

Brief for the Standing Senate Committee on Social Affairs, Science and Technology's Study of Bill C-22

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INCOME SECURITY ADVOCACY CENTRE
Centre d'action pour la sécurité du revenu
www.incomesecurity.org

ISAC is a specialty legal clinic funded by Legal Aid Ontario. ISAC is the only legal clinic in Ontario wholly devoted to systemic advocacy on income security issues. ISAC's mandate is to advance the rights, interests, and systemic concerns of low-income people with respect to income security and employment. It has unique expertise in income security, including the effects of the law on low-income people, the impact that government benefits have on the livelihoods of low-income Ontarians, and the harms that arise when such benefits are denied.

Founded in 2001, ISAC is governed by a community Board of Directors representative of all regions of Ontario. Our Board includes legal clinic caseworkers and people who identify as low-income, with representation from Indigenous communities, racialized communities, people with disabilities, and recipients of income support benefit programs.

ISAC makes the following recommendations for Bill C-22. These recommendations have been endorsed by 48 community legal clinics, listed in the Appendix below.

Bill C-22 Amendment Recommendations

1. Insert statutory appeal rights through a timely and accessible dispute resolution process.

The Senate should amend Bill C-22 to include statutory appeal rights. Individuals living with disabilities who disagree with a decision about the Canada Disability Benefit (i.e., their eligibility, the amount they are entitled to, etc.) must have a right to challenge that decision through an independent, accessible, transparent, and timely dispute resolution process.

Canada Disability Benefit claimants must have broad appeal rights because denying them the Benefit will have a profound effect on their basic livelihood and access to food, housing, medication, and other disability supports. Accordingly, claimants must have accessible avenues to challenge decisions that deny them the Canada Disability Benefit. A tribunal is a less formal appeal right that ensures flexible evidentiary requirements, emphasis on preliminary dispute resolution, and expertise in working with self-represented parties.¹ Dispute resolution should not take place through the current tax system. The Canada Revenue Agency dispute resolution process and the Tax Court of Canada are unwieldy, costly, and lengthy for people living with disabilities facing intersectional barriers.

A tribunal should be designed to offer flexible and swift access to justice for the disability community. Tribunal communications should be provided via public channels through transparent, multi-lingual, multi-format, and plain language information so people living with disabilities understand their appeal rights and any important deadlines. Persons with disabilities must also be involved in the development and implementation of the dispute resolution process. An administrative tribunal will not be accessible or effective if it contributes to a lengthy waiting period for dispute resolution. If claimants have to wait years before receiving a hearing date or a decision they will be left in limbo and in poverty for a longer period of time. The process must be timely and accessible.

Adjudicators that sit on an administrative tribunal for the Canada Disability Benefit should also possess special expertise about the topic they are considering.² Accordingly, those who have

lived experience of disability and relevant legal and government administration backgrounds should sit as adjudicators. While the disability community is broad and intersectional, adjudication by peers with lived experience is less likely to result in decision making that perpetuates ableism. All adjudicators should receive robust training concerning the Benefit, their adjudicative functions (i.e., how to conduct hearings, draft plain language decisions, etc.), and other training necessary to ensure the tribunal is effective, transparent, and accessible.

The Senate should amend Bill C-22 to outline statutory appeal rights, not wait for the regulations. Parliament and Provincial Legislatures commonly outline the appeal rights within the statute's text when establishing an administrative tribunal.³ Appeal rights from the tribunal decision to a court are also laid out in the statute and establish a statutory appeal and/or a judicial review route that ensures parties still have the right to go to court if they are unsuccessful at the tribunal stage.⁴ The Bill currently notes under s. 11(1)(i) that: "The Governor in Council may make regulations respecting appeals". This permissive language and reference to the regulations runs counter to the common practice of Parliament and Provincial Legislatures in administering disability income benefits. The Senate should remedy this by amending Bill C-22 to include statutory appeal rights.

PROPOSED SENATE AMENDMENT:

The Senate respectfully proposes amending the Bill to include appeal rights within the statute:

Appeal to Tribunal

A person, or any person on their behalf, who is dissatisfied with a decision of the Minister made under sections 4 or 5, may appeal the decision to a Tribunal, as set out in the regulations.

