

The higher qualifying standard was criticized by several organizations that made representations to the Committee. As well, the 1981 Unemployment Insurance Task Force felt that the longer eligibility period created a separate, disadvantaged, class of claimant. It noted that a particularly pronounced imbalance is evident when we compare the position of a regular claimant residing in a high unemployment area where the regular entrance requirement is relatively low because of local labour market conditions with the position of a special claimant. The Task Force recommended removing special entrance requirements for any class of claimants (special, new entrants or re-entrants) and extending the regular benefit entrance requirements to all classes of benefits.

Requiring a longer qualifying period for maternity benefits or the parental benefits we propose means making a distinction, based on sex or marital or family status (see Chapter 5), that is prohibited by section 15. The issue of whether distinctions based on pregnancy constitute sex discrimination has been the subject of litigation in both Canada and the United States, with mixed results. For greater certainty, the *Canadian Human Rights Act* now provides that "where the ground of discrimination is pregnancy or childbirth, the discrimination shall be deemed to be on the ground of sex" (section 3(2)). We have adopted this broad definition of sex discrimination for the purposes of our review of federal law in light of section 15. We find it difficult to justify a more stringent qualifying period for special than for regular benefits.

- 3. We recommend that no distinction be made between the qualifying periods for regular benefits and for special benefits under the *Unemployment Insurance Act* and that the Act be amended so that the current eligibility requirement for regular benefits applies in respect of all benefits.**

We recognize that this change will have cost implications but we believe it is dictated both by section 15 and by considerations of equity.

While we have not dealt specifically with sickness benefits, we believe that a more stringent qualifying period for those benefits might also be subject to serious challenge under section 15 as a denial of the equal benefit of the law without discrimination based on physical or mental disability. In any case, we have included all special benefits in our recommendation for the sake of consistency. With implementation of our recommendation concerning parental leave, special benefits will include sickness, maternity and parental benefits. Eligibility for these special benefits will rest on the same basis as regular benefits — that is, 10 to 14 weeks, depending on the local unemployment rate. We have not addressed the longer eligibility requirement for new entrants or re-entrants into the labour market, as we do not believe it raises a section 15 issue.

## **Distinguishing Between Pregnancy and Sickness Benefits**

It is inappropriate to deal with maternity and the proposed parental benefits in the same context as sickness benefits. Childbirth is a common occurrence, and the need to make provisions for maternity leave should be treated as a normal consequence of the full participation of women in the workforce. One result of our recommendation to treat all benefits as regular benefits for qualifying purposes would be to weaken further the conceptual link between pregnancy and sickness.

Section 22(3) of the *Unemployment Insurance Act* also relates to pregnancy and sickness, stating that the maximum number of weeks for which special benefits are