

**BILL C-56: AN ACT TO AMEND
THE EMPLOYMENT INSURANCE ACT AND TO MAKE
CONSEQUENTIAL AMENDMENTS TO OTHER ACTS
(FAIRNESS FOR THE SELF-EMPLOYED ACT)**

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LEGISLATIVE HISTORY OF BILL C-56

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	3 November 2009
Second Reading:	5 November 2009
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SENATE

Bill Stage	Date
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N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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BILL C-56: AN ACT TO AMEND THE EMPLOYMENT INSURANCE ACT
AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS
(FAIRNESS FOR THE SELF-EMPLOYED ACT)*

BACKGROUND

Bill C-56, An Act to amend the Employment Insurance Act and to make consequential amendments to other Acts (short title: Fairness for the Self-Employed Act), was introduced in the House of Commons on 3 November 2009 by the Minister of Human Resources and Skills Development, the Honourable Diane Finley. It received second reading on 5 November 2009, and was referred to the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities on 19 November 2009. On 27 November 2009 the committee reported the bill back to the House with a number of technical amendments. On 10 December 2009 the committee held a meeting to consider the actuarial soundness of the bill, and the same day the bill passed third reading, with a motion of the House specifying that the Employment Insurance Commission provide special monitoring of the new program and that the Canada Employment Insurance Financing Board consider whether contributions correspond with the cost of benefits offered to Quebec's self-employed workers. The bill received Royal Assent on 15 December 2009.

Bill C-56 amends a number of provisions in the *Employment Insurance Act*,¹ but its focus is the establishment of a scheme to provide for the payment of special benefits – maternity benefits, sickness benefits, compassionate care benefits and parental or adoption benefits – to self-employed persons, who are not currently entitled to receive them. Bill C-56

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

¹ *Employment Insurance Act*, S.C. 1996, c. 23 [EI Act].

does not provide self-employed people with access to regular employment insurance (EI) benefits.²

The maximum period of benefits for self-employed persons is the same as for other employed persons: 15 weeks for maternity benefits, 35 weeks for parental or adoption benefits, 15 weeks for sickness benefits and 6 weeks for compassionate care benefits. Self-employed persons also receive benefits at the same rate as employed persons: 55% of their average insured earnings, up to a yearly maximum insurable amount of \$42,300, making the weekly maximum benefit \$447.

Under this bill, self-employed persons must contribute to the EI scheme for at least one year before they may claim benefits. To have access to EI special benefits, self-employed persons will need to have earned a minimum of \$6,000 in income from self-employment during the previous calendar year. Self-employed persons will also be able to withdraw from the EI scheme at the end of any taxation year, as long as they have not claimed benefits. Once they claim benefits, they will have to continue contributing to the scheme as long as they are self-employed.

Self-employed persons who decide to participate in the scheme will pay premiums based on the same rates as employed persons. They will not have to pay the employer's portion of the premium, which is 1.4 times higher than the employee portion. In 2009, the premium rate is \$1.73 for each \$100, up to a maximum of \$42,300 in annual earnings. Budget 2009 stipulates that the rate will remain the same in 2010.³

Self-employed persons who reside in Quebec may access provincial and federal benefit programs. They will continue to receive maternity and parental benefits under the Government of Quebec's Parental Insurance Plan, to which both employed and self-employed persons must contribute. In addition, self-employed persons in Quebec will be eligible for the sickness and compassionate care benefits offered by the Government of Canada's EI scheme. If they decide to contribute to the federal program, they will pay the same EI premiums as other workers in Quebec, where rates are lower than elsewhere in Canada because maternity and parental benefits are funded by the provincial plan. The reduction is \$0.35 per \$100 in earnings

² Self-employed persons who earn income from fishing are already entitled to fishers' benefits under Part VIII, "Self-Employed Persons Engaged in Fishing," of the *Employment Insurance Act*.