2. Guarantee automatic eligibility for people on existing disability programs.

Bill C-22 should be amended to grant automatic eligibility for people who are on existing disability programs, so they do not have to prove their disability again. There are approximately 30 definitions of disability that determine eligibility for disability benefits in Canada for provincial/territorial, federal, private, and public sector programs.⁵ In crafting Bill C-22, the House of Commons defined disability based on the broad and accessible definition found in the *Accessible Canada Act*, which was a great start. However, people with disabilities who already qualify for disability benefits should not have to prove again that they have a disability and are living in poverty.

Proving eligibility for disability benefits is administratively, emotionally, and financially difficult. The process is an additional and time-consuming burden, especially when the person already qualifies for other disability benefits. Moreover, as SOCI found in its study on the Disability Tax Credit, the administrative practice of reapplying "results in an unnecessary strain on resources within the medical community and the public sector, given the need for qualified practitioners to complete forms, public servants to adjudicate applications, and government lawyers to defend appeals."⁶

People who are currently on provincial/territorial social or income assistance disability programs (e.g., the Ontario Disability Support Program) or federal disability programs (e.g., the Disability Tax Credit or Canada Pension Plan – Disability) should not have to prove their disability again to receive the Canada Disability Benefit. These programs have more restrictive “disability” definitions than the definition found in the *Accessible Canada Act*, so qualifying for these programs would ensure qualification for the Canada Disability Benefit. People who receive compensation under federal or provincial employees’ or workers’ compensation programs also should not have to prove their disability again to receive the Canada Disability Benefit.

However, in implementing automatic eligibility, legislative drafting must ensure that the ongoing receipt of the Canada Disability Benefit is not contingent on the ongoing receipt of the programs with more restrictive “disability” definitions that granted automatic eligibility. Rather, receipt of other programs should solely allow a Canada Disability Benefit applicant to bypass the condition to prove they are disabled. A future adjudication on their ongoing eligibility for the Canada Disability Benefit should be based on the criteria set out in the Canada Disability Benefit, not the criteria set out in the program that granted them automatic eligibility.

This is because if someone is suspended or disqualified from a more restrictive program that granted automatic eligibility (e.g., Canada Pension Plan – Disability), they may still qualify for the less restrictive Canada Disability Benefit. For example, a medical review under the Canada Pension Plan – Disability may find that a recipient no longer has a prolonged disability and that the disability is episodic. While those with episodic disabilities do not qualify under the eligibility criteria found under Canada Pension Plan – Disability, they would still qualify under the *Accessible Canada Act* definition adopted by the Canada Disability Benefit. Therefore, when granting automatic eligibility, legislative drafters must ensure that eligibility for the Canada Disability Benefit remains contingent on its definition of disability and not the definition of disability implemented by the benefit programs that granted automatic eligibility to the Canada Disability Benefit.

PROPOSED SENATE AMENDMENT:

The Senate respectfully proposes that what is currently section 4 of the Bill be amended by adding further sub-sections 2 and 3 respectively to guarantee automatic eligibility for people on existing disability programs and to ensure their ongoing eligibility is based on the Bill’s criteria and not the criteria of existing disability programs:

Eligibility

4 (1) A person is eligible for a Canada disability benefit if they meet the eligibility criteria set out in the regulations.

(2) A person is deemed eligible for a Canada disability benefit under subsection 1 if they are in receipt of,

- (a) a federal, provincial or territorial disability benefit, as set out in the regulations;
- (b) compensation under a federal or provincial employees’ or workers’ compensation law, as set out in the regulations; and

(c) any other benefits, as set out in the regulations.

(3) If a deemed eligible person is no longer receiving benefits listed under subsection 2, their continued eligibility for a Canada disability benefit shall be determined based on the eligibility criteria set out in subsection 1.

3. Remove stringent identification requirements so hard-to-reach populations can access the Benefit.

Bill C-22 should be amended to have flexible and inclusive identification requirements. A wide variety of documentation should be deemed acceptable to meet any identification requirement the Bill imposes. Currently, s. 7 of the Bill requires a Social Insurance Number (SIN) from applicants. This requirement will prevent the most vulnerable people living with disabilities from accessing the Canada Disability Benefit and will exacerbate their poverty.

