

REPORT

# Employment Insurance Sickness Benefit Policy

2019 MULTI-STAKEHOLDER POLICY ROUNDTABLE



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This paper has been authored and prepared by Yaroslav Baran and Mary Anne Carter of Earncliffe Strategy Group and sponsored by Canadian Cancer Society, Canadian Labour Congress, Cystic Fibrosis Canada, Diabetes Canada, Heart and Stroke Foundation, Multiple Sclerosis Society of Canada, Neurological Health Charities Canada.

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# EXECUTIVE SUMMARY

This report provides an analysis and evaluation of Canada's EI Sickness Benefit based on a roundtable discussion that assembled a diverse group of stakeholders with an interest in policies focused on sickness and disability benefits in Canada. The assembly was deliberately designed to be comprehensively representative of the scope of perspectives concerned with EI sickness benefit policy: health charities, labour organizations, public servants developing and administering Employment Insurance policy, specialized policy consultants in the disability space, the medical community, small business, and business writ large. The report that follows is intended to capture the policy option discussion that occurred, leading to solutions to fill those remaining gaps. Given the broad range of stakeholders, consensus ranged from broader agreement on more general objectives and undertakings, as well as ten concrete policy change recommendations, including:

1. Expansion of the EI sickness benefit from 15 to 26 weeks without the unintended consequences of private coverage being reduced or cancelled altogether.
2. Enhanced coordination between public benefits, between public and private insurers, and a more claimant-centred client approach to dealing with claims.
3. A thorough review of how episodic disabilities fit into the current EI Sickness Benefit framework, with a call for ESDC to propose access remedies.
4. Greater support for claimants in reintegration into the labour force.
5. A comprehensive review of EI system (considerations of disability) and broader disability system – both short term and long term – including all actors and including a gap and system analysis to better address if EI is the best venue to address sick leave, such as options for asymmetrical accommodation of small employers, including a co-pay structure.
6. Premium Reduction Program reexamination to provide greater incentive for employers, and curb declining program uptake.
7. Additional research on the equity impact of sickness leave with an equity lens.
8. An economic, data-based review of the appropriateness of the 55 percent replacement rate, including funding models, and potential reintegration and private plan impacts of potential change.
9. Creation of a regular forum for broad multi-stakeholder discussion and re-examination of the sickness and disability framework, to ensure regular feedback and policy responsiveness to evolving circumstances.
10. Formalize a regime that ideally includes both public and private insurance

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# INTRODUCTION

A policy roundtable was convened in Ottawa on September 4th, 2019, to bring together a broad range of stakeholders with an interest in the policy surrounding sickness and disability benefits in Canada.

The initiative was co-hosted by the following stakeholder organizations:

- Canadian Cancer Society
- Canadian Labour Congress
- Cystic Fibrosis Canada
- Diabetes Canada
- Heart and Stroke Foundation
- Multiple Sclerosis Society of Canada
- Neurological Health Charities Canada

The assembly was deliberately designed to be comprehensively representative of the scope of perspectives concerned with EI sickness benefit policy: health charities, labour organizations, public servants developing and administering Employment Insurance policy, specialized policy consultants in the disability space, the medical community, small business, and business writ large.

The *Chatham House Rule* discussion was both a continuation – but also a focusing – of a discussion that was started with a similar forum in 2015 about the current state of sickness benefits in Canada. One notable difference between the roundtable in 2019 compared to the 2015 event, is that the 2015 discussion looked more broadly at the landscape

of supports, whereas the 2019 session focused predominantly on EI support recommendations. The focus was narrower; the perspective range was broader.

Statistics and figures are footnoted where possible; however, in some cases, participants offered perspectives that included numbers without providing source material. An editorial decision was made to err on the side of inclusion, as the intent of this document is to capture the discussion. This means that not all data noted in this report will have a source attributed.

The 2015 roundtable was convened and moderated by the Institute for Research on Public Policy (IRPP), in association with Canadian health charities, but also with representatives from government, academia, business, labour and health, scrutinizing Canada’s performance in supporting the employment and income needs of workers and families when they experience a major health issue. It culminated in a 2015 IRPP report, *Leaving Some Behind: What Happens When Workers Get Sick*.<sup>1</sup>

The discussion and paper focused attention on issues at two levels:

1. How effectively Canada’s broad array of job protection, sickness insurance, and employment and income support programs are designed to help individuals and families deal with a major health shock; and
2. How these various programs address the specific needs of populations with episodic, chronic or intermittent illnesses and diseases.<sup>2</sup>

The report found that in any given year, six per cent of Canadian workers will suffer a personal health issue that will require them to adjust their work status, including being away from work for an extended period of time, changing from full-to-part time work, and leaving the labour market entirely”; and pointed to the need for a comprehensive re-examination of the needs of working Canadians who

1 Tyler Meredith & Colin Chia, *Leaving Some Behind: What Happens When Workers Get Sick* (3 September 2015), online: Institute for Research on Public Policy (IRPP) <<https://irpp.org/research-studies/leaving-some-behind-what-happens-when-workers-get-sick/>>.

2 *Supra note at 2.*

are living with an illness or a disability. In particular, two conclusions were focused upon:

1. The call for improved coordination within government and between levels of government, including greater coordination of research;
2. The call to increase basic access to support coverage.

The IRPP report contained numerous additional important observations that served as discussion setters for the 2019 present roundtable. Among the key observations, inter alia, were the following:

- The programs and policies targeting income or employment tend to use narrow definitions of “disability”;
- That access to some program requires either dire reduction in circumstances or subjective definitions of eligibility;
- That more than 20 conditions are recognized by experts as begetting “episodic” disability, and that those living with episodic disability account for nearly half the Canadians of working age living with disability;
- That expenditures on sickness and disability income benefits have continued to outpace inflation, suggesting significant sustainability challenges at this trajectory under the current framework of programs and eligibility;
- That the economic cost of disability – through foregone productivity or replacement labour cost – is upward of \$13 billion annually;
- The importance of employment policies outside the policy framework governed by Employment and Social Development Canada (ESDC), including such things as flexible work arrangements and job protection;
- There is a broad range of difference from province to province in relation to sick leave job protection and compassionate care leave benefits;
- The important place of private sickness benefits insurance coverage in the Canadian system, and that Canada has a heavier reliance on private protection compared with many like OECD

comparators; gaps were also identified – in particular, that seven million Canadian workers had access to neither short nor long term insurance coverage, and six million had only long term coverage through private insurers;

- With respect to OECD comparators, in particular, Canada’s 55 per cent replacement rate and the 15-week EI disability coverage period tend to be significant contrast points;
- Significant information gaps exist: for example, it is not known how many Canadians exhaust their short term disability coverage only to be disqualified for long term coverage; Statistics Canada, the Canadian Survey on Disability health stakeholders and others are identified as potential collaborators to help ameliorate data gaps;
- Principles underpinning a desired future state, include, inter alia: universal access of workers to high quality income support and replacement; harmonization of programs and protections with respect to benefit durations and job protection periods; greater flexibility to accommodate episodic and intermittent illness; and a more holistic, patient/worker-centred approach to program delivery.

The researchers concluded:

*As Canada enters a period in which demographic change will increase the cost and prevalence of absenteeism due to illness, it is important that workers and employers are properly insured to deal with these risks. While Canada’s current system of income and employment support does help many Canadians dealing with illness access the help they require, too many are still left behind. Though a majority of Canadian workers are adequately covered by private disability insurance, a large portion of the labour market has no coverage and must therefore rely on a host of different public programs which, in some cases, may provide inadequate support and are often characterized by poor coordination and a relatively passive approach toward employment support. These reflect problems of design, co-ordination and inadequate flexibility, such that where one works and the nature of one’s impairment can dictate how effectively income and employment needs will be supported*

*during the period of illness. This situation is neither fair nor an effective approach if we are to support all Canadian workers in realizing their potential.*<sup>3</sup>

The September 2019 roundtable used these observations as a launching point, and significant discussion centred on the policy changes that had occurred since that time. It discussed solutions regarding the use and potential expansion of the Sickness Benefit, with the objective of taking stock of policy gaps and articulating specific solutions relating to sickness/disability benefits.

The primary goal of the session was to have a nuanced discussion that focused on developing a series of recommendations that will establish the roadmap required to improve EI policy going forward. The report that follows is intended to capture the policy option discussion that occurred, leading to solutions to fill those remaining gaps. In the end, given the broad range of stakeholders, consensus ranged from agreement on concrete and specifically articulated policy change recommendations, to broader agreement on more general objectives and undertakings.

