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**A UNICEF CANADA SUBMISSION REGARDING BILL C-243, THE  
*NATIONAL MATERNITY ASSISTANCE PROGRAM STRATEGY ACT***

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## **INTRODUCTION**

Bill C-243 seeks to improve Canada's national maternity assistance program strategy, a laudatory goal. The bill proposes an amendment to the *Employment Insurance Act* to allow a claimant to begin using her maternity benefits 15 weeks before the week in which her confinement is expected, if she is unable to perform the duties of her regular or usual employment or other suitable employment because her current job functions may pose a risk to her health or to that of her unborn child, and if her employer is unable to modify her job functions or reassign her to another job. The Bill also requires the Minister of Employment and Social Development to conduct consultations and report to Parliament on a national maternity assistance program within two years of the Act coming into force.

UNICEF Canada welcomes the attention that this bill draws to the issue of maternity assistance, and believes that this is an issue which merits strong consideration by Members of Parliament with a focus on the best interests of the child. In contrast to other high-income countries, Canada's maternity and parental assistance is a "mediocre" approach to supporting the early needs of children and parents. Since a Private Member's Bill must be cost neutral it should, in our view, be supplemented by a government bill with sufficient funding and resources to improve maternity and parental assistance so that it better supports children and parents at a critical stage of development, with long-term impacts. This should include a policy to enable mothers working in risky employment to access leave benefits while also maximizing the leave benefits available during the first year of a child's life, without deducting this to offset required pre-birth leave. The investment that would bring Canada up to comparative good practice is very small in relation to the potential impacts on child health and development and family well-being. Mr. Gerretsen, the bill's sponsor, described the changes as "just a first step and only a partial solution to ...a much larger overall problem."

## **ABOUT UNICEF**

As a UN agency, UNICEF is active in 190 countries and we have saved more children's lives than any other humanitarian organization. UNICEF Canada is a Canadian non-governmental organization (NGO) established 60 years ago and is the representative of UNICEF in Canada. We work tirelessly as part of the global UNICEF family to do whatever it takes to ensure that children and young people survive and thrive, and have every opportunity to reach their full potential. Our global reach, unparalleled influence with policymakers, and diverse partnerships make us an instrumental force in shaping a world where the rights of all children are realized.

UNICEF Canada builds awareness, raises funds, and mobilizes Canadians across the country to help save and protect the world's most vulnerable children. We promote public policy and practices in the best interests of children, informed by our global experience and international best practice, to contribute to the fulfillment of children's rights in Canada and around the world.

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the United Nations Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. The only organization named in the United Nations Convention on the Rights

of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We are the world's advocate for children and their rights. For more information about UNICEF, please visit [www.unicef.ca](http://www.unicef.ca).

## **OVERVIEW OF UNICEF CANADA'S POSITION**

UNICEF Canada supports the bill's proposal that would allow an expectant mother to adjust her work conditions as necessary for the health of herself and her unborn child. Neither a mother nor a child should be penalized for these precautionary measures. Therefore, should a mother leave her employment earlier than expected due to health concerns, her child should still benefit from the full 15 weeks of maternity and 35 weeks of parental leave that is provided to those who leave work at a later date. Maximizing time at home with a newborn child in the first year of life is an important part of the bonding and child development process; it would not be in the best interests of children to curtail this time for families who have to initiate maternity leave earlier due to mothers' working conditions. As such, a discussion of the post-birth assistance available to parents must be held in conjunction with a discussion of pre-birth maternity benefits.

**UNICEF Canada recommends that the Government of Canada undertake consultations with provincial and territorial governments and other relevant stakeholders on Canada's parental leave benefits including a policy to support pregnant women who are unable to continue in their employment due to risky working conditions. This should be followed by a government bill with sufficient funding and resources to at minimum protect existing maternity and parental leave benefits and extend a new benefit for mothers in these circumstances.**

**We also support the proposal that the Government of Canada undertake consultations with a focus on the considerations listed in subsection 3(1) of Bill C-243, but with additional criteria:**

- a) the equitable access to programs by different groups of women and children; and**
- a) the child rights impacts of any changes to the national maternity assistance program and the extent to which they are equitable for and in the best interests of children.**

### **Maternity, Paternity, and Parental Benefits**

Canada's *Employment Insurance Act* currently provides 15 weeks of benefits for pregnancy (commonly referred to as maternity benefits) and 35 weeks of benefits for the care of newborn or newly adopted children (commonly known as parental benefits).<sup>1</sup> Each province and territory has further discretion to apply employment standards legislation in its jurisdiction, including leave from work provisions. As a result, the date at which a mother may begin to make use of her maternity benefits in tandem with leave from work provisions is not consistent across the country. This can result in a problematic and discriminatory gap for women whose work poses a hazard to the health of their unborn children. Without express sanction to avail herself of benefits in advance of her confinement, a mother may feel obliged to remain in her current employ, even if it poses a health risk to her unborn child. Bill C-243 is a private member's bill that seeks to address this oversight.

