UNINSURED
WHY EL IS FAILING WORKING ONTARIANS

SOCIAL PLANNING TORONTO
UNINSURED: Why EI is Failing Working Ontarians

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Introduction

As the Employment Insurance program (EI) nears its 70th anniversary, for many workers in Canada—now facing an indefinite recession marked by massive job loss—there is very little to celebrate. Since its inception in 1940, the EI program (formerly known as Unemployment Insurance) has undergone numerous and significant changes. Although expanded greatly during the 1950s and again in 1971, changes introduced since the late 1970s have made workers’ access to regular benefits increasingly difficult.

To say that many of the EI program reforms since the late 1970s has been a contentious policy issue would be an understatement. Workers have found themselves caught in the middle of an ideological debate as to what the federal government’s role and responsibility on unemployment should be, and who bears ultimate responsibility. Yet, with the EI program a shadow of its former self, it is evident that one side of this debate is winning.

Over the decades, the program’s intended purpose of providing unemployed workers with temporary income relief has fallen by the wayside. The unemployed have seen their EI benefit amounts cut, length of benefits reduced, eligibility restricted, and coverage eroded.

Efforts to curtail regional disparities in EI access have resulted in unfair and unequal distribution of EI benefits. As of December 2008, approximately 44.5% of unemployed workers in Canada were receiving regular EI benefits (42% of workers were covered when the program was first implemented).1 EI coverage has been cut by half since 1990 when about 80% of the unemployed Canadian workforce received benefits through the program.

In the face of economic uncertainty and mounting layoffs, many unemployed workers, especially those in Ontario, may find that the program they have paid into will not be there for them. As is often the case, this will impact the most vulnerable of workers the most: women, youth, people with disabilities, low-income workers, and new immigrants. Changes to EI rules and formulas to determine eligibility have largely failed to address the changing landscape of work in the country, such as the proliferation of nonstandard forms of employment.

This report broadly examines some of the key issues in regards to accessing regular Employment Insurance benefits, paying specific attention to how the program changes have affected EI coverage and benefits for Ontario and Toronto’s workers, and puts forward recommendations to ensure EI is universal and equitable.

History

The Federal Unemployment Insurance (UI) Act was introduced in 1940, and came into effect on July 1st, 1941. It was created in response to the widespread unemployment and poverty that plagued Canada during the Great Depression.
of the 1930s. It was one of many public policies introduced during that time aimed at developing social programs to protect vulnerable people during difficult economic times. These investments into a strong “social safety net” also marked a political ideological shift, one that acknowledged that poverty and unemployment were not just a result of personal behaviour or choice, but were instead largely influenced by economic and labour market forces, such as factory closures, seasonal work, or recessions – factors which are beyond any one person’s control.2,3

The primary objectives of the UI program were to provide financial aid to unemployed workers, assist in job placement, and help to relocate workers to regions with lower rates of unemployment.4

The introduction of a UI scheme therefore guaranteed certain rights and protections from unemployment, not only to keep workers from falling into poverty, but also to provide protection and stability for society as a whole. This would help to avoid or alleviate the many problems associated with unemployment and to act as an economic stabilizer during periods of recession. It was developed as a contributory insurance system, where employees and employers would pay premiums into the program, and could draw benefits from it.

Federal financial contributions initially extended benefits in regionally depressed economies, easing the required premiums of the system as a whole and putting pressure on the federal government to assure no region would fall too far behind in the objective of attaining full employment. Both aspects of this social insurance approach affirmed workers’ entitlement to roughly universal levels of economic security, rather than individual income tested forms of support from the state.

Over the years the federal government enacted a series of changes to the Unemployment Insurance Program. Changes legislated by the federal government in 1971 made the program nearly universal by expanding coverage to additional segments of the labour force, easing eligibility criteria, increasing benefit amounts and introducing sickness, maternity and retirement benefits.

However, emerging neo-liberal principles demanding less government intervention in free markets and business, would eventually target the UI program. This philosophy attacked the UI program on the grounds that ‘generous’ unemployment insurance programs essentially created a disincentive to work, that unemployment could be resolved by economic growth and market signals, and that many people were abusing the system by simply working the necessary minimum requirement for triggering access to benefits.

This assault on the UI program would eventually be reflected in program changes starting in the mid-70s which saw the introduction of Variable Entrance Requirements (VER) where regional unemployment rates were factored in to determine how many weeks of insurable employment were needed in order to qualify, as well as the cutting of benefit rates, reduction in benefit period, amongst others.5

While the cutting back of UI benefits was first introduced by the government in the late 1970s, the most significant modifications to the program occurred from 1990 to 1996. This period saw a series of federal bills aimed at reforming the insurance program. Some of the most profound changes put in place were the
government’s financial withdrawal from the program, a change from a week-based system to an hourly-based system that determined entrance requirements and benefit entitlement; the ineligibility of those who quit without valid reason or were fired; reduced maximum benefit rates; and the rebranding of the program from Unemployment Insurance to Employment Insurance.

