Employment Insurance Special Benefits for Self-Employed People

The Impact on Artists and Cultural Workers

April 2010

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The opinions and interpretations in this publication are those of the author and do not necessarily reflect those of the Government of Canada. This project is funded by the Government of Canada’s Sector Council Program.

Canada

Introduction

The Cultural Human Resources Council (CHRC) brings together individuals, organizations and businesses from live performing arts, book and magazine publishing, visuals arts and crafts, film and television, broadcasting, digital media, music and sound recording, and heritage. Since its launch in 1995, CHRC has made major strides in strengthening the capacity of the cultural sector to address its training needs and human resources issues. In its 2004 review, *Building on Success*, CHRC identified access to social benefits for the self-employed as one of three key priorities for the sector in the next five to ten years.

"Self-employment is an employment status increasingly found across the entire labour force: it has been and remains a mainstay of many in the culture sector who represent 6.3% of all self-employed in Canada. It is necessary to devise approaches to support self-employed cultural workers by developing a mechanism, within government or the sector itself, to improve access to basic social benefits …."

According to 2001 census data and various statistical studies on the cultural labour force,[1] the number of professional artists is growing rapidly; a high proportion of artists are self-employed; artists are highly-educated but their earnings remain low; and their income can fluctuate dramatically from year to year. In addition, most artists do not have access to the social benefits generally enjoyed by other Canadian workers, including paid vacations and holidays, income maintenance when there is no work or they are sick; maternity/paternity and adoption leave; medical, dental and life insurance; and pension plans.

In November 2009, the Canadian government announced that self-employed Canadians will be able to enroll in the Employment Insurance program and become eligible to receive these EI special benefits effective January 1, 2011:

- Maternity Benefits
- Parental Benefits
- Compassionate Care Benefits
- Sickness Benefits.

This report examines this new program to determine its relevance for the cultural community and the likelihood that freelance artists and other cultural workers will enroll.

[1] Cultural Human Resources Council, *Canada's Cultural Sector Labour Force, 2004*; Hill Strategies Research Inc, A Statistical Profile of Artists in Canada, September 2004

Self-employed people can now receive Employment Insurance special benefits

Employment Insurance provides temporary income support to those who are between jobs or laid off; cannot work for reasons of sickness, childbirth, or parenting a newborn or newly adopted child; or who are providing care to a family member who is gravely ill. Most people who work as employees are covered by the program which is funded by statutory deductions from wages and a contribution from employers.

Regular benefits are paid to employees who lose their job through no fault of their own and are available for and able to work, but cannot find a job. In 1971, the program began to pay maternity and sickness benefits, parental benefits were added later. In 2001, the parental leave benefit period was extended and the program was expanded to provide compassionate care benefits. Together, the maternity, parental, sickness and compassionate care benefits are known as special benefits.

Self-employed Canadians may now participate in the EI program and, beginning January 2011, may be eligible to receive special benefits. Self-employed people continue to be ineligible to receive regular EI benefits.

Eligibility
To qualify, a self-employed individual must be a Canadian citizen or permanent resident who is operating her/his own business, or is the employee of a corporation who is not eligible for the regular EI program because s/he controls more than 40 percent of the voting shares. Some successful artists operate such a personal services corporation.

The self-employed individual must enter into an agreement with the Employment Insurance Commission. The agreement must be in effect for 12 months before a claim can be made, except if a person registered on or before April 1, 2010, in which case a claim may be filed anytime after January 1, 2011.

Once a self-employed person has received benefits, they cannot cancel the agreement. Thus, they are obligated to make contributions on all future business income for as long as that is received. An employee who is over the age of 65 continues to pay into and is eligible to receive benefits from the EI program.

Premiums
The self-employed person is required to pay the standard employee premium on insurable earnings up to the regular maximum. In 2010, the premium rate is 1.73 percent (for Quebec residents it is 1.36 percent) and the maximum insurable earnings are $43,200. Thus, the maximum premium paid in the current year is $747.36. In the first year, the premium will be paid in a lump sum when the self-employed person files the income tax return for that year.

In subsequent years, the premium will be paid as part of the regular instalment payments made to the Canada Revenue Agency.

The premium rate for Québec residents is lower because all residents of that province are part of the Québec Parental Insurance Plan, which came into effect January 1, 2006. Self employed workers pay a premium of 0.899 percent of their income, to maximum insurable earnings of $62,500 in 2010. This premium is greater than the rate paid by other workers, but is less than the combined employee/employer rate.

