MASSE
MOUVEMENT AUTONOME ET SOLIDAIRE DES SANS-EMPLOI

SACKING EMPLOYMENT INSURANCE

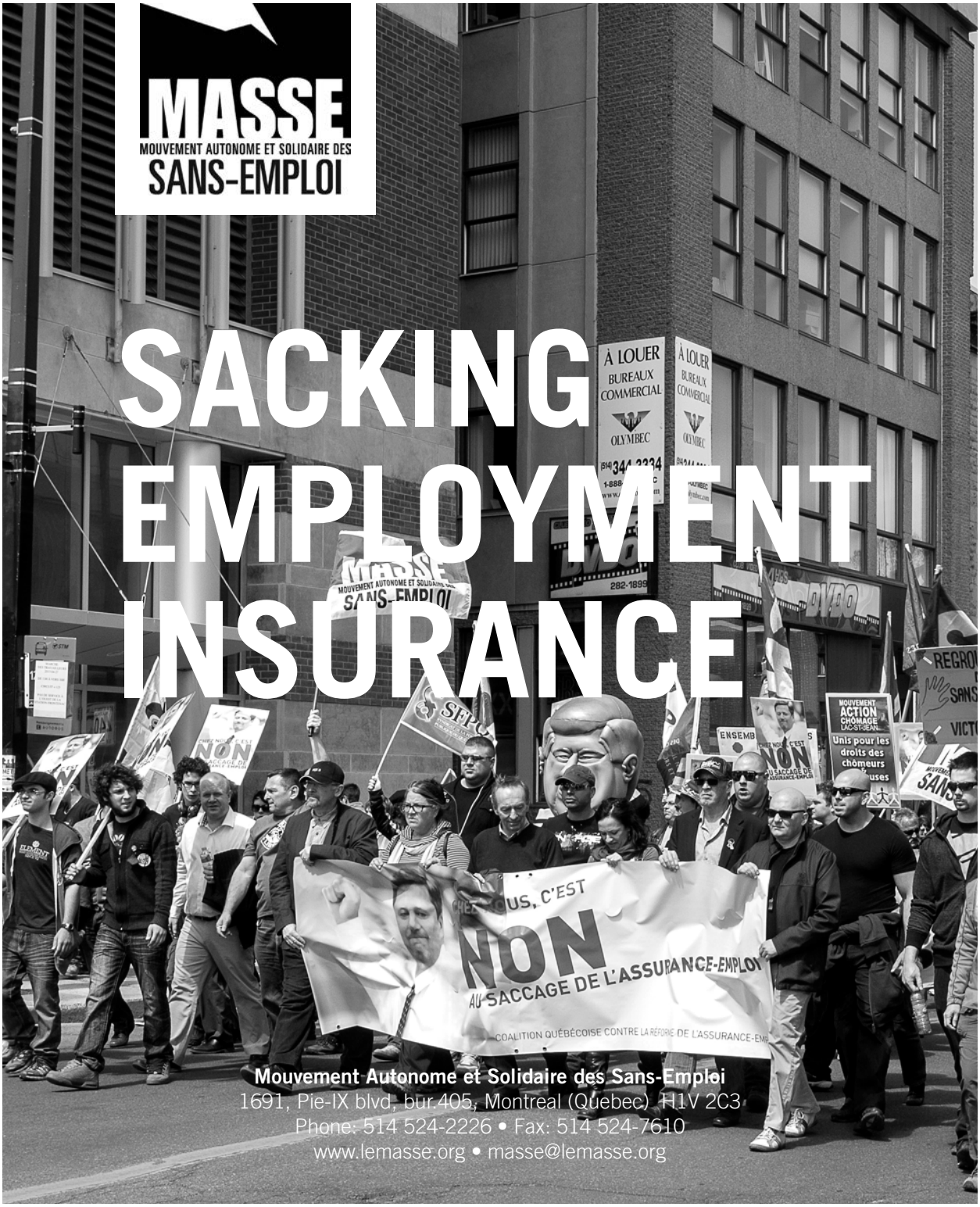

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Photo credit: Michel Giroux.

On March 29th 2012, the federal Finance Minister proposed a budget in which he proclaimed supposed improvements to the employment insurance system. These measures were more clearly articulated nearly a month later, when the mega bill C-38 was proposed[1]. Effectively, it's in this bill, more than 400 pages long, having been adopted without any real debate in the House of Commons, that important modifications to the Employment Insurance Act were adopted.

Taking into account the scope of the changes, especially the dramatic consequences that these would entail and affecting all workers in the country, the Movement Autonome et Solidaire des Sans-Emploi (MASSE) has produced this informational pamphlet to bring to light the stakes raised by these new measures.

To begin, we will bring specific attention to the legislative changes surrounding the **notion of suitable employment**, as this notion is crucial when it comes to the right to protection for the unemployed and also to the right to freedom of work. Following that, we will present and comment upon the following **modifications to the Employment Insurance Act**:

1. The creation of a new tribunal (Social Security Tribunal) dealing with litigation between claimants, employers, and the Employment Insurance Commission.
2. The intensification of the technological shift in communications and the allocation of services to citizens.
3. The announcement of numerous layoffs in the public service, particularly at the Ministry of Human Resources and Skills Development Canada (now Employment and Social Development Canada).
4. The creation of a national pilot project on allowable earnings during a claim period.
5. The establishment of new rules regarding the calculation of benefit rates (14 to 22 best weeks).
6. Non-renewal of the pilot project on the five additional weeks.

Note Special thanks to Richard Beaulieu and Philip Toone for translation.

