonstrates that like EI maternity and parental benefits, great disparities exist in ES provisions for maternity and parental leave both in terms of access to protection and levels of protection available. ES legislation varies across jurisdictions yet all use labour market position to

²² Unionized workers, making up approximately 30% of the paid labour force in Canada, are protected by negotiated collective agreements and may have provisions beyond those provided by federal, provincial or territorial ES legislation. Collective agreements must provide better or comparable benefits to ES legislation. This chapter will focus on maternity and parental leave provisions in government legislation only. Provisions in collective agreements will be discussed in Chapter 5.

determine whether access to job protected leave is possible. This emphasis on labour market position coupled with regional differences in access to and levels of protection, means that some workers in Canada have no job protection at all, while others can take up to 70 weeks of maternity and parental leave with full job protection. ES legislation privileges full-year, full-time, continuous labour-force attachment thereby disproportionately disadvantaging women who find it difficult or impossible to accumulate the labour force attachment required for job protection under ES.

While ES legislation is extensive, covering many facets of the paid employment relationship, this chapter will focus only on those parts of the legislation that pertain to maternity and parental leave. In particular, the chapter will examine the available weeks of job-protected maternity and parental leave, terms of seniority retention and accumulation, and the labour force attachment requirements for such protection in each jurisdiction. Inconsistencies in the qualifying conditions of ES and EI, and the implications of these inconsistencies for women based on regional differences and differences in labour market position, will be highlighted. Suggestions for change and possible outcomes will also be considered.

Employment Standards in Canada

The system of ES in Canada is complex because of the multiple pieces of legislation representing paid workers across Canada (See Appendix A).

Approximately 90% of paid workers in Canada fall under the ES legislation in their province or territory of residence while the remaining 10% fall under the *Canada Labour Code*. The *Canada Labour Code* covers those who work for the federal public service, Armed Forces, banks (excluding credit unions), trucking that crosses provincial borders, federal crown corporations, national airlines and railways, television, telephone, radio and cable industries, and in marine shipping, longshoring, and grain elevators (Department of Justice, 2002).

Minimum wages, maximum hours of work, overtime, vacation pay, sickness, maternity, and parental leaves and other conditions of the employment relationship are in place to ensure a minimum standard of treatment for all workers but the “standards are low, riddled with assumptions, and ineffectively organized” (Fudge, 1996:70). The potential for confusion caused by the fragmented Canadian system of ES is considerable. Employees may not know which legislation they are covered by and the extent and limitations of their rights. Examining the *Canada Labour Code* and provincial and territorial ES legislation highlighted the potential difficulty faced by workers in making such judgments. The researcher was unable, in certain instances, to determine the labour force attachment requirements necessary to qualify for job-protected maternity and parental leave by reading the legislation itself and had to call or e-mail the government in question for clarification. In some instances this information was readily acquired while in others it was not. Those workers with little exposure to, or understanding of, government bureaucracies or those

without excellent command of the English language may find sifting through confusing legislation a particularly daunting task. Workers who know their rights are able to exercise them while those who do not may, for example, unknowingly take a leave and then find that they had no job protection and have no job to return to or have been reduced to a lower position.

The Role of the Federal Government

In tandem with the extension of EI parental benefit duration from 15 to 35 weeks, the federal government released a series of press releases and television ads to promote the new parental benefit program. But neither the press releases nor the television advertising alerted Canadians to potential discrepancies between the federal EI Act and job protection during parental leave. Depending on the jurisdiction in which a person lives, and qualifying conditions for ES job protection in that jurisdiction, job protection may not be available even if EI benefits are. Elucidating this fact sheds a different light on promises of “accessibility” and “increasing the number of parents eligible.” The federal government may have made more parental benefits available, but their assertion that accessibility improved is misleading both because, as the previous chapter has shown, EI maternity and parental leave is not actually more “accessible” to many women than it was under the UI Act, and because the federal government is not accounting for access to job protection in making this statement.

This comparative analysis of ES legislation in each of the Canadian provinces and territories demonstrates that assisting parents in the balancing of productive and reproductive activities is not accorded the same value in all jurisdictions.

Table 1 - Maternity and Parental Leave Provisions and Eligibility Requirements by Jurisdiction

Jurisdiction	Maternity Leave	Parental Leave	Seniority	Labour Force Attachment
Federal Government	17 weeks	35-37 weeks	Accumulates	6 months - continuous with same employer
British Columbia	18 weeks	35 weeks	Accumulates	None ²³
Alberta	15 weeks	37 weeks	Maintained	52 consecutive weeks - one employer
Saskatchewan	18 weeks	35-37 weeks ²⁴	Accumulates	20 weeks - one employer during last 52 weeks
Manitoba	17 weeks	37 weeks ²⁵	Maintained	7 consecutive months - one employer
Ontario	17 weeks	35 weeks ²⁶	Accumulates	13 weeks - one employer
Quebec	18 weeks	52 weeks	Accumulates	No requirement
New Brunswick	17 weeks	37 weeks ²⁷	Accumulates	No requirement ²⁸
Nova Scotia	17 weeks	35 weeks	Maintained	1 yr - one employer
Newfoundland	17 weeks	35 weeks	Maintained	20 weeks - continuous
Prince Edward Island	17 weeks	35 weeks	Accumulates	20 weeks continuous - one employer
Northwest Territories	17 weeks	37 weeks	Accumulates	12 months - continuous
Nunavut	17 weeks	12 weeks	Maintained	12 months - continuous
Yukon	17 weeks	37 weeks	Accumulates	12 months - continuous

²³ Although no specific amount of labour force attachment is required, the *BC Employment Standards Act* requires that an employee wanting to take maternity or parental leave must give notice to his/her employer at least 4 weeks prior to the expected date of delivery.

Level of Job Protection

ES legislation in all Canadian jurisdictions stipulates that after maternity and parental leave has ended, an employer must provide an employee with the same job she left or a comparable job in terms of duties, wages and benefits.²⁹

Seniority is maintained in all jurisdictions although in some, seniority continues to accumulate during leave. ES legislation in Ontario, Quebec, New Brunswick, Prince Edward Island, the Yukon and Northwest Territories all provide for the *accumulation* of seniority during leave. Seniority is maintained during the leave period for employees protected by the *Canada Labour Code*.

The weeks of job protected maternity and parental leave available under ES legislation is also fairly standard across the country and is similar in duration to EI maternity and parental leave benefits. All provincial and territorial ES legislation and the *Canada Labour Code* have provision for 17 or 18 weeks of maternity leave and 35-52 weeks of parental leave.

²⁴ Effective June 14, 2001 up to 89 weeks of job protected leave is available for parents to share although one parent may not take more than 52 weeks of leave. Both a mother and father can take full parental leave (35 and 37 weeks respectively), in addition to 18 weeks of maternity leave.

²⁵ Although the total leave must not exceed 52 weeks.

²⁶ If no maternity leave is taken, 37 weeks of parental leave may be taken. A total of up to 89 weeks of job-protected leave is available although one parent may not take more than 52 weeks. Both a mother and a father can take parental leave, in addition to 17 weeks of maternity leave taken by the mother.

²⁷ Total leave taken by one person may not exceed 52 weeks.

²⁸ Although this is quite misleading because the New Brunswick *Employment Standards Act* requires an employee to give his/her 4 months notice before the leave is scheduled to begin.

