

Brief for the Standing Committee
on Human Resources, Skills and
Social Development and the
Status of Persons with Disabilities
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. 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 to marginalized groups.

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's mandate is to advance the rights, interests, and systemic concerns of low-income people with respect to income security and employment. ISAC carries out its mandate through litigation, policy advocacy, community organizing, and public education.

ISAC makes the following recommendations for Bill C-22.

Bill C-22 Amendment Recommendations

1. Legislate to raise people with disabilities above the poverty line and include the cost of living with a disability.

Bill C-22 states as its purpose “to reduce poverty.” The government has stated that the Canada Disability Benefit (CDB) will be modelled off the Guaranteed Income Supplement (GIS).ⁱ The purpose to reduce poverty and the model of the GIS are insufficient for people with disabilities who must be raised above the poverty line.

Single seniors who receive the maximum Old Age Security (OAS) and GIS monthly payments receive \$1,709.38 if they are 65-74, and \$1,777.93 if they are 75 and over. This provides an income between \$20,512.56 and \$21,335.16 per year.ⁱⁱ The most expensive Market Basket Measure (MBM)ⁱⁱⁱ for a single in Ontario adjusted to 2022 is \$27,733.06 per year.^{iv} This means the GIS model will fall short by \$6,397.90 to \$7,220.50 per year.

This shortfall is particularly problematic when considering the extra costs associated with living with a disability. These costs are extraordinary, unique to each person and disability, and are in addition to basic needs of food and shelter. They include out-of-pocket expenses such as the uninsured portions of assisted devices and medical supplies, physiotherapy, costs to modify living spaces to be accessible, and private psychotherapy and psychological services for people with mental health disabilities who cannot afford to wait for the limited publicly funded services available. The gaps in the social safety net mean that people with disabilities shoulder a disproportionately high cost to support their disabilities.

In 2018, the United Nations estimated that living with moderate disabilities increased the cost of living by 30 per cent. Since the extra cost is higher for people living with severe disabilities, 30 per cent should be treated as a minimum bar, rather than as a cap.^v These costs are in addition to inflationary pressures on the rising costs of basic needs that include housing,^{vi} food^{vii,viii}, clothing, transportation, and digital access. Adding 30 per cent to the most

expensive MBM in Ontario and adjusting the income to the 2022 cost of living results in a minimum income of \$36,052.98 per year. This is the *minimum* amount that people with disabilities require so they can afford basic needs and their disability costs. To reduce poverty, Bill C-22 should also index this minimum income of \$36,052.98 to inflation so that the CDB keeps up with the rising cost of living.

However, the income support benefits currently do not meet the minimum threshold of \$36,052.98 to survive. A single person in Ontario on the social assistance program for people with disabilities, the Ontario Disability Support Program (ODSP), receives \$14,736 per year. In addition, they receive approximately and on average \$1,420^{ix} in federal and provincial tax credits. Therefore, their income shortfall is at least \$19,897. The CDB must fill this gap to achieve the goal of lifting people with disabilities out of poverty, and again this is a minimum bar and not a cap.

To fully support people with disabilities living in poverty, ISAC recommends that Bill C-22 legislate to raise people with disabilities above the poverty line and to account for the extra costs of living with a disability, indexing these costs to inflation.

2. Guarantee automatic eligibility for people on pre-existing government disability programs and commit to develop an inclusive and expansive definition of eligibility for people applying directly for the Canada Disability Benefit.

There are approximately 30 definitions of disability that determine eligibility for disability benefits in Canada for provincial/territorial, federal, private, and public sector programs.^x While the disability definition for eligibility for the CDB will be developed through regulations, ISAC recommends that Bill C-22 include a commitment to an inclusive and expansive definition of disability.

First, to ensure that people who have proved their disability do not need to prove it again, all people who are currently on provincial/territorial social assistance disability programs and federal disability programs should be automatically eligible and enrolled into the CDB.

Second, for people who are not on pre-existing programs or whose applications with provincial/territorial programs are pending, there must be an accessible and expansive definition used. The CDB must not use the definitions of disability employed under the Disability Tax Credit (DTC) and the Canada Pension Plan Disability (CPPD). Both employ highly restrictive definitions that should not be used^{xi}. During the pandemic, many people with disabilities did not receive the \$600 one-time payment to persons with disabilities because the eligibility was restricted to people who were eligible for the DTC, CPPD, and Veterans Affairs Canada disability supports only.^{xii}

Further, relying on the DTC for eligibility will not capture all people with disabilities who require income support. Many low-income people do not apply for the DTC because they do not earn enough income to receive the benefit, and therefore, employing the DTC definition of disability will exclude many people with disabilities living in poverty from accessing the CDB.

