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BILL C-21: A MINEFIELD FOR WOMEN

"A level playing field"

It is no coincidence that Unemployment Insurance is one of the first social programs to come under attack since the signing of the Free Trade Agreement with the U.S.. Canada's system is far superior to the state-based programs south of the border where only 26.4% of the unemployed receive benefits. In states that do offer UI, eligibility rules are generally harsher, benefit periods shorter and benefit rates are at 50% compared to Canada's 60%.

Some states have maternity benefits. Others don't. The Reagan Administration, supported by the Chamber of Commerce, asked the U.S. Supreme Court to strike down state maternity benefits because they discriminate in favour of pregnant workers and because the variability of state plans make uniform maternity policies "impossible" for national employers.

The Macdonald Commission also attacked our UI system as have many U.S. firms. For example, the United States government contested Canada's right to pay UI benefits to fishermen and for the federal government to pay part of the cost. Because the U.S. doesn't have the same program, it considers this an unfair subsidy.

Withdrawal of Federal funding

This pressure from American firms has become an

excuse for the Canadian government to withdraw its contribution to the UI fund. When our UI system was created in 1940, it was deemed essential that the federal government finance a share of the costs in order for UI to insure that UI be a national program available to all Canadians, wherever they lived.

Under Bill C-21, the government will withdraw its \$2.9 billion contribution from the UI fund. Employer and employee contributions will be increased from 1.95% to 2.25% in order to take up the slack. In other words, our premiums are going up even

though the UI fund is running an annual surplus of about \$1 billion. In addition, Bill C-21 will allow the government to redirect as much as 15% of UI monies (\$800 million in 1990) to "employment development programs" which, in the past, have been paid for mainly out of general revenues.

Women and Bill C-21

These changes on our Unemployment Insurance program mean that women must address more than just the parental benefit provisions of Bill C-21. In general, women have higher rates of unemployment and are more often employed part-time and therefore excluded from UI coverage. New cutbacks will make it even harder for women from regions or industries with high unemployment and women from disadvantaged groups (the handicapped, immigrants, visible minorities, natives) to qualify for UI benefits.

RUTH In ST.-JOHNS, NEWFOUNDLAND

Ruth works in a fish processing plant 3 months a year. Last year, saleswork at Christmas allowed her to avoid the "new entrant" status. Currently, she needs 10 weeks of work to qualify for 40 weeks of benefits as part of the Regional Extended Benefit program. Under Bill C-21, she won't qualify for any benefits because she doesn't have 14 weeks of work.

SUSAN from REGINA

Susan works at a hotel in Regina. As usual during the slow months, she's laid off when she has 39 weeks of work. Currently, she would qualify for 48 weeks of benefits but under C-21 she will receive only 35 weeks.



It should also be remembered that many of the cutbacks—since 1975 as well as the ones now proposed—have been justified on the grounds that women, "who don't really need to work" enter the labour force only long enough to qualify for UI benefits; that they abuse the system. In fact, women qualify for benefits much less often than men do. And we know that women who work, whether they're single, married or sole-custody parents, work because they need the income. We also know that they earn far less than men and that when they do receive UI benefits, they therefore receive correspondingly less.

As a representative of Canadian women, NAC insists that the root causes of unemployment and underemployment be addressed in this country. UI is not the problem. It is relatively healthy, running large surpluses in recent years which can be used to finance new benefits.

Tougher eligibility rules

Under the current law, a person (who is not a new entrant or re-entrant to the labour force) must have between 10 and 14 weeks of insured unemployment to qualify for unemployment insurance, depending on the regional rate of unemployment. **In virtually every area, the new requirement will be 5 to 6 weeks longer.** Bill C-21 specifies requirements of 10 to 20 weeks but only in regions with unemployment above 15% will the requirement be as low as 10 weeks. Until now that figure applied to regions with unemployment above 9%.

Cruel and unusual penalties

Under the existing law, a person who:

- quits a job voluntarily;
- is fired for "cause";

- refuses "suitable" employment;
- disobeys a directive from the Commission (to go to a job interview or take a training course, for example)

is subject to a penalty of 1 to 6 weeks of benefits.

