

**Employment Insurance Benefits for Adoptive Parents
By Patricia Paul-Carson for
The Adoption Council of Canada**

Executive Summary

Please See the Attached Document for a Complete Analysis

September, 2011

Issue:

Adoptive parents need additional Employment Insurance (EI) parental benefits in order that they may stay at home to care for their adopted children.

Currently adoptive parents are entitled to receive 35 weeks of EI parental benefits (for use by either parent or shared between them) for child care purposes. Biological parents are entitled to receive 15 weeks of maternity leave benefits (for use by the mother alone) to recuperate from the stresses of pregnancy and childbirth plus an additional 35 weeks of benefits for parental leave (for use by either parent or shared between them) to care for the new child for a total of 50 weeks of EI benefits.

Adoptive parents require an additional 15 weeks to accommodate for the stresses specific to the adoption process and for the added difficulties in integrating an adopted child into a new family.

Legislative History:

Canadian courts have consistently found that it is not discriminatory to provide EI benefits for biological mothers for the purposes of recovering from pregnancy and childbirth and not provide them for adoptive mothers as they do not experience pregnancy and childbirth. However, the courts have also recognized that there are concerns specific to adoptive families.

Financial Implications:

The maximum cost to the federal government would be \$30,186,000 per year.

Federal-Provincial-Territorial Implications:

To ensure all Canadian adoptive parents can take advantage of extended EI benefits proposed for them in this document, the federal government and eight of the provincial/territorial jurisdictions will need to adapt their labour legislation.

Rationale for Providing Additional EI Benefits for Adoptive Parents:

Just like biological parents, adoptive parents have their own special set of circumstances to deal with while becoming parents. These circumstances are equally and sometimes more difficult than the biological difficulties associated with pregnancy and birth. Therefore adoptive parents should be provided with time to cope with these circumstances just as birth mothers are provided with time to deal with the effects of pregnancy and childbirth.

The issues and concerns that adoptive parents face that are distinct to them are described below. Not all adoptive parents must deal with all the issues listed below; however all adoptive parents face some of them. They include:

- Extra time needed to bond with an adopted child and for the adopted child to bond with the adoptive parents;
- Dealing with expected and unexpected health issues of the child;
- Establishing a relationship with the birth parents;
- Post Adoption Depression;
- Dealing with Grief and Depression Regarding the Ability to Give Birth;
- Helping the Child Adapt to a New Culture;
- Time to Travel Abroad for International Adoptions; and
- Breastfeeding of an Adopted Baby.

Considerations:

It is timely to change the EI legislation to provide adoptive parents with an additional 15 weeks of parental leave for the following reasons:

- The current government has a particular interest in families and this proposal would fit in with its policies on strengthening families.
- All federal parties have recently outlined strategies to support families and it is likely that this policy would receive all party support.
- Provincial and territorial governments would likely be supportive of such as policy as it would be an additional incentive to adopt children in the child welfare system under the care of the provinces and territories.
- The Canadian public would likely support such a change. Until recently adoption was shrouded in secrecy but it is now seen as a legitimate way of forming a family.
- Infertility rates are increasing and adoption is being considered by large numbers of Canadians.

Conclusion:

Given the legal history, the minor financial implications for the Canadian taxpayer, the simplicity of extending EI benefits to adoptive parents, the considerable number of reasons why adoptive parents need additional leave to look after their newly adopted child, and the timeliness of such a change to the EI

legislation, the Adoption Council of Canada strongly recommends that the Canadian Government:

- 1) change the Canadian Labour Code to allow for an additional 17 weeks of parental leave for adoptive parents to look after their newly adopted child;
- 2) change the Employment Insurance Act to allow for an additional 15 weeks of parental leave for new adoptive parents;
- 3) encourage those provinces and territories whose labour legislation does not currently allow adoptive parents to take advantage of an extended EI benefit period, to extend parental leave for adoptive parents to a total minimum of 52 weeks.

Employment Insurance Benefits for Adoptive Parents
By Patricia Paul-Carson for
The Adoption Council of Canada
September 2011.

Issue:

Adoptive parents need additional Employment Insurance (EI) parental benefits in order that they may stay at home to care for their adopted children.

Currently adoptive parents are entitled to receive 35 weeks of EI parental benefits (for use by either parent or shared between them) for child care purposes. Biological parents are entitled to receive 15 weeks of maternity leave benefits (for use by the mother alone) to recuperate from the stresses of pregnancy and childbirth plus an additional 35 weeks of benefits for parental leave (for use by either parent or shared between them) to care for the new child for a total of 50 weeks of EI benefits.

Adoptive parents require an additional 15 weeks to accommodate for the stresses specific to the adoption process and for the added difficulties in integrating an adopted child into a new family.

Legislative History:

The Ontario Court of Appeal Justice J. A. Austin provided the following legislative history in the case *Reva Schafer, Eli Schafer, A Minor By His Litigation Guardian, Reva Schafer, Linda Shub and Mitchell Shub, A Minor By His Litigation Guardian, Linda Shub VS The Attorney General of Canada*:

“ [9] Unemployment insurance first came into effect in Canada in 1940. It was designed to pay benefits to an unemployed person who was capable of and available for work and in the process of searching for new employment. The case law that developed around the original Act established a presumption that a pregnant woman was physically incapable of working for a period of six weeks before birth to six weeks after birth, and therefore was not entitled to UI benefits unless she could rebut this presumption.

[10] In 1971, partly in response to the rapidly increasing role of women in the work force, the Act was amended to provide a maternity benefit of fifteen weeks. The benefit period had to commence eight weeks before the expected confinement and end six weeks after the confinement. A separate sickness benefits, also of fifteen weeks was created at the same time.

[11] The eight-week/six-week timing turned out to be unduly inflexible so, in 1976, the Act was amended to make the benefit payable at any time during a 26-week period, beginning eight weeks before the expected birth and ending seventeen weeks after birth.

[12] In 1981, a ministerial Task Force on Unemployment Insurance reported in part as follows:

The physical incapacity basis of maternity benefits would clearly restrict payment to natural mothers. However, because maternity benefits are not now solely related to physical incapacity, it would follow that coverage could be extended to include those, such as adoptive parents, who do not experience physical incapacity ... As an income protection measure, this position would argue that UI has a responsibility to the adoptive parents similar to its responsibility to natural mothers.

