BOLD FEASIBILITIES:

A NEW POLICY SOCIAL ARCHITECTURE FOR CANADIANS WITH DISABILITIES

SUBMISSION
TO
SENATE SUB-COMMITTEE ON CITIES
THE SENATE OF CANADA

BY

MICHAEL J. PRINCE
LANSDOWNE PROFESSOR OF SOCIAL POLICY
UNIVERSITY OF VICTORIA
mprince@uvic.ca

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OVERVIEW

In proposing a new social policy architecture for disability income benefits, this submission has four aims: first, to emphasize the serious problems of poverty facing hundreds of thousands of Canadians with physical and mental disabilities; second, to outline how a new national program of Basic Income for people with severe disabilities would interact with a Refundable Disability Tax Credit as well as existing federal and provincial income programs and tax measures; third, to propose specific reforms to the Employment Insurance Sickness benefit and the Canada Pension Plan Disability program; and, fourth, to identify other initiatives that could comprise an overall federal agenda on disability issues facing Canadians.

THE CURRENT SITUATION: EXTENSIVE AND PERSISTENT POVERTY

In Canada, a significant share of public expenditures on disability cash benefits is delivered through provincial and territorial social assistance programs; a share higher than in most other OECD nations. In the mid 1990s, it was estimated that people with disabilities accounted for 20 to 25 per cent of social assistance caseloads and expenditures. Today, a decade later, 40 to 50 per cent of social assistance caseloads and expenditures are related to persons with disabilities. And with the elimination of the Canada Assistance Plan and adoption of the CHST in 1996, succeeded by the Canada Social Transfer in 2004, there is no direct and meaningful federal involvement in social assistance for people with disabilities.

A recent statement by a large coalition of groups in the Canadian disability movement declares:

> Many Canadians with disabilities and their families continue to experience daily barriers to their full and equal participation in Canadian society. The personal, social and economic costs of exclusion are too high to be ignored. Immediate action is needed to address the high rates of poverty facing Canadians with disabilities and its causes and the lack of access to disability supports that perpetuate barriers and exclusion and keep people with disabilities and their families invisible and marginalized.

Of course, not all Canadians with disabilities are invisible. As a social group, however, persons with disabilities are more marginalized than non-disabled Canadians; and there are consistent patterns of marginalization in the form of under-representation in employment and the over-representation of the disabled in welfare and non-standard work. In social insurance programs such as CPP and EI that cover only the labour force (and not all of that), non-coverage is an issue, resulting in a sizeable number of working people with illnesses and disabilities excluded from public disability support programs. The public program alternative is provincial/territorial social assistance; in effect, welfare based disability benefit. A critical need exists for improved services and enhanced income supports.[1]

In the non-senior population, 27 per cent of persons with disabilities have low income in contrast to 14 per cent of the remainder of the population. The type of income support available (or not) is significant in explaining variations in the likelihood of low income among persons with disabilities. Recipients of workers' compensation or private disability insurance benefits are much less likely to have low income than persons who only receive the C/QPP disability benefit, veterans' pension or social assistance. Furthermore, persons with disabilities who receive only the C/QPP disability benefit or social assistance are more likely to experience "persistent poverty" that is, continued low income over a several year period, than individuals in receipt of workers' compensation benefits.

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[1] Michael J. Prince, *Absent Citizens: Disability Politics and Policy in Canada,* Toronto: University of Toronto Press, 2009.

Short term steps for improving the income security of Canadians with disabilities include making the Disability Tax Credit refundable, expanding the Employment Insurance Sick Benefits to a full year from the present limit of fifteen weeks, and introducing benefits in CPPD for people with episodic and recurrent impairment.

Longer term, the disability community and other social groups are calling for an expanded federal role in income security for Canadians with disabilities in the form of a guaranteed annual benefit also called a Basic Income.

A BASIC INCOME FOR PEOPLE WITH SEVERE DISABILITIES

A Basic Income (BI) for Canadians with disabilities as proposed by the Caledon Institute of Social Policy, and broadly supported by some leading national disability organizations, is designed as an income-tested, federal safety net program for persons with severe impairments. Indeed, the BI would become the principal form of income support against people with severe disabilities.

The definition of disability would be comparable to that used in the Disability Tax Credit rather than, say, the relatively more onerous definition in the Canada Pension Plan Disability program.

