

FAIR submission to:

Senate Standing Committee on Social Affairs, Science and Technology (SOCl) on Bill C-22,
*An Act to reduce poverty and to support the financial security
of persons with disabilities by establishing the Canada disability benefit and making a
consequential amendment to the Income Tax Act*

Sent by email to: soci@sen.parl.gc.ca

FAIR Association of Victims for Accident Insurance Reform
579A Lakeshore Rd. E. PO Box 39522, Mississauga, ON, L5G 4S6
fairautoinsurance@gmail.com

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FAIR Association of victims for Accident Insurance Reform (FAIR) is a grass-root not-for-profit organization with a focus on improving access to auto insurance rehabilitation supports. Our members are largely motor vehicle accident (MVA) survivors who are struggling in a system that continuously finds new ways to delay, deny, and degrade their access to supports.

Thank you for the opportunity to have our voice heard and our comments are in relation to auto insurance claimants and their disability experiences.

Summary:

1. **Careful and considered thought, not fast track**
2. **No insurer claw backs. Closing the door to enriching insurers should be baked into legislation with precise language that would bar insurers and provinces from clawing back the benefits**
3. **Attach CDB to the person as an individual income-based benefit to ensure a Social Benefit is truly reached. CBD must not be reduced based on someone else's income in a household.**
4. **Human Rights are Charter Rights**
5. **Those with disabilities need more income not less**
6. **CDB not be lost at retirement age**
7. **Access to Canadian Disability Benefit (CDB) and being grandfathered in**
8. **Create a way to reach out to the disabled homeless population**

Careful and considered thought, not fast track

We hope the Senate will carefully consider all of the information they've gathered in this process and in doing so recognize their unique position in having a deep depth of knowledge from this process and the tools to truly influence the outcome for millions of Canadians in need right now. It is our hope that you will provide as much detail as possible to provide context and clarity to the legislation as you consider further amendments.

No insurer claw back. Closing the door to enriching insurers should be baked into legislation with precise language that would bar insurers and provinces from clawing back the benefits

Many of our members receive or have applied to access EI, OW, ODSP and CPP-D. Auto insurers in Ontario are payors of last resort [\[1\]](#) so despite paying high premiums claimants quickly discover coverage is illusory, transient, and for many who are captured by a Minor Injury Guideline (MIG) cap of \$3500, it is entirely unavailable.

Auto insurers have transformed their industry and they've quietly created coverage dependent on our public systems. When insurers don't pay, the taxpayers do and insurers know this and plan around this.

Most seriously injured MVA survivors are, and will continue to be, dependent on social supports and all of them will be struggling to recover from sudden injuries while simultaneously being undermined by the insurer they paid to help them. Some will be going to bed hungry, some won't be able to afford medical needs, and some, especially those with brain injuries, will not achieve maximum recovery due to deep poverty and claims delays.

Insurers only collect money but when it comes to pay benefits there are thousands of excuses to not pay anything and they put the responsibility on public tax payers. Government supports them and not people who have permanent damage - it is horrible....unfortunately the government does not care. [N.M.]

Since some of the readers of this document would be Ontario drivers, you more than likely are unaware that current basic coverage is capped at 70% of current wages up to a maximum of \$400/wk if you can qualify to get this benefit for a limited time. It is well below the poverty line and below what a traumatically injured individual would need for an effective recovery since many are brain injured after a car accident. We are already in trouble in Ontario; we are seeing tens of thousands of injured people applying for LAT AABS hearings in an effort to access support every year [2]. Those individuals often wait years to get to a hearing [3] only to hear that their insurer is “not held to a standard of perfection” and their insurers’ failure to provide care as promised in their contract is excused away in a broken justice system. By the time these claimants arrive at a court hearing, most are already on social supports and they are without any specialized medical help. What medical assistance they do get is coming through OHIP if anything at all. If they are denied ODSP coverage they might easily wait years at the Ontario Tribunal System at the Social Benefits Tribunal (SBT) for a hearing about eligibility [4] as well.

