



REFORMING EI SPECIAL BENEFITS

Exploring Alternative Financing and Delivery Options

LUC TURGEON





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Executive Summary

This research paper analyses the delivery of “special benefits” in Canada and whether they should be removed from the current EI program. It demonstrates that Canada’s special benefits are relatively generous from a comparative standpoint, are appreciated by Canadians and have a positive impact. However, it also argues that special benefits need to be improved in order to help Canadians face the ongoing crisis of care caused by increasing participation of women in the labour market and the aging of the population. Different reform options are explored, from the creation of a stand alone program to a devolution of responsibility for special benefits to the provinces. The paper ultimately recommends that the federal government maintain its current role in the delivery of special benefits, but moderately enhance the generosity of these benefits in part based on lessons learned from the Quebec experience.

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1 Introduction

Canada's post-war welfare state was built on the foundation of the nuclear family and the male breadwinner model. While men were expected to earn a “family wage”, women were expected to stay at home to take care of children and elderly relatives. This model has been in crisis for the past forty years. First, it has been challenged as undesirable not only by the women's movement, but also by policy-makers. After all, Canadian women now constitute a majority of university graduates and their participation in the labour market is essential if Canada is to remain economically competitive. Second, the male breadwinner model has become less of an option for increasingly cash-strapped families. As a result, OECD countries have experienced a “crisis of care” that has led to the adoption of new policies, such as child care programs and elderly care programs. Canada's Employment Insurance (EI) special benefits—maternity, parental, sickness and compassionate care benefits—are programs devised to respond to such “crisis of care” issues.

Across OECD countries, these special benefits (to use the Canadian terminology) have a number of more precise objectives (see Phipps, 2005: 24-8, for the goals of the federal government's maternity and parental benefits program). First, they provide a certain level of income security for an individual (and his or her family) if he or she must interrupt work for a temporary period of time. Second, considering widespread evidence of the importance of the early years for a child's development, parental leave programs ensure the presence of a parent during this crucial period in a child's life. Third, parental leave and especially paternity leave programs can contribute to greater gender equity, leading men to take greater responsibility with regards to child rearing. Fourth, considering the increasing demands on contemporary families, both parental and compassionate care benefits contribute to a better work-family balance for Canadians. Finally, considering the limited availability of home care services in many countries like Canada, these benefits allow elderly men and women to live their last moments in dignity surrounded by their loved ones.

Throughout the OECD, these new programs have often been grafted to programs that had previously been adopted to tackle other social problems. This is how, in the 1970s, Canada's parental and sick leave programs came to be attached to its Employment Insurance program. One might wonder whether this approach is still the best way to organize and to finance special benefits. Indeed, some Canadian analysts and organizations have argued that the logic of paren-

tal leave is fundamentally incompatible with EI, that the latter is governed by considerations of labour force attachment and the former by the goal of helping families in the wake of the birth of a child (see Pal, 1985).

This paper analyzes the delivery of “special benefits” in Canada and whether they should be removed from the current EI program. It does so by exploring potential alternative delivery options in light of past proposals and practices adopted by other countries. The paper is divided into four parts. The first part presents the current system in place in Canada. The second part discusses the limits of Canada’s special benefits system. The last two parts explore different reform options. After exploring options for reform, the paper ultimately recommends that the federal government maintain its current role in the delivery of special benefits, but moderately enhance the generosity of these benefits in part based on lessons learned from the Quebec experience.¹

2 EI and Special Benefits in Canada

As mentioned in the previous section, there are four types of special benefits associated with Canada’s EI system: maternity, parental, sickness, and compassionate care. In 2008/09 special benefits corresponded to 27.8 per cent of all EI benefits, for a total of \$3.9 billion (Human Resources and Skills Development Canada, 2009).² Parental leave benefits accounted for 14.4 per cent, maternity for 6.2 per cent, sickness for 7.1 per cent, and compassionate care for 0.1 per cent of EI benefits. Women received 67.2 per cent of all special benefits paid during that period. In this section, I first present a short history of the adoption of special benefits and the current eligibility criteria. In the second subsection, I present a brief statistical portrait of EI special benefits in Canada.

2.1 Special Benefits in Canada

The Unemployment Insurance (UI) program was adopted in 1940 following a constitutional amendment that gave the federal government jurisdiction over Unemployment Insurance. However, it was only in 1971, in the wake of the Royal Commission on the Status of Women and a White Paper on Unemployment Insurance, that maternity and sickness benefits were included as part of UI, allowing maternity benefits to become available for biological mothers. These benefits were viewed as an adjustment to the economic security system put in place in the post-war period. As stated in a report of the Standing Committee on Labour, Manpower and Immigration in 1970:

These additional benefits represent an adjustment in the economic security system to recognize the contingencies generated by a world in which women are a large portion of the labour force and in which a major segment of the population has no protection against interruption of earnings due to sickness (cited in *Reference re Employment Insurance Act* : para. 22).