³ See EI Act, Part III. See also Kevin B. Kerr, *Employment Insurance Premiums: In Search of a Genuine Rate-Setting Process*, PRB 03-41E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 February 2009, <http://www.parl.gc.ca/information/library/PRBpubs/prb0341-e.pdf>.

in 2009, which means that the premium rate is \$1.38 per \$100 in earnings. The reduction calculated for 2010 has been raised to \$0.37 per \$100 in earnings, which means that the premium rate for self-employed persons in Quebec who join the scheme in 2010 will be \$1.36 per \$100 in earnings.

In 2008 there were about 2.6 million self-employed persons in Canada, representing 15.4% of the total employed population. Table 1 shows the number and proportion of self-employed persons by sex and industry.

Table 1 – Number of Self-Employed Persons and Their Proportion of the Total Employed Population, by Sex and Industry, Canada, 2008

Characteristics	Number (thousands)	Proportion
Sex		
Males	1,720	19.1
Females	910	11.2
Industry – Goods		
Agriculture	204	62.2
Construction	372	30.2
Forestry, fishing, mining, oil and gas	48	14.2
Manufacturing	101	5.1
<i>Total, goods</i>	<i>725</i>	<i>18.0</i>
Industry – Services		
Professional, scientific and technical services	398	33.2
Business, building and other support services	166	24.2
Transportation and warehousing	147	17.1
Finance, insurance, real estate and leasing	179	16.6
Information, culture and recreation	124	16.3
Health care and social assistance	234	12.3
Trade	290	10.8
Accommodation and food services	90	8.4
Educational services	52	4.4
Other services	225	30.0
<i>Total, services</i>	<i>1,905</i>	<i>14.5</i>
<i>Total, industry</i>	<i>2,630</i>	<i>15.4</i>

Source: Statistics Canada, *Labour Force Survey*, CANSIM Table 282-0012.

There are more self-employed men than women, and such industrial sectors as agriculture, professional, scientific and technical services, and construction are served by a higher proportion of self-employed persons than are manufacturing, educational services, utilities, and public administration.⁴

DESCRIPTION AND ANALYSIS

A. New Part VII.1 of the *Employment Insurance Act*: Creation of a Special Benefits Scheme for Self-Employed Persons (Clause 16)

Bill C-56 adds to the *Employment Insurance Act* a new Part VII.1, which outlines a special benefits scheme for self-employed persons. In general, the language in the new provisions mirrors that used to describe special benefits in existing legislation, but new section 152.01(1) defines several additional terms to be used in the scheme. A “self-employed person” is defined as an individual engaged in a business or an individual who is employed by a corporation in which that person controls more than 40% of the voting shares.⁵ A “business” is defined as “a profession, calling, trade, manufacture or undertaking of any kind” which does not include an office or employment. These broad definitions are meant to encompass a wide range of self-employed EI applicants.

In addition, Bill C-56 amends other legislation related to the newly created Part VII.1 of the Act,⁶ as well as several sections of the *Employment Insurance Act*.

B. Ability to Opt into Benefits Scheme (Clause 16)

In order to be included in this new scheme for special benefits for self-employed persons, an individual must be a Canadian citizen or permanent resident and must enter into an agreement with the Canada Employment Insurance Commission. Under new sections 152.02(2) and (3), an agreement with the commission is to be “of indefinite duration,” and the conditions of the agreement are to be set by the commission. Once self-employed people receive special

⁴ Proportions for utilities and public administration are so low that, for data confidentiality reasons, they are not publishable.

⁵ The second part of this definition is contained in section 5(2)(b) of the current EI Act.

⁶ For example, clause 2 of Bill C-56 incorporates section VIII of the *Employment Insurance Act*, which sets out a separate regulatory scheme for self-employed persons engaged in fishing, into the definition of “benefits” under the Act.

benefits under the *Employment Insurance Act*, they must continue to pay premiums for as long as they are self-employed.

New section 152.02(4) provides that an agreement is terminated if an individual gives proper notice of termination to the commission before receiving any EI benefits. An agreement can also be deemed terminated under circumstances set out in the regulations.