More women appear to be working until a few weeks before the elected birth, claiming most if not all of their maternity benefits in the period following the birth. For the great majority of these claimants, physical incapacity extending 17 weeks after the birth is extremely unlikely. Rather, they are in reality using more of the maternity benefits during the period in which they are providing the child with post-natal care. The concept of physical incapacity, under these circumstances, is increasingly difficult to justify and administer.

See The Task Force on Unemployment Insurance, Report: Unemployment Insurance in the 1980s (Ottawa: Queen's Printer, 1981) at 68, 70.

[13] In 1984, the Act was amended to provide 15 weeks of parental benefits to be used by either an adoptive mother or father. Accordingly, the Act at that point provided for one 15-week maternity benefit available to biological mothers only, and one 15-week child care benefit available to adoptive parents only. Biological fathers could not receive any benefits.

[14] Section 15 of the Charter came into effect on April 17, 1985. This gave rise to numerous examinations and reports on various aspects of these benefits, including the distinctions between biological and adoptive parents, and between mothers and fathers. The Boyer Commission on Equality Rights under the Charter recommended a two-tier system. The first tier was to be available to women during late pregnancy and the period following birth. The second tier was to be available to either or both parents, whether biological or adoptive, during the period following maternity leave.

See The Sub-Committee on Equality Rights of the Standing Committee on Justice and Legal Affairs. Final Report: Equality for All (Ottawa: Queen's Printer, 1985) at 12-13.

[15] The Task Force on Child Care recommended a 26-week benefit to be shared between new parents, biological or adoptive, in whatever manner suited their personal circumstances. See The Task Force on Child Care, Report (Ottawa: Queen's Printer, 1986).

[16] The Canadian Human Rights Commission evaluated the various alternatives, and submitted a report which stated that, in its opinion, a maternity benefit which sought to compensate pregnant women for remuneration lost because of pregnancy and child birth was not discriminatory against adoptive parents:

...Clearly, adoptive parents do not require income support for circumstances relating to pregnancy or childbirth. They do share with biological parents, however, an undeniable need for income replacement for the period during which intensive care and nurturing must be provided to a new child ... It is for these reasons the Commission believes that adoption benefits are provided for child care purposes.

... Because the purpose of each benefit type is different, it is not possible to conclude that the refusal to provide supplementary unemployment benefits to adoptive parents ... is discrimination on the basis of family status.

See The Canadian Human Rights Commission, Special Report to Parliament on Income Replacement Benefits for New Reports (Ottawa: Canadian Human Rights Commission 1987) at 4-5.

[17] In 1988, the benefits scheme under the Act was challenged as unconstitutional in Schachter v. Canada [1988] 3 F.C. 515 (T.D.). Mr. Schachter was the biological father of a child whose mother wished to return to work before her maternity benefit period was over. He applied for the balance of her maternity benefit so that he could stay home with their child. In the alternative, he asked for a declaration that the child care benefit of 15 weeks available to adoptive fathers was discriminatory in that it was not available to biological fathers. Strayer J. denied Mr. Schachter the balance of the maternity benefit on the basis that it was available only to mothers. However, he agreed that Mr. Schachter had been discriminated against on the basis of his sex. Instead of striking down the benefit to adoptive parents, Strayer J. wrote at p. 544:

... Instead I consider it appropriate and just to make a declaration as to the entitlement of others to the same benefits and leave it to Parliament to remedy the situation in accordance with the Charter, either by extending similar benefits to natural parents or by eliminating the benefits given to adoptive parents or by some provision of more limited benefits on an equal basis to both adoptive and natural parents in respect of child-care. I am not in effect telling Parliament that it must follow one route or the other: all I am determining is that if it is going to provide such benefits it must provide them on a non-discriminatory basis. I am prepared to assume at this stage that Parliament will take the necessary action to render equal a system of benefits found by this Court to be unequal.

[18] The remedy granted by Strayer J. was to "read into" the Act a provision giving biological parents the same child care benefits that were already available to adoptive parents.

[19] Schachter was appealed to the Supreme Court of Canada but, before The case was heard, the Act was amended again. The 15-week maternity benefit was left intact. Parental benefits of ten weeks were made available to either biological parent and to either adoptive parent. Looking at it another way, the 15-week benefit for adoptive parents, enacted in 1984, was reduced to ten weeks and a near benefit of ten weeks was made available to either the biological father or mother. Representatives from the adoption community urged Parliament to provide an extra ten to 15 weeks of parental benefits for adoptive families in which the child was certified as having special emotional or physical needs. Instead, the government, apparently concerned that singling out adoptive families for unique treatment would violate the law as articulated in Schachter, provided a five-week child care benefit to any parent whose child had special needs and who was six months or older at the time of arrival or placement in the home.

[20] After these amendments to the Act were made, the Supreme Court of Canada heard Schachter. The federal government conceded Strayer J.'s finding that the Act as it stood prior to the amendments violated s. 15(1) and appealed only on the issue of remedy: see Schachter v. Canada, [1992] 2 S.C.R. 679. Lamer C.J.C., on behalf of the majority expressed grave concerns about the propriety of this concession at p. 695:

I find it appropriate at the outset to register the Court's dissatisfaction with the state in which this case came to us. Despite the fact that Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143, was handed down in between the trial and appeal of this matter, the appellants chose to concede a s. 15 violation and to appeal only on the issue of remedy. This precludes this Court from examining the s. 15 issue on its merits, whatever doubts might or might not exist about

the finding below. Further, the appellants' choice not to attempt a justification under s. 1 at trial deprives the Court of access to the kind of evidence that a s. 1 analysis would have brought to light.

All of the above essentially leaves the Court in a factual vacuum with respect to the nature and extent of the violation, and certainly with respect to the legislative objective embodied in the impugned provision. This puts the Court in a difficult position in attempting to determine what remedy is appropriate in the present context.