Eligibility for these new programs was restricted to those with previous participation in the labour market. Those claiming benefits had to have 20 weeks of insurable employment, which was more than the requirement for regular benefits. In the case of maternity benefits, according to the “Magic 10 rule,” women had to demonstrate that they were employed 10 weeks before conception in order to make sure that they would not take a job once they became pregnant in order to obtain the maternity benefit. Both the maternity and sickness benefits programs provided for 15 weeks of benefits, corresponding to two-thirds of past wages up to a ceiling. A two-week waiting period applied to those benefits, as was the case for regular EI benefits.

In 1983, adoptive parents became eligible for maternity benefits, and the Magic 10 rule was abolished. In 1990, a 10-week parental leave that could be taken by either the mother or the father was introduced. The replacement benefit rate for special benefits was adjusted to 60 per cent with a ceiling, but was later reduced to 57 per cent in 1993 and then 55 per cent in 1994 (although the replacement rate for low-income claimants was brought back to 60 per cent in 1994, and was then replaced in 1996 by a family supplement). In 1997, in the wake of the switch from UI to EI, eligibility conditions were changed from 20 weeks of work to 700 hours (reduced to 600 in 2001). It was in 2001 that Canada’s parental benefits were significantly improved. Parental benefits were extended from 10 to 35 weeks, for a combined total of 50 weeks if the mother, as in most cases, took the parental leave.

Compassionate care benefits were introduced in 2004. The program was intended for individuals who must temporarily leave work to provide care or support to a gravely ill relative at risk of dying within 26 weeks. These individuals must demonstrate that their regular weekly earnings from work have decreased by more than 40 per cent, and successful claimants receive six weeks of benefits. Originally, the program was available to eligible workers who were absent from work to provide care to a child, parent, spouse, or common-law partner. In 2006, the eligibility was expanded to include in-laws, siblings (including stepbrothers and sisters), grandparents (and step grand-parents), grandchildren, aunts and uncles, nieces and nephews, foster parents, guardians, and wards. It also included the spouses of these individuals, as well as family members of a spouse or a common-law partner. The qualifying period, the waiting period, and the benefit rates are the same as for the other special benefits.

For most of the period following the introduction of the maternity leave and sickness benefits programs in 1971, self-employed workers were not eligible to receive special benefits, as EI was designed for workers in an employer-employee relationship and funded by contributions of both the employer and the employee. However, in 2009 the government adopted the *Fairness for the Self-Employed Act* that made special benefits available to self-employed Canadians on a voluntary basis, that is, as long as they opt into the EI program one year prior to claiming benefits. As a result, such benefits have been available to the self-employed since January 2011.

2.2 Quebec’s Parental Insurance Program

While the provision of special benefits is a federal responsibility, a de facto asymmetry has appeared since 2006, following the creation of Quebec’s Parental Insurance Plan. As a result of this plan, maternity and parental benefits are delivered in Quebec by the provincial government.³ The creation of the Quebec program followed a fight about the constitutionality of using

Employment Insurance to finance a maternity and parental leave program, with the Supreme Court eventually siding with the federal government's position that such a program was constitutional. However, before the judgment of the Supreme Court, the federal government had already signed an agreement that allowed the Quebec provincial government to create its own parental program (the legal details of this devolution will be discussed in section 4.2 below). As a result of this agreement, the Quebec government now collects premiums to finance its parental leave program, and the federal government collects smaller premiums in Quebec than in other provinces. The Quebec parental plan offers two options to Quebec's parents, with both options being financially more generous than the Canadian parental benefits plan. The basic plan guarantees a lower replacement rate but for a longer period, and the special plan higher replacement rates but for a shorter period. Table 1 presents a summary of the basic and special plans.

Table 1: Quebec Parental Insurance Plan

	BASIC PLAN		SPECIAL PLAN	
	Number of Weeks	Replacement Rate	Number of Weeks	Replacement Rate
Maternity	18	70%	15	75%
Paternal (can be shared by the two parents)	7 25 (32)	70% 55%	25	75%
Paternity	5	70%	3	75%

There are five other significant differences between the Quebec and federal programs. First, there is no waiting period to obtain benefits in Quebec. Second, the maximum insurable earning is much higher in Quebec than in the rest of Canada (\$64,000 versus \$44,200 in 2011). Third, eligibility for benefits is much less restrictive in Quebec; whereas the work requirement to be eligible for special benefits under EI is 600 hours, the entrance requirement and minimum insurable earnings in Quebec is \$2,000 of earned income in the past year, regardless of the number of hours worked. Fourth, in order to pay for this more generous program, the Quebec government must collect higher premiums. In 2011 a person in Quebec with an income of \$20,000 pays (by the author's calculations) \$33.40 more in combined premiums than a worker with the same earning does in the rest of Canada; a worker with an income of \$40,000 pays \$66.80 more, and a worker with an income of \$60,000 pays \$158.66 more. Fifth, self-employed workers must pay into the program, and do not have the option to opt in as in the federal program. Moreover, while in the rest of Canada the self-employed pay the same premiums that employees pay, in Quebec they pay more than employees but less than the combined employee and employer premiums.⁴

As such, the Quebec Parental Insurance Plan constitutes both a model against which the federal maternity and parental leave programs can be evaluated, as well as a potential future alternative, one that would see responsibility for special benefits devolved to the provinces.