I was in a Motor Vehicle Accident and catastrophically injured in 2014. I was diagnosed with PTSD, depression and a traumatic brain injury. My insurance company made me fight for rehabilitation and kept denying coverage. I had no other choice and was forced to apply for the Ontario Disability Support Program even though I paid for premium insurance coverage. My insurance company only paid my income replacement for a short time and cut me off without notice. A national disability payment would mean the government wouldn't continue making up and paying for the shortcomings of the insurance company compensation to accident victims. It would allow MVA victims to focus on getting better and regaining their place in life. We wouldn't have to spend time worrying about the next meal or how we can afford medication and treatment while injured and unable to work. [B.Y.]

For all of the above reasons we agree with and support the recommendation in Share Lawyers submission [5] that the proposed amendment to section 9(c) should read as follows:

A benefit under this Act:

9 (c) cannot be retained by way of deduction, set-off or compensation under any Act of Parliament other than this Act or by contract, agreement, private insurance plan or similar instrument; and,

We appreciate and respect that Carla Qualtrough, the Minister of Employment, Workforce Development and Disability Inclusion believes insurers and Provinces when they promise to be fair and share a commitment to improving the lives of persons with disabilities across this country but we would not rely on promises or a memorandum of intent. Closing the door on claw-backs needs to be baked into the legislation so as to leave no opening to confuse the intent when it is clear that currently provincial statutes and private contracts of disability insurance can deduct or set-off the new Canada Disability Benefit to their financial advantage.

Attach CDB to the person as an individual income-based benefit to ensure a Social Benefit is truly reached. CBD must not be reduced based on someone else's income in a household.

The CDB would be life-changing for those living with disability and trauma, it would open doors and provide supports and it would bring hope to those who surely need it. Anyone that qualifies to collect income replacement benefits (IRB) from a car accident injury are currently forced onto social supports, either Provincial or Federal, so insurers can save money. Current government systems have built-in claw-backs based on the income of family members who live in the same residence and that unfairly target the most vulnerable people in our

society. By definition a social benefit is intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such a disability. It has been a failure with current Provincial and Federal public supports. This has led to Canadians afraid to commit to long-term relationships in order to avoid financially punishing their loved ones by association. This unfair policy has isolated and profoundly punished vulnerable Canadians and the negative effects are far-reaching.

CDB needs to be an individual-based income source in order to meet a basic level of dignity. The current systems serve to isolate disabled individuals and increase their vulnerability through financial dependency in often strained and even dangerous situations.

The creation of a reliable nationwide disability support system is a win-win for taxpayers because these dollars will end up in the general economy right across Canada. The mental health benefits, the absence of worry, and the dignity restored to those who suffer terrible health issues would be immeasurable.

I was seriously injured in an automobile accident in 2008. At that time I was a single mother of a young daughter who I supported by working part-time and receiving ODSP. Nobody can imagine what it is like to be reduced from being someone who is partially able to work on ODSP to being a mother who cannot work at all on ODSP because of a car accident. I have managed to keep my daughter with me in an affordable apartment for many years, now that she is leaving the home, where will I live solely on ODSP? A Canada Disability Benefit received ASAP means I stay out of a women's homeless shelter. 15 years later it is very easy to see how I was permanently disabled in a car accident. Even though I knew my injury would affect me for life, all I ever got was denial of the truth by medical experts paid by the insurer to deny and ignore your own physicians, and stick you in the cracks of the system. [L.W.]

Human Rights are Charter Rights

Both the Charter of Rights and Freedoms [\[6\]](#) and Human Rights [\[7\]](#) dictate that we all have the right to equality and dignity, and to live free from all forms of discrimination. The disparity between those written words and the reality for those individuals who are disabled could not be starker than what currently exists in Canada.

People on social supports in Ontario often live in constant fear. Fear of being cut-off from chronically low benefits, fear of not having enough to eat, fear of losing their home, their children, their car, fear for their children being ostracized for poverty, and fear of leaving often abusive relationships due to a lack of funds. All of these fears are the result of inadequate support and a failure to live up the promise of the right to live with dignity [\[8\]](#). The CDB must lift Canadians out of these fears and assist them into the main-stream of Canadian life as equal citizens.

