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# Labour Market and Income Support Programs in Canada for Persons with Disabilities

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## Abstract

This report overviews the disability-related benefits and supports available to working-age Canadians. The prime focus is on income support programs available to persons prevented from working due to debilitating conditions. It also covers underlying two complementary areas:

- Rights-defining legislation and pertinent areas of labour law; and
- Non-monetary supports. These are often provided in tandem with income supports and include rehabilitation services; employment skills training; and aids, devices and supports in preparing for, searching for and retaining employment. These supports are provided by public programs, employment benefits and private/quasi-private insurance.

The report is a primer, providing a common basis for discussion regarding the nature and extent of currently available supports for use by policy analysts, researchers and the public. It describes the rudiments of these programs, legislation and mechanisms including: eligibility, level and type of support provided, and how benefits are delivered. Because many of these programs have overlapping eligibility, a description is also provided outlining how these benefits interact.

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## 1. Introduction

This report overviews the nature of disability-related supports available to working age Canadians. It focuses on the income support programs available to persons prevented from working due to debilitating conditions. These supports can take the form of public programs, employment benefits and private/quasi-private insurance and fall within a structure of rights based law and legislation.

The report is written as a primer, providing thumbnail sketch of all labour market and income supports available to persons with disabilities in Canada. It describes the rudiments of these programs, legislation and mechanisms including:

- A thumbnail sketch of the nature of the support
- A reference to enable legislation, programs or regulations
- How the support is delivered and by what organization(s)
- Eligibility and the associated definition of disability
- Application, review and appeal procedures
- The benefit(s) potentially provided
- How this element potential interacts with other elements of the disability support system.

The goal of this report is to provide a common basis for discussion regarding the nature and extent of currently available supports for the use of policy analysts, researchers and the public.

As a pre-amble, the following provide a brief “lay of the land”, indicating where and when these various supports come to the fore, the level of support provided and how these various support measures interact.

### **Rights Based and Anti-discrimination legislation and law**

Human Rights and Anti-discrimination legislation provides a part of the foundation for the system of income and other supports available in Canada. While, in and of themselves these provisions do not result in the direct provision of income or other support, the absence of these laws and the foundations of sanctions and protections that they provide would undoubtedly have significant impacts in reducing access to income and benefits for many.

The role of employers in hiring and retaining people with disabilities is legislated generally under human rights legislation in federal–provincial/territorial jurisdictions (and under the *Employment Equity Act* in the federal jurisdiction). For example, workers’ compensation regulations commonly require job protection to persons who are injured or become ill in carrying out the duties of employment. In some cases, legislation goes further in spelling out remediation mechanisms. Most typically, these include levels of compensation where actions or conditions result in a work-limiting disability. In some

cases, legislation goes beyond immediate compensation to address systemic issues of inequality. For example, employment equity provides targets for representation of people with disabilities in the labour force and links these to access to federal contracts as balances to the potential application of endemic discrimination in hiring/layoff practices.

### **Income support and compensation programs**

A wide variety of public sector, quasi-public, and private sector sources provide disability income programs and supports in Canada.

- Programs enacted by legislation and directly administered by the public sector include social assistance, the Canada/Quebec Pension Plan (C/QPP), the Employment Insurance (EI) sickness benefit, veterans' benefits, and criminal injuries compensation.
- Programs enacted by legislation and administered by quasi-governmental organizations and Crown corporations include workers' compensation and motor vehicle insurance programs in some provinces.
- Benefits regulated by legislation but offered by the private sector include motor vehicle accident benefits in all other provinces.
- Unregulated insurance produced provided by the private sector corporations primary providing income support to those with short- and long-term work-related incapacity due to illness or injury.
- Awards and settlements resulting from litigation are enforced by the courts and the legal system (e.g., remedies for loss as determined through tort or determinations).
- Tax-based expenditures

How disability income and compensation benefits come into play following the onset of a disability depend on a range of factors: the severity and length of the disability, the cause of the disability; the time of contributions/premiums to a program or plan, where and how did the onset of the disability occur; the income of the recipient and her/his family and the presence of magnitude of the incremental costs resulting from the presence of a disability.

Contributory plans, such as long-term disability, workers' compensation, and motor vehicle accident benefits, typically provide income benefits based on a percentage of earnings ("wage-loss replacement"), whereas the level of benefits from social assistance, which is a "last resort," non-contributory entitlement, is based on an assessment of basic needs, including asset testing.

- Virtually every entitlement and benefit depends on medical certification of the disability. However, the medical certification varies consideration with the definition of disability used and the eligibility criteria. Access to programs vary from an inability to work in the short term because of an illness, quarantine or injury to an

inability to undertake an important function of everyday living because of a permanent condition to an inability to ever perform substantial work at any job. Medical practitioners may also be asked to determine whether or not an injury occurred in a particular circumstance or situation (for example, during an automobile accident or because of exposure to an employment related risk.)

- A number of income benefits also provide supplementary disability- and health-related non-income benefits (e.g., prescription drugs, assistive devices) and may provide access to training/schooling or ancillary benefits (for example, bus passes, or homecare supports).

### **Employment and training programs**

Most government and insurance disability income programs have associated benefits and programs to support employment. Awards and settlements for personal injury include counselling, job adaptations and accommodations, rehabilitation (including health services not provided by Medicare), and partial income benefits during a return to work. Access to these additional supports varies among programs, and on finding or returning to employment, these supports usually end or are reduced or phased out.

Federal and provincial/territorial jurisdictions also have employment programs for people with disabilities that are separate from income benefits, for example, the federally administered Opportunities Fund and the “strings attached” programs under labour market agreements for persons with disabilities (LMAPDs), which are administered by provincial/territorial partners.<sup>1</sup> Unilaterally administered programs often have separate streams, for example, people with intellectual disabilities and for people with mental health or addiction disabilities.

Non-governmental organizations (NGOs) are also heavily involved in delivering employment services to people with disabilities, either on behalf of provincial/territorial governments or using funds garnered through charity or non-profit enterprise, and voluntary or in kind contributions. These NGO efforts and the products and programs they deliver are quite diverse and difficult to turn into archetypes.

In addition to participation in targeted programs, many people with disabilities use generic labour market programs. These include training interventions through Part II of the *Employment Insurance Act* (referred to as employment benefit and support measures or EBSMs); and programs made available through federal–provincial/territorial labour market agreements and federal–Aboriginal partnerships, such as the Aboriginal Skills and Employment Training Strategy (ASETS) and the unilateral Youth Employment Strategy (YES).

Finally, provincial, and territorial governments regulate and administer a number of pre-employment programs which are, in some cases, supported by the federal government. One primary element of many of these programs is the development of fundamental skills

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<sup>1</sup> These programs may include provision for modest income supports usually as allowances, for example, for living expenses while undertaking training away from home.



including—ranging from elementary numeracy and literature to life skills. Often, these are specific to the presence of a particularly type of disability—for example, the mastery of Braille or American Sign Language. A second set of programs provides a foundation of pre-employment training and skills. These may include, for example, high school or post-secondary accreditation, or the completion of the apprenticeship and other journeyman programs necessary to obtain trades certification.

## 2. Human Rights and Anti-Discrimination Legislation

Human Rights and Anti-discrimination legislation provides a part of the foundation for the system of income and other supports available in Canada. While, in and of themselves these provisions do not result in the direct provision of income or other support, the absence of these laws and the foundations of sanctions and protections that they provide would undoubtedly have significant impacts in reducing access to income and benefits for many. The impacts of these sanctions and protections are in many case direct—thus remedies provided in the Canadian Charter of Rights and Freedoms include compensation for any or all of the wages that the victim is deprived of and for any expenses incurred by the victim as a result of the discriminatory practice; and for any or all additional costs of obtaining alternative goods, services, facilities, or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice. Impacts are, to an even greater extent indirect—in providing precedent for conditions or levels of support and recourse/remedy.

### ***Canadian Charter of Rights and Freedoms***

The *Canadian Charter of Rights and Freedoms*<sup>1</sup> is a key component of Canada's Constitution. All laws in Canada must be framed in compliance with the Charter, which guarantees equality before and under the law, and equal benefit of the law without discrimination on the basis of race, ethnicity, colour, religion, sex, or mental or physical disability. The most important feature of the Charter for people with disabilities is the enshrinement of equality rights in section 15.<sup>2</sup> The Supreme Court of Canada has stated that the purpose of section 15 is to protect those who suffer social, political, and legal disadvantages in society. At the same time as it protects equality, the Charter allows for certain laws or programs that favour disadvantaged individuals or groups. For example, programs aimed at improving employment opportunities or providing benefits for people with mental or physical disabilities are allowed under section 15(2).

However, Charter rights can be limited in some ways. Through the use of section 33 (the Notwithstanding Clause), Parliament and the provincial/territorial legislatures can make a particular law exempt from certain sections of the Charter for up to five years. The sections to which the Notwithstanding Clause can apply are fundamental freedoms (section 2), legal rights (sections 7-14), and equality rights (section 15).<sup>3</sup> Further, Charter rights are not absolute in the sense that section 1 recognizes that governments can impose limitations that a free and democratic society would accept as reasonable. In doing so, a government must face a pressing and substantial problem, and the government's response to the problem must be reasonable and demonstrably justified. Through its Charter decisions, the Supreme Court has developed guidelines in this connection.

The Charter only applies to the actions of governments, not to actions of private citizens or businesses. Nevertheless, because governmental action includes passing laws and setting national and provincial/territorial policies, the Charter has had a wide impact on Canadian society. The equality guarantee for people with mental and physical disabilities in section 15 has done a great deal to advance the understanding of the rights of people with disabilities in Canada, not only among legislators and jurists, but among the public.

Disability income and employment programs provided by governments in Canada must conform to the Charter, including the section 15 guarantee of equality.

### ***Canadian Human Rights Act – Provincial/Territorial Human Rights Acts***

Under the *Canadian Human Rights Act* passed by Parliament in 1977, it is against the law for any employer or provider of services who falls within federal jurisdiction to make unlawful distinctions based on race, national or ethnic origin, colour, religion, age, sex, marital status, family status, sexual orientation, disability, or conviction for which a pardon has been granted.<sup>4</sup> All provinces and territories have similar laws in place forbidding discrimination in their areas of jurisdiction.

The *Canadian Human Rights Act* and its provincial/territorial counterparts recognizes that persons with disabilities must have equal access to premises, services, and facilities. Human rights legislation in all Canadian jurisdictions explicitly prohibits discrimination in employment on the basis of disability. It applies to government income and employment programs as well.

### **Jurisdiction**

The *Canadian Human Rights Act* covers federal government departments and agencies, Crown corporations, Canada Post, chartered banks, national airlines, interprovincial communications and telephone companies, interprovincial transportation companies, and other federally regulated industries, such as certain mining operations. These account for about 10 percent of the Canadian labour force.

Founded in 1978, the Canadian Human Rights Commission leads the administration of the *Canadian Human Rights Act*. The Commission works with employers, service providers, individuals, unions, governmental and non-governmental organizations, and provincial and territorial human rights bodies to foster understanding and commitment to achieving a society where human rights are respected in everyday practices. A new service delivery model provides for discrimination prevention initiatives, modern dispute resolution approaches for addressing inquiries and complaints, and regulatory, policy, and knowledge development.

Provincial/territorial human rights laws apply to retail and hospitality businesses, such as stores, restaurants and hotels; hospital and health care providers; schools, colleges, and universities; most manufacturers; provincial/territorial/municipal governments; and service providers (whether for-profit or non-profit).

The following bodies administer and enforce these laws:

- Alberta Human Rights and Citizenship Commission (*Alberta Human Rights Act*);
- British Columbia Human Rights Tribunal (*British Columbia Human Rights Code*);
- Manitoba Human Rights Commission (*Manitoba Human Rights Code*);
- New Brunswick Human Rights Commission (*New Brunswick Human Rights Act*);
- Newfoundland and Labrador Human Rights Commission (*Newfoundland and Labrador Human Rights Code*);

- Northwest Territories Human Rights Commission (Northwest Territories *Human Rights Act*);
- Nova Scotia Human Rights Commission (Nova Scotia *Human Rights Act*);
- Nunavut Fair Practices Officer (Nunavut *Human Rights Act*);
- Ontario Human Rights Commission/Human Rights Tribunal of Ontario (Ontario *Human Rights Code*);
- Prince Edward Island Human Rights Commission (Prince Edward Island *Human Rights Act*);
- Quebec – Commission des droits de la personne et des droits de la jeunesse (*La Charte des droits et libertés de la personne*);
- Saskatchewan Human Rights Commission (*Saskatchewan Human Rights Code*); and
- Yukon Human Rights Commission (Yukon *Human Rights Act*).

### **Eligibility**

The *Canadian Human Rights Act* protects people who are lawfully present in Canada or legally entitled to return to Canada. Provincial/territorial human rights laws protect people within their respective jurisdictions.

### **Definition and Determination of Disability**

According to section 25 of the *Canadian Human Rights Act*, disability means any previous or existing mental or physical disability, and includes disfigurement and previous or existing dependence on alcohol or drugs. Definitions of disability in provincial and territorial human rights legislation vary in details but, generally, have a similarly inclusive approach. A disability can be either permanent (e.g., an irreversible vision or mobility impairment) or temporary (e.g., a treatable illness or temporary impairment resulting from an accident). More than the nature of the illness or injury itself is considered in determining whether a temporary illness or injury is a disability; functional loss, that is, the effects the illness or injury has on a complainant's employment or ability to obtain a service is also considered. Protection against discrimination based on disability covers both actions based on perceptions, myths, and stereotypes and actual functional limitations.

### **Application Process**

The Canadian Human Rights Commission provides dispute resolution services in cases of alleged discrimination by federally regulated organizations, including employers, unions, and service providers. Allegations of discrimination are screened to ensure they fall within the Commission's jurisdiction, and inquirers may be referred to other redress mechanisms, such as a grievance process. If the dispute falls within the Commission's jurisdiction, the parties are offered dispute resolution services to assist in resolving the matter without filing a complaint. If the matter cannot be resolved and the inquirer wishes to file a complaint, the case may be assigned to a mediator or investigator. Ultimately, the Commission may request that the Canadian Human Rights Tribunal hear the case. Throughout the process, the parties are encouraged to look for solutions by participating in alternative dispute resolution (CHRC, 2008).

Complaint processes in provincial and territorial jurisdictions differ in details, but are mainly focused on the resolution of cases before a formal hearing. British Columbia and Ontario have more hearing-oriented systems in which tribunals have been established to hear human rights cases.

### **Review and Appeals Processes**

The Canadian Human Rights Tribunal hears discrimination cases that have been referred to it by the Canadian Human Rights Commission. The process involves public hearings that are somewhat like court proceedings, although less formal. If a complainant or respondent is dissatisfied with the Tribunal's decision and wishes to have that decision reviewed by a higher court, the only recourse is to file an application for judicial review in the Federal Court of Canada.<sup>5</sup>

Provincial and territorial jurisdictions follow similar procedures although, in some jurisdictions, human rights experts appointed for the specific case conduct hearings, rather than members of a permanent tribunal. Parties may apply to the appellate court in their jurisdiction for a judicial review of decisions.

### **Remedies**

If the complaint is found to be substantiated, the Canadian Human Rights Tribunal may make an order against the person found to have or be engaging in the discriminatory practice. The order may include any of the following terms that the member or panel considers appropriate:

- that the person cease the discriminatory practice and take measures, in consultation with the Commission, to redress the practice or prevent the same or a similar practice from occurring in the future;
- that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities, or privileges that are being or were denied the victim as a result of the practice (this may include an order for reinstatement of an employee);
- that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;
- that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities, or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and
- that the person compensate the victim, by an amount not exceeding \$20,000, for any pain and suffering the victim experienced as a result of the discriminatory practice (*Canadian Human Rights Act*, s. 53(2)).

Similar remedies are available under provincial and territorial human rights legislation. Although the financial limits vary, typically, human rights awards are relatively modest.

### **Employer Obligation Regarding Accommodation and Undue Hardship**

Under both federal and provincial/territorial human rights law, the “duty to accommodate” requires employers and service providers to identify and change any rules, practices, expectations, or procedures that have a discriminatory impact based on the prohibited grounds. An employer has a duty to accommodate the specific needs of employees in the workplace. However, employees with disabilities must be able to perform the “essential functions” of their jobs, once accommodations have been made.

Certain circumstances exist under which an employer is not required to provide accommodation, as in the case of “undue hardship,” which refers to the limit of an employer’s capacity to accommodate without experiencing an unreasonable amount of difficulty. Employers are obligated to provide accommodation “up to the point of undue hardship.” This means an employer is not expected to provide accommodation if doing so would bring about unreasonable difficulties based on health, safety, and financial considerations.

A precise legal definition of undue hardship does not exist, nor is there a standard formula for its determination. Each situation is unique and is to be evaluated individually. Employers must review all options carefully before deciding that accommodation would cause undue hardship. It is not enough to claim undue hardship based on an assumption or an opinion; employers have to provide corroborating evidence (CHRC, 2007).

Under human rights laws, employers are also responsible for any harassment in the workplace. It is the employer’s duty to make it clear that harassment is not tolerated, establish a harassment policy, make sure every employee understands the policy and procedures for dealing with harassment, inform supervisors and managers of their responsibility to provide a harassment-free work environment, and investigate and correct harassment problems as soon as they come to light, even if a formal complaint has not been received. As well, employers should be prepared to take appropriate disciplinary action against an employee found to have harassed someone.

Employers must also not retaliate against an employee making a human rights complaint or acting as a witness in an investigation. Human rights commissions can investigate and deal with complaints of retaliation.

### ***Employment Equity Act***

The *Employment Equity Act*,<sup>6</sup> requires federally regulated private sector employers with 100 or more employees (including banks, major transportation and communications industries) to develop employment equity plans directed at including persons with disabilities, women, visible minorities, and Aboriginal people in their work force. It covers about 500 federally regulated businesses. The Act also covers approximately 90 federal departments and agencies for which the Treasury Board is the employer, and Crown corporations with 100 or more employees.<sup>7</sup> In total, about 10 percent of the Canadian work force is covered. In addition, the Federal Contractors’ Program, established under the Act, requires non-federally regulated contractors with 100 or more employees that bid on contracts of \$200,000 or more to commit to, and implement,

employment equity. This includes over one million additional employees in the scope of employment equity.

The Labour Program of Human Resources and Skills Development Canada enforces and administers the *Employment Equity Act*. It also provides resources to employers to assist in the interpretation of the requirements of the Act and in developing employment equity plans. The Canadian Human Rights Commission monitors the compliance of companies and other agencies with their internal employment equity plans and can impose sanctions, such as fines, for non-compliance.

The Act ensures that no person is denied employment opportunities and benefits for reasons unrelated to ability. Employers must also implement the principle that employment equity means more than treating people the same way; it requires special measures and the accommodation of differences. Under the Act, employers must identify and eliminate employment barriers for designated group members that result from the employer's employment systems, policies, and practices. The goal is to institute positive policies and practices and make accommodations so the representation of persons in the four designated groups in the employer's work force reflects their representation in the Canadian work force (CHRC, 2010).

### **Definition and Determination of Disability**

The *Employment Equity Act* defines persons with disabilities as people with a long-term or recurring physical, mental, sensory, psychiatric, or learning impairment. To be included in the definition, people with disabilities must either consider themselves to be disadvantaged in the workplace because of that impairment, or believe that an employer or potential employer is likely to consider them to be disadvantaged. Persons with disabilities include individuals with functional limitations due to their impairment that have been accommodated in their current job or workplace (HRSDC, 2009a). The Act is based on voluntary self-identification by employees of themselves as having a disability.

The representation of persons with disabilities among federally regulated employers grew from 2.7 percent in 1992 to 3.4 percent in 2008. While representation in the public sector saw substantial growth over the 16-year period from 1992 to 2008, representation in the private sector remained relatively constant (CHRC, 2010b).

### **Accessibility for Ontarians with Disabilities Act**

On June 13, 2005, the Government of Ontario passed the *Accessibility for Ontarians with Disabilities Act, 2005*. The Act applies to both the private and public sectors, and makes Ontario the first jurisdiction in Canada to develop, implement, and enforce mandatory accessibility standards. The goal is to make Ontario accessible by 2025 (MCSS, 2011a).

Businesses and organizations in Ontario follow these rules to identify, remove, and prevent barriers to accessibility. Standards have been or are being developed in customer service, employment, information and communications, public transportation, and built environment (buildings and other structures). Once they become law, these standards will include the steps and time lines businesses and organizations will have to follow. The Accessibility Standards for Customer Service Regulation came into effect January 1, 2008.

Public sector organizations had to comply with this standard by January 1, 2010; private sector and non-profit organizations will follow on January 1, 2012 (MCSS, 2011b).



### 3. Labour and Employment Law

Governments in Canada play a major role in determining the conditions of work through statutes and regulations. We refer to this body of legislation collectively as “labour law.” Canadian employment law also includes wrongful dismissal based on the law of contract, which has its origins in English common law in all jurisdictions except Québec, where it is based on the French Civil Code. Wrongful dismissal cases are dealt with by the courts, rather than by government agencies.

#### Labour Law

Labour law defines the rights and obligations of workers and employers. In Canada, labour law is divided into three main areas: industrial relations (or labour relations), occupational health and safety, and employment standards.

**Industrial (labour) relations law** covers topics in unionized environments such as the certification of unions, labour-management relations, collective bargaining, and unfair labour practices. Common issues for employees with disabilities include discipline and discharge, hiring and promotion, absenteeism and leaves of absence, and entitlement to disability benefits.<sup>8</sup> In many cases, the employer’s duty to accommodate the disability-related needs of an employee up to the undue hardship standard is a central issue. Labour arbitrators have decided many more cases in Canada involving a duty to accommodate than have human rights tribunals (Whitaker, 2010).

**Occupational health and safety law** covers health and safety standards, rights and responsibilities of health and safety representatives and committees, and the right to refuse unsafe work. Employers may encounter issues if the disability of an employee raises potential occupational health and safety concerns. Health and safety standards are recognized factors under human rights law in determining whether accommodation of disability-related needs constitutes an undue hardship to the employer.

Occupational health and safety laws are important to the prevention of disability, whether through workplace accidents or occupational illnesses. Within this general framework, Alberta, British Columbia, Prince Edward Island, and Saskatchewan have enacted special provisions on violence in the workplace in their occupational health and safety legislation. Also, under the *Canada Labour Code* (Part II: Occupational Health and Safety), specific duties for employers include the obligation, in respect of every workplace or work activity under their control, to “take the prescribed steps to prevent and protect against violence in the work place.”<sup>9</sup>

**Employment standards law** includes provisions regarding minimum wage, working hours, entitlement to leave, unjust dismissals, holidays and vacations, layoff procedures, and severance pay (HRSDC, 2011). Issues that arise for workers with disabilities in employment standards law include entitlement to minimum wage while in training or

sheltered employment environments, and leave for disability-related reasons, including sick leave.<sup>10</sup>

### **Jurisdiction and Service Delivery**

Labour law is enacted and enforced by both the federal and provincial/territorial governments. The Government of Canada has jurisdiction with respect to labour law over its own departments and agencies, Crown corporations, Canada Post, chartered banks, national airlines, interprovincial communications and telephone companies, interprovincial transportation companies, and other federally regulated industries, such as certain mining operations. These account for about 10 percent of the Canadian labour force. The provinces and territories are generally responsible for the labour laws applicable to the remaining 90 percent of employees in Canada.

**Industrial/Labour Relations:** The federal jurisdiction and the 10 provincial jurisdictions have their own industrial/labour relations statutes and boards that deal with employer and union relations. In many jurisdictions, a general industrial/labour relations act and board exists as do separate acts and boards to deal with unionized employees in the public and “parapublic” sectors.<sup>11</sup> Private sector industrial/labour relations in the territories are dealt with by the Canada Labour Relations Board under the *Canada Labour Code* (CIRB, 2010).

**Occupational Health and Safety:** The federal government and the provinces/territories each have occupational health and safety legislation and a department that enforces these standards, and investigates accidents and working conditions.<sup>12</sup> Occupational health and safety departments are closely linked to workers’ compensation boards.

