



West Coast Legal Education and Action Fund

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VIA EMAIL (sdsi.minister@gov.bc.ca)

The Honourable Michelle Stilwell
Minister of Social Development and Social Innovation
PO Box 9058 Stn Prov Govt
Victoria, BC V8W 9E1

Dear Minister Stilwell:

Re: The clawback of maternity and parental Employment Insurance benefits

I write on behalf of West Coast LEAF to call on the Ministry of Social Development and Social Innovation to end the policy of clawing back maternity and parental Employment Insurance (EI) benefits from families receiving disability assistance.

West Coast LEAF is a non-profit organization that seeks to achieve equality by changing historic patterns of discrimination against women through BC-based equality rights litigation, law reform and public legal education. We have a particular expertise in human rights and we have done in-depth law reform research on the impacts of BC's laws on women with disabilities.

The clawback effectively creates a financial penalty for women who work and have children while on benefits

The Ministry's current practice of clawing back maternity and parental EI benefits disproportionately impacts women in a negative way. It goes without saying that maternity leave benefits, which are intended to minimize the financial consequences of pregnancy and giving birth, have particular importance to women. Because women perform the majority of unpaid caregiving for children, they are far more likely to claim and receive parental benefits as well.¹

¹ Less than 10% of new fathers intended to claim or claimed parental leave benefits in 2014. See Statistics Canada, "Employment Insurance Coverage Survey, 2014" *The Daily* (23 Nov 2015), online: www.statcan.gc.ca/daily-quotidien/151123/dq151123b-eng.htm.

The clawing back of these benefits effectively creates a financial penalty for women who choose to work and have children while on benefits. That penalty is not experienced by men who work and have children while on benefits.

For example, in a heterosexual, two parent family with at least one person with PWD designation, if either or both partners work enough to qualify for maternity and parental EI benefits, the family will likely have a standard of living that depends on their combined income from benefits and employment to cover basic necessities. They may have secured housing based on their combined income level. But depending on which partner is working, the financial fallout will be different.

If the woman works and chooses to have a child, the family will be plunged into financial insecurity during her pregnancy and recovery despite the fact that she has paid into EI and is eligible for maternity benefits, which are designed to address this very situation. Given the unaffordability of child care in BC and the inadequacy of BC's child care subsidy system, it is very likely that she will continue to care for the new child and rely on parental benefits as well, especially if her partner has severe limitation due to a disability. Because the maternity and parental benefits will be clawed back by the Ministry, the family will be forced to go from surviving on PWD benefits plus employment income to surviving on employment income alone. Given the inadequacy of PWD benefit rates in BC, this will likely throw the family into financial crisis that may put their housing or other necessities at risk.

In a similar heterosexual, two parent family that depends on a male partner's employment income to survive, if they have a child, he will be able to continue working through the period that would be covered by maternity and parental benefits. That family will be able to continue to rely on their PWD benefits and employment earnings with no change to their financial security.

The clawback undermines the Ministry's goal of increasing employment rates for people receiving PWD benefits

It is no secret that people with disabilities experience lower employment rates than people without disabilities.² While all people with disabilities experience barriers with respect to employment and income security, women with disabilities are impacted disproportionately.³

It is this systemic exclusion that led BC to identify employment as a key issue in its *Accessibility 2024* plan, in which the province committed to develop the highest labour

² Ministry of Social Development and Social Innovation, *Disability Consultation Report: Moving Together Toward an Accessible B.C.* at 31.

³ Laura Track, *Able Mothers: The intersection of parenting, disability and the law* (Vancouver: West Coast LEAF, 2014) at 77.

force participation rate for people with disabilities in Canada.⁴ The Ministry has also taken steps to support the employment of people on PWD benefits by increasing earnings exemptions, developing employment strategies and implementing the annualized earning exemption. The extent of the Ministry's commitment to increasing employment rates and earnings for people in receipt of PWD benefits is also evidenced by the fact that use of the employment earnings exemptions features prominently in recent Ministry Service Plans as one of only six or seven key Ministry-wide performance measures.⁵

It is precisely some of Ministry initiatives that have enabled families on disability benefits to be able to work enough to qualify for EI benefits. Families in receipt of PWD benefits are now able to earn:

- \$9,600 per year for a single person with PWD designation;
- \$12,000 per year for a two adult family if one person has PWD designation; and
- \$19,200 per year for a two adult family if both adults have PWD designation.

