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# Universal Disability Insurance



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## **INTRODUCTION**

Many Canadians have become convinced that our present disability compensation systems are outdated. They need to be replaced with a different system of compensating people who are disabled or, in the case of death, their survivors.

This new system, a universal disability system, would have the following characteristics:

1. It would compensate people for disablement or premature death regardless of the cause of their death or disability.
2. It would provide an earnings related income replacement paralleling in part the benefit levels provided under the workers' compensation system but would provide benefits to people without regard to their occupational status.
3. Coverage would be compulsory.
4. The plan would be administered by an agency similar in nature to the Workers' Compensation Board.

## PROBLEMS WITH CURRENT DISABILITY SYSTEMS

Canada has a wide variety of disability compensation systems. They include federal and provincial schemes and public and private plans.

Benefits to disabled people are provided under the following systems.

- Employment Insurance sickness
- Canada Pension Plan disability
- Veterans'
- Workers' Compensation
- Automobile insurance accident
- Group weekly indemnity (sickness and accident)
- Group long term disability
- Private sickness and accident
- Retirement pension plans
- Criminal injuries
- Life insurance
- Tort liability (lawsuits)
- Welfare

They all do versions of the same thing - provide benefits to people with a disability or in the case of death, their survivors.

Countless Canadians fall through the "cracks" in the present systems. While bureaucratic agencies of various descriptions deliberate and argue about whether to accept claims, the individuals concerned are left without income continuity and physical and vocational rehabilitation. Anxiety and uncertainty complicate recovery for the individual. Lack of income creates problems for the person's family as well. While agreements among plans such as subrogation of benefits from one plan to another, have helped to remedy this problem, the achievement has not been universal and it demonstrates the disadvantages of the present overlapping systems.

Depending on the nature of the disability, injury or illness, (as well as the cause of course) individuals are treated differently by the different plans. Some plans such as workers' compensation compensate much better for injury than for illness. Other plans such as CPP at least compensate for illness but at much lower benefit levels. Yet many more people are disabled from illness than from injury.

## **REHABILITATION AND DELAY**

Because each system has its own set of rules, an adjudication on the basis of cause must be made as to the eligibility of the disabled person for benefits. Workers who await decisions by the Workers' Compensation Board often become incredibly angry with Board employees. Yet these Board people are not "evil" , they're simply doing their job. (We will use the term Workers' Compensation Board throughout this booklet although the name has changed in some provinces).

Nowhere are the delays more protracted, however, than in the tort liability system. Lawsuits in the courts are incredibly lengthy with no benefit entitlement until a judge makes a decision. Depending on the nature of the automobile insurance system in various provinces, individuals who have been injured in automobile accidents often feel like gamblers with a possible generous decision promised by ambitious lawyers often turning into a negotiated but much reduced figure driven by impoverishment due to delay.

When benefit entitlement is focused on cause and adjudication requires its determination disabled people must remain focused on the cause, nature and severity of the disability. Since delays are inevitable in all of the cause-based systems, disabled people are distracted from what should be their primary focus, recovery. Delay in adjudication thus has an adverse effect on physical and vocational rehabilitation.

Without prompt rehabilitative intervention in the bad back cases, for example, lengthy delays in recovery and sometimes permanent disability result. Yet these are the very cases that are often most difficult (some would argue often impossible) to adjudicate with respect to causation.

A positive attitude and optimism at prospects for recovery are critical factors if disabled people are to get better faster. But delays in adjudication, or worse disallowal followed by lengthy appeals and applications to other benefit systems are bound to produce depression.

Rather than providing therapeutic assistance to disabled people, the present plethora of systems prolong both the length and the severity of the disability.

## **ADVERSARIAL CONFLICT**

Our union deplors the presently increasingly adversarial nature of our disability systems. As pressures for cost control intensify both internal and external to the disability agencies, claimants are increasingly at odds with adjudicators. Nowhere is this more true than within the workers' compensation system.

Experience rating in the workers' compensation system has been introduced in all provinces. As a result, disabled workers and unions are pitted against employers and Boards in a costly, time consuming conflict destructive for disabled workers, to say nothing of labour peace.

Private insurance companies are usually for-profit institutions. It is often after a two-year period on long term disability claims that the insurer will change entitlement eligibility for disablement from "own job" to "any job" thus terminating many claims. In this vulnerable state of disability and a fairly lengthy lack of contact with co-workers as support group and the union as advocate, workers are often not in any position to challenge this decision. As well, there are rarely formal appeal mechanisms within the private plans.

The situation is even worse in the lawsuit system with lawyers being a necessity. The insurer's lawyers are often seasoned advocates with much experience in attempting to discredit the testimony of the disabled person and arguing contributory negligence.

Conflict is not healthy. At the very time when disabled people need moral support the most, they are thrown into conflictual stressful situations that complicate, rather than assist their attempts to overcome their disability.

## **CASUAL ADJUDICATION**

Causal adjudication is absurd and unjust. The long and the short of it is that it is impossible to determine the cause of much disability.

Medicine presently often is unable to determine diagnosis. Is the person's back pain a result of a herniated disc, a bone spur, or sore muscles? Some X-rays on asymptomatic individuals show marked vertebral deterioration which should be disabling, or at least causing considerable discomfort while other individuals experiencing severe pain have an apparently normal X-ray. The same is true for diseases as well. Many pleural mesotheliomas are incorrectly diagnosed as lung cancer.

Much disability results from multiple causation within a target organ or throughout the human body. Lungs for example may simultaneously be harmed by lung cancer, bronchitis, emphysema, and pneumoconiosis. A person may have heart disease and a bad back, each of which alone might not be disabling but combined cause the person to cease work.