Unhoused individuals experiencing mental health disabilities are far less likely to have government-issued identification.⁷ To acquire a SIN, an individual has to provide two identification documents and proof of address.⁸ Many people who are houseless with mental health disabilities face difficulties in obtaining or possessing required information due to the cost of identification; the lack of foundational identification required to obtain other pieces of government-issued identification; and the challenges of receiving identification by mail, or loss of identification, due to precarious housing.⁹ The social and economic exclusion caused by this identification divide has far-reaching adverse impacts.

People with precarious immigration status (i.e., refugee claimants who legally reside in Canada but wait years for their claim to be determined or who are fleeing gendered-based violence) who are living with a disability should also receive the Benefit. Although they contribute to society, the economy, and pay taxes, a disproportionate number of precarious status individuals live in poverty without entitlement to income supports. However, the requirement of a SIN for the Canada Disability Benefit may inhibit their access. This is because they have SINs that start with “9”, if they have a SIN at all, differentiating them from other residents in Canada.¹⁰ In trying to obtain a SIN or other forms of government-issued identification, people with precarious status also encounter language barriers and face difficulties in finding a guarantor who has known them for an extended period of time to vouch for their identity.¹¹

Stringent identification requirements may also exclude Indigenous Peoples from accessing the Canada Disability Benefit. The disproportionately high number of Indigenous community members who lack identification is attributable, in part, to the removal of Indigenous children from their families. Forced enrollment in residential schools and the sixties-to-eighties scoop means that many Indigenous Peoples are disconnected from their family histories and do not have ready access to the information required for identification applications.¹²

Insistence on the collection and use of a SIN also raises fears that the Canada Disability Benefit will be tied to tax filing. The Canada Revenue Agency and Employment and Social Development Canada have identified the requirement to file a tax return and the requirement to provide a SIN as two barriers that impede hard-to-reach populations from accessing

benefits.¹³ The Agency and Department have noted that these hard-to-reach populations include people with disabilities, housing insecure individuals, refugees and other newcomers to Canada, and Indigenous Peoples.¹⁴

Qualifying for the Canada Disability Benefit should not be tied to tax filing or a SIN. Any insistence on requiring tax filing or a SIN will prevent hard-to-reach populations from accessing the Canada Disability Benefit. Reputable analyses of current federal benefits administered through the income tax system demonstrate that hard-to-reach populations are not accessing benefits they are entitled to. The Auditor General of Canada found that only 79 per cent of eligible Indigenous families living on reserve accessed the Canada Child Benefit in 2017 compared to 97 per cent of the general population.¹⁵ On a broader scale, scholars found that the value of cash benefits lost to working-age non-filers in 2015 was \$1.7 billion and that these working-age non-filers were more likely to consist of people who were living in poverty, renters, or recent immigrants.¹⁶

PROPOSED SENATE AMENDMENT:

The Senate respectfully proposes that what is currently section 7 of the Bill be amended by adding a further sub-section 2 to ensure those without a Social Insurance Number can still access the Canada disability benefit:

Social Insurance Number

7 **(1)** The Minister is authorized to collect and use, for the purposes of the administration and enforcement of this Act, the Social Insurance Number of an applicant.

(2) The Minister is authorized to collect and use, for the purposes of the administration and enforcement of this Act, other forms of government identification of an applicant, as set out in the regulations, for applicants without a Social Insurance Number.

Other Bill C-22 Recommendations

4. Prevent any level of government or private insurance company from clawing back the Benefit.

Bill C-22 offers no direction and protection from the “clawing back” of any amount of the Canada Disability Benefit from recipients by the federal government, provincial or territorial governments, or private insurance companies. Assurances are required within the Bill to address this concern. As is, the Bill allows the federal government, provincial or territorial governments, and private insurance companies to use the Canada Disability Benefit as a windfall for government coffers or shareholders at the expense of people living with disabilities. This runs contrary to the intent of the Benefit, which is to go directly into the hands of people living with disabilities and improve their quality of life.

5. Legislate to raise people with disabilities above the Official Poverty Line and include the cost of living with a disability.

Bill C-22 states as its purpose “to reduce poverty”, but it fails to establish a right to an adequate standard of living. While the House of Commons amendment to take into consideration the Official Poverty Line is aimed at lifting people with disabilities out of poverty, the amendment fails to establish parameters that legislatively lift people with disabilities out of poverty. Additionally, the Official Poverty Line is defined under s. 2 of the *Poverty Reduction Act*, as the Market Basket Measure (MBM), however the MBM fails to account for the extra costs associated with living with a disability.¹⁷ Therefore, the Bill must be further strengthened to ensure that recipients receive an adequate benefit.