**Employment Standards:** Each jurisdiction in Canada has employment standards legislation and a government department responsible for employment standards that provides information to employers and employees and investigates complaints.<sup>13</sup>

### **Eligibility for Coverage**

Labour laws in federal and provincial/territorial jurisdictions apply generally to employees although, typically, there are also full or partial exemptions under labour laws for certain industries and classes of employees. Labour laws generally do not apply to independent contractors, who are not considered to be employees.

**Industrial/Labour Relations:** Where employees in a workplace have elected to be represented by a union, their employment rights and responsibilities are largely determined by the collective agreement.<sup>14</sup> Collective agreements typically contain provisions governing the rights of employees who have or acquire disabilities.

**Occupational Health and Safety:** Almost all employees are covered by occupational health and safety legislation. Jurisdictions also have specific additional occupational health and safety regulations to cover higher risk occupations, such as manufacturing, construction, mining, and logging.

**Employment Standards:** Most employees are covered by employment standards in either the federal or provincial/territorial jurisdictions, although some classes of employees are exempted from specific standards, and other classes have special rules applying to them.

### **Application Process**

**Industrial/Labour Relations:** The grievance and arbitration process is used to resolve disputes that arise under a collective agreement. There are typically a number of steps or levels in a grievance and arbitration process, starting with a meeting involving union and management representatives, as well as any individual grievors. If the issues are not resolved, next steps lead to more formal meetings with more senior union and management representatives. Depending on the issue, arbitration by an independent adjudicator may be available as a final step.<sup>15</sup>

**Occupational Health and Safety:** Workers may report occupational health and safety violations to the responsible government department, which then conducts an investigation. Requests for an investigation may be made either by telephone or in writing.

**Employment Standards:** Employees, including employees with disabilities, usually are required to file an employment standards complaint in writing with the responsible government department.

### **Definition and Determination of Disability**

Labour law usually adopts, either explicitly or implicitly, the definition of disability used in the human rights legislation of the jurisdiction. Precedents from both human rights jurisprudence and labour law are used to guide the application of the definition.

When an issue requires a determination of whether an individual worker has a disability, those responsible for interpreting and enforcing the law usually rely on reports and information from physicians and other disability experts, in addition to information from the individual, family, friends, and co-workers. Those involved in making disability determinations include employers, managers, union representatives, arbitrators, and government officials.

### **Review and Appeals Process**

Within labour law systems, cases typically proceed from many issues that are resolved at more informal levels, to a limited number of cases that proceed to more formal levels. Grievances start with meetings between the union and management, but may proceed to an independent arbitration. In the occupational health and safety and employment standards systems, the usual first resolution is a decision by a government official that, in some cases, may be appealed to an independent labour tribunal.

A limited number of labour law cases reach the courts, usually as applications for judicial review of decisions by arbitrators and labour law tribunals.

## **Benefits Provided (Remedies)**

**Industrial/Labour Relations:** Through the grievance arbitration process, employees with disabilities may obtain employment-related remedies, such as reinstatement after termination, disability-related accommodations, and entitlement to disability benefits. Payments for pain and suffering are generally not awarded through grievance arbitration.

**Occupational Health and Safety:** The occupational health and safety investigation may result in an order or directive requiring that certain measures be taken to address the health and safety problems identified. With serious violations, the employer, managers, and responsible workers may be prosecuted. The occupational health and safety process does not provide benefits to individual workers.

**Employment Standards:** An employment standards investigation may result in an order directing the employer to provide the benefit in dispute to the worker, either directly or through appropriate financial compensation.<sup>16</sup>

## **Continuation and Termination of Benefits**

**Industrial/Labour Relations:** The grievance arbitration process usually deals with issues that have arisen in the past. However, because of the continuing relationship between the union and the employer, the result of a past arbitration often influences the resolution of new issues.

**Occupational Health and Safety:** An occupational health and safety order or directive usually includes provision for follow-up measures, such as a review of the situation by an occupational health and safety committee or a subsequent inspection.

**Employment Standards:** An employment standards order only resolves issues that have already arisen, but may provide a precedent if a similar issue arises in the future involving the same employer.

## **Employer Obligations**

**Industrial/Labour Relations:** The industrial/labour relations legislation in the jurisdiction and the collective agreement define employer and union obligations, and their respective roles and obligations to individual workers, including workers with disabilities.

**Occupational Health and Safety:** The employer must comply with occupational health and safety statutes and regulations, and any directives or orders. The employer must also generally inform workers regarding health and safety risks, and respect their right to refuse to perform unsafe work in accordance with the law. In most jurisdictions, occupational health and safety committees and/or representatives are required in certain places of employment.

**Employment Standards:** The employer must comply with employment standards statutes and regulations, and with orders made by employment standards officials.

### **Employment-Related Services, Benefits, and Provisions**

**Industrial/Labour Relations:** Collective agreements cover many aspects of employment; when issues arise, these may be resolved through the grievance arbitration process. For unionized employees with disabilities, issues that may be resolved through this process include:

- hiring, probation, transfers, and promotion;
- discipline and discharge;
- modified work schedules;
- modified job descriptions;
- sick leave and disability-related leave;
- entitlement to disability income benefits (short- and long-term disability insurance);
- entitlement to disability- and health-related benefits coverage;
- assistive equipment and devices;
- modified workplace and environment;
- counselling; and
- training.

**Occupational Health and Safety:** Occupational health and safety laws and processes include a duty to accommodate workers with disabilities up to the undue hardship standard. In some cases, the presence of a worker with a disability may require that additional measures be taken to ensure a safe and healthy workplace that accommodates the needs of the worker. In other cases, where the necessary additional measures would constitute an undue hardship, health and safety requirements may preclude the employment of an individual with a certain disability in a particular work environment.

**Employment Standards:** While employment standards laws govern important aspects of the employment relationship, there are relatively few provisions of specific importance to workers with disabilities. Issues may arise, however, in the determination of exemptions of people with disabilities in “sheltered” or “protected” employment settings from coverage by employment standards legislation. Many of these work settings describe themselves as training or life skills environments in which participants are not truly “employed” and thus are not entitled to employment standards protection, in particular, minimum wage.

### **Interactions with Other Programs**

Many issues dealt with using labour law processes could also potentially be addressed by the courts, through the application of the common law of employment, such as in wrongful dismissal actions. Another major area of overlap exists between labour law and human rights law, particularly with respect to the duty to accommodate in the workplace up to the undue hardship standard.

## **The Law of Wrongful Dismissal**

An employer can lawfully terminate an employment contract in one of three ways: summarily for just cause (e.g. serious misconduct); on the provision of reasonable notice of termination; or with pay in lieu of reasonable notice.

Subject to human rights legislation and any specific contractual or collective agreement, the employer's right to terminate applies to an employee with a disability. Under human rights law, an employee with a disability has the right to be accommodated up to the undue hardship standard.<sup>17</sup> But if the undue hardship test is met, the employee may be dismissed. In particular, an employee with a disability who is unable to return to work within a reasonable period of time, because of disability or illness, may be terminated. Such termination is not for cause, so the employee must be given reasonable notice.<sup>18</sup>

## **Employers' Responsibilities**

As just noted, absence from work due to disability or illness should not be recognized as just cause for dismissal as there is an absence of wilful misconduct. In each instance, the employer must consider a range of interrelated factors, together with any other special considerations bearing on the issue. The key factors include:

- What is the duration of the absence from work?
- Are the terms of employment inherently temporary or of an indefinite term, where a longer period of absence from the job would be allowed?
- Could other employees perform the employee's job while he or she is absent, or is the position characterized as a key post that must be filled on a permanent basis by another if the employee's absence from work is prolonged?
- What does the medical evidence indicate as to the employee's prognosis for recovery, the nature of the illness or disability and the projected period until recovery, if any?
- How long has the period of past employment been? Generally, the longer the term of service, the longer the period of absence that will be allowed.
- What are the terms of the employment contract? Given the approach of the courts to date, particular attention should be given to the provision of disability benefits. It may be that if disability benefits (through insurance or otherwise) are provided for two years, the contract cannot be terminated prior to that time regardless of the seniority of the employee.

## **Employee Rights on Termination**

Unlike human rights and labour relations tribunals, the courts do not have the authority to order the reinstatement of a terminated employee as a remedy in a wrongful dismissal

action. The courts only compensate wrongfully terminated employees through awards of damages. Most wrongful dismissal cases are settled prior to trial.

On termination, employees are entitled to damages for loss of salary, benefits, and any other form of compensation they had previously enjoyed under their contract of employment for the term of reasonable notice. Normally, if the court finds an employee has been wrongfully terminated, damages from loss of salary, bonuses, and commissions do not present a problem and are provided to the terminated employee.

Replacement of health, disability and life benefits, however, is more difficult. Some benefits, such as health care, dental, and even some life insurance, can be replaced by obtaining new coverage or by conversion to personal coverage. However, if there are increased health costs due to the disability or illness, there may not be an opportunity to obtain new coverage. The courts can order that compensation be provided with respect to the loss of benefits, but cannot order an insurer to provide benefit coverage, unless the insurer is a party to the court action.

## **4. Federal Cost-Sharing Programs**

### **Labour Market Agreements for Persons with Disabilities**

These agreements are partnerships between the federal and provincial government. They support programs and services designed to help persons with disabilities succeed in the labour market by enhancing their employability, increasing available employment opportunities, and building on their existing knowledge base. Eligible programs and services under the LMAPDs must recognize the unique labour market challenges faced by persons with disabilities and consider the distinct needs of each individual when determining which interventions are required to prepare that individual to attain and retain employment.

### **Jurisdiction and Service Delivery**

A multilateral framework for the LMAPDs was developed and implemented in 2004 at the Forum of Social Service Ministers. It includes common principles, objectives, and priority areas for action, reaffirming<sup>19</sup> the commitment of governments to work toward ensuring that people with disabilities can participate successfully in the labour market, and to report to Canadians on progress made in this area. The framework calls for bilateral agreements between the federal government and participating provinces that provide for the transfer of federal funding to the provinces for a range of programs and services that enhance the economic participation of working age adults with disabilities in the labour market. Currently, agreements exist between the Government of Canada and nine provincial governments.<sup>20</sup> In each, the Government of Canada contributes 50 percent of the costs incurred by the province for programs and services funded under the LMAPD, up to the amount of the federal allocation identified in the agreement.

Provinces are responsible for the design, delivery, and administration of funded programs and services, and have the flexibility to determine priorities and approaches in their jurisdiction. Typically, the ministries responsible for community and social services, health, education, and training provide the LMAPD-funded programs and services in which an estimated 300,000 individuals participate every year.

As part of the LMAPDs, the Government of Canada works with the provinces on accountability issues, including public reporting and evaluation. Provinces must report on program and societal indicators on December 3 of each year, the International Day of Disabled Persons. Governments recognize the importance of evaluating programs and services supported under the initiative to help determine impacts and outcomes. Each province may choose to undertake evaluations on its own or engage in bilateral or demonstration evaluations with the Government of Canada.

### **Eligibility for Benefits**

While eligibility criteria vary across the provinces and within a province across programs, common elements of eligibility include age, degree of disability, and the degree to which the disability impacts on the ability to secure and retain employment.



Most provinces also include disability-specific targeting in their programs, such as educational supports for students who are deaf, employment-supported programs for persons with developmental disabilities, and initiatives for persons with mental health conditions.

### **Application Process**

The application process varies across the provinces but typically includes an assessment by a medical professional concerning the nature and severity of the individual's disability and a personal assessment by the individual of the impact that disability has on her/his ability to secure and retain employment. The application process includes the nature and extent of support already being obtained from other provincial programs.

### **Definition and Determination of Disability**

Disability is not specifically defined within the LMAPDs nor was it in the two federal-provincial programs that preceded the LMAPDs: Vocational Rehabilitation for Disabled Persons (VRDP) and Employability Assistance for People with Disabilities (EAPD). Rather, it is left to the province to define disability within the context of the principles as articulated in the multilateral framework and within the context of the programs offered to support the lives of their residents with disabilities. Each province implemented programs directed at people with all types of disabilities as well as programs for persons with particular types of disabilities.

### **Review and Appeals Process**

Each province has an appeals process for the review of decisions taken concerning participation in an LMAPD program or service. As with the application process, a number of factors are considered; these factors are outlined by many provinces in the supporting materials developed for each program.

### **Benefits Provided**

Each province develops and administers programs and services designed specifically to meet the needs of adults with disabilities living within its jurisdiction. The multilateral framework provides examples of programs that could be undertaken within the five priority areas (education and training, employment participation, employment opportunities, connecting employers and people with disabilities, and building knowledge). Many provinces turned to these examples when developing their programs and services. While there are some unique programs, there is a commonality of approach across the provinces.

- All provinces offer supports to students with disabilities to begin or complete post-secondary education through either direct interventions between the student and the program or assistance to universities and colleges for the required supports.
- All provinces offer a comprehensive assessment of the skill set of the individual with a disability. This includes experience in the labour force, education, training, and the impact the disability has on the individual's ability to obtain and retain employment. If

additional training is required, it is organized through direct services and linkages to existing programs and services within the province. Some provinces offer individuals, who are not ready to move into employment, a volunteer placement with a non-profit community agency so they can gain experience in a controlled environment.

- Most provinces offer a supported employment program to persons with a developmental disability. This includes a combination of work experience with ongoing support either on or off site.
- Most provinces include a group of services available to persons with mental or substance use disorders. Similar to the umbrella employment support program but somewhat different, these services recognize the unique challenges including increasing independence and social integration.

### **Interactions with Other Programs**

In most cases, LMAPD programs target persons who are not able to receive similar benefits through other employment-related benefit programs, in particular workers' compensation, veterans' benefits, interventions related to labour market agreements, C/QPP vocational rehabilitation programs or privately administered insurance. However, a number of programs are restricted to Social Assistance recipients, while others are complements to or are complemented by non-employment programs (for example: mental health treatment and substance abuse rehabilitation programs)

**Table 4.1: Labour Market Agreements for Persons with Disabilities, Total Federal-Provincial Cost-Shared Payments by Province and for Canada, Fiscal Years Ending March 31, 1998-99 to 2008-09**

Year	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	YT	NT	NU	CANADA
	\$000													
2008-09	11,630	2,827	32,677	21,788	116,300	189,400	26,212	40,910	61,414	90,339	0	0	0	593,497
2007-08	8,449	2,900	29,588	16,345	108,244	205,600	25,101	36,564	55,361	83,631	0	0	0	571,783
2006-07	11,993	2,900	27,740	11,103	116,907	181,500	22,309	28,306	53,624	80,017	0	0	0	536,398
2005-06	11,568	2,900	25,838	15,399	166,743	154,200	21,748	26,715	53,911	73,707	0	0	0	552,729
2004-05	11,505	2,900	18,160	15,810	140,618	142,900	20,174	22,454	52,101	59,355	0	0	0	485,978
2003-04	10,826	2,255	18,011	10,561	190,083	132,500	18,424	23,068	50,539	75,768	0	0	0	532,034
2002-03	11,055	1,990	18,011	10,548	190,953	131,200	17,620	20,860	50,970	62,472	0	0	0	515,679
2001-02	10,561	1,250	14,890	10,548	78,266	130,724	18,442	20,617	44,686	54,000	0	0	0	383,984
2000-01	9,742	1,807	22,250	13,337	78,266	191,667	17,635	22,672	57,456	64,770	0	0	0	479,603
1999-00	10,644	1,645	22,868	12,429	78,266	165,798	17,502	22,657	53,222	55,546	0	0	0	440,577
1998-99	8,220	958	14,890	10,548	78,266	130,724	15,828	19,906	44,686	54,000	0	0	-	378,026

Notes:

1. Total federal–provincial expenditures are calculated by doubling the federal amount paid each year to reflect the 50/50 cost-shared basis.
2. The EAPD program became effective in 1998 following the signing of agreements by the federal and provincial governments.
3. The EAPD program replaced VRDP.
4. The EAPD is designed to help people with disabilities prepare for, obtain, and maintain employment.
5. A broad range of supports are available including assessment and counselling services, employment preparation and training, and skills training.

Source: Human Investment Programs, Human Resources and Skills Development Canada.

## Labour Market Agreements

To increase Canada's labour force and enhance its quality, the Government of Canada entered into bilateral labour market agreements (LMAs) with all the provinces and territories. These agreements provide federal funds for provincial and territorial labour market programs and services that focus on skills development for persons with disabilities as well as Aboriginal peoples, immigrants, new entrants and re-entrants to the labour market, older workers, social assistance recipients, unemployed individuals previously self-employed, women, and youth. Persons with disabilities who are not eligible for EI benefits, or who are employed but do not have a high school diploma or recognized certification, or who have low levels of literacy and essential skills are one group among many identified as potential beneficiaries of the LMA initiative.

Labour market agreements complement LMDAs, which fund labour market programs and services for unemployed Canadians, particularly those who are eligible for EI benefits. The overall objectives of the LMAs include:

- delivery of labour market programs and services that address the needs of employers;
- training and other labour market supports that increase the skills and productivity of the provincial/territorial work force;
- removal of barriers to those having difficulty entering the labour market;
- a more efficient provincial/territorial labour market by streamlining access to tools and information that enable prospective workers and employers to connect easily, and by developing programs and services that are connected and easy to navigate; and
- by leveraging increased investment and partnerships in labour market solutions by the private sector.

Based on these objectives, priority program and service areas have been identified:

- training, such as on-the-job training, workplace-based skills upgrading, job readiness assistance;
- information to support efficient decision making in the labour market;
- labour market and employability assessments;
- labour market connections, matching supply and demand, and promoting and enhancing labour market efficiency;
- financial supports and benefits, such as loans, grants, and living allowances;
- non-training labour market supports, such as credential recognition and assistive technology; and
- employment counselling and career services.

Through existing LMAs, the federal government invested additional moneys in a two-year strategic training and transition fund that supports provincial and territorial initiatives that help meet the training needs of workers in affected communities and sectors so they can stay in their jobs or move to new jobs, while offering provinces and

territories the flexibility to design programming that best meets their needs. The fund ensures that these Canadians, regardless of whether they qualify for EI benefits, are eligible to participate in the training or other employment initiatives that they need.

By October 1 each year, the province or territory publishes a detailed annual plan, outlining its priorities, objectives, planned activities, and projected expenditures for the year, and reports to its citizens on the results achieved in the previous year.

### **Canadian Social Transfer**

Persons with disabilities are one of the population groups that benefit from the Canadian Social Transfer (CST), a federal block transfer to provinces and territories that supports post-secondary education, social assistance and social services, early childhood development and early learning, and child care. The CST is calculated on an equal per capita cash basis to reflect the federal government's commitment to ensure that general-purpose transfers provide equal support for all Canadians.<sup>21</sup>

### **Aboriginal Skills and Employment Training Strategy**

The Strategy is an important element of the federal Framework for Aboriginal Economic Development and helps, among other Aboriginal sub-populations, Aboriginal people with disabilities, to receive the training and skills they need to become active participants in the labour force. The program is the successor to the Aboriginal Human Resources Development Strategy (AHRDS), which expired in March 2010. The new strategy focuses on three priorities: supporting demand-driven skills development, fostering partnerships with the private sector and the provinces and territories, and emphasizing accountability and results.

As an integrated approach to Aboriginal labour market programming, ASETS links training to labour market demand. Aboriginal agreement holders (service delivery points within each province/territory) design and deliver employment programs and services best suited to the unique needs of their clients. All Aboriginal people, regardless of status or location, may access these programs and services that focus on job-finding skills and training, youth, urban dwellers, Aboriginal people with disabilities, and access to child care.

## 5. Employment Programs

### Federal Opportunities Fund

The Opportunities Fund provides support for national, regional, and local projects that assist people with disabilities in preparing for and finding employment or self-employment, as well as acquiring the skills necessary to maintain that new employment. Support includes financial assistance for individuals with disabilities and for employers and organizations, delivered through local Service Canada offices, or through a service provider contracted by the local office. Service Canada offices vary the mix of funding of eligible activities from year to year to align with the needs of local communities. Funding for national projects is distributed by means of a call for proposals. Agreements authorizing financial assistance are negotiated and written on a year-by-year basis up to a maximum of three years. Negotiation depends on successful completion of each individual year.

### Financial Assistance for Individuals with Disabilities

To be eligible for financial assistance, individuals must:

- self-identify as having a permanent physical or mental disability that limits daily activity;
- be unemployed or working less than an average of 20 hours per week;
- be legally entitled to work in Canada;
- be in need of assistance to prepare to enter the labour market, obtain a job, or become self-employed;
- not be currently eligible for federal employment programs offered under Part II of the *Employment Insurance Act* (or similar provincial or territorial programs); and
- not have received EI benefits within 36 months of the request for assistance or maternity or parental benefits within 60 months of the request.

Financial assistance is provided to people with disabilities to:

- create a job for the applicant by starting a business (start-up costs excluded) (funding helps cover personal living expenses and entrepreneurial training);
- get the job skills training they need to enter the labour market; and
- acquire the supports needed (services, arrangements, or equipment such as ergonomic chairs, hearing aids, and large text screens) to overcome barriers to new employment. The supports must be directly related to that employment.

Individuals may also benefit indirectly from funding available to employers and organizations, such as wage subsidies, work experience, and enhanced employment assistance services. Financial assistance may cover all or part of the costs related to living expenses, participating in the activity (specialized services, arrangements or equipment, dependent care, transportation, and accommodation), and training or taking courses.

### **Funding for Employers and Organizations**

Eligible applicants for local, regional, and national project funding include businesses and organizations (can be non-profit), public health and educational institutions, and government agencies including municipal governments, band or tribal councils, and provincial and territorial government departments or agencies. The following options are available:

- wage subsidies (participant wages and related employer costs);
- opportunities to gain paid and unpaid work experience leading to potential employment;
- enhanced employment assistance services to help people with disabilities integrate into the workplace, including needs assessment, employment action plans, counselling, preparation activities, diagnostic services, and paid work experience placements and volunteer opportunities;
- a community co-ordinator for community-based Opportunities Fund services and programs; and
- self-employment support including technical and consultative services.

Assistance may also be provided to employers or organizations to cover overhead costs related to planning, organizing, operating, delivering, and evaluating approved activities, including staff wages and employment-related costs.

National projects provide the opportunity to:

- share promising practices and products nationally;
- produce measurable results for participants in terms of employability or returning to school;
- deliver effective and continuously improving activities that assist people with disabilities in finding a job; and
- provide services to people with disabilities in rural or remote areas, or in instances where there are gaps in existing program services.

### **Provincial/Territorial Programs**

All provinces and territories have programs which target people with disabilities who have demonstrated challenges in accessing employment and related training. These programs assist people with disabilities in addressing these barriers by providing opportunities to acquire the skills, experience, and supports necessary to successfully prepare for, enter, and remain in the work force.

### **Legislative mandate**

Each province is unique in the approach taken in providing the legislative and regulatory underpinning for these programs. Furthermore, mandates for the design of these programs involve multiple pieces of legislation and stretching across multiple ministries (see Table 5.1). In many some, (the Northwest Territories approach being a prime example), programs cross ministerial responsibilities and/or have evolved towards ongoing partnerships with impacted communities and support organizations (which can

include persons with disabilities themselves, parents/family, health facilities, and advocacy, support groups).

### **Service Delivery**

Predominantly, services and supports are delivered by “agents” on behalf of provincial governments (See Table 5.1). These can be quasi-governmental organizations (such as hospitals and educational institutions); for-profit corporations; or, as is most commonly the case, non-profit and charitable organizations. However, it common to find partner organizations providing services which developed or evolved in answer to historically recognized needs which are formally recognized in government legislation or policy. In some provinces/programs, the determination of who delivers programs is a result of a competitive bidding process.

The roles of service delivery agents vary considerably. In some cases, delivery agents are accountable for services specifically detailed in legislation and regulation. This is most often the case when governments, quasi-governmental organizations and for profit corporations are service delivery agents. Predominantly, when NGOs/charitable organizations are delivery agents, they are provided some measure of freedom to develop services, and instead, accountability is principally assessed in terms of outcomes.