To reach all people living with a disability who live in poverty, a broader definition must be used for the CDB than is currently used with pre-existing federal disability programs.

3. Include a timely dispute resolution process through an accessible administrative tribunal via statutory authority.

Individuals who disagree with a decision concerning their receipt of the CDB (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.

CDB claimants should receive the broadest of appeal rights with respect to benefits. A decision denying a benefit to a person with a disability living in poverty has a profound effect on access to medication and other disability supports, food and shelter security, and a host of other factors affecting a claimant's livelihood. Accordingly, claimants must have accessible avenues to challenge decisions that deny them the CDB. Disputes around tax-delivered benefits that go through Canada Revenue Agency processes and the Tax Court of Canada are unwieldy and lengthy and afford less protection for people challenging decisions. In contrast to these formal processes, a tribunal that welcomes self-represented parties is less formal and ensures flexible evidentiary requirements, emphasis on preliminary dispute resolution, and expertise in working with self-represented parties.^{xiii} For these reasons, a tribunal process provides better access to justice for people living with disabilities.

The House of Commons should amend Bill C-22 to outline appeal rights. When establishing an administrative tribunal, common practice has been for Parliament and Provincial Legislatures to outline the appeal rights to the tribunal within the text of the statute and not via regulations.^{xiv} 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.^{xv}

The dispute resolution process must be timely and accessible. 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 poverty for a longer period of time, compounding negative health effects. 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 the important deadlines that they must abide by.

Adjudicators that sit on an administrative tribunal for the CDB should also possess special expertise about the topic they are considering.^{xvi} 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 CDB, 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.

4. Ensure that the Benefit is accessible to everyone by removing stringent identification requirements.

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

Individuals experiencing mental health and addiction disabilities while living in homelessness are far less likely to have government-issued identification.^{xvii} To acquire a SIN, an individual has to provide two identification documents and proof of address.^{xviii} Many people living with mental health and addiction 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.^{xix} 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 must wait years for their claim to be determined, women fleeing gendered-based violence from sponsors, etc.) 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. They deserve access to the CDB, but the requirement of a SIN will 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.^{xx} In trying to obtain a SIN or other forms of government-issued identification, people with precarious immigration 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.^{xxi}

Stringent identification requirements will also exclude Indigenous people from accessing the CDB. 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 people are disconnected from their family histories and do not have ready access to the information required for identification applications.^{xxii}

Supplementary Recommendation for Regulations

ISAC has been following the Committee’s proceedings on the study of Bill C-22. In response to those proceedings, ISAC makes one supplemental recommendation.

1. Target people with disabilities aged 18 to 64.

ISAC recommends that the CDB be delivered to persons with a disability between the ages of 18-64 because this age group has the least amount of income support, particularly if people

are unable to work because of their disability. 79 per cent of people on ODSP are working age single unattached individuals.^{xxiii} This group is currently the most left behind.

For working-age adults, the Canada Workers Benefit (CWB) offers a credit of \$1,395^{xxiv} for a single person. However, many people on ODSP do not qualify because they do not earn the required minimum of \$3,000 per year to be eligible.

For children with disabilities, the pre-existing federal Child Disability Benefit provides a maximum of \$2,985 per child per year. ISAC recommends that this benefit level increase, and that the benefit uses a more inclusive and expansive definition of eligibility for broader access.

For seniors, ISAC recommends that the Committee studies separately how to raise seniors living in poverty above the MBM poverty line.

Endnotes

ⁱ Government of Canada (2019). *A stronger and more resilient Canada*. Retrieved from Government of Canada website: <https://www.canada.ca/en/privy-council/campaigns/speech-throne/2020/stronger-resilient-canada.html>.

ⁱⁱ Government of Canada (2022). *Old Age Security payment amounts*. Retrieved from Government of Canada website: <https://www.canada.ca/en/services/benefits/publicpensions/cpp/old-age-security/payments.html>.

ⁱⁱⁱ Note that while the MBM is Canada's official poverty line, there are no measures for people living in remote communities, reserves, or for the three territories where there are high rates of poverty. There are also concerns that the MBM underreports poverty as compared to the Low Income Measure (LIM). See: Citizens for Public Justice (2020). *Canada's new Poverty Measure Falls Short*. Retrieved from Citizens for Public Justice website: <https://cpj.ca/canadas-new-poverty-measure-falls-short/>.