The insurable earnings are the business income, net of expenses, minus any losses, as claimed on the tax return. Self-employed persons who have other insurable earnings, for example from a part-time job where they are considered an employee, will be subject to the same overall maximum insurable earnings on the combined income. This applies to both the EI and QPIP programs.

Benefits and Conditions
Self-employed persons would be eligible to receive the following benefits and be subject to the following conditions.

Maternity Benefits are paid to a birth mother and cover the period surrounding the child's birth, to a maximum of 15 weeks.

Parental Benefits are payable either to the biological or adoptive parents while they are caring for a newborn or newly adopted child. These benefits may be taken by either parent or shared between them to a maximum of 35 weeks.

Sickness Benefits are paid to a person who is unable to work because of sickness, injury or quarantine, up to a maximum of 15 weeks.

Compassionate Care benefits are payable to someone who must be away from their work in order to provide care or support to a family member who is gravely ill with a significant risk of death within the next six months, up to a maximum of six weeks.

To qualify for benefits, the self-employed person must have an interruption of earnings, defined as a reduction in the time they normally spend on their business activities of 40 percent or more in the week and which is caused by one of the above reasons. For claims filed in 2011, the minimum amount of self-employed earnings in 2010 must be $6,000, a figure that will be adjusted annually. In all cases, there is a two week period before benefits are payable.

The weekly benefit amount payable to the self-employed person for each week in which there is an interruption of earnings will be 55 percent of their self-employment earnings, plus any insurable wage received during the year, divided by 52. Earnings received by the self-employed person during the benefit period will be deducted from the amount of their weekly benefits.

The Québec program provides maternity, paternity, parental and adoption benefits. Parents eligible for benefits have options concerning the length of benefits and the amount of income replacement they will receive. They can choose a shorter period with greater benefits, or a longer period with lower benefits. The payout period can be anywhere from five to 37 weeks (like the EI program, maternity and parental leave can be combined to create a 52 week payout period for Québec residents) and the benefit can be anywhere from 50-70 percent of insured income.

Relationship between the EI Special Benefits and existing insurance programs available to some artists and cultural workers

In the historical absence of social benefits, a number of artists' organizations have developed insurance programs. For example, The Writers Union of Canada and the Periodical Writers Association of Canada have group insurance plans available to members on an individual basis, with premiums payable by the artist. The program includes life insurance, extended health care and basic dental. The Directors Guild of Canada (DGC) similarly has life insurance, extended health and dental benefits, with premiums contributed by engagers. The American Federation of Musicians of the United States and Canada (AFM) offers accident disability, critical illness, health and dental plans, with premiums paid by the artist. Visual artists have no coverage beyond what they have obtained privately or through a spouse or partner.

At the other end of the spectrum, some programs provide benefits in the area covered by the EI special benefits program. The larger unions, such as the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Union des artistes (UDA), Canadian Actors Equity Association (CAEA) and the Writers Guild of Canada (WGC) have comprehensive insurance schemes for their members. In most cases, premiums are paid by the engager, in some cases deductions are also made from the artist's contractual fees. Benefits provided under these plans can be extensive but the amount of coverage received by the individual artist varies enormously from sector to sector and also generally depends on the income earned in the jurisdiction in the year.

At CAEA, benefits are provided to Equity members if they are under contract and are unable to fulfill the contract on account of accident or sickness.

Benefits for members of ACTRA, the Union of British Columbia Performers and the Writers Guild of Canada are provided through the Actra Fraternal Benefit Society (AFBS). Weekly income replacement benefits are available to members with silver and gold coverage and are paid if a member becomes totally disabled. Benefits are available for childbirth, with a presumptive period of six weeks not requiring additional medical certification. The benefit is 60 percent of eligible earnings (average within the jurisdiction over two years) for the first 26 weeks and 50 percent for weeks 27-52. Payments stop if the member earns new income (residuals don't count) and there is a seven day waiting period. These benefits are available to roughly 6,000 of ACTRA/WGC's 21,000+ members. More than 6,000 members have no coverage at all and the rest enjoy only basic benefits.