C. Special Benefits Available to Self-Employed Persons (Clauses 2 and 16)

The following sections created by Bill C-56 give self-employed persons the access to special benefits under the *Employment Insurance Act* that is currently available to employed persons:

- The amended definition of “benefits” in section 2 of the *Employment Insurance Act* includes self-employed persons in the existing special benefits scheme, under new part VII.1 of the Act. As a result, self-employed persons are entitled to the same maximum periods of benefits as are other employed persons under section 12 of the Act: 15 weeks for maternity benefits, 35 weeks for parental or adoption benefits, 15 weeks for sickness benefits and 6 weeks for compassionate care benefits.
- Self-employed persons also receive benefits at the same rate as employed persons: 55% of their average insured earnings, as described in sections 14 to 17 of the Act, up to a yearly maximum insurable amount calculated annually by the Employment Insurance Commission under section 4 of the Act. This amount is now \$42,300, making the current maximum weekly benefit \$447.
- Illness, Injury, or Quarantine: New section 152.03 provides that self-employed persons who stop work because of illness, injury or quarantine are entitled to benefits. If they receive provincially administered benefits for the illness, injury or quarantine, their benefits under the *Employment Insurance Act* will be reduced or eliminated as prescribed, and if they earn money during a period when they receive benefits, those earnings will be deducted from the benefits payments.
- Pregnancy, Birth or Adoption of a Child: Under new section 152.04, self-employed persons are entitled to EI benefits during pregnancy that match those provided to employed persons under section 22 of the *Employment Insurance Act*. New section 152.05 provides self-employed persons with the same parental benefits available to employed new parents under section 23 of the Act. In addition, new section 152.05(15) provides that the self-employed person making a claim for parental benefits (or the other parental claimant) is not required to serve the two-week waiting period before benefits begin or may defer the waiting period if the other parental claimant (self-employed or not) is serving or has elected to serve the waiting period. Thus, only one person need serve the waiting period before benefits can be accessed.

- Compassionate Care Benefits: Under new section 152.06, self-employed persons may receive EI benefits for compassionate care of a family member which match those provided to employed persons under section 23.1 of the Act. In new section 152.01(1), “family member” is defined as a spouse or common-law partner, a child of the individual or partner, a parent of the individual or partner, and other persons to be prescribed.

D. Qualifying for Benefits as a Self-Employed Person (Clause 16)

As previously discussed, new section 152.07 provides that to qualify for benefits, a self-employed person must have entered into an agreement with the employment insurance commission at least 12 months before the claim, unless a different time period has been prescribed. According to new section 152.08(1), that qualifying period must be the year immediately prior to the year during which the self-employed person claims benefits. New section 152.08(2), as amended by the House of Commons Standing Committee on Human Resources, Skills Development, Social Development and the Status of Persons with Disabilities, stipulates that self-employed earnings during the one-year qualifying period can only be taken into account for the initial claim for benefits, meaning that a subsequent benefits claim must be based on income earned after the one-year qualifying period.

In addition, in order to qualify for benefits under new section 152.07, the agreement with the commission must not have been terminated or deemed to have been terminated, the person must have an interruption of earnings from self-employment, and his or her income in the qualifying 12-month period must be at least \$6,000 (or, if the person has committed a violation of the *Employment Insurance Act*, a greater amount if multiplied by a penalizing multiplier which grows for increasingly serious violations of the Act).

New section 152.1(1) provides that a benefit period is established in the same manner used for employed claimants under section 9 of the *Employment Insurance Act*. In addition, applicants must establish that they are qualified to receive benefits and must supply information as directed by the commission regarding their employment circumstances and the interruption of their earnings. Under section 50 of the Act, the commission is already empowered to require additional information about an individual’s claim for benefits at any time.

New section 152.09 provides that a person must elect to qualify for benefits either as an individual with insured employment or as a self-employed person under the new Part VII.1 of the *Employment Insurance Act*. The election is binding during the benefit period established in relation to a specific claim for special benefits, i.e., relating to a certain pregnancy, illness, or

period of care of a family member. An individual cannot elect to move from the scheme for employees to the scheme for self-employed persons during a specific benefit period.