Employment related supports are delivered across the country using a number of differing approaches or foci including:

- An *individualized*, case managed approach: The integrated Prince Edward Island program provides a good example of this type of program where programs are geared towards an integrated approach addressing disability-related barriers to inclusion across multiple domains. In these types of programs, a plan might address all of transportation needs; housing; needs for aids and devices and job training.
- A *disability-specific* focus. This is most typically the case in programs which address mental health; substance abuse issues, developmental disabilities and sight impairment (typically delivered or supported by Ministries with Health, Social Services and Justice mandates). Like individual focus programs, these also tend to be multi-dimensional, often including life-skills development geared towards addressing disability-specific issues; rehabilitation; in conjunction with employment-related training.
- *Program oriented*: These programs are largely tied to case management geared towards increasing independence and reduction of income support reliance. In most cases, these programs are adjuncts to social assistance programs. Interventions in these programs tend to be objective oriented (developing the skills required for employment; help in finding, maintaining employment), but can be part of multi-faceted set of interventions.
- *Objective oriented*: The great majority of employment related interventions tend to be objective oriented—specifically addressing skills development, job preparedness, help in finding employment; support in creating employment opportunities and help in holding onto work. Some of these programs are geared



towards specific transitions—moving from school to work; or moving back into the labour market following an significant disability-related absence.

### **Financing**

As noted above most programs are delivered by agents/partners. Funding from government may come through operating agreements, contracts, grants, and ongoing contributions. These spell out combination of regulations, frameworks, and guidelines defining the nature of services to be provided and providing standards for accountability. Provinces/territories can also provide seed money and limited ongoing operational funding. In many cases, provincial/territorial contributions supplement funds raised through charitable donations or the funds generated through partners' activities (for example the sale of materials produced at sheltered workshops) or an employer's salary dollars.

A difficulty often arises when labour market programs are often parts of broader interventions and support strategies—that is when service delivery is focused on individual or disability specific needs. Further, funding for these often comes from multiple sources, often with varying objectives, requirements and expectations as to outcomes. A plan/rehabilitation strategy may not primarily focus on employment and employability because finding/holding onto a job may be part of a broader strategy to enhance well-being, well-being and/or inclusion. This is very often clearly the case in many programs addressing the requirement of people with substance abuse issue. There, supports in finding and holding onto employment may be a segment of a comprehensive plan which can include access support in development of life skills and making human supports and rehabilitation. Employment may also be a minor complement to other objectives—for example, the Manitoba Health Addictions Program funds agencies work with clients with a primary objective of addressing their dependencies, and developing skills/finding work is an element of ameliorative therapy. Funding in these cases usually come from various sources (often including health, education, employment social services and/or justice) and be supplemented or supplement monies from the proceeds of a charity, sheltered workshop or salary paid by an employer.

The labour market elements of these programs for many of these programs are supplemented from the federal government as per bilateral Labour Market Agreements for Persons with Disabilities (LMAPDs).

### **Program Eligibility and Access**

Provincial employment programs for persons with disabilities tend to focus in on one or more target groups:

- Those new to the labour market (e.g., youth making the transition from secondary to post-secondary education or employment, and new immigrants);
- Individuals who have had long interruptions in their labour market activity;
- Individuals with little or no attachment to the labour market who, as a result, do not qualify for employment-based programs such as EI.

Typically, the population eligible for these programs and services is characterized as facing demonstrated challenges in accessing education and employment.

Access to programs in a number of jurisdictions, is predicated by the development of an action or employment plan (see Table 5.1). A case worker (employed by government a partner agency) manages employment-related supports. This includes developing and maintaining an agreement with the recipient or her/his guardian, often in conjunction with family and, in some cases, mutually agreed on “invitees” (often practitioners in the field). These plans once in place, sets out services and supports to be provided and progress milestones which can include training, job search and job retention objectives. In most circumstances, these plans had “feedback mechanisms” allowing revisions and updating as circumstances change. In some areas of the country and depending on the circumstances, access is service focused, individuals with disabilities applying specific programs or to agencies providing specific ranges of services.

### **Employment Services and Supports Provided**

Table 5.1 provides a broad composite picture of the employment services and supports provided in preparing for and holding onto work by province/territory. It indicates, the commonalities across the country are much greater than the dis-similarities. Major differences in programs come in focus, access and target. In turn, the table does not reflect variations in the services available to differing target populations within provinces/territories (i.e. those with different types or severity of limiting conditions or impairments; or with varying skill, education levels, strength of attachment to the labour market; or with reliance on varying income supports).

Generally, Table 5.2 illustrates that services provided can be categorized around six phases, 5 related to the develop of labour market supply:

1. starting with basic skills development (the development of life skills and basic literacy;
2. Progressing through the development of pre-employment academics exposure to the world of work; These six phases provide, as required, a foundation for
3. Employment skills development which job-specific skills and experience are developed;
4. Job-ready participants can then be supported in job search; and once employment is obtained
5. Help in retaining and progressing in a job/career.

The sixth phase, support in job creation or creating a positive hiring environment focuses upon the development of a demand for the services and skills of people with disabilities.

Table 5.2 provides further details of the components of each of these phases and the footnotes contained there cover most common examples of specific types of interventions. As for anyone employment support measure, skills assessment and counselling, resulting in a training plan is an essential step. A great emphasis for persons

with disabilities is on accommodations to address barriers to training, searching for work and at work.

As noted above, not all of these supports or services are available to the full population of those eligible for provincial supports. Some programs are tailored to the needs of the population with a particular type of disability, or to the specific needs of an individual. For example, most jurisdictions have at least one program for persons with a developmental disability where a strong focus is often placed on pre-employment skills and, in many jurisdictions, on post-employment programs such as job coaching. Similarly, a number of programs addressing the needs of persons dealing with a psychiatric episode or an addiction issue provide a stronger emphasis on recovery and rehabilitation, within which the development or enhancement of job skills and finding employment can play a therapeutic role.

Labour market programs are thus very commonly parts of non-labour market programs addressing a broad scope of the needs of target populations. Furthermore the planning associated with the development of these capacities involves a more comprehensive perspective than can be found in an employment plan—including, for example, the delivery of aids and devices, health, rehabilitation services and addiction treatment provision; or addressing homelessness/housing problems by providing access to decent affordable housing.

<b>Province/ Territory</b>	<b>Umbrella Legislation/ Program(s)</b>	<b>Participating Ministries</b>	<b>Program Access Point(s)</b>	<b>Delivery Agents</b>	<b>Program Focii</b>
Newfoundland and Labrador	Employability Assistance for Persons with Disabilities (EAPD)	Human Resources, Labour and Employment; Health and Community Services; Department of Education; Public Service Secretariat	Through an employment plan developed with departmental staff Primary access point: Department of Human Resources, Labour and Employment	Government agencies, Community-based NGOs/corporations	Most are objective oriented Some are disability focused
Prince Edward Island	Disability Support Program (DSP)	The Ministry of Community Services, Seniors and Labour	Through a goal-oriented action/support plan developed through a partnership including a provincial case worker, the client, and possibly family members/advocates.	Community based NGOs, government agencies	Person focused
Nova Scotia	Programs fall under mandates of various ministerial-based legislation	Department of Community Services; Department of Labour and Advanced Education; Department of Health and Wellness: Mental Health Services and Addiction Services	Through an individual support plan developed with a support worker.	Government agencies; Community and employment support NGOs, post-secondary educational institutions	Most are objective/task oriented (school-to work; return to work etc.), some are program oriented (adjuncts to social assistance)); disability focused (mental health and addiction services)
New Brunswick	Programs fall under mandates of various ministerial-based legislation	Department of Post-Secondary Education, Training, and Labour; Department of Social Development (ADAPT); Department of Health; Office of Human Resources	Through Employment action plan developed with ministerial or NGO staff. May be part of a comprehensive plan including medical/therapeutic services/ access to supports.	Government agencies, Community-based NGOs and for-profit service corporations	Most program oriented (social assistance recipients) ; Mental health, substance abuse programs: disability focused. Other programs: objective oriented
Quebec	Programs primarily fall under the mandate of Ministère de l'Emploi et de la	Ministère de l'Emploi et de la Solidarité Sociale; Secrétariat du Conseil du trésor (in co-operation with	Through an action plan developed with local employment centres of Emploi-Quebec developed with consultant from a specialized manpower organization	Government agency in consultant with a for-profit service corporation	Predominantly Objective-oriented (increase employability); Some Disability focused (those

<b>Table 5.1: Core characteristics of provincial/territorial employment/employment related programs</b>					
<b>Province/ Territory</b>	<b>Umbrella Legislation/ Program(s)</b>	<b>Participating Ministries</b>	<b>Program Access Point(s)</b>	<b>Delivery Agents</b>	<b>Program Focii</b>
	Solidarité Sociale	the Centre des services partagés du Québec; Ministère de la Santé et des Services Sociaux;			with developmental disability or very severe disabilities)
Ontario	Programs fall under mandates of various ministerial-based legislation	Community and Social Services; Ministry of Health and Long-Term Care; Ministry of Training, Colleges and Universities	ODSP Employment Supports. Individual action plan identifying an employment goal and the supports required to achieve that goal.	Third-party service providers (ie. Community health agencies, general hospitals)	Objective-oriented: prepare for/obtain/maintain competitive employment; Disability focused: developmental, substance abuse, educational supports for students who are deaf, deafened/ heard-of hearing
Manitoba	Programs fall under mandates of various ministerial-based legislation	Manitoba Family Services and Community Affairs (FSCA); Manitoba Health; Manitoba Healthy Living, Youth and Seniors	Through personal Vocational Plan. Case coordination services are provided by the provincial and a designated agency service delivery system. People with a mental, psychiatric or learning disability receive services through FSCA regional offices For individuals with physical disabilities, Vocational Rehabilitation services are provided through three designated NGOs	delivered through the departments and via third-party arrangements (eg. Regional health authorities/employment and training centres; and non-profit community organizations)	Disability-focused (eg. The vocational rehabilitation program, mental health programs), Program oriented (Socail Assistance recipients)
Saskatchewan	Employability Assistance for People with Disabilities Program	Ministries of Advanced Education, Employment and Immigration; Education; Health; Municipal Affairs	Individual action plan that focuses on employment (disability-related costs).	Departments and third-party arrangements (regional health authorities, community-based organizations)	Objective oriented (supports persons with disabilities to prepare for, obtain, or maintain employment)

<b>Province/ Territory</b>	<b>Umbrella Legislation/ Program(s)</b>	<b>Participating Ministries</b>	<b>Program Access Point(s)</b>	<b>Delivery Agents</b>	<b>Program Focii</b>
Alberta	Income and Employment Supports Act	Employment and Immigration; Seniors and Community Supports (mental illness); Health and Wellness (developmental disabilities)	Employment Assessment and subsequent development of a service plan providing through Disability Related Employment Supports program (DRES), Work Foundations/ Training for Work; assessments for those with mental illness; development disabilities	Department and third party arrangements (educational/vocational services organizations)	Objective oriented: increase employability; find work Disability specific: mental health, developmental disabilities
British Columbia	Employment Program for Persons with Disabilities (EPPD) and other, ministry specific enabling legislation	Ministry of Social Development; Community Living and Ministry of Regional Economic and Skills Development (developmental disabilities); Ministry of Health Services (mental health/substance abuse programs); Ministry of Science & Universities	EPPD: Through an employment plan outlining an employment strategy including needed supports and training; Ministry of Health Services: part of rehabilitation services	Through service providers, community-based organizations selected through competition	Objective oriented increase employability; Disability specific: specific: mental health, substance abuse developmental disabilities
Yukon	Programs fall under the mandate of various ministries	Advanced Education Branch, Dept. of Education; Dept. of Health and Social Services; Public Service Commission	Through the Yukon Council on disability, return to work action plan developed with the Yukon Council on disability	Delivered through NGOs	Objective-oriented, recipients of social assistance (Employment and Training Services) Disability focused
Northwest Territories	Programs co-ordinated across ministries	Social Envelope Department Initiatives; Health and Social Services; Justice; Education, Culture, and Employment; Munic.& Comm Affairs	Access through the principal NGOs	Delivered through NGOs and Aboriginal organizations	Disability focused
Nunavut	Initiatives fall under broad government mandate	Department of Executive & Intergovernmental Affairs	Access through NGOs	NGOs	Disability focused

Province/Territory	Basic Skills		Pre-employment Skills Development			Employment Skills Development			Help with Job Search			Job Creation			Post Employment Services										
	Life Skills*	Literacy**	Educational Upgrading	Educ. upgrading Supplemental Supports***	Educational Supports****	Summer Jobs Program	Volunteer Placement	Skills Assessment/Counselling	Job related skills training, upgrading	Training supplemental supports*****	Apprenticeship/Internship Programs	Help through mainstream empl. programs	School-to-Work Transition Supports	Job preparation training*****	Labour Market Info. and Job Placement Services	Assessing, Financing Workplace accom.	Transition--Rehab-Community Empl. Programs	Job Placements within public service	Self-Employment Support	Wage Subsidies*****	Employer Education/suasion	Job Supplemental Supports*****	Disability Management Assistance	Support for on-the-job training	Career advancement Support
Newfoundland and Labrador	√	√	√	√				√			√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Prince Edward Island	√	√	√	√		√		√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Nova Scotia	√	√	√	√	√	√		√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
New Brunswick	√	√				√		√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Quebec					√			√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Ontario	√	√			√	√		√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Manitoba	√	√			√			√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Saskatchewan	√	√		√	√			√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Alberta	√	√			√			√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
British Columbia	√	√	√	√	√		√	√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Yukon	√							√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Northwest Territories	√	√		√	√			√	√		√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Nunavut	√	√						√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√

\* Can include time, stress, anger management, communication, healthy lifestyles, personal financial management  
 \*\* Can include literacy, numeracy, primary level schooling  
 \*\*\* Can include living allowances, transportation costs, textbooks, tuition fees while at school  
 \*\*\*\* Can include interpreters, tutors, assistive and adaptive technologies, other special equipment and resources  
 \*\*\*\*\* Can include interview skills, job search techniques, resume writing, knowledge building, sharing labour market information, rights-based advocacy in the workplace  
 \*\*\*\*\* Can include wage subsidy to employer; top up subsidy to job holder, grant for new targeted job creation  
 \*\*\*\*\* Can include job coaching, transportation allowance, tools allowances, purchase/subsidization of technical aids and devices and their maintenance, supplemental benefits (health/drug coverage), employment crisis services, help developing communication skills

## 6. Job Retention and Disability Management Strategies

### Job Retention

Retaining employees is critical for many organizations and for many persons with disabilities. When job retention is not achieved through effective accommodations, it costs both the employee through the loss of employment and income reduction, and the employer through personnel and benefits costs and the loss of an experienced employee.

In particular, people coping with chronic illnesses and disabilities, such as multiple sclerosis, arthritis, spinal cord injury, and severe mental illness, may need assistance to develop retention strategies throughout their working lives. Because of exacerbations or emergencies, these chronic conditions can continually alter the job–person relationship. Long-term, on-the-job support can help employees with such conditions meet the challenges and solve the problems related to job retention before those situations cause the person to lose hope of being able to work.

There is no single program in Canada for furthering job retention. Instead, individual workplaces institute their own policies and practices. However, human rights law and the associated regulations at the federal level, in Newfoundland and Labrador, and in Quebec, address the need for employers to implement job retention strategies. Human rights laws and regulations at the federal level, in Ontario, Quebec, and Manitoba also cover employer obligations in terms of the job promotion of employees with disabilities. Government programs, such as the Ontario Disability Support Program, may provide financial assistance and other forms of support (e.g., counselling/consulting, on-the-job accommodations) to individuals with disabilities and employers.

Determination of disability may involve some form of assessment by a health-related professional but, typically, the individual's disclosure of disability is voluntary under human rights legislation, and there are prohibitions against employers inquiring invasively about such matters.

There is comparatively little Canadian research on retention and promotion of people with disabilities in employment. However, available literature does seem to indicate that the chances of retention and promotion are better with larger vs. smaller employers, non-unionized vs. unionized workplaces, where financial compensation does not hinge on employees putting in long hours of work, and where human resources departments, line managers, and co-workers understand and support people with disabilities. As well, chances of retention and promotion would seem to be better in workplaces that are free from discriminatory perceptions and biases against people with disabilities, where career mentoring and job accommodations are readily available, where individuals are satisfied with their jobs and feel there is a good person–job fit, where organizations are committed to the employment of people with disabilities, and where employees with disabilities exhibit positive personality characteristics (Morris-Wales, 2010).



Supportive measures to further the job retention and promotion of people with disabilities are similar to those provided through disability management and return-to-work (DM/RTW) programs.

### **Disability Management**

A DM or RTW program is a proactive approach to helping injured or ill employees return to safe and productive work activities as soon as medically possible with a primary focus of minimizing the impact of the injury or illness. It involves a partnership between employers, employees, health care providers, rehabilitation professionals, unions and, often, employee representatives. Employers may implement their own programs but may also draw expertise from external specialists.

Some Canadian human rights legislation and associated regulations require that employers provide job accommodations (Canada, Manitoba, Newfoundland and Labrador, Ontario, and the northern territories). Workers' compensation programs typically encourage employers to institute DM/RTW programs, with an integral part being an individual plan that includes time frames and schedules to accommodate the transition back to work based on the individual's abilities and limitations. The RTW plan facilitates early intervention by helping the employee maintain a positive connection to the workplace and alleviate concerns about the absence from work. It provides a structured process that assists in the identification and resolution of issues encountered during the RTW process.

As with job retention measures, determination of disability in DM/RTW programs may involve some form of assessment by a health-related professional but, typically, the individual's disclosure of disability is voluntary under human rights legislation, and there are prohibitions against employers inquiring invasively about such matters.

There is no single DM/RTW program in Canada. Instead, there are hundreds in the private and voluntary sectors. For example, the Workplace Safety and Insurance Board of Ontario recently decided to make DM/RTW consulting part of its suite of in-house services instead of contracting with third-party providers, and has been hiring hundreds of specialists with that end in view (NIDMAR, 2010).

The National Institute of Disability Management and Research (NIDMAR) plays a significant role in fostering common practice standards through its consensus-based disability management audit and certification training for RTW co-ordinators and DM professionals. The professional association of such practitioners (Canadian Society of Professionals in Disability Management) has nearly two hundred members. As well, some post-secondary institutions provide education and training on DM/RTW (e.g., Mohawk College, Humber College, Grant MacEwan University, the University of Northern British Columbia, Pacific Coast University, University of Fredericton and Dalhousie University).

A key goal of a DM/RTW program is to return the employee to her/his pre-accident/illness position. If accommodation is required, options to be considered when establishing the RTW plan include:

- reintegration into the workplace by gradually increasing the hours of work;
- provision of temporary or permanent materials, devices, equipment, or human supports to eliminate or reduce the restrictions and limitations caused by the injury/illness;
- temporary or permanent changes in the job's structure of duties (e.g., reorganization or elimination of tasks, physical changes to the work area, changes in the equipment used);
- a temporary reassignment to another position with the same employer with the time frame for the reassignment clearly specified in the RTW plan; and
- temporary accommodation to facilitate an injured or ill employee's safe transition to full employment hours and duties. The transitional work program may accommodate external treatment programs, such as physiotherapy or the services of a chiropractor.

If the employee is unable to return to her/his pre-accident/illness position, the employer who implemented a DM/RTW program will typically offer retraining and provide the supports required to accommodate the illness/injury in another position.

Once the employee has resumed working, monitoring of progress is essential to address any difficulties or concerns immediately. The nature and extent of this monitoring is integral to the RTW plan. When issues arise, all parties need to meet and establish an alternate plan. In some cases, additional medical investigation may be required or a functional evaluation indicated to reassess the employee's limitations.

A DM/RTW program is also useful in focusing attention on occupational injury prevention and employee wellness promotion.

## **7. Canada/Quebec Pension Plans - Contributory Disability Benefit Programs**

The Canada/Quebec Pension Plans - Disability (C/QPP-D) replaces a portion of the earned income of contributors who cannot work because of a severe and long-lasting disability. A benefit for the children of disability beneficiaries is also available under both plans.

The disability benefit is a lesser known element of CPP and QPP. Established by an act of Parliament in 1965 and implemented in 1966, the CPP is a jointly managed federal–provincial/territorial plan. Quebec manages and administers its own plan, the QPP, and participates in decision making for the CPP.<sup>22</sup> Benefits from either plan are based on pension credits accumulated under both. The plans are financed through mandatory contributions from employees, employers, and self-employed people, as well as from investment income.

While C/QPP-D are similar in many respects, there are some differences, which are noted throughout this chapter.

### **Jurisdiction and Service Delivery**

The CPP-D is federally administered by Service Canada on behalf of Human Resources and Skills Development Canada (HRSDC). It includes a formula for provincial approval of changes to the plan, including changes to CPP-D. The QPP-D is administered by the Régie des rentes du Québec (RRQ).

### **Eligibility for Benefits**

Benefits under the CPP-D are available to people between the ages of 18 and 64 who are not in receipt of retirement benefits, and have a disability that is “severe” and “prolonged” making them unable to do work that is regular and substantially gainful. “Severe” means the disability prevents the applicant from working at any job on a regular basis. “Prolonged” means the severe disability will prevent the individual from going back to work in the next 12 months, or is likely to result in death. Recipients must have made the required minimum amount of contributions to the CPP.

Requirements for QPP-D benefits are similar, except that QPP-D requires a disability to be “permanent,” not just “prolonged” and applicants between the ages of 60 and 64 are assessed on whether they can do their usual job, not any job. “Permanent” means the severe disability is likely to be of indefinite duration, without any possibility of improvement.

Both plans have rules to determine the level of earnings in a year that are required to make a contribution to the plan. A year in which the earnings are sufficient is called a “contributory year.”<sup>23</sup> The level of earnings required for a contributory year is very modest. Each plan has rules requiring a certain number of contributory years up to the

time the applicant becomes disabled and unable to work. The years considered under the rules make up the applicant's "contributory period."<sup>24</sup>

### **Application Process**

Applicants must apply for a disability benefit in writing, submitting a form with basic personal information, a medical report from their physician, and additional consent forms allowing medical and personal information to be obtained from doctors, hospitals, employers, insurers, and others. The initial determination of medical eligibility is made by medical adjudicators, who are health professionals (nurses and physicians) employed by the adjudication authority.

### **Review and Appeals Process**

An applicant who is dissatisfied with a CPP-D or QPP-D decision can turn to four levels of review/appeal. The first step is to request a reconsideration in writing to Service Canada (CPP-D) or the Régie des rentes du Québec (RRQ) (QPP-D). Appeals can also be made to the Office of the Commissioner of Review Tribunals (CPP-D) or the Administrative Tribunal of Quebec (QPP-D), and to the Pensions Appeal Board (CPP-Q) or the RRQ services commissioner (QPP-D). The final recourse is a judicial review by the Federal Court of Appeals.

### **Benefits Provided**

Disability benefits under each plan consist of a flat-rate component and a variable component based on a percentage of the person's retirement pension entitlement. The flat-rate component is the minimum received by all disability benefit recipients. The variable component is greater for those who have worked longer and earned more.<sup>25</sup> Disability benefits are all or nothing; there are no partial benefits.<sup>26</sup> Only a taxable, monthly income benefit is provided; there are no additional health- or disability-related benefits. Benefits are adjusted annually based on increases in the Consumer Price Index.

Eligible children under age 18 of recipients receive a separate benefit. The CPP-D extends benefits to children aged 18 to 25 who attend an educational institution full time.

A three-month waiting period for benefits follows the date on which the applicant is determined to have become disabled.

### **Continuation and Termination of Benefits**

Individuals continue to receive benefits as long as their condition is considered severe and prolonged according to the CPP-D legislation or severe and permanent according to the QPP-D legislation, *or* they return to substantially gainful employment, *or* they begin to receive an early retirement pension (which may be applied for at age 60), *or* they turn 65 years of age at which time the disability benefit is automatically converted to a retirement pension, *or* death occurs.

