

**THE DEMISE OF BUSINESS AND LABOUR INFLUENCE OVER
CANADA'S PROGRAMS FOR THE UNEMPLOYED¹**

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¹ I would like to thank the 12 business and union officials who agreed to be interviewed for my research on the devolution of Canada's public employment service. Those discussions triggered the idea of writing this paper.

Introduction

Every couple of months Canadians are presented with another report, analysis, or commentary suggesting reforms and improvements to our support system for the unemployed. Over the past 100 years these programs – primarily Employment Insurance (EI) and the public employment service (PES) – have operated in different configurations using various names under both federal and provincial management and control. As a cornerstone of the welfare state, our EI and PES programs not only provide protection against loss of income when workers lose their jobs, they also facilitate ‘second-chance’ opportunities for those who either failed in their early years to make a smooth transition from school to work, or later became unemployed. By assisting with job matching and labour mobility, the programs also help employers to fill vacancies more efficiently, thereby improving the performance of the Canadian labour market.

Many Canadians view these government-run programs as a policy failure (Banting 2012). Certainly there has been no shortage of studies suggesting ways to correct the perceived problems. In the past decade alone the think tanks and research institutes that have suggested reforms include: the Mowat Centre (through a comprehensive report *Making EI Work* released in 2011); the Caledon Institute (Mendelson and Zon 2013); the Canadian Centre for Policy Alternatives (every year for the past 21 as part of their Alternative Federal Budget); the CD Howe Institute (Busby and Gray 2011); and the Institute for Research on Public Policy (Courchene and Allan 2009, Bedard and Fortin 2015). In 2013/14 the Council of Atlantic Premiers did an 11 month study and released a 109 page report on EI. In 2014 the Parliamentary Budget Office released a report on EI financing. In February 2016 the federal Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) began a new study on the impact of recent reforms to EI.

A variety of changes have been suggested through these studies: to how the EI fund is structured; to premiums paid; to the scope of the programs covered; to access to benefits and eligibility criteria; to benefit levels; to the availability of special benefits; to regional variability and equity; and to active employment measures and conditionality. New income support programming *outside* of EI has also been promoted, including a new 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 what at the time was called ‘unemployment insurance’ or UI.

This narrow focus on the federal government is surprising as – at its inception in 1940 – the entire UI scheme (including both income benefits as well as employment services) was viewed as a *cooperative* undertaking between government, employers, and workers. The tripartite principle was embedded throughout the entire program structure that included at the time the Unemployment Insurance Commission, the Unemployment Insurance Advisory Committee, and the Court of Referees (Dingledine 1982). It was also evident in how the scheme was financed: that is through contributions from employers, workers, and government.

Yet sixty-six years later – other than through two representatives on the four person Canada Employment Insurance Commission – there are virtually no mechanisms to facilitate employer

and worker oversight of Canada's support system for the unemployed, despite the fact that almost all of the costs incurred – estimated at 21.1 billion in 2016/17 – are covered by mandatory premiums imposed on their constituents.² Federal contributions to unemployment insurance costs stopped completely in 1990. How has government (Ministers, parliamentarians, and bureaucrats) been able to take over control – or in Pal's words (1988, pg. 132) 'expropriate' – the program from Canadian employers and workers? More importantly, why has this occurred?

This paper traces these developments over time, with a particular emphasis on the demise of business and organized labour influence over government decision-making since 1996. This date is important as it marks a major reform to UI, including rebranding as Employment Insurance or EI. It also marks a transformation of the public employment service, as governance responsibility began to be devolved from the Government of Canada to provinces, territories, and Aboriginal organizations. In 2016, 87 per cent of federally-funded PES programming (most of it charged to the EI account) is designed and delivered through these highly decentralized arrangements.

The paper begins by considering why representatives of business and labour (referred to as social partners) are engaged in employment programming in any country, and the mechanisms used to facilitate their participation. Contemporary European and American approaches are briefly assessed. Next it moves to the Canadian experience, first through a short history of the development of our programs for the unemployed, followed by an analysis of the involvement of the three institutions set up in 1940 to facilitate government, business, and labour partnerships: the Unemployment Insurance Commission, the Court of Referees, and the Unemployment Insurance Advisory Committee (and its successors). Then the paper moves to the current day, commenting on the lack of institutional structures in 2016 to elicit business and labour input into employment matters on both a national and provincial basis, and why this has occurred. It concludes by reflecting on the salience of these issues in the context of a new Liberal government determined to update and reform our EI and PES programs for the 21st century.