[21] The concurring judgment of La Forest J. writing for himself and L'Heureux-Dubé J. was equally critical of the government's concession At p. 727, La Forest J. wrote:

To begin with, I am by no means sure there was a violation of the Charter in this case. At first sight (and the Chief Justice alludes to this) it does not seem wholly unreasonable that Parliament might have good reason to encourage adoptive parents as a group, and the effect of the judicial intervention has been to divert from that group some of the monies intended to meet the problem Parliament may have had in contemplation. This Court has repeatedly stated that Parliament may constitutionally attack one problem, or part of a problem, at a time. But the manner in which the case was presented requires us to assume constitutional invalidity in the absence of any evidence as to context, which I would have thought was essential to a consideration of the extent of inconsistency with the Charter.

[22] A unanimous Supreme Court held that, assuming there was a s. 15(1) violation that could not be saved under s. 1, Strayer J. erred in ordering that biological fathers be read-into the impugned provision. Because the effect of reading in would have been to add to the beneficiaries of the legislation a group far larger than the group originally intended, the appropriate remedy would have been to strike down the provision of benefits to adoptive parents and to suspend the striking down for a period sufficient to enable Parliament to respond.

[23] In other words, the Supreme Court in Schachter gave the government reason to question whether the Charter demanded strict parity between biological fathers and adoptive parents. Nevertheless, the amendments made in response to Strayer J.'s judgment have remained in place, and created the situation complained of in these proceedings." (1)

In his findings for the Schafer case, Justice Austin wrote:

"To summarize it is not necessarily discriminatory for governments to treat biological mothers differently from other parents, including adoptive parents.

In order to cope with the physiological changes that occur during childbearing, biological mothers require a flexible period of leave that may be used during pregnancy, labour, birth and the postpartum period. Indeed, such leave provisions may be necessary in order to ensure the equality of women generally, who have historically suffered disadvantage in the workplace due to pregnancy-related discrimination: see Brooks v. Canada Safeway Ltd., [1989] 1 S.C.R. 1219.

[69] None of this is to deny the respondents' submission that adoptive mothers also face profound challenges in adopting and caring for their children. The decision to adopt often follows unsuccessful and difficult attempts to conceive a child biologically. The adoption process itself is rife with anxiety and stress as prospective parents are subjected to an invasive background check. An agonizing wait follows. The adoptive parents can have as little as 48 hours' notice of their child's arrival. The anxiety does not end with the child's placement. In addition to the universal of parenting a new child, adoptive parents may have to endure a 21-day waiting period during which the birth mother may change her mind about placing her child for adoption. Finally, with many placements of adopted children, there is a six-month probationary period during which the adoptive parents are under close scrutiny. International adoptions are at least equally complicated, often involving extended and multiple periods away from home.

[70] However, as severe and distressing as these problems may be, they are not the same problems facing biological mothers. No doubt adoptive parents would put the extra 15 weeks of paid leave to excellent use in preparing and caring for their newly arrived child, but the purpose of the pregnancy leave benefit is not to provide income support to parents who care for their children. It is to provide a flexible system of income support to women who need time away from work because of pregnancy and childbirth." (2)

In 2007, for the case of *Tomasson v. Canada (Attorney General)*, the Federal Court of Appeal dismissed an application for leave to appeal a decision denying an adoptive mother maternity benefits after the adoption of her children. Justice J.A. Nadon found:

"that Parliament rightly recognized that pregnancy and childbirth justified the granting of particular benefits by reason of the physical and psychological consequences of pregnancy." (3)

In his finding, Justice Nadon wrote:

"Because of her view that she was bound by the decision of the Ontario Court of Appeal in **Schafer, supra**, which held that the provisions of the Act granting maternity benefits to biological mothers did not discriminate against

adoptive mothers, Krindle J. dismissed the applicant's appeals. However, it can safely be said that had Krindle J. not been of the view that she was bound by *Schafer supra*, she likely would have decided the issue in favour of the applicant.” (4)

In summary, Canadian courts have consistently found that it is not discriminatory to provide EI benefits for biological mothers for the purposes of recovering from pregnancy and childbirth and not for adoptive mothers as they do not experience pregnancy and childbirth.

Financial Considerations:

There are approximately 2,300 domestic adoptions each year (5) as well as another 2,000 intercountry adoptions (6).

The basic benefit EI rate for both maternity and parental leave is 55% of average insured earnings up to a yearly maximum insurable amount of \$44,200. Individuals receive a maximum payment of \$468 per week, which is taxable.

Therefore the maximum cost to the federal government would be \$30,186,000. (\$468 x 15 weeks x 4,300 adoptions)

In 2008-09, adoptive parents received almost \$24 million in EI benefits. Over the same period, according to the 2009 Monitoring and Assessment Report, adoptive parents used on average more than 26 of the 35 weeks of benefits available. On average, they received a weekly benefit of \$408. These statistics do not include Quebec's parents as they apply for benefits through the Quebec Insurance Parental Plan. (7)

Federal-Provincial-Territorial Implications:

Each province and territory has its own labour/employment legislation governing maternity/pregnancy, parental and adoption leave. This legislation applies to the majority of employers which are provincially regulated while the federal labour standards cover federally regulated businesses such as crown corporations and banks.

To ensure all Canadian adoptive parents can take advantage of extended EI benefits proposed for them in this document, the federal government and eight of the provincial/territorial jurisdictions will need to adapt their labour legislation.

Currently, only Newfoundland and Labrador, Prince Edward Island, Nova Scotia, Quebec and Saskatchewan allow 52 weeks of leave for adoptive parents, which would cover the proposed additional 15 weeks of EI benefits as well as the 35 they currently receive now.

It is interesting to note that the legislation in Newfoundland and Labrador and Saskatchewan delineates three types of leave:

- pregnancy leave for birth mothers only,
- adoption leave for adoptive parents only; and
- parental leave for both birth parents and adoptive parents.

This indicates that the legislation of these two provinces recognizes that adoptive parents have distinct needs separate and apart from the needs of birth parents.

The legislation in Prince Edward Island states that birth and adoptive parents are entitled to 35 weeks of parental leave and also states that, notwithstanding the 35 weeks of leave, adoptive parents are entitled to 52 weeks of leave. This suggests that the PEI legislation also recognizes the unique needs of adoptive parents.

