

**COMPREHENSIVE
DISABILITY INCOME SECURITY
REFORM**

prepared by

The Roeher Institute

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FOREWORD

The reality of unemployment, underemployment and non-participation in the labour force continues to plague people with disabilities in Canada. When the needed supports to assist people are not available or are not easily accessible, those problems are even more difficult to overcome. They are further compounded when the disabled person is a woman or from the First Nations or from an ethnic or cultural minority. Because of a number of barriers and disadvantages to labour force participation, poverty is a consistent and almost inevitable state of affairs for thousands of people with disabilities. A great number who are poor and unable to get jobs have few options but to rely on a variety of social security programs.

As documented in a number of reports, however, the disability income system in Canada is complicated and multi-faceted as are government interventions to improve the labour force participation of people with disabilities. These reports include *Income Insecurity* (The Roehrer Institute, 1989); *Poor Places* (The Roehrer Institute, 1990) and an upcoming study on the funding for personal supports in Canada (The Roehrer Institute, in press). Many of these studies suggest that while incremental reform may be the most politically attractive way to address the unemployment and consequent poverty of people with disabilities, as well as the monumental social and economic cost to society of their being unemployed, the real solution may only be found in comprehensive reform.

A number of solutions have been proposed to address these issues in a comprehensive fashion. Among these is the notion of comprehensive disability insurance. Unfortunately, discussion on this policy option tends to be occurring in a number of "pockets" across the country. The Roehrer Institute felt that a discussion paper, which could be used in the process of focusing that discussion, would be a helpful contribution at this time.

We have attempted in this paper to outline the main components of a coherent proposal, and to set out the principles of reform that any such system would have to meet. The paper is, however, meant as a basis for discussion. In no way does it attempt to address the many details that would be involved in implementing any scheme.

Marcia Rioux, Director
March 1992

I. INTRODUCTION

People with disabilities need money income to purchase for themselves the necessities of life. They also need a wide variety of other supports such as health care, transportation, and training. These are indispensable resources for the maintenance of life and the achievement of well-being for all Canadians. However, people with disabilities often have lost or have not acquired the capacity to earn income, and they also often have extraordinary costs associated with having a disability. This lack of capacity to earn can be either temporary or permanent, partial or total, and is integrally related to how society defines the capacity of and the opportunities available for people with disabilities. In addition, although a wide variety of supports are available in cash and in-kind, these supports vary significantly by program. People with disabilities who do not have income from employment or any other income in their own right need some other form of income security to compensate for the lack of earnings. This need exists regardless of how the disability occurred, whether by accident, by sickness or by disease, and whether it is a physical incapacity or an intellectual impairment.

In Canada what a person with a disability receives is determined more by chance than any other rational allocation criteria such as need, contribution, or loss. This is because Canada's system of disability income protection and supports for disability consists of numerous programs including Workers' Compensation, the Canada/Quebec Pension Plan disability benefits, social assistance, auto insurance, Unemployment Insurance sickness benefits, private insurances, the tort or legal system for negligence action, and several other programs including some tax-based benefits. Each has its own criteria for eligibility and its own schedule of benefits and supports. In this system, what a disabled person receives depends primarily on how they become disabled. The result is widely divergent income protection and supports for people who suffer basically the same problem -- an incapacity to earn. The system is also wasteful, a problem that stems from the existence of multiple administrations, from the need to determine cause of disability through extensive medical assessments, and from the high cost of tort actions.

There is now widespread recognition of the need to improve Canada's system of disability income protection and supports for people with disabilities. Most proposals seek to improve the system's most problematic elements, such as social assistance, auto insurance, or the Canada/Quebec Pension Plan. This paper starts with the assumption that incremental reform of this nature would leave too many problems in the system and, most of all, would be unfair to people with disabilities. It investigates the reform of Canada's disability income security system through the establishment of a universal and comprehensive disability insurance system. Such a system could replace the complex array of programs that now exist with a unified alternative system.

II. CANADA'S DISABILITY INCOME SECURITY SYSTEM¹

There are three kinds of income security programs for people with disabilities in Canada: 1) insurance programs, 2) non-insurance support programs, and 3) tort actions.

Insurance programs compensate for lost income or wages. Social insurance programs are the main programmatic vehicles for the payment of disability income to people who experience physically disabling accidents or illnesses and are unable to continue to work. The most important social insurance programs -- provincially administered Worker's Compensation schemes and the Canada/Quebec Pension Plan -- cover people with wage earnings only, since eligibility requires wage-related contributions. There are, in addition, many kinds of long-term disability insurance provided by private insurance companies and offered to individuals or on a group basis, usually to employees.

Non-insurance supports are government programs which provide benefits to people with disabilities in a variety of ways: through the provision of cash income; through tax reductions; or through the provision of benefits-in-kind such as transportation or wheelchairs. Support can be provided simply because a person has disability, in which case the benefit is universal, or it can be provided selectively to people who have low incomes because they do not have any social or private insurance compensation or any other income. The most important form of non-insurance support is social assistance or welfare. Welfare is the main form of compensation for people who have no earnings record. As a result, is the most important program of income security for people who suffer an intellectual disability.

The tort system, or negligence action at common law, is a mechanism of recourse to the courts to sue a party at fault for losses incurred as a result of a disability. In practice, successful suits are paid by the liability insurance policy of the party at fault. This mechanism is available principally to people who experience disabling accidents where fault can be determined. In some instances such as in the case of industrial accidents or auto accidents in some provinces, the right to sue has been largely or totally removed and replaced by no-fault insurance coverage in the interest of assuring income security protection.

A. The Tort System

Personal injury awards through recourse to the courts is the system referred to as "tort liability". The right to sue for compensation and the settlements derived from such

¹ The problems with Canada's system of disability income protection have been dealt with extensively elsewhere. See The G. Allan Roehrer Institute, *The Power To Choose*, Toronto: 1991, *Poor Places*, 1990 and *Income Insecurity: The Disability Income System of Canada*, 1988; Leon Muszynski, "Improving on Welfare" *Policy Options*, March, Vol. 9 No. 2, 1988; Terry Ison, "Human Disability and Personal Income", *Studies in Canadian Tort Law*, ed. Lewis Klar, (Toronto), Butterworths, 1977.

action are based on historic law or tort rather than government programs or regulation. The tort system might be considered the first remedy available to people who became disabled. The introduction of tort actions in the last century allowed people who experienced a disabling accident as a result of someone's negligence to seek redress through the courts. This system was based on the principle that there could be no liability without fault. If blame could not be ascribed then large numbers of people were left without any support from the system. In fact, people with limited means had little ability to use the courts even when fault could be clearly identified. Tort liability remains an important component of the system of disability compensation except in those cases where the right to sue has been specifically removed such as with industrial accidents or road accidents in those provinces with no-fault plans.

B. Workers' Compensation

Workers' Compensation is a social insurance program designed to protect labour force participants and their dependents against wage loss due to occupational injury or disease. It is provincially based but administered by independent boards and funded through premiums on employers. Workers' Compensation was initiated as early as 1915 in Ontario in response to the need to protect workers against industrial accidents, and employers against crippling negligence suits. It was based on the principles that employers would assume a collective liability for workplace related accidents without the need to determine fault, and that there be mandatory coverage. In the early years, it provided coverage to a limited proportion of the population, but was gradually extended and benefits were improved. Now approximately 70 percent to 90 percent of the labour force is covered by Workers' Compensation depending on the jurisdiction.