Social Partner Engagement in Programs for the Unemployed in Other Countries

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 matters, the partners have historically been considered as government, business, and unions, hence a 'tripartite' relationship. This form of decision-making became popular during the depression of the 1930s. The International Labour Office or ILO bases all of its deliberations on tripartism, using discussions between the three groups to draft its standards and conventions. Employment Services Convention No. 88 – enacted in 1948 – actually requires signatory countries to set up advisory committees with representatives of employers and workers. 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

² Employers pay premiums at a rate 1.4 times the employee rate. This means that employers pay for 7/12 of the program's costs and employees pay 5/12 of the costs (Leonard, 2014).

functioning of the programs as, in most cases, the funds that covered program costs were raised through mandatory insurance premiums levied on their members. The most common model was where the costs were met, to varying degrees, 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. Cooperation with the social partners was welcomed as it internalized class conflict (Weishaupt 2011).

However, there were a number of other reasons for their involvement. As the administrator of the programs, governments saw the direct involvement during the design phase of those impacted by policies as a way to forestall objections and vetoes in the implementation phase. They also knew that the social partners supplied important knowledge about the labour market and the issues involved. This created legitimacy for the goals and strategies selected. Sharing resources among the different partners increased efficiency, and allowed measures to take place that would not otherwise be possible given the resources of one partner alone. Social partners also provided opportunities for creativity and innovation. If all important stakeholders took ownership of the goals and strategies in an employment plan, the chances for good results were increased substantially when the measures were implemented in practice (Froy et al 2011).

Social partner engagement in employment programming is particularly evident in Europe. Their involvement is explicitly supported and promoted by the European Commission through European Union (EU) level funding, as well as defined ways for 'peak' business and labour institutions to provide input into EU decision-making. Within the member states, social partners are strongly involved in stable tripartite institutions in 20 out of 28 EU countries. This includes long-standing traditions in the continental and 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 EU. Social partner involvement in these countries ranges from being co-decision-makers, to administering the programs, to an advisory role.

In Belgium and France the relationships are bipartite, as opposed to tripartite. In Finland participation took the form of systematic involvement in both tri and bipartite ad hoc committees. While Italy, Norway, Sweden, and the United Kingdom have no formal involvement of the social partners, ad hoc relationships existed to solicit social partner input. Only in Malta and Ireland is there no explicit involvement between the state and the social partners (EUROFOUND 2013).

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. Regular unemployment insurance benefits in the US are funded by experience-rated taxes on employer payrolls, not by worker contributions. Extended and emergency UI benefit costs are shared by states and the federal government. While state delivered, the entire US unemployment insurance benefits scheme, employment services, and training system is governed by federal legislation, funding, and rules. Given the significant level of 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 Investment Boards to develop human capital strategies and connect with local employers.

Local workforce boards in the United States must be chaired by an employer representative and business must make up more 50 per cent of the board. The remaining members come from organized labour, educators, community based organizations, economic development agencies, and career centre agencies. In 2015 there were approximately 550 Workforce Boards with 12,000 business members operating across the United States. In 2014 WIA was replaced by the Workforce Innovation and Opportunity Act, streamlining the strategic role of the Workforce Development Boards. Despite this access to decision making, recent evaluations have shown that employers do not typically play a major role in administering the US boards and effectively lack influence over workforce issues in their area (Barnow and Spaulding 2015).

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 or ESC. By the 1930s there were 76 provincially-managed ESC offices operating across the country, partially funded by the Government of Canada. 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 (Hunter 1993).

The 1940 Unemployment Insurance Act had a two-fold purpose: i) income protection and ii) labour market adjustment. Drawing on the British experience, it was decided that the combined scheme was to be managed by an arms-length Unemployment Insurance Commission (UIC) made up of three commissioners representing employers, workers, and government. Management was to be deliberately separated from government in order to prevent political leaders from expanding coverage under pressure from voters (Campeau 2005). The provincial ESC offices and staff from the federal Department of Labour were moved into the UIC and re-branded as the National Employment Service or NES.

Pal (1983) describes in some detail the challenges the Commission experienced in trying to square a UI benefits scheme (operating under actuarial constraints to provide benefits to those who contributed) with manpower functions (designed to help people access work). The 1962 Gill Report (Canada 1962) recommended that the employment service be divorced from the UI Commission and made the direct responsibility of an operating department of the federal government. When the federal Department of Manpower and Immigration was established in 1965, the old 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 training (Dupré et al 1973).

This caused concern among provinces as it meant that Ottawa withdrew from long-standing federal-provincial cost-sharing arrangements related to training (Pal 1983). 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 (Courchene and Allan 2009, Campeau 2005).