²⁹ The exception to this are those cases in which the employee would have lost the job or been moved to a lower level or lower paid job even if the leave had not occurred.

Labour Force Attachment Requirements for Eligibility

On the surface it appears as though provincial and territorial governments have taken the federal government's lead and are providing sufficient job protected maternity and parental leaves for all women employed for pay in Canada to allow for the collection of 15 weeks of maternity benefits and 35 weeks of parental benefits. This is misleading, however. Level of labour force attachment is used to determine eligibility for job protection under ES legislation. There is considerable variation from jurisdiction to jurisdiction ranging from no specific employment duration to 12 consecutive months of employment with one employer. British Columbia, Quebec, and New Brunswick stipulate no labour force attachment requirement other than engagement in paid employment prior to the commencement of leave.³⁰ Alberta and Nova Scotia have the *most* onerous legislation requiring one full year of continuous employment with the same employer prior to the commencement of leave. This means that in Alberta and Nova Scotia women who had been employed for one full year are ineligible for job protection through ES during a maternity and parental leave if they had started a new job during that year. In contrast, these women would have accumulated enough hours of work to qualify for EI maternity and parental

³⁰ While this appears progressive and is definitely more favourable than the labour force attachment requirements found in other provinces, the assertion that there is no specific labour force attachment requirement is misleading. In BC for example, ES legislation requires that an employee give her employer notice of intention to take maternity or parental leave at least four weeks prior to her expected date of delivery. Nevertheless, labour force attachment requirements in British Columbia, Quebec and New Brunswick are currently the least onerous in the country.

benefits. This means that they could take the extended parental benefits but would have no guarantee of a job to return to at the end of it.

Overall, in seven of 14 jurisdictions, and under the *Canada Labour Code*, qualifying conditions for job-protection are more onerous than qualifying conditions for EI. This is the case in Alberta, Manitoba, Nova Scotia, Newfoundland, Prince Edward Island, Northwest Territories, Nunavut, and Yukon. In some cases this is due to the weeks of work needed to qualify for protection and in other cases, the stipulation that this work be continuous or with one employer only. To illustrate, a woman living in PEI or Newfoundland, or an employee covered by the *Canada Labour Code*, employed full-time for 37.5 hours per week, would qualify for EI after working for 16 weeks (approximately 4 months) but would not qualify for job protection. The finding that the qualifying conditions for job protected maternity and parental leave under the *Canada Labour Code* are more onerous than those for EI is particularly startling considering the *Employment Insurance Act* and the *Canada Labour Code* are both *federal* legislation. The approximately 10% of paid workers in Canada who fall under the *Canada Labour Code* must work six consecutive months with the same employer in order to qualify for job protection. EI has no requirement that labour force attachment be with one employer only. Despite the inequality in access to EI because of the privileging of full-time, full-year labour force attachment, the EI program seems somewhat more sensitive to the current

realities of the growing prevalence of contract work, than does ES legislation in many jurisdictions.

The Good Mother/Bad Mother Dichotomy

This examination of ES maternity and parental leave provisions reveals that depending on place of residence and labour market position, paid workers in Canada are eligible for anywhere between 0 and 70 weeks of job protected maternity and parental leave. As was demonstrated in the preceding analysis of EI maternity and parental leave benefits, basing eligibility for job protection in ES legislation exclusively on labour market position discriminates against workers who are engaged in non-standard employment and, therefore, have more interruptions in employment than do full-time, full-year workers engaged in “continuous” employment. In 2002 only approximately 50% of women workers were employed all year (Jackson, 2003:10) meaning that one-half of all women had interruptions in employment.

Nitya Iyer (1997) argues that the exclusion of some women from maternity and parental leave support while others receive high levels of support corresponds with “the ‘good mother/bad mother’ division within the prevailing ideology of motherhood” (177). This ideology of motherhood is based on some women being perceived as ‘good mothers’ because of their social characteristics while others are labelled ‘bad mothers’ (Iyer, 1997:177). The women most likely to be excluded from access to maternity and parental leave are those women

with characteristics that put them in the 'bad mother' category; women with low incomes, women of colour, particularly immigrant women of colour, Aboriginal women, women with disabilities, women who cannot rely on another (usually a male partner) for financial support, and less formally educated women (177). In the case of maternity and parental leave, the perception of some women as good mothers and others as bad mothers may be instrumental in "determining which pregnant women are deserving mothers and which are not" (Iyer, 1997:177). Ironically, legislation that deprives a woman of support for maternity leave because of her social characteristics prevents her from conforming to the image of the 'good mother' by making it impossible for her to stay home with her newborn child. Labelling certain women less desirable mothers (albeit covertly), helps justify failing to support the childbearing activities of women in these categories and in doing so seems intent on discouraging certain women from procreating. Such exclusions send a powerful message about whom our governments deem suitable to procreate and what the ideal mother should look like.

The Implications of Differential Access

For many women the need for adequate income support and job protection during maternity and parental leave goes far beyond a simple desire to take a longer leave. Extended parental leave benefits mean little to those with no job protection, those with low weekly benefits rates, and those who qualify for no benefits at all. While paid maternity and parental leave should be an

option for all women working for pay, leave may be absolutely necessary if there is no family or day care support structure available. A mother without access to job protection under ES or payments through EI would be in violation of child protection laws if she left her infant alone 10 to 12 hours a day in order to work. But governments seem to be operating under the assumption that women without access to paid leave can turn to the “informal sector” for support: generally considered to be family, friends, and charitable organizations (Pulkingham & Ternowetsky, 1996:4). Interestingly, within this framework, governments regard relying on family, friends, and charitable organizations as self-sufficiency (Pulkingham & Ternowetsky, 1996:4). By suggesting that people can turn to their families and friends, government justifies further cuts to programs and promotes individualist thinking which is in keeping with neoliberal arguments against a progressive welfare state. This thinking presumes that the relatives and friends of the dispossessed are wealthy enough to support substantially increasing numbers of people who no longer have access to public social supports. Yet this thinking ignores the fact that the inability to provide for oneself is due to structural changes in society rather than the moral failings of the individual. The government of Alberta, for example, in failing to provide access to job protection for maternity and parental leave for many women, sends the message that maternity and parental leave is a private matter. Job-protection for women on maternity leave is not given high priority, perhaps based on the assumption that women who are procreating are dependent on a

male breadwinner, and an ideology which asserts that only women who have the financial means to procreate and rear children without any government intervention *should* be procreating.

EI maternity benefits and ES legislation appear premised on the notion that women bearing children in Canada have another source of income, preferably from a male partner, yet the reality for many women in Canada is that financial support from a private source is not available. Without sufficient government intervention, a quick return to the paid labour market may be a necessity, and if lack of affordable childcare makes this impossible, a woman taking a maternity and parental leave is forced on to the welfare rolls in order to stay at home to care for her child. With increasingly punitive welfare legislation in place across Canada, failure to provide adequately for maternity and parental leave puts many new mothers and their children in dire financial circumstances. In BC, for example, a woman without access to EI maternity benefits or childcare would be forced to live on meagre and insufficient welfare payments until her youngest child is three at which time she will be forced back into the paid labour market despite the absence of affordable childcare (Friends of Women & Children in B.C., 2002). However, the problem of affordable childcare will not suddenly cease to be an issue at the event of her child's third birthday.³¹

³¹Childcare is a very important issue but full discussion of the absence of, and need for, a national childcare program is beyond the scope of this project and, therefore, will not be engaged in detail here.

