



Legislative Summary

BILL C-35: AN ACT TO REDUCE POVERTY AND TO SUPPORT THE FINANCIAL SECURITY OF PERSONS WITH DISABILITIES BY ESTABLISHING THE CANADA DISABILITY BENEFIT AND MAKING A CONSEQUENTIAL AMENDMENT TO THE INCOME TAX ACT

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Mayra Perez-Leclerc

Parliamentary Information, Education and Research Services

AUTHORSHIP

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Mayra Perez-Leclerc

Legal and Social Affairs Division

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Legislative Summary of Bill C-35
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-35: AN ACT TO REDUCE POVERTY AND TO SUPPORT THE FINANCIAL SECURITY OF PERSONS WITH DISABILITIES BY *ESTABLISHING* THE CANADA DISABILITY BENEFIT AND MAKING A CONSEQUENTIAL AMENDMENT TO THE INCOME TAX ACT

1 BACKGROUND

Bill C-35, An Act to reduce poverty and to support the financial security of persons with disabilities by establishing the Canada disability benefit and making a consequential amendment to the Income Tax Act (short title: Canada Disability Benefit Act),¹ was introduced in the House of Commons on 22 June 2021 by the Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion. Bill C-35 received first reading that same day.

Bill C-35 establishes a Canada disability benefit (CDB) with the stated purposes of reducing poverty and supporting the financial security of working-age persons with disabilities. It also sets out general provisions for administering the CDB and grants regulation-making powers to the Governor in Council with respect to most of the CDB's design elements.

Lastly, Bill C-35 amends the *Income Tax Act*² (ITA) to allow the disclosure of taxpayer information for the administration and enforcement of the Canada Disability Benefit Act, or for the evaluation or formulation of policy for that Act.

1.1 ABOUT THE CANADA DISABILITY BENEFIT

The CDB is one of the three components of the Disability Inclusion Plan to which the Government of Canada committed in the Speech from the Throne of 23 September 2020. The Speech from the Throne explains that the COVID-19 pandemic has disproportionately impacted persons with disabilities and highlighted long-standing challenges.³

Once in place, the Disability Inclusion Plan will include:

- A new Canadian Disability Benefit modelled after the Guaranteed Income Supplement for seniors;
- A robust employment strategy for Canadians with disabilities;

- And a better process to determine eligibility for Government disability programs and benefits.⁴

The Disability Inclusion Plan was identified as a priority in the supplementary mandate letter of the Honourable Carla Qualtrough, dated 15 January 2021.⁵

Funding for the Disability Inclusion Plan was announced in Budget 2021. Notably, the budget committed \$11.9 million over three years starting in 2021–2022 to Employment and Social Development Canada (ESDC) for consultations on how to reform the eligibility process for federal disability programs and benefits.⁶ The work from the consultations is expected to “feed directly into the design of a new disability benefit.”⁷ Budget 2021 indicates that, in preparation for legislation to bring forward a new disability benefit, ESDC will also “establish a steering committee to oversee the development of this work, alongside the Canada Revenue Agency, the Department of Finance Canada and Veterans Affairs Canada.”⁸

A news release from ESDC on 22 June 2021 explains that the new benefit will “supplement, not replace, existing federal and provincial-territorial supports with a goal of lifting hundreds of thousands of persons with disabilities out of poverty.”⁹ A number of federal disability benefits and programs exist, including disability pensions, children’s benefits and savings plans.¹⁰ However, the news release notes that despite these existing supports at the federal, provincial and territorial levels, Canadians living with disabilities are twice as likely to live in poverty as are Canadians without disabilities, a situation that has been exacerbated by the impacts of the COVID-19 pandemic.¹¹

The CDB legislation is the latest initiative by the Government of Canada for the benefit of people with disabilities; in 2019, the government enacted the *Accessible Canada Act*¹² (ACA). The ACA came into force on 11 July 2019; it seeks to transform Canada and make it barrier free in areas under federal jurisdiction (including employment) by or before 1 January 2040, through the identification, removal and prevention of barriers.¹³

2 DESCRIPTION AND ANALYSIS

2.1 GENERAL MATTERS RELATING TO THE BILL

2.1.1 Preamble

The preamble to the bill sets out the rationale for the legislation. It highlights the impact that economic and social exclusion can have on working-age persons with disabilities who are more likely to live in poverty as a result. The barriers to employment that persons with disabilities face are examples of this type of exclusion.

These barriers can include work disincentives caused by the loss of income and other benefits when a person gains employment.