In 1977 the separate UI Commission was amalgamated 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 or FLMM to coordinate labour market policy on a pan-Canadian level. In 1986 the Forget Commission – another committee set up to review UI – identified the need for greater social partner involvement in employment policies. 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 Organisation for Economic Cooperation and Development (OECD) directions, as well as a new ILO Convention 122 on activation that Canada signed in 1966 (Virtuosity Consulting 2003).

By the late 1980s Ottawa was operating over 500 Canada Employment Centres across the country, delivering both UI benefits and employment services (EIC 1990). By this time there were concerns over escalating costs, and various changes were made to UI benefits. Federal contributions from general tax revenues ended in 1990, leaving the entire burden on employers and employees. In 1993 the Department of Human Resources Development Canada (HRDC) was created as a single integrated federal ministry to address interrelated issues ranging from pensions to unemployment insurance to postsecondary education to labour market development.

In 1995 Ottawa 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 and postsecondary education, as well as reductions in direct federal spending. In order to realize a 10 per cent reduction in UI costs, eligibility and access to benefits were further tightened. The program was rebranded as Employment Insurance or 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 (as reported by Campeau 2005, pg. 165).

In response to Québec's autonomy demands, in 1995 the Government of Canada offered to transfer control of EI Part II funding – focused mainly on EI recipients – 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 or LMDAs. Ottawa continued to deliver EI income support benefits through federal offices transformed in 2005 into Service Canada, responsible for a broad range of federal programming. Ultimately over 2,600 federal positions and almost 1,000 contracts transferred over to the provinces (Wood, forthcoming).

In 2006 Ottawa allocated additional money from general revenues through Labour Market Agreements or LMAs so that provinces could enhance employment services for non-EI recipients as well as low income earners. 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 Aged Security under a newly formed

Social Security Tribunal. In 2013 the Government of Canada decided to refocus federal funding to provinces under the LMAs from the vulnerable unemployed to workers who were already employed through new Canada Job Fund Agreements. The federal department responsible was renamed Employment and Social Development Canada or ESDC.

Historical Business and Labour Influence over Canada's Programs for the Unemployed

This brief history has hinted at places where business and labour have played a role in unemployment matters in Canada. The next section of this paper explores their participation through the UI Commission, the UI appeals process, and through various advisory committees.

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 the unemployment insurance program – now called Employment Insurance – for over 75 years. In 2016 these 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 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 (MAR), and oversee a research agenda.

While implementation and oversight of the EI program 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 Canadian Labour Congress (representing workers) and the Canadian Manufacturers' Association (representing employers) enjoyed a monopoly in terms of representation on the Commission (Issalys and Watkins 1977). This has changed over the years; for example the employer representative in 2016 and her predecessor were previously with the Canadian Federation of Independent Business. Instead of being from the Canadian Labour Congress, the worker representative in 2016 is from the Canadian Teachers' Federation.

Over time, the power of the social partners on the Commission has diminished significantly. The first loss of power occurred in 1965 when responsibility for the National Employment Service was transferred from the Commission's authority to the new federal Department of Manpower and Immigration. Although the Commission disagreed with the changes (as UI required a work test), backed by recommendations from the Gill Report the federal government proceeded to transfer the programs out of its control.

The second loss of power occurred when the Commission was amalgamated with the federal Department of Employment and Immigration. Until 1977 the UI Employer and Worker Commissioners comprised two-thirds of the decision-making authority on the Commission; the

third Commissioner represented government. The amalgamation was accomplished by making the deputy and associate deputy ministers of the federal department the Chairman and Vice-Chairman of the Commission, while still retaining the Commissioners for Employers and Workers. According to Pal (1988) 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.....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” (Pal 1988, pg. 132).

The power of 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 or UIDU’, on the basis that it fragmented the program purpose and allowed the government to shift costs that would normally be borne by general tax revenues to employers and workers. Pal’s analysis of this period of the UI program noted “The present Commission has of course had to approve the developmental use of UI funds, but it has done so reluctantly” (Pal 1983, pg. 91). Another example occurred in 1991 with regards to setting the UI premium rate, where the government choose a different, higher rate than what the Commission had recommended. This action was further demonstration that, in essence, the independence of the Commission from the federal Minister was negligible, and the Commission was a *de facto* advisory body (Virtuosity Consulting 2003, pg. 23).

While still referred to as a tripartite organization, in 2016 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. 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.

In order to fulfill their responsibilities, the EI Commissioners for Workers and Employers have set up various ways to establish and maintain working relationships with private and NGO organizations and individuals that are clients of, or affected by ESDC programs. The Commissioner for Employers issues a regular newsletter; in addition a 30 member employer’s forum meets from time to time to review developments related to EI income support, active labour market programming, government tax measures, and EI premiums. The Commissioner for Employers also maintains an active speaking and meeting agenda with employer groups.