1 *Bill C-38 : Jobs, Growth and Long-Term Prosperity Act. An Act to implement certain provisions of the budget tabled in Parliament on 29 March, 2012 and other measures, 41st Parliament,1st Session. Sanctioned on 29 June, 2012.*

PART I

SUITABLE EMPLOYMENT: A DEFINITION WITH HEAVY CONSEQUENCES

With the adoption of Bill C-38, Stephen Harper's Conservative government has modified Section 27 of the Employment Insurance Act (see the former version of the act in the frame), more precisely the provisions dealing with the definition of an unsuitable employment, which is a job that claimants have the right to refuse and for which they are under no obligation to seek without fearing the loss of benefit rights.

27. (2) For the purposes of this section, employment is not suitable employment for a claimant if

a) it arises in consequence of a stoppage of work attributable to a labour dispute[2] ;

b) it is in the claimant's usual occupation either at a lower rate of earnings or on conditions less favourable than those observed by agreement between employers and employees, or in the absence of any such agreement, than those recognized by good employers; or

c) it is not in the claimant's usual occupation and is either at a lower rate of earnings or on conditions less favourable than those that the claimant might reasonably expect to obtain, having regard to the conditions that the claimant usually obtained in the claimant's usual occupation, or would have obtained if the claimant had continued to be so employed.

(3) After a lapse of reasonable interval from the date on which an insured person becomes unemployed, paragraph (2)(c) does not apply to the employment described in that paragraph if it is employment at a rate of earnings not lower and on conditions not less favourable than those observed by agreement between the employers and employees or, in the absence of any such agreement, than those recognized by good employers.[3]

2 Only this section about labour dispute still remains

3 *Employment Insurance Act, (1996) ch.23, section 27.*

This section's provisions allowed an unemployed person the right to search for a job deemed to be suitable, thus a job offering good working conditions and competitive pay. Moreover, this section allowed all unemployed a reasonable period of time in which to search for a job in their field. For Georges Campeau and Jean-Guy Ouellet, specialists in Employment Insurance law, with the notions of suitable employment and reasonable delay"(...) the successive legislators wanted to answer the concerns of the workers' movement and make sure that unemployment insurance was not a constraint mechanism to force the unemployed to accept jobs at a bargain."[our translation].[4] But the new definition of suitable employment will take things in a whole other way.

Bill C-38 abolished some elements of this definition and gave the government the power to introduce a new definition by means of a regulation (and thus without passing through the democratic process of the House of Commons). It was thus on January 6th 2013 that the new provisions of the Employment Insurance Regulations entered into force which served to end the possibility of freely choosing one's job and to favour cheap labour.

The changes mostly affect the definitions of a "suitable employment" as well as those of a "reasonable job search effort."The heart of the problem resides in the fact that these definitions differ between different categories of unemployed according to whether they are considered to be deserving or undeserving ones, not based upon their work histories but upon their previous spells of unemployment.[5] According to the new rules, the more an individual has contributed to Employment Insurance and the less he has drawn benefits, the more he has the right to aspire to a good job. **In short, the rights of unemployed persons will depend on the fact that they have had frequent or seldom recourse to Employment Insurance.**

4 Campeau Georges and Jean-Guy Ouellet, "C-38, l'assurance-emploi et l'emploi convenable: un changement majeur du régime", 2012.

5 *Ibid.*

"I was brought up in a certain way. There is no bad job. The only bad job is not having a job"

Jim Flaherty, former Finance Minister.

THE NEW METHOD OF DEFINING SUITABLE EMPLOYMENT

The six following factors shall be used by the Employment Insurance Commission to determine if an employment is suitable for a claimant and thus that he is obligated to seek it:

1 **The claimant's health and physical capabilities.** A claimant could refuse a job if his health prevents him from filling it. It may be that the claimant will have to provide a medical certificate to prove his incapacity to fill a given job, but nothing in the law nor in jurisprudence forces him to.

2 **The hours of work are not incompatible with the claimant's family obligations or religious beliefs.** With several exceptions, all work hours are considered by the Employment Insurance Commission to be suitable. Effectively, "[claimants are] from the beginning of their claim for benefit, not allowed to restrict their willingness to work only to certain hours of work. Rather, from the beginning of their claim they are obligated to be available for, and must seek and accept, all hours of work that are available in the labour market, including full-time, part-time, evenings, nights and shift work, as well as work that may involve inconvenient or long hours, or overtime."[6]

3 **The nature of the work is not contrary to the claimant's moral convictions or religious beliefs.** For example, they may consider it justified that certain people do not seek or refuse to accept a job in the adult entertainment business or, for an animal rights activist to refuse to work in a slaughterhouse. Other legitimate grounds to refuse a job include the requirement to work during a religious holiday.

   As a general rule, the claimant will have to demonstrate that the prospective employer is not ready to accommodate him for the job offered to be considered unsuitable.

4 **Commute time (one hour).** This means that "the daily commuting time to or from the place of work is not greater than one hour or, if it is greater than one hour, it does not exceed the claimant's daily commuting time to or from their place of work during the qualifying period or is not uncommon given the place where the claimant resides, and commuting time is assessed by reference to the modes of commute commonly used in the place where the claimant resides."[7]

   In short, if a claimant already occupied, during the year prior to claiming benefits, a job that required travel time of over an hour, it is assumed

6 Canada, Service Canada, Digest of Benefit Entitlement Principles – Chapter 10.8.2. http://www.servicecanada.gc.ca/eng/ei/digest/10_8_0.shtml#a10_8_2 .