The actual introduction of the BI would follow on the conversion of the existing non-refundable DTC to a Refundable Disability Tax Credit (RDTC) paid by the federal government from general revenues. A refundable DTC would reach the poorest persons with disabilities who, because they are below the taxpaying threshold, currently do not benefit from this tax measure. The assumption is that a RDTC could be introduced in the short to medium term while the BI would require further policy analysis, public dialogue, and intergovernmental discussions and arrangements.

As a safety net benefit, BI payments would not be taxed, similar to the Veterans Affairs disability pensions, the GST/HST Credit, and the Guaranteed Income Supplement for low-income seniors. (Note that Old Age Security and the Universal Child Care Benefit are considered taxable income and reportable as income. Also, under the Registered Disability Savings Plan (RDSP), the Canada disability savings grant, Canada disability savings bond and investment income earned in the plan are included in the beneficiary's income for tax purposes when paid out of the RDSP).

A Basic Income and Canadian families

The Caledon's BI proposal includes an allowance for dependents less than 18 years of age that would have the same annual value as the maximum dependent allowance provided by the CPP Disability program. The CPP provides monthly benefits for dependent children of parents who are receiving CPP Disability benefits. To be considered dependent, the child must be either under the age of 18 or between 18 and 25 and attending a recognized school or university full-time.

For an adult eligible for the BI, who had a child also with a disability, they would qualify for the Child Disability Benefit a tax-free benefit for families who care for a child under age 18 with a severe and prolonged impairment in mental or physical functions.

Thus, for example, a lone parent with one or more children under age 18 could get the proposed Refundable Disability Tax Credit, the BI, the child dependent allowance, and the Canada Child Tax Benefit as well as the GST/HST Credit. This combining of benefits at the same time for a person or household is sometimes called ‘benefit stacking’ and, in this case, it is an intentional combination of benefits to support people living in very low income circumstances.

A Basic Income and labour force participation

Because the BI would be targeted at people with severe disabilities, expectations of sustained and major labour force attachment by recipients would not apply. The Caledon proposal therefore recommends that any earned income from working would result in the BI benefit being reduced by 50 per cent of the income earned. This could still be seen as an incentive for some recipients to undertake some gainful employment.

Interactions of a Basic Income with other income programs and income sources

Because the BI is intended as a safety net program of last resort, any income from several other particular sources of disability benefits would be fully offset. That is to say, any monies received from these other sources by a BI recipient would result in an equivalent deduction from the amount paid by the BI program. Programs that would be fully offset with the BI include:

- CPP or QPP Disability benefits
- Employment Insurance Sickness benefits
- Workers’ Compensation benefits
- Private disability insurance benefits

Other sources of income would be treated as exempt from considerations of determining payment amounts in the BI program. (Exempt income is income received by an applicant in a form that is not considered income when determining the applicant’s eligibility). These sources could include the following:

- Registered trusts for people with disabilities
- Inheritances
- Gifts
- Personal life insurance

A Basic Income and federal-provincial-territorial relations

An expanded federal role in providing a basic income for adults with severe disabilities would free up significant financial resources at provincial and territorial levels for persons presently on social assistance caseloads, and for reinvestment in disability-related supports and services. An intergovernmental agreement would seek to ensure that provinces and territories use these savings to invest in disability supports for assistance with everyday living and participation in learning and employment.

Provincial income supplements as top-ups to one or more parts of the BI program are a possibility, as is the case with supplementary elderly income benefits and child income benefits in some jurisdictions across the country. The interaction of provincial tax credits relevant to disability also needs to be considered.

An opting-out formula is another possible feature that would enable one or more provinces to deliver a distinct yet comparable program to that of a national BI financed and delivered by the federal government.

On the issue of "passing through" the RDTC, the reasonable expectation is that provinces and territories would not reduce their disability-related welfare benefits as a consequence of the refundable DTC. Since each province and territory establishes their own rules regarding the treatment of social assistance payments, to allow the pass through of the RDTC could be addressed by a multilateral agreement, a series of bilateral agreements, or unilateral action each jurisdiction.[2]

REFORMING EMPLOYMENT INSURANCE (EI) AND CANADA PENSION PLAN DISABILITY (CCPD)

The absence of a social insurance program for working Canadians whose work and earnings are interrupted because of a prolonged illness or moderate disability is an important weakness in Canada's social security for working people. At present the interruption of employment income and family security arising from a moderate disability or recurring illness is largely a matter of individual responsibility with the possibility, for some people, of private insurance plans and, for others, provincial welfare programs.