Of the above examples each condition might have a work related or non work related cause. Is the lung cancer primarily due to smoking or asbestos exposure? Was there a synergistic or combined effect? Is the bronchitis and emphysema due to chronic sulphur dioxide exposure or to cigarettes? Was the pneumoconiosis from work related asbestos exposure or from living by a busy corner where asbestos particles from brake shoes are continually released? And what about the bad heart? How much had to do with chronic exposure to carbon monoxide at work, how much to stress at work, or at home and how much to bad diet and lack of exercise? Was the bad back the result of a bad lift at home or repeated lifts at work or obesity or a too soft bed?

Often we simply cannot determine etiology. No amount of scientific or investigative effort will be able to tell us, for many individual cases, whether the injury or disease was work related, an incident or exposure at home, an automobile accident or was a natural consequence of aging.

What we probably can do much better is to determine causation in the aggregate. We can use extrapolation of animal studies and human epidemiological studies of morbidity and mortality to determine if there is an excess incidence of disease as a result of particular exposures. Does a reduction in the speed limit to 90 km/hour from 110 km/hour reduce mortality, and if so, by how much? Do workers exposed to 0.1 fibre/cubic milliliter of chrysolite asbestos have a greater incidence of lung cancer than unexposed workers and, if so, by how much? Doing more research in such areas will help us to design strategies to prevent injuries and disease. But it would be a fraud to expect that it will help us very much to decide entitlement in individual claims.

Within the medical profession there is a consistent and unfortunate presumption that the absence of positive data with respect to employment causation requires an assumption that work did not cause an occupational disease. One can blame a clinical approach, ignorance or a class bias but regardless of cause vigorous efforts on the part of advocates for disabled workers are unlikely to move medicine away from this negative approach to employment causation very much.

Occupational disease adjudication is likely to become more difficult over time rather than better with ever more new chemicals introduced into the workplace before medical research catches up with the old substances. We still see far more published studies outlining known effects of well known substances such as lead and asbestos than we do of new substances. Yet it was only in 1992 that the Ontario Workers' Compensation Board, for example, added asbestos related diseases as scheduled diseases.

Within the Province of Ontario alone, many resources are devoted to occupational disease adjudication, the Workplace Safety and Insurance Board itself, the Occupational Health and Safety Clinics of various types, the Workplace Safety and Insurance Appeals Tribunal, the legal aid system and clinics to say nothing of employers, unions, physicians and consultants. This money, time, and energy could be much better spent in preventing occupational disease rather than arguing about whether the Board is responsible for paying individual claims.

## **UNIVERSAL DISABILITY PLAN**

There is no blueprint for a universal disability plan. The plan should have the characteristics outlined in the introduction but such an important social program needs to be studied in a thoughtful, methodical way free from political pressures of government and interest groups. We feel very strongly that there must be a Royal Commission into a Universal Disability Plan appointed by the provincial governments. The Krever Royal Commission into Canada's blood system was a model of thorough investigation with sound and significant recommendations.

We envisage the Royal Commissioner receiving input from the interested public, designing the plan and making recommendations which would include several options. The parties of interest, government, employers, the union movement and the injured workers' and disability rights movements, could then debate the features of the plan prior to its introduction.

While in theory the federal jurisdiction should house such a plan, given the present constitutional controversy, sound federal judgement seems unlikely in this regard. Like medicare the universal plan would have to be considered and introduced by a provincial government bold enough to take the step.

## **FUNDING**

Employers are unreasonably concerned that such a plan might result in a major escalation in benefit costs which they provide for their employees. Unions are concerned that employers might get "off the hook" with respect to their responsibilities for paying for work-related injuries and diseases which they presently must under the workers' compensation system. How would a universal plan meet these concerns?

A universal disability plan would be less costly to administer than any one of the present plans because the need to determine causation would be eliminated. The plan would be very much less costly to administer than the present plethora of plans each of which has its own administrative costs. The waste among the present systems is enormous. In the employment context alone, one plan would replace premiums paid by employers for workers' compensation, EI sickness, CPP disability, weekly indemnity, and long term disability plans.

Outside the employment context, the lawsuit system is one of the worst disability compensation mechanisms. It is estimated that tort liability provides only about 50% of the cost of the injury to the beneficiary. It is the most wasteful of all the disability compensation mechanisms.

And what about the union concern about costs? The reality is that the employers are already "off the hook" for most of the cost of occupational disease and always will be until there is a system of assigning occupational disease costs on the employers on an aggregate basis. This would be done in a universal disability plan.

Apart from the above arguments, how would the system be financed?

- 1.** Employers would pay assessments to the plan replacing premiums for various types of sickness and accident insurance and workers' compensation assessments.
- 2.** Motor vehicle insurance assessments to the plan would replace the present personal injury portion.
- 3.** A hazardous activities assessment could be levied, for example, as a tax on cigarettes.
- 4.** If insured people were expected to contribute this should be done through the income tax system (the benefits under the plan would be taxable).

## CONCLUSION

The present practice of classifying disabilities according to cause makes no sense. It results in bureaucratic waste, excessive costs, injustice for many, and a failure to meet the human needs of those disabled by injury and disease.

Benefits to disabled people, employers, unions and governments will accrue through a universal disability plan.

An architect in the form of a Royal Commissioner is needed to design a system posing several alternatives so that the parties of interest can then reach agreement on the most suitable components of the universal disability plan.

Most of the concepts in this paper are found in the writings of Prof. Terence Ison formerly of Osgoode Hall Law School and past Chair of the B.C. Workers' Compensation Board who would be an excellent choice as Royal Commissioner.



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