7 *Employment Insurance Regulations – Section 9.002 d.*

that a job requiring more than one hour of travel is suitable for him based on his commute history.

This provision could appear to be just and logical but seen differently, a worker could be ready to make the sacrifice of a longer commute for a better paying job that is interesting and in his field. However, to commute for more than an hour to a job in any field and paying only 70% of his previous job, that is something else; let us say that the sacrifice is more exacting.

To note, they could compel you to mix different modes of transport. However, the Employment Insurance Commission has determined that if a person must walk several kilometers at night or must hitchhike to either travel to or return from work, he could refuse the job as being unsuitable.

5 **The type of work** (responsibilities, tasks, qualifications, experience).

6 **The salary.**

The great novelty introduced is that the government has **created three categories** of unemployed and that **the allowed sought-after salary as well as the type of work (factors 5 and 6)** will vary depending on the category in which one is.

IMPORTANT It is not enough to have contributed during seven of the last ten years; one must also have contributed sufficiently during this time. Effectively, the government is attacking those of lower pay by adding as condition that **one must have contributed the equivalent of 30% of the Maximum Insurable Earnings**. This refers to the maximum annual revenue that is insurable. For the year 2013, the Maximum Insurable Earnings was set at $47,400. What this means is that a person who is paid more than $47 400 cannot be indemnified for more than this amount (the amount of weekly benefits being $501). Consequently, he ceases to make contributions once annual income reaches this limit. This concept is thus also used to determine if a person could be considered a long-tenured worker. To be clear, to be classified in this category a Quebec minimum wage worker must have worked 40 weeks full time (35 hours) during seven of the past ten years. If this person works all year, he must have worked in 2013 at least 27 hours weekly and practically the same number of hours (because minimum wage has evolved and that the Maximum Insurable Earnings also) during seven of the past ten years. This provision has the effect of excluding from this category not only those paid the least, but equally a large number of part-time workers.

TYPE OF CLAIMANT	CRITERIA	WAGE THAT SHOULD BE DEMANDED	TYPE OF WORK THAT SHOULD BE SOUGHT
Long-tenured workers	Having contributed during 7 of the past 10 years (see sidebar on p.6) AND to not have received more than 35 weeks of regular benefits during the past 5 years.	**During weeks 1 to 18**	
		90% of the reference wage	Same occupation
		After 18 weeks	
		80% of the reference wage	Similar occupation
Occasional claimants	To be neither a long-tenured worker nor a frequent claimant.	**During weeks 1 to 6**	
		90% of the reference wage	Same occupation
		During weeks 7-18	
		80% of the reference wage	Similar occupation.
		After 18 weeks	
		70% of the reference wage	Any job for which you are qualified.
Frequent claimants	Have had three or more benefits periods for EI regular (or fishing) benefits AND have received over 60 weeks of regular benefits during the past 5 years.	**During weeks 1 to 6**	
		80% of the reference wage	Similar occupation
		After 6 weeks	
		70% of the reference wage	Any job for which you are qualified.

8 *Employment Insurance Act, ch 23, 27 (2) b.*

Long-tenured workers. Long-tenured workers are those who could, according to the Conservative vision, be defined as being the "deserving unemployed" since they have long contributed to the Employment Insurance regime and have not often made use of benefits. These people are to be least affected by the changes to the Employment Insurance system, though affected they shall be nevertheless. Effectively, they shall be granted more time to search for a job in their field and at decent pay. Nevertheless, though their treatment is to be less worse, this still represents regression and a loss of rights for these unemployed who, prior to these changes to the Act and to the Regulations, were allowed to refuse a job "(...) at a lower rate of earnings or on conditions not less favorable than those observed by agreement between the employers and employees or, in the absence of any such agreement, than those recognized by good employers"[8] and that, during the entire period during which they would receive Employment Insurance benefits.

Frequent claimants. Frequent claimants are those who could be described, according to Conservative government philosophy, as the "undeserving unemployed,"those who unfortunately live in situations of precarious employment and face frequent periods without work. Let's think of seasonal workers, construction workers, school sector employees, temporary agency workers and all those workers who, lacking job security, must navigate a series of fixed-term contracts and live through several periods of unemployment.

Occasional claimants. The treatment reserved to these unemployed also is problematic as they must, like frequent claimants, accept any type of work and for as little as 70% of previous pay. The difference is that they will benefit from a longer delay before being forced into this.

WAGE DETAILS

Reference earnings: This refers to the wage received at the job occupied for the longest number of hours during the last year prior to applying for benefits. Thus, if a person had filled several jobs during the same year, the pay taken into account shall be that of the job for which he had worked the most hours. This may be disadvantageous for several people. Take the example of a student in Education who works as a cashier during studies. Once studies end, she finds a job as teacher and she loses it at the end of the school year. It is possible, depending upon the hours she worked in one or the other post, that her reference pay for her next job will not be that of a teacher but rather that of a cashier.

Full time or part-time: According to the Employment Insurance Commission, the new criteria don't take into account whether a job is full time or part-time; what matters is the hourly wage, not weekly pay and certainly not yearly pay. Effectively, the Employment Insurance Commission could decide that a claimant who had lost a full time job must seek a job at 90%, 80% or 70% of his hourly wage but without taking into account the number of work hours. Thus a claimant would have to accept a part-time job if it happens to respect the hourly wage guidelines.

The only limit to this is that the claimant, having accepted a job, would receive less than he would have received with Employment Insurance benefits; only then would the employment not be deemed suitable.