E. Calculation of Self-Employed Income (Clause 16)

A new section 152.01(2), created by Bill C-56, outlines how the income of a self-employed person is to be calculated. A self-employed person's income is equal to the year's income from the business (unless more than 50% of gross revenues come from rent for land or buildings) minus all losses sustained by the self-employed person in the year in order to operate that business. The income of persons employed by a corporation they control is the value of their insured earnings had their earnings been insurable as employees. The income of a status Indian who is a self-employed person and living on a reserve is to be calculated according to the *Indian Act*,⁷ without regard to income exempt from taxation under the *Income Tax Act*.⁸

F. Unemployment for a Self-Employed Person (Clause 16)

New section 152.01(4) provides that the regulations will define or determine a week of unemployment for a self-employed person.

G. Rate for Weekly Benefits (Clause 16)

New section 152.16 creates a rate for weekly benefits of 55% of income payable to self-employed persons, the same rate applicable to employed claimants under section 14(1) of the *Employment Insurance Act*. The formula used to calculate income combines any self-employed earnings with any earnings from income included in the other parts of the Act to a maximum amount set under the Act. New section 152.17(5) mirrors section 17 of the Act, both of which set the maximum rate of weekly benefits at 55% of the maximum insurable earnings for the previous year. Like section 16 of the Act, new sections 152.17(1) to (4) increase benefits paid to low-income claimants with dependants.

New section 152.18 provides that where earnings are made during periods of unemployment, self-employed persons' EI benefits be subject to the same deductions as those stipulated for employed persons in section 19 of the Act. However, while section 19(4) of the

⁷ *Indian Act*, R.S.C. 1985, c. I-5.

⁸ *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

Act exempts from EI benefits earnings and allowances payable to employed claimants for attending courses, the costs paid by the self-employed for courses and programs are not exempted from self-employed earnings. Presumably, these would be categorized as business expenses or earnings where appropriate.

Self-employed persons in prison or outside Canada are not entitled to receive benefits under new section 152.2.

H. Premiums (Clause 16)

New section 152.21 provides that self-employed persons who enter into agreements with the commission will be governed by the premium rate set under section 66 of the *Employment Insurance Act*. According to section 152.21(2), they will pay the lesser of a) the self-employed earnings for the year and b) the maximum yearly insurable earnings minus any insurable earnings. New section 152.21(3) provides that the self-employed person must pay premiums for the entire year during which an agreement is entered into or terminated, regardless of when the agreement was begun or terminated during that year.

I. Premiums and Income Tax (Clause 16)

New section 152.22 contains provisions that are almost identical to those in section 30 of the *Canada Pension Plan*.⁹ As is the case for people who pay Canada Pension Plan premiums, a self-employed person who pays EI premiums must file an income tax return on the annual earnings on which the premiums were paid. In addition, a trustee in bankruptcy, an assignee, a liquidator, an agent, etc., dealing with the property, business, estate or succession, or income of a self-employed person must file an income tax return under new section 152.22(3). This provision is broad enough to include a business bankruptcy as separate from a personal bankruptcy of the self-employed person. The tax return for a self-employed person under new section 152.23 should include an estimate of the EI premiums to be paid, which the minister of National Revenue will then assess. The minister will send a notice of assessment of EI premiums payable and any interest or penalties to the self-employed person under new section 152.24.

New section 152.25 provides that self-employed persons shall pay the entire amount of their premiums for the year by the balance-due date, unless they are required to pay

⁹ *Canada Pension Plan*, R.S.C. 1985, c. C-8.

their taxes by instalment under sections 155 and 156 of the *Income Tax Act*. Under new section 152.25(2) of the *Employment Insurance Act*, self-employed farmers and fishers shall pay two thirds of their self-employed EI premiums by December 31 of each year and the remainder by the balance-due date for the taxation year. Self-employed persons other than farmers and fishers may, under new section 152.25(3), pay premiums by quarterly instalments. The amount to be paid may be calculated based on estimated self-employed earnings for that year, the preceding year, the year before that, or a combination of the earnings in the preceding year and the year before that year, with the balance to be paid on the balance-due date. Self-employed persons, including farmers and fishers, under new sections 152.25(2) and (3), are not required to pay premiums that would otherwise be due after their death.