The AFBS is currently considering how its benefits may be integrated with EI benefits if AFBS members enroll in the new program. Typically, EI would take the first payor position and private benefits would be used only to top-up the public program. In the case of ACTRA members, the period of sickness benefits would extend beyond the EI maximum through AFBS, but the member would not receive double benefits for the covered period nor receive benefits longer than the AFBS maximum benefits period. The other possible approach is for the two programs to operate consecutively, permitting a member unable to work beyond 52 weeks to receive benefits from one program initially, and from the other after the initial benefit period has expired; however, there is no indication this form of integration is being considered. Other artists association are likely also considering how their income maintenance programs may be integrated with EI special benefits.

Relevance of the new program to individual artists and cultural workers

Many studies over the years have shown that artists have certain characteristics that potentially will have an impact on the relevance of the new EI program. While the following figures are based on analysis of the 2001 census, they provide a general picture of the key data.

In 2001, there were 130,700 artists in Canada in nine occupations: actors; artisans and craftspersons; conductors, composers and arrangers; dancers; musicians and singers; other performers; painters, sculptors and other visual artists; producers, directors, choreographers and related occupations; writers. Many other cultural workers, such as technicians; set and costume designers; hair and makeup; and others share the characteristics of freelance artists.

The average annual income for artists was $23,500, or 26 percent lower than the average earnings for the labour force as a whole. Average earnings in some arts occupations are at or below the low income cut-off point defined by StatsCan, including:

- Dancers ($14,500)
- Artisans and craftspersons ($15,500)
- Musicians and singers ($16,000)
- Other performers ($18,200) and
- Painters, sculptors and other visual artists ($18,700).

The self-employment rate among artists is 44 percent and self-employed artists earn 40 percent less than self-employed workers in the overall labour force. In three artistic occupations more than half the artists are self employed: painters, sculptors and other visual artist (67 percent); musicians and singers (56 percent); and artisans and craftspersons (50 percent)

A 2004 Québec study of 14,000 artists showed a third of artists report both employment and freelance income, 29 percent report only freelance income, and 27 percent report only employment income. Eleven percent of artists received employment insurance benefits or social assistance. The income of 29 percent of artists fluctuated by 50 percent or more between 2000 and 2001. From January-November 2009, QPIP reported there were 117,813 recipients of parental benefits. Of this total, only 3.7 percent were self-employed, and an additional 2.0 percent had both employed and self-employed income.

An Ontario survey of artists was undertaken in 2005 as part of that province's review of the status of the artist. There were more than 3,300 individual artists who responded, with a distribution that accurately reflects the demographics in the community by artistic category and age. It was reported that 67 percent had to work outside of their artistic activity to survive economically and respondents spent an average of 67.2 percent of their time on their artistic activity.

What all of this means for the new EI special benefits program is far from certain, but it is possible to make some broad general comments.

1. The EI special benefits program for self-employed people will not solve a significant problem, and an inequitable situation, for many artists. If an artist is employed and also receives self-employed income from their art, they will remain ineligible to collect regular EI benefits. For example, if the writer is also a full time teacher and is laid off from their teaching job, that person would not be entitled to collect EI benefits while they are searching for another teaching position. While they may have paid into the EI fund for many years, their business income renders them ineligible to collect regular benefits.

2. The program is potentially of most interest to freelance cultural workers who have insurable earnings as an employee and who do not otherwise have benefits comparable to the EI special benefits. As noted above, in both the Québec and Ontario studies, two-thirds of artists earn money outside their art, and often from employment. Some Québec artists had received an employment insurance payment according to the 2004 study.

   Individuals who pay EI premiums from employment and also earn business income as an artist can maximize the amount they would otherwise receive from the EI special benefits program if they top-up their premiums to the maximum insurable earnings. It is critical to note that, since all earnings must be reported during the benefit period, artistic income received would reduce the benefits payable.

A person who has mixed earnings can choose to apply for benefits either as a regular or self-employed claimant. If the person chooses to receive the special benefits based solely on their employment income (and thus receive a lower benefit payment), they would remain eligible to withdraw from the program.

If the artist has employee wages that are at or above the maximum insurable earnings, there would be no advantage to enrolling in the self-employed program, since the individual would already be eligible for the maximum benefit payment.

Chris is 50 years old and an established professional photographer who also works part-time as a carpenter. His carpentry wages vary according to the workload of his employer and his own availability but he is considered an employee. For the past three years, his employment income has been $30,000 each year and he has earned, after expenses, an average of $22,000 annually from his art. His wife is a full-time bank manager, his children are finishing university and his parents and in-laws are all in their mid-to-late 70s.