## Overview of the Employment Insurance (EI) Sickness Benefit

The Employment Insurance (EI) Sickness Benefit is one of the “Special Benefits” administered by EI: Sickness Benefit, Compassionate Care Benefit, Maternity Benefit, Parental Benefit, and the Family Caregiver Benefit. After qualifying with 600 hours worked in the last year or since their last EI claim, workers are eligible for up to 15 weeks of sickness benefit at a replacement rate of 55 percent - this means that they will earn 55 percent of their insured wages for a maximum of fifteen weeks. Following the completion of the 15 weeks of sickness benefits, workers would need to re-qualify with an additional 600 hours worked to access more EI sickness or the other special benefits mentioned above.

The EI Sickness Benefit and PRP administration was designed from the outset to act as first payer, if there is nothing else available. The PRP encourages the

expansion of other employer and private plans, and roundtable participants were in agreement that a framework that ideally includes both private and public coverage should be maintained.

The financing model (employer and worker payroll contributions), the EI qualifying period and hours required, the replacement rate, and the 15-week period tend to be the most examined and debated aspects of the EI Sickness Benefit. An additional ongoing concern – particularly for both government and business community, as well as employees – is striking a balance in system design to continue to incent the offering of private insurance plans.

The principle of standardization of replacement rates and periods across EI benefit types/supports is a subject of debate within the broader policy community, including non-governmental stakeholders: is it merely a byproduct of a tendency toward symmetry in policymaking? Does it make sense to have symmetrical levels of qualification and benefit periods? What do we make of the fact that asymmetry already exists – in particular, following the expansion of the Compassionate Care Benefit from 6 to 26 weeks, and with the Parental Benefit of up to 40 weeks (or a reduced-replacement rate leave of up to 69 weeks) when parents share the leave? What are the arguments underpinning it, and should change be considered?

## The Co-Fund Model (Financing Model)

The EI system is funded 7-twelfths by employers, and 5-twelfths by employees. The co-fund model (financing model) is also a subject to debate – particularly among the small business community, which some roundtable participants argued, shares a disproportionate burden of the premium. Potential expansions of either the benefit period or the replacement rate, therefore, would also be borne by employers more than by employees, as premiums go up. It should also be noted, however, parenthetically, that employees from small employers also constitute a disproportionate share of claimants for both regular and sickness benefits.

3 *Supra* note 2 at 31-32.

Information on the EI rate setting process can be found on Employment and Social Development Canada's website.<sup>4</sup> The EI Commission is responsible for setting the annual EI premium rate according to a seven-year break-even mechanism, as forecast by the EI Senior Actuary. To ensure transparency and accountability in the EI premium rate setting process, the EI Senior Actuary prepares an actuarial report that is published annually on the date that the rate is set.

Self-employed workers can apply for EI special benefits, but a very small proportion of self-employed workers have signed up to participate in the program – approximately 24,000. Moreover, for self-employed Canadians opting into EI coverage, a single individual is responsible for paying only the employee portion.<sup>5</sup>

The EI program operates under a cost-recovery principle of being entirely self-funding. It does not draw on the Consolidated Revenue Fund. When special benefits were introduced in the early 1970s, general revenues covered those benefits while regular benefits were paid from EI contributions. After 1990, the general revenue source was discontinued, with the entire EI system financed from premiums – with all premiums covering all EI expenditures (rather than specific benefit funds covering specific types of EI expenses).

In 2017-18, paid EI benefits totaled \$18.6 billion. Of this sum, \$12.6 billion was paid out for regular benefits (unemployment), and \$5.7 billion for an aggregate of the special benefits<sup>6</sup>. In 2017-2018, 412,000 sickness benefit claims were made, and \$1.7 billion was paid out from the EI Operating Account.<sup>7</sup>

It is worth noting is that EI Part 2 programming (training and employment supports) is delivered through the provinces and territories, and is paid out of the EI Operating Account.

## Recent Changes

“Working While on Claim” was launched as a pilot in 2005. The measure started as an experimental response to criticism that the system design disincentivized workers from starting to reintegrate into the labour force while receiving benefits. They were forced to either be on benefit or at work in a binary choice that was believed to be counterproductive to gradual workforce reintegration. The program allows a degree of income-generating employment while drawing EI benefits with a claw back. Under the program, if Canadians earn employment income while receiving EI benefits, their benefits are reduced by 50 cents for every dollar they earn, up to 90 percent of their previous insured weekly earnings (roughly four and a half days of work).

Above this cap, their EI benefits are deducted dollar-for-dollar.<sup>8</sup> In 2018, the measure was extended to EI sickness and maternity claimants with the intent to help them return to work gradually, if they so choose. It was also made permanent – i.e., no longer an experimental measure. The program has generally been hailed as a success, softening the distinction between disability on claim with no earnings versus full integration in the labour force. 58,000 claimants have made use of the program in 2018. Evaluations of the program can be found Employment and Social Development Canada's website (Evaluation of the Working While on Claim Pilot Projects).<sup>9</sup>

The Government of Canada also recently reduced the waiting period for accessing EI benefits from 2 weeks to 1 week, and roughly 1.8 million workers benefited from this change in 2017-18.<sup>10</sup> The Government of Canada also eliminated new entrant and re-entrant rules: people who are working for the first time or returning to the workforce have better access to EI as they now have the same eligibility requirements as other workers in the region where they live rather than a higher requirement.<sup>11</sup>

4 2020 Employment Insurance premium rate, 2020 Employment Insurance premium rate, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/premium/rates2020.html>>.

5 EI special benefits for self-employed people, What if I am both self-employed and an employee, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/self-employed-special-benefits.html>>.

6 Employment Insurance – Recent improvements and overview, online: Employment and Social Development Canada, Government of Canada (pdf) <<https://www.canada.ca/en/employment-social-development/programs/results/employment-insurance.html>> at 12.

7 Employment Insurance Monitoring and Assessment Report for the fiscal year beginning April 1, 2017 and ending March 31, 2018, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/monitoring2018.html>>.

8 Employment Insurance – Working While on Claim, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/working-while-claim.html>>.

9 *Evaluation of the Working While on Claim Pilot Projects*, online: Employment and Social Development Canada, Government of Canada (pdf) <<https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/working-while-claim-pilot-projects/summary.html>>..

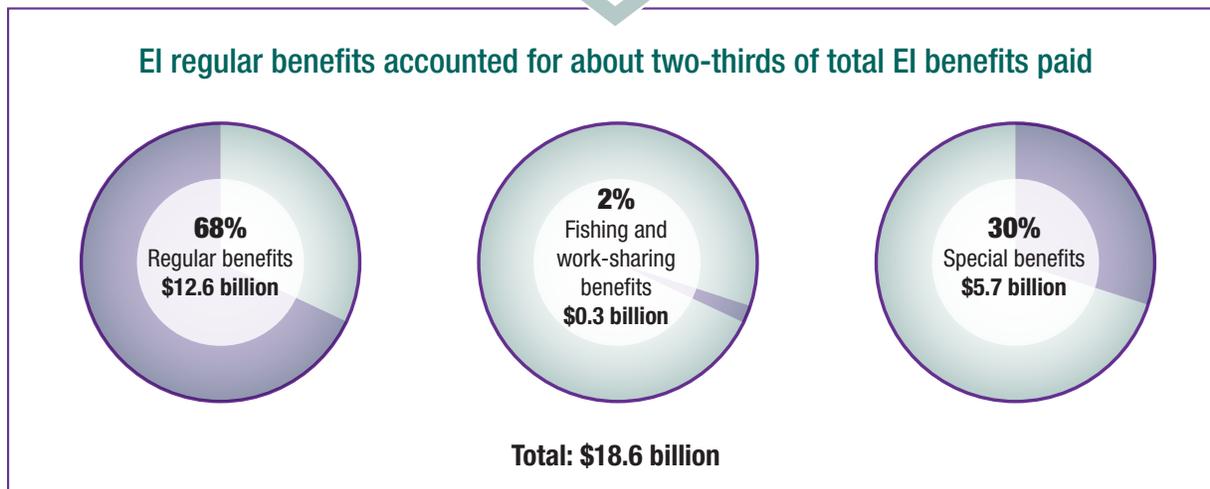
10 Supra note 7 at 7.