Residents of Quebec must apply for benefits through the Quebec Insurance Parental Plan. They do not apply through the federal EI plan. Under QIPP, the birth mother is entitled to receive 18 weeks of maternity benefits. The birth father is entitled to 5 weeks of paternity leave. The birth parents are also entitled to an additional 52 weeks of parental leave (for use by either parent or shared between them) for a total of 75 weeks of benefits for the birth parents. Under the Quebec Insurance Parental Plan, adoptive parents receive a maximum 52 weeks of benefits to be used by either parent or shared between them.

Jurisdiction	Maternity/Pregnancy Leave (in weeks) For Birth Mother only	Parental Leave (in weeks) For Birth Parents and Adoptive Parents	Adoption Leave (in weeks) For Adoptive Parents Only
Federal	17	37	0
Alberta	15	37	0
British Columbia	17 + a possible 6	35 (37 if pregnancy leave was not taken) + 5 weeks if the child requires extra care	0
Manitoba	17	37	0
New Brunswick	17	37	0
Newfoundland and Labrador	17	35	17
Northwest Territories	17	37	0

Nova Scotia	17	52	0
Nunavut	17	37	0
Ontario	17	35 (37 if maternity leave was not taken)	0
Prince Edward Island	17	35 + 5 weeks if child requires extra care (for birth parents only)	52 + 5 weeks if the child requires extra care
Quebec	18 (Quebec birth fathers receive 5 weeks of paternity benefits)	52	0
Saskatchewan	18 + a possible 6	34 (37 if maternity or adoption leave not taken)	18 for primary caretaker only
Yukon	17	37	0

Rationale for Providing Additional EI Benefits for Adoptive Parents:

Just like biological parents, adoptive parents have their own special set of circumstances to deal with while becoming parents. These circumstances are equally and sometimes more difficult than the biological difficulties associated with pregnancy and birth. Therefore adoptive parents should be provided with time to cope with these circumstances just as birth mothers are provided with time to deal with the effects of pregnancy and child birth.

The issues and concerns that adoptive parents face that are distinct to them are described below. Not all adoptive parents must deal with all the issues listed below; however all adoptive parents face some of them.

Bonding with the Adopted Child:

All parents need time to bond with their child and the child needs time to bond with them. This is especially important for adoptive parents.

Research has shown that babies start to bond with the mother while in the womb, as they become attuned to her voice. (8) Biological mothers too start to bond with their baby during pregnancy. (9)

Adoptive parents and their children have not had this nine month period to bond. Moreover, adopted children have often been looked after by multiple caregivers, making it more difficult for them to bond with a new set of parents. (10)

Extra time is needed between the adoptive parents and adoptive child to ensure a secure bond is built. (11)

Research has shown that securely attached children are more successful in school and relationships, more able to manage life's stresses and more self-reliant. (12)

In a paper titled "Raising the Post-Institutionalized Child, Risks, Challenges and Innovative Treatment", Dr. Ronald S. Federici, Developmental Neuropsychologist writes:

...the effects of institutionalization on even the youngest of children can have profound effects on attachment, safety, security and coddling behaviors. Failure to Thrive Syndrome and early infant-toddler restlessness, sleep and feeding disorders, and even early onset emotional-behavioral problems have been reported by many researchers who have followed internationally adopted children (Ames, 1997; Zeanah, 1999, in press). Revisiting the profound effects of early maternal deprivation and care as pioneered by Bowlby, 1951, and Spitz, 1945, have clearly listed out that even brief periods of early infant-maternal separation can lead to a combination of cognitive, attachment and behavioral difficulties.

Most families provide tremendous nurturing and attention for their infant-toddler, but there are a select group who must return to work and place the child in some type of daycare or preschool program at a very early stage of "reattachment" to the new parents. For the child who may have medical and/or psychological-attachment-deprivation risk factors, a placement out of the home for extended periods of time can only promote further unattachment or indiscriminate attachment to other caretakers as opposed to the primary parental figures. Zeanah's work on infant-maternal attachment promotes the need for strong and consistent "reparenting" of the child who has already been deprived during critical developmental stages (Zeanah, 1993, 1996). The importance of aggressive reattachment and reparenting for a young child coming out of an institutional setting is of paramount importance as the child has had a loss of maternal attachment, stimulation and developmental experiences ranging from birth through 24 months with the damaging effects of early childhood deprivation expanding exponentially as the child becomes older and remains in institutional care.

For children who have been institutionalized approximately three years or greater, he writes:

“It is very important that families stay at home with their newly adopted child as long as possible and have only very few people around, preferably the immediate family. Having extended relatives and friends from everywhere will only produce more indiscriminate attachment as everyone wants to "make the child welcome and give them things". If at all possible, the primary caretaker should remain home with the child assessing any and all nuances of cognitive and emotional patterns along with a team of developmental experts before placing the child in any type of school-based program. Daycare should be avoided for an extended period of time (at least 12 months). Remember, daycare is just another institutional setting that the child will attach and adapt to as opposed to a family unit.” (13)

Of particular concern is the possibility that the adopted child has Reactive Attachment Disorder (RAD), a severe form of attachment difficulties.

Dr. Mark Lerner describes children with RAD as exhibiting markedly disturbed and developmentally inappropriate social relatedness. They have considerable difficulty forming meaningful affectionate relationships. Since prenatal experience (e.g. exposure to substances) birth trauma, inconsistent or inadequate day care, separation issues, abuse and neglect are precipitating factors that may lead to RAD, internationally adopted children evidence this disorder at a significantly higher rate than the general population. (14)

A study of children adopted from Romanian orphanages to British Columbia explored attachment and indiscriminately friendly behaviour in forty-six children who had spent at least eight months in a Romanian orphanage prior to their adoption to Canada (RO group). (15) The average age of these children upon adoption was nineteen months. At the time the adoptive parents were interviewed, the average age of the children was thirty months.

Findings were compared with two groups, one consisting of forty-six Canadian born nonadopted children (CB group), and the RC group which consisted of twenty-nine children who were adopted from Romania by Canadian families before the age of four months (RC group). The average age of adoption for the RC group was 2.3 months. At the time the adoptive parents were interviewed, the average age of the RC group was twenty-five months.