The conditions under which CPP-D and QPP-D recipients can have their benefits reinstated after having left benefits for substantially gainful employment are discussed below under the heading "Employer-Related Services, Benefits, and Provisions."

## **Premiums**

Employers must contribute half of the required CPP or QPP contribution; the employee pays the other half. Self-employed persons pay both the employee and employer shares.

## **Employment-Related Services, Benefits, and Provisions**

For clients who are not working, a vocational rehabilitation program is available on a voluntary basis to CPP-D recipients who consent to participate and who are selected as appropriate. The program is based on in-depth vocational assessments provided by contracted rehabilitation consultants in local communities. An individualized vocational rehabilitation program is developed based on the participant's vocational assessment.

While Quebec has a framework of rehabilitation and employment programs for people with disabilities for which QPP-D recipients are eligible (see Annex A), the plan does not provide a separate rehabilitation program for its clients.

Recipients under both plans are permitted to prepare for employment by doing volunteer work, going back to school to upgrade or complete a degree, or taking retraining programs.

A CPP-D recipient is permitted to earn up to the minimum CPP-D contribution level (\$4,700 in 2010, based on gross income before taxes whether employed or self-employed) without having to report the earnings to Service Canada. A CPP-D recipient may also earn more than this amount without losing benefits. There is automatic reinstatement of benefits for CPP-D beneficiaries who try to return to work and have a recurrence of the same disability within two years of returning to work.

A QPP-D recipient is still eligible for benefits if total earnings are less than the maximum disability pension. In 2010, this meant QPP-D recipients could earn up to \$1,126.73 per month or \$13,520.76 per year. Reinstatement for QPP-D recipients who return to work and subsequently are unable to work because of the disability requires the filing of a new application, but there is a simplified form within the first year, and there is no new waiting period within five years.

Both plans permit benefits to continue during a three-month transitional RTW period.

## **Interactions with Other Programs**

Because the programs are complementary, contributions to CPP-D also count toward the QPP-D and vice versa. With respect to other disability income programs, C/QPP-D are "first payers": they are paid to eligible recipients regardless of any other income they may receive, including payments from other disability income programs.<sup>27</sup> Other disability income programs, however, including social assistance, workers' compensation, and long-term disability insurance often require participants to apply for C/QPP-D and deduct the benefit totally or partially.

The CPP-D Vocational Rehabilitation Program may work together with other rehabilitation programs.

Year	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	YT	NT	NU	CANADA
	\$000													
<b>2008-09</b>	116,091	28,144	240,830	147,376	737,958	1,656,831	125,183	87,051	318,267	568,823	2,715	3,456	n/a	4,047,927
<b>2007-08</b>	113,488	27,224	236,116	143,181	718,818	1,595,840	117,972	83,338	311,506	538,400	2,552	3,476	n/a	3,908,020
<b>2006-07</b>	111,137	26,198	231,692	138,614	672,070	1,545,239	113,018	81,157	308,276	516,276	2,350	3,385	n/a	3,765,704
<b>2005-06</b>	110,725	25,968	233,782	138,129	639,560	1,524,579	110,632	80,490	306,383	505,946	2,201	3,375	n/a	3,698,642
<b>2004-05</b>	104,531	24,264	226,317	130,818	685,777	1,461,944	101,870	76,010	289,094	468,334	2,018	3,117	n/a	3,591,014
<b>2003-04</b>	98,758	22,809	216,965	124,512	634,298	1,431,607	98,297	74,903	278,756	442,576	1,880	2,991	n/a	3,441,121
<b>2002-03</b>	94,747	22,027	212,927	121,410	596,318	1,412,533	95,687	74,549	260,776	422,616	1,722	2,553	n/a	3,330,019
<b>2001-02</b>	90,151	21,023	206,178	117,002	564,739	1,357,903	89,900	71,804	242,175	387,391	1,513	2,313	n/a	3,164,152
<b>2000-01</b>	86,991	20,253	201,528	112,720	536,919	1,337,482	85,678	66,667	222,797	366,480	1,493	1,862	n/a	3,053,353
<b>1999-00</b>	78,195	19,879	203,061	109,256	501,282	1,364,474	86,808	68,076	217,929	371,128	1,430	1,830	n/a	3,036,632
<b>1998-99</b>	85,826	19,095	205,077	109,715	484,675	1,388,114	88,452	69,908	217,460	372,404	1,401	1,952	-	3,058,020
<b>1997-98</b>	81,025	17,850	200,329	108,448	469,173	1,382,131	89,148	70,603	210,285	359,330	1,478	1,948	-	3,006,545
<b>1996-97</b>	75,158	16,714	193,913	103,133	447,728	1,387,106	88,779	71,549	209,703	342,224	1,400	1,785	-	2,954,010
<b>1995-96</b>	73,369	16,225	190,787	100,920	441,072	1,419,391	90,026	73,796	207,574	341,021	1,398	1,716	-	2,972,863
<b>1994-95</b>	74,208	16,050	191,487	97,623	421,244	1,468,573	92,656	76,374	208,521	342,498	1,380	1,655	-	3,008,306
<b>1993-94</b>	70,426	14,984	179,290	93,368	402,062	1,371,952	88,285	75,078	195,789	328,391	1,142	1,552	-	2,838,288
<b>1992-93</b>	60,247	12,873	155,596	80,980	389,612	1,158,196	78,823	65,618	167,660	284,087	1,095	1,328	-	2,470,963
<b>1991-92</b>	53,290	11,477	136,331	72,274	367,363	1,009,582	71,305	60,239	147,585	254,806	1,124	1,038	-	2,201,108
<b>1990-91</b>	47,010	9,906	121,920	64,906	351,916	872,362	64,891	53,839	129,654	225,876	981	797	-	1,957,463
<b>1989-90</b>	42,667	9,006	109,752	59,180	334,962	790,218	59,036	50,038	120,514	208,914	889	744	-	1,798,378
<b>1988-89</b>	37,853	7,586	97,139	53,867	317,568	708,005	53,908	45,312	107,871	189,559	766	523	-	1,630,961
<b>1987-88</b>	32,349	6,261	82,764	46,395	302,433	595,399	47,017	37,919	88,046	157,810	584	390	-	1,407,095
<b>1986-87</b>	22,144	4,081	56,723	32,390	279,282	416,920	33,164	25,524	58,520	108,840	367	255	-	1,044,991
<b>1985-86</b>	18,294	3,134	45,663	26,210	252,648	343,768	27,794	20,916	45,846	89,265	321	181	-	879,146
<b>1984-85</b>	15,340	2,710	39,706	22,229	227,509	295,057	22,333	16,688	33,900	71,816	219	122	-	751,842

Notes:

1. Quebec data include payments to QPP beneficiaries in all provinces plus those CPP beneficiaries who reside in Quebec.
2. Canada totals include payments to CPP and QPP beneficiaries residing outside Canada.
3. Benefits are taxable and are indexed annually according to the Consumer Price Index.
4. NWT figures include Nunavut data since 1999-2000.

Source: Human Resources and Skills Development Canada, Annual Report, Quebec Pension Plan.

**Table 7b: Canada Pension Plan and Quebec Pension Plan, Disability Beneficiaries, by Plan and for Canada, 1981-2009**

Year	CPPD*	QPPD**	Canada
2009	315,150	70,118	385,268
2008	310,206	69,209	379,415
2007	306,553	68,004	374,557
2006	302,277	67,468	369,745
2005	294,084	64,957	359,041
2004	290,972	62,957	353,929
2003	286,726	60,119	346,845
2002	281,053	57,478	338,531
2001	279,240	55,577	334,817
2000	283,541	53,215	336,756
1999	288,417	51,003	339,420
1998	287,252	49,867	337,119
1997	292,743	48,223	340,966
1996	299,635	47,236	346,871
1995	298,612	45,376	343,988
1994	280,722	44,127	324,849
1993	241,971	43,114	285,085
1992	211,894	42,745	254,639
1991	194,671	43,278	237,949
1990	182,140	43,086	225,226
1989	171,990	43,061	215,051
1988	158,836	43,389	202,225
1987	150,443	43,262	193,705
1986	145,070	41,705	186,775
1985	131,702	39,576	171,278
1984	123,041	35,781	158,822
1983	111,061	30,420	141,481
1982	98,426	27,765	126,191
1981	90,180	24,372	114,552

Notes:

\*As at June of each year

\*\*Averaged over the calander year

Source: HRSDC, The OAS and CPP Stats Book 2010

## **8. Veterans Affairs Disability Benefit Program**

The Veterans Affairs Disability Benefit Program provides a suite of services and benefits for persons who have become ill or injured while in or as a result of serving in the military.<sup>28</sup>

### **Jurisdiction and Service Delivery**

The Department of Veterans Affairs, the Veterans Review and Appeal Board, and the Veterans Ombudsman have responsibility for the program. Case management is an overarching service provided to former members and veterans of the Canadian Forces (and RCMP) and their families who may need assistance in coping with a serious injury or illness, which may result in disability, as well as assistance in dealing with career transition or death.

### **Definition and Determination of Disability**

Disability for the purposes of the administration of the Veterans Affairs Disability Benefit Program is defined with the federal *Pension Act*, s. 3 as “the loss or lessening of the power to will and to do any normal mental or physical act.” Disability may be aggravated (s. 21), that is, rendered permanent as opposed to temporarily worsened. Evidence of a disability by way of a reasonably current diagnosis is an important element of the eligibility-determination process and is typically obtained from a “qualified medical practitioner,” usually a medical doctor licensed by a provincial medical college to practise in the jurisdiction, although in certain cases diagnoses from health care professionals other than medical doctors may be accepted.

Generally, the disabilities<sup>29</sup> listed involve the impairment or disease of bodily organs, limbs, tissues, and functions, diminishment of quality of life, and the need for attendant services and clothing replacement due to wear and tear by prostheses and similar appliances. The International Classification of Diseases code published by the World Health Organization lists conditions that may be eligible for various benefits and services from Veterans Affairs. The extent of disability is expressed as a percentage, which may range from 0 to 100 percent.

### **Benefits Provided**

Veterans Affairs operates several illness/injury-related financial programs.

#### **Disability Pensions**

Compensation is available to individuals injured in service or their dependants/survivors. Since April 1, 2006, Canadian Forces members and veterans generally receive their disability benefits in the form of a lump-sum payment through the Disability Award program, a one-time, tax-free cash award designed to compensate for the non-economic impacts of a service-related disability, such as pain and suffering, or a non-service-related injury or illness that was aggravated by service. The Disability Award is also available to spouses/partners, children, and other dependants of Canadian Forces personnel who are deceased or disabled as a result of their military service.



## **Financial Benefits Program**

Four components make up the Financial Benefits Program:

- Earnings Loss Benefits, a taxable program, replaces up to 75 percent of the gross pre-release military salary for individuals taking part in the rehabilitation or vocational assistance program.
- The Permanent Impairment Allowance provides a monthly taxable allowance payable for lost job opportunities, because of a permanent and severe impairment.
- The Supplementary Retirement Benefit is a one-time, taxable cash award to compensate for lower pension contributions for those unable to work as a result of being totally and permanently incapacitated.
- Canadian Forces Income Support provides a tax-free benefit for those who have completed the Rehabilitation Program and are able to work, but have not been able to find a job or have a low-paying job.
- As part of the War Veterans Allowance (financial assistance for low-income veterans and their families), a special allowance is available for those who have received a Veterans Affairs disability benefit.

Other services aim to further the civilian employment of members of the Canadian Forces.

- Career Transition Services offers workshops to help identify skills, provide job interview training and practice interviews, advice on managing civilian careers, tips for creating a professional résumé, and information on how to pursue self-employment. Individuals apply online,<sup>30</sup> by calling a toll-free line (1-888-221-2202), or by talking with their case manager.

Additional services include individual career counselling, which offers more in-depth assistance and career coaching to help identify skills, qualifications, experiences, training, and a transition plan for employment in the desired field. Job search assistance through the career coaches is available to individuals who have participated in individual career counselling and have a job search plan.

- The Rehabilitation Program supports people who have been injured as a result of service, to transition from the military to civilian life after being medically released from the military. The rehabilitation process is initiated through a meeting with an armed forces case manager. The manager's function is to support identification of individual goals and challenges, and develop a rehabilitation plan that outlines needed services, benefits, and links with local service providers. The Rehabilitation Program can also provide medical support to stabilize and restore an individual's health to the fullest extent possible, life management counsellors to help individuals develop skills to regain independence and overcome a disability through measures, such as life skills training, anger management, parenting, budgeting, driving, and pain

management strategies. Work-related advisors help individuals transfer skills gained in the military to jobs in the civilian workplace and, when necessary, arrange for training. Costs related to training or schooling are covered, including child care. Individuals participating in the Rehabilitation Program become eligible for the Disability Award.

- The Assistance Fund is a grant of up to \$1,000 for an emergency or unexpected contingency that affects health or safety and for which there are no other resources. Typical expenses include shelter, clothing, health items, and essential appliances.

Services are also available to help address issues related to mental health.

### **Review and Appeals Process**

People who are not satisfied with decisions about their claims for disability benefits can contact the Bureau of Pensions Advocates — lawyers within Veterans Affairs who provide free legal help. Individuals who have obtained new information about their condition and who are not satisfied with a decision by Veterans Affairs may have their claim reviewed. The Veterans Review and Appeal Board also provides veterans and other applicants with an independent avenue of appeal for disability decisions made by Veterans Affairs. The Veterans Ombudsman may also be able to help garner departmental endorsement of a claim for services, benefits, or support.

### **Interactions with Other Programs**

Members of the armed forces are covered by long-term disability insurance and lump sum payments for “accident dismemberment” as benefits of the multifaceted Service Income Security Insurance Plan (SISIP). The Plan provides income replacement and access to vocational rehabilitation for those leaving military service with an impairment. The objective is to provide training and education to enhance the former member’s ability to obtain gainful employment in the civilian work force. The Rehabilitation Program complements the vocational rehabilitation services and earnings loss benefits provided for eligible people who are released from the Canadian Forces for medical reasons.<sup>31</sup>

Year	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	YT	NT	NU	CANADA
	\$000													
2008-09	32,229	19,594	135,381	103,158	220,629	621,226	84,059	62,628	179,451	350,442	0	0	0	1,808,796
2007-08	32,297	19,561	130,530	101,453	220,529	619,724	85,964	63,338	175,985	351,216	0	0	0	1,800,596
2006-07	32,059	19,801	129,506	99,884	221,800	615,691	87,544	63,859	174,658	351,814	0	0	0	1,796,616
2005-06	30,198	19,155	121,073	94,045	209,295	581,341	83,741	61,114	164,366	339,671	0	0	0	1,703,960
2004-05	31,252	19,345	115,853	90,939	199,847	553,875	80,123	60,052	148,251	323,312	0	0	0	1,622,851
2003-04	28,019	19,066	110,221	87,524	190,458	540,594	78,374	58,448	137,762	313,973	0	0	0	1,564,441
2002-03	26,112	18,262	105,394	82,339	178,595	522,501	74,011	55,718	123,112	287,075	0	0	0	1,473,118
2001-02	26,724	13,362	93,536	80,174	160,349	481,051	66,812	53,449	106,899	253,886	0	0	0	1,336,242
2000-01	22,745	17,017	90,581	68,114	143,615	415,318	64,390	49,730	97,614	234,823	0	0	0	1,245,347
1999-00	21,340	16,605	87,997	63,608	134,941	396,966	62,018	47,523	91,072	220,336	0	0	0	1,183,015
1998-99	20,588	16,691	86,772	61,315	132,461	386,781	61,105	45,967	88,462	213,107	0	0	-	1,154,860
1997-98	20,083	17,123	86,498	60,316	132,473	387,190	61,659	45,178	87,761	209,432	0	0	-	1,150,140
1996-97	19,744	16,567	84,585	58,106	130,955	384,104	60,729	44,323	87,034	206,526	0	0	-	1,135,385
1995-96	18,878	16,334	81,812	55,538	129,422	379,966	60,782	43,890	83,877	199,944	0	0	-	1,113,972
1994-95	18,524	16,153	81,420	54,625	129,290	380,743	61,573	44,008	82,077	200,075	0	0	-	1,113,184
1993-94	16,511	16,298	80,026	53,849	127,202	379,246	62,224	43,809	80,233	198,390	0	0	-	1,103,061
1992-93	14,548	16,146	80,006	52,776	127,705	378,577	62,829	43,414	78,569	195,921	0	0	-	1,096,294
1991-92	13,183	16,043	75,880	50,190	120,579	355,787	59,960	41,112	73,270	181,236	0	0	-	1,034,472
1990-91	12,535	14,566	72,238	46,699	114,868	339,629	58,863	39,375	69,970	170,370	0	0	-	982,016
1989-90	12,152	13,226	57,921	42,810	109,423	317,042	54,894	36,689	62,298	152,517	377	82	-	897,789
1988-89	10,883	11,814	62,453	39,065	103,967	283,634	52,405	33,896	57,385	139,597	300	118	-	832,529
1987-88	10,445	10,967	60,102	36,769	100,211	272,551	50,471	32,668	54,318	132,672	0	0	-	798,625
1986-87	10,502	9,994	55,102	32,225	81,484	247,166	54,767	29,269	50,624	121,887	0	0	-	729,031
1985-86	10,151	9,435	51,599	30,604	76,773	237,251	52,333	27,854	48,968	116,184	0	0	-	696,878
1984-85	9,875	9,054	48,034	29,455	73,525	227,588	50,448	26,702	47,115	111,170	0	0	-	668,331

## Notes:

1. Payments to BC include those made to YT beneficiaries, and AB payments include those made to NT beneficiaries for years when data for the territories were unavailable.
2. Canada totals include payments to beneficiaries residing outside Canada.
3. Pensions are not taxable. Benefits are indexed annually according to the Consumer Price Index.

4. Pensions are payable to members or former members of the Canadian Forces who suffer from a disability or disease attributable to service.
5. Certain civilians who served in organizations closely associated with the Canadian Armed Forces during World War I or II are eligible for similar awards of disability pensions.
6. Since 1999-2000, AB payments include those made to NU beneficiaries.

Source: Corporate Planning Division, Department of Veterans Affairs.

<b>Year</b>	<b>NL</b>	<b>PE</b>	<b>NS</b>	<b>NB</b>	<b>QC</b>	<b>ON</b>	<b>MB</b>	<b>SK</b>	<b>AB</b>	<b>BC</b>	<b>YT</b>	<b>NT</b>	<b>NU</b>	<b>CANADA</b>
2008-09	2,438	1,869	12,900	9,239	20,867	62,280	8,401	6,572	17,706	35,449	0	0	0	177,721
2007-08	2,454	1,913	12,840	9,284	21,444	62,444	8,647	6,730	18,054	35,945	0	0	0	179,755
2006-07	2,477	1,961	12,917	9,359	21,761	62,154	8,849	6,790	18,273	36,471	0	0	0	181,012
2005-06	2,456	1,991	12,763	9,259	21,543	60,687	8,784	6,728	17,929	36,629	0	0	0	178,769
2004-05	2,431	1,996	12,227	9,080	20,922	58,784	8,514	6,665	16,920	35,769	0	0	0	173,308
2003-04	2,366	1,991	11,855	8,915	20,302	57,690	8,276	6,574	16,262	34,667	0	0	0	168,898
2002-03	2,334	2,026	11,648	8,662	19,690	57,093	8,074	6,498	15,619	33,161	0	0	0	164,805
2001-02	2,176	1,983	10,989	8,207	18,760	55,413	7,624	6,085	14,124	30,358	0	0	0	155,719
2000-01	2,125	2,003	10,778	7,953	18,298	49,669	7,446	6,004	13,418	28,997	0	0	0	151,563
1999-00	2,094	2,026	10,775	7,794	18,052	49,436	7,465	5,962	13,051	28,428	0	0	0	150,074
1998-99	2,094	2,080	10,862	7,800	18,271	49,890	7,568	5,974	12,848	28,259	0	0	-	150,796
1997-98	2,102	2,117	10,914	7,801	18,462	50,398	7,741	5,969	12,725	28,065	0	0	-	151,520
1996-97	2,071	2,108	10,823	7,743	18,420	50,526	7,784	5,933	12,430	27,668	0	0	-	150,850
1995-96	2,002	2,120	10,610	7,588	18,401	50,426	7,880	5,904	11,966	27,018	0	0	-	149,368
1994-95	1,983	2,108	10,666	7,575	18,536	50,937	8,034	5,956	11,831	26,935	0	0	-	150,161
1993-94	1,897	2,131	10,659	7,460	18,537	51,373	8,105	6,027	11,702	26,593	0	0	-	150,191
1992-93	1,885	2,108	10,662	7,381	18,647	51,766	8,228	6,041	11,609	26,192	0	0	-	150,304
1991-92	1,854	2,106	10,631	7,369	18,816	52,093	8,349	6,045	11,563	25,879	0	0	-	150,627
1990-91	1,842	2,084	10,564	7,272	18,830	52,057	8,391	5,978	11,532	25,378	0	0	-	149,833
1989-90	1,824	2,021	10,479	7,080	18,706	51,443	8,383	5,895	11,322	24,636	0	0	-	147,670
1988-89	1,792	1,947	10,243	6,865	18,516	50,079	8,283	5,755	11,079	23,799	0	0	-	144,284
1987-88	1,791	1,917	10,194	6,792	18,359	50,199	8,380	5,779	11,050	23,649	0	0	-	144,226
1986-87	1,786	1,928	10,160	6,783	17,287	49,773	9,966	5,753	11,207	23,499	0	0	-	144,347
1985-86	1,809	1,921	10,107	6,745	17,033	49,865	10,028	5,753	11,243	23,461	0	0	-	144,371
1984-85	1,796	1,888	9,867	6,604	16,517	49,113	10,008	5,716	11,059	23,157	0	0	-	142,167

Notes:

1. BC figures include YT beneficiaries, and AB figures include NT beneficiaries.

2. Canada totals include beneficiaries residing outside Canada.
3. Pensions are payable to members or former members of the Canadian Forces who suffer from a disability or disease attributable to service.
4. Certain civilians who served in organizations closely associated with the Canadian Armed Forces during World War I or II are eligible for similar awards of disability pensions.
5. Since March 2000, AB figures include NU beneficiaries.

Source: Corporate Planning Division, Department of Veterans Affairs.

## 9. Employment Insurance

The Employment Insurance (EI) program offers temporary financial assistance and a range of employment-related services to unemployed Canadians, including persons with disabilities. Part I of the *Employment Insurance Act* (EI Act) authorizes the Government of Canada to administer income transfers to eligible unemployed individuals. Part II authorizes the provision of other benefits and supports known as “active measures” to improve the employment prospects of unemployed Canadians.

### Eligibility for Benefits

Financial benefits are available to the following under the following circumstances:

- Employment Insurance Regular Benefits are available to individuals who lose their jobs through no fault of their own (e.g., due to a shortage of work, seasonal layoffs, mass layoffs) and who are available for and able to work but cannot find a job.
- Employment Insurance Maternity and Parental Benefits provide support to individuals who are pregnant, have recently given birth, are adopting a child or caring for a newborn, or whose parental leave has been deferred or interrupted because of an imperative military requirement.
- Employment Insurance Sickness Benefits are for individuals who are unable to work because of sickness, injury, or quarantine.
- Employment Insurance Compassionate Care Benefits help people who have to be away from work temporarily to provide care or support to a family member who is gravely ill with a significant risk of death.
- Employment Insurance Fishing Benefits provide support to qualifying, self-employed fishers who are actively seeking work.

Individuals may be entitled to receive EI regular benefits if they:

- paid premiums into the EI account, whether working for an employer or self-employed;
- lost their employment through no fault of their own;
- have been without work and without pay for at least seven consecutive days;
- worked for the required number of insurable hours in the last 52 weeks or since the start of their last EI claim, whichever is shorter;
- are ready, willing, and capable of working each day; and
- are actively looking for work. (They must keep a written record of employers they contact, including when they contacted them.)