J. Violations for Self-Employed Persons (Clause 16)

New sections 152.07(2) to (7) provide that self-employed persons accumulate violations when the violations are issued by the Employment Insurance Commission. The proposed section mirrors the provisions applicable to employed claimants under sections 7.1(3) to (7) of the *Employment Insurance Act*.

K. Penalties

Like section 34 of the *Canada Pension Plan*, new section 152.26 of the *Employment Insurance Act* provides for the payment of interest on unpaid premiums or instalments with applicable rates to be set by regulation by the minister of National Revenue. In addition, new section 152.27 provides for penalties to be paid for a failure to file taxes of up to 5% of the part of the premium owing, or, in the case of people administering property or business for a self-employed person, up to \$50.

New section 152.28 provides that the sections of the *Income Tax Act* governing administration, enforcement, assessments, payment of taxes, and appeals, including appeals to the Tax Court of Canada and the Federal Court of Canada, apply to EI premiums for the self-employed with any necessary modifications that circumstances require.

New section 152.29 provides that arrears will be paid first to amounts owing under the *Canada Pension Plan*, second to amounts owing under the *Employment Insurance Act*,

and third to the payment of income taxes under the *Income Tax Act*. New section 152.3 provides that overpayments will be refunded by the minister of National Revenue.

New section 152.31 provides for the inclusion of self-employed persons in existing provisions of the *Employment Insurance Act* relating to debts, audits, failure to submit returns, and making false claims. New section 152.32 provides that a person who fails to file the required income tax return is liable on summary conviction to a fine of at least \$25 for each day the tax return is not filed to a maximum of \$1,000.

L. Regulations and Review (Clauses 16 and 17)

New section 152.33 allows the commission to make regulations, with the approval of the Governor in Council, with respect to special benefits for the self-employed. New section 152.34 requires a review by the minister of the administration and operation of Part VII.1 of the Act five years after it comes into force.

M. Interaction with Provincial Plans (Clauses 10, 16 and 17)

New clause 153.2 provides that the Employment Insurance Commission may, despite any other provision of the *Employment Insurance Act*, make any regulations it considers necessary in order to implement an agreement between the Government of Canada and any province paying special benefits to its residents which would duplicate the special benefits available under the Act. Newly amended section 153.2(2)(c), and new sections 152.03(2), 152.04(3), 152.05(11) and 152.06(9) also provide the commission with the power to make regulations reducing or eliminating special benefits payable to self-employed persons if those special benefits are duplicated by benefits payable to the self-employed person under provincial law. Clause 10 amends section 69(2) of the Act to provide the commission with the ability to make regulations reducing premiums for the self-employed if they receive duplicate special benefits under a provincial plan which would reduce or eliminate their EI special benefits.

New section 152.11(11) provides that self-employed persons may be able to extend their benefit period if they were unable to qualify for special benefits as a result of being in receipt of payments under provincial law because they had to stop working in order to avoid danger to themselves, their unborn child, or a woman's breastfeeding child.

These provisions are currently applicable to the province of Quebec, where a special benefits insurance scheme is in place for the self-employed. As previously discussed, if a self-employed person residing in Quebec decides to contribute to the federal program, he or she will pay the same EI premiums as other workers in Quebec, where rates are lower than elsewhere in Canada because maternity and parental benefits are funded by the provincial plan, unless regulatory changes are introduced by the commission.

N. Access to Benefits in 2011 at the Earliest (Clauses 19 and 37)

Clause 37, the coming into force provision of Bill C-56, provides that this Act came into force on 1 January 2010, since it received Royal Assent on 15 December 2009. The transitional provisions in clause 19 of Bill C-56 provide that a self-employed person who is able to enter into an agreement with the Employment Insurance Commission between 1 January 2010 and 1 April 2010 may receive benefits commencing 1 January 2011 at the earliest. Under clause 19, new sections 152.25(2) and (3) do not come into force until 1 January 2011, which means that provisions allowing for the payment of premiums in instalments will not come into force until after 1 January 2011.