11 Ibid.

## Total EI benefits paid

In 2017–18 EI benefit payments totalled \$18.6 billion—regular benefits: \$12.6 billion; special benefits: \$5.7 billion

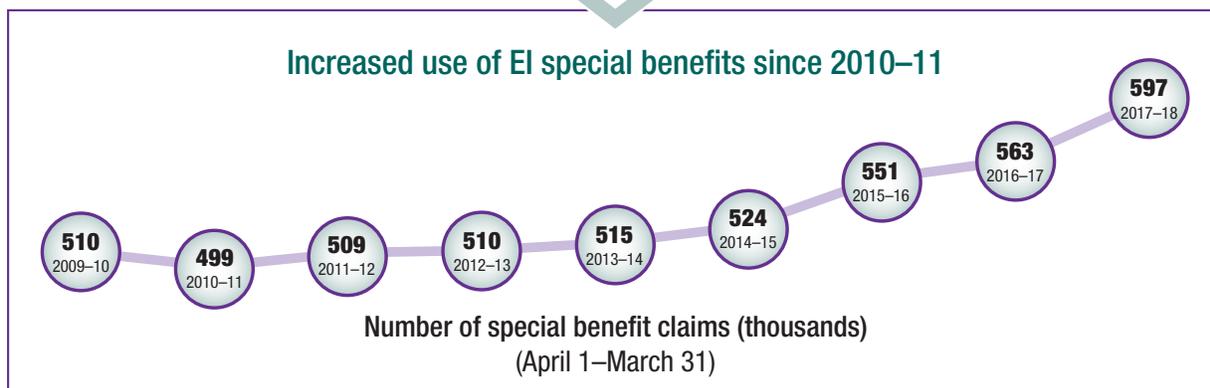
Regular benefits and special benefits accounted for 98.0% of total EI benefit payments. Fishing and work-sharing benefits accounted for 2.0%.



## Special benefits

In 2017–18, there were about 597,000 new special benefit claims established. This represented a 6.0% increase over the previous year and the seventh consecutive year-over-year increase since 2010–11.

Maternity and parental benefits accounted for 68% of the value of all special benefits paid; sickness benefits accounted for 30%.



Graphics from Employment and Social Development Canada (ESDC)'s *Employment Insurance – Recent Improvements and Overview*

## Other Initiatives

Since 2015, Canada has also seen some progressive policy changes such as the adoption of *An Act to Ensure a Barrier-free Canada* (Accessible Canada Act)<sup>12</sup> following an election mandate promise to modernize accessibility law, “helping to create a barrier-free Canada through the proactive identification, removal and prevention of barriers to accessibility wherever Canadians interact with areas under federal jurisdiction.”<sup>13</sup> Having received Royal Assent on June 21<sup>st</sup>, 2019, it was one of the final legislative achievements of the 42<sup>nd</sup> Parliament.

The *Accessible Canada Act* seeks “to benefit all persons, particularly those with disabilities, through the realization of a barrier free Canada in areas under federal jurisdiction,” by identifying and removing barriers, and by preventing new barriers, in the following areas:

- employment;
- the built environment;
- information and communication technologies;
- communication, other than information and communication technologies;
- the procurement of goods, services and facilities;
- the design and delivery of programs and services;
- transportation; and
- areas designated under regulations made by the Governor in Council.<sup>14</sup>

Episodic disability has also garnered a high degree of policy discourse in recent years. In March 2019, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) tabled its fifteenth report of the 42<sup>nd</sup> Parliament,

entitled “Taking Action: Improving the Lives of Canadians Living With Episodic Disabilities.” The report wound up a study by the committee, prompted by a private members’ motion, M-192, tabled by MP David Yurdiga.<sup>15</sup> The motion was passed on November 2, 2018, and charged the parliamentary committee to study and “provide recommendations for legislative and policy changes necessary to ensure that the needs of persons with episodic disabilities caused, among other things, by multiple sclerosis, be adequately protected to ensure equity in government policy to support Canadians across all types of disability”.<sup>16</sup> The 2019 committee report concluded with eleven recommendations<sup>17</sup> including the following:

1. That Employment and Social Development Canada work with other federal government departments and agencies to develop and include an episodic disability awareness and accommodation module as part of the accessibility strategy for the public service.
2. That Employment and Social Development Canada establish a dedicated funding stream through programs such as Social Development Partnerships and the Opportunities Fund for organizations representing and serving people with episodic disabilities in order to develop targeted employment supports for both employers and workers.
3. That Employment and Social Development Canada, along with people with lived experience of episodic disabilities and the organizations that represent them, and representatives from the employer community, study a range of incentives for employers that could offset costs associated with accommodating employees with episodic disabilities.

12 *Accessible Canada Act*, SC C 2019.

13 Making an accessible Canada for persons with disabilities, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/accessible-people-disabilities.html>>. See also Canada, Legal and Social Affairs Division, Parliamentary Information and Research Service, Library of Parliament, *Legislative Summary of Bill C-81*, (Ottawa: Library of Parliament, 2019).

14 *Ibid* at 14.

15 Canada M-192, *Instruction to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (episodic disabilities) – David Yurdiga*, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl, 2018, (Decision Made – Agreed To 2 November 2018) <[https://www.ourcommons.ca/Members/en/david-yurdiga\(86260\)/motions/9911300](https://www.ourcommons.ca/Members/en/david-yurdiga(86260)/motions/9911300)>.

16 *Supra* note 16.

17 House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Taking Action: Improving the Lives of Canadians Living with Episodic Disabilities*, (March 2019) (Chair: Bryan May) <<https://www.ourcommons.ca/Content/Committee/421/HUMA/Reports/RP10367115/humarp15/humarp15-e.pdf>> at 3-5.

4. That Employment and Social Development Canada review and reform Employment Insurance sickness benefits to better support people with disabilities, including episodic disabilities. To this end, reforms must consider:
  - allowing workers to claim benefits in smaller units (hours or days) rather than weeks;
  - reducing the number of hours worked required to qualify;
  - extending the duration of benefits beyond 15 weeks; and
  - international best practices.
5. That Employment and Social Development Canada work with Finance Canada to review the eligibility criteria of the Canada Pension Plan disability benefit with a view to:
  - shifting the emphasis from the medical model concepts of “severe” and “prolonged” towards the social model concept of being able to work productively and gainfully on a regular basis; and
  - encouraging re-entering employment by promoting vocational rehabilitation programs and rapid requalification for benefits as needed.
6. That Employment and Social Development Canada work closely with Canada Pension Plan disability to review appeal mechanisms to ensure openness and transparency and that appellants can be accompanied by an advocate in their appeal process.
7. That Employment and Social Development Canada work with Finance Canada and the Canada Revenue Agency to ensure that individuals can keep all Canada Disability Savings Grant and Canada Disability Savings Bond contributions made to their Registered Disability Savings Plans for periods in which they qualified for the Disability Tax Credit.
8. That Employment and Social Development Canada work with the Canada Revenue Agency to review administrative requirements imposed on recipients of disability benefits with a view to streamlining reporting requirements.
9. That the federal government consider amending the *Income Tax Act* to ensure that recipients of the Canada Pension Plan disability benefits are eligible for the Disability Tax Credit.
10. That the Canada Revenue Agency consider making changes to how it assesses reapplications for the Disability Tax Credit from individuals who were eligible for the Disability Tax Credit in the previous tax year, in order to ensure that they are not denied if they have not experienced a marked reduction in the impairment they experience as a result of their disability since they were last approved.
11. That Employment and Social Development Canada work with Finance Canada, the Canada Revenue Agency and provincial/territorial governments to review the system of disability income supports and employment services programs recognizing the following:
  - that people with episodic disabilities need access to employment supports;
  - that people with episodic disabilities need access to income support during periods when they are unable to work;
  - the benefits of a single window approach that delivers accessible, flexible and portable employment and income supports;
  - associated non-income benefits (e.g. prescription drugs, housing subsidies, vision care) should continue when earned income replaces income supports; and
  - that people applying for programs need to be able to communicate with governments both orally and in writing.<sup>18</sup>

Finally, three of Canada’s major federal political parties also included expanding the EI Sickness Benefit in their respective 2019 federal election platforms.

**In the Liberal Party’s 2019 federal election platform, they promised:**

*“To help workers who fall ill and need help to pay the bills while they rest and recover – such as those recovering from cancer treatments – we will also move forward with extending Employment Insurance sickness benefits from 15 weeks to 26 weeks.”<sup>19</sup>*

18 *Supra* note 16.