Under the new law, the minimum penalty will be 7 weeks, the maximum 12 (1-6 weeks for disobedience of a directive). In addition, **benefits will be paid at only 50% after the penalty has expired.**

NICOLE à QUEBEC

Nicole is a single parent who works as a data clerk in Quebec City, earning \$8 an hour. Her company closes. After 3 months of looking for a comparable job, the Canada Employment Centre advises her of a job posting at \$7 an hour. Unfortunately it's more than an hour from her home, which will cause serious problems with her child care arrangements so she declines the posting. Besides, she needs better pay to support herself and her child.

The local UI office rules that she has declined a "suitable" offer of work and under new Bill C-21 provisions issues a 12-week disqualification to be followed by a 50% benefit rate. Nicole doesn't appeal. She can't afford to wait out the appeal procedure which could take months. She takes another job at \$7 which is closer to home.

Five years later she's laid off again. She discovers that C-21 requires her to finish the old 12-week penalty. In fact, the disqualification stands for 6 years.

Furthermore, if the person finds a job before the penalty has expired, **the penalty will nevertheless be carried forward for the next six years.** In other words, if, three years later, the person is laid off, the remaining weeks of penalty must still be served.

We all know how arbitrary these decisions can be. Is sexual harassment a legitimate reason to quit a job? Did Hélène get fired because

she wasn't doing her job properly or because she was pregnant? In the eyes of some UI agents, waiting tables is "suitable employment" for any woman even if she has specific skills. While many of these cases can be won on appeal, not everybody has the time or the resources to appeal.

What the government is really trying to do is to force people—women, visible minorities and immigrants will be the prime targets—to work at any job, at any wage. In their view, that is what is necessary to make Canadian business competitive with the U.S.

Shorter benefit periods

In virtually all regions, whatever the number of insured weeks of employment, benefits will be paid for fewer weeks. (See table and examples in boxes). This will hit hardest at low unemployment

regions like Southern Ontario. Nevertheless, under current legislation, in a region with an unemployment rate above 11.5%, 18 weeks of insured unemployment are necessary to qualify for the maximum 50 weeks. Under C-21, it will require 37 weeks of insurable earnings. In general, the maximum 50 weeks will not be available in any region with an unemployment rate below 10%, however many weeks or years a person has worked. The previous threshold was 6.6%.

Pretending unemployment isn't "real"

Until quite recently the Canadian government had at least a verbal commitment to full employment. At the time of the 1971 UI reform, it undertook to finance out of general revenues the cost of unemployment above 4%. It was stating that 4% was an average over the cycle and that in good times the unemployment rate should be even lower. In 1976 it moved away from this position, agreeing to finance the additional cost only when unemployment was greater than the average of the previous 8 years (5.6% in 1976). It continued, however, to pay for extended benefits in regions with unemployment above 4%.

Under Bill C-21, people will get additional benefits only when regional unemployment is above 6% and even these will be financed by employer-employee contributions. Although Finance Minister Wilson made some vague promises in his Budget about government contributions "in difficult economic times", there is no legal commitment.

Government and conservative economists have carefully developed the concept of "natural unemployment" which they say is now at about 6% Canada wide. This means 8% in Quebec and British Columbia and as much as 10% in the Maritimes. "Natural unemployment", by their definition, is not real unemployment. It is composed of people who "don't really want to work", of people between jobs and of people who don't have the skills to get

a job. Even with this verbal flimflam, unemployment is still above 7% after seven years of supposed economic recovery. The government has completely abandoned its responsibility to ensure that workers can find decent jobs. Finance Minister Wilson has never made any commitment to bringing unemployment down to even the scandalously high level of 6%. Almost all economic commentators are now predicting a recession with rising levels of unemployment, the cost of which must be paid for by us.

The government's answer to this problem is a Labour Force Development Strategy to which \$800 million of UI funds will be siphoned off in 1990. Many of the programs have nothing to do with training. Instead, they may provide employers with grants to study staffing needs, to hire management consultants to look at ways to improve competitiveness and technology, to pay for the costs of developing and implementing employment

CONNIE in VANCOUVER

Because Connie was working a few hours a week while she raised her kids, she wasn't eligible for UI. With the kids in high school, she works full time at a department store. Her employer regularly lays off people a week before they finish a 3-month probation period and acquire seniority and job security. With only 12 weeks of insured earnings, Connie still isn't eligible for UI. Classified as a "re-entrant", she needs 20 weeks of work. Bill C-21 does nothing to correct that. Furthermore, if she weren't a new entrant, she would qualify for 34 weeks of benefits under the existing law. Under Bill C-21 she will need 16 weeks to qualify for any benefits at all.

equity. While some of these programs represent legitimate areas for government spending, they should not be financed by UI contributions whose purpose is to provide temporary income protection to unemployed workers.