The attainment of greater equality, in terms of ensuring that childbearing does not disadvantage women socially and economically, requires government intervention at both federal and provincial/territorial levels. This is needed to ensure job protection is sufficient enough to prevent penalties in terms of labour market position and access to paid benefits for *all* women taking a maternity and parental leave from the paid labour market. The federal government must lead in this regard, amending the EI maternity and parental programs to make benefits universally available to women in the paid labour market, eliminating the labour force attachment requirements for job protection during leave currently entrenched in the *Canada Labour Code*, and openly calling upon provincial and territorial governments to amend their employment standards legislation to ensure job protection for all workers. The apparent assumption that job protection for non-standard workers is less necessary than it is for full-year workers is an increasingly pressing issue and a source of inequity, particularly given the expansion of non-standard employment. However, instead of normalizing this kind of employment and recognizing it equally in legislation, current programs and reforms over the past decade delegitimize and penalize those engaged in what government labels non-standard work patterns and families other than the nuclear family, thereby depriving many women of recognition and support for their reproductive activities.

Chapter 5

Occupational Welfare Provisions for Maternity and Parental Leave

The preceding discussion of Employment Insurance (EI) and Employment Standards (ES) demonstrates that Canadian provisions for maternity and parental leave are not universally available. Despite this, discourse around maternity and parental leave provision tends not to make the crucial distinction between “availability” and “accessibility” of leave. This chapter will examine the third component of the tripartite system of maternity and parental leave in Canada: occupational provisions. The analysis will examine who has access to occupational provisions for maternity and parental leave, the level of provisions available, and the role occupational provisions have on inequality within the tripartite system of maternity and parental leave provision.

This chapter will argue that private occupational welfare benefits for maternity and parental leave reinforce and exacerbate inequality created by EI and ES serving to further reinforce notions of deserving and undeserving citizens. Occupational provisions are delivered through the employment relationship and tend to be available only to a certain segment of the labour market. This assists in creating the impression that access to provisions is determined by individual “effort.” The suggestion that those with access to good leave provisions are more deserving of them because they have worked for them

while those without access to provisions delivered through the employment relationship are not deserving, presents an inaccurate picture of the reasons for polarization in levels of support for maternity and parental leave. Occupational welfare provisions for maternity and parental leave may also make the erosion of social welfare provisions such as EI less visible. By administering and encouraging voluntary programs through which employers can pay supplementary benefits for maternity and parental leave (Supplemental Unemployment Benefits and Wage-Loss Indemnity), the federal government supports individualization of the economic risks associated with childbearing. This support for private initiatives undercuts public programs and, therefore, a sense of collective responsibility, and may serve to deflect attention from the fact that accessing EI maternity and parental benefits has become more difficult. The image of universality in relation to maternity and parental leave through EI is largely maintained despite evidence to the contrary presented in Chapter 3. In this context, a false picture is painted suggesting that nothing is being taken away, but instead, that some people get more because they are “earning” better benefits and are therefore more deserving of them.

Occupational Welfare

Occupational welfare is a term used here to describe benefits provided to an employee, by an employer, as a condition of the employment arrangement. Occupational welfare provides “fringe” benefits which can be classified into two groups: employment arrangements (e.g., flextime) and benefits with a direct

monetary value (e.g., sickness benefits) (Gower, 1998:61). Like social welfare benefits, occupational welfare offers collective solutions for certain socially recognized needs. Unlike social welfare provisions, however, occupational welfare is a less visible system of collective provision, carries no stigma, and is delivered via market mechanisms. Occupational welfare provisions are privately delivered but often receive preferential tax status benefiting employers (and sometimes employees) and thus, despite appearances, governments subsidize these programs financially. Occupational welfare tends to benefit most those with “good jobs”³² creating a class of citizens who are eligible for extended health and drug plans, private pensions, and full wage replacement and long leaves for maternity leave, while others are eligible for no benefits at all.

A growing body of research explores the interplay between social welfare and occupational welfare (Shalev, 1996; Esping-Anderson, 1996), generally arguing that “some of the same features that inhibit the creation and expansion of traditional social programs unintentionally promote the hidden welfare state” (Shalev, 1996:10). Esping-Andersen (1996) argues that broad support for the public social security system is undermined as the more privileged labour force enjoys private protection delivered through market mechanisms. More research is needed to explore the relationship between the expansion of occupational

³² The term “good jobs” (Drolet & Morissette, 1998) is used to describe employment arrangements providing extensive benefits to employees. These jobs tend to be well paid, hence the connection between higher wages and provision of benefits, and are generally found in large organizations. This study classifies union jobs, “good jobs” according to this benefit availability criterion, although union jobs are often treated separately in the literature.

welfare measures and the erosion of public plans, but studies examining the redistributive effects of pension plans have concluded that private plans are substantially less egalitarian than public plans (Esping-Andersen, 1996; Townson, 2001).

The occupational welfare, or “fringe benefits,” most commonly offered by employers include extended health plans, dental plans, and private pension plans (RPPs). According to data from the *1995 Survey of Work Arrangements*, 55% of employees in Canada are entitled to an employer-sponsored pension plan or group RRSP, 63% are entitled to an extended health plan, and 59% are entitled to a dental plan (Drolet & Morissette, 1998). Full-time students and self-employed persons are excluded from these figures, however, so the percentage of paid workers in Canada who actually have such protection is substantially lower. In addition, there is gender inequality in access to occupational provisions with approximately 70% of men but only 55% of women, having access to such provisions (Gower, 1998:68).

Access to Occupational Welfare

Firm size, unionization, wages, full-time or part-time status, “permanent” or “contract” status, age, level of education, occupation, and industry are all factors influencing the likelihood of having access to occupational welfare benefits (Drolet & Morissette, 1998; Gower, 1998; Moloney, 1989). Each variable is important in determining access but the data presented here will consider firm

size, unionization, and wages specifically. Data on workplace provisions in Canada has not been compiled with race, ethnicity, or immigrant status as variables so who is most likely to be eligible for occupational welfare benefits will be inferred based on where “good jobs” offering such benefits are likely to be found within the labour market, and who is most likely to be in those jobs.

Labour market position determines the level of job protection and income security available to women bearing children in Canada. As has been shown in previous chapters, some women may be eligible for job-protected leave under ES but ineligible for EI because of strict eligibility requirements. Other women may not meet the labour force attachment requirements necessary for ES job protection even if eligible for EI. Self-employed women do not have access to any paid benefits or job protection at all.

Occupational arrangements in support of maternity and parental leave almost exclusively enhance paid protection that is available through ES and EI. Extended job-protected leave, additional financial compensation during part or all of the leave period, and maintenance of other fringe benefits such as extended health benefits, dental plans and/or pension plans during the absence from work, as well as provisions for flexible work arrangements in order to ease the transition from home to work, may be available to those covered by an employer benefits package.

Occupational Means of Providing Maternity and Parental Leave

Paid maternity and parental leave benefits, in addition to EI, may be provided by employers in two ways: Supplemental Unemployment Benefit (SUB) plans (available only to those who qualify for EI) and Weekly Indemnity (WI) plans. SUB plans were first introduced in the federal public service in 1956 as a way of supplementing the EI benefits of federal government employees during temporary lay-offs due to work shortages. The program was intended to create an incentive for employees to return to their federal jobs, thereby reducing costs associated with hiring new employees. The first SUB plan for maternity benefits was negotiated in 1979 by the Quebec Common Front, a group of public sector unions representing about 20% of the female labour force in Quebec at the time. The plan introduced vastly improved financial compensation for maternity leave at a time when paid maternity leave other than EI was extremely rare (Moloney 1989:34).