19 Forward: A Real Plan for the Middle Class (2019), online: Liberal Party of Canada <<https://2019.liberal.ca/wp-content/uploads/sites/292/2019/09/Forward-A-real-plan-for-the-middle-class.pdf>> at 12.

**In the NDP's 2019 federal election platform, they promised to:**

*"...make EI work for Canadians. A New Democrat government would immediately put in place a universal qualifying threshold of 360 hours to make sure that many more Canadians can access benefits, no matter what kind of work they do, and restore the appeals system to make decisions fast and fair..."<sup>20</sup>*

*"To help make ends meet while on EI, we'll increase the income replacement rate to 60 percent and create a low income supplement so that no one receiving EI regular or special benefits receives less than \$1,200 a month."<sup>21</sup>*

*"For many Canadians who need to rely on EI when they're dealing with an illness, the current system falls far short and doesn't provide flexibility to support those who do not want to work when they can. To make sure that Canadians can count on EI when they're dealing with a serious illness, a New Democrat government will extend sickness benefits to 50 weeks, expand access to re-training, and create a pilot project to allow workers with episodic disabilities to access EI sickness benefits periodically, as they need them."<sup>22</sup>*

*"Finally, we will also protect the EI Operating Account in law, so that future governments can't raid it for general revenue."<sup>23</sup>*

**In the Bloc Québécois's 2019 federal election platform, they promised to:**

*"...offer a comprehensive review of the EI system, which has not been done for 15 years... notably, we will ask for a real independent insurance fund, better accessibility, an increase in the income benefit rate, the elimination of a waiting period, and the abolition of the Social Security Tribunal. After more than 20 years of inaction, it's time close the gap in employment insurance."<sup>24</sup>*

Moreover, the improved policy changes, increased dialogue, as well as the inclusion of expanding the EI Sickness Benefit in political party election platforms has demonstrated a commitment to improving the EI Sickness Benefit policy framework in Canada. It is important, however, to recognize that the EI program itself is complex, and a complex system of both public and private supports comprises the current framework.

20 Making life more affordable for everyday people: Making Employment Insurance work for you (2019), online: New Democratic Party of Canada <<https://www.ndp.ca/affordability?focus=13934113&nothing=nothing>>.

21 *Ibid.*

22 *Supra* note 21.

23 *Ibid.*

24 Le Québec, c'est nous: Assurance-emploi une véritable assurance (2019) online: Le Bloc Québécois <[https://www.blocquebecois.org/wp-content/uploads/2019/10/Plateforme\\_Bloc2019\\_web-1.pdf](https://www.blocquebecois.org/wp-content/uploads/2019/10/Plateforme_Bloc2019_web-1.pdf) at 22>. Note: the original text of the Bloc's platform is in French. The footnoted text has been paraphrased in English for the purpose of this paper only.

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# UNDERSTANDING THE EMPLOYMENT INSURANCE PROGRAM

Before providing a more detailed summary of specific EI Sickness Benefit policy gaps, it is helpful to have a sense of the historical and current dynamics at the Canada Employment Insurance Commission (CEIC) – the public service entity, together with ESDC, that plays a leadership role in overseeing the EI program.<sup>25</sup> For more than 75 years, the tripartite organization has included representation from business, labour and the Government of Canada.<sup>26</sup> ESDC and Service Canada carry on the administration of the EI program on behalf of the Commission. The Commission has the legislated mandate to annually monitor and assess the EI program. In this context, the CEIC is responsible for:

- overseeing a research agenda for the annual EI Monitoring and Assessment Report,<sup>27</sup> including the impact and effectiveness of employment benefits and support measures; and
- delivering the report to the Minister by fiscal year end, for tabling in Parliament.

Under the authority of the *Employment Insurance Act*, the CEIC reviews and approves policies related to EI program administration and delivery; and makes regulations, with the approval of the

Governor in Council.”<sup>28</sup>

The CEIC manages \$18.6 billion annually in employment insurance Part 1 benefits (job loss and special benefits); as previously noted, employers and employees are the sole funders of the EI program in what is intended to be a self-funding system. Because a previous surplus in the fund was previously used by government to fund other government activities (essentially as a subsidy to the Consolidated Revenue Fund), contributors have become wary about overpaying into the fund and allowing it to accumulate a nest egg for harder times.

## Premium Reduction Program

The Premium Reduction Program (PRP) is an incentive for private sector employers to offer private plans<sup>29</sup>, ideally offering a similar or better plan than EI sickness benefits. It was introduced at the same time as EI sickness benefits (something that will be further addressed later in this paper). Roundtable participants noted that PRP is not a well-known program, and has had many administrative problems from the outset, mainly because the incentive itself is not very large. The program is arguably shrinking in terms of uptake proportionately to small business numbers, but the amounts provided in premium reductions and the number of employees covered increases over time. The number of participating employers is flat or decreasing, but that is in part explained by the merger of businesses and Business Numbers.<sup>30</sup>

The program offers a triple win for employees, employers and the government.

The 2009 evaluation offers the following assessment – it is dated, but the trends continue:

“When employers provide coverage to their employees for short-term illness or injury with

25 Canada Employment Insurance Commission (CEIC) online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/corporate/portfolio/ei-commission.html>>.

26 *Supra* note 26.

27 *Supra* note 8.

28 *Supra* note 26.

29 *Supra* note 9.

30 *Supra* note 10.

[a qualifying] income protection plan, they may obtain a reduction in Employment Insurance premiums under the Premium Reduction Program, which was established in 1971. Since 1997, the number of registered business numbers with the Canada Revenue Agency enrolled in the program has declined from 37,510 to 33,130 in 2006, and the percentage from 3.6 percent to 2.9 percent. During this same period, the number of employees participating in the program has increased from 5.3 million to 5.8 million, while the percentage of all employees in the labour force participating (excluding the self-employed) has decreased from 46.8 percent to 41.3 percent.”<sup>31</sup>

The premium reductions are articulated in the Actuarial report for 2018<sup>32</sup> and earlier amounts. In 2019, PRP is expected to provide \$1 billion in premium reduction for workers dealing with injury or illness.

Under the Premium Reduction Program, the private insurer must be the first payer, must exceed 55 percent replacement rate, and must offer at least 15 weeks of benefit coverage; must pay benefits to employees within 8 days of illness or injury (the elimination period cannot exceed 7 consecutive days); be accessible to employees within three months of hiring; and cover employees on a 24-hour-a-day basis.

“Evidence of the employer’s commitment to provide a short-term disability plan is required. In addition, the employer must provide an undertaking that they will return 5/12<sup>ths</sup> of the savings to the employees covered by their plan.”<sup>33</sup> In addition, the employer must provide an undertaking that they will return 5/12ths of the savings to the employees covered by their plan, even for employers that pay 100% of the short-term disability plan premiums.

Access has been relatively simple, and deliberately

so, to create attractiveness for small businesses that do not have dedicated human resources staff. However, some participants suggested that recent changes requiring agents to review policies produced backlogs, and applications around policy or unit changes can also take a very long time.<sup>11.2</sup>

There is a view that the incentive to promote the program is to rebalance the sickness benefit burden between the public insurer and private plans. Put simply, as participation in the Premium Reduction Program increases, reliance on the EI sickness benefit decreases. Some stakeholders see the program as a dis-incentive to employers working around the EI system in constructing their own benefit plans – for example, to prevent plan inversion using EI as first-payer.

29,400 businesses are currently participating in the Premium Reduction Program, according to ESDC. According to the Canada Employment Insurance Commission, that amounts to over seven million workers.<sup>34</sup>

### Use of the Premium Reduction Program (PRP)

There are approximately 29,400 firms participating in the PRP

- Proportionally, there are few small firms
- Non-participating firms cite lack of awareness and insufficient reduction to participate
- Represent a significant fraction of insured workers

Premium Reduction Program Categories	Estimated Number of Qualified Employers
1: Cumulative paid sick leave plans	2,500
2: Enhanced cumulative paid sick leave plans	600
3: Weekly indemnity plans	25,900
4: Special weekly indemnity plans	400
<b>Total</b>	<b>29,400</b>
Figures from the Actuarial Report to establish the 2019 EI premium rate	

Most participating employers make use of one of two categories

- Weekly indemnity plans
- Cumulative paid sick leave plans

31 Summative Evaluation: Employment Insurance Premium Reduction Program, December 2009, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/corporate/reports/evaluations/skills-and-employment-2009-december.html#h2>>.

