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# The Seventy-Five Year Decline

How Government Expropriated  
Employment Insurance from  
Canadian Workers and Employers  
and Why This Matters

BY DONNA E. WOOD

## Mowat Centre

ONTARIO'S VOICE ON PUBLIC POLICY



School of Public Policy & Governance  
UNIVERSITY OF TORONTO

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The background of the page is a blurred photograph of an office environment. Several people are visible, their forms softened into bokeh-like shapes. The lighting is bright, suggesting a well-lit workspace. The overall color palette is a mix of warm and cool tones, with some greens and blues visible through the windows and on the people's clothing.

Business  
and labour  
engagement  
in employment  
matters is  
critical primarily  
because EI is a  
*social insurance*  
program.

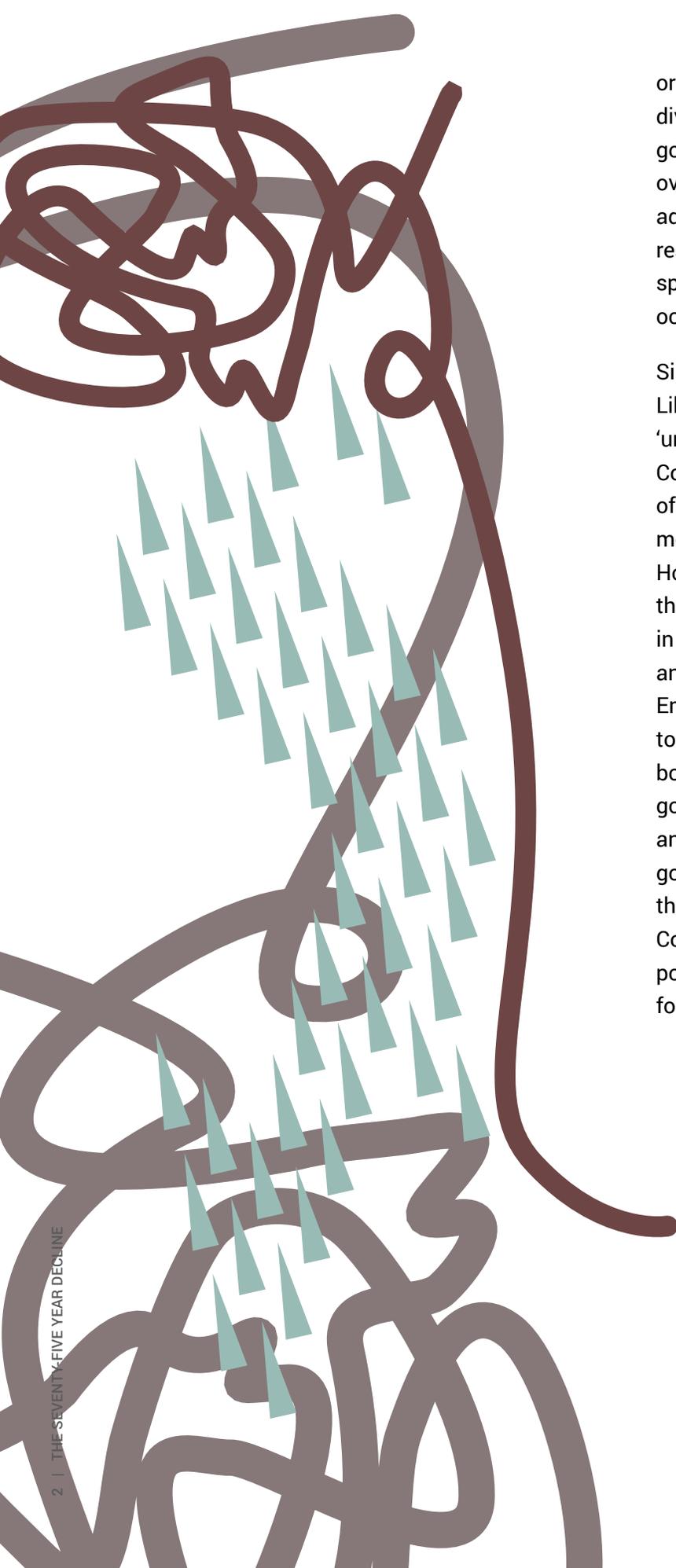
# EXECUTIVE SUMMARY

Many Canadians believe that our support system for the unemployed is broken and in dire need of reform. Almost universally, recommendations for change are addressed to the Government of Canada. This narrow focus on the federal government is surprising as, at its inception in 1940, Canada's unemployment insurance scheme (which includes both income support benefits and the public employment service) was viewed as a *tripartite* responsibility of employers, workers and government. Yet over 75 years later – other than through two representatives on the four person Canada Employment Insurance Commission – there are virtually no mechanisms to facilitate oversight and secure input from business and labour, despite the fact that almost all of the costs incurred – estimated at \$21.6 billion in 2016/17 – are paid for by mandatory social insurance premiums levied on their constituents.

This paper looks at how – over time – federal governments of all political stripes have been able to assert control or 'expropriate' unemployment insurance from Canadian employers and workers by transforming and even eliminating the institutions set up to ensure business-labour-government partnerships. With only two seats on the Canada Employment Insurance Commission – compared to two for government – the EI Commissioners for Workers and Employers lack power and authority. Recent changes to consolidate EI appeals through a Social Security Tribunal have significantly diminished worker rights. All pan-Canadian advisory committees and research institutions focused on employment issues have lost their federal funding and most have closed down.

This matters. Business and labour involvement in Employment Insurance is important for a number of reasons, most significantly because as a *social insurance* program, contributions from their members finance most of the program costs through a dedicated payroll tax. Their advice improves performance. A place at the table is also a requirement of international conventions and agreements that Canada has signed on to. If a more robust partnership and dialogue had been in place, EI eligibility benefit restrictions and a declining investment in employment services starting in the mid-1990s might have been moderated. Income inequality in Canada might not have grown to its current level. Short-term and ill-conceived decisions such as implementing a Canada Job Grant in 2013 might never have happened. Problems with the Social Security Tribunal would never have occurred.

There are many reasons why business and labour oversight and input into EI has diminished over time. Certainly, the combination of Cabinet government and executive federalism creates in Canada a closed, elite dominated process involving primarily politicians and bureaucrats in any policy area. The absence of vertically integrated, highly representative encompassing 'peak' pan-Canadian business and labour



organizations exacerbates the business-labour divide and impedes their capacity to interact with government and with each other. The dismantling over the past 20 years of all pan-Canadian advisory committees and research institutions responsible for employment has eliminated spaces where fruitful conversations used to occur.

Since assuming power in 2015 the Trudeau Liberals have focused on selected adjustments to 'undo' many of the changes made by the Harper Conservatives to EI. However, this is just the tip of the iceberg in terms of changes needed to modernize our programs for the unemployed. Hopefully this paper will remind Canadians of the legitimacy of business and labour's voice in relation to our programs for the unemployed, and that the EI Commissioners for Workers and Employers will take the initiative to find new ways to ensure that their constituents are organized both vertically and horizontally to engage with governments (federal, provincial and territorial) and with each other. Putting the business-labour-government partnership on a more formal footing through a National Labour Market Partner's Council would go a long way towards optimally re-positioning Canada's labour market programming for the 21st century.

# 1 INTRODUCTION

Every couple of months Canadians are presented with another report, analysis or commentary advocating reforms and improvements to our support system for the unemployed. Canada's Employment Insurance (EI) program and the public employment service have operated since the beginning of the 20th century in different configurations using various names under both federal and provincial management and control.<sup>1</sup> As a cornerstone of the welfare state, these are the programs that provide the first line of protection against loss of income when workers lose their jobs. They also help Canadians access 'second chance' opportunities such as training. By providing information and facilitating mobility, they enable employers to fill vacancies more efficiently, thereby improving Canada's overall labour market performance.

Many view these government-run programs as a policy failure.<sup>2</sup> Certainly there has been no shortage of detailed studies suggesting ways to correct the perceived problems. Notable recent reviews include the Mowat Centre EI Task Force's *Making It Work*, released in 2011 and involving 17 papers by 23 experts and 18 recommendations.<sup>3</sup> In 2013/14 the Council of Atlantic Premiers undertook an 11-month study and made 8 recommendations.<sup>4</sup> Following the Liberal

election victory in 2015, the federal Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) held hearings and made 15 recommendations aimed at reversing the 2013 Conservative EI benefit and eligibility changes.<sup>5</sup> In 2016 an EI Service Quality Review panel consisting of three Members of Parliament traveled the country and in February 2017 released a report with ten recommendations.<sup>6</sup>

1 In 1995 Unemployment Insurance (UI) was renamed Employment Insurance (EI). EI is used for contemporary times and UI for the past. Canada's public employment service now operates primarily under provincial, territorial, and Aboriginal management through entities such as *WorkBC*, *Employment Ontario*, *Emploi-Québec* and the *Aboriginal Employment and Training Strategy (ASETS)*.

2 Banting, Keith (2012). 'Introduction: Debating Employment Insurance,' in *Making It Work: Research from the Mowat Centre Employment Insurance Task Force*, Keith Banting and Jon Medow (eds). Queen's Policy Studies Series, Montreal and Kingston: McGill-Queen's University Press.

3 Mowat Centre (2011). *Making It Work: Final Recommendations of the Mowat Centre Employment Insurance Task Force*, Toronto: The Mowat Centre.

4 Council of Atlantic Premiers (2014). *Pan-Atlantic Study of the Impact of Recent Changes to Employment Insurance*. Halifax: Council of Atlantic Premiers. Available at <http://www.cap-cpma.ca/images/AdvisoryPanelFinalReport.pdf>, accessed March 15, 2016.

5 Human Resources, Skills and Social Development and the Status of Persons with Disabilities Standing Committee (2016). *Exploring the Impact of Recent Changes to Employment Insurance and Ways to Improve Access to the Program*. Ottawa: Human Resources, Skills and Social Development and the Status of Persons with Disabilities Standing Committee. Available at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=42&Ses=1&DocId=8363042>, accessed February 24, 2017.

6 Employment and Social Development Canada (2017). *Employment Insurance Service Quality Review: Making Citizens Central, Report*. Ottawa: Employment and Social Development Canada, at pg. 85. Available at <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/service-quality-review-report.html>, accessed February 24, 2017.

A variety of reforms have been suggested in all of these studies: to how the EI fund is structured; to premiums paid and how they are set; to eligibility criteria and access to benefits; to the level of benefits; to the conditions under which benefits can be received; to the availability of special benefits; to regional variability and equity; to how Service Canada manages and delivers EI benefits; to access to employment services and training; to programming for disadvantaged groups, and to the availability and quality of labour market information. New programming *outside* of EI has also been promoted, including a temporary income assistance program and a basic annual income. Clearly, there is no shortage of reform ‘ideas.’

Almost universally, the recommendations have been addressed to the Government of Canada, given that a 1940 amendment to the 1867 British North America Act inserting section 91(2A) assigned it exclusive responsibility for unemployment insurance. This narrow focus on the federal government is surprising as – at its inception in 1940 – Canada’s entire unemployment insurance scheme (including both income benefits as well as employment services) was viewed as a *cooperative* enterprise between employers and workers under government supervision and direction.<sup>7</sup>

The tripartite principle with respect to the governance of the Unemployment Insurance (UI) program was embedded throughout its entire structure, which included at the time the Unemployment Insurance Commission, the Unemployment Insurance Advisory Committee and the Court of Referees.<sup>8</sup> It was also evident in how the scheme was structured and financed: as

7 Labour Gazette (1943). *Unemployment Insurance in Canada Historical Background of Legislation- Outline of Administration of Unemployment Insurance Act 1940-1943*, May 1943, Pages 640-651.

8 Dingleline, Gary (1981). *A Chronology of Response: the Evolution of Unemployment Insurance from 1940 to 1980*. Ottawa: Minister of Supply and Services Canada.

a contributory social insurance program funded by employers, workers and government.