Privatization in the works?

The government has already begun consultation with business and labour on the establishment of a "National Skills Development Advisory Board". Bill C-21 provides for several new ways of transferring responsibility for training and job creation to the private sector. Among other points, UI monies could be used to assist claimants in starting a business and to provide wage subsidies to potential employers. The Commission could also contract out referral or training programs.

We can reasonably ask "just how far will this privatization go?" There are already rumors that the Employment and Immigration Commission will be transformed into a Crown Corporation. Will it then

be sold off to private profit-making interests? Several business groups are already lobbying to have some of the functions of Canada Employment Centres transferred to the private sector. But ILO Conventions signed by Canada require "the maintenance of a free public employment service".

Both the Macdonald and Forget Commissions proposed that UI should be structured more like commercial insurance where each small group contributes and receives benefits as a function of the "private" risk which can be attributed to it. The Macdonald Commission proposed "experience rating" of individual enterprises which is widely used in the United States. Forget proposed that benefit levels be established according to the number of weeks of contributions so that, for example, a worker with only 26 weeks of employment in a year would get only half the benefits of a person with a full year of insurable earnings.

Both of these proposals are fundamentally opposed to the concept of "**social insurance**": unemployment is a result of underlying economic phenomenon and cannot be ascribed to the behaviour of individuals or even specific employers. Therefore, society as a whole must take responsibility for both the causes and the consequences of unemployment.

NAC insists that the government has a responsibility to eliminate all but frictional unemployment. We also believe that the financial costs of unemployment should be shared by all Canadians, in particular by those fortunate enough to be at low risk.

NAC policy on Unemployment Insurance

1) **No tightening of eligibility requirements.** NAC supports a uniform 10-week requirement for all regular and special benefits regardless of the regional unemployment rate. It may be easier, in general, to get a job in the Toronto region than in Halifax, but that might not be true for a specific group of people such as immigrant women or for a sub-region where public transportation is poor. (Clause 5 and Clause 4 which distinguishes between "major" and "minor" attachment claimants.)

2a) **No increase in penalties:** NAC recommends that penalties be limited

to three weeks as they were from 1971 to 1975. (Clause 21 which proposes new subsections 30(1.1) and (1.2) of the UI Act).

2b) **No carrying forward of penalties beyond the current benefit period.** (Clause 21, Subsection 30(4)).

PHYLLIS in HALIFAX

Phyllis' employer got a \$100,000 grant from the Industrial Adjustment Services program to study the impact of Free Trade on the textile industry. The Halifax company put in some of its own money and set up an Industrial Adjustment Committee which is overloaded with management: 2 company officers, 2 supervisors "representing employees" and 2 union reps. The Chairman is a retired businessman. The Committee voted to use the money to hire a big management consulting firm to put together a new "work incentives program".

Phyllis is mad. She thought that the government's "employment development" program would mean she'd get some retraining. She doesn't see why her UI contributions are being used to pay a consulting firm. She's worried that the "incentives" program will turn into a speed-up and even layoffs. Her friend, Teresa, has some similar questions about a grant her company got through Human Resource Planning, another part of the federal government's new "Labour Force Development Strategy".

Technical note: Where possible, we have indicated the clause in Bill C-21 to which our recommendation applies. In legal jargon, the term "clause" applies to the sequentially numbered amendments enumerated in Bill C-21. Bill C-21 provides for amendments to the existing "Unemployment Insurance Act". Each unit of this Act is called a "section". Each numbered point in a section is a "subsection".