The growing shift from providing income support to providing more “active” employment benefit and support measures that would assist workers in finding secure work was encapsulated with the introduction of EI Part II – bringing in a range of programs such as skills loans and grants, wage subsidies, self-employment assistance, and job creation.6,7

How EI works today

The following are just a few of the most contentious parts of the EI program that critics have identified as having eroded eligibility and created barriers for workers to receive regular benefits.

Qualifying period & labour force attachment period

To become eligible for benefits a worker must have accumulated the necessary number of insurable work hours in the last 52 weeks of when the claim was made. This is referred to as the ‘qualifying period’. This number is based on regional unemployment rates. The lower the unemployment rate of a region, the more hours of work are needed to qualify. With Toronto’s current unemployment rate of 8.8% (as of March 2009, based on a three-month moving average) workers would need 595 hours in order to qualify for regular benefits.

Additionally, a worker’s prior attachment to the labour force is also assessed. This ‘labour force attachment period’ of 52 weeks precedes the ‘qualifying period’. To be eligible for regular benefits a worker must show that they accumulated at least 490 hours of employment during this ‘labour force attachment period’.

Those who do not meet the ‘labour force attachment period’ criteria (most often new entrants such as youth or newcomers, or re-entrants to the labour market who have been absent from the workforce in the past two years) need a minimum of 910 hours in their ‘qualifying period’.

Benefit amount and duration of benefits

Weekly benefit amounts are based on 55% of average earnings over the previous 26 weeks to a maximum of $447. Benefits last between 14 and 45 weeks depending on regional unemployment rates and hours worked during the previous year. It is important to emphasize that these are maximum figures and that only those in high unemployment regions would be able to obtain the maximum level of benefits. In fact, the average weekly regular unemployment benefit across the country in 2008 was $329.46.8 In 2006-2007, Toronto’s EI beneficiaries received an average weekly benefit of $339, with benefits lasting an average of 30.5 weeks.9

Waiting period

There is currently a minimum two week waiting period before a person can start receiving their benefits. The Service Canada website has justified this waiting period by describing it as the following: “This is like a deductible for any kind of insurance.”10 The government has, in effect, equated EI to a form of private

UNINSURED: Why EI is Failing Working Ontarians | 3
insurance; however, unlike private insurance, workers are unable to shop around for their unemployment insurance provider. For low-income workers, two weeks without any income can put families in a financially detrimental position. A nation-wide Environics poll had revealed that 4 in 10 Canadians said that they are only one or two paycheques away from falling into poverty. Those needing to work on a short term basis or file for social assistance during that two week period, will find their EI benefits deducted.

What are the problems for Ontario?

While the steep decline in EI coverage and tightened eligibility criteria has been felt by workers all across the country, it has been especially detrimental to Ontario’s workforce. The provincial government has claimed that its workers are being left out of the program despite being one of its prime contributors. This is justified by numbers indicating that Ontario’s average share of EI benefits is one of the lowest in the country. In 2007, EI premiums from Ontario’s employers and employees represented almost 40% of the program’s total contributions, however only 30% of unemployed workers received regular EI benefits (compared to an average of 58% in other provinces). Furthermore, the average of total EI regular benefits per unemployed person in the province was about $5,120, compared to $9,750 in other provinces.

The current recession is taking a tremendous toll on Ontario’s workers. From October 2008 to March 2009, nearly 171,000 jobs were lost pushing the province’s unemployment rate to 8.7%, the highest in over a decade. Toronto has seen its unemployment rate climb to 8.8% in March 2009, largely surpassing the rates of other major Canadian cities.

For many of these workers, EI will be their first stop for assistance in these difficult times. Yet the evidence of the unequal EI distribution in Ontario can be seen in some of the hardest hit areas of the province. Both Oshawa and Windsor, for example, have seen substantial increases in the number of EI claims; however the level of EI benefits in these cities was one of the lowest in the region.

The federal government has opened up access to training under EI’s Part II employment benefit and support programs (delivered by the province under the Labour Market Development Agreement) for workers who do not qualify for EI benefits. Previously, some programs, such as skills development or the targeted wage subsidies program, have been inaccessible for some unemployed workers due to EI eligibility being a prerequisite. The 2009 Federal Budget announcement of $500 million over two years towards a Strategic Training and Transition Fund for workers who have been unable to access training programs is expected to assist 50,000 unemployed workers (such as the long-term unemployed or self-employed workers).

Further research is required to evaluate if these employment benefits and support measure are indeed helping unemployed workers find suitable and secure employment, and which groups have difficulties accessing these programs.

Problems for Toronto’s workers

While the loss of income has the biggest impact on any worker who loses their job, there are also myriad other negative implications, both
personal and social, associated with unemployment. This can include mental and physical health impacts, such as depression, decline in self-esteem, increased anxiety, and alcohol abuse, as well as other social effects such as family breakdowns, and an increase in crime and suicide rates.  