Yet over 75 years later – other than through two representatives on the four-person Canada Employment Insurance Commission – there are virtually no regularized mechanisms to ensure employer and worker oversight and input, despite the fact that almost all of the costs incurred – estimated at \$21.6 billion in 2016/17 – are paid for by mandatory premiums levied on their constituents.<sup>9</sup> At the launch of the UI program in 1940 employer and worker contributions were roughly equal; however, the employer contribution is currently 1.4 times that of employees. Although it controls and administers the program, federal financial contributions to UI/EI stopped completely in 1990.

This paper looks at how government (ministers, parliamentarians and bureaucrats) has been able to assume control – or in Pal’s words, ‘expropriate’<sup>10</sup> – the program from Canadian employers and workers. Its main focus is on the demise of business and labour influence over unemployment insurance and the public employment service since 1995. That year marked a major reform to UI income benefits – including rebranding the program as EI – as well as an offer to provinces and territories to take on responsibility for most aspects of the public employment service. In 2016, 87 per cent of Canada’s public employment service programming (with most costs charged to the EI account) was designed and delivered by provincial and territorial governments and Aboriginal organizations.

9 Parliamentary Budget Office (2016). *Economic and Fiscal Outlook April 2016*. Ottawa: Parliamentary Budget Office. Available at [http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2016/EFO%20April%202016/EFO\\_April\\_2016\\_EN.pdf](http://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2016/EFO%20April%202016/EFO_April_2016_EN.pdf), accessed September 4, 2016.

10 Pal, Leslie A. (1988). *State, Class and Bureaucracy: Canadian Unemployment Insurance and Public Policy*. Kingston and Montreal: McGill-Queen’s University Press.

I begin by considering why representatives of business and labour (also referred to as social partners) are involved in employment programming in any country, and the value they add. Contemporary European, American and Australian approaches are assessed. Then I move to the Canadian experience, first through a short history of programming for the unemployed, then by detailing the demise of business and labour influence over the three institutions set up in 1940 to facilitate partnerships: the Unemployment Insurance Commission, the Court of Referees, and the Unemployment Insurance Advisory Committee (and its successors). Next I move to the current day, outlining the situation in 2017. After a brief reflection on the properties of social insurance – compared to other kinds of income support programming – I conclude by reflecting on why it is important for business and labour to increase their influence over Canada’s support programs for the unemployed. I also suggest potential steps to achieve this goal.



# 2 WHY SOCIAL PARTNERS ARE INVOLVED WITH EMPLOYMENT PROGRAMMING IN ANY COUNTRY

A ‘partnership’ is a relationship where two or more parties, having compatible goals, form an agreement to do something together that they might not be able to achieve alone. It implies the sharing of resources, work, risk, responsibility, decision-making, power, benefits and burdens. In employment and labour market matters, the partners have historically been government, business and unions, hence a ‘tripartite’ relationship. The International Labour Office (ILO) bases all of its deliberations on tripartism, using discussions between the three groups to draft its standards and conventions. Employer and union organizations are considered to be distinct from other civil society groups as they represent key economic actors and draw their legitimacy from a broad membership. After World War I, and more so after World War II, tripartism – also called social dialogue – was seen as an effective way to overcome class struggle, generate social peace, foster economic prosperity and promote social justice.<sup>11</sup>

ILO Employment Services Convention No. 88 – enacted in 1948 – actually commits participating countries to tripartism with respect to maintaining a free public employment service. Articles 4 and 5 require the establishment of a national advisory committee and, where necessary, regional and local committees. Representatives of employers and workers are to be appointed in equal numbers to these advisory committees.<sup>12</sup> By 2015, 90 countries had ratified this convention; Canada signed on in 1950.

As part of the evolution of their welfare states, most developed countries established unemployment benefit and employment services regimes in the early 20th century. Representatives

of business and organized labour demanded a voice and an active role in the functioning of the programs primarily because, in most cases, the schemes chosen levied mandatory insurance premiums on their members. The most common model was where the costs were met jointly by employers and workers. In some countries the state supplemented the cost. In a much smaller number of countries financing came from a single source: employers, workers or the state. Social partner involvement was also viewed as important, as unemployment insurance benefits programs alter the balance of power and the contract of employment between employers and employees. For workers it reduces their need to find immediate employment after a lay-off. For employers it allows workers to be laid-off more easily and later recalled.<sup>13</sup>

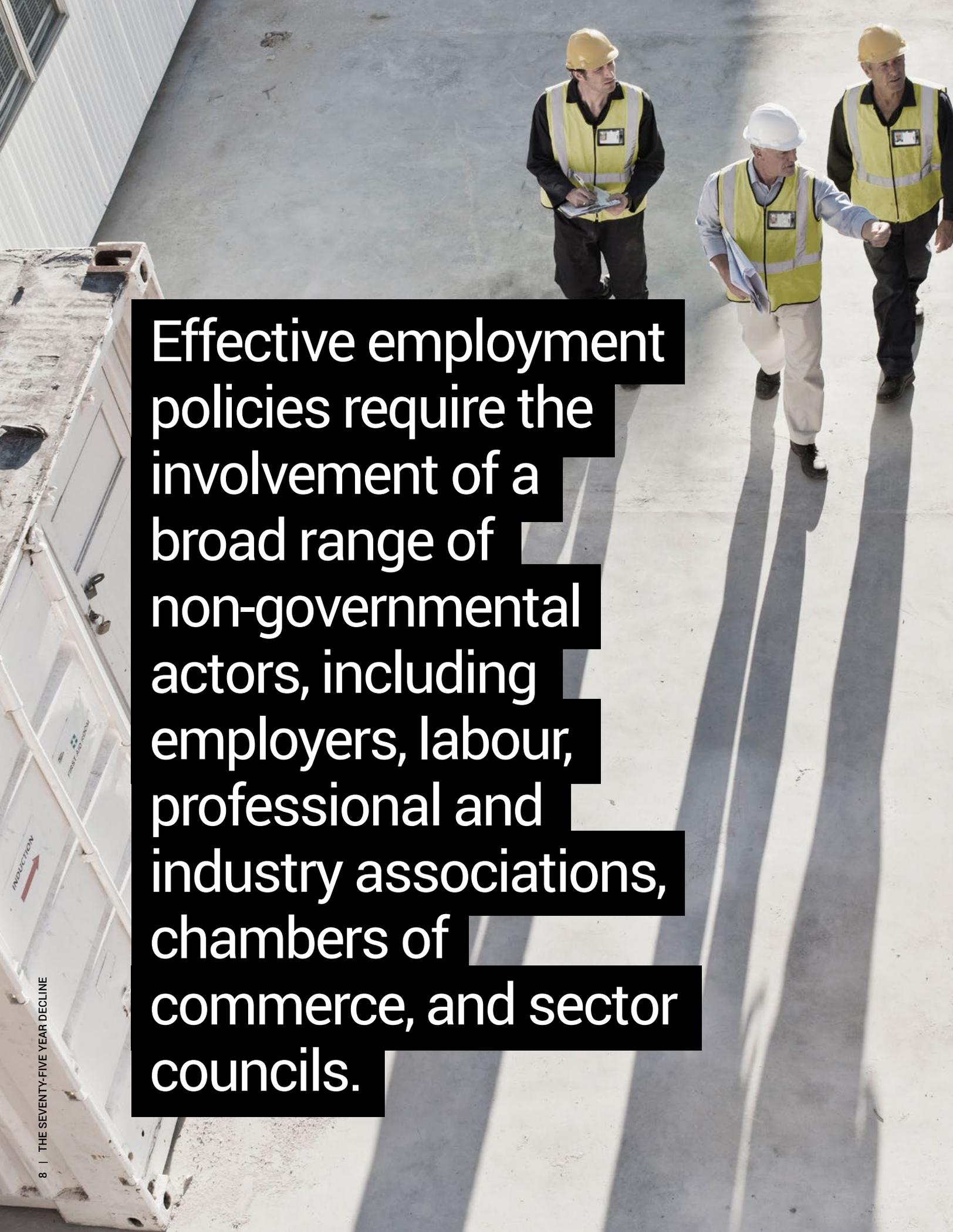
11 (European Commission 2016). *The Role of Social Partners in the Design and Implementation of Policies and Reforms*, July 2016, European Commission Directorate-General for Employment, Social Affairs and Inclusion.

12 International Labour Organization (1950). *Employment Services Convention, 1948 (no. 88)*. Geneva: International Labour Organization. Available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C088](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C088), accessed August 12, 2015.

13 Pal, Leslie A. (1988). ‘Sense and Sensibility: Comments on Forget.’ *Canadian Public Policy*, Vol. 14, No. 1, March 1988, pg. 7-14.

There are also a number of practical reasons for their involvement. As the administrator of the programs, governments see the direct involvement during the design phase of those impacted by the policies as a way to forestall objections and vetoes in the implementation phase. They also know that business and labour supply important knowledge about the workplace, the issues involved and future challenges. By being at the table, they create legitimacy for any government goals and strategies selected. Sharing resources among the different partners increases efficiency, and allows measures to take place that would not otherwise be possible given the resources of one partner alone. If all important stakeholders take ownership of the goals and strategies in an employment plan, the chances for good results are increased substantially when the measures are implemented in practice.<sup>14</sup>

14 Froy, Francesca, Sylvain Giguère, Lucy Pyne and Donna E. Wood (2011). *Building Flexibility and Accountability into Local Employment Services: Synthesis of OECD Studies in Belgium, Canada, Denmark and the Netherlands*. Paris: OECD. Available at <http://www.oecd.org/cfe/leedprogrammeloecconomicandemploymentdevelopment/buildingflexibilityandaccountabilityintolocalemploymentservices.htm>, accessed August 29, 2012.

A high-angle photograph of three construction workers on a site. They are wearing yellow high-visibility vests and hard hats (one yellow, one white). They are gathered around a set of blueprints, with one worker pointing at a section. The ground is concrete, and a white container is visible on the left side of the frame. The scene is brightly lit, casting long shadows.

Effective employment policies require the involvement of a broad range of non-governmental actors, including employers, labour, professional and industry associations, chambers of commerce, and sector councils.

# 3 INTERNATIONAL EXPERIENCE WITH SOCIAL PARTNER ENGAGEMENT

The Organisation for Economic Cooperation and Development has concluded that effective employment policies require the involvement of a broad range of non-governmental actors, including employers, labour, professional and industry associations, chambers of commerce, and sector councils.<sup>15</sup> Likewise, recent statements of the ILO, the United Nations, the International Monetary Fund, and the Group of Twenty all encourage countries around the world to increase the use of social dialogue, especially as a means to achieve 'decent work' objectives. "In a context of increasing concern about social inequalities and economic imbalances, social dialogue is key to achieving the balance between economic growth and social equity and to enhance ownership by the main actors involved.<sup>16</sup> The ILO is particularly emphatic, noting that social dialogue promotes and strengthens tolerance and understanding; builds capacity; facilitates longer-term reforms; and usually results in better results.<sup>17</sup>

Social partner engagement in employment programming is particularly evident in Europe. In 20 out of 28 European countries social partners are strongly involved in policy-making through stable tripartite institutions that oversee their country's unemployment insurance and public employment service programs. These institutions are usually established in legislation. This includes long-standing traditions in continental Europe and the Nordic countries, as well as in

eastern European countries required to establish social partner relationships as part of the process of becoming a member of the European Union (EU). In 12 of the 28 countries social partners also play a role in implementation and management, while in half they play a role in program monitoring.<sup>18</sup>

Examining four EU countries in more detail, Weishaupt concluded that the cooperation and support of the social partners in Austria and Germany was a key element in the launch of the short-term work and qualification schemes put in place to minimize the impact of the 2008 crisis.<sup>19</sup> While social partners in Denmark

15 Organisation for Economic Cooperation and Development (2012). *Better Skills, Better Jobs, Better Lives: a Strategic Approach to Skills Policies*. Paris: OECD. Available at [http://www.oecd-ilibrary.org/education/better-skills-better-jobs-better-lives\\_9789264177338-en](http://www.oecd-ilibrary.org/education/better-skills-better-jobs-better-lives_9789264177338-en), accessed February 23, 2017.