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 Canadian Labour Congress, as well as opportunities for federal officials to provide briefing sessions on selected issues. The

Commissioner speaks at many union gatherings and connects on a regular basis with organizations representing unemployed workers from across Canada. Through these exchanges, suggestions for EI research are solicited.

There is no process that brings these labour and business stakeholders together with each other and with government. The EI Commissioner connections with their respective constituencies are separate, distinct, and parallel. The Commissioner for Employers sees the role as “an advocate for business that is embedded within the department”. The Commissioner for Workers noted how the advocacy role goes beyond unionized workers to also include non-unionized labour. “The ombudsman role is the most rewarding part of my job.....speaking with advocacy groups keeps me grounded in the role”.

Both Commissioners admitted to having to work very hard to influence EI policy, noting that the ESDC hierarchy from the bureaucracy to politicians does not typically include consideration of the views of the ‘independent’ Commissioners representing Canadian employers and employees. In 2014 each Commissioner presented the views of their constituents at parliamentary hearings examining renewal of the federal-provincial Labour Market Development Agreements. They also attended cross-Canada roundtables on LMDA renewal in 2014, as well as a meeting of federal-provincial Labour Market Ministers. However, they had to press hard to be included.

Employer and Worker Representation on the EI Board of Referees

One of the main tenets of the 1940 UI scheme was that it was insurance based: that those who contributed to the program were entitled to benefits. The argument was that only a contributory scheme could guarantee jobless rights without a means test. This tenet was reflected in the establishment of an appeals procedure. 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 appointed by the Governor in Council, a representative of employers, and a representative of workers. Umpires were chosen from judges of the federal court and provincial superior courts (Campeau 2005). Only benefit decisions could be appealed, not employment services or access to training.

Until 2013, the appeal process had not changed fundamentally since 1940. The EI Commissioners for Employers and Workers were responsible for nominating their respective representatives to the Boards of Referees. This took a considerable amount of their time, requiring travel to various parts of the country to undertake information and training sessions. Although time-consuming, it ensured that they were connected to EI issues as they played out on the ground. In 2012/13 approximately 900 board members heard appeals in 83 centres across Canada. That year there were 20,099 appeals, with approximately 20 per cent resulting in the reversal of the department’s decision (CEIC 2012/13).

In Porter’s view (2015, pg. 41) “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.” The decisions of the EI Umpire also formed a body of jurisprudence that, in turn, guided EI insurance officers in future decisions (Porter 2015).

The EI Commissioners for Employers and Workers were not consulted by the federal government on the abolishment of the EI Boards of Referees and their replacement with a new Social Security Tribunal (SST). No evidence was provided as to the rationale for the change, other than as a cost saving measure. In 2016 their new role in appeals is much diminished, in that they now serve on a ‘nominating committee’ with the SST chair to vet possible appointees to the EI section and make recommendations to the ESDC Minister. The Tribunal is arm’s length and does not have to give up information to the EI Commissioners.

The Tribunal consolidated EI appeals with those from Old Age Security (OAS) and the Canada Pension Plan (CPP). Rather than a tripartite body, hearings for EI claimants are now held before one of 39 full-time tribunal members working out of Ottawa. With the Boards of Referees, almost all hearings were in person. In 2015 only three per cent were in person; the rest were via telephone hearings or videoconference. A new ‘request for reconsideration’ step has resulted in an 82 per cent reduction in appeals to the SST compared to the Boards of Referees (CEIC 2016).

The decision to consolidate federal appeal processes was surprising, as most people thought that the previous system was an easy, timely, non-judicial, and free way to resolve issues with EI benefits. University of Ottawa Law Professor Lucie Lamarche worried that, under the new system, applicants would have to hire lawyers. Business and labour groups expressed concern that the new Tribunal would lead to delays and a more formal process. With the previous system complaints were generally heard within 30 days and decisions rendered within a week. A spokesperson for the Canadian Federation of Independent Business noted “We certainly feel that the EI Board of Referees was working well” (CBC 2012). Aside from democratic concerns, the changes further weakened the position of labour as an actor in the policy arena (Porter 2015).

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. Employment Service Canada was supported by a National Employment Service Council, consisting of federal and provincial administrators as well as business and labour representatives. When UI was implemented in 1940, the Council was replaced by a National Employment Committee – consisting of eight members, three each from business and labour plus one from the Canadian Legion and one from the League of Women’s Rights – to advise the UI Commission on employment matters. An Unemployment Insurance Advisory Committee – with labour and business representatives – was also established to review premium rates, adequacy of coverage, and the benefit structure (Dingledine 1982, Hunter 1993).