^{iv} Statistics Canada (2022). *Market Basket Measure (MBM) thresholds for the reference family by Market Basket Measure region, component and base year*. Retrieved from Statistics Canada website: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1110006601> and Bank of Canada (2022). *Inflation Calculator*. Retrieved from Bank of Canada website: <https://www.bankofcanada.ca/rates/related/inflation-calculator/>.

^v United Nations Department of Economic and Social Affairs (2018). *Disability and Development Report: Realizing the Sustainable Development Goals by, for and with persons with disabilities*. Retrieved from United Nations website: <https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf>, pp. 37-38.

^{vi} Approximately 70% of clients on social assistance in Ontario live in market rentals. The average market rent for bachelor apartment in Toronto – the city with the highest MBM – is currently \$1225. See: Toronto (2022). *Current City of Toronto Average Market Rents & Utility Allowances*. Retrieved from City of Toronto website: <https://www.toronto.ca/community-people/community-partners/social-housing-providers/affordable-housing-operators/current-city-of-toronto-average-market-rents-and-utility-allowances/>.

^{vii} In 2021, 61 per cent of food bank users in Toronto were ODSP recipients. See: Daily Bread Food Bank (2022). *Research Bulletin: A Decade of Deep Poverty 2010-21*. Retrieved from Daily Bread website: https://www.dailybread.ca/wp-content/uploads/2022/10/DB-ResearchBulletin_Report-2022.pdf, pg. 8.

^{viii} One 2021 study highlighted that two-thirds of respondents who identified as having a disability had less than \$3.33 per day for all necessities including food after paying housing and utilities. See: Feed Ontario (2021). Retrieved from Feed Ontario website: <https://feedontario.ca/wp-content/uploads/2021/11/Hunger-Report-2021-Digital.pdf>, pg. 5.

^{ix} The \$1420 calculation is the 2021 figure.

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- ^x Stapleton, John and Yvonne Yuan (2021). *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 devorah.kobluk@isac.clcj.ca.
- ^{xi} CPPD and DTC use “severe and prolonged,” while ODSP uses “a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more.” See: Government of Canada (2022). *About the Canada Pension Plan Disability Benefits*. Retrieved from Government of Canada website: <https://www.canada.ca/en/employment-social-development/programs/pension-plan-disability-benefits.html> and Government of Canada (2022). *Disability tax credit (DTC)*. Retrieved from Government of Canada website: <https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit/eligible-dtc.html>.
- ^{xii} Government of Canada (2022). *One-time payment to persons with disabilities*. Retrieved from Government of Canada website: <https://www.canada.ca/en/services/benefits/one-time-payment-persons-disabilities.html>.
- ^{xiii} Government of Canada (2021). *The judicial structure: Administrative boards and tribunals*. Retrieved from Government of Canada website: <https://www.justice.gc.ca/eng/csj-sjc/just07.html> and Government of British Columbia. *The role of tribunals in B.C.'s justice system*. Retrieved from Government of British Columbia website: <https://www2.gov.bc.ca/gov/content/justice/about-bcs-justice-system/tribunal-sector/role>.
- ^{xiv} *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.
- ^{xv} *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.
- ^{xvi} Daly, Paul (2021). *Tribunal Competence and Expertise*. Retrieved from Administrative Law Matters website: <https://www.administrativelawmatters.com/blog/2021/06/04/tribunal-competence-and-expertise/>.
- ^{xvii} Marrelli, Megan (2017). *What it means to be a Canadian living without ID*. Retrieved from This Magazine website: <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: Coplan, Isaac (2014). *Infographic Wednesday - Myths of Homelessness*. Retrieved from Homeless Hub website: <https://homelesshub.ca/blog/infographic-wednesday-myths-homelessness>.
- ^{xviii} Government of Canada (2022). *Social Insurance Number – Apply*. Retrieved from Government of Canada website: <https://www.canada.ca/en/employment-social-development/services/sin/apply.html>.
- ^{xix} Sanders, Chris *et al* (2020). ‘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. Retrieved from International Journal of Environmental Research and Public Health website: <https://www.mdpi.com/1660-4601/17/12/4227/htm>.
- ^{xx} Government of Canada (2020). *Employer information – Social Insurance Number (SIN)*. Retrieved from Government of Canada website: <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers-sin.html>.
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- ^{xxiii} Maytree (2022). *Social Assistance Summaries – Ontario*. Retrieved from Maytree website: <https://maytree.com/social-assistance-summaries/ontario/>.
- ^{xxiv} Government of Canada (2022). *Canada workers benefit (CWB) – How much can you expect to receive*. Retrieved from Government of Canada website: <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/witb-amount.html>.