Across Canada approximately 3,000 employers, with over 887,500 workers collectively, now have approved SUB plans (HRDC, 2001 b). However, because plans topping up maternity and parental benefits no longer need to be approved (HRDC, 2003), the total number of SUB plans is not known nor what percentage of these plans supplement EI maternity benefits. Like other occupational fringe benefits, it is normally “good jobs” that have a SUB plan. As a result, a woman’s labour market position determines her likelihood of having access to SUBs for a maternity leave. The voluntary nature of this method of provision means that

there is no universality to these benefits as “SUB plans are not compulsory unless collectively bargained and they must be funded out of the current revenue of the plan sponsor or through a trustee [so] it is no surprise to find not all employers have one” (Pearce, 1997). Leaving payment of top-up benefits to the discretion of individual employers of course ensures differential access.

The top-up benefits paid under a SUB plan are not regarded insurable earnings for the purposes of EI and, therefore, cannot be used towards another EI claim. Top-up benefits *are* considered income for tax purposes however. Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) contributions must also be paid on SUB plan payments *if* the payments are made out of general revenues. If the plan is financed through a trust fund or insurance policy, however, payments are exempt from CPP/QPP contributions (HRDC 2001 b). This means that while there are tax savings for employers (and in some cases employees), women must pay premiums on benefits as though it were regular income but do not accumulate any credits towards subsequent EI claims.

Wage-loss indemnity (WLI) plans are designed to provide income-replacement to paid workers in the event of temporary or permanent disability. Employers who provide benefits through a WLI plan pay reduced EI premiums. The *Premium Reduction Program* was introduced by the federal government in 1971 to encourage the provision of WLI plans thereby taking a step towards privatization of unemployment benefit provisions. Today, employers providing

employees with income in times of disability receive a reduction in EI premiums if the plan provides wage-replacement of at least 55% of the employee's regular weekly insurable earnings up to the EI benefit maximum.³³ In other words, the amount of money paid to an employee weekly must not exceed what the employee would be receiving if she were collecting benefits through EI. Currently, employers pay reduced EI premiums on approximately 60% of all insurable earnings in Canada (HRDC 2001a) totalling annual reductions for employers of about one-half a billion dollars.

Wage-loss indemnity plans are less common than SUBs as a mechanism through which employers provide income support to parents on maternity or parental leave. Many WLI plans are designed to preclude maternity leave although employers with a plan qualify for the premium reduction regardless of whether the plan provides for wage replacement during maternity leave. As there is no direct fiscal incentive compelling employers to provide for maternity specifically through their WLI plan, many employers do not.

Occupational Welfare Provisions for Maternity and Parental Leave

There is a dearth of up-to-date information about occupational provisions for maternity and parental leave in Canada. Neither the *1995 Survey of Work Arrangements (SWA)* nor the *1990 Labour Market Activity Survey (LMAS)* examined maternity or parental leave provisions so the most recent comprehensive data of

³³ WLI is paid *instead* of EI whereas SUBs supplement EI payments.

occupational maternity leave provisions compiled by the federal government is now almost 20 years old: the *Maternity Leave Survey* in 1985 (Moloney, 1989). Joanne Moloney's study, *On Maternity Leave*, using data from the 1985 Maternity Leave Survey, showed that industries with high rates of unionization had the highest incidence of maternity absence whereas industries with the lowest rate of union membership had the lowest rate of maternity absence (Moloney, 1989). Because her study drew a connection between access to maternity leave provisions and maternity absence, this is a significant finding. But Moloney also acknowledged that union membership did not guarantee access to maternity leave provisions. In fact, in the early 1980's only one-half (49%) of collective agreements in Canada made mention of maternity leave and of these, more than two-thirds (71%) exceeded what was required by government legislation (Moloney, 1989:5). Thus, only one-third of collective agreements contained provisions meeting or exceeding government requirements. *Paid* maternity leave was provided in only 26% of collective agreements (Moloney, 1989:6). Other non-UI types of compensation paid by employers or through group insurance plans were found in about 20% of employment arrangements (Moloney, 1989:9). Moloney found that financial compensation rates differed markedly for full- and part-time employees due largely to the relationship between hours worked and qualifying for UI, with 93% of full-time workers being compensated compared to only 83% of those who worked part-time year round and only 60% of those who worked part-time for less than a year (Moloney 1989: 9). Other worker

characteristics, such as age, marital status, education, province of residence and industry, had only a subtle link overall to access to maternity leave compensation due in part, Moloney argued, to wide availability of UI maternity benefits. She did find, however, a more marked difference for non-UI types of maternity leave compensation among these sub-groups. Non-UI provisions were most common in the public and other regulated services with compensation being paid in 28% of maternity absences compared with only 12% for all other industries (Moloney, 1989:10). Paid compensation for maternity absence was less common for women under the age of 25 than for women who were older, for women without post-secondary education than for women who have post-secondary education, for single women than for married women (Moloney, 1989:10). Moloney reported that sampling variability made detailed analysis of small groups problematic but reported the general trends above. The study also found that longer maternity absences were most likely to be found among those who received higher levels of compensation for maternity leave (Moloney, 1989:11). In conclusion, the study found non-UI types of compensation for maternity leave was quite rare and, consequently, childbearing was an “expensive proposition to combine with participation in the workforce” (Moloney, 1989:12).

More recently, in January 1998, Human Resources Development Canada (HRDC) compiled data on maternity and parental leave provisions found in major collective agreements in Canada but this data set applies only to the approximately 36% of workers in Canada who are members of trade unions. In

fact, when one considers that only 30% of the *female* workforce in Canada is unionized (Akyeampong, 1998:30) and that all maternity leaves and most parental leaves are taken by women, the actual figure is lower. No similar data has been collected about non-union occupational provisions for maternity or parental leave.

In 1998, approximately 36% of collective agreements in Canada had some provision for paid maternity benefits beyond the level provided by the federal government through EI (HRDC, 1998). Based on the fact that 30% of the female workforce in Canada is unionized, we know that in 1998 at least 11% of the female workforce had provisions for maternity leave that were more generous than EI available to them.³⁴ In 1980 and 1988 respectively, only 5.8% and 26% of collective agreements had some provision for paid maternity benefits beyond the level provided by the UI system (Moloney, 1989). This represents more than a 20% point increase between 1980 and 1988. Thus, unionization in Canada over the past couple of decades is very relevant to maternity and parental leave provisions generally, however, labour market restructuring has had a major impact on unions. In 1984, 41.8 % of paid workers in Canada were unionized compared with 32.2% in 2002. For women the figures were 36.6% and 32.0% respectively. It is important to note that the rate of unionization in 1984 may actually have been higher than statistics suggest. Until 1997 data on rates of

³⁴ Although this tells us nothing about what is going on with the 70% of the female workforce that is not unionized.

unionization were collected through a survey of unions rather than the Statistics Canada household survey. Consequently, some smaller bargaining units were missed in the data collection prior to 1997 (Jackson & Schetagne, 2003:10-11). So while the percentage of collective agreements in Canada providing paid benefits beyond what is available through EI has gone up, the overall rate of unionization including the rate of unionization among women has gone down. This means that while a greater percentage of unionized workers now have provisions for maternity leave that exceed what is offered through UI/EI than they did 20 years ago, overall, the proportion of workers who are able to enjoy these benefits has gone down. In light of declining rates of unionization, better provisions in union collective agreements may not represent an overall improvement in maternity and parental leave provisions in Canada.

