



Don Valley Community Legal Services

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Reply to: Andrew K. Langille

**DELIVERED ELECTRONICALLY &
VIA EMAIL TO HUMA@parl.gc.ca**

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Standing Committee on Human Resources, Skills, and
Social Development and the Status of Persons with Disabilities
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Members of Parliament:

Re: Submissions – Review of the Employment Insurance Program

These submissions from Don Valley Community Legal Services are with respect to the review of the Employment Insurance (“EI”) program currently being conducted by Standing Committee on Human Resources, Skills, and Social Development and the Status of Persons with Disabilities.

Don Valley Community Legal Services is a community legal clinic serving the communities in east Toronto of East York, Flemingdon Park, Thorncliffe Park, Leaside, Leslieville, and North York. We are funded by Legal Aid Ontario to provide legal services to low-income residents in the areas of income security, housing, immigration, and employment. Don Valley Community Legal Services also provides employment law services to the four other community legal clinics in eastern Toronto. We do a significant number of cases involving EI issues arising from the application of the *Employment Insurance Act* (“the *EIA*”) by Service Canada, the Employment Insurance Commission (“EIC”), and Employment and Social Development Canada (“ESDC”). These cases involve brief advice, rendering legal opinions, and litigation against the EIC before the Social Security Tribunal – this is to say that we have significant experience, developed from assisting hundreds of clients, in navigating the EI program.

The submissions and recommendations that are set out are based upon the collective knowledge of the lawyer and paralegals that deliver employment law services and reflect the lived experience that our clients have in accessing, or not, benefits under the *EIA*. We would suggest that while the EI program is a critical piece of the social welfare infrastructure in

Canada it has, due to various reasons¹, deep structural problems that require remedies and reform.

A. Technical Changes to Employment Insurance Act, the Associated Regulations, and Application of Employment Insurance Act via Digest of Benefit Principles

1. End Allocation of Settlement and Severance Payments

The practice of setting-off settlement and severance payments against past or future EI benefits should be permanently end.

2. Termination After Maternity Leave

Women returning from maternity leave face precarious situations in the period from when they return to work until they accumulate enough insurable hours to qualify for regular or sickness EI benefits. Women who are terminated, separated from, or leave their employment prior to having enough insurable hours should either be granted enough hours to be brought up to minimum number of insurable hours or be allowed to utilize the insurable hours accumulated in the fifty-two (52) weeks prior to their taking maternity or parental EI benefits.

3. Eliminate Delay Rule Entirely.

We often encounter workers who do not apply for EI benefit within the stipulated four (4) week requirement. After four (4) weeks there must be an adjudication on whether there was good cause for delay, which can have severely limit access to EI benefits. There are various reasons for delayed applications and this should not concern Service Canada, EIC, or ESDC. Workers should be permitted to apply for and retroactively receive EI benefits if they submit their application for EI benefits within fifty-two (52) weeks of becoming unemployed.

B. Improving EI Benefits

4. Improved Income Replacement Rate and Twelve (12) Best Weeks Calculation

The current income replacement rate is insufficient for unemployed Canadians meet the necessities of life. The income replacement should be increased to 70% from 55%. The best weeks calculation rules should be based solely on the best twelve (12) weeks or less that a worker has.

¹ We would suggest these reasons include, but are not limited to, the following: the highly regressive nature of the 1996 reforms to the EIA; the lack of progressive reforms over the past twenty years to the *EIA*; intransigence on the part of staff within EIC, Service Canada, and ESDC to recognize the changes within the labour market arising from precarious work; and, an unreasonable focus by the Federal Government to use EI as a means to push individuals into any form of employment, which most often is precarious employment.

5. Creation of a Minimum Floor of Benefits

The adoption, during the COVID-19 pandemic, of a minimum floor of \$500.00 per week in EI benefits has been a welcome development. A minimum floor of \$500.00 per week in EI benefits should be made permanent.

6. Increase Maximum Number of Weeks for EI Sickness Benefits

The maximum number of weeks available under EI sickness benefits should be increased to at least thirty (36) weeks and in the case of workers with chronic, episodic or recurring sicknesses, illnesses, or disabilities the maximum number of weeks available under EI sickness benefits should be increased to at least fifty (50) weeks upon provision of a medical note from a medical practitioner.

7. Increase Maximum Number of Weeks for EI Regular Benefits

The maximum number of weeks available under EI regular benefits should be increased to fifty (50) weeks.

8. Reduce or Eliminate Clawback for Working While Receiving Benefits

Clawbacks for employment income received while working while receiving regular EI benefits should be minimized as much as possible for low-wage and precarious workers.

C. Improving Access to EI Benefits

9. Set a Universal Qualification Requirement

A single, universal entrance requirement set at the lesser of three-hundred and sixty hours (360) or twelve (12) weeks of insurable employment. The current variable entrance requirement tends to discriminate against young workers, newcomers, women, low-wage workers, and workers from lower socio-economic classes.