With these institutions in place, Canada had no hesitation in ratifying ILO Employment Services Convention 88 in 1950. It committed Canada to “maintain or ensure the maintenance of a free public employment service.....as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive

resources” (ILO 1950). Articles 4 and 5 required signatory countries to establish suitable arrangements, through advisory committees, for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment services policies. This includes providing for one or more national advisory committees and, where necessary, regional and local committees. Representatives of employers and workers are to be appointed in equal numbers to these advisory committees.

In 1951 a new National Advisory Council on Manpower with more than 30 members was established to consider a number of issues, including the labour stresses emerging from the Korean War, the role of the National Employment Service, the need for vocational training, and measures to ameliorate seasonal employment. However, by 1955 the Council has been disbanded (Hunter 1993). Over time the UI Advisory Committee was also largely pushed to the side; instead discussions and decisions took place mainly at the level of the executive and within the federal bureaucracy (Porter 2003, pg. 103).

While there had been business and labour representation on the Gill Committee that examined the UI system in the early 1960s, for the most part the review was internal to the federal government. Based on interviews with senior federal officials in the 1970s, Pal noted that organized labour and business had opposing views on UI, and that these respective stances had not changed in years. Employers wanted the program to adhere to insurance principles and were adverse to expansion of the program. In contrast, 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 Canadian Labour Congress 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” (Pal 1985, pg. 76 and 91).

Also sidelining the social partners was a greater reliance on expert opinion, given the increasing complexity of the UI benefit scheme. The 1971 reforms liberalizing UI were initially promoted as being achieved at little to no extra cost to government. When this turned out to be wrong, reining in costs became a major focus of federal Ministers and bureaucrats. Contraction of the program also engaged the provinces, who previously had not been pre-occupied with UI. A smaller UI program meant a larger provincial social assistance burden. In addition, UI expenditures were vital to the economies of the high unemployment provinces, particularly Atlantic Canada and Québec. Attempts to drop fishermen from the program and other restraint measures engendered considerable controversy with federal parliamentarians from those parts of the country that were most affected (Pal 1985).

In 1976 the Advisory Committee established under the 1940 UI legislation was disbanded and replaced by the Canada Employment and Immigration Advisory Council (CEIAC). Council activities and scope encompassed all activities under the responsibility of the Minister of Manpower and Immigration. The Council was also much larger, consisting of 15-21 people, with one third representing employers, another third representing workers, and the final third representing other constituencies such as persons with disabilities, women etc. While the Council was prolific (between 1981 and 1990 it produced 26 reports on a wide variety of topics), it was

weaker than the UI Advisory Committee that it replaced. For example, the 1940 UI Advisory Committee was required to make recommendations to the Commission and had the independent power to mount inquiries, whereas the Council was only expected to submit annual reports and had no power to hold hearings. As described by Pal (1988, pg. 133) “Ministerial control over the Council, and thus the Commission, is substantial and firm”.

With UI costs rising again due to the recession that gripped the country in the early 1980s, a number of internal-to-government task forces were undertaken to reform the UI program. The highly influential Royal Commission on the Economic Union and Development Prospects for Canada (known as the MacDonald Commission) that reported in 1984 also addressed UI issues. In 1985 the Mulroney government appointed a Commission of Inquiry on UI, headed by Claude Forget. Four of its six Commissioners (representing labour and business) issued dissents to the Commission’s 1986 final report. It was subsequently referred to a parliamentary committee, as the government also disagreed with its recommendations (Pal 1988).

As these developments played out, in 1984 business and labour – through the Canadian Labour Congress and the Business Council on National Issues – came together to form a bipartite independent organization, the Canadian Labour Market and Productivity Centre (CLMPC). As a neutral, national, forum where key actors in the economy could engage in constructive dialogue on issues of mutual concern, over its 23 year life span the organization focused on developing joint approaches to improving the operation of the labour market and Canada’s productivity performance (CLBC 2007). Stimulated by endowment funding announced in the 1983 federal budget, the voting membership consisted of 12 business, 12 labour, and two representatives from the education community. Their non-voting partners consisted of four federal Deputy Ministers plus senior representatives from each of the provinces (Hunter 1993, pg. 320).

In 1985 the Canada Manpower Centres began to establish Local Advisory Councils (LACs) with business, union, and representatives from other groups as a counterpart to the national Canada Employment and Immigration Advisory Council. However, the 1989 *Labour Force Development Strategy* proposed a different model for securing the involvement of the labour market partners. As a result, many of the LACs subsequently closed (Hunter 1993).

