



Submission from the Canadian Human Rights Commission on the proposed Canada Disability Benefit Regulations

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Table of contents

Introduction	1
General Comment: Barriers in the Consultation Process	1
Objective	2
Eligibility Criteria	2
Using the Disability Tax Credit	2
Exclusions	3
Amount	4
Amount and Calculation	4
Income Testing for Couples	5
Protection from Clawbacks	6
Application Process	7
Other Issues	7
Terminology	7
Gender-based Analysis Plus	8
Measuring Impact	8
Suspension of Benefits	9
Incapacity	9
Compliance and Enforcement	10
Conclusion	11

Introduction

The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution. We promote, monitor and protect human rights in Canada. We are also responsible for monitoring Canada's implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD).

The CHRC celebrated the adoption of the Canada Disability Benefit Act ("CDB Act") in 2023. This monumental step forward promised to lift people with disabilities across Canada out of poverty and improve their quality of life. However, we are concerned that the details of this new program, as laid out in the draft Canada Disability Benefit Regulations, will fail to deliver on this promise.¹

The CHRC welcomes this opportunity to comment on these draft regulations. We strongly encourage the government to strengthen the Canada Disability Benefit (CDB) and begin rolling out this critical program as soon as possible. The CDB should ensure all people with disabilities in Canada have an adequate standard of living and can live with dignity.

General Comment: Barriers in the Consultation Process

- **Issue:** The CHRC recognizes the government's efforts to make this consultation process accessible.² However, we are concerned that barriers may still prevent some people with disabilities from participating in this consultation. For example, the format of the consultations (i.e. inserting comments in text boxes on the Canada Gazette webpage) may not be accessible for everyone. The draft regulations and the Regulatory Impact Analysis Statement ("Impact Analysis") are also written in technical language that may be hard for some people to understand.³
- **Recommendations:**
 - The government should make its consultations fully accessible for people with disabilities. For example, we recommend providing information about the draft regulations in plain language; telling people how to ask for the draft regulations in alternate formats; and adding a table of contents to the Impact Analysis to make it easier to navigate through the long text.

¹ Canada Gazette, Part I, Volume 158, Number 26: Canada Disability Benefit Regulations (June 29, 2024): www.gazette.gc.ca/rp-pr/p1/2024/2024-06-29/html/reg2-eng.html.

² For example, the government provided sign language videos summarizing the draft regulations. See: Employment and Social Development Canada, Summary of the proposed Canada Disability Benefit Regulations (2024): www.canada.ca/en/employment-social-development/programs/disabilities-benefits/summary-regulations.html.

³ Although the government is also allowing people to provide input in other ways (e.g. by email or mail), these options are not mentioned at the beginning of the consultation materials. Some people may therefore not be aware of these options. The government's summary of the draft regulations is also written in technical language that may be hard for people to understand.

- In its upcoming report to Parliament about how it engaged with people with disabilities when developing the regulations, the government should explain how it will work to improve the accessibility of future consultations.⁴

Objective

- **Issue:** The objective of the draft regulations is to “reduce poverty and support the financial security” of people with disabilities. While this would be a step forward, the government has an opportunity to align the objectives of the CDB with its international human rights commitments. For example, article 28 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) require Canada to ensure people with disabilities and their families have an adequate standard of living. These articles also recognize people’s right to “the continuous improvement of their living conditions”.
- **Recommendations:**
 - The objective of the draft regulations should be strengthened to align with Canada’s commitments under international law. The regulations should aim to guarantee all people with disabilities in Canada an adequate standard of living and enable them to live with dignity.
 - The CDB amount and eligibility criteria should be significantly expanded to achieve this objective. We provide specific recommendations about this below.

Eligibility Criteria

Using the Disability Tax Credit

- **Issue:** Paragraph 2(1)(b) of the draft regulations would require people to be eligible for the Disability Tax Credit (DTC) in order to access the CDB. The CHRC is concerned that many people with disabilities are excluded from the DTC, and many people face barriers in accessing this program. For example:
 - The Disability Tax Credit has a very low uptake rate (estimated at 40% of working-aged adults with qualifying disabilities) despite the staggering poverty rate among people with disabilities in Canada.⁵
 - Some types of disabilities are not recognized or do not qualify for the DTC (e.g. pain-related and episodic disabilities).