For example, clause 1(3) of Bill C-21 (page 1) repeals subsection 2(2) of the UI Act. According to the *Explanatory notes* (on the opposite page 1a), subsection 2(2) states that "a person reaching a specified age" is deemed to have reached it on the 1st day of the month after his or her birthday. The notes also indicate that this amendment is pertinent to clause 13 of Bill C-21. Clause 13 (on page 11) says "Section 19 of the said Act is repealed." The explanatory notes on page 11a give you the text of Section 19 which denies UI benefits to persons over 65. A Supreme Court decision has ruled this practice discriminatory on the basis of age. Therefore, the combined effect of clause 1(3) and clause 13 of the Bill C-21 is to allow people over 65 to contribute to UI and to draw benefits if they are unemployed. Clause 13 is the important one; clause 1(3) only eliminates an unnecessary definition.

2c) We would also like to see some **guidelines indicating what is "just cause" in the case of a voluntary quit.** In particular, sexual harassment, dangerous working conditions, and child-care problems associated with unreasonable hours or lengthy travelling times should be listed as "just cause" for quitting a job. (Section 28 of the existing Act).

4a) **Maintenance of federal government funding.** The federal government should return to the policy of financing the additional costs of unemployment above 4%, nationally or regionally, as a sign of its commitment to reduce unemployment to this level. It should also make significant contributions to pregnancy, parental, illness and other special benefit programs in order to preserve the public's interest in these areas. (Clauses 29,30,50,51,52)

3) **No reduction in benefit periods.** NAC would like to see the overall maximum extended to 78 weeks in areas of very high unemployment. We are in favour of real training and job creation programs so that people don't have to remain unemployed for such long periods, but we don't think it necessary to take the punitive route proposed by C-21. (Clause 9--Subsections 11(1) and (2) of the UI Act).

LOUISE - IT'S HER PROBLEM TOO

Louise has a secure job. Even if she should lose it, she has highly marketable skills and will get another one quickly. Bill C-21 changes don't seem to be of much interest to her even though she'll be paying higher premiums.

But Louise's 22-year-old daughter can't find a steady full-time job at a liveable wage and so she's still living with Mom. Louise also discovers that the provincial government is planning to raise taxes to cover the anticipated increase in unemployed workers who turn to welfare. Louise is not one of the 3 million Canadians who collect UI benefits during a given year--but it's her problem too!

illness and other special benefit programs in order to preserve the public's interest in these areas. (Clauses 29,30,50,51,52)

4b) **Training and job creation programs should not be financed from UI funds but from other government revenues.** (Clauses 20, 48, 49, 50)

5) **No reduction in benefit levels.** Clause 21(3) (Subsection 30(6) of the

Act, pages 16-17) opens the door to an eventual reduction of benefits to the 50% level by imposing it first as a punitive measure.

NAC would like to see all benefits raised to the 95% level. From 1975 to 1979 benefit levels were at 66-2/3% and previous to that were at the 75% level under certain circumstances.

NAC would also like to see the two-week waiting period abolished. Women, who already have trouble getting by, need that money to live on.

CITY	Official unemployment April 1989	Weeks of insurable earnings to qualify for U.I.		Duration of benefits in weeks Worker with 39 weeks insured work	
		CURRENT	PROPOSED	CURRENT	PROPOSED
Halifax, N.S.	7.6%	12	18	48	35
St. John's Nfld.	11.4%	10	14	50	50
Quebec City, Que.	7.1%	12	18	46	35
Toronto, Ont.	4.1%	14	20	34	29
Regina, Sask.	7.8%	12	18	48	35
Vancouver, B.C.	9.2%	10	16	50	43

- 6) **Amend Section 13 so that part-time workers with at least eight hours of insurable earnings are covered.** Currently a person must have at least 15 hours or earn at least 20% of maximum insurable earnings which excludes many women.
- 7) **Weeks during which a claimant is employed on a job creation project should be treated as employment** and covered by UI and the Canada or Quebec Pension Plans. This clause (18(2) on page 12), while not new, has the effect of reducing eligibility for regular UI benefits and is really a disguised subsidy to employers.
- 8) **Repeal of the clauses and Regulations (changes made in March 1985) which require that separation pay (termination pay, severance pay, vacation pay and pensions) be treated as earnings and deducted from UI benefits.**
- 9) **Removal of the obligation for taxpayers with income above \$44,070 (in 1988) to reimburse up to 30% of UI benefits.** This clawback, while not new to Bill C-21 as it was adopted in 1979, is a first step towards making UI benefits a "welfare" programme available only to the needy, rather than a universal social insurance program.
- 10) **No privatization!** Canada Employment Centres should be run by the government in the interests

of workers and not that of business. Government must be responsible for the quality of all training programs.