The idea of no-fault here means that employees are denied the right to sue an employer for an accident even if the disability was caused by employer negligence. In return, workers are entitled to a relatively high level of compensation for full or partial disability. Employer responsibility for accidents and efforts to prevent accidents are reflected in a rate structure which penalizes employers with a higher incidence of claims for compensation. Eligibility for Workers' Compensation requires that the disabling injury or illness be certifiably workplace related. Compensation levels are determined as a ratio of insurable earnings before the accident (75 percent of gross earnings or 90 percent of net earnings depending on province), and benefits are tax free. In addition, the extent and the duration of disability is taken into account. In the case of partial disabilities, compensation is based on a combination of earnings impairment estimates and degree of disability. In some instances of permanent disability, lump sum payments may be made. Besides cash income, disabled workers may also receive medical or rehabilitation services. In all jurisdictions, rehabilitation services are an integral part of the Workers' Compensation program.

The major problem with Workers' Compensation is the fact that it ignores the interests of employees when they are injured or become disabled during the two-thirds of the day when they are not at work.

C. Auto Insurance

Besides workplace related accidents, road accidents are a major cause of physical disability. The auto insurance system is viewed as the main line of defense against the loss of capacity to earn as a result of injuries sustained in a road related accident. The auto insurance system in Canada varies from province to province. Many provinces retain traditional private insurance coverage backed, if necessary, by fault-based personal injury awards through the tort system. In large measure because of the high cost of insurance for tort action, partial no-fault systems of auto insurance have been adopted in Ontario, Manitoba, Saskatchewan, and British Columbia, and a pure no-fault system operates in Quebec. A large proportion of insurance premium dollars, for example, is absorbed by legal and court costs. These plans vary widely but in Manitoba, Saskatchewan and British Columbia the schemes pay low level benefits for personal injury to the victims of disabling road accidents regardless of who is at fault and the person has the right to sue under the tort system as well. In Ontario and Quebec a high level benefit is provided to individuals experiencing total disabilities. In Ontario about 5 percent of accident victims who have exceeded a threshold level of serious and long-term disability have retained the right to use the tort system to pursue lump sum compensation to recover damages for economic losses, pain and suffering, or other compensation beyond earnings replacement.

Where no-fault plans exist, they are considered a considerable improvement over fault-based systems. However, these plans do not provide a completely desirable alternative to the old system. Benefits in most provinces are low, and partial disabilities are not covered. There are also complaints about delays in the provision of benefits to people who are eligible. These concerns have raised doubts about the value of no-fault itself. Pressure has been mounted to restore negligence action to allow for a greater ability to sue for damages especially for non-economic losses such as pain, suffering, and the loss of the enjoyment of life. But the problem appears to be less with the no-fault premise as with the adequacy of the plans themselves as vehicles for compensation. As the debate rages between those who favour no-fault and those who do not, much of the discussion centres on who should run auto insurance -- government or the insurance industry -- when the more important issue might be whether there should be auto insurance at all with respect to personal injury compensation.

D. The Canada/Quebec Pension Plan²

The Canada/Quebec Pension Plan was established in 1966 as a social insurance retirement plan that also pays disability benefits to pre-retirement individuals who experience severe and permanent disabilities. It is also a surviving spouse's pension, and a disabled contributor's child's benefit. The majority of the Canadian labour force is covered because earnings-related contributions are compulsory for most employed and self-employed individuals between 18 and 65 years of age. The maximum payable monthly benefit to people who met minimal contributory requirements was \$709.52 in 1990. Contributions must have been made in two of the last three or five of the last ten calendar years and for at least one third of the contributory period. Since Unemployment Insurance provides sickness benefits for a maximum of 15 weeks, C/QPP disability benefits have been designed to commence the fourth month following the disability. In some provinces, Workers' Compensation benefits may be reduced by an amount equal to C/QPP benefits received, but this reduction usually occurs only after one year. Benefits are taxable and are terminated if a person obtains paid employment. There are no rehabilitation provisions to assist recipients to reintegrate into the labour force in the C/QPP since the stringent requirements assume that they will be totally unable to work and will remain on benefits until retirement or death.

The definition of an eligible disability for C/QPP disability benefits is highly restrictive.³ It compensates only "severe and prolonged mental and physical disabilities". Partial disabilities or total disabilities experienced temporarily are not covered. Almost all recipients of C/QPP disability benefits have become disabled through disease, but because eligibility requires earnings-related contributions, only people with an established earning record can receive benefits. This means that people with no earnings record, such as people who have had a disability from birth or a young age and most people with intellectual impairments, are not eligible.

E. Private Long-term Disability Insurance

For people who become disabled outside of the workplace but not in a car accident, the major public insurance program is C/QPP disability benefits. But, as we have seen, these pay only for serious and prolonged disabilities. In addition, benefits are

² For more complete descriptions of the following programs see Health and Welfare Canada, *Inventory of Income Security Programs in Canada January 1988*, Ottawa: 1989.

³ This definition of disability is considerably more restrictive than that used by private long-term disability plans and by public plans in all other industrialized nations like the Old Age, Survivors, Disability and Hospital Insurance (OASDHI) plan in the United States. See Health and Welfare Canada, *Joint Federal-Provincial Study of a Comprehensive Universal Disability Program*, Ottawa: 1983, and Health and Welfare Canada, *National Disability Insurance Programs in Fourteen Countries*, Ottawa: 1984.

generally low, with earnings replacement rates far below a person's normal earnings. This is because the plan was designed to assure room for private insurers to provide coverage to a large segment of Canadians. For higher income earners it was assumed that private coverage would provide benefit top-ups to replace income over the maximums allowed under each program. Private long-term disability plans (LTDs) have been established to fill the gap left by the C/QPP, Workers' Compensation and auto insurance. LTDs are not mandatory; only about one half of Canadian workers are covered by private disability insurance. There is a bias in the private system toward the coverage of higher income earners such as management employees, unionized workers in the public sector, and employees in large manufacturing operations. LTDs provide relatively generous benefits compared to C/QPP for a much broader range of disabilities. By their nature, like the C/QPP, LTDs primarily provide compensation to people with illness-related disabilities.

F. Unemployment Insurance Sickness Benefits

Although it is not usually thought of as such, Unemployment Insurance plays an important role in providing short-term benefits to people with disabilities as a result of illness or accident. Unemployment Insurance sickness benefits provide up to 15 weeks of wage loss compensation to insured workers who suffer a disabling condition and can prove it with a medical certificate. Benefits are paid at a rate of 50 percent of average weekly insurable earnings over the past 20 weeks of insurable employment and are taxable. There is a two-week waiting period during which claimants do not receive benefits.

G. Social Assistance

Social assistance, or welfare, is the main form of income security for people who have no other means of support. It is operated at the provincial level with half the cost born by the federal government through the Canada Assistance Plan (CAP). In some provinces, welfare is operated at both the provincial and the municipal level. A key requirement under CAP provisions is that recipients be deemed "in need". Need is determined through the application of a "needs test" which is a process where any income is measured against required expenditures to determine a budgetary deficit. Any sizable amount of assets must be liquidated and used as income before eligibility can be established. This asset test is a highly restrictive feature of social assistance, one that excludes large numbers of people with disabilities who have some limited assets and low or non-existent incomes. In addition, people with disabilities living with families are not entitled to support in their own right if the family's income is high enough to disqualify them from support. Welfare covers people who have fallen through the gaps in the system described above but it is not failure-proof. Many people also fall through this safety net and are forced to rely on family and friends for their support.

