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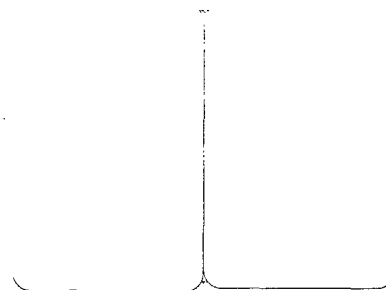
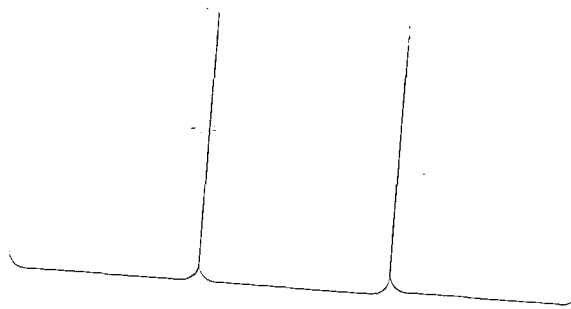
Ministère de la Justice
Canada

The will to act for Canadians with disabilities

**Federal Task Force on
Disability Issues**



**The Will to Act for
Canadians with Disabilities:
Research Papers**



Developed for:
Federal Task Force on Disability Issues

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les documents de recherche"*

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FOREWORD

A Task Force on Disability Issues was established on June 5, 1996 by the ministers of Human Resources Development, Finance, Revenue and Justice. The Task Force was chaired by Andy Scott, M.P. (Fredericton-York-Sunbury) and the other members were Clifford Lincoln, M.P. (Lachine-Lac St-Louis), Andy Mitchell, M.P. (Parry Sound-Muskoka), and Anna Terrana, M.P. (Vancouver East). Their mandate was to define and to make recommendations regarding the role of the Government of Canada as it relates to Canadians with disabilities.

Many issues in the area of disability have been studied over recent years by federal and provincial governments (together or separately), parliamentary committees, commissions, private research organizations and the voluntary sector. The Task Force did not intend to initiate new studies, rather the Task Force decided to concentrate its efforts on five key issues: national civil infrastructure/citizenship, legislative review, labour market integration, income support and tax system.

The Task Force worked closely with representatives of organizations of people with disabilities and conducted consultations across the country to discuss all of the key issues that were addressed in their final report. The Task Force also engaged experts in each of these fields to prepare research reports and outline options for government action. A team of seventeen researchers accepted to assess for the Task Force the relevance and feasibility of previous recommendations and proposals in these areas in light of recent developments (e.g. Canada Health and Social Transfer; devolution of labour market training to the provinces) and to develop options for the short, medium and long terms.

They accepted the challenge of working under the very tight timeframe of the Task Force, giving serious consideration to the input provided by disability community members and participants to the various consultations, and to the many submissions received during the life of the Task Force. The collection of their work, together with the results of the public consultations, provided the basis for the final report of the Task Force, ***Equal Citizenship for Canadians with Disabilities: The Will to Act***, which was submitted to the sponsoring ministers on October 28, 1996.

The Task Force on Disability Issues is pleased to share with the public these impressive research papers, produced in support of its work and which accurately depict the challenges in each issue area studied. This work will no doubt constitute a reference for future work on disability. It is our hope that this collection of research papers further our understanding of these complex issues and will enlighten decision making by all sectors.

We are grateful to the researchers for their understanding of the Task Force mandate and the excellence of their work.

THE RESEARCH PAPERS

THEME I - National Civil Infrastructure / Citizenship

Research Paper 1

Strengthening Civil Society and Citizenship for People with Disabilities in Canada

Marcia Rioux, Keith Banting, Michael Mendelson, Gerard Boychuk,
Cam Crawford
The Roeher Institute

THEME II - Legislative Review

Research Paper 2

Strategic Approaches and Specific Measures for the Exercise of
Citizenship Rights by Persons with Disabilities

Tina Head

Research Paper 3

Designing a Legislative Reform Strategy for Persons with Disabilities:
Priorities and Options

Rosalind Currie, Sandra Goundry, Yvonne Peters
Equality Matters, Currie, Goundry and Peters

THEME III - Labour Market Integration

Research Paper 4

Labour Market Integration for Persons with Disabilities: Issues, Overlaps
and Options

Havi Echenberg
Social and Fiscal Policy / Public Affairs

Research Paper 5

Disability and Labour Market Integration: Clarifying Federal
Responsibilities in the Evolving Social Union

Burt Perrin
Burt Perrin & Associates

Research Paper 6

The Future of the Vocational Rehabilitation of Disabled Persons
Jane Atkey

THEME IV - Income Support

Research Paper 7

The Disability Income System in Canada: Options for Reform

Sherri Torjman

The Caledon Institute

THEME V - Tax System

Research Paper 8

Taxation and Disability

Richard Shillington

Centre for International Statistics

The Canadian Council on Social Development

Research Paper 9

Taxation and Disability Recommended Reforms

David Baker and Harry Beatty

Advocacy Resource Centre for the Handicapped

Research Paper 10

The Costs of Health and Disability as borne by Employers; and,

The Role of Trusts, Private Savings and Investment in Addressing Future

Costs of Disability

Gregory Williams

Gregory Williams and Associates, Research and Consulting

**THEME I - NATIONAL CIVIL
INFRASTRUCTURE / CITIZENSHIP**

Research Paper 1.

**Strengthening Civil Society and Citizenship for People with
Disabilities in Canada**

**Marcia Rioux, Keith Banting, Michael Mendelsohn,
Gerard Boychuk, Cam Crawford
The Roeher Institute**

RESEARCH PAPER 1

**STRENGTHENING CIVIL SOCIETY
AND CITIZENSHIP FOR PEOPLE
WITH DISABILITIES
IN CANADA**

**Marcia Rioux, Keith Banting,
Michael Mendelsohn,
Gerard Boychuck, Cam Crawford
The Roeher Institute**

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RESEARCH PAPER I

A FRAMEWORK FOR CITIZENSHIP

By Marcia Rioux

The National Task Force on Disability Issues is studying the future role of the Government of Canada in relation to Canadians with disabilities. The task force identified civil infrastructure and citizenship as one of its key issues. The purpose of this report is to provide preliminary analysis and advice on a role for the federal government in guaranteeing citizenship rights to Canadians with disabilities and strengthening the civil infrastructure. The report presents a number of options for consideration and tries to lay out both the benefits of those options as well as the challenges that those options present. While there is some considerable detail in the paper, it more importantly provides a general direction for the Task Force to consider rather than an in-depth analysis and implementation mechanisms. There has been a significant amount of in-depth policy analysis of disability issues carried out in the past ten years which could be provided to the Task Force as background in the areas where such in-depth analysis is needed. The work within this report is informed by those background papers.

While identified as one of the discrete areas of inquiry for the task force, the work presented here clearly has implications for the entire mandate of the task force. The ideas offered in this work therefore affect and are affected by labour market integration, tax reform, income support, and legislative reform. Indeed, it is the perspective of this paper that citizenship can only be guaranteed for people with disabilities when the inter-relationship of these issues is recognized and managed through social policy.

People with disabilities who made presentations at the national consultations of the task force provide the context within which to address issues of civil infrastructure and citizenship. These views which we have summarized below further support similar views heard in the Mainstream 1992 consultations and consultations held by the Parliamentary Committee on Human Rights and Disability over the past eight years. They also reflect ideas and conclusions that can be found in disability organizations newsletters, government submissions, policy options and research reports. The ideas presented in the four papers that make up this report attempt to deal with these critiques of the existing system and the responses called for by citizens with disabilities.

OUTCOMES OF COMMUNITY CONSULTATIONS OF TASK FORCE

RE: *LIMITATIONS OF THE EXISTING SYSTEM FOR PEOPLE WITH DISABILITIES IN EXERCISING THEIR CITIZENSHIP RIGHTS*

- Denial of social and economic participation.
- Poverty.
- Hampered mobility.
- Discrepant, inequitable services and treatment.
- Inadequate support for services and disability organizations.
- Fragmented, narrow approaches to disability and services.
- Devolution of policy and programs.
- Public ignorance about disability.
- Shifting attitudes ("learner and meander"; private responsibility).
- Approaches to disability that focus on individual instead of social pathology.
- Lack of say about policy, programs, decisions.
- Lack of leadership, vision, direction.

RE: *ENABLING CONDITIONS FOR THE EXERCISE OF CITIZENSHIP*

- A response that facilitates a decent standard of living and opportunities to contribute.
- A response that guarantee access to similar supports, regardless of region.
- A response based on a common approach across country, but sensitive to individual differences and needs.
- A response that will result in secure, predictable program arrangements.
- A response with enforcement and accountability provisions to ensure necessary programs will be developed and implemented.
- A response that addresses the social causes of disability and disadvantage.
- A response that provides a legislated framework and other incentives for social and economic access.
- A response that ensures core and other funding commitments for services and organizations.
- A response that ensures the input of persons with disabilities to policy, programs and decision-making.
- A response reflecting a holistic approach to disability that spans income, employment, education and other areas of life.
- A response that provides information and raises awareness.
- A response demonstrating vision, leadership, common principles and values.

The report is broadly divided into four complimentary and interdependent papers:

Paper I: A framework for Citizenship

This paper lays out the framework within which the report approaches the issues of citizenship and civil society from a disability perspective

Paper II: The Shifting Nature of Civil Society and Citizenship

This paper explores concepts of civil society, social capital, citizenship and community and reflects on their implications for the design of Canadian social policy in general and the roles of the federal government in particular.

Paper III: Strengthening Civil Society and Citizenship: The Federal Policy Role in Offsetting the Costs of Disability

This paper looks at four options to meet the objectives of citizenship and civil society, with respect, specifically to persons with disabilities. It reviews the options against the criteria of how and whether they contribute to full inclusion and citizenship.

Paper IV: Strengthening Civil Society and Citizenship: Federal Tools for Civic Infrastructure

This paper looks at the roles the federal government has played in strengthening the civil organizations that have supported greater participation in Canadian society. The paper examines instruments the federal government could use in the future to build on the gains it has achieved, further advancing individual citizenship and civil society more generally.

CITIZENSHIP THROUGH A FRAMEWORK OF SOCIAL WELL-BEING

An explicit framework of social well-being, one that can guide the development of public policy for civil infrastructure is needed to secure the citizenship of people with disabilities. A framework of social well-being is built on commitments to the well being of individuals, communities and to societies as a whole (Roeher Institute, 1993). To the extent that institutional arrangements enable fulfilment of societal commitments, there is social well-being. Social well-being and individual well-being are thus integrally related. The political theory which has informed, in part, the development of institutions in Canada and is now being called upon as a justification to limit the role of government and societal institutions, often setting the individual against society. The two are viewed as separate entities with society and government seen as a threat to individuals. However, contrary to the assumptions of such theory, individuals and society are interwoven. Communities and societies make commitments to, and establish the institutional conditions for, achieving the well-being of individuals - those who constitute communities and societies. Governments around the world are passing human rights legislation and entering international agreements which reflect such commitments. Recognizing and fostering the interconnections among individuals, communities, societies and their natural environment can provide a basis for more fully meeting the commitments to self-determination, democracy and other principles. The purpose of a framework of social well-being is to articulate the foundational commitments to citizenship, to render visible the relationship of individuals to their society and to point to the kinds of institutional conditions which make well-being more possible.

Social well-being and citizenship are in a dynamic relationship. This is because societal commitments change in response to new claims from individuals and groups, and in response to changing environments: social, political, economic, built and natural environments. Consequently, a framework of social well-being is in continuous evolution. What are considered to be guiding commitments and obligations at one point in history are found to be unable at other points to respond to the changing social, economic and political landscape. This is certainly the case in the Canadian context where the framework of social well-being that was put in place in the period during and following the Second World War is unable now to meet the claims and commitments of a society approaching the 21st century.

In the immediate post-war period the framework of obligations for the welfare state in Canada entrenched the worthy/unworthy distinction with the emphasis on security, citizenship (understood as civil and political rights), and democracy. These became the pillars of the Canadian state, and provided the basis for massive investment in building the institutional infrastructure for welfare provision (The Roeher Institute, 1993). While Marshall's (1949/1963) broader notion of citizenship (to include social and economic rights) was being formulated in this period the figure of the "citizen" that remained entrenched was that of the self-made, rational, and independent individual exercising basic democratic and legal rights. A democratic state and society was to be constituted by such individuals securing for themselves, and largely on their own, "the good life". Because many people with disabilities did not meet the tests imposed by such a concept of citizen, they were to be taken care of through the "security" pillar of the welfare state - investment in institutional facilities, special education, segregated vocational training and employment, and community services exclusively for persons with disabilities grew substantially in the post-war period. In this way the post war framework for securing the welfare and well-being of Canadians institutionalized exclusion for people with disabilities.

The cracks in the post-war framework for well-being began to emerge in the 1960s and claims for its restructuring gained momentum from the 1960s through the 1980s, first from the civil rights and women's movements, and later from the growing disability rights movement.

A new foundation of rights was established in Canada and internationally in response to such claims. The entrenchment of the rights of people with disabilities within human rights legislation, of constitutional equality rights for people with disabilities within the *Charter of Rights and Freedoms* have had important consequences in Canada. These rights are now legally entrenched on an equal basis with those of other groups: women, people of minority races, cultures and religions and older Canadians. The prohibition against discrimination under provincial human rights statutes has in the past fifteen years been extended from issues of employment for those with physical handicaps to

include services, facilities and accommodation for people with both mental and physical handicaps - making these statutes a much more expansive instrument of rights protections. Canada is also signatory to a number of international agreements which affirm political, social and economic rights for people with disabilities, including the United Nations Universal Declaration of Human Rights (1948); the United Nations Convention on the Rights of the Child (1989); the United Nations World Program of Action Concerning Disabled Persons (1983); the UN Declaration on the Rights of Disabled Persons (1975); and the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993). Established in the post-war period, these agreements provide a set of international commitments to guide nation-states in the pursuit of social well-being.

SOCIAL WELL-BEING: SELF-DETERMINATION, DEMOCRATIZATION, EQUALITY

The emergence of a new framework for social well-being in Canada is rooted, then, in a number of developments in the post-war period: the obligations found in human rights protections established in the past 50 years; the universal entitlement of the post-war welfare state; and the established critique of the worthy/unworthy poor distinction as a basis of state provision. The key elements of the new framework are self-determination, democratization, and equality. In the Canadian context, these principles are reflected in statutory instruments such as the *Canadian Charter of Rights and Freedoms*, the recently-repealed Canada Assistance Plan, statutory human rights provisions, the *Canada Health Act* which aims to ensure universal access to needed health care, and employment equity legislation that seeks to secure greater equality in employment for women, aboriginal persons, persons with disabilities, and visible minorities.

Together these statutory instruments and provisions articulate the social, economic, and political foundations that are considered in Canada to be necessary for the well-being of individuals, communities, and society as a whole. They establish basic protections to respect the integrity of individuals, communities, and Canadian society. They define the decision-making processes to enable participation and to respect the integrity of diverse groups. As well, these provisions recognize the importance of fairness and distributive justice in society. The guiding principle these provisions articulate to ensure respect and integrity is that of self-determination. To guide the formation of decision-making processes, the principle of democratization is appealed to. To guide a fair distribution of benefits and advantages in Canadian society, these instruments declare the principle of equality.

CURRENT CHALLENGES

The challenge governments now face is what alternative social policy can be proposed that will more adequately reflect the shifting meaning of social well-being. It is on this basis that the limitations of current institutional arrangements can be identified and programs can be formulated that will be more than simply salvaging what is left and will enable citizenship to be achieved, in particular for those who have been marginalized.

To enable the exercise of citizenship, recognition has to be given to the connection between collective goals, social well-being, and what a society "requires of, makes possible for, and even grants as a matter of right to its individual citizens". Social policy, health policy, and economic policy need to address explicitly what individuals should be enabled to do for themselves and for others. A new context for political debate about policy responsive to disability is critical to enabling citizenship rights to be exercised.

The move from peripheral citizenship status entitlement to full citizenship has been an historical struggle for people with disabilities. To promote their social and economic participation means the development of an overall "disability framework". Such a framework would be in contrast to the present set of policies and programs, federal, provincial and municipal, which address disability through fragmented interventions, interventions that are often based on assumptions that disability is primarily a result of an individual deficit rather than recognizing it as a social construct. It is not enough simply to add on new measures to old instruments to deal with disability. Even, however, if that were possible, and it has been the primary response to the increasing public participation of people with disabilities in the past 30 years, it will not be feasible within the new economic, social and political realities.

Tinkering with existing programs will neither meet the needs that have been identified by people with disabilities nor will it address the question of citizenship. But it is also not a simple case of identifying what has not been lost in the social program deconstruction of the past few years and making choices based on the salvaging of what is left. Keeping programs which in their generous incarnations have not met the basic needs of people with disabilities in ensuring social well-being or citizenship entitlements, in getting them stable employment, in meeting their costs of disability, in creating opportunities to be participating members of their communities is neither a creative option nor perhaps an option at all. It seems highly unlikely that programs which could not meet the needs of disability when there were more generous benefits will be likely to meet those needs in lean times. Arguably some of these programs will make people worse off if they have to rely on them now.

PERSONS WITH DISABILITIES: SHIFTING FROM PERIPHERAL STATUS TO FULL CITIZENSHIP

It is possible to identify the types of policies that leave an individual in a peripheral citizenship status. It is also possible to recognize the challenge that governments now face to shift the magnetic force from disincentives to incentives and to make the barriers to citizenship permeable:

- Disability -related costs met a matter of citizenship
- income security
- employment
- income-maintenance
- Employment Policies that have the inclusion of people with disabilities built in.
- Self determination/ choice
- Equality of outcome
- Secure, dependable reliable provisions of personal supports and aids
- Physically accessible public environment
- Coordination of policy and programs
- Democratic participation in decision-making
- Reliability of policies and programs
- Criminal Code that recognizes crimes against people with disabilities.
- Attached to welfare system to meet disability-related costs
- Discretionary provisions of personal support and aids
- Piece-meal social support dependent on charity
- Participation when it is practical and convenient to fit disability in
- Parallel programs and services (programs with add-ons for) disability)

Two questions arise at the end of the day: who has responsibility? and who pays?

Both of those questions have to be put in the context of what we are trying to achieve. People with disabilities are not federal-provincial beings. To suggest as our existing policies do that we can talk about citizenship and equality-rights in a policy environment in which medication and medical rehabilitation are federal concerns and the cost of a wheelchair is provincial; some supports and aids (depending on what they are used for) are federal and some provincial or municipal does not make sense. We cannot divide individual people as we divide territory. There has to be a designated responsibility for ensuring the complex needs of people with disabilities are met, wherever they live in the country, and as they move from one part of the country to another. Disability related needs and costs are not only, or even primarily, individual costs. Many disability-related costs and expenses are a result of a social and economic policy environment that is fundamentally hostile to the participation of people with disabilities.

Welfare state arrangements have been unable to deliver on the promise of citizenship, that is participation in society, fulfilment of basic needs, opportunities to contribute and the support to exercise self-determination in order to have a decent quality of life. The role of the federal government in strengthening the exercise of citizenship and ensuring social well-being for all Canadians is its most significant contribution.

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PAPER II CIVIL SOCIETY, CITIZENSHIP AND SOCIAL POLICY

By Keith Banting

As we approach the next millennium, the shrinking role of that government plays in our lives is generating a new balance between the state, the market and civil society. Not surprisingly, this shift has focused considerable attention on the associations and networks that link individuals together in civil society. Critical questions quickly surface. Does this infrastructure of social institutions represent an alternative mechanism through which society can mobilize and deploy resources for collective purposes? Can strong and active civil associations build bridges across the various divisions that threaten to fragment societies, and contribute to a wider sense of social engagement and community? What are the limits to reliance on civil society as a means of achieving a humane existence?

Commentators have approached these questions through the lens of different concepts: civil society, social capital, citizenship and community. At their deepest level, however, all of these concepts centre on the web of social institutions and relationships that envelop us as individuals, and structure the ways we relate to each other in everyday life. This essay explores these concepts, and reflects on their implications for the design of Canadian social policy in general, and the role of the federal government in particular. Although the concerns that sparked this inquiry centre on the position of people with disabilities in Canadian society, the essay takes a broader perspective in the confidence that the papers that follow focus more directly on critical disability issues.

The first section surveys a number of ideas about the nature of our social relations, and emphasizes the importance of a balance between civil society on one hand, and citizenship on the other. The second section explores the balance that was struck between these two sides of our collective life in postwar Canada. The third section analyses the forces that are altering that balance now. The final section then reflects on the policy instruments available to the federal government to contribute to a humane balance between civil society and citizenship in Canada.

1. CIVIL SOCIETY AND CITIZENSHIP RIGHTS

a) Civil Society:

The focus on civil society is common to virtually all countries in which the state is in retreat. Nowhere is the discussion more intense, however, than in countries undergoing

radical political change. In eastern Europe, the collapse of the Soviet state is complete, and the countries of that region remain in various stages of transition to more open political systems. In Latin America, several authoritarian regimes have given way to democratically elected governments. In both of these groups of countries, commentators look anxiously for autonomous social organizations to play a much larger role in the lives of citizens. Indeed, this concern has been built into the very definition of "civil society" offered by some analysts. For example, Ernest Gellner defines civil society as "that set of diverse, non-governmental institutions, which is strong enough to counterbalance the state, and, whilst not preventing the state from fulfilling its role as keeper of the peace and arbitrator between major interests, can nevertheless prevent the state from dominating and atomizing the rest of society."¹

The stakes in these countries are large. The collapse of communism does not guarantee that the emerging societies will be civil; nor does the calling of national elections in previously authoritarian regimes in Latin America ensure that democracy will grow deep roots. Unfortunately, many of the countries lack the civil infrastructure sought by Gellner. The previous authoritarian regimes often sought to co-opt or abolish existing social organizations, and to erase traditions of independent civil engagement. Such strategies did not always succeed fully, as the role of the church in some of these countries attests. Too often, however, the institutional legacy of authoritarianism included an enfeebled civil society, which is unable to fill the vacuum created by the retreat of the state. The development of strong, autonomous social organizations is clearly a compelling priority.

Even in this context, however, it is important to note the potentially dark side of civil society, as Gellner himself emphasizes. Not every autonomous group contributes to a humane and settled existence. Private organizations and networks themselves can be divisive or repressive, as evidenced by the Russian mafia that has emerged from the rubble of the Soviet state, and by the ethnic conflict that has left stains on the historical record of post-communist countries. The potentially dark side of civil society is not limited to violent forms. Social organizations and private networks can also entrench more subtle forms of discrimination against people who differ from the mainstream of society. The civil quality of civil society depends not only on the vigour of its social organizations, but also on mechanisms to protect the rights of citizens and a tradition of tolerance of differences among people. As we shall see, this is a lesson that resonates in western nations as well.

Although the established democracies of the west do not face a crisis of civil society in such stark terms, the shrinking of governments has shifted attention to their non-governmental sectors as well. Several strands in contemporary political discourse come

¹ Ernest Gellner (1995) "The Importance of Being Modular," in *Civil Society: Theory, History, Comparis*, edited by John A. Hall. Cambridge: Polity Press, p.32.

together. First, conservative advocates of a smaller state argue that big government has sapped the strength of social organizations, and that a chastened state will create more room for the voluntary sector and the "thousand points of light" anticipated by President Bush. Second, other commentators, less committed to reducing the range of public benefits, wish to rely more heavily on non-governmental organizations to deliver services previously provided directly to citizens by public agencies. The language of partnership and alternative service delivery pervades contemporary discourse on public management.

Finally, a growing communitarian movement also extols the virtues of a vibrant civil society. Communitarians distrust governments -- especially big governments -- as the best instrument to meet human needs and inspire generosity of spirit. However, they also distrust theories that build on the centrality of the self-interested individuals operating in a free market. Civil society, working through freely organized local associations and communities, represents an alternative mechanism for cooperation and the collective management of much of society's activities. The communitarian spirit was captured by Senator Bill Bradley of the United States in a speech to the National Press Club in Washington, D.C.:

"Civil society lies apart from the realms of the market and the government, and possesses a different ethic. The market is governed by the logic of economic self-interest, while government is the domain of laws and with all their coercive authority. Civil society, on the other hand is the sphere of our most basic humanity -- the personal, everyday realm that is governed by values such as responsibility, trust, fraternity, solidarity and love."²

In a period in which the constraints on state action are palpable, the case for a vibrant civil society is attractive. The result has been considerable debate about the strengths and weaknesses of the organizations and networks that constitute the third sector. In the process, we have discovered how little we really know about their size, composition, administrative capacities and economic significance. Although statistical agencies track in loving detail the activities of both the public and private sectors, the operations, resources and capacities of the tens of thousands of organizations in the third sector represent relatively uncharted territory on the institutional map of Canada and many other western nations.

Nevertheless, there are lots of warning signs that we should not overestimate the capacities of the infrastructure of civil society. Many leaders from the third sector emphasize that they too labour under powerful constraints, and their organizations

²

Quoted in John Butler, "The Civic Communities Movement," The Agora Group, March 1996.

cannot absorb all of the social functions that governments are off-loading. Down-sizing in the public sector is far from a liberating experience for important components of Canadian civil society. Many partnerships between government and non-governmental organizations are falling victim to budget reductions, and countless social organizations are fading as a result. In the contemporary period, the relationship between the state and important elements of Canadian civil society is a complementary rather than a competitive one.

These warnings are reinforced by scholarly research. In the United States, much attention has focussed on the proposition that the vibrancy of civil society has actually been in decline for decades. Most notable has been the work of Robert Putnam, who has given prominence to the concept of "social capital."³

For Putnam, social capital refers to features of social organizations such as networks, norms and trust that facilitate coordination and cooperation for mutual benefit. According to the theory of social capital, societies with a dense network of civic associations will develop higher levels of trust and reciprocity, more effective channels of informal communications, and a greater capacity for cooperative action and collaboration. In contrast, societies with limited forms of civic engagement tend to be plagued by higher levels of distrust and suspicion, a tendency to concentrate on the interests of oneself and one's immediate family as opposed to the wider community, and lower levels of cooperative action.

In the case of the United States, Putnam sees an erosion of social engagement and mutual trust on virtually all fronts. In the political domain, he points to a steady decline in turnout at national elections and weaker participation in political parties and related organizations. In the economic domain, he notes the precipitous drop in union membership. In the social domain, he points to declines in membership in parent-teacher organizations and fraternal associations, as well as sharp drops in the number of volunteers for groups such as the Boy Scouts and the Red Cross. Even the religious domain, he concludes, has seen a modest fall in attendance. Although Putnam acknowledges counter-trends in the form of newer associations and social movements, he concludes that, on balance, the net level of social engagement among Americans is falling steadily. His symbol for this trend is 'bowling alone': more Americans are bowling today than ever before, but bowling in organized leagues has plummeted.

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See Robert Putnam (1993) *Making Democracy Work: Civic Traditions in Modern Italy* Princeton: Princeton University Press; "The Prosperous Community: Social Capital and Public Life," *The American Prospect*, Number 13 (1993): pp.35-42; "Bowling Alone: America's Declining Social Capital," *Journal of Democracy* vol. 6 (1), 1995: pp. 65-78; "Tuning In, Tuning Out: the Strange Disappearance of Social Capital in America," *PS: Political Science and Politics*, December 1995: pp. 664-83.

Putnam canvasses a variety of possible reasons for this weakening of social connectedness: the movement of women into the labour force, which has reduced the time and energy available for building social capital; residential mobility; demographic changes such as increases in the divorce rate and fewer children; and the technological transformation of our leisure time by the advent of television. Careful statistical analysis suggests that the advent of television has been the most potent factor, and Putnam notes that "the new 'virtual reality' helmets that we will soon don to be entertained in total isolation are merely the latest extension of this trend."⁴

The theory of social capital has generated lots of debate, with critics beginning to marshal their counter-arguments. Moreover, conclusions about American experience cannot be transferred automatically to other countries. Nevertheless, several points seem relevant to our present inquiry:

- First, the vigour of civil society is important to the level of trust and communication in society, and in our capacity for cooperative or collaborative endeavours.
- Second, we cannot take for granted that civil society will continue to flourish merely because the state is in a period of retreat. Other powerful forces may be reducing the capacities of independent social organizations, and limiting their ability to pick up burdens that governments choose to set down.
- Third, we need to explore how public policy influences the development of social capital, and the capacity of social organizations and networks to integrate people in systems of trust and cooperation.
- Finally, as in the case of the post-authoritarian countries, it is important to remember that civil society alone cannot guarantee an inclusive community. Social organizations can be instruments of repression in western nations as well, as the history of the Ku Klux Klan reminds. Similarly, informal networks can not only build important bridges and facilitate communication; they can also exclude through subtle discrimination. As Putnam himself recognizes,

"...we were often right to be worried about the power of private associations. Social inequalities may be embedded in social capital. Norms and networks that serve some groups may obstruct others, particularly if the norms are discriminatory or the networks

⁴ Robert Putnam, "Bowling Alone," p. 75. For a statistical analysis of the factors eroding civic engagement, see his "Tuning In, Tuning Out."

socially segregated. Recognizing the importance of social capital in sustaining community life does not exempt us from the need to worry about how that community is defined -- who is inside and thus benefits from social capital, and who is outside and does not."⁵

This concern is one which resonates within the disability community and among the representatives of socially marginalized groups.

Civil society thus needs parameters that ensure protection for individual rights, tolerance of differences among people, and a commitment to social inclusiveness. Civil society, to be truly civil, must be based on an strong conception of the citizen and citizenship.

b) Rights and Citizenship

The Oxford English Dictionary defines a citizen as "a member of a state, an enfranchised inhabitant of a country;" and citizenship is simply described as "the position or status of a citizen." However, in liberal democracies, citizenship has come to have a much richer meaning. As the English sociologist, T.H. Marshall, explained "citizenship is the status bestowed on those who are full members of the community. All those who possess the status are equal with respect to the rights and duties with which (citizenship) is endowed."⁶ There is no universal principle that specifies precisely what the rights and duties of citizens should be. Nevertheless, Marshall argued that over the centuries the concept of citizenship in democratic countries has come to incorporate an increasingly complete set of rights. In the 18th century, citizens were endowed with "civil rights," including liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. In the 19th and early 20th centuries, citizens also came to possess "political rights", especially the right to participate in the exercise of political power as a voter and an elected member of the legislature. In the mid-20th century, citizenship came to include a wider set of "social rights" which Marshall defined as "the right to a modicum of economic welfare and security to live the life of a civilized human being according to the standards prevailing in the society."⁷

⁵ Robert Putnam, "The Prosperous Community," p. 42.

⁶ T.H. Marshall (1963) *Sociology at the Crossroad and other essays* London: Heinemann, p. 87.

⁷ *Ibid*, p. 74

From this perspective, citizenship is much more than formal membership in the state. It also represents a promise that individuals will not be discriminated against or marginalized. The definition of civil, political and social rights obviously differs from country to country, and over time within any particular country; and it is certainly possible to define the rights bestowed on every citizen so narrowly as to provide only limited protection against social exclusion. A vigorous conception of citizenship, however, represents a commitment that there will be no internal "borders", and that all members can participate in core elements of community life.

The power of the idea of universal, citizenship rights can be seen in the battle for desegregation waged by the civil rights movement in the US south beginning in the 1950s. No other concept could have generated such a challenge to discrimination embedded so deeply in both public and private institutions. This promise of inclusion is relevant to all groups at the margins of society, and to those, such as people with disabilities, who need supports and aids to participate effectively in economic and social life.

The inclusiveness implicit in citizenship rights has an additional relevance in federal states. There is an inevitable tension between federalism and equality -- or more precisely, between the scope for regional diversity in public programs on one hand, and the equal treatment of similarly placed citizens, irrespective of where they live, on the other. Different federations respond to the tension differently, establishing different balances between regional diversity and citizen equality. Whatever the balance struck, however, the concept of citizenship is a powerful symbolic reminder that -- in addition to the multiple local identities of individuals in a pluralistic society -- there is a level at which all citizens are members of one community.

Civil society and citizenship thus need each other, and the appropriate aim of public policy is to strengthen both elements of our collective lives.

2. THE CANADIAN POSTWAR MODEL

During the postwar period, Canadians struck a new balance between the state, the market and civil society. Throughout those decades, public policy did seek to enhance the diversity reflected in civil society in a number of ways, and to expand the definition of the civil, political and social rights inherent in Marshall's conception of citizenship.

The expansion of the state in the postwar years obviously had a dual impact on civil society. In some ways, the expanding public sector displaced non-governmental organizations. To take only one example, the restructuring of the role of government in the province of Quebec after the quiet revolution absorbed social functions previously carried out by private institutions, especially the church. Yet the extent of this displacement should not be overstated, since the expansion of the social role of

government in this period was fundamentally a response to the clear inability of local charities and civic groups to cope with the overwhelming social dislocation of the depression of the 1930s. Moreover, in other ways, government policy supported the emergence of a more diverse civil society. Tax relief for charitable donations provided an important basis of support for charitable organizations, and partnership agreements with governments provided support for a wide range of services delivered by the third sector. In effect, government grants nourished a wider range of social organizations than would have emerged if various social groups were left to their own resources.

The most prominent of these grants programs were initiated in the mid-1960s by the federal government to support a wide range of advocacy organizations. Most political attention focussed on the assistance given to minority languages groups, multicultural associations and women's organizations. However, support was also established for human rights advocates, native organizations, and -- particularly relevant in this context -- disability organizations. Intriguingly, these programs were initially couched in the language of national unity and citizenship development, and were managed by the Citizenship Branch of the then Secretary of State. The purpose was to generate a stronger allegiance to national institutions by nurturing a sense that they were more open to public interest groups and social movements. Whether these programs had the desired effect is debatable. One assessment concluded that "the SOS's funding of groups fragments rather than unifies national identity."⁸ Whatever the impact on national unity, however, the programs did stimulate the emergence of a more diverse set of social organizations in Canada.

The second trend throughout this era was the expansion of social benefits and the reinforcement of citizenship rights. Although all levels of government were engaged in this historic project, the federal government provided important leadership at many stages. The explicit goal of the politicians, public servants and others who laboured on these initiatives was to provide health care, advanced education and income protection for Canadians, and to entrench their rights more firmly. Indirectly, however, the federal government was also breathing life into the concept of Canadian citizenship. It did so by establishing a set of national principles, standards and conditions that ensured that Canadians would be treated similarly, no matter what language they spoke or what region they lived in.

The pan-Canadian dimensions of the emerging welfare state was based on three major pillars:

- major income security programs that provide direct federal payments to individual citizens (Family Allowances, Old Age Security, the Guaranteed

⁸ Leslie A. Pal (1993) *Interests of State: the Politics of Language, Multiculturalism, and Feminism in Canada* Montreal: McGill-Queen's University Press, p. 256.

Income Supplement, Unemployment Insurance, and the Canada Pension Plan).

- shared-cost grants to provincial programs in such fields of health care, post-secondary education and welfare, provided they met the principles or requirements specified by the federal legislation.
- equalization grants to poorer provinces to ensure that they are able to provide average levels of public services without having to resort to above average levels of taxation.

The federal government also deployed an increasingly powerful set of legal instruments to consolidate and entrench a system of rights on a pan-Canadian basis, and to enhance equity in Canadian employment practices. The primary legal instruments established were:

- the Canadian Charter of Rights and Freedoms, which established a regime of legal, democratic and equality rights that applies to all levels of government.
- the Canadian Human Rights Act, which prohibits discrimination in both the public and private sector in all areas falling under federal jurisdiction.
- employment equity legislation and programs designed to increase the labour force participation of people with disabilities, women, Aboriginal peoples and visible minorities.

Given the federal nature of Canada, the construction of the welfare state and the protection of rights involved both federal and provincial governments. Federal programs set a national framework in many critical areas, but provincial action was critical both to complementing federal programs, and to establishing the basic approach in areas where federal authorities had no role. In some cases, the provinces led, nudging a reluctant federal government into action; at other times, Ottawa was the source of initiative. In both processes, critical design issues were normally hammered out within the private confines of federal-provincial meetings.

Important gaps remain in the structure of social programs that emerged, and policy tended to respond more effectively to some groups than others. Certainly, Canadians with disabilities have not fully realized the vision of an "Open House," a society in which people with disabilities participate fully in all aspects of community life, including school, work and recreation, because discriminatory barriers have been removed and

disability-related supports have been provided.⁹ Despite the gaps and limitations, however, impressive progress was made during this period.

Thus, during the postwar era, public policy sought to enrich the meaning of both civil society and the wider social meaning of Canadian citizenship. Moreover, the strong federal role in this process transformed these programs into a definition of a pan-Canadian community, an affirmation that, for some purposes, Canada is more than a community of communities.

3. STRAINS ON THE POSTWAR MODEL

The postwar model has come under strain from a number of directions, and a new balance between the state, the market and civil society is emerging. Although that new balance is clearly creating greater scope for civil society, important questions remain. Can civic associations respond? Will support for traditionally marginalized groups such as persons with disabilities be increased or decreased in such a world? And will the common identity of Canadian citizens prove strong enough to sustain the country into the next millennium?

The sources of pressure on the postwar model are diverse:

- In part they are rooted in the wider restructuring of the global economy. Inter-regional trade within Canada is increasingly overshadowed by international trade: in 1981, Canadian exports were somewhat less than the total value of inter-provincial trade; by the mid-1990s, international trade was 70 per cent greater than inter-provincial trade. In some regions, such as Ontario, the change has been even more dramatic.¹⁰ As the trading linkages among regions weaken, the scope for a pan-Canadian approach to economic issues narrows, and the relevance of federal leadership in economic and social policy is increasingly challenged.
- Global economic restructuring also generates pressure for greater convergence in the economic and social policies of countries in the wider trading system. Although domestic political pressures supporting distinctive national approaches to social problems remain strong, the constraints on the choices of the national state have clearly tightened.

⁹ House of Commons, Standing Committee on Human Rights and the Status of Disabled Persons (1995) *The Grand Design: Achieving the 'Open House' Vision*.

¹⁰ In 1981, Ontario's exports to the rest of the world and to other parts of Canada were roughly in balance; by 1994, exports to the rest of the world were twice those to the rest of the country. Tom Courchene, "In Quest of a New National Policy," (Unpublished manuscript, 1996).

- Technological change is contributing to greater polarization in the wages that individuals earn in the economy. Although this inegalitarian trend has been offset so far by the tax and transfer systems in Canada, there is some evidence that individuals prospering in the new economy feel less committed to those being left behind. One sign is stronger class differences in support for the redistributive role of government in the contemporary period.¹¹
- The social structure of Canada is also changing in ways that challenge elements of the postwar model. Most importantly, Canada is becoming much more socially diverse in terms of ethnicity, race, language, Aboriginal status, family structures, relations between men and women, and sexual preference. We have seen the emergence of a wider range of social movements and groups that articulate distinctive identities, and challenges traditional conceptions of equality and community. Although in one sense these trends enhance the diversity of civil society, they also create pressure for movement away from broad, universal programs that treat all individuals the same towards a more variegated set of programs that reflect more fully the diversity of social conditions in the country.
- Regional and linguistic divisions also challenge the postwar model, especially the central role played by the federal government. The strength of the secessionist movement in Quebec leaves the very existence of the country in question; and the tensions among the regions have grown more intense. The result is broadening support among many provincial governments for significant decentralization of responsibility.
- Finally, the postwar model is being undermined by the fiscal crisis of the public sector. The burden of debt financing has pre-empted a major portion of the revenues of public revenues, squeezed all other spending priorities, and triggered down-sizing, restructuring and decentralization throughout the public sector.

The combined effect of economic restructuring, enhanced social diversity, intensified regional divisions and fiscal weakness has been inherently fragmenting, and has shifted the foundations on which elements of the postwar balance rested.

At one level, the trends of the last decade have opened up more terrain for civil society. However, as indicated earlier, it is not at all clear that associational life will expand to fill the vacuum. Many of the factors identified by Putnam operate in Canada as well.

¹¹ See, for example, Ekos Research Associates Inc. (1995) *Rethinking Government '94: An Overview and Synthesis* Ottawa.

Moreover, reductions in public budgets are affecting non-governmental organizations as well. Sustaining grants for social advocacy groups have been reduced, sometimes sharply; and many of the grants to support services delivered by civic associations is also declining.

The impact on the structure of citizenship rights and benefits has also been significant. All three of the pillars on which the pan-Canadian dimensions of the welfare state were constructed have been weakened, albeit in different ways.

- Major income security programs do not create the same regime of equal benefits for all Canadians. Universal programs such as Old Age Security and Family Allowances have given way to income-tested benefits, which exclude affluent Canadians. In addition, unemployment benefits no longer set a single, national standard to which all Canadians are entitled irrespective of where they live. Variations are now dramatic: fully 90 per cent of the unemployed in Newfoundland receive unemployment benefits; in Ontario, only 43 per cent are so lucky.¹²
- The set of national standards established through shared-cost programs has been narrowed as a result of the adoption of block funding. In addition, the sharp reduction in federal transfers to the provinces has undermined the legitimacy of the federal role in these programs, triggering determined provincial challenges to the conditions that do remain. The long-term prospects of national principles embedded in the Canada Health Act and the prohibition of residency requirements in social assistance now look very uncertain. Moreover, the cut in federal transfers has triggered successive waves of cuts at the provincial and local levels.
- The system of equalization grants to poorer provinces has been less affected by the politics of restraint. Clearly, the political commitment to inter-regional redistribution is stronger than the commitment to inter-personal redistribution. This confirmation that Canadian political institutions are more responsive to regional claims than to the claims of diverse social groups may be reassuring for poor provinces but unsettling for social groups dealing with poor and marginalized Canadians generally.

In comparison with the trend of social benefits, the legal instruments deployed to provide enhanced protection for the rights of Canadian citizens have suffered less dramatic reversals. Equality-seeking groups sense a slowing of momentum in the

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Timothy Sargent (1995) "An Index of Unemployment Insurance Disincentives," Working Paper No. 95-10, Department of Finance, Fiscal and Economic Analysis Branch Ottawa.

decisions of the Supreme Court on the Charter; employment equity legislation has come under attack in a number of provinces; and many Quebec sovereigntists and Aboriginal leaders reject the legitimacy of the Charter. Despite these pressures, there are fewer explicit reversals than in the area of social benefits. To adopt Marshall's language, civil and political rights retain considerable protection from the systems established in recent decades, but the fullness of the social rights associated with Canadian citizenship has been eroding.

Not surprisingly, defenders of the postwar balance have expressed considerable alarm. To take one example, the recent report of the Standing Committee on Human Rights and the Status of Disabled Persons of the House of Commons recently commented on the "apprehensiveness" of the disability community, noting that "they are confronting changes to -- or elimination of -- almost every major federal program that deals with persons with disabilities."¹³ Although prohibitions on explicit discrimination are important for persons with disabilities, they are particularly vulnerable to the erosion of social programs that enable them to participate more fully in economic and social life.

4. THE FEDERAL ROLE IN THE NEW MILLENNIUM

The government of Canada must develop and articulate a vision of its role in social policy. Repeated budget reductions in the federal government's own programs and changes in its approach to shared-cost programs have cast a cloud of uncertainty over its commitment to social progress. Do federal authorities still think of themselves as having a role in meeting the social needs of Canadians? Or are they prepared to abandon the field to others? The current debate over disability programs offers the federal government an opportunity not only to respond to the needs of a particular group of vulnerable people, but also to articulate a broader vision of its role in social Canada.

c) The Federal Government and Citizenship: Beyond Flags

The idea of citizenship remains an important starting point in rebuilding a vision of the federal role in the social policy. The promise of inclusiveness implicit in the concept of citizenship provides a guiding principle in developing programs that enable all Canadians to participate effectively in the mainstream of economic and social life. Moreover, the promise of equality implicit in the idea of citizenship provides a guiding principle for the central government in a federal state. A primordial role of the federal government is to ensure that Canadians are broadly treated in similar ways, irrespective of the language they speak or the region in which they live. This obligation is embedded in Section 36(2) of the constitution, which entrenches the commitment to a program of equalization grants, but it has a wider resonance as well. At its base, the

¹³House of Commons, *The Grand Design*, p. 3.

idea of citizenship speaks to a social solidarity that is important in a country so deeply divided by region and language. An expansive definition of citizenship confirms that, for some purposes at least, Canadians are members of a single community, and part of a network of obligations that spreads from coast to coast to coast.

Clearly, the concept of citizenship rights as developed by Marshall must be tempered in a federal state. Taken to its logical extreme, a set of basic social rights guaranteed to all citizens would imply a rigid uniformity of social programs across the country, a uniformity incompatible with Canada's federal nature and its social history. To extend the concept in this way in Canada would provoke political challenges to the very idea that citizenship has acquired a social dimension in the 20th century.

Nevertheless, the social dimension of citizenship does constitute a basis for federal action. First, the federal government retains considerable jurisdiction of its own in the field of social policy. The tax and transfer system is a major instrument through which the Ottawa can respond to the needs of individual Canadians. This instrument remains important to both the concept of social inclusion and the idea of Canada as a single community. Whether the federal government always meets the imperatives implicit in the idea of citizenship is an interesting question. For example, are the regional variations in unemployment benefits now so great as to undermine the concept of the equal treatment of Canadian citizens, irrespective of where they live? Can the same question be asked of the financial formula incorporated in the Canada Health and Social Transfer?

Second, the concept of the social dimension of citizenship continues to be reflected in the program of equalization grants, which ensures that all provinces can maintain reasonably comparable levels of public service without having to resort to above average levels of taxation. As noted earlier, this is one pillar of the federal role that so far has retained considerable political protection.

Third, a vigorous concept of Canadian citizenship commits the federal government to continued engagement with provinces in a search for a broadly pan-Canadian approach to social policy in areas under provincial jurisdiction. This search is obviously becoming more difficult because of the decline in federal cash contributions to provincial programs, and the legacy of our constitutional conflicts. Yet there is no other mechanism available to the country to secure a pan-Canadian approach to health care and social services.

Certainly, alternative mechanisms to federal involvement have been canvassed. One alternative is a social charter, which emerged suddenly in the agenda of the constitutional negotiations during the early 1990s. The essential idea was to entrench a commitment to the existing framework of social programs in the constitution of the country, building a social equivalent to the Charter of Rights and Freedoms. With

entrenchment of the basic parameters of social programs, its advocates contended, decentralization could be approached with greater equanimity.¹⁴ There was considerable debate about whether such a charter could or should be justiciable, that is, enforceable in the courts, and different approaches to the idea continued to swirl around in the deliberations. In the end, however, the social charter remained a symbol of, rather than a solution to the tensions within the country. Even a non-justiciable charter failed to gain sufficient support to be included in the Charlottetown Accord that was eventually put to the Canadian people in a referendum.

A second alternative that has emerged equally suddenly in recent months is to rely on inter-provincial negotiation to establish a pan-Canadian approach to social policy. The key to this approach is the proposition that standards do not have to be federal to be national. Rather, it is argued that a process of inter-provincial negotiation can build a common approach, and that provinces would have strong incentives to sustain it.¹⁵ However, the history of inter-provincial initiatives provides little evidence that provinces could, in fact, agree on a common definition of social Canada. Even if they could reach consensus on a common principles, no enforcement mechanism is possible, and there could no means of constraining individual provinces that chose a distinctive course in the future.

In the final analysis, there is no alternative. The federal government must continue to be a part of a federal-provincial dialogue which defines broad pan-Canadian approaches to social policy. This is not an appeal for the federal unilateralism that characterized periods in our past. Nor is it an appeal to freeze existing programs for all time. It is an appeal, however, for a common Canadian debate about our social future, and for the preservation of pan-Canadian social programs.

d) The Federal Government and Civil Society

In addition to sustaining the social meaning of Canadian citizenship, it is also worth exploring federal actions that would enhance civil society in the late 20th century. None of these instruments are particularly expensive, and therefore they represent options available even to governments with relatively threadbare treasuries.

¹⁴ During the constitutional negotiations, the strongest supporter of a social charter was the then NDP government of the province of Ontario. See Ontario (1991) *A Canadian Social Charter: Making Our Shared Values Stronger* Toronto: Ministry of Intergovernmental Relations.

¹⁵ For the fullest development of this idea, see Tom Courchene (1996) "ACCESS: A Convention on the Canadian Economic and Social Systems," Working Paper Prepared for the Ministry of Intergovernmental Affairs, Government of Ontario, Toronto.

Building Social Capital: The federal government could seek to nurture social capital by expanding, rather than reducing, its financial support of social organizations. Such a strategy has two benefits. First, it would contribute to a stronger institutional capacity in civil society, and increase the number of organizations capable of responding to social needs. Second, it would strengthen the capacity of civil society to monitor social needs, to articulate emerging problems, and to highlight program deficiencies.

Perhaps the most powerful way to influence public policy is to shape political discourse, that is, to influence the issues that are actively debated, the ways in which they are defined, and the range of policy approaches to them that are actively considered in public debate. Moreover, ideas do not respect borders, and such forms of influence flow readily across inter-governmental boundaries. As Pal noted of the federal government's existing support for various equality groups:

"...a portion of SOS funding goes to purely provincial or local groups, so that the national government's priorities on language, on multi-culturalism, and on women get projected into the provincial arena.....The point is not that these issues would never get articulated at the local or provincial level. Obviously, they would, but quite probably in terms more congruent with local and provincial conditions. The SOS's programs "normalized" the politics of official languages, of multiculturalism, and of women. Terms of debate, issues at stake, and demands and claims in almost each broad area and specific policy within that area are remarkably similar from one end of the country to another."¹⁶

Sponsoring Innovation and Experimentation: A related instrument available to the federal government is support for innovation and experimentation in the system. One of the common arguments for decentralization is that it permits a wider variety of policy options to be implemented, turning provincial and local governments into laboratories for experimentation. Nevertheless, there would still seem to be a role for the federal government to widen the range of experiments that occur by supporting innovative approaches to policy issues by other levels of government or by social organizations. In part, such a strategy would compensate for the comparative weakness of private foundations in this country. The current federal contributions to experiments in the field of social assistance and training in New Brunswick and British Columbia represents an ambitious form of this type of instrument. There are also important federal contributions to experiments with disability programs in Newfoundland and Prince Edward Island. One could image a wide range of experiments and demonstration projects supported by the central government.

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Leslie Pal, *Interest of State*, p.258

Knowledge-Based Instruments: Monitoring and Social Audits: Effective learning from diverse, decentralized systems requires rich flows of high-quality information; and informed judgment about the relative effectiveness of different programs. Such knowledge generation enriches democratic debate, and enhances the capacity of groups in civil society to assess their own effectiveness and hold governments to account. A high-quality system would involve several distinct elements: comprehensive monitoring; effective comparative program evaluation; and perhaps authoritative public judgments.

Monitoring is crucial to social learning. One of the most striking features of Canadian social policy, in comparison with that in many other countries, is how much we do not know about social programming in different regions of the country. Our statistical information is extremely uneven; and there is no central depository of information on comparable social programs in different regions and localities. As a result, the process of learning from the experience of different parts of the country is more difficult.

In addition, our capacity for high-quality evaluation of social programs has eroded in recent years. Governments have down-sized policy units within major government departments; they have also eliminated advisory research bodies, such as the Economic Council of Canada, the Canadian Advisory Council on the Status of Women, and the Ontario Economic Council, or shifted the mandates of other bodies from program evaluation towards consultation. As a result, the burden of policy analysis falls more heavily on civil society, and particularly the network of private research units, university-based scholars and research centres, and advocacy organizations. Although there is considerable expertise spread through these networks, almost all of these organizations have small budgets and limited capacity to conduct major, multi-year, multi-disciplinary research projects that are essential to significant advances in our understanding of the social world in which we live. Support for high-quality, balanced comparative program evaluation would be a second stage in strengthening our capacity for social learning.

Finally, it is possible to move beyond monitoring and program evaluation to authoritative judgments. Such a process would involve a more formalized system of social audits, analogous to the audits of public finances conducted at all levels of government. Canadians are rather fond of quoting international agencies that rank the performance of different countries on important social dimensions, especially when those rankings reflect well on us. A similar process of authoritative judgments on the relative effectiveness of social programs across the country would be equally, if not, more informative. Whether such judgments would be best rendered by public bodies or by a council rooted more firmly in civil society is an issue requiring substantial discussion. Nevertheless, the ability to make summary judgments about effectiveness, and let those judgements be tested in the wider political process, can only enrich the quality of democratic debate in Canada.

5. CONCLUSIONS

The balance among the state, the market and civil society is changing in ways that place greater strains on both civil society and citizenship rights. Sustaining both dimensions of our collective life is critical. A vigorous civil society represents an invaluable means of responding to collective needs in an era of shrinking governments. And an underpinning of rights and benefits for all citizens is essential to ensure that civil society does not leave some groups on the margins, or discriminate against individuals and groups that differ from the mainstream.

Getting the right balance between civil society and citizenship is especially important for people with disabilities. These Canadians face greater obstacles to self-organization and collective action than do others, and a strategy that looks exclusively to civil society to establish an "Open House" is unlikely to succeed. For this element of the Canadian community, a strong conception of citizenship remains central. This is not to denigrate the contributions of the third-sector, or to deny scope for a larger role in the future. It is simply to observe that the promise of inclusion implicit in the ideal of citizenship is not easily replicated elsewhere.

It has become common to denigrate the role of the federal government in the social life of Canadians. Yet there remains a large reservoir of public support for federal initiatives that respond effectively to the social needs of Canadians. The instrument of shared-cost programs is clearly much more constrained than in the postwar period, but other instruments remain available to federal authorities committed to a vibrant civil society and citizenship rights. Moreover, the ideal of citizenship retains a powerful integrative potential in a country divided by language and region. Although some suggest that this potential can be fully realized through purely inter-provincial agreements, the evidence of our history overwhelmingly suggests that a strong federal presence is essential to a pan-Canadian approach to social policy. Federal leadership remains one way of saying clearly that, amongst the diverse communities and identities that define us, the community of all Canadians remains a meaningful element in our lives.

PAPER III
STRENGTHENING CIVIL SOCIETY AND CITIZENSHIP
THROUGH NATIONAL POLICY

By Michael Mendelson and Gerard Boychuk

1. THE CONTEXT

This is a time of enormous change, challenging us to rethink many of our basic conceptions of social policy. The extraordinarily powerful, but anonymous, forces of the market continue their relentless search to identify and meet an increasing spectrum of human needs, bringing new areas of previously non-market activity into the money exchange system. This process, sometimes called 'commodification', is both assisted by, and in turn contributes to, the development of new technologies, and the rationalizing force of economic globalization. There is nothing intrinsically wrong with commodification; far from it, much increased leisure and human satisfaction has resulted. But, as a new area leaves the venue of pre-market voluntary exchange and becomes enmeshed in market exchange, like many market based phenomena there are externalities that the market cannot encompass. (These are effects external to the market process (e.g. pollution from a factory) that are not reflected in the price or the product.)

The increasing atomization of society is one of the externalities of the commodification of many activities of daily living and community and family life. Television, for example, has filled the human need for entertainment and distraction and, perhaps, also in some ways provides an artificial circle of friends. Previously this need had been partly filled by everything from sewing clubs to Rotary Societies. The demands for labour mobility also mean that people move a lot more, breaking up friendships and making it harder to form life-long associations.

This has in turn led to increasing concern about a pattern of diminishing community life. What is sometimes called social cohesion or, more recently, civil society, is seen as at risk. It turns out that this concern might be much more important than at first thought: rather than merely a longing for an idealized past of village life, the voluntary associational relations that made up communal life prior to the encroachment of the market could themselves be an essential prerequisite for a healthy, sustainable economy and civic life. Robert Putnam's work in this area (Putnam 1993) became instantly popular and much discussed, because it hit a raw nerve, capturing a rising realization that something is amiss.

If we are to address this concern, we will need to take some form of collective action. Stopping or reversing the process of commodification is unrealistic (perhaps impossible too) and probably undesirable. But are there ways to offset or reverse some of the externalities, by strengthening civil society?

In the previous paper, Keith Banting talks about citizenship and civil society. He argues that government faces a new challenge: how to give meaning to citizenship in a world of increasing atomization. He argues that this is a task that properly resides with the federal government.

This paper begins where Banting's leaves off. It looks at the specific issue of whether there are ways that the instruments available to the federal government can be used to meet the objectives set out by Banting with respect, specifically, to those Canadians with disabilities. In particular, we look at four options for federal programs to meet these objectives and review these options against the criteria of how and whether they contribute to full inclusion and citizenship.

2. OPTION A: INTRODUCE A FEDERAL REFUNDABLE DISABILITY TAX CREDIT (DTC)

Tax related options were reviewed in a paper for the Task Force by Richard Shillington (Shillington 1996). One of the options reviewed by Shillington is a broadening of the existing disability tax credit, while making it refundable. We will not here repeat Shillington's work. Many of the detailed issues and sub-options are explored in his paper. Rather, the objective here is to assess a number of general options from the perspective of citizenship.

Briefly, the current DTC is a non-refundable reduction in federal and provincial tax payable, worth up to \$720 reduced federal tax and up to about \$400 reduced provincial tax, depending upon the province. The total federal cost was about \$272 million and the total provincial cost about \$150 million in 1993. It was claimed by about 540,000 people in 1993. About 370,000 of these claims were for the person with disabilities: the remaining 170,000 claims were by a spouse or supporting relative. About 45% of persons claiming the credit for themselves were over 65. The DTC is now worth nothing to those with no taxable income and no supporting relative with taxable income - this is what it means to be non-refundable. (Finance 1996)

Option A would see the DTC turned into a refundable credit so that those without income would receive a cheque, rather than limiting the DTC to a tax reduction only for those paying tax. At the same time the DTC could be broadened to include a potentially wider scope of impediments, perhaps not only to daily living, but to employment or education as well. Finance estimates that the cost of simply making the DTC refundable would be about \$200 million, but this is further complicated by the potential

loss of over \$100 million from the provinces (discussed below). If this were made up by the federal government, it would add to costs but not to the benefits available to claimants.

This DTC option may or may not be attractive as a tax measure or as a means of increasing income. But this option has some very substantial failings from a citizenship perspective, which is the perspective of this paper. These are as follows:

a) Labelling

As the current DTC is administered it requires that applicants obtain a medical certificate stating that they have a severe and prolonged mental or physical impairment, markedly restricting their ability to perform basic activities of daily living. While the DTC does not literally require a person to be labelled as a disabled person, functionally it is a simple binary decision - yes or no. If yes, the person has sufficient impairment to be entitled to the disability credit. If no, then impairment is not sufficient. Whether it is directly said or not, this amounts to labelling. While this may seem a trivial problem to some, it is in fact fundamental and contradicts the idea of citizenship.

It should be acknowledged that the current DTC program criteria have been designed so as to attempt to avoid labelling a person as disabled. The Income Tax Act specifically defines a number of functions of daily life: perceiving; thinking and remembering; feeding and dressing oneself; speaking; hearing; eliminating; and walking. It is the performance of these activities that is supposed to be measured. So the existing test for eligibility in the DTC does in theory address impediments to daily functioning rather than disability, *per se*.

But it then converts the assessment of impairment into an all or nothing permanent certification of disability. It provides a flat rate benefit with no relation at all to the impediments, only to the label. Nor would this be any better if the refundable DTC were income related. Any program which requires people to pass a one time, permanent hurdle such that they are entitled to payment if they pass and are not entitled if they do not, has labelling as an unavoidable consequence of the program design, regardless of the good intentions of the program designers. Social policy whose objective is social inclusion and citizenship for persons with disabilities must be aimed at the impediments; not at the person.

Requiring a person with a disability to declare her or himself as permanently disabled because of serious and permanent impairment is to require signing away a good deal of the aspirations and hopes which any person, with or without a disability, must nourish. If we should have learned one single lesson from the last century of social programs it is simply this: people tend to become what they are labelled as being.

Persons forced to sign what amounts to a confession of their permanent dependency will likely remain permanently dependent.

It is hard to think of a program feature that could be more contrary to the idea of citizenship. At some time in a more enlightened future, this type of program requirement will likely be seen in much the same way as we now regard the poor houses of Victorian England.

b) Inadequacy

By its nature, the DTC will never be adequate to provide the supports and services needed to overcome or ameliorate impediments for those with disabilities. For some, it will be more than required. For others it will be much less. A flat rate benefit may be acceptable as an income subsidy program, but it cannot function as a program to help pay for the costs related to disability. These costs are far too variable. While income programs are extremely important to meet the basic need of people with disabilities (as with others who are poor) (and addressed in other work of the Task Force) it is cost of disability, that is, individual supports, and aids and devices that are needed to allow social inclusion and the realization of citizenship.

As well, the current DTC is partially paid for by the provinces since it is a reduction from the Basic Federal Tax. It is not clear how the cost of a federal tax credit could be shared by the provinces. Nor is it easy to see how the federal government could prevent provinces from taking advantage of the enhancement of the credit to reduce their own support for persons with disabilities. This could include the many provincially financed programs to provide supports and services, as well as provincial income support for the large group on social assistance, most of whom would for the first time be benefitting from the tax credit if it were refundable. The consequence could be little or even no net gain for many persons with disabilities, despite substantial increased federal expenditure.

The federal government would either have to negotiate a reasonable agreement with the provinces - without offering anything in exchange - or make up the loss itself. The former is unlikely at present. Even if provinces reluctantly agreed to some arrangement there is nothing to stop them reducing their support quietly over a number of years. The latter route would mean additional federal costs with no added benefit for persons with disabilities.

c) Medical certification

The current DTC requires a physician to act as gatekeeper for the program. Physicians are not particularly well trained for this purpose. Nor is there any reason to expect that their decisions will be similar for all physicians and therefore fair between potential

claimants. What provisions could there be to ensure consistency of physician decisions across Canada? It is very likely that people are accepted readily by some physicians while others in the very same condition are not judged as meeting the criteria.

However, the real problem with this certification method is the implicit medicalizing of disability. People with a disability are not sick. In the Netherlands, the definition of eligibility has been taken out of physician's hands and placed in the responsibility of trained panels (Beekman 1996). Judgement is made according to the actual conditions in the labour market, and not on the basis of the individual. While it is possible to imagine Canada adapting some such system for the social insurance programs, it is not easy to see how this type of system could function with reasonable costs in relation to the annual demands of the tax system.

Of course, self assessment is not possible where the only benefit is money. The result of self assessment would be an explosion of claims and the necessary administrative controls and audit would be cumbersome, costly and invasive. So the DTC seems stuck with medical assessment with all its unfairness. The stigma of being labelled as 'sick' with a medical condition is contrary to the goal of social inclusion and citizenship.

Conclusion to Option A discussion

Expanding the DTC may perhaps be a positive proposal if the goal is to increase income. However, if the goal is to ensure full citizenship by eliminating barriers to participation in society, it may well do the reverse by adding to the sense of exclusion.

3. OPTION B: INTRODUCE A REFUNDABLE DISABILITY EXPENSE TAX CREDIT (DETC)

The current tax system includes a credit for medical expenses called the Medical Expenses Tax Credit. The METC includes expenses often incurred by persons with disabilities, such as home renovation costs, but it is little used by claimants who also claim the DTC - only about 70,000 claim the METC. This could be partly because it is not a very generous credit, providing tax reductions equal to 17% of eligible medical expenses above the lesser of 3% or \$1,614 net income. It is also not a refundable credit. Effectively, the METC allows medical expenses above a certain amount (the amount related to income) to be purchased from after tax income, on average, and depending upon tax bracket.

A refundable DETC would, like the METC, be based on spending on eligible items and be transferrable to a supporting relative, but in the case of the DETC it would be on a broadly defined range of disability related personal support and aids devices. However, unlike the METC, the objective of the DETC would be to use the tax system to offset the

cost of disability related personal supports and aids and devices not just to allow people to pay the costs out of before tax income.

The DETC would be based on some higher percentage of spending being creditable, perhaps up to 100% up to some level of expenditure. As well, the value of the DETC could be income related by providing for the reduction of the credit by some per cent of income.

To illustrate, take a hypothetical program design whereby the first \$5,000 of eligible expenses was 100% credited, the next \$5,000 credited at a rate of 50% and the remainder at 17% as at present. For illustration assume the credit was reduced by 10% of net income. Thus with \$15,000 eligible expenditures and \$10,000 net income, the refundable credit would be \$8,350 less \$1,000. Of course, any range of limits and tax back rates are possible and the simplest program design would be one of a straight credit based on eligible spending up to some limit, with no income related reduction.

From a citizenship perspective the DETC has a number of potential advantages and disadvantages. These are discussed below:

a) Personal supports and aids and services according to impediment

The great advantage of the DETC is that it would provide a flexible program of subsidy for personal supports and aids and devices to enable full participation in society. It would be a 'statement by deed' by the government of Canada that all residents have a right to be a full member of society and that personal supports and aids and devices needed to realize that objective would be at least partly paid for by Canada, according to the personal requirements of each individual. In this regard the objective of the DETC would be fully consistent with the objectives of a citizenship perspective.

Of course, to the extent that the program provides less than a 100% credit, it will not fully meet the objectives of a citizenship perspective, as many who cannot afford their share of the cost will remain excluded for want of an unaffordable personal support, aids and devices or service. This is a limitation of the DETC that is also discussed further below.

b) Eligibility

To the extent that services and supports would be limited to those only of interest to persons with a disability, no certification of an individual's 'degree of disability' would be needed. Rather, it would be possible to rely upon self selection, based on the principle that no one without a disability would be interested in the support or service anyway. Some particularly expensive items that are reusable (e.g. wheelchairs) could be refundable only if purchased from authorized dispensers or under specific conditions.

Of course, the broader the definition of allowable expenses the more subject to potential abuse is the program. For example, if adaption of cars to hand controls is included and is fully reimbursable, it is not inconceivable that some individuals would convert their automobiles for no good reason. It is also not beyond the realm of possibility to imagine people trying to make a quick dollar by reselling purchased goods in other countries. However, all tax based programs are subject to some potential abuse. The level of potential misuse of the program could be closely monitored and appropriate steps taken if this seemed a substantial, growing problem.

An adequately monitored DETC should not require labelling of people and it would not require medical certification.

c) Front end spending

Tax credits are paid in a lump sum four or more months after the end of the year: expenditures are made during the year. A program providing 100% reimbursement is not much good if the individual cannot raise the money to spend in the first place. This problem could be at least partly solved by making the credits assignable, at least to specified retailers and dispensers. Presumably, the market would then take care of the rest, as suppliers set up financial arrangements (and prices) that reflect a delayed payment. Those that did so would get the business. Alternatively, or in addition, arrangements could also be made whereby funds could be forwarded on an assigned basis by financial institutions' with the financial institutions costs being creditable as well.

All of these solutions are made more difficult as the credit is reduced below 100%. It would still be possible to assign the federal credit, but the individual would then have to come up with their share of the funds. This could be a substantial impediment. As well, if the credit is income related it is hard for a retailer or even an individual to know exactly how much will be credited. In these cases the problem of front end costs is difficult to solve.

d) Supplier efficiency

If costs are 100% credited up to a high limit there is little incentive for the purchaser to find a good price. This could lead to escalating costs and inefficient suppliers of goods and services. This problem may be more imagined than real: people will still want to get a good price and get quality service, particularly if they are paying even part of the price. On the other hand, it is a common practice for autoshops to 'forgive' the deductible on insured auto repairs, which is really a way of inflating prices for the insurer. A similar pattern may evolve in the DETC. This issue would have to be monitored.

e) Federal costs

If Canada were a unitary state, the DETC would likely be the best possible program. It would result in a uniform program across Canada fully supporting the purchase of needed supports and services. However, Canada is not a unitary state. As with Option A, Canadian federalism makes the DETC much more complicated.

Unlike the DTC, there would be very little loss of the provincial share of any existing tax credit. This is because there is very little current provincial contribution to the METC for the kinds of personal supports that would be covered under the DETC. Thus, this does not add to federal costs and lead to 'spillage' of funds outside of the funding going into the program.

However, even more than the DTC, the DETC would allow provinces to reduce their current programs to provide personal supports and aids and devices to people with disabilities. Many supports and services are not provided by commercial retailers; instead they are provided by provincially supported voluntary agencies or even directly by the provinces. Of course, there is nothing to stop these agencies from instead selling their products, so they could remain involved. However, the problem is that the provinces are likely to reduce their financial support, since the federal government is paying instead. The result could be a loss of much of the funding that provinces are currently devoting to these programs. This would be a net gain to provincial treasuries, but to the extent that the federal government made up these costs, it would represent a federal expenditure with no benefit to those with disabilities. The withdrawal of provincial spending would raise costs and make it less likely that the federal government would spend the needed funds to finance an adequate DETC.

Regardless of what provinces do it is hard to estimate the costs of this Option. The federal government could phase in a DETC by starting with a small maximum, say \$1,000 annually or a \$10,000 lifetime limit or a mix of the two. If costs after a few years are modest, the limits could then be raised. This would contain potential exposure to large unanticipated costs.

Conclusion to Option B discussion

The DETC could be a viable step forward towards a program of supports and services for persons with disabilities. However, if there is provincial withdrawal of existing programs and supports, the DETC is likely to be less than fully adequate.

4. OPTION C: INTRODUCE A DETC BUT ALLOW PROVINCES TO 'OPT IN' - THE DETC+

This option would see the federal government introduce a DETC as in option B above, but with one big difference: provinces agreeing to operate a program providing benefits at least equal to those of the DETC, and agreeing to a few other national criteria, would be allowed to 'opt in.' An opted in province would run its own program and the federal government would give the province directly the funds it would otherwise have spent in that province through the DETC.

The general requirement for an opting in province would be that the benefits of its program for persons with disabilities would be at least equal to those of the federal program alone. Additional criteria could include the standard conditions in the CHST: no residency restrictions on people from other provinces and acknowledgement of the federal contribution. The total cost to the federal government should be the same as the DETC.

Aside from the advantages and disadvantages of the DETC, there would be a number of other factors to consider regarding the 'DETC+'. The main advantage is that the DETC+ would at least allow the possibility of combining federal and provincial funds into a much better program. The provincial program could be innovative. It could include at least some provision for 'self-directed funding' whereby a person is given control over the funds that would have otherwise been spent on their behalf. Further advantages and disadvantages are discussed below:

a) Will anyone opt in?

Assuming a relatively generous DETC, a province would likely be better off to opt in than to remain in today's status quo. This is because there are today major provincial expenditures on personal supports and aids and devices for persons with disabilities and, even with a substantial expansion to introduce a new program providing benefits better than those of the federal program, the net cost to the province would likely be less after subtracting the federal contribution. This would suggest that provinces would be willing to opt in.

On the other hand, even these reduced net costs would probably be greater than the costs to the province of simply letting the federal government introduce a DETC and simultaneously cutting back on provincial expenditures for personal supports and aids and devices to persons with disabilities. In other words, while opting in would likely be less expensive than the current *status quo*, it would likely be more expensive than the new *status quo* were a DETC to be introduced. From a financial perspective, therefore, provinces could have an incentive not to opt in.

Some provinces might opt in in any case, because they would want to better integrate programs for those with disabilities and would take advantage of the federal offer to do so. Other provinces might opt in and offer a program essentially the same as the federal program, except administered by the province, as a way of maintaining their jurisdiction and still saving some costs - although not quite as much as they could save if they remained opted out. As there would be no great advantage to those with disabilities if a province opts in, unless the provincial program is much better than that of the DETC alone, there would not be substantial political pressure on provinces to opt in.