3 An Evaluation of Canada's Current Approach to Special Benefits

As mentioned in the introduction, EI special benefits have historically had a number of purposes. When evaluating EI special benefits, one must first analyze whether these objectives have indeed been met. In the first part of this section, I evaluate the impact of EI special benefits on three important factors: labour force attachment, income support, and gender equality. In the second section, I explore the issue of policy coordination and whether the special benefits system is integrated more broadly in Canada's welfare architecture.

3.1 Evaluating EI Special Benefits

Since the 1970s, a constantly growing proportion of pregnant women have been eligible for maternity benefits. In 2009, 76.2 per cent of all new mothers had insurable employment, and among these, 88.0 per cent were receiving maternity or parental benefits. The situation was relatively different in Quebec, where 81.5 per cent of new mothers had insurable employment, and 94.7 per cent of new mothers with insurable employment were receiving maternity or parental benefits (Statistics Canada, 2010). In fact, of all the births registered in Quebec in 2008, 84.5 per cent led to the payment of parental benefits (in comparison to 67.1 per cent in the rest of Canada in 2009).⁵ An estimated 20 per cent of workers receiving EI/QPIP benefits also received an employer top-up (Marshall, 2010). In 2009, almost all mothers took advantage of the full 15 weeks of the federal maternity leave program (the average is 14.6 weeks), and on average parents took 32.6 out of the 35 paid weeks available with the parental leave program (Human Resources and Social Development Canada, 2009: Chapter 2). In Quebec, families with two employed parents took advantage on average of 54.2 of the 55 available weeks under the basic plan, and 42.2 of the 43 available weeks under the special plan.

The ability of a majority of Canadians to obtain maternity and/or parental leave benefits has had a number of positive impacts. Michael Baker and Kevin Milligan (2008a; 2008b) have shown that extended maternity leave, such as the one introduced in Canada in 2000, increased the time women were at home with their children, the likelihood that mothers stayed with their pre-birth employer, and the percentage of mothers attaining public health breastfeeding benchmarks.

While the maternity and paternity leave programs have allowed a majority of Canadians to obtain benefits, it is far from perfect. A 2003 study, conducted before the introduction of Quebec's parental leave program increased the national average, estimated that around 35 per cent of new mothers did not claim benefits. Overall, 16 per cent of new mothers were not in the workforce in the prior two years of their child's birth, 10 per cent were in employment but were not able to meet the qualifying hours, and 9 per cent were in the "other" category, which included self-employed workers (Evans, 2007: 122, in particular). In certain regions of the country, it is easier to qualify for "regular" (those for laid-off workers) than for "special" EI benefits such as maternity leave. It is the opposite in other regions of the country. While in high-unemployment regions workers must have worked 420 hours to qualify for benefits after being laid off, women in the same regions must have worked 600 hours to qualify for maternity benefits. As such, the actual number of qualifying hours constitutes an important impediment to a small, but nevertheless significant, number of women.

In 2008/9, the average weekly maternity benefit was \$350. Similarly, the average parental benefit was \$360 (with men receiving a higher level of benefits) (Human Resources and Social Development Canada, 2009: Chapter 2). The Quebec program is much more generous, as shown by the fact that for an employed female worker in Quebec who gave birth and adhered to the basic plan, the average weekly benefit was \$470 in 2008. Both the Quebec and the Canadian plans make provisions for the payment of supplements to low-income parents. The Family Supplement allows low-income Canadians outside of Quebec to receive up to 80 per cent of their insured earnings up to the overall regular benefit weekly maximum. Similarly, in Quebec, low-income workers can receive up to 80 per cent of their insured earnings.

It must be stressed that, from a comparative perspective, the Canadian parental leave system is relatively generous. When using the full-time equivalent paid leave indicator, which is the wage replacement rate multiplied by the duration of leave, Canada is among the OECD leaders. The FTE Paid Parental Leave in Canada corresponds to 28 weeks. Only Germany, Greece, Quebec, Sweden, Finland and Norway provide more generous paid leave programs.⁶ In comparison, the FTE Paid Leave in the United States and Australia is 0, 14 weeks in New Zealand, 20 weeks in Denmark and 21 weeks in Ireland (Ray et al., 2009).

Many analysts have questioned the generosity of the program for low-income workers. Evans (2007) found that a majority of women who were likely to return early to employment were indeed low-income women. Research also indicates that women with lower earnings are both less likely to, and may not be able to, stay at home for the full duration of their maternity/parental benefits. Kathleen Lahey (as cited in Standing Committee on the Status of Women, 2009) found that around 25 per cent of women were not able to take their full maternity leave, and that those were, on average, women who had an annual income of \$16,000 or less.