Between 25 and 33 percent of recipients of social assistance (depending on province) are disabled. The majority of people with severe mental disabilities and

congenital handicaps, and young people who are disabled rely on social assistance for support because they rarely have an established earnings record that would allow support under any of the insurance programs. Welfare covers persons who are "disabled", "severely handicapped", or "permanently unemployable". One particularly negative feature of the welfare system is that it requires that a person with a disability demonstrate through a medical assessment an incapacity to work. If deemed "unemployable", individuals can be eligible for disability-related welfare benefits which usually are higher than regular welfare benefits. If deemed employable, they may be eligible for regular welfare benefits and be required to actively seek work. This designation of people with disabilities as employable is not only in many cases inaccurate, it also stigmatizes recipients and reinforces both negative assumptions by society and by disabled individuals themselves about the capabilities of people with disabilities to function in the mainstream of society. Rates of social assistance have been regularly criticized for being far under accepted poverty rates.⁴ Welfare rates are kept low to encourage people to take work, but people with disabilities are bound by the contradictory requirement that they be considered unemployable to be eligible. This has led many people to question the appropriateness of welfare as a vehicle of support for people with disabilities.

Another key problem with the welfare system is the lack of incentive it provides to earn extra income. Welfare guidelines stipulate that recipients cannot earn any outside income beyond a minimal exemption without it being "taxed-back" completely. This aspect of welfare, combined with the fact that recipients often lose important medical, dental, drug, and other special assistance when they leave welfare, has sometimes been referred to as the "poverty trap".⁵

The welfare system operates with a great deal of administrative discretion which allows welfare workers to grant numerous exceptions depending on the individual's situation. This discretion is regarded by many as intrusive and degrading -- one of the main reasons why welfare is so stigmatizing. On the other hand, many people also regard the discretionary aspect of welfare as a strength because it allows for flexible responses to individual circumstances.⁶ In the case of people with disabilities, this is particularly important given the wide variation of extraordinary needs that requires special and sometimes supplementary assistance.

⁴ See Sherri Torjman, *Income Insecurity: The Disability Income System of Canada*, Toronto: The G. Allan Roher Institute, 1988, Tables 3-6.

⁵ See Ontario, *Transitions: Report of the Ontario Social Assistance Review Committee*, Toronto: Queen's Printer, 1988

⁶ For an extended discussion of these issues see Sherri Torjman, *Income Insecurity*, Op. Cit.

H. Other Programs

There are a number of other programs at the federal and provincial levels that have emerged to fill in the gaps and provide compensation to groups not otherwise covered but considered deserving of coverage. These include the federal war veterans allowance, provincial programs of compensation to victims of crime, and those who become disabled in the process of assisting police efforts.

Two kinds of support specifically of benefit to people with disabilities are provided through the tax system. These are the disability tax credit and the medical expenses tax credit. The disability tax credit is non-refundable and allows an individual with a disability to reduce their tax payable by 17 percent of what they spend on disability-related expenses for themselves up to a maximum of \$3,327.00 (or \$565.59) in the 1990 taxation year, and an additional allowance for a dependent who is not a spouse. To be eligible to claim the disability credit, an individual must have a severe or prolonged impairment that markedly restricts their ability to function for a period of at least a year. They must be unable to dress, bathe, prepare meals, communicate with or hear others, manage personal affairs because of a mental impairment, or walk or move.⁷ The medical expenses credit provides a similar tax reduction for medical expenses incurred.

In addition, a significant form of support for people with disabilities is provided in-kind through a wide variety of programs such as special medical and disability-related expenses in health plans, special needs such as assistive devices through social assistance, vocational rehabilitation services, homemaker and attendant care services, and transportation services. In some provinces, such as Quebec, some of these are provided in an integrated fashion to individuals who design, with service providers, an individual service plan.

III. PROBLEMS WITH THE SYSTEM

The system described above evolved over the past century in a haphazard, piecemeal fashion. Each program or mechanism was developed independently; it was not designed as an integrated or coordinated system. And this is its central problem; as a system it does not work well. It is inequitable, irrational, and inefficient. It is inequitable because it treats people with the same needs and experiences radically differently; it is irrational because risks are not pooled in any logical manner and costs are continually shifted from program to program; and it is inefficient because valuable resources are consumed in multiple and unnecessary administrative, medical, and legal processes.

⁷ Ibid, p.63.

A. The Problem of Cause

The key aspect of the system as it now exists -- and its most problematic element - is that it requires the classification of disability by cause in order to determine eligibility for one program or another. The system makes distinctions between people with the same needs, and compensates them differently based on how they became disabled. The need to classify according to cause is unfair because it has the effect of denying adequate compensation to people who are not covered. It also denies compensation to those people who are covered but the precise cause of whose disability cannot be established.

The requirement of cause determination is unfair because how one becomes disabled is largely a matter of chance. Disabilities are inevitable in a highly industrialized, mechanical age where transportation is based on the personal automobile, where hazardous chemicals are extensively used in the production of a many commodities and in daily life, and where environmental pollution is increasingly linked to many serious diseases. However, it is largely chance that determines whether a person becomes disabled in the workplace, in a road accident, at home, on vacation, in the womb, during childhood, as a result of environmental factors, disease, or in any number of other ways. The end result is a system that treats people with like needs or losses vastly differently.

The main difficulty with cause as a factor in the system is that in practice it is often difficult and costly to determine the precise etiology of many disabilities. Even disabilities that appear to be clearly accident-related are compounded by such factors as age, health, physical status, and previous accidents or disabilities. This difficulty is particularly evident in the case of Workers' Compensation. In many cases, such as with the loss of a limb or sight in an industrial accident, it is possible to determine unequivocally that the person's job was the source of the disability. In many other cases, such as with industrial diseases or back injuries, the origin of the disability is less clear. Much time, effort, and debate is devoted to the attempt to determine the extent to which Workers' Compensation is responsible for the payment of benefits to people. For example, back injuries can begin or be simply be aggravated by an accident at work or on the road. In a situation where an individual has a multiple disability, the Workers' Compensation boards have the difficult task of determining the significance of the compensable disability compared to the person's other disabilities. This problem plagues beneficiaries of Workers' Compensation who are denied claims as a result of an attempt to shift losses based on the judgement that the disability was caused as much by a previously experienced accident or disease or natural aging, as by the event at work. These arguments are also made frequently in negligence actions suits in order to reduce the liability of the person or entity at fault.

The difficulty of precisely diagnosing the cause of disability is most evident for some of the most serious of disabilities, such as those caused by cancer, which have uncertain or multiple origins. Indeed as medical and social science progresses, we begin to understand the complexity of the system of environment, family, society, and

workplace and how they affect the health and well-being of Canadians. It is likely that it will become ever more difficult to identify a single cause for the vast majority of disabilities.

The requirement of cause identification is least fair to those who are at the bottom of the income security hierarchy -- people who have always had a disability or who have not established an earnings record. This includes many people who have a mental handicap whose losses are just as real as those who experience accidents or were earners.

B. The Hierarchy of Support

A major problem is the system's lack of fairness in treating some forms of disabilities as more deserving than others, and in compensating them differently. This is reflected in the hierarchy of income security support for people with disabilities. There is a wide variation in eligibility for benefits. This comes about because of considerable differences in the definition of disability and the duration of coverage under different plans. At the top of the hierarchy are disabilities that are considered compensable. Accidents in general are treated as compensable; they are seen as events that a person can be insured against. While coverage by insurance appears to be an important factor in determining where one fits in the hierarchy, the simple fact of coverage does not guarantee adequate benefits or even compensation in the event of disability. People who are insured through contributions to one program or another may not be eligible for benefits because their disability does not fit with the eligibility criteria for those programs. For example, a person can contribute to Workers' Compensation or auto insurance but if their disability is associated with a disease or an accident at home they would not be eligible for disability benefits under either program.

Negligence suits might be at the top of the list. But successful large suits are achieved only by a small minority of people seeking settlements through the courts. The most generous public program is Workers' Compensation which compensates, with non-taxable benefits, full and partial disabilities from accidents or diseases that are workplace related. Disabilities from highway accidents and accidents from other causes are also compensated but at a lower rate and with a great deal of variation across provincial jurisdictions. In the case of road accidents, a person may or may not be able to sue for a larger lump sum settlement depending on the seriousness of the disability and the jurisdiction. Partial disabilities that come from accidents outside the workplace remain for the most part not compensated.