10. Eliminate the Quit-Fire Rule

The quit-fire rule and any restrictions related to voluntary separation should be entirely eliminated. In countless situations we have encountered employer who attempt to use false, misleading allegations to prevent former employee from accessing EI benefits. Additionally, the voluntarily leaving rules often keep employees who are experiencing harassment, sexual harassment, or discrimination from leaving their jobs as the fear of not being able to access EI benefits is a real consideration given that workers worry about not having any source of income available.

11. Regularizing Access to All Forms of EI Benefits for Migrant Workers

Access to EI benefits should be regularized for all categories of migrant workers who are working in Canada on a temporary or longer-term basis. This would include regularizing access to EI benefits for international students studying in Canada.

12. Restore EI Program Liaison Officer Positions

Having an internal, single, dedicated point of contact within Service Canada for EI matters would be mutually beneficial for community legal clinics and Service Canada as it would minimize the need for staff resources to be spent on dealing with the resolution of routine EI issues.

13. Utilization of Email and Physical Service Canada Locations

Service Canada, for whatever reason, refuses to communicate with claimant via email, which contributes to delays in the processing of claims and the need for claimants to either call into the 1-800 number, fax documents, or visit a physical Service Canada location, which is typically staff with agents unable to do more than the most basic of functions on EI matters and will often refuse to answer even basic questions about EI. Utilizing email to communicate with service users and citizens has proven efficient for countless organizing globally and it is something that Service Canada and ESDC should consider. Consideration should also be given to properly training agents at physical Service Canada location so they can render advice, answer questions regarding EI, and provide assistance to workers accessing EI benefits.

14. Provision of Full EI File for Claimants Pursuing Reconsideration and for Social Security Tribunal Hearings

Often claimants are unaware of the specific reason they have had an adverse decision made against them by EIC, which, as a regular practice, fails to disclose why an adverse decision was made. Service Canada should begin the practice of proactively providing the full EI file to all claimants who have requested a reconsideration or who are appealing an EIC decision to the Social Security Tribunal.

D. Translation and Interpretation Services

15. Interpretation Services

Service Canada only offers services in English and French, which is simply not sufficient or acceptable given that workers attempting to access EI benefits or accessing EI benefits may not speak English or French at a level which would permit them to navigate the various complexities of the EIA and the associated administrative rules. Service Canada must begin to utilize translators to communicate with claimants who do not speak English or French fluently and proactively offer interpretation services.

16. Translation Services

Written communications from Service Canada should be translated into whichever language the worker understands if there is a barrier to communication; additionally, any documentation related to reconsiderations or appeals made to the Social Security Tribunal should be translated into whichever language the worker understands if there is a barrier to communication. The lack of translation services is a major barrier to workers being able to access EI benefits and contributes to the income insecurity and precarity that many newcomers to Canada experience in their initial period of working in Canada.

17. Interpretation and Translation Services for Reconsiderations and Social Security Tribunal Hearings

Workers who are not fluent in English or French should be provided, as a right, access to full interpretation and translation of any documentation sent to the worker from Service Canada and the Social Security Tribunal.

E. Enforcement and Misclassification

18. Joint Enforcement from Canada Revenue Agency and Service Canada's Integrity Unit

Mischief against the *EIA* and the *Canada Pension Plan* has reached endemic levels in Canada's labour market. Workers are frequently misclassified as independent contractors and denied access to EI, CPP, and other benefits that flow from being classified as an employee. The Canada Revenue Agency and Service Canada's Integrity Unit must develop a comprehensive strategy to combat misclassification of employment status.

19. Increased Regulatory Penalties for Misclassification of Employment Status Under the *Employment Insurance Act*

Harsher penalties must be introduced to penalize employers who misclassify employees and fail to properly remit premiums owing under the *EIA*.

F. Increased Training for Level One and Two Agents, and Reconsideration Agents

20. Increased Training for Frontline Agents

Frontline agents need vastly increased training on basic issues in employment, labour, and human rights law. The *EIA* is part of a wider system of ameliorative statutes and the common law. We encounter, on a frequent basis, agents who do not understand basic concepts in employment, labour, and human rights law or even first principles like legal precedence, the principles of fundamental justice, or the import of the Canadian Charter

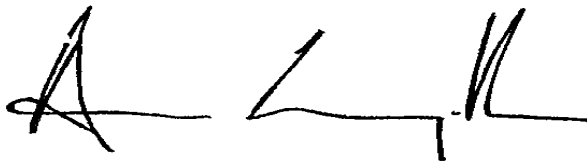
of Rights and Freedoms or the Canadian Human Rights Act or analogous provincial statutes. Service Canada and ESDC must train agents to a much higher standard to ensure that decision-making is in line with current norms and realities facing Canadian workers.

These are our submissions. If the committee or any of its members have any questions about any of the foregoing then we would ask them to contact Andrew Langille at (416) 420-3609 or langilla@lao.on.ca.

Yours truly,

Don Valley Community Legal Services

Per:

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

Andrew K. Langille, B.A. (Hons.), LL.B., LL.M.
Coordinating Staff Lawyer, Toronto East Employment Law Services
Barrister & Solicitor