[2] The province of British Columbia offers a recent example of a provincial supplement and "pass through" for a federal disability income reform, the Registered Disability Savings Plan (RDSP). The BC government has given a one-time $5 million endowment to a provincial foundation to improve the financial futures of low income people with disabilities in BC. Targeted to social assistance clients who have a disability, when clients open a RDSP and contribute a minimum of $25.00, the foundation will contribute $150.00 from the provincial endowment fund. The BC government expects that up to 30,000 income assistance clients will start a RDSP through this initiative. In addition, BC has exempted RDSP assets and withdrawals. This means that they will not affect a client's income assistance payments. This BC initiative will begin in fall 2009.

Promising and obvious programs for reforming the architecture for disability income insecurity are EI sickness benefits and CPP Disability benefits. How do they currently operate and interact with other programs? And how might they be modernized to afford better protection for persons with disabilities with significant attachments to the labour force?

EI Sickness Benefits

For EI sickness, earnings from sickness plans, disability wage-loss indemnity plans and workers' compensation plans (a pension or a lump sum payment) are not taken into account in the determination of earnings for benefit purposes. Neither is CPP disability benefits treated as earnings for EI benefit purposes. In fact, a person may apply separately for the EI sickness benefit and the CPP or QPP disability benefit at the same time. Earnings taken into account for EI sickness include payments from a paid leave plan for sickness, a group wage-loss indemnity plan, and motor vehicle accident insurance.

Individuals can apply for the EI sickness benefit while waiting for a provincial workers' compensation decision on a claim but, in such circumstances, they must sign an understanding to repay the sickness benefits when the workers' compensation claim is finalized. Likewise, if a person receives financial support from a provincial/territorial social assistance program while waiting for their EI benefits to start, the person may have to reimburse that money out of their EI benefits.[3] By contrast, employer-provided programs that offer supplemental payments to EI sickness benefits during a period of unemployment due to illness, injury or quarantine, are not deducted from the employee's EI benefits.

The average duration of EI sickness benefits is just over 9 weeks, though about 30 per cent of clients exhaust the full 15 weeks. After the final payment, if a person does not have a job to return to, they may apply for and possibly receive EI regular benefits, up to 50 weeks of combined benefits (that is, 15 weeks of sickness benefits and 35 weeks of regular benefits). In a similar way, a person on EI regular benefits who becomes ill while on that claim, can apply for and may receive sickness benefits.

CPP Disability Benefits

The existence (actual or assumed) of other public and private programs conditions several design elements of CPP disability; specifically, the income replacement rate of a reasonable minimum, with additional benefits to come from other sources; the three month waiting period; being the payer of first resort; and, the offset of some or all of CPP disability benefits by other programs. For example, the Guaranteed Income Supplement, the Spouse's Allowance and Allowance for the survivor, War Veterans Allowance, and

[3] Federal government studies report that only a small portion of individuals who exhaust their EI regular benefits move on to social assistance within a year, and that the UI/EI reforms of 1996 had little impact on the take-up rate of social assistance, at least until the latest economic recession began in Canada in 2008.

provincial/territorial social assistance all take into account CPP disability benefits when determining payment amounts.

CPP disability benefits differ from provincial and territorial disability benefits in important ways. Unlike provincial disability benefit programs, CPP disability benefits are not asset tested: there is no limit to the personal assets a person can have. Receiving income from other sources (except for a certain level of employment income) will not disqualify a person from receiving CPP disability. Also in contrast with provincial disability income benefits, if a CPP disability client becomes involved in a dependent relationship, for example, a marriage or common law relation, their benefits are unaffected. CPP disability benefits are portable across provincial jurisdictions whereas that is not the case with provincial social assistance. CPP disability benefits are indexed and taxable, while provincial/territorial welfare benefits are not taxed but neither are they indexed automatically. Provincial and territorial disability income benefits are funded through general revenue taxes while the CPPD is funded through payroll contributions of employees and employers. Since CPP benefits rest on the social insurance technique, there is the element of an “earned right” to the benefit and therefore not the same social stigma associated with provincial welfare programs.

Within the CPP itself, there are some benefit offsets and interactions. A person eligible for both the CPP disability and CPP survivor benefit can receive both in a combined payment, although the total amount is adjusted based on the survivor’s age and other benefits received. For insured workers between age 60 and 65, who obtain a CPP disability benefit, they cannot, at the same time, receive the CPP retirement pension.