Disease-related disabilities are much less frequently compensated. They are treated as less deserving of public support; they do not receive compulsory insurance coverage. If a disability is not considered compensable, the person has little recourse but to turn to the welfare system to get support through a demonstration of need. In terms of the impact on a person's life, disabilities from accidents have the same effect as disabilities from other experiences such as birth, sickness or disease. But disabilities from

birth, sickness and disease are deemed less deserving and, therefore, are not in general compensated. In this way, people with the same needs are treated differently. People afflicted by sickness, disease or a mental disability constitute the majority of the population with disabilities. They have the same inability to resolve their needs for income as people who experience an accident-related disability. But the disability income system assigns them to the bottom of the income security hierarchy, most often to welfare.

C. The Problem with Tort Actions

Tort liability is a major mechanism to compensate people with disabilities, despite the fact that significant no-fault programs exist in the form of Workers' Compensation and several provincial auto insurance plans. There are several objections to tort as a system of compensation for people with disabilities. First, to achieve a settlement takes on average about a year and in some cases, especially where an appeal is made, five to ten years. Most people who have a disability cannot wait; they need benefits right away. The result is that those most in need, or with the least resources to support an expensive and risky court battle, will settle for considerably less than they might get or need in the long-run to satisfy their need for benefits in the short-term. Second, despite the appeal of potentially achieving a large dollar settlement, the vast majority of people who use this method end up with little or no compensation at all. Frequently, in large cases that go to appeal the only net beneficiaries are members of the litigation bar. Third, there are serious problems with lump sum payments as a form of compensation for losses resulting from disability. Most people with disabilities need a regular monthly income rather than lump sum compensation. Moreover, periodic payments are in the public interest; they ensure that people who receive lump sum compensation will not eventually become dependent on a public program if and when the settlement is exhausted. Fourth, lump sum compensation for pain and suffering -- a key issue used in defence of negligence action -- is almost invariably based on intuitive judgements about future events rather than rational and consistent criteria. As a result, settlements can vary considerably depending on lawyers, courts, and judges, and are at least not consistent with what actually happens. Finally, negligence action is an exceedingly costly system in administrative terms. The ratio of administration (i.e. legal and administrative costs) to benefits is much higher than any other existing method of getting benefits to a population in need.⁸

D. The Problem of Multiple Administration

The classification of disability according to cause results in a system of multiple administration that creates its own set of problems. Each program has its own eligibility criteria, application procedures, levels of benefits, and appeals procedures. The

⁸ The insurance industry argues that a major reason for unnecessarily high insurance premiums is the high cost legal services and court costs associated with tort actions. These remain disproportionately high costs in partial no-fault systems because legal actions are still permitted.

complexity of the system makes it very difficult to understand and as a result many people do not get what they are entitled to because they don't know about a program or how or where to apply, or they apply too late.

This system of multiple administration and adjudication is also remarkably wasteful. We have already referred to the exceedingly high administrative cost in the tort liability system of getting benefits to disabled victims. There is also a substantial cost, especially in the form of medical assessments, associated with determining whether a claim is valid under the terms of various programs. There are further costs associated with systems of subrogation, assignment, and third party claims. These costs are associated not with benefits to individuals with disabilities but with the administrative requirements of transferring funds from agency to agency and integrating programs with different criteria.⁹ For example, a person with a disability may be eligible and in receipt of a C/QPP disability pension and also be eligible and in receipt of social assistance. This requires that both systems handle the person's case, thereby incurring the extra administrative cost of integrating the two systems. However, since the C/QPP benefits are deducted dollar for dollar off what the person would otherwise receive from social assistance there is no financial benefit to the individual from the multiple administration.

Another problem is that there are often unintended effects when one part of the system is changed. For example, in 1987 the federal government increased the basic disability pension paid by the C/QPP. Because many people in receipt of this benefit also receive provincial social assistance and there is a dollar-for-dollar reduction by social assistance, many people with disabilities got no net benefit from the federal increase.

There are other inefficiencies in this system of multiple administration. One is the inefficiency that comes from having some groups over-covered while others are under-covered and fall through the gaps. For example, in some provinces a person with a disability can receive both a Workers' Compensation disability pension and a C/QPP disability pension so that their total benefit is in excess of their previous employment income. Someone with a court awarded settlement can receive compensation for the same loss that she/he has already been awarded under another plan. Indeed, it is common to have one person covered by four or five forms of insurance while another person is covered by none, and to have some people better off financially after becoming disabled, while others are thrown into poverty.

Opportunity costs are another inefficiency. For example, the compulsory contributions for coverage of workplace accidents and auto insurance forces a person to pay for categorical accident coverage when it would be in their better interest and more cost effective to pay for more general disability coverage regardless of cause of disability.

⁹ Terry Ison, *A Universal Plan of Disability Compensation*, Toronto: Osgoode Hall Law School, York University, A paper prepared for a conference organized by Corpus Information Services on "Permanent Partial Disability: Today's Challenges -- Tomorrow's Solutions", 29th October, 1987

E. The Problem of Rehabilitation

Finally, the system impedes rehabilitation in a number of ways.¹⁰ The requirement for cause definition tends to encourage the distortion of people's perception and display of symptoms to secure eligibility for specific programs. This impedes accurate diagnosis as well as treatment and rehabilitation. Moreover, it is often in the interest of the person with the disability to demonstrate the most significant incapacity to work she/he is able.

Once a person has had a claim sustained under one program he or she will not want to risk losing their place in the hierarchy of benefits by altering their earning status, especially if they are receiving Workers' Compensation. If eligibility is established and then a person finds work, there is a tendency to fear that any subsequent incapacity will not be eligible for the same level of benefits.

In addition, there is a powerful disincentive to rehabilitation in any system that covers only severe and total disability. The recipient benefits by exaggerating his or her incapacity in order to increase the likelihood of eligibility. A recipient will tend not to want to risk the loss of their full disability status by efforts to re-enter the workforce in case such re-entry proves unsuccessful. This is a major problem with both C/QPP disability benefits and welfare.

Many programs, such as the C/QPP and social assistance actively discourage people with disabilities from seeking work. This is because of the lack of any earnings exemption, plus high tax-backs on earned income, and the absence of effective rehabilitation support. The discouragement of rehabilitation is not only socially undesirable, it contributes to further wastefulness in the system as people collect more benefits that they would otherwise need if they were employed.

¹⁰ See Terry Ison, "The Therapeutic Significance of Compensation Structures", *The Canadian Bar Review*, Vol 64, No. 4, December 1986.

IV. PRINCIPLES FOR REFORM

Based on this assessment of the problems with the existing system of income security for people with disabilities, what principles should guide our thinking about an alternative? Several principles stand out as the key issues that should guide disability income security reform. These are:

- 1) comprehensiveness,
- 2) universality,
- 3) compensation for losses,
- 4) adequacy,
- 5) recognition of disability-related needs,
- 6) minimization of unnecessary dependency on income security,
- 7) efficiency,
- 8) simplicity.

A. Comprehensiveness

First and foremost, the alternative should be comprehensive in what risks it covers. It should provide compensation for all disabilities regardless of cause. The major problem with the system as it now exists is that compensation is based on how a person becomes disabled rather than need, loss, premium contributions, or even blame. Disabilities from accidents are considered more deserving than disabilities from sickness or disease. The same effective disability is dealt with by different programs vastly differently.

There is no compelling reason to distinguish accident-related disabilities from other forms of disabilities for purposes of compensation, although there is a need to distinguish levels of compensation. We become disabled in the course of living our daily lives. In many cases, it is not possible to know whether disabilities were sustained at work, on the road, as a result of sickness, or in any other of the many possible ways.