Example: Carl is a long-tenured worker who lost his job as a joiner for which he worked 35 hours per week at $17 an hour, giving him an annual income of $30,940. According to the new rules, he must seek a job at 90% of his previous wage, which would mean a job offering $15,30 per hour, but the number of hours is not really taken into account. Thus, a part-time job offering just 22 hours per week at $15,30 per hour would be deemed suitable, even though his annual earnings would be cut in half to $17,503.

DETAILS ON THE TYPE OF WORK

Employment in one's field (same occupation): According to the Employment Insurance Regulations, a job in one's field refers to any job in which one worked during the year prior to the benefit period. Thus, if someone worked in several jobs, each of them is considered to be jobs in his field, which could be very much disadvantageous. Effectively, if we take the example of the cashier who became a teacher, a job as a cashier would be considered as much a job in her field as would be a job as a teacher. She would thus have to orient her job search to these two fields. If, for example, a person, desiring to make ends meet, decides to take a second job lasting several weeks, and then becomes unemployed, this person will have to seek out this same type of job, even if it has nothing at all to do with his usual field.

Similar occupation: The worrying question: what is a "similar"job? The Employment Insurance Regulations define similar job as being: "any occupation in which the claimant is qualified to work and which entails duties

that are comparable to the ones that the claimant had during their qualifying period."[9] However, this definition leaves much open to interpretation. If the Employment Insurance Commission considers that an available job to which you did not apply (or had refused) was a similar job, though you did not think so, it shall cut benefits and it would be up to you to justify your opinion that the job was not similar and thus suitable. To do this, you risk having to pass an administrative review and then stand before a new Social Security Tribunal, which as we shall see in the second part, is difficult to access, complex and inequitable.

Any job. Occasional and frequent claimants may be forced to accept any job, as almost anyone (except in health-linked cases) is capable of cleaning a floor, and thus should a floor cleaning post at McDonald's be available, the claimant would be forced to apply to and accept this job, no matter if he is trained as a welder or as an accountant. Moreover, the Regulations specify that should the claimant **not be qualified for a job but the employer offers workplace training for it, he must apply for and accept this job**.

9 *Employment Insurance Regulations, Section 9.003 (2)b.*

IMPORTANT

If a claimant (as he has no choice according the new definition of a suitable employment) accepts a job outside of his field at lower pay and later loses this job, the Employment Insurance Commission will consider this last job to be in the unemployed's record. Thus, this job that was outside of his field will from now on be considered as a job within his field and the associated pay that had been 90%, 80% or 70% of previous pay may become his reference pay (thus requiring that he searches for a job less remunerative still). **In short, this reform puts into place a process of impoverishment and of degradation of professional life.**

WHAT DOES ALL THIS MEAN?

Refusal to take a suitable employment

If a claimant is aware of an available job considered as suitable (according to the category in which he is classified), he must apply for this job and if he gets an offer, he must accept it. If the claimant does not take the opportunity to obtain a suitable employment, the Employment Insurance Commission will impose a sanction of 7 to 12 weeks for refusal to take a suitable employment, which means an immediate cessation of payments to the unemployed up until a maximum of 12 consecutive weeks. After which, payments will resume but these weeks will be lost.

ATTENTION!!!

In the weeks that followed the coming into force of the new Regulations, the Digest of Benefit Entitlement Principles[10] stipulated that a sanction (disqualification) could be imposed for refusing a suitable employment if you inform a potential employer that you are not available but for a short period because you are moving far away or you are returning to your old job, or even if you are pregnant. This was later qualified but there are still possibilities that the Commission will interpret the Regulations more severely.

Also, to tell the prospective employer that you lack experience, to hesitate about the job offer, to ask for too much pay, or to arrive late for an interview may also be considered to be a refusal and thus lead to disqualification.

10 Guide to the intention of Employment Insurance Commission functionaries permit them to determine who has and who has not the right to Employment Insurance benefits.

The Job-Alert system: A tool of control?

In its federal budget omnibus bill, the Conservative government planned to spend $21 million over two years to create a system that would transmit job market information (by e-mail or by voice mail) as well as on jobs available in Canada to the unemployed. Though in and of itself there is nothing wrong with providing information, we worry that this new system will serve as a **means to apply control and additional pressure upon the claimants** who risk having to justify why they did not apply to positions when they were aware of their availability. Effectively, with this system, the Commission will probably know what job offers were sent to a claimant. Thus, it may follow up to see if the claimant had applied for these jobs and if he did not, cut payment to the unemployed for refusing to take a suitable employment. Note that for the moment, registration in the Job-Alert system is optional and claimants are not obliged to register for it, though it looks bad in the eyes of the Commission for someone not to register.

WHO WILL BE HIT BY THESE CHANGES?

Seasonal workers

Seasonal workers are to be the first and hardest hit by this new method of determining suitable employment. By the nature of their work, seasonal workers are forced to resort to Employment Insurance every year as their economic activity is not continuous, lasting only for a fixed period of time, such as fishery workers, tourism sector workers, forestry workers, agricultural workers, construction workers as well as workers in schools. **As they regularly claim Employment Insurance, they risk being categorized as frequent claimants with the expected consequences**, that is, having to seek and accept any job at 70% of previous pay.

Also, what we must consider is that very often, especially in more remote areas, either zero or very few jobs are available during off-seasons. Will they be still obliged to seek jobs every day on fear of benefit cuts?

Seasonal industry employers

Taking it further, it is not only seasonal workers who will be hit by these measures, but equally seasonal industry employers. Effectively, before the reforms, these people were having difficulties recruiting and retaining personnel; with the reforms, this situation can only deteriorate. If we drastically increase the pressure upon the unemployed to force them to find a job at any price, employers risk no longer having workers available when the season resumes. For firms engaged in seasonal economic activity, these modifications brought forth by the Conservative government may lead to **the loss of a local, experienced, available and qualified workforce, as well as an aggravation of their existing problem of recruiting and retaining personnel**.