16 International Labour Organization (no date). *Social Dialogue: Promoting Sound Governance, Inclusive Growth and Sustainable Development*. Geneva: International Labour Organization. Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/genericdocument/wcms\\_172420.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_172420.pdf), accessed March 1, 2017, at pg. 3.

17 International Labour Organization (2013). *National Tripartite Social Dialogue: An ILO guide for improved governance*. Geneva: International Labour Organization. Available at [http://ilo.org/ifpdial/information-resources/publications/WCMS\\_231193/lang-en/index.htm](http://ilo.org/ifpdial/information-resources/publications/WCMS_231193/lang-en/index.htm), accessed March 1, 2017.

18 Eurofound (2013). *Social Partners Involvement in Unemployment Benefit Regimes in Europe*. Dublin: Eurofound. Available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/social-partners-involvement-in-unemployment-benefit-regimes-in-europe>, accessed March 21, 2016.

19 Weishaupt, J. Timo (2011). *Social Partners and the Governance of Public Employment Services: Trends and Experiences from Western Europe*. Working Document No. 17, May 2011. Geneva: International Labour Office.

# Positive historical experiences have placed social dialogue at the heart of the EU social model.

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continue to play an important advisory role, in recent years their role has weakened. In contrast, social partners in the United Kingdom play a minimal role. The tripartite Manpower Services Commission was abolished in the 1980s. While still consulted, social partners in the UK are not privileged over other stakeholders. Today these include the private, for-profit contractors that provide most placement services for UK jobseekers.

These positive historical experiences have placed social dialogue at the heart of the EU social model as a central component of ‘good governance.’ Article 150 of the Treaty on the Functioning of the European Union explicitly states that “in fulfilling its mandate the [Employment] Committee [EMCO]<sup>20</sup> shall consult management and labour.” Not only is their involvement supported by the European Commission through funding, a defined protocol outlines working methods for the EU’s four ‘peak’ business and labour organizations — as well as social partners at the member state

20 EMCO is a committee of senior government officials from all 28 member states plus the European Commission. It supports the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council of Ministers. The parallel entity in Canada is the Forum of Labour Market Ministers (FLMM).

level — to provide input into EU-wide decision-making. There is growing activism among social partners in Europe. In 2013 they came together to issue a *Social Partner Declaration* which states that their involvement in employment and labour market policy at an EU-level is ‘essential.’<sup>21</sup>

The United States (US) also has a long tradition of partnership working in its programs for the unemployed. However, here the privileged partner is business. This is because regular unemployment insurance benefits in the US — managed and delivered by the 50 states under flexible federal rules — are funded by experience-rated taxes on employer payrolls, not by worker contributions. Given employer funding of the system, in 1998 the federal Workforce Investment Act (WIA) required every state to set up state as well as local workforce boards. In 2014 WIA was replaced by the Workforce Innovation and Opportunity Act, streamlining the strategic role of the workforce boards. These must be chaired by an employer representative and business must now make up two thirds of the board (up from one half). Labour organizations are no longer required to be included on the boards.<sup>22</sup>

21 European Social Partners (2013). *Social Partner Involvement in European Economic Governance: Declaration by European Social Partners*. Available at [http://www.ueapme.com/IMG/pdf/Joint\\_Declaration\\_on\\_the\\_Involvement\\_of\\_the\\_Social\\_Partners\\_in\\_the\\_Economic\\_Governance.pdf](http://www.ueapme.com/IMG/pdf/Joint_Declaration_on_the_Involvement_of_the_Social_Partners_in_the_Economic_Governance.pdf), accessed February 23, 2017. The 4 ‘peak’ EU social partner associations are BusinessEurope, the European Association of Craft Small and Medium Enterprises (UEAPME), the European Centre of Employers and Enterprises providing Public Services (CEEP), and the European Trade Union Confederation (ETUC).

22 Klassen, Thomas R. (2015). *Enhancing the Role of Employers and Other Labour Market Stakeholders in Labour Market Adjustment Policy and Programs: A Study of Ontario’s National and International Competitors*, final report, prepared for Ontario Ministry of Training, Colleges and Universities.

In 2015 there were approximately 550 workforce boards with 12,000 business members operating across the US. A national association of workforce boards coordinates the state and local boards. Despite the privileging of business, recent evaluations have shown that employers typically do not play a major role in administering the boards and effectively lack influence over workforce issues in their areas.<sup>23</sup> Reflecting on the Michigan experience (with a state-wide board chaired by the Governor and 24 local boards), Klassen concluded that the large size of the boards (25 plus members) meant that they were often dominated by particular interests such as a specific industry or sector.<sup>24</sup> Focusing on job-ready workers, they largely failed to adequately serve those with barriers to employment.

In contrast to Europe and the US, Australia has few institutionalized mechanisms to hear the views of business and labour on employment matters. This is because unemployment benefits and the public employment service are funded by government tax revenues, as opposed to contributions from employers and workers. Managed centrally by the Commonwealth Government (not the states), the benefits side is administered by an Australia-wide arm's length agency called Centrelink. The public employment service has been fully outsourced for over 20 years to about 100 private and not-for-profit organizations delivering 650 contracts in 116 areas across Australia. As in the UK, the main stakeholders in employment matters in Australia are the associations that represent the views of the employment services contractors. It is

only within the context of the broadly scoped tripartite and multipartite National Workplace Relations Consultative Council and the Regional Development Australia Committees that the views of business and unions on employment matters in Australia are heard.<sup>25</sup>

23 Barnow Burt S. and Shayne Spaulding (2015). 'Employer Involvement in Workforce Programs: What Do We Know?' in *Transforming U.S. Workforce Development Policies for the 21st Century*, Tammy Edwards, Todd Green and Carl Van Horn (eds). Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

24 Klassen, Thomas R. (2015). *Enhancing the Role of Employers and Other Labour Market Stakeholders in Labour Market Adjustment Policy and Programs: A Study of Ontario's National and International Competitors*, final report, prepared for Ontario Ministry of Training, Colleges and Universities.

25 Wood, Donna E. (forthcoming). *Transforming the Governance of Canada's Public Employment Service Through Devolution*. University of Toronto Press.

# 4 A SHORT HISTORY OF CANADA'S SUPPORT PROGRAMS FOR THE UNEMPLOYED

The Government of Canada's first involvement in employment programming was in 1918, when it enacted – with provincial approval – the Employment Offices Coordination Act, providing for the establishment of the Employment Service of Canada (ESC). By the 1930s there were 76 provincially-managed ESC offices operating across the country, partially funded by the Government of Canada. Their main service was labour exchange and placement. During the Great Depression the federal government was pressured to also implement a national unemployment insurance benefits scheme as provinces and municipalities were unable to cope with the cost of 'relief.' Given provincial jurisdiction, it took until 1940 for all provinces and Ottawa to agree to change the constitution, assigning exclusive responsibility for unemployment insurance to the Government of Canada.<sup>26</sup>

The 1940 Unemployment Insurance Act had a twofold purpose: i) income protection and ii) labour market adjustment. While most features of the new program were adopted from Great Britain's contributory 'social insurance' model, instead of being controlled by government the Canadian scheme was set up to be managed by an arms-length Unemployment Insurance Commission (UIC) made up of three commissioners representing employers, workers and government. Program administration and management were deliberately separated from government in order to prevent political leaders from expanding coverage under pressure from voters. Unions were convinced that direct worker contributions to the scheme would give labour the leverage needed to control the program in the interests of the unemployed. Otherwise, like in the US, it would be controlled by employers. At its inception, each partner contributed in the ratio of

40:40:20 to a fund that would pay out benefits to eligible unemployed workers. The provincial ESC offices and staff from the federal Department of Labour were moved into the UIC and rebranded as the National Employment Service (NES).<sup>27</sup>

Pal describes in some detail the challenges the Commission experienced in trying to square an unemployment insurance benefits scheme (operating under actuarial constraints to provide benefits to those who contributed) with manpower functions (designed to help people access work).<sup>28</sup> As a result, the 1962 Gill Report recommended that the employment service be divorced from the UI Commission and made the direct responsibility of an operating department of the federal government.<sup>29</sup> When

26 Hunter, John (1993). *The Employment Challenge: Federal Employment Policies and Programs 1900-1990*. Ottawa: Government of Canada.

27 Campeau, Georges (2005). *From UI to EI: Waging War on the Welfare State*, translated by Richard Howard. Vancouver and Toronto: UBC Press.

28 Pal, Leslie A. (1988). *State, Class and Bureaucracy: Canadian Unemployment Insurance and Public Policy*. Kingston and Montreal: McGill-Queen's University Press.

29 Canada (1962). *Report of the Committee of Inquiry into the Unemployment Insurance Act*, Ernest C. Gill, Chairman.

the Department of Manpower and Immigration was established in 1965, the NES offices were transformed into Canada Manpower Centres as part of a 'grand design' under which the federal government would assume full responsibility for manpower policy and expand their role in employment and training matters.<sup>30</sup>

This caused concern among provinces as Ottawa withdrew from long-standing cost-sharing arrangements related to training.<sup>31</sup> As this was happening on the manpower side, increased federal funding through the Canada Assistance Plan allowed provinces to modernize and improve their social assistance programs for unemployed people not covered by UI benefits. Some started to offer employment services. In 1971 Ottawa enlarged the benefits side of UI, such that by 1983 it had become the largest operating program of the federal government. Coverage became near universal and stabilization and social policy components were added, shifting the program dramatically away from its original insurance principles and entrenching jobless rights.<sup>32</sup> 1974 saw the first 'developmental' uses of the UI fund to pay for training, work sharing and job creation. Switching these costs from general revenues to UI was possible due to surpluses in the UI account.<sup>33</sup>

30 Dupré, Stefan, David Cameron, Graeme McKechnie and Theodore Rotenberg (1973). *Federalism and Policy Development: the Case of Adult Occupational Training in Ontario*. Toronto and Buffalo: University of Toronto Press.

31 Pal, Leslie (1983). 'The Fall and Rise of Developmental Uses of UI Funds.' *Canadian Public Policy*, IX: 1 1983, pg. 81-93.

32 Courchene, Thomas J. and John R. Allen (2009). 'A Short History of EI and a Look at the Road Ahead.' *Policy Options*. September 1, 2009. Montreal: Institute for Research on Public Policy. Available at <http://policyoptions.irpp.org/magazines/employment-insurance/a-short-history-of-ei-and-a-look-at-the-road-ahead/>, accessed March 16, 2016; Campeau, Georges (2005). *From UI to EI: Waging War on the Welfare State*, translated by Richard Howard. Vancouver and Toronto: UBC Press.

33 Hale, Geoffrey E. (1998). 'Reforming Employment Insurance: Transcending the Politics of the Status Quo.' *Canadian Public Policy*, Vol. 24, No. 4 (Dec 1998), pg. 429-451.