With EI eligibility, benefit periods and rates contingent upon a region’s unemployment rate, Toronto’s workers have seen their access to EI decrease as well since the 1990s. In 2008, on average only 23% of unemployed workers in the Toronto area were in receipt of EI benefits (the unemployment rate in Toronto in 2008 was 7.52%). This represents a decline of nearly 59% from 1990, when 56% of unemployed workers were receiving EI benefits. Workers in the Greater Toronto Area alone have been found to contribute 19% of the entire EI fund.  

The graph above reveals the decline in EI beneficiaries (as a ratio of EI recipients to unemployed workers) for the City of Toronto from 1990-2008.  

EI benefit disparities also exist from one urban centre to another. The following table compares EI average weekly benefits amounts and average length of entitlements for different Canadian cities with varying rates of unemployment for the year 2006-07. While Toronto’s unemployment rate was nearly double that of Calgary’s, Toronto received less in terms of average weekly benefit, and only slightly longer duration (about a week) of benefits.

The difficulty in accessing EI benefits for Toronto’s workers should come as no surprise considering the makeup of Toronto’s labour force and the changing nature of work in the
EI BENEFITS FOR URBAN CENTRES (2006-07)

<table>
<thead>
<tr>
<th>City</th>
<th>Unemployment rate (%)</th>
<th>Average entitlement in weeks</th>
<th>Average weekly benefit</th>
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<tr>
<td>St. John’s</td>
<td>8.1</td>
<td>34.7</td>
<td>$324</td>
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<tr>
<td>Halifax</td>
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<td>$313</td>
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<td>31.6</td>
<td>$318</td>
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<td>30.5</td>
<td>$339</td>
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<tr>
<td>Oshawa</td>
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<td>$352</td>
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<td>$353</td>
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</tr>
<tr>
<td>Vancouver</td>
<td>4.4</td>
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</tr>
</tbody>
</table>

SOURCE: Human Resources and Skills Development Canada, 2007 Monitoring and Assessment Report

city. The EI program has been designed to accommodate a traditional form of work - i.e. permanent, full-time employment. This, however, is not reflective of the changing labour market which has favored more “flexible” forms of employment arrangements, namely contract, temporary, casual, and part-time work (also known as non-standard, or precarious work). Furthermore, a large segment of Toronto’s workforce, including low-income workers, youth, women and new immigrants, are not being adequately covered by EI, and will be hit hardest when they lose their jobs. Consider the following:

Toronto remains one of the top Canadian cities in which new immigrants settle. Between 2001 and 2006, 267,855 newcomers settled in Toronto, an average of 55,000 new immigrants per year.21 These newcomers, with no prior attachment to the Canadian labour force, need to accumulate 910 hours of work in order to qualify for EI.

The proliferation of non-standard forms of work makes it difficult to accumulate the necessary hours to obtain EI.

In the past 10 years, there has been a 59% increase in the number of temporary and contract jobs across the country.22 From 1997 to 2005, the number of temporary employees in Toronto increased by 68%, and in 2006 accounted for 13.4% of all Toronto workers.23 The 2006 Census revealed that self-employed workers accounted for nearly 12% of Toronto’s working population.24

Working on the Edge, a report released by the Workers’ Action Centre, has also found that many employers are purposely misclassifying their employees as “independent contractors” or as “self-employed” in order to increase their profits and avoid legal obligations to their workers. Since self-employed workers are ineligible for EI, these employees will never be able to obtain benefits when they are let go. Moreover, since those who voluntarily quit their jobs (without a just cause) are also ineligible to collect EI benefits, workers in precarious working conditions may feel pressured to stay where they are, for fear they will be ineligible to receive benefits while they look for more stable, long-term employment.
The significant gender gap in EI coverage and unequal benefit rates between men and women.

From January 2008 to January 2009, for instance, the increase in the number of men receiving regular EI benefits was twice that of women. The number of male beneficiaries in January 2009 surpassed those of women in every province and territory across the country. These findings hardly point to anything new. The report “Women and the Employment Insurance Program” by the Canadian Centre for Policy Alternatives (CCPA) found that the proportion of unemployed women receiving EI benefits diminished significantly from 69% in 1990 to 32% in 2004.

The report goes on to detail how the EI program has not accurately reflected the realities of women’s participation in the labour force. Women are more likely to be in part-time, temporary, casual, and contract work, on average are paid less than men, and are more likely to leave a job due to family responsibilities than to lose a job – all factors that limit their eligibility for benefits. Women who do qualify for regular EI benefits may find, due to their low wages, benefit amounts that are lower than social assistance. In 2006-07, there was a 20% gap between men’s average weekly EI benefits compared to women’s.

