



Recommendations on Bill C-22, the *Canada Disability Benefit Act* to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)

In keeping with the spirit of the *Canada Disability Benefit Act*, this brief from Defend Disability provides two recommendations on how the framework legislation can be improved in the Bill, and three additional and important design considerations for the Act's future regulations.

Summary

Section A: Recommended amendments to Bill C-22, the *Canada Disability Benefit* framework legislation

- Recommendation 1: Ensure a statutory minimum amount of the *Canada Disability Benefit* in Bill C-22, to ensure it will raise people with disabilities at least thirty percent above the Market Basket Measure poverty line. This will account for the extra costs of living with a disability and raise people with disabilities out of poverty.
- Recommendation 2: Ensure the *Canada Disability Benefit Act* includes a legislated appeals mechanism in Bill C-22, to ensure access to justice for vulnerable applicants.

Section B: Design considerations for future regulations

- Recommendation 3: Institute a definition of disability for eligibility that is grounded in lived experience of disability, focused on function rather than diagnosis, and inclusive, to ensure access to the program for all who need it.
- Recommendation 4: To ease access, individuals receiving provincial and federal disability supports should automatically qualify for the *Canada Disability Benefit*. In addition, there must be an accessible direct application that uses the definition of disability outlined in Recommendation 3.
- Recommendation 5: Ensure that the *Canada Disability Benefit* supplements provincial and territorial income support programs and engage with the provinces and territories to preclude the clawback of provincial and territorial income supports.

Submission

About Defend Disability and the expertise informing our recommendations

Defend Disability has a rich composition and a history as a powerful provincial disability justice advocacy group. From across Ontario, our members include people with lived experience of disability and poverty, frontline health providers, social policy experts, legal practitioners, health-specific NGOs, community agencies and anti-poverty and disability rights advocates. Our diverse membership is grounded in lived experience and informs our comprehensive understanding of disability and the financial supports required to allow persons with disabilities to secure individual autonomy, self-determination, and full economic, political and social inclusion.

Since 2018, we have engaged with matters relating to policy and funding of the Ontario Disability Support Program (ODSP), the social assistance program in Ontario for people with disabilities. We helped lead successful efforts to persuade the Ontario Government to reverse its plan to revise the ODSP definition of disability. We also successfully raised concerns with delayed access to justice at the provincial Social Benefits Tribunal, where ODSP cases are adjudicated.

We have participated in discussions with the Minister of Children, Community and Social Services and Members of the Provincial Parliament and the City of Toronto on critical issues including social assistance rates, government investments, the need for stakeholder consultations and how to have meaningful co-design processes on Ontario's current once-in-a-generation transformation of social assistance.

A. Suggested Amendments to Bill C-22, the Canada Disability Benefit framework legislation

Recommendation 1: Ensure a statutory minimum amount of the Canada Disability Benefit in Bill C-22, to ensure it will raise people with disabilities at least thirty percent above the Market Basket Measure poverty line. This will account for the extra costs of living with a disability and raise people with disabilities out of poverty.

Our members who have lived experience of disability and those who provide services to them are acutely aware of the extra costs of living with a disability. While we appreciate that regulations will need to be the principal mechanism for setting benefit rates, our members know that we need protection in legislation to prevent regulatory fluctuations from defeating the core purpose of the Bill, and to ensure persons with disabilities do not live in poverty. It is critical for the Bill to specify a statutory minimum threshold for the Canada Disability Benefit (CDB) that should guarantee that persons with disabilities are able to live above the poverty line. To secure individual autonomy, self-determination, and full economic, political and social inclusion, the minimum guarantee must be adequate to account for the extra cost associated with living with a disability, which may include expenses such as medical or technical aids/devices, home modifications, dietary supplements, mental/physical therapies, etc. We recommend that the Bill legislate a benefit amount that, while supplementing pre-existing provincial programs, is at least thirty percent¹ above the local Market Basket Measure of poverty. Furthermore, the amount must be indexed to inflation and subject to regular review.