Most parental benefits continue to be claimed by women, although there is some evidence that men are now more likely to claim parental benefits than they once were as a result of the longer parental leave introduced in 2001. For biological parents, women were responsible for 86.5 per cent of all claims in 2008/9 (Human Resources and Skills Development Canada, 2009: Annex 2.9). Whereas 61.9 per cent of parental biological claims established by men were shared with their partner, only 6.4 per cent of women who established biological parental claims shared them with their partner. As for men who shared the benefit with their partner, they took an average of 10.8 weeks of benefits. The average claim duration by parents who shared the parental benefit was 32.0 weeks, and 32.3 weeks for those who did not share (Human Resources and Social Development Canada, 2009: Chapter 2). In comparison to other OECD countries, Canada (with the exception of Quebec) does not have a separate paternal leave program. However, since the introduction of the parental leave program, the percentage of fathers filing for benefits has increased tremendously, especially since the extension of the leave in 2001. In Canada, the percentage of eligible fathers who received parental leave benefits has increased from 3 per cent in 2000 to 30.1 per cent in 2009. But, this growth was driven largely by change in Quebec; if Quebec (which now has a separate paternal leave program) is excluded from this national calculation, then the proportion of eligible fathers who took advantage of parental leave was only 12.8 per cent in 2009, compared to 79.1 per cent in Quebec (Statistics Canada, 2010).

In 2009, sickness benefits were claimed on average for 9.4 weeks, with an average weekly benefit of \$327. Of those claiming benefits, 31.4 per cent used all 15 weeks. As for compassionate care

benefits, claimants used on average 4.7 weeks, while 57.5 per cent used all six weeks of entitlements (Human Resources and Social Development Canada, 2009). As shown by recent policy proposals by political parties, there seems to be an increased belief that the number of weeks of coverage under the compassionate care program is insufficient and should be extended.⁷

3.2 EI Special Benefits and Canada's Welfare Architecture

It is not only important to evaluate special benefits on their own, but also how they “fit” with Canada's broader welfare architecture. Some commentators have argued that despite the inclusion of special benefits in an employment insurance program, these benefits have evolved over time in a way that reflects both the transformation of Canadian society as well as the growing importance of family policies in Canada's welfare architecture. As argued by Michael Prince (2009: 16-17),

Indeed, in today's world of work and families, these income benefits are not really “special” or add-ons to the EI system. With dual earners the primary form of families, and gender equality of opportunity a prominent social value, these benefits are central elements within federal jurisdiction in family policy, income security and labour market programming. These benefits address important risks centered in the economy, the worker and the family; they represent efforts at addressing some of the challenges and stresses of work-family life relation. Eligibility for these benefits falls squarely within EI's logic of paying premiums into the program and accumulating sufficient insurable hours of employment over the past year.

However, not all analysts share such a perspective. In a well-known criticism of the inclusion of maternity benefits in EI, Leslie Pal (1985: 552) has argued that “the government has made a mistake in grafting maternity benefits to UI in 1971; efforts to improve these benefits within the context of UI have led to bizarre and even absurd results.” More specifically, Pal (1985) presented a number of problems that are still relevant today and are related to the inclusion of maternity leave (and now parental leave) in EI. Two are especially important from the point of view of family policy. First, only working women are eligible for benefits, when non-working women also need support when a child is born. Second, there is a two-week waiting period before an individual can receive benefits, which makes sense for regular benefits but not for special benefits (Ibid: 558). Another limit of the Canadian parental program is the fact that, contrary to the case of Scandinavian countries, the system is not especially flexible. In Sweden, for example, parental insurance benefits can be used until a child's eighth birthday. Moreover, the earning-related portion is highly flexible, allowing a parent to be both on leave and work partially on the same day. Such possibilities do not exist in Canada.⁸ One could also point to another important problem in relation to the interaction of special benefits with the broader family policy agenda: the difficult coordination with provincial child care programs. Currently, the transition from parental leave to work is especially difficult in Canada due to the absence of child care services (with the exception of Quebec) once a parent returns to work. Another problematic element resulting from the integration of parental and maternity benefits in the same program as regular unemployment benefits is the impact on the income security of certain workers; currently, a person who has received maternity or parental benefits during the previous 50 weeks is not eligible for regular EI if she is laid off once she returns to work.