Regions

Meanwhile, considering that many seasonal industries are located in areas remote from major urban centers, the government has by attacking seasonal work through the Employment Insurance reforms put its viability into jeopardy, and with it the economic survival of some regions.

If the Employment Insurance system forces the claimants to accept any job located at a distance of one hour (or more), many workers may be

Note that if a seasonal worker has a job offer that would prevent him from returning to his usual seasonal work, he will have to make a decision with heavy consequences. If he leaves this job to return to that job he was doing, Service Canada may consider that he has chosen to place himself at greater risk of unemployment, so his voluntarily leave may be considered as unjustified, which implies that all accumulated hours would be erased.

forced out of their regions during the off-season. If these workers leave the region, it is probable that firms may have to face workforce shortages.

Also, by obliging the unemployed to find a job on short notice and at a distance of one hour from their place of residence, we may anticipate a subsequent migration of populations to regions where there is available work, thus abandoning economically disadvantaged regions. In short, **this reform puts into question the continued viability, vitality and survival of some regions**.

Precarious workers

Other than seasonal workers, other types of workers must periodically resort to Employment Insurance, including those described as precarious. In truth, recent decades have seen an explosion of atypical work. No more are we in an era of the permanent Monday-to-Friday nine-to-five job, when job security was the norm. More and more, the tendency is towards part-time work, on call or of fixed-length contracts (consider the proliferation of Temporary Help Agencies). These jobs are generally non-unionized and offer no job security but rather precariousness. Precarious work involves bouts of unemployment. Effectively, as every contract ends, the worker is again unemployed until he finds himself another contract. As such, the measures proposed by the Conservative government **further weakens precarious workers**, who find themselves mostly classified as “frequent claimants.”

Women

Even prior to the reform of 2012, studies showed that only one woman out of three had access to Employment Insurance benefits when unemployed. This is explained by the fact that women work disproportionately in part-time precarious jobs and that they often leave and return to the job market. The recent changes, instead of correcting this systemic discrimination, deepen it.

Also, by categorizing the unemployed, the reform has the effect to exclude many women workers from the best of the three categories (long-tenured workers). Effectively, to be considered as a long-tenured worker, one must, among other things, have contributed during seven of the past ten years. A problem already emerges from the fact that women must often leave the job market to engage in family responsibilities (taking care of children or sick parents) or because they take maternity leave. In fact, they may not have contributed for the seven years required to benefit from the status of long-tenured worker. Moreover, they must, during these seven years, have contributed the equivalent of 30% of the Maximum Insurable Earnings.

However, **as women earn lower salaries and work shorter hours than men, they risk to have not contributed sufficiently to be categorized as long-tenured workers**. They would thus be labelled as frequent or occasional claimants with the resulting treatment.

New arrivals on the job market

The situation in which many women are confronted prevails equally for young, immigrants and welfare claimants. They tend to have low pay and precarious jobs, often with part-time hours (particularly the youth). Also, **they risk having not contributed sufficiently to be considered long-tenured workers**. Moreover, these categories of people all share the characteristic of not having a long work experience, which means that many among them have not contributed during seven of the ten previous years, according to the regulation.

Provinces

We have many reasons to believe that many unemployed will be unable to satisfy the Conservative government’s new demands and that consequently; they will see their benefits disappear. What happens to those whose rights to benefits have been removed? Having no more money, these people **will have no choice but to turn to social assistance programs**. Consequently, the governments of the provinces will have to provide support income to these unemployed.

WHAT IS AT STAKE WITH THE REDEFINITION OF SUITABLE EMPLOYMENT?

Taken together, these changes represent regression for ALL workers:

These changes will put downward pressure on wages

By forcing the unemployed to accept any job at any wage, the federal government manages to systemize the lowering of workers’ salaries as their bargaining power is dramatically weakened. Effectively, if they force the unemployed to take any job at starvation wages without which they would have no income, they place these workers in situations of extreme vulnerability faced with their employers. **And why would an employer offer good working conditions if job seekers must accept whatever job at non-competitive pay?**

They impoverish the unemployed

Employers often want to know someone's pay at a previous job in order to fix that of a prospective employee. If, however, the previous job is one where the unemployed had to accept what was 70% of his previous pay, what would become of him? According to Guy Lacroix, economist at the Université Laval, «below average pay is often interpreted as proof that someone is less productive. He will be offered less. The stigma is difficult to expunge!»[11] And if the person loses this new job, he must then seek a job paying but 70% that of the last job. In short, it is fortunate that provinces have minimum wage laws.

Stigmatization of the unemployed

All claimants must bend to the new job-seeking demands. Also, we can predict fairly accurately (and we have observed this several times) that the Employment Insurance Commission will **exercise an increased and more sustained control over claimants**, promoting the idea that the unemployed are parasitical fraudsters who like to suck at the State's teat. Short of subjecting the unemployed to surveillance and demanding that they account for everything, **the very idea of the right to benefits is put into doubt**. Employment Insurance will no more be seen as a right conferred through the payment of premiums, but rather it will be seen as a privilege. Moreover, with this redefinition of suitable employment and the new demands upon job seekers, one could say that they wish to punish the unemployed who claim benefits to which they have the right and for which they have contributed; as if the job loss alone was not sufficiently difficult.