⁴ Subsection 11.2(1) of the Canada Disability Benefit Act (CDB Act) requires the government to publish this engagement report by December 2024.

⁵ Teeple, J., (June 2024), The disability tax credit needs immediate reform, Policy Options: <https://policyoptions.irpp.org/magazines/june-2024/disability-tax-benefit-reform/>.

- The DTC is non-refundable. People only benefit from the DTC if their income is high enough that they have to pay taxes. Many people with disabilities live below this income threshold, and therefore do not benefit from the DTC.
- Many people face barriers when applying for the DTC. They have trouble understanding the application process, and they cannot afford to hire professionals (e.g. accountants or lawyers) to help them. Some people give up because they find this process too difficult and discouraging.
- The DTC medicalizes disability. It relies on medical assessments, which creates barriers for people with disabilities. Many people are uncomfortable sharing their private medical information with strangers. Many people do not have access to doctors due to staffing shortages across the country. Some doctors refuse to fill out DTC forms. Most doctors charge a fee for this, which many people with disabilities cannot afford. Travelling to medical appointments also takes time and money, especially for people living in remote areas. Budget 2024 committed funding to support people with these costs, but the draft regulations do not provide details about these supports.
- Some people only qualify for the DTC on a temporary basis. They must reapply for the DTC every few years, which creates more barriers.
- **Recommendations:**
 - Using the DTC to determine eligibility for the CDB could help speed up the implementation of this new program. However, since many people face barriers in accessing the DTC, this should only be a temporary solution. The government should work with disability communities to find a more inclusive and accessible way to determine eligibility for the CDB in the long-term. For example, people with disabilities who receive other federal, provincial or territorial disability benefits could automatically be enrolled for the CDB.
 - The government should also continue working to make the DTC program more inclusive and accessible.

Exclusions

- **Issue:** The CHRC is concerned that the eligibility criteria in section 2 of the draft regulations would prevent certain groups of people with disabilities from accessing the CDB.⁶
- **Recommendation:** The eligibility criteria for the CDB should be broad and inclusive so that as many people as possible can benefit from the CDB. It is especially important to ensure that people with disabilities who face intersectional forms of oppression and discrimination can access this program.

⁶ For example, some newcomers to Canada who have disabilities and some prisoners with disabilities would not have access to the CDB.

Amount

Amount and Calculation

- **Issues:** The CHRC is very concerned about the maximum amount of the CDB. The proposed regulations would only allow people with disabilities to receive CDB payments of up to \$2,400 per year or \$200 per month. This amount is far too low to lift people with disabilities out of poverty or ensure their financial security.

In November 2023, the Parliamentary Budget Officer (PBO) concluded that the CDB should be between \$14,356 and \$22,701 in order to lift people with disabilities out of poverty.⁷ Disability advocates have been calling for the CDB amount to be even higher, given the additional costs associated with living a disability.

Through our work monitoring the right to adequate housing for people with disabilities, we have learned that many people are currently struggling to pay their rent and meet their basic needs.⁸ Some people with disabilities are even turning to Medical Assistance in Dying (MAID) because they feel they have no other options. This is unacceptable.⁹ The data we have collected shows that people with disabilities are more likely to live in unaffordable housing, and are nearly twice as likely to live in core housing need.¹⁰ The CDB amount must be high enough to improve the living conditions of people with disabilities and enable them to live with dignity.

The CDB's proposed income thresholds (\$23,000 for single people and \$32,500 for couples) and working income exemptions (\$10,000 for single people and

⁷ Office of the Parliamentary Budget Officer, The Canada Disability Benefit: Model and Scenarios (Nov 2023): www.pbo-dpb.ca/en/publications/RP-2324-019-S--canada-disability-benefit-model-scenarios--prestation-canadienne-personnes-handicapees-modele-scenarios [PBO Report].

⁸ The CHRC and the Office of the Federal Housing Advocate (OFHA) have developed a detailed framework to monitor the right to adequate housing for people with disabilities in Canada. Our framework monitors outcomes, policy efforts and government resources in eleven key areas, including affordability and homelessness. See: CHRC and OFHA (2024): Monitoring the right to housing for people with disabilities: <https://www.chrc-ccdp.gc.ca/resources/publications/monitoring-the-right-housing-people-disabilities>.