Disability costs are unique to each person and disability, and are often paid out-of-pocket in addition to basic needs of food and shelter. These out-of-pocket expenses include the uninsured portions of assisted devices and medical supplies/services, arranging specialized transportation, and modifying living spaces to make them accessible, among others. In 2018, the United Nations estimated that living with a moderate disability increased the cost of living by 33 per cent.¹⁸ For people living with severe disabilities, the cost of living increased by 40 per cent.¹⁹ Therefore, people living with disabilities must receive a significantly higher amount than what the Official Poverty Line sets out or they will remain in poverty.

Keeping people living with disabilities in poverty runs counter to Canada’s commitment under Article 28 of the *United Nations Convention on the Rights of Persons with Disabilities*, which provides that State Parties “recognize the right of persons with disabilities to an adequate standard of living for themselves and their families”.²⁰ To ensure Canada provides an adequate standard of living for people with disabilities, the Senate must consider and address the cost of living with a disability when strengthening Bill C-22.

Appendix: List of Endorsing Organizations

The community legal clinics who have endorsed these submissions are listed below in alphabetical order:

1. Aboriginal Legal Services
2. Advocacy Centre for Tenants Ontario (ACTO)
3. Advocacy Centre for the Elderly (ACE)
4. ARCH Disability Law Centre
5. Canadian Environmental Law Association (CELA)
6. Centre for Spanish-speaking Peoples
7. Chinese and Southeast Asian Legal Clinic (CSALC)
8. Clinique juridique francophone d'Ottawa du Centre des services communautaires Vanier
9. Clinique juridique Roy McMurtry Legal Clinic (Stormont, Dundas & Glengarry)
10. Community Advocacy & Legal Centre
11. Community Legal Assistance Sarnia
12. Community Legal Clinic – Brant, Haldimand, Norfolk
13. Community Legal Clinic of York Region

14. Community Legal Services (Western University)
15. Community Legal Services of Ottawa
16. Don Valley Community Legal Services
17. Downtown Legal Services
18. Grey-Bruce Community Legal Clinic
19. Halton Community Legal Services
20. Hamilton Community Legal Clinic
21. HIV & AIDS Legal Clinic Ontario (HALCO)
22. Huron Perth Community Legal Clinic
23. IAVGO Community Legal Clinic
24. Jane Finch Community Legal Services
25. Justice for Children and Youth (JFCY)
26. Kensington-Bellwoods Community Legal Services
27. Kinna-aweya Legal Clinic
28. Lake Country Community Legal Clinic
29. Landlord's Self-Help Centre
30. Legal Assistance of Windsor
31. Legal Clinic of Guelph and Wellington County
32. Manitoulin Legal Clinic
33. Mississauga Community Legal Services
34. Neighbourhood Legal Services
35. Neighbourhood Legal Services London-Middlesex
36. Niagara Community Legal Clinic / Clinique juridique communautaire de Niagara
37. North Peel & Dufferin Community Legal Services
38. Parkdale Community Legal Services
39. Peterborough Community Legal Centre
40. Scarborough Community Legal Services
41. South Asian Legal Clinic of Ontario (SALCO)
42. Unison Health and Community Services
43. University of Ottawa Community Legal Clinic
44. Waterloo Region Community Legal Services
45. West Scarborough Community Legal Services
46. West Toronto Community Legal Services
47. Willowdale Community Legal Services
48. Windsor-Essex Bilingual Legal Clinic