In sum, there are a few reasons to think some provinces might opt in, but it is not at all certain that this would happen, nor does there seem to be any substantial 'snowball' effect whereby one province's opting in would put political pressure on other provinces to do so.

b) How much does a province get?

One technical problem with this Option is the calculation of the amount going to an opted in province. There are several ways this problem could be solved. Depending upon the design of the provincial program, the amount of the federal payment could be linked to the volume or cost of the provincial program. Alternatively, the amount going to an opted in province could be linked to the amount going to provinces that do not opt in, in an equal per capita or other type of formula. This, of course, assumes that some provinces do not opt in. Or an arbitrary formula of some kind could be negotiated.

As problematic for the provinces would be some kind of assurance that whatever they negotiate or agree to today, would continue to be honoured tomorrow. Unfortunately, the history of federal reductions in federal-provincial cost-shared programs has left many provinces highly sceptical of federal commitments. They would be concerned - for good reason - that the federal government would withdraw in a few years, leaving them all alone holding the bag. Nothing short of a Constitutional amendment can bind future Parliaments; however a solemn, legislated commitment for a substantial period of time, with a fixed date for renegotiation (for example, ten years) should help alleviate some of this provincial concern.

c) Federal-provincial relations

In the most recent Speech from the Throne, the federal government undertook not to develop any new cost sharing programs in areas of provincial jurisdiction without the consent of the majority of the provinces. Provinces agreeing to offer a program meeting the national objectives would be given compensation so they could run their own program. Would the proposed DETC+ contradict the Throne Speech commitment?

If a majority of the provinces agreed to the DETC+ this would meet the first part of the Throne Speech commitment. There is every reason to think that this consent would be obtainable; after all the provinces would have nothing to lose and much to gain. Whether the second part of the Throne Speech commitment is honoured by DETC+ is less clear. The Option is a novel arrangement allowing provinces to 'opt in' and set up a program that substitutes for a federal program. This is not what anyone had in mind when discussing opting out of a cost-shared program. Indeed, at the risk of confusing everyone, the opting in right of provinces in DETC+ may be thought of as an opting out of a federal program and compensation for a province running its own program. In this view, DETC+ would fully meet the second half of the Throne Speech commitment regarding new shared cost programs.

d) Checkerboard Canada

One of the consequences of giving provinces choices of opting in or otherwise is that there may be markedly different programs across Canada. However, the DETC itself would define a national minimum and provinces who opt in to their own program would have to permit full mobility. The result should be less of a checkerboard Canada than we have at present. Therefore, this should not be a real problem for DETC+.

e) Federal presence

It is important that programs paid for by Parliament are seen by the public to be financed by Canada and viewed as 'Canadian' programs, not just provincial programs. This is not just a trivial political matter: recognizable pan-Canadian programs, especially those to assist persons who are disadvantaged, are an important part of our national identity. Where a province opted in, the federal government would no longer be paying a direct benefit to persons with disabilities, at least in regard to their expenses. To some extent, the consequent loss of visibility could be offset by requiring full recognition of the government of Canada on all publicity circulated about the program, but there is no means to compensate fully for the loss of the more direct DETC as a Canadian program.

Conclusion to Option C discussion

DETC+ offers an innovative way to assist persons with disabilities in removing impediments to their full participation in society. It offers all of the advantages of the DETC while also allowing provinces to set up better programs if they wish to do so. Of course, the ultimate effectiveness of the program depends upon the generosity of the underlying DETC as well as the responsiveness of the provinces to their opportunities. The latter may be in question, as they would be exposing themselves to greater financial risk than by remaining on the sidelines and letting the federal government go it alone. There is good reason to suspect that DETC+ might end up just plain DETC in implementation.

5. OPTION D: A COMPREHENSIVE DISABILITY RESOURCES INSURANCE PLAN - CDRIP - RUN BY PROVINCES AS A PREMIUM/SUBSIDY BASED INSURANCE PLAN WITH A FEDERAL INDIVIDUAL BASED TAX CREDIT TO OFFSET THE COST OF THE PREMIUMS

This Option also builds on a tax related credit, but in this case the credit is available only when a province 'opts in'. The federal tax credit would reimburse people for the cost of registration in a universal, province-wide program providing a comprehensive range of supports and services related to disability. The provincial program would be designed along the principles of the Roeher Institute's proposed Canadian Disability Resource Program (Rioux and Crawford 1994).

The provincial program would be partially supported through the 'premiums' paid by persons wishing to enroll and partially provincially supported through general revenue. The costs of the premium would, in turn, be fully or almost fully offset by the federal government through a tax credit. In provinces that did not set up a program meeting federal criteria, individuals would not be eligible for the federal tax credit.

The federal criteria could include:

- enrollment open to anyone resident in the province on a self-selection basis
- enrollees entitled to a comprehensive range of personal supports and aids and devices related to disability on a first dollar full coverage basis (while allowing for appropriate controls and use)
- include as part of the provincial plan an option for self-directed funding, whereby individuals could chose to negotiate a budget with which they would contract for their own services
- the provincial program could be run directly, by non-profit agencies or by commercial firms under contract
- the premium would have to be set at or not much more than the maximum value of the federal credit
- federal credits may be assigned and assignment would have to be acceptable as payment of premiums

- recognition of federal contribution would be required.

The amount of the federal tax credit would be determined on the basis of a federal estimation of what would constitute an appropriate level of incentive for provinces to organize such a program and, of course, based on what the federal government feels it can afford.

To illustrate: Individual pays an annual premium of, say, \$1,100 to the Provincial Comprehensive Disability Resources Insurance Plan (CDRIP). If Individual cannot pay all of the premium he may assign his forthcoming federal credit to the province. This pays all or almost all of the cost on behalf of Individual. As a member of the CDRIP Individual is then entitled to benefits consisting of first dollar comprehensive coverage of all appropriate disability related personal supports and aids and devices as defined in a menu. This includes an option for self-directed funding arrangements, if Individual wishes to pursue this alternative. The total cost of the CDRIP is covered in part by the premiums, but the remainder has to be paid by the province.

The costs to the federal government of this Option are more predictable and controllable than those of the DETC or the DETC+. Basically, having set the tax credit amount, the risks are only those of greater enrollment than anticipated, although there are also possibilities of lesser enrollment. By way of example, if the tax credit were \$1,000 and everyone with a severe impairment (according to the 1991 HALS survey) enrolled the cost would be about \$650 million dollars. However, it seems highly unlikely that everyone would enroll, particularly if there were some small 'deductible' in the form of a portion of the premium not offset by the federal tax credit.

In addition, the federal government could further reduce costs by making the value of the credit related to taxable income. For example, the value of the credit could be reduced by 1% of net income, so that in the above example anyone with \$50,000 income would receive a tax credit of only \$500. However, it should be acknowledged that costs would be difficult to estimate without some experience.

As federal financing is directly to individuals rather than to provinces it would be much more difficult for the federal government to reduce arbitrarily its financial commitment. Some longer term financial agreements would still be needed, but this should not be as much of an impediment as it is for the DETC+.

Where a province opts in and develops a CDRIP, it will fully meet the needs of citizenship by providing all persons with disabilities a comprehensive range of supports and aids and devices. Moreover, no humiliating test of permanent disability would be required. This would be a huge new advance for people with disabilities in Canada. This is the main advantage of Option 4. Of course, where a province did not agree to

set up a CDRIP, there would be nothing at all, except provincial programs. This is a significant disadvantage of Option 4.

Another advantage of the CDRIP is its insurance-like nature. This clearly takes the program out of the realm of welfare and into a more business-like and less charity-like arrangements. If the premium is income related, many of the enrollees will indeed be paying a large portion of the cost themselves. This should allow claimants to be treated as valued customers rather than as supplicants. If a province wished it could arrange a capitation type of funding and allow non-profit or even commercial firms to compete for enrollees. Doubtless, this would further enhance the status and treatment of beneficiaries.

Other advantages and disadvantages are discussed below:

a) *Would anyone opt in?*

In the case of the DETC+ option the financial incentives on the province were slanted towards non-participation. In the case of the CDRIP, the financial incentives are likely towards participation. While the costs of the CDRIP in a province would probably be higher than at present, these would substantially be offset by the federally supported premiums. Cost estimates of this kind are beyond the scope of this paper, however it seems reasonable that the net costs to the province of a CDRIP would be equal to or less than their current costs.

The financial concerns of the province would likely be that they are exposed to all of the risk, at least in terms of the costs of personal supports and aids and devices, while the federal contributions are effectively capped. Nevertheless, the combination of potentially lower costs, as discussed above, and a major new program, should prove very attractive to many provinces.

It would not be necessary for all provinces to opt in in the first instance. The federal government could negotiate prior to introduction of the program with several provinces and see which would be willing to be among the first to sign on. Once several provinces offered such a program there would be considerable pressure for other provinces to opt in.

b) *Federal-provincial relations*

It is not at all clear that the proposed funding mechanism is a 'shared cost' program at all. If it is not, it is not encompassed within the Throne Speech commitment. The federal government is sharing the costs with individual citizens, not provinces. The federal government has never ceded its right to make direct payments to any Canadians, for whatever purpose. This does not appear to be a shared cost program in any ordinary

sense. Nevertheless, some provinces would likely object to the CDRIP as an interference in an area of provincial jurisdiction. Whether or not a majority of provinces concur with the CDRIP, it can be anticipated that there would be a bit of a rocky reception from more than one province. However, this was also the case for Hospital Insurance and Medicare. The federal government should not necessarily let dissent of a few provinces act as an effective veto.

Some provinces might demand the right to 'opt out' and deliver their own program. But this demand makes little sense in this context. The program is already designed to allow provinces to run their own plans and get compensation from the federal government indirectly.

c) Complexity and innovation

The CDRIP would be an altogether new approach to social policy in Canada. Anything too new and too innovative is regarded with some suspicion, and often rightly so. Unanticipated problems will undoubtedly arise. For some, this in itself may be a sufficient disadvantage of the CDRIP to take it out of consideration as an option. However, it can be expected that only one or two provinces would sign on at first, so a period of experimentation and piloting of the program could be undertaken. This would minimize risks for other provinces. It would be disastrous in the long run for Canadian public policy if anything truly bold and new was automatically ruled out of contention.

d) Checkerboard Canada

Unlike the DETC+, the CDRIP does not guarantee a minimum level of support for expenses associated with disability right across Canada. This is one of its major weaknesses. Some Canadians - those in provinces that chose not to opt in - would get nothing at all. Others would have a comparatively rich program, partly paid for by federal taxpayers, including the taxpayers in the provinces that had not opted in. The hope from a federal point of view would be that persons with disabilities and their supporters would put pressure on provinces not opted in to join up. But there would no doubt also be some pressure on the federal government to provide benefits directly in those provinces.

e) federal recognition

As a program paid through people, rather than through governments, the CDRIP would automatically ensure recognition of the federal contribution and would give the program high visibility as a federal-provincial plan.

Conclusion to Option D discussion

CDRIP is the most innovative of the options presented here. It uses a new federal instrument - indirect funding through enrolled individuals - rather than traditional cost-sharing. Where it is set up in a province, it should fully meet the citizenship goals of full participation and inclusion. Where it is not set up, political pressure would have to be asserted to persuade the province to sign on. As provinces are likely to save money, this might not be an insurmountable barrier.

6. CONCLUSION

As new issues arise in public policy new instruments and approaches are needed to address them. With increasing recognition of the importance of citizenship and civil society to Canada, we need to search for ways to strengthen these aspects of our national life. In Canada we are not a unitary state and are constrained by the Constitution. Like other newly emerging concerns in the past, we must now find innovative ways to adapt the old Constitution to new policy objectives.

In this paper, we have discussed four options for doing so. Two of the options are direct federal programs with no provincial involvement. Two allow provincial opting in to a provincially run and managed program. The three last options - DETC, DETC+ and CDRIP - all meet to some degree at least the demand for citizenship and social inclusion of persons with disabilities.

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PAPER IV

STRENGTHENING CIVIL SOCIETY AND CITIZENSHIP: FEDERAL TOOLS FOR CIVIL INFRASTRUCTURE

By Cameron Crawford

1. THE CONTEXT

The civil status of persons who have a disability has evolved in Canada since the time of Confederation. In the late 1800's, most programs for persons with a disability were actually structured to prevent people with a disability from participating in their communities. A combination of fear and charitable impulses helped to establish large congregated institutions which "protected" communities from persons with a disability and also "protected" persons with a disability from the dangers of the community. Gradually, a range of laws and social institutions have fostered greater participation by persons with disabilities, first by their physical presence, then by their social presence, and finally through a recognition of their role in civil society. Increasingly over the past two decades, the framework for supporting participation of persons with a disability in their communities and in all aspects of Canadian private and public life has shifted from charity to a citizenship rights basis.

The perspective on disability has also shifted. Whereas disability was once considered an individual deficit amenable only to passive care or active treatment, it is now recognized that individuals are disabled in part by their environments (e.g., social programs, labour markets) biased in favour of selected segments of the population. For example, income and social service programs can, by their design, effectively hamper persons with functional limitations from gaining access to the economic life of their communities. In so doing, these constructs extend and aggravate disability.¹⁷

Sometimes, the federal government has taken the lead role in creating new social arrangements and shifting the perspective on disability from individual deficits to the social problems that reinforce disability and disadvantage. The creation of the Canada Assistance Plan in 1966, with its provision for federal cost-sharing of many services to persons with a disability, provided the major impetus for the transfer of programs for persons with a disability from provincial departments of health to community services. The cost-sharing mechanisms also provided a massive infusion of dollars into provincial systems which allowed for expansion of services in the 1970's and 1980's, essentially within a welfare framework. However, the inclusion of the equality rights

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See The Grand Design: Achieving The "Open House" Vision, Report of the Parliamentary Committee on Human Rights and Disability, December, 1995.

provisions in the Canadian Charter of Rights and Freedoms has provided a different framework for conceptualizing a new approach to supports and services.

The landmark **Obstacles** report of 1980, spearheaded by the federal government, drew major attention to the ongoing exclusion of persons with a disability from the social and economic mainstream. Recent all-party reports of the Parliamentary Standing Committee on Human Rights and the Status of Disabled Persons have pointed to the structural factors that aggravate disability and social disadvantage, and have called for vigorous government action to address these problems.

Driving government responses, however, are not just the political and ethical requirements to address the claims of marginalized individuals and groups. Governments have been driven by the need to address the social and other costs to society as a whole of the pragmatic choices available at any given time. High public debts and deficits, and sea changes in public opinion about the role of governments, set real limits to government action. New global economic realities prohibit policy and program responses to citizen claims thought reasonable only a decade ago. Moreover, governments are increasingly recognizing that the human and economic costs of policies and programs that fail to adequately address the citizenship claims of disadvantaged groups create hardship, not only for those groups, but for society as a whole. For example, social programs that meet basic human needs but only in exchange for removing disadvantaged groups from the social and economic mainstream foster social dependency, squander valuable human potential, and involve economic costs no longer sustainable by the taxpayer. It has been estimated that including persons with a disability in the labour market at rates similar to the population of persons who do not have a disability would lead to \$4.6 billion in savings to the Canadian economy.¹⁸

In the complex interaction and bargaining between governments, individual citizens, citizen groups and other forces, a consensus on basic principles and values has begun to mature. An infrastructure of legal, policy, program and other instruments has been established on the basis of that consensus. This infrastructure has accorded gradual recognition to the place of people with disabilities in civil society and has set out to ensure the conditions are present which will enable them to exercise their prerogatives as equal citizens.

For its part, the federal government has played an active role investing in this infrastructure, establishing and using specific granting mechanisms and other tools to further the place of persons with disabilities in civil society. These investments and tools have resulted in concrete outcomes for persons with disabilities and for society as

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Canadian Association for Community Living, "The Economic Costs of Segregating People with a Mental Handicap", Downsview, March 1991.

a whole. While some outcomes have perhaps fallen short of the ideal, they have helped advance the civil status of persons with disabilities. These outcomes have received wide public support among persons with disabilities and other groups, and have shaped expectations about what the Canadian state -- governments in particular - should be doing to strengthen civil society.

Roles the federal government have played include: making foundational commitments of the Canadian state to basic standards for civil society, including human rights; ensuring the democratic input of disadvantaged groups to the policy process, collaboration and social learning on policy and program issues; experimentation with new approaches to strengthening citizenship, participation and equality; generating and disseminating knowledge and information for accountability, effective program design and for the strengthening of civil organizations; and ensuring a broad network of viable civic organizations to address a wide range of needs, which in turn has enhanced the broader "system" of publicly-financed programming. This paper looks at these outcomes, at the grants and other mechanisms the federal government has used to achieve them, and possible tools the federal government could use in the future to preserve and build on past gains.

2. PAST ROLES OF THE FEDERAL GOVERNMENT AND TOOLS USED

a) Making Foundational Commitments to Basic Civil Standards

The federal government has demonstrated leadership in committing the Canadian state to safeguard and advance central entitlements for all citizens. For example, by committing Canada to the International Declaration on Human Rights, the Government of Canada has pledged the Canadian state to ensure that its citizens are accorded dignity, justice and other marks of equality. The government of Canada has also taken the lead in international arenas promoting similar standards for application in other jurisdictions. For example, it took the lead in promoting the adoption of the United Nations Convention on the Rights of the Child, and subsequently created the Partners for Children Fund to assist Canadian non-governmental organizations to work with non-governmental organizations in other countries to promote the application of the convention and strengthen the institutions of civil society in Canada and abroad in entrenching equality-rights. Nationally, the government of Canada has implemented a number of mechanisms to guarantee basic civil standards. The cornerstone of protection of the citizenship rights of persons with a disability is the inclusion of equality rights provisions in the Charter of Rights and Freedoms. Section 15 states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The government of Canada not only included the equality rights provisions in the Charter but also designed a series of related activities and programs to assure that the words of the Charter would be respected. For example, the Charter Challenge Program enables protected groups to challenge the federal government in court to assure that Charter provisions are respected. This program has helped to assure that groups which traditionally could not afford costly litigation have a means to test legal interpretation of the Charter. The program has enabled groups to undertake legal research which has sometimes helped to avoid litigation and has also resulted in groups being able to intervene or to pursue cases directly.

As well, the federal Canadian Human Rights Act has established the principle of non-discrimination in law and has authorized enabling mechanisms that aim to protect that principle (e.g., the Canadian Human Rights Commission and tribunals). The legislation set a standard influential in changing provincial laws, which have similarly aimed to prevent discrimination on the basis of disability.

Federal Employment Equity legislation and contracting provisions recognize the historical disadvantages certain groups, including persons with disabilities, have faced in the labour force and aims to redress past injustices and disadvantage.

In debates on the Canadian identity, universal health care is repeatedly articulated as the most fundamental entitlement of Canadian citizenship. The federal Canada Health Act accords universal protection to all Canadians from catastrophic financial loss arising from illness and injury. Established Programs Financing (EPF) and more recently the Canada Health and Social Transfer are the federal enabling mechanisms that have helped the provinces to meet the basic health care needs of all citizens.

Through mechanisms such as VRDP, direct labour market program delivery¹⁹, Outreach, delivery assistance, training coordinating groups, and community economic development projects with their specific provisions for persons with disabilities, the federal government has promoted the labour force participation of persons with disabilities. Through transfers to individuals made possible under the Canada Assistance Plan (CAP) and through the Canada Pension Plan disability benefit, the government of Canada has provided a measure of basic income security for those not in the labour force.²⁰ CAP-funded community development and demonstration projects have done the same, as have the Disability Tax Credit and other credits available under the tax system. The role of the federal government in promoting labour market

¹⁹ Direct services are accessible in principle if not in actual fact to all who qualify through Human Resources Development Canada labour market programming.

²⁰ See The Roeher Institute, "Reforming the Canada Pension Plan: Bearing in Mind Persons with Disabilities", North York, May 2, 1996; The Roeher Institute, "Reforming the Canada Pension Plan: Implications for Women with Disabilities", North York, May 17, 1996.

participation and income security have addressed the need of persons with disabilities for basic levels of income without which citizenship and social participation are empty terms.

Through application of a broad definition of literacy and recognition of the limited access which many Canadians with a disability have had to a formal education, the Literacy Secretariat has funded projects which provide literacy skills to persons with a disability, contributing to their economic security and enabling them to participate more effectively as members of civil society.

In recognition of the disproportionate likelihood of violence and abuse faced by persons with disabilities, the federal government lent direct support to a variety of discrete initiatives financed by the Solicitor General, the Family Violence Prevention Division of Health Canada, the Women's Program and the Status of Disabled Persons Secretariat of Human Resources Development Canada. These initiatives aimed to prevent violence and abuse and to improve the responses of police, social service and other agencies to this serious problem. In doing so, the federal government gave effect to the principle that all Canadians have the right to live in security as equal, fully participating members of their communities, free from the threat of violence and abuse and with equal protection and benefit of the law.

Explicit federal support has also been given for provincial social service delivery in recognition of the unique claims/needs and eligibility for support of persons with disabilities (welfare services under CAP). These programs have provided the technological aids and devices, attendant and other services individuals require as necessary conditions for exercising their citizenship prerogatives.

Such commitments in principle and in fact by the Canadian Government have won for Canada its widely-respected place as the international leader in promoting the citizenship and participation of persons with disabilities.

b) Democratic input, collaboration, learning and consensus on policy and program design issues

Democratic input

Since the inclusion of the equality rights provisions in the constitution, the government has been consulting civil society institutions regularly in the process of developing social policy affecting persons with a disability. Since 1980 there has been a Committee of Parliament on Human Rights and the Status of Disabled Persons which consults the community regularly. This arrangement has been a critically important vehicle for enabling the voices, concerns and constructive ideas of Canadians with disabilities to come to the direct attention of the federal government. Also noteworthy is that this is one of the rare parliamentary committees which has been able to develop

unanimous reports to Parliament regardless of the party in power or the parties in opposition.

In addition to making regular presentations to the Parliamentary Committee on Human Rights and the Status of Persons with a Disability, associations of persons with a disability have made presentations and held informal discussions with Parliamentary Committees on Justice, Immigration, Reproductive Technology, Human Rights, Employment, Finance, Human Resources and Foreign Affairs. In each case, the associations addressed a particular bill or policy of the government and identified the impacts on persons with a disability.²¹

These representations are having a policy impact, as witnessed by the commitment of the Minister of Finance to review the impact of the tax system on persons with a disability. In the words of the Minister of International Trade, addressing a luncheon in honour of the Heads of State of Central America on May 17, 1996, Minister Eggleton stated:

"The relationship which our countries are developing is based not only on trade but reflects a new perspective on the linkages between economic development, human rights, civil society and democratisation...(I) in economic restructuring there is an opportunity to develop a "civic society" that diminishes dependence on government and fosters citizen participation, democratisation, self-reliance and social entrepreneurship."

Similarly, concerns in the disability community about the issue of tax reform led to a budget commitment and collaboration between officials of Finance and Human Resources Development to review this issue. This process has been aided by the Secretariat on the Status of Disabled Persons, although the placing of the Secretariat at a junior level within the bureaucracy of one particular department (Human Resources Development Canada) limits its effectiveness in coordinating other departments.

Through provincial consultations made possible under CAP, VRDP and through other granting arrangements, the federal government made further investments which enabled the voluntary sector to come together and participate in meaningful debates about social policy which transcend particular disabilities and traditional political orientations (e.g., Mainstream 1992). In particular, federal core funding of a number of national organizations gave those groups the capacity to serve as natural sounding boards for testing the waters on certain policy ideas.

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See, for example, Canadian AIDS Society, "Reforming the Medical Expense Tax Credit and Disability Expense Tax Credit", 29 February, 1996. The Canadian Paraplegic Association and the Council of Canadians with Disabilities (formerly COPOH) have also developed a range of consultation briefs on tax reform.

This process of constant dialogue with Members of Parliament, Parliamentary Committees and Cabinet Ministers has both promoted the rights of persons with a disability and also helped to strengthen the democratic and participatory process in Canada. It has ensured that the voices of the most vulnerable are heard not only on election day but throughout the mandate of a government; it has also provided important opportunities for Canadians more generally to participate actively in the democratic process and in the building of civil society through their involvements in community boards and other voluntary programs at the community level.

Collaboration

Aside from facilitating direct input to the democratic process, federal measures have brought about an important degree of collaboration between levels of government in Canada and their non-government partners. For example, while the National Strategy for the Integration of Persons with a Disability (NSIPD) had numerous short-comings that have been documented in several reviews, the initiative did open the door to creative collaboration between different levels of government and different sectors of civil society. The interdepartmental review of the NSIPD noted that partnerships with the NGO sector were particularly strong.²² Significant federal support was given to the network of Independent Living Centres under the NSIPD to carry out a range of activities, not the least of which aimed to strengthen the independent living movement as well as the skills, independence and participation of individuals with disabilities.

Through the Deinstitutionalisation Initiative, the federal Government invested \$15 million to help six provinces work with their NGO partners to transform institutional services and provide supports to people in the community consistent with a human rights framework. For the first time, persons with an intellectual disability and their families and organizations have been allowed to play a meaningful role in determining how public funds would be spent to support them. Because of cut-backs in social programs both federally and provincially, this has not been an easy process. However, the Initiative provided a framework that allowed communities to demonstrate to government officials the creativity and reasonableness of individuals and families as they struggle to set priorities about the best way to allocate limited resources. Both federal and provincial government officials have acknowledged that they are getting better value for the dollars they are spending by cooperating with the voluntary sector.

Much the same can be said about NSIPD and Fitness Directorate program support for the Active Living Alliance for Canadians with a Disability. This support has made it possible for a wide range of non-profit organizations in the fitness, recreation and sport sectors to engage in a long-term, collaborative process of program re-design and

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Human Resources Development Canada, Interdepartmental Evaluation of the National Strategy for the Integration of Persons with Disabilities (NSIPD), Ottawa, August 1995, p. 54.

infrastructure development. These organizations have been collaborating and sharing resources to increase the participation of persons with disabilities in community programs and other opportunities for physically active lifestyles. A guiding aim has to ensure individuals with disabilities will have more equal access to all aspects of Canadian society and more equal access to health and well-being.

Social learning and consensus

Furthermore, by fostering democratic input and collaboration the federal government has helped educate voluntary groups about issues which were often beyond their immediate concern. This has helped the organizations participate as more knowledgeable and constructive partners in the policy and program design process. For example, financing the presence of a representative of the disability community on the Labour Force Development Boards nationally and provincially raised the level of understanding in the disability community about labour market issues and also made it possible for this community to influence business and labour. Joint and strategic initiatives have resulted in greater understanding in the voluntary sector about the issues and constraints facing governments and greater capacity to explore sustainable policy and program solutions to social problems.

Moreover, by increasing community "buy-in", direct federal involvements with the voluntary sector have strengthened broad political support in the community for government-sponsored initiatives.

c) *Experimentation with New Approaches to Strengthening Citizenship, Participation and Equality*

The federal government has used a range of financing tools to pilot new approaches to strengthening the citizenship, participation and equality of persons with disabilities and other disadvantaged groups. The deinstitutionalization stream of the Joint Initiatives is enabling provincial governments, voluntary organizations and communities more generally to explore how to shift social investments from programs that create social isolation and dependency to new approaches that foster inclusion, greater autonomy and independence. Without short-term federal assistance, the financial disincentives to engage in this process would have been prohibitive for all parties. An anticipated outcome of the initiatives is more cost-effective support for greater numbers of individuals in their communities than would otherwise have been possible.

In the 1994 federal budget, the government announced a series of Strategic Initiatives designed to inform the government's process of social reform. While most of the initiatives involved bilateral collaboration between the federal and provincial governments, there were two important exceptions. The first was a commitment to a series of projects designed to support aboriginal communities devise effective ways of addressing social and economic challenges; native groups have been active in the

implementation. The other project in collaboration with the government of Prince Edward Island involves a partnership with the provincial government and voluntary organizations at the national and provincial level. Through this initiative (Choice and Opportunity), citizens with a disability are being given an opportunity to contribute to health and social service reform in the province, and to impact on other provincial and federal policies which can promote the participation of people with disabilities in all aspects of their communities. The project is setting in place new and sustainable approaches to provide direct service delivery, to community development and civic participation that will ensure essential needs are met with a minimum of reliance on formal delivery systems.

Flexible funding through a variety of other federal sources has permitted experimentation and demonstration which have met direct needs of individuals with a disability while strengthening the institutions of civil society. For example, funding for the Canadian Paraplegic Association and its affiliates across the country has helped support new approaches to facilitating the integration of persons with disabilities into the labour market. Federal support for the national network of independent living centres, which have served as a locus of training, learning and social interaction for individuals who have become leaders in the disability movement, has helped inform and strengthen that movement. While strengthening the democratic process, federal support has also led to the emergence of new approaches to social policy affecting persons with a disability across the country.

Similarly, federal support under various departments has resulted in improvements in program design (e.g., literacy, fitness, sport, recreation) and broader accessibility of programs and opportunities at the community level. Federal support for a diversity of other projects has resulted in important innovations in the criminal justice, employment, post-secondary education and training, and child care fields.

e) *Creating and Disseminating New Knowledge for Accountability, Program Design and for Strengthening of Civil Organizations*

Through federal support for evaluation and sharing of information about experimental projects, new knowledge has been produced and disseminated. For example, NSIPD-funded projects, strategic initiatives, and a range of other federally-sponsored initiatives have helped change how we think about individual autonomy and control, and effective ways of lessening disadvantage while meeting individual needs. The new knowledge has yielded an important base of information for program design and has helped increase program efficiencies and maximized returns on public investments in programming.

To this important base of knowledge the federal government has contributed further information through routine departmental reports, and its own special reports on

selected issues. National surveys, such as the National Population Health Survey, the Survey of Labour and Income Dynamics, and the Health and Activity Limitation Survey have given increased recognition to the need to gather information on persons with disabilities. It is highly questionable whether the provinces have the capacity let alone the will to ensure the availability of such information, which directly concerns a large and growing segment of the Canadian population. Unfortunately, the federal government decided to withdraw support for conducting the Health and Activity Limitation Survey in 1996, the year of the most recent Census. While that data source is open to criticism, it remains the largest, most detailed and one of the most important sources of information on disability in the country and has served as a basis for designing similar surveys in other countries.

Participation by representatives of disability associations in international activities has been another important contributor to knowledge about the potential roles of civil society institutions. In particular, exposure of Canadians to experiences in countries with fewer resources is shedding new light on how communities can address needs with extremely limited resources and without creating unsustainable reliance on formal structures and delivery systems.

Two examples are worth mentioning. The support of the government of Canada to maintain the headquarters of Disabled People's International in Winnipeg has assured a steady flow of ideas and experiences from around the world to Canadian partners, information which then has been shared with other disability organizations in Canada. Similarly, support by Health Canada for the Partnerships in Community Living project has provided an opportunity for Canadian non-government organizations to learn about emerging civil society institutions in Latin America and to transfer this knowledge to the Canadian context.

The role of the federal government in supporting the creation and dissemination of information has not only contributed to the policy and program design process, it has strengthened the accountability of governments to their electorates. Armed with essential information, tax payers are in a much better position to make informed judgements about the suitability of government expenditures and program commitments.

f) *Ensuring Viable Civic Organizations and Enhanced Programming*

Through both its direct and indirect support, the federal government has helped sustain a wide range of civic organizations that aim to protect the safety and security of disadvantaged citizens, and to advance their participation and equality in Canadian society. Core funding, cost-sharing, and targeted grants for consultations and special projects have been among the tools the federal government has used to support this civil infrastructure.

Federal funding has recognized the unique knowledge and capacity of voluntary organizations to directly address the issues that affect their constituencies. By contributing to the programs, the federal government like its provincial counterparts has ensured the presence of a versatile network of programs which help comprise the broader "system" of essential services in Canada. The funding also recognizes the limits of private financial contributions, even in periods of comparatively low personal and corporate taxes, to support the diversity of non-profit programs that are needed.²³

To be sure, voluntary organizations need to constantly evaluate their performance, pursue excellence and seek efficiencies. However, with the current withdrawal of public financial support by the federal and provincial governments, this infrastructure of civil organizations is in grave danger of erosion, and in some cases, of collapse.

3. POSSIBLE TOOLS FOR THE FUTURE

Governments, individual citizens and groups are reflecting critically on how best to advance individual citizenship and civil society while effectively addressing other important issues, such as the need for fiscal and expenditure restraint, the need to adapt to international economic forces, and the need to balance increasingly diverse claims on a highly decentralized federal system.

However, while it is open to question whether the tools the federal government has used in the past are suitable for present realities, the desirability of the gains achieved have been less open to debate. Few in the disability community, for instance, would challenge the recent shift from a charity basis to a citizenship rights basis for social arrangements intended to address needs. Few would challenge the emerging approach to disability that seeks answers to social problems in systemic factors, not merely in the passive care and active treatment of individual pathology.

Moreover, it is difficult to conceive of Canada not remaining committed to basic standards of civil society, including its tradition of human rights. Nor have disadvantaged Canadians disputed their ongoing need and expectation to be involved in designing the policies and programs that will directly affect them. If anything, that need is becoming more acute: the input of disadvantaged citizens is becoming more difficult to garner as power and responsibility devolve to the regional and local levels.

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The Canada Assistance Plan was introduced in the mid-1960s, when levels of prosperity were high and taxes comparatively low in Canada. Even in that period, there was a recognized need for governments to supplement the efforts of the non-profit sector to address social issues.

In light of dwindling fiscal resources and increasing domestic and international pressures, never has achieving effective collaboration between civil partners been a more pressing need. In a period of Canadian history marked by rising social tensions, there continues to be a clear need for programmatic responses to the challenge of involving all Canadians in the process of nation-building. Having at its disposal an ongoing store of creative, new responses to persisting obstacles that undermine civil society is in the interests of any modern democracy. Ensuring stakeholders in civil society are well informed about the most effective means of realizing civil participation remains critical for economic efficiency if for no other reason. Accountability for tax dollars and public trust are not achievable without adequate tracking and reporting of the activities performed by governments and the organizations they support. And it remains vital to ensure voluntary civic organizations have the support they require to carry on their work if persisting human needs are to be met, and if the powers and formal structures of the state are to be kept within reasonable bounds.

What, then, are some possible options the federal government could consider for the future tools it could use to consolidate and build on past gains? What tools would respect the present need for realignments in federal and provincial/territorial responsibilities without leaving the sustainability of gains achieved subject to mere chance and powerful interests?

a) *Federal Leadership*

As it has done in the past, the federal government can and arguably should further the commitments of the Canadian state to basic standards of civil society, at home and internationally. In practical terms on the national front this would mean continuing programs such as the Charter Challenge Program, or devising some suitable alternative, that will ensure disadvantaged groups and individuals have the resources they need for equal protection and benefit of the law.

The federal government could embed statements of intent in federal legislation authorizing fiscal transfers. For matters beyond health care services,²⁴ such statements of intent would accord recognition in federal law to groups disadvantaged or likely to be disadvantaged, and to the desirability of all levels of government cooperating to ensure the needs of such persons are met. The statements would clearly articulate the aim of the federal government, on behalf of Canadian citizens, to help provincial governments address those needs. The provinces would have wide scope to design programs in keeping with local and regional priorities. In return for the transfer the provinces would be required through publicly-available, annual reporting to justify how their programs contribute to this (and perhaps additional) national objective(s). Citizens would

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It is assumed that the Canada Health Act, or some amended version of it, would continue to guide provincial expenditures in the health care field.

determine in the political forum whether their governments are acting in accord with their stated aims, and would have legislative and reporting tools that would assist them in the process.

The same sort of provisions could apply to specific areas of programming transferred from federal to provincial auspices (e.g., labour market services). Again, the federal government could embed statements of intent in legislation authorizing financial transfers (i.e., that provincial programming will pursue selected national labour market objectives and its own provincial objectives, while ensuring disadvantaged groups have fair access to programming²⁵). In return for the transfers, the provinces would clearly indicate how their programs are operating to achieve these aims.

The federal government could play a lead role in responding to widespread demands for a new national program that would ensure persons with disabilities have the technologies and personal services they need to participate as equal citizens in Canadian society. As proposed by Mendelson in his paper, such a program would require clear fiscal incentives and a high degree of partnership with the provinces and territories. A new approach to programming would be required, however, one which respects provincial autonomy while eliciting provincial "buy-in".

b) Fostering Innovation

As it has done in the past, the federal government could continue to provide support for pilot, demonstration, and other projects. Ideally, however, such projects would involve diverse partners (e.g., governments, NGOs and private sector businesses). As suggested by Banting in his paper, the focus of the innovations supported would be the strengthening of citizenship for individual Canadians and the strengthening of civil society through civil organizations.

The federal citizenship framework would guide organizations in their design of program innovations. It would also serve as a "yardstick" for program evaluation.

The focus on citizenship would enable the federal government to lend support to initiatives which, in some cases, might touch on provincial jurisdiction but which respond to issues of national concern and which therefore defy a "water-tight compartments" approach to the Constitutional division of federal-provincial powers. For example, program innovations might seek a high degree of integration between community economic development, and training, social, health and income support services. Underlying aims could be greater economic efficiency, self-sufficiency and wider participation in civil society. Such an initiative would be of interest to the nation as a whole. A province and its NGO partners could seek federal support to embark on

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The provinces could be required to develop their own designated group policies.

such an undertaking, particularly where they lack the resources to move forward without federal assistance.

Time-limited transitional funds could be made available to provinces seeking to make major program shifts but who lack the necessary finances to put in place alternative programs while gradually phasing out old programs.

Specific leadership development initiatives could be supported in the interests of responding to issues of citizenship. For example, generating a broad network of practitioners skilled in the labour market integration of persons with disabilities would be in the interests of the country's economy. No single province is likely to lend support to such an initiative, although several provinces and NGOs in a number of regions would likely be interested in participating jointly in a federally-supported project.

Time-limited projects aiming to improve the quality of training in the human services sector across provincial boundaries would be in the interests not only of persons with disabilities, but human service workers seeking to exercise their mobility rights and strengthen their economic security. This in turn could be beneficial for the country's economy more generally.²⁶ Experiments with social service or health care delivery in several provinces within a federally-sponsored pilot project could generate lessons useful for delivery systems in other provinces and territories.

The federal government could lend support to smaller initiatives designed to address local social and economic problems, but which are known to be faced widely by persons with disabilities in various parts of the country (e.g., exclusionary post-secondary programs; inadequate access to entrepreneurial financing).

The federal government could also consider lending support to initiatives that address issues in civil law (e.g., contracting, property law) but which transcend provincial boundaries and which require models for more coherent pan-Canadian responses (e.g., adult protection, substitute decision-making).

In any project touching on the lives of persons with disabilities, an important principle for the use of innovation funding would be that emphasis be placed on projects where disability organizations and their community partners play key roles.

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i.e., by increasing the skills of workers, thereby raising the chances that they will move to where economic opportunity awaits them instead of relying on income support in a province which has no market for their otherwise limited skills.

c) *Fostering Participation*

As identified by Banting, one of the primary driving forces behind government interest in civil society internationally is the search to fill the vacuum being created by the retreat of government from traditional roles. There is a twofold risk if government does not support civil society institutions. The first is that only groups with economic power will be able to participate in the institutions of civil society, thus eliminating the potential for disadvantaged groups such as persons with a disability to participate in the broad democratic process. The second is that the economic elites will impose a framework for social policy which will further disenfranchise persons with a disability by preventing them from having meaningful say in the policies and programs that affect them directly. The long-range result of inappropriate policy and program responses could be unforeseen social and economic costs that would not be sustainable.²⁷

Arguably, it is in the interests of the Canadian state for the federal government to continue facilitating the direct public input of persons with disabilities and their organizations to the federal government. Continued federal support is urged for the Parliamentary Committee on Human Rights and the Status of Persons with Disabilities, and for ongoing departmental consultations. To ensure individuals and groups potentially affected by government actions have direct access to government representatives, political access (e.g., invitations to participate) and the conditions of access (e.g., reimbursement for expenses; disability-related supports such as sign language interpreters) would not be mediated by third party decision making.

Furthermore, federal contributions towards sustaining national disability organizations would give those organizations the structural capacity to engage with the federal government on a flexible, as-needed basis instead of having to rely exclusively on much less stable project funds, private contributions, special consultation grants and other unpredictable funds.

It is also in the interests of the country as a whole that organizations affected by provincial policy have input to policy development and program design. Otherwise, groups negatively affected by a given policy may see their citizenship eroded and seek mobility for economically inefficient reasons.²⁸ To address this challenge, the federal government could state its intent that, in exchange for fiscal transfers, the provinces and territories would ensure persons with disabilities and other disadvantaged groups are adequately consulted on impacts of programs subsidized by the federal transfers.

²⁷ i.e., the vicious cycle of labour markets that exclude certain groups, driving up dependency on social programs that offer passive, poverty-level support and that impede social and economic integration.

²⁸ e.g., they might gravitate towards another province because more adequate social programs are available, there, not because of more favourable labour market conditions.

Moreover, in the interests of social cohesion and common purpose, it remains critical to ensure citizens in general have opportunities to participate in civil organizations, and that the levels of voluntary participation actually increase. While CAP provided federal incentives for the provinces to support these activities in the past, there are currently no clear federal incentives to encourage such involvements at the provincial and local levels in the future. Again, a statement of intent embedded in federal legislation could indicate that the fiscal transfer is intended, in part, to enable provinces to support voluntary participation in non-profit organizations. To ensure voluntary organizations actually foster civic participation, the provinces might be encouraged to explore new approaches to governance that would vest organizational control in ordinary citizens instead of paid professionals. The federal government could help finance new models of governance and the evaluation of these models.

Where CHST transfers prove insufficient to enable the provinces to obtain necessary levels of democratic participation (e.g., for major, multi-region consultations on social service reform in a given province), supplementary, time-limited resources could be made available to address provincial short-falls.

d) *Fostering Coordination*

Much progress has been made in coordinating actions within the federal government on issues affecting the citizenship status of persons with disabilities; however, other measures could also be taken. Consideration could be given to creating a committee of Cabinet with a mandate to address issues that cross departmental lines. Such a Committee would represent key departments at the federal level whose activities are likely to affect persons with disabilities (e.g., Finance, Revenue, HRDC, Health, Transport, Science Industry and Technology). It would have an executive and support staff, would report and make recommendations directly to Cabinet, and would regularly receive input from an advisory body representing national disability organizations and selected representatives from the labour, educational, health and business communities.

The mandates of the Committee would be to: a) identify obstacles to citizenship emanating from the policies of particular departments, and from the combined effects of several departments; and b) to present clear policy options for strengthening the citizenship of persons with disabilities.

Alternatively, the current Secretariat for disability issues could be significantly strengthened and provided the resources it needs to operate more effectively across departmental lines and with its partners in the disability community. However, consideration would need to be given to de-linking the Secretariat from narrow departmental mandates (e.g., employment only) while at the same time ensuring it has the necessary authority to interface effectively with major departments.

A new mechanism is also needed to ensure individual pieces of legislation and regulations, and the combined effects of several statutes and regulatory instruments (e.g., those governing employment equity, employment insurance, income tax and income support) are consistent with the citizenship of persons with disabilities. The mechanism would make specific recommendations for legislative and regulatory reforms and report to Parliament. The Government of Canada would ensure its departments prepare action plans, as well as legislative and regulatory proposals, to ensure needed reforms receive focused attention. The need for such a mechanism is based on the premise that equality is a right of citizenship for all persons, including persons with disabilities, and that the Government of Canada has a duty to make serious efforts to address the legislative and regulatory factors that hamper the full exercise of citizenship prerogatives.²⁹

Pilot, demonstration and other projects funded in the interests of innovation could be required to have a strong policy and program coordination emphasis, with evaluation criteria that reflect that objective.

Moreover, provinces attempting to achieve greater coordination to maximize the effectiveness of programs financed by fiscal transfers could be given supplementary resources for this purpose. The funds would help offset the "next steps" of implementation once initial consultations with partners in policy and program change have taken place.

e) *Tracking Social Spending as Social Investment*

The federal government has played an important role in ensuring the Canadian public has some of the information it needs to make informed judgements about the suitability of government expenditures and program commitments. It has also ensured that information needed for effective policy and programming has been available. However, as Banting points out, the state of information about Canada's social programming is far from ideal. This suggests the need for a much stronger role in the future for the federal government on the information front.

In order to play this role effectively, the federal government would need to continue supporting surveys that capture data on persons with disabilities. The eclipse of the Health and Activity Limitation Survey means that detailed, current information is no longer available on important issues concerning the barriers faced by persons with disabilities. Accordingly, the survey should be revived. If this survey is not to occur,

²⁹

Currie, Goundry and Peters present a fairly detailed proposal for a new mechanism that would coordinate legislative and regulatory reforms with a view to impacts on persons with disabilities. See Currie, Goundry and Peters, "Task Force on Disability Issues Options Paper - Legislative Reform, September 12, 1996".

attention could be given to increasing the sample sizes of other surveys (e.g., National Population Health Survey) to ensure sub-samples of adequate size are available on disability. As well, a more consistent approach across surveys to identifying respondents with disabilities would enable researchers to use several survey instruments to create a composite picture of critical issues.

Without a more coherent and generous approach, survey findings are vulnerable to the charge that they are based on samples too small to be trusted, too small to be useful at the provincial level, and as presenting an inaccurate composite picture of issues affecting the citizenship of persons with disabilities. This in turn will serve to further disadvantage persons with disabilities in the policy and program forum at both the federal and provincial levels.

With the devolution of responsibility to the provincial level, there is a mounting temptation for the federal government to withdraw from certain areas of information gathering and reporting (e.g., the Health Reports, various reports on labour market training, post-secondary education, employment, etc.) Federal involvement is becoming all the more necessary to stem the "balkanization" of information.

Moreover, provincial reporting of activities in the social services, employment and health fields have been notoriously incomplete and non-comparable. They provide only a fragmentary glimpse of how Canada's social programs operate. To allow for a more coherent picture of Canada's social programs for the federal tax payer, the federal government could require in exchange for fiscal transfers that the provinces provide reasonably detailed, public information on the programs they are administering. Ideally, a common reporting framework would be used to ensure a core of comparable information is available to the public regardless of province or territory. The federal government's role would not be to inspect and police the provinces. It would, however, ensure that electorates have sufficiently detailed information to hold all levels of government accountable. The federal role would be to enable Canadian citizens to use the political process intelligently and to pursue program effectiveness in keeping with national and provincial priorities.

In addition to these measures, the federal government could lend direct support to NGOs with a capacity to provide useful policy and program research to persons with disabilities, policy makers and program officials. The federal government could also consider lending support to provincial research efforts where the policy or programs in question impinge upon federal jurisdiction or where the provinces simply lack the necessary resources.

To ensure the Canadian public is adequately informed, the federal government should continue its broad public dissemination of research, reports and other informational products. It could consider taking greater advantage of modern communications technology to make these products more widely available through electronic delivery systems (e.g., the Internet).

4. CONCLUSION

In order to move beyond the social policy framework which evolved in Canada after the Second World War towards a framework which enhances social well being it will be necessary to focus not only on discrete programs and policies but also on principles which transcend them. In particular, it will be important to ensure the participation of the most disadvantaged citizens, including persons with a disability, in an ongoing process of democratization. As countries which have not promoted equality and broad civil society participation in decision making have learned, the price of exclusion would be further marginalization, societal unrest and economic instability.

The nature and scope of the federal roles in supporting the citizenship of persons with disabilities, and in strengthening civil infrastructure more generally, have been outlined. Federal contributions to individuals, groups and society have been considerable. As Rioux points out in her paper, representatives from the disability movement rightly view with apprehension the implications of possible federal abandonment of its roles, particularly if concrete measures are not implemented to ensure the provinces and other parties fill the vacuum.

While the nature of federal commitments and the tools it uses will undoubtedly change, there remains not only a defensible but an essential place for the federal government in strengthening civil institutions, civil society and individual citizenship. This paper has pointed to crucial leadership functions the federal government can play by ensuring the Canadian state remains committed to basic standards of civil society, and by ensuring programs are in place to make possible the meaningful exercise of citizenship for all citizens. Also crucial is for the highest level of government to ensure Canadians with disabilities, like other citizens, have direct access to their political leaders, and have the resources they need to engage as constructive partners in the democratic process. The federal government enjoys a unique capacity to support innovations in policy and programming that are in the interests of Canadian society, and has a distinct perspective on civil society from which to approach this task. The Government of Canada has a particular interest and capacity to foster higher levels of coordination between civil partners in an increasingly diverse and decentralized federal state. And it has an essential role to play by ensuring the necessary information is widely available for effective program design and for the informed participation of *all* Canadian citizens in the democratic process.

If these roles are left to chance, Canada is likely to make an uneasy transition into the twenty-first century. Canadians with disabilities are likely to bear more than their fair share of the weight of weakening civil infrastructures.

THEME II - LEGISLATIVE REVIEW

Research Paper 2.

**Strategic Approaches and Specific Measures for the Exercise
of Citizenship Rights by Persons with Disabilities**

Tina Head

Research Paper 3.

**Designing a Legislative Reform Strategy for Persons with
Disabilities: Priorities and Options**

**Rosalind Currie, Sandra Goundry and Yvonne Peters
Currie, Goundry & Peters**

RESEARCH PAPER 2

**STRATEGIC APPROACHES AND
SPECIFIC MEASURES
FOR THE EXERCISE OF CITIZENSHIP
RIGHTS BY
PERSONS WITH DISABILITIES**

Tina Head

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INTRODUCTION

In June 1996, a Task Force on Disability Issues was established by the federal government to "report on the future role of the Government of Canada as it relates to the Canadian disability community." Required to report by early October 1996, the Task Force determined that it would not initiate new studies, but rather would assess the relevance and feasibility of previous recommendations and proposals, with the object of developing options for the short, medium and long term. The Task Force concentrated its efforts on five key areas: labour market integration, income support, the tax system, legislative review, and national civil infrastructure / citizenship. This paper has been commissioned by the Task Force to provide an examination of strategic approaches and specific measures to assist the exercise of citizenship rights by persons with disabilities; as such, it complements the research papers which more specifically address the issues of legislative review and civil infrastructure / citizenship.

THE ROLE OF THE FEDERAL GOVERNMENT IN THE CANADIAN STATE

In a federal state, no level of government has complete power; however, there is considerable variation in the balance of powers between levels of governments in federal states. The *British North America Act, 1867*¹ (B.N.A. Act), which established the Dominion of Canada and set the basic rules of federalism, provided a framework for a strong central government. For example, it gave provinces only enumerated powers. The federal government had enumerated powers, but it also had the residue of power over matters not enumerated, as well as the power to disallow provincial statutes by simple declaration. The B.N.A. Act provided the federal government with stronger fiscal powers, the power to appoint provincial Lieutenant Governors and judges of the country, district and superior courts.

Since confederation, judicial interpretation of the B.N.A. Act, conventions and political practices have altered this balance of power, effectively eliminating these elements of provincial subordination. It is generally agreed that in the decades since confederation, Canada has adapted to become a "cooperative federalism", that is, a network of intergovernmental relationships, most of which depend on "informal relationships which have no foundation in the Constitution, or in statutes, or in the conventions of parliamentary government²."

In 1982, the B.N.A. Act was renamed *The Constitution Act, 1867* (U.K.), R.S.C. 1985, App. II, No. 5.

Peter W. Hogg, *Constitutional Law of Canada (3d) (Supp.)* (Toronto: Carswell, 1992), at 5-35.

A significant portion of the modern Canadian state rests on what is referred to as the "federal spending power." This power is not explicit in the *Constitution Act, 1867*, but is inferred from the powers to levy taxes (91(3)), to legislate in relation to public property (91(1A)), and to appropriate federal funds (106)³. The federal spending power is the basis of federal-provincial financial arrangements which, in turn, have formed the basis for federal contributions for social assistance, hospital insurance, medicare, and post-secondary education, for federal grants and loans which provided family allowances and federal loans for student housing, and for numerous federal tax expenditures⁴.

No discussion of the division of powers would be complete with an examination of international rights and obligations, particularly in light of the rapid proliferation of international human rights standards.

Under the Canadian constitution, the power to make treaties belongs to the Crown (Executive) rather than federal Parliament. In keeping with the principle of parliamentary sovereignty, Parliament is not bound by international commitments made by the Executive unless they are adopted by Parliament, either expressly or by implication, or unless the norms expressed in an international treaty can be said to have passed into customary law.

Because treaty-making is a power of the Crown, in theory the federal parliament could make treaties dealing with matters which the constitution otherwise assigns to the provinces, e.g. issues affecting property and civil rights. However, in the *Labour Conventions Case*⁵, the Judicial Committee of the Privy Council, then Canada's highest appellate body, ruled that the federal parliament's treaty implementation power was limited to those matters assigned to it under the constitution, and that it could not use the treaty-making power to encroach upon provincial jurisdiction. This decision has been subject to much criticism and there are hints that the Supreme Court may be prepared to reconsider the matter; however, the *Labour Conventions Case* remains a valid current statement of Canadian law⁶.

Hogg, Note 2, at 6-16.

Hogg, Note 2, at 6-19.

A.G. Canada v. A.G. Ontario (Labour Conventions Case), [1937] A.C. 326.

See: William A. Schabas, *International Human Rights Law and the Canadian Charter: A Manual for the Practitioner* (Toronto: Carswell, 1992), at 20, fn.12,13; Anne F. Bayefsky, *International Human Rights Law: Use in Canadian Charter of Rights and Freedoms Litigation* (Markham: Butterworths Canada Ltd., 1992), at 28; Hogg, Note 2, at 11-11 - 19.

THE ROLE OF THE FEDERAL GOVERNMENT ON DISABILITY ISSUES

The *Constitution Act, 1867* does not give any level of government the specific power to enact laws to limit or promote disability-related claims, or any other of the egalitarian characteristics included in modern human rights statutes or in section 15 of the *Canadian Charter of Rights and Freedoms*⁷. Generally, the courts have classified such powers according to the particular activity in question; consequently, the federal government has authority to legislate on disability issues only in areas of federal jurisdiction. The most significant instrument establishing the rights of disabled persons in Canada is the *Canadian Charter*, which binds both the federal and provincial governments, and guarantees to persons with disabilities the right to equality before and under the law and to the equal protection and benefit of the law without discrimination.

The *Canadian Charter* was inspired by international treaties which prohibit discrimination, such as the *International Covenant on Civil and Political Rights*⁸, and the *International Covenant on Economic, Social and Cultural Rights*⁹; the federal government has signed these treaties and is accountable to international bodies for their implementation in Canada, regardless of the domestic division of powers. The federal government is also bound by international customary law, which can be enforced in Canadian courts¹⁰. Many international instruments which do not have the status of treaties, e.g. *Declaration on the Rights of Mentally Retarded Persons*¹¹, and the *Declaration on the Rights of Disabled Persons*¹², will serve at least as an aid to the interpretation of the *Canadian Charter* and domestic statutes, if they are not found to have been implemented by implication, for example, in the *Canadian Charter*.

Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11 [hereafter "the *Canadian Charter*"].

Canada Treaty Series 1986 No. 47; in force for Canada August 19, 1976.

Canada Treaty Series 1976 No. 46; in force for Canada August 19, 1976

Arguably, the *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly December 10, 1948; GA Res. 217A (III), U.N. Doc. A/810 (1948), states norms of customary international law. See: Schabas, Note 6, at 19, fn.8.

Proclaimed by the United Nations General Assembly December 10, 1971; GA Res. 2856 (XXVI) (1971).

Proclaimed by the United Nations General Assembly December 9, 1975; GA Res. 3447 (XXX) (1975) [hereafter "the Declaration"].

For many Canadians, the matters which most affect the substance of daily life fall within provincial jurisdiction: housing, social services, hospital and medical services, welfare/social assistance, education, local transportation, legal aid and the administration of justice. Consequently, some of the most tangible contributions of the federal government to the enhancement of the status and socio-economic condition of Canadians have been through the exercise of its spending power. For example, federal funding under the *Canada Assistance Plan*, the *Vocational Rehabilitation of Disabled Persons Act*, the *Federal-Provincial Fiscal Arrangements Act*, and the *Income Tax Act* have provided income support, housing/rent supplements, welfare services, health care, attendant care, transportation/work adaptations, education and other tax credits/deductions for persons with disabilities.

Many Canadians look to the federal government to exercise leadership on matters of social policy to ensure that quality, accessible, non-discriminatory services are available across Canada. The Task Force on Disability Issues heard repeatedly in its consultations that "the federal government should ensure that there is equity across the country." This view of federalism is reinforced by subsection 36(2) of the *Constitution Act, 1982*¹³, which provides:

Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

However, there is considerable disquiet about the future role of the federal government.

Budget restraints have had a dramatic impact on Canada's social infrastructure, causing concern even in the international community¹⁴. At the same time, the federal government is committed to a re-structuring of the Canadian state:

[T]he very nature of government itself must change. We must develop a new notion of responsibility. The time is long past when governments can -- or should -- do everything. We need a new division of labour, a new partnership, a clear vision of what the advantages of each partner are. Responsibility should lie with those who are best able to do the job. And that requires a government that knows where its true potential lies -- and

Being Part III of Schedule B to *Canada Act 1982* (U.K.).

In expressing concerns about the persistence of poverty in Canada, the United Nations Committee on Economic, Social and Cultural Rights stated, "Of particular concern to the Committee is the fact that the federal government appears to have reduced the ratio of its contribution to cost-sharing agreements for social assistance." *Concluding observations on Canada*, U.N. Doc. E/C.12/1993/5 (1993).

what its real limitations are¹⁵.

The introduction of Bill C-76, which created the Canada Health and Social Transfer¹⁶, and the most recent Throne Speech, which announced measures to "modernize" the federation¹⁷, have created uncertainty about the federal government's future role.

Speaking for persons with disabilities, one participant in the Task Force's consultations stated, "Every day we know less and less about who is responsible for what and whether anybody cares."

THE RIGHTS OF PERSONS WITH DISABILITIES

Both the federal and provincial governments have a responsibility to act in accordance with the equality rights guaranteed under section 15 of the *Canadian Charter* to persons with disabilities and other historically disadvantaged groups. There has been debate whether the *Canadian Charter* is a source of positive or negative rights, that is, whether it compels governments to act positively or merely prohibits certain actions. This narrow focus ignores the political, if not justiciable, commitments of the federal government¹⁸.

For example, the *Declaration on the Rights of Disabled Persons* proclaims that persons with disabilities have the same fundamental, civil, and political rights as other human beings. The international community has recognized, however, that civil and political rights are not meaningful without guarantees of social, economic, and cultural rights. For persons with disabilities, this has resulted in explicit recognition in the *Declaration* of the specific social, economic, and cultural needs of persons with disabilities. These include the right to:

- ▶ measures designed to enable disabled persons to become as self-reliant as

A New Framework for Economic Policy, a presentation by The Honourable Paul Martin, P.C., M.P. to the House of Commons Standing Committee on Finance, October 17, 1994, at 1.

The Budget Implementation Act, 1995, R.S., c. C-6.

Specifically, this meant a commitment not to use the federal spending power to create new shared-cost programmes in areas of exclusive provincial jurisdiction without the consent of the majority of provinces, the withdrawal of the federal government from some areas of shared jurisdiction (e.g. labour market training, social housing), and the transfer of federal responsibility in other areas to the private sector and municipal authorities (e.g. transportation infrastructure). See *Speech from the Throne to Open the Second Session Thirty-Fifth Parliament of Canada*, February 27, 1996.

The United Nations Committee on Economic, Social and Cultural Rights has expressed deep concern that "in some courts and in recent constitutional discussions, social and economic rights have been described as mere 'policy objectives' of governments rather than fundamental rights." See Note 14.

possible (5);

- ▶ medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable persons with disabilities to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration (6);
- ▶ economic and social security and to a decent level of living (7); and,
- ▶ avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property (11).

The *Declaration* further provides that persons with disabilities are entitled to have their special needs taken into consideration at all stages of economic and social planning (8), and that organizations of disabled persons should be consulted in all matters regarding the rights of disabled persons (12).

The rights enumerated in the *Declaration* provide an important tool for the interpretation of the rights of disabled persons under domestic law, such as the *Canadian Charter*. More importantly for the purposes of the Task Force on Disability Issues, the *Declaration* can be said to provide a moral and political guide for the federal government in defining its role and responsibilities with respect to disability issues. In fact, the terms of the *Declaration* call for national action to ensure that the *Declaration* will be used as a common basis and frame of reference for the protection of the rights of persons with disabilities.

This paper will not examine the federal government's role in implementing the substantive rights of persons with disabilities, including the need for amendments to the *Canadian Human Rights Act* and the efficacy of that framework for addressing disability-based discrimination. These rights will be examined in other research papers which the Task Force has commissioned. The object of this paper is to examine the structural mechanisms by which the federal government and persons with disabilities can enhance the exercise of those rights.

STRATEGIC APPROACHES / SPECIFIC MEASURES

FEDERAL LEADERSHIP

The Standing Committee has previously recommended that, with regard to persons with disabilities, the federal government continue to provide visible leadership in developing policies and programs in areas that fall within its jurisdiction and assist the provinces and territories in areas where jurisdiction is shared¹⁹. This is the clear and passionate expectation of the disability community. It is also the pledge of member states of the United Nations.

Administrative Coherence and Accountability

A first step in providing leadership is ensuring that there is a comprehensive and coordinated approach within the federal government. Ostensibly, this was to have been provided by the Secretary of State, later reorganized as Human Resources Development Canada, under the National Strategy for the Integration of Persons with Disabilities. The successes and limitations of previous government efforts to provide a coordinated effort through the National Strategy have been subject to evaluation and are enumerated in "The Grand Design: Achieving the 'Open House' Vision", a December 1995 report of the Standing Committee on Human Rights and the Status of Disabled Persons.

The need remains for a strong federal presence with a "cross-cutting mandate, interdepartmental coordination and intergovernmental collaboration²⁰." There is a need for additional accountability beyond that which exists under the current arrangement. The designation of a minister responsible, an annual reporting mechanism, and systemic measures to scrutinize the implications for disabled persons of proposed policy measures would improve the current accountability framework for federal action on disability issues.

The Standing Committee has already made a number of specific recommendations in this regard, including:

- ▶ the designation by the federal government of a Secretary of State with a formal and specific mandate to coordinate federal activities related to disability;

The Grand Design: Achieving the 'Open House' Vision, Report of the Standing Committee on Human Rights and the Status of Disabled Persons, Minutes and Proceedings of the Standing Committee, House of Commons, Issue No. 50, December 1995, at 21.

The Grand Design, Note 19, at 10.

- ▶ the continuation of the National Strategy for the Integration of Persons with Disabilities under the direction of the Secretary of State;
- ▶ the preparation of an annual report by the Secretary of State to be referred to the Standing Committee on Human Rights and the Status of Disabled Persons;
- ▶ a second comprehensive review and amendment of federal legislation and regulations; and,
- ▶ a mandatory section assessing the impact of proposed measures on persons with disabilities to be included in all memoranda to cabinet and other relevant documents²¹.

If implemented, these recommendations would establish a more coherent and responsive coordinating mechanism for federal policy and action.

It should be noted that these are strong measures, considered against the recommendations of an earlier Standing Committee for an "effective mechanism within the federal government to ensure ongoing and consistent monitoring, advocacy, and coordination on behalf of disabled persons in relation to all policy, legislation and regulations²²." In that report, the Standing Committee was attracted to but did not adopt recommendations for "an independent agency, perhaps modelled on the Office of the Commissioner of Official Languages, that audits policy implementation and reports on progress to Parliament through [the] Standing Committee²³." However, the Standing Committee was concerned about the likely three-year delay involved in the establishment of such a body. The Standing Committee also considered short-term alternatives, such as the creation of a Prime Ministerial task-force/roundtable/special representative, and ultimately opted in its recommendations for the appointment of a ranking official of the PCO to assume responsibility for disabled persons and to perform the ongoing functions related to cabinet activities. The current recommendation supporting the designation of a Minister responsible, together with an appropriately designed administration, updates these approaches.

The Grand Design, Note 19, at 21-22. Note section 8 of the U.N. *Declaration on the Rights of Disabled Persons* which provides, "Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning."

A Consensus for Action: The Economic Integration of Disabled Persons, Second Report of the Standing Committee on Human Rights and the Status of Disabled Persons, Minutes and Proceedings of the Standing Committee, House of Commons, Issue No. 30, June 1990, at 35.

A Consensus for Action, Note 22, at 19.

An Independent Advocacy Function

Although significant, it is not enough for government "merely" to get its house in order; one or more mechanisms are necessary to ensure:

- ▶ an aggressive, continuing review of policies, programs and services to remove barriers to the equality of persons with disabilities; and,
- ▶ the existence of an independent monitoring and advocacy role on disability issues.

Some have suggested that the creation of a federal ombudsperson - either with general responsibilities or with a specific mandate on disability issues. Most Canadian provinces have established an ombuds office²⁴. The idea of a federal ombudsperson has been current at the federal level since 1965²⁵. In 1978, the federal government introduced legislation to establish a federal Ombudsman, but it died on the Order Paper and has not been revived. There have been several private members' bills, the most recent of which was introduced by federal M.P. Beryl Gaffney²⁶. As well, in 1994, the annual meeting of Canadian Ombudsman resolved to petition the federal government to establish a federal Ombuds office, in addition to the existing specialized Commissioners at the federal level²⁷.

The creation of a federal Ombuds office would provide persons with disabilities, and the Canadian public generally, with a proven mechanism, independent of government, for addressing complaints and difficulties accessing public administration and services. Presumably, the creation of a federal Ombuds office mandated specifically to address disability issues would perform the same function, with a disability-specific focus. Either of these options would provide an additional level of scrutiny and accountability

For an overview of provincial ombuds legislation, see Philip Rosen, *The Development of the Legislative Ombudsman Idea*, Research Branch, Library of Parliament, January 1985.

Rosen, Note 24, at 15. In 1963, the Royal Commission on Government Organization (the 'Glassco Commission') recommended the creation of the office of Parliamentary Commissioner, based on the Swedish Ombudsman model.

Bill C-221, First reading, March 14, 1994. The Bill died on the Order Paper.

Letter from Ontario Ombudsman Roberta Jamieson, on behalf of Canadian Ombudsman, to Prime Minister Jean Chretien, June 14, 1994. Existing specialized Commissioners, who perform an ombuds-like function, include the Canadian Human Rights Commission, the R.C.M.P. Public Complaints Commission, the Security Intelligence Review Committee, the Canadian Judicial Council, the Information Commissioner, the Privacy Commissioner, the Correctional Investigator, and the Commissioner of Official Languages. For a recent review, see Philip Rosen, *The Establishment of a Federal Ombudsman*, Research Branch, Library of Parliament, May 1989; *Options for Establishing a Federal Ombudman*, Research Branch, Library of Parliament, August 1996.

to those already identified by the Standing Committee in its various reports.

There are significant limits to the traditional role of an ombudsperson, which is to provide an independent and neutral "complaint investigation and mediation body whose recommendations are not binding, but have to be supported by moral suasion and exposure to public opinion to be effective²⁸." One ombuds office has advised that its role is limited to following up complaints by individuals about existing services - where a service does not exist, there is no basis for a complaint.

It is not the role of an ombudsperson to advocate for individuals or groups, or to provide what has been called "systemic advocacy"²⁹, that is, advocating changes to policies and practices that create barriers to equality or supporting communities in their efforts to secure needed programs and services. In recognition of these limitations, some provinces have created specialized advocacy functions to meet the needs of specific groups, e.g. children. The legal status of these child advocates varies considerably from one province to another. In Saskatchewan, this function has been codified; the Provincial Ombuds office is now combined with a Children's Advocate who has the power to investigate complaints and advocate for the creation of programs to meet children's needs. However, it has been suggested that even this function needs enhancement, so that the Child Advocate has legal authority to intervene and press for a right when circumstances so require.

The creation of an advocacy mechanism at the federal level would enhance the recommendations previously made by the Standing Committee. There are numerous models which can be adapted to fulfill such a function -- existing specialized commissioners at the federal level, provincial government approaches, or international examples³⁰. A closer examination of these options should be considered in consultation with organizations of persons with disabilities and in light of the Standing Committee's reflections on the limited progress made through mechanisms instituted under the National Strategy for Integration.

Rosen (1996), Note 27, at 1.

See, for example, *The Advocacy Act, 1992*, S.O. 1992, c.26, repealed 1996, c.2, s.1, effective March 29, 1996.

For example, the British Columbia Office for Disability Issues was developed after an examination of models in Quebec, Ontario, Alberta, Australia, Germany and the United States.

THE ROLE OF ORGANIZATIONS OF PERSONS WITH DISABILITIES

The Standing Committee is justifiably proud of its history of unanimous reports which "propose, promote, monitor and assess initiatives aimed at the integration and equality of disabled persons in all sectors of Canadian society³¹." These reports would not have been possible without the continuing participation of numerous individuals and non-governmental organizations representing persons with disabilities. In fact, no review, policy, or legislative exercise involving the rights of disabled persons can effectively be undertaken without their participation.

The U.N. *Declaration on the Rights of Disabled Persons* explicitly calls for the consultation of organizations of disabled persons in all matters regarding the rights of disabled persons, and in the entitlement of disabled persons to have their special needs taken into consideration at all stages of economic and social planning³². These organizations cannot sustain their activities without state-funded resources, whether stable core funding, technical supports, or access to project monies for specific initiatives. Yet, the Standing Committee has already noted that funding for Grants and Contributions has been reduced and redirected as a result of Program Review³³. At a time when the federal role on disability issues is moving towards a narrower focus, when major disability-related programs are under review, in transition, or ending³⁴, and when the federal government is struggling to understand its role in addressing issues affecting persons with disabilities, it is absolutely vital that the federal government ensure strong financial, technical and other supports are available to organizations of persons with disabilities so that they can exercise their participation rights as citizens.

The Grand Design, Note 19, at 2.

Sections 12 and 8.

The Grand Design, Note 19, at 4.

The federal/provincial Vocational Rehabilitation of Disabled Persons agreements expire in 1996. The mandate of the National Strategy for the Integration of Persons with Disabilities ended in March 1996. The *Canada Assistance Plan* has been dramatically reduced and restructured under the Canada Health and Social Transfer (one third - \$2.3 billion - of CAP expenditures provide income security and supports and services for persons with disabilities). Canada Pension Plan benefits and contributions are under review. See *The Grand Design*, Note 19, at 4.

LITIGATION: A STRATEGY OF LAST RESORT

For most, litigation is a strategy of last resort. It requires a high level of rights literacy. It is expensive and slow-moving. Its outcome is uncertain, and it often ensures that there are only winners and losers in the struggle. Nonetheless, the importance of effective legal remedies cannot be understated.

State-funded Legal Aid

The preamble to the *Americans with Disabilities Act* (ADA) recognizes that, unlike many other historically disadvantaged groups, persons with disabilities have often had no legal recourse to redress violations of their rights. This recognition orients the need for an ADA in the United States; it also sets the stage for section 505 of the ADA, which gives a court or administrative agency discretion to award state-paid legal costs in ADA-related litigation.

International law, and domestic law, including the *Canadian Charter*, recognizes the entitlement of persons charged with criminal offences to state-funded legal counsel. Some have argued that the guarantees in the *International Protocol on Civil and Political Rights* to an effective remedy for any violation of rights or freedoms recognized in the *Covenant* provide the basis for arguing the right to state-funded legal aid for civil matters as well. The European Court of Human Rights, which considers appeals under the *European Convention for the Protection of Human Rights and Fundamental Freedoms*³⁵, has recognized a right to funded counsel for civil matters, even though the *European Convention* is not explicit on this point³⁶.

The U.N. *Declaration on the Rights of Disabled Persons* is quite explicit, however. It provides:

Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves dispensable for the protection of their persons and property³⁷.