According to the preamble, the legislation is designed to improve social and economic inclusion and enhance the existing protection of the rights of persons with disabilities under the *Canadian Charter of Rights and Freedoms*.¹⁴ The Act also aims to help reduce poverty, as set out in the *Poverty Reduction Act*,¹⁵ progressively achieve Canada's international obligations under the United Nations *Convention on the Rights of Persons with Disabilities*¹⁶ and meet the United Nations Sustainable Development Goals.¹⁷

In addition, the preamble recognizes the importance of engaging with people who have disabilities along with the provinces and territories to design the CDB.

2.1.2 Short Title and Purposes of the Bill
(Clauses 1 and 3)

Clause 1 sets out the short title of the bill, namely, the Canada Disability Benefit Act (the Act).

Clause 3 states that the purposes of the bill are “to reduce poverty and to support the financial security of working-age persons with disabilities.”

2.2 CANADA DISABILITY BENEFIT

2.2.1 General Matters Relating to the Canada Disability Benefit
(Clauses 2 and 4 to 10)

Clause 4 of Bill C-35 provides that a person is eligible to receive the CDB if they meet the regulatory criteria for eligibility. Clause 5 of the bill requires the Minister of Employment and Social Development (the minister) (clause 2) to pay the CDB to eligible persons who apply for it or for whom an application is made, in accordance with the regulations.

Clauses 6 and 7 of the bill make provisions for the collection of information. Specifically, an applicant or their representative must provide to the minister any information that may be required with respect to the application for a CDB (clause 6). In addition, the minister is authorized to collect and use the social insurance number of an applicant for the purposes of administering and enforcing the Act (clause 7).

Clause 8 of the bill stipulates that the minister may enter into agreements with any federal department or agency, and upon approval by the Governor in Council, with any provincial department or agency, to carry out the purposes of the Act set out in clause 3 of the bill.

Clause 9 of the bill protects CDB payments from being subject to bankruptcy or insolvency laws. It prevents the payments from being assigned, charged, attached or

used as a security or retained by way of deduction, set-off or compensation under any federal legislation other than this Act. However, benefit payments are garnishable under the *Family Orders and Agreements Enforcement Assistance Act*.¹⁸

Clause 10 of the bill provides that all benefits paid under the Act are to be paid out of the Consolidated Revenue Fund.

2.2.2 Regulations (Clause 11)

Clause 11(1) of Bill C-35 gives the Governor in Council the power to make regulations regarding most CDB design elements, including:

- the eligibility criteria (clause 11(1)(a));
- the conditions to be met to receive or continue to receive a benefit (clause 11(1)(b));
- the amount of a benefit or the method for determining that amount (clause 11(1)(c));
- how a benefit is indexed to inflation (clause 11(1)(d));
- the payment periods and the amount to be paid in each period (clause 11(1)(e));
- applications for a benefit (clause 11(1)(f));
- the amendment or revocation of decisions made by the minister (clause 11(1)(g));
- reviews or reconsiderations of decisions made under the Act (clause 11(1)(h));
- appeals (clause 11(1)(i));
- retroactive payments to persons who do not apply for a benefit within a specified time but who are otherwise eligible (clause 11(1)(j));
- applications and payments involving persons who are incapable of managing their own affairs, as well as reviews, reconsiderations or appeals commenced on their behalf (clause 11(1)(k));
- the circumstances in which the minister may deem an applicant or beneficiary to be dead, as well as the application of the Act when an applicant or beneficiary dies (clauses 11(1)(l) and 11(1)(m));
- the minister's correction of administrative errors (clause 11(1)(n)); and
- the identification and the recovery of debts owed to the Crown (clauses 11(1)(o) and 11(1)(p)).

Clause 11(1)(q) of the bill also authorizes the Governor in Council to make regulations that establish summary conviction offences, and set fines or terms of imprisonment or both, for any of the following offences:

- knowingly using false identity information or another person's identity information to obtain a benefit (clause 11(1)(q)(i));
- counselling someone to apply for a benefit in order to steal all or a substantial part of it (clause 11(1)(q)(ii)); and
- knowingly making false or misleading representations concerning an application for a benefit (clause 11(1)(q)(iii)).

The Governor in Council may also make regulations under clause 11(1)(r) to establish a system of administrative monetary penalties and set the amounts of those penalties, for either or both of the following:

- knowingly making false or misleading representations concerning an application for a benefit (clause 11(1)(r)(i)); and
- applying for and receiving a benefit while knowingly not being eligible to receive it (clause 11(1)(r)(ii)).