⁹ Read our statement about MAID: CHRC, Ending one's life must be a true and informed choice (Feb 2024): <https://www.chrc-ccdp.gc.ca/resources/newsroom/ending-ones-life-must-be-true-and-informed-choice>.

¹⁰ CHRC and OFHA, The right to housing for people with disabilities: Affordability (2024): <https://www.chrc-ccdp.gc.ca/resources/publications/the-right-housing-people-disabilities-affordability>; CHRC and OFHA, The right to housing for people with disabilities: Core housing need (2024): <https://www.chrc-ccdp.gc.ca/resources/publications/the-right-housing-people-disabilities-core-housing-need>. People are in core housing need if they live in housing that is unaffordable, inadequate, or unsuitable, and they cannot afford to move to housing nearby that is affordable, adequate and suitable.

\$14,000 for couples) should also be increased to remove barriers to employment for people with disabilities.¹¹

The draft regulations do not consider fluctuations in people's incomes. For example, people with episodic disabilities may work in the gig economy because they need flexible work schedules. If their income is not stable, they may need higher CDB payments at certain times of the year.

In addition, the draft regulations do not address differences in the cost of living across the country. For example, people living in places such as Toronto and Vancouver may need higher CDB payments since their cost of living is higher. People living in remote or rural areas may require additional support to offset certain added barriers, such as a lack of nearby public services or increased transportation costs.

- **Recommendations:**

- The amount of the CDB must be significantly increased. This amount should be high enough to lift people with disabilities out of poverty, guarantee them an adequate standard of living, and enable them to live with dignity. The CDB should consider the additional costs associated with living with a disability, as required by the Canada Disability Benefit Act.¹²
- The CDB income thresholds and working income exemptions should also be increased to remove barriers to employment.
- The CDB should reflect differences in the cost of living across the country.¹³ It should also be responsive to fluctuations in people's income and financial needs over time.

Income Testing for Couples

- **Issue:** The draft regulations use a spousal income test. This means people's CDB payments could be reduced because of their partner's income. The CHRC is concerned that this could limit people's autonomy and life choices. People with disabilities may feel they cannot marry or live with their partners because they cannot afford to have their CDB payments reduced.

The government's Impact Analysis acknowledges that the spousal income test "reinforces financial dependency". People with disabilities are more vulnerable to abuse and exploitation if they are financially dependent on their partners. If

¹¹ The income threshold is the amount of income a person can have before their CDB amount gets reduced. Working income exemptions mean that a certain amount of people's employment income would be excluded when determining their CDB amount. These exemptions allow people who receive the CDB to keep money they earn through employment.

¹² CDB Act, paragraph 11(1.1)(b).

¹³ Provinces and territories have also called for CDB payments to vary based on the cost of living in different regions.

people aren't financially independent, it may also be more difficult for them to leave violent situations. These risks are even higher for women with disabilities¹⁴ and people who face intersectional forms of oppression.

- **Recommendation:** The CDB should be individualized to support people's autonomy, independence and safety. The regulations should use an individual income test instead of a spousal income test.

Protection from Clawbacks

- **Issue:** The CHRC is concerned that the draft regulations don't prevent clawbacks (i.e. reductions) in people's other benefits and income supports. This means people's other supports (e.g. federal, provincial and territorial benefits and payments from private insurance) could be reduced based on income they received from the CDB. This would defeat the CDB's objective since it would not improve the financial situation of people with disabilities. To date, only a few provinces and territories have committed to preventing clawbacks in other benefits for people who receive the CDB.¹⁵

The government's Impact Analysis acknowledges that "provincial and territorial income supports are largely insufficient to meet the economic demands that many persons with disabilities face in their day-to-day lives." According to the PBO, these programs fall short of the official poverty threshold by 40 percent on average.¹⁶ The CDB should not replace these income supports. It should supplement these supports, help bridge these income gaps and lift people with disabilities out of poverty.

- **Recommendation:** The government must ensure other income supports are not clawed back for people who receive the CDB. This includes supports such as other federal benefits, provincial and territorial social assistance programs and payments from private insurance. Preventing clawbacks is critical to achieve the CDB's objective of lifting people with disabilities out of poverty. The CDB should not count as income when determining people's eligibility for other support programs, or the amount people receive from those programs.