I was in a car accident in 2015 receiving a severe concussion as well as serious neck and back injuries. It took several years for those injuries to heal in the meantime I was battling with my insurance to receive income supplement benefits to assist me in covering some cleaning help in running my bed and breakfast. The benefits lasted a very short time then cut off in the meantime I am left to cover these costs on my own. This created not only a financial distress but anxiety and stress in my life as I was trying to run a small business and deal with my injuries. Insurance companies are making record profits at this time on the backs of injured people who are left to their own demise. It's shameful what's happening, this is an insurance that we pay into to cover us in time of need and instead it's a sham! Lobbyists for these companies have the government under control, a very sad mess. [M.G.]

Those with disabilities need more income not less

Bill C-22 should not start at the poverty line; it should start with consideration of need. The CDB needs to lift people out of poverty and despair, not ensure it will never end. It needs to be indexed and reflect the real needs of these individuals and recognize the additional costs of living with a disability.

The person who is healthy and well doesn't face the same daily challenges as someone who relies on disability supports. Working individuals without barriers can supply and access the goods and services they need. The same is not true for those facing physical and mental challenges.

Food banks are a band-aid solution [\[9\]](#) and are often unreachable by those with disabilities who need the help the most. It's not unusual for people who are considered disabled to have special dietary needs, assistive devices, housing accommodations, necessary medications (not just provincially funded medications but also over-the-counter) and mobility supports. Not all of these needs are currently covered and if they are, there are multiple steps and obstacles to accessing these supports.

CDB not be lost at retirement age

Expenses don't disappear at 65 and neither do illnesses and trauma. Housing costs, medications, food, all of these costs continue to grow as we age and indeed more assistance may well be needed. The current practice is to shift individuals from social supports onto old-age supports and this means that those most in need may have to choose between food and other needs such as shelter. There needs to be some accommodation for people with disability challenges. A recognition that their requirements, including perhaps many years of not contributing to a pension plan due to illness, might be greater than the average working person faces at retirement.

Access to Canadian Disability Benefit (CDB) and being grandfathered in

Across the country there would be a wide variety of disability coverages offered at varying levels and all of these disparate programs will have to be brought into one basic CDB. We recognize that poses the question of who qualifies since the thresholds of what defines disability by each province may vary. It is our hope that anyone now collecting disability would be 'grandfathered' into the new CDB without creating new hurdles for those already facing huge obstacles and who have undoubtedly already jumped through many hoops and qualifying processes to get the benefits they currently collect.

I was injured in two car crashes, about a decade apart. Insurance coverage for the first provided income support, but for the second, the Ontario government had deteriorated insurance coverage so much that the standard operating procedure was to deny both treatments and income support then require so-called independent medical examinations. They were numerous, mostly denied treatment plans, and incompetent, for example, one referred to me as male and another verbally assaulted me. Although the law allowed me to sue the drivers for pain and suffering and income support because I'd suffered a catastrophic injury, the Supreme Court of Canada had limited payouts so that, even with cost-of-living increases built in, it doesn't cover therapy for pain and suffering. It doesn't cover the basics of living either. I received CPP Disability, but it comes with no health benefits unlike ODSP. As such, even though it, combined with the insurance, is below the poverty line, I still have to pay for necessary treatments out of pocket. The Ontario government delisted community care, as well.

A guaranteed minimum liveable income, without a disability test, would treat everyone equally, based on their income tax filing alone. The government could not discriminate on the basis of disability. The Canada Disability is only a first step, but if it doesn't provide a liveable income for everyone with a disability -- not solely for those who receive the disability tax credit -- and prevent clawbacks by provincial programs, then it's no better than insurance companies who care only about profits, not living up to their contractual obligations to claimants. [S.J.]