Madam Justice Rosalie Abella has recognized that access to legal services for persons

In force September 3, 1953.

Although the *European Convention* is not binding in Canada, it has been cited as a aid to interpretation by Canadian courts. See Schabas, Note 6, at 55-56.

Section 11.

with disabilities is vital because it means access to the mainstream and to integration³⁸.

Under Canada's constitution, the responsibility for legal aid is shared between the federal and provincial governments. The federal role is largely one of providing financial contributions to provincial and territorial programs through federal-provincial agreements; one set of agreements is negotiated by the Department of Justice to provide federal payments for criminal legal aid services, while the other has been traditionally negotiated by Human Resources Development Canada under the *Canada Assistance Plan*. The Justice agreements with the territories cover both civil and criminal legal aid.

Access to legal aid resources varies considerably from province to province. In a recent study of legal aid in Canada, the National Council of Welfare observed that, "only the Quebec legal aid plan provides full services in all categories. At the other extreme, New Brunswick offers the least, with partial services in criminal law, no family law coverage to speak of, no other civil law services, and no information, outreach or advocacy programs³⁹."

The Nielson Task Force on Program Review recommended that federal involvement in legal aid be consolidated under a single agreement. The introduction of the Canada Health and Social Transfer, coupled with the elimination of appeal rights (among others) under the *Canada Assistance Plan*, will have important consequences for the disability community and for Canada's compliance with international norms in this area⁴⁰. There are undoubtedly federal-provincial discussions on-going about the future of federal financial contributions to legal aid and the appropriate mechanisms for the delivery of such funding. The Standing Committee on Human Rights and the Status of Disabled Persons has an interest in these discussions.

Access to Legal Services By the Disabled (Toronto: Queen's Printer for Ontario, 1983) at 14, cited in National Council of Welfare, *Legal Aid and the Poor* (Ottawa: Minister of Supply and Services Canada, 1995) at 13.

Ibid, at 39.

The National Association of Women and the Law has stated that "Pending cuts to transfer payments under the Canada Health and Social Transfer will undoubtedly diminish the amount of money spent on civil legal aid." NAWL advocates the rationalization of legal aid funding within one federal government department, viz. Justice, the establishment of minimum standards for coverage, entitlements, and service delivery upon which funding is contingent, provide research on legal aid services to assist provinces in meeting their Charter obligations, reconsider federal cuts, and work in consultation with community organizations to ensure equal access to justice. Letter from Darlene Jamieson, National Coordinator to the Hon. Allan Rock, July 27, 1995.

The Court Challenges Program

The Court Challenges Program has been the subject of several substantial reports by the Standing Committee on Human Rights and the Status of Disabled Persons. These reports were influential in the federal government's decision to reinstate the program. The Court Challenges Program, and by corollary the development of equality jurisprudence, continues to be hampered by the limitation in the Program's mandate to fund only those equality test cases involving federal laws, policies, or programs.

The Standing Committee on Human Rights and the Status of Disabled Persons has recommended at least twice that the mandate of the Program be extended to cover all equality test cases having national importance, whether involving federal or provincial laws. This recommendation has been expressly approved and supported by the United Nations Committee on Economic, Social and Cultural Rights⁴¹. The general arguments for an expanded Court Challenges Program are numerous:

- ▶ The Constitution of Canada does not apply only to federal laws, and it is not itself only a federal law. It is Canada's supreme law, applying to all laws, programs and practices of all governments. Disadvantaged groups need access to the use of their rights in all jurisdictions. It is not appropriate to make federal/provincial jurisdiction an issue where basic constitutional rights are at issue - a policy which the federal government appropriate pursues in the funding of language rights cases⁴².
- ▶ By their nature, equality cases can transcend the particular legal challenge to the specific law at issue, and have important consequences for all governments. Jurisprudence established in an equality case involving one level of government can affect all other governments. For example, *Andrews v. The Law Society of British Columbia*⁴³, a case involving a provincial law, set the framework for the interpretation of section 15 equality rights for all provinces and the federal government.
- ▶ The advancement of equality is a national policy, found in federal/provincial statutes, Canada's constitution, and international human rights treaties signed by the government of Canada.. An expanded program would reflect these commitments and prove an important tool for the promotion of these fundamental

Concluding observations on Canada, Note 14.

The Community Advisory Committee, *Supplementary Brief to the Standing Committee on Human Rights and the Status of Disabled Persons*, October 14, 1989, at 10.

[1989] 1 S.C.R. 143.

values.

- ▶ Equality rights have a different history than civil or political rights. Civil rights pre-existed the Charter, have been accepted by the courts, and in some cases are best protected by the absence of government regulation. Equality is still a goal to strive for, and requires promotion and positive action by government⁴⁴.
- ▶ A full program can be an important catalyst for governments and bureaucracies to make the transition from constitutional law as a relation-governing instrument to a tool for power sharing with the people⁴⁵.

The Canadian Association for Community Living notes that "many of the troublesome aspects of [the lives of individuals with a mental handicap] are directly impacted by provincial/territorial laws which at present they cannot challenge because they cannot afford the legal costs⁴⁶."

Persons with disabilities are still denied the most basic of formal citizenship rights, e.g. some provincial juries legislation excludes many persons with disabilities from jury service, whether or not they are capable of effectively discharging the duties of juror, with or without reasonable accommodation⁴⁷. This is a form of stereotyped exclusion that is substantially at odds with section 15 of the *Charter*, but is an issue beyond the scope of the Court Challenges Program.

Finally, the restricted mandate of the Program may impact the substantive development of equality jurisprudence.

The Government of Canada is currently the focus for litigation by disadvantaged groups because only these challenges can obtain funding. Were the funding criterion modified, test cases which more naturally belong in other jurisdictions would be initiated there. The funding restriction is currently having the effect of determining both which cases

Elizabeth Shilton, "Charter Litigation and the Policy Processes of Government: A Public Interest Perspective" (1992) 30 Osgoode Hall L. J. 653 at 658.

Shilton, Note 44, at 660.

Submission to the Parliamentary Standing Committee on Human Rights and the Status of Disabled Persons, October 1989.

See M. David Lepofsky, "Equal Access to Canada's Judicial System for Persons with Disabilities -- A Time for Reform" (1995) 5 N.J.C.L. 183 at 201.

can be pursued and which respondents are chosen⁴⁸.

The federal government should expand the mandate of the Court Challenges Program to cover all equality test cases of national importance.

Expanding the mandate of the Program would not preclude the federal government from seeking partnerships with provincial governments that have been on record as supporting an expanded program, including the governments of British Columbia, Saskatchewan, and New Brunswick. It should be noted that a former Liberal government in Ontario established a litigation fund for the use of the Women's Legal Education and Action Fund, which applied to challenges to provincial *and* federal laws.

THE CANADA HEALTH AND SOCIAL TRANSFER

National Standards

The Standing Committee on Human Rights and the Status of Disabled Persons has already noted the federal government's failure to maintain existing standards under the *Canada Assistance Plan* pending the negotiation of minimum national standards under the Canada Health and Social Transfer. Many advocate the reinstatement of these standards pending the outcome of negotiations with the provinces. Following consultations with the disability community, the Standing Committee recommended the following "protections" be attached to the new transfer:

- ▶ minimum national standards⁴⁹ and a minimum amount of funding for disability-related income programs and supports and services to ensure consistent outcomes;
- ▶ for those denied assistance an independent appeal mechanism that involves people with disabilities;
- ▶ an adequate cash component to provide sufficient incentive for the provinces to undertake negotiations;
- ▶ provisions for a "social audit" to provide all Canadian with comprehensive

The Community Advisory Committee, Note 42.

Provincial advisory bodies recommended the following standards: accessibility based on need; adequacy in relation to need; the right of appeal; accountability and full disclosure on the part of all levels of government on the distribution and use of CHST funds; meaningful and ongoing participation by persons with disabilities in the development and evaluation of social programs funded in whole or in part, under the CHST. *The Grand Design*, Note 19, at 20.

information about expenditures of funds through the Canada Health and Social Transfer and its successors in order to ascertain whether there has been adequate funding provided for people with disabilities.⁵⁰

At minimum, the federal government needs a mechanism to monitor the CHST to ensure that it does the job that is intended. The Auditor General for Canada has as its mission the provision of a "fair and frank accounting of the government's stewardship of financial and other resources." An aggressive interpretation of the Auditor General's mandate could possibly support an inquiry into the uses which have been made of monies provided by the federal government under the CHST.

A CHST Research Fund

A more cooperative approach could be developed through the creation of a CHST Research Fund, modelled on the recently announced Health Services Research Fund. The federal government has already shown that it is prepared to exercise leadership on key social issues through the establishment in 1996 of a new Health Services Research Fund, described as follows:

The immediate objective is to bring together partners -- from provincial governments, health institutions and the private sector -- who are interested in building a shared fund, thereby making better use of the human and financial resources in the health care system. The research will be practical in nature. It will identify what works in Canada's health care system, what does not work, and what procedures and interventions require further evaluation.⁵¹

The federal government will consult with provincial and territorial governments and other interested partners on how to set up and manage the fund, which will be administered by the Medical Research Council of Canada. To permit research to get underway during the course of the five years, and to help endow the fund, the federal government announced that it would provide \$65 million over 5 years, irrespective of contributions from other partners, of which \$15 million would be reallocated from the Medical Research Council and Health Canada.

A similarly designed Fund could be established to monitor the impact of the CHST, evaluate the extent to which the citizenship rights of persons with disabilities (among others) are protected and/or enhanced under the new transfer, and provide on-going

The Grand Design, Note 19, at 22.

Budget Plan, tabled in the House of Commons by the Honourable Paul Martin, Minister of Finance, March 6, 1996 (Ottawa: Finance Canada, 1996), at 62-3.

assessment of the federal role in social policy. Such a Fund could provide opportunities for collaborative research and community partnerships beyond the confines of research undertaken under the current regulations of granting agencies like the Social Sciences and Humanities Research Council⁵². The establishment of such a Fund would signal some element of federal responsibility in the area of social programs. It may partially address the concerns expressed by the Committee on Economic, Social and Cultural Rights.

CONCLUSION

The exercise of full citizenship rights by persons with disabilities requires a comprehensive response by government. It requires:

- ▶ the recognition in law of the rights and entitlements of persons with disabilities and our social and collective responsibility to share the costs of providing them;
- ▶ a national effort to provide the income, employment and social supports and services necessary to overcome the barriers to participation experienced by persons with disabilities;
- ▶ a national vision and dedicated commitment by government to facilitate the creation of policies and programs which enhance the equality of persons with disabilities; and,
- ▶ resources in the hands of persons with disabilities and their representative organizations to ensure ongoing advocacy and participation in consultative mechanisms, and effective legal remedies for persons with disabilities.

There has been considerable emphasis placed in this paper on international human rights standards, although there is relatively little discussion of them in federal studies and policy proposals. Understanding of these instruments, and their potential application in Canada, is relatively new; for example, both the bench and bar have generous learning curves ahead of them⁵³. The federal government can look to these

For example, SSHRC in partnership with the Disabled Persons Secretariat at HRDC initiated a valuable research grants program focused on disability issues. The program is in its final year and there has been no public indication that it will be continued, for example, as one of SSHRC's strategic grants programs. While this initiative deserves continuation on its own merits, a different program, focused on the CHST and open to the wider community rather than researchers sponsored by academic institutions is also needed.

For an illustration of errors in jurisprudence, see Anne F. Bayefsky, "International Human Rights Law in Canadian Courts" in Irwin Cotler and F. Pearl Eliadis, eds. *International Human Rights Law: Theory and Practice* (Montreal: The Canadian Human Rights Foundation, 1992), at 138-140.

standards, including the *Declaration on the Rights of Disabled Persons*, to give substance to its obligations under the *Canadian Charter* and to provide a framework for its role in the advancement within Canada of the rights of persons with disabilities.

As the United Nations Committee on Economic, Social and Cultural Rights has observed, the government of Canada would be mistaken to consider that these international obligations are "mere policy objectives" rather than fundamental rights that require effective remedies and positive action by member states.

RESEARCH PAPER 3

**DESIGNING A LEGISLATIVE REFORM
STRATEGY
FOR PERSONS WITH DISABILITIES:
PRIORITIES AND OPTIONS**

**Rosalind Currie, Sandra Goundry and Yvonne Peters
Equality Matters
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DESIGNING A LEGISLATIVE REFORM STRATEGY FOR PERSONS WITH DISABILITIES: PRIORITIES AND OPTIONS

INTRODUCTION

The Task Force on Disability Issues is studying the future role of the Government of Canada as it relates to Canadians with disabilities. The purpose of this Paper is to provide preliminary advice to the Task Force on priorities and options for legislative reform for persons with disabilities. It is beyond the scope of this Paper to provide the Task Force with an in-depth analysis of each legislative reform issue of significance to persons with disabilities. Rather, the Paper seeks to offer guidance to the Task Force as to the general direction in which to take disability-related legislative reform issues.

The Paper uses the term "legislative reform" to include both the review of existing legislation and the development of new legislation. This advice is offered on the understanding that more than legislative reform is needed to fully realize the rights and aspirations of persons with disabilities. Consequently, this Paper is submitted in the knowledge that the Task Force has sought advice on other important priority issues such as citizenship, labour market integration, income support and tax reform.

The Paper is broadly divided into three parts.

PART I - DISABILITY-BASED DISCRIMINATION AND THE SHIFT TO AN EQUALITY RIGHTS FRAMEWORK asserts that the *Canadian Charter of Rights and Freedoms* (the "Charter") must form the centrepiece of legislative reform for persons with disabilities. This Part of the Paper highlights some of the key *Charter* values and principles which must underpin an effective legislative reform strategy for persons with disabilities.

PART II - LEGISLATIVE REFORM: HISTORICAL APPROACHES, UNFINISHED BUSINESS AND EMERGING ISSUES reviews past and present reform strategies. Legislative reform for persons with disabilities is not a new concept. It was a key strategy for persons with disabilities in the early 1990's culminating in 1992 with the passage of Bill C-78 (the "Omnibus Bill"). While Bill C-78 amended a few pieces of legislation, it left a number of statutes, identified by the disability community as discriminatory, intact.

This Part examines the achievements of past reforms and the work which remains outstanding. As well, this Part identifies emerging legislative trends which have possible implications for persons with disabilities.

PART III - MOVING TOWARDS A NEW STRATEGY FOR LEGISLATIVE REFORM -A CRITIQUE OF PAST APPROACHES AND SUGGESTIONS FOR A PERMANENT MULTI-DIMENSIONAL STRATEGY provides a critical analysis of past legislative reform initiatives and draws on the analysis developed in Part I to suggest the development of a co-ordinated Permanent Multi-Dimensional Strategy for Legislative Reform (the "Strategy"). It is proposed that the Strategy consist of a number of key features including a Disability Equality Rights Framework, a legislated Barrier Review Mechanism and a vehicle that ensures that disability issues are addressed at each stage of the legislative and policy process. The proposed Strategy provides options for legislative reform on an immediate, short, and long-term basis.

WHAT IS MEANT BY LEGISLATIVE REFORM? SIX WORKING ASSUMPTIONS

There are six working assumptions adopted in this Paper regarding what constitutes an effective legislative reform process. Those assumptions are:

- (i) A legislative reform strategy cannot be limited to the review of existing pieces of legislation, without also examining the policy framework (the policies, rules, practices, interpretive bulletins and guidelines) that is responsible for the implementation of that legislation;
- (ii) A legislative reform strategy cannot be undertaken on a piece-meal and intermittent basis; it requires a permanent central mechanism which co-ordinates an on-going, comprehensive and systematic legislative review process;
- (iii) A legislative reform strategy includes a mechanism to incorporate disability-based analysis in the design and developmental stages of policy and legislative initiatives;
- (iv) The development of a legislative reform strategy requires an understanding of and an appreciation for the social, economic, political and historic context for disability equality claims;
- (v) A legislative reform strategy requires the development of a conceptual framework to guide the review process itself and to assist in making decisions as between competing alternatives; and
- (vi) The conceptual framework for the legislative reform strategy has, as its main source of principles and values, the *Charter of Rights and Freedoms*.

PART I DISABILITY-BASED DISCRIMINATION AND THE SHIFT TO AN EQUALITY RIGHTS FRAMEWORK

A. AN OVERVIEW OF THE CONTEXT FOR LEGISLATIVE REFORM

During the past twenty years or so, the context in which disability issues are considered has shifted from a paternalistic care-taking analysis to an equality rights analysis. Equality must be the driving force of a legislative reform strategy for persons with disabilities. However, understanding the historical context of equality for persons with disabilities is important for a number of reasons.

First, it underlines the extent to which the concept of disability is socially constructed. Second, it underscores the role that disability-based discrimination has played in the formulation of legislation and policy. Third, it emphasizes the need for an equality rights analysis. With this in mind, the next few pages provide a brief overview of the historical context of disability equality claims.

1. The Historical Underpinnings of Discrimination and Oppression

There are various perspectives on the origins of disability-based discrimination which can generally be summarized as:

- (i) the exclusion and marginalization of people with disabilities from the productive labour force¹;
- (ii) the medicalization of disability²; and
- (iii) the role of charity in reinforcing stereotypes and perpetuating dependence.³

These perspectives are not simply abstract musings by disability rights theorists. Indeed, one does not need to go very far back in the legislative histories of federal or provincial governments to find explicit examples of disability-based discrimination. Some examples follow.

Michael Oliver, *The Politics of Disablement: A Sociological Approach* (New York: Saint Martins Press, 1991), esp. Ch. 3.

Jerome Bickenbach, *Physical Disability and Social Policy* (Toronto: University of Toronto Press, 1993).

See generally: Marcia Rioux, *The Contradiction of Kindness; The Clarity of Justice* (North York: The Roehner Institute, 1993) and Jim Derksen, *Disabled Consumers Movement: Policy Implications for Rehabilitation Service Provision* 1980.

(a) The Immigration Act as an Example of Disability-Based Discrimination

A few short years ago, section 19(1)(a) of the *Immigration Act*, explicitly prohibited many persons with disabilities from immigrating to Canada on the grounds of medical inadmissibility. While the medical inadmissibility provision has been amended recently to remove the overtly discriminatory wording, the history of this section is revealing.

The purpose of the section is to identify those classes of persons deemed undesirable for admission to Canada. The list of prohibited classes has included criminals, subversives, terrorists, social assistance recipients, drug traffickers, prostitutes, persons having contracted contagious diseases and in every version of the *Act*, persons with disabilities.⁴

This one hundred year history of legislated exclusion underlines the extent to which discriminatory attitudes have informed the development of the legislation. Even today the medical model of disability provides the rationale for continued exclusion as disability continues to be equated with ill health. The assumption is that disabled immigrants will place 'excessive demands' on Canada's health and social systems.

(b) The Sexual Sterilization Acts as Examples of Disability-Based Discrimination

Both B.C. and Alberta enacted their own sexual sterilization legislation in the early part of the nineteenth century.⁵ Those statutes expressly provided for the forced sterilization of women and men with disabilities - particularly mental disabilities. The discriminatory attitudes and eugenic values which informed the legislation were blatantly apparent. For example, section 5 of the *Alberta Act* provided:

If upon such examination, the board is unanimously of the opinion that the patient might safely be discharged if the danger of procreation with its attendant risk of multiplication of the evil by transmission of the disability to progeny were eliminated. . .

The *Alberta Act* was repealed in 1972; the B.C. legislation was repealed in 1973. The history of sexual sterilization legislation is instructive in that it both (i) highlights the discriminatory biases which have informed governments' legislative agenda; and (ii)

Sandra A. Goundry, *Final Brief on the Proposed Amendments in Bill C-86 to Sections 19(1)(a) and (b) of the Immigration Act* (Winnipeg: Canadian Disability Rights Council, September 1992).

Sexual Sterilization Act, S.A. 1928, c.37; *An Act Respecting Sexual Sterilization*, B.C. Journal of the Legislative Assembly (Session 1933) LXII, 101-15, Ch. 59 (7 April 1933).

provides evidence of past state-sanctioned abuse and oppression of people with disabilities.

2. Towards A Rights-Based Analysis

The discriminatory treatment of people with disabilities is not solely a historical phenomenon -their condition of disadvantage persists. The difference is that since the 1970's the disadvantage or marginalization which people with disabilities continue to experience is more likely to be attributed to discrimination, unequal treatment and/or infringement of their rights.

This move towards an anti-discrimination or rights-based analysis has coincided with a number of legislative, constitutional and international developments, namely:

- (i) the enactment of human rights legislation - and the gradual inclusion of mental and physical disability as a prohibited ground;
- (ii) the introduction of the equality guarantee in the *Charter*; and
- (iii) the proclamation of international human rights conventions and protocols to which Canada is a signatory⁶.

The nature and extent of the discrimination experienced by persons with disabilities has been documented over and over again. In 1981, the Special Parliamentary Committee on the Disabled and the Handicapped tabled 130 recommendations in the *Obstacles Report*⁷. Since then there have been a series of federal reports including: *Equality for All*⁸, the *Abella Report on Equality in Employment*⁹, *A Consensus for*

The Universal Declaration of Human Rights G.A. Res. 217(a) (III), U.N. Doc. A/810 (1948); *The International Covenant on Economic, Social and Cultural Rights (ICESCR)* G.A. Res. 2200 (XXI), 21 U.N. GAOR, App. (No. 16) 49, U.N.Doc. A/6316 (1966), adopted December 1966 and entered into force January 3, 1976; *The Declaration on the Rights of Mentally Retarded Persons* G.A. Res. 2856 (XXVI) (1971); and *The Declaration on the Rights of Disabled Persons* G.A. Res. 3447 (XXX)(1975).

David Smith (Chair), *Obstacles: Report of the Special Committee on the Disabled and the Handicapped* (3rd Report) (Ottawa: Supply and Services Canada, February 1981).

Patrick Boyer (Chair), Parliamentary Committee on Equality Rights, *Equality for All* (October, 1985).

Commissioner Rosalie S. Abella, *Report of the Royal Commission on Equality in Employment* (October, 1984).

*Action*¹⁰, *Paying Too Dearly*¹¹, *As True as Taxes*¹², *Completing the Circle*¹³, and most recently *The Grand Design: Achieving the Open House Vision*¹⁴. These reports have consistently called for a concerted effort on the part of the federal government to address the unequal position of people with disabilities in Canadian society.

3. Disability as a Social Construct

Further, disability is increasingly viewed as a social construct rather than an inherent trait. What is meant by this is simple: people with disabilities are handicapped or disabled by their physical environment and societal attitudes; not by the 'disability' itself. For example, an individual who uses a wheelchair for mobility is prevented from entering a building when the entrance is at the top of a flight of stairs by the fact that there are stairs, not because he or she uses a wheelchair. If the same building had a ramp, instead of or in addition to stairs, that same individual would no longer be considered handicapped or disabled in relation to gaining entrance to the building.

Just as "disabling" as the physical environment which has been planned from the perspective of able-bodied people, is a societal perspective on disability which devalues the lives of people with disabilities. There is a general attitude that views people with disabilities as "burdensome" or "pathetic and pitiable" and deems their lives as "not worth living". This perspective sees the disability, not the person, and as a result, attributes all of the above negative assumptions to the fact of a disability rather than to the societal conditions and barriers which prevent full participation.

This discussion is not simply rhetoric and unfortunately has contemporary application. For example, in the case of new reproductive and genetic technologies (NRGT's), significant resources are being directed towards the development of a wide range of prenatal screening and diagnostic procedures designed to detect, and in many cases, eliminate disabilities. These objectives are pursued under the uncritical guise of

Bruce Halliday, (Chair), House of Commons Standing Committee on Human Rights and the Status of Disabled Persons, *A Consensus for Action: The Economic Integration of Disabled Persons* Second Report, (June 1990).

Bruce Halliday, (Chair), House of Commons Standing Committee on Human Rights and the Status of Disabled People, *Paying Too Dearly* (June, 1992).

Bruce Halliday, (Chair), House of Commons Standing Committee on Human Rights and the Status of Disabled Persons, *As True as Taxes: Disability and the Income Tax System* (Ottawa, 1993).

Bruce Halliday, (Chair), House of Commons Standing Committee on Human Rights and the Status of Disabled Persons, *Completing the Circle* (March 1993).

Rey D. Pagtakhan, (Chair), House of Commons Standing Committee on Human Rights and the Status of Disabled Persons, *The Grand Design: Achieving the 'Open House' Vision* (December, 1995).

"progress" and without taking into account the impact of these activities on the lives of people with disabilities.

This overview is not simply 'background material' for consideration by the Task Force. Rather it provides both support for the veracity of the Working Assumptions set out in the Introduction and evidence of the need for a comprehensive multi-dimensional legislative reform strategy which is designed to eliminate systemic disability-based discrimination and improve the condition of Canadians with disabilities. This Strategy needs to be on-going, comprehensive and a permanent feature on the federal legislative landscape. Past experience also tells us that it is imperative that any such Strategy, and all of its component parts, be informed by a conceptual framework which provides:

- an unassailable rationale for the Strategy;
- justification for the government to undertake such a wide-ranging initiative in times of fiscal restraint;
- a standard/guidelines which can be used by policy makers, decision makers, and the disability rights community to prioritize issues, determine the nature and extent of amendments, and consider competing interests and options;
- a vehicle with which to incorporate the vision of the disability rights community; and
- a model which brings to the forefront the values which are informing political decisions.

The *Charter*, and more specifically, the constitutional guarantee of equality, has the most potential to provide the foundation for this framework¹⁵. Consequently, the conceptual framework proposed for the Legislative Reform Strategy is an Equality Rights Framework. An Equality Rights Framework incorporates many of the above features - it provides: (i) the justification and rationale for the Strategy; (ii) a standard to measure options; (iii) the capacity to include the equality vision of the disability community; and (iv) a values system which has constitutional force.

The most popular conceptual framework used by the present federal government is one based almost exclusively on concerns with deficit reduction and economic efficiencies. While fiscal and economic considerations are important parameters to consider when charting the course of an entire country, a commitment to fiscal responsibility and economic efficiency does not preclude the honouring of Canada's international commitments or excuse government from its constitutional obligations.

B. DEVELOPING AN EQUALITY RIGHTS FRAMEWORK

1. The Role of the *Charter*

(a) Justifying the Strategy

As part of the *Constitution Act, 1982*, the *Charter* is the supreme law of the land. According to section 32, the *Charter* applies to all governmental activity. Legislative reform is clearly government activity as is the development of strategies, initiatives, regulations, policies, rules and practices.

(b) Providing a Rationale for the Strategy - The Charter as a Constitutional Beacon

The *Charter* provides both a mechanism through which government action can be reviewed and challenged in the courts and a constitutional beacon to guide legislators and bureaucrats in the formulation and review of public policy and law. There are then two ways to both approach and justify legislative reform. The first, which is reactive, is based on a court order and the second, which is proactive, is based on government acknowledgement of its constitutional obligations.

It is the latter role which is of most significance in the context of this Paper. As a constitutional beacon, the *Charter* serves as a guide to all levels of government(s) as to how they should conduct the "business of government". That business includes:

- the drafting of legislation and regulations;
- the development of policies, strategies and initiatives;
- the assignment of priorities and resources;
- the negotiations with respect to arrangements for the provision of services; and
- the implementation and administration of all the above.

This role, as a beacon, also includes the task of developing new ways of conducting the "business of government" that incorporate as priorities the removal of discriminatory barriers for people with disabilities and the elimination of systemic discrimination.

(c) Serving as a Repository of Values

The *Charter* is the constitutional expression of our Canadian value system. This fact makes the search for what constitutes Canadian values relatively straightforward. For example, the courts, particularly the Supreme Court of Canada (S.C.C.), in the course of adjudicating *Charter* claims, have had to begin to identify the core principles and fundamental values which underlie the *Charter*. A respect for human dignity and a

commitment to social justice and equality are consistently "identified" as core *Charter* values. The S.C.C. has deemed these particular values to be "essential" to a free and democratic society.¹⁶ Clearly, these values seem tailor-made to the task at hand. Any framework considered by the Task Force should have as its philosophical *raison d'être* "a respect for human dignity and a commitment to social justice and equality".

2. Providing the Philosophical Foundation for the Strategy

(a) *The Equality Guarantee*

Equality is a key constitutional norm and a central tenet of our liberal democracy. It is clear that the purpose of section 15 is to ensure equality in the formulation and application of legislation and policies.¹⁷

Equality is also the umbrella goal of the disability rights movement. The goal of equality means that self-determination, autonomy, dignity, respect, integration, participation and independent living must be the defining parameters of any disability-related legislative reform strategy.¹⁸

(b) *Competing Visions of Equality*

There are of course competing visions of constitutional equality which are often described as falling into one of two broad categories: the formal model versus the substantive model. The problems with formal equality as the model of equality have been discussed elsewhere. It is the substantive approach to equality, particularly an approach that seeks to achieve equality of results, which holds the most promise for identifying disability equality issues in a comprehensive and systematic way and for providing the elements for a framework in which to deal with them.

3. Building Blocks for the Task Force - Key Features of Substantive Equality

What is meant by equality has changed significantly over time. Today our understanding of the meaning of equality is much more sophisticated. Our approach to equality rights analysis is results-oriented and potentially inclusive of the equality goals of people with disabilities. In this context equality means:

R. v. Oakes, [1986] 1 S.C.R. 103 at p. 136.

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at p. 171.

See also Federal/Provincial/Territorial Review of Services Affecting Canadians with Disabilities *Pathway to Integration: Final Report Mainstream 1992* (Ottawa, May 1993) and the *National Strategy for the Integration of Disabled Persons* referred to in the *Grand Design supra* note 14 for other guiding principles.

- context is all important and requires that disability equality issues be examined in their social, political, economic and historic context;
- effects or results are the focus of any inquiry rather than intention;
- **equal** treatment sometimes means that same treatment is required and other times means differential treatment is required;
- legislation is bound to make distinctions and not all distinctions are discriminatory;
- only distinctions which discriminate are singled out for scrutiny and removal, that is, distinctions which impose burdens, obligations or disadvantage on members of already marginalized groups;
- where differential treatment is required for equal treatment, the failure to include a necessary distinction may similarly impose burdens, obligations and disadvantages; and
- sometimes affirmative or proactive measures are required to remove barriers and eliminate systemic discrimination.

PART II LEGISLATIVE REFORM: HISTORICAL APPROACHES, UNFINISHED BUSINESS AND EMERGING ISSUES

Equality is a relatively new political, legal and constitutional vehicle for persons with disabilities. Principles derived from the *Charter* have helped, at least on a theoretical level, to foster a vision of equality for persons with disabilities. Ensuring that this vision is incorporated into Canadian laws and institutions has been a much more difficult process.

For over two decades, the disability rights movement has advocated for specific changes to federal legislation which would (i) remove systemic barriers, (ii) promote equality rights, and (iii) ensure an adequate standard of living. Numerous government and parliamentary reports exist documenting the social, economic, legal and political barriers experienced by persons with disabilities.¹⁹ The same reports also provide a wealth of information on options and solutions for overcoming these barriers. On some issues progress has occurred. But, for the most part, progress has been shockingly slow, deeply disappointing and profoundly frustrating for persons with disabilities.

What seems to be missing is a strategy, other than litigation, for transforming *Charter* principles and values into tangible legislative results. Part III of this Paper suggests that a co-ordinated Permanent Multi-dimensional Legislative Strategy may increase the prospects for needed reforms. However, to determine how such a Strategy might improve the lives of persons with disabilities, it is first useful to review the effectiveness of past legislative initiatives. Particular attention is paid to the lessons learned from Bill C-78.

A. HISTORICAL APPROACHES TO LEGISLATIVE REFORM FOR PERSONS WITH DISABILITIES

For the most part, the disability rights movement has approached legislative reform on an issue-by-issue basis. The movement has relied on the political forum and lobbying campaigns to educate and persuade politicians and bureaucrats to make the required changes. In particular, three specific vehicles have been used to seek legislative reforms:

1. the Parliamentary Committee Legislative Review Process;
2. the Standing Committee on Human Rights and the Status of Disabled Persons; and
3. an Omnibus Bill on disability-related issues.

Supra notes 7- 14.

Each vehicle is briefly discussed below.

1. The Parliamentary Committee Legislative Review Process

The role of a Parliamentary Committee is to review proposed legislation that has received first and second reading in the House of Commons and, if necessary, to make recommendations for changes. In the past, disability rights advocates have participated in this process by appearing before such Committees and presenting a disability rights analysis on the impact of the proposed legislative changes. In most instances, such presentations also contain recommendations for changes to the proposed legislation to ensure that issues of concern to the disability community are adequately addressed or at least considered.

In this process, analysis of the proposed legislation and recommendations for changes are received at the end of the planning and drafting stages when resistance to substantive revision is high. In recent years the government from time-to-time has held consultations with equality-seeking groups and other stakeholders in an attempt to identify their concerns at earlier stages of the legislative process. However, these consultations have had little success in persuading the government to address systemic barriers through legislative reform for persons with disabilities in Canada.²⁰

2. The Standing Committee Reports on Human Rights and the Status of Disabled Persons

The Standing Committee on Human Rights and the Status of Disabled Persons has been active for many years in promoting the equality rights of men and women with disabilities and has recommended many important changes to federal legislation in the course of its work. As has previously noted, there are numerous reports written by the various members of this Committee which have contributed to the analysis of the status of people with disabilities in Canada thereby laying the groundwork for systemic change at the federal level.²¹

In recent years, prior to the introduction of draft legislation, disability rights groups, often along with other equality-seeking groups or other stakeholders, have been invited to consultations with the government department in charge of designing and drafting the legislation. For example, the Canadian Disability Rights Council and DAWN Canada were invited to consultations held by Health Canada about proposals for a regulatory framework to manage new reproductive and genetic technologies. There are several problems with the way in which consultations with members of the disability community have been structured in the past. The consultations are often: (i) held with members of other equality-seeking groups and stakeholders, so that there are too many concerns on the table at one time to deal with adequately in a short period of time; (ii) organized with little lead-time, leaving minimal opportunity for adequate research and preparation of submissions and recommendations; (iii) presented as a "one-shot-deal" rather than an on-going collaborative process; and (iv) held without provision of funding to the groups to prepare positions.

Supra notes 7-14.

One report in particular, *A Consensus for Action: The Economic Integration of Disabled Persons*²² contained a specific recommendation with respect to legislative reform, that is, that all federal departments, Crown corporations and agencies be required to review, and where necessary, reform legislation and regulations to ensure the integration of people with disabilities. This work of the Standing Committee, taken together with over a decade of advocacy by the disability rights community, provided the impetus for an Omnibus Bill on disability issues. This Omnibus Bill was to be a concrete step on a long-term path which was to include a major overhaul of federal legislation with respect to disability issues.

3. The Omnibus Bill on Disability-Related Issues (Bill C-78)

An Omnibus Bill is a legislative vehicle commonly used by governments to introduce simultaneous changes to a number of pieces of legislation that are tied together by a common thread or theme. The idea of an Omnibus Bill on disability issues was proposed by the disability rights community as a way of beginning a comprehensive legislative process to bring federal legislation in line with the guarantees of the *Charter of Rights and Freedoms*. The inspiration for a comprehensive review of federal legislation came most directly from the 1990 *Americans With Disabilities Act (ADA)*, a U.S. civil rights initiative that had caught the imagination and hearts of people with disabilities and politicians alike in the U.S. and Canada.

In 1990, the Canadian Disability Rights Council (CDRC) received a mandate from community groups representing people with disabilities across Canada to undertake a comprehensive review of federal legislation. More specifically, the CDRC was asked to develop proposals with respect to those pieces of legislation which the federal government had already acknowledged required revision.

The Omnibus Bill process was designed to assess the effect of laws on the lives of persons with disabilities and propose solutions in the form of amendments to federal legislation. The disability rights community took the position that it was important to prepare their own set of proposed amendments to illustrate the precise changes needed. The community believed that by setting out the exact wording of each proposed amendment to be included in an Omnibus Bill, the government's legislative drafting process would be easier and faster and would produce a result which would truly benefit people with disabilities.

Supra note 10.

The CDRC consulted widely with community groups and eventually a set of proposals were drafted²³. This process was funded by the Disabled Persons Participation Program, Secretary of State. The CDRC proposed amendments to seven pieces of federal legislation in the form of an Omnibus Bill including: (i) the *Canada Evidence Act*; (ii) the *Criminal Code of Canada*; (iii) the *Broadcasting Act*; (iv) the *Immigration Act*; (v) the *Access to Information Act*; (vi) the *Canada Elections Act* and (vii) the *National Transportation Act*²⁴. The proposals set out the history of the issue for each of the seven pieces of federal legislation recommended for inclusion, the principles underlying the proposed changes and a set of concrete recommendations for legislative change.

The community process was complemented by a government-initiated legislative review process. The then Disabled Persons Participation Program of the Secretary of State worked with the various departments responsible for the identified pieces of legislation and generally co-ordinated the federal government's review process.

In June 1992, Parliament passed Bill C-78 *An Act to Amend Certain Acts with Respect to Persons with Disabilities*²⁵ which included amendments to the: (i) *Access to Information Act*; (ii) *Citizenship Act*; (iii) *Criminal Code*; (iv) *Canada Elections Act*; (v) *National Transportation Act*; and (vi) *Privacy Act*. In deciding to proceed with Bill C-78, Cabinet also authorized further legislative review, to deal with those proposals omitted from the Bill. As well, the government made a commitment to undertake a series of related regulatory actions, programs and policies for the benefit of persons with disabilities.

See Rosalind Currie, *Legislative Reform for People with Disabilities . . . Proposals for Change. . . An Act to Implement the Equality Rights of Persons with Disabilities, Phase One, 1991* (Winnipeg: Canadian Disability Rights Council, 1991).

Changes to the *Canadian Human Rights Act* (CHRA) were not included in the CDRC Omnibus Bill proposals. This decision was made for several reasons:

- (i) a separate legislative review of the CHRA had already been announced by the federal government at the time of the development of the CDRC Omnibus Bill;
- (ii) changes to the CHRA affected other equality-seeking groups, in particular, in the area of the duty to accommodate (e.g. women and members of religious minorities were equally concerned about the scope of such an amendment);
- (iii) a comprehensive package of amendments, including amendments related to the rights of gays and lesbians, was on the table - an approach which was viewed as a better strategy for all equality-seeking groups; and
- (iv) the pursuit of "single-issue" amendments, like the duty to accommodate, was perceived as potentially undermining the government's obligation to make comprehensive changes to this *Act*.

Royal Assent was given on June 18th, 1992.

B. OUTSTANDING LEGISLATIVE REFORM INITIATIVES

Bill C-78 did not include amendments to all of the pieces of legislation proposed for inclusion by the CDRC (excluded were amendments to the *Broadcasting Act*, the *Canada Evidence Act* and the *Immigration Act*). On the other hand, several pieces of legislation were amended by Bill C-78 that were not included in the CDRC's Omnibus Bill proposals (eg. the *Citizenship Act*, and the *Privacy Act*).

Moreover, for the most part, Bill C-78 only made minor changes to the Acts which were included (eg. the *Access to Information Act*, the *Criminal Code*, the *Canada Elections Act*). For example, the amendments to the *Access to Information Act* only extended the right to request information in an alternate format to those with a sensory disability. This means that people with a learning disability, or a mental handicap, and those with some dexterity problems who cannot easily handle paper or turn pages, cannot make the same request.

Those Acts identified by the CDRC, but omitted from the Bill, as well as those provisions which only received cosmetic changes, must be regarded as outstanding legislative reform issues. As the Task Force consultations demonstrate, support for these initiatives among persons with disabilities is still very much alive.

Since the enactment of Bill C-78 several federal government departments have continued the work begun during the Omnibus Bill process. These departments have reviewed the CDRC legislative proposals along with other legislative issues of particular significance to people with disabilities. For example, the Department of Justice has continued to research and consult on the legislative options proposed during the Omnibus Bill process for amendments to the *Criminal Code* and the *Canada Evidence Act*. Case law from the Supreme Court of Canada and continued political pressure from the disability rights community has also prompted the Department of Justice to reconsider the inclusion of a statutory duty to accommodate in the *Canadian Human Rights Act*. The Department is working on legislative options for amending the CHRA.

What follows is a brief description of those legislative reform proposals not included in Bill C-78 and consequently regarded as outstanding.²⁶ This information should assist the Task Force in its consideration of various options and strategies for continued legislative reform. The outstanding legislative reform issues are not presented in any

Information for this section of the paper was gathered primarily from the following several sources: Nancy Holmes, *Bill C-78: An Act to Amend Certain Acts with Respect to Persons with Disabilities - Legislative Summary* (Library of Parliament, Research Branch, June 10th, 1992) and *Review of Legislation - Task Force on Disability Issues Background Paper No. 3* (August 9, 1996). Other sources of information included department officials, members of community groups and Library of Parliament research staff.

particular order. All of the legislative reform proposals outlined below are considered important and essential. Although the duty to accommodate was not originally included as an Omnibus Bill proposal, because of its enormous importance to persons with disabilities, it is included in the following outline. A specific legislative reform strategy to address existing and emerging legislative concerns is proposed in Part III of this Paper.

1. Duty to Accommodate - the *Canadian Human Rights Act*

The disability rights community has pressed for the inclusion of the duty to accommodate as an amendment to the *Canadian Human Rights Act* for many years. The Canadian Human Rights Commission describes the duty to accommodate as:

... the obligation of an employer, service provider or union to take reasonable steps to eliminate disadvantages to employees, prospective employees or clients resulting from a rule, practice, or physical barrier that has an adverse impact on any group protected under the *Canadian Human Rights Act*. Accommodation helps ensure that the opportunities of all Canadians are not limited for discriminatory reasons.²⁷

Although the *Canadian Human Rights Act* does not include an express duty of accommodation, a series of Supreme Court of Canada decisions have made it clear that the duty to accommodate is an enforceable legal obligation²⁸. Consultations and research in this area have been on-going since the enactment of Bill C-78. It is not within the scope of this Paper to make recommendations with respect to the specific wording of such an amendment. It is, however, worth noting that several proposals have been submitted to the federal government on this point.²⁹ A statutory duty to accommodate is by far one of the most significant proposals for legislative reform. A statutory duty to accommodate which is truly aimed at achieving equality has the potential to eliminate many of the barriers currently experienced by persons with disabilities at the federal level.

Policy and Planning Branch, The Canadian Human Rights Commission *The Duty to Accommodate* (August 14, 1996).

See *Re Ontario (Human Rights Commission) and O'Malley v. Simpson Sears Ltd* (1985), 23 D.L.R. (4th) 321 (S.C.C.); *The Alberta Human Rights Commission v. Central Alberta Dairy Pool* [1990] 2 S.C.R. 489 (S.C.C.) and *Central Okanagan School District (No.23) v. Renaud* (1992), 2 S.C.R. 970. It is worth noting that Kim Campbell, during her term as Minister of Justice, introduced a Bill to amend the *Canadian Human Rights Act* to include a duty to accommodate that was never passed into law.

See, for example, a proposal submitted recently to the Department of Justice by national equality-seeking groups and the numerous recommendations for change made by the Canadian Human Rights Commission in their Annual Reports.

2. *Criminal Code and Evidence Act*

The CDRC put forward proposals during the Omnibus Bill process to amend certain key sections of the *Criminal Code* and the *Evidence Act*. Bill C-78 introduced one minor amendment to section 486 (2.1) of the *Criminal Code* to permit a complainant who would have difficulty communicating evidence by reason of a mental or physical disability in sexual offenses cases to testify outside the courtroom or behind a screen. The government announced that it would review the other CDRC recommendations during a Phase II process.

Since the enactment of Bill C-78, the Department of Justice has been reviewing possible changes to these *Acts* with a view to improving access to the criminal justice system for persons with disabilities. Consultations have been held with the disability rights community, the legal community and government. In May of 1995, a report was published outlining the positions of these stakeholders³⁰. As a result of this consultation and research process within the Department of Justice, it appears feasible that amendments to the *Criminal Code* and the *Evidence Act* could be introduced quickly by the government. These amendments should, at a minimum, address all of the issues raised by the CDRC's proposals.

3. *Immigration Act and Regulations*

Perhaps more than any other legislative provision, the previous section 19(1)(a) of the *Immigration Act* that denied admissibility into Canada on the basis of disability, was regarded as one of the most offensive legislative provisions dealing with persons with disabilities. This provision was changed under Bill C-86, not by the Omnibus Bill, to remove the reference to disability. The disability rights community was highly critical of this amendment because, while it removed the overt discrimination in the *Act*, it did little to change the actual practice of immigration officials who continue to discriminate against people with disabilities wishing to gain admission to Canada.

The regulations pertaining to section 19(1)(a) of the *Act* are supposed to provide guidance on how to assess and interpret "excessive demand". However, these regulations have not yet been finalized, which means that the new provision is not in force. Until these regulations have been finalized and enacted, persons with disabilities are concerned that immigration officials continue to make decisions on the basis of myths and stereotypes about the cost to the health and social services system

Amendments to the Criminal Code and the Canada Evidence Act with Respect to Persons with Disabilities - Report on Stakeholder Positions (Department of Justice Canada, May 1995).

of immigrants with disabilities.³¹

The issue of a regulatory framework to guide the interpretation of "excessive demand" should also be carefully considered. There is concern that the proposed regulations continue to rely exclusively on a medical model of disability.³² According to experts, the medical approach to the excessive demand question is undertaken with no consideration of social factors, such as the individual's capacity to integrate and support him or herself, and/or the nature and extent of available support from family members. Groups representing persons with disabilities are calling for an assessment which includes a social model and not strictly a medical model.

4. *Access to Information Act*

Bill C-78 introduced a minor amendment to the *Access to Information Act* with the result that the right to request information in an alternate format was extended only to persons with a sensory disability. Sensory disabilities were defined as disabilities related to sight or hearing only. The amendment provided that only if the information existed in the alternate format requested, would it be readily provided. Otherwise, the *Act* restricted the right to obtain information in an alternate format, where it did not exist in that form, to those requests that the head of the institution considered both necessary and reasonable.

This minor amendment was not considered sufficient to adequately address the need for government information to be made available in alternate formats. Legislative reform of the *Access to Information Act* is needed to ensure that Canadians with disabilities are able to receive information concerning their own government in a format that is usable by them. People with disabilities have the same need for government information as other Canadians do. Their disability prevents them from accessing information, not from needing it. As the number of older Canadians increases there will be an even greater demand for alternate format materials. People who have a learning

In fact, according to Luciana Soave, a member of the Legislative Review Working Committee to the Task Force on Disability and executive director of an organization in Quebec that assists people with disabilities from cultural communities, recently there have been more cases involving discrimination by Immigration officials under this section.

Consultations with over 60 NGO's were undertaken by the Department of Immigration about the regulatory framework needed to enact this legislative provision and a set of regulations were pre-published in 1993. The draft regulations were not accepted by the provinces due to concerns that the proposed model did not capture the long-term costs of certain conditions and disabilities such as HIV/AIDS, developmental delay, dementia and renal insufficiency. Another proposed set of regulations has been drafted which take into account these concerns. However, they have not been discussed with the new Minister. The Ministerial briefing is expected later this fall.

disability or who have difficulty handling print material (eg. turning pages) will also benefit from alternate format material. Some of the most commonly used alternate formats are also easy to produce by using computers, scanners and photocopiers.

5. *National Transportation Act (Canada Transportation Act)*

Only a very minor amendment was made to the declaration section of this *Act* by Bill C-78. However, the government did establish a review commission in 1992 to study the *Act*, including the proposed changes suggested by the CDRC in the Omnibus Bill. The CDRC, (which is now defunct), and other disability rights groups have continued to press for legislative changes to the *Act* and the introduction of regulations.

In 1994 two sets of regulations were implemented by the National Transportation Agency dealing with:

- (i) Terms and Conditions of Carriage of Persons with Disabilities which set the standard level of services to be offered to passengers with disabilities by large air carriers; and
- (ii) Training Regulations which provide that carriers and terminal operators in the air, rail and marine modes are required to provide specialized training to their personnel on servicing passengers with disabilities.

The National Transportation Agency has recently been replaced by the Canadian Transportation Agency as a result of the new *Canada Transportation Act*. This *Act* became effective on July 1st, 1996. Accessibility initiatives have been enhanced by requiring that all complaints be resolved within 120 days. Codes of Practice are being introduced to provide the industry with guidance.

6. *Broadcasting Act*

No amendments were made to the *Broadcasting Act* during the Omnibus Bill process. As a parallel action to accompany Bill C-78, the government announced that it was examining the way in which a policy direction to the CRTC could be used in relation to closed captioning and employment equity, rather than make the amendments proposed to the *Broadcasting Act*. However, the CRTC now requires all English language stations:

earning more than 10 million dollars a year to caption all local programming, including live segments from September 1, 1998. In addition, by the end of their license terms, these stations must close caption at least 90 percent of all programming broadcast throughout the day. Smaller stations are either expected or encouraged to achieve the

same goals before the end of their license terms³³.

Yet to be addressed are legislative proposals or policies which ensure that broadcasters begin to provide television programming which is accessible to blind and visually impaired viewers. For example, written information provided on a television screen should be accompanied by a voice-over for the benefit of those viewers, in the same way as captioning is provided for the deaf and hard of hearing.

7. *Canada Elections Act*

Bill C-78 made some amendments to the *Canada Elections Act* to make voting more accessible. Other amendments were made in 1993 by Bill C-114 which also addressed some of the proposals for change put forward by the Canadian Disability Rights Council.

Some monitoring of the impact of these recent changes to this Act is required in order to determine if further legislative amendments are necessary to ensure that Canadians with disabilities are able to exercise their right to vote.

C. ONGOING AND EMERGING LEGISLATIVE ISSUES WHICH HAVE IMPLICATIONS FOR THE RIGHTS OF PERSONS WITH DISABILITIES

Some of the "ongoing" issues and initiatives referred to in this section raise issues which traditionally have been of significance to persons with disabilities (for example - employment and training and income security). Others, which may be described as "emerging", are generally in response to the development and application of a wide range of technologies - from genetic technologies to information technologies. These 'emerging' issues and initiatives constitute a whole new set of potential problems and pitfalls for persons with disabilities. However, once again, with respect to both the ongoing and emerging issues and initiatives, the disability rights community has been largely excluded from the drawing board stages of both policy formulation and legislative drafting.

The following few pages provide some examples of specific areas where legislative and policy issues have arisen or are being identified as potentially affecting people with disabilities.

1. New Reproductive and Genetic Technologies

Remarkable "advances" have taken place in the field of reproductive and genetic sciences and technologies in the last half of the twentieth century. In October of 1989, the federal government established the Royal Commission on New Reproductive Technologies with a mandate to study the complex issues arising out of such technologies. In 1993 the Commission released its report *Proceed With Care*. Since the release of that report there have been two related government initiatives:

- (i) the introduction of legislation to prohibit certain new reproductive and genetic technologies and practices,³⁴ and
- (ii) the release of a discussion paper *New Reproductive and Genetic Technologies: Setting Boundaries, Enhancing Health* that sets out a proposed regulatory framework for public comment.

These issues have profound implications for the rights of persons with disabilities who are particularly concerned about the following issues:

- the use of prenatal diagnosis to detect, and in many cases eliminate, a fetus with a disability;
- the uses for and application of genetic information; and
- the implications of all these technologies for the rights to reproductive health and self-determination of women, in particular, women with disabilities.

The area of genetic privacy is closely related to new reproductive and genetic technologies. Genetic privacy issues are related to concerns about the privacy of personal information in the wake of technological advances in computers, telecommunications, videos and bio-medical sciences that make it possible for others to learn detailed and intimate information about particular individuals. The ramifications for the equality and privacy rights of persons with disabilities of the disclosure of personal genetic information is unquestionably an issue of profound importance.

How will the information learned from genetic testing and screening be used in the future? Will persons with disabilities be further marginalized and discriminated against on the basis of such information? Will individuals be discriminated on the basis of a

Bill C-47 *An Act Respecting Human Reproductive Technologies and Commercial Transactions Relating to Human Reproduction* which received first reading on June 14th, 1996.

perceived disability? Are there adequate safeguards in place? Does the *Privacy Act* provide adequate protection to address these concerns or are other legislative initiatives required? These are some of the emerging issues persons with disabilities must be involved in from the outset.³⁵

2. Income Security

Issues related to the financial security of people with disabilities, in the face of shrinking welfare dollars and devolution of responsibility for programming to the provinces, are of profound concern. Due to the chronic unemployment and underemployment of people with disabilities in Canada, many are still forced to rely on public assistance for financial security. What is the role of the federal government in this regard? How can the needs of people with disabilities be better served? Particular issues are currently being studied, however this broad area and related legislation should be reviewed as a whole.

The Canada Pension Plan is currently under review and consultations are being held with concerned stakeholders, including Canadians with disabilities. The disability pension component of the Plan has been of critical importance to people with disabilities in the past. While some amendments were made in 1995 to remove the disincentives to work, the future of this piece of legislation should be reviewed with a disability perspective and focus.³⁶

As well, the income tax system requires a major overhaul to take into account the status of Canadians with disabilities. The tax system currently acknowledges and attempts to offset the additional costs of disability through the Medical Expenses Tax Credit and the Disability Tax Credit. However, as other research suggests, there is a need for a fundamental overhauling of the tax system which is a complex and lengthy process.³⁷

3. Employment and Training

People with disabilities face a great many barriers to employment and training programs. This area is an important one to reform. There are a number of pieces of federal legislation that address aspects of these issues which require a co-ordinated and cohesive strategy for change. These Acts need to be examined together since

For a full discussion of this issue see: Privacy Commissioner of Canada, *Genetic Testing and Privacy* (1995).

For more information and discussion of income security issues, in particular the Canada Pension Plan, see the research paper prepared by Sherri Torjman for the Task Force on Disability.

For more information see the research paper on the income tax system prepared by ARCH and Richard Shillington for the Task Force on Disability.

they are interrelated and even overlapping in some cases. For example, the *Vocational Rehabilitation of Disabled Persons Act (VRDP)* is legislation which enables the federal government to enter into agreements with the provinces and territories to contribute to the cost of provincial vocational rehabilitation programs and services. Recent initiatives such as the *Canada Health and Social Transfer Act* and the devolution of labour market training to the provinces raise important jurisdictional questions about the future of programs such as *VRDP*.³⁸

Federal employment equity legislation is also of particular concern to people with disabilities due to the importance of providing accommodation in the workplace. Income security for people with disabilities who suffer from chronic unemployment and underemployment is an ongoing and critical issue. Recent changes to the scheme of unemployment insurance provisions made in the *Employment Insurance Act* threaten to create additional employment barriers for persons with disabilities. For example, according to *Background Paper No. 4*, under the new *Employment Insurance Act*, employment benefits will be offered to insured participants as defined in the *Act*. This means that

A person with a disability will have access to an employment benefit only if he or she clearly needs it, if persons with disabilities are identified as one of the groups of workers identified in the community as most needing support, and if he or she is likely to return to long-term employment as a result.³⁹

Many people with disabilities are concerned that they will not be able to access these needed benefits. The *Income Tax Act* is also important to review in this area.

4. Health and Social Services

The devolution of responsibility in the area of health and social services to the provinces is of grave concern to persons with disabilities. New legislative initiatives in this area have sanctioned an erosion in federal standards. This erosion of minimal national standards means that persons with disabilities are not ensured a right of access to services, nor are they guaranteed a right to receive income assistance on the basis of need. The loss of national standards has raised concerns that a patchwork of programs and services will be created across the country which may further erode the rights of people with disabilities.

See the research paper prepared by Jane Atkey for the Task Force on Disability Issues for more information.

Task Force on Disability Issues, *Background Paper No. 4 Labour Market Integration* at p. 4.

5. New Information Technologies

The issue of access to information and materials by people with disabilities has repeatedly been documented as a significant problem for many years. It appears that this issue may be compounded by the emergence of new and inaccessible information technologies such as provided by the internet and e-mail. There is concern about whether the information highway will be truly accessible to persons with disabilities. Already much of the information presented on websites is often incompatible with computer speech packages, used by the blind, due to the heavy reliance on graphic images to access the information at these websites. To this end the *Copyright Act* is important to review, and consideration should be given to a separate piece of legislation that would regulate these emerging information technologies to ensure that equality of access is provided.

PART III MOVING TOWARDS A NEW STRATEGY FOR LEGISLATIVE REFORM FOR PEOPLE WITH DISABILITIES: A CRITIQUE OF PAST APPROACHES AND SUGGESTIONS FOR A PERMANENT MULTI-DIMENSIONAL LEGISLATIVE REFORM STRATEGY

A. A CRITIQUE OF PAST APPROACHES TO LEGISLATIVE REFORM FOR PERSONS WITH DISABILITIES

1. Pre-Bill C-78 (Omnibus Bill) Legislative Reform Strategies

Prior to Bill C-78 legislative reform for persons with disabilities occurred sporadically and infrequently. Many of the issues of concern to persons with disabilities were dealt with by way of policy or program developments. There are of course exceptions to this general absence of legislative activity with respect to disability issues. Amendments to the *Canadian Human Rights Act* in 1976 and the passage of the *Employment Equity Act* in 1986, as well as the amendments made to the Act in 1995, are some of the more notable examples of legislative reform which specifically address the rights of persons with disabilities. However, the general lack of legislative action in the past should in no way be construed as a lack of need for reform. As noted earlier, there are many reports and studies in existence which detail the numerous barriers to equality encountered by persons with disabilities in Canadian society. The reality is that in a majority of cases, the needs and concerns of persons with disabilities are seldom considered at the legislative drawing board stage. Consequently, Canadian laws are remarkably silent on disability issues.

As a result, persons with disabilities frequently find themselves in the position of pressing for legislative changes after the fact. Trying to play "catch-up" runs the risk of

piece-meal and quick-fix solutions. It also means that the major legislative overhaul required to overcome deeply entrenched systemic barriers is difficult, if not impossible, to obtain.

2. Assessing Bill C-78 (Omnibus Bill) as a Strategy for Legislative Reform

Bill C-78 represented the first attempt at comprehensive legislative reform for persons with disabilities. What we learned from Bill C-78 was that effective legislative reform depends on a variety of important factors. Although an Omnibus Bill has the potential to bring about needed reforms, many of the critical features required for **effective** legislative reform were missing during the development of Bill C-78. Nevertheless, Bill C-78 provides a stepping stone from which to gain a more indepth understanding of the type of strategy needed to develop effective legislative reform initiatives for persons with disabilities.

As indicated earlier, to a large extent, Bill C-78 was inspired by the passage of the *Americans with Disabilities Act (ADA)* in 1990. The *ADA* is a comprehensive bill of civil rights for Americans with disabilities. The attractive feature of the *ADA* is that it not only prescribes rights, but also prescribes mechanisms for operationalizing and enforcing these rights. The *ADA* covers areas such as transportation, employment, access to goods and services, public accommodations and services operated by private entities and telecommunications. The high profile political support garnered by the *ADA* encouraged persons with disabilities to push for a similar made-in-Canada initiative. This resulted in the development of Bill C-78.

Although Canadians with disabilities were impressed with the *ADA* they decided against a specific "Canadians with Disabilities Act" for a number of reasons. First, unlike their American counterparts, Canadians with disabilities already enjoyed statutory and constitutional protection of their human and equality rights. The problem was with the enforcement of these rights. Second, they feared that an *ADA*-equivalent would further segregate persons with disabilities and further entrench the conception of disability as a different or special class. In addition, many of the areas covered by the *ADA* fell under provincial jurisdiction and consequently, an *ADA* equivalent in Canada would have encountered enormous jurisdictional obstacles.

For this reason, Canadians with disabilities opted for an Omnibus Bill which could amend several pieces of legislation at once. Persons with disabilities were aware that omnibus legislation was not a new concept in the field of law reform. They argued that omnibus bills are often used as a device to make required legislative changes. It is therefore not surprising that persons with disabilities looked to the Omnibus Bill with great anticipation and expectation.

The passage of Bill C-78 received mixed reviews. On one hand, it was heralded as an historic occasion; that is, never before had a Bill been introduced in the House of Commons which dealt specifically with the fundamental rights of Canadians with disabilities. On the other hand, the Bill was a huge disappointment as many of the amendments recommended by persons with disabilities were not included in the *Act* and hence actual changes to the law were minuscule.

Understandably, many persons with disabilities were deeply disappointed and frustrated with the Bill. In its campaign for an Omnibus Bill, the CDRC was repeatedly told by persons with disabilities from across the country, that it was time for meaningful and comprehensive legislative reform. Many persons with disabilities believed that Bill C-78 failed in this regard. Nevertheless, the CDRC proposals for an Omnibus Bill, together with Bill C-78, represented an important first step. It was seen by both parties as the beginning of a process, not the end of the road.

It was hoped that some of the amendments omitted from the Omnibus Bill would be addressed in subsequent legislative initiatives. As noted earlier, although several departments have undertaken research and consultation on a variety of issues, very few legislative reform initiatives have resulted. As the Standing Committee on Human Rights and the Status of Disabled Persons so poignantly states:

institutions have not succeeded in bringing about the systemic changes that are required to build disability-related concerns into the basic premises that guide policy formulation and programme implementation.⁴⁰

3. Rethinking Past Strategies: What Went Wrong

Persons with disabilities had high hopes for the Omnibus Bill. By choosing to include in the Omnibus Bill legislation that had been discussed by the community and government for many years and was considered to be easily and quickly amended, the community had hoped all of the requested changes would become law. But the task turned out to be much more complicated than initially imagined.

Although the then Disabled Persons Participation Program (DPPP), Secretary of State, played an important co-ordinating role, it did not have the necessary authority or clout required to ensure the full participation and co-operation of the relevant government departments. For example, each piece of legislation was overseen by a different government department. Each department devised its own way of analyzing and evaluating the effect of the proposed amendments, and each department had its own perspective on whether legislative amendments were actually needed. The DPPP

The Grand Design, supra note 14.

could not garner support for a systematic approach to the effort.

There is no doubt that an Omnibus Bill can be a useful tool to make amendments where there is consensus on the need for certain legislative changes. However, upon reflection, it is clear that the lack of a carefully devised strategy which mandated a consistent and across-the-board commitment to legislative reform for persons with disabilities, was one of the factors which limited, from the outset, the potential gains made by Bill C-78. The experience with Bill C-78 suggests that there is a need for a Permanent Multi-Dimensional Strategy for Legislative Reform for persons with disabilities.

Drawing on the lessons from the past, in particular, the lessons learned from Bill C-78, the next section of this Paper identifies some priorities and options for future legislative reform initiatives.

B. SUGGESTIONS FOR THE FUTURE: DEVELOPING A PERMANENT MULTI-DIMENSIONAL LEGISLATIVE REFORM STRATEGY FOR PERSONS WITH DISABILITIES

To date, disability-related legislative reforms initiated by the federal government have not been very satisfying nor result-producing for Canadians with disabilities. If legislative reform is to be an effective vehicle for redressing disability-based discrimination, a series of steps must be taken to avoid the disappointments of the past.

First and foremost, government must make a long term commitment to promote the equality rights of persons with disabilities through legislative reform. Second, a Permanent Multi-Dimensional Legislative Reform Strategy must be developed. The term "Multi-Dimensional Strategy" is used to describe a Strategy which supports a variety of activities designed to remove or prevent discriminatory barriers through legislative reform and related measures.

1. Developing An Equality Rights Framework

The central goal of a Permanent Multi-Dimensional Legislative Reform Strategy must be to breathe life into the *Charter's* guarantee of equality for persons with disabilities. To achieve this goal, the Strategy must be based on an Equality Rights Framework which subscribes to the following objectives:

- to remove from federal legislation, historical stereotypes and prejudices which characterize persons with disabilities as dependent, incapable and in need of charity;
- to replace these perceptions of disability with a model of equality which promotes (i) the right to full participation in society; (ii) an entitlement to adequate supports to live in the community; (iii) the right to choice and control over one's life; and (iv) the right to dignity, respect, autonomy and self determination;
- to remove widespread systemic disability-based discrimination;
- to ensure that existing and proposed legislation does not further marginalize or disadvantage persons with disabilities;
- to ensure that disability issues are considered at the preliminary stages of legislative drafting and policy development to preclude harmful results;
- to recognize that equality for persons with disabilities includes both same treatment and different treatment; and

- to acknowledge that equality is a right of citizenship for all persons, including persons with disabilities.

Using this Framework as the underpinnings of a Permanent Multi-Dimensional Strategy, it is necessary to consider its component parts. Set out below are some of the activities and components which could be implemented as part of an overall multi-dimensional Strategy. Although all of the activities identified are inter-related and regarded as critical features of an effective strategy, it may not be necessary to implement them all at once. Rather, mechanisms such as phasing in or establishing goals and timetables for implementation could be considered. What follows are some suggestions regarding priorities and options for implementing the identified activities.

2. Taking Immediate Action

(a) Taking Care of Outstanding Legislative Reform Issues

As described earlier, Bill C-78 excluded many important reforms recommended by the CDRC. Much of the required research has been conducted and the types of changes needed well documented. It does not matter whether the vehicle used to take care of these outstanding legislative reform issues is a second Omnibus Bill, individual Bills, or some other regulation amending process. **What matters is getting the job done.** The issues which require immediate attention include: (i) the regulation of accessible interprovincial motor coach transportation; (ii) an expansion of the *Access to Information Act* to include all print-handicapped persons; (iii) amendments to the *Evidence Act* and the *Criminal Code*; (iv) improvements to the *Broadcasting Act* and directives for blind and visually impaired persons; and (v) passage of *Immigration Act* regulations which respect the equality rights of people with disabilities.

Above all, the immediate inclusion of the duty to accommodate in the CHRA is required as a good faith gesture.

(b) Establishing a Barrier Review Mechanism

Time and experience has demonstrated that a permanent legislative reform mechanism is needed. The purpose of such a mechanism would be to review existing and future legislation to remove or prevent disability-related barriers.⁴¹

By establishing a legislated barrier review mechanism, the process of legislative reform and review for persons with disabilities would become a mandatory practice. For example, such a mechanism could be responsible for ensuring that legislative reform

One example of this approach is being developed by the Ontarians with Disabilities Act Committee. See for example, "Towards a Barrier-Free Society for Persons with Disabilities by the Year 2000" (August 31, 1995).

for persons with disabilities is carried out on an on-going and co-ordinated basis.

One method of ensuring that a permanent legislative reform mechanism is established is to enact legislation which authorizes its development and outlines its responsibilities. Such an Act might be referred to as a "Canadians with Disabilities Act". It should be underscored though that the purpose of such an Act would not be to duplicate the *ADA* but rather to statutorily require an ongoing legislative process for persons with disabilities. Nor should it be viewed as a panacea for all disability issues. The success of such a mechanism depends extensively on the implementation of related measures and the allocation of sufficient resources.

Examples of activities contemplated by a Barrier-Review mechanism may include:

- a requirement that a disability-focused review of all legislation be completed within a specified time period (eg. within one year);
- a requirement that government departments responsible for various pieces of legislation prepare action plans and legislative proposals for removing disability-based barriers within a specified time period (eg. by the year 2000);⁴²
- a requirement that government table an annual report with Parliament describing its work and the actions it has taken with respect to removing disability-related barriers;⁴³ and
- the power to make regulations concerning disability issues which cannot be adequately addressed by existing or future statutes (eg. producing government information in alternate formats, ensuring access to the information highway, ensuring access to computer technology, and ensuring access to goods, services and facilities that fall under federal jurisdiction).

This approach is similar to the approach used by employment equity initiatives which establish goals and timetables for recruiting and hiring members of identified groups.

This is currently required by provincial ombudsmans and the Auditor General.

3. Setting Medium Term Goals

(a) Using a Broad-based Integrated Approach

According to Background Paper No. 3, "Review of Legislation", the disability community has identified a number of broad "priority" areas which require immediate action. Because of the complexities of some of these issues, a simple amendment to a particular piece of legislation will not suffice. Indeed, each priority area is likely to require a review of several relevant statutes and regulations, as well as pertinent policies and programs. Consequently, the Omnibus format adopted by the CDRC (ie. a legislative review where the focus is individual pieces of legislation) is not appropriate. Rather, a broad integrated approach to legislative reform that considers all legislation and policies in a particular area, is more beneficial.

A legislative reform format which focuses on broad priority areas is more likely to result in coherent and co-ordinated reform which is more effective than a piece-meal approach. This is particularly so when dealing with legislation and polices which are inter-related. Further, such an approach addresses the fragmentation and lack of co-ordination which is characteristic of these larger priority areas.

Some of the prospects for this broader integrated approach to legislative reform include⁴⁴:

- a review of the tax system with, as its guiding principles, fairness and recognition of the extra costs of disability;
- income support programs, with the objective of streamlining disability support;
- a legislative or regulatory framework to ensure access to information technology;
- a new *Vocational Rehabilitation of Disabled Persons Act*; and
- new reproductive and genetic technologies (NRGT's).

It is important to consider which pieces of legislation are involved in each identified "priority" area and how they work together. For example, in the area of reproductive and genetic technologies, the new criminal legislation (Bill C-47) would be reviewed, as would the *Privacy Act* and the new proposed regulatory scheme, along with any other

These were identified as priority areas by the national disability groups according to the Background Paper No.

pieces of legislation which are relevant to NRGTS. In the area of employment, the *VRDP Act* and its corresponding federal/provincial agreements, the *Employment Equity Act*, and the new *Employment Insurance Act* could be reviewed together along with relevant provisions in the *Income Tax Act* and income support programs.

(b) Developing a Disability Lens

Legislative reform alone cannot adequately address disability-based discrimination. Numerous government initiatives and actions are often mandated by policy directives rather than legislation. Thus, it is suggested that a mechanism be established which requires that the formulation and implementation of all legislative and policy initiatives be reviewed through a disability lens to ensure that disability issues are addressed at each stage of the legislative and policy process. This should include a review of all cabinet memoranda and documents to assess the impact of a proposed measure on persons with disabilities.⁴⁵

(c) Establishing an Ongoing Consultation Mechanism with the Disability Community

Ongoing consultation with the disability community is a vital feature of a Legislative Reform Strategy. It is suggested therefore, that government be required to regularly consult with the disability community to provide an update on its work with respect to legislative reform and to seek input on its future work. The consultation model used by the Department of Justice to consult with the women's community on issues of violence, has proven to be an effective model.

To ensure the effectiveness of such consultations, disability groups will undoubtedly require resources to prepare submissions on various issues and strategies and to provide constructive advice on proposed legislative and policy initiatives.

This idea is currently being explored in British Columbia by the Office for Disability Issues with the provincial government. For more information see their most recent draft discussion paper *Rationale and Background for the Disability Lens* (Draft, August 1996). Other work is also underway in various government departments on integrating gender into the policy making process which may provide some guidance and insight for the development of a disability lens. See for example: Status of Women Canada, *Gender-based Analysis: A Guide for Policy-Making*, March 1996; CIDA, *CIDA's Policy on Women in Development and Gender Equity*, Catalogue #: E94-227/1995 (July 1995); and CIDA, *China Gender Equity Strategy* (May, 1995).

4. Establishing Long Term Mechanisms

(a) An Ongoing Disability and Legislative Reform Focus in Government

An important feature of a legislative reform process is the development of a high profile, ongoing focus or mechanism within government. The purpose of such a focus or mechanism would be to monitor and propose legislative or policy strategies for overcoming and preventing disability-related barriers. Such an entity would ensure that disability issues do not fall by the wayside or depend solely on political pressure for action.