Non-discrimination

As a result of several court decisions, the government has had to make some positive changes to the Unemployment Insurance Act which correspond to previous NAC recommendations. Some are described in the pages on parental benefits. Two others are the following:

Clauses 2(2) and 3(1): Persons who are employees of a business owned by their spouse or of a corporation in which their spouse owns at least 40% of the stock--almost always women--will now be covered by unemployment insurance.

Clauses 2(1) and 13: Discrimination on the basis of age is eliminated. Persons over 65 will now be eligible for UI benefits although pension income in excess of 25% of the UI benefit will continue to be deducted from benefits.

NAC also recommends that workers between the ages of 55 and 64 be eligible for a special extended benefit given that they often have particular difficulty finding new employment.

A CHANGE IN THE STRUCTURE OF UI BENEFITS

Under the current UI Act, regular (for unemployment as opposed to parenting or illness) benefits are payable in three phases:

Initial benefit phase: 1 week of benefit for each week of insurable earnings up to a maximum of 25 weeks.

Labour force extended benefit phase: 1 week of benefit for each 2 weeks of insurable employment in excess of 25 weeks up to a maximum of 13 additional weeks of benefits.

Regional extended benefit phase: 2 weeks of benefit for every 0.5% that the regional unemployment rate exceeds 4% up to a maximum of 32 weeks.

The overall maximum cannot exceed 50 weeks of benefits in addition to the two-week waiting period. In a place like Toronto, however, if the unemployment rate is 4.1%, the maximum is only 40 weeks for a person with at least 51 weeks of insurable earnings: 25 weeks of initial benefits; 13 weeks of labour force extended benefits and 2 weeks of regional benefits.

Special benefits (pregnancy, adoption and illness or any combination thereof) are limited to 15 weeks and can be taken only during the initial benefit period which hurts many women.

Under Bill C-21, the three phases will be abolished but the numbers of weeks of benefits, and in many cases the overall maximum, will be significantly reduced. Special benefits will be able to be taken at any time and will be limited to a total of 30 weeks.

PARENTAL BENEFITS

Under the existing law, natural mothers or either adoptive parent can claim up to 15 weeks of benefits if they have 20 weeks of insurable earnings during the past year.

As a result of several court cases and a 1988 amendment allowing natural fathers to take the leave in the case where the mother dies or becomes disabled, the government has been forced to make some amendments to the UI Law. In so doing, it has announced some improvements to parental benefits as well as some significant cutbacks:

- Pregnancy benefits, remaining at 15 weeks, will now be available exclusively to a natural mother even if she dies or becomes disabled.
- There will be a new parental leave of 10 weeks available to either adoptive parent and to either natural parent or to be shared. However, if adoptive parents share the parental leave or if the natural father takes parental leave, both parents must serve the two-week waiting period without benefit.
- Previously, combined pregnancy and illness benefits could not exceed 15 weeks and could be taken only during the initial benefit period, (the first 25 weeks of unemployment). Under Bill C-21, pregnancy, parental and illness benefits can be combined up to a maximum of 30 weeks and can be taken any time. The maximum of 30 weeks also applies even though entitlement to regular benefits may be less than 30 weeks.
- Pregnancy, parental or illness benefits can be claimed during a strike or lockout under Bill C-21 but only if the person "had begun making arran-

gements in relation thereto" before the work stoppage began (clause 22).

Finance improvements without cuts elsewhere

These improvements, mainly the creation of 10 weeks of additional parental benefits for natural parents and the increased flexibility in combining special benefits, will cost about \$450 million. NAC insists however, that these, and other needed improvements, could have been financed without the cutbacks in the rest of the UI program.

There are also cutbacks for parents, the most serious of which is the **reduction of leave for adoption from 15 to 10 weeks**. In most ways, pregnancy and parental benefits still fall far short of NAC proposals. In addition, women should be aware that the general

thrust of UI reform threatens pregnancy and parental leave just as much as it does regular benefits. The general cutback in weeks of benefits may mean that women who avail themselves of pregnancy and parental benefits and are then unemployed may find they are not eligible for regular benefits. Most provincial labour standards legislation provide very poor job protection for maternity leave and none for parental leave. In any case they do not protect against layoff for economic reasons.