¹⁴ Women with disabilities are about twice as likely to experience violence, including emotional, financial, physical, or sexual violence by a current or former partner, than women without disabilities. See: Western University Centre for Research & Education on Violence Against Women & Children, (Jan 2019), Women with Disabilities and D/deaf Women, Housing, and Violence: https://gbvlearningnetwork.ca/our-work/issuebased_newsletters/issue-27/index.html#:~:text=VIOLENCE%20AGAINST%20WOMEN%20LIVING%20WITH%20DISABILITIES%20IN%20CANADA&text=71%25%20of%20women%20living%20with,a%20victim%20of%20violent%20crime.

¹⁵ Subsection 8(2) of the CDB Act requires the government to make public its agreements with provinces and territories about the CDB.

¹⁶ PBO Report, supra note 6.

Application Process

- **Issue:** The draft regulations do not provide details about the CDB application process. However, the Impact Analysis states that people who currently receive the DTC would not have to apply for the CDB. They would be automatically enrolled for the CDB if they meet the new benefit's income thresholds. People who do not currently receive the DTC would have to complete two separate applications (one for the DTC and one for the CDB), in addition to filing their taxes. The CHRC is concerned that this would put a significant burden on people with disabilities, especially for people who face barriers in accessing the DTC.
- **Recommendations:**
 - The government should work with people with disabilities to design and implement a CDB application process that is simple and accessible. For example, the application process could be simplified by automatically enrolling people for the CDB if they meet the new program's income thresholds. This would put less of a burden on people with disabilities. It would also allow the government to begin sending people their CDB payments sooner.
 - To increase the accessibility of the application process, the government should also provide free navigational supports for people who want to apply for the CDB.
 - The government should assess the accessibility of the CDB application process on an ongoing basis, in collaboration with people with disabilities. The government should update the application process, when needed, based on any feedback about barriers that it receives from people with disabilities.

Other Issues

Terminology

- **Issue:** The Gazette uses the term “severe” to describe disabilities. This language medicalizes disability. It also reinforces a “hierarchy of disabilities”, which views certain disabilities as “worse” and therefore more deserving of stigma.
- **Recommendation:** Instead of focusing on the severity of people's disabilities, the CDB should focus on removing financial barriers that prevent people with disabilities from living with dignity and fully participating in society. This is more in line with the social model of disability, which is reflected in the CRPD and the Accessible Canada Act.

Gender-based Analysis Plus

- **Issue:** The draft regulations do not address the unique and intersectional barriers experienced by different groups of people with disabilities. For example, people living in institutions, newcomers to Canada and people experiencing homelessness may face more barriers in accessing the CDB. Data shows that people with disabilities are four times more likely to experience homelessness.¹⁷ These people may not have bank accounts, permanent addresses or personal identification. They may therefore need more support to access the CDB.
- **Recommendations:** The government should ensure **all** people with disabilities have equal access to the CDB. Specific measures should target people with disabilities living in vulnerable situations and groups who are often underrepresented. Additional supports should be tailored to the unique needs of these people with disabilities.

Measuring Impact

- **Issues:** The government's Impact Analysis states that "disaggregated data will be used to monitor the CDB's financial impact among diverse groups of persons with disabilities using the Canada Survey on Disability" (CSD). Through our monitoring of the right to housing for people with disabilities, we discovered significant gaps in the data about people with disabilities that is collected through national surveys. For example, the CSD and the Canadian Housing Survey (CHS) only include people who live in private residences. People who live in institutions, such as group homes, prisons and long-term care homes, are excluded from these surveys. People experiencing homelessness are also excluded.¹⁸ The CHRC is concerned that the experiences of many people with disabilities therefore are not reflected in these surveys.

In addition, data from these surveys cannot be fully disaggregated. For example, the CSD and the CHS do not ask people about their sexual orientation or gender expression. The CHRC is concerned that this would make it difficult to monitor the impact of the CDB on certain groups of people with disabilities who face intersectional forms of oppression and discrimination.