In 1998, paid maternity leave provisions found in collective agreements ranged from full or partial income for the two week unpaid EI waiting period to top-ups to the weekly benefits available through EI for between 6 and 39 weeks, or both. Unionized employees who do have a provision for paid maternity leave in their collective agreement receive anywhere between 60% and 100% of their regular salary (HRDC, 1998) from combined EI and top-up benefits. Breakdowns based on occupation, income, industry, and firm size are not available so we have only a very cursory picture of what is available. As of January 1998, *no* collective agreement had a provision for *paid* parental leave beyond what is provided through EI.

Rates of unionization between men and women are fairly equal with 32.3% of men and 32.0% of women unionized in 2002 (Jackson & Schelange, 2003). However, there is a large discrepancy in the unionization rates of public and private sector workers. In the public sector, 75.8% of workers are unionized compared with only 19.6% of workers in the private sector (Jackson & Schelange, 2003:14). Broken down by gender, in the private sector, men enjoy a substantially higher rate of unionization than do women. In 1999, only 12.8% of women in the private sector were unionized, compared with 22.5% of men (Akyeampong, 1998:9-10). In the public sector, however, a higher rate of unionization is found among full-time workers at 33.8% compared with only 24.2% of part-time workers in 2002 (Jackson & Schelange, 2003:14).

These figures are significant in terms of maternity and parental leave because, as the previous analysis of EI and ES legislation has shown, non-unionized, non-standard, part-time workers are those least likely to qualify for EI maternity and parental benefits and job protection through ES. Yet the percentage of paid workers in Canada who fall into each of these categories is growing and women are disproportionately represented in these segments of the labour market. This means that the kind of work needed to secure provisions for a supported maternity and parental leave has become increasingly unavailable and family forms increasingly deviate from the male breadwinner model at the same time that governments implement reforms that reify full-time full-year work and the male breadwinner nuclear family model. Overall this represents a

shift in support to an increasingly small group of citizens and an erosion of support for the fastest growing segment of the labour market. The following analysis of occupational provisions for maternity and parental leave will further demonstrate this trend and the polarization being exacerbated by the tripartite system of maternity and parental leave provision in Canada.

Estimating Levels of Maternity and Parental Leave Provision Among Non-Unionized Workers

Since the most up-to-date information about occupational welfare plans for maternity and parental leave apply to unionized workers only, and the only comprehensive information is very dated, current data on occupational provisions for sick leave (which is more comprehensive and up-to-date) will be used as a rough measure for estimating the level of maternity and parental leave protection for non-unionized employees. By comparing actual levels of protection for sick leave with actual levels of protection for maternity and parental leave among unionized workers, it is possible to get a rough estimate of maternity and parental leave provisions in the non-unionized sector as well.

Sick leave benefits were chosen because they are similar to maternity and parental benefits in costs and benefits to employers and employees. SUB plans can also top-up EI sick benefits (housed with EI maternity and parental benefits under the umbrella "Special Benefits") and WLI plans provide disability benefits to employees in times of sickness. Although sick leave provisions are the best occupational benefits to use to estimate provisions for occupational maternity

and parental leave provisions, sick leave benefits are more widely available than are maternity and parental leave provisions among unionized employees. It is reasonable to expect this is the case in the non-unionized sector as well, perhaps to an even greater degree. Sick leave benefits may be more widely available, in part, because the target population for maternity and parental leave provisions is mainly women and although parental benefits are touted as being a “gender-neutral” benefit, only 10% of those collecting EI parental benefits in Canada are men³⁵ (Marshall, 2003) so the target population for parental leave is not much larger than it is for maternity. This suggests that women are the primary beneficiaries of maternity *and* parental benefit provisions and, as such, bargaining power for these provisions is less than it is for other benefits, including sickness benefits.

Sick leave benefit data allows for the examination of differential access to sick leave benefits based on industry, occupation, firm size, unionization status, and wages, providing a picture of where paid occupational maternity and parental benefits are *most likely* to be available. Combined with the likely labour market position of different workers, this examination provides a profile of who is most likely to be eligible for occupational maternity and parental benefits.³⁶

³⁵ There may be many reasons men take few parental leaves. Men’s higher wages means that it may be more difficult for families to give up the wages of the male wage earner. In addition, the culture in certain workplaces may not be accepting of a man’s decision to take time off work for parental leave despite the existence of government programs.

³⁶ More research is needed in this area, particularly given the growing propensity for market driven “solutions” to social issues in Canada.

When analyzing data about workplace policies it is important to consider that although an employer may claim to offer a particular benefit, the benefit may actually only be available to employees who meet certain criteria (Gower, 1998) or may be provided to employees only at the discretion of a supervisor or employer (Hoschild, 1997). For example, some workplaces exclude part-time workers from family benefit plans although this may not have been specified during the data collection process. The data used here does not distinguish between full and part-time employees, but research generally suggests that many part-time workers are excluded from occupational plans or receive reduced or limited benefits (Gower, 1998:36). The exclusion of part-time workers from many occupational plans is particularly significant in a labour market where non-standard work, including part-time work, is becoming more common, especially for women who are more likely than men to be employed in part-time or other forms of non-standard paid work.

Employer Sick Leave Provisions

The 1995 *Survey of Work Arrangements* provides a breakdown of occupational sick leave benefits by earnings, workplace size, industry and occupation for unionized and non-unionized employees in Canada. Among all employees, paid workers who earn more, relatively speaking, are more likely to be eligible for paid sick leave than are lower wage earners. For example, 82% of employees earning more than \$19.99 per hour have provisions for paid sick

leave, while only 20% of employees earning less than \$10.00 per hour are covered (Drolet & Morissette, 1998).

Table 2 - Paid Sick Coverage by Hourly Wage

Hourly Earnings	Paid Sick Leave (% Employees Covered)
< \$10.00	20%
\$10.00 - \$14.99	57%
\$15.00 - \$19.99	73%
> \$19.99	82%

Source: Statistics Canada, Survey of Work Arrangements, 1995

Larger workplaces were more likely than smaller workplaces to provide employees with paid leave in times of illness. For example, 80% of employees in workplaces with over 500 employees were covered compared to 70% in workplaces with fewer than 20 employees (Drolet & Morissette, 1998).

Unionization, however, is a much stronger prediction of paid sick leave coverage than workplace size alone. In organizations with fewer than 20 employees, 70% of unionized workers had some provisions for paid sick leave compared with 32% of non-unionized employees. In firms employing more than 500 employees, the proportions were 80% and 77% respectively (Drolet & Morissette, 1998).