32 *Supra* note 10.

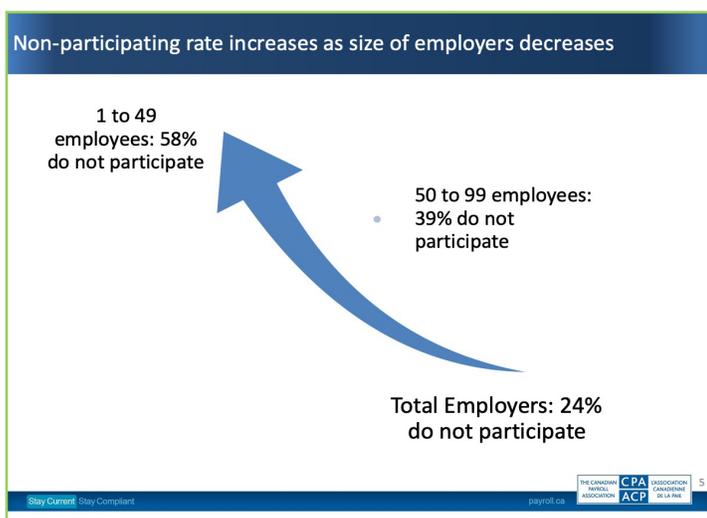
33 EI Premium Reduction Program: For employers, online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers/premium-reduction-program.html>>.

34 Summary of the Actuarial Report on the EI Premium Rate 2019, 2019 Employment Insurance premium rate online: Employment and Social Development Canada, Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/premium/rates2019.html>>.

A significant concern among policymakers and stakeholders is that uptake of the program is declining: between 2000 and 2015, enrollment decreased by 12 per cent – with the biggest reductions in uptake being among small and medium enterprises (SMEs).<sup>35</sup>

Despite being in existence since the introduction of the EI Sickness Benefit, there is a perspective that the Premium Reduction Program suffers from a lack of awareness. Stakeholders opinion varies on how to improve the program, and the department has demonstrated a general approach of openness to ideas.

The Canadian Payroll Association found in a 2014 survey that 24 per cent of employers with short-term disability plans do not participate in the PRP. The two key reasons cited were lack of awareness of the program, and the high administrative/compliance burden. The rate of non-participation increases inversely proportionally to the size of the business in employment numbers: among companies that employ between 50 and 99 workers, 39 per cent of businesses do not participate in the program. Among companies with 1-29 employees, 58 percent of the companies do not participate in the PRP. A combined total of 47 percent had either never heard of the plan, found it too burdensome, or found the incentive too insignificant to justify the administration and expense.



35 *Supra* note 7.

The Premium Reduction Program is also contributing to a data gap of which policymakers are aware: because access was deliberately made easy to enhance attractiveness of the plan, the program does not have data on the medical reasons for the claim other than simply “sickness” or “disability”.

A clear recommendation emerged to increase awareness of the program, with marketing material tailored to different sizes of business. It was also recommended that ESDC collaborate with insurers to promote to benefits of the program.

The Canadian Payroll Association also argued perverse consequences of moving from a 2 to a 1 week waiting period. Specifically, the research found:

- Employers had to amend short term disability (STD) plans to meet the Premium Reduction Program requirements;
- New policies often had to be submitted numerous times before the wording was accepted;
- An unnecessary administrative burden – for example, the requirement that additional employment income be included in calculation of STD benefits, even though employees’ basic salaries were over Maximum Insurable Earnings;
- A dramatic increase in STD claims;
- The complexity of administration was such that employees were often back at work by the time their claims were adjudicated; and
- Consequently, many employers are now reconsidering remaining in the Premium Reduction Program.

The insufficient incentive or benefit was illustrated thus: for the employer, it yields a \$120.43 saving per employee for employees earning at least \$53,100. For employees, the savings amount to \$86.02 before taxes or \$65.37 after taxes. In both cases, not worth the administrative effort for small businesses.

The business community has voiced an appreciation of the auto-renewal program, given that the paper based application process for the Premium Reduction Program is seen as onerous – particularly for small and medium enterprises that are too small to have a dedicated staff constituting professional human resources and payroll department.

A practical and logistical concern was also raised in relation to the program: its lack of synchronization with real world pay cycles. Administrative nuisance was noted by businesses in cases where they either first learned of the program, or renewed their membership in the program after the first pay cycle of the year.

The EI waiting period reduction from two weeks to one week has also had some unexpected perverse consequences for employers: some have observed that it led to rate hikes for the businesses, because insurers are now liable earlier for payouts. Rate hikes reported by employers were due to increased usage of their short-term disability (STD) plans, i.e., for employees claiming STD after a period of only 1-2 weeks before returning to work. Prior to the change to the EI waiting period, employers could have a 2-week waiting period before STD claims could be made. In the case of employers that have modified their plans to maintain eligibility under the Premium Reduction Program, an employee that is ill/unable to be at work after only 1 week can make an STD claim, even though they are back to work before the end of the 2nd week. This change has led some employers to amend or cancel their private coverage plans altogether.

There have also been reports of cases where businesses did not insure bonuses and commissions because their employees were already receiving basic salaries over the Maximum Insurable Earnings (MIE), as they are not predictable as certain payouts. Service Canada has been disqualifying such businesses now from the Premium Reduction Program, saying that not all earnings were insured, even though including such bonuses and commissions would not increase an employee's entitlement because of basic salaries already reaching the MIE. Again, companies have

been cancelling their participation as a result.

Multiple additional reasons were cited as a contributors to a decline in private insurance the proliferation of the “gig economy”; trends toward “lifestyle” packages instead of traditional benefit packages such as paid holiday trips and non-work-related self-improvement courses.

**Overall, the rising costs of premiums are also noted as disincentives for greater take-up of the Premium Reduction Program, and by extension, the footprint of private coverage.**

A recommendation was made for greater coordination between government, insurers and businesses, to find mutually-beneficial solutions – noting that neither group wins when private plans are not established: the PRP system was not built on the assumption that EI should be secondary payer, rather, it has been designed largely as a real opportunity for private plans to play a greater role within the framework.

### Length of the EI Sickness Benefit

The period of the EI Sickness Benefit is 15 weeks. To qualify one must work 600 hours in the previous 52 weeks (one year, known as the “benefit period”) or since the last EI claim before qualifying for benefits. To requalify for another EI sickness claim, the worker needs an additional 600 hours of employment.

A growing chorus of stakeholder voices is calling for an expansion of the EI Sickness Benefit to 26 weeks from 15 weeks. Many reasons were cited for an extension. Theoretically, beyond a short-term disability is long-term disability, which often assumes the individual will not be re-integrating into the work force. Multiple stakeholders, however, stated that there are many conditions and illnesses that are indeed recoverable, but with a longer recovery period than the existing Sickness Benefit.

These include heart attack and stroke, cancers and other non-chronic illnesses.<sup>36</sup> Other stakeholders noted the differences in administration and qualifications between the Sickness Benefit, short term disability (STD) and long-term disability, and that many workers fall into gaps of coverage.

Stakeholders argued widespread anecdotal evidence that anxiety over the expiry of benefits often inhibits recovery or adds a mental health complexity to what is otherwise a physical recovery condition.

The discrepancy between Canada and other OECD countries was again noted, with Germany and Sweden offering 78 weeks, Norway and California offering 52 weeks, France offering 51 weeks, and the United Kingdom offering 28 weeks. It is worth noting, of course, that not all other aspects of support regimes are identical – i.e. residing within including contributory/labour market programs versus other types of income support, prevalence of private support in the overall mix, etc.

Many argued for an extension to 26 weeks, and some argued that neatness of symmetry with the Compassionate Care Benefit, also offered under the EI program as a special benefit. It was also discussed whether a practical case can be made for symmetry between these two benefits, or if 26 weeks (6 months) is an arbitrary number and there is no particular need or case for precisely harmonizing identical benefit periods. (As one policy stakeholder noted, symmetry could theoretically also be evoked for the 35 weeks of care giving for children with critical illnesses.)

The Parliamentary Budget Officer studied the cost estimates relating to increasing the benefit period from 15 weeks to 50 weeks in a report on April 4, 2019.<sup>37</sup> The report offers helpful insights on program use and return rates by mapping current trends and patterns. As of the date of the roundtable on

September 4<sup>th</sup>, ESDC had yet to formally respond to this recommendation.