There are a number of models which can be drawn on in developing such a focus or mechanism. Some of the models are currently being used by the government to ensure compliance with certain policy or legislative objectives. For example, the *Official Languages Act* requires the appointment of an Official Languages Commissioner to ensure compliance with the *Act*. The *Auditor General Act* sets out the duty of the Auditor General to audit federal departments and agencies.⁴⁶ As well, many provinces have appointed ombudsmen to ensure that administrative practices and services of public bodies are fair, reasonable, appropriate and equitable.⁴⁷

(b) Developing a Centre of Expertise

Often disability issues are complex and not easily resolved by legislation alone. Significant changes to the social and economic environment and continual advances in technology will no doubt further complicate disability issues. For this reason a centre which can provide expertise in a variety of areas and which can conduct research and analysis on policy and legislative matters could be a great asset.

Both persons with disabilities and government could benefit from such a centre. From the point of view of persons with disabilities, a centre could provide them with the research and analysis needed to educate and persuade the government to undertake a particular activity. From the point of view of the government, a centre could provide specialized technical assistance and research on appropriate measures which can be

It is interesting to note that on December 15, 1995 Bill C-83 became law. The Bill amended the *Auditor General Act* to establish the position of Commissioner of the Environment and Sustainable Development within the Office of the Auditor General. These changes were made because Canadians are increasingly concerned about environmental issues and because of the fact that the environment is an area where postponing action involves considerable risks. This model is an interesting one to further explore in the context of disability rights issues at the federal level.

Note that in 1994 Beryl Gaffney, a federal M.P. introduced a Private Members Bill to establish a Federal Ombudsman. While this initiative died, it is being considered for re-introduction at the present time. This model may be informative for establishing an on-going disability and legislative reform process within government.

used to overcome existing and potential disability-related barriers.

Such a centre could be modeled on the recently announced centres of excellence on women's health.⁴⁸ These centres, funded by the federal government, are independent entities and are governed by a community board. Their purpose is to research, analyze and identify options for dealing with the health concerns of women.

CONCLUSION

This Paper has attempted to provide the Task Force with some general advice on an effective legislative reform strategy for persons with disabilities. It is clear that significantly more work is needed to identify the many systemic barriers embedded in federal legislation and to fashion legislative reforms which remedy such discrimination. A Permanent Multi-Dimensional Strategy which is founded on a disability equality rights framework and which supports the need for a variety of inter-related activities will significantly improve the prospects for achieving meaningful substantive results for persons with disabilities in the future.

A wealth of materials describing the inequalities experienced by Canadians with disabilities and proposing various solutions for remedying these inequalities has been produced. While legislative reform has attained some minor gains for persons with disabilities, its overall success is painfully and embarrassingly insignificant. Sporadic, piece-meal, single-effort initiatives are neither effective nor efficient.

The federal government stands at the cross-roads in relation to disability-related legislative reform issues. The government can continue to address disability issues on a piece-meal, after-the-fact, reactive basis. Or, government can demonstrate its commitment to disability equality rights and recognize its constitutional obligations to improve the lives of Canadians with disabilities. By formally implementing a Permanent Multi-Dimensional Legislative Reform Strategy, a Strategy designed from the outset to eliminate systemic barriers to the equality aspirations of persons with disabilities, the government would signal its adoption of the latter course.

Announced on June 25th, 1996 by Health Minister David Dingwall (Health Canada) in a news release entitled "Successful Candidates for Centres of Excellence for Women's Health Announced".

THEME III - LABOUR MARKET INTEGRATION

Research Paper 4.

Labour Market Integrtrion for Persons with Disabilities: Issues, Overlaps and Options

Havi Echenberg

Social and Fiscal Policy / Public Affairs

Research Paper 5.

Disability and Labour Market Integration: Clarifying Federal Responsibilities in the Evolving Social Union

Burt Perrin

Burt Perrin and Associates

Research Paper 6.

The Future of VRDP

Jane Atkey

RESEARCH PAPER 4

**LABOUR MARKET INTEGRATION
FOR PERSONS WITH DISABILITIES:
ISSUES, OVERLAPS AND OPTIONS**

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Background

The Task Force on Disability Issues, created by the Ministers of Finance, Human Resources Development and Revenue in early June, 1996 was charged with a consideration of issues related to disability, the tax system, and the "new union". (The last refers to the in-progress redesign of federal and provincial responsibilities for policy, program development and program implementation.)

The Task Force divided its work into five areas: income security/support, legislative issues, the tax system, national or civil infrastructure/citizenship, and labour market integration. Experts within disability organizations selected the area in which they wished to focus, and became the "working group" assigned to that particular issue.

The labour market integration issue was further divided, for purposes of commissioning independent research papers. Three researchers were engaged to prepare papers relating to an overview of labour market integration issues and their relationship to the other issue areas:

- rights-based options or proposals for the future with regard to labour market integration;
- proposals related to the future of the Vocational Rehabilitation for Disabled Persons (VRDP) program; and
- proposals or options related to the Human Resources Investment Fund, the possible agreements with provincial/territorial governments with regard to all labour market training, and the new Employment Services in general.

This paper will combine the overview analysis and linkages, with recommendations based on both the analysis and the human rights of persons with disabilities applied to labour market integration.

Its first purpose is to draw the broad parameters of the labour market integration issues, and to relate them to the other issues of the Task Force. While all of the defined issues are inter-related, none is more complex or "in-flux" than labour market issues, making it particularly challenging to address fully and meaningfully in a "snapshot" for the Task Force.

It must be noted that while the contents of this paper are the responsibility of the researcher alone, the analysis, insights and recommendations have been informed by the work over many years of several disability organizations and their volunteer and paid leadership, and have benefitted from the specific advice and counsel of Dr. Mark Kleiman of the University of California at Los Angeles School of Public Policy and formerly of the John F. Kennedy School of Government at Harvard University, Michael Huck of the Council of Canadians with Disabilities, and Gordon Fletcher and Vici Clarke of People First. Additionally, James C. Young provided improved clarity through inspired editing.

Public Policy and Labour Market Behaviour

The interrelationship between labour market behaviour and public policy is a balancing act, trying to find the right incentives to encourage or force individuals outside the labour market to participate in training¹ and/or work. The incentives, in general terms, are the right mix of income security and tax measures to encourage appropriate amounts of training and/or work. And it is premised on the notion that having all potential workers in the labour market is in the public interest. (For the purposes of this paper, being in the labour market means being in paid, productive employment, or in an educational or training institution with a view to entering or re-entering the paid, productive labour market.)

The idea is that if all available workers are as highly skilled as possible, they will be highly productive, and provide a pool of skilled labour that job creators can benefit from, leading to high employment, low deficits (as people earning higher incomes pay more taxes), and steady, stable economic growth. The theoretical balance, or equilibrium, between supply and demand at high wages and healthy profits, then, requires that all available workers be seeking work and/or training, and that all potential employers be creating the jobs they can provide with their good ideas and highly skilled labour.

Movement toward such an equilibrium between supply and demand in the labour market, though, relies on some fundamental economic principles:

- that all workers are going to seek jobs that use their maximum potential, and are going to be evaluated and compensated in the same manner as any other employee with the same job skills;
- that workers will choose to acquire skills in such a way that the resources invested in acquiring the skills -- by employers, workers, and/or the state -- receive an "economic" return in productivity, wages, and/or tax revenues and economic growth respectively;
- that all potential employers can find the "inputs" they need, including capital and sufficiently skilled labour;
- that compensation will match the contribution the employee is able to make to the employer, in the production of goods and/or services; and
- that employers and employees can find each other, and that any relocation required is effortless and revenue-neutral.

Further, the equilibrium described above makes assumptions about the conditions facing the potential workers:

a (potential) worker has only a marginal choice to make between work and leisure. That is, the worker will be required to work sufficient hours to provide for

¹For the purposes of this paper, training includes post-secondary education and specialized and general training programs, leading to either certification for employment or increased skills.

his or her basic needs. Only once earned income is sufficient to meet these needs will a worker make choices as to whether to work more or enjoy leisure, depending on the relative value (or utility) of work and leisure to that worker. These conditions are as follows:

- if a (potential) worker ascertains that the time s/he invests in education/training will be rewarded with more meaningful and/or more generously compensated work, and can raise or borrow the required capital, that (potential) worker will purchase appropriate training or education program in which to participate; and
- if a worker is qualified and can offer value to an employer, s/he will be considered for available employment, and the employment will be within a workplace that permits him/her to perform the job.

Needless to say, these economic conditions are rarely, if ever, met. The minimum wages that exist in almost all workplaces in Canada, for example, (with the notable exception of sheltered workshops) prevent the employer from offering lower wages to someone who might be less productive.

For persons with disabilities², the assumptions are even less likely to be a reality. First, no consensus has been reached on whether employment to the extent possible of all persons with disabilities is in the public interest. It is not known whether creating the conditions that would allow all persons with disabilities to participate in the labour market would be a net cost or benefit to society, or what factors would be included in such a calculation. Would the costs of accommodating a person with a disability in the labour market be offset by decreased social assistance payments? Would they be the same if employment required on-going supports? Is the intangible benefit to the employee and his/her peers and employers of significant social value? Is the value to the parents, children, and/or partner of the employee with a disability part of the calculation?

The Task Force may wish to make a statement of principle about the public interest being served by integrating persons with a disability into the labour market, and/or propose further research into this issue. For the purposes of this paper, the researcher has assumed that integrating the largest possible number of persons with disabilities into the labour market is the public policy goal.

Other assumptions about the functioning of the labour market and public policy interventions in it are also not entirely applicable to persons with a disability in Canada. Persons with significant and long-term disabilities, for example, can

²This paper adopts the definition and measurement of disabilities as used by Statistics Canada's Health and Activity Limitation Survey (HALS). It is notable that a person with a limitation whose limitation is entirely removed by the use of a technical aid is not considered disabled for HALS purposes, and are therefore not reflected in labour market data used in Canada with regard to persons with disabilities.

receive modest (though usually inadequate) incomes, if they can prove that they are incapable of participating in the labour force. Rather than encouraging participation in the labour market, then, this public policy encourages persons with a disability to exclude themselves from the labour market.

If a person's disability requires significant or on-going accommodation that cannot be matched by either increased productivity or longevity in the job or some other benefit to the employer, that person is going to be at a disadvantage in attempting to enter training or employment. If the employee bears the cost of accommodation, the net effect will be less compensation for that individual employee. If the employer bears the costs, she will have less net benefit from the employee, and will be at a competitive disadvantage with employers who have not hired an employee with a disability. Either way, the person with a disability faces less likelihood of receiving employment with the same net compensation as the non-disabled competitor for the job, even if all other things are equal.

The mismatch between the realities faced in the labour market, both on a supply and demand basis, by persons with a disability means that, left to its own devices, the labour market will exclude persons with disabilities that require accommodation greater than any added benefit they can bring to the employer. And this is exactly what has happened, for the most part. However, although it persists in the exclusion of persons with disabilities, the labour market is not entirely unrestrained. The "state" intervenes in the market already, in the form of government policy and programs:

- The *Charter of Human Rights and Freedoms* and federal and provincial human rights legislation: prohibit discrimination on the basis of disability in some areas, including in employment.
- Affirmative action programs: set percentage figures of jobs in specific labour forces that should be held by persons in "designated groups", including persons with disabilities, as targets for covered employers.
- Programs and policies designed to assist persons with disabilities, trainers, and employers to overcome physical barriers to the participation of disabled persons in education/training and the labour market: help make the workplace accessible and provide appropriate technology and other supports to the employee with a disability.
- Income security programs: are increasingly being designed to create positive incentives for both (potential) workers and employers.

Federal and provincial governments have begun the process of making the labour market work for persons with disabilities. Still, the labour market persists in excluding persons with disabilities as measured by the Health and Activity Limitation Survey. In 1991, just over 12 per cent of the population between the ages of 15 and 64 was disabled, with a limitation that could not be overcome by

the use of a technical device.³ In the same year, less than half of persons with disabilities were employed, compared to about 70 percent of the non-disabled population of the same age range. However, only eight per cent of the working-age population, disabled and non-disabled, were identified as unemployed, that is without employment but actively seeking work. The difference, of course, is that among the disabled population, 44 per cent described themselves as outside the labour force, compared to only 19 percent of the non-disabled working-age population.

However, among the more than one million persons with disabilities who were outside the labour force in 1991, more than 900,000 wanted full-time or part-time work. In other words, these people wanted to be in the labour market, yet were not even looking for work. (Their reasons will be discussed in greater detail later in this paper.)

Even with well-intentioned and significant interventions, then, the labour market does not operate according to conventional economic theory for persons with disabilities. At a time when federal and provincial governments are discussing the establishment of an income security program for persons with disabilities and negotiating jurisdiction with regard to delivery of services to persons with disabilities and delivery of training in general, consideration of an appropriate public policy response and incentives must be designed carefully. Persons with disabilities had come to believe they could turn to certain programs; however, just as these programs are disappearing, and their replacements are not yet determined or well established, the economy in general is requiring *all* (potential) workers to "re-tool" for a new economy. Just as economic uncertainty makes security more important, persons with disabilities have no idea which of the services vital to their survival will survive or how they will be delivered or accessed.

To make the labour market work for persons with disabilities. Appropriate policies and programs with regard to labour market integration for persons with disabilities must, as a minimum, accomplish the following goals:

- overcome the barriers that limit the choice available to a (potential) worker with a disability with regard to both education/training and employment;
- eliminate the discrimination faced by (potential) workers seeking employment;
- remove barriers (architectural, attitudinal and technical) from the workplace;
- compensate persons with disabilities and/or their employers for the costs of disability, especially in the workplace; and
- ensure fair compensation for work performed.

³These and other data in this paper are drawn from *Adults with Disabilities: Their Employment and Education Characteristics, 1991 Health and Activity Limitation Survey*. Statistics Canada, 1993.

If these goals were accomplished, then the labour market would work for persons with disabilities. Fixing the labour market would lead to less need to "fix the person with a disability". If the labour market were transformed into one that provided persons with disabilities with the same opportunities and compensation enjoyed by those who are not disabled, half the battle would be behind us. We could then focus on historic factors at play, and other current barriers to employment for persons with disabilities.

Historically, persons with disabilities have been excluded from mainstream education and training opportunities, both by architectural barriers, and by conventional thinking which assumed they would be unable to achieve as well as their non-disabled counterparts in the mainstream setting. The parents of children with disabilities were surrounded by professionals who saw their children in terms of their deficiencies, rather than in terms of their possibilities; parents in turn often diminished their expectations of their children with disabilities. And, perhaps most importantly, neither parents, children, trainers/educators, nor employers saw role models of adults with disabilities who were achieving in the schools, in the workplace, and in the community.

Both the educational institutions (primary, secondary, and post-secondary) and the workplace imposed architectural barriers that precluded ease or even possibility of entry for those with mobility impairments. Workplace and educational equipment was not suited for others with different kinds of disabilities. Documentation was not available in alternate media. Teachers and employers had not been trained to face a group of students or employees so that hearing-impaired students could lip-read. Technology often made the classroom and workplace less adaptable, rather than more adaptable, as people were expected to adapt to machines. Perhaps most importantly, non-disabled classmates had no exposure to persons with disabilities, and knew nothing of their abilities and potential.

Again, state intervention began to address some of the historical barriers. The United Nations' International Year for Disabled Persons and subsequent domestic government initiatives assisted in the decline of xenophobia (at least of persons in wheelchairs who otherwise appeared "normal"), the removal of architectural barriers, and the seeds of affirmative action and other public education campaigns. Simultaneously, the gradual shift from public policies that sought to provide passive support for persons with disabilities to subsist through their lifetimes to policies and programs that served to overcome historical disadvantage and current barriers was begun. Examples included Outreach programs within Canada Employment Centres, the Strategy for the Integration of Persons with Disabilities, the *Employment Equity Act*, and amendments to the *Transportation Act*.

Organizations formed by persons with disabilities not only resulted in the identification of unintended impacts prior to public policy being implemented, but also assisted persons with disabilities to develop leadership and public policy skills. Over the years, the combined effect has been an articulate, outspoken group of leaders among persons with disabilities, particularly in the labour market integration area. (Some of these organizations and individuals are instrumental partners in the development of these research papers.)

The persistence of barriers and under-representation of persons with disabilities in the labour market and in training and educational institutions is testimony more to the enormity of the barriers and obstacles that existed in the first place, rather than to failure of recent public policy. It is also possible that the successes to date have been lost in the more outspoken identification of remaining challenges. The early efforts to address rising public deficits by across-the-board cuts to public spending are beginning to undermine the prior successes and to contribute to a backsliding, even for those who had overcome barriers to become employed, wage-earning contributors to the economy and community.

The political and fiscal confluence of interests are leading to a rapid devolution of responsibility for labour market issues and income security programs to more local levels of government, fiscal constraint of public spending, and/or privatization of previously federally owned or regulated industries and sectors. With these developments, the progress to date is in serious jeopardy of becoming a nostalgic memory of the "halcyon days". This would be most disturbing when the technology, the critical mass of enlightened employers, and the emergence of strong role models among persons with disabilities all point to even more successes, with continued astute strategic public policy interventions.

Labour Market Integration and Its Links to Other Policy Areas

Labour market participation decisions, as discussed above, are the product of what is possible and what is expected from the necessary training and resulting employment opportunities. An individual trying to decide whether to enroll in a two-year program for welders or a ten-year university education for doctors, takes into account many factors. All students, those with disabilities and those without, consider:

- the loss of income they might have accrued from working or other sources if they were not students;
- the costs associated with the training/education (tuition, books, student fees, and so on);

- what the effect on their employment opportunities the training and resulting credentials will have (higher wages, greater probability of getting the kind of work they want); and
- what other benefits and costs might be associate with the training/education decision.

An individual with a disability has additional factors to take into account.

- Will the training or education program be available in a physical location that is free of architectural barriers? Will training materials in the required alternate media be available and at what cost?
- Will any related physical locations, e.g., libraries, bookstores, placement assignments, also be barrier-free?
- Will the resulting credentials be sufficient to overcome any attitudinal barriers that potential employers might impose because of the disability? Will current sources of income or services be discontinued if s/he becomes a student?
- Will the necessary transportation be available at the necessary times, to allow not only for class attendance, but also for all the less formal learning opportunities and requirements, e.g., library time, study groups, and so on?

Similarly when any individual considers whether to accept a job offer, there are factors that enter into the decision:

- the income available from work compared with that available from other sources of income (for example, welfare, or parental support);
- the costs associated with working (suitable clothing and equipment, for example);
- the lost leisure, and
- future opportunities that might result from this particular job.

As with training/education, the individual with a disability has additional factors to consider:

- Can s/he get to work using available accessible public transit? What if there is overtime?
- Are the washrooms located nearby accessible?
- Can attendants visit the workplace, if and as required?
- Will communication from the employer be in a form that is accessible?
- Will related socializing be important and if so, will it be accessible?
- Are the necessary technical adaptations available quickly enough to permit the individual to perform as expected as quickly as expected?
- And will co-workers and supervisors hold diminished or increased expectations of the individual because s/he has a disability?

To the extent that other policy areas and directions minimize or exacerbate the effects of the additional factors, labour market integration is inextricably connected to those areas and directions.

Income security/support

In all discussions about labour market behaviour of individuals, the main tension described is between an income security system -- whether private or social insurance benefits or social assistance -- and the income insecurity offered by the labour market. In general, the trade-off is seen between income security from non-wage sources that is too generous and/or too passive on the one hand, and the often more adequate, often less secure income from participation in the labour force.

For years, people who were considered "unemployable" were exempt from the discussion of these trade-offs, and persons with disabilities were among those who were expected to be inevitably and probably permanently reliant on private or public insurance benefits, or on welfare. When others reliant on those income sources were often blamed for their lack of participation in the labour force, those with disabilities were seen as having no choice, and therefore among the "deserving" recipients, *as long as they were demonstrably or implicitly incapable of participating in the labour force*. Additionally, gradually, those income security systems came to encompass not only cash transfers, but also in-kind transfers of adapted public transportation, adaptive devices, and necessary supports, including attendant or interpretive services, for example.

Whereas the individuals with disabilities may have chosen to participate in a labour force or training situation that accommodated them, the income security system required them to be "unemployable" in return for a subsistence existence. Should the individual choose to abandon income security for the risks inherent in training/education and or labour-market entry, that individual often lost all supports as well as income. Fully one-fifth of persons with disabilities, as defined by Statistics Canada in 1991, cited the loss of some or all of their income if they went to work as a barrier to employment. Similarly, more than one-tenth identified the loss of some or all support services if they went to work as a barrier to employment.⁴

Slowly, as income security programs were seen as too expensive to continue in their passive form, and as it became clear that human capital was the only competitive advantage remaining to domestic economies in a world marketplace, the emphasis shifted from passive income security systems which attached stigma and shame, to reliance by those deemed capable of employment and which attached the label of unemployability among those who were deemed to be incapable for employment to reliance. The new emphasis was on "active measures", which would encourage those outside the labour market to build the skills to re-enter. It was seen as being cost-effective in the long-term, though

⁴ *Adults with Disabilities*, p. 52.

perhaps more costly in the short-term. Since this shift in thinking coincided with the coming into effect of the equality provisions of the *Charter of Rights and Freedoms*, the same possibilities were considered for those with disabilities. Programs that had previously required persons to be certified as unemployable were now being revised to encourage individuals with disabilities to become employable, with additional appropriate supports.

The problem seems to have emerged when spending more in the short term was seen to be contributing to what governments in industrialized countries everywhere came to see as a "deficit and debt crisis", which was translated into an urgent need to cut public spending, even if the long-term benefits would outweigh the short-term costs. Around the world, what had once been seen as an investment in the future, in the form of active income support programs, now came to be seen as too generous and too costly for the current fiscal climate. Suddenly, governments began to believe that the threat of unrelieved poverty would be a more powerful incentive for those relying on social assistance than the promise of increased skills and labour market potential. This view was lacking in truth and justice for the vast majority of persons relying on social assistance; for many persons with disabilities, labour market participation remained an impossible dream.

For persons with disabilities, the reductions in public spending that accompanied the shift or threatened shift from supported training or education to the high risk of reliance on the vagaries of an exclusionary labour market could be devastating. It translates into very real consequences, such as an end to regular baths by home care workers or attendants, or no transit to get to medical appointments, or social and economic isolation. In short, the "stick" is not only often not required, it's also unlikely to contribute to increased integration of persons with disabilities into the labour market. To the contrary, the fear among persons with disabilities with expertise in labour market issues is that it will force them and their peers to rely exclusively on income security programs, with even less access to the labour market.

With the move from the Canada Assistance Plan (CAP) to the Canada Health and Social Transfer (CHST), fewer conditions are attached to federal funding for social assistance programs. At the same time, in the absence of these conditions, the provincial/territorial governments have begun to set the national social policy agenda collectively, and a disability income security scheme seems to be one of the top priorities. At the First Ministers' Meeting in June of this year, integrated income support for persons with disabilities was the second priority established for the two levels of government in the social policy area. In addition to having direct control over the funds previously administered under CAP and over related programs already in their jurisdiction (housing, workers' compensation, and so on), the provincial governments want joint management of a consolidated income support system that includes the Canada Pension Plan

(currently federally administered and jointly managed), and the Vocational Rehabilitation for Disabled Persons (VRDP) program (currently jointly managed and administered).

The integrated support is intended for those with "long-term and significant disabilities", as distinct, presumably, from the otherwise "employable" population. While it could include labour market initiatives for persons with disabilities, the fear is that it could again relegate them to income security and appropriate supports only if they self-identify or are labeled as "unemployable".

At the Premiers' Meeting last month in Alberta, the Premiers discussed integrated income support for persons with disabilities and agreed to the following recommendations:

"It is recommended that Premiers call on the federal government to fully consult with provinces on changes to federal programs that impact on persons with disabilities.

It is proposed that Premiers ask provincial/territorial/ Social Services Ministers to work with other provincial/territorial Ministries and their federal counterparts to:

- review existing programs and services provided to persons with disabilities;
- identify gaps and overlaps; and
- develop a progress report with a workplan and timeframes by January 31, 1997, on how to move forward together.

It is recommended that Premiers ask Social Services Ministers to work with Ministries of Finance and their federal counterparts, in consultation with other Ministries as appropriate, to develop a proposal for integrated income support for persons with disabilities within current frameworks."⁵

On labour market matters, the same report identified an additional next step that would be relevant to persons with disabilities under current arrangements:

"It is also recommended that Premiers ask their Ministers responsible for labour market issues:..... to continue to work with Ministers responsible for social services to explore common approaches to linking income support programs with training and employment services..."⁶

⁵ "Issues Paper on Social Policy Reform and Renewal: Next Steps", prepared for the 37th Annual Premiers' Conference, Jasper Alberta, August 1996, p. 15.

⁶ "Issues Paper on Social Policy Reform and Renewal", p. 16.

However, if persons with significant and long-term disabilities have been segregated with their own income support system developed in conjunction with the federal Finance Ministry, rather than the Human Resources Development Minister, for example, it is all too likely that the careful examination of the interrelationship between income support and labour market integration will be lacking for persons with disabilities, whose situation most urgently requires such consideration and co-ordination.

Similarly, the premiers' "Issues Paper" recommends that provincial premiers work with federal officials on the Employment Benefits and Measures outlined in the new *Employment Insurance Act*. Since most persons with disabilities are not eligible for employment insurance or the attendant benefits and measures, they would again be excluded from the primary policy consideration given to labour market participation in a social policy context.

In short, the current direction can be helpful and progressive for persons with disabilities in ensuring them a barrier-free labour market only if the interrelationship between the proposed income support system and labour market initiatives are considered as they relate to persons with disabilities.

Legislative Issues

A broad number of issues have been identified in the third background paper prepared by federal officials for the Task Force, some of which will have important implications for labour market integration of persons with disabilities. The most pertinent of these may be amendments to the *Canadian Human Rights Act* and a regulatory framework for access to information technology, especially with regard to the Internet.

Canadian Human Rights Act amendments have been long-promised, and are now expected during the current Parliamentary session. In short, the promise to include "duty to accommodate" in the *Act*, as an elaboration of the prohibition of discrimination against persons with disabilities in employment, is expected to make jobs with federal employers more accessible. Also, there is some hope that with the federal amendment, more provincial governments will consider such an amendment to their own human rights legislation, making more jobs in the provincial jurisdiction more accessible for persons with disabilities. The elaboration of the duty to accommodate and the first decisions on complaints in this area will assist in defining the barriers facing (potential) employees with disabilities and the employers who are and are not hiring them.

Also, the needs of persons with disabilities should be built into plans to harness technology as a tool to improve the dissemination of labour market information electronically and to make Canadian workers more productive and competitive in the global economy. Access to technology is a particularly important issue for

persons with disabilities, since technological advances are often key to opening up their opportunities in the labour market. For example, the shift from the typewriter to a word processor on a personal computer, combined with a voice synthesis application for the computer, meant that persons with visual impairments could "see" what was on the screen, along with what they would type. Similarly, the computer's ability to convert text to Braille assists those with visual impairments. Voice-operated computers have meant that those with impairments to manual dexterity can operate computers and their applications. And, most recently, these advances combined have opened the electronic world of the Internet to those with disabilities.

More and more employers are using the Internet and related telecommunications-permitted bulletin boards to advertise job opportunities; increasingly, training institutions are providing information and even instruction via telecommunication, including the Internet. The federal government itself has committed itself to an electronic "hiring hall" for the country. To the extent that Canadian educators, training institutions, employers, and employment agencies/brokers make their electronic communication suitable for adaptation for persons with disabilities, the possibilities for training, education, and employment for persons with disabilities can be significantly improved.

However, if the common electronic communication format is *not* adaptable for persons with disabilities, their training, education and employment opportunities will be significantly diminished. Since this industry is still in its period of initial growth and development, now is the opportune time for governments and other stakeholders to agree on a standard that will make such electronic communication a boon, rather than a further barrier, for persons with disabilities. The federal government could play an instrumental leadership role in encouraging the development of such a standard.

The Tax System

Currently, the federal tax system is one of the more universal instruments designed to offset costs of disability. For persons with disabilities, as for the non-disabled, the interrelationship between the tax system, income support systems, and earnings can have positive or negative effects on net income left for individuals. Currently, disability-related tax measures are not employment-related; instead the Disability Tax Credit is for all persons who are certified by a physician as being disabled, and the Medical Expenses Tax Credit offsets a percentage of the money spent on approved medical expenses. The credits are not refundable, hence they have value only against taxable income; in that sense, they may be of more value to an individual earning income in the labour market, and may also be more costly to government as individuals with disabilities enter the labour market.

The personal and corporate income tax systems are among the few remaining exclusively federal instruments available to offer positive incentives both to individuals with disabilities and to employers who would hire them. A number of tax measures could assist persons with disabilities and employers to enhance labour market integration of persons with disabilities. These include refundability of tax credits, working income supplementation, increased deductibility for accommodation-related expenses for business, and increased tax recognition of employment-related expenses. Even a guaranteed annual income, with a component designed to match a proportion of earned income, could help remove employment disincentives from the current income support programs for persons with disabilities.

National or Civil Infrastructure/Citizenship

All citizens, whether or not they have a disability, are seeking new ways to act and be heard together, so that their communities reflect their values and respond to their needs, and so that governments at all levels work toward that goal with the citizens that elect and fund them. Implicit in this search is a recognition that representative democracy is fundamental but not a replacement for other forms of participation in the decision-making and policy-setting processes that affect individuals and groups of citizens.

In the 1970s, the federal government decided that all stakeholders involved in a decision should be involved in that decision, whether or not they could afford to be represented by professional lobbyists or other representatives. At the time, such representation was seen to be most effectively delivered by public interest groups, which worked with specific groups within society who would otherwise be un- or under-represented to enhance the public interest. They often functioned as information conduits to and from individuals and groups of individuals, and as "intelligence"-gathering organizations, reporting in both directions the informed opinion of opinion-leaders.

The funding of public interest groups has been severely restrained as the fiscal screws have tightened, and have been subject to criticism and re-interpretation as "special interest" funding that should not come from the public purse. Coincident with this development is the technology that permits "direct democracy" to be one giant step closer: polls can be taken using toll-free phone numbers for registering opinions, overnight public opinion polls can be commissioned by anyone who can pay for the product, and polls via the Internet allow anyone with a computer and a modem available to them to learn about an issue and express a view upon it. The idea is that government funding has led to the artificial sustenance and growth of organizations advocating for those who stand to benefit from public policy, and alternative mechanisms exist now to permit the individuals who were intended to be served to be heard.

In addition to the loss of the relatively inexpensive advice of experts, the finger on the pulse of a particular community (including persons with disabilities), and research directed by persons directly affected by the policies in question, the loss of public interest groups is also the loss of a form of civil society. Leadership and skills were learned in those organizations. Networking that is common among those in certain professions or with other privileges was now available to local leaders among persons with disabilities. And a critical mass of policy expertise and participation was developed, upon which local organizations and individuals could rely for springboards to their learning.

These roles need to be sustained in some form, even if core funding or sustaining grants are not instruments government is prepared to use. And some national civil infrastructure is particularly important with regard to labour market integration of persons with disabilities. As income support and labour market programming are devolved to more local governments, the federal government has stated its intention to maintain the levers of labour market information at the federal level, relying on the employment insurance program as the primary source of information. However, most persons with disabilities will be excluded from employment insurance eligibility and its attendant services and programs.

Provincial governments may choose to share labour market information among themselves and even with federal officials. However, unless individuals with disabilities and the organizations they can sustain also have access to the information, it is all too possible that unintended, unmeasured, and even invisible impacts of decentralized policies on persons with disabilities will result and persist. Given the legal and moral obligations of all governments to provide the fullest possible training, education, and employment opportunities to persons with disabilities, some civil infrastructure that enhances their access to relevant information and permits them to be heard with a sophisticated, articulate analysis of impacts is prerequisite to meeting the obligation.

While such infrastructure is necessary at other levels as well, and will be seriously undermined by the scheduled reduction in and eventual elimination of grants to regional organizations or persons with disabilities, federal leadership and example are most important in the areas of society and the economy related to labour market integration. The establishment of the Canadian Labour Force Development Board reflected this importance, and served as a model to provincial governments. A similar "civil society infrastructure" model could have a similar effect and value to decision-makers at all levels.

Leveling the Playing Field for Labour Market Integration

Background

Human rights instruments in Canadian jurisdictions, like their international counterparts, refer specifically to the prohibition of discrimination against persons with disabilities. The United Nations *Declaration of Human Rights*, its two covenants -- on civil and political rights, and on cultural, social and economic rights --, and its Declaration on the Rights of Disabled Persons all make explicit reference to a prohibition of discrimination against persons with disabilities. Similar clauses exist in the *Canadian Human Rights Act*, and in most provincial human rights legislation, thereby covering most private employers in the country. Additionally, many Canadian jurisdictions have employment equity legislation, which is intended to correct for historical discrimination and/or exclusion by encouraging employers to hire individuals from designated groups, usually women, Native peoples, visible minorities, and people with disabilities.

The question, of course, is what the prohibition of discrimination is intended to mean and what policy framework support it. There are two obvious reasons that employers might intentionally discriminate against persons with disabilities in hiring. The first is because the employer believes the employee with a disability may cost him/her more in benefits and/or lost work time and in lower productivity than the non-disabled applicant. The second is because the employer doesn't wish to work with someone who is disabled for non-economic reasons, or believes the other employees will not wish to work with someone who is disabled. Currently, the prohibition of discrimination would apply only to the latter form of discrimination on the part of an employer.

In addition, there are many unintentional barriers to employment and training for persons with disabilities. These include architectural barriers, systemic barriers built into how entry requirements get described through to how a work week might be structured, and programmatic barriers which get built into program designs. If persons with disabilities are to be full participants in the new economy currently evolving, the barriers must be overcome. Their wish, clearly stated many, many times, is to have real jobs in the real labour market, and to receive education and training with their non-disabled peers. (A notable exception is within the deaf community, where a significant proportion identify their language as the basis of a distinct culture that requires separate education and training systems.)

To be truly meaningful to persons with disabilities, and to be most in keeping with the rhetoric attached to the issue of the integration of persons with disabilities, the human rights and the elimination of discrimination must be understood to encompass the encouragement of a labour market that works for persons with disabilities. That is, as outlined above, it must make the training and/or employment of a person with a disability as easy, and as economically advantageous to employer and employee, as the training and/or employment of someone without a disability, all other things being equal. A number of issues must be resolved for this to occur including:

- public compensation of the extra costs associated with disability to both the (potential) worker/student and the trainer/employer;
- the creation of barrier-free workplaces and places of learning with the provision of appropriate technology;
- the public assumption of costs related to employment supports and accommodation where they would be onerous or unreasonable on the employer;
- the elimination of a parallel or sheltered labour market for persons with disabilities; and
- the elimination of "unemployability" as a condition of eligibility in other public programs which must also not create strong negative disincentives for the individual who might otherwise choose training/education or employment.

While accomplishing any of these goals would be progress toward making the labour market accessible to persons with disabilities, and equipping them with the skills they need once they have access, a comprehensive approach would be more likely to assist with overcoming attitudinal barriers as well. Hence, the specific recommendations that follow can be seen as options, but are more appropriately seen as components of an action plan to creating a level playing field for persons with disabilities with respect to training/education, and the labour market itself. It is noteworthy that the removal of the "unemployability" designation as a condition of receipt of services or income, and the disability-related costs of employment could be accommodated in a comprehensive disability insurance and income replacement plan, like that proposed in the research paper on income security prepared for the Task Force.

Disability-Related Costs of Employment

Extra costs associated with disability cannot be the sole responsibility of the (potential) student or worker nor of the employer alone. These include costs affecting an individual's ability to pursue training and/or seek employment, or those that would make the cost of employing a person with a disability greater to an employer than the cost of employing a non-disabled individual. To make the labour market truly non-discriminatory, public funds must be available to offset these costs where necessary to make labour market integration non-discriminatory.

Such funds could be administered through a comprehensive disability insurance and income replacement program, independent living centres, Canada Employment Centres, new provincial training programs funded in part with federal money, a fund administered by whatever administrative body is established for the new comprehensive disability income plan foreseen by the provincial premiers and the Prime Minister, or by whatever supersedes the administrative body for VRDP funds. Where the accommodation is portable, and suited to the individual's needs, it is highly recommended that funding be arranged so that the accommodation remains within the control of the person with the disability. If it is property, i.e., a technical device, that equips the individual with a disability for a range of workplaces, the device should become the property of the individual with the disability. Where the accommodation is made to the workplace itself, and is not portable, or can remain in the workplace as an accommodation to other potential employees with a disability, the accommodation could become the property of the employer. Examples of the former might be speech synthesizers for adapted computers, and of the latter, ramps or other architectural accommodations to the workplace.

It is important to note that some persons with disabilities will require on-going accommodation in the workplace, whether in the form of part-time interpreters for the hearing-impaired employee, or personal aides for a severely mobility-impaired employee, or job coaching that may decline over time without disappearing entirely for the intellectually-impaired employee. Unless these accommodations are funded from public sources, or from a general pool of revenue collected from employers and employees as well as governments, these individuals will be denied the opportunity to participate in the labour force, and to make a meaningful economic and social contribution to their community.

Removing Barriers

Training programs, educational institutions, and workplaces subject to government regulation for other reasons must be barrier-free, in the sense that architectural barriers must be removed or overcome; technology must be used to be inclusive of persons with disabilities, not exclusive; and attitudinal barriers must not be tolerated.

In this area, significant progress has been made, largely because of public-sector leadership as well as funding. However, there is fear that with the diminished size of the public sector, the leadership role will be similarly diminished. Also, as more and more services, industries and sectors are privatized, deregulated, and downloaded to more local governments or to the community and/or for-profit sector, much of what has been gained will be lost.

Where federal, provincial, and territorial governments either deliver or contribute to job creation and/or training programs, the removal of barriers should be a condition of funding. While lower levels of government and the private sector often complain about such conditions, these are intended to reflect a legal and moral commitment already made by most governments, and that govern most private-sector employers. Where such conditions are attached, the extent of compliance should be subject to review by the appropriate human rights tribunal.

The Duty to Accommodate

Human rights legislation must be amended to include the "duty to accommodate" (with public funds available as noted above). As well, the accommodations must be defined to be inclusive: architectural accommodations, technological accommodations, accommodation with regard to hours of work, and accommodation with regard to appropriate personal supports including interpreters, job coaches, and personal aides.

The federal Justice Minister has committed himself to introducing such an amendment to the *Canadian Human Rights Act* in coming months. When each jurisdiction considers amendments to human rights legislation, it usually reviews the recent amendments and experience of other jurisdictions. It is hoped, therefore, that the federal decision to introduce such an amendment will lead provincial and territorial governments to include it as well, thereby requiring more employers to accommodate persons with disabilities so that they may make their contribution and take their place in the labour force.

Elimination of "Unemployability" as a Condition of Eligibility for Public Assistance and Services

Public policies must not be premised upon "unemployability" as a condition of eligibility. As well, they must not create powerful disincentives to risk-taking with regard to employment and training, through the complete and sudden withdrawal of support in the form of income or services upon the undertaking of these activities. In fact, it is likely that such supports in the form of services should not be in any way conditional on training or employment activities, since making individuals with disabilities responsible for the costs associated with the disability creates its own discriminatory practices in all aspects of life, not just in the labour market.

Supports in the form of income could be reduced above a threshold of earned income, with a gradual reduction rate, and readmission to the income security program without question if and when the earned income ceases. It is especially important that a new comprehensive disability income program anticipated by federal and provincial governments not contain any conditionality that will make

it more beneficial for persons with disabilities to be out of the labour force when they would like to and are able to be in it. Less than half of persons with disabilities of all levels of severity outside the labour market have worked in the open labour market in the past five years. Yet, almost twice that many want to be working, at least part-time. Clearly, integrating these individuals into the labour market will require some considerable leap of faith and risk on their part. If government programs make the risk even greater, they may be sidelined by bad public policy forever.

Designation of Training "Seats"

Because historical discrimination has created systemic discrimination against persons with disabilities, and because it will take time for the labour market to become non-discriminatory with the proposals noted above, interim measures are advisable.

As an example, the designation of "seats" within training programs for persons with disabilities should be included in negotiations with provincial governments. Fifteen percent of seats would approximately reflect the proportion of the population that is disabled, and might be a fair figure to begin with.

While such a measure could again be viewed as "attaching strings" and unacceptable in a new federalism, it should be proposed as consistent with human rights obligations and commitments already made by federal and provincial governments, and by the *Charter*, which governs both levels of government.

A second interim measure would be to do "exit interviews". A proportion of terminations from employment and dropouts from training of persons with disabilities could be routinely selected at random and investigated, to determine what caused the terminations or departures. This measure would not only identify illegal discrimination where it exists, it would also assist all stakeholders to respond both to elements of the labour market that continue to discriminate and to gaps in preparedness on the part of persons with disabilities who may be re-entering the labour force after significant absences.

Elimination of the Parallel Labour Market

To make the labour market truly non-discriminatory for persons with disabilities, the parallel or "sheltered" labour market must be dismantled entirely. Such workplaces, which are exempt from minimum wage laws and usually from occupational health and safety laws, are often presented and funded as "pre-vocational" training, which can become terminal for too many persons with disabilities. "Pre-vocational" training, if it is provided at all, should have set

criteria that are not specific to persons with disabilities, and must be time-limited.

Equally as important, the products of such programs should not be permitted to be sold on the open market. Such sales create unfair competition for businesses who might otherwise hire the demonstrably capable persons with disabilities to produce the same product at a profit in the open labour market. As long as the parallel labour market exists, for-profit employers cannot compete in industries where employees with disabilities can demonstrably do the work.

RESEARCH PAPER 5

**DISABILITY AND LABOUR MARKET
INTEGRATION: CLARIFYING FED-
ERAL RESPONSIBILITIES IN THE
EVOLVING SOCIAL UNION**

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1. INTRODUCTION

A. Background and Context

On 5 June 1996, the government established a Parliamentary Task Force on Disability Issues, chaired by Andy Scott, M.P. The mandate of the Task Force is to define and recommend a future federal role in the disability area. It is required to complete its work and to report back by mid-October.

One of the areas of focus of the Task Force concerns labour market integration. A key consideration is employment-related programming and services under the jurisdiction of Human Resources Development Canada (HRDC).

Proclamation of the new Employment Insurance (EI) Act on 1 July 1996 represents a fundamentally different approach to employment support services. It provides for new employment benefits and measures through the Human Resources Investment Fund (HRIF), replacing programs under the now-repealed UI Act and the National Training Act, including the Canadian Jobs Strategy. The federal government has indicated its intention to withdraw from labour market training within the next three years and has extended an Offer to the Provinces and Territories to enter into agreements to take over responsibility for delivery of active employment measures and labour market services currently delivered by HRDC.

There are a number of reasons for this new approach. It is consistent with the new union. It recognizes training as primarily a provincial responsibility. It responds to fiscal restraints. It also responds to evaluations which have documented the limited effectiveness of previous efforts at helping people qualify for and find employment. The new approach, with an emphasis on active employment measures and its results orientation, is expected to provide opportunities for greater harmonization and the elimination of overlap and duplication across levels of government.

B. Purpose and Scope of This Paper

What does the evolving federal approach mean for people with disabilities who are not employed? What form can a federal role in disabilities take? The purpose of this paper is to explore these critical questions. In particular, it considers:

- Why there is a need for the federal government to continue to play a strong role in this area, and how it can do so in a way which is consistent with the new union.
- Implications for people with disabilities of changes to the EI Act and how it is being interpreted and operationalized;
- Implications of devolution and the federal Offer to the Provinces;

- Employment support and skill training and development needs of people with disabilities who are not directly eligible for HRIF benefits;
- New Employment Equity legislation;
- Attitude towards disability within HRDC.

This paper also identifies a number of practical, "doable" options for enhancing the appropriateness and benefits of programs for people with disabilities. These are consistent with the current context and environment and for the most part do not require any legislative changes. Most require little or no additional costs. Where additional expenditures are required, these are consistent with recent allocations for programs aimed at comparable target groups with similar needs.

C. Methods

This report drew upon the following sources of information:

- A review of documentation, including published and unpublished HRDC documents of various forms, as well as information from external sources.
- Interviews with a number of HRDC staff, primarily at national headquarters (NHQ) but also at the regional and local levels. These included official contacts identified by the departmental representative assigned to assist in this assignment and to expedite contact and cooperation with appropriate departmental officials. I also interviewed a number of other HRDC staff identified through my own contacts.
- Related consulting activities of Burt Perrin Associates on behalf of HRDC and others in the areas of training and employment services.
- Liaison with Working Group representatives, who provided suggestions and information and commented on earlier ideas and on a comprehensive outline for this paper.
- Interviews with a few other community-based contacts.

2. SUMMARY: NEED FOR A STRONG FEDERAL ROLE REGARDING DISABILITY AND LABOUR MARKET INTEGRATION

It is apparent from the analysis in this paper that a strong federal leadership role in disability is both appropriate and necessary. There are many ways in which a federal role can complement and support devolution and decentralization of delivery.

Following are the major reasons why a continued federal leadership role in disability is needed:

1. Ensuring equity

The federal government has a constitutional responsibility to ensure equity in the use of its funds. It also needs to take action on equity in order to be consistent with its own internal policies, such as its Designated Group Policy, and legislation imposed upon others, such as the newly revised Employment Equity Act. The Offer to Provinces to provide employment measures and services under the Employment Insurance (EI) Act does say that this should be done with consideration to equity.

Equity means providing access for all to the fullest opportunity to exercise individual potential and to the opportunity to achieve equivalent results. It means accepting people *with* their differences. It means a duty to accommodate, and to address and eliminate both overt and systemic (or hidden) barriers.¹ As Judge Rosalie Abella indicated in the Royal Commission report on equality in employment:

"We now know that to treat everyone the same may be to offend the notion of equality. Ignoring differences may mean ignoring legitimate needs. . . . Ignoring differences and refusing to accommodate them is a denial of equal access and opportunity. It is discrimination."²

This interpretation of equity was affirmed by the Supreme Court of Canada³ which stated that equality, as provided for in Sect. 15 of the Charter of Rights and Freedoms, does not mean sameness since "identical treatment may frequently produce serious inequality" in terms of benefits derived. Justice McIntyre, writing on behalf of the Court, added that: "A law expressed to bind all should not because of irrelevant

Judge Rosalie Silberman Abella.(1984). *Equality in Employment: A Royal Commission Report*. Ottawa: Supply and Services Canada.

Ibid, p. 3.

Andrews v. Law Society of British Columbia. 2 February 1989.

personal differences have a more burdensome or less beneficial impact on one than another.”

Needless to say, there also are strong social and moral reasons for the government to continue to play a role in enhancing equity across the country.

2. National standards

The Prime Minister has indicated his commitment to the principle of national standards. While the Premiers disagreed at the recent Jasper conference with how standards should be set and enforced, they did *not* disagree with the principle of national standards.

3. Direct federal responsibility for employment services

Irrespective of what services under EI the provinces will agree to provide, the federal government still retains overall responsibility for the EI Act. In addition, at a minimum, it will continue to operate the national employment service, and will retain direct responsibility for Sect. 60(4) of the Act, which provides for support for employment assistance services, and research and development and related activities.

4. Consistency and equity with other target groups

The federal government continues to assume responsibility for addressing the employment needs of other special needs groups, such as Aboriginal peoples and Youth. It is inequitable to withdraw funding and support for people with disabilities, when other groups facing similar needs and barriers to employment are considered worthy of support.

5. Opportunities for synergy, knowledge creation and information sharing

The problems preventing people with disabilities from participating fully in the labour market are extensive. It is not always clear what approaches would work best. A federal role can provide opportunities for sharing learnings and best practices across jurisdictions.

6. Economies of scale

When dealing with small subgroups such as people with specialized needs or severe disabilities, projects and initiatives at the national or regional level may be more cost effective, where there may not be a critical mass in each local community to justify provision of needed activities and supports.

7. Cost Savings

As discussed in the text, a new U.S. Government Accounting Office (GAO) study provides evidence from other jurisdictions of the potential for enormous cost savings to the Canada Pension Plan (CPP) and other government and private disability and insurance plans from appropriate return-to-work measures. People who move from receiving disability pensions to employment will become taxpayers and contribute to the economy and to government revenues. GAO says that employment measures should be viewed as investments rather than program outlays.

8. Importance of coordination

There is ample evidence that without some sort of coordination, programs and services provided by various levels of government and by the private sector end up being disjointed. There is a need, at the very least, for a federal information sharing role. Otherwise, there is bound to be overlap and duplication, while at the same time some people — usually those most in need — will end up falling through the cracks.

9. Public support

It is noteworthy that both President Clinton and his Republican challenger, Bob Dole, have both made strong speeches celebrating the sixth anniversary of the Americans with Disabilities Act (ADA). Both promised to maintain a strong federal presence in support of ADA and helping people with disabilities obtain employment.

Former President Bush first promised to create ADA during his Presidential election campaign. This promise has been credited by a major U.S. polling organization as one of the major factors leading to his election success.

10. Improved employment rates

In his ADA speech, Dole cited GAO figures which credits ADA with increasing the percentage of severely disabled Americans with jobs from 23.3 percent in 1991 to 26.1 percent in 1994 — a jump of about 800,000 jobs. The implications for the return on investment from decreased social assistance and EI costs, plus workers now paying tax, are enormous.

11. Models in other jurisdictions

The European Commission (EC) has undertaken extensive activities supporting the employment of people with disabilities. These activities are designed to complement the responsibility of member states which have direct responsibility for the actual delivery of programs. Surely if the European Union can justify an EC role in disability, the same would apply to the Canadian federal government.

12. Canada's international commitments and agreements

It will be necessary for the federal government to continue to play some sort of role in order to live up to its international commitments and agreements. In particular, Canada has agreed to abide by the *Standard Rules of United Nations on the Equalization of Opportunities for Persons with Disabilities* and the 1993 Convention of the International Labour Organization (ILO, a UN Agency) which states that: "*Each Member shall, in accordance with national conditions, practices, and possibilities, formulate and periodically review a national policy on vocational rehabilitation and employment of disabled persons.*" Indeed, Canada was a leader in the development of the UN's *Standards Rules*.

Options and Recommendations:

- *For many reasons, it is in the interest of the federal government to maintain a role which supports and facilitates the employment of people with disabilities. Such a role can complement its new direction to employment services, including the process of devolution.*

3. THE NEW APPROACH TO EMPLOYMENT SUPPORT SERVICES AND PEOPLE WITH DISABILITIES

A. The Human Resources Investment Fund

i. *Consideration of the Needs of People with Disabilities*

Perhaps the most striking finding of this study is the lack of consideration within HRDC of the implications of its new approach to employment support for people with disabilities. This does not appear to have been considered during the development of HRIF, contrary to UN Standard Rule 14, which states that implications for people with disabilities be considered in the policy and decision-making process. There appears to be little interest in even talking about how people with disabilities will be affected, let alone making any modifications to minimize any differential or adverse effects. Despite the emphasis on accountability and evaluation, there is even resistance to assessing the impact on people with disabilities retroactively.

The Department has a Designated Group Policy (DGP) as of August, 1990 to:

"Facilitate adjustments required for the effective functioning of the labour market by eliminating the barriers preventing the full productive contribution of the designated groups . . . [and] to contribute to the achievement of:

1. *A decline of the unemployment rate . . .*
2. *An increase in the labour force participation rate . . .*
3. *An increase in the average income from employment . . .*
4. *Increased participation of the group in a wider range of occupations and levels."*

As far as I could ascertain, this policy has not been repealed or replaced.

The *EI Part II Policy Framework*^A states that:

"When targeting clients, designated employment equity groups (women, persons with disabilities, visible minorities and aboriginal) remain a priority among the population of insured participants."

There is little awareness of these policies at any level within HRDC. Indeed, we could not find a single person outside the Office for Disability Issues (previously called the Status of Disabled Persons Secretariat), including the Department's official contacts assigned to aid me in this analysis, who were aware if indeed there were any policies

regarding people with disabilities. Evaluations sponsored by the Department have confirmed lack of awareness and lack of attention to the DGP.⁵

Disability is scarcely mentioned in any Departmental documentation — including limited consideration in the *HRCC Handbook on Employment Benefits and Support Measures*, the guide for managers and staff at local HRCCs (Human Resource Centres Canada, formerly Canada Employment Centres [CECs]). There is no documentation or operational guidelines that anyone knew of indicating how these policies could be acted upon. Action with respect to serving people with disabilities or results achieved does not form part of the Accountability Framework for HRIF nor is it in the latest draft of the Evaluation Framework.

The HRCC staff *Handbook* sets out seven principles guiding the new system of employment benefits and support measures. Equity is not included in this list.

How likely is it that people with disabilities will get equitable access to employment services and benefits? The Department's own brief to the Task Force states: "A person with a disability will have access to an employment benefit *only* . . . if persons with disabilities are identified as one of the groups of workers identified in the community as most needing support." (italics added) This position is consistent with statements by people with disabilities — at Task Force Hearings and elsewhere — that they feel betrayed by the federal government.

Do people with disabilities need help obtaining employment? The facts speak for themselves. Over half — 52 percent — are not employed, compared to 27 percent of non-disabled people. There is ample documentation about the many additional barriers faced by people with disabilities in obtaining and maintaining employment. Because of these barriers, it may require some additional effort to enable a person with a disability to find and maintain employment. But because the alternative is long-term dependency on various income support programs, the potential cost savings are tremendous.

The disability rate among working age adults is 13 percent. Yet the participation rate of people with disabilities in HRDC programs is 1.9 percent. HRDC's evaluation of the National Strategy for the Integration of Persons with Disabilities (NSIPD) indicated that despite its stated objective of tripling the participation rate, this instead declined slightly. This evaluation indicated that the Department did little to attempt to improve the participation rate; indeed, it indicated that local CECs have downgraded their service to people with disabilities.

E.g. see Dorothy Riddle, Service-Growth Consultants Inc. *Assessment of the Implementation of the Designated Group Policy*. July, 1994 and Burt Perrin Associates. *Accountability in Contract Training in New Brunswick*. March, 1996.

Groups such as the Council of Canadians with Disabilities (CCD) and the Canadian Association of Independent Living Centres (CAILC) have proposed that a "fence" be placed around funds within HRIF, dedicated to people with disabilities, proportional to the representation rate of people with disabilities within Canada.

How will *implementation* of the HRIF affect people with disabilities? All indications are that it will adversely affect them. We have already noted the lack of interest within HRDC at NHQ in even considering this question and failure to build in any monitoring mechanisms. One key aspect of the new approach which concerns many people with disabilities is the decentralization of decision making to the local level. Priority groups at the local level are discretionary. As the above quote from the Department's brief to the Task Force indicates, people with disabilities may — or may not — be considered a priority and eligible for services, in the absence of any principles and guidelines which require that equity be taken into account.

But the new localized approach to labour market planning can also provide major opportunities — *if* supported by the Department. One of the key principles in the EI Act is cooperation and partnership. If groups representing people with disabilities are involved in local level planning, this could provide opportunities to identify barriers to employment and to develop and act upon strategies, suitable to each community, for overcoming these.

Indeed, all HRCCs are required to develop business plans. The HRIF Accountability Framework does not specifically refer to these business plans, although it is implicit that HRCCs are to account in some way for their performance in fulfilling their business plans. HRCCs are expected to develop their business plans in conjunction with groups in the community. The new HRCC staff *Handbook* says that a community network will likely include organisations representing people with disabilities.

The HRCC *Handbook* points out that: "One size does not fit all [and] that there is no magic formula to helping individual Canadians find long-term employment." But the only examples it provides are geographic and age differences. It makes no mention of disability. It provides no acknowledgement that people with disabilities may face additional barriers and hence, as Abella and the Supreme Court have indicated, may require solutions different in some cases from others in order to produce equivalent outcomes.

In order for a person with a disability to be eligible for benefits and measures, he or she must be considered likely to move into long-term independent employment. This is a carryover from the now-defunct CJS. But this acts as a systemic barrier in two ways:

- The only jobs which a person with minimal labour force attachment is likely to obtain may be short-term, entry-level employment;

- Some people may have difficulty working completely independently, but may be able to do so with appropriate support, such as that provided by a job coach or an attendant.

Another difficulty, readily acknowledged by HRDC staff, at least at the regional and local levels, is the limited expertise of HRCC staff regarding disability. This problem probably has increased, given reductions in special needs positions at the Regional and local levels.

There are a variety of potential ways of making necessary expertise regarding disability available. For example, these could include: additional staff training; support and assistance to regular HRCC staff from someone with expertise, perhaps at a regional level within HRDC and/or from the community; advisory committees; use of Outreach and other specialized agencies, as discussed in Section 3.B.ii.

ii. Narrowing of Eligibility

A major issue with respect to the new EI Act and people with disabilities concerns eligibility. Only "insured participants" — people who have been in receipt of EI within the previous three years — are eligible for the five active employment measures which form the cornerstone of HRIF. To a certain extent, this represents an expansion of eligibility for some HRCC services, which were previously restricted to people currently in receipt of EI.

But, this also represents a significant narrowing of eligibility, as people out of the workforce previously were eligible for a number of CJS programs and services. This is of particular concern to the disability community.

Just 16 percent of people with a disability who are not employed are defined as "unemployed", i.e. eligible for EI payments (186,000 according to the 1991 Health and Activity Limitations Survey, probably slightly greater now given increases in the unemployment rate) versus 29 percent of non-disabled people. Slightly more, but probably not too many more people, would qualify under the three-year rule. *Thus the vast majority of people with disabilities are not eligible for the primary employment measures in the new HRIF.*

There are two potential solutions to this problem: 1) change the eligibility criteria, or 2) create a new fund operating outside the EI Act to fund services for people with disabilities. The second option is discussed in Chapter 4.

Modifications in eligibility criteria would require legislative changes to the EI Act. The Council of Canadians with Disabilities has proposed an exemption for people with disabilities so that they would not have to demonstrate previous labour force attachment in order to be eligible for employment benefits. This has been opposed by the Department, and is likely to continue to be opposed, on the grounds that the primary

intended beneficiaries of EI-insured services are those who have been in the labour market and paid into the EI account.

Nevertheless, the EI Act does provide one exception to the three-year rule. Sect. 58(b) extends the benefit period to five years from the initial receipt of EI for people who temporarily withdrew from the labour market in order to care for new-born or newly adopted children. This provision acknowledges the special circumstances faced by women on maternity leave who need to withdraw temporarily from the labour market.

Surely the same principle should apply to people who have been employed but subsequently had to withdraw temporarily from the labour market due to a new or recurring disability. It would appear appropriate to extend the eligibility to five years, or more, for people on disability pensions. This would recognize and help to accommodate the special barriers they face and help to level the playing field.

The numbers of people who would qualify for such extended eligibility probably would be small. But this can be expected to increase with an aging population, with the front end of the baby boom entering the age group where new disabilities can be expected to develop. Otherwise, there is a real danger that newly disabled adults will never reenter the labour force. As a newly released report⁶ from the General Accounting Office (GAO) in the U.S. documents, the long-term costs to government and private disability insurance plans are staggering — and avoidable.

This report concluded that:

"Improving the success of SSA's [Social Security Administration] return-to-work efforts offer great potential for reducing federal disability program costs while helping people with disabilities return to productive activity in the workplace. If an additional 1 percent of the 6.3 million DI and SSI working-age beneficiaries were to leave the disability rolls by returning to work, lifetime cash benefits would be reduced by an estimated \$2.9 billion. With such large potential savings, return-to-work services could be viewed as investments rather than as program outlays."

iii. Accountability and Evaluation: The Need to Move Away from Building in Disincentives to Providing Meaningful and Useful Information

The new HRIF accountability framework places a focus on results. It has two primary results measures: 1) employment results for clients within the past year, and 2) resulting savings to the EI account. The framework does not include any accountability measures for results achieved with subgroups such as people with disabilities.

While it is likely unintentional, the emphasis within the primary measures on immediate employment and cost savings may well reward efforts to "cream": to serve the easy to serve versus those most in need. The evaluation literature documents the tendency of performance measures such as these to have similar perverse effects.

People with disabilities tend to be perceived by HRCC staff and others as difficult to serve and less likely than others to succeed. Indeed, many people will require extra help and extra time to obtain a job, as a result of the need to accommodate special needs and to overcome both systemic and overt discrimination in the job market. Performance measures of staff who devote any significant effort to serving people with disabilities will suffer accordingly.

To be sure, the accountability framework also contains longer-term results measures. This does provide the potential to document cost savings if people with disabilities can find and maintain employment over the long term. Nevertheless, the emphasis within the Department is perceived to be on the short-term primary measures.

Thus the HRIF accountability framework not only does not reward HRDC staff — or others within provinces or third-party agencies delivering HRIF services on behalf of the Department — who work with people with disabilities; it provides disincentives which may penalize staff who do so. If people with disabilities had been given an opportunity to participate in the development of accountability measures, this form of systemic discrimination probably could have been prevented.

HRDC is currently developing a framework for an eventual evaluation of HRIF. I was not permitted to see the current draft of this evaluation framework. I was told, however, that it contains no consideration of the impact of the new program on people with disabilities.

The lack of accountability measures and of any plans to assess the impact of HRIF on people with disabilities gives a strong message to staff within the Department and to the community. It says that HRDC does not believe it has a responsibility to address the employment needs of people with disabilities.

There *is* a need for accountability and evaluation — but accountability and evaluation which addresses the *right* questions and which provides useful, timely information. Programs and services which have no positive effect, or which have negative effects,

do no one any good. In order for programs and services to be improved, there is a need to identify what works and what does not, so that programs can be adjusted.

But this requires a somewhat different approach to evaluation, with an emphasis on providing timely information in a constructive way, within the context of a learning organization. HRDC staff at the Regional and local levels generally feel that there are limitations to many NHQ evaluations.⁷ In particular, they feel that NHQ evaluations tend not to address questions which would give them information which they would be able to act upon, and that the large-scale nature of these evaluations means that it can take years before results are available.

A recurrent theme emerging from the Hearings of the Task Force was a desire for accountability and evaluation. But people with disabilities have indicated concerns about *how* this is done. They feel that they should participate in the monitoring and evaluation process. It is worth noting that a major theme of the International Evaluation Conference held in Vancouver in November, 1995 was the importance of participatory approaches to evaluation which involves key stakeholders. This invariably improves the relevance, quality, and credibility of evaluation.

In any case, the Department thus far has not plans to evaluate either the appropriateness and effectiveness of its new policy direction on people with disabilities, or how this can be improved.

What is included in accountability and evaluation frameworks sends an important message. The word these days is that "what gets measured gets done." With no accountability or evaluation indicators examining the impact of HRIF on people with disabilities, there is a clear signal: the Department does not care.

It is important to realize that HRIF policies, including its approaches to accountability, sets the sage for delivery expectations and practices, not only for services delivered directly by HRDC, but also for those delivered by the provinces and other service providers.

In summary, the basic design of HRIF is flawed. The design is not in compliance with existing Departmental policies with respect to equity. As a result, the HRIF design contains many systemic biases that will adversely affect people with disabilities — whoever has responsibility for the actual delivery of services — unless modifications are made to HRIF policies, the accountability framework and the approach to evaluation.

E.g. Burt Perrin Associates. *Accountability in Contract Training in New Brunswick*. Prepared for the New Brunswick Labour Force Development Board. March, 1996.

Options and Recommendations:

- *The HRIF design should be refined to remove systemic barriers for people with disabilities, i.e.:*
 - a) *All employment programs and services under HRIF, whether provided by HRDC staff, provinces or third-party organizations, should be required to conform to the DGP and the principle of equity. Operational manuals should spell out in detail what this means in practice, and staff and managers at all levels should be provided with appropriate training.*
 - b) *The HRIF accountability framework should be modified to include accountability measures with respect to the impact of services on people with disabilities. The framework should be reviewed and modified to eliminate incentives for creaming. Similarly, the evaluation framework under development should make provision for assessment of the impact of HRIF on people with disabilities. Performance appraisals of all managers, including policy as well as operational positions at NHQ as well as in the Regions and local offices, should be based in part upon results in providing equitable service to people with disabilities.*
 - c) *Evaluations are needed to provide timely, relevant information about how programs can improve.*
 - d) *Specialized expertise in disability should be made available to managers at all levels, to HRCC counsellors and to staff in third-party agencies.*
 - e) *In accordance with UN Standard Rules 14 and 18, people with disabilities should be given the opportunity to participate as partners in planning, monitoring and evaluation processes at all levels.*
 - f) *Eligibility for insured services under the EI Act should be amended to either exempt people with disabilities from the current three-year rule, or at least to extend the eligibility period for people on disability pensions consistent with the extension granted people on maternity leave.*

B. Services Which Can Be Provided to Uninsured Participants Under the EI Act

i. *Extended Eligibility*

The above section suggests that only "insured participants" are eligible for HRIF services. In fact, this is not quite true — at least in theory. For example, the EI Act provides for a national employment service to provide labour market information to anyone seeking employment.

Of particular relevance to people with disabilities is Sect. 60(4) of the EI Act which states that:

"The Commission may establish support measures to support:

(a) organizations that provide employment assistance services to unemployed persons;

(b) employers, employee or employer associations and communities in developing and implementing strategies for dealing with labour force adjustments and meeting human resource requirements; and

(c) research and innovative projects to identify better ways of helping persons prepare for, return to or keep employment and be productive participants in the labour force."

This section has profound implications. It means that employment support through organizations is possible to people who are not employed, including to those who are *not* "insured participants"! Indeed, it is possible, albeit indirectly, to make available the full range of employment measures to people with disabilities in this way, even if they are not in the labour force.

In addition, Sect. 60(5)(a) indicates that assistance can be provided to employed persons if they are facing a loss of their employment. This provision would apply to many employed people with disabilities, including people who develop a disability while working, others who have little tenure and still others whose continued employment is at risk without accommodations of various forms.

As the EI Part II Policy Framework states: "EAS [Employment Assistance Services] could be used to target certain client groups, such as persons with disabilities, who require a more holistic approach to addressing their labour market needs. . . . It reflects the role of HRCCs as one community partner among many."

Nevertheless, there appears to be little awareness of the implications of Sect. 60(4) — both among staff within HRDC and outside. In particular, there appears to be little awareness of the potential to use the EI Act to address the employment needs of people who are not EI eligible.

Another barrier to effective use of EAS is the discretionary nature of these services. Thus far, they have not been identified as a priority within HRDC at either the NHQ or local levels. Because of this low level of priority and the discretion of local offices to decide upon its mix of programs and services without taking into account the needs of equity groups, it appears that funds which will be allocated for EAS will be extremely limited. This is yet another example of how, through lack of consideration of their needs, people with disabilities are denied access to potential resources.

In summary, there *is* a legislative provision for providing more equitable service to people with disabilities under the EI Act. What is needed are supportive policies, operational procedures, dedicated resources — and the recognition of the federal role and responsibility to do so.

ii. Outreach Agencies and other Employment Assistance Services

Outreach agencies were first established over 20 years ago, as an adjunct to CECs, to serve specific populations with special needs. Many of these agencies serve people with disabilities. Some serve people with any form of disability, but most are aimed at highly specialized client groups (e.g. visually impaired or hearing impaired people). There are a limited number of Outreach agencies across the country.

In addition, there are a variety of other community-based employment assistance services (EAS) currently funded by HRDC which support people with disabilities. These include national as well as regional and local projects, services and initiatives. EAS serve both EI-eligible and ineligible participants.

How effective are these community-based services in helping people with disabilities in obtaining assistance while helps lead to employment? While some services surely are more effective than others, at least three national evaluations commissioned by the Department⁸ have considered the relative effectiveness of employment services which it has provided directly or indirectly. These studies have concluded that:

Coalition of Provincial Organizations of the Handicapped [now CCD: Council of Canadians with Disabilities and National Anti-Poverty Organization. *Willing to Work . . . Together*, 1991; Burt Perrin Associates. *Exploring the Effectiveness of Canada Employment Centres for People with Disabilities*, 1994; and Evaluation and Data Development, HRDC. *Evaluation of ORDC Initiatives under the National Strategy for Integration of Persons with Disabilities (NSIPD): Phase II*, 1995.

"Employment training for persons with disabilities works better when carried out by third party organizations which specialize in providing services to persons with disabilities."⁹

Thus these studies, as well as other sources, overwhelmingly conclude that people with disabilities generally receive more appropriate and effective service when provided through third-party agencies in the community rather than directly by government.

There can be a potential concern about segregating people with disabilities in special programs, rather than serving them through mainstream institutions. This issue was considered in the evaluation of CECs referred to above.¹⁰ In brief, almost everybody agrees that the objective should be integration into the mainstream, and that all services should be fully accessible.

Nevertheless, many people with disabilities require specialized assistance in order to do so. Most individuals interviewed said that they preferred going somewhere where they were treated as a human being, where there was appreciation of their special needs and expertise in identifying appropriate solutions, and when they indeed were helped in obtaining employment. The danger inherent in mainstream services is that they may place low priority on serving people with disabilities and lack the resources to do so effectively. This is the situation in CECs.

Vulnerability of Outreach and EAS

Outreach and other EAS are clearly eligible for funding under Sect. 60(4) of the EI Act. As indicated above, they are just about the only employment services provided through HRDC which have indeed been effective in addressing the employment support needs of people with disabilities.

Nevertheless, the current message, within HRDC and in the community, is that the future of these services is up in the air. The message appears to be that there is not a vehicle for continued funding of programs at a national or regional level. Some Outreach services and other EASs may continue to be funded, but *only* if people with disabilities are considered a priority at the local level. The expectation, based upon consultations to date, is that many or most of these services will not be funded past March, 1997.

NSIPD Evaluation, *ibid*, p. vi.

Burt Perrin Associates. *Op. cit.*, note 8.

A priority need is providing interim short-term support for the continuation of existing Outreach and EASs serving people with disabilities pending a review of the role of these services at the national, regional and local levels. Otherwise, through lack of consideration, people with disabilities may lose access to the few services which appear to be addressing their employment support needs.

We found considerable support, in principle, for locally based programs and services. Nevertheless, there is also a role for complementary specialized services on a regional or national basis, as long as there is some connection to the local level. These can help draw upon and produce national level expertise transferable to other settings. They can make it possible to provide cost-effective specialized services, especially to small subgroups of people with severe disabilities or specific needs, where it might not be economic to do so at a local office level. We were also told that the logistics of a service provider negotiating agreements with multiple HRCCs can be difficult or impossible.

Thus there appears to be the need for a mechanism to fund national level services, where appropriate, as well as locally based services. This is not inconsistent with the EI Act and Offer to the Provinces, both of which provide for partnerships between the federal government and others besides with the provinces.

Options and Recommendations:

- *EAS should be identified as a major vehicle within the EI Act for addressing employment needs of people with disabilities. Funding should be allocated for these services on an equitable basis.*
- *An immediate priority is for a short-term extension of funding to Outreach and EAS for an additional year.*
- *A funding mechanism should be developed for national and regional level specialized employment support services and programs.*
- *EAS should be identified as a priority at the local level.*
- *EAS should be recognized as a mechanism which can help get people with disabilities into the labour force as well as a means of developing pre-vocational skills.*
- *There is a need for a systematic review considering the future role for Outreach and other EAS serving people with disabilities. Outcomes of this review may include: recommendations for which types of Outreach and EAS should be supported in the future, appropriate accountability measures, the development of more stable funding for services which will continue to be supported, recommendations for expansion of EAS if appropriate, and identification of alternative ways of addressing employment needs of people with disabilities who are not employed.*

C. Accessibility

HRDC is the lead Department for disability. It has lead responsibility for integration of people with disabilities into the labour market. One would expect it to be a leader in demonstrating how programs and services can be made fully accessible to everyone, including to people with disabilities. Indeed, HRDC has made numerous commitments, such as in statements before the Standing Committee, to making its services, employment centres, and electronic kiosks fully accessible.