In failing to rectify such gender disparities, the government is not fully valuing women’s employment contributions. Difficulties in accessing benefits for women is not a new phenomenon, as historically the government has placed special conditions for married women in order to curb their unemployment insurance claims. The 1962 report by the Committee of Inquiry into the Unemployment Insurance Act, hastened to single out married women as most likely to be guilty of making fraudulent UI claims.

The chart below illustrates the declining rate of EI recipients in Toronto since the 1990’s,
and how the number of female beneficiaries has remained nearly consistently below that of men.\textsuperscript{31}

Despite the fact that these segments of the labour force are not eligible to receive EI benefits due to the nature of their employment, they are regular EI contributors from the first hour of their employment (unless they happen to be contract workers deemed to be self-employed).

\section*{EI and Social Assistance}

As the recession deepens, many workers who are denied EI or have exhausted their EI benefits will have to resort to other means in order to make ends meet. This can include dipping into their savings or RRSPs, increasing their debt load by taking out loans or relying on credit, borrowing from family or friends, or having to apply for social assistance. In Ontario, an increase in social assistance cases would place greater financial burden upon municipalities, as they are responsible for a shared cost of administering the program.

Those who have little choice but to turn to social assistance will also find that Ontario Works (OW) is just as difficult and restrictive to access as EI, as applicants must prove that they have no other form of income and virtually limited or absolutely no savings or assets to become eligible for benefits. A single individual with no spouse or dependents for example, cannot possess more than $572 worth of (non-exempt) assets, such as cash, savings, or investments or own any motor vehicles valued at more than $10,000; the maximum asset limit for a claimant with a spouse and one dependent is $1,630.\textsuperscript{32}

Moreover, social assistance benefits in the province are far below what one would need in order to maintain an adequate standard of living, as rates have not been restored since being drastically cut by 21.6% under the Conservative Harris government in 1995. As of December 1, 2008 the maximum monthly basic needs and shelter allowance for a single individual on Ontario Works was $572, while a couple with a dependent aged 12 years and under was $1,036.\textsuperscript{33}

A report by TD economics released in February 2009 paints a grim picture for Toronto in light of the current economic crisis. It has forecasted the city's unemployment rate will reach 9.5% in 2009, which the TD Bank estimated would result in an increase of 18,000 to 20,000 OW caseloads.\textsuperscript{34} This would amount to an additional $65 to $70 million cost to the City of Toronto.

The following graph illustrates the number of EI and social assistance (SA) cases in Toronto between 1990 and 2008. The sharp decline in both EI and SA cases in the mid-90s in all likelihood reflects the regressive changes to EI, the recovering economy from the 1991-92 recession, as well as the introduction of the Ontario Works program by the Conservative Harris government.\textsuperscript{35} As mentioned earlier, the restrictive nature of the OW program may help to explain the lack of relationship between declining EI coverage and an increase in social assistance. Further research would need to be conducted to determine the relationship between EI and SA use, since people who may not have been eligible for EI could have turned to SA, or those who would have received more income through SA would have not applied for EI (or vice versa).\textsuperscript{36} However, it is very possible that individuals who were denied EI or had exhausted their benefits had, as a result, turned to OW.
Navigating the EI system

Today, the EI system has become an automated and computerized process, where the vast majority of claims are entered and assessed electronically with reduced staff involvement. In 2007, 95% of EI claims were registered electronically.37 People can fill out their applications online, and complete their regular EI reports via the internet or by telephone. While the government has increasingly called for more pro-active means to find employment, an automated computerized system offers little in the way of helping unemployed workers the opportunity to assess their skills, find suitable re-training programs, or assist them in finding suitable and secure employment.

Workers who have contributed to the EI system for years, but will be applying for benefits and navigating the system for the first time, may be unfamiliar with the complex formulas used in determining their benefits; or for others, they may be dismayed to find they are ineligible to receive any benefits at all. A Canada-wide Human Resources and Skills Development Canada (HRSDC) EI tracking survey conducted in 2008 of 1,500 Canadians across nearly all regions of the country, revealed some interesting figures. Although only 23% of respondents had received EI benefits within the past 5 years, 73% felt confident that they would be able to access EI if they were to lose their employment.38

Questions around one’s familiarity with the EI system demonstrated that many Canadians were not aware of how the program operates. Only 34% were able to identify the federal government as being responsible for the EI program. As well, many respondents were unaware of the additional benefits that they may be entitled to such as sickness benefits for any short-term illness (47% not very/unaware), compassionate care benefits (49% not very/unaware), and the Family Supplement benefit for low-income families with children (65% not very/unaware).
The Family Supplement benefit provides low-income families with children, with a net family income of $25,921 or less, a benefit rate increase of up to 80% of one’s average insurable earnings. This benefit is automatically provided for those families receiving the Canadian Child Tax Benefit (CCTB), and is calculated using family income information provided by the Canada Revenue Agency, as the CCTB application collects an individual’s Social Insurance Number (SIN). In 2006-07, the average weekly benefit for this group in Ontario was $268 (the supplement providing an average weekly top-up of $42). Nationally, EI recipients receiving this benefit (predominantly working women) has steadily decreased from 11.4% in 1999-2000, to 7.7% in 2006-07.\(^{39}\) HRSDC has attributed this decrease to the rise in family incomes, while the income level threshold to receive the supplement has remained unchanged since 1997, when the benefit first came into effect.