Table 3 - Paid Sick Leave Coverage by Workplace Size for Unionized and non-Unionized Workers

Workplace Size	Paid Sick Leave (% Employees Covered)
Under 20 employees	
Unionized	70%
Non-Unionized	32%
20 - 99 employees	
Unionized	77%
Non-unionized	48%
100 - 500 employees	
Unionized	78%
Non-Unionized	68%
Over 500 employees	
Unionized	80%
Non-Unionized	77%

Source: Statistics Canada, Survey of Work Arrangements, 1995

From this, we can conclude that with regards to paid sick leave, unionized employees are better provided for overall, but being a union member makes the most difference for those employed by smaller organizations. It also demonstrates that, overall, those who work for larger firms are more likely to be eligible for paid sick leave than those who work for smaller firms. Those earning higher wages are also more likely to be eligible than those with lower earnings.

There is no breakdown of paid sick leave by industry, based on unionized or non-unionized status, but knowing which sectors have high rates of unionization allows us to draw some conclusions. The highest rate of coverage for paid sick leave is found among those working for the federal, provincial or municipal governments, and those working for a public utility. These are largely unionized workforces.

Table 4 - Paid Sick Leave Coverage by Industry

Industry	Paid Sick Leave (% Employees Covered)
Federal Government	91%
Provincial Government	89%
Municipal Government	82%
Public Utilities	85%
Retail Trade	33%
Accommodation, Food and Beverage	17%

Source: Statistics Canada, Survey of Work Arrangements, 1995

Industries with the lowest rate of coverage for paid sick leave are those industries where unionization is most uncommon. Only 17% of those employed in accommodation and food and beverage services are eligible for paid sick leave, and only 33% of those working in the retail trade. When compared with the rate of coverage for those employees working in the public sector, there is a strong indication, again, that unionized employees have better benefits. It is reasonable to suppose that this is the case for maternity as well as sickness benefits. When we consider the findings that there is a strong connection between being eligible for paid maternity benefits and taking maternity leave (Marshall, 1999), it is reasonable to conclude that unionized employees who are more likely to be covered by occupational plans for paid maternity leave, than are non-unionized employees are more likely to take maternity leave.

A comparison of occupational paid sick leave benefits and occupational paid maternity leave benefits among unionized employees reveals that far fewer unionized workers in Canada are eligible for paid maternity leave benefits from

their employer than are eligible for paid sick leave benefits. Given that only 36% of union collective agreements provide paid maternity leave beyond what is provided through EI, we can conclude that maternity leave provisions among non-unionized employees is much lower than this.

This analysis provides a cursory picture only of maternity and parental leave provisions in occupational welfare plans. We know that maternity leave provisions are most likely to be available to unionized employees, higher wage earners, and among those working for larger firms. We can also predict that full-time workers are more likely to be eligible for benefits than are part-time workers are. But even among unionized employees, provisions appear to be inadequate. Beyond this, very little is currently known. Because women are the specific target population for maternity leave and because most parental leaves are taken by women, there is less bargaining power for maternity and parental leave provisions than for other kinds of occupational welfare benefits like sick leave, which has a more wide-reaching target population. The potential number of beneficiaries of provisions for sick leave is greater. If children were regarded as the responsibility of society, and not the responsibility of individuals (usually women), bargaining power for provisions to support these activities would almost certainly be greater.

The labour market position of particular groups of women is significant in terms of their likelihood of having access to occupational provisions for

maternity and parental leave. According to Statistics Canada, the occupational profiles of visible minority and non-visible minority women are quite different. For example, among those employed for pay in 1995-96, 36% of visible minority women with university degrees worked in professional occupations compared to 55% of non-visible minority women. In addition, during the same time period, 44% of visible minority women with university degrees were working in clerical, sales, or service jobs, compared with 25% of other women with a degree (Chard, 2000:224). According to the 1996 Census, 69% of visible minority women in Canada were immigrants (Chard, 2000:220). The number of visible minority women has doubled in Canada over the last decade, largely because of immigration. A Statistics Canada report suggests "visible minority women may be doubly disadvantaged, encountering barriers not only because of their gender, but also because of their race or colour" (Chard, 2000:219). These figures suggest that visible minority including First Nations women, and immigrant women, are more likely than other groups of women to be concentrated in those segments of the labour market least likely to provide maternity and parental leave support.

The finding that occupational maternity and parental leave provisions are most likely to be available to those employees also most likely to qualify for EI and ES job protection suggests that when occupational provisions are taken into account, inequity in support of maternity and parental leave is further exacerbated. Governments are fuelling polarization by attaching access to good

provisions for leave to labour market position. On the one hand there are shrinking good jobs but expanding provisions among those with good jobs so these women are getting better maternity and parental leave provisions. On the other hand, there is an expansion of bad jobs and diminishing provisions for those in less secure employment. As responsibility for outcomes are increasingly individualized by government programs, women engaged in standard full-time, full-year jobs with high wages and fringe benefits are not only more able to benefit from maternity and parental leave provisions from all sources, they are also considered more deserving of this protection than the increasing numbers of women who have no provisions or who have inadequate provisions. The current tripartite system of maternity and parental leave provision in Canada appears to be giving better protection to some and increasingly poor provisions to many.

Chapter 6

Conclusion: Accessibility & Inequality in Maternity and Parental Leave Provisions

“There is now overwhelming scientific evidence that success in a child's early years is the key to long-term healthy development. Nothing is more important than for parents to be able to spend the maximum amount of time with new born children in the critical early months of a child's life” (Prime Minister Jean Chrétien, October 13 1999 as cited in McIlroy, A., (1999)).

In announcing the expanded parental leave program under Employment Insurance (EI), Canadian Prime Minister Jean Chrétien attested to the importance of parental care in a child's early life. But there is a discrepancy between the rhetoric of the statement and the reality of who is able to take extended leave. Given the exclusionary qualifying conditions in the current EI program, the Canadian government must believe that it is only important that *some* newborn children be entitled to “the maximum amount of time” with their parents. The preceding analysis of the tripartite system of maternity and parental leave provision in Canada has demonstrated that if the government wants to help *all* Canadian families balance productive and reproductive activities, current policies must be reformed.

Since the introduction of UI maternity benefits in 1971, many changes to maternity and parental leave provisions in Canada appeared progressive. On the surface it appears as though benefits for women bearing children in Canada

are improving. What is not as apparent is that qualifying conditions have become more onerous and increasingly favourable to full-time, full-year workers, particularly during the 1990's and this has occurred at the same time that the labour market has shifted toward more non-standard employment and fewer full-time, full-year jobs. This discrepancy between real world experience on the one hand and legislation on the other means that fewer women are now eligible for paid benefits and job protection yet those who have remained eligible are now enjoying better benefits.

The Unequal Distribution of Maternity and Parental Leave Provision in Canada

This analysis of the tripartite system of providing for maternity and parental leave in Canada demonstrates that inequalities in support of childbearing are exacerbated by legislation which ties access to provisions and levels of protection to labour market position, yet frames provisions in a way that suggests that access is directly related to the "efforts" of individuals instead of structural factors both in the programs themselves, and in the economy. In Canada, access to maternity and parental leave provisions is determined by labour market position exclusively. Labour market position dictates leave length, level of job protection during leave, whether paid benefits are available, and the level of that income replacement, making a maternity and/or parental leave inaccessible to many women.