One approach focused on business and labour partnerships for human resource development in specific industry sectors, for example aerospace, steel, automotive repair and electronics. Comprising employers, employees, educators, government and other stakeholders, sector councils provided a neutral decision-making forum to develop and implement human resource strategies within a sector. In 1992 the federal government expanded funding support to the Sectoral Partnership Initiative; by mid-1997 there were 22 national sector councils operating with federal funding support as an integral part of the federal Workplace Skills Strategy (Gunderson and Sharpe 1998, Gunderson 2011). Most sector councils were located in Ontario.

Another approach focused on broad-based labour force development boards. In 1991 the Minister of Employment and Immigration announced the creation of the Canadian Labour Force Development Board (CLFDB), with 22 members drawn from business, labour, social action groups, and training organizations, plus governments as ex-officio members. The EI Commissioners for Workers and Employers were responsible for nominating representatives to

the board. The Canadian Labour Market and Productivity Centre was also influential through consultations undertaken that led to the establishment of the CLFDB.

The federal government was motivated to establish labour market boards as a way to increase the training efforts of the private sector. The national board was to be supplemented wherever possible by provincial and local boards, with federal officials across the country playing a leadership role in creating the boards. Ultimately provincial boards were established in Newfoundland, Nova Scotia, New Brunswick, Québec, Ontario, Saskatchewan and British Columbia.³ A pan-Aboriginal National Management Board was also established. The CLFDB was to be concerned with making recommendations to Ottawa concerning training policies and programs and funding levels from the UI account (Haddow and Sharpe 1997).

None of the labour market boards lasted long. By 1996 the pan-Aboriginal Management Board had disappeared, fractured amongst the different Aboriginal constituencies. For various reasons all the provincial boards closed down. The national labour market board (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 (Virtuosity Consulting 2003).

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. Probably the most important dynamic was the lack of political commitment. 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 UIDU was overturned. The negotiation of the federal-provincial Labour Market Development Agreements in 1996 and the increased role of provincial governments in EI Part II programming ultimately reduced the relevance of a national advisory body (Virtuosity Consulting 2003, pg. 25).

As the labour market boards wound down, the national sector councils continued to grow such that by the mid-2000s there were more than 30 bodies, 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 (Gunderson 2011). In 1995 the CLMPC transformed itself into the Canadian Labour and Business Centre (CLBC) and became known as a centre of expertise on labour market and skills issues, especially through its work with two new federal institutions established in the early 2000s: the Canadian Council on Learning and the Workplace Partner's Panel.

Contemporary Social Partner Engagement in Canada's Programs for the Unemployed

All of these federally-funded institutions that used social partner engagement as their 'modus operandi' have now closed. The national sector councils lost their core federal funding in 2013. Some continue to exist with business and labour support, as well as a small amount of federal funding under a much diminished 'sectoral initiatives' program. Assessments of the effectiveness of the sector councils were not particularly positive. Researchers at the Conference Board of Canada (2008) noted that the lack of collective goals impeded collaboration. They suggested that

³ For various reasons Alberta, Prince Edward Island, and Manitoba never established provincial boards. Ontario and Québec also established local boards.

the councils needed to focus more on regional engagement. Gunderson (2011) concluded that firms in sectors covered by sector councils were actually associated with *undesirable* outcomes.

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.⁴ When it was set up in the early 1980s, funding was provided through federal endowments. When federal cutbacks in the mid-1990s stopped these contributions, the organization relied on project funding. It was forced to close in 2006 when federal funding for its Workplace Partner's Panel was cut. As detailed in its record of achievements, its demise was much regretted by business, labour, and provincial government representatives (CLBC 2007).

For a brief period the Canadian Labour Congress and Canadian Manufacturers & Exporters took over the role that the CLBC had previously played on the Canadian Council on Learning or CCL. This too did not last long. The CCL lost all of its federal funding in 2010. It lived for only six years, brought down by different priorities of a new Conservative federal government, as well as the unwillingness of some provincial governments to engage with a federally-funded institution focused on education and learning issues, viewed as provincial responsibilities.

Even though in 2016 there is no *national* engagement through advisory committees, post-devolution some provinces have put processes in place to secure social partner input into employment services, now under their control and management. Québec has the most developed partnership structure, including a national board (Commission des partenaires du marché du travail or CPMT), 17 regional labour market councils (CRPMTs), and 29 sectoral workforce committees (CSMOs). All have representation from labour, business, the community, and academia detailed in legislation, with defined linkages to the provincial government. Manitoba also has a well-developed and long-standing partnership structure with business and unions – also established in legislation – consisting of a Minister's Advisory Council on Workforce Development as well as 17 sector councils. Ontario has 26 local Workforce Planning Boards, with representation from business and labour as well as education and community groups. However, these local boards do not come together at the provincial level.