Chris decides to enroll in the EI special benefits program for self-employed people. His additional premium is based on that portion of business income required to take him to the maximum insurable earnings ($43,200 - $30,000). His additional annual premium is 1.73 percent of $13,200, or $228.36.

Chris breaks his arm badly in a recreational hockey game and cannot work for 13 weeks. He would be entitled to a benefit of 55 percent of his average insurable earnings, or $457, for 11 weeks. In week six, his dealer sends him $1,500 which he earned from the sale of two of his recent multimedia photographic works. He would not be paid the sickness benefit for this week and thus would receive a total payout of $4,570 over the ten weeks of his eligibility.
If he had claimed only on his employment income, he would have received a total payout of $3,173.

Because he has received benefits as a self-employed person, Chris must now remain in the program for as long as he earns business income. When he leaves his carpentry job, he will need to pay premiums on the full amount of his artistic income. However, he calculates that it is worth it for him, since he has no other accident or illness insurance, and he is worried that he may be called upon to care for aging parents in future, since his wife has no flexibility to take time off.

3. The program might be of moderate interest to established professional artists who earn a consistent and reasonable living exclusively from self-employed work, either in their artistic

field or outside of it. If the person does not have any other equivalent benefits, they may see this program as a reasonable way to obtain important insurance coverage.
The primary caveats that limit the potential interest are:

a) Does the individual have enough overall income to make the premium affordable?

b) With what frequency will the artist receive royalty payments or earn other income during periods when they are not working due to illness, caring for a newborn or newly adopted child, or when they are looking after gravely ill relatives?

   If they do have such income, it would reduce their benefits payable. Obvious examples would be:

   - a book author who is ill and unable to work but who continues to receive regular royalties from book sales, as well as payments from the public lending right for previous works;
   - a visual artist who is injured but is just now receiving royalties for sales of paintings done in the past three years;
   - the musician who is a primary parent but is still able to perform evening and weekend gigs when their spouse is home from work.

While only 33 years old, Aileen has a graduate degree in English literature and is already an established writer. She recently married Edwin, an architect just starting out on his own, who has no benefits plan. Each year, Aileen secures three to six feature assignments in Canadian or U.S. magazines, has published several short stories and recently won the CBC literary award. Her second novel, a coming of age story about a Caribbean immigrant to Toronto, was short listed for the Giller prize. Aileen is about to begin work on her next novel, does some teaching, corporate writing and expects to earn a PHD in the next few years. While her income fluctuates, in the past five years, she has averaged close to $32,000 annually. Both she and her husband have extended family in Canada and they have decided to start a family.

Aileen is a member of TWUC and PWAC and pays the premiums for the basic life, extended health and dental care insurance coverage through their plans. She decides to enroll in the EI program because she has no comparable benefits. Thus, she can expect to pay annual premiums of $553.60. Two years after enrolling, Aileen gives birth to her first child and she applies for both the maternity and parental leave benefits. Her weekly benefit is 55 percent of her average weekly income ($615.38) or $338.46.

While she seriously cuts back her hectic schedule to look after her child for the full one year period, she continues to work on her thesis, receives quarterly royalties from her publisher, a small payment from the public lending right and writes one feature article. In total, she receives work related income in six weeks during the year. Thus, her total benefit is $14,892.24 (50 weeks - 6 weeks x $338.46).

The program makes sense for Aileen since she expects to have more children, and would have coverage for illness and compassionate care. While this means that she will have to continue to pay premiums as long as she receives artistic income, this does not concern her, particularly because she could see herself taking on a full-time teaching position at the university. If she does, she would likely pay the maximum EI premium from her employment income.

4. Given that the minimum net self-employed income must be $6,000 each year (this is the amount for 2010 and it will be adjusted in future years), the program will be of little interest to many artists. An artist just entering the profession, or changing the focus of their career, may spend many years and a good deal of money establishing a secure artistic income. After several years of losses, it may be many more years before their artistic earnings consistently meet the minimum threshold.

Monique is a 29 year old professional dancer. After graduating, she worked for two years at a small Montréal dance company. When it ceased to operate, she spent three years working as an independent dancer in Québec. She moved to Toronto to join the Toronto Dance Theatre and worked there until she left in 2008. She and her partner Susan, who is also her life partner, received a grant from the Canada Council to explore new techniques and to choreograph works that they would perform together and with one other dancer. She expects to stage these works for several years beginning in late 2010.