In 1977 the separate UI Commission was joined with a newly created Department of Employment and Immigration Canada. In 1983 federal, provincial and territorial governments came together to create the Forum of Labour Market Ministers (FLMM) to coordinate labour market policy on a pan-Canadian level. In 1986 the Forget Commission – another committee set up to review UI – identified, among other items, the need for greater social partner involvement in employment policies.<sup>34</sup> Condemned by unions, the Forget report was largely ignored by government.<sup>35</sup> In 1989 Ottawa introduced the *Labour Force Development Strategy*, deliberately shifting the program orientation from passive to active labour market measures. This was in line with OECD directions, as well as a new ILO Convention 122 on activation that Canada signed in 1966.<sup>36</sup>

By the late 1980s Ottawa was operating over 500 Canada Employment Centres across the country, delivering both UI benefits and employment services.<sup>37</sup> Employment services were available to UI recipients as well as disadvantaged groups such as women, Aboriginal people, immigrants, youth, social assistance recipients and disabled people. Contracted out primarily to not-for-profit employment agencies, the services for disadvantaged people were paid for out of general tax revenues, not the UI account. Given concerns over escalating costs, a series of incremental changes were made to rein in UI benefits. In the absence of a provincial veto, federal officials were able to pursue a 'salami tactic', that is a series

34 Canada (1986). *Commission of Inquiry on Unemployment Insurance Report*. November 1986, Claude E. Forget, Chairman.

35 Pal, Leslie A. (1988). 'Sense and Sensibility: Comments on Forget.' *Canadian Public Policy*, Vol. 14, No. 1, March 1988, pg. 7-14.

36 Virtuosity Consulting (2003). *History of Federal Employment Policies and Programs 1985-2002*. Draft Final Report, under contract to Strategy and Coordination Human Resources Development Canada.

37 Employment and Immigration Canada (EIC), 1990. *Pathways to Success: Aboriginal Employment and Training Strategy: a Background Paper*.

of small cuts enacted on a regular basis that gradually transformed the program.<sup>38</sup> However, UI tightening caused considerable concern, particularly for Atlantic Canada and Québec where many citizens used UI benefits to balance out their seasonal incomes. Federal contributions to the UI account from general tax revenues ended in 1990, leaving the entire burden on employers and employees.

In 1995 the Government of Canada embarked on a broad-ranging series of program and spending cuts to reduce the federal deficit and debt. This included reductions to provincial transfers for social assistance benefits, as well as reductions in federal spending on employment measures for disadvantaged groups. As part of a plan to realize a 10 per cent reduction in UI costs, eligibility and access to benefits and services were further tightened to ensure that the fund was self-sustaining. The program was rebranded as Employment Insurance (EI), and officially split into EI Part I (focusing on income benefits) and EI Part II (focused on employment benefits and support measures). In 1989 85 per cent of jobless Canadians qualified for UI benefits; by 1997 this had dropped to 41 per cent.<sup>39</sup> As a result of the new eligibility restrictions, a surplus began to accumulate in the EI fund, resulting in increased attention to EI matters by federal finance officials. There were growing pressures on government to reduce EI premiums by more than a token amount.<sup>40</sup>

In response to Québec's autonomy demands, in 1995 the Government of Canada offered to transfer control of EI Part II funding – essentially the public employment service – to interested provinces and territories. It took over 14 years and a change of government at the national level from Liberal to Conservative in 2006 for all 13 jurisdictions to agree to take on the federal programming through Labour Market Development Agreements (LMDAs). Responsibility for Aboriginal labour market services was also devolved to local Aboriginal organizations. Ottawa continued to deliver EI income support benefits and some residual employment services through federal offices transformed in 2005 into Service Canada, responsible for a broad range of federal programming. By March 2004 the surplus in the EI account was estimated at \$46 billion, with many stakeholders claiming that Ottawa had used EI money to balance the federal budget.

In 2006 Ottawa allocated additional funding from general revenues through Labour Market Agreements (LMAs) so that provinces and territories could enhance employment services for non-EI recipients as well as low income earners. The Canada Employment Insurance Financing Board (CEIFB) was created in 2008 to set and manage EI premiums in a more transparent way. In 2012 EI program recipients were required to take any job deemed 'suitable' and to use 'reasonable and customary measures' to obtain employment. Changes were also made to the EI appeal process, consolidating all appeals for Employment Insurance, the Canada Pension Plan, and Old Age Security under a newly formed Social Security Tribunal (SST).

38 Beland, Daniel and John Myles (2008). 'Policy Change in the Canadian Welfare State: Comparing the Canadian Pension Plan and Unemployment Insurance', *SEDAP Research Paper No. 235*, McMaster University, Hamilton, Ontario.

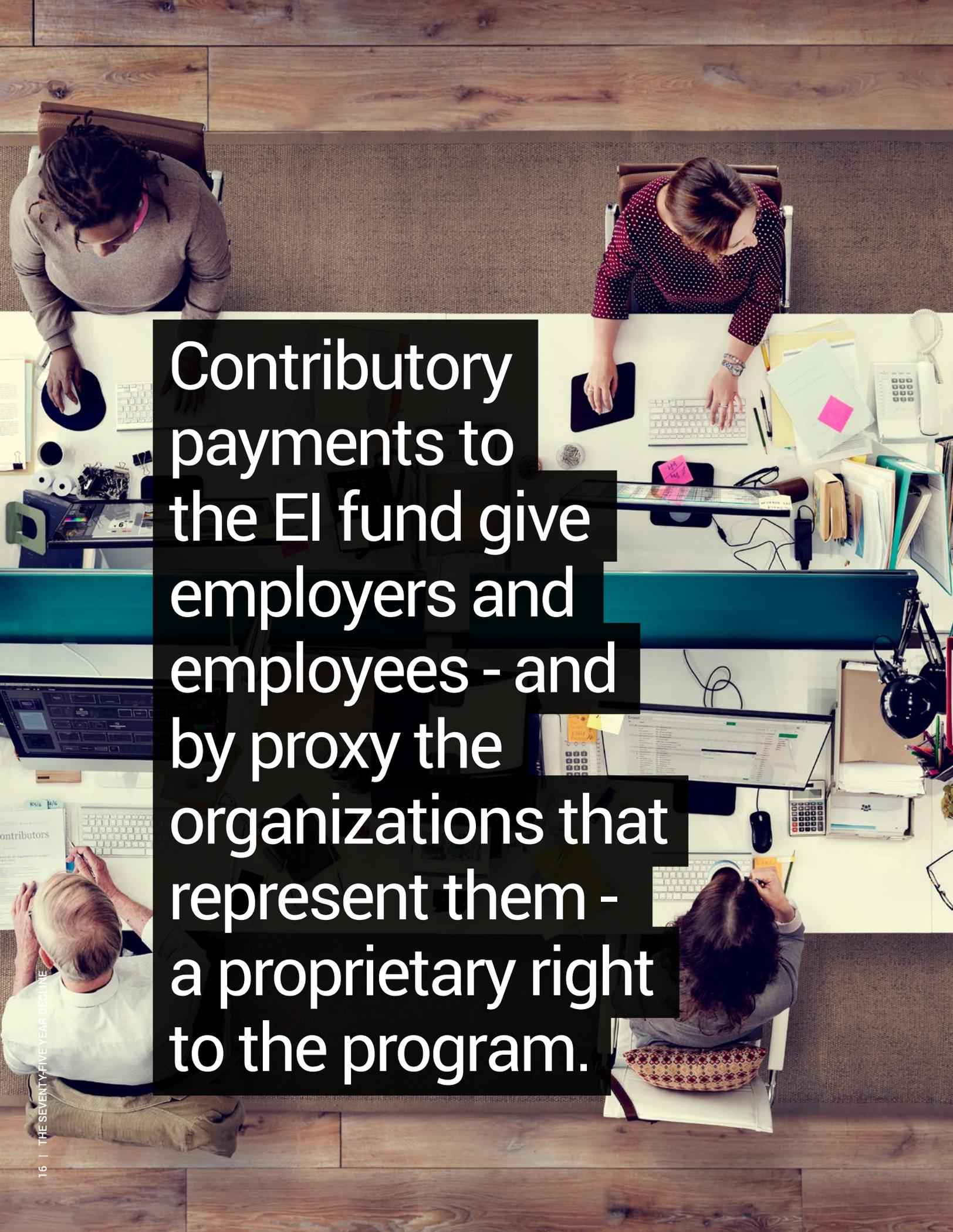
39 Campeau, Georges (2005). *From UI to EI: Waging War on the Welfare State*, translated by Richard Howard. Vancouver and Toronto: UBC Press, at pg. 165.

40 Hale, Geoffrey E. (1998). 'Reforming Employment Insurance: Transcending the Politics of the status Quo.' *Canadian Public Policy*, Vol. 24, No. 4 (Dec 1998), pg. 429-451.

In order to bring employers into training decisions, in 2013 the federal government transformed LMA funding to provinces and territories through new Canada Job Fund Agreements. Moving scarce resources from unemployed to employed workers raised many concerns.<sup>41</sup> The federal department responsible was renamed Employment and Social Development Canada (ESDC). The CEIFB was dissolved and responsibility for setting EI premiums was moved back to the EI Commission. The Forum of Labour Market Ministers announced the establishment of a Labour Market Information Council.

In 2016 the newly elected Liberal government announced a number of changes to EI income benefits (mostly focused on adjusting work requirements and easing eligibility conditions). Additional changes were detailed in the 2017 budget. There will be greater flexibility in access to parental and maternity benefits as well as caregiver benefits. Additional funding was allocated to the provincial labour market transfer agreements; worker eligibility to EI Part II funding was broadened; and it will be easier for EI claimants to go back to school while on benefits. Funding was also allocated to support the development of a new organization to support skills development and measurement and to improve EI service delivery.

41 Wood, Donna E. (2015). 'Recasting Federal Workforce Development Programs under the Harper Government,' in *The Harper Record*, Teresa Healy and Stuart Trew (eds). Ottawa: Canadian Centre for Policy Alternatives. Available at <https://www.policyalternatives.ca/publications/reports/harper-record-2008-2015>.



Contributory payments to the EI fund give employers and employees - and by proxy the organizations that represent them - a proprietary right to the program.

# 5 HISTORICAL BUSINESS AND LABOUR INFLUENCE OVER CANADA'S PROGRAMS FOR THE UNEMPLOYED

This overview has hinted at places where business and labour have played a key role in unemployment insurance and the public employment service. However, unlike in the EU, on neither side are there recognized 'peak,' pan-Canadian organizations that interact with government and with each other.

While there are hundreds of associations representing business interests in particular sectors, input into employment matters has primarily been provided by five encompassing organizations whose names and roles have changed over the years. Since 1902 the Canadian Manufacturers and Exporters Association has represented industrial firms. The Canadian Chamber of Commerce has been in place since 1925 and has a presence across Canada through its 425 local chambers. In 1969 the Canadian Federation of Independent Business was set up to advocate for small and medium-size business. The Business Council of Canada represents the chief executives of Canada's 150 leading companies. In Québec there is the Conseil de Patronat du Québec.<sup>42</sup>

On the labour side the main player is the Canadian Labour Congress. In 2008, through its affiliate unions, the Canadian Labour Congress (CLC) represented 70.7 per cent of unionized workers. Québec unions organize 10.4 per cent of unionized workers, with another 13 per cent in 'independent' unions. However, unions do not represent all Canadian workers. Over the past two decades union density has fallen, representing 25.6 per cent of the civilian labour force in 2008.<sup>43</sup>

## Employer and Worker Representation on the Unemployment Insurance Commission

With antecedents going back to 1940, the Canada Employment Insurance Commission (CEIC) has been responsible for unemployment insurance for over 75 years. In 2017 its powers and duties are detailed in Part 3 of the Department of Employment and Social Development Act, as well as the separate Employment Insurance Act. The Commission has authority over EI policy and regulations; financial transparency/rate setting; and EI appeals. It is also responsible for overseeing the delivery of EI Part II pan-Canadian programming; approving amendments to provincial and territorial EI Part II funding agreements; approving work-sharing agreements

42 Coleman, William (2016). 'Business, Labour, and Redistributive Politics,' in *Inequality and the Fading of Redistributive Politics*, Keith Banting and John Myles (eds). Vancouver: UBC Press.