Comprehensiveness also requires that both full and partial disabilities be covered. The existing system covers partial disabilities only in certain instances, such as when they are sustained at work, but not in other circumstances. A system that sought to cover only full disability would undermine comprehensiveness because it could not replace important parts of the system that provide partial disability coverage, such as Workers' Compensation and auto insurance. It would also continue the irrational practice of requiring administrative agencies to make distinctions between disabilities in multiple disability situations in order to determine which are compensable under the terms of their program. In addition, a full-disability plan would undermine efforts to make rehabilitation a key objective; it would encourage individuals to present their incapacity as total so as not to lose coverage.

The only exclusion from the system should be for disability that results in an inability to work for short periods of time. How much time is an important and debatable question. In order to avoid overloading the system with short-term disability-related claims, the system might be designed to begin paying benefits after some acceptable time period to assure that short term claimants are weeded out. One method might be to assume continued coverage of short-term disability (to a maximum of 17 weeks) which is now provided under the sickness benefits provisions of Unemployment Insurance.

The principle of comprehensiveness implies the unification under one single plan of the many programs that currently exist. Alternatively, several plans could continue to exist with a common set of regulations, benefits schedules and terms of eligibility. However, with this strategy many of the problems of a caused-based system would remain.

B. Universality

In addition to the issue of *what disability* is covered, the other aspect causing fragmentation is the issue of *who* is covered. The alternative system should be universal; it should cover all people regardless of earning status. The coverage of non-earners in the same system as earners would be a significant innovation. The current social policy system tends to divide populations at risk into deserving and undeserving based on whether they work and pay premiums which make them eligible for social or private insurance. The usual argument against the inclusion of non-earners in the same plan as earners is that non-earners have less right to adequate benefits since they have not contributed or paid premiums. It is important to make a distinction between inclusion in the same plan, and how one determines benefit levels for people with disabilities. There may be good reason to vary levels of benefits based on past earnings, extent and duration of disability, and other factors. However, all people with disabilities should have access to benefits based on rational criteria rather than the irrational and frequently objectionable distinctions of the existing system. This objective is best reached through a universal plan where all individuals at risk of incurring a disability are included regardless of earning status.

A key function of universality would apply here. Universality in social provision creates a common social identity. Selective and fragmented systems divide the community of people with disabilities into deserving and undeserving groups. They all too frequently place the interests of one group against another, undermining adequate protection for all. Universal systems create bonds of association and a mutual self-interest in a high quality disability income system.

In addition, providing coverage only to people who contribute out of earnings creates inequity. For example, covering earners only would mean that a person who normally works would not be covered for disability when they are out of work. Universal coverage is especially important in an economy with employment and the labour market made unstable by international competitive pressures and government initiatives such as

free trade agreements. The phenomenal growth in part-time employment and in self-employment suggests that we need to re-think the way in which we provide protection against risks. Full-time standard employment may no longer be the norm, nor is it an appropriate basis for protection. In addition, the exclusion of non-earners from adequate income security protection would be unfair to people who become disabled while they are out of the labour force temporarily in order to raise children.

A commitment to universal coverage would indicate a recognition that many current non-earners, even those who have severe physical or mental impairments, are excluded from paid employment not because of their inherent limitations to contribute productively to society, but because society, and in particular the workplace, has been systematically structured to exclude them. There is a growing recognition and acceptance of the potential for people with very serious disabilities to be productive employees in many conventional workplace settings.

A commitment to including all people with disabilities in one plan which would provide monetary benefits (albeit at different levels) could encourage the trend toward developing independent living options for people with disabilities, especially people who suffer a mental impairment.¹¹ A commitment supporting independent/community living requires that individualized funding be provided directly to individuals with disabilities rather than to institutions that care for them. Under the current welfare system, individualized funding is possible but constrained primarily by the strict regulations of the federal and provincial governments regarding welfare provision. Moving support for people with disabilities into a new, unified plan would mean shifting the support of people with disabilities entirely out of the welfare system. This could be the springboard for a new approach to funding people with disabilities and associated support services.

The requirement that a person be a resident of the country or province for a specified period of time would constitute a legitimate exclusion from coverage under the plan or system. Old age would also be a legitimate categorical exclusion assuming that the retirement income system would absorb people who reach the regular retirement age of 65 and who relied on the disability income system for all or part of their income. However, the retirement income and disability income system would have to be better integrated so that people on a disability pension would not experience a substantial drop in income when they switch over to the retirement income system.

C. Compensation for Losses

A primary objective of any income security system should be to maintain living standards at levels comparable to those that were enjoyed before they were interrupted. The monetary benefits provided under any new system should be based on the principle that all people should have the opportunity to be fully compensated for income losses due to disablement. The idea that compensation be provided to people with disabilities

¹¹ See The G. Allan Roher Institute, *The Power to Choose*, Toronto: 1991.

even though they have not been in the labour market would be an important departure from the existing system. Under the existing system, benefits provided to non-earners are based primarily on the principle of equity which restricts eligibility to people based on their income or the income of other family members. Although a critical foundation for compensation is the idea of loss, compensation differs from the redistribution principle in assuming that people with disabilities are eligible for disability benefits in their own right, not only if they contribute or fall below a certain income, or have no family or friends to support them.¹²

Where people are earning or have an earning record, the loss they suffer is both current and future earnings; where people are not earning (because they are young or because they have not been able to work) they lose their capacity to earn in the future. In this way people with no earnings record would be compensated *for the disability itself*, an experience which may restrict their earning capacity. Losses due to pain and suffering may also be regarded as legitimate and compensable but as second order objectives after the need for ongoing income security is met.

Where losses are measurable, earnings compensation should be provided on an earnings-related basis.¹³ The calculation of benefits for loss of earnings would be as a percentage of past earnings, with adjustments for reasonable expected future earnings gains, partial disabilities, and individual circumstances. Ideally, the percentage of past earnings covered would have no maximum so that it would encourage universality and prevent fragmentation of the system though the development of other plans.

In the non-earner's case, there are several methods that could be employed. For example, an imputed weekly minimum earnings could be established for all individuals with a small or non-existent earnings record, and benefits could be calculated as a percentage of this level. Alternatively, a level could be chosen as some proportion of average wage, the average wage or income of a cohort, or some other standard deemed to reflect the potential income stream of a person without a disability who has not established an earnings record. One difficulty with such an approach is in the provision of unacceptably high levels of compensation to individuals who have high independent incomes.¹⁴ An acceptable formula might contain a component that would be

¹² Paul T. Dickinson, "An Analytical Framework and Generic Options for a Disability Benefits System in Canada, Appendix F., *Joint Federal Provincial Study of a Comprehensive Disability Protection Program*, Health and Welfare Canada, Vol. V., 1983.

¹³ For an extensive discussion on the theory and method of calculating such benefits see Paul T. Dickinson, "An Analytical Framework and Generic Options for a Disability Benefits System in Canada, Op. Cit.