Where a person’s employment is their first job or they are re-entering the work force after an absence of two years, they need to have accumulated at least 910 hours of insurable

employment during the qualifying period to be eligible for EI regular benefits. The qualifying period is usually the last 52 weeks before the start date of the claim.

Where a person's employment is not their first job or they have been out of the labour force for less than two years, the number of hours they must accumulate depends on the regional unemployment rate and ranges from 420 to 700 hours. Qualifications for maternity and parental benefits, the compassionate care benefit, and the sickness benefit are fixed at 600 hours.

### **Review and Appeals Process**

Claimants may appeal decisions made by the EI Commission in the event that EI benefits have been refused, are to be repaid or when a warning letter has been given or a penalty assessed. Employers may appeal decisions made by the EI Commission where benefits have been paid to an employee who quit or was fired for misconduct or who refused work, was in a labour dispute, or where a warning letter has been given or a penalty assessed. In the first level of the appeal process, the Board of Referees examines the EI Commission decision and makes an independent decision on the case. In certain circumstances, there is a second level of appeal to the Umpire, usually a judge with the Federal Court of Canada.

### **Benefits Provided**

The basic EI benefit rate is 55 percent of the individual's average insurable weekly earnings. As of January 1, 2011, the maximum yearly insurable amount was \$44,200, which meant individuals could receive a maximum amount of \$468 per week. Regular beneficiaries may still receive benefits and work; benefits are reduced by \$0.50 per dollar of employment earnings over \$50 per week. Benefits are reduced on a dollar-for-dollar basis for earnings while receiving sickness and other special benefits and for co-insurer payments.

Regular claimants of EI are eligible for between 14 and 45 weeks of benefits, depending on hours worked and the local unemployment rate,<sup>32</sup> which can be spread, under most circumstances, over 52 weeks.<sup>33</sup> Sickness benefits are limited to 15 weeks. The duration of maternity and parental benefits, and the compassionate care benefit varies.

### **Premiums and other Obligations**

Employment insurance is self-funding and is paid for by mandatory contributions of premiums by employee and their employers. For every dollar of EI premium paid by employees, employers generally contribute \$1.40. In 2011, employers paid up to \$1.78 per \$100 of earnings per employee, up to the maximum insurable earnings of \$44,200, or up to \$786.76 per employee. Employer contributions are reduced when commensurate sickness, maternity, parental or compassionate care benefits are provided as a term of employment. The premium rate for workers in Quebec in 2011 is \$1.41. (The Province of Quebec has collected premiums since January 2006 to administer its own maternity, parental, and paternity benefits under the Quebec Parental Insurance Plan.) As well, employers submit a record of employment for each employee who leaves her/his job,



regardless of the reason for job separation and whether he/she intends to file a claim for EI.

### **Employment-Related Services, Benefits, and Provisions**

Part II of the *Employment Insurance Act* authorizes the implementation of “active measures” to help the unemployed, including persons with disabilities prepare for, find, and maintain employment. Such measures are known as employment benefits and support measures (EBSMs). These are conceptually and operationally divisible into employment benefits (EBs), which target “insured persons” within the meaning of the legislation, and support measures (SMs), which target employers, organizations, and communities seeking to improve the employment prospects of insured persons.

Part II of the EI Act also authorizes the Canada Employment Insurance Commission to enter into agreements with provinces and territories to determine how active measures are to be implemented and evaluated and requires the Commission, on behalf of the Government of Canada, to invite provinces to enter into agreements to further those ends. Bilateral federal–provincial/territorial agreements (LMDAs) operationalize EBSMs. Under these agreements, responsibility for the design and delivery of EBSMs has been transferred entirely from the federal government to the provinces and territories, or the programs are co-managed by both orders of government. The latter pertains to British Columbia, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, and Yukon (See Chapter 4 for additional details).

To be eligible for EBs, individuals must be unemployed and be an active EI client or have a claim that ended in the preceding three years as a former EI client. Former EI clients include those who have re-entered the labour market after a maternity or parental claim in the preceding five years. Employment benefits include the following.

- Targeted wage subsidies (TWSs) encourage employers to hire individuals they would not normally hire in the absence of a subsidy. Targeted clients include those facing particular disadvantages, and there is a hope that employers will ultimately hire TWS participants on an ongoing basis. The subsidy may be up to 52 weeks, or 78 weeks for persons with disabilities. The subsidy covers a percentage of the wages and mandatory employment-related costs. Under normal circumstances, the wage subsidy does not exceed 60 percent of the total wages paid to the individual for the period of the agreement.
- Targeted earnings supplements enable some people receiving EI or longer-term unemployed individuals who would not otherwise enter the labour force to accept topped up low-wage jobs. The Supplément de retour au travail in Quebec is the only such intervention currently in place under Part II of the EI Act.
- Job creation partnerships give participants the opportunity to gain work experience to improve their prospects of obtaining and maintaining employment. Financial assistance is provided to short-term projects that offer work experience to participants. Because

these employment opportunities are generated through locally developed projects in the public and non-profit sectors, they also benefit the community and the local economy.

- Skills development has two components: regular and apprenticeship. It provides direct financial assistance that enables unemployed individuals to select, arrange, and pay for training in skills. Regular participants receive financial assistance to defray basic living and training costs, including tuition. Apprentice interventions are supported during the classroom portion of apprenticeship training, primarily through EI Part I. These individuals may also receive Part II support for additional classroom-related expenses.
- Self-employment enables participants to obtain employment by helping them start their own business or become self-employed. It provides financial assistance for basic living expenses and other personal needs while participants develop and implement a business plan. Self-employment also funds co-ordinators who ensure participants have access to business planning advice and expertise.
- Employment assistance services interventions support participants as they prepare to enter or re-enter the labour force. These services range from job search assistance provided to job-ready clients to the development of in-depth RTW action plans for clients facing multiple employment barriers. Non-insured persons within the meaning of the EI Act are eligible only for employment assistance services from an EBSM.
- Labour market partnerships encourage and support human resource planning and labour market adjustment. This funding is used to improve the capacity of employers, employer and employee associations, and communities to respond to local labour market adjustment issues.
- Research and innovation support activities that identify effective ways of helping people prepare for or keep employment. Funds are provided to eligible recipients to enable them to carry out demonstration projects and research for this purpose.

### **Interactions with Other Programs**

Part I benefits come into play in the absence of like insurance benefits.<sup>34</sup> Thus, when an EI sickness benefit claim is made, benefits are reduced or eliminated by payments from workers' compensation or private short-term disability insurance benefits. Social assistance income benefits are available when EI is not available, or as top ups in circumstances where EI benefits are less than social assistance benefits. Employment Insurance does not insure long-term or permanent illness/injury; thus CPP-D, private long-term disability, and related workers' compensation, non-economic loss benefits do not interact.

Year	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	YT	NT	NU	CANADA
\$000														
2008-09	24,789	9,668	43,549	52,045	273,777	290,720	29,850	19,151	79,139	164,131	1196	1257	377	989,677
2007-08	22,687	8,923	39,425	48,533	264,095	278,475	28,893	17,974	73,699	149,639	991	1048	301	934,695
2006-07	20,130	7,447	37,488	44,718	255,673	260,462	27,929	17,120	70,801	140,437	822	966	234	884,253
2005-06	18,177	6,382	34,633	39,058	238,529	249,569	27,263	16,142	68,926	131,252	910	912	325	832,087
2004-05	16,952	6,159	32,712	36,782	223,739	240,578	26,142	16,067	68,412	123,305	820	782	237	792,711
2003-04	15,391	5,974	30,910	33,521	214,255	227,330	25,224	15,247	64,820	115,088	909	948	330	749,972
2002-03	14,530	5,109	27,710	29,810	198,926	217,567	23,200	14,543	68,183	105,772	845	851	291	702,374
2001-02	12,271	3,924	24,463	26,973	180,759	201,504	21,841	12,712	57,628	101,946	700	816	212	645,767
2000-01	10,847	3,833	22,541	24,489	160,321	190,215	18,996	11,826	51,704	94,442	643	653	158	590,709
1999-00	9,452	3,279	19,207	21,186	138,301	170,169	16,948	10,711	47,300	85,335	606	740	55	523,297
1998-99	8,282	2,809	16,651	18,406	117,493	157,810	15,095	10,852	44,873	79,688	549	737	-	473,252
1997-98	7,477	2,715	15,774	16,106	103,721	149,700	14,612	9,553	38,065	78,797	660	797	-	438,003
1996-97	8,070	2,763	16,351	16,245	102,209	148,439	14,737	9,328	36,086	80,086	562	903	-	435,814
1995-96	8,409	2,765	17,719	16,719	104,955	159,437	15,290	9,835	36,081	82,309	506	882	-	454,943
1994-95	7,955	2,599	18,060	16,636	103,458	161,395	15,024	9,769	32,989	78,955	664	767	-	448,288
1993-94	8,429	2,525	18,567	16,160	101,208	155,916	14,874	9,598	31,231	75,773	532	755	-	435,607
1992-93	8,111	2,683	18,492	15,904	98,974	159,767	15,539	9,806	31,761	74,380	446	666	-	436,617
1991-92	7,573	2,366	17,301	14,871	93,993	160,146	14,709	9,711	30,248	70,962	398	686	-	423,046
1990-91	6,370	1,879	14,836	12,747	83,248	163,137	12,867	8,278	27,768	60,102	276	511	-	392,067
1989-90	6,218	1,677	14,226	11,924	80,291	155,305	12,171	7,440	25,362	49,622	338	417	-	365,025
1988-89	5,925	1,590	12,287	10,526	77,823	142,630	11,311	6,992	22,543	41,778	271	386	-	334,086
1987-88	5,096	1,453	11,199	9,491	68,868	123,831	10,947	6,344	19,762	34,821	219	258	-	292,312
1986-87	4,359	1,153	9,485	7,769	60,192	103,311	9,806	6,197	17,999	29,562	180	284	-	250,315
1985-86	3,853	1,010	8,446	7,186	57,748	89,520	8,913	5,433	15,610	25,388	148	278	-	223,545
1984-85	3,609	1,007	7,933	6,394	55,807	81,133	8,491	5,504	14,961	23,814	154	197	-	209,012

## Notes:

1. Canada totals include payments to persons residing outside Canada.
2. Until 1978, benefits were based on 66.67 percent; between 1978 and 1993 on 60 percent; as of April 1993 on 57 percent; and as of July 1994 on 55 percent of the claimant's average weekly insurable earnings. Benefits are taxable.
3. The new EI system came into effect on July 1, 1996.

Source: Human Resources and Skills Development Canada.

Year	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	YT	NT	NU	CANADA
2008-09	1,691	664	2,907	3,500	17,549	17,545	1,901	1,183	4,387	9,897	58	57	16	61,355
2007-08	1,631	622	2,718	3,332	17,459	17,453	1,919	1,172	4,254	9,363	49	53	13	60,040
2006-07	1,543	559	2,745	3,226	17,581	16,814	1,914	1,174	4,406	9,151	46	51	11	59,222
2005-06	1,471	512	2,683	2,955	17,125	16,539	1,943	1,183	4,514	8,960	49	50	17	58,002
2004-05	1,398	503	2,591	2,832	16,563	16,256	1,927	1,197	4,681	8,599	46	42	13	56,650
2003-04	1,333	485	2,484	2,641	16,185	15,487	1,899	1,169	4,481	7,935	55	52	16	54,224
2002-03	1,204	419	2,300	2,397	15,146	14,910	1,773	1,103	4,393	7,297	53	45	15	51,056
2001-02	1,076	360	2,093	2,275	14,320	14,421	1,729	1,026	4,211	7,286	44	44	11	48,897
2000-01	976	336	1,946	2,104	12,981	13,989	1,565	968	3,930	6,840	41	39	9	45,724
1999-00	888	312	1,723	1,881	11,541	12,816	1,428	921	3,668	6,345	41	37	10	41,612
1998-99	773	275	1,568	1,683	10,112	12,151	1,330	945	3,549	6,034	39	41	4	38,504
1997-98	684	251	1,513	1,510	8,970	11,519	1,253	868	3,156	5,940	42	49	-	35,756
1996-97	712	260	1,466	1,436	8,629	11,066	1,237	839	3,021	6,051	39	52	-	34,811
1995-96	711	252	1,540	1,426	8,663	11,654	1,245	851	2,926	6,148	35	52	-	35,506
1994-95	696	238	1,574	1,412	8,575	11,734	1,234	847	2,693	5,974	40	47	-	35,064
1993-94	710	230	1,560	1,330	8,050	10,920	1,150	810	2,430	5,620	30	40	-	32,880
1992-93	660	240	1,550	1,310	7,750	10,860	1,170	820	2,390	5,460	30	40	-	32,290
1991-92	640	210	1,470	1,240	7,390	10,940	1,100	810	2,290	5,280	30	40	-	31,440
1990-91	550	180	1,350	1,110	7,090	12,490	1,090	750	2,330	4,930	20	30	-	31,930
1989-90	560	160	1,350	1,110	7,380	13,420	1,110	720	2,300	4,350	30	30	-	32,510
1988-89	570	160	1,230	1,040	7,530	13,200	1,110	700	2,210	3,920	20	30	-	31,710
1987-88	510	150	1,150	980	6,940	12,230	1,110	670	1,970	3,450	20	20	-	29,200
1986-87	460	130	1,020	840	6,470	10,830	1,040	650	1,820	3,020	20	20	-	26,320
1985-86	430	120	970	800	6,460	10,140	990	620	1,690	2,720	20	10	-	24,980
1984-85	421	125	943	770	6,670	9,750	1,002	637	1,638	2,627	15	17	-	24,614

## Notes:

1. Claimants who can prove eligibility with a medical certificate may receive up to 15 weeks of sickness benefits.
2. Canada totals include beneficiaries residing outside Canada.
3. The new EI system came into effect on July 1, 1996.

Source: Human Resources and Social Development Canada.

## 10. Social Assistance

Provincial or territorial social assistance (commonly known as “welfare”) functions as Canada’s social safety net of last resort. It provides financial assistance and in-kind goods and services to individuals whose income from employment or other sources is not sufficient to meet their needs and who have exhausted other avenues of support.

### Jurisdiction and Service Delivery

There are 13 welfare systems in Canada: one in each province and territory where ministries administer and deliver social assistance, often sharing responsibilities with municipal governments and agencies.

### Definition and Determination of Disability

For non-senior adults, the definition of disability for program eligibility purposes varies by jurisdiction and, sometimes, by program. The expected minimum period of impairment varies from 90 days (e.g., Manitoba) to a year (e.g., Ontario, Saskatchewan, Alberta) to two years (some elements of the British Columbia program).

Ontario uses a wide-reaching definition of disability. “A person with a disability is defined as a person who has a substantial physical or mental impairment which results in a substantial restriction in one or more activities of daily living (ability to attend to personal care, function in the community or function in a workplace).” All provinces have a specific reference to the ability to work or “earn a living” and most refer to “attend to personal care.”

### Eligibility for Benefits

Provincial governments provide financial support to those who require assistance, because circumstances render them incapable of maintaining employment or whose employment or other means of support does not provide sufficient income to meet their needs.<sup>35</sup> The welfare system in every jurisdiction is governed by complex rules that regulate all aspects of the system, including eligibility for assistance, rates of assistance, other assets that income recipients are allowed to keep, and appeals procedures. The system is highly discretionary in the sense that caseworkers, supervisors, and administrators are authorized to make many exceptions to the general rules.

Eligibility for social assistance is first determined on the basis of categorical definitions outlined in provincial regulations. In the case of persons with disabilities, most provinces require that applicants have a physical or mental disability that severely impedes their ability to engage actively in paid employment in the labour market. Medical certification of disability is typically required. Once applicants qualify on the basis of categorical definition, they must then qualify on the basis of their liquid and fixed assets. That is, they cannot have cash, bonds, stocks, other securities, or immovable objects whose value exceeds certain amounts set out in provincial rules.<sup>36</sup> An assessment is then conducted to determine the resources available to applicants to meet their basic needs. Income from

sources, such as government allowances, public and private pensions, and paid employment is taken into account.

Eligible employable persons, including people with disabilities, are actively encouraged to pursue, accept, and retain any reasonable offer of employment or retraining as an initial and continuing condition of eligibility for social assistance. Thus, many jurisdictions offer employment services and training opportunities in combination with financial assistance.

### **Benefits Provided**

Assistance consists of a basic allowance and a shelter allowance. The basic allowance covers the cost of food, clothing, utilities, and personal and household items. Basic assistance may be supplemented by provisions for in-kind supports (e.g., covering costs of supportive devices or local transit). Benefit and non-monetary assistance levels vary based on numerous criteria. However, all programs consider the number of family maintainers, the number and age of children, the capacity of family members to take on work (“employability”), and disability.

All programs have design features to assist persons with disabilities, including higher exemption levels on assets and income, higher basic assistance levels, special disability-related allowances, and supplementary health and medical benefits. An applicant with a disability may also meet the criteria of an individual with multiple barriers to employment that includes substance abuse, child-care or transportation issues, a history of long-term unemployment, and low basic skills. Such individuals may require interventions to address personal circumstances in order to be able to find and maintain employment and, as such, may have higher benefit levels and exemptions to reflect their longer-term reliance on social assistance.

Table 10B indicates the variations across the country in the ways disability status affects the levels of monetary benefits, employment assistance, and other types of in-kind assistance.

- Persons with disabilities can be part of a social assistance program that includes all persons seeking social assistance. In these jurisdictions, people with disabilities are assessed to have higher “basic assistance levels” and receive higher incomes (NS, QC).
- Persons with disabilities can be provided with benefits that include assessments at higher “basic assistance levels” and, in addition, are provided supplements to address disability-related expenses (AB, MB, NL, PE, SK) unless the “handicap” is severe (BC, NT, NU, YT).
- Persons with disabilities can also be administered under a separate program with separate determinations of basic needs and separate employment and in-kind assistance provisions (NB through the Extended Benefits Program, ON through the Ontario Disabilities and Supports Program/ODSP and for persons with “severe

handicaps” in AB through the Assured Income for the Severely Handicapped Program/AISH).

Text Table 10A illustrates the effect of higher basic assistance levels and special disability-related allowances on social assistance benefit levels in 2008. It juxtaposes the maximum annual total benefit for a single person with a disability with those received by a single employable person without a disability.

<b>Province</b>	<b>Single/Employable \$</b>	<b>Single with a Disability \$</b>
Newfoundland and Labrador	9,147	10,647
Prince Edward Island	6,432	8,517
Nova Scotia	6,060	8,080
New Brunswick	3,447	8,254
Quebec	6,904	10,348
Ontario	6,732	12,030
Manitoba	6,186	9,077
Saskatchewan	7,768	10,106
Alberta: Assured Income	5,186	8,530
Assured Income for the Severely Handicapped:		13,050
British Columbia	7,355	10,912
Yukon	13,460	16,615
Northwest Territories	16,942	20,544
Nunavut	40,716	42,956

Source: NCW (2009).

As indicated in Table 10B, several provinces provide incentives to work that are tailored to beneficiaries with disabilities. British Columbia, Manitoba, Ontario, Saskatchewan, and Yukon allow people with disabilities to retain benefits while receiving higher levels of employment earnings than other social assistance beneficiaries. Alberta, Manitoba, and Ontario provide enhanced support benefits (e.g., work clothing, transport allowances). Finally, Prince Edward Island extends work-related and other benefits to all persons with low and moderate income irrespective of their status as social assistance beneficiaries. These incentives are designed to ensure that those who successfully leave social assistance for employment are not left worse off by accepting employment.

Employable persons in receipt of income support are encouraged to access the various disability and federal and provincial/territorial employment programs described in Chapter 5 of this report.

### **Continuation and Termination of Benefits**

Should a recipient deemed able to sustain employment choose not to pursue a job or retraining, that individual may be subject to penalties ranging from a specified reduction in benefits over a prescribed period of time to the full cancellation of benefits. Employable persons may be required to sign and adhere to an individualized contract that stipulates training and rehabilitation measures to be undertaken to regain financial independence.



### **Review and Appeals Process**

Most provinces provide a two-stage appeal process involving review and dispute resolution, usually by a case worker not implicated in the file, followed, where necessary, by reference to a quasi-judicial appeal tribunal.

### **Interactions with Other Programs**

Social assistance is considered to be a last payer, that is, support of last resort. As a result, with the exception of some tax credits (e.g., the GST/HST rebate, the Canadian Child Social Transfer/CCST, and provincial property tax rebates), and in-kind services (e.g., assistive device programs), benefits received from other programs reduce social assistance on a dollar-for-dollar basis.

<b>Text Table 10B: Summary of Provincial/Territorial Social Assistance Disability Specific Income and Employment Benefits</b>						
<b>Province/ Territory</b>	<b>Enabling Legislation</b>	<b>Social Assistance with Higher Basic Needs Allowance</b>	<b>Supplementary Income Benefits</b>	<b>Targeted Disability- Related Program</b>	<b>Supplementary Support Benefits</b>	<b>Supplementary Employment Related Supports</b>
Newfoundland and Labrador	<i>Income and Employment Support Act</i>	√	√ (Flat Rate Allowance for the Disabled)			
Prince Edward Island	<i>Social Assistance Act/ Rehabilitation of Disabled Persons Act (DSP)</i>	√ (Eligible DSP recipients)	√ (Non-DSP beneficiaries)		Disability Support Program (DSP) (all persons with long-term disabilities who have low and moderate income) Personal and special care allowances for those with other disabilities	DSP provides training, allowance for work equipment, travel to work, child care
Nova Scotia	<i>Employment Support and Income Assistance Act</i>	√	√		Higher shelter allowance	
New Brunswick	<i>Family Income Security Act</i>			Extended Benefits Program		
Quebec	<i>Individual and Family Assistance Act/ Individual and Family Assistance Regulation</i>	√	Social Solidarity Program √			

<b>Text Table 10B: Summary of Provincial/Territorial Social Assistance Disability Specific Income and Employment Benefits</b>						
<b>Province/ Territory</b>	<b>Enabling Legislation</b>	<b>Social Assistance with Higher Basic Needs Allowance</b>	<b>Supplementary Income Benefits</b>	<b>Targeted Disability- Related Program</b>	<b>Supplementary Support Benefits</b>	<b>Supplementary Employment Related Supports</b>
Ontario	<i>Ontario Disability Support Program Act</i>			<i>Ontario Disabilities Support Program</i>		<p>\$0.50/dollar retention of net employment earnings plus allowances for transition to work, retention of ODSP supplementary benefits</p> <p>Health, dental care, assistive devices program supplement</p> <p>Allowance for transition to work; work-related costs; child care</p>
Manitoba	<i>Employment and Income Assistance Act</i>	√	√ (Income Assistance for Persons with Disabilities)			Retention of first \$115/month plus \$0.30 per dollar of net income retention with allowances for transition to work, retention of supplementary benefits, work clothing, child care, transportation (bus pass)
Saskatchewan	<i>Saskatchewan Assistance Act</i>	√	√ Saskatchewan Assured Income for Disability (SAID)		Saskatchewan Rental Housing Supplement; supplementary health care benefits	Retention of first \$100/month and \$0.25/dollar of the next \$500

<b>Text Table 10B: Summary of Provincial/Territorial Social Assistance Disability Specific Income and Employment Benefits</b>						
<b>Province/ Territory</b>	<b>Enabling Legislation</b>	<b>Social Assistance with Higher Basic Needs Allowance</b>	<b>Supplementary Income Benefits</b>	<b>Targeted Disability- Related Program</b>	<b>Supplementary Support Benefits</b>	<b>Supplementary Employment Related Supports</b>
Alberta	<i>Income and Employment Supports Act</i>	√ (Non-AISH beneficiaries)	√(Personal Needs Allotment for Non-AISH beneficiaries)	Assured Income for the Severely Handicapped (AISH)		AISH: training, tools, other employment expenses; child care
British Columbia	<i>British Columbia Employment and Assistance for Persons with Disabilities Act</i>	√	√Disability Assistance		Reduced cost transit pass  Disability Housing Assistance	Earnings exemption of \$500 month
Yukon	<i>Social Assistance Act</i>	√	√			Earnings exemption of \$3,900/year
Northwest Territories	<i>Social Assistance Act</i>	√	√			
Nunavut	<i>Social Assistance Act</i>	√	√			

## 11. Workers' Compensation

Workers' compensation provides no-fault compensation to most Canadian workers who experience a job-related injury or illness. The five cornerstones to workers' compensation laws are often referred to as the Meredith Principles. These cornerstones form the basis for each provincial/territorial workers' compensation board and commission in Canada.<sup>37</sup>

- No-fault compensation: Workplace injuries are compensated regardless of fault.
- Collective liability: All employers share the cost of the compensation system.
- Security of payment: A fund is established that is adequate to assure compensation payments will be available.
- Exclusive jurisdiction: Compensation claims are directed solely to the compensation board and the board is the decision maker and final authority for all claims.
- An independent governing board that is autonomous, non-political, and financially independent: The administration of the system is solely focused on the needs of its employers and labour clients.