Overall, these survey findings indicate that the government has not properly informed workers of the benefits that they are entitled to, and more public education needs to be conducted to reverse such trends. The automated Family Supplement benefit must also be reviewed in order to determine whether the family income eligibility level requires readjusting to reflect current low-income measures. For example, a family of four living in Toronto with a net family income of $29,000 would not be eligible for the EI Family Supplement benefit, however, they would be considered as low-income based on Statistics Canada’s Low-Income Cut-Off (the 2007 after-tax low-income cut-off for a family of four in a city with a population of 500,000 or more was $33,946).

“The Take all available work”

Critics have often cited the need to tightly regulate and restrict the EI program, claiming that an overly generous program creates a disincentive to work, or for the pressing need to curb access by repeat claimants. In a February 2009 press interview, Human Resources Minister Diane Finley underlined the government’s position on EI by stating: “Our goal is to help people get back to work, and get back to work quickly in jobs that will last. We do not want to make it lucrative for them to stay home and get paid for it, not when we still have significant skill shortages in many parts of the country.”\(^{40}\)

There is no argument that the intent of EI is to provide temporary financial assistance for workers in between jobs, so that workers can have the time to look thoroughly for employment that is most suited to a person’s training, skills, interest, and that can provide them with an adequate income and benefits. Yet the “jobs that will last” that Minister Finley is quick to promote are the very jobs that are quickly disappearing. In the past decade, Ontario is the sole province that has seen its proportion of jobs that pay less than $10 an hour increase.\(^{41}\) In 2007, 17% of jobs in Ontario paid less than $10 an hour.\(^{42}\)

Further, manufacturing jobs continue to be lost across Ontario. From 2002 to 2007 Toronto lost 104,600 manufacturing jobs.\(^{43}\) Across the country, the recession has decimated full-time employment, yet there has been an increase in the number of part-time jobs. From October 2008 to March 2009, Canada lost 387,000 full-time jobs, while part-time positions rose by 30,000.\(^{44}\) The federal government’s mantra continues to be “take all available work”, pushing workers into sectors of the economy that offer
low pay, no benefits, or little or no stability nor security. Consequently, people may feel forced or trapped into such working arrangements, since voluntarily leaving would automatically result in the denial of EI benefits.\textsuperscript{45}

Evidence of this push can be found in the EI rules themselves. For example, the rationale for altering the EI program to an hourly-based system from a week-based system and for introducing “small weeks” (when workers earn less than $225 a week) into the benefit formula was to assist those in part-time and seasonal work to maximize their EI benefits, while still being able to take all available work (including part-time and temporary work according to Service Canada).\textsuperscript{46} However, setting the threshold of number of hours needed to qualify in low unemployment regions at a high level has essentially had the reverse effect, and the small week method of calculating benefits has little impact for those employees who consistently work “small weeks”. Furthermore, the previous weeks based system assumed a minimum work week of 15 hours (with a minimum of 12 weeks to be eligible), while the current hourly system assumed a 35 hour work week (thus increasing the minimum hours needed for eligibility to 420 hours), as a result excluding part-time workers and precarious workers.\textsuperscript{47}

**Fraudulent Claims**

As with many forms of income support programs, fraud is often touted by government and critics as a constant concern. EI fraud can be perpetrated by workers or employers, such as in cases where earnings or employment are not reported by EI claimants, or where employers falsify and/or sell Record of Employment documents. According to the government, curbing such illicit actions requires further regulating, cutting and imposing restrictive criteria on such programs.

However, in many instances these claims of fraudulent activity are largely inflated in comparison to the actual money spent on such programs. In 2007-2008 the federal government spent approximately $14.3 billion in EI benefits.\textsuperscript{49} In 2007-2008 the HRSDC department reported a loss of $147.9 million due to fraudulent EI claims.\textsuperscript{49} This represents roughly 1% of all spending on EI benefits. HRSDC has estimated that it will eventually recover all but $58,924 of this money by ordering fraudulent claimants to return the benefits that were paid out to them.

**Surplus?...What surplus?**

The federal government’s withdrawal from the Unemployment Insurance program in 1990 as a financial contributor, signaled the beginning of the most pronounced changes that the EI program would see; changes that would see EI revenues soar, and expenditures plummet.