¹⁴ One problem with universal payments is that although they are taxable, tax reform over the past twenty years has dramatically reduced top marginal tax rates thus undermining their political acceptability. If the income tax system was more progressive, i.e. taxed high income people proportionately more, then compensation for disability regardless of income as a principle might

compensation for the disability itself, and another component that would be provided on a less discretionary, less intrusive income-tested basis. The critical implication of this approach is that it suggests that welfare, and in particular needs testing, is not an appropriate method of determining eligibility for basic income assistance for people with disabilities.¹⁵

D. Adequacy

A key aspect of any new system should be the establishment of minimally acceptable levels of support for people with disabilities. As we have noted, the current welfare system, which is responsible for the bulk of people with mental impairments, provides benefit levels far below poverty levels in Canada. This standard is rooted in the desire to stigmatize and provide strong incentives to find employment. For people with disabilities, this standard of minimal adequacy has to be considered unacceptable. The benefits provided under the C/QPP are also seriously inadequate. They are premised on the idea that people will have other, private coverage. In fact, many people on the C/QPP are also on welfare. The move to a new system should, therefore, result in the establishment of new minimal standards of adequacy for people with disabilities. One method would be to establish a principle of minimum benefit level parity between people with disabilities and elderly people on a combined Old Age Security/Guaranteed Income Supplement level of income. This would provide improved benefits for the people with disabilities and reflect a growing consensus on the idea that the elderly and people with disabilities should not be treated so differently.¹⁶ Some provision would also be needed to compensate for the reduction in retirement income from a contributory pension as a result of the disability.¹⁷

E. Recognition of Disability-Related Needs

The system of disability income security should recognize that people with disabilities have individual needs that can result in vastly different monetary requirements. Different disabilities sometimes require individualized assistance to meet extraordinary requirements for living with disabilities in society. The range of particular needs faced by people with disabilities spans a wide spectrum and includes: assistive

become more acceptable.

¹⁵ It may, however, be appropriate for specialized forms of assistance as we will argue subsequently.

¹⁶ This principle was embodied in at least some of the proposals of the Joint Federal-Provincial Study of a Comprehensive Disability Protection Program which we will examine subsequently.

¹⁷ In order to gain support for such reform from key groups such as trade unions this benefit would probably have to be at least as high or not much less than what is currently provided by Workers' Compensation, (i.e. benefits would be averaged up rather than averaged down).

devices, prosthetic devices, drugs, specialized therapy or medical services, workplace or home modification, special transportation and training.

The provision for individual needs is inevitably based on some degree of administrative discretion in the assessment of need. Ideally, these would be provided directly to individuals in the form of a monetary benefit so that they could choose themselves what and where to purchase for their need. At the same time, there are instances where the provision of a benefit in-kind, such as a service or an assistive device, would be preferable. For all of its disadvantages, the one advantage of the social assistance system is that it allows for a discretionary response to individuals' needs. While income-testing may be more desirable than needs-testing as a mechanism for determining eligibility, such a method cannot in itself recognize the unique needs of every single individual with a disability. People who fall just above the income cut-off might have very high costs associated with their disability which, given their resources, will leave them with a large budget deficit. It is, therefore, also important that some mechanism for the provision of individual needs assistance be available in any system of income security for people with disabilities. The system of individual service plans which operates in Quebec may be a good model to develop.

F. Minimization of Dependency on Income Security

It is in the interests both of the individuals affected and society as a whole to minimize unnecessary dependency on income security. On the other hand, efforts to minimize dependency can result in coercion and injustice if adequate supports and opportunities for employment are not present. The designation of people with disabilities on social assistance as unemployable is both unnecessary and unjust. People with disabilities need support in their efforts to seek self-sufficiency through employment, or through other means, and these efforts should not be penalized by a large reduction in benefits.

In the first instance, the system should be designed to prevent the risks it protects against. However, disability is inevitable and when it occurs, a system of income protection should be designed to help recipients to recover the maximum degree of ability to function independently in the labour market through effective rehabilitation. Rehabilitation services could be provided under any system, but it would be preferable to disassociate the provision of these services as much as possible from the process that determines eligibility for monetary benefits. Ideally, rehabilitation services could be seen as a special part of the occupational training system so as to encourage effective, relevant training that is useful to both employers and disabled employees alike. The central goal of quality rehabilitation services is the rapid integration of people with disabilities into the mainstream labour market. In addition, the system should be designed so as not to discourage earnings over and above basic levels of compensation.

G. Efficiency

It almost goes without saying that system of income security should be *efficient*. The current system violates this principle because it wastes money on unnecessary administrative procedures, medical assessments, legal and court costs, and through overlapping protection. Program fragmentation is the main reason for the system's wastefulness.

Efficiency should be achieved in two ways. The first is through administrative efficiency. This means that there should be the lowest possible ratio of administrative spending to spending on benefits. Economies of scale can be achieved ideally through a unified administration which eliminates the need to determine the origin of disability. Second, the system should be efficient in assuring that social spending for disability support is no more than is required to meet the reasonable objectives of the society. This can be achieved through vigorous efforts to prevent disability, effective rehabilitation, and assuring that incentives and opportunities for gainful employment exist for people with disabilities.

H. Simplicity

Complexity in any system works against effective entitlement. Canada's tax and transfer systems are notably and unnecessarily complex. This fact has been the motivation for most proposals to reform income security. As we have seen, the disability income system suffers from complexity and irrationality when it should be simple and easy to understand. Terms of eligibility should be clear and easily understandable, and claimants should clearly know what they are entitled to. Appeals procedures should also be clearly spelled out and access to an appeal should be speedily available to those denied a claim if they believe they have been wronged.

V. WHAT IS THE ALTERNATIVE?

The problems with the existing system of disability income protection have been widely recognized. Most proposals for reform of the system tend to focus on ways to fill in the gaps or improve the most problematic or poorest elements of the system. Unfortunately, this approach tends to see the problems in terms of weak elements of the system that need improvement rather than as faults in the system as a whole. Nevertheless, there have been several Canadian proposals for alternative *systems*. In addition, there have been initiatives in other countries that we can learn from in thinking about alternatives here in Canada.

Proposals for comprehensive reform of Canada's income security system have been made by numerous government commissions, task forces and studies over the past several decades. Many of these proposals are made in the interests of improving the incomes of the working poor, rationalizing the tax and transfer system, or for other

objectives. There have been several Canadian proposals specifically for comprehensive reform of the disability income security system. For example, in 1981 the federal Special Parliamentary Committee on the Disabled and the Handicapped recommended a comprehensive national disability insurance plan and the expansion of benefits under the C/QPP.¹⁸ In response to this recommendation, the federal Department of Health and Welfare undertook a joint federal-provincial study of a comprehensive disability protection program. In 1985 the Royal Commission on the Economic Union and Development Prospects for Canada also recommended the adoption of a national disability income plan without specific design options.¹⁹ Provincial reports in Manitoba, Saskatchewan, and most recently Ontario have made proposals for various forms of disability insurance. A review of Ontario's Workers' Compensation system by Professor Paul Weiler led him to recommend that it be integrated into a reformed and comprehensive disability income system.²⁰ And Ontario's Social Assistance Review Committee's 1988 report *Transitions* recommended an insurance plan that would provide benefits for disability regardless of cause as the principal alternative for the many people with disabilities who end up on welfare.²¹

The idea of a guaranteed income is also put forward as an alternative to the existing income security system. However, both the concept of a guaranteed income and the idea of universal disability insurance can mean many different things. Proposals which are labelled universal or comprehensive can be misleading. Some visions of these ideas represent a significant improvement on what we are doing now; others represent little more than tinkering and marginal improvements.

A. The Joint Federal-Provincial Study

The most specific proposals for reform of the disability income system were made by the Federal-Provincial Study of a Comprehensive Disability Protection Program. A report was completed in 1983 which developed several design options favoured by the federal and provincial ministers and provided some preliminary cost estimates.²² The study rejected the idea of a single unified plan, as put forward by the Parliamentary

¹⁸ Canada, House of Commons, *Obstacles: Report of the Special Committee on the Disabled and the Handicapped*, Ottawa: Minister of Supply and Services, 1981.

¹⁹ Canada, *Report of the Royal Commission on the Economic Union and Development Prospects for Canada*, Ottawa: Minister of Supply and Services, Vol 2., 1985.

²⁰ Paul Weiler, *Protecting the Worker from Disability: Challenges for the Eighties: A Report Submitted to Russell H. Ramsay, Minister of Labour*, Toronto: Ontario, 1983.