Other analysts (e.g. Mintz, 2010) have argued that special benefits should be paid through general taxes, since an increase in premiums to pay for general social benefits, due to maximum contribution limits, represents a greater burden on workers with low and modest incomes. Moreover, payroll taxes used to finance a program such as EI impose a burden solely on the working population and employers, an argument made over time by both unions and employers. One might argue that programs such as parental leave and compassionate care benefits are valuable to the entire community, and as such should be paid for by the entire community. This issue has become more relevant since 1990, when the program went from being financed from employer/employee premiums *and* the federal government's general revenues, to being fully self-financed from employer/employee premiums. Some economists and groups representing employers (and workers) have argued that the higher payroll taxes used to finance those benefits were an impediment to job creation and higher wages. For example, the Canadian Chamber of Commerce has argued that:

Because the EI program has been used to support government spending in a variety of areas completely unrelated to the original purpose of the EI program, EI premiums rates have been kept at unnecessary high levels. (...) The social-program aspects of EI should be placed within general program spending. Reducing EI premiums for both employers and employees would reduce real wage costs to employers making it more attractive to hire more workers, and increase real wages received by employees. It would put in place incentives to boost productivity (2009).

Poschmann (2005) has also argued that Ottawa has historically “collected far more money than needed to run employment insurance as an insurance program, and uses surplus EI premium revenue to finance numerous federal expeditions in areas of provincial jurisdiction.” The argument here is that the inclusion of special benefits in EI has led to federal-provincial bickering and an unclear division of responsibility between the two orders of government, reducing accountability to citizens.

An evaluation of the current program demonstrates that Canada's special benefits system is relatively generous. The main problem with the program itself currently seems to be a lack of flexibility, a replacement rate in Canada outside Quebec that is of limited generosity for parents who cannot count on a maternal leave top up from their employer, and eligibility requirements that make it difficult for certain women to qualify for maternity benefits. Other problems identified are related to the financing of special benefits in Canada and their coordination with provincial programs. While such criticisms are not uncommon, very few analysts have explored the potential benefits and drawback of alternatives to the delivery of special benefits in Canada (a notable exception being Phipps, 2005).

4 Alternative Approaches to the Delivery of Special Benefits

In this section, I explore whether there might be more effective ways of providing special benefits in Canada. After all, Canada is one of the rare countries that pays for special benefits through an employment insurance program, whereas most countries fund special benefits

through a general social insurance fund or through general revenues. I first explore the option of financing EI special benefits through general taxation. It must be stated, however, that many more models of financing special benefits could be examined, including direct employer financing, portable leave saving accounts, income contingent loans, and concessional business tax arrangements (for two interesting discussion of these different financing options see Productivity Commission, 2009; Wilkinson and Briscoe, 1996). Those options are not explored since they are not viable in the Canadian context or because they are unlikely to find any substantial support from either policy-makers or important stakeholders.

Changing the delivery of EI special benefits could also be done in Canada through a process of devolution that would lead provinces to take charge of special benefits as part of growing provincial policies concerned with the reconciliation of work and family life. I explore three different reform options that would involve greater participation of the provinces in the delivery of special benefits, but ultimately conclude that the federal government should maintain its role delivering special benefits and moderately enhance benefits in part based on lessons learned from the Quebec experience with QPIP.

Each of these reforms involves different conceptions of justice, equity, and efficiency, as well as different conceptions of the Canadian political community and the role of the federal government. As such, I evaluate these alternatives according to four main criteria: 1) efficient program design; 2) efficient program delivery; 3) fairness and equity between men and women, and between salaried employees and non-salaried employees; and 4) the harmonious working of Canada's federal system.

4.1 A New Federal Approach: A Stand Alone Program Financed Through General Revenues

A recommendation that has often been proposed is to take special benefits out of EI and to finance them through general taxation, with continuing federal responsibility for those benefits. This recommendation has come both from employers (as demonstrated previously) as well as from unions, who have at times expressed their preference that parental leave be taken out of EI, albeit with the caveat that such a move should be taken only after the adoption of a law that would guarantee a right to maternity leave. In a brief submitted to the Commission on Unemployment Insurance Reform (1986: 120), for example, the Syndicat des fonctionnaires provinciaux du Québec made a case for ending the financing of maternity leave through UI premiums:

The worker who quits her job because of pregnancy is not really unemployed, since she still has her job. The benefits paid out to these workers should, therefore, be provided by a program other than Unemployment Insurance – for example, through Family Allowances – and should entirely be financed by the government.

On the other hand, the Canadian women's movement (outside of Quebec) has long opposed taking special benefits out of the UI or EI program on the grounds that inclusion in the federal social insurance program protected the program from provincial constitutional challenge. As argued by the Canadian Advisory Council on the Status of Women in a brief to the 1986 Commission on Unemployment Insurance Reform:

It is not clear that the federal government would retain jurisdiction if benefits were removed from the [UI/EI] program. Canadian women's rights to earnings replacement while on maternity leave might then depend on provinces developing their own programs. Thus, a national program, with national standards, available to all women regardless of where they live, might be jeopardized (quoted in DiGiacomo, 2007: 10).