She and Susan have begun the process to adopt a baby, but they know the timing is uncertain. As a member of the Dancer Transition Resource Centre, Monique has received career counseling and a small grant to explore her interest in massage therapy as a possible second career.

Monique's income has fluctuated greatly in her dance career. In her first years as a professional she made $15-18,000 and in her best year she made $37,000. But, in two other years, her expenses exceeded her income. In one of these years, she was injured and received provincial workers' compensation payments since she was on a UDA contract. In the other, she simply could not find work and survived on her savings and help from her parents and Susan.

In 2009, she had professional income of $31,000, from dancing, choreography, teaching and the Council grant. But she knows that in 2010 she will have little income since she has given up her other dancing and teaching, and is incurring significant costs to mount her production in the fall, including hiring the other dancer to rehearse with herself and Susan. While a portion of the Council grant will be included in this year's income, her expenses will come close to matching her overall business income. She is optimistic she will have several good years ahead and will earn a reasonable income from her new works, but she is also aware that her dance career must come to an end, which is why she is looking at returning to school with the support of DTRC.

Monique cannot see how the EI special benefits program for self-employed people can benefit her. She and Susan are excellent financial managers and have been able to survive well on their modest incomes. But, the premium costs would be significant, $536.30 if her income returned to the 2009 level. In addition, there is simply no guarantee that her income will not fall below the $6,000 threshold. She already knows that this will be the case for 2010 and, if she and Susan were able to adopt a child in 2011, she would be ineligible to receive parental benefits.

5. Another significant limiting factor for the new EI program is the fact that, once you have received benefits under the program, you must continue in it for as long as you earn business income. Even if an artist is no longer creating new works, many will continue to receive income from works they created years before, such as royalties, residuals, public lending right, exhibition right and other copyright payments, for the rest of their lives.

Mariano is a successful artist. His career began as a child when he appeared in several television commercials and a stage play. As a teen he played a leading role in a major television series and this was followed by roles in several movies, two of which were Hollywood productions. He is just finishing his first feature film script in collaboration with a Canadian producer and has several other ideas for movies and television series in various stages of development. While he continues to work as an actor, he is considering the possibility of directing one of his own scripts in the next few years and he is also exploring opportunities in Los Angeles. He and his wife Mingzhu, who is a copyright lawyer, have decided to start a family.

While his income fluctuates, Mariano has earned in excess of $100,000 for many years. On the advice of his financial manager, he incorporated several years ago and thus works through his own personal services corporation. He is in the top insurance category of the Actra Fraternal Benefit Society (AFBS).

Roughly 15 percent of his income is from residuals, but he expects this will rise in the near future as the initial use period for his movies is coming to a close. He will begin soon to collect royalties on sales, including from the lucrative Latin American market where he is reasonably well known because of his heritage.

Mariano is committed to spending time with his future children and so he explores the possibility of enrolling in the EI special benefits program. Because his earnings from the Corporation are more than the maximum insurable earnings, he would be required to pay an annual premium of $747.36 for 2010. He quickly realizes that this makes no sense for him. Even if he decides to cut back significantly to look after a newborn when his wife returns to her practice, the occasional work which he could easily do as a primary caregiver, when added to his residual income, may well mean that he can collect no benefits. He has reasonable accident and illness coverage through his AFBS plan (which is both more flexible regarding fluctuating income and does not consider his residual and royalty income to be work).

Furthermore, if he were to collect benefits, he would need to continue in the program for the rest of his life. If he lived for 50 more years, he could pay $37,400 based on the 2010 figures and yet might receive only a few thousand dollars in benefits.

In Summary

The new Employment Insurance program for self-employed people represents an important step forward in recognizing the needs of a rapidly growing segment of the Canadian workforce. It may be of significant interest to some self-employed cultural workers in Canada. In summary, the program should be of most interest to self-employed artists with the following profiles:

- An artist who has employment income in addition to income from the artistic endeavour, if the individual is not already paying the maximum EI premium with respect to the employment income and who has no employment benefits.
- An artist whose income is reasonable and consistent from year to year, who is in a position potentially to qualify for the more significant benefits (maternity and parental leave), and who does not have any comparable coverage.