COMMENTARY

Extending EI benefits to self-employed persons has been the subject of study by parliamentary committees in the past;¹⁰ for example, in 2005 the House of Commons Standing Committee on the Status of Women recommended extending parental and maternity EI benefits specifically to the self-employed.¹¹ Governments since 2001 have responded by promising

¹⁰ See, for example, the following two reports recommending EI for the self-employed: House of Commons, Standing Committee on Human Resources Development and the Status of Persons with Disabilities, *Beyond Bill C-2: A Review of Other Proposals to Reform Employment Insurance*, May 2001, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1032161&Language=E&Mode=1&Parl=37&Ses=1>; and House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Restoring Financial Governance and Accessibility in the Employment Insurance Program*, February 2005 (Recommendation 22), <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=38&Ses=1&DocId=1624652&File=0>.

¹¹ House of Commons, Standing Committee on the Status of Women, *Interim Report on the Maternity and Parental Benefits Under Employment Insurance: The Exclusion of Self-Employed Workers*, November 2005, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2148183&Language=E&Mode=1&Parl=38&Ses=1>.

further review of the issue.¹² Some commentators have called for a complete re-design and overhaul of the EI system in order to fix what they describe as systemic problems with the system. Some have urged that all EI benefits be made available to the self-employed.¹³

Several witnesses who appeared before the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities during hearings on Bill C-56 argued that the bill should be a first step to providing self-employed workers with greater EI benefits.¹⁴ The committee also heard testimony from some who contended that the impacts of expanding the EI program through Bill C-56 have not been studied enough.¹⁵ A number of witnesses expressed concern that the proposed program is optional and that it may not be designed to cover the cost of benefits. They argued that the Quebec Parental Insurance Program model of maternity and parental benefits, which provides higher benefits and allows greater maximum insurable earnings than the scheme proposed under Bill C-56, requires no waiting period, and is mandatory for all income earners, should be adopted.¹⁶

¹² See the following reports: Canada, *Response of the Government, pursuant to Standing Order 109, to the Third Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities: "Beyond Bill C-2: A Review of Other Proposals to Reform Employment Insurance,"* 2001; Canada, *Government Response to the Second and Third Reports of the Standing Committee on Human Resources, Skills Development and the Status of Persons with Disabilities: "Restoring Financial Governance and Accessibility in the Employment Insurance Program,"* 26 May 2005, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=1845241&Language=E&Mode=1&Parl=38&Ses=1>; Canada, *Government Response to the Fifth Report of the Standing Committee on the Status of Women: Interim Report on the Maternity and Parental Benefits Under Employment Insurance: the Exclusion of Self-Employed Workers,* 18 September 2006, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2335206&Language=E&Mode=1&Parl=39&Ses=1>.

¹³ See, for example, Institute for Research on Public Policy, *Policy Options*, September 2009, <http://www.irpp.org/po/index.htm> (issue on employment insurance), and especially, in that issue, Jeremy Leonard, "Time to get real on EI reform"; Thomas J. Courchene and John R. Allan, "A short history of EI, and a look at the road ahead"; and Janice MacKinnon, "EI: the law of unintended consequences."

¹⁴ See, for example, House of Commons, Standing Committee on Human Resources, Skills Development, Social Development and the Status of Persons with Disabilities [HUMA], *Evidence*, 2nd Session, 40th Parliament, 24 November 2009, 1635 (Stephen Waddell, National Executive Director, Alliance of Canadian Cinema, Television and Radio Artists).

¹⁵ *Ibid.*, 1640 (Laurell Ritchie, National representative, Canadian Auto Workers Union).

¹⁶ *Ibid.*; HUMA, 1635 (Stephen Waddell); and HUMA, 1655 (Barbara Byers, Executive Vice-President, Canadian Labour Congress).