Nevertheless, there is ample documentation¹¹ of numerous accessibility problems with HRDC services. Moreover, there is limited understanding among staff at all levels within the Department about what accessibility really means. These same studies document the lack of comfort of many CEC/HRCC staff in working with people who have a disability. The NSIDP evaluation noted that CECs have not connected a lack of demand for services with the need for greater accessibility, including information.

The Department appears to be interpreting "accessibility" mainly in terms of physical access to premises, and to some materials for people with sensory limitations. That physical access is but one component of accessibility is so well known and documented that it should not be necessary to even have to state this. It is necessary, once again, to point out, however, that people may have a variety of different functional limitations, both visible and invisible, which require a range of accommodations in order for programs and services to be accessible. There does not appear to be any comprehensive recognition of this within HRDC.

A couple of current examples may help to illustrate the problem:

- One of the Working Group members told me that in a recent application to the Department, which included a line for accommodations for participants in the proposed program, the Director reviewing the proposal interpreted "accommodation" as referring to hotel rooms, and questioned why this was included in the proposed budget.
- When I asked one of my official contacts at NHQ about other forms of accessibility besides physical access and provided an example of a person with limited endurance, I was told that all CEC staff are "professional" and should be able to deal with any other circumstances.

In addition, the accessibility of kiosks, to which the Department and its Minister have made a particular commitment with respect to accessibility, appears to be a concern. The Canadian Human Rights Commission is currently investigating this issue. HRD Ontario Region approached the Neil Squire Foundation in 1994 to evaluate the accessibility of Job Bank kiosks, in response to complaints. It found that:

"The kiosks were built to standard and hence, they should be accessible. On the other hand, since the standards don't deal with all the issues, they in fact are not generally accessible. To say that they do not deal with any accessible considerations is probably not accurate. These considerations were simply not dealt with in a comprehensive manner."

E.g. see note 8. The CEC evaluation study in particular documented the systematic lack of understanding of the meaning of accessibility and the lack of appropriate services and accommodations for people with disabilities in almost every respect. The NSIPD evaluation discussed the lack of attempts by HRDC to act on improving the need for better accessibility.

During the course of preparing this report, I received a telephone call from a person with visual impairments who went in person to an HRCC and found that she could not use the kiosk. She asked the staff if there were accessible kiosks, and if so where these were. She said that she subsequently called around to about six different HRDC offices. In all cases, she said that the people she spoke with told her that they did not know anything about accessible kiosks, and that no one had told them about the Minister's commitment in this regard.

Accessibility problems are most likely to arise when considerations regarding disability are considered only *after* the initial design and development of new programs, services and systems. When accessibility issues are considered at the early stages, it is usually possible to identify ways of overcoming barriers in the basic design, with little or no additional cost. At a later date, this may be difficult or impossible.

Options and Recommendations:

- *Commitments to full accessibility, spelling out in detail the multi-dimensional nature and meaning of accessibility, are needed by senior management at NHQ, Regional Office and local office levels.*
- *Action plans should be developed and implemented, which spell out the specific action steps which are required to ensure full accessibility.*
- *The accountability framework should be modified so that all potential deliverers of HRIF services will be held accountable for making services and programs accessible for people with disabilities.*
- *Results in the action plan should be monitored and evaluated, with a formative process so that corrective action as appropriate can take place sooner rather than later.*
- *Representatives of people with disabilities should be active participants in all the above steps at the NHQ, Regional and local levels.*

D. The HRDC Culture and Attitude Towards People with Disabilities

HRDC has many staff members throughout the Department who are genuinely committed to equitable service to people with disabilities, to addressing and overcoming barriers, and to achieving results. Thus there are important building blocks which can be used to craft a needed new approach so that the needs of people with disabilities are fairly addressed. But as G. Edward Deming, the father of total quality management, has said, 85 percent of the results are due to actions of systems rather than of individual staff.

As this report has indicated, there is a lack of commitment or interest in understanding or addressing the needs of people with disabilities on an equitable basis. At times, there appears to be resistance to even considering the potential impact of new program directions on people with disabilities.

The culture within HRDC which does not view people with disabilities as warranting more than tangential assistance is *the major stumbling block to equity for people with disabilities*. This is not a new problem. This has been widely acknowledged, by many people both within government and in the community as a long-standing attitude which has been carried over from the former Employment and Immigration Canada into its successor department, HRDC. Without a change in the culture, it is hard to see how substantive change is possible.

This attitude underlies the other difficulties which have been identified in this report as well as in many, many other documents. For example, it is responsible for:

- lack of awareness about equity policies;
- failure to incorporate considerations regarding equity into operational guidelines, agreements, accountability and evaluation frameworks;
- lack of accessibility or understanding of what this means;
- limited consideration of the impact of new program approaches on disability; and
- programs serving people with disabilities bearing a disproportionate share of program and funding cuts.

As the Standing Committee Report¹² noted:

"The Department's own Evaluation Branch documents noted the same critical comments that have been made by the independent policy analysts, the disability community and provincial advisory commissions."

The Standing Committee Report noted other findings from the Department's own NSIPD evaluation, such as the low priority to disability issues, lack of a strategic focus, lack of any change in the programming approach for people with disabilities as a result of the National Strategy, lack of interest in improving accessibility — and lack of results in terms of increased participation or employment.

The reactions from my departmental interviewees while researching this paper reinforces the above attitudes. In a number of conversations, the tendency was to change the subject when I would ask about the impact of new directions on people with disabilities. When I insisted, it became apparent that this has not been considered, nor is there any strong desire or pressure within the system to do so. One of my official contacts dismissed people with disabilities who are not in the labour force (some 84 percent of all people with disabilities who are not employed) as either unable or unwilling to work — apparently unaware of the extensive evidence to the contrary.

With some exceptions, I had great difficulty in obtaining necessary documents from the official contacts within the Department who were identified to assist me in this project. In some cases, I was told that these did not exist, such as any evaluation studies which looked at the effectiveness of departmental programs in serving people with disabilities — despite the four studies cited in this report. I was able to obtain most of the information and documentation which I needed to complete the analysis for this report only through using my own informal contacts within the Department and elsewhere.

Options and Recommendations:

Given the systemic, long-standing attitude within the Department which leaves people with disabilities on the sidelines, there are no simple solutions to turn this around quickly. Following are some possible strategies:

- *Acknowledgement of the issue and commitment to respond to it:*
 - ▶ *At the political level, by the Minister;*
 - ▶ *At the bureaucratic level, by the Deputy Minister.*
- *The need for programs and services to address the needs of people with disabilities be made more explicit in the federal platform for negotiations with the provinces regarding assuming responsibilities under the EI Act.*
- *Development of a results-oriented action plan, which shows how existing policies about equity will be implemented, including dates and a monitoring process.*
- *Annual publication of a public report card on progress on the action plan.*
- *A policy requiring a barrier review regarding the potential impact on people with disabilities, as an essential part of the development of any significant changes are made to policies, practices, and systems, as is required under ADA in the United States.*
- *Explicit policy statements and procedures be added to all appropriate manuals and operational guides, which clearly spell out: 1. the obligation to serve people with disabilities on an equitable basis, and 2. what this means in practical terms.*
- *Modifications to accountability and evaluation frameworks so that they contain results measures regarding services provided to people with disabilities.*
- *Performance appraisals of managers and operational staff to include performance in addressing the needs of people with disabilities in an equitable and effective manner.*

- *Training provided to all HRDC managers and staff at all levels, including within NHQ, focusing on misconceptions and the meaning of accessibility, as well as providing practical guidance about how to consider and to address the needs of people with disabilities.*
- *The Department should design and implement an all-encompassing long-term change management strategy in order to transform the organization into one which includes and supports people with disabilities.*
- *Lead responsibility for monitoring resting with Strategic Policy, with the Office for Disability Issues serving in a support capacity.*
- *The Office for Disability Issues to serve as an expert resource and support to all parts of the Department.*
- *Establishment of Advisory Councils or Reference Groups of people with disabilities, using the Mainstream 1992 model, in order to aid in the design and development, monitoring and evaluation of policy implementation at NHQ, Regional and local levels. and to comply with the UN Standard Rules.*

E. Devolution and Implications for People with Disabilities

As Chapter 1 noted, the Minister of Human Resources Development has offered the provinces and territories an opportunity to enter into agreements to take over delivery of active employment measures and other labour market services currently delivered by HRDC. What does this mean for people with disabilities?

HRDC's Federal-Provincial Relations Unit appears to be unwilling to consider this question, let alone specify that people with disabilities should receive priority — or even equitable treatment, or what form this might take. They say that this would interfere with negotiations with the provinces. Nevertheless:

- The Offer to the Provinces/Territories *does* say: "The requirements of equity groups are to be given special consideration."
- If provinces/territories deliver services, this will be in accordance with the EI Act Part II, thus most of the considerations discussed earlier regarding HRIF, including the need for equitable service to equity groups such as people with disabilities, also would apply, including:
 - The Department's Designated Group Policy;
 - Constitutional obligations for equitable treatment under Sect. 15 of the *Charter of Rights and Freedoms*;

- o The disproportionate need for employment assistance among people with disabilities, as well as the costs of income support and potential long-term savings.

As noted earlier, the Prime Minister, and the Premiers, have supported the concept of national standards.

It should also be noted that bilateral National Framework Agreements between the federal government and the First Nations require that the initiatives under these agreements: 1) indicate that provision will be given to equitable service to designated groups, including to people with disabilities, 2) include appropriate performance measures within accountability and evaluation frameworks, 3) involve monitoring of performance with a commitment to take corrective action where applicable. We were told by HRDC staff in the Aboriginal Relations Unit that it would be a "dealbreaker" if a group was not willing to agree to these conditions.

It is hard to see how requirement for equity in agreements with the provinces could be inconsistent with the new union. People with disabilities would like to be involved in developing, monitoring and reviewing these agreements. With or without this participation, there still is virtually unlimited scope for provinces to determine the most suitable ways of building in equity consistent with labour market conditions and opportunities and other priorities.

It should also be noted that the federal government is committed to withdrawing from direct purchase of training over the next three years. People with disabilities are concerned with this provision. Nevertheless, because of its key role in federal-provincial relations, it is a "given" in the current context.

However, indirect purchase and support of training still *is* possible, both for EI-eligible and ineligible participants, under Sect. 60(5)(b) of the EI Act, with the agreement of the applicable province. There appears to be little awareness of the existence of this clause at the present time, within HRDC and elsewhere.

Options and Recommendations:

- *Refine the design of HRIF to remove systemic barriers for people with disabilities before moving any further with the Offer to the Provinces.*
- *Build in a requirement in all agreements with provinces/territories, as this is being done with the First Nations, that equitable service to people with disabilities be provided; how this is done can be open to negotiation, but should be built into accountability and evaluation frameworks with progress reviewed on an annual basis.*
- *Involve people with disabilities in some way in the monitoring process.*
- *Explore the implications for people with disabilities of the federal withdrawal from training, and consider possible application of Sect. 60(5)(b) of the EI Act where the federal government can support labour market training with the approval of the applicable province.*

4. CRF FUNDING FOR EMPLOYMENT SERVICES TO PEOPLE WITH DISABILITIES NOT DIRECTLY ELIGIBLE FOR HRIF BENEFITS AND SERVICES

A. CRF Funding Similar to Other Priority Target Groups

As Chapter 3 indicated, the vast majority of people with disabilities who are not employed have not been in receipt of EI within the past three years. As a consequence, they are not directly eligible for employment benefits under HRIF. In theory, some may be able to benefit from Outreach and other employment assistance services. But as previously discussed, these services at present are very limited and not available across the country. Most or all of even these existing services are likely to be defunded. EAS does not appear to be a priority.

Where does this leave people with disabilities who are interested in working, but require assistance? There are already very low participation rates in Department programs. The new approach to employment services will result in even fewer people with disabilities who will receive service.

There used to be \$45 million from CRF (Consolidated Revenues Fund) dedicated to people with disabilities under the CJS. But this has been cut as a result of the 1995 budget. Thus people with disabilities have been hit with a double whammy: restricted eligibility for new services (except for the few who will qualify under the three-year reachback period and unless greater priority is given to EASs for non-EI eligible

people), and the elimination of the limited funding that used to exist for those not eligible.

This not does appear to represent equitable treatment. It may appear that services for people with disabilities should bear their share of the government's fiscal restraint plans. But people with disabilities, who already have greater needs, face more extensive barriers, and have received a disproportionately lower share of available services, have been further hit differentially, more than other groups and non-disabled people in similar situations. There probably was no intention in the planning of the new direction to hurt people with disabilities more than others. But through lack of consideration, during the planning and development process, of the implications these changes would have, people with disabilities are being subject to further inequalities.

While CRF funds for people with disabilities have been cut, funding for other disadvantaged groups has stayed the same or even been increased significantly. In particular, there are two new national initiatives for Aboriginal People and for youth, providing funding for programming across the country which is appropriate for these two groups.

The Aboriginal program provides an opportunity for Aboriginal communities to design and deliver their own labour market programming in all parts of the country. It recognizes that many previous attempts at addressing the employment needs of Aboriginal people have not been successful due to a variety of systemic barriers, and provides the flexibility to design and implement suitable programs. The same considerations apply to people with disabilities.

The new initiative was developed in recognition of the fact that the labour market participation of Aboriginal people is disproportionately lower than that of the mainstream population, that education levels are lower, and that they face a number of barriers preventing access to training and to education. The same applies to people with disabilities.

The annual budget for the Aboriginal Initiative is \$200 million, of which \$145 million is from CRF and the balance from the UI account.

The new Youth Initiative similarly has been developed in response to the special barriers faced by youth in breaking into the labour market. As the federal budget stated: "While employment is of concern to all Canadians, young people are finding it particularly difficult to find and sustain jobs. Education and skills, while necessary, are no longer always sufficient in themselves to guarantee employment in today's changing job market." The exact same situation also applies to people with disabilities.

The 1996-97 budget for the Youth Initiative is \$380.5 million, of which \$317.6 million is from CRF. This compares to its 1995-96 budget of \$251, of which \$189.6 is from CRF. The most recent Speech from the Throne announced an annual enhancement of \$105 million over each of the next three years for enhanced youth initiatives. This is reflected in the overall budget of \$317.6 million for the current year.

As indicated above, people with disabilities face the same low rates of employment, as well as barriers and difficulties in obtaining employment, as do Aboriginal people and youth. The numbers are comparable to these groups. It does not appear equitable to withdraw CRF funding for employment support programs for people with disabilities when funding for other target groups with similar needs is maintained or increased, is national in scope, and is developed in accordance with the special barriers faced by people with special needs.

CRF funding is needed in order to be able to design and deliver appropriate employment supports for the majority of people with disabilities who are not employed and who are denied access to other services. But this also has important symbolic value. Reinstatement of CRF funding can help provide an important message to people with disabilities, to the employer community, and to the public at large. Failure to do so delivers the contrary message.

Thus whether or not there should be CRF funding for employment support for people with disabilities does not appear to be a viable option. The two key questions are: 1. how much funding should be made available, and 2. for what purposes.

Options for the size of a new fund include:

- \$45 million — as previously dedicated to people with disabilities;
- \$150 million — similar to the CRF budget for the Aboriginal initiative;
- \$320 million — similar to the CRF budget for the Youth Initiative.

How should these new funds be directed for maximum impact? They could be used in a variety of ways, including:

- Extending access to the five employment benefits under HRIF to people with disabilities who are not EI-eligible participants, as well as properly resourcing EAS;
- Helping to level the playing field, in particular by improving access and accessibility and assisting directly or indirectly in countering extraordinary costs of disability (e.g. funding or making available aids, attendants, and other special needs) which are discussed in other Options papers being prepared for the Task Force;

- Funding the design, development and delivery of programs and approaches at national, regional and local levels which address the specific employment support needs of people with disabilities; funding could go to mainstream services, services organized and provided by consumers, by employer groups and other community-based organizations, as well as specialized services.
- Test out innovative approaches to getting people with disabilities employed. This can include broad community economic development approaches as well as specific services. The objective would be to identify best practices, and provide for information dissemination across the country in a variety of forms.

The above are possible options. In keeping with basic planning principles, as well as the UN Standard Rule 18, organizations representing people with disabilities should be given the opportunity to participate in the design and development of new approaches.

CRF funding need not represent a new or special program for people with disabilities. As indicated above, it can be used to provide for equitable access to *existing* program structures.

B. Employability and Social Partnerships (ESP)

ESP incorporates elements of Child Care Visions, the National Welfare Grants Program (formerly within Health and Welfare Canada), and the former Disabled Persons Participation Program (DPPP). Its mandate is to support partnership approaches which test out innovative ways of addressing employability needs, including those of people with disabilities. Thus its scope includes, but goes beyond, disability.

The budget for ESP over the last two years is informative:

	<u>1995/96</u>	<u>1996/97</u>
Child Care Visions	\$4.2M	\$5.1M
Disabled Persons Participation Program	\$5.1M	\$3.2M
Rest (National Welfare Grants)	\$4.2M	\$3.8M

It should be noted that some of the National Welfare Grants may go towards supporting disability-related projects. Nevertheless, this budget indicates that DPPP funding not only decreased by 37 percent over the last year; it took a bigger "hit" than the budgets for the other ESP components. This also represents a sharp decrease of some \$12 million from the funds which had been available for disability-related projects under the National Strategy for Integration of Persons with Disabilities.

The lion's share of funding from this fund dedicated to disability is used to support the operational funding of national disability organizations. This core funding is to be phased out over the next three years, although the groups may be eligible for ad hoc project funding. The reason for this appears to be two-fold: a feeling that it is no longer appropriate for government to be locked into ongoing core funding of organizations, and concern over the merit and value resulting from the grants.

Thus at the present time, while ESP has been used to support innovative research and demonstration approaches in the disability area, such as a pilot project in British Columbia exploring a new approach to help people on CPP disability benefits return to work on a trial basis, such funding is extremely limited.

There is a major need for a research and development fund such as ESP which can be used to support nationally relevant projects. The reality is that we do not know, as well as we need to, the best ways of enabling people with disabilities to work. Thus it may be appropriate to *increase* the budget of ESP which is dedicated to disability.

Options and Recommendations:

CRF funding on behalf of employment support of people with disabilities should be reinstated on an equitable basis as provided to other priority target groups.

- *Funding options include:*
 - *\$45 million as previously dedicated to disability within CJS*
 - *\$150 million similar to the Aboriginal employment initiative*
 - *\$320 million similar to the Youth Initiative*
- *The text provides options for how these funds could be used, including:*
 - *Extending access to benefits under HRIF to people with disabilities who are not EI-eligible participants;*
 - *Helping to level the playing field, in particular by improving access and accessibility;*
 - *Funding the design, development and delivery of programs and approaches at national, regional and local levels which address the specific employment support needs of people with disabilities;*
 - *Testing out innovative approaches to getting people with disabilities employed and communicating information about best practices.*
- *Expansion of ESP funding dedicated to research and demonstration projects regarding employment of people with disabilities.*

5. EMPLOYMENT EQUITY

The new Employment Equity Act (Bill C-64), which replaces earlier legislation, received Royal Assent on 15 December 1995 and will come into force in October, 1996. The Act is intended "to achieve equality in the workplace" and "to correct the conditions of disadvantage in employment" experienced by members of the designated groups, including people with disabilities.

The legislation represents an important step forward. But there are a number of ways in which its impact can be strengthened. This chapter touches upon some possible steps which could help. Others have been identified in various submissions which have been made to the government.

A. Clarification of Key Concepts Under the Act

Many of the key requirements under the Employment Equity Act are not clearly defined. Lack of precision leaves these open to interpretation, and means that progress is less likely to happen. For example, concepts such as: "reasonable progress", "undue hardship", "reasonable accommodation" all require clarification and definition. Including definitions of these and other key provisions in the Regulations would strengthen the potential impact of the Act.

The Canadian Human Rights Commission, Council of Canadians with Disabilities, the Advocacy Resource Centre for the Handicapped, and others are aware of examples of models for the above concepts which have been developed or are in use in other jurisdictions which could easily be used for the new Employment Equity Act.

B. Support and Information

There is very little the government is doing to assist employers and the public in complying with the Act. Without this assistance, there is a real danger that action may not occur.

For example, there is a need for public education, aimed at employers, employees and the general public, about the meaning and implications of the Act and why it is in everyone's interests to employ people with disabilities. This could be done directly by the federal government and/or by support to non-governmental organizations such as employer and labour organizations, and organizations representing people with disabilities and other designated groups.

There is also evidence that many employers need assistance in learning *how* to go about employing people with disabilities.¹³ While legislation is an important step forward, it by itself is not sufficient. It is noteworthy that the United States government has made available a number of resources to assist employers in complying with the Americans with Disabilities Act (ADA). For example, it has an Equal Opportunities Commission which provides information to employers and to others about available resources providing technical assistance and information.

The U.S. federal government funds Regional Disability and Business Accommodation Centers which provide training, information and technical assistance. It also funds the Job Accommodation Network (JAN). JAN has been funded by HRDC to provide a Canadian service over the past several years. No decision has been made about the future of this service.

C. Commitment to the Letter and Spirit of the Act

Within HRDC, there appears to be ignorance of the Employment Equity Act and its implications. For example, my official contacts initially were not sure what I was referring to when I requested information about the new legislation. As the lead department both for disability and for employment, with responsibility for the Employment Equity Act itself, it would seem appropriate that the Department identify what it can do, in all respects, to advance the objectives of the legislation.

The new legislation extends coverage under the Act to the federal public service. It would seem appropriate that the federal government show leadership by striving not merely to meet its minimal obligations, but rather by acting itself as a model employer. The perception, however, is that key departments within the government are actively resisting further employment of people with disabilities in general, and making available necessary accommodations in particular. Certainly, there is ample documentation that the federal government record in this area is less than stellar. There are a number of misconceptions about disability within the federal public service which have been identified in internal documents, such as the mistaken belief that considerations regarding equity are contrary to the merit principle.

E.g. see Burt Perrin Associates. *Evaluation and Future Directions for the Job Accommodation Network (JAN) in Canada*. October 1995.

Options and Recommendations:

- *Specific directives specifying the interpretation of key provisions in the Employment Equity Act (e.g. "reasonable accommodation") should be developed and preferably be included in the Regulations. Examples and models for these already are available.*
- *HRDC should provide public education aimed at employers, employees and the general public, about the meaning of the Act.*
- *HRDC should make available supports to assist employers in complying with the Act, similar to the supports available in the U.S. to support compliance with ADA.*
- *HRDC should act upon recommendations regarding the future of JAN, which is presently funded on an interim basis.*
- *HRDC, as the lead Department for disability and employment, should commit itself to acting upon the spirit of the Employment Equity Act in all its operations.*
- *The federal government should demonstrate leadership by acting as a model employer in employing people with disabilities and showing how special needs can be accommodated.*

6. CONCLUSION

There is ample evidence that Canadians with disabilities want to work. But in order to do so, they require help in overcoming the many special barriers they face which are not of their own making.

People with disabilities feel that they have the right to equity and to a level playing field. They seek an equal opportunity to achieve the same results as other Canadians. This right is contained in Section 15 of the Charter of Rights and Freedoms.

There are many strengths in HRDC's new approach to the provision of employment services. But the implications of this approach for people with disabilities have not been thought through. There seems to be a resistance to doing so within the Department. As a result, many of the provisions of the new approach and operational policies will result in the exclusion of people with disabilities from receiving the assistance they need in obtaining employment. Funding and programs which could be of benefit to people with disabilities appear to have been cut disproportionately more than for others.

This paper has identified a number of action steps which HRDC can take to improve the appropriateness and accessibility of its programs and services for people with disabilities. Most of these steps require little or no additional allocations of resources.

This paper has identified why there is a need for a strong federal role with respect to disability and labour market integration. It has indicated many benefits to the federal government and to Canadians, and has shown how a federal role in disability can be consistent with the new union.

RESEARCH PAPER 6

THE FUTURE OF VRDP

Jane Atkey

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THE FUTURE OF VRDP

1.0 INTRODUCTION

The Task Force on Disability Issues is studying the future role of the Government of Canada as it relates to the Canadian disability community. Labour market integration is one of the six topic areas under review. One of the questions within this area is the future of the *Vocational Rehabilitation of Disabled Persons (VRDP) Act*, and the VRDP Agreement that the federal government has with the provinces and territories. The Agreement expired on March 31, 1996. A paper on the future of VRDP was requested by the Task Force.

The purpose of this paper is to assess the relevance and feasibility of proposals regarding the future of VRDP in light of recent developments (the Canada Health and Social Transfer and the devolution of labour market training to the provinces), as part of the background work on labour market integration.

2.0 HISTORY OF VRDP

2.1 IN CANADA

Until 1952, only war veterans and injured workers were in receipt of government sponsored vocational rehabilitation (except for disabled adults in Saskatchewan). A significant initiative, resulting from a National Conference on Rehabilitation of the Physically Disabled held in Toronto in 1951, was the recommendation to help bring all disabled persons back into the labour force.

In 1952, the federal government entered into agreements with the provinces by Order-in-Council, known as the Coordination of Rehabilitation of the Handicapped Agreements. Services under these agreements were directed to enabling handicapped persons to become capable of remunerative employment, and also to enabling them to make a full contribution to the life of the community.

Vocational training was not part of these agreements. It was provided to people with disabilities by the federal Department of Manpower and Immigration through the federal/provincial training agreements.

In 1961, the Coordination agreements were replaced by the *Vocational Rehabilitation of Disabled Persons Act* which brought together the rehabilitation and the training components and limited eligibility to those incapable of pursuing regularly a substantially gainful occupation. The Act enables the federal government to enter into agreements with the provinces and territories to contribute to the cost of provincial

vocational rehabilitation programs and services, for an agreement period not to exceed six years.

The Agreements were the same for all of the provinces and territories (Quebec signed the Agreement for the first time for the 1986-88 period) and provided for a federal contribution of 50 percent of certain costs of eligible provincial programs which assist persons with disabilities to prepare for employment. Formal administrative guidelines were developed in the 1980s.

It was originally administered federally by Labour Canada, then Manpower and Immigration/Employment and Immigration Canada, then in 1973, Health and Welfare Canada and currently by Human Resources Development Canada.

In earlier Agreements, the federal department responsible for employment had direct participation in Selection Committees which approved plans for training and education on an individual client basis. Since 1988 such federal participation has not been specified in the Agreement. According to the Agreement, the federal employment department also had (and still has in the Agreement) responsibility for placement of people with disabilities into employment. In addition, the Agreement requires that full use be made of the services of the federal employment department.

Over the years, the Vocational Rehabilitation of Disabled Persons (VRDP) Agreement has been revised at the end of various agreement periods. In the 1960s, support for those persons undertaking post-secondary education in preparation for employment was added to the Agreement. In 1986, eligibility for continued services for a limited time after placement in employment was added and the requirement for Selection Committee discontinued.

The 1986-88 federal/provincial review of fiscal arrangements led to a number of improvements to the 1988 Agreement, which included expanding eligibility for those already in employment (vocational crisis), enhancing the training on the job provisions, extending services for up to 3 years after placement in employment, direct payments to individuals, consumer involvement in individual training plans, enhanced cost sharing of assistive devices, and the establishment of an appeal mechanism.

Until recently, federal funding of VRDP was open ended. A ceiling was imposed holding funding at the 1994-95 level.

2.2 INTERNATIONAL

In Canada, the *Vocational Rehabilitation of Disabled Persons Act* was developed in the context of the international standards contained in the Vocational Rehabilitation (Disabled) Recommendation, 1955, of the International Labour Organization (ILO).

In 1993 the ILO Recommendation was updated by the Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) (ILO Convention 159) and its companion, Recommendation 168.

Major additions or shifts in emphasis in the ILO Convention and Recommendation from the 1955 instrument to the 1983 instruments included:

- a focus on employment in addition to vocational rehabilitation (the title of Convention 159 reflects the dual nature of the instrument);
- consideration of prospects of persons with disabilities "advancing in" as well as "securing" and "retaining" employment;
- at the very least, measures applicable to the general population to be applied equally to persons with disabilities, e.g. the need to make use of existing vocational guidance, vocational training, placement, employment and related services for workers generally, with any necessary adaptations for persons with disabilities;
- the widening and creation of employment opportunities, such as financial assistance to employers.

Canada's position at the time reflected today's directions. For example, the Canadian position included the principles that:

- a person with a disability is handicapped in terms of employment as much by social and environmental barriers as by a lack of working ability. Social and environmental adjustments are needed to provide equality of opportunity and treatment in respect of access to, retention of, and advancement in employment.
- a continuation of a special focus on provision of services to persons with disabilities is required in the regular training and employment context. Without this focus, the particular needs and problems of disabled persons and the unique social and environmental barriers to employment with which they are faced, could be overlooked.

3.0 CURRENT ENVIRONMENT

A major restructuring of government responsibilities in the labour market area is underway. Human Resources Development Canada (HRDC) has withdrawn from cost sharing of social assistance and welfare services under the Canada Assistance Plan (CAP) and has combined this with block transfers to the provinces to create the new Canada Health and Social Transfer (CHST). The Government of Canada plans to work with provinces to develop by mutual consent the principles and objectives which should underlie the CHST.

In most provinces, CAP and VRDP were administered financially by the same officials. With CAP gone, it is unlikely that provinces will want to retain any detailed cost sharing administrative capacity.

HRDC has also offered the provinces an opportunity to assume responsibility for active employment measures to help those eligible for Employment Insurance (EI) to get back to work. Approximately \$2 billion will be available to provinces and territories for this purpose from HRDC's Employment Insurance account. The federal government will enter into three-year labour market agreements with the provinces and territories. There will be negotiations on the results to be achieved and the process for evaluating them.

In addition, HRDC will withdraw from labour market training over the next three years.

Regarding VRDP, the federal government has proposed to the provinces and territories that the VRDP Agreement be extended to March 1997 with no change in what programs are cost shared and a limit of \$168 million, the 1994-95 level. The proposal suggests that this time period would provide an opportunity for an orderly change to new mechanisms more consistent with respective government mandates and better focussed on overcoming obstacles to employment faced by persons with disabilities. Further, the proposal states that federal policy in relation to VRDP will reflect the overall approach of the federal government to federal-provincial-territorial relations as articulated in the recent Speech from the Throne and that it is essential to take into consideration the views of the community of persons with disabilities. The federal government invited the provinces and territories to suggest ways of improving and ensuring cooperative approaches to enhancing employment opportunities for persons with disabilities across Canada.

This proposal will likely be considered at the meeting of interprovincial ministers of social services in Victoria on September 16, 1996 to which the federal Minister of Human Resources Development Canada will be invited. The provinces have developed a preliminary position on VRDP regarding the continuation of funding and the need to make joint decisions.

4.0 WHAT VRDP DOES

Currently, all the territories and provinces deliver vocational rehabilitation programming which is cost shared under the VRDP Agreement. While the Agreement and the administrative Guidelines outline in broad terms the various requirements for eligibility of clients and programs and services to be cost shared, provinces and territories have discretion in the way in which programs are delivered, what programs are delivered, how much service they provide, and to whom they provide it. The Agreement also requires the establishment of an appeal mechanism, that there be no cost to the client for assessment, and that services relate to a vocational objective.

4.1 PROGRAMS AND SERVICES COST SHARED UNDER VRDP

Provinces originally either developed their own legislation to mirror the VRDP Agreement or implemented the provisions of the Agreement as a provincial program. Some provinces deliver only what is possible to be cost shared under the Agreement; others design and deliver programs and then seek cost sharing for part or all of the program. In some provinces, workshops and training allowances were until recently cost shared under the Canada Assistance Plan (CAP), not VRDP.

The majority of provincial programs consist of provincial funding of programs delivered by a vast network of non-profit agencies and organizations. The federal government contributes to provincial costs related to staff of those programs only. A small portion of the federal VRDP dollars is directed to the provision of goods and services on an individual or client by client basis and primarily delivered by provincial governments. Included in this cost are supports and services needed by individuals to undertake vocational training and post secondary education.

4.1.1 Individual Cost Programs

The individual cost programs such as the Vocational Rehabilitation Services (VRS) program in Ontario, were originally designed according to the requirements of VRDP. Essentially, they were structured to be similar to programs and services offered through the national employment service, including the various training components. Some provinces also drew on the Workers Compensation Board (WCB) model in designing their program.

A later addition was VRDP cost sharing of support for individuals pursuing post secondary education as well as post graduate studies where applicable, which would lead to suitable employment commensurate with abilities and interests. Until recently, the federal employment department (now HRDC) was part of the decision making

process with respect to vocational training. Some provinces have retained the former federal involvement.

Jurisdiction for delivery is mainly in the provincial social services sector, except for B.C. Skills, Training and Labour, and New Brunswick, and perhaps others. These programs are primarily operated by government.

Most services and all goods are purchased from both public and private suppliers. Some programs have counsellors with expertise to provide assessments and vocational and other counselling and to provide employment placement services.

The VRDP cost shareable goods and services that can be provided or purchased on behalf of individuals include just about anything needed by the individual to enhance capacity to pursue employment, depending on what the province chooses to do (with the probable exception of purchase of a vehicle, although vehicle modifications can be done if disability related).

4.1.2 Supported Employment

VRDP was originally developed with the objective of assisting the client to become capable of economic self-sufficiency through employment. The assumption was that once employed, supports and services would no longer be needed. Now it is recognized that many people can participate in economic productivity without being fully competitive or fully self-sufficient. Ongoing support is an integral feature.

Generally, supported employment is the provision of extra supervision and assistance for individuals with (often severe) disabilities to perform a normal job in open employment. The amount of assistance provided is what the individual needs to stay in a job. Instead of compensating the employer for the lower productivity of the worker as in wage subsidies, the emphasis is on a guarantee that the job will be done with the help of job coaches employed by the agency, who train, assist and support the worker in the work situation.

Supported employment programs are primarily delivered by the network of community based local associations for community living and targeted to people with intellectual disabilities.

4.1.3 Sheltered Workshops

Workshop programs are delivered by community agencies. (There are also workshops attached to larger institutions for people with intellectual disabilities, which are operated by provinces and have never come under the VRDP Agreement having been deemed to fall under Established Programs Financing).

Some aspects of workshops are prevocational life skill development in nature; some have vocational assessment and training programs; some provide regular employment; and some aspects of workshop programming could be called day activity programs.

The largest population served is those with intellectual disabilities but some are targeted to those with psychiatric disabilities and those with physical disabilities. In some provinces, workshops serving those with intellectual disabilities are part of a network of services for this population.

4.1.4 Mental Health Programs

Mental Health programs that are cost shared under VRDP are delivered by community based agencies or by provincially operated psychiatric institutions. The programs tend to be primarily treatment oriented programs but there are also a number which are directly vocationally related as well as some supported employment programs.

4.1.5 Alcohol and Drug Programs

Alcohol and drug programs are delivered by provincial commissions or community based agencies. The emphasis is on treatment and rehabilitation. The programs that are cost shared under the VRDP Agreement are primarily those established prior to 1987. Programs established after that time became eligible for cost sharing under the Alcohol and Drug Treatment and Rehabilitation (ADTR) Agreement, although provinces could still claim for cost sharing for post 1987 programs under VRDP if they had reached the cost ceiling limit of the ADTR Agreement for the particular province.

4.1.6 Other Agency Programs

A variety of other agencies and organizations are funded by provinces to deliver vocational rehabilitation and other services that are cost shared under VRDP and do not fit into any major program category. Included are disability specific organizations such as the Canadian National Institute for the Blind (CNIB), Canadian Paraplegic Association (CPA), part funding of Outreach services, literacy programs, alternative computer training, etc.

4.2 PROBLEMS WITH VRDP

In a labour market integration context, the problems with VRDP include:

- 1) Only a small proportion of persons with disabilities is eligible at a given point in time, and their eligibility is time limited.

- 2) Assistance to people to engage in self employment, to stay in the job or to advance in the job is either not eligible, or is extremely restricted.
- 3) Provinces are encouraged to retain separate systems and conditions for persons with disabilities preparing for employment rather than providing services to support the participation of persons with disabilities in regular training and employment programs.
- 4) Funding is limited. If one were to consider the totality of funds that go into training, education, employment placement, retention and advancement of the general population through the former Canadian Jobs Strategy for example, the amount of \$168 million under VRDP is minuscule in proportion to the percentage of people with disabilities in the population.
- 5) Provincial programs cost shared under VRDP tend to be skewed toward the prevocational and rehabilitation side, with only a small percentage directed toward assistance for vocational training, education and direct employment activities.
- 6) There have long been complaints that the sheltered workshop system tends to keep people with disabilities out of the work force, unprotected by labour standards, and with no access to work-related benefits. VRDP has contributed to this situation as it does not technically share in costs of "employment". With some exceptions, for the most part clients are not usually in a true employment relationship within workshops. On the other hand, there are a number of programs within the workshop system that provide vocational assessment and training programs which lead to competitive employment, although the concept is criticized for its segregative approach.
- 7) Provinces have begun to explore various forms of supported employment. Recent changes to VRDP allow for cost sharing of services for up to 3 years following placement in employment. While a step in the right direction, such time limitation is a barrier to implementing supported employment programs, which by their very nature must be ongoing.

5.0 PLANNING CONSIDERATIONS FOR THE FUTURE OF VRDP

Planning for the future of VRDP needs to be done within the context of the prevailing concepts related to people with disabilities.

5.1 EQUALITY

The purpose of the United Nations World Programme of Action Concerning Disabled Persons with respect to the Decade of Disabled Persons (1983-1992) was to promote measures for the goals of "equality" and of "full participation."

The Canadian Charter of Rights and Freedoms indicates that everyone should not only be treated equally, but also benefit equally under the law. This means that opportunities must be afforded to all potential employees and existing employees, taking into account their differences, which will enable them to enjoy the same benefits as their non-disabled counterparts. In acknowledging that persons with disabilities have the right to equal benefit without discrimination, it is recognized that it could mean treating people the same despite their differences, or it could mean treating them as equals by accommodating their differences, provided they derive equal benefit.

A key principle in the Government of Canada's Declaration on the Decade of Disabled Persons is that "Services and programs shall be aimed at integrating disabled persons into existing social and economic structures rather than segregating such persons into parallel environments".

In terms of training and employment, the equality of opportunities approach is basically concerned with the behaviour of trainers, educators and employers. True accessibility through accommodating people with disabilities in mainstream programs is at its core. The federal government is currently addressing changes to the federal Human Rights Code to include an obligation to provide accommodations. In at least one province, such provision is already in the provincial Human Rights Code. Across the country, employers and training and education institutions are in the process of developing this approach.

The employment equity approach is primarily concerned with outcomes. It is more results oriented than the equality of opportunities approach, which is more intention oriented. It is designed basically to address the historical disadvantage experienced by certain groups by increasing their representation in the work force. A number of employment equity initiatives have been implemented at all levels of government and in the private sector. The federal legislation, for example, requires that federally regulated employers make reports on the number of people with disabilities who are employed and what initiatives have been taken to promote their employment. This

focus is more on process than outcome and is therefore criticized for the lack of mandatory targets.

5.2 INDIVIDUAL CHOICE

The principles of self-determination and full partnership in citizenship have become major objectives of the consumer movement. The belief is that people with disabilities are the most appropriate ones to choose how they wish to live and participate in the community, just as others choose. There are various program and service models to enable individuals to manage their own affairs including direct funding to individuals.

5.3 INVOLVEMENT OF THE DISABILITY COMMUNITY

Full participation in citizenship means that people with disabilities and organizations involved with disability should have a full say in how policies and programs that affect them are developed.

It is anticipated that service structures will more and more be operated by organizations run by persons with disabilities, recognizing that some services are more effective when provided in this manner. Under VRDP there are currently no restrictions on types of agencies for cost sharing purposes.

5.4 SPREAD OF RESPONSIBILITY

Who is responsible for people with disabilities? Some say the federal government, others say the provincial government, yet others say that they should look after themselves. Disability is only one characteristic of people. People who have this characteristic are the same as everyone else. To answer the question, you have to ask who is responsible for everyone. This of course cannot be answered except in terms of specifics, such as who is responsible for education or job training, or employment placement in this country. The fact is that all people in society share the responsibility to create communities which are accommodating to people with disabilities.

For too long, the sole responsibility for people with disabilities has been deemed to rest with provincial social services or health. While very important in the lives of people with disabilities, social services or health do not have responsibility for education, or for job training or for employment or for transportation, or housing, etc. In particular, the demand on social services to act on behalf of people with disabilities in all areas has been excessive. Understandably, this shoving of responsibility into one sector has led to greatly restricted opportunities for people with disabilities to participate in all aspects of society.

The federal government itself has a dual role with respect to people with disabilities. The foremost and overriding responsibility of the federal government is to ensure that all citizens have an opportunity to participate in, share in, and contribute to all that Canada has to offer. This is a Charter guarantee for everyone. Regardless of which order of government delivers what programs, the Government of Canada is looked to as the protector of the rights of all citizens. The equalization of opportunities for people with disabilities falls squarely in this realm.

Secondly, the federal government must ensure that its own operations, across all departments, do not exclude or otherwise discriminate against this segment of the population.

5.5 ONE SIZE DOES NOT FIT ALL

This would be a strange place if all shoe stores in Canada specialized in one shoe size. Only size 10 people could get hiking boots. You would have to be a size 3 if you wanted high heeled pumps. Or sneakers would be designed for size 6½. If you wanted pumps and were size 5, you would have to squeeze your foot into size 3. Pretty soon someone would study the characteristics of size 5 people who wore pumps and categorize them as walking challenged, maybe even unmotivated.

In this day and age, there are those who still ask what jobs people with disabilities can do, what training suits them best, and what works to get them into employment. This is about as absurd as asking what one particular shoe will enable people to walk, run, or hike well. There is probably not one job anywhere that has not been done or could not be done by a person with a disability. Obviously, training and education to acquire work skills is as individual a matter to people with disabilities as it is to those who do not have a disability. How people get into employment is unique for each person, whether or not they have a disability.

The lesson is that a range of options must be available to people with disabilities as to how they plan for their working life and what paths they choose. For example, some VRDP cost shared programs are criticized because everyone is expected go through a "process" that is often not tailored to the individual, or to accept counselling, or to go to a workshop for a vocational assessment, or to go through a battery of tests for approval for educational programs when other students do not have to.

5.6 MAINSTREAMING OR TARGETING? NOT DIVESTING!

The equalization of opportunities for persons with disabilities cannot happen over night. Jurisdictions traditionally responsible for services to this population will need to continue to provide these services, without penalty, until others assume responsibility in a manner which provides true equality (e.g. withdrawal from payment of tuition fees

for regular courses should not occur until student loan plans recognize that loan repayments are more difficult for those with disabilities; that people with disabilities face additional costs for disability-related aids and assistance; and that students with children who have a disability may need different child care arrangements).

If programs are to be designed which are targeted to people with disabilities, then they must be programs which assist individuals to gain access to the full range of training, education and employment opportunities that are available. This is only fair.

The trouble with targeted programs is that they are usually limited in funding and scope, and thus become restrictive to choice and opportunity in themselves. The far better and less discriminatory route entails opening up the full range of training, education and employment opportunities to people with disabilities.

The approach of the Americans with Disabilities Act (ADA) is an example of the choice and opportunities approach. And it is working. On the 6th anniversary of the ADA on July 26, 1996, Mr. Bob Dole stated that "because of the ADA, the percentage of severely disabled Americans with jobs has increased from 23.3 percent in 1991 to 26.1 percent in 1994 -- a jump of about 800,000 jobs."

6.0 MAJOR POLICY APPROACHES

6.1 ENHANCING EMPLOYABILITY

Enhancing the employability of people with disabilities entails both enhancing work related skills, credentials, and experience on the one hand and providing the tools and services which will enable them to function physically, mentally and emotionally at their optimum potential on the other hand.

Work related skills and credentials are obtained through training and education, and experience and training on the job. VRDP has been a major policy instrument targeted to people with disabilities and designed to enhance their working capacity. Many people with disabilities have been enabled to pursue a substantially gainful occupation as a result. This approach is still very much needed but can be more effective if integrated to the extent possible into the regular training and employment environment.

6.2 JOB CREATION

Job creation includes employment subsidies for workers with disabilities, subsidization of work place adaptation costs, the imposition of quotas, or grant and levy systems. *[A grant and levy system holds all employers responsible for employment of persons with disabilities in proportion to their overall representation in the labour force. Employers*

pay a levy when they do not meet their responsibilities. Employers are paid a grant out of the levy fund for the extra costs of employing persons with disabilities, e.g. workplace adaptations, and wage subsidies.]

VRDP has not been involved in job creation activities with the exception of a tentative and limited support for supported employment programs.

6.3 EQUAL ACCESS

This approach is that of guaranteeing "equal access" to the new minority of people with disabilities. It means changing the network of relationships which prevents this social minority from being fully integrated into all aspects of society. It means altering patterns of discrimination in education and training institutions, companies, and industries in order for people with disabilities to gain true access to jobs. In Canada, this is beginning to happen through human rights legislation and employment equity provisions. VRDP to date has not been involved in this approach although as the general environment becomes more accessible, traditional vocational rehabilitation workers will have less involvement with those people who can access regular programs and more involvement with those people with severe and multiple disabilities.

7.0 FACTORS TO CONSIDER FOR VRDP

7.1 FUNDING

7.1.1 Funds Targeted to People with Disabilities

It could be considered logical to attach VRDP to mainstream employment programs to promote integration, or to integrate programs at the outset. There will be many demands on the VRDP pool of money for this purpose.

VRDP funds could go in a block transfer to provinces, with bench marks or conditions related to people with disabilities, through either being attached to labour market agreements or the Canada Health and Social Transfer (CHST).

The dilemma of attaching VRDP dollars to other provisions is that, while mainstreaming is most desirable, we know historically that people with disabilities tend to be left to the last or left out because problems are seen as too complicated or too costly. In addition, there is not as yet sufficient expertise within mainstream programs to address complex disability issues. There is widespread concern about the risk that dollars would be absorbed by programs and thus lost to disability-related efforts.

One argument here is that people with disabilities have been excluded from education, training and employment in the past, and until or unless they are guaranteed equal access and equal benefit of education, training and employment, the dollars must be earmarked. Without a special focus, the particular needs and problems of people with disabilities and the unique social and environmental barriers to employment with which they are faced, could be overlooked.

7.1.2 Client by Client Funding

Individualized client funding is a delivery mechanism that has long been done by provinces and cost shared under VRDP. It differs from program funding in that expenditures are made and tracked on a client by client basis depending on what the client needs, rather than being directed to program costs such as staffing. This funding mechanism encourages the provision of goods and services to be tailored to individual needs.

7.1.3 Direct Funding to Individuals

Direct funding to individuals was a new mechanism for the 1988 VRDP Agreement. This mechanism is only suitable on a selective basis as there are some individuals with disabilities who are either not in a position to organize their own services, or do not wish to do so, while others welcome this opportunity.

7.1.4 Federal Transfer Mechanism

The federal government has stated that it will not be inclined to use its spending power in areas of provincial jurisdiction. However, to the extent that the federal government maintains involvement in active employment measures through transfer of funds to provinces and territories, it has a role in at least applying the same principles to measures for people with disabilities. If it can transfer funds through labour market agreements, it can also transfer funds for other mechanisms, such as a renewed VRDP agreement. It is incumbent on the federal government to adopt a policy to ensure equality of opportunities for employment for people with disabilities.

With the demise of CAP, a cost sharing mechanism is probably a non-starter. Most provinces will no longer have the resources to dedicate to complicated and detailed cost sharing administration. Various ways of block funding or cost matching will need to be considered for the future of VRDP but with assurances that such measures will be as generous and flexible as for example, the labour market agreements.

If a transfer mechanism is put in place, a new funding formula will be needed to provide cross-provincial equity. Such a formula should not be used to equalize economic

disparities across provinces at the expense of people with disabilities. Rather, it should be based on population and preferably on the proportion of the disability population according to the most recent Statistics Canada data.

The current allocation of VRDP dollars to the provinces is disproportionate on a population or a disability population basis and on a program basis. There are a number of reasons. For example, some provinces tied major vocational rehabilitation activities to CAP assistance provisions which no longer exist, e.g. sheltered workshops in Nova Scotia, maintenance allowance in Ontario. Some provinces have VRDP type programs which were funded under the now defunct Canada Jobs Strategy, e.g. supported employment programs. Some provinces have not realized the full maturity of VRDP cost sharing while others have, e.g., Quebec has only been a VRDP participant in recent years.

7.1.5 Increase in Funding

Can we afford not to? Funds are somehow found for other sectors.

In the grand scheme, the VRDP dollars are small. They are small in relation to what is spent on the general population for subsidized training, education and labour market activities. They are small in relation to what the provinces as a whole spend on disability related needs. They are minuscule in terms of other transfers to provinces. They are marginal in terms of what the U.S. is doing regarding employment of people with disabilities. They are a tiny percentage of what is spent on income support programs for people with disabilities who might otherwise be working.

Doubling the VRDP dollars would not be unreasonable given the benefits. In terms of cost benefit, an investment in the economic productivity of people with disabilities can be doubled, tripled, and even quadrupled. With the demographic increase in the disability population, particularly older people still of working age, there is an urgency to ensure that all people with disabilities have opportunities to realize their economic potential.

HRDC spent about \$45 million on people with disabilities under the Canada Jobs Strategy. There has been a cut of almost 100% in this funding. Much of it was through Outreach program funding or project funding to supported employment and placement programs that would or could otherwise be eligible under VRDP if there was not ceiling on the VRDP dollars. Provinces are just now beginning to experience a demand for replacement funding for these programs and projects.

An increase in funding would address provincial concerns if there continues to be a transfer of VRDP funds to them. There could be a guarantee that provinces retain at

least the same level of funding they now have and other provinces would be brought up to par according to a new funding formula.

7.2 STRUCTURAL FACTORS

7.2.1 Federal Only

A strong belief of the disability community is that the federal government must continue to have a significant role in the labour market integration of people with disabilities. It is important that the quality and equality of services to all Canadians with disabilities be ensured, regardless of where they happen to live. As well, national thinking from experts and advocates from all across Canada can be brought to bear to achieve innovative and effective programming. Lessons learned can be effectively shared on a national basis.

There is a great fear amongst the disability community that the federal government is abandoning them and that the programming that has been working and perhaps that has been taken for granted, will be lost. In addition to maintaining the programs that work, innovative programming on a national basis in the area of labour market integration is particularly important in the current economic climate.

7.2.2 Federal/Provincial

There is also a great fear amongst the disability community that if the federal government withdraws from a federal/provincial mechanism, that provinces will withdraw funding from their own programs. These provincial programs are considered to be essential for the basic survival in many instances, of people with disabilities. Indeed, some provinces have indicated that they would consider this. Yet other provinces have, on the other hand, given the ceiling on VRDP cost sharing, gone ahead to develop innovative programming for the economic integration of people with disabilities which has not been fettered by VRDP restrictions.

7.2.3 Partnerships

The community of people with disabilities and their organizations will want to have equitable access to opportunities to deliver programs and to continue to undertake activities to promote and protect the rights and interests of people with disabilities. They are not sufficiently resourced for these purposes. Partnerships will be needed with all sectors for their resourcing and for joint perspectives on disability.

National, provincial and local non-governmental service providers have a major stake in providing prevocational services and other supports to enable people with disabilities to develop their capacity to participate in labour market activities. The people in these

organizations have both a good understanding and passion for the various issues involved in labour market integration for persons with disabilities.

Employers and unions are particularly key players in development of employment opportunities for people with disabilities. Similarly, trainers and educators in mainstream systems must be involved in all aspects of the development of opportunities for training and education.

7.3 PROGRAM FACTORS

7.3.1 Who Should be Targeted?

There is a difference in vocational rehabilitation and employment-related resources available to people with disabilities. Those with attachment to the work force can usually access vocational rehabilitation and employment-related resources through their employers' disability management programs and health benefits, or through WCB vocational rehabilitation programs, or through the Canada Pension Plan (CPP) vocational rehabilitation program, or through private insurance rehabilitation provisions, and through Employment Insurance (EI) provisions. There are also those who receive provisions through tort actions (seeking damages for a civil wrong). On the other hand, those not attached to the work force, or not covered by their employer or whose disabling condition is otherwise not compensated, only have recourse to VRDP cost shared programs and to take their chances through mainstream programming. The latter group consists mostly of those seeking first time entry to the work force and those with tenuous attachment to the labour force.

In the broader disability area in relation to employment activities, by far the greatest interest, action and financial investment is in the return-to-work area with HRDC's EI provisions, WCB, employer disability management programs, CPP, and private insurance being major players in the field of vocational rehabilitation and employment of people with disabilities. In recent years for example, there has been a proliferation of private rehabilitation enterprises.

VRDP only excludes those eligible for WCB or Veterans' programs. Some provinces may recover monies from insurance companies and others, through subrogate claims.

The greatest need is for those who are not covered by other vocational rehabilitation and employment-related programs.

7.3.2 Focus on Training, Education and Employment

The VRDP focus could be on the employment end of the spectrum, leaving assessment, counselling and treatment of a prevocational nature as a provincial responsibility. This would mean federal withdrawal from cost sharing of provincial programs which are more treatment, rehabilitation or prevocational in nature and which could be considered more of a provincial jurisdiction than employment activities.

7.3.3 Supported Employment Programs

To date, supported employment has been targeted to people with intellectual disabilities. The concept is equally applicable to those with other disabilities. (There are those in the U.S. who deplore the fact that the federal legislation there is restricted to those with intellectual disabilities.) For example, supported employment could incorporate the direct employment related aspects of provincial mental health programs, whether they be administered by community based agencies or institutions.

A focus on supported employment could help provinces solve the dilemma of workshops. There is sufficient experience in both Canada and the United States to warrant a task force to determine how best to take existing federal and provincial resources in the workshop area and reallocate over time to supported employment

7.3.4 Post Secondary Education

The \$3,500.00 HRDC grant to individuals with disabilities to pursue post secondary education duplicates to some extent what is provided under the VRDP Agreement. The majority of people with disabilities do not come within the provisions of the Agreement at any given point in time. Thus, the grant covers a much broader population and may in fact be responsible for many people with disabilities not having to go through a provincial rehabilitation program to access the post secondary system, a process which has its own built in barriers.

Why not withdraw from VRDP cost sharing of tuition fees and related books and supplies and improve on the post secondary education grant instead? This would avoid inconsistencies across provinces where some have already withdrawn from these provisions. One could mainstream this area through building a separate fund, working with the National Educational Association of Disabled Students (NEADS) and related provincial groups and with provincial departments of advanced education and training, perhaps under the auspices of the Council of Ministers of Education.

There has already been much work done in provinces to provide access to people with disabilities to post secondary education programs, e.g. in Ontario there are special

needs coordinators in each of the 22 community colleges, along with various provisions for other goods and services, and for accommodations in courses, etc.

7.3.5 Individualized Access Program

The individual cost programs currently under VRDP could be simplified and expanded. For example, delivery could be extended to disability and service provider organizations, and ways of involving the private sector explored. Eligibility could be extended so that support is provided throughout an individual's employment career. Employment placement should become a significant feature of such a program. Self employment, career advancement, job retention, and retirement planning should also be featured. A program can be done similarly to the way the current individual cost programs are run and can include direct funding to individuals.

The key to the success of such programs is employment counsellors with expertise to provide assessments and vocational and other counselling and to do job placements.

The advantage of the individualized approach is that the client is supported in whatever is the best fit of programs and services according to the interests of the client - whether it be HR centres, apprenticeship training, post secondary education, private tutoring, work adjustment, etc. It is one of the best mechanisms to help individuals to access mainstream services and obtain employment.

VRDP has traditionally cost shared in the provision of services and processes of "restoration", defined in the VRDP Agreement as "remedial or restorative treatment and related services to alleviate, reduce or remove a handicapping condition". Indeed much has been provided to people with disabilities by way of wheelchairs, crutches, braces, artificial limbs, medical assessments, home and vehicle modifications, etc. For many years, VRDP cost shared services were the only government source for many people. But it remains highly selective in that only those who are proceeding to employment are eligible, and only for a short time in their lives. With the advent of universal health coverage, there was no longer the need for VRDP support for many services. More recently, governments are in varying stages of developing such programs as assistive devices, residential modifications, etc. on a more universal basis, thus reducing the demand for VRDP to serve in this capacity. On the other hand, provinces have been reluctant to develop the broader programs where they might lose cost sharing for VRDP eligible clients. This concern was addressed in a recent revision to the VRDP Agreement.

Purchase of technologies to facilitate accommodations in mainstream programs on behalf of individual clients is also an issue. Such provisions are generally not currently VRDP cost shareable. The argument is that they should not be purchased from a

targeted fund, otherwise mainstream programs will not as readily see fit to assume a responsibility to do so.

7.3.6 Job Creation

The central role of employers in hiring, training, work place accommodations and prevention activities makes them essential partners for government and for potential and current employees with disabilities.

Wage policies in this country are generally determined for the general population by the labour market authorities. There has been a history of differential minimum wages for various groups, e.g. women and children, farmers. The trend is away from differential minimum wages.

For persons with disabilities, the tradition has been to exempt employers from paying minimum wage to individuals with disabilities or to groups as in the case of sheltered workshops, who have a low productive capacity due to disability. This approach is no longer acceptable to people with disabilities. Such provisions have also been challenged under the Charter of Rights and Freedoms.

Wage subsidies are a way of creating job openings for people with disabilities by reimbursing employers for their time and costs associated with special training and supervision, and other accommodations. They are also designed to compensate employers for lower (initial) productivity on the part of the new employee. The general expectation is that the employer will retain the employee at the end of the subsidy period on a full wage basis, or the employee will be ready for full employment with another employer. This mechanism to date has not been designed for those who cannot be expected to be fully productive. Wage subsidies are also a means of enhancing the competitive power of persons with disabilities through work training and work familiarization, as is done with the current training on the job wage subsidy provision of VRDP.

Self employment can be a viable approach for those with disabilities who either prefer to work at home or set up their own business. Access to mainstream assistance available to the general population for persons with disabilities to conduct their own business is needed if they are to have better opportunities to become self employed or develop their own businesses.

7.3.7 Income Support/Replacement Programs

There is a growing imbalance between expenditures on active and passive measures i.e., money spent on services directed to the involvement of persons with disabilities in the work force versus money spent on disability related income support or replacement programs. A substantial proportion of persons on disability income support or replacement programs are motivated for training or work but cannot risk losing the security of income due primarily to the extra costs of disability, the inflexible disability criteria for eligibility, and the often uncertain nature of their working capacity. More flexibility and coordination is needed between income support and replacement programs and vocational rehabilitation and employment strategies.

Any proposal for VRDP will have to take into account the relationship with income support and replacement programs.

7.3.8 Accountability

One of the key statements of the 1983 ILO Convention on Vocational Rehabilitation and Employment (Disabled Persons) is that "measures applicable to the general population [are] to be applied equally to persons with disabilities, e.g. the need to make use of existing vocational guidance, vocational training, placement, employment and related services for workers generally, with any necessary adaptations for persons with disabilities". Any proposal for the future of VRDP should include this precept as a guideline for implementing or funding programs.

It follows that rules and regulations for eligibility and for choices of individuals should be no more rigorous than those for the general population. One of the criticisms of some of the provincial programs cost shared under VRDP is that clients have to "go through hoops" to obtain approvals for training, education and employment, far beyond what anyone else has to do. Choices must be equally available to persons with disabilities as to the general population.

Measurements of outcomes also need to be applied on the same basis as for the general population. For example, one program was once evaluated in terms of percentage of clients who found employment. The rate was about 30% and this was deemed to be deficient until the question was asked "In comparison to what?" At the time, the national rate of obtaining employment from national employment centres was about 17%.

With a shift of responsibility to mainstream programs, there should also be a shift in accountability. Outcome measures in terms of success in obtaining employment or economic productivity of individuals with disabilities would then be those applied in

mainstream programs, taking into account whether or not the necessary program adaptations were made.

8.0 THE WAY TO THE FUTURE

The following four proposals were initially considered in terms of options for the use of VRDP funds. Consultation and feedback indicated that these could not be options. They are not either/or proposals but rather basic components of a national effort to achieve the labour market integration of people with disabilities. All are equally part of the way to the future.

The first three proposals reflect the major policy approaches of enhancing employability, job creation, and equal access respectively and must go hand in hand. The fourth proposal provides the infrastructure for the creative development and continuing effectiveness of the first three proposals.

The first proposal deals at length with VRDP. The second and third proposals -- job creation measures and measures to achieve equal access -- must also be in place if we are to effect any significant improvement in the employment status of people with disabilities. These latter two types of measures will be dealt with at greater length in other papers on labour market integration.

8.1 REFOCUS AND UPDATE VRDP

This proposal is basically a shift in focus of the current VRDP from a prevocational and rehabilitation emphasis to the employment end of the spectrum. It would use the existing VRDP fund with enhancement.

An updated VRDP would include skill training and placement in or return to employment, and supports to people to retain and advance in employment, including self employment. The primary objective would be integration of people with disabilities into mainstream labour market activities.

Program features of a new VRDP:

- Targeting those not covered under other vocational rehabilitation and employment programs. This would direct efforts to those not attached to the labour force and/or not covered through other vocational rehabilitation and employment measures such as those of private insurance, WCB, CPP, EI, and employer disability management. Those people with disabilities benefitting would consist primarily of those with little or no attachment to the labour force and those with severe or multiple disabilities.

- Special recognition and emphasis on provisions for measures that redress some of the particular employment disadvantages faced by women with disabilities
- Continued and enhanced funding of supported employment programs with unlimited time but with requirements that individuals be in a true employment situation, to include all disabilities, and to be in partnership with employers
- Individualized access programs to assist people with disabilities into mainstream training and ongoing employment, to include disability-related aids and devices and other supports which are portable with the individual
- Specialized training for those involved in delivery of programs to include knowledge of different disabilities, problems people with disabilities will encounter in the work force in different kinds of jobs, what solutions are available to solve these problems, as well as employment counselling skills and knowledge of the world of work
- New accountability features that describe outcomes in terms of integration into mainstream training, education and labour market activities.
- A mechanism to share information on policy and program development across provinces, perhaps a national council which includes the disability community, employers, service providers, etc., with a view to fostering similarity of programs across provinces.

The post secondary education aspect of the current VRDP would be mainstreamed, perhaps integrated into HRDC's Youth Strategy. A separate mechanism would be established that consolidates federal post secondary grants to individuals and the current VRDP dollars directed to individuals for post secondary education, to include support for graduate studies, to be administered by federal and provincial education authorities and involve the Council of Ministers of Education. Guidance counsellors and others in colleges, universities, and technical institutes with expertise in disability issues and accommodations should be covered with additional funds.

The federal government would withdraw its cost sharing contribution to provincial prevocational or rehabilitation type programs such as components of sheltered workshops, mental health and alcohol and drug programs, and programs of other agencies that are not specifically linked with mainstream training, education or employment activities. This is not meant to imply that these programs are not essential for people with disabilities. They are. But consideration of federal involvement in these and other disability-related programs and services should be shifted to a jurisdiction other than one which focuses on employment.

For the remaining programs, a block transfer to provinces on a major program basis (by major program area such as supported employment) would replace the current cost sharing mechanism. Agreements that totally replace the existing VRDP Agreement would be developed for a three year period that are no less restrictive than the proposed labour market agreements. Conditions of the transfer would have to be negotiated with the provinces. Ongoing agreements would, in line with the labour market agreements, depend on the results achieved. The VRDP Act itself could be used without change.

The timing would probably involve much longer than the proposed one year extension of the VRDP agreement would allow. An interim measure prior to formalization of new agreements will likely be needed.

Provinces will need assurance of continued funding on an equitable formula basis. It is likely that they will not be willing to discuss programmatic issues until funding issues are resolved.

At least \$200 million will be needed to effect this option initially. A "fair share" proportion of labour market authorities' dollars should be diverted over time to allow for increases in funding of this program where warranted.

The overall fiscal impact will be positive. The expansion of eligibility to include ongoing support for people with disabilities in employment should be offset by reducing eligibility for those covered by other programs. Improving opportunities for economic productivity of people with disabilities will lead to enhancement of their contributions to the economy as consumers and tax payers and will reduce the costs of income support programs.

This proposal is consistent with the program directions that provinces are moving in. It would satisfy their requirement that funding continue in a more flexible, responsive manner and with cross provincial comparability.

This proposal will also be of interest to the disability community but some nervousness will remain about what provinces will do about the programs where the federal contribution has been withdrawn.

People with disabilities and their organizations will support the development of federal benchmarks which encourage some sort of national consistency in provincial programming. Some provinces may be more interested in provincial autonomy.

8.2 JOB CREATION

Active employment measures are available for those eligible for EI only, whether they will be delivered by the federal government or provinces. This means that those people with disabilities who do not have a significant attachment to the labour force are excluded.

This proposal entails establishing a separate fund by using the \$45 million targeted to people with disabilities in the previous Canada Jobs Strategy to run a parallel and equal system of active employment measures for people with disabilities not eligible for EI.

Measures would include wage subsidies, income supplements, support for self-employment, partnerships for job creation, and skills loans and grants, provided on the same basis as for the EI measures but adapted to disability.

The administration and the process and timing would go in tandem with the current offer of the federal government to provinces regarding active employment measures and would involve agreements similar to the proposed labour market agreements.

There will be many people with disabilities who will qualify in their own right as EI eligible for active employment measures who will need a disability focus. There would need to be some cross over of disability expertise and bridging between the mainstream active employment measures and this proposal.

The longer term direction is to gradually move non-EI eligible people into the EI eligible stream by effecting their attachment to the work force in order to qualify and by incrementally consolidating programs.

8.3 EQUALIZING OPPORTUNITIES

A person with a disability is handicapped in terms of employment as much by social and environmental barriers as by a lack of working ability. Social and environmental adjustments are needed to provide equality of opportunity and treatment in respect of access to, retention of, and advancement in employment.

The proposal is to develop a federal capacity to provide expert information and knowledge on measures and initiatives to assist employers, educators, trainers, people with disabilities, and service providers to address the barriers to education, training, and employment that face people with disabilities every day.

This would be regarded as a core business of HRDC and funds should come from the Consolidated Revenue Fund (CRF) accordingly. It is not intended that the federal government pay for the costs of accommodations and technologies in the work place or in training and education facilities, except where they themselves are employers or operate labour market type programs.

Knowledge is needed by employers so that they can address systemic discrimination, for example, in the way jobs are advertised, the way interviews are conducted; on how to make the work place accessible and dispelling the perception that accessibility is costly; on arranging for personal supports on the job - sign interpreters, attendant care, day care services; on such accommodations as restructuring work, part time work, re-assignment of duties, and training; and on locating people with disabilities to recruit.

Knowledge is equally needed by potential and current employees with disabilities on what their rights are, what accommodations mean, and how to approach employers for accommodations.

Similarly, education and training should be delivered in a way which recognizes and accommodates the specific needs of students with disabilities. A variety of special arrangements are needed, for example, flexible policies such as an extension of the length of time one can attend courses, or an extension of the age limit for youth programs.

Human Resources Development already provides funds related to the Job Accommodation Network (JAN) located in the U.S. which provides information on job accommodations based on the actual experience of employers. This program could be Canadianized and its Canadian data base expanded as part of this initiative.

HRDC also has some experience in developing expertise in this area. The Outreach projects formerly funded through the Canada Jobs Strategy are considered by the community of people with disabilities to be very effective (and with small dollars) in the area of finding jobs for people. The employment-related expertise acquired by these programs is regarded as being far greater than that of provincial social services programs cost shared under VRDP. And these projects have played a significant role in educating employers. The limitation is that they do not exist in any significant numbers across the country.

A national and various regional disability and training and employment accommodation centres could be developed, building on the strengths of the existing outreach programs and adding others proportionately across the country (or at least in major urban centres). These centres would provide a broad range of information, technical assistance, and training on employment and other accommodations, to employers,

people with disabilities and training and educational facilities, and would continue to place into employment people with disabilities who required specialized expertise.

A similar initiative has been developed in the U.S. with federal funding. Regional Disability and Business Accommodation Centers (RDBACs) have been established to provide a broad range of information, technical assistance, and training on the *Americans with Disabilities Act* (ADA) to employers, people with disabilities and others that would facilitate the effective implementation of the ADA, successful employment outcomes for individuals with disabilities, and greater accessibility in public accommodations.

This would be a federal-only initiative which has the potential to create significant social change and greatly improve opportunities for the labour market integration of people with disabilities. Such an initiative will be well received by all sectors as it will only serve to enhance and make easier the work of others.

8.4 NATIONAL DISABILITY AND EMPLOYMENT FUND

This proposal would establish a substantial research and development fund to focus on a short term strategic investment leading to longer term measures to integrate all people with disabilities into mainstream training, education, and employment activities.

This would not be a shot gun approach but rather a methodical means of focussing on projects that improve competitiveness and that demonstrate possibilities and opportunities. It would be a foundation for ongoing improvements in the three policy areas discussed in the first three proposals -- employability enhancement, job creation and equalization of opportunities. The goal would be two pronged -- to increase the number of people with disabilities participating in employment, and to find ways and demonstrate how people with severe or multiple disabilities are able to work.

It could start on April 1, 1997 as a cost matching fund -- one third available to provinces (who could use their currently allocated dollars if the project met requirements), one third to employers, and one third to the disability community, with encouragement for these and other sectors to act in partnership.

There are some amazing examples of individuals with severe or multiple disabilities who are able to participate economically in the labour market. Unfortunately these situations remain anecdotal and the expertise associated with setting up favourable conditions to achieve labour market integration in these instances is not available to others.

There would be many issues to be addressed by such a proposal. One In particular would be the relationship of employment and income support/replacement programs. One of the concerns of the community of people with disabilities is the notion of employability. One usually has to be deemed unemployable to be eligible for income support or replacement programs. But people with severe disabilities often need a measure of ongoing income security before they can risk attempting remunerative employment.

THEME IV - INCOME SUPPORT

Research Paper 7.

The Disability Income System in Canada: Options for Reform

Sherri Torjman

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RESEARCH PAPER 7

**THE DISABILITY INCOME SYSTEM IN
CANADA:
OPTIONS FOR REFORM**

**Sherri Torjman
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Executive Summary

The purpose of this report is to identify and analyze the range of possible options for reforming the disability income system in Canada. The paper does not present extensive details on the mechanics of existing programs or the various design options. Rather, it provides a 'broad brush' sweep of possible reforms and assesses their potential impact.

Before examining specific options for reform, it is proposed that the Task Force on Disability Issues set out a vision and a course for long-term reform. The vision would identify the dimensions of what the ideal disability income system would look like five years from now and beyond. The Task Force should then identify the medium-term and short-term options that should be pursued in order to reach that long-term goal. Short-term changes made in the absence of a broader context simply may shift caseloads and costs from one jurisdiction to another.

The proposed short-, medium- and long-term reforms have been categorized along two dimensions: by program purpose and by time frame. The time frame was determined by the length of time required to effect the proposed change, complexity of administration and implementation, and financing implications in terms of both cost and source of revenue. Each option is described and then discussed from the perspective of federal-provincial dimensions, financing considerations, strengths and weaknesses. Issues related to accountability and to the impact on women are also included.