As a result of the reforms that restricted entitlements, the federal government saw the accumulated surplus from EI premiums rapidly balloon over the years- from $4 billion in 1994-95, to an astonishing $54 billion by 2008. This surplus of funds flowed directly into the federal government’s consolidated general revenues as opposed to being streamed into a separate EI account. This money was primarily used to balance the government’s budget and pay down the national debt rather than being re-invested back into the EI program. As confirmed by a Finance Canada spokesperson in 2004, “That money’s already been spent...The Employment Insurance account has been consolidated on
the books since 1986; it’s just a bookkeeping entry, there’s no real cash there.” The government in other words had both withdrawn its contribution to the EI program, and used the surplus funds from workers and employers for its own purposes.

The Auditor General, in five consecutive reports dating from 2000 to 2004, joined the growing chorus of community and labour advocates in admonishing the federal government for misusing EI money and violating the fundamental objectives of the Employment Insurance Act.

In May of 2008, the Canadian Labour Congress, along with two Quebec labour unions, La Confédération des syndicats nationaux (CSN) and the Syndicat national des employés de l’aluminium (SNEA) launched a Supreme Court case against the federal government claiming that the government had been illegally diverting EI surplus funds into the government’s general revenues and improperly spending it on debt reduction and other social programs. The unions accused the government of essentially imposing an indirect form of taxation onto workers by deliberately setting premium rates higher than what was needed in order to create the $54 billion surplus, and as such, had over stepped their Constitutional authority.

In December 2008, the Supreme Court reached a ruling. They found that the federal government had acted within its legal right to allocate EI funds as it wished, and that they did not intentionally create a surplus in order to balance the government’s books. However, the Court also declared that the federal government had illegally collected EI premiums from workers for three specific years- 2002, 2003 and 2005, by failing to go through the proper parliamentary procedures for authorization. The Supreme Court has given the federal government one year to respond to their judgement, but did not provide any recommendations on how to rectify the situation.

In light of these growing criticisms and debates, the federal government, through the 2008 federal budget, created the Canada Employment Insurance Financing Board (CEIFB) - a new crown corporation established to manage and administer the EI program. Starting in 2011, the mandate of this new body will be to ensure that the EI program operates on a break-even basis by setting yearly premium targets so that revenue collected would not exceed benefit payments. Although this new financing system will also include a $2 billion reserve fund, the Canadian Institute of Actuaries has stated that this cushion would need to be raised to $10-$15 billion to adequately meet the needs of workers during a deep and prolonged recession.

**Appeals**

Mechanisms for workers to appeal an unfavourable EI decision have been in place since the program was first created to ensure that workers’ EI entitlement rights were properly protected under the law. Workers who feel they have been unfairly denied benefits can choose to appeal the decision using the following processes: a board of referees/Tax Court of Canada, an Umpire, the Federal Court of Appeal, and finally the Supreme Court of Canada. Appeals have played an important role in creating precedents in EI benefit eligibility, resulting in instrumental changes to the EI rules.

While having some legal representation in front of a Board of Referees or an Umpire is not necessarily required, a worker’s chances...
of success are greatly improved if a representative is present. \(^{55}\) However, since many of the workers who appeal are from non-unionized workplaces or a low-income background, they may not be able to afford such legal representation, and would need to receive help from a community legal clinic. Currently, only three provinces in Canada—Saskatchewan, Manitoba, and Quebec—provide funds to groups/

organizations so that workers can access EI representation during appeals. \(^ {56}\)

The following charts detail the number of appeals for Ontario and Toronto from 1999 to 2008 at both the Board of Referees level and the Umpire level. \(^ {57}\) Over this time period, an average of 23% of Ontario appeals that came before the Board of Referees, and roughly 20% before an Umpire, resulted in a favourable

### EMPLOYMENT INSURANCE CLIENT APPEALS: BOARD OF REFEREES

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<td>Client appeals allowed by the Board of Referees</td>
<td>2,140</td>
<td>2,036</td>
<td>2,367</td>
<td>2,500</td>
<td>2,084</td>
<td>1,979</td>
<td>1,788</td>
<td>1,461</td>
<td>1,229</td>
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<tr>
<td>Percentage allowed (favourable to client)</td>
<td>22%</td>
<td>21%</td>
<td>24%</td>
<td>23%</td>
<td>23%</td>
<td>25%</td>
<td>25%</td>
<td>22%</td>
<td>19%</td>
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</tbody>
</table>

**Toronto CMA**

| Client appeals to the Board of Referees decided | 4,884 | 4,517 | 4,560 | 5,289 | 4,735 | 3,611 | 3,066 | 2,812 | 2,973 |
| Client appeals allowed by the Board of Referees | 1,062 | 1,038 | 1,174 | 1,242 | 1,185 | 982 | 895 | 707 | 599 |
| Percentage allowed (favourable to client) | 22% | 23% | 26% | 23% | 25% | 27% | 29% | 25% | 20% |

**SOURCE:** Service Canada, Employment Insurance Appeals Division

### EMPLOYMENT INSURANCE CLIENT APPEALS: UMPIRE

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<tr>
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<td>Appeals to the Umpire decided</td>
<td>n/a</td>
<td>n/a</td>
<td>866</td>
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<td>952</td>
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<td>n/a</td>
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<td>184</td>
<td>117</td>
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<td>n/a</td>
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<td>19%</td>
<td>14%</td>
<td>20%</td>
<td>24%</td>
<td>21%</td>
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</tbody>
</table>