11 Guy Lacroix in Manon Corneiller, «Emploi: changement des règles du jeu. Le gouvernement conservateur refuse de dévoiler ses intentions sur l'assurance-emploi » Le Devoir, May 19 2012, http://www.ledevoir.com/politique/canada350478/emploi-changement-des-regles-du-jeu .

An infringement of fundamental human rights

Section 23(1) of the Universal Declaration of Human Rights guarantees that «everyone has the right to work, to free choice of employment, to just and favourable conditions of and to protection against unemployment.» The redefinition of suitable employment literally **violates freedom to choose one's work and also takes from the unemployed what little they had to protect them in case of job loss**. With these reforms, they push the unemployed towards whatever work since all the government wants is that this person no longer be a «burden on society.» This concept of work at any price creates not only a climate promoting abuse by employers, but also transforms work from a social value to a form of forced labour. No more will the unemployed be free to choose jobs in their fields offering good working conditions. To Hell with their interests, their values, their training, their skills, their situation or their aspirations; if a post is vacant, they must take it as quickly as possible on pain of having benefits cut. **The choice is simple: you either starve, or accept any kind of job**. Long live freedom of work!

Devalues acquired skills

To force the unemployed to accept any job regardless of their interests and aptitudes will lead to workers ending up in professional fields with nothing to do with their training. This will serve to distance them from their field and to devalue their skills or diplomas, as they would have had a certain lapse of time without exercising their trade. In short, **this measure goes against all discourse about the importance of education and training and is completely counter-productive, as it will serve to devalue the worker's skills and training**.

What will happen if I find a job outside of my field and I leave it to return to my usual one?

If a claimant is forced into accepting any job that is not in his field and he decides to leave that job to return to his traditional one, Employment Insurance Commission will consider this to be a voluntary leave and, unless he proves that this departure was the only reasonable solution, every hour accumulated before this departure will be erased. He thus risks not having sufficient hours accumulated for a subsequent claim.

Note that if a claimant finds a job outside of his field, this job will remain in his file, which will mean that this job may be considered from then on to be a job in his field.

«If you don't take the available work, you don't get EI»

Jason Kenney, former Minister of Immigration who became Minister of Employment and Social Development Canada.

WHAT IS THE GOVERNMENT'S RATIONALE?

In addition to the many negative consequences that will result from the redefinition of suitable employment, nothing concrete justifies it. Effectively, according to Guy Lacroix, economist at the Université Laval, these changes are not founded upon any recent study, and «nothing on the radar justifies anything of the sort.»[12] Josée Ladouceur, CSN economist, concurs, saying that «there is nothing that demonstrates that the unemployed linger on Employment Insurance.»[13] Quite the opposite, only 24.8% of the unemployed complete their benefit period.

Moreover, we can believe that, with such reforms, the government seeks to cut its expenses and thus to make access to Employment Insurance benefits more difficult still. But this is not the case as since 1990, the federal government no longer contributes to Employment Insurance. In fact, only employees and employers finance the Employment Insurance fund. The government does not add a penny.

Then why? These are our hypotheses:

TO PROVIDE COMPANIES A DOCILE AND CHEAP LABOUR FORCE

We have seen how the changes made to the definition of suitable employment will serve to undermine workers' negotiating power and create systemic pressure serving to lower pay, which will be very profitable to employers. Let's also remember that in 1993, the unemployed lost their rights to benefits when they quit their jobs or were sacked for misconduct. These measures helped make workers less mobile and far more docile and cooperative. With these new measures, these tendencies will be amplified.

12 Guy Lacroix in Manon Corneiller, «Emploi: changement des règles du jeu. Le gouvernement conservateur refuse de dévoiler ses intentions sur l'assurance-emploi » Le Devoir, May 19 2012, http://www.ledevoir.com/politique/canada350478/emploi-changement-des-regles-du-jeu .

13 Josée Ladouceur in Manon Corneiller, ibid. .

SACKING EMPLOYMENT INSURANCE

FOR IDEOLOGICAL REASONS

The conservative Right maintains that social programs such as Employment Insurance create citizen dependence upon the State. This is why it becomes necessary to rush the unemployed back to work. Further, according to right-wing philosophy (or neoliberalism), the size of the State must be reduced. This is manifested by a degradation in social programs that require more stringent conditions, are targeted at particular clienteles, or with increasing user fees.

Moreover, they inculcate the idea that unemployment is a matter of personal responsibility. The fault lies with the person if he has lost his job, and it's up to him to get on with it. Social problems such as unemployment are decreasingly analyzed through the prism of collective responsibility and increasingly as a matter of individual responsibility. Here they want to remove the social and collective dimension of unemployment, that implies that unemployment is a social risk to which all paid workers may face, and outside of their will. Can we blame a worker who lost his job because the firm replaced him with a machine? Can we say that it's the fault of a worker if she was laid off because of economic crisis?

To effectively sell these right-wing measures, they promote prejudices so that the population adheres to these ideas to cut social protection. Thus, they say loudly and clearly that the unemployed are lazy who "take the easy way out" and that there are far too many abuses (not proved) by those nasty gamers of the system.

“What we want to do is make sure that the McDonald’s of the world aren’t having to bring in temporary foreign workers to do jobs that Canadians who are on EI have the skills to do”.

Diane Finley, former Human Resources
and Skills Development Minister

TO LOWER EMPLOYER CONTRIBUTIONS

By constraining the right to Employment Insurance in this way, clearly this means that the number of claimants will diminish and several will be subject to sanctions for not having applied to this or that job opening. Already, less than one unemployed out of two have the right to Employment Insurance. If we add to this those who will be excluded due to the redefinition of suitable employment, the government will be tempted to satiate demands by employers desiring a reduction in the contributions employers make. We are headed perhaps towards a regime where only employees will assume the risks of unemployment.