Most of the short-term options focus upon the Canada Pension Plan because of the current CPP reform. Any change that would affect fundamentally the nature or structure of the program requires provincial agreement under an amending formula. Under this stream of options, the disability benefit would remain in place with all the advantages it confers: coverage for all working Canadians including the self-employed (who are not covered by workers' compensation or Employment Insurance); no exclusions on the basis of former medical history or inordinately higher premiums for contributors deemed to be high risk; a benefit that ensures some measure of adequacy through its flat-rate component; full inflation protection; portability throughout the country; and guaranteed coverage until recovery from the disability or until retirement or death. (It should be noted that without the flat-rate component, beneficiaries would receive only a percentage of their earnings-related retirement benefit; the flat-rate component is intended to provide a measure of adequacy until beneficiaries become eligible for Old Age Security at age 65.) The CPP effectively represents a form of mainstreaming because it provides insurance in the event of disability *for*

all Canadians. While most Canadians will never require a disability benefit, it represents a crucial protection.

The short-term options for income support include the enhancement of the disability tax credit, the refundability of that credit and a welfare top-up. The latter would not be a reasonable option at this time but is included here because it was 'on the table' during the federal-provincial discussions on reforming the disability income system which took place in the early 1980s.

The medium-term options focus primarily upon the ways in which the CPP could be changed to encourage workforce participation and could be integrated more closely with other earnings replacement programs to reduce administrative duplication and costs. On the income support side, medium-term options include a low-income tax credit and enhanced welfare. Again, enhanced welfare would not be a reasonable option at this time but is discussed here because it was considered in the early 1980s.

The long-term options explore various ways to reconfigure the existing programs. The earnings replacement options include mandatory private insurance, universal accident insurance and comprehensive public insurance. National income-tested and means-tested programs comprise the income support options. The national income-tested option could be developed as an Integrated Disability Benefit modelled on the Integrated Child Benefit currently being considered by provincial Premiers.

The last section also explores two options which integrate the earnings replacement and income support functions. The first option is a comprehensive insurance and income-tested program. A guaranteed income that combines earnings replacement and income support is another possibility.

This paper does not examine labour market issues although it does consider how income programs can encourage training and workforce participation. Neither does the report explore in great depth the compensation of special needs - even though these represent major costs. The report focusses instead on ways to ensure an adequate and stable income for persons with disabilities. The costs arising from disability-related needs should be addressed in an associated system which helps offset these expenses through a combination of direct dollars (individualized funding), tax-related assistance and provision of services. In fact, it could be argued that measures which offset disability-related costs would have a positive effect on income for two reasons: 1) such measures would reduce the amounts that individuals must spend on these costs, and 2) these measures could help many people enter or re-enter the labour market.

In setting out both a long-term vision for reform as well as the specific options that move in that direction, the Task Force should bear in mind the concerns that have been raised by members of the disability community. The community is deeply worried that the federal government is relinquishing its role in protecting and promoting the full citizenship of persons with disabilities. Ottawa is seen to be failing to sustain leadership and responsibility for the well-being of people who traditionally have been segregated from the mainstream of Canadian life. Moreover, there appears to be a general failure to recognize the critical role that the federal government can play in certain areas - in terms of delivering or setting standards for national programs.

The disability community is also concerned that any reform process inadvertently might create a worse system than the one now in place, making it less adequate or less comprehensive. A new system could move towards a welfare base and away from an insurance base that provides coverage as a matter of right to those who have made the required contributions.

In short, the disability community wants to ensure that the Task Force proceeds very cautiously, especially around an issue like income security that is so fundamental to basic human needs. In fact, if there is any doubt about the potential impact of certain options, the Task Force is advised not to proceed in that direction - particularly if the net result might be a reduction, rather than an improvement, in income and overall well-being.

Introduction

This report has been prepared for the federal Task Force on Disability Issues. The purpose of this report is to identify and analyze the range of possible options for reforming the disability income system in Canada. The paper does not present extensive details on the mechanics of existing programs or the various design options. Rather, it provides a 'broad brush' sweep of possible reforms and assesses their potential impact.

While this report recognizes the intrinsic links between the income system, employment issues, tax questions and the reimbursement of special needs, it acknowledges that other streams of research have been set up by the Task Force to explore these areas. They are discussed as appropriate but, despite their relevance, do not constitute a primary focus.

Before examining specific options for reform, the Task Force is advised to consider some broader issues that pertain to the overall disability income system. These include the principles that underlie that system, the intended purpose of the income program under review and of the system more generally, eligibility, employability, delivery and financing. Each of these issues is discussed more fully below.

The first item on any agenda for reform should be to set out the long-term goal for reform. Within this statement of vision should be a clear articulation of the principles that will guide the discussion and a sense of what the reform seeks to achieve. Is its purpose to improve the adequacy of benefits paid under certain programs? Is it to ensure more extensive coverage of income security for persons with disabilities? Is it intended to 'rationalize' the system and minimize administrative duplication? Is its primary purpose to reduce the costs of specific programs or of the overall disability income system? The answers to these questions will help guide the selection of options for reform.

In exploring these issues, the Task Force should bear in mind the concerns that have been raised by members of the disability community about the underlying rationale for and process of reform. The disability community is deeply worried that the federal government is relinquishing its role in protecting and promoting the full citizenship of persons with disabilities. Ottawa is accused of failing to assume leadership and responsibility for the well-being of people who traditionally have been segregated from the mainstream of Canadian life. There is a sense that the current reform exercise has been undertaken to help the federal government find ways to relinquish protections for persons with disabilities rather than introduce improvements to certain programs or to the overall system of

supports and services.

The level of government that delivers a given program can make a difference to its quality. Federal delivery of income security programs, in particular, ensures *de facto* national standards in the form of adequacy (the federal government has the fiscal capacity to raise and distribute revenues to provide adequate benefits); comprehensiveness to ensure that all eligible Canadians are covered; equity in the treatment of people with similar needs; and portability of benefits throughout the country. The national system of public pensions illustrates the advantages of federal delivery.

The disability community is also fearful that any reform process inadvertently might create a worse system than the one now in place. A new system could move towards a welfare base and away from an insurance base that provides coverage to all who have made the required contributions.

While the current patchwork is fraught with inefficiencies, at least there are alternatives if problems arise in any given program. A person who is deemed ineligible by a single system which includes no alternatives will have nowhere else to go. Monopolies can be very dangerous structures - especially in the absence of adequate accountability and appeal mechanisms.

Even the removal of the disability benefit from the Canada Pension Plan into a new 'comprehensive' insurance might have the effect of marginalizing people with disabilities and moving them out of the mainstream. The net result of the reform effort may be segregation rather than improved well-being. The reform could move in precisely the opposite direction of earlier federal efforts which attempted to remove barriers to the 'mainstream' and to ensure that persons with disabilities are able to participate in Canadian society as full and equal citizens. (It could be argued, however, that a comprehensive insurance which provided a significant earnings-replacement benefit also represents a form of mainstreaming.)

In short, the disability community would want to ensure that the Task Force proceeds very cautiously and carefully in its work - especially around an issue like income security that is so fundamental to basic human needs. *In fact, persons with disabilities would caution the Task Force not to proceed at all - unless there is a clear understanding of the alternatives and their implications and unless it is certain that any changes actually will improve the income security of persons with disabilities.*

Principles for Reform

Participants at the Task Force Consultations throughout the country identified the need for federal leadership in protecting and promoting the full citizenship of persons with disabilities. This leadership includes the articulation and enforcement of national standards - especially for programs that comprise the income security system. At the Montreal Consultation, participants noted the need for national standards and enforceable conditions for income security programs: "*On a discuté de l'importance des normes nationales à travers le pays pour ce qui est de la sécurité du revenu et du besoin d'avoir des conditions attachées aux programmes de sécurité de revenu.*" Participants at the Vancouver Consultation were particularly concerned about the devolution of powers to the provinces as a result of the replacement of the Canada Assistance Plan by the Canada Health and Social Transfer. But national standards need not be set by the federal government alone. The Winnipeg Consultation proposed the possibility of pan-Canadian standards that would be set by the federal government in conjunction with the provinces.

It should be noted that the Caledon Institute has made a distinction between national standards and principles [Torjman and Battle 1995: 2]. Caledon has argued that objectives refer to overall goals. Principles act as the guides with respect to how these goals should be sought. Conditions spell out explicit requirements for the receipt of funds. Standards set benchmarks by which to judge the adequacy of certain programs. Best practices represent exemplary models. The following discussion considers the *principles* that should guide the reform of the disability income system. Ideally, conditions and standards would then be developed.

Mainstreaming is an overarching principle of reform in any discussion of disability. People with disabilities should have access to all public programs and to the same goods and services as other Canadians. Any reform that is being considered should be assessed against this principle - i.e., whether the change moves persons with disabilities closer into the mainstream of society or segregates them even further to the sidelines.

Moreover, all reforms with respect to programs and services pertaining to persons with disabilities should be structured to *support and enhance* their *potential* to the greatest extent possible. The problem is that the receipt of disability-related supports and services is often tied to the receipt of a given income benefit; this link acts as a serious disincentive to moving off the income program.

With respect to income security reform, in particular, *entitlement* is a key underlying principle. Participants at the Winnipeg Consultation stated that income security is an inherent right or entitlement of Canadian citizenship. Income security is a fundamental right because it is a prerequisite to the satisfaction of basic living needs. National citizenship implies federal involvement in ensuring and protecting this right.

Comprehensiveness is another key principle. This means that the overall system of income security should provide at least some degree of protection to all persons with disabilities. Many people with disabilities are excluded from various programs because they do not qualify on the basis of definition or contributory requirements. There is little protection for non-earners with the exception of provincial welfare assistance, the legal system and private insurance. A Joint Federal-Provincial Task Force established by the federal and provincial Ministers of Social Services in 1982 to examine disability income reform built its recommendations on the 'no distinction' principle. This principle assured income protection to Canadians from the effects of disability regardless of where, how or why it had occurred [Federal-Provincial Task Force 1983: 2].

The British Columbia Division of the Canadian Mental Health Association (CMHA) includes comprehensiveness in its set of pan-Canadian standards for disability benefits and insurance [Working Group 1996]. The CMHA defines comprehensiveness as a principle which ensures the inclusion of people with temporary or episodic disabilities; no discrimination against frequent users of Employment Insurance with episodic disabilities such as mental illness; and access to income assistance not contingent on mandatory participation in training.

The related principle of *accessibility* assures the transparency of the income security system. Participants at the St. John's Consultation pointed to the need for federal involvement in "empowering persons with disabilities to access what is available to all Canadians and making aid available through the federal government accessible to persons with disabilities."

Adequacy is another principle that should underlie the disability income system. Adequacy refers to a fair and reasonable level of income support. The CMHA defines adequacy as a level of income sufficient to ensure a modest, comfortable standard of living, comparable to that provided by elderly benefits (i.e., Old Age Security and the Guaranteed Income Supplement), which would be indexed to the cost of living. Adequacy can be understood in both nominal and real terms.

'Nominal' adequacy refers to the actual level of a benefit; 'real' adequacy refers to its value in relation to the cost of living. With respect to the latter, some

programs within the disability income system are indexed on a regular basis - e.g., CPP benefits are pegged to changes in the Consumer Price Index (CPI). Welfare, by contrast, is not tied to any benchmarks - wages or CPI. In fact, most changes to welfare in recent years have resulted in reductions, rather than improvements, to the program.

The fact that most Canadians with disabilities are poor speaks volumes about the adequacy of the current system. Persons with disabilities are concentrated at the bottom end of the income scale. Close to 60 percent have incomes that fall below Statistic's Canada's low income cut-offs [Canada 1994: 4]. An estimated 26 percent of adults with disabilities (defined by Statistics Canada as those between the ages of 15 and 64) have incomes of less than \$5,000; 17 percent fall between \$5,000 and \$9,999; 11 percent between \$10,000 and \$14,999; nine percent between \$15,000 and \$19,999; eight percent between \$20,000 and \$24,999; seven percent between \$25,000 and \$29,999; and 22 percent have \$30,000 or more [Canada 1994: 52]. Despite the range of programs, there is ample evidence that the 'system' is failing many people with disabilities.

Equity is another key principle. Horizontal equity refers to the similar treatment of people in like circumstances. Right now, certain programs within the disability income system pay benefits on the basis of how and why the disability occurred. The type and level of benefits vary widely despite the fact that the consequences of the disability - the limitations in functional ability or work capacity - may be the same.

Equity implies the provision of a basic income to all who require it and the application of the same eligibility rules across the board. But equity does not necessarily mean that everyone gets treated the same way. In fact, this type of treatment could be harmful for persons with disabilities if there were no flexibility in the system. In ensuring equity, it is important to bear in mind that programs should also be *responsive*, to the greatest extent possible, to individual needs. The Charlottetown Consultation raised the need for income programs to be flexible and to recognize individuality.

Support for independent living means that income programs should encourage and promote efforts towards independence, choice and control. The CMHA points to the need for the disability income system to *promote independence and integration* by removing workplace and educational barriers through various forms of accommodation. There are, however, some serious caveats which are discussed more fully under 'employability.' The right to a basic income should never be jeopardized by the pressure to move people towards 'independence.'

Accountability involves the presence of appeal mechanisms and representation by people with disabilities in planning and evaluation. Accountability should begin at the earliest stages of application; persons with disabilities should be informed about the various programs to which they may be entitled, how the application process works (information about the application process should be available in alternate formats), and how disputes are reviewed and appealed. Participants at the Regina Consultation spoke about the need to involve consumers in decision-making and proposed that some form of regional consumer/ medical committees help determine eligibility and levels of need.

Efficiency refers to the proportion of dollars going into the system (as tax dollars, premiums, contributions or co-payments) that come back as compensation [Beatty 1991: 133]. Part of the drive to reduce excessive administration has to do not only with reducing costs but, equally important, with ensuring that as much of the money as possible going into the system is paid out in the form of benefits, not as administrative costs.

Many of the options discussed below - especially the medium- and long-term reforms - would reduce unnecessary administrative duplication, thereby streamlining the system and lowering excessive administrative expenditure. Cost reduction through other means, such as benefit reductions, is not a primary focus of this paper as it would have a serious negative impact upon the well-being of persons with disabilities.

Purpose of Program

Disability income programs can serve several different purposes: earnings replacement; income support; compensation for loss, pain and suffering; and compensation for disability-related costs. In considering the reform of a given program as well as the entire system, it is important to be clear about the intended purpose of the assistance.

One set of programs within the disability income system *replaces lost earnings*. These programs are intended for people who are or have been employed. Their earnings were interrupted because of an injury, accident, illness or disability-related condition. These programs include workers' compensation, Employment Insurance, the Canada/ Quebec Pension Plan and private disability insurance.

A second set of programs within the broader system provides *income support*. These programs are directed towards people with no earnings or whose earnings are so low that their earnings replacement benefits require

supplementation. Provincially-run welfare is the primary program of income support.

Income support programs can also provide *compensation for loss*. This compensation is paid in order to recognize the pain, suffering and loss associated with a disabling injury or accident. Workers' compensation, for example, takes into account in the calculation of benefits the earnings loss arising from a work-related accident or injury. Private insurance may also provide compensation for pain and suffering.

Finally, some programs within the disability income system pay additional benefits to *offset disability-related costs*. Most provincial welfare programs provide higher benefits to persons with disabilities in respect of the fact that they tend to incur higher costs.

This paper focusses primarily upon the earnings replacement and income support options. It incorporates the issues of compensation and disability-related costs within the discussion but does not focus primarily upon these objectives.

Determining the intended purpose of a given program is critical because it helps identify other features of the program, such as eligibility and level of benefit. For example, an earnings replacement scheme is intended for workers who have made the required contributions to the plan. Benefits for earnings replacement programs, such as the Canada Pension Plan, are determined as a percentage of earnings. The adequacy of the payment depends in part upon the level of earnings prior to disablement. This type of benefit is sometimes referred to as a 'relative benefit'; it is paid on the basis of a relative standard in which the benefit is equivalent to a percentage of lost earnings.

The benefit level is always a key issue in earnings replacement programs. The concern lies in ensuring that the benefit is not more attractive than paid work. "There is a conviction among employers' organizations that rates of compensation equivalent to 100 percent of lost earnings would create a disincentive to return to work" [Ison 1994: 18].

A related issue pertains to whether the benefit is intended to replace current or future income. Other design questions include the basis for the earnings calculation - the career average, the career period with or without a drop-out provision or the final career period in which benefits generally are higher. Final insured earnings refer to a benefit formula in which the earnings taken into account are those in the pay period (usually a year) just prior to the onset of the disability.

Beatty points out the problems inherent in earnings replacement systems.

Typically, the level of pre-disability earnings used for the calculation of benefits is based on a formula. The formula does not distinguish between the promising employee with a lifetime of promotions and advancement ahead and the employee about to be dismissed for incompetence. The linkage between the earnings history and benefits entitlement is subject to many arbitrary rules and distinctions. There is no inherent reason why the wage loss of someone who is permanently disabled at age 22, for example, should be a ceiling for his or her income forever" [Beatty 1991: 114].

Decisions must also be made regarding the base for determining pension benefits once an individual reaches age 65. The disability/retirement interface is important to consider in order to ensure that the earnings level upon which retirement benefits are calculated represents an adequate base. Under the current system, CPP disability beneficiaries continue to receive benefits until recovery from the disability, until age 65 as long as they meet the disability definition or until death. At age 65, the disability benefit is converted to a retirement benefit. The latter is based on average wages at the time the beneficiary turns 65 and is thus wage indexed for the period of disability. This issue is considered more fully under short-term options (CPP disability/retirement interface).

In contrast to earnings replacement programs, income support programs are intended for persons who have not been employed or have not made sufficient contributions to qualify for earnings replacement programs. Benefit levels for income support are therefore determined not in relation to former earnings but according to some other standard. This type of benefit is fixed on the basis of an 'absolute standard' which is unrelated to past earnings. An absolute standard can be based on several criteria including basic needs, costs, comparability to programs for the elderly or relationship to the average or minimum wage [Federal-Provincial Task Force 1983: 36].

For example, earlier studies of disability income reform used as a benchmark the basic guarantee provided through Old Age Security/Guaranteed Income Supplement programs [Federal-Provincial Task Force 1985; Ontario 1988]. However, it should be noted that the combined maximum OAS/GIS (\$10,425 in 1996) falls well below the poverty level for a major metropolitan area (\$17,127).

In addition to benefit levels, a question that must be resolved is whether disability income programs - be they earnings replacement or income support programs - should take into account only the costs of basic living or whether they should also make allowance for special disability-related needs. It is difficult to assess the adequacy of income programs without considering whether or the

extent to which they make provision for special needs. There are essentially two major kinds of special needs: one-time needs and ongoing needs.

One-time or emergency special needs include the costs of fire or flood in the home, funeral or theft. Periodic or ongoing needs are related to the presence of a health-related or disabling condition. These needs may take the form of special goods including drugs and medications; prosthetic equipment; wheelchairs and other aids for mobility; aids for persons with visual disabilities and communications devices for persons with speech and hearing impairments; reading and writing aids and adaptive equipment to activate computers; prosthetic and orthotic equipment; and respiratory equipment.

Special needs may also take the form of required services, such as homemaker assistance or attendant services. The latter provide assistance with the activities of daily living including feeding, dressing, personal hygiene, bathing, grooming and transferring (e.g., from a wheelchair into the bathtub). Homemaker services help with daily tasks such as home maintenance and cleaning, laundry, ironing, meal preparation, budgeting, shopping and banking. Respite care involves time to relieve caregivers in case of holidays or emergencies.

One possible approach is to provide a larger base benefit which is expected to cover the costs of many 'less obvious' special needs. Alternatively, an income protection program could provide disability-related expenses on an itemized basis. But while some costs are more difficult or impossible to itemize, they nonetheless represent disability-related expenses. There may be a need to recognize these costs on both a flat-rate and itemized basis.

There is merit to separating out these costs so that basic needs are taken care of through a generic approach that suits all (assuming that most people's basic needs are relatively similar). Special needs can then be addressed through an individualized approach that allows considerable variation according to specific requirements. Participants at the Montreal Consultation spoke about the need to separate compensation for special needs from income security programs (*"l'importance de séparer la compensation des besoins spéciaux des programmes de sécurité du revenu"*).

Despite the fact that this paper does not focus specifically upon special needs, the Charlottetown Consultation pointed out that supports and services for special needs are often tied to the receipt of certain income benefits. The loss of associated supports can act as a major disincentive to moving off a given program of income support - clearly a problem that must be addressed.

Eligibility

Eligibility for benefits is another key issue. This paper focusses upon benefits for persons between the ages of 18 and 64. It is assumed that persons younger than age 18 live with parents or families. Canadians age 65 and older are entitled to elderly benefits and may also be eligible for a private pension. It is the age group between the 'young' and the 'old' with which this paper is concerned.

That having been said, the question of age raises a host of related issues because of the links between disability and age - i.e., the incidence of disability rises with age. If, for example, there were to be a serious focus on employability (discussed below), it would be essential to consider the best use of resources. It could be argued that training and employment enhancement programs should be directed primarily towards younger persons with disabilities; older persons with disabilities (e.g., those 55 and over), by contrast, should be eligible for full income support. This latter group would have access to training if desired and available.

However, older persons with disabilities who have never had appropriate training, education and employment experiences in the past will often have a difficult time integrating into the workforce. Employment opportunities for this group may be limited (or realistically may not exist at all) [Beatty 1992: 12]. Because of the range of work-related barriers they face, their income would be guaranteed and linked only to work effort where feasible.

Moreover, this paper focusses upon disability income for adults with disabilities who live either alone, with partners or as heads of families. It does not explore various options for survivors' benefits. There are a range of factors relevant to this specific issue; the first challenge is to ensure the presence of an adequate disability income system - a complex task in itself.

Eligibility criteria depend to a large extent upon the purpose for which the benefit is paid. In the event that a benefit is intended to provide protection from loss of earnings capacity as a result of disablement, it makes sense to deliver the benefit in the form of an insurance and to ensure coverage to workers who have made the required contributions. But this eligibility criterion does not answer the question of the type of disability that would qualify - yet another difficult issue.

Conversely, the benefit may be intended to provide income support to any person with a disability who lacks enough money to live. In this case, the work status of the person is irrelevant - what matters is the presence of disability. Again, the key question is one of definition.

There are several ways to define disability. First, applicants may qualify on the basis of a particular condition or disease. There are problems with this approach, including the fact that not all persons with a given condition are unable to work or to carry out the basic activities of daily living. The ability to work may be more a function of a person's skills or abilities rather than physical or mental condition. Another factor is that a person may be at a certain stage of developing a condition (i.e., multiple sclerosis) and may be perfectly able to function independently or continue working - albeit at a different pace.

Disability is a far more complex phenomenon than a simple physical state. It includes mental conditions, stress-related conditions and musculoskeletal disorders, the symptoms of which are not verifiable in a urine sample, blood test or x-ray. The medical model, which is generally used to determine eligibility for disability-related programs, is far too narrow and limited a framework; it leaves out many people with conditions that preclude them from working or at least from performing the job for which they were trained. A broader definition of disability reflects more accurately the complexity of disabling conditions (although it clearly has caseload and cost implications).

The second way of determining disability is to identify impairment to designated activities of daily living. The disability tax credit operates in this way. It makes payments in respect of individuals with an impairment severe enough to markedly restrict the ability to perform one or more basic activities of daily living all or almost all of the time. What is important is not the diagnosis or condition but rather how that condition affects a person's ability to perform one or more of these activities. The use of functional ability focusses upon the *consequence*, not the *cause*, of disability.

But the presence of a disability does not affect everyone the same way and to the same extent. "Disabilities run the range from relatively mild to profound. Their consequences may be very different. Some disabilities affect physical functioning, stamina, cognition, memory; many affect the person in a combination of these and other ways. Some disabilities can be accommodated easily in the workplace, home and elsewhere, while others cannot. The effect of a disability on an individual's life, and that of his or her family, often includes many intangible social and psychological obstacles which are not easily capturable in an inventory of the person's functional limitations" [Beatty 1991: 118].

Another way to determine eligibility is to identify limits to workforce participation. A person may be able to continue working but at a different pace or with some assistance in the form of work-related or technical supports. Certain individuals may be able to carry out their own jobs on a sporadic basis while others require a different form of work. Still others may be unable to work at all. Determining eligibility on the basis of workforce participation links closely to the

issue of employability. -

Employability

A major issue to be addressed is the extent to which any given income program should incorporate expectations with respect to workforce participation. This is an important consideration in that it will determine whether a training component should be built into the program and whether or not the benefit design will take earnings into account.

Current programs vary widely with respect to their employability expectations and associated training efforts. Workers' compensation has a built-in active rehabilitation component. Most welfare programs, by contrast, require persons with disabilities to be unemployed on a long-term basis - in some cases, 'unemployable.'

Similarly, the CPP requires that a person be out of the workforce entirely and be incapable of performing any work that would provide sufficient income for basic support. Most people with disabilities are capable of some form of work; the problem is that the CPP does not recognize varying degrees of capacity.

It would appear that these expectations regarding employability - or unemployability - are somewhat dated. Over the past two decades, social attitudes towards disability have undergone a profound change. "It has been recognized more and more that persons with disabilities can work, especially if accommodation is made to their special needs through provision of an adapted workplace or special equipment through specialized training and through restructuring of job descriptions. ... But disability compensation programs have not all kept up with this changing perspective" [Beatty 1991: 125].

Moreover, there have been significant scientific, medical and technological advances since the introduction of the CPP in 1966. These advances mean that it is inappropriate - even incorrect - to equate disability with unemployability. The recent federal Social Security Review heard in its consultations that many more people with disabilities would like to work if they had the opportunity, tools and appropriate supports [Canada 1994: 4].

In fact, more than half (56 percent) of people with disabilities are in the workforce, either employed (48 percent) or actively seeking work (eight percent). But women with disabilities are at a particular disadvantage *vis-à-vis* the labour market. Even with education levels comparable to those of men, such women are not well represented in the labour force. The employment rate for women with disabilities is 40.7 percent, about two-thirds of the rate for non-disabled women

and about 15 percent less than for men with disabilities [Canada 1994: 4].

On the one hand, it would appear that there should be a strong work component in all programs. A study on disability income reform prepared by a Federal-Provincial Task Force stated that "rehabilitation should be an integral component of a disability protection program" [Federal-Provincial Task Force 1985: v]. The Task Force recommended a strong focus on vocational rehabilitation to enable a person to secure, retain and advance in suitable employment. In other words, most individuals should be considered employable to some degree. The nature and type of disability should not be used as the basis to make judgments about work capacity - e.g., it should not be assumed that someone with a specific condition, such as cerebral palsy, cannot work or perform a certain job.

It should be noted that in April 1990, the CPP approved a limited pilot project to examine the feasibility of the rehabilitation provisions of the disability benefit. In 1991, this project was integrated with the National Strategy on the Integration of Persons with Disabilities as a five-year interdepartmental initiative to promote the independence of Canadians with disabilities. The project will remain active another year although it ended officially in March 1996. Its purpose is to identify suitable CPP beneficiaries and provide the necessary vocational rehabilitation services to allow these individuals to return to remunerative employment. The assessment and rehabilitation plan are determined on an individualized basis with the approval of the client. Benefits continue to be paid during rehabilitation; they also continue to be paid upon completion of the program to allow for a three-month job search.

Effective August 1995, the Department of Human Resources Development put in place several additional measures to encourage self-reliance and participation. CPP disability beneficiaries who return to work will have their benefits extended for three months to assess their capacity to remain at work. Recipients are not generally considered to be gainfully employed until they have returned to work for three months and unless their annual earnings are greater than \$8,850 (i.e., 25 percent of the Year's Maximum Pensionable Earnings or \$35,400 in 1996). They can have their work skills tested without fear of immediate benefit loss. CPP beneficiaries will continue to receive benefits while attending school or university to help them acquire other skills. Those with recurring or degenerative disabilities will have their benefits reinstated on a fast-track basis if the disability recurs. In order to promote the development of useful skills and reduce isolation, engaging in volunteer activities will no longer trigger an automatic reassessment.

A strong caution is in order at this point. While it may be appropriate to build employability expectations into programs of income support, it cannot be assumed that all individuals are able to work unless the appropriate work-related aids and personal supports are available. The lack of work-related and personal supports is a major obstacle to labour market integration.

Moreover, workforce participation may be an unrealistic expectation for many recipients of disability income, given the high rate of unemployment in the country. With a national average unemployment rate of 10 percent and even higher rates in some regions, jobs are at a premium. An individual who may have to perform the required work more slowly or who may need additional assistance in the form of work-related technical aids or personal supports is at a clear disadvantage in a high-unemployment labour market. It should come as no surprise, then, that workers with disabilities have a higher-than-average sensitivity to cyclical downswings; they are the first to be made redundant in times of economic downturn [Aarts and de Jong 1996: 9].

Negative attitudes and low expectations are another problem. Employers often see a person's disability rather than his or her capacity. "There are those members of socially disadvantaged groups, including many persons with disabilities, who would have been earners except for widespread patterns of systemic discrimination which have been documented so many times" [Beatty 1991: 113].

There are other inherent dangers in an approach which embodies employability expectations. Rehabilitation can become a *de facto* workfare program for people with disabilities - a "euphemism for enforced controls" [Ison 1994: 32]. There may not be sufficient rehabilitation or training opportunities for all those who would be potentially eligible for or interested in participating. "The rehabilitation services will be spread too thinly, counsellors will have large caseloads, there will be delays, needed accommodations will not be available quickly enough to allow persons with disabilities to take advantage of training, education and employment opportunities" [Beatty 1992: 13].

It would be entirely inappropriate to build a workfare-type expectation (i.e., no participation, no pay) in the disability income system. What is defined as suitable and available work could become a contentious issue if there are pressures to move people off programs of income support and back to the labour market as quickly as possible. Workers' compensation typically includes a strong 'rehabilitation obligation' which requires injured workers to participate in training or employment in order to receive continued support. Income program recipients would have to play an active role in determining the type and extent of work-related activity in which they become involved.

In short, employability expectations must bear in mind the profound barriers to employment: lack of work-related aids and devices, lack of personal supports, negative attitudes and high unemployment. Income support must always be assured in order to provide a secure base. Individuals then move into work-related opportunities where appropriate and available. Moreover, this support should continue or be reinstated in the event that the rehabilitation, training or job did not work out. Participants at the Vancouver Consultation stated clearly the need to ensure that benefits continued in case the work arrangement was unsuccessful. But while the CPP is striving to improve work incentives and provides income support during rehabilitation, training and job search, it cannot guarantee reinstatement if the jobs do not work out unless the person cannot continue because of disability.

Finally, income security reform should be undertaken in the context of a broader national employment strategy that includes accessible mainstream training and education; effective and enforced employment equity legislation; removal of physical, attitudinal and systemic barriers to employment; support for disability-related costs for working people; and reform of the direct grant and tax systems to achieve these objectives [CCD 1996: 8].

Delivery

Once there are clear expectations regarding the purpose of the income program, it is then possible to determine the most appropriate design for achieving these objectives. The delivery mechanism is very much a function of program objectives and design. Benefits can be delivered through insurance programs or through universal, income-tested, means-tested and needs-tested programs.

Social insurance programs provide income protection by pooling contributions against designated risks such as unemployment, retirement and accidents on the job. Benefits are paid if contributors or eligible workers fall victim to the risk from which protection is ensured. Employment Insurance, the Canada/Quebec Pension Plan and provincial workers' compensation plans - all employment-based programs - are the major social insurances in Canada.

Universal programs provide benefits to all households that meet certain criteria - such as old age or presence of children - regardless of income. Benefits are not affected by the receipt of assistance from other income programs. Family allowances and Old Age Security (OAS) used to be delivered on a universal basis prior to the introduction of the 'clawback' in 1989. There are no longer any federal income programs delivered on a universal basis.

Income-tested programs deliver benefits to individuals who qualify on the basis of income level. Those whose net incomes fall below a certain level called the 'threshold' receive the maximum benefit. Above the threshold, benefits decline relative to increases in income. The 'reduction rate' is the amount by which benefits are reduced as income rises. Benefits end entirely when net incomes exceed a designated amount known as the 'cut-off point.' Most income security programs in Canada are income-tested. The Child Tax Benefit and Guaranteed Income Supplement for seniors are examples of income-tested programs; both use a household rather than individual definition of income. (The Guaranteed Income Supplement and Old Age Security will be replaced in 2001 by an income-tested Seniors Benefit.)

Means-tested programs determine eligibility on the basis of income and assets. The original federal Old Age Pension introduced in 1927 (predecessor to the universal Old Age Security) was delivered on a means-tested basis.

Needs-tested programs take into account not only income and assets but also the extent of need. They generally require an elaborate administrative apparatus because they collect much more information to determine eligibility than income-tested programs. Provincial welfare is an example of a needs-tested program.

The options discussed in this paper employ these terms in considering the ways to deliver various forms of income support. The specific delivery mechanism, in turn, influences the most appropriate federal-provincial configuration and financing arrangement.

Financing

The current disability income system is often referred to as a 'patchwork' of uncoordinated programs. Eligibility and benefits are based more on cause of disability - how and why the disability occurred - rather than on degree of need. Two people with virtually the same functional capacity could receive very different types and levels of benefits depending on the origin of the disability. This patchwork is one of the major reasons for reform. Participants at the Regina Consultation pointed out that the existing patchwork of programs "results in a great deal of policing and virtual harassment, reviews and audits which put a terrific amount of unnecessary stress on people and lead to a lot of inconsistencies and a lot of expense."

Ironically, however, it could be argued that there is 'method to this madness.' As noted earlier, there are inherent dangers in monopoly arrangements - especially when there are no built-in forms of appeal or external review. Moreover, the fact that there is a range of different programs means that each is financed through different sources. Next to the issue of 'how much?', the question of 'who pays?' is a key determinant of reform. The diversity of funding bases helps reduce the cost 'burden' on any one source.

A question closely related to 'who pays?' is 'who pays first?' This issue refers to the unresolved problem as to which program in the current patchwork arrangement should pay the 'base level' of benefits and which should act as a supplementary top-up to that base. Should government programs that cover the entire population (e.g., C/QPP) form the basis of a system over which all other programs, such as private insurance and welfare, provide an additional amount? Or should categorical programs, intended for specific purposes, make the first payment and then allow the more general program to top up the 'first-tier' benefit to a designated level?

This issue has been raised recently in public debates in relation to the fact that, in some jurisdictions, CPP beneficiaries can also receive workers' compensation for a work-related injury or accident. In this case, the benefits are 'stacked' - i.e., the worker gets benefits from both sources. While only an estimated 10 percent of CPP beneficiaries also receive workers' compensation, the problem nonetheless should be addressed. The issue of first/second payer has important implications for long-term reform - especially in relation to the respective roles of the public and private sectors. In fact, most workers' compensation programs actually offset the CPP disability benefit, making CPP the first payer to workers' compensation.

Options for Reform

The Task Force on Disability Issues requested that possible reforms to the disability income system be set out under three major categories: short-term, medium-term and long-term options. This paper has classified as 'short-term' any changes that could be made in less than three years. 'Medium-term' change likely would take from three to five years to put in place. 'Long-term' options would require more than five years for implementation.

The complexity of administration and implementation is a key factor that helps distinguish between these various categories of reform. Short-term changes generally include interpretive measures and adjustments to current programs. Medium-term options usually need more time because they entail negotiations with another party involved in the area or affected by the change (e.g., establishing closer links between the Canada Pension Plan and workers' compensation). Finally, it would take more than five years to introduce some form of comprehensive change (e.g., a GAI) that would require negotiations with the provinces, provincial bodies (i.e., workers' compensation boards) and the private insurance industry. There would also be substantial cost implications.

In fact, financing is another major factor that determines the time frame for reform. Financing includes two dimensions: 1) the cost of the proposed reform, and 2) the sources of revenue required to support that option.

The possible short-, medium- and long-term reforms are presented in Table 1. They have been placed along two dimensions: by program purpose and by time frame of the reform. The time frame was determined on the basis of the length of time required to effect the proposed change, the complexity of administration and implementation, and the financing implications for both cost and source of revenue. Each option is described and then discussed from the perspective of federal-provincial dimensions, financing considerations, strengths and weaknesses. Issues related to the impact on women and on accountability are also included.

It should be noted that the options listed here as medium-term reform could be acted upon more quickly and become short-term reform with a sufficient investment of interest and resources. Conversely, some options identified as short-term proposals may take longer than one to three years because they require provincial approval; they were included here as short-term reforms because they are on the CPP discussion table right now.

Moreover, the proposed options constitute the broad parameters for reform. Within each option, there are other possibilities. For example, while the Task Force may opt for comprehensive public insurance, certain components of that plan, such as assessment of disability or rehabilitation, could be privatized. Either or both of these components could be privately delivered within the context of a plan that is publicly administered and financed. However, in setting out a combination of public auspices and private delivery,

Table 1

Options for Disability Income Reform

	<i>Short-Term</i>	<i>Medium-Term</i>	<i>Long-Term</i>
<i>Earnings Replacement</i>	<ul style="list-style-type: none"> • CPP administration • CPP eligibility criteria • CPP contributory requirements • CPP disability benefit level • CPP disability/retirement interface • taxability of CPP disability benefit 	<ul style="list-style-type: none"> • full and partial CPP disability benefits • link CPP/EI • link CPP/workers' compensation • link CPP/private insurances • CPP partnering with private employers • integrated assessment/rehabilitation 	<ul style="list-style-type: none"> • mandatory private insurance • universal accident insurance • comprehensive public insurance
<i>Income Support</i>	<ul style="list-style-type: none"> • enhancing disability tax credit • refundability of disability tax credit • welfare top-up 	<ul style="list-style-type: none"> • low-income tax credit • enriched welfare 	<ul style="list-style-type: none"> • income-tested support program • means-tested support program
<i>Earnings Replacement/ Income Support</i>			<ul style="list-style-type: none"> • universal insurance and income-tested support • guaranteed annual income

the private components of the system must be held publicly accountable for all decisions. There are dangers in separating certain functions - e.g., allowing administrative autonomy without the associated fiscal responsibility. In addition to reduced accountability, concerns regarding privatization include an over-reliance on professionals and an emphasis on profit rather than the needs of individuals.

While the options are described separately, they should not necessarily be understood as discrete activities. For example, the Task Force could propose two short-term reforms - e.g., change the taxation status of the CPP disability benefit and move towards the refundability of the disability tax credit. Alternatively, the Task Force could begin with short-term reform (e.g., change CPP eligibility definition to allow for some work activity) and move into medium-term options (e.g., full and partial CPP disability benefits). This type of two-stage reform would ensure some immediate benefit for persons with disabilities while the administrative and financing issues associated with longer-term reform were being worked out.

Ideally, the selection of options should not be undertaken as an exercise in and of itself without an appropriate context. The reform options outlined below represent the means to an end; it is best to determine the general direction which the Task Force wishes to pursue and the long-term objectives it seeks to achieve. The specific options then become much more apparent.

It is proposed that the Task Force articulate a vision for long-term reform - i.e., what the disability income system should look like five years from now. It should then identify the medium-term and short-term options that could be pursued to help reach that long-term goal. The staging of possible reforms is discussed below.

This type of policy development is 'strategic' for two reasons. First, it would help the Task Force members make decisions in an integrated and purposeful manner. Second, long-term reform often takes place through a series of incremental changes that are introduced to various systems over a period of time. Even if the ideal long-term goal is not reached or is delayed, at least several positive steps would have been taken along the way without dismantling the entire infrastructure now in place. While current programs have inherent weaknesses, at least they exist. Finally, short-term changes made in the absence of a broader context may simply result in shifting caseloads and costs from one jurisdiction to another.

Staging of the Reform

The Task Force should set out a broad framework for reform which includes a clear long-term goal. Within the broader framework, the Task Force should develop a plan for reform that is set out as a series of interrelated stages. There are several ways in which to proceed. One way is to identify a certain objective and to select the specific reforms that meet that objective. The other option is to set out the desired program configuration and to determine the steps to reach that goal.

In the first case, the Task Force could decide, for example, that it wanted to modify the disability income system to enhance options which achieve a certain goal - e.g., enhanced employability. The other option is to set out the long-term goal that represents the most appropriate program design and the most feasible delivery mechanism, and then identify the incremental steps along the way to achieve that objective.

If, for example, the Task Force decided to pursue as a long-term goal a comprehensive insurance and income-tested support program, it could plan a path that would lead to this long-term objective through several short- and medium-term steps. In the short term, these would include expanding the definition of disability in the CPP to allow for employability and turning the disability tax credit into a refundable credit. Medium-term reforms would include the introduction of full and partial benefits within CPP and the gradual integration of CPP with other programs - starting with EI and moving towards automobile insurance, private insurance and workers' compensation. Integration could begin with the assessment and rehabilitation components of various programs.

With respect to income support, the Task Force could build on the refundable disability tax credit to move eventually towards a national income-tested program. This program could take the form of an Integrated Disability Benefit similar to the Integrated Child Benefit currently being considered by the Premiers.

Finally, the two components would be integrated (not necessarily combined) to ensure that they were compatible and that the income support component provided not only full support for those with no earnings, but also supplementation for those whose earnings replacement benefits and other sources of income fell below a designated level.

Short-Term Reform

Most of the short-term options focus upon the Canada Pension Plan because reforms to this program are now under way. However, the proposed reforms may take longer to effect because provincial approval is required for most of these changes.

Under this stream of options, the disability benefit would remain in place with all the advantages it confers: coverage for all working Canadians including the self-employed (who are not covered by workers' compensation or Employment Insurance); no exclusions on the basis of former medical history or inordinately higher premiums for contributors deemed to be high risk; a benefit that ensures some level of adequacy through its flat-rate component; full inflation protection; portability throughout the country; and guaranteed coverage until recovery from the disability or until retirement or death. Finally, if the CPP disability benefit is reduced in coverage or level, then private long-term disability (LTD) plans would become more expensive for employers and employees.

The Council of Canadians with Disabilities points out the importance of the breadth and equity in coverage provided by the CPP. "All employed and self-employed Canadians are eligible to participate on the same basis. There are no differential rates or exclusions based on personal health or disability history. A major concern of the CCD regarding any proposed replacement of the CPP by private insurance is that these rating variables or exclusions will be introduced, effectively denying coverage to disabled persons entering the workforce or changing jobs, or at the very least making it more expensive" [CCD 1996: 3]. The CPP represents a mainstream solution in that it is available to all Canadians; it is not a segregated program intended only for persons with disabilities. (It should be noted that it would be possible, in theory, to provide comprehensive coverage by the private sector through pooling high-risk cases; this financing arrangement is described under 'mandatory private insurance.' The concern lies in exclusions on the basis of previously-existing conditions.)

The disadvantage of focussing upon this program alone is that many fundamental problems with respect to the disability benefit and the disability income system more generally would remain unresolved. One of the identified problems is that the CPP provides protection in the event of earnings loss from three very different contingencies - retirement, disability and death. The original rationale for setting up the program in this way was to ensure protection from earnings loss in the face of factors that result in *long-term* interruptions. Unemployment Insurance, by contrast, was intended to protect earnings in the event of *short-term* work interruptions - i.e., loss of job (which, at the time the

program was introduced, generally meant a short-term period), illness or temporary disability, or birth or adoption of a child.

While the original rationale underlying these two insurances made sense, it could be argued that the major risk factors against which the CPP provides earnings protection - retirement and disability - are fundamentally different contingencies. There have been calls to remove disability entirely from the CPP and to set up some other form of insurance for this purpose. This possibility is discussed under long-term options.

A. Earnings Replacement Options

1. CPP Administration Description:

The role of the CPP administration in this area is to assess initial eligibility for a disability benefit, to determine continued eligibility for the benefit, to collect and document information, and to manage the process in the event that an appeal is launched. In addition, as a result of recent changes, the administration is involved in assessing claimants deemed to have some rehabilitation potential.

The administration of the disability benefit has been subject to substantial criticism over the years. The most vocal critic has been the Office of the Auditor General - which issued in September 1996 yet another set of recommendations regarding CPP administrative change.

This report is a follow-up to a 1985 Auditor General report which identified numerous problems in the CPP administration including the fact that "there were virtually no written policies, procedures or directives for reviewing and processing applications, entitlements and appeals, and for establishing boundaries within which medical decisions were made." The report also noted that "at the time of our audit, in December 1984, it took 90 days to complete the processing of an initial application for a CPP disability pension and up to two years to process appeals."

In January 1985, several steps were taken to correct the identified administrative deficiencies. These steps included introducing procedures to clear backlogs in processing applications, improving communications with client service centres and undertaking studies to improve work flow at all levels and to measure performance. While it was too early at the end of the audit to assess the full extent of these improvements, the Auditor General concluded that "they appear to be substantive."

Subsequent measures have been put in place to tighten up the administration of the program with respect to initial assessments, reassessments and the tracking of clients, improved communications, return-to-work incentives, data linkage between programs, and the redesign of the technology to ensure consistency of adjudication decisions and appeals. These changes have had a measurable impact on the disability caseload.

In the area of initial assessments, new guidelines were introduced for determining medical eligibility. As a result of administrative measures, including the introduction of these guidelines, there has been a slowdown in the caseload growth and costs since September 1994 and an actual reduction in new grants since September 1995. This trend is expected to continue, despite the growth in applications. The percentage of applications denied is currently 60 percent, and is likely to increase. The rate of reversal is down to 20 percent (the increase in denials has generated a higher number of appeals).

Between May 1993 and August 1996, 18,585 cases have been reassessed and 6,762 benefits have been cancelled. The appeals system has also been tightened. The CPP Review Tribunal, composed of members with legal and medical expertise, was established in 1992 to replace the more informal review committees at the second level of appeal. Denials now represent 60 to 65 percent of appeal decisions and are expected to rise to between 70 and 80 percent in the near term.

Additional work needs to be done to ensure that the eligibility criteria are applied consistently throughout the country. The program recently has been regionalized. While this makes the program 'closer' to the potential beneficiaries, it also can give rise to widespread variations in practice.

The CPP administration needed (and continues to require) improvement - especially with respect to data collection and the sharing of information with provinces and other deliverers of disability insurance. (A caveat should be noted here; consumers have expressed concern about the sharing of information and would like to have a say in determining how and where information about their specific circumstances is shared.) However, the Task Force should bear in mind the following factors in reviewing the Auditor General' report.

The administration of the CPP disability benefit faced a huge increase in demand due both to political decisions in the late 1980s and early 1990s and to recommendations from the Office of the Auditor General to make the CPP better understood by Canadians. The CPP administration must implement the will of Parliament; any time a change is made that results from a Parliamentary directive,

the CPP must put it into effect. The Parliamentary directives of the late 1980s and early 1990s resulted from recommendations of the House of Commons Committee on the Disabled and the Handicapped struck by Parliament in respect of the International Year of the Disabled in 1981.

The Committee recommended in its *Obstacles* report that Canada take steps to design and implement a Comprehensive Disability Insurance Program [Canada 1981: 53]. As a first step towards comprehensive reform, the Committee proposed that the CPP disability benefit be increased - that the flat-rate component of the benefit be made equivalent to that of the Quebec Pension Plan - and that fewer people be excluded from coverage under the CPP [Canada 1981: 53]. In response to these recommendations, a Federal-Provincial Task Force was established by Social Services Ministers in 1982 to examine various options for reform of the disability income system. While the proposals it put forward in its *Joint Federal-Provincial Study* were not adopted, several reforms were introduced in 1987 to address a recognized national problem.

Prior to 1987, contributors were required to work and to have made CPP contributions for at least five of the last ten years before claiming disability benefits. In 1987, contributory requirements for the disability benefit were relaxed to allow workers who had contributed to the Canada Pension Plan for two out of the past three years to qualify for benefits. Also in 1987, retroactivity claims were extended from 12 to 15 months. (The flat-rate component of the disability benefit was also increased in that year; see discussion of CPP benefit level below.)

The eligibility criteria for the disability benefit were loosened yet again by the introduction of Bill C-57 which took effect in 1992. The Bill opened up disability claims to many workers who previously had been denied benefits by lifting the time limit on late applications. The underlying rationale was that many potentially eligible candidates had not applied for the disability benefit because they were unaware that the CPP paid such a benefit; most people view the CPP as a retirement pension only and have no knowledge of its other components.

This problem was confirmed by the Auditor General in his 1993 report. The report pointed out that most Canadians do not understand the CPP and the benefits to which they may be entitled under the Plan. In response to the Auditor General's recommendations for more public information, the Department of Human Resources Development conducted a major information campaign [Wills 1995: 74]. The result was an increase in the number of applications from individual Canadians as well as a rise in referrals from other programs - notably, workers' compensation, welfare and private insurers - which reassessed their respective

caseloads and referred to the CPP any candidates deemed potentially eligible.

In addition to factors that were essentially beyond the control of the program, administrative practice guidelines - put in place in 1989 to reflect the decisions of the Pensions Appeals Board - contributed to caseload growth. These guidelines effectively allowed non-medical factors to be taken into account - unemployment rate in the region, the availability of certain jobs and the applicant's skills - in determining eligibility for a disability benefit. Older workers, in particular, are overrepresented among CPP disability beneficiaries relative to their share of the population. The incidence "can be attributed not only to the greater susceptibility of older workers to disability but also to the greater difficulty faced by older workers re-entering the workforce after accident or illness" [CPP Advisory Board 1994: 4].

While guidelines which recognize non-medical factors may appear to be highly questionable, they actually were quite consistent with practice in several European countries. A comprehensive cross-national study of disability policy attributed the growth of disability income support to faltering economic growth; disability income programs became, in effect, an instrument to encourage early retirement [Aarts and de Jong 1996: 1]. "In Holland, Germany and Sweden, entitlement durations depend on age, such that workers older than 58 or 60 may keep unemployment insurance until they reach pensionable age (65) or qualify for disability insurance benefits on non-medical, labour market grounds. Improper use of disability benefits as a more generous, and less stigmatizing, alternative to unemployment benefits was quite common in the 1975-1990 period" [Aarts and de Jong 1996: 9].

It should come as no surprise, then, that there was a dramatic rise in disability benefit caseloads - especially in the late 1980s and early 1990s. The growth in caseload was predictable and, to some extent, appropriate; the increase was essentially a response to identified problems in the program. The application 'surge' after the 1992 amendment could be seen as a 'correction' to the system rather than the crisis that it has widely been portrayed. However, some of the caseload increase was due to the fact that the CPP was acting as a *de facto* Unemployment Insurance program. Clearly, this was an inappropriate use of the CPP. In 1995, the Department of Human Resources Development issued a directive to disregard socioeconomic conditions in determining eligibility for the disability benefit.

In summary, Parliament changed the benefit level and the contributory requirements in 1987 and 1992, respectively, for the express purpose of making the benefit more adequate and extending its coverage. The Auditor General encouraged the CPP disability program to inform Canadians about the benefit. While many of the CPP housekeeping mechanisms (e.g., reporting, reassessment) have been and still need to be improved, the fact that the caseloads increased substantially in recent years was not due primarily to administrative inefficiencies. *The caseload rise was the result of explicit political decisions and administrative directives intended to open the program and thereby redress its perceived inadequacies in terms of both benefit and coverage.*

Federal-Provincial:

The CPP administration can implement certain changes on its own if they improve the delivery of the existing program. However, federal-provincial negotiations are required for any changes that alter fundamentally the character or structure of the program.

Financing:

Any proposed administrative changes could have financing implications. For example, tightened administration may require additional staff to carry out reassessments, provide training to ensure regional consistency or apply a more stringent appeal process. The associated costs are relatively minor - especially considering the potential long-term savings arising from more effective program administration. Some of the costs related to multiple eligibility and rehabilitation assessment could be reduced through the closer integration of CPP with other programs (discussed under medium-term options).

Strengths:

Tighter administration would help restore confidence that the CPP is being run more consistently and effectively. Restoring confidence in the disability benefit component, in particular, is important not only for caseload and cost control but also for ensuring the long-term sustainability of the program.

Weaknesses:

Some of the changes being introduced in the guise of more efficient administration actually will restrict eligibility. This unintended (or perhaps intended) consequence is a serious concern in that the program could end up refusing benefits to people with *bona fide* disabilities who have no recourse other than provincial welfare.

2. CPP Eligibility Criteria (Definition)

Description:

The current definition of disability employed by the Canada Pension Plan requires applicants to have a disability that is both severe and prolonged. A severe disability is one that renders a person incapable of regularly pursuing *any substantially gainful occupation*. (This requirement is different from a number of private insurance plans and even workers' compensation programs which relate initially to a person's inability to do his or her own job.) Under the CPP, a prolonged disability has to be long (usually more than 12 months), continued and indefinite, or likely to result in death. In short, the CPP requires that a person be out of the workforce entirely and be incapable of performing any work that would provide sufficient income for basic support.

These eligibility criteria appear to be an anachronism, given the scientific and technological progress that has been made in recent years in the field of disability. In most cases, the problem is not lack of capacity on the part of the identified person. Rather, the problem lies in the lack of access to appropriate goods and services which allow persons with disabilities to live independently and to work if possible.

Moreover, the CPP fails to recognize that persons with disabilities participate in the labour market to varying degrees. Some have no or minimal attachment to paid employment. Others are in transition; they may move into the workforce after a period of training or gradually ease out of the labour market because of a disabling condition. Some people have sporadic or intermittent work patterns as a result of a degenerative or recurring condition. For example, persons with multiple sclerosis or AIDS may find that they are able to work well for a period of time, face difficulties as their condition deteriorates and then can resume work fully or partially during a period of remission. Still others have a long and stable work history, despite the presence of a very severe disability. (As earlier noted, the recently-introduced work incentives allow the fast-tracking back onto benefits for anyone who returns to work and then becomes disabled. This helped address the problem, albeit to a limited degree, of sporadic work patterns of persons with degenerative conditions.)

The CPP does not recognize varying degrees of capacity; it requires recipients to be in or out of the labour market - as though the world were black and white when, in reality, it is actually quite 'gray.' One option is to redefine disability in terms of 'ongoing employment disadvantage' or 'significant loss of earnings capacity.' The person could retain this status despite rehabilitation efforts [CCD 1996: 10].

Another problem related to definition is the fact that the scope of disabling conditions has expanded dramatically with the inclusion of stress, certain mental health conditions and environmental sensitivities. The new administrative guidelines being employed by the CPP are encouraging the acceptance of disability claims on the basis of 'objective' criteria and are looking more closely at claims in the mental and musculoskeletal categories.

Federal-Provincial:

The federal government can introduce interpretive changes to the eligibility criteria for the disability benefit within the terms of the existing law.

Financing:

The financing implications of eligibility changes are fairly straightforward: Tightening the definition of disability will reduce the number of potentially eligible applicants and the associated costs. A more liberal definition of disability will raise costs as caseloads increase. However, as noted earlier, these costs do not 'go away.' They are simply shifted from one level of government to another; if applicants have no other source of income, they must rely on provincial welfare.

Strengths:

A more narrow definition allows the program to be administered consistently throughout the country and to ensure that the eligibility criteria are clearly understood by all parties, including private insurers and other related programs.

Weaknesses:

There are serious concerns about the apparent interest in assessing eligibility primarily on the basis of objective medical evidence. The more stringent medical interpretation of disability may exclude many potential claimants with conditions that are not verifiable or quantifiable in a laboratory including stress-related conditions, mental disorders and severe environmental sensitivities.

The Council of Canadians with Disabilities points out that 'objective' is a term which may carry questionable assumptions. "Individuals with significant psychiatric histories, or with chronic pain due to back and joint injuries (to take two examples), may qualify for CPP by documenting their own accounts of how these disabilities have affected them, supported by the opinions of their physicians. The fact that these diagnoses are not based directly on X-rays or blood tests does not make them less 'objective' or 'genuine,' and does not mean that these disabilities are not 'real' " [CCD 1996: 7].

Participants at the Vancouver Consultation noted that not all disabilities are visible and asked: "What exactly does 'sick' look like, anyway?" They contended that the federal government should not focus strictly on people with 'visible' disabilities. At the Whitehorse Consultation, participants noted how difficult it is to tell the difference between "the visible, invisible, mental, physical and other disabilities, who has got what."

Possible changes in the eligibility criteria are of particular concern to women; the data on gender breakdown by cause of disability show that women have a much higher incidence of claims for mental disorders and stress-related conditions [CPP Advisory Board 1994: Tables 4 and 5]. Any move to tighten the eligibility criteria in the areas of mental and stress-related conditions, in particular, would have an adverse impact upon women.

Finally, it is of interest that the Quebec Pension Plan interprets 'severe' and 'prolonged' more stringently than the Canada Pension Plan. Severe is generally interpreted to mean a physical condition whose presence can be verified through quantifiable evidence. Prolonged is generally interpreted as 'lasting forever' compared to the CPP definition of lasting at least one year. Yet CPP physicians have pointed out the difficulty of predicting that any given condition will last 'forever.' In short, the purpose of tightening the initial assessment should be to ensure the more consistent application of definition - not to keep potentially eligible recipients off the system.

3. CPP Contributory Requirements

Description:

Eligibility can be affected not only through modifications to the definition of disability but also through changes to the contributory criteria required by the Plan. As noted, contributory requirements for the disability benefit were relaxed in 1987 to allow workers who had contributed to the CPP for two out of the past three years to qualify for benefits. Prior to that time, applicants were required to have contributed for five of the past ten years. This reform was introduced in response to a recommendation by the House of Commons Committee on the Disabled and the Handicapped that fewer people be excluded from coverage under the CPP [Canada 1981: 53].

The *Information Paper for Consultations on the Canada Pension Plan* released by the federal, provincial and territorial governments in March 1996 raised the possibility of tightening the contributory requirements for the disability benefit. One option is to modify the contributory period by increasing the *amount*

of attachment to the workforce. The *Information Paper* proposes extending the period of qualification for new applicants to require that contributions be made in four of the last six years. This means that some people entering or reentering the labour force would not have CPP disability coverage until they accumulate a longer period of labour force attachment than required at present.

The problem with the proposal is that it was made with no substantiating data as to its potential impact, although clearly the intended purpose is to restrict eligibility. The eligibility criteria had been changed because they were deemed in a Parliamentary Committee report to be too restrictive [Canada 1981]. It is impossible to assess the strengths or weaknesses of such a proposal without knowing its likely impact. The eligibility criteria should remain intact until sufficient data is made available that documents the probable effect of the proposed change.

There is, however, a more stringent interpretation of the existing eligibility criteria that might be considered. Right now, somebody can work for several months at the end of one year and several months at the beginning of the next year and still be eligible for a disability benefit. Applicants may qualify even if they have not worked for two full years. The current eligibility criteria should be interpreted in the spirit in which the amendment was intended - to open the door but not to take excessive advantage of the eligibility liberalization. It should be noted that addressing this problem would require a different way of collecting information; right now, Revenue Canada provides information only on total annual contributions.

Another option is to repeal the Bill C-57 provision and replace it with a requirement similar to that in the Quebec Pension Plan in which eligibility is extended to all workers with a severe and prolonged disability at the time of application who have made contributions in half their contributory period. The contributory requirement would change to two out of three years, five out of ten years or half the contributory period. This change would allow benefits to be granted for late application but would still require substantial attachment to the labour force. A variation would be to allow only first-time applicants to be eligible under this provision. Finally, the government could decide to repeal entirely the provisions of Bill C-57.

A different set of reforms would involve strengthening the *recency of attachment to work* provisions; right now, applicants need to make contributions in five of the last ten years and then there is a retroactive period. Somebody can stop working for six years for reasons other than disability, become severely

disabled almost six years after he or she has stopped working and get a partial earnings replacement benefit. This appears to be an overly generous provision with respect to recent attachment to the workforce.

Federal-Provincial:

The federal government would have to negotiate with the provinces any modifications to the CPP contributory requirements. Any change that would restrict eligibility for the CPP likely would lead to a rise in provincial welfare caseloads (although not all individuals would qualify because of the stringent asset tests employed in determining eligibility for welfare).

Financing:

An increase in the contributory requirements for CPP eligibility, regardless of the specific proposals, would reduce the costs of the program but would, in turn, shift some of the burden to the provinces; costs would also be borne by individuals, families and private insurers. Conversely, more liberal eligibility criteria would increase CPP costs.

Strengths:

The only apparent strength to this proposal is that it will reduce CPP costs by keeping potentially eligible recipients off the program for longer periods of time. Clearly, this so-called strength is a weakness from the perspective of adequate coverage and the principle of comprehensiveness.

Weaknesses:

Tightening the contributory requirements to the CPP would increase provincial welfare, private insurers and provincial workers' compensation programs which offset the CPP. Moreover, a proposal to tighten the contributory requirements also raises a philosophical issue as to the role of social insurance. When should insurance coverage begin? One could argue that a worker should be covered under an insurance program as soon as contributions are made. Private insurance pays benefits as soon as premiums have been paid. Because the purpose of an insurance is to pool risks, the cost burden arising from 'early claimants' should be offset, in theory, by those who make late claims or who do not claim under the program at all. It should be noted that Quebec has expressed opposition to any extension to the CPP contributory requirements, noting that it would contravene recent directions taken by the province.

4. CPP Benefit Level

Description:

The House of Commons Committee on the Disabled and the Handicapped recommended in its *Obstacles* report that Canada take steps to design and implement a Comprehensive Disability Insurance Program [Canada 1981: 53]. As a first step towards comprehensive reform, the Committee recommended that the CPP disability benefit be increased - that the flat-rate component of the benefit be made equivalent to that of the Quebec Pension Plan - and that fewer people be excluded from coverage under the CPP [Canada 1981: 53].

In 1987, the value of the disability benefit was increased substantially; the monthly flat-rate portion went from \$91.06 in 1986 to \$242.95. This change raised the total maximum disability benefit from \$455.64 to \$634.09 a month in that year. The total maximum monthly benefit is \$870.92 in 1996 - although the average benefit is only \$657.40.

Benefits should remain at their current levels and should continue to be indexed in order to protect their value. However, it is possible that benefit reductions will be considered in order to lower costs. One option is to reduce the flat-rate component because it bears no relation to contributions. A person might have made the minimum contribution to the CPP, but still be eligible for at least \$312 a month until the age of 65. But such a reduction would create hardships for many people because there is little other assistance for disability-related costs. (The maximum CPP disability benefit is actually lower than most provincial welfare rates - and welfare itself falls well below the poverty line throughout the country.)

Any reduction would hit women especially hard; the average monthly benefit for women (\$587.29) is much lower than the average benefit for men (\$709.10). The difference is due to the fact that women's earnings are lower, on average, than men's earnings; this gap affects the earnings-related component of the benefit. Maintaining an adequate flat-rate amount is crucial for women because it helps compensate, to a limited extent, for the gender differences in the earnings-related portion of the benefit.

It might be possible to remove the flat-rate component of the benefit altogether. However, the loss would have to be offset by a higher earnings replacement rate - e.g., in the 60-75 percent range rather than the one now in place (55 percent).

Federal-Provincial:

The federal and provincial governments would have to negotiate changes to benefit levels. Any change in this area would affect provincial budgets; welfare is often used to top up inadequate CPP benefits. Reducing the disability benefit would increase provincial welfare costs.

Financing:

The purpose and intended result of any benefit reduction would be an associated drop in CPP costs. However, the likely increase in welfare costs means that the net result is not a reduction in pay-outs but simply a shift in the level of government assuming the costs.

Strengths:

There are no apparent strengths to this option other than cost reduction.

Weaknesses:

A reduction in the value of the CPP disability benefit would move far from making the disability income system more adequate - a key principle that should underlie any reform of the disability income system. As noted, most CPP beneficiaries receive less than the associated welfare benefit in their respective jurisdictions.

It could be argued that the disability benefit should be reduced in order to promote equity among recipients of CPP retirement and disability benefits. However, the equity argument has little relevance here. The retirement and disability benefits are paid at different rates because they are intended for different purposes. The higher disability benefit provides some (albeit limited) recognition of higher disability-related costs. Moreover, Canadians age 65 and over have access to a related system of elderly benefits if their incomes fall below certain levels. Persons with disabilities have no access to this associated income system until they reach age 65. Neither do they have much capacity for private savings unless they happen to be independently wealthy.

The proposal to move towards a complete and higher earnings-based system may make more sense from an insurance perspective but could have high cost implications depending upon the selected percentage of earnings replacement.

5. CPP Disability/Retirement Interface

Description:

Under the current system, CPP disability beneficiaries continue to receive benefits until recovery from the disability, until age 65 as long as they meet the disability definition or until death. At age 65, the disability benefit is converted to a retirement benefit. The latter is based on average wages at the time the beneficiary turns 65 and is thus wage indexed for the period of disability. The government *Information Paper* on CPP reform proposes that the retirement benefit to which CPP beneficiaries would be entitled could be modified in one of three ways.

First, the retirement benefit of disability pensioners could be based on the average wage at the time of disablement with subsequent price indexing. At age 65, the benefit would have the same value as it had at the time the person became disabled. This change would link the benefit more closely to the work history of the disabled recipient. It would not apply to current recipients of a retirement benefit.

The second option involves reducing the value of the retirement benefit to the equivalent of an actuarially reduced early retirement benefit. CPP retirement benefits can be taken as early as age 60. But few disability recipients opt for this provision because the disability benefit is greater than the comparable early retirement benefit and is not reduced at age 65 when converted to a full retirement pension. If the retirement pension for Canadians with disabilities is made equivalent to an actuarially reduced early retirement pension, they would be treated at retirement the same way as those who take early retirement. The provision would not apply to those already age 65.

A third option is to permit only a partial drop-out of the years of disability when calculating the retirement benefit, rather than allowing all the years of disability to be excluded in addition to the 15 percent general drop-out allowed under the CPP.

The *Information Paper* also raised the possibility of ending benefits for claims for a disability occurring up to six months after a person started an early retirement benefit. This option would be feasible primarily because the disability was not the cause of interrupted earnings. Moreover, in some circumstances, contributors can become eligible for disability benefits after they die and benefits are paid to their estate.

Federal-Provincial:

The federal government would have to negotiate any proposed changes to the retirement base with the provinces. The modification could have implications for the federal government itself in that many seniors with disabilities would require additional assistance through federal elderly benefits if the value of their CPP retirement benefit were reduced.

Financing:

A proposed change in the base for calculating the retirement benefit for persons with disabilities could reduce CPP payouts but likely would create additional pressure on another federal program. The cost burden would shift from a payroll-supported program to a benefit financed through general revenues.

Strengths:

As in the case of an extended contributory period, the *Information Paper* provides no data on the potential impact any of these options. It is impossible to know whether a few people would be hit inordinately hard as a result of these changes or whether many people would be affected only slightly. It is difficult to make any specific recommendations in the absence of this data. There appear to be no strengths to this option other than cost reduction.

Weaknesses:

Many recipients could experience a substantial drop in benefits under the first option for reducing the value of the retirement benefit to which disability beneficiaries are entitled - i.e., using the earnings base at the time of disablement and moving towards price rather than wage indexing. People who may have become disabled early in their working careers could suffer a substantial loss of income.

The second option for reducing the retirement benefit - an actuarially reduced benefit equivalent to an early retirement benefit - may hurt fewer beneficiaries or may result in a smaller loss of income. However, this proposal may affect many more people than the first option. Moreover, the second option may be seen as an unfair change. Individuals do not choose to become disabled and thereby reduce their earnings capacity; however, many workers (clearly not all in *these* economic times) have opted to lower their earnings through early retirement. Again, it is impossible to assess the true impact of this option in the absence of any data. A Consultation Paper issued by the Quebec government on the Quebec Pension Plan contends that recipients of the disability benefit should be eligible for the same level of benefits as workers who have chosen their age of retirement [Quebec 1996: 47].

6. Taxability of CPP Disability Benefit

Description:

CPP disability beneficiaries pay income tax on the disability benefit. This means that they actually receive less than the amounts paid out by the CPP. The proposed option would remove the taxable status of the CPP disability benefit in order to allow recipients to keep the full amount of the benefit.

The taxable status of the benefit creates a serious burden for many people with disabilities, most of whom have low incomes in the first place and many of whom are pay high costs for disability-related goods and services. In 1996, the federal income taxpaying threshold for a single person claiming the disability tax credit begins at \$11,314 of gross income - well below the \$17,127 poverty line for a major metropolitan area. The income-taxpaying threshold for taxfilers who claim the disability tax credit begins at an income level which represents only 66 percent of the poverty line.

The taxpaying threshold has been falling steadily in recent years as a result of the decision to partially index the personal income tax system starting in 1986. Taxpayers who qualify for the disability tax credit have largely escaped the effects of partial indexation of tax benefits and credits because the disability tax credit was boosted in 1991 (from \$575 in 1990 to \$700 in 1991 in terms of federal income tax savings). However, since 1991 the disability tax credit has lost value to inflation because of partial indexation, with an attendant decline in the taxpaying threshold for taxfilers qualifying for the credit. In 1991, it was worth \$749 (federal) in constant 1996 dollars, as opposed to its 1996 value of \$720 in federal income tax savings. The taxpaying threshold went from \$11,681 in 1991 to \$11,314 in 1996.

An alternative is to introduce a low-income tax credit to help offset the tax burden on low-income Canadians (this proposal is discussed under medium-term options). However, this tax credit would be open to all poor households and not simply to those with disabilities.

Federal-Provincial:

The federal government would have to consult with the provinces regarding a change in the taxation status of a benefit. They would be affected by the (albeit modest) loss of tax revenue if the taxability of the disability benefit were removed.

Financing:

This option would represent a direct loss of revenue to the federal government (and to provincial governments which collect an average 59 percent of federal income tax payable). However, the actual loss would be relatively minor because many CPP disability beneficiaries have no other source of income and therefore pay very little tax - although at very low incomes, any tax is a high tax.

Strengths:

The proposal to remove the tax on the CPP disability benefit would provide direct assistance to current beneficiaries, many of whom cannot afford to lose even a dollar of benefits. It would be a relatively minor program adjustment. The removal of the tax status would reduce a disincentive in the system in which people with disabilities may find it more advantageous to be on welfare because the level of assistance - while very low - is often higher than a taxable CPP disability benefit.

Weaknesses:

While the proposal represents a relatively minor tax adjustment, it would create inequities that would be subject to serious question. First, CPP retirement beneficiaries would point to the inconsistencies of a program in which one component (the retirement benefit) was taxed and the other component (the disability benefit) was not. Moreover, benefits under related programs, such as Employment Insurance, are taxable. Welfare, by contrast, is not taxed (all income-tested and needs-tested benefits are non-taxed benefits because the income and needs tests used to determine eligibility eliminate the need to apply income taxation). This potential equity problem would not exist if the federal government chose, instead, to introduce a low-income tax credit. The proposal could also be challenged on the basis that the CPP is offset by the fact that employers can deduct their premium contributions and employees claim their respective contributions in the form of a credit.

Finally, it could be argued that special tax status for the disability benefit flies in the face of the mainstreaming principle which seeks, to the greatest extent possible, to reduce distinctions between people with disabilities and other Canadians and thereby apply the same rules and standards to both.

B. Income Support Options

1. Enhancing the Disability Tax Credit

Description:

The disability tax credit is not an income program *per se* because it does not transfer cash directly to individuals. But it is included in this discussion of income support for two reasons. First, while the purpose of the disability tax credit is to offset disability-related costs, it effectively increases the income available to certain persons with disabilities by reducing federal and provincial income tax payable. It thereby acts as an income supplement for many persons with disabilities.

Second, the disability tax credit can act as a mechanism for income security reform; it provides the basis upon which a more adequate benefit can be built in the long term. In fact, the House of Commons Standing Committee on Human Rights and the Status of Disabled Persons recommended the use of the tax system as a delivery mechanism for benefits for lower-income persons with a disability [Canada 1993: 14].