43 Coleman, William (2016). 'Business, Labour, and Redistributive Politics,' in *Inequality and the Fading of Redistributive Politics*, Keith Banting and John Myles (eds). Vancouver: UBC Press.

of \$600,000 or more; employment services; and developing and using labour market resources. The Commission also has a legislated mandate to annually assess the EI program through a Monitoring and Assessment Report, and oversee a research agenda.<sup>44</sup>

While implementation and oversight of EI is carried out by public servants within ESDC, the EI Commissioners for Employers and Workers are called upon to sign off on everything from EI regulations to cases destined for the federal court. Mandated to represent and reflect the views of their respective constituencies, the Commissioner for Workers and the Commissioner for Employers are appointed by the Governor-in-Council for terms of up to five years. Between 1940 and the 1970s, the CLC (representing workers) and the Canadian Manufacturers' Association (representing employers) enjoyed a monopoly in terms of representation on the Commission.<sup>45</sup> Over time the Canadian Federation of Independent Business has become more influential on the business side, with the 2017 employer representative and her predecessor coming from that organization.

As Governor-in-Council appointees, the commissioners are independent of the federal public service, serving their terms on 'good behaviour.' Their offices are situated within the ESDC department, providing proximity to both political and bureaucratic leaders in Ottawa. While still referred to as a tripartite organization, in 2017 the CEIC actually has four members, two representing the interests of government, and one each representing the views of workers and employers. The Chairperson and Vice-Chairperson of the Commission are respectively the Deputy

Minister of ESDC and the Senior Associate Deputy Minister responsible for Service Canada. The Vice-Chairperson votes on decisions only if the Chairperson is unavailable.

Although chosen by the federal minister and appointed by Cabinet, the EI Commissioners for Workers and Employers are nominated through a competitive process and their constituencies are canvassed to ensure that they have the support of employer and labour groups. However, the ultimate decision is up to the federal Cabinet. In 2011 the Government of Canada refused to accept the CLC nominee, and chose instead a representative from the Canadian Teachers' Federation. This caused concern within the labour movement.

Over time, the power of both employer and worker representatives on the Commission has diminished significantly. A very important loss of power occurred in 1965 when responsibility for the National Employment Service was transferred from the Commission's authority to a new federal Department of Manpower and Immigration. Although the Commission disagreed with the changes – as UI required benefit recipients to demonstrate that they were looking for work – backed by recommendations from the Gill Report the federal government proceeded to transfer the programs out of its control. This resulted in two parallel structures for federal employment programming: Canada Manpower Offices and the UI Commission.

The most significant loss of power for business and labour occurred in 1977 as part of the process of joining the UI Commission with a new Department of Employment and Immigration and reducing the two parallel federal structures responsible for employment programming to one. The amalgamation was accomplished by making the deputy and associate deputy ministers of the federal department the Chairman and Vice-

44 For more information on the role of the Commission see <http://www.esdc.gc.ca/en/ei/commission.page>.

45 Issalys, Pierre and Gaylord Watkins (1977). *Unemployment Insurance Benefits: a Study of Administrative Procedure in the Unemployment Insurance Commission*. Prepared for the Law Reform Commission of Canada, Minister of Supply and Services Canada.

# Over time, the power of both employer and worker representatives on the Commission has diminished significantly.

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Chairman of the Commission, while still retaining the Commissioners for Employers and Workers.

According to Pal this change was of historic importance as it “finally buried the 1940 principles that UI should be insulated from political pressure through management by an autonomous Commission and that employers and employees had a proprietary right to the program ... the principle was eroded in the 1946 amendment ... and again in 1966. The 1977 amalgamation went much further however, in placing the deputy minister in the chair and reducing private sector representation on the Commission from two out of three to two out of four ... the government in effect expropriated the UI program.”<sup>46</sup>

Control by the federal government over the Commission was evident in the 1980s in regard to how the UI fund came to cover the costs of training, work sharing and job creation. Labour and employer organizations objected to the developmental uses of UI, on the basis that it fragmented the program purpose and allowed government to shift costs that would normally be borne by general tax revenues to employers

46 Pal, Leslie A. (1988). *State, Class and Bureaucracy: Canadian Unemployment Insurance and Public Policy*. Kingston and Montreal: McGill-Queen's University Press, at pg. 132.

and workers. Pal's analysis of this period noted “The present Commission has of course had to approve the developmental use of UI funds, but it has done so reluctantly.”<sup>47</sup>

While the 1986 Forget Commission recommended reviving the autonomy of the UI Commission by making it a Crown corporation, no changes were made and it continued to lose power. For example, in 1991 the government chose a different, higher UI premium rate than was recommended by the Commission. This demonstrated that, in essence, the independence of the Commission from the federal minister was negligible, and the Commission was a ‘de facto’ advisory body.<sup>48</sup> The Commission had little influence over the stepped and incremental tightening of UI that ran through the 1980s and 1990s, even though the proposed emphasis on active measures was rejected by most unions and business groups as a largely ineffective palliative for structural unemployment.<sup>49</sup>

Regardless of its loss of power, over the past decade the EI Commissioners for Workers and Employers have set up various ways to establish and maintain working relationships with their respective constituencies. The Commissioner for Employers issues a regular newsletter; in addition a 30-member employer's forum meets from time to time. The Commissioner also maintains an active speaking and meeting agenda with employer groups. In 2015 the Commissioner for Employers saw the role as “an advocate for business that is embedded within the department.”

47 Pal, Leslie (1983). ‘The Fall and Rise of Developmental Uses of UI Funds.’ *Canadian Public Policy*, IX: 1 1983, pg. 81-93, at pg. 91.

48 Virtuosity Consulting (2003). *History of Federal Employment Policies and Programs 1985-2002*. Draft Final Report, under contract to Strategy and Coordination Human Resources Development Canada, at pg. 23.

49 Hale, Geoffrey E. (1998). ‘Reforming Employment Insurance: Transcending the Politics of the Status Quo.’ *Canadian Public Policy*, Vol. 24, No. 4 (Dec 1998), pg. 429-451, at pg. 445.

The Commissioner for Workers holds an annual forum to bring the federal minister and senior federal officials together with labour stakeholders and other experts from across the country. There is also a labour reference group chaired by the CLC, as well as opportunities for federal officials to provide briefing sessions on selected issues. The Commissioner speaks at many union gatherings and also connects on a regular basis with organizations representing non-unionized unemployed workers from across Canada. The Commissioner for Workers noted in 2015 how the advocacy role includes non-unionized labour. “The ombudsman role is the most rewarding part of my job – speaking with advocacy groups keeps me grounded in the role.”

However, there is no process that brings these labour and business stakeholders associated with the commissioners together with each other and with government. The EI Commissioner connections with their respective constituencies are separate, distinct and parallel. Both commissioners admitted to having to work very hard to influence policy, noting that the federal ESDC hierarchy from the bureaucracy to politicians does not typically include consideration of the views of the ‘independent’ commissioners representing Canadian employers and workers. Most are unaware of the social partner roots of Canada’s EI programming.

In 2014 each Commissioner presented their views at the parliamentary committee hearings examining renewal of the federal-provincial LMDAs and in 2016 they presented at hearings considering EI changes. However, their input was considered much like any other stakeholder who presented. The commissioners also attended cross-Canada roundtables on LMDA renewal in 2014, as well as 2015 and 2016 meetings of the FLMM. They had to press hard on federal officials to be included in these

federal-provincial undertakings. Provincial and territorial government officials were likewise reluctant to have them participate, viewing the EI Commissioners for Workers and Employers as part of the federal government, not as representatives of their respective constituencies.

## Employer and Worker Representation on the Board of Referees

One of the main tenets of the 1940 unemployment insurance scheme was that it was insurance-based: that those who contributed were entitled to benefits as a right, not as charity. Only a contributory scheme could guarantee jobless rights to be claimed through legal channels. As there was no means test, “self-reliant men and women could accept [UI benefits] without disgrace”.<sup>50</sup> This tenet was reflected in the establishment of a tripartite appeals procedure as a way to protect worker rights.

There were two levels of appeal. If a claim for benefits was refused by an officer of the UI Commission, the claimant could make an appeal to a Court (later called a Board) of Referees, an independent impartial tribunal consisting of a three person panel. If the claimant was still not satisfied, further recourse was available to an Umpire.

The composition of the Board of Referees was tripartite, consisting of a Chairman representing government, a representative of employers and a representative of workers. Government representatives were chosen based on political considerations. Employer and worker representatives were nominated at the local level (usually by the local chamber of commerce and the local labour council) based on their

<sup>50</sup> Bryden, Kenneth (1974). *Old Aged Pensions and Policy Making in Canada*. Montreal: McGill Queen’s University Press, at pg. 24.

knowledge of the workplace. Government did not veto the worker and business nominees. The EI Commissioners for Employers and Workers confirmed their respective representatives, and were heavily involved in supporting the appeal process. Although time-consuming, it ensured that the commissioners were connected to EI issues as they played out on the ground.

Face to face meetings of the Board of Referees were the norm; at the appeal hearing appellants did not know who each board member represented. In 2012/13 approximately 900 board members heard appeals in 83 centres across Canada.<sup>51</sup> In Porter's view, "The Boards of Referees played an important role in helping define the terms and conditions under which EI benefits could be received and, above all in making it possible for people to bring their issues forward, tell their stories and have a decision that might be considered arbitrary or unfair reconsidered. The Boards were decentralized and provided an important window on what the implementation of the rules and regulations meant in practice."<sup>52</sup> Individual decisions were made after conversations among the three Board of Referees members; in some cases they might also involve Service Canada staff. Umpire rulings formed a publicly available body of jurisprudence to guide future decisions. Local union councils and legal aid clinics helped appellants navigate the appeal process. Some provinces also had unemployment advocacy centres that shared relevant information on EI appeals through their cross-Canada networks.

This appeal process had not changed fundamentally since 1940. The EI Commissioners for Employers and Workers were not consulted by the federal government when it decided in 2013 to abolish the EI Boards of Referees and Umpire system and replace it with a new Social Security Tribunal (SST). SST consolidated EI appeals with those from Old Age Security and the Canada Pension Plan. Rather than a tripartite body, EI appeals are now held before one of 39 full-time SST tribunal members. SST is arm's length and does not have to give up information to or report to the EI Commissioners.

No evidence was provided to the EI Commissioners on the rationale for the change, other than as a cost saving measure. A spokesperson for the Canadian Federation of Independent Business noted "We certainly aren't sure where this idea is coming from. We feel that the EI Board of Referees was working well."<sup>53</sup>

Problems relating to the establishment of the SST are increasingly coming to light. The 2016 parliamentary HUMA hearings into EI changes heard testimony from experts, and the EI Service Quality Review heard directly from EI recipients and stakeholders. "Prior to the new system, in 2012-13 appeals were informally reconsidered within 14 days, with those unsuccessful receiving a hearing at the Board of Referees, on average, in 44 days, whereas currently, the average reconsideration decision takes 38 days, with unsuccessful claimants waiting on average 165 days when appealing to the SST."<sup>54</sup> In 2016 Québec unions issued a joint statement, noting that "...there has been a decline in the quality of

51 Canada Employment Insurance Commission (2013). *2012/13 Employment Insurance Monitoring and Assessment Report*. Ottawa: Canada Employment Insurance Commission. Available at <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/monitoring2013.html>, accessed April 21, 2017.

52 Porter, Ann (2015). 'Austerity, Social Program Restructuring and the Erosion of Democracy: Examining the 2012 Employment Insurance Reforms.' *Special Issue: Social Policy and Harper, Canadian Review of Social Policy* 71 (1) pg. 21-52, at pg. 41.

53 CBC (2012). *Employment Insurance Boards to be Scrapped*. May 25, 2012.

54 Employment and Social Development Canada (2017). *Employment Insurance Service Quality Review: Making Citizens Central, Report*. Ottawa: Employment and Social Development Canada, at pg. 85. Available at <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/service-quality-review-report.html>, accessed February 24, 2017.