Create a way to reach out to the disabled homeless population

To truly appreciate how the current disability system has failed Ontario's car crash survivors one needs only to look at our homeless population. Recent media has pointed out that about 50-55% of the individuals in a homeless situation currently struggle with brain injury [10]. Scratch at that data and you can see about 40% of brain injuries are the result of a car accident and that means that a significant number of the most challenged disabled people have already spiraled down as a result of Ontario's failed auto insurance scheme. It's hard to imagine what the daily fear must be like as they struggle to function and survive. Legislation won't be enough to bring these lost survivors back into Canada's social structure easily so a plan must be created to ensure ALL Canadians with a disability are included in a new plan of care [11].

Conclusion

In an ideal world this new CDB would magically be in place tomorrow. The need is that great, the suffering of those who are already challenged beyond what most of us can imagine shames us all. The harm to our society, not just reputational, but in our hearts as we watch the suffering of our fellow citizens, weighs heavily on us as Canadians, because we all know we are all just one bad decision away from needing support ourselves.

Every day it is estimated that 144 new brain injuries will happen in Ontario [12]. Of the 12,000 estimated each year, 800 will die. Every year 150,000 Canadians suffer an acquired brain injury and it is thought that a brain injury will occur every 3.5 minutes in Canada. Many of these injuries will be the result of a car accident injury [13]. Of the roughly 16,000 injured and unpaid car crash survivors who will end up in Ontario courts every year, most will receive a minimum amount of care, transitory income replacement and many will need supports in the future.

In 2016 I was riding my bicycle to work when a driver of a car hit me head on. I suffered a broken pelvis, traumatic brain injury, whiplash and still suffer from chronic pain. I developed severe PTSD, anxiety and major depression. I was on IRB up until the 20-month mark after my collision when the insurance company stopped paying. I was forced to apply for EI sickness benefits and then CPP Disability. Both options being extremely difficult to receive, with CPP being the ultimate worse, despite having years of doctor's visits and stacks of documents proving my disabilities. During the application period for EI and CPP I went over two years without any financial support from insurance or CPP which meant no income – zero money coming in for me. My husband supported us on his single salary and because of that it caused extreme difficulty for our marriage. Because I couldn't contribute financially and my pain and mental health inhibited me from sufficiently contributing to managing the housework, my sense of self-worth severely deteriorated. I became suicidal and inconsolable. I felt like a failure and worthless. I hated myself and blamed myself for "not getting better fast enough". Because of this he eventually left me, it became too much for him to take care of me. I wonder all the time that if I had unrestricted access to treatments like physiotherapy, osteopathy, acupuncture, psychotherapy, and more, if I would be as broken as I still am. I wonder what I would be doing now if I my

recovery was actually focused on helping me recover. I wonder if my husband would have stayed if I wasn't forced into poverty because I was hit by a driver of a car. CPP Disability provides me with \$849 of taxable income each month. Can you survive on this? [S.B.]

The creation and power of a Canadian Disability Benefit extends far beyond the individual recipients themselves, it will change their lives but also our economy and our Canadian sense of self respect because when persons with disabilities are able to fully participate in our society, everyone will win.

Thank you for your time and attention to this task before you. We appreciate the magnitude of what needs to be done and the Senate's role in making these changes a reality.

Rhona DesRoches, Chair

FAIR Association of Victims for Accident Insurance Reform

[1] O. Reg. 34/10: STATUTORY ACCIDENT BENEFITS SCHEDULE - EFFECTIVE SEPTEMBER 1, 2010

Deduction of collateral benefits

47. (1) The insurer may deduct the following amounts from the amount payable to an insured person as an income replacement or non-earner benefit under this Regulation:

1. Any temporary disability benefits being received by the insured person in respect of a period following the accident and in respect of an impairment that occurred before the accident.
2. Any other periodic benefit being received by the insured person in respect of a period following the accident and in respect of an impairment that occurred before the accident, if the insured person was receiving that other periodic benefit at the time he or she first qualified for the income replacement or non-earner benefit and, at that time, the other periodic benefit was a temporary disability benefit. O. Reg. 34/10, s. 47 (1).