Women's participation in the paid labour market and the increasing necessity for this attachment to be fairly constant, coupled with a child's need for parental involvement in infancy, are factors that spurred the creation of Canada's maternity and parental leave programs in the first place. Notwithstanding the fact that levels of protection are insufficient even for those who *can* take leave, for many families in Canada it is clear that programs are not meeting these objectives. Instead, current programs demonstrate that in Canada, childbearing and rearing are largely treated as a private instead of societal responsibility (Freiler, 2001; Iyer, 1999). Governments respond to changes in the economy by reducing income support to families instead of helping families balance work and family responsibilities (Freiler, 2001:121). Levels of support provided by maternity and parental leave programs vary widely but women on maternity leave collecting EI, secure in terms of job protection, receiving wage top-ups, is not the norm. The reality for many women is no benefits or job protection and for many, this means no leave. The picture painted by the federal government suggests otherwise, however, with promises of increased access to longer parental leaves. Recent government initiatives may have improved protection for some women bearing children in Canada, but many women receive inadequate provisions in support of maternity and parental leave and others receive no protection at all. In 2000, only 54% of all new mothers in Canada received EI maternity benefits (Marshall, 2003) and while some of these women were not engaged for pay in the paid labour market many others were. Further,

the percentage of new mothers in Canada who received EI in a given year tells us nothing about the level of maternity and parental leave protection these women received or how long they were on leave. Of the 54% new mothers who received EI maternity benefits we do not know how many received the maximum EI benefit of \$413 per week and how many received less. We do not know how many of these women had job protection under ES legislation or an employer willing to hold her job and, consequently, how many of these women had a job to return to at the end of leave. And we do not know how many of these women received a top-up from her employer during maternity leave and, therefore, received full or near-full wages during her maternity leave. Exactly who comprises this 54% is not clear as EI maternity and parental benefits statistics are not broken down by race, ethnicity, or immigrant status. Neither is there a definitive way to determine who is eligible for employment standards job protection and there is inadequate information about occupational provisions for maternity and parental leave. Therefore, who is being best served and who is being excluded is obscured by government rhetoric.

Nevertheless, we do know that the current tripartite system of maternity and parental leave provision in Canada discriminates against particular groups of women. The system privatizes the reproductive activities of these women and deprives their children of parental involvement in the early stages of life. This is in direct contradiction to government rhetoric about the importance of quality care in early life and the “progressive” government legislation put in place to

ensure this “quality care” is available. As it stands today, Canadian provisions for maternity and parental leave do not adequately assist most parents to balance productive and reproductive activities and contrary to Katherine Marshall’s (2003) assertion, the recent extension of EI parental leave has not had a “major impact” on most new mothers and fathers. Current programs and recent initiatives provide for some women and families only. Even more disturbing is the fact that polarization between good and poor provisions takes place across lines of class, race, and ethnicity. This polarization sends a powerful message about how our governments view citizens in different social locations and whose reproductive activities it chooses to support and even acknowledge. This project demonstrates that while assisting the reproductive activities of a certain segment of Canadian society, the tripartite system of maternity and parental leave in Canada deprives many women of access to leave and in doing so, creates and reinforces inequality.

Access to Adequate Provisions Means Access to Leave

Consideration of where women are likely to be situated in the paid labour market, and the qualifying conditions for protection under each of the three components of the tripartite system of maternity and parental leave provision reveals that in Canada, few women are likely to have access to provisions for maternity and parental leave at levels sufficient to allow for a full-year of leave. Ironically, this is what the federal government states is available to women. Further to this, examination of where women are likely to be concentrated in the

labour market based on race, ethnicity and immigrant status, reveals that the group of “privileged” women who can take advantage of full maternity and parental benefits is likely to be white, middle class, Canadian born, with a male partner. Women who fit this profile are less likely than visible minority women and lone-mothers to be employed in low status occupations making it much easier for them to meet the qualifying conditions stipulated by various governments to secure paid benefits and job security during a maternity and parental leave. As a result, it is this “privileged” group of women who are most likely to be able to take maternity and parental leave (and a full-year of maternity and parental leave in particular).

Further, the tripartite system reveals an apparent assumption on the part of policy makers that most women have an alternative form of income to rely on in times of maternity and parental leave (theoretically a male partner) thereby rendering job security and adequate income levels less important. However, as this project has demonstrated, full-time, full-year work is increasingly unavailable because of labour market restructuring and many women do not live in the governments “preferred” nuclear family with a male breadwinner earning sufficient wages to render the wages of the female partner of secondary importance.

Katherine’s Marshall’s (2003) study reveals that since the extension of EI parental leave, more women are indeed taking longer leaves, however, little

information is provided about who are these women. The study reveals a direct relationship between taking maternity and parental leave and having access to paid benefits for leave so it is clear that for the majority of women, policy, not personal choice determines whether a leave is possible.

To illustrate, consider the positions of two fictitious but “typical” women. “Sherrie” is employed in a full-time, full-year, permanent job. She is pregnant with her first child and has accumulated enough hours of work to qualify for EI maternity and parental benefits. She has been in her current job for a short time only, but has had continuous employment for several years. “Sherrie” lives in British Columbia and is entitled to job protection and maintenance of seniority and benefits for the full year under the *British Columbia Employment Standards Act*. Her employer has SUB plan maternity benefit top-ups for full-time employees so she will receive full pay from her employer for the two-week EI waiting period in which no federal benefits are payable and will be topped up to 95% of her income for the maternity benefit duration. There is no provision through her employer for a top-up for the parental portion of her leave but she is married to a man with a full-time job and good income so she is able to afford the time at home and is in no rush to return to work.

“Reva” works part-time in the food services industry. She has held a number of part-time jobs (sometimes more than one at a time) and is often unable to secure full-time work. When she has worked full-time she has often

found that her employer is not flexible enough to allow her to fulfill her parenting responsibilities. She is a lone-parent and full-time daycare, when it is available, is beyond her financial means. When Reva applied for EI maternity and parental benefits, she was told that she had not accumulated enough hours of work to qualify and was, therefore, forced to return to work almost immediately following the birth of her daughter. "Reva" lives in Alberta and has been employed by her current employer for only three months (although she has been employed on and off for the last two years), so, based on the *Alberta Employment Standards Code* which requires that she be employed for 52 consecutive weeks with one employer to qualify for job protection, she may not have a job to return to if she takes maternity leave. This is an important consideration because her current job has higher wages than many she has held in the past and she is the sole support of her child so she cannot do without the income. As such, she has no choice but to return to work two weeks following the birth of her child. Even with this short leave she cannot make the month's rent. For now, she has been fortunate enough to find childcare among family and friends but the stress of working this out day by day is getting to be too much. In addition, many of her current arrangements will not be feasible for long as the circumstances of those providing her childcare are about to change.

These are only two examples. Many variations could be presented. For example, a woman might work for an employer who does provide a top-up to EI maternity benefits but because she may have recently returned to the workforce

she does not qualify for EI. Since SUBs are available only to those who are collecting EI, this woman would be entitled to no paid benefits at all.

Alternately, a new mother might qualify for EI but may not have sufficient weeks of labour force attachment to qualify for job-protected leave under the ES legislation in the jurisdiction where she lives.

Proposals for Change

It may appear as though the current federal government has placed children at the top of its policy agenda. However, this analysis reveals that despite rhetoric about Canada's "progressive" parental leave program, recent changes fall far short of actually addressing the problem of unequal access to, and insufficient levels of protection for, maternity and parental leave in Canada. Existing policies are not sufficient to effectively reduce inequalities between men and women in the labour market and recent reforms do not address the problem of unequal access to Canada's maternity and parental leave provisions. In order to improve the system's equality enhancing potential, and reduce the inequality created by the current system, a number of possible changes could be opened up for debate. In making changes to the system of maternity and parental leave provision in Canada, government must consider the level of payment, eligibility requirements, and the funding source for the benefits. Some of the possibilities are considered here.