In 2017 there are no national advisory structures in place with respect to either EI income benefits or the public employment service.

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administrative justice that clearly violates the rights of the jobless to be protected against unemployment.”<sup>55</sup>

Aside from democratic and social justice concerns, the changes also weakened the position of labour as an actor with respect to EI, and broke the direct link between the EI Commissioners for Workers and Employers and EI appeals. A labour respondent interviewed through this research noted how the new process “stacks the odds against the unemployed worker. The people on the Social Security Tribunal have no lived experience with the workplace. Government has completely confiscated the process and squeezed out workers and business, despite the fact that they pay for the system ..the people now involved [in making judgements] are only accountable to meeting the performance requirements of the Social Security Tribunal; previously the Board of Referees were accountable to the union and business groups that nominated them.”<sup>56</sup>

Both the federal HUMA committee (in 2016) and the EI Service Quality Review Panel (in 2017) made recommendations on the need for the federal ESDC department to review the SST. However, neither report highlighted the elimination of business and labour control over the process as a particular problem; all of the attention was placed on issues such as reduced access, timeliness, transparency, and whether hearings should be in person or by telephone/ videoconference. There were no calls for the SST review to be conducted in a way that would privilege input from business and labour representatives.

In light of the changes to the appeal process, the EI Commissioners for Workers and Employers were re-evaluating their roles. New directions being considered included more involvement with policy development; enhanced monitoring of program impacts; and facilitating greater stakeholder engagement. With the demise of the CEIFB, the Commission is again involved in EI rate setting.

55 MacEwen, Angella (2016). *The New EI Appeals Process Isn't Working: Here's Why*. Rabble.ca. Available at <http://rabble.ca/blogs/bloggers/progressive-economics-forum/2016/12/new-ei-appeals-process-isnt-working-heres-why>, accessed February 24, 2016.

56 SST members are recruited through a centralized process. The key skills looked for are a background in case law and decision-writing, not experience with the workplace. Unlike the tripartite decision-making under the previous Board of Referees, SST members make decisions on their own.

## Employer and Worker Involvement in Advisory Committees, Boards and Councils

Business and labour involvement in formal advisory committees pre-dated the 1940 Unemployment Insurance Act. The Employment Service of Canada was supported by a National Employment Service Council. When UI was implemented in 1940, the council was replaced by a National Employment Committee to advise the UI Commission on employment matters, and an Unemployment Insurance Advisory Committee to review premium rates, adequacy of coverage, and the benefit structure.<sup>57</sup> As a result of business and labour involvement in these committees, Canada had no hesitation in ratifying ILO Employment Services Convention 88 in 1950.

However, many changes have occurred over the past 75 years, and in 2017 there are no national advisory structures in place with respect to either EI income benefits or the public employment service. The initial UI advisory groups were replaced by a National Advisory Council on Manpower in 1951 and then by the Canada Employment and Immigration Advisory Council in 1976. Government also sought input through special inquiries, including the Gill Commission in 1961, the Royal Commission on the Economic Union and Development Prospects for Canada (the MacDonald Commission) in 1984, and the Forget Commission in 1985.

Although business and labour were involved in all of these undertakings, Pal noted that their opposing views on UI had not changed in years.<sup>58</sup> Employers wanted the program to adhere to insurance principles and were adverse to expansion. Employee organizations focused on the need for greater government action against unemployment, the need for better access to benefits, and the protection of claimant's rights. "State officials often know exactly what the responses of the CLC or the Canadian Chamber of Commerce will be to any given set of proposed amendments. Hence the associations (and indeed most others) are largely ignored at the policy formulation stage ... consultation is still pursued, but from the government's viewpoint probably more for legitimation than for real dialogue."<sup>59</sup>

In order to overcome these problems and build a new tripartite relationship, in 1984 business and labour – through the CLC and the Business Council on National Issues – came together to form the Canadian Labour Market and Productivity Centre (CLMPC), supported by endowment funding announced in the 1983 federal budget. Employer groups engaged because of tight labour markets and a scarcity of labour. Unions were hoping to replicate the success of their 'junior insider role,' that in the 1960s and 70s had led to major gains in social programming.<sup>60</sup> The federal government was keen on this initiative as a way to increase the training efforts of the private sector and to secure buy-in to the free trade agreement with the US.

57 Dingleline, Gary (1981). *A Chronology of Response: the Evolution of Unemployment Insurance from 1940 to 1980*. Ottawa: Minister of Supply and Services Canada; Hunter, John (1993). *The Employment Challenge: Federal Employment Policies and Programs 1900-1990*. Ottawa: Government of Canada.

58 Pal, Leslie A. (1988). *State, Class and Bureaucracy: Canadian Unemployment Insurance and Public Policy*. Kingston and Montreal: McGill-Queen's University Press.

59 Pal, Leslie (1985). 'Revision and Retreat: Canadian Unemployment Insurance 1971-1981,' in *Canadian Social Welfare Policy: Federal and Provincial Dimensions*, Jacqueline. S. Ismael, (ed). The Institute of Public Administration of Canada, Kingston and Montreal: McGill-Queen's University Press, at pg. 76 and 91.

60 Jackson, Andrew and Bob Baldwin (2007). 'Policy Analysis by the Labour Movement in a Hostile Environment,' in *Policy Analysis in Canada: the State of the Art*, Michael P. Howlett, David H. Laycock and Laurent Dobuzinskis (eds). Toronto: University of Toronto Press.

While most of the focus of the CLMPC was on labour market adjustment, training and workplace issues, it also engaged on unemployment insurance benefit issues.<sup>61</sup>

One of the most significant undertakings of the CLMPC was facilitating consultations in the late 1990s through seven task forces on a variety of labour market issues. This led to the creation of the Canadian Labour Force Development Board (CLFDB), with 22 members drawn from business, labour, social action groups and training organizations, with federal and provincial government officials as ex-officio members. The UI Commissioners for Workers and Employers were responsible for nominating their respective representatives to the CLFDB board.

The CLFDB was set up to make recommendations to Ottawa on training policies and programs and funding levels from the UI account.<sup>62</sup>

The national board was to be supplemented wherever possible by provincial and local boards. Ultimately provincial boards were established in

## None of the broad-based labour market boards lasted long.

Newfoundland & Labrador, Nova Scotia, New Brunswick, Québec, Ontario, Saskatchewan and British Columbia.<sup>63</sup> A pan-Aboriginal National Management Board was also established. While government-funded, none of these boards were established in legislation.

The Government of Canada was also open to enhancing business and labour partnerships for human resource development in specific industry sectors, for example aerospace, steel, automotive repair and electronics. Sector councils were seen as a way to manage the pressures of both demand and supply adjustment.<sup>64</sup> By the mid-2000s more than 30 bodies were operating, as well as an Alliance of Sector Councils. While Ottawa provided core funding, it did not impose a 'top-down' set of initiatives and requirements.<sup>65</sup> Labour and management were meant to have equal representation on the councils.

None of the broad-based labour market boards lasted long. By 1996 the pan-Aboriginal Management Board had disappeared, fractured among the different Aboriginal constituencies. For various reasons all the provincial boards closed down. The CLFDB struggled for relevance in a changing labour market policy landscape and its demise was finalized in 1998 when representatives of the Business Council on National Issues and the Canadian Federation of Independent Business announced that they were pulling out.<sup>66</sup>

61 Canadian Labour and Business Centre (no date). *The Canadian Labour and Business Centre a Record of Achievements*. Available at [http://www.clbc.ca/About\\_Us.php](http://www.clbc.ca/About_Us.php), accessed March 27, 2016.

62 Haddow, Rodney and Andrew Sharpe (1997). 'Canada's Experiment with Labour Force Development Boards: an Introduction,' in *Social Partnerships for Training: Canada's Experiment with Labour Force Development Boards*, Andrew Sharpe and Rodney Haddow (eds). Kingston, ON: School of Policy Studies Queen's University.

63 For various reasons Alberta, Prince Edward Island, and Manitoba never established provincial boards. Ontario and Québec also established local boards.

64 Gunderson, Morley and Andrew Sharpe (1998). *Forging Business-Labour Partnerships: The Emergence of Sector Councils in Canada*. Toronto: University of Toronto Press.

65 Gunderson, Morley (2011). 'Impact of Sector Councils: A Canadian Institution.' *Journal of Labour Research*. 2011, 32: 414-426.

66 Virtuosity Consulting (2003). *History of Federal Employment Policies and Programs 1985-2002*. Draft Final Report, under contract to Strategy and Coordination Human Resources Development Canada.

At the CLFDB table it was difficult for business and labour to cooperate with each other, let alone with the equity groups that also had a seat. Of more significance was the reluctance of the federal government to genuinely cede authority to an arm's length body.<sup>67</sup> With a change in government to the Liberals in 1993, the diminished support of the new minister and departmental officials was evident by 1994 when the board's advice on the developmental uses of UI was overturned. The negotiation of the federal-provincial LMDAs in 1996 and the increased role of provincial governments in EI Part II programming ultimately reduced the relevance of a national advisory body based upon social partner input.<sup>68</sup>

The bipartite CLMPC closed in 2006. Transformed in 1995 into the Canadian Labour and Business Centre (CLBC), over its 20 year-plus lifespan it became known as a centre of expertise on labour market and skills issues. The strength of the CLBC was that it provided a way to have a national conversation across all labour market issues with senior business and labour representatives, as well as federal and provincial governments.<sup>69</sup> When set up in the early 1980s, funding was provided through federal endowments. Federal cutbacks in the mid-1990s meant that the organization increasingly relied on project funding. When its Workplace Partner's Panel funding was cut in 2006, the CLBC was forced to close its doors.

67 Haddow, Rodney and Andrew Sharpe (1997). 'Canada's Experiment with Labour Force Development Boards: an Introduction,' in *Social Partnerships for Training: Canada's Experiment with Labour Force Development Boards*. Andrew Sharpe and Rodney Haddow (eds). Kingston, ON: School of Policy Studies Queen's University.

68 Other than in Québec, social partners were not involved in developing the LMDA agreements. There are currently no requirements to involve business and labour in the devolved provincial programming.

69 Co-chaired by business and labour, the CLBC board in 2006 was comprised of 9 business, 10 labour, 1 federal, 11 provincial/territorial, and 2 academic representatives, all at the President/CEO/ Director/Deputy Minister level.

As detailed in its record of achievements, its demise was noted as being much regretted by business, labour, and provincial government representatives.<sup>70</sup> However, people interviewed through this research suggested that there was not a deep commitment by either business or labour. A federal government informant noted that, while labour took it seriously and sent elected leaders, business leaders were more interested in having conversations with politicians, as opposed to senior civil servants. Public servants wanted both sides to send senior people; when this did not materialize or the CLBC became critical of government, relations soured. A labour respondent noted that "it withered on the vine and only paid staff were advocating for it ... it was not seen by either labour or business as a vital organization."

For a brief period the CLC and the Canadian Manufacturers & Exporters Association took over the role that the CLBC had previously played on the Canadian Council on Learning's (CCL) Centre for Workplace Learning. The CCL also did not last long, losing all of its federal funding in 2010. It lived for only six years, brought down, among other reasons, by the unwillingness of some provincial governments and the Council of Ministers of Education, Canada to engage with a federally-funded institution focused on education and learning issues, viewed as provincial responsibilities.

70 Canadian Labour and Business Centre (no date). *The Canadian Labour and Business Centre a Record of Achievements*. Available at [http://www.clbc.ca/About\\_Us.php](http://www.clbc.ca/About_Us.php), accessed March 27, 2016.