TO CEASE REQUIRING TEMPORARY FOREIGN WORKERS

Former Immigration Minister Jason Kenney, now Minister of Employment and Social Development since 2013, said he did not want Canada to bring in temporary foreign workers to fill posts that could be filled by the unemployed. Too often, jobs filled by these migrant workers are badly remunerative seasonal posts and are very often physically demanding. If we must call upon workers from abroad, it must be because Canadians are not interested in these jobs (or because employers want employees at a bargain). In redefining suitable employment, they will oblige the unemployed to accept all work for which they are qualified. Thus, the government may no longer require foreign workers because the unemployed would have no choice but to do these jobs instead.

TO FAVOUR A MIGRATION OF WORKFORCE FROM EAST TO WEST

Canada’s western provinces have a workforce shortage while the eastern provinces face unemployment. Faced with this, the Conservative government has a very simplistic solution: send the eastern unemployed to work in the West! Job-Alert system envisages sending job offers from outside the unemployed person’s home province. A provision within the Digest of Benefit Entitlement Principles envisages a future where an unemployed person who has worked in another province and who loses his job must from then on search for work and be ready to accept work in both provinces.[14]

14 Employment Insurance Commission, Digest of Benefit Entitlement Principles, Chapter 9.

PART II
OTHER CHANGES TO THE REGIME

1 – THE SOCIAL SECURITY TRIBUNAL (SST):

It's through the omnibus Bill C-38 that the Conservative government has decided to create a new tribunal called the Social Security Tribunal, replacing the traditional organs that dealt with Employment Insurance measures, these being Board of referees and the Office of Umpire.

Prior to 1 April 2013, the date when the new Tribunal begins functioning, if a person did not agree with a decision of the Employment Insurance Commission, he could contest this decision by appealing to the Board of referees. The Board of referees was a decision-making organ composed of three persons: an employee representative, an employer representative, and a president. The unemployed person who, for example, has not the right to Employment Insurance benefits could defend his case before these three people who would arbitrate. Following this, it was possible for the parties to appeal the decision of the Board of referees to the Office of Umpire.

In creating the Social Security Tribunal, the Conservative government abolished the Board of referees as well as Office of Umpire. From this point on, it will be the new tribunal's section of Employment Insurance's General Division that will judge Employment Insurance litigations and it is in the new tribunal's Appeal Division where the General Division's decisions may be appealed.

But what does this change?

A UNIQUE DECISION-MAKER

Decisions by Boards of referees were taken by three people, permitting a more considered and well-argued outcome. With the Social Security Tribunal, this tripartism is ended and the fate of the unemployed person is put into the hands of a single person.

MANDATORY ADMINISTRATIVE REVISION

Before, an unemployed person disagreeing with an Employment Insurance Commission decision could serve an application for revision at that same commission, or he could go directly into appeal before the Board of referees. Many preferred jumping the revision stage as they doubted the impartiality of the Commission (let's not forget, the Commission had to cut as many benefits as possible to fill quotas) and the efficiency of the review process. As revisions ended too often by upholding the Commission's original decision, they served only to prolong the period before the unemployed could receive their first cheque. Henceforth, before appealing a decision before the SST, the unemployed will have to pass through an application for revision.

INCREASE IN WAITING DELAYS

The obligation to pass a revision application will inevitably extend delays before the unemployed person receives a final decision, with subsequent access to benefits. Also, we do not know if the 39 deciders that will be tasked at the Employment Insurance Section will be enough to quickly process the demand. In 2010-2011, 26,769 appeals were heard before the Board of referees, with delays of approximately 30 days.[15] Will the new tribunal be as efficient? Every added delays before a final decision will have catastrophic consequences. During the wait for a first cheque and without any other resources to subsist, unemployed persons will be tempted to abandon their claims and to settle for the first job available - even if the job is way below the norm of 70%, 80% or 90% of the last salary as imposed by the government. Note that the Employment Insurance Commission and the Social Security Tribunal don't have to respect any delay to make their decisions.

> Before, when your Employment Insurance claim was unfairly refused and you wanted to appeal a decision, a simple and relatively quick process was available. Now, it shall be the arbitrariness of an administrative revision, followed with the iniquity of a single tribunal with one judge only and endless delays.

REJECTION OF APPEAL AND REQUEST FOR PERMISSION

The Social Security Tribunal brings new and very heavy consequences. Henceforth, the General Division of Employment Insurance may refuse to hear a case if it considers that the plaintiff does not have a reasonable chance to succeed. What is more, one cannot appeal a decision before the Appeal Division without permission. Thus, the new tribunal now has the power to reject the initiation of an appeal previously presented and heard before the

15 Canada Employment Insurance Commission, Employment Insurance – 2011 Monitoring and Assessment Report, 2012.

Board of referees by necessity, or before an Umpire. This is a grave violation of the rights of unemployed persons.

A MORE RIGID AND DEHUMANIZED STRUCTURE

The structure of the Board of referees had the advantage of allowing unemployed persons – who are not usually represented by counsel – to make their case before three people in a reasonably convivial, human and flexible framework. We believe that the Social Security Tribunal represents a step backward in this sense, as the formalism of the new structure risks to discourage many claimants from asserting their rights. Moreover, according to SST rules, it is up to a member of the tribunal ("the judge") to determine the way in which he treats a case. According to Social Security Tribunal regulations, we understand that the most usual means will be to judge "on file," this means only through analyzing the claimant's file. Should he judge it necessary, the "judge" could invoke a hearing that, according to his desire, could take one of the following forms: telephone conference, videoconference or in person. In short, all this leads us to believe that hearings in person, which before was the rule, risks becoming the exception and this will be to the claimant's disadvantage.