The proposed amendments in Bill C-243 will allow women to obtain Employment Insurance maternity benefits earlier (at 15 weeks instead of 8 weeks prior to the expectant mother's confinement date) and will have positive effect for some women (and their unborn children) who do not have other benefits available during this time period, particularly if they would otherwise remain in risky work conditions. However, the period of benefits available after the birth of the child will be correspondingly reduced. This would curtail the bonding period for the child and limit the salutary effect on child health and development. It may also have negative health and cost implications for new mothers if they must return to work once their Employment Insurance benefits expire. For example, if a woman begins receiving maternity benefits 15 weeks prior to childbirth and receives the full duration of maternity (15 weeks) and parental (35 weeks) of Employment Insurance benefits, these benefits will expire 15 weeks prior to the child turning one year old – a significant period in the life of a newborn at a critical stage of life.

There is substantial international research documenting the health and well-being benefits to children and to parents of at least a year of post-birth leave benefits. Canada's current maternity assistance policy recognizes this, and it is in effect a minimum standard in many high-income countries since many also exceed it.<sup>2</sup> Ensuring that an expectant mother has a safe workplace and, where necessary, the ability to leave her work early for health reasons, is an important provision to ensure the well-being of a child. However, the period of time that a mother spends with her newborn is just as important as the time that she spends safeguarding her health while pregnant. Attachment is an important foundation from which newborns grow and develop. According to the Canadian Pediatric Society, attachment is essential to a child's long-term emotional health, as it helps activate essential emotional functions such as trust, care, and self-control.<sup>3</sup> It also supports breastfeeding and other positive outcomes that can last a lifetime.

A recently published multinational study on parenting and happiness confirmed a predominant link between parental happiness and family policy supports. In countries offering the strongest family policies (including parental leave, paid sick and vacation leave, and work flexibility) a net positive effect on the happiness of parents was observed.<sup>4</sup> The researchers theorized that this can be attributed to the positive effects these social policies had on decreasing the stress and cost of child rearing.<sup>5</sup> This has important implications for child well-being, as improving parental well-being is a strategy to improve child well-being.<sup>6</sup> The study also examined the impact of monthly child income benefits; surprisingly, these were found to have less effect on parental happiness than policies that facilitated a better work-life balance.<sup>7</sup> Furthermore, family policies were not achieved at the expense of non-parents.<sup>8</sup> In fact, the stronger a country's comprehensive family policy package, the happier the general population was.<sup>9</sup>

The availability and cost of childcare for infants under one year old can be an added burden for parents who must return to work before a child's first birthday, and breastfeeding – already at a comparatively low rate in Canada – will be more difficult to sustain. The costs of less access to post-birth benefits may, for some mothers, be persuasive in decisions about whether to take leave from risky working conditions as there will be uncertainty about the risk in some circumstances. Curtailing the availability of maternity and parental leave benefits following birth is not in the best interests of the child. Canada must base maternity assistance policy on children's rights and child-focused evidence as opposed to other subordinate considerations.

Even before the introduction of Bill C-243, parental benefits were a policy issue of federal interest. During the Liberal party's federal election campaign in 2015, they made a commitment to introduce flexible parental benefits. The new Government introduced the new Canada Child Benefit, and has commenced development of a National Early Learning and Child Care

Framework. These measures hold significant promise to support child development and well-being, but parental leave is a policy measure that could measurably improve both parental and child well-being from the start, evidenced by good practice in peer nations and by a growing body of research.

### **Domestic and International Models**

Quebec's benefits system takes a different approach and is based upon an occupational health and safety model, funded through workmen's compensation, which places an obligation on the employer to compensate the expectant mother if alternate non-hazardous work cannot be found. This is in contradistinction to the model proposed in Bill C-243, which is based on an unemployment insurance scheme that places the onus on the expectant mother, and provides less protection for her unborn child overall by compromising the length of time allowed for post-birth bonding and parenting to occur. The Preamble to Bill C-243 states that "...Quebec has a Safe Maternity Experience program that uses preventive measures to allow pregnant and nursing women to continue working and allows for preventive withdrawal in cases where an employer cannot reassign an employee or eliminate the hazards to her health or that of her unborn or breast-fed child." Quebec offers three methods of accommodating women whose pregnancy is put at risk by their employment conditions: first, women are expressly given the choice to begin maternity leave 16 weeks before the expected date of delivery.<sup>10</sup> In fact, employers may even require a medical certificate stating that the employee is fit to work from the sixth week before delivery, so it is widely accepted that pregnancy may affect a woman's ability to complete a certain job.<sup>11</sup> Second, women have the right to protective re-assignment, to have their work responsibilities changed to accommodate their pregnancy or to accommodate breast-feeding, without suffering a concomitant pay cut.<sup>12</sup> Third, women can use 'special maternity leave' - a type of preventive withdrawal whereby a woman may stop working entirely because her health or that of her unborn child may be at risk from her work.<sup>13</sup>