Several of the participants commented that an extension to 26 weeks would cost 4 additional cents per \$100 of insured earnings. And an extension to 50 weeks – argued by other participants, predominantly representing labour groups – would cost 8 additional cents per \$100 of insured earnings.<sup>38</sup>

Employers' groups retorted that an additional 8 cents in premiums is really a 11.2 cent increase for employers (i.e. 8 cents x 1.4), given the contribution split, and that such an increase would be very difficult for the business community to swallow in the present economic climate. They also note that premiums are not profit sensitive, that CPP costs were also rising, and that piling on with additional contribution burdens on employers could create a perverse disincentive to hiring.

It was argued by some that, at a benefit period of 50 weeks, the data suggests it is unlikely a worker will return to work. If that is the case, it may not make sense to house a benefits plan of such a period in a *labour* market program. A legitimate debate exists whether this benefit is indeed, at its core, a *social insurance* program.

Important questions were raised about potential unintended consequences of a major extension (i.e. in the order of 50 weeks): for example, would employers stop offering private coverage plans (undoing the effects of the Premium Reduction Program), and would the relationship between the EI Sickness Benefit and other support programs require a comprehensive readjustment?

ESDC explained the dynamics surrounding the extension of the benefit period for the Compassionate Care Benefit – which originally offered six weeks of benefits – to 26 weeks. It

36 BC Cancer. (2019). Report developed by Cancer Surveillance & Outcomes, Population Oncology. Data endorsed by BC Cancer's Tumour Group Council and approved by the Performance Measurement Advisory Committee.

37 Office of the Parliamentary Budget Officer, *Cost Estimate of an Increase in the Duration of Employment Insurance (EI) Sickness Benefits* (Ottawa: PBO, 4 April 2019) (pdf) online: <[https://www.pbo-dpb.gc.ca/en/blog/news/EI\\_Sickness\\_Benefits](https://www.pbo-dpb.gc.ca/en/blog/news/EI_Sickness_Benefits)>.

38 Hadrian Mertins-Kirkwood, "Extending EI sickness benefits a big step in the right direction for ill and injured workers" *Behind the Numbers* (19 December 2019), online: Canadian Centre for Policy Alternatives <<http://behindthenumbers.ca/2019/12/19/extending-ei-sickness-benefits-a-big-step-in-the-right-direction-for-ill-and-injured-workers/>>.

came after a strong and sustained lobby: families had previously had to guess when a loved one would die, and had a six-week window to guess correctly. This was deemed to be a fundamentally uncompassionate approach. Presently, a half-year window, along with a requirement of a medical certificate of likelihood of death within that period, are considered to be an acceptable and reasonable balance – particularly given the relatively low uptake.

Initial projections of a high cost in extending the benefit period for the Compassionate Care Benefit did not materialize because the update spike was lower than expected. Uptake was originally 6000 users per year, so the risk was deemed acceptable and the change was made despite projections; the number of users has now grown to 9000 users per year.

While a consensus was emerging at the roundtable that a case for extension exists, there was no stakeholder consensus at the present time on an extension of 50 weeks.

It should also be noted here, again, that during the federal election campaign immediately following the roundtable, the Liberal Party 2019 election platform committed an increase to a benefit period of 26 weeks for the Sickness Benefit<sup>39</sup>, and the New Democratic Party and the Bloc Québécois platforms offered to extend it to 50 weeks.<sup>40</sup>

## Episodic Disability

The implementation of the *Accessible Canada Act* in June 2019 marked an important step in the EI sickness benefit discussion wherein the term “episodic” was included in the definition of disability under the new legislation.

As the IRPP report points out, “illness or disability may be episodic or progressive, and require either recurring or permanent accommodation.”<sup>41</sup>

Episodic disability is defined in the 2019 parliamentary committee report<sup>42</sup> as “medical conditions or diseases that are prolonged and often lifelong but have unpredictable episodes of illness and disability. These episodes of disability can vary in severity and duration and are often followed by periods of wellness.”<sup>43</sup> The report says 1.6 million Canadians self-report as having an episodic disability. This is true for Canadians living with multiple sclerosis (MS), numerous cancers, diabetes, acute arthritis, inflammatory bowel disease, mental health conditions, HIV, epilepsy, migraine, Hepatitis C, chronic fatigue, chronic pain, cystic fibrosis, rare diseases and other conditions.

Historically, Canadian legislation has only had a very narrow definition of disability and doesn’t allow for Canadians with episodic disabilities to fit within it. While the *Act* only changes the way that the Government of Canada and organizations within federal jurisdiction address disability and accessibility, recognition of the term “episodic” as a disability, at the federal level, is a critical step in refining the conversation further to ensure various programs address the specific needs of populations with episodic, chronic or intermittent illnesses and diseases.

Episodic disability was a recurring and significant concern during the roundtable. The EI Sickness Benefit was described by multiple stakeholders as a “binary switch” – either a worker is able to work or is unable to work. No accommodation is made for workers who are generally able to work but afflicted by intermittent periods of more acute symptoms, or for workers who, on an ongoing basis range from full ability to work to short periods of full inability to work.

39 *Supra* note 20.

40 *Supra* note 21; Bloc Québécois, Press Release, “Prestations de maladie du régime d’assurance emploi” (9 décembre 2019) online: <<https://www.bloquebecois.org/2019/12/prestations-de-maladie-du-regime-dassurance-emploi/>>.

41 *Supra* note 2 at 2.

42 House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, Taking Action: Improving the Lives of Canadians Living with Episodic Disabilities, (March 2019) (Chair: Bryan May) <<https://www.ourcommons.ca/Content/Committee/421/HUMA/Reports/RP10367115/humarp15/humarp15-e.pdf>>

43 *Supra* note 18 at 7.

The point was made that the short-term oriented Sickness Benefit should, in principle, be able to accommodate the latter group – workers who experience intermittent short-term episodes of full inability. The important point was made, however, that the qualifying period precludes effective use of the program for such cases – particularly for such conditions as migraine, where the disability period may be a single day.

Data suggests that, with a low replacement rate, people tend to just rack up debt.

Attendees from the medical community concurred that the binary nature of the Sickness Benefit is divorced from the reality of illness, and that continuing the on/off eligibility model leads to both inhumane and inefficiently expensive administration. There was consensus that this “false categorization” needs to be done away with and replaced with a more creative but flexible eligibility.

## Equity Dimensions

Some concern was raised among stakeholders with the eligibility requirement of 600 hours. It was noted that this requirement discriminates against workers who are not given sufficient hours by their employer to be able to qualify within a reasonable period of time. The problem particularly affected part-time workers, who are often, effectively shut out of a sickness benefit eligibility despite paying premiums.

The eligibility requirement of 600 hours was noted as an impediment to long-term part-time workers such as women re-integrating into the workforce after a period of leave to care for children. Consequently, the point was made, albeit anecdotally, that this discriminatory impact affects women more than men, further exacerbating the gender divide in employment earning outcomes. Moreover, it has been noted

that this can be particularly vexing in regions where regular benefits can be accessed with fewer than 600 hours.

Other demographic inequity impacts were also cited anecdotally, including an outsized impact on new Canadians, on younger workers entering the workforce, and on “gig economy” workers – models of employment that are entirely devoid of any kind of insurance coverage or personal benefits. The EI program was identified as the natural filler, and that the overall model may require a rethink once longer-term trends are more accurately captured with empirical data.

Self-employed workers are also underrepresented in coverage. Approximately 24,000 currently opt into the EI program, with the requirement that they opt into the full suite of EI benefits, and that they do so for the duration of their self-employed status. In the last year for which statistics are available, approximately 800 claims were made. Some 150 of these were for the Sickness Benefit, recognizing that most self-employed opt into the program for planned access to Maternity/Parental benefits. Overall, however, the opt-in rate is low; according to the Evaluation, two main reasons are likely: lack of awareness for some self-employed workers, others are aware and merely choose not to opt-in.