Endnotes

- ¹ Government of Canada, “The Judicial Structure: Administrative Boards and Tribunals” (1 September 2021) <<https://www.justice.gc.ca/eng/csjs-just/07.html>>; See also Government of British Columbia, “The Role of Tribunals in B.C.’s Justice System” <<https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/tribunal-sector/role>>.
- ² Paul Daly, “Tribunal Competence and Expertise” (Administrative Law Matters: 4 June 2021) <<https://www.administrativelawmatters.com/blog/2021/06/04/tribunal-competence-and-expertise/>>.
- ³ *Old Age Security Act*, R.S.C., 1985, c. O-9, at s. 28(1); *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B, ss. 23-30; *Employment and Assistance Act*, S.B.C. 2002, c. 40, ss. 19-25.
- ⁴ *Old Age Security Act*, R.S.C., 1985, c. O-9, at s. 28(3); *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B, s. 31; *Employment and Assistance Act*, S.B.C. 2002, c. 40, s. 19.3.
- ⁵ John Stapleton and Yvonne Yuan, “Designing a Canada Disability Benefit: Introduction to a 10 part series on the design of the Canada Disability Benefit (CDB)” (Available in draft form on request to info@isac.clci.ca).
- ⁶ Senate of Canada, Standing Senate Committee on Social Affairs, Science and Technology, *Breaking Down Barriers: A Critical Analysis of the Disability Tax Credit and the Registered Disability Savings Plan* (June 2018), at 13 <https://sencanada.ca/content/sen/committee/421/SOCI/Reports/2018-06-18_SS5_RDSP-DTC_FINAL_WEB_e.pdf>.
- ⁷ Megan Marrelli, “What it means to be a Canadian living without ID” (This Magazine: 31 March 2017) <<https://this.org/2017/03/31/what-it-means-to-be-a-canadian-living-without-id/>>. Moreover, 45% of people who are homeless are disabled or have mental illness, see Isaac Coplan, “Infographic Wednesday - Myths of Homelessness” (Homeless Hub: 15 January 2014). <<https://homelesshub.ca/blog/infographic-wednesday-myths-homelessness>>.
- ⁸ Government of Canada, “Social Insurance Number – Apply” (3 August 2022) <<https://www.canada.ca/en/employment-social-development/services/sin/apply.html>>.
- ⁹ Chris Sanders *et al*, “You Need ID to Get ID’: A Scoping Review of Personal Identification as a Barrier to and Facilitator of the Social Determinants of Health in North America” (2020) 17:12 International Journal of Environmental Research and Public Health 4227 <<https://www.mdpi.com/1660-4601/17/12/4227/htm>>.
- ¹⁰ Government of Canada, “Employer Information – Social Insurance Number (SIN)” (22 December 2020) <<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers-sin.html>>.
- ¹¹ Chris Sanders *et al*, “You Need ID to Get ID’: A Scoping Review of Personal Identification as a Barrier to and Facilitator of the Social Determinants of Health in North America” (2020) 17:12 International Journal of Environmental Research and Public Health 4227 <<https://www.mdpi.com/1660-4601/17/12/4227/htm>>.
- ¹² Ellen Smirl, “Access to Identification for Low-Income Manitobans” (Canadian Centre for Policy Alternatives: October 2017) at 11 <https://policyalternatives.ca/sites/default/files/uploads/publications/Manitoba%20Office/2017/10/Access_to_ID_Low_income_Manitobans.pdf>.
- ¹³ Auditor General of Canada, *Reports of the Auditor General of Canada to the Parliament of Canada: Report 1 Access to Benefits for Hard-to-Reach Populations* (Ottawa: Office of the Auditor General of Canada, 2022), at 2-3 <https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202205_01_e.pdf>.
- ¹⁴ *Ibid*, at 3.
- ¹⁵ *Ibid*, at 8-9.
- ¹⁶ Jennifer Robson and Saul Schwartz, “Who Doesn’t File a Tax Return? A Portrait of Non-Filers” (September 2020) University of Toronto Press Journals: Canadian Public Policy 323 at 323-24, 327-28 <<https://www.utpjournals.press/doi/pdf/10.3138/cpp.2019-063>>.
- ¹⁷ Craig W.M. Scott *et al*, “Disability Considerations for Measuring Poverty in Canada Using the Market Basket Measure” (2002) 163:1 Social Indicators Research 389 at 389-91, 397, 401-04 <<https://link.springer.com/content/pdf/10.1007/s11205-022-02900-1.pdf>>.
- ¹⁸ United Nations Department of Economic and Social Affairs, *Disability and Development Report: Realizing the Sustainable Development Goals by, for and with persons with disabilities*, 2018, at 37-38 <<https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf>>.
- ¹⁹ *Ibid*.
- ²⁰ United Nations, *Convention on the Rights of Persons with Disabilities*, Article 28 – Adequate standard of living and social protection <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>>.