

Bill C-22 – Amendments to Bill C-22 – Submission to the Senate Standing Committee on Social Affairs, Science and Technology (SOCI), Monday, April 3, 2023

Bill C-22 is missing some essential elements. If the goal of the proposed Canada Disability Benefit (CDB) is a federal income benefit for people with disabilities, then not only do poverty issues have to be taken seriously with regards to amounts paid out but there is another ignored issue – the connection between disability and auto insurance, that is Motor Vehicle Accident (MVA) victims and their descent into poverty, with insurers helped along and subsidized by both federal and provincial levels of government via various means, including in the courts. To understand the connection, it is important that the Senate examine, understand and bring forth legislative changes with regards to the treatment of accident victims ending up on government disability programs because auto insurers have shirked their responsibility to their policy holders. The following outlines the interconnections.

Those drivers throughout Canada who have been seriously or catastrophically injured in an MVA are falling into poverty because their auto insurers frequently don't honour the insurance policies that drivers are legislated to have with these insurers. Over the years there are enough statistics on the number of legitimate accident victims who, as claimants, have had to take up legal counsel and fight their auto insurer for years for their policy health benefits despite the very high premiums paid. Rather, insurers immediately yell fraud focusing on staged accidents and the like where criminal gangs or organisations are involved. The average driver/claimant gets lumped into the fraud group and must fight a gargantuan battle with their insurer in order to access the health benefits for which they pay and which they require to optimize their return to a pre-accident time in terms of their health and lifestyle. This fight goes on today with the only difference being that the health benefits have been substantially reduced at various times since 2010. Income replacement benefits (IRBs) for a standard policy, which is what most drivers have, remain un-indexed at 70% of one's salary from the former 80% to a continued maximum of \$400 weekly. To receive this paltry amount still requires an uphill battle for the insured party and when acquired leaves them in poverty.

When drivers become claimants as a result of a serious or catastrophic injury in an MVA accident, this is the point at which the 'deny, deny, deny' process of insurers to save money takes on the diabolical beginning towards poverty. In Ontario, if an auto insurer deems an injury to be minor, regardless of whether the injury is minor or serious, it only allows \$3,500 in treatment for physiotherapy or other treatment protocols. But before these monies can be accessed, the auto insurer gets the added bonus of obliging a claimant who may have private health insurance to firstly use up their benefits from the primary health provider. People who have private work policies pay for them via premiums and all drivers pay for car insurance so why do auto insurers get to jump across to private benefit plans and force their access first. This is an enormous saving and financial bias for auto insurers and forces claimants to use up those benefits which they might require for any other number of reasons. Why do provincial governments financially cater to auto insurers to the detriment of their clients?

Adding insult to injury, what an insurer deems minor is often not what a claimant's health provider would consider minor. Once the \$3,500 is depleted, the insurer not only deems the claimant as 'healed', but closes the file. It is then up to the seriously injured claimant to fight on in order to reopen their file to receive the necessary treatment benefits to optimize their recovery. More often than not, this entails having to hire legal counsel for the claimant, ending up in long wait lines for a LAT adjudication, while being sent to costly Insurance Medical Examinations (IMEs) countless times to counter what a claimant's own medical providers have determined. Claimants who are seriously or catastrophically injured have to fight their auto insurers for years for deserved and necessary benefits while dealing with horrendous health issues. Why does our provincial government (whether it is conservative or was liberal because both parties are guilty) let business interests take the lead to the serious health and financial detriment of so many policy holders who have paid for coverage to help out with this precise issue?).