**Toronto CMA**

| Appeals to the Umpire decided | n/a | n/a | 480 | 373 | 477 | 442 | 403 | 279 | 264 |
| Decision favourable to the Client | n/a | n/a | 91 | 94 | 91 | 68 | 82 | 73 | 55 |
| Percentage favourable to the Client | n/a | n/a | 19% | 25% | 19% | 15% | 20% | 26% | 21% |

**SOURCE:** Service Canada, Employment Insurance Appeals Division
decision for the client. It is important to note that appeals can be initiated by employers as well. The majority of appeals however are by employees, while employer appeals account for approximately 3% of all appeal cases. Even while factoring in appeals by employers, there are still hundreds of workers who have received benefits by appealing their initial denial of benefits. Further in-depth research is required to gain a better understanding as to the nature of these appeals, and in order to shed some light on barriers or issues these workers are facing.

Recent Changes

The much anticipated 2009 federal budget raised hopes that the government would take appropriate measures to improve access to the EI program in the face of massive job losses, and to help cushion and stabilize the effects of a pronounced recession by increasing benefit rates. In their budget, the government decided to direct its resources to preparing workers for the future by means of providing greater job training and skills development opportunities – with funding of $1 billion over two years for training programs delivered under EI, $500 million over two years for a Strategic Training and Transition Fund which will open up training programs for those who do not qualify for EI, and another $500 million over two years to extend EI benefits to long-tenured workers who are in longer-term training programs. The federal government estimates that these initiatives alone will assist approximately 160,000 unemployed workers. While job training is integral to developing a skilled and employable workforce, this funding (provided over a two year period) lacks any sense of urgency and does not address the alarming job loss that the country is facing- where in one month alone (January 2009) Canada lost 129,000 jobs.

In terms of regular EI benefits, what the budget offered was an additional five weeks of benefits for claimants over the next two years (to a maximum of 50 weeks) at an estimated cost of $1.15 billion, and the freezing of premium rates for 2009-2010 ($1.73 per $100 of insurable earnings). A freeze in premium rates during a recession along with a large increase in claims will inevitably lead the $2 billion EI reserve to quickly run dry. Consequently, an EI deficit will result in either higher premium rates to be set in order to recoup costs, or a further cut in benefit amounts for unemployed workers.

While economists are uncertain as to how long the Canadian recession will last, our experience indicates that, even when a recession is technically over, ample time is still required for markets to fully recover and employment numbers to rebound. Following the 1992 recession for example, a substantial decrease in permanent layoffs only occurred in 1995- three years later. Using private sector forecasts, the federal budget itself does not anticipate unemployment rates decreasing until sometime after 2011.

The U.S. on the other hand, recognizing the devastating impact of the economic downturn on workers, has responded by vastly improving their unemployment insurance program. Their stimulus package includes increasing weekly unemployment insurance benefits for recipients by $25, exempting the first $2,400 in benefits from federal tax, increasing benefits by an additional 33 weeks, and expanding coverage to allow more workers to qualify for extended benefits.
Recommendations

The EI program is failing millions of workers across the country. EI reforms are urgently needed to adequately reflect the current labour market, to become more equitable, and to protect those in precarious working conditions. In excluding significant segments of the workforce, it has essentially devalued their work and contribution to the Canadian economy and has turned its back on the UN’s Declaration of Human Rights (Article 23: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment).65

We strongly urge the federal government to implement the following changes to EI to ensure that benefits are widely accessible by:

Reducing regional EI disparities

- Decrease the number of qualifying hours to a uniform 360 hours over a 12-month period for all regions across the country.
- Raise benefit amounts from 55% to 60% of workers’ insurable earnings, and use workers’ 12 best weeks within the previous 52-week period to calculate benefit amounts.
- Increase duration of benefits in all regions to 50 weeks.

Ensuring fairness and protecting low-income workers

- Eliminate the two week waiting period.
- Remove voluntary leaving clause that traps workers into precarious employment.
- The 2009 Federal budget has called for the HRSDC Minister to establish an expert panel that will consult with the public on how to best provide EI maternity and parental benefits for self-employed workers. The scope of these consultations should be expanded to include the provision of regular EI benefits for self-employed workers who cannot find enough work as well.
- Significantly reduce the number of qualifying hours for new and re-entrants to the labour market.
- Undertake public education campaigns to better inform workers of all EI benefits entitlements and supports.
- The Ontario government should follow the lead of Quebec, Manitoba and Saskatchewan, by providing special funding for EI representation for workers’ appeals.