These increased exemptions were expressly intended to remove employment barriers for families in receipt of disability benefits.⁶ These positive steps now allow families to supplement their meagre benefits and they may work enough hours to meet the EI qualifying requirements.

Unfortunately, the Ministry's clawback of maternity and parental leave EI benefits undermines all of this work and creates a barrier to employment for women on PWD benefits. As set out above, they are effectively punished financially for working and having children while on benefits. Many women who choose to have children, as is their right, may forgo employment to avoid the financial chaos that will result when they are no longer able to work after the arrival of their child.

The Ministry's current services plan notes the following strategy to enhance employment and community inclusion for people with disabilities: "Engage stakeholders and the public to identify barriers and solution to improving the employment outcomes for Persons with Disabilities."⁷ In our view, the clawback of maternity and parental EI benefits is just such a barrier and the solution is clear – the Ministry must exempt the benefits from the calculation of income to ensure that

⁴ British Columbia, *Accessibility 2024: Making B.C. the most progressive province in Canada for people with disabilities by 2024* at 11.

⁵ Ministry of Social Development and Social Innovation, "2014/15 Service Plan Report" at 12; Ministry of Social Development and Social Innovation, "2016/17-2018/18 Service Plan" at 12.

⁶ BC Government News, "Flexibility helps people with disabilities earn" (3 Dec 2014), online: <https://news.gov.bc.ca/stories/flexibility-helps-people-with-disabilities-earn>; BC Government News, "Changes to Income and Disability Assistance take effect today" (1 Oct 2012), online: <https://news.gov.bc.ca/stories/changes-to-income-and-disability-assistance-take-effect-today>.

⁷ Ministry of Social Development and Social Innovation, "2016/17-2018/18 Service Plan" at 12.

women with disabilities do not experience additional and gendered barriers to employment.

The clawback risks reinforcing historic policies and current assumptions intended to discourage women with disabilities from having children

Given that it is incredibly difficult for a family to survive on disability benefits, many women may have no other choice but to work to provide basic necessities like secure housing for their family. These women may be forced to choose not to have children in order to avoid the financial crisis created by the clawback of maternity and parental benefits.

The decision about whether and when to have children is a fundamental human right.⁸ There is a long history of undermining the reproductive rights of women with disabilities in Canada, ranging from overt laws that result in abhorrent human rights violations like forced sterilization⁹ to systemic barriers based on stereotypes and presumptions about their ability to parent. These latter barriers range from judgments about having children despite risks of passing on their disability to their child, assumptions about their ability to care for or nurture a child, bias about the necessity of mobility in parenting and beliefs that a mother's disability would be a hardship for her child.¹⁰

While likely unintended, the provincial clawback of maternity and parental EI benefits has the result of constraining the free exercise of women's reproductive rights, and more specifically, the free exercise of the reproductive rights of women living in poverty and with disabilities.

The clawback amounts to discrimination and violates equality rights

As set out above, the clawback of maternity and parental EI benefits from families on income and disability assistance disproportionately disadvantages women by forcing them to choose between employment and financial security and their reproductive rights. The Supreme Court of Canada has noted that society benefits from reproduction: "those who bear children and benefit society as a whole should not be economically or socially disadvantaged. It is...unfair to impose all of the costs of pregnancy upon one half of the population".¹¹

The practice of clawing back maternity and parental EI benefits discriminates against women in families that receive disability assistance. The clawback contributes to the

⁸ UN *Convention on the Elimination of All Forms of Discrimination against Women*, art 16(1)(e).

⁹ See e.g. *E (Mrs) v Eve*, [1986] 2 SCR 388.

¹⁰ *Supra* note 3 at 50-51.

¹¹ *Brooks v Canada Safeway Ltd*, [1989] 1 SCR 1219.

poverty and marginalization of women with disabilities by creating additional barriers to their employment and undermining their reproductive rights.

British Columbia has an opportunity to show leadership on this issue by taking meaningful action to support the employment and reproductive rights of women with disabilities. We urge you to act now to remedy this discrimination and not to spend precious resources engaged in protracted litigation on this issue.

Thank you for your attention in this matter and we look forward to your response.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Milne', with a stylized flourish at the end.

Kendra Milne
Director of Law Reform
West Coast LEAF

cc Michelle Mungall, Opposition Critic for Social Development