### Jurisdiction and Service Delivery

Each province and territory in Canada has workers' compensation legislation that created and empowered its own workers' compensation board and commission. Federal government employees, including employees of Crown corporations and agencies, are covered under the *Government Employees' Compensation Act*.<sup>38</sup>

### Eligibility for Benefits

Workers' compensation benefits are available to most workers in Canada but not all. In 2008, it was estimated that, overall, 83.2 percent of Canadian workers were covered but, this percentage varies among the provinces and territories.<sup>39</sup> Each province/territory has its own unique coverage requirements, and changes to the coverage are made regularly.

### Application Process

All claims are to be made in writing by the injured/ill employee after the employer has been notified of the accident/condition.<sup>40</sup> The time frame for submitting a claim varies among the jurisdictions as does the nature and extent of the supporting documentation required.

### Definition and Determination of Disability

In most jurisdictions, entitlement to workers' compensation benefits depends primarily on the definitions of "accident," "injury" in the workplace, and "occupational disease" rather than on the definition of "disability." Benefits are paid when the results of an accident, injury, or illness lead to the employee being off work past the day of

accident/notification of illness, when there is a loss of earnings, or a permanent impairment (loss of physical or mental function) occurs.

### **Review and Appeals Process**

While there are slight differences among the provinces/territories, fundamentally, all decisions are initially reviewed using a collaborative, two-step process. The first step involves a discussion between the person who made the decision and either the employee or the employer where all considerations that went into making the decision are provided, and additional information (if available) is accepted for consideration. The second step is initiated if concerns remain. It involves a request for review that typically is to be submitted within one year following an original decision and is undertaken by internal reviewers at the workers' compensation board. If resolution is still not achieved, the case is typically forwarded to an internal appeal body and, if necessary, to an external review body for final resolution.

### **Benefits Provided**

In most provinces/territories, the right to benefits begins at the moment following injury or onset of illness.<sup>41</sup> Benefits provided by workers' compensation can be grouped under five categories: health care, rehabilitation, temporary financial support, permanent function loss, and survivor.

- Most health care expenses (including equipment and supplies) incurred as a result of an injury or work-related disease are covered by workers' compensation with some expenses requiring pre-approval.
- Workers' compensation provides rehabilitation services and programs to workers injured on the job to return workers to their pre-injury health and to get injured workers back to work. These services include vocational rehabilitation, and supports in assuring re-employment and in other areas of daily life.
- Temporary financial support includes wage loss benefits, loss of retirement income benefits, and permanent disability benefits. Wage loss benefits are a proscribed percentage (between 75 and 90 percent, depending on the province) of "net" normal wages, that is, gross wages at the time of injury (or in some cases, an average over a time period prior to injury/illness) minus provisions for C/QPP, EI contributions, and income tax, since benefits are not subject to these payments.<sup>42</sup> All the provinces and territories (except Manitoba) have a maximum amount of earnings that will be covered. Effective January 1, 2010, the maximum amount of earnings covered ranged from \$77,610 (YT), \$77,600 (ON), and \$77,000 (AB) to \$47,500 (PE), \$50,800 (NS) and \$51,235 (NL). In addition, in most provinces, beneficiaries receiving loss of earnings benefits for an extended period (varying from one to two years), have additional moneys put aside to compensate for the loss of pension contributions. The size of this benefit varies among jurisdictions, ranging from five to ten percent of the loss of earnings benefit to actual pension plan contribution amounts.

- If an injured worker is determined to have a permanent disability because of the work injury, he/she may receive additional compensation that could involve lump sum payments and/or annualized monthly economic loss payments. Provinces/territories offer these payments based on schedules of degree/percentage by type of permanent impairment. Depending on the province, it can also take into account other factors, such as age when injury/illness occurred and prior earnings.
- If a worker dies due to a work injury/disease, her/his dependants may be eligible to receive fatal and dependency benefits. In most provinces/territories, this lump sum includes funeral/burial expenses and related costs. Spouses and dependent children are also eligible for dependency benefits, which vary by jurisdiction. Benefits for spouses continue after remarriage. Benefits for children are subject to an age criterion but are extended in the case of dependent children who exceed the age criterion but are indigent. All provinces/territories (except British Columbia and Nova Scotia) provide survivor benefits to same-sex and common-law partners.

### **Continuation and Termination of Benefits**

Loss of earnings benefits are provided until the disability or earnings loss ceases. The benefit can be modified if either factor changes. The workers' compensation board or commission may also suspend, reduce, or terminate any workers' compensation benefit payable to a worker if the worker fails to:

- take all reasonable steps to reduce or eliminate a permanent impairment and loss of earnings resulting from an injury;
- seek out and co-operate in any medical aid or treatment that, in the opinion of the case manager, promotes the worker's recovery and return to work;
- take all reasonable steps to provide the board or commission with full and accurate information on any matter relevant to a claim; or
- notify the workers' compensation board or commission immediately of any change in circumstances that affects or may affect the worker's initial or continuing entitlement to compensation.

The workers' compensation board may suspend, reduce, or recover the compensation if a worker does anything to imperil or retard recovery, such as engaging in injurious or unsanitary practices, refusing treatment, or acting on independent medical advice. The board can also terminate benefits when a doctor indicates the injury or illness has healed with no residual disability, and no further rehabilitation is required.

Finally, if a worker takes up residence in another jurisdiction and has not been granted a permanent disability award, the workers' compensation board may terminate payment of compensation unless it is satisfied that the period of disability has not been prolonged by the move or unless the worker provides medical evidence that the disability still exists and is likely to be permanent. In some provinces/territories, the payment frequency can be changed if the worker leaves the jurisdiction.

## Employer Obligations

Workers' compensation boards and commissions are fully funded by employers. With the exception of those that are individually liable, employers are required to pay a certain dollar amount per \$100 of payroll, referred to as an "assessment rate" or "premium." Individually liable employers (or self-insurers) who are provided services by workers' compensation boards pay (either through reimbursement or a deposit account) the actual cost of compensation paid in respect of their workers (including administrative overheads).

Money collected from employers is accumulated in what is usually termed an "accident fund." In general, these moneys provide wage loss benefits to workers injured on the job who are unable to work due to the work injury. The fund also helps cover medical aid and rehabilitation to workers injured on the job, and the general administration of the board.

Each jurisdiction has an average provisional assessment rate. The establishment of the overall premium requirement is done at the board level. Employers and industries with similar operations and risks are grouped to set industry rates. However, the employer does not necessarily pay this average assessment rate. In determining individual employer premiums, a balance is assessed between collective liability where workers' compensation costs are spread across all employers and accountability where premiums reflect the accident experience of industries and employers.

Financial incentives are provided through various pricing programs to encourage accident and illness prevention and disability management. For example a board may increase the premiums otherwise payable by a particular employer if, in the opinion of the Board an employer has not taken sufficient precautions to prevent accidents to workers or the working conditions are not safe.

Premiums may decrease if the employer has an accident record that has been consistently good and the employer's ways, works, machinery, and appliances conform to modern standards so as to reduce the hazard of accidents to a minimum. The employer must also have complied with the regulations made under occupational health and safety laws and regulations respecting the availability of first aid.

In addition, accidents and illness prevention are also essential elements of employer obligations. All provinces and territories provide regulatory mechanisms covering occupational and workplace health and safety. These strategies have four basic elements directed toward creating and sustaining safe workplaces and work practices:

- the provision of training and education;
- prevention through the provision of advice and guidance in the design of workplaces and work practices;
- regulation through the development of laws and regulations; and
- enforcement through inspections and imposition of penalties.

Responsibility for various elements of occupational health and safety is shared between ministries of labour and workers' compensation boards. In most provinces and in all the



territories, the boards are primarily or solely responsible for providing workplace safety training and education, and in encouraging employers to adopt accident prevention strategies. Regulation and enforcement are, in most provinces, the purview of ministries of labour. Workers' compensation boards provide incentives and penalties through rate determination to encourage the creation and maintenance of safe workplaces and practices.

### **Employment-Related Services, Benefits, and Provisions**

Workers' compensation boards across the country offer similar services in the areas of vocational rehabilitation and supports in assuring re-employment and in other areas of daily life. Vocational rehabilitation services generally include:

- work assessment (used to identify work abilities and to inform decisions about safety and readiness for RTW for injured workers);
- early RTW<sup>43</sup> and work hardening (building worker's physical capabilities/increasing workday tolerance);
- workplace or work site modifications including ergonomic services;
- the purchase of tools and equipment for a new job;
- employer subsidies and wage top-ups;
- training (on-the-job, assistance with formal and academic training including tuition, books, and supplies, subsistence support and transportation); and
- placement services, job search, relocation assistance, and help in moving to self-employment.<sup>44</sup>

Supports in assuring re-employment include:

- employer obligations to re-employ (in some provinces only if an employee has a tenure of a specified time, usually a year);
- employer obligations to accommodate the workplace;
- employer obligations to re-instate the same level of pay, seniority, and benefits; and
- protection from dismissal, suspension, layoff, discipline, and discrimination related to the work-related injury or illness.

Supports in other areas of daily life include:

- adaptations/modifications within the home and to a motor vehicle;
- home care, home maintenance, child care and personal care assistance;
- psychological and social counselling;
- legal services and financial counselling; and
- rehabilitation and counselling services for spouses and other dependants.

### **Interactions with Other Programs**

Most workers' compensation boards and commissions require clients facing significant long-term wage loss as a result of a work-related injury or illness to apply for C/QPP-D and deduct the C/QPP-D benefits totally or partially from the wage loss benefit. Further,

other insurance or retirement benefits directly ascribable to an accident or injury at work may offset wage loss benefits. However, in most work-related injury or illness circumstances, the workers' compensation board is a first payer with respect to wage loss and health benefits, reducing payment and service benefits provided, for example, by private disability and health insurance, EI, and social assistance.

<b>Year</b>	<b>NL</b>	<b>PE</b>	<b>NS</b>	<b>NB</b>	<b>QC</b>	<b>ON</b>	<b>MB</b>	<b>SK</b>	<b>AB</b>	<b>BC</b>	<b>YT</b>	<b>NT</b>	<b>NU</b>	<b>CANADA</b>
2008	163,949	23,414	299,444	168,703	2,177,150	4,147,823	240,582	244,792	838,160	1,349,156	20,278	27,235	-	9,700,686
2007	149,211	21,991	294,521	159,027	2,142,433	3,929,499	214,971	229,490	796,501	1,256,591	19,694	27,235	-	9,241,164
2006	153,945	21,012	257,953	160,608	2,021,241	3,666,653	201,740	227,172	816,001	1,195,628	20,650	25,005	-	8,767,609
2005	149,819	19,061	262,217	154,971	1,916,865	3,548,124	190,430	214,096	772,245	1,181,808	17,403	23,033	-	8,450,072
2004	145,683	18,879	198,897	144,118	1,908,731	3,405,307	183,039	220,771	781,694	1,145,860	15,802	19,315	-	8,184,717
2003	152,001	19,176	183,184	144,694	1,850,275	3,161,000	176,885	219,853	797,487	1,108,787	12,716	20,889	-	7,846,947
2002	139,142	18,728	170,698	139,438	1,740,000	3,003,000	165,935	237,744	965,387	1,136,876	12,617	27,621	-	7,757,186
2001	141,545	22,284	166,656	142,822	1,645,015	2,877,000	172,107	219,453	758,408	1,198,760	10,829	23,643	-	7,378,522
2000	106,644	18,993	125,468	94,577	1,261,063	2,342,000	132,855	139,778	500,301	915,924	7,609	21,302	-	5,666,514
1999	99,428	18,017	112,208	87,686	1,196,486	2,203,000	137,301	125,861	413,370	878,206	8,292	16,125	-	5,295,980
1998	85,740	12,764	96,315	82,579	1,156,992	2,262,000	114,913	116,127	368,012	813,048	6,353	14,513	-	5,129,356
1997	77,616	11,604	90,717	72,132	1,142,300	2,249,000	110,601	111,900	335,400	929,388	7,427	15,200	-	5,153,285
1996	74,898	13,900	107,446	70,033	1,179,400	2,371,000	110,483	106,700	322,000	687,680	6,602	15,800	-	5,065,942
1995	74,129	14,421	104,786	64,909	1,217,208	1,987,396	110,852	112,970	281,158	711,003	6,932	14,647	-	4,700,411
1994	71,948	12,981	101,769	66,126	1,219,810	2,330,000	99,016	107,208	300,092	714,540	6,722	17,944	-	5,048,156
1993	70,727	11,703	110,423	69,711	1,214,852	2,435,000	89,094	98,132	362,108	659,984	5,479	20,379	-	5,147,592
1992	82,085	11,139	143,238	63,750	1,323,768	2,444,000	107,465	86,902	404,165	624,959	6,493	11,259	-	5,309,223
1991	86,696	10,928	125,940	65,161	1,326,264	2,342,000	114,116	82,687	408,537	503,588	3,643	12,615	-	5,082,175
1990	73,929	10,412	106,753	66,719	1,187,379	2,059,000	112,316	81,143	360,250	461,263	3,408	9,250	-	4,531,822
1989	54,449	8,523	110,834	49,633	1,007,657	1,782,000	97,021	83,548	315,193	411,318	3,255	10,818	-	3,934,249
1988	54,167	7,605	70,786	45,328	952,732	1,628,000	91,829	104,366	309,983	369,896	3,291	10,018	-	3,648,001
1987	41,592	6,991	67,744	50,119	953,837	1,466,000	88,122	86,395	314,253	319,284	3,054	9,290	-	3,406,681
1986	32,652	5,005	67,697	44,331	942,454	1,248,739	80,905	82,540	319,720	290,576	1,935	6,927	-	3,123,481
1985	30,079	4,575	55,954	42,194	809,837	1,097,584	72,370	83,429	259,084	267,729	2,011	6,559	-	2,731,405
1984	29,954	3,315	53,298	39,580	756,572	978,940	63,595	80,945	200,762	274,443	1,965	4,891	-	2,488,260

## Notes:

1. Expenditures cover benefit payments for all years paid during the year for assessable employers. Excludes administration costs.
2. Data subject to the collection practices, reporting requirements, claims policies, and definitions used by the various boards: thus, data are not comparable between jurisdictions or over time.
3. Beginning in 2001, data include benefits payments for all years paid during the year for assessable and self-insured employers as well as for health care and vocational rehabilitation. Excludes administration costs.

Source: Up to 1999, data provided by Labour Program, HRDC. From 2000, data obtained from the Association of Workers' Compensation Boards of Canada.

Year	NL	PE	NS	NB	QC	ON	MB	SK	AB	BC	YT	NT	NU	CANADA
2008	4,262	879	8,143	4,700	84,095	78,652	17,115	13,757	32,414	63,319	560	936	-	308,832
2007	4,388	872	8,294	4,489	87,392	81,302	17,346	13,885	35,237	63,858	580	936	-	318,579
2006	4,595	812	8,351	4,276	94,092	83,552	18,161	14,178	37,701	63,202	497	916	-	330,333
2005	4,846	877	9,025	4,451	99,290	90,146	17,811	14,197	36,448	60,529	447	960	-	339,027
2004	4,857	1,038	9,214	4,197	104,385	90,762	17,274	13,910	36,093	58,425	453	822	-	341,430
2003	5,270	1,241	8,867	4,611	107,335	93,612	17,610	15,170	36,694	57,116	443	941	-	349,678
2002	5,540	1,348	8,738	4,702	110,432	95,951	17,938	15,646	38,527	59,688	496	974	-	359,980
2001	6,199	1,884	9,090	5,177	113,067	98,687	18,569	15,100	38,973	66,244	445	900	-	374,135
2000	6,647	2,066	9,248	5,361	119,315	104,455	19,740	14,976	39,511	70,818	399	848	-	393,384
1999	6,616	2,088	8,223	6,500	116,961	101,009	19,343	13,281	35,501	70,334	446	763	-	381,065
1998	5,556	2,014	8,188	5,954	113,004	97,436	19,175	13,802	36,201	71,696	411	709	-	374,146
1997	5,060	1,812	8,211	5,571	113,986	102,032	18,077	14,137	35,373	72,700	533	860	-	378,352
1996	5,050	2,442	8,009	5,310	119,831	103,321	17,580	13,686	31,947	71,742	505	1,014	-	380,437
1995	6,169	2,450	10,536	4,348	131,943	119,047	18,344	13,342	29,470	78,400	544	1,083	-	415,676
1994	6,504	3,434	11,777	4,893	136,126	125,886	17,789	12,651	29,202	81,488	478	1,172	-	431,400
1993	6,077	1,983	11,754	5,835	136,541	125,386	16,218	12,042	29,162	79,503	453	1,064	-	426,018
1992	7,992	2,134	10,876	9,813	151,101	137,213	17,748	11,480	30,211	81,003	413	1,210	-	461,194
1991	9,419	2,259	12,083	11,523	181,148	155,754	18,826	12,963	36,466	81,236	343	1,187	-	523,207
1990	10,397	2,564	11,295	11,871	209,489	184,722	22,253	13,405	39,253	87,147	192	1,352	-	593,940
1989	13,282	2,461	10,281	12,410	218,973	201,264	21,631	13,833	38,686	81,046	377	1,685	-	615,929
1988	9,986	2,438	11,497	11,344	216,073	208,521	22,161	15,208	40,525	74,815	463	1,305	-	614,336
1987	9,099	2,067	11,151	9,855	217,291	209,520	22,751	15,513	47,300	66,869	375	1,132	-	612,923
1986	8,748	1,928	12,651	10,994	210,001	203,241	23,592	16,621	47,058	63,066	320	966	-	599,186
1985	8,666	1,797	11,779	11,290	198,430	188,461	22,625	16,712	48,004	62,052	244	1,289	-	571,349
1984	9,140	1,532	12,023	11,105	179,239	172,002	21,236	16,592	41,228	60,044	283	1,268	-	525,692

## Notes:

1. Workers' Compensation is an employer-funded program to protect members of the labour force against occupational injury or disease.
2. Starting in 1996, the criteria for reporting benefits in Quebec were revised.
3. Data are subject to the collection practices, reporting requirements, claims policies, and definitions used by the various boards; thus data are not comparable between jurisdictions or over time.

4. The number of occupational injuries compensated during a particular year includes claims originating in previous years.
5. Data include total number of lost-time claims and the number of fatalities accepted.

Source: Up to 1995, data provided by Labour Program, HRDC. From 1996, data obtained from the Association of Workers' Compensation Boards of Canada.

## 12. Short- and Long-Term Disability Insurance

A number of insurance products in the private marketplace cover employment earnings loss due to illness or injury not covered by publicly funded or mandated programs. About half of all employees in Canada are insured by these products. The two most common are short- and long-term disability.

Short-term disability insurance provides earnings substitution benefits for a limited time<sup>45</sup> (six to eight months, but in some cases up to a year) to persons unable to work or who have limited capacity to work at one's occupation while recuperating from an injury or illness. Short-term disability insurance often comes into effect following exhaustion of employment-related sickness benefits and may supplement and extend beyond the exhaustion of EI sickness benefits.<sup>46</sup>

Long-term disability insurance provides benefits when an injury or illness results in a person not being able to work (progressing over time from one's own job or occupation to any work) for an extended or permanent period.<sup>47</sup> Long-term disability insurance usually takes over at the limit of the short-term coverage.

A third less commonly adopted insurance product — group critical illness insurance — fills the gap between short- and long-term disability insurance and life insurance. It provides a tax-free lump sum payment within 30 days of the diagnosis of a critical illness, unrelated to employment. The payment is related to the severity of the illness, in a manner similar to the workers' compensation permanent disability benefit.

### Service Delivery

Short- and long-term disability insurance products are usually adjudicated by the insurer and the insurer manages the delivery of services.

### Eligibility for Benefits

Disability insurance plans may be provided as a fringe benefit by employers, purchased or co-paid as part of a group plan<sup>48</sup> or purchased directly from an insurer in the marketplace (often by self-employed persons and contract employees<sup>49</sup>). Plans purchased by employees have a major income tax advantage, since benefits are not subject to income tax, while those provided by employers are treated as fully taxable benefits of employment (in the manner of salaries or wages).

If not covered by any other plan, program, or benefit, short-term disability insurance comes into effect following a covered accidental injury or hospitalization or eight days following the onset of an illness. Otherwise, it typically comes into effect following the exhaustion of other short-term measures. Long-term benefits come into effect following a qualifying period, coinciding with the end of short-term coverage.

Some insurers exclude claims for at least some disabilities that are “attributable to pre-existing medical condition,” suicide/self-inflicted injuries, commission of a crime, or disabilities occurring while in prison or due to war.

### **Application Process**

Claims are initiated by the individual or, if incapacitated, a family member or a person designated to have power of attorney.

### **Definition and Determination of Disability**

Disability insurance plans do not insure against loss of income; they insure against loss of capacity to work. For the first two years following the initiation of short- and long-term disability, the disability is defined as the inability of a person to perform the duties, first of her/his own job, and, during the latter parts of this period (usually following rehabilitation) efforts, the definition is extended to one’s own occupation. At the two-year mark, the disability is usually extended to the essential duties of any occupation (often termed a job for which one is reasonably suited). Given the significant distinction between the two definitions of total disability, there is a good chance that a beneficiary may receive benefits during the first 24 months, when unable to perform the duties of her/his own occupation, only to be denied benefits after 24 months even though the medical condition has essentially remained the same.

Medical evidence is crucial in determining whether an individual is disabled and therefore entitled to disability insurance. Pursuant to most policies, the insured must provide satisfactory evidence from the treating doctor to establish initial entitlement. There is also an obligation to provide further information on request.

To make a proper evaluation, the employee’s medical information must include the medical diagnosis, the basis for the diagnosis, a summary and interpretation of any test results, the proposed treatment and the prognosis. Given that the definition of disability focuses on the insured’s functional limitations, the medical evidence must be such that it enables the insurer to evaluate the degree to which the person may carry out the duties of her/his own occupation initially and, ultimately, any occupation for which the individual is qualified.

Because the focus is on the occupational limitations of the insured, a full understanding is required by a prescribing medical practitioner of the nature of the occupation including the duties, the physical requirements, mental demands, and the degree to which the disability affects the insured’s ability to perform the job. Further, an assessment is required of the effect that continued performance of the duties may have on the insured’s health. That is, while the employee may be capable of performing her/his duties at the present time, if the continued performance of the job will detrimentally affect the employee’s health in the long run, then for all intents and purposes the individual is disabled.

To assess the degree of occupational limitations, an assessment may also be made of the effect the disability has on the individual’s daily living. To evaluate the insured’s medical

condition in light of the occupational limitations, the insurer may also wish to conduct a vocational assessment using experts in this area. A full vocational assessment will consist of an evaluation of the insured's interests and aptitudes, and provide more extensive information as to the individual's ability to function in daily life, including the various physical demands.

### **Review and Appeals Process/Continuation and Termination of Benefits**

It is common for disputes to arise regarding ability to work, particularly at the two-year mark where, commonly, long-term disability eligibility criteria are extended to inability to perform any work-related duties. These usually involve a review by the insurer; commonly, resolution requires deferral to the tort system.