(The medical expenses credit is not included in this paper because its primary purpose is to compensate for health and disability-related costs for which receipts must be produced. It is therefore much more relevant to a discussion of the costs of disability rather than an integral component of the income security system *per se*. The medical expenses credit is being explored in the research on the tax system.) Neither does this paper consider options such as a disability expense credit or an employment tax credit which would help offset the costs of going to work.

For the purposes of the disability tax credit, Revenue Canada interprets 'severe' to mean a mental or physical impairment that markedly restricts an individual's ability to perform the basic activities of daily living. 'Prolonged' implies that the impairment has lasted or may be expected to last for a continuous period of at least 12 months. 'Markedly restricted' means that all or almost all of the time the person is unable, or requires an inordinate amount of time, to perform a basic activity of daily living, even with therapy and the use of appropriate devices and medication. The specific diagnosis or condition is irrelevant; what is important is the impact of that condition upon a person's ability to carry out one or more basic activities. These include feeding and dressing oneself; eliminating (bladder or bowel functions); walking; perceiving, thinking and remembering; and speaking so as to be understood in a quiet setting, by another person familiar with the

individual. (It should be noted that while Revenue Canada interprets the eligibility criteria for the disability tax credit, these are actually set by the Department of Finance.)

The disability tax credit is calculated by taking a fixed amount (\$4,233 in 1996) and multiplying it by the lowest tax rate for the year. In 1996, it amounts to \$720 (17 percent of \$4,233) or \$1,145 in federal/average provincial tax savings. The disability tax credit could be enriched by increasing its value. For example, it could be raised from its current (federal) value of \$720 a year to \$900 a year.

Where an individual pays no tax, or not enough to benefit from the entire credit, he or she can transfer the unused portion to another family member who pays tax. Another individual (usually a parent or spouse) may be able to obtain a transfer of the disability tax credit (or its unused portion) from a child or spouse, and in certain circumstances, from another family member and/or claim the qualifying medical expenses of a dependent or a family member.

The fact that the disability tax credit is non-refundable means that it is of no value to people too poor to pay income tax. A non-refundable tax credit is subtracted from taxes owed and can only reduce taxes to zero. A refundable tax credit, by contrast, not only reduces taxes to zero but also pays a benefit if the taxpayer deducts the value of the credit from taxes owing and comes up with a negative balance. In other words, taxfilers who are below the taxpaying threshold would receive a cheque from the government. The GST credit is an example of a refundable tax credit.

However, even if the credit were to be made refundable, it would be of no assistance to those deemed ineligible on the basis of the current Revenue Canada criteria. Persons with cystic fibrosis or other respiratory ailment, for example, generally cannot qualify for the disability tax credit because 'breathing' is not included as an activity of daily living. People who are hard of hearing may be as markedly restricted in their ability to perform the activities of daily living as persons who are deaf. Yet they are generally ruled ineligible for the credit. The Canadian Hard of Hearing Association has pointed out the inappropriateness of certain eligibility criteria; they note in communication to the Department of Revenue that daily living does not occur in a "quiet setting."

It could be argued that because the unused portion of the credit is transferable to another family member, it is, in effect, a refundable credit. As noted, a taxfiler who financially supports a spouse or the taxfiler's or spouse's child, grandchild, parent or grandparent who qualify for the disability tax credit can claim the credit if the latter would be unusable to the dependent because he or she

has little or no income. (The advantage of this arrangement to the federal government is that provinces share the costs of the current credit as well as the portion that is transferred; with a refundable credit, the federal government would pay the entire amount if the current practice for the financing of refundable credits is followed.) However, many people with disabilities would argue that benefits should be paid to them directly and not to others on their behalf. There is a big difference between a refundable credit that pays a cash benefit to low-income persons with disabilities and a transferable credit that reduces the income tax payable by a supporting family member. The current practice simply reinforces the dependence of persons with disabilities.

Federal-Provincial:

The federal government could make the proposed change on its own. However, consultation with the provinces is advised in that there would be an associated impact on provincial budgets in the form of a revenue loss.

Financing:

The federal government would pay the lion's share of the cost of raising the value of the credit; provinces would pay part of the cost by virtue of the revenue loss resulting from an increased credit.

Strengths:

The proposed increase in the value of the disability tax credit would provide slightly higher assistance to persons with severe and prolonged disabilities. This support is important in that the majority of persons with severe disabilities have incomes that fall well below poverty levels.

Weaknesses:

Many persons with disabilities do not benefit from the credit because they are too poor to pay tax. Increasing the value of the disability tax credit would be of no assistance to those individuals. The way to address this problem is to make the credit refundable.

The related problem of exclusion from the credit was discussed at the Yellowknife Consultation. Participants proposed the possibility of including occupational therapists in carrying out functional assessments for determining eligibility.

2. Refundability of Disability Tax Credit

Description:

The 1991 Health and Activity Limitation Survey (HALS) identified 4,200,000 who reported a disability. Of those, 549,352 adults in households are severely disabled according to the HALS 'severity index.' Yet only 355,840 taxpayers claimed the disability credit in 1990; fewer than 10 percent of those who identified themselves as disabled for the purposes of the 1991 Census claimed the disability tax credit.

The low proportion of claims from potentially eligible individuals may be due to the fact that many people with disabilities are unaware of the credit. In addition, the criteria for qualification may be interpreted inconsistently by medical practitioners. The Standing Committee on Human Rights and the Status of Disabled Persons made several recommendations for improving the availability of information about the credit. However, the Committee also pointed out that the most probable reason for the low incidence of claims is that many persons with disabilities are too poor to benefit from the credit [Canada 1993:7]. The Committee went on to propose its refundability.

As noted above, it could be argued that because the unused portion of the credit is transferable to a family member, it provides assistance to individuals who may not be able to claim the assistance for themselves. On the other hand, transferring the credit to someone else relegates people with disabilities to a dependent position.

Federal-Provincial:

The federal government should consult with provinces on the proposed change. These negotiations are especially important to ensure that the benefit of a refundable tax credit is not offset by an associated reduction in provincial welfare (see weaknesses).

Financing:

The federal and provincial governments currently share the cost of the disability tax credit, including the transferable portion. At last count (1992), the federal government spent \$265 million on the disability tax credit and the provinces an estimated \$156 million. However, the federal government would assume all the costs of a refundable credit (unless some arrangement could be worked out with the provinces to require them to continue paying part of the cost, which is unlikely). There could also be a windfall gain to the provinces if they decide to reduce their respective welfare payments by an equivalent amount.

If the disability tax credit were to be made refundable, it is possible that administrative costs would go down because there no longer would be a need to track the component of the credit that is transferred to a relative.

Strengths:

The proposal would address the problem of inadequate coverage; many people with disabilities do not benefit under the current system. Moreover, a refundable credit would direct additional money to people who really need financial assistance.

Weaknesses:

The inherent danger in a refundable credit is that provinces may use the opportunity of an enhanced (federally-funded) payment to cut their respective welfare benefits. This problem arose in the past when the federal government brought in the refundable child tax credit (predecessor to the Child Tax Benefit) and the refundable GST credit. Negotiations would have to precede the introduction of this measure to ensure that the credit was not offset by an equivalent cut. Moreover, even if the credit were to be made refundable, it would be of no assistance to those deemed ineligible on the basis of the current eligibility criteria.

3. Welfare Top-Up

Description:

Social assistance - or welfare - is the income program of last resort. It provides financial assistance to individuals and families whose resources are inadequate to meet their needs and who have exhausted other avenues of support.

Each province and territory sets its own rules and regulations that govern eligibility for assistance, the amount of basic assistance, type and level of special assistance, enforcement policies and provisions governing appeals. Despite the differences, all jurisdictions have several features in common. Applicants must qualify on the basis of provincial definition. Provinces generally require that the disability be severe and prolonged and that the applicant with a disability be considered 'unemployable' - i.e., unable to engage in remunerative employment.

In addition, applicants must qualify for welfare on the basis of a needs test which takes into account assets, incomes and needs. The value of their liquid (i.e., cash, bonds) and fixed (i.e., house, car) assets must not exceed designated

levels. Their incomes cannot exceed certain amounts. (Eligibility for Alberta's Assured Income for the Severely Handicapped is determined on the basis of an income test.) Applicants may also have special needs which generate higher costs than their available resources.

Most provinces pay more generous benefits to single-parent families and to persons with disabilities than to recipients considered employable. Despite the higher levels of assistance for those deemed 'unemployable,' welfare rates in all parts of the country fall well below poverty levels [National Council of Welfare 1995: 24-25]. In 1994, the latest date for which national comparable data are available, maximum annual welfare benefits for a single person with a disability were as follows (the numbers in brackets represent the welfare benefit as a percentage of the poverty line for the largest city in each province): \$8,546 in Newfoundland (63 percent); \$9,202 in Prince Edward Island (69 percent); \$8,806 in Nova Scotia (65 percent); \$8,325 in New Brunswick (61 percent); \$8,312 in Quebec (54 percent); \$11,757 in Ontario (76 percent); \$8,227 in Manitoba (53 percent); \$8,515 in Saskatchewan (63 percent); \$6,770 in Alberta (44 percent); \$9,504 in British Columbia (61 percent); \$8,980 in Yukon (no poverty line comparisons); and \$13,108 in the Northwest Territories (no poverty line comparisons).

Under the proposed option, the federal government would pay a flat-rate or standard monthly benefit to all recipients who qualify for long-term welfare because of a disabling condition. The *Joint Federal-Provincial Study* modelled a top-up worth \$175 a month in 1986. The benefit would not be taxable; welfare is not a taxable benefit because income is already taken into account in determining benefits.

A variation of this approach is to pay a variable amount so that all welfare recipients receive the same income on a national basis after the top-up is paid. Those who do not qualify for social assistance for whatever reason - e.g., their assets exceed the allowable limits in a given province - would not be eligible for the top-up.

Federal-Provincial:

This option would be a federally-financed and federally-delivered benefit. Determination of disability could be at the federal or provincial level. However, the federal government would require access to welfare data - names and addresses of recipients - in order to pay the benefit. One way to deal with this administrative issue is to direct money to the provinces which, in turn, would deliver the benefit to their respective recipients. Provinces could be required to recognize the federal contribution to the program. The *Joint Federal-Provincial Study* referred to this

option as "the least disruptive" approach among the various options for reform [Federal-Provincial Task Force 1985: 40].

Financing:

The top-up would be federally financed through consolidated revenues. The flat-rate top-up of \$175 a month proposed by the *Joint Federal-Provincial Study* would cost an estimated \$475 million in 1986. The inclusion of institutionalized people would have added an extra \$50 million to the costs in that year.

Strengths:

The benefit would improve the incomes for people who rely on welfare for their subsistence. As noted, welfare benefits - even for persons with disabilities who generally receive higher provincial benefits - fall well below the poverty level in all jurisdictions.

The *Joint Federal-Provincial Study* noted that a welfare top-up could also reduce or eliminate the need for the CPP flat-rate component, assuming the top-up was also payable to the recipients of CPP disability benefits. While this option would lower CPP costs which are supported through payroll taxes, it would increase the costs paid through general revenues. The option would simply shift the financing burden from employers and employees to taxpayers generally [Federal-Provincial Task Force 1983: xiii].

Weaknesses:

Some provinces already pay a higher rate of assistance to persons with disabilities. A potential problem in the proposed option is that provinces could retract the higher-cost programs and reduce benefits to the level paid to recipients considered to be employable. There would be no incentive to improve welfare because provinces simply could rely on the federal top-up to compensate the inadequacies. In fact, this possibility raises the question as to what would happen if provinces not only fail to increase their benefits but actually reduce their benefits. Would the federal government be expected to fill the gap?

Moreover, the proposed benefit may provide an incentive for people to go on welfare in order to receive the top-up. Yet recent welfare reform has headed in precisely the opposite direction by trying to move recipients off welfare. In addition, this option would bring no resolution to the fundamental problem inherent in the welfare system; in order to receive a higher benefit, most persons must be declared or classified as 'unemployable.' This requirement acts as a major disincentive to work.

Finally, concerns could be raised as to why the federal government has decided to provide special assistance to only one category of persons with disabilities (i.e., those who qualify for welfare). It could be argued that because welfare recipients have access to special assistance for disability-related needs, they may be relatively better off in net terms than someone who relies primarily upon other programs of income support, such as the CPP disability benefit.

Medium-Term Reform

A. Earnings Replacement Options

1. Full and Partial CPP Disability Benefits

Description:

CPP now pays only full benefits - i.e., a person is either in or out of the workforce. Under the proposed reform, CPP would pay partial benefits as well. The value of the benefits would vary by the extent of workforce participation. This option could be implemented only if the definition of disability under the program were changed to recognize work potential.

The *Joint Federal-Provincial Study* put forward a broader proposal for reform; a disability insurance that would provide protection for earners in the event of full or partial disability of a long-term nature. The proposed program would ensure mandatory coverage of all employed and self-employed Canadians on earnings up to the average wage.

Both the population protected and the level of earnings covered would be identical to the C/QPP. But the definition of disability for determining eligibility would be based on the experience from past workers' compensation claims and would include an estimated percentage loss of individuals' earning capacity.

The *Joint Federal-Provincial Study* proposed that a full benefit would be 60 percent of 'final insured earnings' up to the earnings ceiling - i.e., a formula based on earnings in the pay period (usually a year) just prior to the onset of the disability. Partial benefits would be paid on a pro-rated basis relative to the person's loss of earnings capacity. Partially disabled workers would receive 60 percent of their wage loss. The program would have a strong commitment to rehabilitation. Benefits would be indexed to CPI up to a maximum eight percent. They would begin 17 weeks after the onset of disability and would continue until recovery from the disability, age 65 or death. Periodic reassessment would determine continuing entitlement, especially in partial benefit cases.

Federal-Provincial:

Although the CPP Act allows for rehabilitation, the federal government would be required to negotiate the proposed change with the provinces. The inclusion of partial benefits would represent a fundamental shift in the nature of the CPP, its eligibility criteria and the associated benefits. The provision of partial benefits in recognition of a recipient's work efforts means that the current eligibility criterion of severe and prolonged disability with no capacity to perform any work would no longer be relevant.

The *Joint Federal-Provincial Study* proposal on full and partial benefits would be administered as a network of provincial and territorial plans, each of which meets minimum national standards. As in the case of the C/QPP, the proposed program would allow provinces to opt out if they operated an analogous plan.

Financing:

There are several cost implications. Costs would decrease to the extent that beneficiaries earned money from work. However, this reduction would be offset by the increase in the numbers of people who would qualify if the eligibility criteria were liberalized to include work potential. Moreover, administrative costs could rise because of the greater focus on assessment and rehabilitation - reflecting, in effect, the costs of a case management approach. The net cost would be difficult to project because of these counteracting forces.

The Federal-Provincial Task Force proposal would be funded through equally-shared employer and employee premiums. Premium rates might vary from province to province although they would be standard within the same jurisdiction. The program would be financed as a 'full cost' system - i.e., the amount required to fund the liabilities of a mature system. Full-cost financing would involve a larger government-administered fund as well as a higher initial premium than the current CPP pay-as-you-go approach.

Strengths:

A program that paid partial benefits - whether within the context of the CPP or not - would recognize that many individuals with disabilities are capable of working to some degree. A person may have a disability that is both severe and prolonged but may still be able to return to work with some training or work-related aid. In addition, the availability of full and partial benefits within the context of an earnings replacement program could reduce welfare caseloads.

Weaknesses:

Concern has been expressed by some groups representing persons with disabilities about the rehabilitation measures and about partial benefits, more generally. Apparently, some individuals have been encouraged to participate in the rehabilitation measures introduced within the CPP only to find that it was not easy to go back on the program when required - ironically, because they had demonstrated their rehabilitation potential. The problem lies in the underlying legislation which states that individuals must have a severe and prolonged disability that prevents them from regularly pursuing substantially gainful employment. Once they have demonstrated that their disability no longer prevents them from pursuing employment, the legislation provides little choice but to discontinue benefits. It should be noted that some consumers have raised questions as to whether the CPP should be engaged in rehabilitation at all - or whether this involvement reduces opportunities for access to generic employability programs.

There is also a danger that a program which pays partial benefits sets up unrealistic expectations and pressures with respect to work performance. There must be associated personal and work-related supports as well as available jobs. Otherwise, the program will withdraw benefits inappropriately because it is based on the false assumption that certain clients can resume work in the absence of supports or available employment.

There are also concerns that partial benefits can create insecurity and poverty. "A person with a disability which effectively excludes him or her from the workforce needs a full income, not 15 or 50 percent" [Beatty 1991: 119]. The *Joint Federal-Provincial Study* pointed out the difficulty of assessing the degree of disability and setting the appropriate level of partial benefits.

Yet another concern relates to the potential for skewing the nature of an insurance program - whether it is CPP or some other configuration. A decision to introduce partial benefits must consider whether the benefit as it is currently paid (i.e., as a percentage of former earnings) would have to change to take earnings into account. The program could become, in effect, an earnings-tested benefit and move away from the concept of an insurance that is paid regardless of outside earnings or income.

2. Link CPP/EI

Description:

Another option for medium-term reform is to merge parts of the CPP disability benefit with the employability measures within the new Employment Insurance (EI) program. Employment Insurance is a federally-administered program that replaced the former Unemployment Insurance (UI) program. UI provided income protection from temporary work absences arising from unemployment, illness, temporary disability, or birth or adoption of a child. The risk against which the insurance is afforded must be a temporary interruption; those unemployed over a prolonged period receive assistance under different programs - notably, the Canada Pension Plan and welfare. Employment Insurance continues to provide income protection in the event of a short-term interruption of earnings - but the entry requirements, maximum level of benefit and maximum duration of benefit have become more stringent.

Employability enhancement is a major focus of the new program. Employment Insurance redirects a substantial sum of money (\$800 million) from income support towards employment benefits. These include a package of measures - wage subsidies, earnings supplements, self-employment assistance, job creation partnerships, and skills loans and grants - to help workers prepare for and find a job. In addition, a three-year \$300 million fund is intended to stimulate economic growth and create new jobs.

Closer integration of EI and the CPP would mean a more explicit and active focus upon employment and employability within the latter program. The EI employment assistance services would effectively be made available to CPP disability applicants and beneficiaries. Far more persons with disabilities could be working successfully but are not because of the barriers they face in opportunities for retraining and in access to work-related and personal supports.

There is precedent for this focus on rehabilitation in other countries. Sweden, for example, emphasizes early intervention for workers receiving sickness benefits and the coordination of all parties involved in rehabilitation including physicians, unions, employers and vocational professionals.

Federal-Provincial:

The linkage of the CPP with EI could be implemented by the federal government alone. Both programs are administered by the Department of Human Resources Development. However, the provinces should be consulted; changes which focus on employability could have an impact upon provincial programs. Responsibility for labour market training and other employability measures has

recently been transferred by Ottawa to the provinces - although the federal government could continue to provide additional funding for this purpose through its Human Resources Investment Fund (HRIF).

Financing:

Costs would be pooled from premiums paid for both CPP and EI. Both programs are currently supported through employer-employee premiums (i.e., payroll taxes) although the contribution rates for the two programs differ.

Strengths:

Closer links with Employment Insurance - whose primary focus is employability - would allow workers to test out whether they are employable over the long term (i.e., more than 12 months). In a brief prepared on the CPP, the Council on Canadians with Disabilities points out that "many people whose disabilities could reasonably be described as 'severe' have proven themselves able to work very successfully, particularly with suitable education and training. Many more persons with disabilities could be working successfully, but have not been given a fair opportunity to do so because of the barriers they face" [CCD 1996: 2].

A link with EI would also allow training to begin at earlier stages. The literature points out that the sooner reintegration begins, the more likely the chances of a successful outcome (i.e., some degree of labour force participation). A closer link with EI would also reduce administrative costs in that CPP and EI would not have to run two parallel administration systems for rehabilitation and case management.

Weaknesses:

The problem in linking CPP with EI is that the move would add another layer of complexity to the latter program - which has been criticized by several federal commissions and studies over the years on the grounds that it is trying to accomplish too much under the same umbrella. In addition, incorporating the rehabilitation function within EI could exclude the self-employed - a growing segment of the labour market - who currently are not covered by that program. Participants at the Winnipeg Consultation pointed out that many people with disabilities are not eligible for Employment Insurance; they cannot make the required contributions because they are unemployed or they are self-employed and are therefore not included in the program.

Moreover, the Council of Canadians with Disabilities contends that a focus on rehabilitation and retraining should be part of a larger employment strategy for

people with disabilities that includes accessible mainstream and training opportunities, removal of physical barriers and greater assistance with disability-related costs [CCD 1996]. The fact that there is no effective employment strategy - not only for persons with disabilities but for Canadians more generally - creates dependence on all programs of income support. The 'problem' with the CPP disability benefit is that its small rehabilitation effort barely scratches the surface of the huge need for retraining, continual upgrading and restoration of work capacity.

3. Link CPP/Workers' Compensation

Description:

The purpose of workers' compensation is to compensate for earnings loss due to a work-related accident or injury. The program is provincially run and administered and therefore varies throughout the country.

Workers' compensation replaces between 75 percent and 90 percent of lost insured earnings in the event of occupational injury, disability or disease (the variation is smaller than the numbers suggest because the programs with a 75 percent replacement rate base benefits on gross earnings while the 90 percent benefits are based on net earnings). Employees receive compensation in the case of injury but abrogate their right to seek legal damages from their employers. Benefits are determined by the length and severity of the incapacity; lost earnings potential may also be taken into account. In addition to cash awards, workers' compensation plans include a variety of in-kind benefits, such as rehabilitation services. Employers pay 100 percent of the cost of workers' compensation. Benefits are not taxed.

While workers' compensation offsets earnings loss for work-related accidents or injuries, the CPP pays benefits in the presence of a severe and prolonged disability that causes a substantial interruption of earnings, regardless of cause. This means that a worker could receive benefits under both programs. One option for reform is to look at how benefits are stacked between programs.

In some provinces, workers' compensation is added to the CPP and recipients can make more money from both programs than from working. In other provinces, workers' compensation deducts the Canada Pension Plan benefits dollar for dollar and thereby reduces its own costs.

In Quebec, by contrast, people with a work-related injury go to workers' compensation in the first instance. They cannot apply to the Quebec Pension Plan. In effect, the QPP is second payer to workers' compensation. The Quebec

practice could be a model for the CPP.

In considering the closer links between the two programs, a key question that must be resolved is who assumes the role of first payer? It could be argued that workers' compensation should bear the primary cost of a disability resulting from a *work-related injury*. The program was set up for that purpose.

The categorical programs that pay benefits in the event of injury, such as automobile insurance, as well as the other social insurances (i.e., workers' compensation and Employment Insurance) should be the first payer in the event of a disability. The CPP could then top up the benefits from the other programs to the designated maximum that the person would have received as a disability benefit. This shift could mean that a person receives no benefits at all under CPP if the maximum has been reached under an equivalent program. As a general principle, CPP should be the second - or at least partial payer - to categorical programs that compensate for disability.

An agreement could be sought to cap the combined earnings replacement at some percentage - e.g., 80 percent - of pre-disability gross earnings. The amount must be set at an adequate level to ensure that the administrative efficiencies involved in rationalizing the two programs do not result in a substantial drop in income for recipients.

Federal-Provincial:

This option would require extensive negotiations with provinces which are responsible for the program through their respective workers' compensation boards.

Financing:

While the CPP is funded through employer and employee premiums, workers' compensation is financed by employer premiums alone. Both sources of financing would continue to support an integrated program.

Strengths:

A closer link with workers' compensation could help integrate certain administrative and rehabilitation functions that are now carried out independently by both programs (this model is described below under 'integrated assessment/rehabilitation'). Moreover, the links between programs would begin to resolve the issue of first and second payer.

Weaknesses:

Only an estimated 10 percent of workers receive both CPP and workers' compensation benefits. The extent of the overlap may not be worth the administrative complexities of linking the programs. (However, there would be future savings derived through shared administrative procedures, such as assessment and rehabilitation.)

Workers' compensation is different from other programs because it provides compensation for partial loss of capacity. Other programs, by contrast, are based on 'all or nothing' approaches - like the CPP disability benefit. This basic difference between workers' compensation and other programs is sometimes cited as the reason why the former cannot (at least just yet) be integrated or harmonized with other programs of income support. Yet lump-sum awards for pain and suffering can continue to be paid as a top-up to the basic level of benefits delivered through another program. Quebec has this kind of lump-sum award as part of its no-fault automobile accident insurance which has been largely harmonized with workers' compensation in that province.

One problem in proposing a closer merger of the CPP and workers' compensation (especially if the latter becomes the designated first payer) is that a greater burden could be shifted to employers who now pay 100 percent of the costs of workers' compensation but only 50 percent of costs of the Canada Pension Plan. If, by contrast, the CPP becomes first payer to workers' compensation, then the former would assume more of the costs, thereby transferring the increase to employees (although it could be argued that all employer costs are shifted to employees through reduced wages). In addition, a closer integration of workers' compensation and CPP could complicate the experience-rated base of workers' compensation which is intended to act as an incentive to provide a safe workplace.

The proposed option raises concerns about the nature of a social insurance. If CPP becomes second payer to workers' compensation (and potentially to other categorical programs), would there be difficulty collecting premiums for a program for which people ultimately may derive no benefits if the contingency occurs? (Apparently, this issue has not been a problem in Quebec where the QPP is second payer to workers' compensation.)

Turning the CPP into a second payer could make it a residual program rather than an insurance that provides guaranteed coverage to all who have made the required contributions. Under the proposed option, for example, a worker injured on the job may receive workers' compensation and nothing from CPP. The lack of payment could potentially create a problem, given that the worker had

made compulsory contributions to the CPP. While the QPP is second payer to workers' compensation in that province, it still provides protection to anyone who needs it as a primary source of income.

The issue of first and second payer becomes even more complex when considering the links of CPP and private insurances. This issue is explored below.

4. Link CPP/Private Insurances

Description:

This option would link CPP with private insurances that pay compensation for disability. There is considerable variation among private long-term disability insurance plans. In general, however, most pay benefits for the first two years after disablement to insured persons who cannot do their own jobs. After two years, these individuals are reassessed. If they are able to do any job, they are cut off the benefit. CPP pays benefits to those unable to carry out any substantially gainful employment and whose condition is expected to last at least a year.

Most private insurances act as second payer to the CPP. They either top up the CPP benefit or provide a sum to compensate for earnings loss. In general, private insurers assure a certain percentage (usually 60-65 percent) of pre-disability earnings, and take into account income from other sources, including CPP. Insurance premiums are calculated with this offset in mind.

There are several functions - notably assessment, reassessment and determination of rehabilitation potential, and rehabilitation and training - which both the CPP and private insurers now carry out that could be more closely integrated. Currently, there is little collaboration around rehabilitation and retraining. This lack of collaboration is unfortunate; private insurers often come into contact with individuals at relatively early stages in the development of a disability and could provide earlier intervention which generally results in a higher rate of success.

Federal-Provincial:

Discussions would have to be held with the private sector around the possible integration of administrative and rehabilitation functions as well as the actual payment of benefits.

Financing:

Private plans calculate their premiums on the understanding that they are second payers to the CPP. They are more in the 'top up' mode than in the full coverage business. There would be serious cost implications if private insurers were to pay higher benefits than they do now.

With respect to rehabilitation, in particular, costs for both CPP and private insurers could be reduced if both parties invested jointly in the assessment of rehabilitation potential, provision of training and ongoing assessment of capacity.

Strengths:

The proposed option would streamline the system and reduce unnecessary testing and administrative duplication. There is value in collaborating on reassessments in particular. If these are not carried out jointly, then the same person could be found by one administration to be capable of working while deemed unemployable by the other program. This inconsistency is not only confusing and destabilizing for the individual; it could also act as a disincentive to work.

Right now, the fact that private insurers are second payers to the CPP means that they tend to encourage applicants to apply for CPP, even though these individuals may not be eligible. This practice increases the workload for the CPP administration and the associated costs. Closer integration would reduce the likelihood of inappropriate referrals to the CPP. However, costs could be reduced for both parties through closer collaboration on rehabilitation and reassessment.

Weaknesses:

If private insurers were to assume more of the cost burden of disability, then premiums for private insurance coverage could increase. Higher costs would reduce coverage as fewer employers would want to purchase the insurance. In fact, only an estimated 43 percent of the Canadian workforce is covered by private disability insurance and, in the long term, only for total disability.

5. CPP Partnering with Private Employers***Description:***

The CPP could partner with private employers. The employer would agree to hold open the job for the employee who is off work as a result of a severe disabling condition. (The job may not be the same position as the one previously held.) The CPP could pay benefits in the interim while the employee received some form of training or rehabilitation. The CPP could test out this model in

partnership with several large employers.

Federal-Provincial:

The CPP can undertake this type of initiative on its own because it is working with individual employers and assisting employees in returning to their former workplace.

Financing:

Costs would be shared with the selected employer.

Strengths:

The strength of this model is that it works with individual employers (albeit relatively large employers) to keep work positions open for their employees who have become disabled or whose previously existing condition has deteriorated. This 'open door' arrangement helps expedite the return to work.

Weaknesses:

This plan works well with employers who are keenly interested in the rehabilitation potential of their employees. However, this type of approach applies only to a small and select group of employers.

6. Integrated Assessment/Rehabilitation

Description:

Under this model, existing income programs would remain in place - at least for the time being. However, several of the common functions that they carry out - notably assessment and rehabilitation - would be shared. The purpose of this approach is to streamline various programs by reducing expensive duplication with respect to assessment for eligibility and rehabilitation. The integrated assessment/rehabilitation function could be publicly financed and delivered, privately financed and delivered, or a combination of the two (e.g., publicly financed and privately delivered).

The Canada Pension Plan is currently testing out a model of integrated assessment/ rehabilitation with the BC Ministry of Labour, the Insurance Bureau of British Columbia (responsible for automobile insurance), the provincial workers' compensation board, a private insurer and the regional Employment Insurance office (a federal program).

Many CPP disability recipients are also eligible for benefits under other

income programs including workers' compensation, Employment Insurance and private insurance. The purpose of the model is to test out a 'single window' approach to program delivery. At the Edmonton Consultation, participants pointed out the need for "one-stop shopping for income support related information and services"; all levels of government must work together to build such a model.

The pilot operates on a case management basis in which each claimant is assigned to an individual who assesses needs and rehabilitation potential, develops a rehabilitation plan, sets out a training program and assists in finding an employment placement. These functions are being carried out according to a set of mutually agreed 'best practices.' The BC Paraplegic Association is helping to provide case management and job placement.

Up to 50 individuals will be involved in the project. An evaluation will determine whether participants in the project return to work more quickly than members of the control group.

Federal-Provincial:

This option requires extensive collaboration among all parties involved in the delivery of income programs including the federal government, each provincial government, provincial bodies (e.g., workers' compensation boards) and private insurers. Because of the administrative complexities in setting up such an arrangement, it would be necessary to implement the proposed model on a province-by-province basis. Each jurisdiction would be encouraged to work out its own model for delivery based on current programs and the most feasible design in that particular province. All models would adhere to a set of national guidelines or standards.

Financing:

The project is expected to last 18 months at an estimated cost of \$224,800. The CPP will contribute \$20,000 for the evaluation of the pilot and up to \$10,000 per client for rehabilitation.

If this model were to be more widely applied, all involved parties would make a financial contribution to support the integrated assessment/rehabilitation function. The costs would be divided according to a pre-set formula or on a pro-rated basis relative to the number of cases. However, such an arrangement would require core funding for the actual facility in addition to individualized funding on a client basis.

Strengths:

This option reduces administrative duplication. A streamlined assessment and rehabilitation process not only would lower costs but also would minimize the burden for claimants who no longer have to deal with (and follow the rules of) several different systems.

Weaknesses:

A consolidation of the assessment process, in particular, represents a centralization of decision-making power. It would be essential to build an appeal process into any integrated arrangement in order to ensure that all claimants can question decisions regarding their specific cases.

While the BC partnership operates under the guidance of an advisory committee that includes consumers, concern has been expressed about the medically-based assessments that are being used for the project. These assessments are seriously restricting eligibility for the program. A related problem arises from the fact that consolidation represents the only option; failure to meet the definition or medical criteria results in total exclusion of persons with disabilities from all programs.

B. Income Support Options**1. Low-Income Tax Credit****Description:**

The purpose of a low-income tax credit is to offset the income tax burden on low-income households. The federal income taxpaying threshold for a single person begins at \$6,547 of gross income - well below the \$17,127 poverty line for a major metropolitan area. However, the disability tax credit raises the income-taxpaying threshold to \$11,314. The proposed option would provide a payment that offsets the income taxes paid by low-income households.

Federal-Provincial:

This option would have to be negotiated with provinces as it represents a major change in the tax system and would reduce provincial revenues.

Financing:

The federal and provincial governments would share the cost of a non-refundable credit.

Strengths:

This option provides a way of directing more money towards low-income Canadians with disabilities. It would also reduce disincentives to work by removing the income tax paid on low earnings; wages are subject to income tax while welfare is not.

Weaknesses:

A low-income tax credit would help reduce or eliminate the tax burden for the majority of people with disabilities. However, it is also a 'blunt' instrument from the viewpoint of disability income options in that it would provide assistance to all low-income households, not just to those with disabilities. The eligible population would be relatively large. At the same time, a low-income tax credit could be less costly than a refundable disability tax credit in that the latter would have to be a sizeable sum in order to make a financial difference. The relative costs of each approach would depend upon its specific design.

2. Enriched Welfare

Description:

The *Joint Federal-Provincial Study* explored the option of enriched social assistance or welfare. The rationale underlying the proposal was to ensure a higher base benefit level to persons with disabilities, recognizing that they face a variety of daily expenses which do not apply to low-income people more generally. The proposed design of the *Joint Study* would provide all persons with disabilities who are currently recipients of social assistance with an income guarantee at least equivalent to the OAS/GIS rate - or \$10,425 in 1996. (It should be noted that this rate falls well below poverty levels; any option of this nature would have to employ a higher base.)

Under the *Joint Study* option, eligibility would require the presence of a severe and prolonged disability - i.e., the same criterion currently used in the C/QPP. Benefits would be based on household size and would be determined through a needs test that would take into account level of assets, income and need. The benefit would be adjusted to changes to the Consumer Price Index. The existing welfare provisions in which extra assistance is paid to persons with special needs would be retained. While persons with disabilities would receive benefits, these individuals would still be part of the welfare system.

Higher earnings exemptions for persons with disabilities could be another feature of the design. 'Earnings exemptions' refer to the amount of income that welfare recipients may earn from outside employment without affecting their welfare entitlement. Once their earnings exceed the specified limit, their welfare cheques are reduced by a designated amount.

Earnings exemption guidelines vary widely by province and territory. In some provinces, such as Quebec, earnings exemptions take the form of a flat-rate amount. Welfare cheques are reduced by one dollar for every dollar of income earned over and above that level. In other jurisdictions, such as Alberta, exemptions are expressed as a percentage of earnings. Recipients may keep up to a certain percentage of their employment-related earnings (to a designated maximum) before their welfare cheques are reduced. In still other provinces, such as Ontario, a combination of flat-rate and variable exemptions is used in which recipients may earn up to designated amount as well as an additional amount that represents a certain percentage of their earnings. Welfare payments are reduced after that point.

Federal-Provincial:

This option would use existing welfare programs as the base. It would be provincially administered which means that some lack of uniformity - e.g., determination of eligibility - would be inevitable as in the existing system. The federal role would be limited primarily to financing.

Financing:

The federal government could pay for the enrichments to current welfare payments on its own or could share the additional cost with the provinces. The *Joint Federal-Provincial Study* estimated that 225,000 recipients would have been eligible for the enriched welfare option in 1985; it would cost in the order of \$490 million for the federal government and an additional \$160 million for the provinces and territories (based on a 75-25 federal-provincial cost-sharing arrangement).

Strengths:

The proposal would provide additional assistance to persons with disabilities currently receiving welfare. The option would ensure that welfare benefits approach a minimum income guarantee that is more adequate than the payments now in place.

Weaknesses:

The benefits would be paid only to people who qualify as severely disabled. It could be argued that these are not the people who require assistance because they already have a form of support (despite the fact that it falls below poverty levels). Many people with disabilities are left out of the income system; they may have a partial or recurring disability which interferes with their work performance but the disability is not prolonged or severe enough for them to qualify for benefits.

Another potential problem is that the higher income guarantee could encourage people to qualify for welfare and could inadvertently increase, rather than lower, welfare caseloads. Provinces could also decide to reduce the availability of special assistance and/or personal supports in the form of technical aids, attendant care or homemaker services if they spend more on basic assistance or if welfare recipients are perceived to be better off financially and more able to purchase these supports on their own.

Long-Term Reform

A. Earnings Replacement Options

Long-term reform would involve the creation of a new earnings replacement program. The CPP disability benefit would be removed from the Canada Pension Plan and combined with other programs into some new form of insurance.

The advantage of creating a new insurance is that it could be designed with precisely the features that are considered appropriate. For example, benefits could be established on a sliding scale to allow for variable work capacity. There could be a strong focus on rehabilitation and retraining. A new insurance could integrate several (or all) of the existing programs to reduce the excessive administration and costs involved in multiple assessments, reassessments and rehabilitation.

A new option could help resolve the 'apples' and 'oranges' problem in which two very different contingencies, retirement and disability, are being insured within one program - the CPP. Because some critics appear not to understand that the CPP was set up to provide protection in the event of long-term earnings interruption, they believe that the disability component of the program is taking the CPP away from its 'original purpose.' This lack of understanding has created serious difficulties for the disability benefit which has become the target of growing attack.

If a decision is made to design a new earnings replacement income program, it is important to determine the specific features that would be ideal - and possible - to achieve. For example, it would be essential to include self-employed workers (currently covered under the CPP) in any new insurance scheme; the self-employed comprise a growing segment of the labour market.

While the following options set out the basic parameters for redesigning the income security system, they do not provide details (although some specifics are presented for illustrative purposes). These would have to be determined on the basis of in-depth examination and modelling to determine the potential impact and cost of any given design.

The three proposed earnings replacement options put forward in the *Joint Federal-Provincial Study* incorporate several key features. All the options were designed to replace 60 percent of pre-disability earnings up to the C/QPP ceiling; provide a high degree of inflation protection; begin payments of benefits 17 weeks after the onset of disability; protect all employees and the self-employed; and include a rehabilitation component. Moreover, all the options assumed the continued existence of workers' compensation, other categorical programs (e.g., automobile insurance) and welfare. Two of the options assumed public administration [Federal-Provincial Task Force 1985].

But there could be serious disadvantages to a new insurance - especially if privately delivered. A private scheme could reduce coverage - with many individuals denied inclusion on the grounds that they are considered to be too high risk. The premium rate could be far too high - effectively leaving out many potentially eligible individuals. A private plan could mean the loss of equity and portability of benefits throughout the country. However, there may be ways in which to combine public and private elements (e.g., privately deliver certain parts of a public program). Finally, as earlier noted, a coordinated plan which becomes a monopoly is a potentially dangerous arrangement if there are no appropriate safeguards.

1. Mandatory Private Insurance

Description:

Mandatory private insurance would replace the CPP disability benefit. Legislated standards would govern the various features of the program including benefit levels, inflation protection, groups of people covered, premiums and rehabilitation benefits.

The proposal put forward in the *Joint Federal-Provincial Study* would provide mandatory protection for all employed and self-employed persons with earnings up to the average industrial wage (\$23,900 in 1985 or \$35,400 in 1996). Protection would be afforded to all workers who satisfied the Unemployment Insurance (now Employment Insurance) eligibility criteria.

Benefits would be paid to persons, who by reason of disability, are unable to perform the duties of any occupation for which they are reasonably qualified or may become qualified through training, education or experience. The process of disability determination would also assess rehabilitation potential.

Under the option presented in the *Joint Federal-Provincial Study*, workers' compensation would remain in place as a separate program. The new scheme's benefit would be equivalent to 60 percent of final insured earnings - i.e., a formula based on earnings in the pay period (usually a year) prior to the onset of the disability. Benefits would be indexed to the CPI up to an eight percent annual maximum. Payments would begin 17 weeks after the onset of disability and continue until rehabilitation changes the circumstances or until retirement or death.

Coverage would begin immediately upon employment and would extend for 90 days after employment terminates or when a new job begins if earlier. In the first year of employment, disability resulting from an illness or injury for which the individual received treatment within the past 90 days would not be covered. Once that condition was satisfied and the individual changed jobs, there would be no second waiting period.

The program would incorporate an active rehabilitation component that would be patterned on the individual assessment approach now used in private plans. Insurers would have an explicit obligation to promote rehabilitation. Any individuals who engage in training or an occupation under the supervision of a physician and with the approval of the insurer would have benefits reduced; total income from all sources would not exceed 100 percent of pre-disability income. However, benefits would be increased back up to the full amount if the beneficiary were unable to continue the work activity.

Federal-Provincial:

The design and costing of the proposal made by the *Joint Federal-Provincial Study* assumed administration through the private insurance industry. Coverage would be offered on a competitive basis by licensed accident and sickness insurers. Features of the plan could vary from one employer-employee group to another but all plans would be required to meet national minimum standards. Employers could operate self-insured plans if these met the designated standards. Special arrangements would have to be made for small employee groups (see financing). Alternatively, similar benefits could be provided through a publicly-administered scheme [Federal-Provincial Task Force 1985: 10].

This option would require extensive federal-provincial negotiations. Constitutionally, Ottawa and the provinces have concurrent jurisdiction over insurance. The federal government regulates the corporate structure and financial standards of federally incorporated companies, the Canadian branch operators of foreign insurers and provincial companies that have chosen to register federally. Provincial governments regulate the corporate structure and financial standards of

provincially incorporated insurance companies as well as the market operations of all insurance companies licensed to do business in that province [Ontario 1986: 105].

Financing:

The proposed plan would be financed on a fully-funded basis by employer and employee premiums. Premium rates would vary and would be determined by a competitive process as is now the case with private insurance plans.

A maximum premium and insurance pool arrangement would have to be introduced for some groups, such as workers employed in small businesses. The pool would be established to guarantee coverage for small groups at no more than the maximum premium. These workers would otherwise have to pay high premiums or be refused coverage.

The proposed pool would operate on a break-even basis and would be governed by a management board composed of government, private insurers and employer/employee representatives. The management would be responsible for setting the maximum premium rate, the rate of interest on investments and the actuarial valuation basis for claims on pooled groups. The management could also set guidelines for the provision of vocational rehabilitation and would be responsible for setting appropriate standards.

Strengths:

The option would provide universal coverage to all employed and self-employed Canadians. Inflation protection would be better than that now afforded under private sector plans - although potentially it could be worse than the inflation protection assured under the CPP. The variable premium rate would act as an incentive to employers to reduce disability claims and to encourage vocational rehabilitation.

The program would lower administrative costs somewhat because it would incorporate the CPP disability benefit. However, the reduction would be offset by the fact that administrative costs are generally assumed subsidies in public programs; in the proposed design, the administration would be an explicit cost [Federal-Provincial Task Force 1985: 14].

Weaknesses:

Private insurance raises serious concerns about the coverage and adequacy of the protection. The Canadian Life and Health Insurance Association (CLHIA) estimates that 43 percent of the employed labour force is covered by private long-term disability insurance.

It would be essential to ensure the adequacy of benefits. The percentage replacement of private disability insurance is usually lower than workers' compensation. (The latter generally pays the highest benefit because it effectively 'compensates' employees for having abrogated the right to sue the employer.) Private benefits are rarely indexed except in government-sponsored plans.

There would be strong profit motive to lower costs, control eligibility and shorten the length of claims. A private scheme could reduce coverage - with many individuals effectively denied inclusion on the grounds that they are considered to be too high risk. Categorical exclusions by type of disability could be introduced. Many private plans already exclude persons with pre-existing disabilities. Alternatively, persons deemed to be high risk could be covered but may be required to pay inordinately high - and in some cases unaffordable - premiums. An independent body would have to be set up to monitor and enforce minimum national standards.

Another way in which potential beneficiaries have been left out is through lack of information. Many people who become disabled are not informed of the specific provisions of their private plan and have no access to the details of their insurance coverage.

Finally, the *Joint Federal-Provincial Study* noted the difficulty of implementing a private insurance scheme which compensated for anything other than full and total disability. Private insurance provides short-term benefits during an initial rehabilitation period for those who cannot perform their own work but retain significant earnings capacity. However, serious administrative problems could arise if efforts were made to extend protection further by paying partial disability benefits, given the wide range of physical and mental conditions which could be used to justify a partial benefit claim [Federal-Provincial Task Force 1985: 21]. Another administrative difficulty includes the fact that multiple providers could make the system very complex and unmanageable.

2. Universal Accident Insurance

Description:

This insurance would pay benefits to persons disabled as a result of an accident. The proposed option would consolidate many of the categorical programs currently in place. Categorical programs include tort liability, automobile accident insurance, criminal injuries compensation and war veterans benefits; the purpose of these programs is to compensate for the effects of disability or injury related to *specific causes* or events. While workers' compensation is also a categorical program, there is considerable debate as to whether or at what stage to include this program in a comprehensive disability insurance scheme.

The introduction of tort actions in the last century allowed people who experienced a disabling accident as a result of someone else's negligence to seek redress through the courts [Muszynski 1992: 3]. Today, tort liability is an important component of the disability compensation system except in cases when the right to sue has been removed explicitly - i.e., in workers' compensation programs and in provinces with no-fault automobile insurance schemes.

Partial no-fault systems of automobile accident insurance have been adopted in Ontario, Manitoba, Saskatchewan and British Columbia. A full no-fault system operates in Quebec [Muszynski 1992: 4]; Ontario has a threshold system which allows only those with serious and permanent disabilities to sue. Criminal injuries compensation is also available for people who are victims of violent crime.

Veterans benefits may be paid to members or former members of the Canadian Armed Forces who are suffering from a disability. It must be the result of an injury or disease attributable to military service in war or peace.

Under the proposed option, the cause and site (i.e., workplace, home) of the accident would be irrelevant in terms of eligibility and benefit levels. There are enormous costs involved in trying to determine cause when attribution is often impossible. The Ontario Task Force on Insurance noted that "a technologically advanced, post-industrial society exposes citizens to an array of risks and hazards, many of which are highly indeterminate and long-range, for example, the as-yet-undetermined effect of environmental pollution or various complex chemical and biological processes" [Ontario 1986: 4].

The Ontario Task Force proposed an incremental process for introducing universal accident insurance. The process would begin with no-tort injury compensation for automobile accident injury that would involve the redesign of existing automobile insurance schemes. The second stage would introduce no-

tort injury compensation system for all accidents. This plan would integrate non-work and non-automobile injury - in effect covering all accidents. (The model presumed the continued existence of workers' compensation.) The third stage would build on the second phase by adding no-tort compensation for all disability, including sickness and disease.

Australia and New Zealand are often cited as examples of countries with a universal accident insurance program. Prior to the introduction of a universal plan, several studies of the disability income system in New Zealand found that the system was inequitable, inefficient and irrational. In 1972, the government introduced a comprehensive plan based on the abolition of tort liability and the integration of compensation schemes for accidents under one administration.

Under the New Zealand system, benefits are paid to victims of disabling accidents after the first week of disability up to a level of 80 percent of lost or interrupted earnings. Benefits are also paid on an income-tested basis to non-earners, regardless of the cause of the accident. The plan includes a lump-sum payment to those who have been seriously and permanently disabled as well as a survivor's benefit. Comprehensive rehabilitation is also built into the program.

Federal-Provincial:

A universal accident insurance program could be administered by the federal government or by a private agency with premiums collected by the federal government. Substantial negotiations with provinces and the private sector would be required to design and implement such a plan because it would consolidate all existing accident insurance schemes and possibly workers' compensation boards. (The inclusion of the latter is a design option that would have to be explored; in theory, a comprehensive insurance would include accidents both on and off the job.) Alternatively, a comprehensive program could be administered jointly by both the federal and provincial governments because so much of the current insurance system falls under provincial jurisdiction.

Financing:

A universal accident insurance program could be financed through a combination of employer premiums, automobile premiums, a tax on hazardous activities such as certain sports and through general revenues. The New Zealand system is supported through a levy on employers which varies according to the risk category of the employment, a levy on motor vehicles through a license fee, and general government revenues to cover the costs of benefits and services to persons who are non-earners [Muszynski 1992: 28].

Strengths:

The major strength of this proposal is that it would replace the range of programs which compensate for accidents - whether these are the result of workplace injury, car accident, household injury (e.g., a fire) or war-related injury. Both the cause and venue of the disability would be irrelevant; the focus would shift to the consequence of the accident. Such integration would eliminate duplication of administration and consolidate several programs that have been set up to compensate for various accidents.

A national accident insurance program would be less complex than a more general disability insurance and would not have the problems of definition associated with other programs: An accident is the result of a traumatic incident which is readily identifiable and observable. Moreover, a national accident insurance scheme would standardize the provision of benefits for various problems. Workers' compensation boards, for example, pay different levels of compensation throughout the country for the same injury.

A universal accident insurance scheme would go a long way towards addressing problems in the current system. Under tort, compensation is paid on an irrational basis. More than half of all modern injuries go uncompensated. The Ontario Task Force on Insurance noted that "the best evidence we have today indicates that only one-third to one-half of accident victims get any compensation through the tort system. Others, including those who are seriously or catastrophically injured, are left behind or slip through the cracks" [Ontario 1986: 65].

Finally, the proposed option would redress the problems arising from the fact that the present tort-insurance system, although run by a well-intentioned and compassionate judiciary, remains riddled with uncertainty and unpredictability - so much so that tort litigation has been described as a 'lottery.' A universal accident insurance would also reduce the inordinate cost of continuing to use tort for injury compensation. A large portion of every premium dollar is eaten up by the transaction costs of the tort-insurance system. In fact, "more than 50 cents of every premium dollar is absorbed in the administrative and legal costs of running the system" [Ontario 1986: 66].

The current tort system involves enormous delay. It is not unusual for some cases to drag through the courts from two to 13 years. The tort system as it presently operates does not pay compensation promptly even to the 'winners' [Ontario 1986: 65-6]. A study conducted for the (former) Department of Health and Welfare on the impact of liability claims on health care concluded that "the civil liability system for the compensation of the disabled is cumbersome, complex and

expensive" and urged that an alternative to litigation be sought for those disabled by medical injury [Ontario 1986: 67].

While the proposed option would be designed on a no-tort basis, the latter would not necessarily eliminate the establishment of fault. Fault would remain relevant and the deterrence of negligent behaviour would be achieved through a more refined and rigorous penalty rating or premium-pricing mechanism.

Weaknesses:

The weakness of this proposal is that it is based upon the provision of income support as a result of a disabling accident. While it would be relatively easy to determine eligibility for benefits, the majority of claims for disability are not made because of accidents. The majority of claims arise from disabling illnesses - which would be left out under a plan that compensated only for accidents. About 80 percent of deaths for people between the ages of 20 and 60 result from disease; accidents, poisonings and violence including suicide account for only 19.9 percent of deaths [Ison 1994: 10]. Weiler points out that three different measures - disease/accident statistics, CPP disability benefits and mortality rates - point to the same conclusion: Disability and death due to disabling diseases are far more prevalent than disability and death due to accidents [Weiler 1983: 16-17].

Another potential problem relates to the controversy regarding the right to sue. The really difficult and controversial issue in this area is whether persons who become disabled through the wrongful acts of others, whether intentional or negligent, have a special level of claim to a higher level of compensation as 'innocent victims.' This issue is the great 'fault/no fault' debate which dominates both the technical literature and the public debate on the need for more comprehensive, universal approaches to disability compensation [Beatty 1991: 115-6]. However, if it is deemed important to establish fault, then this can be accomplished in other ways - e.g., administrative compensation systems run by tribunals or boards.

Finally, there is a problem in detaching workers' compensation, in particular, from labour market policies which have recently been transferred to the provinces. "The interplay between social policy and the labour market must be kept within provincial control if the flexibility to react to local needs while remaining competitive is to be maintained" [Bogyo 1996: 130].

3. Comprehensive Public Insurance

Description:

A proposal for a comprehensive disability insurance plan was set out in the 1988 *Transitions* report of the Ontario Social Assistance Review Committee (SARC). Under the SARC proposal, a comprehensive insurance plan would pay benefits for disability due to accident, illness or injury primarily on a mostly 'no fault' basis, regardless of cause. Coverage against total and partial disability would be universally extended to all full-time, part-time and self-employed workers. There would be a minimum qualifying period for part-time workers. For those who have been in the labour force for a long time, coverage could be extended for a period after they have stopped working.

The proposal would integrate the range of earnings replacement programs, including workers' compensation and the CPP disability benefit. The integration could also abolish or limit the right to sue for damages arising from accidents that cause personal injury or death, such as car accidents. Private insurance could continue to be provided for temporary or short-term disability or for the provision of benefits over and above the earnings level established by the comprehensive plan.

The benefits under the proposed program would be pegged at a certain percentage of earnings prior to disablement. SARC suggested that the level of earnings replacement be set at 80 to 85 percent of net average recent earnings (as in the proposed Australian legislation at the time). This percentage would represent a higher level than both the current CPP and the proposals for comprehensive reform put forward in the *Joint Federal-Provincial Study*. However, it is lower than the 90 percent of net income generally paid under workers' compensation. Benefits would be fully indexed to inflation. Inflation protection is particularly important for persons with severe disabilities who experience a loss of career advancement and generally lack opportunities to increase their earnings.

Under a similar model for comprehensive insurance (the Ison model), all government systems for compensation or premature death would be abolished as separate systems and would be combined in one plan. The plan would include workers' compensation, actions for damages for personal injury and death, automobile accident benefits, compensation for the victims of crime, the sickness benefit under Employment Insurance, the disability and death benefits under the Canada Pension Plan, veterans' benefits and any other systems that involve the categorical treatment of persons who are temporarily or permanently disabled [Ison 1994: 132]. The basic welfare system would remain separate - as a last resort system to provide temporary assistance in the event of short-term disability

or until another plan came into effect in case of long-term disability. While private insurance would neither merge with the plan nor be prohibited, it would become unnecessary.

The cause of disability would be irrelevant for the purpose of eligibility so that claims could be paid quickly without inquiry into cause. While it would be easier to confine the plan to 'workers,' this would be unfair because it would not provide coverage to individuals now excluded from the system. The *Joint Federal-Provincial Study* proposed that non-earners could be included in a comprehensive program through government subsidy of their premium contributions [Federal-Provincial Task Force 1983: 42].

Under the proposal, an income allowance would be paid in cases of total disablement from work, whether temporary or permanent. The payment would represent 80 to 90 percent of pre-disability gross earnings. Partial disability benefits would also be paid.

Benefits would be indexed to the cost of living. The allowance would commence after one month of absence from work because of disability and would not be retroactive. Special calculations would apply to income for the first month [Ison 1994: 136]. The income allowance would be taxable and the tax would be deducted at source. There would be no income test required to qualify; income would be taken into account through the taxation status of the benefit. The allowance would be payable until the person returns to work, becomes eligible for a retirement pension or dies. Allowances would also be paid to survivors after the death of the recipient.

In addition to a full or partial income allowance, the Ison plan includes a component that would compensate for the disability itself. To provide this form of compensation, statutory tables would be compiled to specify the amount payable for loss of faculty or disfigurement. The proposal does not provide details about this form of compensation; "within the framework of the plan, provision could be made to compensate for whatever losses ought, according to prevailing judgment, to be compensated" [Ison 1994: 135]. This lump-sum benefit would not be paid in cases of short-term; temporary disability; rather, it would compensate for long-term or permanent injuries.

In cases of serious disability, especially where there is an employment problem, counselling could be provided and the costs of rehabilitation would be paid by the system. These costs include retraining, educational upgrading, relocation, home adjustments or any other required measures. An allowance

could also be provided for special needs, such as the additional costs of mobility, appliances or attendant services.

It should be noted that a comprehensive disability insurance program exists in other countries, such as the Netherlands. After 52 weeks of sickness benefits insured under the Sickness Benefits Act, employees in the Netherlands are entitled, in principle, to a disability benefit. The disability insurance for workers is based on two Acts - the general Disablement Benefits Act which insures income-earning citizens up to the minimum wage and the Disablement Insurance Act which provides an additional wage-related benefit [Beekman 1996: 77].

Federal-Provincial:

The proposed option would require extensive negotiations among the federal government, provincial governments and private insurers. Ideally, the new plan would be delivered by the federal government. But provinces may be unwilling to give up the programs they now operate. Given current political realities, a provincially-administered initiative may be more likely.

However, the door to income security reform has recently been opened. In March 1996, all provinces (except Quebec) released a *Report of the Ministerial Council on Social Policy Reform and Renewal*. The *Report* suggests the possible integration of income support for individuals with long-term and significant disabilities into a single national program. However, the focus on *income support* means that provinces may be willing to discuss possible changes only to their respective welfare systems. It is uncertain whether the proposal is intended to include other provincial programs, such as workers' compensation and automobile accident insurance.

Financing:

In order to pay for income insurance as well as the other costs of disablement, the Ison Plan suggests that there be a compensation fund administered by an agency of government. The revenue for the fund would be derived from several sources [Ison 1994: 133-4].

First, there would be an assessment on employers that would replace workers' compensation assessments, the premiums paid by employers for public liability and disability insurance, and long-term sick pay. The second source of funds would be a charge on the use of motor vehicles - in the form of an owners' premium, drivers' premium or earmarked fuel tax. This charge would replace the personal injury portion of the premium now paid for automobile insurance. The third source of revenue would be a special tax or premium imposed on hazardous activities. This levy would be determined on the basis of experience and

documented statistics. Finally, a portion of the fund would be supported through general revenues.

Decisions on costs could be made by producing estimates on aggregate data - e.g., government statistics on highway injuries and deaths could be compared with claims statistics to produce a rough estimate of the proportion of total income from the fund that should be derived from highway traffic [Ison 1994: 133]. The objective would be to achieve a good social cost accounting without the enormous cost, waste and damage of inquiring into the cause for each claim.

Ison contends that the reserve portion of the fund should not be determined by actuarial estimates of future cost. Instead, there should be a statutory formula for the reserve requirement. For example, after an initial period, the reserve could be expressed as a multiple of the average payout for the last three years. He suggests that reform could be fiscally neutral or even result in cost savings because of the excessively wasteful and costly duplication in the current system.

The Ontario Social Assistance Review Committee also noted the need for multiple sources of funds. A comprehensive plan would require a levy on employers as in the case of workers' compensation, premiums for employees, a levy on the use of motor vehicles similar to current automobile insurance premiums and a premium on other hazardous activities. The plan would also have to be supplemented through government funds. While SARC identified premiums as the preferred method for financing such a plan, it recognized that flat-rate premiums are regressive; low-income households would have to pay a higher proportion of their income than better-off households. SARC proposed a premium subsidy to offset the burden on low-income households. Another solution is to employ a proportional, sliding-scale premium system.

Strengths:

The advantages of comprehensive insurance include the fact that the program would cover all disabilities, regardless of cause or where the accident, injury or disabling condition happened to occur. This design would help respond to one of the fundamental problems in the disability income system - the fact that type and level of benefits are determined more by the *cause* of disability rather than its *consequence* - i.e., inability to perform a basic activity of daily living or inability to work.

Eligibility requirements and levels of compensation in current programs commonly do not reflect need, loss, blame or premium contributions so much as the specific circumstances of how the disability occurred. "Current systems of

compensation for disablement and premature death do not have their origins in any coherent design. Individually, and more so collectively, they are haphazard, wasteful, limited in their achievements and damaging in their collateral effects" [Ison 1994: 129].

Under a comprehensive insurance plan, scarce resources such as time, money and expertise would be spent helping individuals re-enter the labour market rather than determining the specific cause of disability and the associated attribution of responsibility. Rather than being concerned about what caused the condition, a comprehensive program would focus on its impact, the needs felt by its victims, and what can and should be done by way of monetary compensation. Moreover, a national plan would ensure the equitable treatment of persons with disabilities - not only with respect to cause and type of disability but also in regard to residence. "The grief of this uncoordinated conglomeration of systems includes a wasteful duplication of administrative and adjudicative structures, the grief of disabled people who sometimes have to deal with several agencies when one would be enough, wasteful over-insurance in some cases and tragic under-insurance in others" [Ison 1994: 130].

Weiler explains how complicated is the issue of attribution. "A compensation program which is founded simply on occupational causation is inherently incapable of accommodating the fact that seriously disabling diseases are usually multi-causal in character. In the initiation and promotion of cancer, for example, we know that personal lifestyle - smoking or diet - and the general environment - air and water pollution - often figure along with a toxic industrial substance. Without the conjunction of these external factors, the workplace exposure might not have generated any malignancy at all, or at least the cancer might not have manifested itself as early as it did" [Weiler 1983: 54].

A study of workers' compensation in Ontario also supported the need for comprehensive disability insurance. "A typical accidental injury follows immediately on the mishap taking place in the plant. When a worker falls, or is cut, or is involved in a collision, the occurrence of the injury is visible to the naked eye. Simple common sense suffices to make an occupational connection. By contrast, if a worker is exposed to a toxic substance such as asbestos, coke oven emissions, or radon daughters, a malignancy may not manifest itself for ten, twenty or thirty years. In the meantime, what happens inside the worker's body is invisible and little understood. Nor can one tell, by examining the cancerous growth itself, what kind of exposure may have produced it" [Weiler 1983: 30].

Several of the plans that would be integrated are already in the public domain. There would be a reduction in administrative costs (especially with respect to assessment for initial and continued eligibility) if these plans could be pooled. However, the private sector may resist such integration (see below).

A comprehensive insurance might be able to address another fundamental weakness in the current system: the fact that the disability income system tends to undercompensate those with severe disabilities and to fully compensate (or even overcompensate) those injured or ill in the short term [Weiler 1983: 81-82].

Finally, a new plan would remove disability from the CPP. Tom Kent, one of the architects of the CPP, has argued recently that it no longer makes any sense to finance non-work-related disability benefits through payroll taxation. In follow-up correspondence to the National Forum on the CPP organized by the Caledon Institute, Kent admits that payroll taxes were light in 1964 (at the inception of the program) and the original, tight disability provisions responded to very severe needs. However, he now believes that the federal government should persuade the provinces to pool resources in one scheme of disability coverage financed, apart from the employer levy for workers' compensation, from general revenues. (The concerns of the disability community should be noted here; the fact that disability is included in the current program helps ensure that persons with disabilities are integrated in the mainstream of Canadian society.)

Weaknesses:

The potential weakness in such a plan is that the responsibility for the cause of an accident or injury is removed. In the case of employers, in particular, the absence of responsibility could reduce their interest in maintaining a safe work environment. One way to address this problem is to ensure that some form of experience rating continues to be built into the premium system.

Experience rating means that premium rates are set according to use of the system. Premium rating is intended not only to finance program costs but also to encourage employers with more frequent claims on the system to improve the occupational health and safety of their workplaces. Employers with disproportionate claims pay higher premiums than those with lower claims who are 'rewarded' for their safer work environments. In fact, a study of workers' compensation in Ontario pointed out that a program financed entirely through industrial assessments of employers should provide a necessary incentive to the development of a less hazardous workplace [Weiler 198: 12].

Another potential problem is the fact that a national disability insurance scheme which covers the entire population could be subject to question by the private insurance industry that could see the plan as a substantial incursion into their 'territory.' Moreover, it could be subject to challenge under North American Free Trade Agreement (NAFTA) which could limit new activity by national governments in areas in which there is already substantial private activity.

The counter-argument is that the individual disability programs already exist; the primary change would be the administrative integration and pooling of finances. Second, it could be argued that the private sector has had unfettered opportunities to act in this field and, to date, has done so in only a limited way. Finally, there would continue to be plenty of scope for the private sector to play a role in topping up the base level of benefits. In addition, there could be substantial private sector involvement in various aspects of a new program including assessments for initial eligibility, ongoing eligibility and rehabilitation potential, and provision of training and rehabilitation.

B. Income Support Options

1. Income-Tested Support Program

Description:

Under this option, benefits would be paid to persons with severe and prolonged disabilities in the form of an income guarantee set at a designated level. Benefits would be calculated through an income test that took into account the availability of other resources. Benefits would decline as income from other sources rose.

The *Joint Federal-Provincial Study* put forward a proposal for an income-tested benefit in which maximum benefits for single persons with no dependents would be equal to OAS and GIS at the single rate schemes. In 1996, these programs paid a combined maximum of \$10,425 a year for a single person or \$16,904 for a couple. Under the 1985 proposal, the first dependent (either spouse or child) would receive an equivalent amount while \$100 per month would be paid for each additional dependent. Private top-up insurance would be allowed.

It should be noted, however, that while the principle of an income guarantee is appropriate, the precise OAS/GIS configuration would not be adequate. The OAS/GIS combined maximum falls below the poverty line for a major metropolitan area (\$17,127 for a single person and \$21,408 for a family). One option is to set a higher benchmark. The Regina Consultation proposed a national universal

program pegged at the poverty line plus 20 percent - or an estimated \$20,552 for a single person in a major metropolitan area in 1996. (Clearly, the latter is a controversial proposal; there are questions about the poverty lines themselves and concerns regarding the potential costs of using these lines as a base.)

Provinces could also top up these rates as five provinces and the territories currently do with respect to elderly benefits; Ontario, Manitoba, Saskatchewan, Alberta, BC, Yukon and the Northwest Territories provide income-tested supplements for seniors. A top-up not only improves the adequacy of the benefit but also helps compensate for regional variations in the cost of living.

Under the *Joint Federal-Provincial Study*, benefits would be calculated on an income-tested basis. Income from all outside sources, including workers' compensation, private disability insurance and the CPP disability benefit, would be taxed back at 100 percent. Earned income would be retained up to the OAS level. Above that, additional income would be reduced at a 50 percent rate, like the GIS. Under the GIS, maximum monthly benefits are reduced by \$1 for every \$2 of outside family income, including earnings.

Federal-Provincial:

Ideally, the proposed program would be operated by the federal government. The income tax system would be used as the means of determining benefits. The determination of disability would be administered by the Department of Human Resources Development. Provincial administration of the program with joint federal-provincial financing is another option.

Financing:

This program would be funded by the federal government (with possible contributions by provincial governments) and would be financed through general revenues. In theory, provinces should be expected to contribute to the program because their welfare caseloads would be substantially reduced as people with disabilities move off the program. The *Joint Federal-Provincial Study* estimated in 1985 that its income-tested benefit would cost \$800 million a year, over and above what the federal and provincial/territorial governments currently spend on welfare for persons with disabilities. (The key program parameters for this cost estimate included the definition of disability as employed by the Canada Pension Plan and the OAS/GIS maximum income guarantee.) However, the proposal assumed that these costs would drop if there were a complementary earnings replacement program that provided full and partial benefits. The possibility of a combined earnings replacement/income support option is discussed below.

Strengths:

The advantage of this option is that it would remove people with severe and prolonged disabilities from provincial welfare. Benefits would be paid at an adequate level and would be consistent throughout the country. A national program would respect the principle of equity by treating beneficiaries the same in all parts of the country (although it could be argued that the same treatment would ensure inequity since the cost of living and the availability of supports vary so much by region). Under a national program, benefits would be portable from one province to another. "This program model gives the widest assurance of uniform, adequate income support for the low-income disabled on a nationwide basis" [Federal-Provincial Task Force 1985: 36].

A major strength of income-tested benefits is the fact that they can be administered easily and efficiently through the tax system. Persons whose net income falls below a designated amount would be eligible for benefits. The current federal Child Tax Benefit and Guaranteed Income Supplement operate in this way and the Seniors Benefit that will take effect in 2001 will be calculated on an income-tested basis.

Because an income-tested program does not take assets into account, it does not require that individuals 'spend down' all their assets in order to qualify for financial assistance. In addition, the fact that benefits would be paid on an income-tested basis means that individuals could work. Their earnings would be supplemented by the income support program up to a maximum level. The program would act, in effect, as a work incentive (see counter-argument below).

Weaknesses:

A major weakness of this proposal is that it would not provide any assistance to persons with disabilities that were not severe and prolonged. It could also be argued that an income-tested support program would have the opposite-than-intended effect upon work performance. Participation in the paid labour market could be discouraged by the fact that individuals know they have an income guarantee, regardless of their work involvement. In fact, it may be difficult to incorporate the concept of partial disability within any comprehensive model.

There is really no way to get around this conundrum. If the purpose of a program is to provide an income guarantee and at the same time encourage workforce participation, there will always be individuals who choose not to work. It is assumed that these individuals will comprise a minority of the potential recipient population - primarily because of what is known about the psychological benefits of work and the fact that people generally want to work when they have the opportunity. The alternative (i.e., to make the program a simple flat-rate amount

with no offset for outside income) is less palatable because its all-or-nothing design effectively acts as a complete disincentive to work.

Another option is to pay the income-tested benefit only to persons with very severe and prolonged disabilities. Yet this option fails to acknowledge that individuals whose disabilities may be severe and prolonged may still be able to do some form of work.

2. Means-Tested Support Program

Description:

This program would be similar in design to the income-tested support program and would provide similar levels of benefits. It would be tied to changes in the Consumer Price Index.

The key difference from the national income-tested option described above is in the determination of eligibility. Applicants would qualify on the basis not only of their *income* but also their *assets* including wills, trusts and estates. A means-tested program for disability already exists in the form of provincial welfare. In fact, welfare employs an even more stringent test by taking into account income, assets and needs - hence the term 'needs test.'

Federal-Provincial:

This program could be administered by the federal or provincial governments. The difficulty with federal administration is that a means test is an 'intrusive' test which inquires not only into income but also into levels of assets. It thereby requires more extensive administration than a simple income test which can be applied through the income tax system.

There is precedent for a federal means-tested benefit; the Old Age Pension introduced by Ottawa in 1927 determined eligibility on the basis of both income and assets. However, the program was administered by provincial welfare departments and, in some provinces, by local welfare authorities [McGilly 1991: 126]. A means-tested disability income program could be run by federal regional offices which administer other federal programs, such as the Canada Pension Plan.

Conversely, this program could be delivered by provinces through the offices they already have established for their welfare systems. The federal government would share the costs.

Financing:

As in the case of an income-tested benefit, a new national program could be financed by the federal government, the provinces or both. The program would be an entirely new expenditure if it were to be financed by the federal government because provinces are already funding this type of program through their respective welfare systems. Another possibility is to negotiate a provincial contribution in respect of the individuals that the program effectively would remove from provincial caseloads.

A means-tested program is more selective than an income-tested program because it takes into account assets that may be available for an individual's support. Means-testing could thereby reduce costs, although the administrative expenses involved in a more intrusive eligibility test would be higher.

Strengths:

A national program would respect the principle of equity by treating beneficiaries the same in all parts of the country. The benefit would also be portable from one region to another.

The strength of means-testing is that it takes into account individual circumstances and requirements, as do provincial welfare systems in assessing recipient needs. It is thereby considered to operate more selectively than an income-tested benefit. Means-testing is a more complete and accurate test of the true extent of resources available to a household.

Weaknesses:

The proposed program does not really represent an improvement to existing welfare systems unless there is a substantial rise in the nominal value of the benefits as well as an increase in real terms in which benefits are indexed to changes in the cost of living.

While means tests are a more accurate reflection of financial circumstances than income tests, the strength of means-testing is also its prime weakness. These tests are administratively more cumbersome, intrusive and costly.