It is uncertain though whether taking special benefits out of EI would necessarily lead to a successful constitutional challenge. First, the Supreme Court could always justify the creation of a new stand-alone program in an area of provincial jurisdiction by arguing that it is consistent with the federal government's spending power. Second, in the 2005 reference case on EI, the Court made important statements that could lead to the conclusion that it will remain deferential to the federal government and is unlikely to strike down a stand-alone program financed through general revenues. Indeed, in its judgement, the Supreme Court (*Reference re Employment Insurance Act*, 2005: para. 44) rejects a narrow interpretation of the federal power over EI as a carve-out from the provincial power over property and civil rights, arguing that "the specific power cannot be evaluated in relation to the general power, because any evolution would then be regarded as an encroachment." Indeed, the Court concludes that while the provincial legislatures have jurisdiction over social programs, "Parliament also has the power to provide income replacement benefits to parents who must take time off to give birth or to care for children (Ibid., para. 77)." Such a broad definition of the purpose of maternity and parental leave program suggests that the Court could view such a stand-alone program simply as a normal evolution of the EI program, with the same objective of providing income replacement benefits.

A certain number of countries finance special benefits such as parental leave through general taxation. New Zealand introduced such a system in 2003 in a situation of budget surplus. The system, however, is not especially generous, as female employees are only entitled to 12 weeks of paid leave. In 2011, Australia will also introduce its first paid parental leave scheme, which like New Zealand, will also be financed through general taxation. It will pay 18 weeks of parental leave at the minimum wage for primary care givers that earn less than (AU) \$150,000 annually. Furthermore, under this scheme employers will deliver the benefits and, in order to be eligible, parents will need to have worked continuously for at least 10 of the 13 months prior to the expected birth or adoption date (for more on the Australian Plan see O'Neil, 2010).

There are a number of advantages to financing special benefits out of general taxation. First, it would spread the cost of such benefits across all Canadians. This is especially important, as previously mentioned, in light of the fact that all Canadians benefit from parental leave and compassionate care leaves. Second, it would decrease payroll taxes that can be an impediment to job creation. Third, it would eliminate the negative interaction between the logic of employment insurance and the logic of special benefits mentioned in the previous section, exemplified in the case of the two-week waiting period.

However there are important drawbacks to such an approach. First, countries that have historically financed parental leave out of general revenue have tended to provide less generous benefits.⁹ Although there are no intrinsic obstacles to financing generous income replacement benefits out of general taxation, the fact that citizens contribute to an insurance system would

seem to justify their receiving benefits that more closely reflect their earnings and contribution. Second, the parental leave program is generally very popular among Canadians, especially since the changes introduced in 2001. A survey (Human Resources and Skills Development Canada, 2005) found that the average satisfaction scores after the introduction of the enhanced program were quite high (with an average score of 6.0 out of 7.0). Therefore, any attempt at creating a new, stand alone program, is likely to attract significant controversy.

4.2 A Decentralized Approach: Provincial Parental Insurance Programs/Conditional or Unconditional Federal Transfers

A second ambitious reform proposal would be to follow the precedent of Quebec's parental insurance program to decentralize responsibility for all special benefits to the provinces. The legal framework is already in place for such a decentralization. Specifically, Section 64(5) of the Unemployment Insurance Act (1971) provided for the development of provincial sickness or maternity leave programs:

Where under a provincial law any allowances, monies or other benefits are payable to insured person in respect of sickness or pregnancy that would have the effect of reducing or eliminating the benefits that are payable under this Act, to such insured person in respect of unemployment caused by that illness or pregnancy, the premium payable under this Act shall be reduced or eliminated as prescribed but subject to paragraph (a) of section 65.

This opting out clause was maintained in 1996 when UI was replaced by EI. As stipulated in Section 69 (2) of the Employment Insurance Act:

The Commission shall, with the approval of the Governor in Council, make regulations that provide a system for reducing the employer's and employee's premiums when the payment of any allowances, money or other benefits because of illness, injury, quarantine, pregnancy or child care under a provincial law to insured persons would have the effect of reducing or eliminating the special benefits payable to those insured persons.

Opponents of decentralization have argued that the process of devolution might lead to either a race to the bottom or a patchwork of very different benefits across the country. Shelley Phipps (2005: 29), for example, argues that "a potential danger of transferring responsibility for maternity/parental benefits to the provinces is that some provinces might choose to offer much less than is currently available, while others may only be able to afford the basic programs." Therefore, according to Phipps, "maintaining federal jurisdiction over maternity and parental benefits seems the safest way to ensure that benefits for parents are equal across the country" (Ibid., 43).

While it is undeniable that variations in generosity might appear in the different provincial programs, the Canada-Quebec Final Agreement on the Quebec Parental Insurance Plan demonstrates that a race to the bottom is unlikely if the federal government imposes conditions to the transfer of responsibility to the provinces. The Canada-Quebec agreement made provisions for interprovincial mobility (articles 1.2.2 and 5.1) and also guaranteed that any person residing in Quebec would receive a total amount of benefits substantially equivalent to what they would

have been entitled to under the EI regime (article 5.4.2). Moreover, the agreement also included a clause stating that each party could terminate the agreement as long as it provided a one year notice (article 6.4.1). As such, if a province would significantly reduce benefits, the federal government could regain control over the provision of special benefits. Finally, even in the case of less constraining intergovernmental agreements, one has to take into consideration that the principle of universal maternity and parental benefits has largely become accepted in Canada, which constitutes an obstacle to a widespread retrenchment by the provinces in case of devolution.