### **Benefits Provided**

Short-term disability benefits allow for earning replacements that are close to prior earnings. Long-term disability benefits provide a percentage of pay/earnings ranging up to 50 to 70 percent of gross weekly earnings at the time of onset.<sup>50</sup>

Long-term disability benefits are often reduced to reflect other disability-related benefits (e.g., CPP-D, workers' compensation, automobile insurance). These benefits generally include an inflation factor and continue for as long as the employee remains disabled, but not generally beyond the age of 65.

In many ways, non-income benefits parallel those of workers' compensation and can include medical costs, physiotherapy, and rehabilitation as prescribed by a medical practitioner.

### **Interactions with Other Programs**

Disability insurance plans typically do not cover work-related accidents or injuries (i.e., those covered by workers' compensation), the results of an automotive accident (as covered by provincial automobile insurance legislation), or a third-party criminal act (as covered by victims of crime federal/provincial legislation). When it is clear that an accident or injury has led to a permanent incapacity or imminent death, long-term disability is a second payer to C/QPP-D, with insurance remuneration reduced on a dollar-for-dollar basis by these program benefits.

An exception occurs with EI sickness benefits.<sup>51</sup> In this case, short- and long-term disability insurance plans take on first payer status, thus reducing EI benefits. To avoid this situation, short-term disability plans sometimes initiate payments following the exhaustion of EI sickness benefits. Employers can opt to use short-term disability benefits instead of EI sickness benefits. In this case, EI premiums are reduced on a prorated basis.



### 13. Paid Sick Leave

Paid sick leave is not mandated by any federal or provincial/territorial labour legislation.<sup>52</sup> However, about half of salaried or wage-earning employees in Canada receive paid sick leave.<sup>53</sup> Paid sick leave is generally both self-insured and adjudicated by the employer, with benefits directly paid from payroll; that is, it is usually a fringe benefit of employment specified in a contractual agreement.

#### ***Benefits Provided***

Benefits are usually the full amount of the employee's wages or salary. These benefits are typically subject to all employment-related deductions including normal taxes, and C/QPP and EI premiums.

Benefits usually cover a short period — often a maximum two to three weeks annually. However, benefits provided by some employers are “bankable” (i.e., unused benefits can be carried forward from year to year or month to month)<sup>54</sup> and, in other cases, increase with seniority/tenure (often coming into effect after an initial period of employment and progressing from a minimum of two to three weeks to a maximum of four weeks).

Typically, medical certification of inability to work due to illness is required only when absences are protracted (usually longer than three to five days).

## 14. Automobile Insurance

In Canada, motor vehicle operators must obtain insurance that includes coverage in the event of an accidental injury caused by their vehicle.<sup>55</sup> Coverage is provided by private insurers or Crown corporations. However, the nature and limits of standard benefits are stipulated through provincial government legislation and regulations.<sup>56</sup>

### Benefits Provided

Benefits cover:

- income replacement when an injured person suffers a substantial inability to perform the essential tasks of her/his employment, self-employment, or formal schooling, and benefits for non-earners who are unable to carry on “a normal life” as a result of an accident related injury;
- compensation for lost capacity to undertake non-remunerated caregiving, home maintenance and cleaning; and
- costs associated with medical, rehabilitation, and attendant care.

The income replacement benefit can begin a week following the accident, or at a point within the two-year period following the accident when a condition related to the accident manifests itself. Coverage regarding an inability to perform the essential tasks of livelihood or schooling lasts for up to two years following an accident.<sup>57</sup> At that point, coverage continues only if the insured person experiences a complete inability to engage in *any* employment or self-employment for which he or she is reasonably suited by education, training, or experience

The full income replacement benefit equals about 70 to 80 percent of the earnings in the period just before the accident. If the earning loss benefit extends beyond the age of 65, the benefit becomes a pension replacement, providing about two percent per year of coverage. If the benefit stretches beyond the two-year mark, a minimum payment is provided.<sup>58</sup>

This same minimum benefit is provided to students unable to continue their formal education and those non-earners unable to carry on a normal life for a period of at least six months. (In Ontario, these benefits in 2011 are \$185 per week, rising to \$320 if the incapacity stretches beyond two years; in British Columbia, \$145, rising to \$300).

If, as a result of an accident-related injury, the person is unable to continue caregiving activities for which remuneration is not given, an allowance is provided for a replacement. The benefit is provided for up to two years unless the caregiver is unable to carry on “a normal life” as a result of an accident-related injury. The insurer is also required to provide for the costs of replacing services provided in housekeeping and home maintenance.

In addition, the insurer is required to pay for medical, rehabilitation, and attendant care. Rehabilitation services are those that are reasonable and necessary for reducing or eliminating the effects of any disability resulting from the impairment or to facilitate the person's reintegration into her/his family, the rest of society, and the labour market. These can include:

- life skills training;
- family, social rehabilitation, financial, and employment counselling;
- vocational/academic assessments and training; modifications, aids and devices in the workplace, home or motor vehicle; and
- attendant care by an aide, attendant, or through a long-term care facility.

Unless optional coverage is purchased, remunerative benefits are not indexed and other benefits are capped.<sup>59</sup> These caps are conditional on injury severity (ranging from "minor injury" to inability to live "a normal life.")

In most provinces, determinations of benefits and acceptance of treatment/rehabilitation plans by the insurer are not subject to review by any independent body. Remedy must be sought through the tort system. In the provinces of British Columbia, Manitoba, and Saskatchewan, where a Crown corporation is the provider, arbitration mechanisms are in place.

Insurance benefits are not subject to income tax.

### **Eligibility for Benefits**

The injured person is required to undergo a medical examination and agree to a treatment/assessment plan if major medical, attendant care, or rehabilitation is required. The injured person is required to obtain treatment and participate in rehabilitation as is reasonable, available, and necessary to permit her/him to engage in employment or self-employment and shorten the period during which the benefit is payable. The employment/self-employment must entail the essential tasks of the employment or self-employment that are of a type that the insured person is able and qualified to perform, or commensurate with her/his qualifications, and is able and qualified to perform.

### **Interactions with Other Programs**

Benefits provided are net of other first payers including the C/QPP-D, workers' compensation and the EI sickness benefit.

## 15. Victims of Crime Compensation Programs

Violent crime is a social phenomenon that, unfortunately, affects many. As a result, governments have taken an active approach in attempting to lessen the impact of violent crime on victims. Although a price cannot be put on the multitude of forms this impact can take, there is often a visible financial impact on victims of crimes. Financial compensation may aid in certain aspects of this victimization, especially with regard to loss of wages, medical bills, and therapy costs.

In Canada, over the past 30 years, there have been numerous advances in the services available for victims of crime. If eligible, victims of violent crime may seek financial compensation within the province/territory where the crime occurred. These services are available to victims of crime who have incurred a disability as a result of a crime or to their dependants in the case of the death of the victim. “Loss of income” compensation is available in all provinces except Newfoundland and Labrador; it is not available in any of the territories.

### Jurisdiction and Service Delivery

Both the federal and provincial governments play an equally important role with regard to victims of crime. While the federal government enacts and reforms criminal law (mainly in the *Criminal Code*), the provinces have the responsibility to enforce administration and prosecution of those laws.

All the provinces and territories have legislation relating to victims of crime. Some of the legislation includes principles that apply to the treatment of victims and are generally based on the 1985 *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003*.

The Office of the Federal Ombudsman for Victims of Crime (OFOVC) (an independent resource for victims in Canada) was created in 2007 to ensure the federal government meets its responsibilities to victims of crime. The OFOVC is mandated to perform the following functions.

- Facilitate access of victims to existing federal programs and services by providing information and referrals.
- Address victims’ complaints about compliance with the provisions of the *Corrections and Conditional Release Act* that apply to victims of offenders under federal supervision and provide an independent resource for those victims.
- Enhance awareness among criminal justice personnel and policy makers of the needs and concerns of victims and the applicable laws that benefit victims of crime, including promotion of the principles set out in the *Canadian Statement of Basic Principles for Justice for Victims of Crime*.

- Identify emerging issues and exploring systemic issues that impact negatively on victims of crime.

Each provincial program is funded through the consolidated revenue of the province, surcharge revenue, general tax revenue, or a combination of these. Federal funding further assists federal, provincial, and territorial governments in responding more effectively to the needs of victims of crime.

### **Eligibility for Benefits**

In provinces where compensation or financial assistance programs exist (all provinces except Newfoundland and Labrador), victims and survivors of violent crime, such as homicide, sexual assault, domestic violence, assault, and child sexual abuse and neglect may be eligible for financial compensation/benefits for the crime that was perpetrated against them. The victimization must have occurred within the province of application.

While each province determines its own criteria for compensation, it is generally accepted that the injury or death must result from:

- the commission of a violent crime constituting an offence as prescribed by the *Criminal Code*;
- lawfully arresting or attempting to arrest an offender or suspected offender, or assisting a peace officer in executing her/his duties; or
- preventing or attempting to prevent the commission of an offence or suspected offence.

### **Application Process**

The claimant needs to file a report with the police within one year (two years for some provinces), but many exceptions are made. A claimant must file an application for compensation to the program office within the province in which the crime occurred.

The application must include original receipts for compensable expenses. A hearing is held and decisions are generally made between one and five years after an application is made. Compensation/financial benefits will be paid to the claimant in about four to twenty weeks following the hearing.

### **Definition and Determination of Disability**

Financial assistance can be provided to victims injured as a result of certain violent crimes (in all provinces), immediate family members of an injured or deceased victim (in some provinces), as well as some witnesses of violent crime (in some provinces).

A “victim” refers to a person who is injured or killed as a direct result of a prescribed offence or when acting as a “good Samaritan.” Eligible family members include the victim’s spouse, child, or parent. The legal requirements for each category of family members are broad and vary among the provinces. A spouse may include a common-law spouse or an ex-spouse who is still eligible to receive financial benefits according to another enactment (i.e., separation agreement). With reference to the children of victims,

biological children as well as those children the victim treated as her/his own are regarded as children eligible for benefits. Similarly, “parent” may also refer to a person who stands in the place of a parent to a victim.

Witnesses are the final category of potential beneficiaries. A witness refers to an individual who has a strong emotional attachment to the victim but does not have to be related to the victim. In addition, this individual must have witnessed in close proximity “a prescribed offence that causes a life threatening injury to, or the death of, the victim” and/or “the immediate aftermath of a prescribed offence that causes the death of the victim, in circumstances that are sufficient to alarm, shock and frighten a reasonable person with that emotional attachment to the victim.” Finally, this individual must have suffered psychological harm that “is diagnosed by a registered psychologist or a medical practitioner as a recognized psychological or psychiatric condition; and, in the opinion of the person who makes the diagnosis, is a result of the circumstances of the situation.”

### **Review and Appeals Process**

A claimant who is dissatisfied with a decision can request reconsideration in writing. If still dissatisfied, the claimant can appeal to the court.

### **Benefits Provided**

Hundreds of programs exist to provide services and sanctuary to crime victims throughout Canada. They generally provide support and practical assistance. Crime victim assistance programs provide a range of services, including information, crisis intervention, counselling, emergency shelter, advocacy, short- and long-term emotional support, court preparation, accompaniment through the justice system, information sharing with victims of federally sentenced offenders (by the Correctional Service of Canada and the National Parole Board), and referrals.

The maximums benefits and awards vary by province. Expenses compensable by the program vary by type of claimant. Provincial maximums range between \$2,000 and \$127,000, with individual maximums within some categories of award. For example, funeral expenses have a set maximum in some provinces. Other compensable expenses may include:

- medical expenses (i.e., prescription fees, ambulance rides, dental work);
- mental health/counselling expenses;
- pain and suffering (not available in BC, MB, SK);
- support for a child born as a result of a sexual assault;
- lost wages for incapacitated or disabled victims;
- lost support for dependants of victims;
- rehabilitation for disabled victims;
- expenses to obtain documents;
- expenses to attend hearings;
- services to replace work in the home previously performed by the victim;
- property loss/damage; and
- protective measures and relocation expenses.

### **Interactions with Other Programs**

The compensation/financial assistance program is seen as the payer of last resort; therefore, all other coverage must be exhausted before claims for compensation.

## 16. Personal Injury Compensation through the Tort System

People who acquire disabilities as a result of the wrongdoing or negligence of others may sue the responsible parties to obtain compensation. These personal injury actions are part of what is called the tort system. In this system, the claimant, or plaintiff, must prove there was fault on the part of the responsible party, or defendant, and that the actions of the defendant caused the plaintiff's injuries.

Personal injury tort claims can ultimately be decided by the courts. However, the vast majority of cases are resolved through settlements reached before a trial is held. Smaller cases, in particular, may be settled without a civil action.

An injured plaintiff or defendant is not required to have a lawyer, but lawyers are involved in most cases involving substantial damages. Mounting legal costs as cases progress place pressure on both plaintiffs and defendants to reach settlements.

In most cases, the defendant will have liability insurance to cover some or all of a possible settlement or court judgment, as well as some or all legal expenses. Governments and very large organizations may choose to self-insure, that is, to assume all the risks of litigation without insurance.

### Jurisdiction and Service Delivery

Laws governing personal injury claims are within the jurisdiction of the provinces and territories. Except for Quebec, many key tort principles are based on the traditional English system of judge-made precedents; in Quebec, they are based on the *Civil Code*, derived historically from French law. The courts deciding personal injury claims form part of the civil justice systems of the provinces and territories.

Personal injury lawyers, like other lawyers, are regulated by professional regulatory bodies called law societies in each province and territory. In cases where the plaintiff has acquired a significant disability, the plaintiff will usually retain a lawyer.

The regulation of liability insurers and insurance is divided between the federal and provincial/territorial levels. As explained by the Insurance Bureau of Canada (2009: 3):

The federal Office of the Superintendent of Financial Institutions (OSFI) is concerned primarily with the solvency and stability of insurance companies that are registered under federal statutes.

Financial supervision by provincial superintendents of insurance is limited mainly to insurers operating under provincial charters. However, provincial authorities predominate in the supervision of the terms and conditions of insurance contracts and the licensing of companies, agents, brokers and adjusters.



## Eligibility for Benefits

Eligibility to receive compensation through a personal injury tort action requires:

- that the plaintiff can prove intentional wrongdoing or negligence on the part of the defendant;
- that the plaintiff can prove injuries and losses caused by the actions of the defendant and requiring compensation; and
- that the plaintiff begin the action within the permitted time period, called the “limitation period.”<sup>60</sup>

Practically, success for the plaintiff in a personal injury action also requires:

- that the plaintiff be able to afford the costs of legal fees and obtaining expert medical evidence,<sup>61</sup> as well as the possible award of costs to the defendant’s lawyer if the case is unsuccessful; and
- that the defendant have sufficient insurance, or alternative sources of funding, to pay the settlement or judgment once it is obtained.

## Application Process

While the details differ among jurisdictions, in general, there are 10 steps in a civil action.

1. The plaintiff, usually through a lawyer, prepares a statement of claim with a concise account of the facts on which the plaintiff relies.
2. The court issues<sup>62</sup> the statement of claim.
3. The plaintiff, usually through a representative such as a process server, delivers or serves the statement of claim on all defendants and files an affidavit of service with the court.
4. The defendant prepares a statement of defence and serves it on the plaintiff, and files a copy with the court together with proof of service.
5. The plaintiff and defendant must deliver to each other, and to any other parties added to the case, an affidavit that lists all relevant documents in the party’s power, possession, or control. Copies of the documents must be made available at a party’s request.
6. The plaintiff and defendant usually schedule an examination for discovery, at which the parties are questioned under oath regarding the issues in the case, including the documents identified at step 5. Typically, the lawyers will conduct the examination for discovery. No judge or court official is present. The proceedings are recorded and a transcript can be ordered if necessary.
7. If the case is not settled following examinations for discovery, either party may “set the action down for trial” by serving and filing the trial record, which includes a copy of all relevant documents.

8. In some jurisdictions, the parties are required to attend a pre-trial conference before a judge or a court official to attempt to settle the case or to better define the issues for the trial.
9. At the trial, the parties make opening statements, followed by the examination and cross-examination of witnesses, and concluding with the closing arguments of the parties.
10. The trial concludes with the decision of the judge or jury. Where a judge is presiding over the trial without a jury, the judge may reserve judgment and release it later (Ontario, 2010).

### **Definition and Determination of Disability**

In a personal injury tort action, the plaintiff is compensated for injuries arising from the actions of the defendant. The injuries may be either physical or mental.

In a tort case, it is not required to establish that the plaintiff has a disability as a result of the actions of the defendant. It is sufficient to establish that there were resulting injuries. Nevertheless, if the defendant's actions led to the plaintiff's acquiring a permanent or long-continued disability, this would typically lead to a much higher award of damages than if a full recovery were achieved or anticipated.

What is significant in a tort action is usually not whether the plaintiff meets a general definition of "disability," but whether the plaintiff has acquired a specific disability or disabilities, and what the expected consequences of this are over the course of the person's life.<sup>63</sup> This is determined by the court through expert evidence provided to the court by health professionals, particularly by specialist physicians, but also by occupational therapists, physiotherapists, and others with expertise in particular disabilities, injuries, or conditions. Usually, both the plaintiff and the defendant will engage health professionals in support of their respective cases, and the judge or jury will weigh the evidence.

### **Review and Appeals Process**

Decisions by trial courts may be appealed to the respective courts of appeal in the jurisdiction. A very limited number of cases involving legal issues of fundamental importance are appealed to the Supreme Court of Canada.

### **Benefits Provided**

A personal injury tort action, if successful, results in an award of damages to the plaintiff (Parker, 2002). The underlying principle governing damage awards is that, to the extent that it is possible, the victim should be put in the position that he or she would have been in but for the wrongful actions of the defendant. That is, all of the losses suffered and expenses incurred by the plaintiff are quantified in monetary terms, based on estimates of their lifelong impact, and are payable by the defendant to the plaintiff.

For the purposes of personal injury litigation judgments and settlements, the total amount of damages is divided into different categories or “heads” of damage: non-pecuniary and pecuniary damages.

Pecuniary damages are intended to reimburse specific losses or expenses incurred by the plaintiff before the settlement or trial. This includes lost wages and benefits from time missed at work or lost profits if the plaintiff is a business owner. It also includes specific health-related expenses, such as transportation costs, caregiving, housekeeping, and other out-of-pocket expenses attributable to the injury and/or disability.

Non-pecuniary damages are intended to compensate the victim for future costs and expenses, and for personal injuries or losses of a non-financial nature. Non-pecuniary damages may include compensation for the following, if caused by the injury and/or disability:

- loss of earnings from employment and/or business profits over a lifetime;
- loss of opportunity to contribute through homemaking and caregiving, and to enhance the value of property (e.g., doing home renovations);
- lifetime costs of future care and housekeeping, rehabilitation and education, job accommodations, and of maintaining an accessible home and vehicle;
- damages for pain and suffering, loss of enjoyment of life generally or for loss of the ability to participate in specific activities, and for reduced or lost opportunity to marry; and
- damages payable to a spouse or partner for loss of consortium and to other dependants for loss of support and guidance.

A settlement or court judgment will also contain an amount to cover part or all of the plaintiff’s legal fees.

Personal injury damage awards may range from very small amounts for minor injuries to several million dollars for lifelong catastrophic injuries. The actual amounts received by plaintiffs, especially in the most serious cases, are often limited by the insurance coverage and other financial assets available to the defendant, and may be reduced by legal fees as well.

### **Continuation and Termination of Benefits**

It may take several years to reach a personal injury settlement or judgment, especially in larger and more complex cases, which can impose some hardships on plaintiffs. Once the settlement or judgment is determined, it cannot be varied upward or downward based on a change in the plaintiff’s circumstances. This may be to the advantage or disadvantage of plaintiffs in particular cases.

Where there is a large financial award for a serious lifelong disability, the award is often converted into a structured settlement, which provides for regular payments, thus ensuring that funds will be available over the person’s lifetime.

## **Employer Obligations**

Involvement of the plaintiff's employer in a personal injury tort action is typically limited to providing documentation as to lost time and wages, and perhaps evidence as to the plaintiff's potential for continued employment and advancement both prior to and after the injury and/or disability, as well as evidence regarding necessary job accommodations.

## **Employment-Related Services, Benefits, and Provisions**

As discussed earlier, a personal injury damage settlement or court judgment may include amounts to cover the lifetime costs of any rehabilitation, retraining, and education necessitated by the injury and/or disability. It may also include amounts to cover the lifetime costs of job accommodations.

## **Interactions with Other Programs and Benefits**

The traditional "collateral benefits rule" in Canada (derived from English law) held that benefits from other sources (such as government programs and insurance) were *not* taken into account in determining personal injury tort awards. However, in recent decades some Canadian provinces and territories have enacted statutory amendments to limit the application of the collateral benefits rule, on the grounds that it creates a "double recovery" situation, that is, the plaintiff is compensated from more than one source for the same injury. This has created very complex laws and given rise to considerable difficulties of interpretation, resulting in litigation.

As discussed in Chapter 11, an employee whose injury is covered by workers' compensation is not permitted to sue her/his employer in tort (or any other employer covered by workers' compensation). In some circumstances, however, the employee may be able to sue a third party who is responsible for the injury and/or disability. The workers' compensation system is fully reimbursed for its payments to the employee out of the damage settlement or court award, and the employee may keep any excess amount.

As discussed in Chapter 13, under the motor vehicle accident compensation systems in some provincial and territorial jurisdictions, compensation is paid on a "no-fault" basis according to a statutory scheme, and the right to sue an at-fault driver for additional damages may be restricted or prohibited altogether as a result.

## 17. Tax Measures

A key aspect of the Government of Canada's strategy to assist people with disabilities and their caregivers is its use of tax measures, particularly through personal income tax credits and benefits based on tax definitions.

Unless otherwise indicated, all references to tax rules and amounts in the following discussion are for the 2010 taxation year. Further, all references to "tax credits" are to non-refundable credits. "Non-refundable" means the credit can only be used to offset income tax otherwise owing or payable. A non-refundable credit is only beneficial to individuals with taxable income. Federal non-refundable credits are based on amounts spent or set by legislation. The amounts are multiplied by 15 percent (the lowest marginal rate of tax) to calculate the actual value of the credits to the taxpayer.

Tax "deductions" reduce a taxpayer's taxable income directly. A "benefit" is a payment to an individual or family regardless of whether they owe or pay tax, as is a "refundable credit."

### Federal Disability-Related Tax Measures

#### Disability Tax Credit and Supplement for Children

The Disability Tax Credit (DTC) and the Medical Expenses Tax Credit (METC) are the two most important federal disability-related tax measures. Besides the value of DTC claims to people with disabilities and their families, the DTC is also an eligibility criterion, or "screen" for several other disability-related tax credits, deductions, and benefits.

Individuals of any age may qualify for the DTC (also called the "disability amount") if they are blind, or have an impairment in physical or mental functioning that is severe and prolonged, and the impairment results in a marked restriction in activities of daily living. A prolonged impairment is one that lasts, or is expected to last, at least 12 months. Activities of daily living include speaking, hearing, walking, elimination (bowel or bladder functions), feeding, dressing, and performing mental functions necessary for everyday life. People who are significantly restricted (but not severely restricted) in more than one activity of daily living (including vision) also qualify for the DTC. Finally, individuals qualify for the DTC if they receive life-sustaining therapy at least three times per week, for a total of at least 14 hours.

The DTC recognizes the effect of non-itemizable disability-related costs on a taxpayer's ability to pay tax. The DTC provides a federal tax credit of up to \$1,086.<sup>64</sup> If the DTC-eligible individual has little or no taxable income and does not require some or the entire DTC claim, the claim may be made by a supporting family member, subject to certain conditions.

Families caring for children fewer than 18<sup>65</sup> who are eligible for the DTC may receive further tax relief through the DTC supplement for children, which provides an additional federal tax reduction of up to \$633.

### **Medical Expenses Tax Credit and Refundable Medical Expense Supplement**

A taxpayer may claim medical expenses using the METC for her/himself, a spouse or partner, and dependent children under 18. Subject to certain restrictions, claims may also be made for medical expenses incurred on behalf of other dependent relatives. To be claimed by a taxpayer, the taxpayer's total medical expenses must exceed three percent of their net income or \$2,024, whichever is less.