With its commitment to a smaller federal government, many non-government organizations lost funding during the nine-year Harper Conservative reign.<sup>71</sup> Federal funding for the national sector councils was cut in 2013. Some continue to exist into 2017 with business and labour support, as well as a small amount of federal funding under a much diminished 'sectoral initiatives' program. Assessments of their effectiveness were not particularly positive. Over time, labour became concerned over a lack of parity on the councils.<sup>72</sup> The Conference Board of Canada noted that the lack of collective goals impeded collaboration.<sup>73</sup> Gunderson concluded that firms in sectors covered by sector councils were actually associated with undesirable outcomes (i.e. less likely to have classroom training, payments for literacy, etc).<sup>74</sup> Some provincial governments were not supportive as they typically view labour markets as regional, as opposed to national. The fact that most of the sector councils were located in Ontario did not endear them to the eastern or western provinces.

Even though in 2017 there is no *national* engagement through advisory committees, post-devolution some provinces have put processes in place to secure ongoing social partner input into the public employment service, now primarily under their control and management. Québec has the most developed partnership structure, including a national board (the Commission des partenaires du marché du travail or CPMT), 17 regional labour market councils, and 29 sectoral

workforce committees. All have representation from labour, business, the community and academia detailed in legislation, with defined linkages to the provincial government. Manitoba has a Minister's Advisory Council on Workforce Development as well as 17 sector councils. Ontario has 26 local Workforce Planning Boards.

Relationships with social partners in the other provinces are more ad hoc, and often take place within structures that are broader than just employment issues. Since 2008, New Brunswick's Economic and Social Inclusion Corporation has provided the social partners with access to government decision-making. Until its demise in 2012, Newfoundland & Labrador's Strategic Social Partnership provided business and labour with similar access. Nova Scotia and Prince Edward Island have retained remnants of provincial sector councils. Saskatchewan, British Columbia and Alberta have set up industry reference groups; however their roots are shallow and activities depend upon the political environment. There is limited funding support provided. This contrasts with Québec and Manitoba, who actually fund their social partnership arrangements.<sup>75</sup>

None of these provincial arrangements concern themselves with EI benefits, still under the exclusive control of the Government of Canada. The provincial boards also have no capacity to influence the national policy framework for EI Part II, any other federal funding to provinces through the labour market transfer agreements, or the continuing federal role in areas such as Aboriginal, youth and disability employment programming.

71 Wood, Donna E. (2015). 'Recasting Federal Workforce Development Programs under the Harper Government,' in *The Harper Record*. Teresa Healy and Stuart Trew (eds). Ottawa: Canadian Centre for Policy Alternatives. Available at <https://www.policyalternatives.ca/publications/reports/harper-record-2008-2015>.

72 By 2003 only 9 of the 30 councils had business/labour parity.

73 Conference Board of Canada (2008). *Literature Review 2005: The Skills Factor in Productivity and Competitiveness*. Ottawa: Conference Board of Canada. Available at [http://www.conferenceboard.ca/Libraries/EDUC\\_PUBLIC/SectorCouncilLiteratureReview-eng.sflb](http://www.conferenceboard.ca/Libraries/EDUC_PUBLIC/SectorCouncilLiteratureReview-eng.sflb), accessed March 27, 2016.

74 Gunderson, Morley (2011). 'Impact of Sector Councils: A Canadian Institution.' *Journal of Labour Research*, 2011, 32: 414-426.

75 Wood, Donna E. (forthcoming). *Transforming the Governance of Canada's Public Employment Service Through Devolution*. University of Toronto Press.

# 6 WHY IS BUSINESS AND LABOUR INVOLVEMENT IN EMPLOYMENT MATTERS IN CANADA IMPORTANT?

This paper has demonstrated how marginal business and labour oversight has become over Canada's programs for the unemployed, especially in the past 20 years. The EI Commissioners for Workers and Employers – with only two seats on the Employment Insurance Commission, compared to two for government – lack power and authority. Changes to the EI appeal process – that for almost 75 years demonstrated tripartism at a concrete working level – have diminished worker rights. Pan-Canadian advisory committees and research institutions – that used to give business and labour alongside other stakeholders defined ways to influence government program policy and decision-making – have all closed down.

This matters. Business and labour engagement in employment matters is critical in Canada primarily because EI – like the Canada Pension Plan and Worker's Compensation – is a social insurance program. These are not like other income security programs such as Old Age Security and child benefits (which are universal and based on purely demographic principles such as age) or social assistance and income supplementation (which are selective, taking income and need into account), all paid for out of government general tax revenue.<sup>76</sup>

With social insurance, funds are collected for a specific purpose, detaching the financing of the selected program from the state's general tax-raising activities.<sup>77</sup> Social insurance programs pool risk across a defined but broad group of

people known to be at risk of insufficient income and supports (for example due to unemployment, injury or advanced age). Bringing in the resources of the state, they require mandatory contributions through government legislation in order to force savings for those defined as at risk. Benefits received are recognized as a right, not charity. This right is reinforced through a reliable appeal process in the event of doubt or dispute.

By design, social insurance programs are financed in whole or part by premiums paid by or on behalf of the potential beneficiary, creating a direct link between benefit eligibility and the contributions used to finance it. They also contain an explicit provision to account for income and expenses, often through a trust fund.<sup>78</sup> While the social insurance features of the main American

76 Banting, Keith (1982). *The Welfare State and Canadian Federalism*. Institute of Intergovernmental Relations, Kingston and Montreal: McGill-Queen's University Press.

77 Koreh, Michal and Daniel Béland (2017). 'Reconsidering the Fiscal-Social Nexus: the Case of Social Insurance', in *Policy and Politics*, Policy Press 2017.

78 Marsh, Leonard (1943) *Report on Social Security for Canada*, reprinted in 1975 with a new introduction by the author and a preface by Michael Bliss. Toronto and Buffalo; University of Toronto Press; Banting, Keith (1982). *The Welfare State and Canadian Federalism*. Institute of Intergovernmental Relations, Kingston and Montreal: McGill-Queen's University Press.

and British unemployment programs have diminished over time, in Canada they remain as dominant in 2017 as they were in 1940.<sup>79</sup>

Campeau noted how the Canadian unemployment insurance scheme was a compromise reached in the 1930s between employer associations, unions and the political ruling class on the type of state involvement in unemployment.<sup>80</sup> Being social, UI socialized certain risks recognized as shared by society, asserting a collective liability and the need for government support. Being insurance, UI was more than just a tax imposed by lawmakers to collect money to be used as desired. Insurance practices meant that contributions and benefits were inextricably linked.

These contributory payments to the EI fund give employers and employees — and by proxy the organizations that represent them — a proprietary right to the program. One respondent characterized this accountability as “No taxation without representation.” The payments they incur are not insignificant: in 2017 the annual maximum employee contribution is \$836.19 and the maximum employer contribution is \$1,170.67 per worker.<sup>81</sup>

Aside from this proprietary right — that extends to EI income benefits as well as the public employment service — business and labour organizations must be directly involved in the programs to ensure that they respond to the needs of their constituents. Interventions must

adapt rapidly to changes in business conditions to ensure that employers remain competitive while workers remain productive and employed. Their involvement forces dialogue, as opposed to unilateral government decision-making. While some may say that this is time-consuming, if a more robust partnership and dialogue had been in place, EI eligibility benefit restrictions and a declining investment in employment services starting in the mid-1990s might have been moderated. Income inequality in Canada might not have grown to its current level.<sup>82</sup> Short-term and ill-conceived decisions such as implementing a Canada Job Grant in 2013 might never have happened.<sup>83</sup> Problems with the SST would never have occurred.<sup>84</sup>

The direct involvement of those impacted by the policies as part of the decision-making process is also a way to smooth program implementation and get buy-in to the approaches selected. Being part of monitoring and reviewing results and research ensures that necessary and ongoing improvements and adjustments are made. Sharing resources among the different partners increases efficiency and improves program effectiveness. As demonstrated by the accolades posted at the demise of the CLBC in 2007, the social partners themselves believed that their involvement was essential to the performance of Canada’s labour market. While no surveys or information is available today to re-confirm this assessment, it is highly likely that these views are no different a decade later.

79 Although regular benefits in the US are financed by employer contributions, extended and emergency unemployment insurance costs are covered by federal and state tax revenues. The UK has a variety of benefits within what is called Universal Credit, supported by both social insurance contributions and tax funding. In Canada all EI benefit costs are supported by the EI fund. While employment services are a combination of EI funding and general tax revenue, the dominant source of funding is EI.

80 Campeau, Georges (2005). *From UI to EI: Waging War on the Welfare State*, translated by Richard Howard. Vancouver and Toronto: UBC Press.

81 See: <http://www.cra-arc.gc.ca/tx/bsnss/tpcs/pyrll/clcltng/ei/cnt-chrt-pf-eng.html>. Due to the parental insurance program, there are different maximums in Québec.

82 Banting, Keith and John Myles (2013). ‘Introduction,’ in *Inequality and the Fading of Redistributive Politics*, Keith Banting and John Myles (eds). Vancouver and Toronto: UBC Press.

83 Wood, Donna E. (2015). ‘Recasting Federal Workforce Development Programs under the Harper Government,’ in *The Harper Record*, Teresa Healy and Stuart Trew (eds). Ottawa: Canadian Centre for Policy Alternatives. Available at <https://www.policyalternatives.ca/publications/reports/harper-record-2008-2015>.

84 Employment and Social Development Canada (2017). *Employment Insurance Service Quality Review: Making Citizens Central, Report*. Ottawa: Employment and Social Development Canada. Available at <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/service-quality-review-report.html>, accessed February 24, 2017.

# 7 WHY HAS BUSINESS AND LABOUR ENGAGEMENT IN EMPLOYMENT PROGRAMS IN CANADA DIMINISHED?

The Supreme Court of Canada ruled in 1935 that social insurance programs, financed by premiums, fall within provincial jurisdiction. This is why it took a constitutional amendment and unanimous provincial agreement for the federal government to assume exclusive responsibility in 1940 for unemployment insurance. In Pal's view, the thinking at the time was that if the plan was to function on an actuarial basis, concurrent federal-provincial jurisdiction — as was agreed to a decade later at the insistence of Québec in relation to old aged pensions — must be avoided.<sup>85</sup> However, this 1940 decision and thinking neglected the overlap and interconnection between UI and provincial social assistance programs — which both serve the unemployed — as well as provincial training programs. Given this interdependence, employment programs in Canada continue to be contested and debated between federal and provincial governments. For all practical purposes most elements are effectively a shared responsibility.

While organized labour believed at the time that workers' UI contributions would establish a proprietary claim not just to benefits but also to the management of the program itself, this has not occurred in practice. There are many reasons why government considers business and labour as special interest groups, as opposed to program proprietors. Most important, the combination of Cabinet government and executive federalism has created in Canada a closed, elite-dominated policy-making process involving primarily politicians and bureaucrats.<sup>86</sup> Majority governments can, in effect, govern unilaterally until they are thrown out of power. As labour market policy is a long-contested policy domain, when governments can't agree on who

should do what, other actors get sidelined. The regional dimension that has been built into EI benefits over time engages powerful political constituencies at the provincial — as opposed to the national — level.

Pal's book-length 1988 analysis of unemployment insurance convincingly argued that worker and employer involvement in the UI Commission was a threat to the federal human resources bureaucracy, which tried to emasculate it. With such a complex program running under actuarial principles, government 'experts' believed that only they were qualified to run it. Federal finance officials became increasingly involved in UI/EI in the 1990s, as they worked to transform the program into a major 'milk cow' for the federal budget. Rather than serving the needs of business and workers, their primary interests were in balancing budgets and restraining spending. Establishing the Employment

<sup>85</sup> Pal, Leslie A. (1988). *State, Class and Bureaucracy: Canadian Unemployment Insurance and Public Policy*. Kingston and Montreal: McGill-Queen's University Press.

<sup>86</sup> Banting, Keith (1982). *The Welfare State and Canadian Federalism*. Institute of Intergovernmental Relations, Kingston and Montreal: McGill-Queen's University Press.