2 – A TECHNOLOGICAL SHIFT

The last few years have seen a tendency at the Department of Human Resources and the Skill Development (which has become the Department of Employment and Social Development since the summer 2013) to move further towards centralization and automation of services to the population. Meanwhile, we have observed a flagrant deterioration of service to citizens. With Bill C-38, the federal government plans to go further down this road by permitting communications, transmissions of documents and services to citizens to take place through electronic means. However, what do we do with people who do not have Internet access, or who are not capable of using new technologies? Will we still be able to speak to a human being? Who will answer the numerous questions from citizens dealing with a very complex Employment Insurance system? And what do we do with illiterate people?

3 – CUTS IN PUBLIC SERVICE POSITIONS

These technological changes are being accompanied with important cuts to the public service. Why keep workers around when a computer can do everything they did? But there are limits to what a machine can do.

During the winter of 2012, the EI processing centres were no longer capable of processing claims in a timely manner, forcing unemployed persons to deal with deficient services and inhumane delays. Instead of learning from their mistakes and realizing that personnel cuts generated dramatic consequences in the lives of citizens, the Conservative government continued its push to abolish 19,200 public service positions between then and 2015.

4 – PILOT PROJECT ON ALLOWABLE EARNINGS

Since August 5th, 2012 a new pilot project has come into effect that has the supposed objective of encouraging the unemployed to work during their benefit period by permitting them to keep a larger portion of their benefits if they work while unemployed. This new national pilot project, though interesting to some claimants, is disadvantageous for several, including those of lower pay. This pilot project replaced Pilot Project No. 17, according to which a claimant could conserve work income up to as much as 40% of weekly benefits or $75, depending on what was the most advantageous.

Of note: this pilot project is scheduled to end on August 1st, 2015 unless renewed.

Example for a low revenue person: Lucy receives benefits amounting to $250 per week. She found a small part-time job that brings her $120 per week. According to the 40% rule, she can earn a total of $100 before any of her benefits are cut. Lucy would thus lose $20 worth of benefits. According to the new formula, they will cut her benefits by the equivalent of half of her earnings, amounting to $60. **She will receive a payment of $190 in Employment Insurance, and thus will lose $40.**

Example of a person having a better salary: Martin receives the maximum total of benefits, $501 per week. While working part-time during his unemployment period, he receives $500 in income from this work. According to the 40% rule, Martin may gain $200 without benefits being cut; he would find himself thus with an unemployment cheque of $201. With the new rule, Martin's cheque would be cut by half of his work pay, amounting to $250. In the end, Martin would gain $49 more than under the previous measure.

5 – IMPLEMENTATION OF NEW RULES REGARDING THE CALCULATION OF BENEFIT RATES (14 TO 22 BEST WEEKS)

This new measure is inspired by a pilot project that was ongoing for several years and that permitted the calculation of benefit amounts based on the 14 best work weeks during the year preceding a loss of employment. This measure was aimed only at certain economically disadvantaged regions (of high unemployment) and only for a limited time. The government decided to apply this measure in all regions by modifying it slightly.

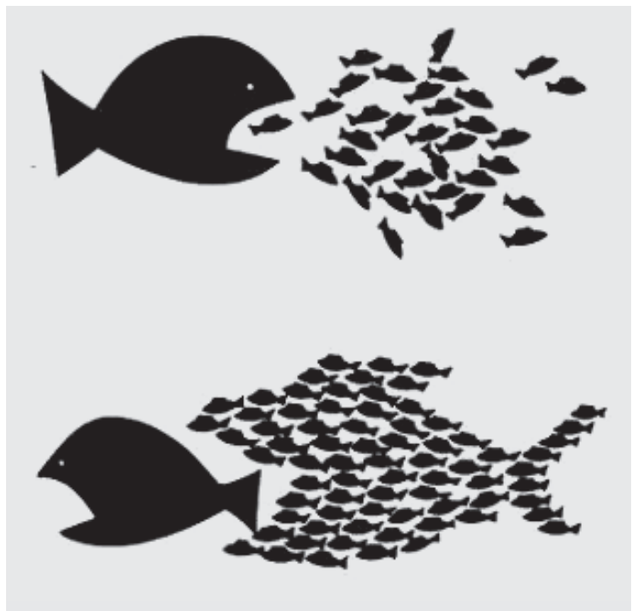
With the new measure, benefit rate calculations shall be done using the 14 to 22 best-remunerated weeks, in function of the regional unemployment rate. For someone benefiting from the pilot project of 14 best weeks, this could amount to a loss since henceforth, his benefits could be calculated based on a larger number of weeks, not his 14 best ones. For seasonal workers who work only a limited number of weeks, this modification may be very disadvantageous compared with the previous pilot project.

"We must ensure that Employment Insurance not be a cushion on which we sit for months, through the year, year after year (…) These people -- there are few -- prefer to take their time and go hunting rather than go to work". [Our own translation]

Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development.

6 – NON-RENEWAL OF THE PILOT PROJECT ON FIVE ADDITIONAL WEEKS

In its 2012 budget, the Conservative government chose not to renew the pilot project on five additional weeks. Notably, this pilot project permitted seasonable workers to avoid the black hole, meaning the period between the end of benefits and their return to work, a period characterized by a complete absence of income. It's yet more harsh news for this category of workers on which several regional economies depend.



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