²¹ Ontario: *Transitions: Report of the Ontario Social Assistance Review Committee*, Toronto:, Queen's Printer, 1988

²² Health and Welfare, *Joint Federal-Provincial Study of a Comprehensive Disability Protection Program. Volume I*, Ottawa: 1983.

Committee on the Disabled and the Handicapped. As an alternative, its proposals were designed to fill in the gaps of the existing system.

Three earnings replacement models and three non-earner models were outlined. The design features of all the earnings replacement models were to: a) replace 60 percent of pre-disability earnings up to the Canada/Quebec Pension Plan ceiling (tied to the average wage); b) provide a high degree of inflation protection; c) begin payment of benefits 17 weeks after the onset of disability in order to preserve the sickness benefits of unemployment insurance; d) protect all employees and the self-employed; and e) include a rehabilitation component. All models assumed that existing categorical programs such as Workers' Compensation and provincial auto insurance would remain in place. The three earnings replacement models were:

- 1) a Long-term Disability-type program which would resemble the kind of protection provided by current long-term disability plans for employees but extend it to all workers. It assumed private sector administration and was estimated to cost 1.89 percent of payroll by 1990;
- 2) a Canada/Quebec Pension Plan-type program which assumed a federal public administration. This option was cost on two different definitions of disability, one a more liberal definition than that under the C/QPP, another using the same definition as the C/QPP. The more liberal definition resulted in a cost of 1.55 percent of payroll by 1990, while the existing definition resulted in a payroll cost of 1.1 percent;
- 3) a Full and Partial Disability program which assumed provincial administration and was projected at a cost of 6.5 percent of payroll in the initial year.

The non-earner models started from the similar assumption that it would be desirable to keep as much of the present system in place as possible. Benefits in all approaches would be targeted at low-income persons and would be funded from general revenue. The definition of disability was the C/QPP definition of "severe and prolonged". A key issue was how to deal with special expenses associated with disability. No one design was favoured but the position taken for costing was to provide a higher base level to disabled persons in recognition of the higher costs they face compared to able-bodied low-income persons. It was assumed that the appropriate level of benefits for people with disabilities was equivalent to that of the combined Old Age Security/Guaranteed Income Supplement. The three models were:

- 1) an *income-tested model* that assumed federal administration similar to OAS/GIS and was estimated to cost \$800 million annually over and above what is currently being spent by federal, provincial, and territorial governments on social assistance for people with disabilities;
- 2) an enriched social assistance model that would be provincially administered and

have the federal government provide enhanced cost-sharing (perhaps 75:25 percent) to allow provincial governments to increase the benefit levels of those now on social assistance who qualify under the C/QPP definition of disability to a level equivalent to the OAS/GIS level. The increased cost to the federal government was estimated to be approximately \$650 million;

- 3) a *social assistance top-up program* which would provide a flat-rate top-up to regular social assistance benefits that people with disabilities normally receive. Administration would be at the federal level. Set at \$175 per month, the cost of this option was estimated to be in the order of \$475 million in 1986. Including institutionalized people with disabilities would add a further \$50 million to the cost.

Several major problems with these proposals can be identified. A key starting point for the Joint Federal-Provincial Study was the preservation of the existing programs. The strategy was designed to fill in the gaps. This starting point was largely the result of provincial reluctance to give up responsibility for programs they now operate, especially Workers' Compensation. Quebec in particular is opposed to any federal incursion into income security fields it regards as its own. In addition, efforts to reform systems that have been established over many decades runs into the inertia of enormous entrenched bureaucracies.

We have argued that one of the main problems with the existing system is its fragmentation. There is no doubt about the difficulty of reforming a system that is shared between numerous provincial and territorial governments and the federal government, and that has enormous entrenched bureaucracies. The federal system, where responsibility is shared between governments for basically the same kinds of programs, is frequently a major impediment to reform.²³ But the difficulty of changing the system does alter the fact that it is now remarkably irrational, unjust and wasteful.

The Joint Federal Provincial Study proposals were not for comprehensive reform. To be comprehensive would require the unification of the system so that compensation for disability was no longer cause- or program-related. It is not possible to achieve comprehensiveness through filling in the gaps. The fundamental problems of the system would have remained: the multiple administration and categorical distinctions and the hierarchy of support. However, the adoption of any of three earner-related proposals or the three non-earner related proposals would have meant a significant improvement for many people with disabilities who now lack effective compensation. In this way the Joint Federal-Provincial Study reform package would make some incremental improvements but would also reinforce the inequity, irrationality, and wastefulness of that system by adding to it.

²³ See Keith G. Banting, *The Welfare State and Canadian Federalism*, Kingston: McGill-Queen's University Press, 1982.

More specifically, with respect to the earnings replacement plan for contributors, the fact that it would pay only 60 percent of pre-disability earnings would put its compensation substantially below that provided by Workers' Compensation. This violates the principle of equity since people who become disabled outside of the workplace would be treated differently than those who are injured in the workplace. There are also major differences between the three options outlined with only the third covering both full and partial disability. The coverage of partial disabilities is essential if coverage is to be comprehensive and at least the same as that provided now by Workers' Compensation.

With respect to the proposals for the non-earners plans, there were only two real options. One was to improve the benefits provided to welfare recipients with disabilities, while the other was to move them into a new program similar to the federal income-tested GIS program for the elderly. These options would represent a decided improvement for people with disabilities now on welfare. But they too would do little to overcome the many other problems with the existing system. They would reinforce the hierarchy of support for people with disabilities by maintaining the substantial differences between earners and non-earners. In addition, there was no provision for the coverage of partial disability. Keeping non-earners within the realm of the welfare system would simply reinforce all of the negative aspects of welfare support for people with disabilities.

B. The Ison Proposal

Professor Terry Ison of Osgoode Hall Law School, York University, Toronto, has developed a detailed proposal for a truly comprehensive and universal disability income security system.²⁴ It would cover all disabilities regardless of cause, cover all people regardless of occupational status, and would be compulsory.

Ison's proposal would involve merging existing public plans that provide income assistance to people with disabilities: Workers' Compensation; auto insurance benefits; Canada/Quebec Pension Plan disability benefits; compensation for victims of crime; veterans' benefits; and social assistance disability-related benefits. Negligence action for personal damages would be abolished. Private individual and group long-term disability plans would not be abolished but their existence would be minimized by a system that makes such extra coverage unnecessary. As in the Ontario proposal, welfare would remain a separate program but people with disabilities now on welfare would be supported by the new program.

²⁴ For recent presentations of the proposal see Terry Ison, *A Universal Plan of Disability Compensation*, Toronto: Osgoode Hall Law School, York University, A paper prepared for a conference organized by Corpus Information Services on "Permanent Partial Disability: Today's Challenges -- Tomorrow's Solutions", 29th October, 1987, and *Universal Disability Insurance*, Toronto: Osgoode Hall Law School, York University, a paper presented to the Conference of the Ontario Federation of Labour on Workers' Compensation, London, October, 1990.

A new plan would be created that would ideally be administered by the federal government. Given current political and constitutional realities, however, Ison argues that a provincially administered initiative is a more likely option. The plan would be operated by a board with a visible and responsive local presence. It would be funded much the same as the existing system is now funded, and as the New Zealand system is funded, through a combination of employer assessments, a tax on gasoline and motor vehicles, a tax on hazardous activities such as smoking, and through general government revenue. To the extent that individuals would contribute they would do so through the income tax system.

Efforts to prevent disability would be encouraged through these financing mechanisms. For example, premiums paid for the right to drive a motor vehicle could be related to the accident record of the individual. Similarly, taxes or premiums on employers or individuals for hazardous activity that contributes to disability can be assessed at higher rates, or through penalties, than those who engage in safer practices.