Extending the duration of EI Sickness Benefits

As an expansion to the EI sickness program, the new medium term benefit could be for at least 26 weeks, as the practice in some other countries, or, using a Canadian benchmark, up to 35 weeks like the EI parental benefit or to 45 or 50 weeks. This reform would add between 11 to 20 further weeks to the current maximum duration period of the sickness benefit.

Increasing in length the maximum duration of the sickness benefit to, say, 50weeks could be delivered in at least two different ways: all at once as up to 50 weeks consecutively, or access to a maximum of 50 weeks over a specified period, such as two years, with automatic access to the remaining portion of the 50 weeks through that specified period until the full amount was used.

The rationale underlying this feature is to offer flexible person-centred income protection that readily links with rehabilitation and employment services. This could be done, in part, by having periodic interviews or employment planning sessions with recipients to review their work experiences, plans and personal circumstances.

Eligibility would include 600 hours of insurable earnings in the previous 52 weeks for the first 15 weeks (the status quo qualifying condition) and either no additional labour force attachment requirements for any additional weeks under the new benefit or some further number of insurable hours over, say the past 78 weeks. Such a two-phase eligibility structure could mirror a two-phase benefit structure.[4]

This option lies clearly within federal jurisdiction, and does not legally require involved intergovernmental negotiations and consensus as does the CPPD option, although advance notice to the provinces and territories and some consultations would likely occur. This type of reform would be an appropriate manner to use EI for social policy purposes. Locating a new benefit within EI situates the reform within the federal department charged with labour market and skills development, ensuring institutional attention to employment and return to work services.

Adding partial benefits to the CPP Disability program

A benefit for partial disabilities in CPP disability program represents a basic change to the CPP program and legislation, a move away from the "all-or-nothing" nature of this program, toward a functional approach to eligibility based on the potential of applicants to continue to participate in the labour force, taking into account economic and social factors along with personal circumstances. A new intermediate category of impairment would be formulated that recognizes disabilities that are significant and cyclical or recurrent and not only prolonged and continuous.

Obviously, core design issues for this option include how "partial disability" would be defined, and by whom; whether non-medical factors are taken into consideration such as age, education, employment experience, local/regional labour market conditions; what would be the benefit level or levels; and, the role of vocational rehabilitation and other employment services.

While the Canada, Quebec and American public disability insurance plans do not cover partial disabilities, many European systems do, including France and Germany. These plans typically define partial disabilities as 50 to 60 per cent of earnings capacity, that is, a partial yet still significant ability to earn income through employment. One approach could entail the provision a partial benefits that would be only for a limited time period, such as 52 weeks maximum, perhaps available over a two year interval. After this specified time had elapsed, the recipient would be re-assessed and then determined whether she or he qualified under the stricter criterion for the full CPP disability benefits.

A modified CPP formula could be designed for partial disability benefits, providing pro-rated benefits based on an individual's loss of earnings capacity. The formula might be to replace 60 per cent of the insured claimant's lost earnings up to the current maximum of 30 per cent of covered earnings at the average income level. That is, 60 per cent of 30 per cent, producing a replacement rate of about 18 per cent of average income. In 2005,

[4] Varied rates in sickness benefits are the practice in a number of countries, including France, Germany and Italy.

that would have been an average monthly payment of about $475. Cost projections could be done on the “four of the last six years” contributions approach as compared, say, to a “career average” approach or a “best five years” approach for determining benefit payment levels. The logic behind the “career average” or “best five years” approaches is to smooth out fluctuations and interruptions in earnings due to cyclical and recurrent chronic diseases and health conditions. A “drop-out” provision could be another way to handle periods of low or no earnings.

An important assumption behind these reform options for the Basic Income (BI), EI sickness benefits, and CPP Disability is that existing disability income programs, such as veterans’ benefits, certain tax measures, workers’ compensation, social assistance, provincial auto insurance, and private LTD plans all remain in place.

OTHER POLICY REFORMS

Beside the income security reforms discussed above, a number of other reforms that are less expenditure oriented are worth noting as they pertain to a renewed federal vision and agenda for advancing the citizenship of persons with disabilities.

Ratify the UN Convention on the Rights for Persons with Disabilities

The purpose of this recent UN Convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” Canada has signed the Convention but yet to ratify it. There is no reason for delay. It is time for Canada to join 70 other countries worldwide that have ratified this important Convention on human rights.