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 non-government partners with access to government decision-making on a wide variety of social policy issues, including employment. 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, established when the federal government was in charge of employment programming. Saskatchewan, British Columbia and Alberta have set up industry reference groups; however their roots are shallow and activities ebb and flow dependent upon the political environment. There is limited funding support provided. This contrasts with Québec and Manitoba, who support their social partnership arrangements with sustained provincial funding.

⁴ 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.

None of these provincial arrangements concern themselves with issues related to Employment Insurance benefits, still under the exclusive control of the Government of Canada. They also have no capacity to influence the national policy framework for EI Part II, any other federal funding to provinces such as through the Labour Market Agreements or Canada Job Fund Agreements, or the continuing federal role in areas like Aboriginal and youth employment programming.

Conclusion

As identified in the introduction to this paper, there is no shortage of issues with respect to our programs for the unemployed. Given this perceived underperformance, it is surprising that more attention has not been paid to the oversight role of business and labour. After all, it is contributions from their members that finance 100 per cent of the program costs through a dedicated payroll tax. While labour has identified the lack of structured input to the public employment service as a problem in their response to Canada's reporting on ILO Convention 88 – which in Articles 4 and 5 *requires* social partner engagement through advisory committees – there was no evidence from the ILO material of business concerns with the current arrangements.

This paper has demonstrated how marginal the social partner oversight role has become. Over the years the views of Employer and Worker representatives on the Employment Insurance Commission have been regularly overridden by federal officials on the Commission. Often their perspective is ignored. Certainly it is mostly hidden from public view, given the separate internal bipartite processes to engage with their respective constituencies. Long-standing business and labour engagement with the EI appeal process was unilaterally changed by the Government of Canada in 2012, leaving EI claimants with much reduced recourse.

Despite robust advisory committees to the Commission in the first fifty years of the operation of the UI program, over the past twenty-five years all have been dismantled, replaced by ad hoc consultations as determined from time to time by the political party in charge of the Government of Canada. The zenith of institutionalized social partner engagement was under the Mulroney Conservatives between 1984 and 1993. By the time that the Chrétien Liberals took charge of government in 1993, many of these institutions had faltered, with their demise exacerbated by a perceived need for the federal government to re-assert control over an expensive unemployment insurance scheme and use devolution of EI Part II as a way to keep Québec within the federation. While there were some attempts in the early 2000s under the Liberals to increase social partner engagement, these all disappeared during the Harper Conservative period between 2006 and 2015, brought down by a drive for a smaller federal government and the recognition (for a while) of provincial primacy, at least over active employment measures.

The United States and the European Union both place a high degree of importance on social partner engagement, often locating them at the core of their employment programming governance structures. Why has this not occurred in Canada? Many reasons have been suggested. First is that labour market policy is a contested federal-provincial policy domain; when governments can't agree on who should do what, the social partners get sidelined. Second is our Westminster system that concentrates power among government executives. Majority governments can, in effect, run dictatorships until they are thrown out of power. If the social

partners had been more powerful, it is unlikely that devolution of the PES or a smaller EI program would have been possible. Third is the regional dimension that has been built into EI benefits over time. This engages powerful political constituencies at the provincial – as opposed to the national – level. Fourth is the lack of ‘peak’ institutions, especially on the business side, that enables each of the partners to speak as one voice at the national level. Their fragmentation into different representative organizations on a provincial and pan-Canadian basis, as well as parallel arrangements in Québec, makes the third partner – government – all that more powerful. Fifth is the continuing weakness of labour – exacerbated under the Harper Conservatives – and the privileging of business issues in our current neo-Liberal times.

Finally, there is the lack of sustained institutional structures to build and maintain partnerships, especially between business and labour. For over 20 years this role was played at a national level by the Canadian Labour and Business Centre; its demise in 2006 when government funding was withdrawn was much lamented by all involved. Unlike Europe and the US, governments in Canada have generally been reluctant to allocate funding to sustain partnership engagement. This reluctance extends to research where today there are no longer any pan-Canadian institutions focused on labour market matters. Instead, they are being re-created at the provincial level through organizations like the BC Centre for Employment Excellence and the Ontario Centre for Workforce Innovation. We don’t seem to have this reluctance to fund pan-Canadian institutions in other areas, for example health care and education.