In 2017-18, of 412,000 EI sickness claimants, 55 percent are women.<sup>44</sup> Women also have greater difficulty qualifying. They are statistically more likely to be working part-time, therefore having a tougher time meeting the qualifying hour threshold. This also means women are at relatively a lower wage rate.<sup>45</sup> Eligibility for the EI program is tracked annually by Statistics Canada. For 2018, men: 88.3% and women: 86.1%.<sup>46</sup>

Some facets of disability impact have a dramatically distorted gender impact. Multiple sclerosis, for example, affects women at three times the rate at which it affects men. Heart and stroke also have a gender disparity, though not as pronounced as in MS.

44 *Supra* note 7 at 5.

45 *Supra* note 8.

46 Statistics Canada, *The Daily: Employment Insurance Coverage Survey, 2018*, (Ottawa: StatCan, 14 November 2019) online: <<https://www150.statcan.gc.ca/n1/daily-quotidien/191114/dq191114a-eng.htm>>.

The current benefit structure can also have a significant impact on reinforcing poverty.

While additional data is required, it has been suggested that a connection exists between a prolonged requirement for long-term disability and Canadians falling below the poverty line. Moreover, it is argued that it is a perverse and unintended consequence of design flaw if Canadians should be falling *into* poverty because they cannot access systems designed to *support* them in times of long-term disability, and thus fall through the cracks.

## Replacement Rate

The 55 percent replacement rate received some discussion during the roundtable, but less than other key aspects of the Sickness Benefit program. The poverty dimension was noted – that employees can often be counterintuitively tipped into poverty at the worst possible time for them, particularly if they lack private insurance as a supplement to EI. Presently, in some jurisdictions, the replacement rate and cap are less than the minimum wage.

The replacement rate was designed on an assumption of a co-pay. It is also a harmonized replacement rate across EI benefits, and the rate had previously been as high as 75 percent, but that data indicates that a higher replacement rate can act as a disincentive to reintegration in the labour market.

Multiple roundtable participants insisted that the 55 percent replacement rate must be augmented, but questions remained unanswered about who would pay for the premium delta to ensure higher coverage. Some stakeholders argue that 100% replacement rate should not be regarded as unfeasible. The business community, on the other hand, has signaled that the required rate hike would make it a non-starter.

An argument would be easily made that it would make for poor public policy if the replacement rate was augmented only for the Sickness

Benefit and not for regular benefits – and that, if the government were to move in this direction, it would be prudent to either hike the replacement rate across the board, or to fund the delta in Sickness Benefit replacement rate from another source.

A higher replacement rate could also give rise to additional unintended consequences: the impacts of such a move on the footprint of private coverage (which would be rendered less necessary at a higher replacement rate) is unknown and difficult to speculate given current data.

## Administration and Coordination

Roundtable participants recognized that, in many individual cases, once EI sickness benefits are exhausted, Canadians have no other programs to support them. This is especially true for those applicants who are living with a chronic disability. While it may be true *any* health condition – including an episodic one – that prevents a person from being able to work at his/her job can lead to eligibility for EI sickness benefits, the current structure is not nimble enough to accommodate shorter term acuteness of symptoms, and provides an insufficient benefit period for *chronic* episodic conditions. Moreover, no other program exists to naturally fill these gaps. In other cases, (episodic or not), Canadians exhaust short-term EI sickness benefits without qualifying for long-term support.

Stakeholders commonly noted a need to better understand how the various regulatory instruments interact with each other and that better information is needed to help people navigate the system that impacts their wellbeing. A coordination opportunity exists for government in this regard.

These are not problems ESDC can fix on its own, but it could prompt coordination between EI and insurers to work as a team, treating each applicant as a client. Discussion generated

excitement and consensus around the notion of a case management concept bringing all stakeholders together, both in program reform and in individual case management. An information portal for employers would also be very welcome.

Greater coordination between governments and the private sector is also required to address the identified fissures developing between private and public coverage footprints. Insurers and business groups recommended a government lead role in coordination to develop short and long-term goals for an integrated EI sickness benefit and long-term disability framework, with clearly articulated best roles for both public and private insurers. There continues to also be coverage gaps, and vast differences between public and private programs and can considerably impact certain workers depending on where they reside in the country.

Employers also say they tend not to be fully aware of programs and support available to them to help support workers living with an illness or disability – this is especially true of employers who own small and medium-sized businesses (SMEs) across Canada. This lack of awareness contributes to significant inconsistencies in benefit coverage for workers across category of employer.

Medical participants and labour participants argued in favour of doing away with sick forms, noting they are not used properly anyway. A growing trend was noted in favour of “no questions asked” personal days, and that this simplified regime might have some application to the Sickness Benefit. It was cautioned, however, that the lower the level of documented rigour, the greater the data gaps – and data

ultimately informs better public policy. A balance of interests, therefore, must be considered.

Several stakeholders called for a conversation about creating a one-window coordination to bring together EI, private insurers, employers and employees to create more efficient patient-based ease of service. A case management model was cited as a possible template. As previously articulated, the recent report by the Standing Committee on Human Resources and Skills Development on episodic disability offered specific recommendations from Parliament to the Government of Canada. The political will is, therefore, present for a coordinated model.

**A growing chorus of stakeholder voices is calling for an expansion of the EI Sickness Benefit to 26 weeks from 15 weeks.**

Data gaps exist throughout the system. ESDC does have some data on the interoperability between support programs, and on claimants accessing multiple programs, but notes that data are incomplete. Economic data points are also relevant to public policy analysis, in addition to data on program use. For example: financial stress contributes to a high degree of economic productivity loss, with some estimates reaching as high as \$16 billion annually.<sup>47</sup> Policymakers require verification and greater articulation of such conclusions to better inform policy development.

47 The Canadian Payroll Association, News Release, “Financial Stress in the Workplace Costs Canadian Economy \$16 Billion Annually: Canadian Payroll Association’s Annual Survey Results” (4 September 2019) online: CPA <<https://payroll.ca/PDF/NPW/2019/Media/2019-National-Payroll-Week-News-Release-National-F.aspx>>.

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# TAKEAWAYS

Canada's EI Sickness Benefit has been virtually unchanged since the 1970s. It presently replaces 55 per cent of income, up to a maximum annual insurable amount (\$53,100 in 2019), with a maximum benefit period of fifteen weeks – with a rigid on/off access to claim. In 2018, Working While on Claim provisions were extended to EI Sickness benefits, allowing claimants the flexibility to manage a gradual return to work when they are able to do so. Claimants can also take their 15 weeks of EI Sickness benefits over a 52-week benefit period. Together, these flexibilities allow claimants the ability to work when they can while receiving benefits when they are unable to work. That being said, there is universal consensus that this is still not an ideal solution for some claimants with certain types of illnesses, such as episodic illnesses. As such, some aspects of this model need to be updated.

A general desire exists to augment coverage – tending on balance toward an extension of the benefit period over an increase in the replacement rate.

There is also a desire for access to accommodations and more experimental application of pilot projects available to other EI benefit programs: active labour market support, case management support, and perhaps an expansion or augmentation of Working While on Claim. Creative reapplication of a workshare concept – perhaps adapted for Episodic Disabilities – was floated as a possibility. For illnesses requiring a longer recovery period than the available benefit period, in absence of an extended benefit period, an adaptation of a recent changes to parental leave might be considered such as spreading out a limited benefit over a longer period of time on a prorated basis.

Reintegration assistance garnered strong support and would help transition claimants back into the labour force. It was noted that countries with

stronger benefit levels (both replacement rates and benefit periods) also tend to have stronger workforce reintegration support infrastructure -- and higher reintegration rates.

System-wide re-evaluation was also strongly endorsed: taking stock of the entire support infrastructure – including private coverage and its inter-relation with public insurance.

There is a desire to address gaps in ability to meet Government of Canada eligibility criteria, with specific consideration given to the realities of contractors, short-term workers, so-called “TYA” and “T5A” workers, self-employed sole proprietors, and “gig” workers.

Episodic disability needs to be addressed, although specific solutions remain unclear. The current binary structure is an anachronism that is kind to neither the client nor the public purse. Broad consensus exists that it needs to be further addressed – the key question was how. A potential model includes an “open claim” format, with a fixed aggregate benefit period and replacement rate, but with an ability to move in and out of claim with ease. Creative and careful modifications to the Working While on Claim program might also be possible to specifically adapt a version of this structure specifically for episodic disability.

Does the 55 percent replacement rate need to be addressed? Many voices said yes, although some caution persisted about potentially lower or later work force reintegration rates tied to higher replacement rates, and fewer private plans offered as a consequence. Should there be an augmentation of the rate, should it be extended across EI benefits? Who would pay for it and at what co-pay proportions? These questions remain unanswered.