The CB and RC groups were matched in sex and age within one month to the RO group.

The researchers found that RO children scored significantly lower on the security of attachment measure than did the CB and RC group. The RC children's security of attachment did not differ from the CB children.

The authors found that the primary difference in attachment patterns between the RO and CB group is the ambivalent attachment behaviour exhibited by RO children. Ambivalent attachment behaviour is characterized by ambivalence toward a caregiver when distressed. The adoptee combines contact seeking with angry resistant behaviour and is not easily comforted. The researchers provide the example of a child wanting to be put down and then fussing or wanting to be picked right back up.

Although RO, RC and CB parents did not differ on their parent attachment scores i.e. levels of commitment to the parenting role, it was only in the RO group that parent attachment was correlated significantly with the child's attachment score. Although even low scores on the parent attachment may be good enough for CB and RC children, the RO children may require a higher level of parental commitment in the form of more emotional warmth and a greater ability to read children's cues. The researchers hypothesize that the uncommunicative behaviours and behavioural problems exhibited by RO children may have made it more difficult for their parents to respond to them in ways appropriate for the development of secure attachment.

The researchers note that the RO children's attachment security scores were unrelated to both their age at adoption and the length of time they had been in their adoptive families. RO children's lower scores of security of attachment are most likely attributed to the extended period of neglect and social deprivation they experienced while institutionalized.

The study further showed that the length of time spent in an orphanage was the most predictive factor for later difficulties. Also an important *factor* was parenting skills: more nurturing, stimulating and supportive adoptive parents were able to provide a better rehabilitative environment for the orphanage children. (16)

A study of children adopted from orphanages in the former Soviet Union into the U.S.A. found similar results. Time spent in an orphanage was a strong risk factor while an appropriately supportive and nurturing family environment was a strong rehabilitative factor. (17)

Dealing with Health Issues of the Child

Many adopted children have special health care needs that new adoptive parents need to address.

A report by the Association of the Ontario Association of Children's Aids societies stated that there were 819 public adoptions in Ontario in 2009. The report also quoted a 2006 review by the Ontario Ministry of Children and Youth that found that 82 per cent all crown wards have special needs related to behavioral, developmental, physical or mental issues. (17 a) A study sponsored by the

American federal Department of Health and Human Services (DHHS), (DHHS), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) and Administration for Children and Families (ACF) found that most adopted children are twice as likely as children in the general population to have special health care needs (39 percent compared with 19 percent). (18)

The study also found that the majority of adopted children fare well according to measures of social and emotional well-being. However, 26 percent of adopted children have been diagnosed with Attention Deficit Disorder or Attention Deficit with Hyperactivity Disorder (ADD/ADHD) at some point during childhood, and 15 percent have been diagnosed with behavior or conduct problems. Rates of these problems were especially high among children adopted from foster care. (19)

There are additional issues for children involved in intercountry adoptions.

Lisa Edelsward in her paper summarizing adoption research states that the pre-adoption medical reports (also known as the child study report) which are provided to prospective adoptive parents to indicate to them the health of their prospective adoptive child are not often accurate. She notes a number of studies have found that the actual health of the children on arrival in their adoptive homes did not always match the pre-adoption medical reports. Some countries from which children are adopted may not have adequate or accessible medical expertise to accurately assess the medical condition of the children. This means that parents need time to deal with these unexpected health problems found in the child. (20)

A large pan-Canadian study of Romanian adoptees found discrepancies between the pre- and post-adoption medical evaluations. In 12 per cent of the cases studied, medical testing done on arrival in Canada “revealed positive results for diseases for which [the] child had tested negative in Romania. Diagnoses found in Canada included Hepatitis B, parasites, tuberculosis (TB), anaemia, and Giardia; one child was found to be HIV positive.” The authors noted that “these findings are similar to those of Jenista [the author of an American study] who found that although parents were often reassured by negative screening results in Romania, postneonatal diagnoses in the United States revealed conflicting findings.” (21)

An American study of children adopted from Eastern Europe found that the preadoption medical reports from the children’s countries of origin often included multiple unfamiliar diagnoses of severe neurologic impairments which were later found not to exist. However, for 20 per cent of the children, post-adoption evaluations found growth and developmental delays as well as medical problems that had not been cited in the original reports. (22)

Lisa Edelsward also reported on a study of children adopted from China to the United States found unsuspected medical diagnoses in 18 per cent of the

children, including hearing loss, orthopedic problems, cardiac anomalies and other congenital abnormalities. This study also found that children who were classified as “healthy” or “special needs” did not match the reality of the health of the children. “The special needs designation was assigned to children with obvious birth defects, but many other children received this designation because of square skull or pigeon breast deformity (which may be signs of rickets) ... or even no obvious abnormality.” The three most severely developmentally delayed children were proposed as “healthy children” to their adoptive parents, and five children had such severe impairments that the adopting parents requested different children be assigned to them. (23)

Establishing a Relationship with Birth Parents

Some adoptions include some contact between the birth parents and the adoptive parents and adoptive parents need time to deal with this relationship whatever it may be.

Although there are no Canadian statistics on the number of adoptions in which there is ongoing contact between the birth parent and the adopted child, the large 2007-2008 study, mentioned earlier in this paper, sponsored by the American federal Department of Health and Human Services (DHHS), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) and Administration for Children and Families (ACF) found that just over one-third of children in non-relative adoptions (36 percent) have had some kind of post-adoption contact with their birth families. Contact was most likely for children in private domestic adoptions (68 percent, compared with 39 percent for children adopted from foster care and 6 percent for children adopted internationally). (24)

Open adoptions are the way of the future. A 2002 study by principal investigator Charlene E. Miall, Ph.D., McMaster University and co-investigator Karen March, Ph.D., Carleton University revealed that a majority of Canadians support some form of open adoption allowing contact between birth parents and adoptive parents after the adoption happens. Canadians also think that confidential adoption (no contact between birth parents and adoptive parents) should continue to be an option. (25)

When Bill 210 was introduced in the Ontario legislature in 2005, a news release from the Ministry of Children and Youth Services said that:

Crown wards could retain contact with their birth parents after being adopted. They would no longer have to cut off all contact to be eligible for adoption. The Ontario legislation's stress on openness reflects the strong trend today toward open relationships in adoption: birth and adoptive families know each other's names and addresses, and have ongoing contact through letters, phone calls or visits. Open adoptions have been the norm in private domestic adoptions for many years. (26)

Post Adoption Depression

Post Adoption Depression Syndrome, or PADS, which can affect adoptive parents, is similar to a long recognized condition that new mothers often experience in the days and weeks following child birth known as Postpartum Depression.