If a minimum threshold is not included in the framework legislation, it must be central to the development of regulations

Recommendation 2: Ensure the Canada Disability Benefit Act includes a legislated appeals mechanism in Bill C-22, to ensure access to justice for vulnerable applicants.

No definition of disability can adequately capture the full range of experiences of persons with disabilities. As seen through twenty years of experience with the ODSP, a program's definition requires testing and refinement through application, adjudication and appeals. Effective appeal mechanisms enable full consideration of adjudication decisions, to allow for the refinement of the definition through litigation.

¹ Cattari, L. (2021). *Beyond Basic Need: The Financial Cost of Disability*. Hamilton Roundtable for Poverty Reduction. <https://hamiltonpoverty.ca/preview/wp-content/uploads/2021/01/HRPR-Policy-Brief-The-Financial-Cost-of-Disability.pdf>.

Great care must be taken in designing an accessible appeals mechanism, to ensure that the most vulnerable applicants have meaningful appeal rights. Federal income support credits and benefits delivered through the Canada Review Agency (CRA), such as the Disability Tax Credit (DTC) and the Canada Child Benefit (CCB), are appealed through a lengthy objections process and ultimately through the Tax Court of Canada. This process is prohibitively onerous, expensive, and not accessible to clients living near or below the poverty line.

We therefore recommend that Bill C-22 enshrine in the Act the right to appeal a denial of the benefit through a tribunals-based appeals mechanism that allows for the careful, timely and transparent consideration of the impact of the disability on the whole person. This is the case for ODSP, Employment Insurance, Canada Pension Plan Disability (CPPD). If the right of appeal is only written into the regulations, it could easily be removed or limited. Such a Tribunal must be empowered to consider oral testimony and make decisions *de novo*. Consideration may be given to expanding the jurisdiction of the Social Security Tribunal (SST) to hear such appeals or taking on learnings from that Tribunal such as the recent addition of the navigator service to assist individuals with CPP disability appeals. It will be critical that the decision-making body continuously seek to be responsive, inclusive and equitable, to meet the diverse needs of individuals living with disabilities from across the country. There must also be a statutory right of appeal to the Federal Court. Through this process, the Canada Disability Benefit's (CDB) definition of disability will evolve, through litigation, to more completely meet the breadth of lived experiences of persons with disabilities.

B. Design Considerations for Future Regulations

Recommendation 3: Institute a definition of disability for eligibility that is grounded in lived experience of disability, focused on function rather than diagnosis, and inclusive, to ensure access to the program for all who need it.

Since 2018, Defend Disability has advocated for the Ontario government to maintain its current legislated definition of disability as the test for access to ODSP. The ODSP definition of disability requires that an individual have a substantial physical or mental impairment, or cumulative impairments; that is continuous or recurrent and expected to last one year or more; that results in a substantial restriction in one or more activities of daily living; and is verified by a prescribed health care provider.² This definition has been refined and tested by courts and tribunals, who apply a whole person analysis and consider functioning in the community and capacity for personal care, in addition to functioning in a workplace.

The definition of disability used for ODSP should be the starting point for developing the definition of disability used for the CDB. The federal government should work to ensure that the definition of disability for the CDB is also based on an understanding of lived reality and functional impairment, rather than the medical model of disability reflected in current federal programs. For example, the two major current federal disability support programs, CPPD and the DTC, rely on far more restrictive and medicalized definitions of disability.

The CPPD program requires a disability to be “severe” and “prolonged,”³ and to prevent an individual from regularly pursuing any substantially gainful occupation. The DTC requires an

² *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B. Retrieved from Government of Ontario website: <https://www.ontario.ca/laws/statute/97o25b#BK4>, S. 4.