There are two approaches to devolution that could be adopted. The first approach entails the creation of provincial parental insurance programs along the same lines as the Quebec program, with the federal government reducing EI premiums. A province could then decide to follow the Quebec model and adopt a parental insurance program, or could in fact decide to finance such a program through general taxation with the potential benefits and drawbacks discussed in the previous section.

There are three main advantages to the adoption of provincial parental insurance programs. First, such an approach would entail clearer lines of accountability, with provinces clearly in charge of family policies. Second, it would allow provincial governments to have parental insurance programs as generous as the provinces' voters desire. Third, it would allow provincial governments to experiment with new approaches that could allow a more seamless integration between the parental leave program and child care.

Besides a certain degree of policy variations between provinces, a main drawback of this approach, which entails the federal government in effect ceding tax space to the provinces, is that the value of such tax space varies considerably between poorer and richer provinces, making it, difficult for poorer provinces to offer the same level of benefits as wealthier ones. While increase in equalization payments could be made to avoid such potential pitfalls, the reality is that the equalization payments as a share of the GDP have declined significantly over the last thirty years and the current political climate is not conducive to a more generous equalization program. Moreover, the creation of ten provincial parental insurance programs would undoubtedly result in increased administrative and delivery costs.

The second approach is an alternative to simple devolution, and would call for the federal government to create a new conditional transfer to the provinces, who would then be responsible to devise their own plans within parameters established by the federal government. Such an approach would obviously have the merit of ensuring the adherence of provinces to national standards. However, provinces might strongly oppose such an intrusion. Furthermore, a conditional transfer might lead to unclear lines of accountability, creating a process of blame avoidance between the two levels of government.

Another alternative, one the provinces would perhaps find less intrusive, would entail incorporating special benefits as part of the largely unconditional Canada Social Transfer. A clear benefit of such a program is that it would ensure a certain degree of inter-regional redistribution that would guarantee that poorer provinces could provide similar benefits to richer ones. The first obvious drawback to such an approach is that a lack of conditionality could lead to significant variations among provinces in the generosity of benefits, as provincial governments

channel these resources to other priorities. Considering the ever-growing share of provincial budgets dedicated to health care, this is a real concern. Second, in light of the experience of the deep cuts to social transfers in 1995, this approach also has the drawback of limiting funding predictability and the potential of deep cuts that could force provinces to reduce benefits.

A more clear-cut process of devolution is, thus, perhaps more desirable than the adoption of a new transfer program or the inclusion of special benefits in the CST. However, one might question the willingness of the federal government to withdraw from the provision of all special benefits considering their popularity among the public and the likely backlash that could come with such a process of devolution. Perhaps more importantly, besides Quebec, no other provincial government has expressed any desire to take responsibility for parental and maternity benefits. The option of devolving responsibility to the provinces for special benefits is therefore unlikely to be pursued.

5 Reforming Special Benefits: Recommendations

As noted at the outset, Canada's special benefits compare well overall with international practices. Moreover, while many analysts have argued that the financing of special benefits through payroll taxes is currently inequitable, an important advantage of funding special benefits out of an insurance program is that it makes the connection between payments and benefits more transparent than funding out of general revenues. Programs financed through social insurance plans tend to be more generous and they allow debates about the appropriate generosity of benefits to be linked with Canadians' willingness to pay. Moreover, considering the inherent difficulty of reforming the EI program because of both public opinion and government inertia, it is important to propose reforms within the parameters of the existing system.

An obvious approach would be for the Canadian government to make maternity and parental benefits as accessible, flexible, and generous as the Quebec Parental Insurance Plan, in line with the recent recommendation of the House of Commons Standing Committee on the Status of Women (2009). Considering the higher premiums that might come as a result of the higher replacement rate, it is questionable whether such a reform would be acceptable to a majority of Canadians in the current economic climate. Improving accessibility ought to be the first objective of any reform of special benefits. A modest proposal in the short term would be to improve eligibility by decreasing the number of hours required to work to be eligible for benefits. At a minimum, the number of hours should be decreased to 420 hours in the short term to avoid, in certain regions, situations where workers must work more hours to qualify for special benefits than for EI regular benefits. In the longer term, the federal government's objective should be to reduce eligibility requirements so that they are more in line with those in place in Quebec.

Reforms should also be made to the design of the different special benefit programs. First, seeing as new mothers and sick workers are unable to look for a job, the two-week waiting period to receive special benefits should be eliminated as it clearly has no rationale; indeed, Quebec's parental insurance system does not impose any waiting period. Second, workers who have received special benefits should be entitled to regular benefits when they come back to work in order to avoid a situation in which they can be laid off and have no access to benefits at all.

Third, the current pilot project that allows a recipient to combine benefit and paid work should be made permanent.