An extensive list of eligible medical expenses includes a number of disability-related expenditures not usually thought of as "medical," such as home renovations and vehicle modifications for accessibility, attendant care, tutoring services and, in some circumstances, the costs of attending a specialized school.

The Refundable Medical Expenses Supplement (RMES) is based on the same list of allowable expenses as the METC, but provides a refundable credit to working individuals and families with relatively low incomes and high medical expenses. The RMES is intended to reduce work disincentives associated with the loss of health and disability benefits when a person with high medical or disability-related expenses moves from social assistance into the labour force. The RMES has a maximum value of \$1,074 and requires employment or self-employment income of at least \$3,135 to qualify.

### **Other Disability-Related Tax Credits, Deductions, and Benefits**

A number of tax measures contain special provisions that offer enhanced tax relief to individuals eligible for the DTC or their families. Other measures simply require that the individual have "impairment" or be "infirm," without requiring DTC eligibility.<sup>66</sup>

**Families of Children with Disabilities:** In addition to the DTC Supplement for children described above, the following tax claims and benefits are available to parents and guardians caring for children with DTC eligibility.

- Families with children that qualify for the Canada Child Tax Benefit, which is based on family net income, also receive the Child Disability Benefit for children who are DTC-eligible. The Benefit is based on family net income and provides up to \$205.83 per child per month.
- The Children's Fitness Tax Credit ordinarily allows families to claim a credit of up to \$75 for the enrolment of a child under the age of 16 in an eligible program of physical activity. If the child qualifies for the DTC, the age of eligibility is increased to 18. Also, an additional \$75 can be claimed for a DTC-eligible child, provided a minimum of \$100 in eligible fitness expenses has been paid.
- The Child Care Expenses Deduction ordinarily allows eligible child care expenses incurred to earn business or employment income, pursue education, or perform research to be deducted from income for income tax purposes up to a limit of \$7,000 for children under 7 years of age and \$4,000 for children between the ages of 7 and 16.<sup>67</sup> The limit is higher in respect of children who qualify for the DTC (\$10,000), and DTC-eligible children are considered eligible for the purposes of the Child Care

Expenses Deduction at any age. Where a child has a “mental or physical impairment,” but does not qualify for the DTC, a Child Care Expense Deduction claim may be made regardless of age, but is limited to \$4,000.

**Post-Secondary Students with Disabilities and Their Families:**

- The Registered Education Savings Plan (RESP) is a tax-assisted savings vehicle to help families accumulate savings for their children’s post-secondary education. Direct government assistance is provided through Canada Education Savings Grants and Canada Learning Bonds. The investment income earned in an RESP accumulates tax free. Canada Education Savings Grants, Canada Learning Bonds, and investment income earned in the plan are included in the beneficiary’s income for tax purposes when paid out of an RESP. Time periods for contributions to and termination of RESPs are extended where the beneficiary is eligible for the DTC.
- The Education Amount is a non-refundable credit that may be claimed by a student in a post-secondary institution or who is taking a qualifying training course approved by Human Resources and Skills Development Canada. In certain circumstances, if the student is unable to use the Education Amount, it may be transferred to a parent or grandparent. Ordinarily, full-time students may claim \$400/month, and part-time students may claim \$120/month, but students who are part time because of their disabilities may also claim \$400/month. Part-time students who are DTC-eligible qualify, as do students with other mental or physical impairments whose inability to take a full course of study is certified by an authorized medical person.

**Employed and Self-Employed People with Disabilities:**

- The Working Income Tax Benefit (WITB) is intended to provide tax relief for eligible working low-income individuals and families who are already in the work force and to encourage other individuals to enter the work force. The benefit provides a refundable tax credit to low-income individuals, which increases as their earnings rise, and is reduced as family income rises. The WITB is applied for using the general income tax return, and is paid out quarterly. In most provinces and territories,<sup>68</sup> the maximum WITB is \$931 for single individuals with no eligible dependants, or \$1,690 for individuals with an eligible spouse or at least one eligible dependant. The benefit also includes a disability supplement of up to \$465 for each working individual who is eligible for the DTC.
- The Disability Supports Deduction (DSD) provides tax relief for the cost of disability supports incurred for the purposes of employment or education (e.g., sign language interpretation services, and talking textbooks). This deduction eliminates the income tax payable on income (including government assistance) used to pay for these expenses, and exempts this income from the calculation of income-tested benefits.<sup>69</sup>
- There is also limited tax relief available to employers and businesses that make accessibility modifications of certain prescribed types: these expenditures may be claimed in a single tax year rather than spread over several years according to capital cost allowances rules.

### **Home Buyers and Home Owners with Disabilities, or with Dependants with Disabilities:**

- The Home Buyers' Amount is a non-refundable credit with a maximum value of \$1,500. Generally, only first-time home buyers qualify. However, the "first-time" requirement does not apply to home buyers who are DTC-eligible, or who buy a home for the benefit of a person who is DTC-eligible, provided that the home is more accessible or better suited to the needs of the DTC-eligible person.
- Medical expenses include renovation or construction expenses paid to make changes to give a person who has a severe and prolonged mobility impairment or who lacks normal physical development, access to (or greater mobility or functioning within) the dwelling. This category also includes reasonable moving expenses to move a person who has a severe and prolonged mobility impairment, or who lacks normal physical development, to housing that is more accessible to the person or in which the person is more mobile or functional, to a limit of \$2,000 (in Ontario, the provincial limit is \$2,473).

### **Family Caregivers and Family Supporters of Adults (over 18) with Disabilities:**

- The Infirm Dependant Credit assists eligible individuals providing support to an "infirm" dependent relative. The credit may be claimed by taxpayers supporting a child or grandchild age 18 or over, parent, grandparent, brother, sister, aunt, uncle, niece, or nephew who is dependent due to an intellectual or physical infirmity.
- The Caregiver Credit provides tax relief to individuals providing in-home care for a parent or grandparent age 65 or over, or for an "infirm" dependent relative, including a child or grandchild age 18 or over, brother, sister, niece, nephew, aunt, or uncle who resides with the taxpayer.

The Infirm Dependant Credit and the Caregiver Credit are alternative claims. Only one of these two claims may be made by a taxpayer with respect to a particular "infirm" dependant. Each requires only that the dependent relative be "infirm," not necessarily that the relative be DTC-eligible.<sup>70</sup> Both are non-refundable credits with a maximum value of \$633, which is reduced as the net income<sup>71</sup> of the dependant increases. There are differences between the two credits. The Caregiver Credit requires that the dependant live with the taxpayer, but the Infirm Dependant Credit does not; and the threshold at which the Caregiver Credit begins to be reduced by the dependant's net income is higher than the corresponding threshold for the Infirm Dependant Credit.

**Registered Disability Savings Plans:** Also known as RDSPs, these plans became available to Canadians in 2008 to help individuals with disabilities and their families save for the future. Canadian residents under age 60 who are eligible for the DTC are also eligible for an RDSP. Earnings accumulate tax free, until money is taken out of the RDSP. Parents or guardians may open an RDSP for a minor. Adults may also open RDSPs for themselves. With written permission from the holder, anyone can contribute to the RDSP.



Through the Canada Disability Savings Grant, the Government of Canada deposits money into a beneficiary's RDSP to help save for her/his future. The federal government provides matching grants of up to 300 percent, depending on the amount contributed and the beneficiary's family income. The maximum is \$3,500 each year, with a limit of \$70,000 over the beneficiary's lifetime. Through the Canada Disability Savings Bond, the government deposits money into the RDSPs of low- and modest-income Canadians. Qualifying beneficiaries could receive up to \$1,000 a year from the government, with a limit of \$20,000 over a lifetime. Contributions do not need to be made to the RDSP in order to receive the bond. A beneficiary is eligible to receive these benefits until the end of the year in which they turn 49.

**Goods and Services Tax and Customs Duties:** The Goods and Services Tax (GST) system exempts<sup>72</sup> the tax on a number of goods and services, such as health care, home care, and personal care services, provided to people with disabilities. In addition, many medical and assistive devices, such as wheelchairs and walkers, are exempt from GST, as are vehicle modifications for accessibility. Similarly, many items for people with disabilities are exempted from customs duties.

### **Provincial/Territorial Disability Related Tax Measures**

The federal government administers provincial and territorial income tax systems on behalf of all jurisdictions except Quebec, which has its own tax administration. Most, but not all, disability-related provincial/territorial tax measures are based on federal tax measures, differing only in the amounts referred to in eligibility and calculation rules.

The federal non-refundable credits discussed above are generally reflected in the provincial/territorial tax systems. The value of the provincial/territorial credits is generally less than the federal value, because the marginal tax rates in the provincial/territorial systems are lower than the federal rates. However, jurisdictions may make adjustments in these credits. For example, both Alberta and Saskatchewan have significantly increased the provincial value of the DTC in recent years.

Refundable tax credits and tax benefits, such as the Child Disability Benefit and the Refundable Medical Expense Supplement, are exclusively federal. However, the Government of Canada has negotiated changes to the Working Income Tax Benefit with Alberta, British Columbia, Nunavut, and Quebec. These jurisdictions have redesigned the Benefit to make it more effective, and Quebec, in particular, has enriched the program. The Registered Education Savings Plan and the Registered Disability Savings Plan both contain provisions for grants and bonds to be paid by the Government of Canada. While the provincial/territorial jurisdictions do not participate directly in these programs, they have co-operated by exempting the plans from the asset and income tests under their social assistance programs, which makes the plans more accessible and valuable to low-income people with disabilities and their families.

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## Endnotes

<sup>1</sup> When the Charter came into effect April 17, 1982, this marked the first time the fundamental rights and freedoms of Canadians were enshrined in a constitutional document.

<sup>2</sup> Section 15 came into effect on April 17, 1985, three years after the rest of the Charter. This delay gave federal, provincial, and territorial governments time to bring their laws into line with the equality rights in section 15.

<sup>3</sup> To date, only two provincial governments have used section 33; it has never been used by the federal Parliament. Use of this provision tends to carry with it a great deal of political controversy.

<sup>4</sup> In June 2008, Aboriginal peoples affected by the *Indian Act* received full access to human rights laws through Parliament's repeal of section 67 of the *Canadian Human Rights Act*.

<sup>5</sup> Judicial review requires showing that an error in law or procedure was made in hearing the case. It is not a full re-hearing of the issues, and witnesses are not called, nor is new evidence received, save for exceptional cases. The application for judicial review must be filed within 30 days of the date the Tribunal's decision was first communicated to the complainant. See CHRT (2006: 27).

<sup>6</sup> The Act was introduced in 1986 following the report of a royal commission chaired by Judge Rosalie Abella, who is now a justice of the Supreme Court of Canada (Royal Commission on Equality in Employment, 1984).

<sup>7</sup> The coverage of the Act was extended to the federal public sector in 1996.

<sup>8</sup> The law regarding the jurisdiction of arbitrators to decide entitlement to disability benefits is complex and developing. For a useful summary, see Fisher (2009).

<sup>9</sup> However, no such steps have yet been prescribed by regulation. See HRSDC (2006).

<sup>10</sup> No Canadian jurisdiction requires an employer to provide paid sick leave. However, in six jurisdictions (federal, New Brunswick, Newfoundland and Labrador, Quebec, Saskatchewan, and Yukon), employment standards law requires that employees not be dismissed, suspended, laid off or demoted when on sick leave (HRSDC, 2009b).

<sup>11</sup> "Parapublic" refers to employees in the broader public sector, such as hospital workers, teachers, police, and firefighters. See HRSDC (2010).

<sup>12</sup> See CCOHS (2010). The Northwest Territories and Nunavut have a joint department.

<sup>13</sup> For links to provincial and territorial departments responsible for employment standards, see HRSDC (2009c).

<sup>14</sup> The rate of unionization in Canada in 2010 was 29.6 percent (Statistics Canada, 2010). Unionization is most common in the public and parapublic sectors, and among larger employers in industries, such as manufacturing, resource development, and transportation.

<sup>15</sup> Because the parties to a grievance and arbitration process are the union and company management, a worker with a disability needs the support of the union to take an issue forward under a collective agreement. The union owes the worker a duty of fair representation, but is not required to take all the steps to advance a case it regards as lacking in merit. A worker who believes the union has not represented her or his interests fairly may bring the matter before the labour relations tribunal in the relevant jurisdiction as a “duty of fair representation” case.

<sup>16</sup> For example, an employer who did not provide sufficient vacation days to a former employee may be required to make a payment to the former employee.

<sup>17</sup> See the discussion of the *Canadian Human Rights Act* in Chapter 2 above.

<sup>18</sup> What is “reasonable notice” has been the subject of many court decisions.

<sup>19</sup> It builds on the experiences of its two predecessors: the Vocational Rehabilitation for Disabled Persons (VRDP) program that provided for federal–provincial/territorial cost sharing of rehabilitation programs delivered and administered by the provinces and territories and the Employability Assistance for People with Disabilities (EAPD) initiative that had a strong employability focus with results-based accountability and greater emphasis on public reporting.

<sup>20</sup> Quebec did not participate in the multilateral framework, but has signed an LMAPD that respects similar principles in providing labour market programs in Quebec. The territories have confirmed their support for the principles and direction of the framework. They will continue to provide labour market programs for people with disabilities, and will participate in the multilateral framework in the future if outstanding fiscal arrangement issues are resolved.

<sup>21</sup> CST provisions encourages the provision of uniform, pan-Canadian standards such as the prohibition of minimum residency requirements for social assistance.

<sup>22</sup> The legislative authorities for CPP are the *Canada Pension Plan* (R.S.C., 1985, c. C-8) and *Canada Pension Plan Regulations* (C.R.C., c. 385); for the QPP, *An Act Respecting the Québec Pension Plan* (R.S.Q., chapter R-9) and *Regulation Respecting Benefits* (c. R-9, r.5.1).

<sup>23</sup> A CPP contributory year occurs when earnings are at least 10 percent of that year’s maximum pensionable earnings. For QPP, earnings are at least equal to that year’s basic exemption.



<sup>24</sup> Applicants must have contributed in four of the last six years in their contributory period, or in three of the last six years in their contributory period provided they have made CPP contributions for at least 25 years. Years in which the person did not make contributions to the plan are not counted as part of the contributory period if the person was caring for a child under 7 or the person was receiving C/QPP-D.

<sup>25</sup> It is also constrained by annual limits on pensionable earnings.

<sup>26</sup> In 2011, the fixed amount for CPP is \$433.37 per month. The variable amount is equal to 75 percent of CPP. The maximum benefit payable in 2011 is \$1,153.37 per month.

<sup>27</sup> However, QPP-D is not paid to someone who is entitled to an unreduced income replacement indemnity from the Commission de la santé et de la sécurité du travail.

<sup>28</sup> Details are available at VAC (2011a,b).

<sup>29</sup> A table of disabilities and guidelines for assessment is available at VAC (2011c).

<sup>30</sup> See CTS (nd).

<sup>31</sup> Manulife Mutual is the private-sector insurer of SISIP benefits and services. The Treasury Board of Canada is responsible for governance of the plan and SISIP Financial Services is the administrator. Information about the earnings loss benefits and vocational rehabilitation services provided through SISIP are available at SISIP (2009, 2011).

<sup>32</sup> A pilot project in high unemployment regions allows for a maximum duration of benefit receipt of up to 50 weeks.

<sup>33</sup> Claimants may defer receiving benefits for a number of reasons that include taking on part-time work or receiving benefits from other time-limited sources. In a number of exceptional circumstances, including incapacity due to a long-term illness or disability, benefits can be spread over a period of up to 104 weeks.

<sup>34</sup> However, employers and insurers may provide/offer supplements to EI benefits, often referred to as top-ups.

<sup>35</sup> Welfare systems often differentiate benefits provided to address emergency needs and benefits provided to those whose requirements are predicted to be intermittent/transitory or permanent. In some cases, permanent is defined in terms of functionality. For example, British Columbia identifies individuals “facing persistent multiple barriers to employment.”

<sup>36</sup> Senior provincial officials may waive or adjust asset guidelines in certain circumstances.

<sup>37</sup> These cornerstones are the outcome of an Ontario Royal Commission to study workers’ compensation established in 1910. The product of this Royal Commission, often

referred to as the Meredith Report was published in 1913 and outlined the trade-off in which workers relinquish their right to sue in exchange for compensation benefits and the roles of workers' compensation boards. In the ensuing five years, six provinces — Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, and Ontario — enacted legislation implementing the report's recommendations and establishing workers' compensation boards. By 1974, enabling legislation and boards were in place in all provinces and territories.

<sup>38</sup> Northwest Territories and Nunavut legislation empower a shared board.

<sup>39</sup> Among employees not covered by workers' compensation, most work for employers deemed "individually liable." These employers are specified in an exclusionary schedule of the enabling legislation of all the provinces/territories. Included here are employees of the federal/provincial/territorial governments and, depending on the jurisdiction, may include employees of Crown corporations, municipalities, hospitals and school boards, and a number of companies whose operations span provincial boundaries.

With the exclusion of federal government employees, benefits and provisions for adequate funding by these entities are determined by provincial workers' compensation boards for those working within their boundaries. Federal legislation stipulates that covered employees receive the same level of compensation and benefits as others in the province where they work. There are some exceptions. For example, Alberta covers those working in three territories and for those working abroad. The Government of Canada relies on provincial boards to deliver and administer benefits.

In addition, self-employed persons can voluntarily opt for workers' compensation coverage in the province where they work.

<sup>40</sup> In many jurisdictions, the employer and/or a medical practitioner is empowered to help an injured/ill worker to prepare a claim. However the workers' compensation board can waive the requirement for a *written* claim under special circumstances (e.g., where the worker is illiterate or the industrial (occupational) disease requires isolation or quarantine).

<sup>41</sup> Three provinces (New Brunswick, Nova Scotia, and Prince Edward Island) have a waiting period before time-loss benefits are paid: three, two, and three days respectively.

<sup>42</sup> In some cases, other payments may also be deducted, for example, premiums to other illness/injury related insurance plans.

<sup>43</sup> These programs encourage a return to some type of work even while an injured worker is still recovering, provided the work is determined to be medically suited to the injury or illness. Workers' compensation may provide partial loss of earning benefits during this time to reflect the difference between pre-accident/illness and current earnings.

<sup>44</sup> In most cases, the onus is on the employer to offer re-employment to an employee experiencing work-related injuries or illness. Re-employment services are made available when an employer is unable or unwilling to provide employment at the same earnings level. The employer is assessed financial penalties by the workers' compensation board in cases where the employer is unwilling to provide commensurate employment and may face additional sanctions related to labour and human rights regulations.

<sup>45</sup> The maximum short-term disability term is often referred to as the "elimination period." This refers to eligibility for long-term disability policies, which come into effect following the exhaustion of the short-term disability. Thus, employees must go through an "elimination period" before qualifying. The longer the elimination period, the lower the long-term disability premiums, given that most illnesses are of short duration.

Historically, to qualify for long-term disability benefits, the employee must have been off work due to illness or disability for the entire elimination period. Thus, the illness or injury has been seen to be permanent, rather than episodic. However, most plans have been modified to allow for short periods of full-time and longer periods of part-time employment to encourage a partial or early return to work.

<sup>46</sup> In some cases, short-term disability benefits are supplements or "top-ups" to sickness (as well other "special benefits") provided through the EI program. These plans are referred to as Supplemental Unemployment Benefit Plans (SUBs).

<sup>47</sup> In some cases, long-term disability is integrated with a retirement pension plan, rather than as a part of an insurance plan.

<sup>48</sup> Many employment-based group disability insurance policies stipulate that insurance coverage and eligibility terminates 31 days following the end of active full-time employment for full pay.

<sup>49</sup> These plans are similar to group long-term disability plans, but the premiums tend to be much higher than those of employer-sponsored or "group plans." Group plans are often provided by professional and affinity organizations. For example, the Canadian Medical Association offers such a plan to medical doctors, and many Chambers of Commerce do so for business owners. Some unions also offer these plans.

<sup>50</sup> As with workers' compensation benefits, short- and long-term disability benefits are usually tax free. While receiving these benefits, recipients are exempt from public program premium payments, Short- and long-term disability benefits are often marginally less than net employment earnings.

<sup>51</sup> If short-term disability is paid as a Supplemental Unemployment Benefit, it acts as a top up.

<sup>52</sup> Minimum provisions are provided protecting employment, but not requiring remuneration during short periods of illness; see Chapter 3.

<sup>53</sup> Data from the Labour Force Survey indicates that in 2010, about 50% of paid employees temporarily absent from their job for a period of a week were paid during their time away from work.

<sup>54</sup> For example, most unionized employees of the federal government accrue a “bankable” 1.25 days of sick leave for every month of employment.

<sup>55</sup> Coverage excludes those engaged in a criminal offence, those who are non-licensed drivers, or who used a motor vehicle without the permission of the owner.

<sup>56</sup> See *Ontario Regulation 34/10*; *BC Insurance (Vehicle) Regulation*; and *Saskatchewan Personal Injury Benefits Regulations*.

<sup>57</sup> In addition, a person returning to or starting employment/self-employment during this period may resume receiving any benefits if, as a result of the accident, he or she is unable to continue the employment or self-employment. During that period, if earnings fall below pre-injury levels, partial benefits may be paid.

<sup>58</sup> Most provincial-specified benefits fall within this range. However, in Newfoundland and Labrador, benefit levels are not specified in regulations.

<sup>59</sup> In Manitoba and Saskatchewan, annual income benefits are also capped. In 2010, the cap was in the range of \$70,000 per year. In addition, in Saskatchewan, minimum insured benefits provide a floor for persons who opt to use the tort system for a determination of benefits.

<sup>60</sup> Limitation periods vary among jurisdictions. They may be extended in special cases, for example, if the plaintiff lacked capacity for a period of time to instruct a lawyer to commence the action.

<sup>61</sup> If a plaintiff’s lawyer is satisfied that a case has a reasonable prospect of success, a contingency fee arrangement may be made, whereby the plaintiff does not have to pay the lawyer until the settlement or judgment is received. However, a contingency fee arrangement does not cover an adverse award of costs payable by the plaintiff to a successful defendant.

<sup>62</sup> By issuing a document, the court validates that it has been received in accordance with the rules of court. Issuing a document does not involve consideration of the contents of a document, only its form.

<sup>63</sup> There are some cases in certain jurisdictions in which the plaintiff has to establish that a statutorily defined threshold of “disability” has been met in order to sue in a particular type of case; for example that there is a “permanent disability” or a “severe disability” in a motor vehicle injury case.

<sup>64</sup> Special rules that apply to limit or eliminate DTC claims where METC claims are also made with respect to institutional care or attendant care for the individual.

<sup>65</sup> In this Chapter, unless otherwise specified, “child” and “children” refer to persons under the age of 18.

<sup>66</sup> We do not include a discussion of general tax claims available regardless of disability in this section, except in so far as eligibility for these claims is extended or enhanced due to DTC-eligibility, impairment, or infirmity.

<sup>67</sup> Ordinarily, the lower-income parent in a two-parent family must claim the CCED. However, where the lower-income parent was incapable of caring for the children because of a “mental or physical infirmity,” the higher-income parent may make the claim.

<sup>68</sup> The WITB and disability supplement amounts have been modified in Alberta, British Columbia, Nunavut, and Quebec.

<sup>69</sup> Expenses claimable under the DSD could also be claimed under the METC, but the DSD claim provides more tax relief than the METC. Some lower-income earners who qualify for the RMES would, however, obtain more benefit from making the RMES claim than the DSD claim.

<sup>70</sup> The taxpayer claiming these records should keep on file and be able to produce a physician’s letter documenting the “infirmity” of the dependent relative. There is no prescribed form for certifying “infirmity.”

<sup>71</sup> Net income includes social assistance and workers’ compensation payments, which are not taxable income.

<sup>72</sup> Technically, some of these items are “zero-rated” under the GST system, rather than “exempted.” In the end, however, the consumer of these items either does not pay GST on them, or receives a rebate of the GST that was charged.