¹⁷ People with disabilities are also twice as likely to experience hidden homelessness, and more likely to experience homelessness due to violence. See: CHRC and OFHA, The right to housing for people with disabilities: Homelessness (2024): <https://www.chrc-ccdp.gc.ca/resources/publications/the-right-housing-people-disabilities-homelessness>.

¹⁸ We discovered these data gaps through our Monitoring Framework on the Right to Adequate Housing for People with Disabilities. To learn more about these data gaps, see: CHRC and OFHA, The right to housing for people with disabilities: Data gaps (2024): <https://www.chrc-ccdp.gc.ca/resources/publications/the-right-housing-people-disabilities-data-gaps>.

- **Recommendations:**

- The government should address these data gaps and ensure the experiences of **all** people with disabilities are reflected in national surveys. This data is critical to be able to fully assess the impact of the CDB on diverse groups of people with disabilities.
- The CDB program should be updated, as needed, to address any disparities that are revealed through the analysis of disaggregated data.

Suspension of Benefits

- **Issue:** Subsection 13(1) of the draft regulations would allow the Minister to suspend a person's CDB payments if there are concerns about the person's eligibility for the CDB. Payments could be suspended until the Minister is satisfied the person is eligible for the CDB. The CHRC is concerned that this could put people with disabilities in precarious financial situations. For example, some people may not be able to pay their rent and other bills on time if their CDB payments are suspended. They could face late fees or be evicted from their homes as a result.
- **Recommendation:** The government should only withhold a person's CDB payments if evidence confirms the person is not eligible for the CDB.

Incapacity

- **Issues:** Section 18 of the draft regulations would allow representatives to act on behalf of people with disabilities who are "incapable of managing their own affairs". Section 19 would allow the CDB to be paid to people's representatives, such as guardians and trustees. The CHRC is concerned that this could subject people with disabilities to financial abuse if adequate safeguards are not put in place.

The CHRC is also concerned that the draft regulations would allow people with disabilities to be deprived of their autonomy and legal capacity through substitute decision-making systems. Article 12 of the CRPD states that people with disabilities have the right to "enjoy legal capacity on an equal basis with others", and the right to access the supports they need to exercise their legal capacity. Canada's reservation on article 12 of the CRPD allows for the continued use of substitute decision-making systems. The CHRC is concerned that Canada has made little progress in moving towards supportive decision-making systems that preserve the autonomy people with disabilities.

- **Recommendations:**

- The government should ensure adequate safeguards are in place to prevent the legal and financial abuse of people with disabilities who apply for or receive the CDB.
- The government should continue to work towards fully implementing article 12 of the CRPD. This would require a real shift towards a human rights-based approach to legal capacity. Instead of depriving people with disabilities of their legal capacity, people with disabilities should be provided with the supports they need to make their own decisions.

Compliance and Enforcement

a) Obligation to Appear

- **Issue:** Section 36 of the draft regulations would allow the Minister to require a person with a disability to appear in person, or by audio or videoconference, to provide information about their CDB application. This may create barriers for some people with disabilities. For example, people may face transportation barriers or have trouble accessing the internet or a phone. They may not be able to take time off work for this.
- **Recommendation:** People's accessibility needs and individual circumstances must be taken into account when implementing the CDB. Compliance and enforcement activities should be accessible and people's disability-related needs should be accommodated.

b) Administrative Monetary Penalties and Offences

- **Issue:** Section 37 of the draft regulations would allow administrative monetary penalties (AMPs) to be imposed on people who knowingly make false or misleading statements. Section 38 would allow people to be punished for offences on summary conviction. The CHRC is concerned that these actions could have serious consequences for people with disabilities.
- **Recommendation:** Special care must be taken to ensure that these actions are only used as a last resort, if a person has **knowingly** provided false information. People with disabilities should not be penalized for making mistakes or unintentionally providing false information.

Conclusion

The CHRC encourages the government to continue developing, implementing and monitoring the CDB program in collaboration with people with disabilities. Embracing the Accessible Canada Act's principle of "nothing without us" would help ensure the CDB program is inclusive, accessible and responsive to the needs of disability communities. Given the urgent need to lift people with disabilities out of poverty, the government should begin making CDB payments as soon as possible.

The CHRC urges the government to ensure the CDB aligns with Canada's commitments under international human rights laws. We welcome further opportunities to provide input on this critical new program.