Bill C-21 makes the first move towards reducing benefits from 60% to 50% of insured earnings. Will pregnancy and parental benefits be exempt?

The withdrawal of the federal government from general financing opens the door to eventual privatization or to a move to return jurisdiction to the

MARIA in TORONTO

Maria works for a company which does light manufacturing in Toronto. She left work a month before the due date of her first baby. She was thinking of splitting the proposed parental benefit with her husband but he would have to serve an additional two-week waiting period and they'd really miss his higher salary. So Maria takes the 15 weeks pregnancy benefits and the 10 weeks proposed parental benefits.

When she returns to work, she finds that she, with thirty others, has been laid off. When she applied for pregnancy benefits, she had 39 weeks of insured earnings since a seasonal layoff the year before. Under the current UI Law, she would have had the right to a total of 34 weeks of benefits with 19 still to be taken. Under C-21, she has a total of only 29 weeks with only 4 left after the parental leave.

provinces--as was the case before the 1940 Constitutional Amendment which gave jurisdiction to the federal government. A woman's right to pregnancy benefits or a parent's right to parental benefits would depend on where she or he lives.

Parental benefits: NAC policy

1) In conformity with the Canada Labour Code, NAC recommends:

- 15 weeks of pregnancy benefits

- plus 24 weeks of parental benefits

- plus payment of benefits during the 2-week waiting period to be added to either the pregnancy leave or the parental leave.

In toto, this means 41 weeks for natural parents of which 26 would be available to either parent and 26 weeks for adoptive parents. (Clause 9)

2) **No cutbacks of existing benefits to adoptive parents!** Most adoption agencies require a parent to stay home for at least six months. In Ontario, for example, two-thirds of adoption are now of older children who have gone through very difficult situations. Adoptive parents very badly need this time off. Because of various legal technicalities concerning non-discrimination between natural and adoptive parents and the necessity of reserving pregnancy leave for natural mothers, such a demand may require defining adoption benefits separately from either pregnancy or parental benefits. (Clause 9, Subsection 11 (3)(b))

3) **Payment of benefits during the two-week waiting period.** NAC has called for suppression of this waiting period for all benefits but it particularly makes no sense in the case of pregnancy, parental and illness benefits when beneficiaries are not supposed to be looking for a job. (Section 23)

4) **Elimination of the special requirement of 20 weeks to qualify for pregnancy, parental or illness benefits.** NAC recommends that only 10 weeks of insurable earnings be required for any UI benefits, but in any case it should not be more difficult to qualify for special benefits than for

regular benefits. This is particularly discriminatory for women living in regions of high unemployment where it is often impossible to find 20 weeks of paid employment. (Clauses 4, 12, 14).

5) **Payment of benefits at 95% of insurable earnings.** Most European countries provide for parental benefits at a rate between 90 and 100%. There is no reason to reduce income levels during this period because there is no reason to provide work incentives.

6) **A new program of 10 days per year of parental responsibility benefits for each parent (20 days for sole-custody parents) for each child or other dependent family member.**

7) **No limits on combinations of pregnancy, parental and illness benefits.** In addition there should be a minimum number of weeks of regular benefits available after special benefits. The new rules in Bill C-21, while an improvement, may be discriminatory to women since men, eligible only for parental and illness benefits, can never be limited by the 30-week maximum. (Clause 9)

8) **No restrictions on the right to take pregnancy, parental and illness benefits during a strike or lockout.** If, for example, a woman finds she is pregnant two months into a strike and the strike has not been settled when the time comes for her to take the leave, she should be able to take it, even though she had not started to plan for it before the strike began. (Clause 22)

9) **The parental leave provisions of the Canada Labour Code should apply to all employees under federal jurisdiction, including the armed forces and public service employees not covered by a collective agreement.**

10) **Provinces should amend labour standards laws to be at least as generous as the Canada Labour Code (17 weeks of pregnancy leave and 24 weeks of parental leave).** Such leave should be granted even to recent employees (some provinces require more than a year of employment *with the same employer* before a woman is eligible). Job security should be complete, seniority should accumulate and employer insurance plans should be maintained.