Insurance Financing Board in 2008 was a major attempt to ensure that EI premiums were dedicated exclusively to EI program activities.<sup>87</sup>

Then there is the impact of neo-liberalism and the loss of labour's voice. Until the 1970s Canada's political and economic systems accommodated the voice of workers through tripartite structures; however this changed dramatically in the 1980s and 1990s. For the past 15 years, business associations have had better access to government in Canada, with close ties to top federal ministers.<sup>88</sup> Coleman notes in particular how the business-labour divide and their potential for cooperation have widened due to deep differences in their understanding of the advantages and disadvantages of economic globalization.

In his view these differences are difficult to bridge as neither business nor labour have built vertically integrated, highly representative, encompassing, pan-Canadian organizations to formally interact with government. Each of the five business organizations identified earlier in this paper present their views individually to governments, as opposed to collectively. Vertical integration is also absent because none of the organizations is a peak association whose members are sectoral associations representing different parts of the economy. While there are

also separate organizations on the labour side, in Coleman's view the CLC — with affiliates in each province — has been relatively successful in becoming a single representative of labour in Canada, outside of Québec. He concludes however, that among both business and labour there is considerable competition for members, no systematic vertical integration, and very little systematic horizontal coordination.<sup>89</sup> This contrasts with the European Union where four 'peak' EU-wide social partner organizations have defined and agreed-on channels to interact with EU governments on a wide variety of issues.

Finally, it is hard to maintain a social partner culture in employment matters in the absence of pan-Canadian institutional structures to build and maintain partnerships and sustain evidence-based research.<sup>90</sup> Despite the presence of advisory committees in the early years of the operation of Canada's UI program, over the past 20 years all have been dismantled at the national level, replaced by ad hoc consultations as determined from time to time by the political imperatives of the party in charge of the Government of Canada. This puts government in the driver's seat. It means stop-and-start relationships as new actors get involved and try to get up to speed. There is limited institutional memory as the wheel gets re-invented over and over again.

87 Beland, Daniel and John Myles (2008). 'Policy Change in the Canadian Welfare State: Comparing the Canadian Pension Plan and Unemployment Insurance', *SEDAP Research Paper No, 235*, McMaster University, Hamilton, Ontario, at pg. 18.

88 Gomez, Rafael and Juan Gomez (2016). *Workplace Democracy for the 21st Century*. Ottawa: Broadbent Institute. Available at [http://www.broadbentinstitute.ca/workplace\\_democracy](http://www.broadbentinstitute.ca/workplace_democracy), accessed August 30, 2016; Coleman, William (2016). 'Business, Labour, and Redistributive Politics,' in *Inequality and the Fading of Redistributive Politics*, Keith Banting and John Myles (eds). Vancouver: UBC Press; Jackson, Andrew and Bob Baldwin (2007). 'Policy Analysis by the Labour Movement in a Hostile Environment,' in *Policy Analysis in Canada: the State of the Art*, Michael P. Howlett, David H. Laycock and Laurent Dobuzinski (eds). Toronto: University of Toronto Press; Stritch, Andrew (2007). 'Business Associations and Policy Analysis in Canada,' in *Policy Analysis in Canada: the State of the Art*, Laurent Dobuzinski, Michael Howlett and David Laycock (eds). Toronto: University of Toronto Press.

89 Coleman, William (2016). 'Business, Labour, and Redistributive Politics,' in *Inequality and the Fading of Redistributive Politics*, Keith Banting and John Myles (eds). Vancouver: UBC Press.

90 The availability of evidence-based, comparative research is essential for improving labour market performance. In 2017 there were no pan-Canadian institutions in place; instead, they are being re-created at the provincial level through organizations like the BC Centre for Employment Excellence, the Ontario Centre for Workforce Innovation, the Québec L'observatoire compétences-emplois sur la formation continue et le développement des compétences, and the Nova Scotia Centre for Employment Innovation. These are not bound in any kind of pan-Canadian way. Many provinces have not developed similar institutions.

A man with a beard and blue shirt is leaning over a laptop, looking intently at the screen. The background shows a workshop or office environment with various items hanging on the wall.

**Business and  
labour continue  
to be regarded by  
government as  
just two of many  
'special interest'  
groups,  
as opposed  
to 'proprietors'  
of the program**

# 8 CONCLUSION

Introduced in 1940, UI was Canada's first national social security program. Supporting almost three million people in 2013/14<sup>91</sup>, both EI income benefits and the public employment service remain essential to Canadian workers and employers. As identified in the introduction to this paper, there is no shortage of chronic problems that remain unresolved. What is interesting is the lack of attention paid to governance and the oversight role of business and labour. Their involvement is important for a number of reasons, most significantly because contributions from their members finance most of the program costs through a dedicated payroll tax. Their advice improves performance. A place at the table is also a requirement of international conventions and agreements that Canada has signed on to.

In 2017, there are two institutions that influence federal decisions in employment policy matters in Canada. The first institution is the Employment Insurance Commission, consisting of two commissioners from the Government of Canada, plus the Commissioner for Workers and the Commissioner for Employers. Two individuals cannot possibly be expected to represent the range of business and labour interests across Canada, nor can they force business to take the interests of labour into account and vice-versa. The second institution is the FLMM, consisting of ministers (and a network of officials) from all federal, provincial and territorial governments. It has only been in the last few years that connections have been built between

the FLMM and the EI Commission, with the EI Commissioners for Workers and Employers attending FLMM ministers' meetings. However, like most intergovernmental processes in Canada, there is very little information provided to the public on deliberations or developments.

Since assuming power in October 2015, the Trudeau Liberals have focused on selected adjustments to 'undo' many of the EI changes made by the Harper Conservatives, as promised in their election platform. They have also consulted on ways to improve EI benefit administration and how to reinvest in the public employment service. However, this is just the tip of the iceberg of changes needed to modernize our programs for the unemployed. Speaking on behalf of unions, Jerry Dias, the President of Unifor, has a 'wish-list' of additional changes that they are championing on EI.<sup>92</sup> So does business. Both the Canadian

91 In 2013/14, there were 1,791,950 new claims for EI income benefits. Wood estimated that 1,168,227 Canadians were helped through the provincial and Aboriginal parts of the public employment service. See: Canada Employment Insurance Commission (2014). *2013/14 Employment Insurance Monitoring and Assessment Report*. Ottawa: Canada Employment Insurance Commission, at pg. 239. Available at <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/monitoring2014.html>, accessed April 21, 2017; Wood, Donna E. (forthcoming). *Transforming the Governance of Canada's Public Employment Service Through Devolution*. University of Toronto Press.

92 Dias, Jerry (2016). 'It's Time Employment Insurance Came with a Guarantee.' *Huffington Post*, March 30, 2016. Available at [http://www.huffingtonpost.ca/jerry-dias/employment-insurance-federal-budget\\_b\\_9576506.html](http://www.huffingtonpost.ca/jerry-dias/employment-insurance-federal-budget_b_9576506.html), accessed August 30, 2016.

Federation of Independent Business and the Business Council of Canada have produced reports offering up guidance to policymakers.<sup>93</sup>

The Liberals have committed to three 'governance' developments with respect to EI and the public employment service. The first is to follow through on the implementation of the Labour Market Information (LMI) Council and its stakeholder advisory committee. This has been under development by the FLMM since an advisory committee on LMI under the leadership of Don Drummond reported in 2009.<sup>94</sup> Although formally announced almost two years ago, details on the scope and activities of the Council and its advisory panel are still not known.<sup>95</sup> The second is to review the EI appeal process and the operation of the Social Security Tribunal in response to the complaints heard as a result of parliamentary hearings and the work of the EI Service Quality Review panel. The third is to establish – in partnership with 'willing' provinces and territories, the private sector, educational institutions and not-for-profit organizations – a new organization to support skills development and measurement in Canada.<sup>96</sup> As detailed in this paper, unilateral federal action in 'skills development' without

provincial buy-in will surely result in another failure to support workforce development in Canada, as occurred with the Canadian Council on Learning and the sector councils.

In none of these federal commitments are business and labour accorded any kind of privileged role over other stakeholders, despite the fact that most funds for new federal programming will likely come from the EI account. Business and labour continue to be regarded by government as just two of many 'special interest groups', as opposed to 'proprietors' of the program.

In a recent paper I recommended the establishment of a National Labour Market Partner's Council, focused on the public employment service, linked to the FLMM and Aboriginal labour market organizations.<sup>97</sup> I even sketched out some of the issues to be tackled and suggested best practice examples that could be drawn on with respect to its role, composition and scope. I suggested that the approach used in the EU to involve social partners appeared promising. Closer to home, the Québec CPMT provides another example. Post-devolution, Québec's public employment service is one of the best performers of all the provinces.<sup>98</sup> Is this because of strong social partner involvement? Certainly business and labour are not the only actors with a stake in Canada's public employment service. The CPMT also involves community-based employment organizations, public training institutions and representatives of disadvantaged groups.

93 Ziai, Ashley and Marvin Cruz (2016). *Insuring Employment: SME Perspective on the Employment Insurance System*. North York, ON: Canadian Federation of Independent Business. Available at <http://www.cfib-fcei.ca/cfib-documents/rr3409.pdf>, accessed October 22, 2016; Drummond, Don and Cliff Halliwell (2016). *Labour Market Information: an Essential Part of Canada's Skills Agenda*. Ottawa: Business Council of Canada. Available at <http://thebusinesscouncil.ca/wp-content/uploads/2016/06/Labour-Market-Information-June-13.pdf>, accessed October 22, 2016.

94 Advisory Panel on Labour Market Information (2009). *Working Together to Build a Better Labour Market Information System for Canada*, available at <http://www.flmm-fmmt.ca/CMFiles/FLMM%20Reports%20and%20Releases/Working%20Together%20to%20Build%20a%20Better%20Labour%20Market%20Information%20System%20for%20Canada-%20Final%20Report.pdf>, accessed April 28, 2017.

95 LMI is but one function of a public employment service. The stakeholder advisory council role will be primarily technical, focusing on data, analysis and distribution. See <http://www.flmm-fmmt.ca/english/View.asp?x=910>.

96 It is expected that the new organization will draw on recommendations for a FutureSkills Lab provided by the Advisory Council on Economic Growth, see <http://www.budget.gc.ca/aceg-ccce/pdf/skills-competences-eng.pdf>.

97 Wood, Donna E. (2016). *Strengthening Canada's Public Employment Service Post-devolution*. Ottawa: Caledon Institute for Social Policy, September 2016. Available at <http://www.caledoninst.org/Publications/Detail/?ID=1104>.

98 Wood, Donna E. (forthcoming). *Transforming the Governance of Canada's Public Employment Service Through Devolution*. University of Toronto Press.



Better ways to secure social partner input into policy-making on EI income benefits as well as appeals also need to be considered. A pan-Canadian advisory committee focused on employment services, training and labour market adjustment may not be the most suitable approach. As was in place at the outset of Canada's UI program in 1940, a separate process may be more suitable.

The lack of 'peak' institutions in Canada that enable the social partners to speak collectively at the national level on employment matters makes government as the third partner all that more powerful. The CLMPC set up in 1984 was an attempt to overcome this problem. The Forget Commission suggestion in 1986 to re-establish the UI Commission as an autonomous entity was another. While both these ideas failed, the reasons for institutionalizing social partner engagement in EI benefits and the public employment service remain as vital in 2017 as in 1940. Hopefully this paper will remind Canadians of the privileged place of business and labour in employment policy and look to lessons from the past and other places as a way to build and institutionalize new governance structures to improve programming. Given their historic and legislated role, any kind of reforms must be shaped by the EI Commissioners for Workers and Employers. A new way needs to be found to ensure that their various constituent groups are optimally organized both vertically and horizontally to engage with governments (federal, provincial and territorial) and with each other. With the recent adjustments to the EI appeal process that has freed up much of their time, the EI commissioners are now ideally positioned to take on this challenge.