**Onerous compliance must be avoided throughout the system, as stress, lack of autonomy, and stigma all inhibit rehabilitation, as does the time and energy consumed by satisfying claim legitimacy – energy redirected from recovery and recuperation.**

Balance is required, and thoughtful reform. It is generally recognized that any system reform must be conducted in a thoughtful manner, to avoid unintended consequences: be they perverse disincentives countering the proliferation of private plans, or creating unsustainable programs that ultimately collapse under the weight of their liabilities.

A broad agreement emerged that 15 weeks is simply an insufficient benefit period for a sickness benefit because of frequent gaps in eligibility for post sickness benefits, and because of the many recoverable (i.e. not Long-Term Disability) conditions that require well over 15 weeks to recover.

26 weeks was widely seen as a more reasonable and appropriate benefit period. A move from a 15-week model to a 26-week model was the key consideration that consistently came up during the course of the roundtable, and the one major reform recommendation that had the most broad-based support. While some support exists for an even longer extension, 26 weeks emerged as a period most stakeholders could support.

Caution was offered in how to move to a 26-week benefit period. If not done carefully, expanding from 15 to 26 weeks could cause real coverage to fall from 30 to 26 weeks if private Short-Term Disability (STD) plans fall off – in other words, if current private plans doubling the public 15 weeks disappear, and claimants are left with only the public benefit period.

Ten specific policy recommendations emerged from the roundtable, with varying degrees of priority. A theme threaded throughout the roundtable was that overall coordination needs to be enhanced between public and private players. There needs to be further accommodation and more active labour market support; and addressing issues such as how to support those employees while working on

claim, developing regulatory models on work-sharing, and further defining episodic disability more precisely in the qualifying categories in the various programs is critical. Examples of potential accommodations could include substituting video conferencing or online meetings for onerous travel for in-person meetings, or having the employer promote an open and ongoing dialogue with an employee to consider their views on what would best help accommodate them in the workplace. In particular, a review of how episodic conditions ought to be addressed to help those wanting to return to work in some capacity, which currently does not fit into the existing system, should be a top priority. There also needs to be greater support for the reintegration of claimants into the labour market.

A majority of the participants felt strongly that a review of a real gap analysis to better address whether EI is the best venue to address sick leave, specifically looking at comparisons between STD, LTD, public and private programs and to consider their impacts across the entire EI system as a whole to best address illness and disability support is urgently needed. While there was a general consensus that all stakeholders need to work together to improve the system and expand the 15-week model, some employer voices cautioned that there could be unintentional impacts on employers in Canada (SMEs in particular), and the amount they would have to pay for the existing EI premium. This could unintentionally affect employees who require the assistance of an expanded benefits program, and as a result, the majority of the participants felt that a comprehensive analysis of the economic impacts on both employers and employees needs to be conducted before moving forward with any changes to the current model to ensure the appropriate improvements are implemented to benefit the majority of Canadians – both employers and employees.

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## RECOMMENDATIONS

- 1.** Expansion of the EI sickness benefit from 15 to 26 weeks without the unintended consequences of private coverage being reduced or cancelled altogether.
- 2.** Enhanced coordination between public benefits, between public and private insurers, and a more claimant-centred client approach to dealing with claims.
- 3.** A thorough review of how episodic disabilities fit into the current EI Sickness Benefit framework, with a call for ESDC to propose access remedies.
- 4.** Greater support for claimants in reintegration into the labour force.
- 5.** A comprehensive review of EI system (considerations of disability) and broader disability system – both short term and long term – including all actors and including a gap and system analysis to better address if EI is the best venue to address sick leave, such as options for asymmetrical accommodation of small employers, including a co-pay structure.
- 6.** Premium Reduction Program reexamination to provide greater incentive for employers, and curb declining program uptake.
- 7.** Additional research on the equity impact of sickness leave with an equity lens.
- 8.** An economic, data-based review of the appropriateness of the 55 percent replacement rate, including funding models, and potential reintegration and private plan impacts of potential change.
- 9.** Creation of a regular forum for broad multi-stakeholder discussion and re-examination of the sickness and disability framework, to ensure regular feedback and policy responsiveness to evolving circumstances.
- 10.** Formalize a regime that ideally includes both public and private insurance.

# APPENDIX A: ROUNDTABLE PROGRAM

## EI SICKNESS BENEFIT POLICY ROUNDTABLE

Wednesday, September 4, 2019 | 9:00am - 4:00pm  
Earncliffe Strategy Group  
46 Elgin Street, Suite 400, 4th floor boardroom, Ottawa

**Objective of Roundtable:** To take stock of policy gaps and solutions relating to sickness/disability benefits. The goal is to discuss solutions regarding the use and potential expansion of the Sickness Benefit, and we expect that the deliberation, written report, and recommendations from this meeting will establish the roadmap required to improve EI policy.

### AGENDA AND BREAKOUT OF DISCUSSION

- 9:00 – 9:15:** Arrival and registration
- 9:15 – 9:30:** Networking and refreshments (continental breakfast)
- 9:30 – 9:35:** Welcome remarks | Review of objectives and agenda for the day
- 9:35 – 10:00:** Roundtable introductions of participants
- 10:00 – 10:20:** Summary of IRPP report: *“Leaving Some Behind: What Happens with Workers Get Sick”* (2015) – Benjamin Davis, Senior Vice President, Mission and Julie Kelndorfer, Director, Government and Community Relations, MS Society of Canada
- 10:20 – 10:45:** Briefings from the Canada Employment Insurance Commission – Judith Andrew, Commissioner for Employers; Pierre Laliberté, Commissioner for Workers
- 10:45 – 11:00:** Bio break
- 11:00 – 11:20:** EI Sickness Benefit and Recent Changes – Andrew Brown, Director General, Employment Insurance Policy, Employment and Social Development Canada
- 11:20 – 12:30:** Identification of Policy Gaps – Roundtable
- 12:30 – 1:00:** Lunch
- 1:00 – 3:00:** Policy option discussion, based on lead option solutions to remaining support gaps – Roundtable  
*Example:* mechanics and costs of extending of the Sickness Benefit  
*Example:* integrating income support and disability benefits  
*Example:* flexibility to move in and out of the EI system for Canadians living with episodic conditions or disability  
*Example:* changes to Premium Reduction Program
- 3:00 – 3:15:** Bio break
- 3:15 – 3:45:** Review of recommendation and policy option prioritization
- 3:45 – 4:00:** Concluding remarks

# APPENDIX B: PARTICIPANT LIST

Adele Furrie	Adele Furrie Consulting Inc.
Kelly Masotti	Canadian Cancer Society
Helena Sonea	Canadian Cancer Society
Emilie Hayes	Canadian Federation of Independent Business
Mathieu Galliot	Canadian Federation of Independent Business
Chris Roberts	Canadian Labour Congress
Joan Weir	Canadian Life and Health Insurance Association
Matt Poirier	Canadian Manufacturers & Exporters
Stephen Vail	Canadian Medical Association
Chandra Pasma	Canadian Union of Public Employees
Denis Hamel	Conseil du patronat du Québec
Eunice Mamic	Cystic Fibrosis Canada
Krista Banasiak	Diabetes Canada
Yaroslav Baran	Earnscliffe Strategy Group
Mary Anne Carter	Earnscliffe Strategy Group
Shane O'Neill	Earnscliffe Strategy Group
Andrew Brown	Employment and Social Development Canada, Skills & Employment Branch, Employment Insurance Policy
Judith Andrew	Commissioner for Employers, Canada Employment Insurance Commission
Pierre Laliberté	Commissioner for Workers, Canada Employment Insurance Commission
Nancy Amyot	Office for the Commissioner for Workers, Canada Employment Insurance Commission
Harry Beatty	Employment and Social Development Canada, Income Security & Social Development, Office for Disability Issues
Christine Query	Office for the Commissioner for Employers, Canada Employment Insurance Commission
Stephanie Lawrence	Heart & Stroke Foundation of Canada
Benjamin Davis	Multiple Sclerosis Society of Canada
Julie Kelndorfer	Multiple Sclerosis Society of Canada
Joanna Valsamis	Multiple Sclerosis Society of Canada
Deanna Groetzinger	Neurological Health Charities Canada
John Stapleton	Open Policy Ontario
Rachel De Grâce	The Canadian Payroll Association
Cammie Peirce	Unifor