There would be two principal types of benefits:

- 1) an *earnings-related benefit*. This would be income allowance for total or partial disability that would replace at a high percentage any loss of earnings, with no ceiling. It would commence one month after absence from work begins, and would not be retroactive. The first month would be covered by the Unemployment Insurance sickness benefits and employer sick pay schemes. Both these benefits would be a fixed benefit or pension based on projected loss of earnings.
- 2) an *impairment benefit*. This would be seen as compensation for the disability itself and for the loss of capacity to earn. The calculation of the disability benefit would include a component for the presumed loss of earning capacity and for non-monetary losses such as pain and suffering. This would be a lump sum benefit for minor cases or pensions for more serious cases. The calculation of the benefit would be based on a revised incapacity schedule with partial disabilities compensated as a percentage of total disability. This would be the primary benefit for non-earners and for people currently supported by social assistance.

Both benefits would be payable to earners and non-earners alike, but each would receive a pension based on a formula that takes into account the need to provide earnings replacement, for those who have earnings, and for non-monetary losses. The method of interaction of the two proposed by Ison is to calculate the pension by the larger of the two amounts plus 50 percent of the smaller. This would prevent those with large future earnings losses from having no compensation for non-monetary losses, or from having too much overall. It would also prevent non-earners from receiving too small an income. All benefits would be fully taxable and would be indexed to rises in the consumer price index to assure that they do not deteriorate over time.

In addition to the above basic benefits, Ison proposes several other benefits that would be included in his universal, comprehensive disability plan. They are:

- o **rehabilitation services:** These would be voluntary and separated as much as possible from the determination of eligibility for benefits;
- o **special expense allowances:** Some provision for discretionary provision for extraordinary needs would be included. In addition, special medical services would be provided through an improved integration with existing medical and health services;
- o **retirement provisions:** These would be compensation payments to pension plans (such as the C/QPP or private plans) for continuation of pension contributions until the normal age of retirement;
- o **death benefits:** These would include: a) a funeral allowance of a standard amount; b) a non-dependant survivor's benefit; and c) allowances for dependent survivors.

Ison's proposal is a valuable contribution to the important debate about what to do about income security for people with disabilities in Canada. It is also consistent with the principles discussed earlier in this paper. It is comprehensive; it is universal; it is „based on the idea that people with disabilities should receive compensation, not need related benefits; it would compensate equal losses equally; it would recognize special needs although it does not specify how or to what extent it would do so; it would attempt to minimize dependency on income security through a beefed-up commitment to rehabilitation and through the reduction of therapeutic damage due to comprehensive integration; and it would be efficient and simple.

Ison stresses the idea that the retention of tort liability for personal injury compensation is a major barrier to comprehensive reform. The existence of the negligence action option and the idea that fault allocation was necessary for liability was one of the key reasons for the development of the fragmented, caused-based system we have inherited. As long as negligence action is a mechanism that can be used, and as long as people hope, as they do with other lotteries, however inaccurately, that they can achieve large settlements, this will restrict the development of other systems to provide adequate coverage. This in turn will put downward pressure on the rest of the system, encouraging fragmentation since people who can afford it will seek separate coverage.

Ison, like many others who support the idea of comprehensive and universal reform, suggests that reform could take place in a fiscally neutral context or even result in cost savings. This is because the current system is considered exceedingly wasteful due to fragmentation and a comprehensive alternative would save enormous administrative expenditures which could be redirected to people with disabilities as benefits. The total net cost of any reformed system depends on many factors that are not clearly defined in

Ison's proposal. There are no doubt considerable savings to be made from the abolition of tort, the necessity to determine cause, and the multiple administrations. In addition, there are cost savings associated with the reductions in social assistance which need to be considered in any assessment of the total or net cost to society. But it is hard to believe that real comprehensive reform would be less expensive or at least no more expensive than the existing system, especially if reform was to raise the standard of adequacy to the top of the hierarchy (i.e. Workers' Compensation levels). There are also likely to be considerable costs associated with the new coverage of previously non-covered people with disabilities. Many people with disabilities fail to qualify for any income security in their own right and have to rely on the charity of family and friends. The provision of income to people with disabilities without an asset test would certainly expand the population with disabilities who qualify for income support and undoubtedly result in considerable cost. In addition, as we have argued, the total net cost is largely a function of how broadly or narrowly eligibility is defined. Ison implies a broad definition, but also seeks to reduce costs by having employers pick up the support of most short-term recipients with disabilities who are earners and who do not qualify for UI sickness benefits. The point is that the net costs of comprehensive reform cannot be determined without considerable detail in a proposed program design, and we should not delude ourselves about the cost of creating a better system. This is not an argument against reform, it is only an argument to be clear about the fiscal implications.

C. New Zealand's Universal Accident Insurance System

Those interested in reform of the disability income system often refer to the model universal accident insurance system of New Zealand. In the 1960s, New Zealand's system of disability compensation was much like it is in Canada today. Several studies found that it was inequitable, inefficient and irrational. The first response was to focus on road accidents and adopt a no-fault system. But it was realized that this approach was limited and inequitable because it ignored the victims of other accidents. The *Woodhouse Report* of 1967 set out a blueprint for an alternative system of accident compensation that was based on the abolition of tort liability and Workers' Compensation as separate programs and their replacement with a comprehensive plan. Such a scheme was adopted in 1972 and has operated successfully ever since.

In the New Zealand system, benefits are paid after the first week of disability to a level of 80 percent of lost or interrupted earnings to victims of disabling accidents. Benefits are also provided on an income-tested basis to non-earners who experience a disability accidentally no matter how. A survivor's income is paid, a lump sum benefit is provided to those who are seriously and permanently disabled, and for pain and suffering, although recently these benefits have been reduced in the interests of fiscal restraint. And there is a comprehensive rehabilitation program built in for all beneficiaries.

New Zealand's Accident Compensation Commission is a social insurance program

which generates revenue in several ways. There is a levy on employers which varies depending on the risk category of the employment; there is a levy on motor vehicles through a licence fee; and the fund is supplemented by general government revenue to cover the costs of benefits and services to those who are non-earners or who are not injured on the road.

The New Zealand system is considered to be more cost effective than the system it replaced, and it provides substantially better protection to accident victims.²⁵ However, to say that the New Zealand system is comprehensive is misleading. The major limitation of the New Zealand scheme is that it covers disability only as a result of accident. Disabilities as a result of sickness and disease, by far the largest reason for disability in New Zealand as well as Canada, are excluded from coverage under the plan.

VI. CONCLUSION

How feasible is comprehensive universal disability insurance for Canada in the 1990s? Evidently there is no political commitment on the part of the federal government or any provincial governments to the adoption of a comprehensive, universal disability insurance system at this time. The proposal of the Joint Federal-Provincial Study illustrates the possibilities and the limitations in policy thinking about what constituted an acceptable alternative several years ago. The starting point of the Study was the maintenance of the status quo in the existing program framework with a new program for earners and an improved program of social assistance, or possibly an income-tested program for non-earners. Even this limited attempt at reform was a non-starter. Little has changed in the interim. If anything, retrenchment is the order of the day in social policy.

The problems with the existing system logically point to the need for comprehensive reform. But policy making is never simply an exercise in pure logic. It is a process of accommodating a multiplicity of interests that do not always have the public interest in mind. There is considerable inertia built into the system of income security that make it very difficult to reform. Fears about cost, the concerns of powerful lobby groups, and entrenched bureaucratic interests reinforce ideological predispositions against a system that seeks to empower recipients. The barriers to reform are mostly political and ideological, they are not just economic.

²⁵ Terry G. Ison, *Accident Compensation*, Croom Helm London, 1980, p.187.