The question of whether or not maternity and parental leave should be considered a form of unemployment, and therefore, whether the Employment Insurance program is an appropriate vehicle through which to pay maternity and parental leave benefits, was considered in 1970 and should be revisited. If EI continues to be the vehicle through which maternity and parental leave benefits are paid, qualifying conditions should be reconsidered. In order to meet the objective of greater equality for women, the federal government could amend legislation to provide greater access to benefits, and a higher benefit rate. Coverage could be extended to self-employed workers who are currently excluded and current labour force attachments should be reconsidered as they excluded many workers. The current benefit rate of 55% of income up to a maximum of \$413/wk minus taxes should also be reconsidered. Current benefit rates mean that maternity leave is out of reach for many people. As Katherine Marshall's (1999) study revealed, if benefit levels were raised, and more people had access, it is reasonable to expect that more parents would take time off work. Changes such as these could assist in lessening inequality among women and could reduce some of the financial inequality between men and women that is currently increased during maternity leave because of women's drop in income. Finally, whether or not a gender-neutral parental benefit is actually effective in creating greater equality between men and women should be considered. As an alternative, a paternity benefit exclusively for fathers could be introduced. Further research is necessary to fully investigate the potential benefits of such a

system as issues of workplace culture and beliefs about appropriate roles for men and women also play a large role. However, in countries such as Norway where paternity benefits exclusively for men are available, 80% of fathers take a leave compared with only 10% in Canada (Marshall 2003).

As an alternative to the present system of connecting maternity and parental benefits to employment, a flat rate universal benefit could be introduced. Extending coverage to all women is one way of ensuring that women in non-standard employment have access to maternity leave. The current system that limits payments to women in employment, and certain kinds of employment in particular, exacerbates inequality. It could be argued that as all women bearing and caring for newborns are making the same contribution to society, all should receive the same level of benefits. If the payment is designed to recognise the social significance of childbearing, society should contribute to the cost of supporting all parents in their reproductive activities. A flat rate universal benefit would ensure that non-standard workers and the unemployed are provided for and their childbearing activities are recognized. Such a benefit could be provided through the tax system or as a form of social security.

While a flat rate benefit may help avoid creating greater disparity between high and low income earners, there are tradeoffs which must be taken into account when considering any system. Maintaining the existing system but replacing women's full wages instead of only partial wages would address the

issue of inequality between men and women but not inequality among women. However, while a flat rate benefit would address inequality among women, depending on the level of this flat rate benefit, it may not address inequality between men and women for higher income earners. Also, the issue of funding creates limitations to the extent to which eligibility requirements can be amended to ensure more equal access to provisions under the old system. Currently, employers and employees fund EI maternity and parental benefits, not government. Consequently, it is not realistic to expect that employers will be accepting of a system that does not have some sort of labour force attachment requirement. However, such labour force attachment would be unnecessary in a fully government funded scheme.

To complement this research, in-depth cross-national comparative research is needed in order to more fully develop suggestions for change and alternatives to the current tripartite system of maternity and parental leave provisions. In addition, greater understanding of privately delivered provisions for maternity and parental leave and the interplay between privately and publicly delivered provisions is needed in order to consider the tradeoffs of alternative systems in more depth and unequal access to job protection must be considered in depth. It is crucial, however, that the impression that maternity and parental leave provision in Canada is sufficient, not take firm hold. Instead, the inequalities of the current system must be brought to the forefront and open

debates encouraged, in order to consider our options and ultimately, implement a more just system.

Conclusion

Like other social programs, current maternity and parental leave policies in Canada are based on a worker-citizen model. The rights of social citizenship, in this case access to maternity and parental leaves, are determined by a person's "contribution" to society through paid work; in other words, paid labour market position. This project raises many questions about the way the tripartite system of maternity and parental leave provides for families and about the extent to which provisions should be related to occupational and income achievement. Recent reforms to EI will only benefit a small (and shrinking) portion of the population and are regressive in that they further inequalities. Those with "good" jobs offering benefits, and with the financial means to take advantage of government programs which benefit only those who are already advantaged, are increasingly regarded as the independent, deserving members of society. Those who are not eligible for maternity and parental leave protection are increasingly regarded as "dependent" and less deserving.

A system that makes securing job protected maternity and parental leave difficult (and increasingly so in a labour market that is becoming more dependent on "flexible" labour and unstable employment), leaves decisions about granting maternity or parental leave up to individual employers.

Therefore, instead of providing a universal benefit for all women taking a leave from the paid labour market in order to bear children, the government leaves the fate of many women to the mercy of the market.

It would be difficult to find a politician at any level of government who does not claim to value “quality” care for children and does not acknowledge the necessity for parents to have adequate time with their children. Nor would it be easy to find a politician who would endorse the continued existence of child poverty. Yet inequities in the tripartite system of maternity and parental leave provisions reveal systemic societal discrimination regarding whose children are deemed to be deserving of extended parental involvement at the beginning of life.

Appendix A - Data Sources³⁷

Unemployment Insurance Act 1940

Unemployment Insurance Act 1971 (Bill C-229)

Employment Insurance Act 1996 (Bill C-23)

<http://laws.justice.gc.ca/en/E-5.6/text.html>

Canada Labour Code

<http://laws.justice.gc.ca/en/L-2/text.html>

British Columbia Employment Standards Act

http://www.qp.gov.bc.ca/statreg/stat/E/96113_01.htm

Alberta Employment Standards Code

<http://www.qp.gov.ab.ca/documents/acts/E09.cfm>

Saskatchewan Labour Standards Act

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/L1.pdf>

Manitoba Employment Standards Code

<http://web2.gov.mb.ca/laws/statutes/ccsm/e110e.php>

Ontario Employment Standards Act, 2000

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/00e41_e.htm

Quebec - Act Respecting Employment Standards

http://www.cnt.gouv.qc.ca/en/lois/normes/table_matiere.asp

New Brunswick Employment Standards Act

<http://www.gnb.ca/acts/acts/e-07-2.htm>

Nova Scotia Labour Standards Code

<http://www.gov.ns.ca/legislature/legc/statutes/labourst.htm>

Newfoundland Labour Standards Act

<http://www.gov.nf.ca/hoa/statutes/l02.htm>

Prince Edward Island Employment Standards Act

http://www.gov.pe.ca/law/statutes/pdf/e-06_2.pdf

³⁷ A URL is included for all data sources that are available electronically.

Consolidation of Labour Standards Act (Nunavut)

http://www.nunavutcourtofjustice.ca/library/consol-stat/1999_CSNu_106_Labour_Standards.pdf

Northwest Territories

Yukon Employment Standards Act

<http://www.canlii.org/yk/sta/pdf/ch72.pdf>

Maternity Leave Survey, 1985

Survey of Work Arrangements, 1995

1990 Labour Market Activity Survey

Supplemental Employment Benefit Program

<http://www.canlii.org/yk/sta/pdf/ch72.pdf>

Premium Reduction Program

<http://www.hrdc-drhc.gc.ca/prp-prtc/documents/in12199e.pdf>

1998 HRDC raw data of provisions in major collective agreements in Canada

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