In 2016, there are two peak institutions that control employment policy in Canada. The first is the Employment Insurance Commission, consisting of two Commissioners from the Government of Canada, plus the Commissioner for Workers and the Commissioner for Employers. The second is the Forum of Labour Market Ministers (FLMM), consisting of Ministers (and a network of officials) from all federal, provincial and territorial governments. However, there are no mechanisms for these two structures to relate to each other, nor are there broader opportunities for social partners and other interested stakeholders to have their views heard.

Since assuming power in October 2015, the focus of the Trudeau Liberals has been on selected adjustments to EI to ‘undo’ many of the changes made by the Harper Conservatives. A broader engagement is set to follow out of the parliamentary HUMA inquiry that started in early 2016. The new government has also signaled that they want to consult on employment programming that they deliver directly (e.g. for Aboriginal people, youth, and the disabled) as well as on the array of federal-provincial arrangements funded both through the EI account and general revenues. Hopefully this paper will remind the social partners of their historical place in this policy area, and the influence they could have if their engagement with government was more firmly structured and institutionalized.

References

Banting, Keith, 2012, 'Introduction: Debating Employment Insurance', in *Making EI Work: Research from the Mowat Centre Employment Insurance Task Force*, Queen's Policy Studies Series, McGill-Queen's university Press, Montreal and Kingston.

Canada, 2015, *Report for the period June 1, 2014 to May 31, 2015*, Made by the Government of Canada on Employment Service Convention No. 88, 1948.

Canadian Labour and Business Centre (CLBC), 2003, *The Canadian Labour and Business Centre a Record of Achievements*, available at http://www.clbc.ca/About_Us.php, accessed March 27, 2016.

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

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

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*, W.E. Upjohn Institute for Employment Research, Kalamazoo, Michigan.

Bedard Michel and Pierre Fortin, 2015, *Eleven Propositions for a Better EI Regime Summary*, Institute on Research on Public Policy, July 23, 2015, available at <https://www.economics.utoronto.ca/gindart/2015-07-23%20-%20Eleven%20propositions%20for%20a%20better%20EI%20regime.pdf>, accessed March 16, 2016.

Busby, Colin and David Gray, 2011, *Mending Canada's Employment Insurance Quilt: The Case for Restoring Equity*, available at <https://www.cdhowe.org/mending-canada%E2%80%99s-employment-insurance-quilt-case-restoring-equity>, accessed March 16, 2016.

Canadian Centre for Policy Alternatives, 2015, 2016, *Alternative Federal Budget*, available at <https://www.policyalternatives.ca/publications/reports/alternative-federal-budget-2016> pg. 57-60 and <https://www.policyalternatives.ca/publications/reports/alternative-federal-budget-2015>, pg.61-65, accessed March 16, 2016.

Conference Board of Canada, 2008, *Literature Review 2005: The Skills Factor in Productivity and Competitiveness*, available at http://www.conferenceboard.ca/Libraries/EDUC_PUBLIC/SectorCouncilLiteratureReview-eng.sflb, accessed March 27, 2016.

Courchene, Thomas J. and John R. Allen, 2009, 'A Short History of EI and a Look at the Road Ahead', *Policy Options*, Institute for Research on Public Policy, September 1, 2009, 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.

EUROFOUND, European Foundation for the Improvement of Living and Working Conditions 2013, *Social Partners Involvement in Unemployment Benefit Regimes in Europe, Ireland*, available at <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/social-partners-involvement-in-unemployment-benefit-regimes-in-europe>, accessed March 21, 2016.

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*, available at <http://www.oecd.org/cfe/leedprogrammeloocaleconomicandemploymentdevelopment/buildingflexibilityandaccountabilityintolocalemploymentservices.htm>, accessed August 29, 2012.

International Labour Organization (ILO), 1950, *Employment Services Convention, 1948 (no. 88)*, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C088, accessed August 12, 2015.

Issalys, Pierre and Gaylord Watkins, 1997, *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.

Leonard, Andre, 2014, *Background Paper the Employment Insurance Program in Canada: How it Works*, Publication No. 2010-52-E, Library of Parliament.

Mowat Centre, 2011, *Making it Work: Final Recommendations of the Mowat Centre Employment Insurance Task Force*, available at <http://www.mowateitaskforce.ca/sites/default/files/MakingItWork-online.pdf>, accessed March 16, 2016.

Mowat Centre 2015 and Caledon Institute of Social Policy, *Renewing Canada's Social Architecture*, available at <http://social-architecture.ca/>, accessed March 16, 2016.

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

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, McGill-Queen's University Press, Kingston and Montreal.

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

Parliamentary Budget Office 2014, *Response on the Financing of Employment Insurance and Recent Measures*, available at http://publications.gc.ca/collections/collection_2014/dpb-pbo/YN5-72-2014-eng.pdf, accessed March 21, 2016.

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.

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