³ *Canada Pension Plan (R.S.C., 1985, c. C-8)*. Retrieved from Justice Laws Website: <https://laws-lois.justice.gc.ca/eng/acts/C-8/page-9.html?txthl=prolonged+severe#s-42>, S. 2.

individual to have a marked (i.e. severe) restriction in at least one specific bodily function or activity of daily living (or an equivalent restriction through cumulative effects in multiple areas of function) at least 90% of the time.⁴ These definitions are based in medical diagnostic categories rather than the social model of disabilities that accounts for societal barriers. Indeed, in March 2019, HUMA recommended that CPPD “shift the emphasis from the medical model concepts of ‘severe’ and ‘prolonged’ towards the social model concept of being able to work productively and gainfully on a regular basis,”⁵ in part to account for income support required by people with episodic disabilities during periods when they cannot work. Either of these definitions (CPPD and DTC), if applied to the CDB, would result in the exclusion of many individuals living with disabilities who are in need of this benefit.

We recommend, therefore, that the CDB draw on the definition of disability used by ODSP as a starting point in the development of its own qualifying definition. The final definition should be developed through consultation with people with a diversity of lived experience of disability, legal experts in disability support program access, and health providers with experience in assessing disability and supporting applications for disability support programs. It should be based on a functional understanding of disability that is grounded in the lived realities and barriers persons with disability face in our society.

Recommendation 4: In order to ease access, individuals receiving provincial and federal disability supports should automatically qualify for the Canada Disability Benefit. In addition, there must be an accessible direct application that uses the definition of disability outlined in Recommendation 3.

Provincial social assistance disability support programs are accessed through robust and rigorous application processes that require extensive time and energy from persons living with disabilities, health care providers and other supports. While there are still barriers to accessing ODSP, these programs are targeted to persons with disabilities living in the deepest poverty. Federal disability support programs (CPPD and DTC) employ highly restrictive definitions of disability that admit only those with a level of disability above what we believe is reasonable to access this new program.

In order to ease access and reduce the burden on persons with disabilities and their supports, we recommend that one of the pathways to qualifying for CDB is that every individual already receiving federal or provincial social assistance disability support should automatically qualify for the CDB. This approach has been applied in Ontario, where individuals who have qualified for CPPD are automatically deemed eligible for the ODSP (provided they have financial need).

It must also be recognized that many low-income Canadians living with disabilities do not currently receive these benefits due to factors such as extremely low-income cut-offs and lack of access to health and social support. In particular, historically disadvantaged groups, such as Indigenous Peoples who are underrepresented on ODSP, face additional barriers in accessing

⁴ Government of Canada (2022, June 24). “Disability Tax Credit.” 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>.

⁵ Canada, Parliament, House of Commons. Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA). (2018). *Fifteenth report entitled: Taking Action: Improving the Lives of Canadians Living with Episodic Disabilities*. 42nd Parl, 2nd sess. Rept. 15. Retrieved from Parliament of Canada website: <https://www.ourcommons.ca/DocumentViewer/en/42-1/HUMA/report-15/page-24>.

ODSP. Therefore, for individuals with disabilities not already receiving federal or provincial social assistance disability support, we recommend an accessible direct application that uses the definition of disability we outline in Recommendation 3. Such a process should again be determined in collaboration with those with a diversity of lived experiences of disability and their allies.

Recommendation 5: Ensure that the Canada Disability Benefit supplements provincial and territorial income support programs and engage with the provinces and territories to preclude the clawback of provincial and territorial income supports.

ODSP rates trap recipients in levels of deep poverty and fail to provide necessities of life, including adequate food and shelter. Provincial and territorial clawbacks to the CDB would undermine the ability of recipients to avail themselves of the full impact of income security benefits necessary to raise them above the poverty line, to realize greater social inclusion and lives of dignity. Agreement from the provinces and territories for the harmonization of legislative frameworks to prevent the clawback of these disability benefits is critical. A recent example of such successful harmonization of targeted poverty reduction measures is the elimination in Ontario of the clawback from social assistance of the CPPD contributor's child benefit and surviving child's benefit.

Preventing clawbacks would also help to ensure that people with disabilities are able to access the full suite of services and benefits afforded to them. For example, services such as coverage for prescription medications and medical supplies, are an integral part of ODSP. If the federal government does not work with provincial and territorial governments to prevent clawbacks, people with disabilities may not only lose income benefits but also access to medical benefits and other critical disability support services.