



## ***FAIR Association of Victims for Accident Insurance Reform***

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### **FAIR Response to Canada Disability Benefit Regulations Consultation**

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.

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 so despite paying high premiums claimants quickly discover coverage is illusory, transient, and for many 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.

The Canadian Disability Benefit (CDB) safety net, coupled with provincial payments or other supports currently received by applicants, would support the well-being of those most in need. It would ensure Canadians with disabilities have an opportunity to live a life with dignity.

We recognize that there must be discussion and negotiations regarding implementation of the CDB that include the federal government, provincial and territorial governments and insurance companies who will be affected by the creation of new supports. If the purpose of the CDB is to support Canadians as individuals then safeguards must be in place to prevent insurers and provinces from clawing back those supports and enriching themselves. Current policy in Ontario is to allow insurers to claw-back from government programs. There is nothing to prevent insurers from including the CDB funds in this wide net of programs they can take advantage of in the same way as has been done with ODSP. It is of utmost importance to the taxpayers that this enrichment procedure, initiated by private insurers to add to their bottom line, not be allowed in the CDB process. A failure to address this will mean Canadians would be directly subsidizing already wealthy private insurers who are already raiding provincial coffers. There needs to be protection baked into this legislation to prevent insurers from taking advantage of taxpayers. Medical benefits such as prescriptions and any other disability supports and services should not be lost in this process as this could leave disabled Canadians in a worse situation than they currently are dealing with.

## Eligibility

The **Canada Disability Benefit Act, S.C. 2023, c. 17** states the “aim is to ensure a Canada that is inclusive for all Canadians, including persons with disabilities” and more importantly refers to the definition of disability as accepted under the **Accessible Canada Act, S.C. 2019, c. 10** as: “**disability** means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society. (*handicap*)”.

From here it appears the definition of disability above, accepted by the government in 2019, already provides the criteria for eligibility.

Across the country there is a wide variety of disability coverage offered at varying levels, both public and private. It is our hope that anyone now collecting disability would be ‘grandfathered’ into the new CDB without creating new obstacles for those individuals who have undoubtedly already jumped through many hoops and qualifying processes to get the benefits they currently collect.

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 due to advancing age. The current practice is to shift individuals from social supports onto old-age supports. There needs to be some accommodation for people with disability challenges. A recognition that their needs might be greater than the average working person faces at retirement and that they are very unlikely to have built up assets for retirement due to their situation.

## Benefit amount

The CDB 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 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.

The benefit should supplement existing programs across Canada and the CDB should be a payor of last resort or in other words be topping up, to a livable amount, any monies currently being received by a disabled Canadian.

In the early months of the Covid-19 pandemic the Federal government provided \$2000 per month to support Canadians whose jobs and income were affected. Because the government did not tie one household member’s income to another person residing in the same home, this appears to have done the job the government planned for. This same disassociation of beneficiaries of support should be adopted into the CBD. People with disabilities should not be punished financially because they chose to

live together as currently happens in Ontario. The CERB payment would be inadequate today given how quickly the cost of living has risen and that amount, as a starting off point, would have to be adjusted. The CBD should be indexed annually to ensure disabled Canadians will not fall behind.

The CDB must lift Canadians out of poverty and assist them into the main-stream of Canadian life as equal citizens.

Disabled Canadians should always be encouraged to do what work they can, if they can, and they should not be punished when they do so. A threshold or cap on what earnings they may bring in should be established so as not to punish people who make the effort to overcome their challenges and that amount should be in excess of the \$1000/month currently allowed in on Ontario for ODSP recipients.

There should be no penalty or claw-back on inheritances, legal settlements or gifts, nor should there be an asset test applied which could eliminate access to this benefit.

### **Applications and payments**

The application process should be made highly accessible for Canadians with disabilities. The current website page dedicated to this survey is a testament of what thoughtful accessibility should look like. A multitude of ways to fill out the application is possible using this model.

There should be supports to assist those with disabilities and their care-givers to navigate the application process.

The use of plain language and the opportunity to provide language interpretation in the application process is an important part of successful management of the procedure. There should be a national Help-desk to assist in filling out forms and to provide clarity to applicants and/or their representative or care-givers.

Accommodations must be made for those who do not have access to family physicians and who may have trouble accessing their own medical files. A system needs to be set up that is accessible across the country and the government could consider dedicating particular health professionals such as nurse practitioners, occupational therapists and psychologists to perform assessments to qualify individuals.

Canadians who are already collecting benefits should be grandfathered into this process and should not have to 'start from scratch' to prove their disability.

The government needs to create a pathway to reach out to the disabled homeless population. This is a community that currently struggles with government interactions and has a significant population of individuals with brain injuries as a result of a car crash. 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

Payments should be monthly and in a manner that allows individuals to manage their finances best.

## **Administration**

Calculation of eligibility should begin at the date a person becomes aware of a disability and not the date of application. Retroactive payment should reach back to that date and not be restricted to the governments currently used Old Age Security (OAS) and Guaranteed Income Supplement (GIS) plan that limits back-payment to less than one year. Disabilities are often evolving and complex and applications should reflect the discovery of a disability and acknowledge that in retroactive payments.

## **Reconsiderations and appeals**

There should always be the right to reconsideration and an opportunity to correct. This could be achieved through a Federal Tribunal system specific to the CDB and not funneled into existing and often overloaded Tribunals. There should be a variety of options to facilitate the disability of the participants including accommodations for the ability of travel so in-person hearings, now the norm, could be performed by video or any other form that meets the needs of a disabled person.

Appeals from a Tribunal outcome should be provided through a Federal Court but there must be accommodations made for disability in that process as well.

## **Compliance and enforcement**

We would strongly recommend that the CDB not take a punitive stance when it comes to compliance. Many of the mistakes made in the Ontario auto insurance context are the result of error and misunderstanding when filling out forms or an inability to understand what has been asked of a claimant. This goes directly to the quality of the assistance provided at the time of application so a more robust effort at the beginning of the process would reduce the need for compliance down the road.

## **Best practices or tools**

It should be high on the list to protect the privacy of Canada's disabled population. 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. Fear of exposure of their personal information through sharing of the CDB form should not be added to the list.

## **General Comments**

Thank you for considering our input into the CDB regulatory process and we appreciate the opportunity. We encourage the government to continue to make the effort to be inclusive and to provide an avenue for people with disabilities to ensure that the CDB reflects their needs and priorities.

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