Reinstate the Court Challenges Program

The rise and fall, then revival and demise once again, of the Court Challenges Program show how citizenship rights are subject to contestation and termination by the federal state. For most of the past twenty-five years, the Court Challenges Program offered resources to disability organizations enabling these groups to be more effective participants in fundamental legal cases dealing with equality rights and constitutional questions of the relationship between citizens and the state, and between the Charter of Rights and governments.

Individuals with disabilities and their associations made considerable use of this program for augmenting their modest influence on public policy and government politics, and as a way of giving meaning to the rights of Canadians living with disabilities in a society marked by systemic barriers and ambivalent public culture of pride and prejudice. It seems obvious that this program should rise again and be reinstated by the federal government and parliament.

Introduce a Federal Disability Act

A federal government task force on disability issues in 1996 called for comprehensive legislation for Canadians with disabilities, and Québec and Ontario have wide-ranging accessibility laws for persons with disabilities. In addition to the limits of the human rights laws, and examples of legislative reforms in these provinces and in other countries, the persistent social exclusion, poverty, and stigma experienced by Canadians with disabilities also spurs interest in a federal disability act. This sort of legislation fits Canadian practices of group-conscious policies, as for Aboriginal peoples, veterans, official language communities, women, seniors, and visible minority communities.

If carefully designed, and in close consultation with disability groups across the country, a disability act could be a modest contribution to advancing access as well as tackling poverty.

A federal disability act, to be effective and acceptable to the disability community, requires a framework of organizational structures and policy tools. These include: a minister of disability issues named in the legislation with specific duties and powers; a commissioner of disability and inclusion, an independent officer that would report to parliament annually on the progress of federal public bodies in complying with standards and policies related to disability; an accessibility design centre that would give the federal government capacity to develop and promote universal design standards for facilities, services, and technologies; and a full inclusion policy centre located in the Canadian Human Rights Commission in order to supply proactive advice on removing and preventing barriers.

The potential scope of a federal act includes telecommunications, inter-provincial and international transportation, broadcasting, banking, justice, immigration, First Nations, employment in the federal public service and federally regulated sectors (about 10 per cent of the overall Canadian labour force), and various other federal programs, services, institutions, and tax measures. Not an end in itself, a federal disability act should be a beginning in federal leadership on a wider disability agenda.

Depending on the statutory details and implementation systems, a Canadian disability act could serve as a useful addition to the policy repertoire for lowering obstacles, mainstreaming disability, and enforcing public accountability for improving access and social inclusion. Admittedly, a new federal disability act is unlikely to tackle issues of poverty, literacy, and the lack of personal supports, issues largely within provincial jurisdiction. For these major social issues, a new spirit of cooperative intergovernmental relations devoted to advancing inclusion and equality is essential. At the same time, a national act could strengthen enforcement of activities within areas of federal jurisdiction such as telecommunications, employment equity, and human rights.

Expand access to training, education, and labour force participation

I wish briefly to propose two measures. First, establish specific targets for persons with disabilities in labour market agreements between the federal and provincial/territorial governments, and second, expand federal funds to federal programs that support innovation by business councils, employers, labour unions, and related trade and professional associations in labour force inclusion by disabled Canadians.

Mainstream disability issues in federal policy and administrative work

Mainstreaming disability into public policy and administration suggests a further set of reforms in relation to national statistics and an inclusion index; impact assessments with use of a disability or inclusion lens; and budget statements that commit to improving the lives of people with disabilities and also report on implications for people with disabilities and families, and wider economic and social conditions.

To give one example: public reports on disability, such as *Advancing the Inclusion* - the Government of Canada's accountability report to Parliament on federal actions on disability - must go beyond being inventories of existing programs. They could be robust accountability documents by including evaluations of results against objectives, over time, and by engaging interested publics of the disability community around possible new initiatives and/or reforms to current programs and delivery systems, through online consultations, roundtable meetings, and other processes.

Monitor progress of a federal agenda

To ensure accountability of this agenda, quantitative targets are essential for measuring results and encouraging success. Over five to ten years, the targets are to reduce by half the annual income gap between Canadians with and without disabilities, to reduce by half the poverty rate of adults with disabilities (which at that time was 15 per cent for working age people with disabilities), to reduce by half the non-reimbursed costs faced by persons with disabilities, and to reduce by half the labour force market participation gap between Canadians with and without disabilities, which would mean increasing the employment rate for persons with disabilities from the average of 44 per cent to 61 per cent. These are central tests of whether an agenda of action on disability is successful over the coming decade.