Auto insurers spend more money to deny a legitimate claimant than it would cost to provide the health services necessary. An occupational health provider I knew stated from observational experience with regards to her clients over the years, that if there are 10 legitimate claimants, an auto insurer will fight all 10 to deny them benefits beyond the MIG (Minor Injury Guidelines). She said auto insurers know that most seriously injured claimants don't have the tenacity to fight and likely 7 out of the 10 will drop out. Of the remaining 3 claimants, 2 will fight on and get benefits below what they're entitled to but can't handle fighting any longer. Finally, the last one will fight to the bitter end, taking years to get what they should. Meanwhile, the insurer has saved money on the 9 others. Many of those who drop out of the process don't have the ability to pick up their former jobs, thus they deplete their savings fighting the insurer and end up on ODSP or CPP Disability Plan. This outcome guarantees a future well below the poverty line. (eg. in Ontario, a recent 5% increase on only part of the \$1,169 monthly for a single person on ODSP is an insult and guarantees homelessness). Even the amount of the Student CERB, despite it being short-term, was \$1,250 with an additional \$750 for a total benefit of \$2,000 if a student had a disability or dependants. Many were living with their parents, paying no bills, yet were in line for higher government assistance than someone on ODSP who likely is on ODSP because an auto insurer shirked its responsibility. How is it possible that the Ontario government thinks anyone, let alone a disabled person, can live on these amounts and, in addition, subsidize the auto insurance industry?

When an auto insurer does pay out, the dollar amounts don't come close to what a person could have earned if they had been able to continue their pre-accident work life. No seriously injured accident victim is going to fight for years and uproot their lives for the measly pay outs or benefits to which they're entitled if they weren't really and truly seriously injured and couldn't return to their prior life. (It's surely too much time and work for a 'scammer' who can turn to many easier ways (online) to cheat in a shorter time frame). And even when the insurer is forced to settle, the insurer has the right to withhold an annual inflation increased deduction which is currently over \$43,000 that jurors are not even allowed to know about. So the provincial and

federal governments end up subsidizing these claimants via ODSP and CCP Disability and consequently subsidize auto insurers rather than ensure that auto insurers honour their policies fully. For example, the annual \$142 million auto insurers in Ontario pay the provincial government under the Insurance Act to cover costs for accident victims is a drop in the bucket of the real cost and hasn't changed in years. What the industry doesn't point out is that in 2011 the auditor general found that the \$142 million was insufficient and recommended at that time that the Financial Services Commission of Ontario (FSCO) work with the Ministry of Finance, the Ministry of Health and Long-Term Care and the insurance industry to review the costs.<sup>1</sup> FSCO agreed but still today, nothing has changed.

Another group of accident victims that gets left in the cold are people with acquired traumatic brain injuries (TBI). The Canada Disability Benefit should also include them as many have been left behind by their insurer and by government disability programs because they often have difficulty advocating for themselves. Because this is an invisible disability, too many people with TBI are dismissed as having only a slight concussion which will right itself within six months or outright malingering when, in fact, they cannot return to normal life and now require permanent health benefits and income support to see them through.

When claimants plead to receive their benefits, let alone improved benefits, our society yells socialism – and we certainly can't have that! Let free enterprise and the market work its charm and create an even bigger gap between the 'haves and have-nots' (a market which hasn't been free in eons because big business wouldn't survive without its lobbyists being at government troughs begging for subsidies and tax credits or threaten to pull out of the country). But its charm is only for the elites, not for every day Canadians. It is time someone in government had the balls to stand up for what is right - stand up to auto insurers to stop the downslide of accident victims into poverty with a helping hand of the institutions around them.

If the purpose of Bill C-22 is to reduce poverty and to support the financial security of persons with disabilities then not only should government disability programs have to pay an indexed living wage, but auto insurers and the Insurance Act need to be held accountable for their role in putting the financial interests of this industry ahead of their clients, and in particular, the clients who have suffered life changes due to serious and catastrophic injuries.

Sincerely,

Jokelee Vanderkop

Author

“So You Think You're Covered! The Insurance Industry Rip-Off: Surviving the Fight for Long-Term Disability Benefits”

---

<sup>1</sup> FSCO, “Auto Insurance Regulatory Oversight,” 2011 Annual Report of the Office of the Auditor General of Ontario, Chapter 3, Section 3.01, 65, 66.