PADS has many of the same symptoms that are associated with postpartum depression:

- Depressed mood;
- Loss of interest in activities that used to bring pleasure, or a diminished pleasure in those activities;
- Weight loss or weight gain;
- Inability to sleep or a marked increase in sleep;
- Feeling agitated;
- Fatigue;
- Unrealistic expectations about parenting;
- Feelings of shame or guilt;
- Inability to concentrate. (27)

Awareness is growing and some academic studies have been undertaken in this area. Prevalence rates are similar to or perhaps higher than the 15 percent rate for postpartum depression. The rate of post-adoption depression has been reported in 2009 at 15.4 percent by Senecky *et al.*(28) and in 1999 at 32 per cent by Gair. (29) Professionals say clients report feeling vulnerable about admitting they're depressed. (30) Therefore it may be hard to obtain accurate numbers.

One study undertaken on PADS involved 39 adoptive mothers of reproductive age who were registered with international adoption agencies. All women completed the Edinburgh Postnatal Depression Scale (EPDS), the Beck Depression Inventory (BDI), and the Brief Symptom Inventory (BSI) before and 6 weeks after the adoption. Responses were compared between the study group and published findings for biological mothers in the general population. Symptoms of depression were found in 15.4% of the study group. This rate was similar to that for postpartum depression in the general population, and lower than the rate recorded in the study group before adoption (25.6%). (31)

Another study undertaken in Israel found that the rate of depression in women just after the adoption is around 15%, similar to the rate of depression found in women who have given birth, as noted above. The authors of this study suggest this is powerful evidence that the reasons that women develop post-natal depression must be more psychological and social rather than biological. (32)

The John Hopkins School of Medicine reported on a 2010 study which evaluated the prevalence rate and factors associated with post adoption depression in 86 mothers. The rates of significant depressive symptoms were calculated at three time points post adoption, and associations with specific clinical variables (personal or family psychiatric history, stress, and adjustment difficulty) were assessed. Rates of significant depressive symptoms were found in 27.9% of subjects at 0-4 weeks, 25.6% at 5-12 weeks, and 12.8% at 13-52 weeks post adoption. Significant depressive symptoms were not associated with personal or family psychiatric history but were associated with stress and adjustment difficulties post adoption. Significant depressive symptoms were relatively common in adoptive mothers within the first year after adoption and were associated with environmental stress. (33)

Dealing with Grief and Loss Regarding the Inability to Give Birth

Infertility is a stressful life event and depressive symptoms are normal responses to the life crisis of the infertile couple. Grief reactions are common among infertile females and males, and the mourning process is considered important in order to resolve the infertility crisis. (34) Although this mourning is often resolved before the parents adopt a child, the sense of loss may be an ongoing issue, and may extend into the adoption process. (35)

Research has shown that the psychological stress experienced by women with infertility is not easy to cope with.

As noted by Ann Hirsch and Stephen Hirsch, some of the feelings experienced include:

- a sense of loss for the child or children that have been imagined. The prospective parents may also feel that they are missing out on the experience of parenthood or the act of having a biological child.
- envy: prospective parents may feel angry at life in general. They may also feel angry or jealous that parenthood seems to come easily to others.
- denial: prospective parents sometimes tell themselves that the next month will bring a positive pregnancy test, and then, when it doesn't, feel a huge sense of sadness and shock.
- shame: women may feel that a diagnosis of infertility makes them less feminine, while men may feel that a diagnosis makes them less masculine.
- lack of control: prospective parents may feel a lack of control, knowing that there is nothing they can do to guarantee or know if treatments will work. (36)
- marital dissatisfaction: studies show that couples dealing with infertility are more likely to feel unhappy with themselves and their marriages. Infertility may affect their relationship in a number of ways, including sexual tension,

financial stress from fertility treatment costs, fear of abandonment, and arguments about treatments. (37)

Helping the Child adapt to a new culture

Internationally adopted children move to a new culture with a different language, and need as much time as possible to adjust to their new family and environment.

Dr. Boris Gindis, in an article published by the National Association of School Psychologists, states that:

In terms of adaptive behaviour, internationally adopted children face the task of transforming their orphanage survival skills into functional family/school relationships. They have to learn new patterns of behaviour and new social skills with both adults and peers.” He uses the example of an eight year old child recently adopted from a Ukrainian orphanage, “who expressed confusion regarding the fact that neither in his new family nor in his new school did adults beat children who misbehaved. For him to follow instructions from adults who do not hit children was a great difference from what used to happen in an orphanage. Therefore, he kept testing the limits to see when he would get hit. With peers in an orphanage, daily relationships were based on the dominance and submissiveness/inferiority model (Dubrovina, et al., 1991). To switch to an "equal opportunity" model is a great transition for a post-institutionalized child. In terms of other deficiencies in social skills, I have to point to an age and sex segregation issue common to Russian and East European orphanages where children are confined to their age group and have very little contact with children from other age groups. Add to this the almost complete absence of male caregivers (again, at least in Eastern Europe orphanages where direct care staff is exclusively females): children may not see or interact with an adult male for years (Sloutsky, 1997).” (38)

Time to Travel Abroad to Adopt a Child

Most international adoptees are collected in their country of origin by their adoptive parents. This process can require more than one trip or a prolonged stay in the country of origin. Formal adoption is normally completed in a foreign court prior to return to the Canada.