<https://www.ontario.ca/laws/regulation/100034#BK70>

[2] Tribunals Ontario 2021-22 Annual Report

Table 4: Licence Appeal Tribunal Automobile Accident Benefits Service (LAT-AABS) Caseload Overview
Active Appeals fiscal year end /2022 **16,204**

https://tribunalsontario.ca/documents/TO/Tribunals_Ontario_2021-2022_Annual_Report.html#lat

[3] Backlogged tribunals creating 'distress' for Ontarians waiting months or years to be heard

<https://www.cbc.ca/news/canada/toronto/tribunal-backlogs-ontario-justice-1.6766594>

[4] Table 8: Social Benefits Tribunal (SBT) Caseload Overview

Active Appeals fiscal year end /2022 **9,753**

https://tribunalsontario.ca/documents/TO/Tribunals_Ontario_2021-2022_Annual_Report.html#sbt

[5] Bill C-22 Unintended Consequence as a Windfall for Insurers at VII. Proposed changes to Bill C-22

By referencing only Acts of Parliament in section 9 (c) the clear implication is that both provincial statutes and private contracts can deduct or set-off the new Canada Disability Benefit.

A proposed amendment to section 9(c) to read as follows:

A benefit under this Act:

(c) cannot be retained by way of deduction, set-off or compensation under any Act of Parliament other than this Act ***or by contract, agreement, private insurance plan or similar instrument***; and

<https://sharelawyers.com/videos-info/ask-a-lawyer/bill-c-22-unintended-consequence-as-a-windfall-for-insurers/>

Steven Muller, Hart Schwartz/ Share Lawyers

[6] Section 15 of the Canadian Charter of Rights and Freedoms

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. ...

[https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201383E#:~:text=15\(1\)%20Every%20individual%20is,or%20mental%20or%20physical%20disability.%20%E2%80%A6](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201383E#:~:text=15(1)%20Every%20individual%20is,or%20mental%20or%20physical%20disability.%20%E2%80%A6)

[7] Canadian Human Rights Commission

Human rights define what we are all entitled to a life of equality, dignity, respect, and a life free from discrimination

<https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-are-human-rights>

[8] ODSP recipients calling for help, exploring assisted dying

“Some learn to get potatoes and margarine so at the end of the month, it’s called the potato diet and it’s one potato a day for the last two weeks,” Kim explained.

<https://toronto.citynews.ca/2020/09/02/odsp-covid19-pandemic/>

[9] Toronto food bank demands emergency funding from province as client visits quadruple

<https://www.cp24.com/news/toronto-food-bank-demands-emergency-funding-from-province-as-client-visits-quadruple-1.6342115>

[10] Half of homeless people have experienced traumatic brain injury

Roughly half of people who are homeless or in unstable housing have experienced a traumatic brain injury in their lifetime, a new study has found, with potentially severe consequences for their mental and physical health.

<https://globalnews.ca/news/6245863/homeless-traumatic-brain-injury/>

[11] Brain Injury Canada Homelessness

Approximately 50% of people experiencing homelessness have had a brain injury with varying symptoms and outcomes[3]. This is a large percentage of the population who often don’t get the support or resources they need for treatment and recovery. Many may not fully realize they have had a brain injury.

<https://braininjurycanada.ca/en/blog/2020/10/21/homelessness/>

[12] Brain Injury Association of Durham Region

Causes (estimated) Motor vehicle collisions (45%)

144 new brain injuries are sustained every day in Ontario

Every year 150,000 Canadians suffer an acquired brain injury

It is thought that a brain injury will occur every 3.5 minutes in Canada

Currently there are close to 500,000 people in Ontario who are diagnosed with an ABI

Brain injuries occur 10x more often than spinal cord injuries

More than 800 Ontarians die each year due to brain injuries

More than 12,000 people in Ontario sustain disabling brain injuries every year

<https://biad.ca/about-brain-injury/>

[13] Government of Canada Injury in review, 2020 edition: Spotlight on traumatic brain injuries across the life course

Overall there were 657 head injury cases among pedestrians struck by motorized vehicles on roadways, of which 67.1% reported a TBI.

<https://www.canada.ca/en/public-health/services/injury-prevention/canadian-hospitals-injury-reporting-prevention-program/injury-reports/2020-spotlight-traumatic-brain-injuries-life-course.html#a15>