In the long term, the replacement rate for special benefits should stop being attached to the replacement rate of regular benefits. While there is a reason to keep regular benefits lower (in order to encourage people to rapidly find a job), such an approach does not apply to special benefits. While a case can be made in the long term to align the replacement rate of the Canadian parental leave program to the one in place in Quebec, in the short term, it is more pressing to reform the compassionate care program to help Canadians face the eminent crisis of care associated with the ageing of the population. The current system both lacks flexibility and generosity. Four reforms should be adopted. First, the length of the leave should be significantly extended from six weeks.¹⁰ Second, the current requirement that a family member be at risk of dying within the next 26 weeks should be modified. The program should allow family members to take a leave for the care of persons that, while not at eminent risk of dying, have chronic conditions such as cancer. Third, family members should be able to share the compassionate care leave. Finally, the program should be more flexible, allowing the leave to be taken non-consecutively over a longer period of time, for example over a year.

As for the financing of special benefits, an alternative approach that could be explored would be to finance a part of their cost through general revenues. The financing of part of EI out of general revenues has a precedent in Canada. Indeed, until 1990, the federal government contributed to the EI fund. It is also in place in other countries. In Sweden, for example, 15 per cent of the costs of the parental leave program are paid out of general revenues. Such measures would contribute to spreading the costs of social programs to all Canadians, a legitimate measure considering that we can all benefit from programs such as parental leave and the compassionate care. Moreover, such measures would lead to lower premiums for employees and employers, a measure that could encourage job creation.

6 Conclusion

With the reform introduced in 2001 to maternity and parental benefits, and the introduction in 2004 of the compassionate care program, EI special benefits are now relatively generous, providing important help to Canadians who must interrupt work to care for a newborn or sick relative. However, the system is far from perfect. Maternity and parental leaves are often not accessible for a significant number of Canadians, many of whom need them the most. Moreover, many aspects of the program make little logical sense, such as the two week waiting period and the difference in required work hours needed to collect special benefits compared to regular benefits for those living in high unemployment regions of the country. Finally, the financing of special benefits falls only on the shoulders of workers and employers, when all Canadians benefit directly or indirectly from those benefits.

A number of reform options have been explored. The first one would involve financing EI special benefits from general taxation. A second approach would involve devolution of responsibility for special benefits to the provinces. While Quebec has long preferred this option, it is unclear whether there is an appetite for such devolution in other provinces. Finally, a prefer-

able scenario would be a more modest reform of current rules of eligibility to special benefits, an extension of the number of weeks of entitlement under the compassionate care benefits and the financing of a share of special benefits through general revenues.

Ultimately, it is up to Canadians and their representatives to decide which of these options is more likely to contribute to the prosperity of the country and to the challenge of responding to the ongoing crisis of care. However, it seems clear that despite the important gains made over the last decade, the task of reforming the provision of special benefits in Canada is not over.

Endnotes

1. I would like to thank Keith G. Banting, Josh Hjartarson, and an anonymous reviewer for their constructive suggestions. Special thanks to Mike Pal both for his suggestions and for a helpful email exchange on the 2005 Supreme Court reference case on the Employment Insurance Act. They are obviously not responsible for any errors present in this text.
2. Data exclude maternity and parental benefits in Quebec, as they are offered under the Quebec Parental Insurance Plan.
3. Sickness benefits and compassionate care benefits continue to be delivered by the federal government.
4. In 2011, the rates are 0.537 per cent of insurable earnings for wage salaried workers, 0.752 per cent for employers, and 0.955 per cent for self-employed workers.
5. Unless specified otherwise, data for Quebec presented in this section are from Conseil de gestion de l'assurance parentale, *Rapport sur le portrait de la clientèle du Régime québécois d'assurance parentale*, 2008. Available at www.cgap.gouv.qc.ca/statistiques/portrait.asp
6. Some countries, such as France, provide for longer maternity leave, although the leave is not a paid one.
7. The Liberal Party of Canada proposed during the last election to extend to six months the compassionate care leave benefits.
8. A recipient of EI regular, parental and compassionate care and fishing benefits can earn \$50 per week or 25 per cent of his or her weekly benefits, whichever is higher. Currently, a pilot project in place since 2005 in certain region and extended until August 5, 2011 in all regions allow a recipient to earn the greater of \$75 or 40 per cent of weekly benefits.
9. An exception would be the new, and generous, German parental leave program that is financed through general taxation. However, that program is too recent to draw any conclusions about its viability and desirability.
10. For example, the Liberal Party of Canada has proposed to replace the Compassionate Care Program by a Family Care Employment Insurance. The new program would provide up to six months of benefits. The Liberal Party estimates are that such a program would cost \$250 million per year.

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About the EI Task Force

The Mowat Centre has convened a research-driven Employment Insurance Task Force to examine Canada's support system for the unemployed. The Task Force will develop an Ontario proposal for modernizing the EI system—conscious of the national context—that works for individuals and businesses.

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