Further, clause 11(1) of the bill authorizes the Governor in Council to make regulations to ensure compliance with the Act. Specifically, the Governor in Council may make regulations to adapt section 44.2 of the *Old Age Security Act*¹⁹ (which makes provisions for the administration and enforcement of seniors' benefits under that Act) and apply it to the verification of compliance or the prevention of non-compliance with the Canada Disability Benefit Act (clause 11(1)(s)). The Governor in Council may also make regulations authorizing the minister to ask an applicant, a beneficiary or their representative to provide any information or document needed for their application in order to verify compliance or prevent non-compliance with the Act (clause 11(1)(t)).

Lastly, clause 11(1)(u) allows the Governor in Council to make regulations to carry out the purposes and provisions of this Act.

Clause 11(2) of the bill stipulates that regulations made by the Governor in Council may make distinctions between different classes of applicants and beneficiaries.

2.3 PARLIAMENTARY REVIEW (CLAUSE 12)

Under clause 12 of Bill C-35, a committee of the Senate, the House of Commons or both must conduct a parliamentary review of the Act and of its administration and operation. The initial review is to be conducted within three years after this section comes into force and every five years thereafter.

2.4 CONSEQUENTIAL AMENDMENTS TO THE *INCOME TAX ACT* (CLAUSE 13)

Clause 13 of Bill C-35 amends section 241(4)(d) of the ITA, which sets out the circumstances in which taxpayer information can be disclosed. Specifically, new

section 241(4)(d)(vii.51) of the ITA stipulates that taxpayer information may be provided to an official solely for the administration and enforcement of the Canada Disability Benefit Act or for the evaluation or formulation of policy for that Act.

2.5 COMING INTO FORCE (CLAUSE 14)

Clause 14 of Bill C-35 provides that the Canada Disability Benefit Act comes into force on a day to be fixed by order of the Governor in Council.

NOTES

1. [Bill C-35. An Act to reduce poverty and to support the financial security of persons with disabilities by establishing the Canada disability benefit and making a consequential amendment to the Income Tax Act](#), 43rd Parliament, 2nd Session.
2. [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.).
3. Government of Canada, [A Stronger and More Resilient Canada: Speech from the Throne to open the Second Session of the Forty-Third Parliament of Canada](#), 23 September 2020, p. 17.
4. *Ibid.*, pp. 17–18.

The Guaranteed Income Supplement (GIS) is a monthly payment provided to individuals who are 65 years of age or older and who live in Canada. It is available to low-income pensioners who receive Old Age Security and is not taxable. The parameters for the GIS are set out under the *Old Age Security Act*. For additional information, see Government of Canada, [Guaranteed Income Supplement: Overview](#).
5. Justin Trudeau, Prime Minister of Canada, [Minister of Employment, Workforce Development and Disability Inclusion Supplementary Mandate Letter](#), 15 January 2021.
6. Department of Finance Canada, [A Recovery Plan for Jobs, Growth, and Resilience](#), Budget 2021, pp. 233–234.
7. *Ibid.*, p. 233.
8. *Ibid.*, p. 234.
9. Employment and Social Development Canada (ESDC), [Government of Canada introduces legislation to create the new Canada Disability Benefit](#), News release, 22 June 2021.
10. Government of Canada, [Disability benefits](#).
11. ESDC, [Government of Canada introduces legislation to create the new Canada Disability Benefit](#), News release, 22 June 2021. See also Stuart Morris et al., [“A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017,” Canadian Survey on Disability Reports](#), Statistics Canada, 28 November 2018; and Statistics Canada, [“Persons with disabilities and COVID-19,” Infographics](#), 6 July 2020.
12. [Accessible Canada Act](#), S.C. 2019, c. 10.
13. For additional information, see Brendan Naef and Mayra Perez-Leclerc, [Legislative Summary of Bill C-81: An Act to ensure a barrier-free Canada](#), Publication no. 42-1-C81-E, Library of Parliament, 27 June 2019. See also Government of Canada, [Order in Council P.C. 2019-1042](#), 9 July 2019.
14. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
15. [Poverty Reduction Act](#), S.C. 2019, c. 29, s. 315.
16. United Nations High Commissioner for Human Rights, [Convention on the Rights of Persons with Disabilities](#).
17. United Nations, [“17 Goals to Transform Our World,” Sustainable Development Goals](#).

18. [Family Orders and Agreements Enforcement Assistance Act](#), R.S.C. 1985, c. 4 (2nd Supp.).
19. [Old Age Security Act](#), R.S.C. 1985, c. O-9, s. 44.2.