Crises arise during travel. First time parents may be overwhelmed by the normal demands of a toddler and which can be compounded by adjustment issues as the child experiences life outside an institution. (39) Some adoptive parents are in the child’s country of origin for a month or more before they receive placement

of the child. As a result, they need time to adjust back to the realities of their life in Canada. (40)

Breastfeeding an Adopted Baby

Some mothers choose to breastfeed their adopted child, although there are no definitive statistics on the number that do. Karleen Gribble reports that there is evidence that breastfeeding can play a significant role in developing the attachment relationship between child and mother. In instances of adoption and particularly where the child has experienced abuse or neglect, the impact of breastfeeding can be considerable. She states that breastfeeding may assist attachment development via the provision of regular intimate interaction between mother and child; the calming, relaxing and analgesic impact of breastfeeding on children; and the stress relieving and maternal sensitivity on mothers. (41)

Considerations:

It would be timely to change the EI legislation to provide adoptive parents with an additional 15 weeks of parental leave for the following reasons:

- The current government has a particular interest in families and this proposal would fit in with its policies on strengthening families.
- All federal parties have recently outlined strategies to support families and it is likely that this policy would receive all party support.
- Provincial and territorial governments would likely be supportive of such as policy as it would be an additional incentive to adopt children in the child welfare system under the care of the provinces and territories.
- The Canadian public would likely support such a change. Until recently adoption was shrouded in secrecy but it is now seen as a legitimate way of forming a family. (42)
- Infertility rates are increasing and adoption is being considered by large numbers of Canadians. (43)

Conclusion:

Given the legal history, the minor financial implications for the Canadian taxpayer, the simplicity of extending EI benefits to adoptive parents, the considerable number of reasons why adoptive parents need additional leave to look after their newly adopted child, and the timeliness of such a change to the EI legislation, the Adoption Council of Canada strongly recommends that the Canadian Government:

- 4) change the Canadian Labour Code to allow for an additional 17 weeks of parental leave for adoptive parents to look after their newly adopted child;
- 5) change the Employment Insurance Act to allow for an additional 15 weeks of parental leave for new adoptive parents;

- 6) encourage those provinces and territories whose labour legislation does not currently allow adoptive parents to take advantage of an extended EI benefit period, to extend parental leave for adoptive parents to a total minimum of 52 weeks.

Bibliography

1. Justice J.A. Austin, *Reva Schafer, Eli Schafer, A Minor By His Litigation Guardian, Reva Schafer, Linda Shub and Mitchell Shub, A Minor By His Litigation Guardian, Linda Shub VS The Attorney General of Canada*, The Ontario Court of Appeal, August, 1997
<http://www.ae-ei.gc.ca/policy/appeals/Other/C-25044-97E.html>
2. Ibid
3. Tomasson v. Canada (Attorney General) (F.C.A.), 2007 FCA 265, 2008, 2 F.C.R. 176
<http://recueil.cmf.gc.ca/eng/2007/2007fca265/2007fca265.html>
4. Ibid
5. Laura Eggertson, BJ, Noni MacDonald, MD MHSc, Cindy L. Baldassi, LLM, Paul C. Hébert, MD MHSc, Ken Flegel, MDCM MSc and Joan Ramsay, BA.; “Every Child Deserves a Home”, Canadian Medical Association Journal, 181,(12) December 2009
<http://www.cmaj.ca/cgi/content/full/181/12/E265>
6. Citizenship and Immigration Canada web site:
<http://www.cic.gc.ca/english/immigrate/adoption/index.asp>
7. Human Resources and Skills Development Canada, EI Monitoring and Assessment Report, http://www.rhdcc-hrsc.gc.ca/eng/employment/ei/reports/eimar_2009/annex/annex2_10.shtml
8. AJ deCasper and WP Fifer, “Of Human Bonding: Newborns Prefer their Mother’s Voices”, Science 6 Vol. 208 no. 4448, p. 1174-1176, June 1980, DOI: 10.1126/science.7375928
<http://www.sciencemag.org/content/208/4448/1174.abstract>
9. Fonagy P, Steele H, Steele M., “Maternal representations of attachment during pregnancy predict the organization of infant-mother attachment at one year of age”, Child Development. (5), 1;62(5) p. 891-905, October, 1991.
<http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8624.1991.tb01578.x/abstract>

10. Frederici, Ronald, "Raising the Post-Institutionalized Child Risks, Challenges and Innovative Treatment" on line article at:
http://www.drfederici.com/raising_child.htm
11. Ibid
12. Atwool, Nicola, "Attachment as a Context for Development: Challenges and Issues", Quality Contexts for Children's Development Children's Issues Seminar, Invercargill
12 March 1997, quoting Fahlberg, 1988; on line at:
<http://www.thelizlibrary.org/liz/attachment.html>
13. Frederici, Ronald, "Raising the Post-Institutionalized Child: Risks, Challenges and Innovative Treatment" on line article at:
http://www.drfederici.com/raising_child.htm
14. Lerner, Mark, "Risk for Reactive Attachment Disorder in Adopted Children", 2007, on line article at:
<http://www.rainbowkids.com/ExpertArticleDetails.aspx?id=232>
15. Chisholm, Kim., Carter, Margaret., Ames, Elinor & Morison, Sara. "Attachment security and indiscriminately friendly behaviour in children adopted from Romanian orphanages.", Development and Psychopathology, vol. 7, p. 283-294, 1995.
<http://www.adoption.ca/summ-Chisholm-95.htm>
16. Ibid
17. McGuinness, Teena, Pallansch, Leona, "Competence of Children Adopted from the former Soviet Union", Family Relations, Vol. 49, No 4, p. 457-464, 2000
<http://www.jstor.org/pss/585841>
- 17a. Ontario Association of Children's Aid's Societies, "Child Welfare Report 2009-2010", p. 15, 2010
<http://www.oacas.org/pubs/oacas/papers/oacaschildwelfarereport2010.pdf>
18. National Centre for Health Statistics, U.S. Department of Health and Human Services, National Survey of Adoptive Parents, 2007-2008,
<http://aspe.hhs.gov/hsp/09/NSAP/index.shtml#Background>
19. Ibid
20. Edelsward, Lisa, "Challenges Experienced by Intercountry Adopted Children", for Human Resources and Social Development Canada, 2005, on line article
at:http://www.cwlc.ca/files/file/pubs/IntercountryAdoptedChildren_Edelsward.pdf
21. Ibid
22. Ibid
23. Ibid
24. National Centre for Health Statistics, U.S. Department of Health and Human Services, National Survey of Adoptive Parents, 2007-2008,
<http://aspe.hhs.gov/hsp/09/NSAP/index.shtml#Background>
25. Miall, Charlene and March, Karen, "Open Adoption as a Family Form: Community Assessments and Social Support", Journal of