This policy is not without precedent. In the European Union, the European Agency for Safety and Health at Work issued the Pregnant Worker's Directive in 1992.<sup>14</sup> It provides for two types of measures for health and safety and protection against unfavourable treatment.<sup>15</sup> It provides for specific forms of leave for pregnant workers and women who have recently given birth.<sup>16</sup> Individual European countries have since amended their national laws to ensure they are aligned with this directive, but various approaches have been taken. The following is only a sampling of some of the diverse policies adopted by different countries, many of which suggest better options for Canada:

In Belgium, a 'protection of maternity' leave is provided if an employee must be withdrawn from her usual tasks, and where the employer has no alternate activities to assign her.<sup>17</sup>

In Finland, the same rules apply to women who are on leave due to a pregnancy-related sickness as to employees on standard sick leave.<sup>18</sup>

In Germany, the *Maternity Protection Act* does not allow employees to perform work that is dangerous to themselves while pregnant or to their unborn child.<sup>19</sup> Pregnant women have the right to a fully paid leave six weeks before childbirth in these circumstances, and to special protection while breastfeeding.<sup>20</sup>

In Hungary, women are entitled to twenty-four weeks of maternity leave, and they can decide on the starting date of this leave themselves.<sup>21</sup> Should a woman not wish to take this leave early, but holds a position in which she is unable to work while pregnant, she must be offered a job

appropriate for her state of health.<sup>22</sup> If that cannot be managed, then she is given leave from work, but will still be paid her original wages.<sup>23</sup>

In Iceland, employers are obliged to make necessary arrangements to ensure a pregnant woman's safety, which can include changing her working conditions, hours or tasks, or granting a leave of absence, without reducing her wages or undermining her other job-related rights.<sup>24</sup>

In Norway, pregnant women have the right to up to 12 weeks of pregnancy leave while they are pregnant.<sup>25</sup> Additional weeks off before the birth can be taken using sick leave, paid through the national insurance system.<sup>26</sup>

In Sweden, pregnant women have been allowed to use sickness benefits, as opposed to using their limited parental leave benefits, for when they are prevented from working due to pregnancy-related problems.<sup>27</sup> This became part of case law in 2009 when an appeal court found that four pregnant women had been directly discriminated against in an earlier ruling denying them sickness benefits.<sup>28</sup>

There is clearly significant variance in how pregnant women who must adjust their work schedule due to pregnancy-related health concerns are compensated during this time. Some models use employment insurance benefits and see this as an issue that can be addressed by using regular sickness benefits, pregnancy/maternity benefits, parental EI benefits, or some combination of these. Yet others classify this as an occupational health and safety measure, with remuneration being provided through workers' compensation. In sum, while Bill C-243 contains some positive elements and is a productive first step, it doesn't go far enough in achieving some of the important objectives set out in the Preamble – such as "...a woman's pregnancy should not act as a barrier to full participation in the workplace, adversely affect her employment, inflict financial hardship or compromise the pursuit of her chosen career." While extending the eligibility date from which women working in a dangerous environment can begin maternity leave, the bill would leave the total amount of maternity or parental leave unchanged. Both the percentage of income received and the total weeks that can be collected would remain the same. The negative implications for mothers and children justify an approach that does not deduct post-birth bonding time for women who are compelled by risky working conditions to leave earlier.

We conclude that there is significant recognition both in Quebec and across Europe that pregnant women and their unborn child may face risks in particular workplaces, and that child-focused measures to accommodate them in these instances are an important and valid component of a benefits plan. UNICEF Canada therefore recommends that the Government of Canada advance a policy allowing pregnant women to adjust their current employment, as needed and without repercussion, without costing their child bonding time after birth.

We also support the proposal that the Government of Canada undertake consultations with a focus on the considerations listed in subsection 3(1) of Bill C-243:

- a) the current demand for a national maternity assistance program;
- b) the adequacy of the current federal and provincial programs oriented to assisting women during pregnancy;
- c) the financial and other costs of implementing a national maternity assistance program;
- d) the potential social and economic benefits of a national maternity assistance program; and
- e) any legal, constitutional or jurisdictional implications of implementing a national maternity assistance program.

To these criteria should be added:

- f) the equitable access to programs by different groups of women and children;  
and
- g) the child rights impacts of any changes to the national maternity assistance program and the extent to which they are equitable for and in the best interests of children.

The proposed consultation process and subsequent report will allow for a fuller discussion on salient considerations, including different types of legislation or legislative changes that may address the range of needs experienced by women who require workplace accommodation or are unable to work during their pregnancy, and their children.

## **CONCLUSION**

The package of maternal, paternal and parental benefits that Canada provides is extremely important for the well-being and happiness of Canada's parents and children. However, there is room for improvement, as Bill C-243 points out. Allowing pregnant women a clear and viable option to adjust their work tasks or leave their work early where their employment poses a risk to their unborn child is a valid consideration – and one that has already been codified in policies in peer jurisdictions. Canada should look to do so as well, but without compelling a corresponding reduction of post-birth parental leave that compromises the child's bonding and healthy development process. Canada should consider these issues through a lens that gives priority to the best interests of children, above all other considerations.

Respectfully submitted on behalf of UNICEF Canada by:

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