Improve access to training and employment benefits/supports

- Ease training restrictions. Currently, the only way in which a worker can continue to receive EI benefits while upgrading their skills, or learning a new trade, is through courses or programs designated specifically by the government. Workers should be able to continue receiving EI benefits during their retraining, so they can be properly equipped with the necessary skills when rejoining the workforce, as well as having open access to a wide range of educational institutions and training programs.
- Ensure that all employment benefits and support programs falling under EI Part II, and delivered through the provinces, are not contingent upon EI eligibility.

Protecting workers during periods of economic decline:

- Gradually increase the EI reserve fund from its initial $2 billion to better cushion against the effects of a deep and prolonged
recession. This will allow the program to handle an influx of claimants during periods of mounting job loss and help prevent the program from falling into deficit, thus averting any large increases in premiums or cutting of benefits.

- Implement special emergency benefit measures by extending benefit duration by an additional 52 weeks when the national unemployment rate reaches 6.5%

2 Ibid.


5 Ibid.


9 HRSDC (2007), op.cit.


19 Statistics provided by the City of Toronto Development, Culture & Tourism Department.

20 HRSDC (2007), op. cit.


27 Standing Senate Committee on Social Affairs, Science and Technology (2008), op.cit.
28 HRSDC (2007), op.cit.
29 Campeau (2005), op.cit.
30 Ibid.
35 Statistics provided by the City of Toronto Economic Development, Culture & Tourism Department. ‘Social Assistance Beneficiaries’ is reported as the total number of welfare cases, not total household beneficiaries.
39 HRSDC, “2007 Monitoring and Assessment Report”.
42 Ibid.
50 Jerry Langton, “Ottawa rebuked, again, for mas-
References


Statistics provided by Service Canada, Employment Insurance Appeals Division (unpublished).

Ibid.


For nearly 70 years, Canada’s Employment Insurance program (EI) - formerly known as Unemployment Insurance - has been assisting unemployed workers by providing them with temporary income relief when they’ve lost their jobs. Here are some quick facts about EI’s history:

- **Created in the aftermath of the Great Depression, EI has become an essential component of Canada’s social safety net.**
- The development of the EI program meant that government understood that unemployment was often beyond any workers’ control, due to factory closures, seasonal work, or economic recessions.
- Some felt that the program was overly generous and created a “disincentive” for people to find work, and needed to be scaled back.

**Cutting Back**
In the late 1970’s and intensifying during the 90’s, government made it harder to get EI and cut the benefits of people who were eligible.

- The number of unemployed workers eligible for EI went from 80% in 1990 to only 44.5% in December 2008.
- Now in Toronto only one in four unemployed workers are receiving regular EI benefits - 59% less than in 1990.
- While benefits were being cut from workers, the surplus from EI rose to an astonishing $54 billion in 2008.

“So, what exactly is wrong with EI?”

- **Regional unemployment rates determine the number of hours a worker has to work to qualify.** These rates are also used to calculate the amount and duration of weekly EI benefits. But this leads to very different results across Canada. Ontario, for example, has not seen its fair share of EI benefits. In 2007 Ontarians contributed 40% of the program’s dollars but only 30% of Ontario’s unemployed workers received regular EI benefits.
- **The nature of the labour force has changed in this country, while EI has not.** In the past 10 years there has been a 59% increase in the number of temporary and contract jobs across the country and EI doesn’t help these workers. The high number of hours needed to qualify makes these workers ineligible for benefits despite their contributions to the program.
- **It’s especially hard to get for the groups that need it most.** New entrants to the labour market, such as youth or newcomers, need to have at least 910 hours of work to qualify for regular benefits. Also, women continue to see their rate of EI eligibility fall below that of men, where from January 2008 to January 2009, the increase in the number of men receiving regular EI benefits was twice that of women.

**Government Response**
Despite mounting pressure to reform the EI program in order to increase eligibility during this period of massive job loss, the only thing the federal government did in their 2009 budget, was extend regular EI benefits by an extra five weeks to a maximum of 50 weeks (until 2011). This will provide only short-term relief for unemployed workers and their families during this recession. With minimal or no support from EI, many unemployed workers will have to resort to living off savings, cashing in their investments or RRSPs, using credit and increasing personal debt, borrowing from family and/or friends, or applying for social assistance.

**Change is Long Overdue**
A strong EI program is essential to assist unemployed workers while they search for work, and to help stabilize against the effects of a prolonged recession, by providing people with income to spend in their local communities.

Here are five simple steps for government to fix EI for Canadian workers:

1. Decrease the number of qualifying hours to a uniform 360 hours over a 12-month period for all regions across the country.
2. Raise benefit amounts from 55% to 60% of workers’ insurable earnings, and use workers’ 12 best weeks within the previous 52-week period to calculate benefit amounts.
3. Eliminate the mandatory two week waiting period.
4. Significantly reduce the number of qualifying hours for new and re-entrants to the labour market (currently 910 hours).
5. Implement special emergency benefit measures by extending benefit duration by an additional 52 weeks when the national unemployment rate reaches 6.5%.