- Family Issues, p. 388-389, 2005 on line: Sage Publications
http://www.sagepub.com/ciel/study/articles/Ch07_Article.pdf
26. Adoption Council of Canada web site:
<http://www.adoption.ca/news/050606Ontlaw.htm>
 27. Foli, Karen, "Depression in Adoptive Parents: A Model of Understanding Through Grounded Theory", Western Journal of Nursing Research, 2010,
<http://wjn.sagepub.com/content/32/3/379>
 28. Senecky, Yuhuda et al, "Post Adoption Depression among Adoptive Mothers"; Journal of Affective Disorders, 115, p. 62-68, 2009,
<http://www.isadopt.is/PASnefnd/PostAdoptionDepression.pdf>
 29. Foli, Karen, "Depression in Adoptive Parents: A Model of Understanding Through Grounded Theory", Western Journal of Nursing Research, p. 381, 2010
<http://wjn.sagepub.com/content/32/3/379>
 30. Foli, Karen, "Post Adoption Depression: What Nurses Should Know", American Journal of Nursing: Vol. 109, Issue 7, p11, July 2009
http://journals.lww.com/ajnonline/fulltext/2009/07000/postadoption_depression_what_nurses_should_know.2.aspx
 31. Senecky Y, Agassi H, Inbar D, Horesh N, Diamond G, Bergman YS, Apter A, "Post Partum Depression Among Adoptive Mothers", Journal of Affective Disorders, vol. 115, no1-2, p. 62-68, May, 2009
<http://www.ncbi.nlm.nih.gov/pubmed/18950870>
 32. Persaud, Raj, The Association for Post Natal Illness Web Site, referencing Journal of Affective Disorders, vol. 115, no. 1-2, p. 62-68, May, 2009
<http://apni.org/Dr-Raj-Persaud-Articles.html>
 33. Fields ES, Meuchel JM, Jaffe CJ, Jha M, Payne JL.; "Post Adoption Depression", Arch Womens Ment Health. 13 (2) p. 147-51, 2010 Apr. Epub 2010 Jan 30. Erratum in: Arch Womens Ment Health. (5) p. 457, Oct. 13, 2010. <http://www.ncbi.nlm.nih.gov/pubmed/20119862>
 34. H. Volgsten, A. Skoog Svanberg, L. Ekselius, Ö. Lundkvist, and I. Sundström Poromaa, "Prevalence of Psychiatric Disorders in Infertile Women and Men Undergoing *in vitro* Fertilization Treatment", Oxford University Press on behalf of the European Society of Human Reproduction and Embryology, 2008
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2993044/>
 35. Kepecky, R, Anderson, Karen "Infertility and Adoption" quoting K. Daly, p. 21, In Clinical and Practical Issues in Adoption, edited By Victor Groza and Karen Rosenberg, Greenwood Publishing Group, 1998
 Cecelia M. Brebner et al, "The Role of Infertility in Adoption", Bulletin of Royal College of Psychiatrists, Vol 10, p. 58, March, 1986
<http://pb.rcpsych.org/cgi/reprint/10/3/58.pdf>

36. Valentine, Deborah, "Reproductive Losses and Grieving", Journal of Social Work and Human Sexuality, Vol. 6, Number 1, 1988
<http://www.informaworld.com/smpp/content~db=all~content=a904836044~frm=titlelink>
 Christine Dunkel –Shetter, University of California, on line article:
http://health.psych.ucla.edu/CDS/pubs/1991%20DunkelSchetterLobel_Psychological%20reactions%20to.pdf
37. Hirsch, Ann, Stephen, Hirsch, "The Effect of Infertility on Marriage and Self Concept", Journal of Obstetrical, Gynaecological and Neonatal Nursing, Vol. 18, Issue1, p. 13-18, January, 1989,
<http://onlinelibrary.wiley.com/doi/10.1111/j.1552-6909.1989.tb01611.x/abstract>
38. Gindis, Boris, "Navigating Uncharted Waters: School Psychologists Working with Internationally Adopted Post-institutionalized Children", "COMMUNIQUE" (a publication of National Association of School Psychologists (Part I) Vol. 27, #1, pp.6,9,) September 1998 and (Part II) Vol. 27, #2, pp.20-23, October 1998
<http://www.bgcenter.com/UnchartedWaters.htm>
39. Bledsoe, Julia, Johnston, Brian, "Preparing Families for International Adoption", Pediatrics in Review, Vol. 25 No. 7 p. 247-248, July 2004
<http://adoption.squarespace.com/storage/Preparing%20Families%20for%20International%20Adoption.pdf>
40. Spitzer, Robert, M.D., Michael Terman, Ph.D., Janet B.W. Williams, D.S.W., Juan Su Terman, Ph.D., Ulrik F. Malt, M.D., Forbes Singer, M.Ed., and Alfred J. Lewy, M.D., Ph.D., "Jet Lag: Clinical Features, Validation of a New Syndrome-Specific Scale, and Lack of Response to Melatonin in a Randomized, Double-Blind Trial", American Journal of Psychiatry, 156:1392-1396, September, 1999
<http://ajp.psychiatryonline.org/cgi/content/full/156/9/1392>
41. Gribble, Karleen, "Mental Health, Attachment and Breastfeeding: Implications for Adopted Children and their Mothers", International Breastfeeding Journal 2006 1:5 March 2006
<http://www.internationalbreastfeedingjournal.com/content/1/1/5/abstract>
42. Adoption Council of Canada, "Canadian Look favourably on Adoption: Ipsos Reid Survey, 2005
<http://www.adoption.ca/news/050712ipsos.htm>
43. Ibid