Moreover, it could be argued that means tests are unnecessary in this case. Most people with disabilities are poor and have no income - let alone assets - to contribute to their support. Even if they had access to some resources through an estate, means and needs tests are often criticized on the grounds that they require applicants to 'spend down' their assets into poverty. One way of addressing this problem is to allow certain exemptions so that applicants can write off a given level of their assets and not have to become virtually penniless in order to qualify for

assistance.

C. Earnings Replacement and Income Support Options

1. Universal Insurance and Income-Tested Support

Description:

This program would combine two of the options outlined above: universal insurance and income-tested support. In order to work properly, the two programs would have to be closely integrated.

Program integration does not necessarily imply that people would receive the same benefits under the insurance plan as they would get under the income support plan. Two people with similar disabilities or with similar functional capacity could continue to receive, as under the current system, different levels of benefits. While this difference may appear to contradict the underlying rationale for reforming the income security system, the continued 'inequity' actually would arise because the earnings-related component of the program would be calculated on a different basis (i.e., a percentage of former earnings) while the income support component of the benefit would employ a different base (e.g., poverty line).

It is also possible that an individual might qualify for both the earnings replacement and the income support benefit. This could happen, for example, in the case of persons whose earnings were so low that their benefits do not meet their living needs. In this case, the income-tested support would supplement the earnings component up to a certain level. Provincial welfare programs now play that supplementation role.

The presence of a combined earnings replacement and income support program would require a consistent definition of disability to determine eligibility for entitlement. At the current time, different definitions are used and the existing programs do not share a common approach to establishing eligibility.

A decision would have to be made as to which component of the program acted as the first tier - or the first payer. One possibility is to assume that the earnings replacement or insurance component is the first payer and that the income-tested component is the second payer which takes into account income from other sources, including earnings.

However, other two-tier systems work differently. In Holland and Sweden, for example, compensation for loss of earnings capacity due to long-term disabilities is provided through a two-tier system. The first tier is universal, with eligibility based on citizenship. Eligibility for the supplement or second tier is restricted to labour force participants. Second-tier benefits are based on age or employment history and wage earnings [Aarts and de Jong 1996: 7].

Federal-Provincial:

The Social Assistance Review Committee contended that disability insurance and income support ideally would be delivered by the same level of government. This would increase the prospects for harmonization. Despite the ideal arrangement, the complexity of federal-provincial collaboration may require that various income programs be delivered by different levels of government. "In that event we would simply argue that the program as a whole will benefit to the extent that its constituent elements are coordinated" [Ontario 1988: 112]. The new program could be administered by the federal government - although parts of it, such as the assessment of disability or the rehabilitation component of the program, could be publicly or privately delivered.

Financing:

The program could be financed through a variety of sources, including employer/ employee premiums, automobile insurance premiums, consolidated revenue funds, and a tax on hazardous products (e.g., cigarettes) or on hazardous activities (e.g., race car driving, parachuting, mountain climbing).

Strengths:

A two-pronged program would combine the 'best of both worlds.' The insurance component would continue to provide earnings protection in the event of earnings interruption as a result of an accident, injury, illness or disabling condition. The cause and venue of the disability would be irrelevant.

Persons who had no attachment to the labour force or who had not made sufficient contributions to the plan still would be covered through the income-tested support component. The advantage of income-testing is that it allows partial work activity. Ideally, an income-tested benefit would be more adequate than current welfare systems.

Weaknesses:

It could be argued that a combined insurance/income support approach remains a patchwork of sorts. There still would be multiple administration and a hierarchy of support. Moreover, Beatty points out that while advocates of comprehensive disability compensation reform usually recommend this type of

'two-tier' system, those with marginal labour force attachment wonder why they should be forever relegated to a 'lower tier.' The earnings of women are more sporadic and lower than those of men. Women with disabilities, in particular, view the two-tier system as just another social mechanism which relegates them to poverty [Beatty 1991: 111].

As noted earlier, a universal insurance likely would add many more people to the disability income rolls because the eligibility criteria would be more inclusive than the current system. While this inclusion would be positive from a comprehensiveness point of view, it would have associated cost implications. An income-tested program would be costly for two reasons: 1) more people would qualify than under a means-tested approach, and 2) ideally, benefits would be more adequate in both nominal and real terms than current welfare payments.

2. Guaranteed Annual Income

Description:

This option is often referred to as *the* guaranteed annual income as though there were only one possible design without recognizing that there is a wide range of possibilities. Many commissions and organizations have called for some form of guaranteed income. The Social Assistance Review Committee pointed out that the term 'guaranteed annual income' refers more to a concept than to a construct. It does not describe a structured income security program with a detailed and specific set of rules and regulations governing benefit levels or eligibility requirements. In fact, "a GAI could function in many different ways and could even be designed in such a way as to worsen the lot of poor Canadians" [Ontario 1988: 103].

A GAI is often considered to be a totally new method for providing income to persons whose own income is inadequate [National Council of Welfare 1976: 1]. However, there are various forms of guaranteed income now in place. For example, people who receive long-term disability benefits under welfare systems in some provinces already receive a form of guaranteed income. The Old Age Security/Guaranteed Income Supplement package is often considered to be a guaranteed income for seniors. In short, "any program that sets an income floor below which a person will not be allowed to fall (i.e., an income *guaranteed* by the government) is a guaranteed income (emphasis in the original) [National Council of Welfare 1976: 2].

Despite the differences in design, a GAI would incorporate several key features. First, it would provide a minimum level of income guarantee to all deemed eligible for the program. In this case, the target could be narrowed to include only people with severe disabilities between the ages of 18 and 64.

Second, a GAI would assume that most people derive some income from employment. An income test would be applied to take into account income from other sources, including earnings and investment. The benefit would supplement earnings and would provide total income support only for those with no attachment to the labour market. A GAI is best delivered as an income-tested benefit through the tax system.

The difference between this proposal and the income support option earlier described is that the GAI proposal is a 'big bang' approach. It would effectively eliminate the need for publicly-financed insurance-based programs (although individuals and employers could continue to purchase private disability insurance as a top-up). A 'big bang' would rationalize and integrate *all* existing income security programs - federal, provincial and private - that deliver disability-related benefits.

Federal-Provincial:

Federal delivery through the income tax system is the ideal delivery mechanism for a guaranteed annual income.

Financing:

A program which provides more adequate coverage would extend its reach and thereby the number of potential recipients and associated costs. If the program is funded as a supplementation/support rather than as an insurance, then the financing moves from a premium-based system shared by employers and employees to a consolidated revenue base (i.e., government).

Strengths:

A GAI is often cited as a solution to the current problems in the disability income system (see, for example, the Halifax, Charlottetown and Whitehorse Consultations). The recent federal Social Security Review identified the advantages of a guaranteed annual income. These include the fact that it could provide more adequate support to persons who are eligible under the scheme; it could separate access to income from access to disability-related goods and services; and it could improve incentives to work if benefits were taxed back at a relatively low rate. A comprehensive scheme could disentangle federal-provincial cost-sharing and top up payments from other disability earnings replacement programs, such as CPP and partial payments under workers' compensation.

Finally, the needs test currently used to determine eligibility for provincial welfare would be replaced by a less intrusive test [Canada 1994: 19].

All citizens, including both earners and non-earners, would be covered in a comprehensive redesign of the disability income system. Right now, non-earners with no private resources must rely on provincial welfare. A more integrated, rationalized set of programs would reduce the complexity of the system and minimize costly duplication and excessive administrative costs. Partial work would be permitted, thereby (in theory) reducing disincentives to work.

A GAI would provide a minimum income floor below which individuals would not fall. The option would reduce stigma because benefits would be delivered as a tax credit rather than through welfare. Finally, a GAI could assist people who fall through the cracks because they do not fit the criteria of any given program; a GAI ensures that there are effectively no 'cracks' (unless the eligibility criteria are highly restrictive).

Weaknesses:

The disadvantages of this option include the fact that it could label people as permanently unemployable. Any form of GAI that increased the number of potentially eligible recipients would be costly and could divert resources from other supports and services. In addition, a GAI would be paid at a rate that would not meet all needs - especially those with very high disability-related costs. Some form of program would have to be in place to offset these costs. If eligibility were limited only to those with severe disabilities, then there would be a problem for persons who had less severe or only partial disabilities.

Another disadvantage of comprehensive reform lies in its cost and associated financing. A program which provides more adequate coverage would extend its reach and thereby the number of potential recipients. If it were funded as a supplementation/support rather than as an insurance, then the financing moves from a premium-based system shared by employers and employees to a consolidated revenue base (i.e., government). It is possible that the costs of such a program would be so high that only those with very severe disabilities would qualify; there would be a serious trade-off between adequacy and coverage.

A background report to the federal Social Security Review pointed out that a GAI, on its own, would not be able to respond to individual needs and may always require a top-up for extra costs. A fiscally sustainable GAI would have to be selective [Canada 1994: 19]. This selectivity raises questions as to how to meet the needs of persons with mild or moderate disabilities.

This conclusion echoed the findings of an earlier report; the *Joint Federal-Provincial Study* stated that "it would not be realistic or advisable to attempt to meet the differing needs of all disabled persons in different circumstances through a single national plan. Rather, a system of programs, each designed to meet specific objectives, integrated and rationalized to provide comprehensive protection to all Canadians who are or will become disabled, was more reasonable" [Federal-Provincial Task Force 1985: 2].

It could be argued that a program which ensures income support could discourage workforce participation because it ensures a basic income floor regardless of labour market involvement. Moreover, the implementation of a GAI could detract from job creation. SARC noted that "the provision of employment is so central to achieving our overall objective of community integration that we would be extremely wary of any program that might diminish the importance of job creation" [Ontario 1988: 104].

SARC also pointed out that a program which provides adequate financial assistance but does nothing to facilitate integration into community life does not necessarily improve the status quo [Ontario 1988: 104]. There would be no incentive for provinces (now responsible for labour market training) to fund employment-based programs for persons with disabilities if they had an income guarantee from the federal government. The result could be the full exclusion of persons with disabilities from these programs as well as the workforce.

Another weakness of a GAI is that it cannot distinguish between basic income needs and special needs that may be associated with a disabling condition. Despite the problems of current welfare systems, at least they are flexible enough to meet individual needs. A complete rationalization of all programs into one large income program would remove some of the positive aspects of an individualized approach.

Finally, a new national program may not even be possible if it violates the terms and conditions of Canada's free trade commitments in which the national government could be seen as interfering significantly in a field in which there is substantial private sector activity.

Conclusion

This paper has put forward a range of short-, medium-, and long-term options for reforming the disability income system. Before selecting any specific reforms, the Task Force on Disability Issues is encouraged to set out a vision for the ideal disability income system. It should then determine a medium- and short-term course of action which moves towards the ideal long-term objective. Short-term changes in the absence of a broader context will have the effect of shifting clients and costs from one jurisdiction to another and from one payer to another.

After determining its long-term objectives, the Task Force should then articulate clear principles to guide the reform. It should also consider certain questions such as the purpose of specific income programs and of the overall income security system as well as general issues related to eligibility, employability, delivery and financing.

There are many possible options for reforming the disability income system. Changes can be made to the earnings replacement components, the income support components or to both. There are many possible changes that can be made to the CPP in both the short- and medium-terms. However, some of these improvements would come at great cost in terms of providing adequate income protection for all Canadians, including those with disabilities.

While making decisions about the specific income reforms, it is important to bear in mind the issue of disability-related goods and services. In fact, it could be argued that a major investment in supports and services - whether through tax compensation, individualized dollars or direct service delivery - would enhance independent living and workforce participation, thereby reducing dependence on programs of income support.

Finally, the Task Force should bear in mind the concerns raised by persons with disabilities not only at the Consultations but also over the many years during which income security reform has been studied. Unless the reform improves the income security and well-being of persons with disabilities, then the best reform is no reform.

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THEME V - TAX SYSTEM

Research Paper 8.

Taxation and Disability

Richard Schillington

Centre for International Statistics

The Canadian Council on Social Development

Research Paper 9.

Taxation and Disability Recommended Reforms:

Final Report

David Baker and Harry Beatty

Advocacy Resource Centre for the Handicapped

Research Paper 10.

Part 1: The Costs of Health and Disability as Borne by Employers as a Potential Barrier to the Accommodation of Disabled Persons in the Workplace

Part 2: The Role of Trusts, Private Savings and Investment in Addressing Future Costs of Disability

Greg Williams

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RESEARCH PAPER 8

TAXATION AND DISABILITY

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Taxation and Disability

1. BACKGROUND

".. the Committee wants to emphasize that it is not asking for charity or special favours on behalf of the disabled community. ... the Committee does not see that it is asking for anything more than that which has already been done for other groups of Canadians". (Special Committee on the Disabled and the Handicapped, 1982).

Policies and programs which address the needs of persons with disabilities have been established by the Federal government from rather modest beginnings when the tax deduction for persons blind or confined to bed was established. They have been expanded and improved over the years with many enhancements over the last decade (see Appendix A).

There are many reasons for wishing to review government policies with respect to persons with disabilities.

In some cases, this view is motivated by compassion - a concern to provide support and assistance for a disadvantaged group. Statistical evidence shows that persons with disabilities are far more likely than other Canadians to live in poverty, a result of significant exclusion from the labour force and hence reliance on a social assistance system which virtually assures poverty¹.

In other cases, the call for further action/initiatives is motivated by entitlement (a right of citizenship), a belief that governments are not fulfilling their legal obligations to treat persons with disabilities equitably. The view that the tax system is failing to treat persons with disabilities equitably has been advanced by The Standing Committee on Human Rights and the Status of Disabled Persons in their reports "As True as Taxes: Disability and the Income Tax System" in 1993 and "The Grand Design: Achieving the 'Open House' Vision" in 1995.

".. ... federal institutions have not succeeded in bringing about the systemic changes that are required to build disability-related concerns into the basic premises that guide policy formulation and programme implementation. (Standing Committee on Human Rights and the Status

¹Adults with disabilities have a poverty rate of about 22% compared to a national rate of 13% for those without disabilities. For persons with disabilities relying on social assistance the poverty rate is about 64%. As well, the participation rate, (the proportion in the labour force), of working age persons with disabilities range from 71% to 45% and 26% for those with mild, moderate and severe disabilities; this compared to a figure for all persons with and without disabilities of 78% (Fawcett, 1996).

of Disabled Persons, 1995).

In addition to concerns about equity, others may wish to ensure that the tax system does not compound the burdens of people who already bear extraordinary burdens. Finally, it is being increasingly realized that many persons with disabilities have talents and skills which are under-utilized and that the tax system can be a tool in facilitate the employment of persons with disabilities. The employment would advance the interests of the person with a disability and governments.

In June 1996, the Federal government established a Task Force on Disability to address issues related to persons with disabilities. This issues include:

- Tax System
- Income Support
- Legislative Reform
- Labour Market Integration
- National Civil Infrastructure/Citizenship
- Federal/Provincial relations

The Task force has held hearings across Canada with members of the disabled community and was worked to representatives of that community.

This report was commission by the Task Force for review short-term, medium-term and long-term options for changes to the tax system related to disability and to assess those options. This report will concentrate on personal income tax issues while other reports are being prepared on specific tax issues such as the GST, family trusts and employer tax recognition for accommodating disability.

This paper will proceed in four stages:

- first, the basis in tax principles for the tax recognition for persons with disabilities will be presented.
- second, the tax provisions currently in place with may assist persons with disabilities will be reviewed.
- third, proposals which have been advanced by various parties to modify the tax treatment of disability will be presented and assessed.
- fourth, the conclusion will summarize the more viable short-term, medium-term and long-term proposals.

2. TAX TREATMENT OF DISABILITY

"Disability involves costs - to governments and society as a whole, but most importantly, to disabled persons themselves. The tax system provides one- but far from the only - way of assisting persons with disabilities to meet these unavoidable costs." (Standing Committee on Human Rights and the Status of Disabled Persons, 1993)

The tax recognition of disability is based on the accepted principle that fairness means assessing taxes in a way which recognizes differences in "ability to pay".

The "ability to pay" principle implies equity considerations. The increasing income tax rate structure which underlies progressivity is based on the principle of vertical equity. The principle of horizontal equity implies that persons in like circumstances should be taxed identically. Conversely, individuals with the same gross income who do not have the same ability to pay should be taxed differently. For example, individuals with significant medical expenses will have their taxes reduced based on the principle of horizontal equity. This principle recognizes that individual circumstances such as disability, medical expenses and the support of dependants affects "ability to pay" and that some recognition of these differences is necessary in a fair tax system.

This discussion is based simply on the fact that persons with disabilities have extraordinary costs vis a vis other Canadians. The additional costs associated with disability are varied. Some are easy to imagine; special devices or modifications to clothing, and additional costs for personal care and transportation. Other costs are harder to imagine unless experienced first hand. For example, there may be additional costs for accommodation if housing/shelter options are restricted due to public transit requirements. In another example, the extraordinary cost of installing a lift in a vehicle is obvious. Less obvious is the additional cost of having to purchase a van rather than a less expensive compact car or the additional costs of maintenance and repair for a larger vehicle.

Some would argue that to achieve the full social and economic integration of persons with disabilities, the cost implications of disability, income support, access to social support, services and any required aids and devices would need to be totally covered by social programs. There would then be no cost borne by the individual which would require tax recognition; this is what generally happens with medical

conditions² under Medicare.

It is important to stress that the tax system in dealing with the residual, non-reimbursed, cost of disability is a blunt instrument. Income support programs and social support programs are far better equipped to assess and respond to individual need - obviously the needs of persons with disabilities are unique to each individual. If these additional costs were borne totally by social programs there would virtually no need for tax recognition. The point is that some costs are borne by social programs and some are not. The tax system has a obligation to respond because of its obligation to treat people equitably. For this task, the tax system is admittedly a blunt instrument.

It is important to stress that the tax recognition of disability based upon equity principles is not a matter of charity. Just as deductions for business expenses are not considered tax-loopholes, or a tax-preference, the tax recognition of disability and medical expenses are not loopholes or subsidies, but simply equitable treatment.

Reasonable tax recognition depends then on the current social context in which persons with disabilities live. This report will assume that the existing income and other support programs for persons with disabilities remain.

2.2 Current Tax Treatment

The current tax system provides deductions and credits which may be used by persons with disabilities. As well, certain sources of disability related income are not taxable. A list of these income sources and their impact on government revenue is presented in Table 2. A summary of the current tax deductions and credits related to disability is presented in Table 1 along with information about the number of beneficiaries and the impact on government revenue.

²Taking for example a medical case; an individual suffering from appendicitis who has an appendectomy would have a reasonable claim for tax recognition if the procedure were not paid by provincial medical care plans. Indeed, the social policy related to medically required services, covered under Medicare, and the needs of persons with disabilities is telling. Conditions which lead to disability are often medical in nature, (eg. diabetes leading to blindness). The distinction between a disability and a medical condition may be very fine but it leads to a very different response from government. Medicare covers medically required costs without limit and are not income tested - disability related costs are inadequately compensated are primarily borne by the individual and are subject to income tests.

Table 1

Selected Tax Measure for Persons with Disabilities, 1993					
Measure	Number of Beneficiaries	Federal Tax Forgone (\$ 000's)	Provincial Tax Forgone (\$ 000's)	Total Tax Forgone (\$ 000's)	Average Tax Value \$
Disability Tax Credit	538,000	\$ 272,000	\$163,200	\$435,200	\$809
Medical Expense Tax Credit - for DTC Beneficiaries*	77,000	\$ 18,949	\$11,369	\$30,318	\$394
Infirm Dependant Credit	39,000	\$ 12,000	\$7,200	\$19,200	\$492
Attendant Care Deduction	444	\$ 300	\$180	\$480	\$1,081
Employment-Related Tax Measures		\$20,000	\$12,000	\$32,000	

* this is estimated based on the proportion of the METC which is claimed by persons with disabilities.

Source: calculations by the Department of Finance.

Table 2

Non-Taxation of Disability Related Income Sources	Federal Revenue Cost, 1993 (million)
Social Assistance (all recipients including those without disabilities)	\$ 705
Workers' Compensation	610
Personal Injury/Death awards	18
RCMP pension for injury, disability or death	8
veterans' disability pension and support for dependents	140

Source: Government of Canada Tax Expenditures - 1995; Dept. of Finance.

Just over \$300 million dollars worth of federal tax expenditures³ exist because of the tax deductions and credits for persons with disabilities; there is also an additional \$180 million dollars in provincial tax expenditures⁴.

The Income Tax Act is complex and no less though for persons with disabilities. It is not possible to detail all the exclusions and restrictions for various tax measures here. The following descriptions are intended to be informative but can not convey all the detail of the Income Tax Act.

2.2.1 Disability Tax Credit

The Disability Tax Credit provides a non-refundable credit for those with a prolonged marked reduction in their ability to perform a function of daily living as certified by a medical practitioner. The credit has a face value of \$4,233 in 1996 thereby reducing federal income tax owing by \$720 and combined federal-provincial taxes by about \$1,120.

To be eligible for the DTC beneficiaries must have a medical practitioner certify that they meet the criteria as laid out in an application form. They must be unable to perform a function of daily living even with the assistance of aids. The credit may be transferred to a supporting relative so that the credit may have value even if the person with a disability does not have taxable income.

The primary purpose of the DTC is to improve tax fairness by recognizing the effect of a severe disability on an individual's ability to pay tax. The DTC does not try to perform this function precisely; it is a blunt instrument. By being blunt it is easy to administer; it does not require claimants to keep detailed records of cost. The administrative advantage which is inherent in treating all claimants the same brings with it the disadvantage of providing too much tax recognition to some claimants and not enough to others.

The report "True as Taxes" expressed concern because few persons with disabilities were actually using the DTC (Standing Committee on Human Rights and the Status of Disabled Persons, 1993); the figure was 10% based on the 1986 Health Activities Limitation Survey, HALS. Data from the 1991 HALS indicate that little has changed. According to the 1991 HALS only about 23% of those with severe disabilities

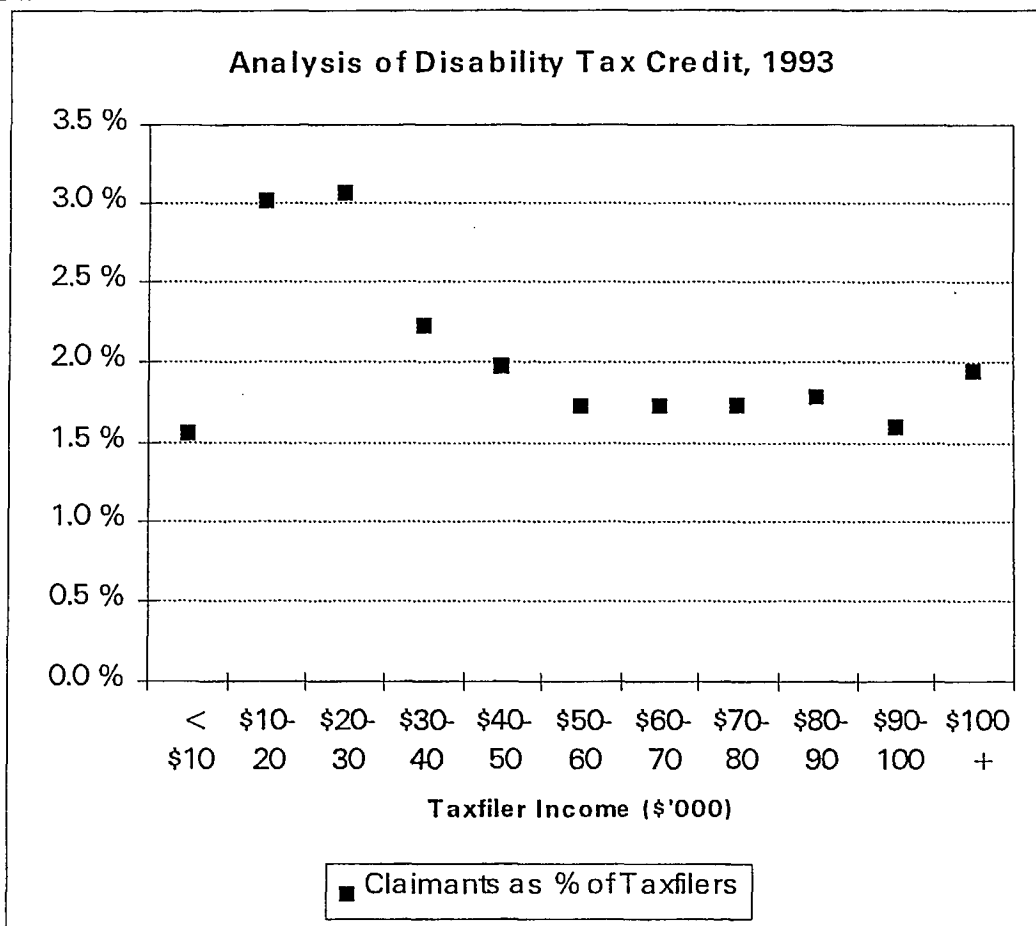
³tax expenditure is a term used to refer to lost government revenue due to a tax preference.

⁴Reference will occasionally be made to associated provincial tax expenditures. These only exist in provinces which are part of the tax rental agreement; all provinces except Quebec are part of the agreement. An average provincial tax rate of 60% will be used for illustration.

used the DTC, compared with 16% of those with moderate disabilities. Differences in the definition of disability between the income tax system and HALS will only partially explain the low rate.

One notes that of those who did not claim the DTC about half were because they did not know it existed (HALS 1991). The remainder was because they were refused or thought they could not qualify.

Figure 1



The data in Figure 1 present the rate of utilization of the DTC by tax filer income. About 2% of all tax filers claim the DTC. The utilization rate is highest for those with lower incomes; below \$30,000 a reflection likely of the lower incomes characteristic of persons with disabilities.

2.2.2 Medical Expenses Tax Credit

The Medical Expense Tax Credit provides tax relief for extraordinary medical expenses by providing a tax credit for eligible medical expenses. Only the amount of

the expenses above the lesser of 3% of net income or \$1,614 are included in the non-refundable credit; this exemption is intended to limit tax assistance to above average medical expenses.

The eligible expenses for the METC are itemized and include:

- medical, dental and hospital services;
- attendant care;
- nursing home care;
- care at a school or institution;
- ambulance services;
- personal transportation for medical care (trips over 40km);
- travel costs of an attendant;
- medical devices (artificial limbs, wheel chairs, braces, eyeglasses, etc. plus a list of prescribed devices in section 5700 of the regulations);
- guide dogs;
- expenses related to bone marrow and organ transplants;
- home renovations;
- rehabilitation therapy;
- prescribed drugs;
- diagnostic services;
- dental services; and
- contributions to private health services plans.

There is a good deal of flexibility in how medical expenses can be claimed. Expenses can be claimed for any 12 month period ending in the calendar year. As well, a family's expenses can be combined and claimed by either of the adults⁵.

⁵This facilitates the claim by two earner couples compared to one earner couples; a family with \$1,200 in expenses and \$40,000 of net income may, or may not get any tax recognition. There would be no claim if the income was all earned by one individual; but a credit of \$900, worth about \$200, would be available if the income were split

The calculation of the credit is somewhat complex. Essentially, the credit reduces combined federal and provincial taxes by 26% of the credit. The credit is the amount of non-reimbursed eligible medical expenses to the extent that they exceed the income exception, (the exemption is the lesser of 3% of the claimants net income or \$1,614).

Table 3

Illustration of the Medical Expense Tax Credit

Case	Family Net Income	Husband's Net Income	Wife's Net Income	Eligible Medical Expense	Net Income Exemption 3% or \$1,614	Amount of the METC	Tax Value of the METC
A*	\$10,000	\$10,000	\$ -	\$2,500	\$300	\$2,200	\$ -
B	\$15,000	\$15,000	\$ -	\$2,500	\$450	\$2,050	\$558
C	\$15,000	\$10,000	\$5,000	\$2,500	\$300	\$2,200	\$598
D	\$20,000	\$10,000	\$10,000	\$2,500	\$300	\$2,200	\$598
E	\$20,000	\$20,000	\$ -	\$2,500	\$600	\$1,900	\$517
F	\$60,000	\$60,000	\$ -	\$2,500	\$1,614	\$886	\$241
G	\$60,000	\$10,000	\$50,000	\$2,500	\$300	\$2,200	\$598
H	\$60,000	\$30,000	\$30,000	\$2,500	\$900	\$1,600	\$435
I	\$100,000	\$100,000	\$ -	\$2,500	\$1,614	\$886	\$241
J	\$200,000	\$200,000	\$ -	\$2,500	\$1,614	\$886	\$241
K	\$100,000	\$100,000	\$ -	\$2,500	\$1,614	\$886	\$241
L	\$100,000	\$100,000	\$ -	\$2,500	\$1,614	\$886	\$241
M	\$100,000	\$100,000	\$ -	\$2,500	\$1,614	\$886	\$241

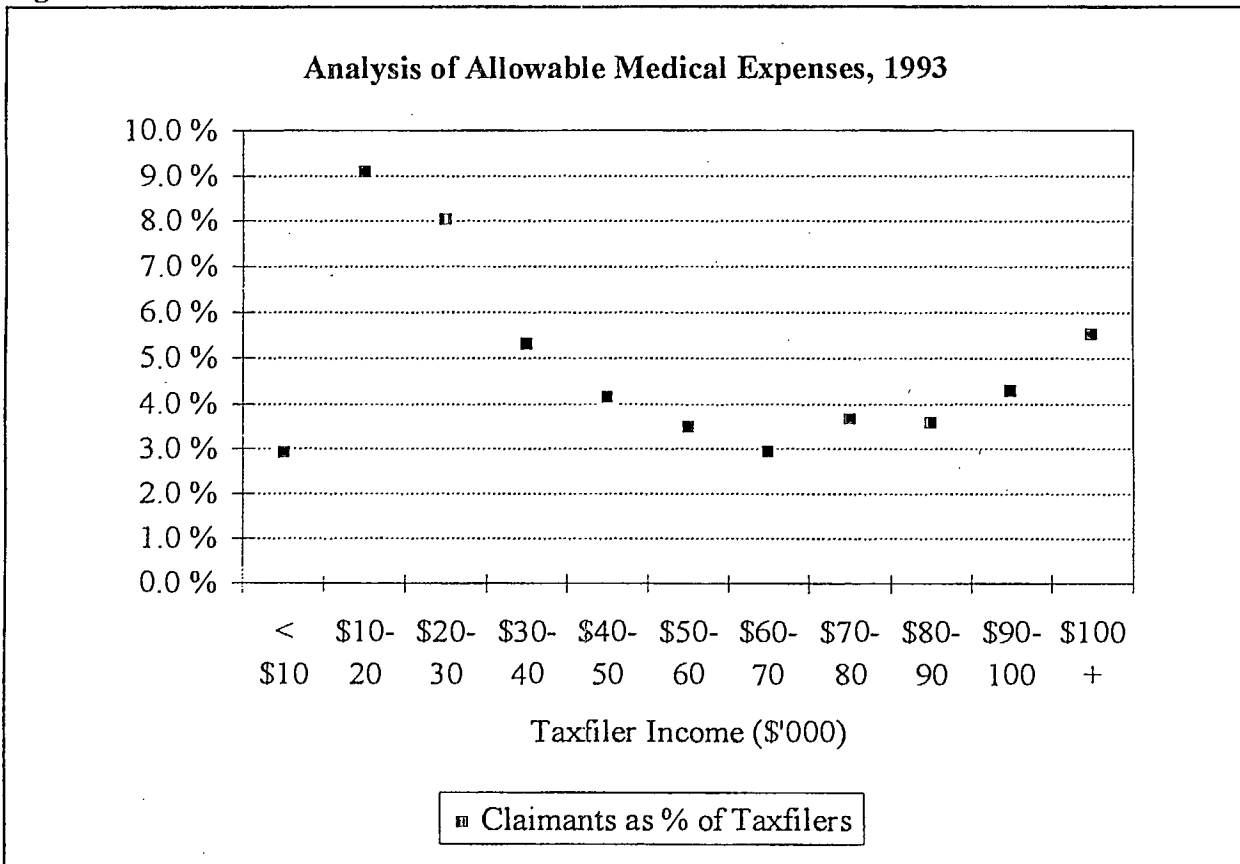
* assumed non-taxable

Not all medical required costs are eligible for a credit. The rules are construed to exclude tax recognition where an expense has some personal benefit. For example, air conditioning for an individual with multiple sclerosis is not claimable on the basis that other Canadians can not claim air conditioning for their home, that the person with a disability would get a benefit beyond what is medically necessary and the benefit would be shared by others who live in the household. Similarly, the cost of nutritional

\$30,000 and \$10,000, (\$900 = \$1,200 less 3% of \$10,000).

supplements for persons with AIDS is not an eligible medical expense, again because the supplements are seen as a personal expense. Where a vehicle must be modified to install a lift, the installation of the lift is eligible for the METC but not the cost of repairs to the lift, the additional cost of a van over a sedan; nor is the additional cost of gasoline due to the gas mileage of a van eligible. These items are not eligible because they are considered a personal expense. That may be the case but they are not discretionary they are necessitated by the transportation needs of the person with a disability.

Figure 2



The utilization rate of the METC is much higher than that for the DTC since it is not limited to expenses related to disability. The utilization rate is highest at low incomes in a pattern similar to that for the DTC related to the low income experience of persons with disabilities (see Figure 2). It is not clear though why utilization would increase as income rises above \$60,000. It is difficult to imagine that high income persons have more medical needs than lower income persons; it is more likely that high income individuals have access to the sophisticated tax advice needed to utilize these tax measures.

Since the METC is based on actual amounts spent, it will not assist persons with disabilities, (or others), who can not afford to purchase items which are medically necessary. It should not be too surprising then that the average amounts claimed increase with income (see Figure 3). Indeed, for tax claimants with incomes over \$100,000 the average amount claimed is about \$6,500.

The METC is not designed specifically to meet the requirements of persons with disabilities. Since it is based on actual expenses, rather than needs, it will be of more value to higher income individuals. It will also reward those in a position to purchase services and devices compared to those who obtain them from family or friends. For example, care in an institution is eligible, (including "hotel costs" such as food, laundry and personal services) but not the same care at home; required renovations at home are eligible if done by a contractor but not if performed "as a favour" by a family member. In fact, it appears that the METC would also be available for someone who left Canada to obtain medical services even if those services were available in Canada.

Similarly, the part-time or full-time (temporary) attendant care (limited to \$5,000) claimed as part of the METC may be combined with a claim for the DTC. But a claim for full-time attendant care (or care in a nursing home) may not be combined with the DTC.

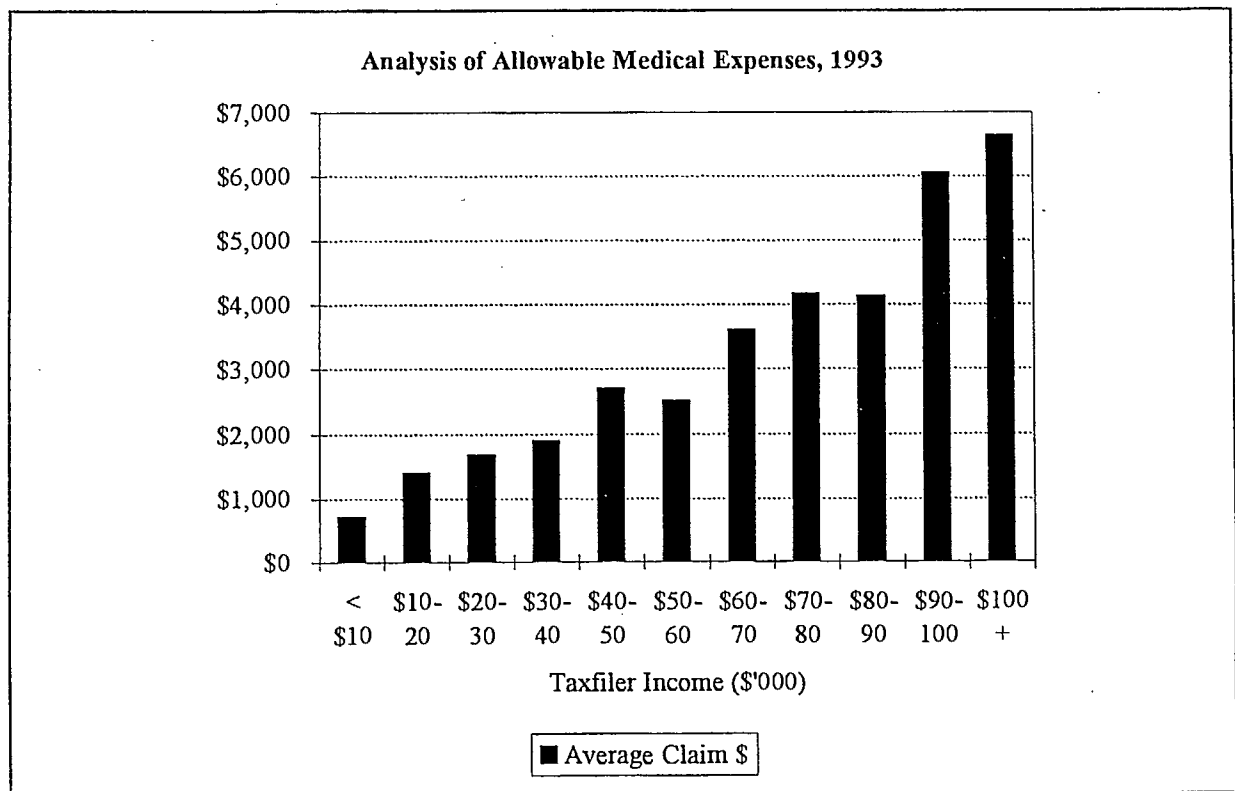
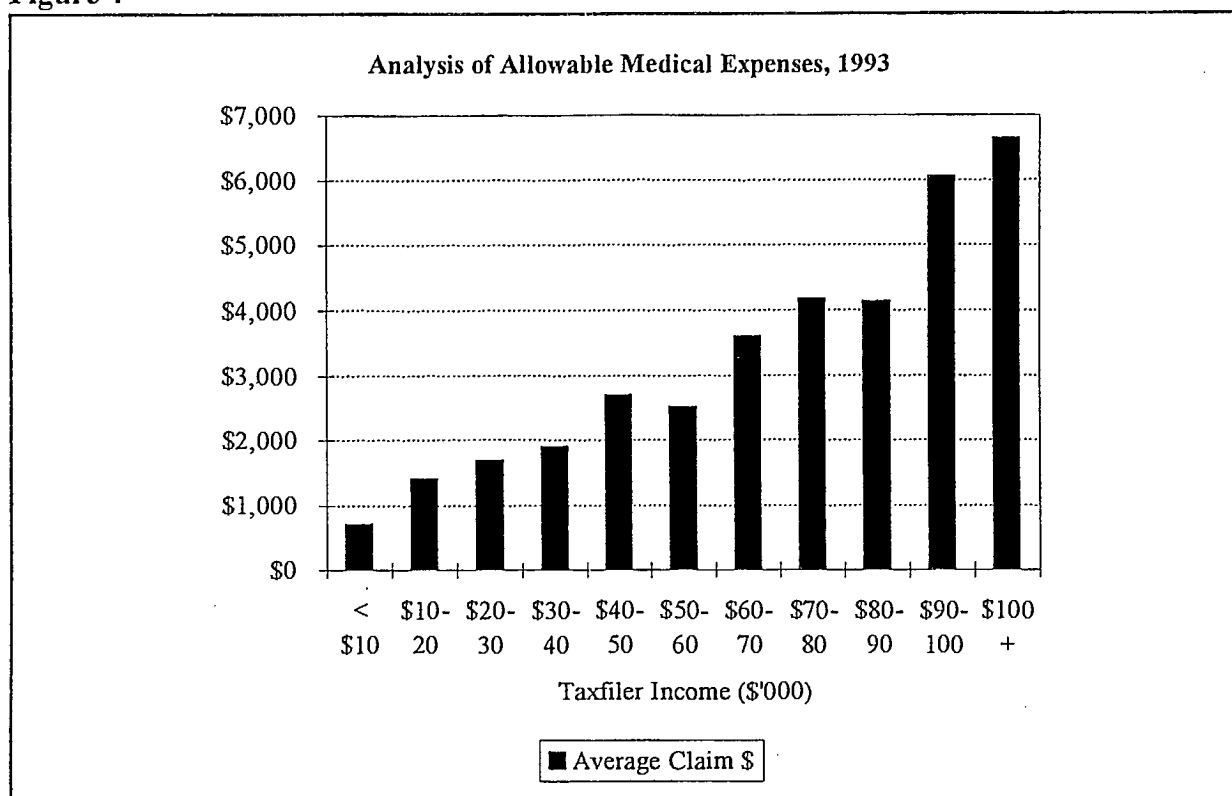


Figure 4



Like the DTC the METC is not refundable. Refundability is unlikely to be as great an issue for the METC as it is for the DTC; there are few Canadians whose income is so low that they are not taxable but yet have the resources to have purchases significant medical expenses⁶.

Very few of those claiming the DTC also claim the METC; in 1993 about 71,000 or about 13% of DTC claimants also claim the METC.

2.2.3 Attendant Care Deduction

The Attendant Care Deduction allows for the deduction of eligible cost, up to \$5,000, for attendant care if those costs were required to earn income, (or do research or take training). To be eligible these expenses must be paid to a person aged 18 or

⁶While the numbers are likely small, there will be persons with disabilities who have enough financial assets from a damage award to purchase items and are yet not taxable.

older who is not a spouse. To claim this credit the individual must be entitled to the DTC and it may be claimed along with the DTC.

It is noteworthy that fewer than 500 individuals utilized this deduction in 1993 costing the federal government about \$300,000. Payments to spouses are excluded; presumably to prevent this deduction being used for income splitting.

2.2.4 *Infirm Dependent Credit*

This credit allows those supporting an infirm or dependent child to claim a credit. The credit was increased in the 1996 budget so that the supporting persons federal taxes are reduced by about \$400, (combined federal and provincial taxes will be reduced by about \$640). The increased cost to the federal treasury of the budget measure was about \$40 million. In 1993 the 39,000 children claimed cost the federal treasury about \$12 million.

2.2.5 *more generous Child Care Expense Deduction*

Child Care Expenses can be deducted where they are necessitated by an adult with a disability. As well, a higher limit exists in the costs of child care for the care of a child with a disability.

In addition, Child Care Expenses for a child 14 years of age and older can only be claimed for children who are physically or mentally infirm.

2.2.6 *Other Tax Measures*

There are other tax measures which are not designed specifically for the population with disabilities but which have been adjusted for their needs. Additional tax measures will be discussed in other papers being prepared for this task force. They will not be discussed in detail but include:

- Equivalent to Married Credit
- Education Credit is available for part-time students if they qualify for the DTC.
- Preferential tax treatment for employer provided transportation
- Preferential tax treatment for employer's renovation expenses
- GST relief for eligible devices.

3. PROPOSALS AND ASSESSMENT

The following sections discuss a number of proposals and assesses them. The assessment of the options will depend though on the choice of available criteria which

depends on the motivation for tax treatment of disability.

Some will approach these proposals from a premise that persons with disabilities are entitled, as a matter of citizenship, to certain income and social supports. The tax system is seen as a vehicle through which the federal government can realize its obligations to the community of persons with disabilities. By accepting this position one would have little concern for the cost of implementing changes since the treatment is based on recognizing a right of citizenship.

A second principled approach to the proposals might be that the tax system is not "in the business" of rectifying the deficiencies of the income support and social support systems in Canada. Indeed, as social policy is primarily, and increasingly, a provincial responsibility the federal government should not be expected to make-up for, or second-guess, the decisions made by provincial governments on how and to what extent people with disabilities will be supported or assisted.

A pragmatist may search the proposals below looking for the least expensive and easiest to implement option as a way of recognizing the political pressure to "doing something more" for persons with disabilities.

When assessing the costs of current tax measures or the proposals which are discussed in the next section, it is useful to have reference values. Table 4 presents other related financial data for the federal government for comparison. For example, the estimated cost of making the DTC refundable, \$200 million, is a substantial sum of money but not great when compared to tax advantages enjoyed by other Canadians. It is about 7% of the tax expenditures for the two Capital Gains Exemptions and is about 1.5% of the tax expenditure associated with RRSP's and Private Pensions.

3.2 Consistent Treatment of Disability Related Income

Currently some sources of disability income are exempt from tax, (Workers'

Table 4 - Selected Federal Government Revenue and Expenditure Statistics

Selected Financial Data	Amount (million)
Total Federal Budgetary Revenue (1994-95)	\$123,000
Total Federal Tax Revenue	
Personal Income Tax Revenue	56,000
Direct Taxes on Corporations	12,000
Revenue from Consumption Taxes (GST, Excise Taxes and Duties)	27,000
Cost of Selected Major Tax Expenditures (1993)	
Capital Gains Exemption (\$100,000 life-time limit; ended in 1994)	1,170
Capital Gains Exemption (\$500,000 life-time limit)	1,575
RRSP's and Private Pensions	14,770
Employer-paid Insurance premiums for private health and welfare plans benefits	1,200
Cost of Selected Social Programs	
CPP Contributions (must double to maintain benefits)	13,000
Seniors Benefit Programs (OAS, GIS and SPA)	20,000
Child Tax Benefit Program	5,200
Impact of Partial Indexation (indexation to CPI less 3%)	
Annual Increase in Personal Income Tax Revenue (2.5% CPI)	\$ 1,200
Annual Decline in Purchasing Power of the Child Tax Benefit	170

Sources: Budget Plan 1996, Dept. Of Finance; Government of Canada Tax Expenditures - 1995; Dept. of Finance.

Compensation, Social Assistance, employee purchased Disability Insurance Benefits)

and some are included in income for tax purposes (employer sponsored Disability Insurance Benefits, CPP/QPP Disability Benefits). As well, funds from liability claims are exempt from tax. These various treatments would appear to be a departure for tax fairness as enunciated by the Carter Commission "a buck is a buck is a buck". Several individuals with the same disability, and perhaps with the same gross income will be in very different after-tax positions dependent on whether they could sue for liability, were injured on the job (making them eligible for Workers Compensation), had a work history, (so they would be eligible for CPP/QPP disability benefits), or had no other source of income and were hence reliant on social assistance.

The circumstance of the injury do not only determine the level of compensation available based on the income sources and after tax income but also determine access to other supports since eligibility to many of them is geared to net income as defined in the tax system. Thus an individual who by chance becomes disabled in a way which makes them eligible for personal disability insurance will also be more likely to be eligible for the Child Tax Benefit, the GST credit and also certain provincial health benefits which are income tested because the test is geared to net income.

Some would argue that the various tax treatments of income sources is reasonable because it is determined by the tax treatment of the supporting contributions. For example, CPP/QPP benefits are taxable because they come from funds, the contributions to which, are deductible.⁷ Similarly, contributions to individual disability insurance schemes are not deductible; thus, the benefits are tax free. This argument carries some weight but it does not explain the tax free status of workers compensation since employer contributions are deductible.

Beneficiaries may not be convinced of the fairness in taxing their benefits because of the tax status of contributions made in the past by their employer before they were disabled. This link between their benefits and the contributions may be somewhat obscure to the individual beneficiary.

Government is properly interested in ensuring that all income flows are taxed and that none are taxed twice. They may be indifferent as to whether they are taxed in the hands of the beneficiaries or the contributors. Recall that CPP/QPP is taxed in the hands of the recipients but employee sponsored disability benefits are taxed in the hands of the contributors. Governments may be indifferent but the disabled population

⁷ The justification for taxing the benefits because the contributions are deductible is not compelling for two reasons. First, the employee contributions are recognized via a 17% credit, not a deduction, thus this income may often be subject to double taxation when it is taxed in the hands of the beneficiaries at higher rates. As well, the employer contributions are only deductible where the firm is taxable. A significant portion of the labour force are employed in the public sector and an additional number work in non-taxable firms, (profitable or non-profitable).

is not. First, if contributions are taxed then the tax burden is spread very widely. If benefits are taxed then the total tax burden is borne by a smaller number of individuals, and necessarily higher average amount. Taxing funds in the hands of the beneficiaries also has the effect of taxing those who are already bearing a disability. Taxing the beneficiary also means taxing a relatively poorer population; this undermines the vertical equity of the income tax system and also reduces government revenue compared to taxing the contributions which are made on average by higher income individuals..

If all persons with disabilities are to be treated equitably then all disability related sources of income should be treated the same; either taxable or non-taxable. If they are all made tax-free then all contributions would have to come from after-tax dollars, (employee contributions would not be deductible and employer contributions would be a taxable benefit). There is some consistency in treating all disability related sources more like social assistance which is tax free. This though might be seen as inequitable vis a vis the non-disabled population with the same income which is taxable.

Tax equity concerns, comparing those with and without disabilities, suggest that all income should be taxable. The current tax system though demands significant taxes from individuals with very low incomes; income tax burden begins at an income of \$6,500 and at \$12,000 the income tax burden is about \$1,400. For this reason, one may hesitate recommending that all disability related sources be made taxable. Since it would likely reduce that standard of living of many persons with disabilities who are already not well-off.

Any change in the tax treatment of income would have to await significant consultation with employers, organized labour and the insurance industry since many compensation contracts are premised on the current tax treatment. This area is complicated as well by existing benefits which would have to be studied to determine the implications of moving to a new tax treatment.

3.3 Disability Tax Credit - Make Refundable

Several organizations including the Standing Committee on Human Rights and the Status of Disabled Persons have called for this change. It is motivated by a desire to provide some recognition for the costs of disability to those who do not now benefit from the DTC (these are individuals who do not live in a taxable household; those who are not taxable and can not transfer the credit to someone who is taxable).

The argument in favour of refundability is to extend to the lowest income person with a disability the same recognition of costs which are now afforded higher income persons with disabilities or persons with disabilities who live in a taxable household. As well, by making the credit refundable the funds are paid to the person with a disability enhancing their autonomy rather than benefiting the supporting individual.

A portion of those who might benefit from refundability rely on social assistance. Consequently, any benefit from making the DTC refundable could be offset, in whole or in part, by reductions in social assistance rates for persons with disabilities. The likelihood of this "offsetting" could be tempered by the considerable political pressure on provinces not to reduce social assistance rates for persons with disabilities. Preliminary analyses indicate that about 20% to 30% of those who might benefit from refundability are on social assistance⁸.

As many as half of the persons with disabilities who might benefit from the refundability of the DTC are over the age of 65 (based on the same analysis). Traditionally, income support for seniors is the responsibility of the federal government and seniors are not normally eligible for social assistance. Thus, to the extent that a refundable DTC is like an income program, it may be considered appropriate that the federal government play such a role for seniors.

The introduction of the Seniors Benefit will change the impact of a refundable DTC. The new seniors benefit is non-taxable and replaces the taxable Old Age Security and the age and pension income deduction. Initial indications are that it will not be included in net income. It may well be more important for the DTC to be refundable than it is now because after the introduction of Senior's Benefit few seniors will be taxable. Thus without refundability fewer seniors will get any support from the DTC.

Others might argue against making the DTC refundable because then it would be essentially an income program and they do not see the income tax system as the most appropriate vehicle for delivery such a program. Yet precedents exist. The GST credit and the Child Tax Credit, (replaced in 1992 by the Child Tax Benefit), are refundable tax credits.

Enthusiasm for DTC refundability however should be tempered. Once the DTC is refundable it could be seen less as an entitlement based on tax fairness, and more as an income support program. In the current political environment income support programs are increasingly targeted only to the poorest of families. There is a potential risk that a refundable DTC would be targeted only to the poorest of persons with disabilities and benefits would no longer be available to persons with disabilities with higher incomes. This has been the experience of families with children where the Family Allowance was introduced in part so that non-taxable families would get some benefit from the child tax exemption. The system of supports for children is no longer universal and much less generous to families with children, regardless of income, than if it had remained as it was before targeting.

⁸ The analysis is based on HALS but non-taxable individuals can not be directly identified, so this estimate should be considered as a "rough guess".

An additional problem in making the DTC refundable is the issue of refunding the provincial share of the tax value. The federal government has no mechanism for refunding the provincial tax dollars associated with the DTC to the beneficiary. It might be feasible for the federal government to refund the federal portion of the credit to all eligible Canadians and in provinces that paid for it the provincial share. Similarly, a refundable DTC could be added to the provincial tax credits many of which are already refundable. The level of the credit would vary by province depending on how much provinces topped-up a basic federal amount, (the cost would be shared between the levels of government).

There several ways to implement this recommendation which would need to be studied. The options include:

- simply refunding the federal share of the credit on the tax form; much like the Child Tax Credit did. As discussed above, the amount refunded could vary by province.
- add to the provincial tax forms which already include refundable tax credits.
- mail a non-taxable amount to beneficiaries much like the new Seniors Benefit.
- mail a taxable amount to beneficiaries much like the late Family Allowance program.

3.4 Disability Tax Credit - Work Income Supplement

This proposal would entail a modest supplement to the DTC for persons with disabilities who have some earned income similar in design to the Work Income Supplement that is now in place for the Child Tax Benefit. The policy intent is to encourage employment for low-income persons with disabilities although the amounts contemplated are relatively modest; the supplement would be 8% of earned income to a limit of \$500.

While an income supplement of this form might benefit some 65,000 DTC recipients, the effect of an 8% supplement may be small for individuals facing the overwhelming employment hurdles in place for persons with disabilities. Thus, this may be an attractive supplement to other measures which would recognize the unique employment expenses of persons with disabilities.

The effectiveness of this measure will depend on the refundability of the DTC otherwise some eligible for the supplement would receive no benefit because they are not taxable. As well, the design would have to take account of other support programs many of which discourage employment because benefits end if the recipient because employable.

3.5 Disability Tax Credit - Eligibility - broadening "activities of daily living"

Concern has been expressed about the eligibility mechanisms for the DTC. While the tax principle deals with costs, the eligibility is based on limitations to Activities of Daily Living which might have little to do with costs.

The current assessment for DTC eligibility includes the use of AIDS; "... can they walk 50 metres on level ground, using appropriate aids." This seems contrary to the factor which we are trying to measure; costs implications. Apparently, a individual who can regain mobility with the use of expensive prosthetic devices will make themselves ineligible for the DTC and would therefore be denied the tax recognition for the related costs. There is an apparent unfairness of allowing the DTC for someone confined to a wheelchair but not for a walking prosthetic.

One might be tempted to remove the reference to an aid in the assessment. But that could trivialize the DTC by making eligible persons with minor sight or hearing deficiencies, which can be compensated for with inexpensive aids. A review of the criteria and procedures may be necessary with input from officials and representatives of the community to find ways of identifying persons who are likely to have significant cost implications due to some impairment in a fashion which is not vulnerable to misuse.

3.6 Disability Tax Credit - Change the Method of Assessment

Currently the Revenue Canada DTC form must be completed by a physician or optometrist. This raises concerns amongst some that it leaves the tax system open to abuse as citizens search for physicians willing to complete the form. Physicians already play a gate-keeper role for the health care system in a way which many commend (for hospital admission, referral to specialists and access to prescription drugs). For physicians charged with the responsibility of verifying eligibility, completing the Revenue Canada form must occasionally be awkward and could in some cases lead to a conflict of interest.

There is also concern that the reliance on M.D.s to determine eligibility perpetrates a medical model in the understanding of disability which may not accommodate the needs of all persons with disabilities. Some feel that the medical model implies an emphasis on illness and "things which are broken," and is less sensitive to disabilities which are more sensory, emotional or cognitive.

One alternative for determining eligibility is to allow self-assessment although the necessary controls to prevent abuse could be cumbersome. An alternative method of eligibility assessment would be the creation of a bureaucracy the function of which is to assess eligibility as other countries have done. The cost of such a mechanism is

possibly significant but it is possible that the physicians currently employed by CPP for assessing eligibility could be used.

The present mechanism is not credible in the community of persons with disabilities. Alternative procedures are needed which will identify persons who likely have significant costs associated with disability. These need to be credible to the community as reasonable mechanisms which identify those with cost consequences while not creating an opportunity for widespread abuse.

3.7 Disability Tax Credit - Full Indexation of Credit to Inflation.

The value of the DTC is not indexed to inflation. While the effect of inflation is to reduce the purchasing value of the credit, several budgets have increased the value of the DTC.

As Table 5 illustrates, the face value of the DTC increases only when inflation exceeds 3%. The effect is to erode the purchasing power of the DTC by \$50 in the period from 1992 till 1995.

The community of Canadians with disabilities are placed in the position then of lobbying for increases in the face value of the DTC, not to increase its purchasing power but simply to maintain it.

Table 5

Tax Value of the Disability Tax Credit			
	Face Value	Tax Effect*	Tax Effect \$1995's
1988	\$ 3,236	\$ 880	\$ 1,082
1989	\$ 3,272	\$ 890	\$ 1,042
1990	\$ 3,327	\$ 905	\$ 1,011
1991	\$ 4,118	\$ 1,120	\$ 1,185
1992	\$ 4,233	\$ 1,151	\$ 1,200
1993	\$ 4,233	\$ 1,151	\$ 1,179
1994	\$ 4,233	\$ 1,151	\$ 1,176
1995	\$ 4,233	\$ 1,151	\$ 1,151

* Face value multiplied by 17% and 1.6

3.8 Medical Expense Tax Credit - Make Refundable

The arguments for making the METC refundable are very similar to those for refundability of the DTC but the circumstances are somewhat different. Since the METC is based on monies actually spent there are not likely to be a large number of persons with significant medical expenses and no taxable income, (especially since expenses must exceed 3% of your net income). Thus the cost of making the METC refundable is likely very small for the population with disabilities. Recall though that the METC can be claimed by the lower income spouse. Thus a broad move to make the METC refundable could have significant effects for the general population.

3.9 Medical Expense Tax Credit - Replace the List with A Statement of Principle

Relying on a list to define eligible expenses has had a number of consequences:

- the list is often viewed as out-of-date with new technical advances or practice and also with evolving disabling conditions. As a consequence, the list has been expanded several times in the last decade. One suspects that it will always be somewhat out-of-date.

The list has been constructed so that where a medically necessary expense includes an element of personal consumption it is excluded from the list. For example, the cost of air conditioning for a home where someone has multiple sclerosis is not included in the list.

Some vigilance has been demonstrated in ensuring that no items of personal consumption are included in the METC. The courts eventually ruled that the air conditioning costs for those with multiple sclerosis were eligible for tax recognition, (the government initially filed an appeal of this decision, the appeal was later dropped). This strict exclusion of all costs where a component is personal consumption does not apply in other circumstances. The cost of air conditioning a business office is deductible without question regardless if it is truly necessary for earning income. Similarly, professional conventions or continuing education courses which take place on cruise ships or in warm climates are deductible without question despite the apparent personal consumption. Similarly, golf, meals and entertainment expenses may also entail some personal consumption yet are at least partially deductible.

One needs to keep in mind that at most 26% of the medical costs eligible for the METC are reimbursed by the tax credit. Yet a deduction, which is how business related expenses are recognized, means that up to half of the costs would be borne by the tax system.

The company car and the office in the home are situations where expenses to earn income clearly overlap with personal items. Current tax practice demands an apportioning of costs based on some reasonable criteria, miles driven for business are square footage of the office. Paradoxically, a self-employed person would be allowed to deduct a portion of the air conditioning at home even if it was not medically required⁹.

⁹The argument has been advanced that business expenses are subject to the scrutiny of share holders who have an interest in ensuring that expenses are really intended to earn income; thus, Revenue Canada can afford to be somewhat less vigilant. This would not be the case though for private corporations or the self-employed.

When an expense is business related, a personal consumption component does not lead to excluding it from tax recognition; there is sometimes an attempt to identify a deductible portion. If medically necessary expenses were assessed using the same principles as apply to business expenses there would be two consequences. First, instead of eligibility being based on an inclusive list, there would be a statement of principle; "Non-reimbursed expenses incurred which were medically necessary, as certified by a physician, due to a illness or condition diagnosed by a health professional are eligible." Second, there would be a set of rules to apportion costs where there is some mixture with personal consumption with a medically necessary expense.

3.10 Disability Expense Tax Credit - to Replace the Medical Expense Tax Credit

Currently the DTC plays a role of rough justice in allowing some tax recognition for undocumented costs of disability. The METC is suppose to handle the extraordinary expenses but it is subject to some arbitrary restrictions and is of minor benefit to the population with disabilities partly because of the concern that broadening its scope would leave the tax system open to abuse by individuals outside the disabled community.

A Disability Expense Tax Credit has been proposed as a means of expanding the usefulness of the METC for persons with disabilities without incurring a great deal of additional cost. The DETC could be designed for persons with disabilities in a fashion that the METC never was. It could be made refundable. A DETC could deal in a more sensitive way with the apportioning of costs for tax purposes between medically necessary, personal consumption and a business expense for the population with disabilities.

This could be done in a fashion which is entirely consistent with tax principles and tax practice.

3.11

Tax Recognition of Employment Related Expenses

Costs incurred in order to earn income are normally deductible from that income. It is the profit from business which is income and subject to tax and not just the gross revenue. Normal business expenses such as printing, shipping, rent and myriad others are deductible.

Persons with disabilities will often have extra-ordinary costs associated with earning an income. These might be additional costs associated with getting to and from work, or additional aids and assistance in order to perform the required duties of employment. It may be that it simply takes more time for a person with a disability to

perform required work tasks. To the extent that this is true, there are additional costs attached to the employment of persons with disabilities. Employment standard legislation declares that these costs at the workplace are to be borne by the employer.

The insistence that these costs be borne by the employer will likely discourage some employers from hiring persons with disabilities. This may be the case even after acknowledging the tax assistance which is now available related to the costs of employing persons with disabilities¹⁰.

Some employment related costs due to disability are obvious, others not:

- additional costs of getting to and from work because public transit is inaccessible.
- modification to a building for accessibility.
- special electronic aids such as braille printers, large computer screens.
- assistants to perform necessary tasks.

The tax treatment of these costs will depend on the employment circumstances and who bears the cost:

- self-employed: a full deduction for costs would be allowed.
- employee of a firm: all costs borne by the employer would be allowed as normal business deductions some would be subject to accelerated depreciation.
- employee of a firm: the only cost borne by the employee which would be eligible would be the assistance of an attendant, (maximum of \$5,000 per year and which can not be claimed with the DTC).

It may be noted that there are a range of expenses which are not eligible for tax recognition when borne by the employee which would be when borne by a self-employed person or the employer. For example, the cost of special computer equipment or other aids. There are cases of persons who could deduct the full cost of a personal assistant when self-employed but this deduction was no longer available when they became the employee of a firm.

A deduction for persons with disabilities of any employment related expense along the lines of that which is now available to the self-employed would demonstrate a

¹⁰Note that the tax assistance available to employers for their costs associated with employing persons with disabilities reduces those costs; it does not offset them fully. Indeed, one notices that other jurisdiction fully offset employers costs of employing persons with disabilities.

sincere encouragement of the employment of persons with disabilities¹¹.

3.12 Guaranteed Annual Income for Persons with Disabilities

A Guaranteed Annual Income (GAI) has long been advocated by persons concerned about social policy. But a Guaranteed Annual Income can mean very different things to different people. For some it would mean a guaranteed income, no less than the poverty line, as a right of citizenship; benefits would be taxed back in some fashion as income increases. Others advocate a GAI which would simplify the social safety net, streamlining many eligibility criteria, but not increasing the overall benefit levels (for a fuller discussion, see HRDC 1996).

Such proposals have difficulties. With a tax back rate (the rate at which support levels are reduced because of other income) as low as 20%, for example, the cost is untenable - tens of billions of dollars. If the tax back rate is too high, like the 100% common for social assistance, then there will be a severe work disincentive. A GAI with a high tax back rate is viable, however, where a population is not expected to be employed (for example seniors; one is unconcerned about the work disincentive). A GAI for persons with disabilities would be tenable if one assumed this population was unemployable. This assumption is clearly false. In fact a GAI would likely undermine the efforts to encourage and assist the employment of persons with disabilities. It is likely then that a fiscally feasible GAI would be counter to efforts to facilitate the employment of persons with disabilities.

4. CONCLUSIONS

The following options have been selected on the basis that the changes will address existing inequities in the tax system as it applies to persons with disabilities. The proposed options are consistent with tax principles and/or existing tax practice. These changes would not extend a new or unique benefit to the population of persons with disabilities; rather, they would extend tax recognition to the persons with disabilities much like that currently available to other Canadians. A more detailed discussion of each item can be found in section 3 above.

Short Term Proposals

The government could turn the DTC into a refundable credit much like the existing Child Tax Benefit. This would have the affect of initiating an income support program which would be of particular benefit to the poorest of persons with disabilities

¹¹These costs could be certified as required by the employer, using a form like TD2200, which is now available so that employees can deduct the cost of a car used for business or a required office at home.

(particularly seniors) and would extend to them the same benefit available to persons with disabilities with higher income. Several programs could be used as delivery models; the Child Tax Benefit, GST Credit, provincial refundable credits, Seniors Benefit or Family Allowance. This credit or the new benefit should be fully indexed to inflation.

A refundable DTC could be augmented with a Work Income Supplement added to the DTC. The design of such a feature should be determined after consultation with the community of persons with disabilities to maximize the employment incentive in the context of current social supports.

The list of eligible expenses for the METC will always exclude Canadians with medical expenses unanticipated by the legislation from equitable tax treatment. This could be remedied by either reviewing the list annually with input from the communities of interest or replacing the list with a statement of principle. In the case of business for example, eligible expenses are essentially defined according to the principle that "any expense for the purpose of earning income can be deducted from that income". For the METC, the principle might be "any medically necessary expense or any increase in a non-medical expense due to a disability is eligible."

Medical expenses which have an element of personal consumption (air conditioning, nutritional supplements etc.) should not be totally excluded from tax recognition. Instead, a procedure should be put in place so that a portion of the cost is deductible much as is now done for business expenses such as company cars and home offices.

To alleviate some of the problems of using the METC to meet the special needs of persons with disabilities, a Disability Expense Tax Credit could replace the METC for persons with disabilities. The list of eligible expenses could be considerably wider for the DETC and the credit rate could be set higher in recognition of the added burden of expenses which are prolonged and ongoing. By using the DETC instead of the METC, the benefits could be limited to persons with disabilities and the costs would be easier to control.

Greater efforts are evidently still necessary to ensure that existing tax measures like the DTC and METC are known to likely beneficiaries and are as simple as possible.

The Revenue Canada form T2200 should be modified to ensure that certain work-place expenses borne by the employee due to a disability are deductible by the employee. This would extend to employees tax recognition which is now available to the self-employed, and corporations both private and public.

Middle Term Proposals/Options

The criteria for DTC eligibility is not functioning effectively when it has so little credibility among the population of persons with disabilities. The eligibility criteria for the DTC should be reviewed with representatives of the disability community to ensure that they are consistent with the intent of the DTC; that is, they should identify individuals who very likely have increased costs due to their disability.

The element of rough justice inherent in defining eligibility for the DTC might be obviated somewhat if a three stage level of disability were used; similar to mild, moderate and severe. The consequences then of misclassifying individuals would then be reduced. As well, other tax measures which depend on the DTC could be reserved for the severe or moderate categories.

Long Term Proposals/Options

The tax treatment of various disability related income sources is inconsistent and inequitable. By taxing disability related income, the tax burden is shifted onto a low-income beneficiary population when it could equally be borne by the higher-income, more numerous, contributor population. More simply, disability related incomes could be tax-free if the contributions to the plans were no longer tax deductible.

The movement to consistent tax treatment would be impacted by any move to a comprehensive disability income plan. Changes would take several years to plan and implement as they would entail changes to collective agreements and existing benefit packages. All interested parties will require an opportunity for input and significant lead time.

5. ANNEX A: A HISTORY OF THE TAX TREATMENT OF DISABILITY

"In Canada, the federal government has recognized the additional costs of disability by providing tax relief, in one form or another, since 1930. That year, the government made allowances through the sales tax and customs tariff for certain articles for people with mobility impairments or for those who were blind. Since 1942, the income tax system has provided for certain relief for medical expenses for all Canadians, including people with disabilities. Income tax changes in 1944 provided blind people with the first disability-related deductions based on the additional costs that they had to incur.

In the years that followed, the same factors that provoked these initial steps towards tax relief have served as arguments to extend it. The dollar limits and the income threshold for claiming the medical expenses deduction have become more liberal since, as the Minister of Finance said in 1961, 'the whole purpose of the deduction for medical expenses is to give relief to those taxpayers whose ability to pay

has been reduced by extraordinary expenses...' The tax system has also increasingly allowed for the transferability of medical expenses or disability tax benefits. These changes recognize that disability-related expenses may be incurred by another taxpayer for a close relative with a disability who has little (or no) taxable income. In 1985, the government extended the disability deduction to all Canadians who were 'markedly restricted in activities of daily living'.

As part of the tax reform exercise in 1988 the deductions for disability and medical expenses were converted, along with several other personal deductions, to non-refundable credits..."¹²

The 1991 Budget increased the value of the disability tax credit and included the eligibility criteria in the Income Tax Act.

Incremental expansion of recognition included in 1989 a provision which allows persons eligible for the DTC with employment income to deduct non-reimbursed costs of a part-time attendant needed for employment.

In 1991 some tax assistance was introduced to facilitate the renovation of buildings by employers to accommodate persons with disabilities.

Since 1992 the definition of "earned income", which is used to determine contribution limits to RRSP's has been expanded to include CPP disability benefits, (consistent with the existing inclusion of benefits from taxable long-term disability plans). In the same year, the education tax credit was made available to part-time students if the student had a disability.

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RESEARCH PAPER 9

TAXATION AND DISABILITY
RECOMMENDED REFORMS: FINAL
REPORT

David Baker and Harry Beatty
ARCH

Introduction

The authors of this report are lawyers at ARCH: A Legal Resource Centre for Persons with Disabilities. For several years, ARCH has become increasingly involved with tax issues and persons with disabilities. This involvement has included:

- * preparing an annual public legal information article entitled "Answers to Your Tax Questions" (published for the past several years in "ARCH*TYPE")
- * acting as legal consultant to the Council of Canadians with Disabilities (CCD) with respect to briefs and submissions regarding taxation issues, including preparing an extensive discussion paper for CCD ("Tax Reform and People with a Disability", 1991)
- * responding to inquiries from individuals with disabilities, their families, social agencies, legal clinics and lawyers regarding tax issues related to disability
- * representing clients with disabilities in tax cases.

This varied experience has provided ARCH with a perspective on how tax provisions affect persons with disabilities and their families on a day-to-day basis, particularly relating to their efforts to maintain economic and social independence. A brief summary of tax cases ARCH has or is litigating will illustrate this point.

The first of these cases was Overdyk v. M.N.R., 83 DTC 307, [1983] CTC 2361. ARCH's client, Michael Overdyk, was paralyzed from the waist down on his left side. He was denied the disability deduction under the old "confined to a bed or wheelchair" test as he ordinarily used leg braces rather than a wheelchair. He did so, contrary to medical advice, in part because his workplace was inaccessible and he wanted to keep working. The Tax Review Board upheld Mr. Overdyk's appeal on the basis that he would have been confined to bed because of his disability if he did not have the braces as aids. The Overdyk case formed part of the background to the federal government's decision, announced in the 1985 federal budget, to extend eligibility for the disability deduction to "all severely disabled Canadians".

The second case involved Professor Mark Nagler of Renison College, University of Waterloo. Professor Nagler, who has cerebral palsy, was unable to carry out his teaching duties, such as preparing lectures, without the help of an assistant to aid him in typing, carrying books, etc. He had to pay the assistant out of his own funds in order to perform his job duties. Revenue Canada denied him a deduction for the attendant because the Income Tax Act only permitted such deductions when "required by the contract of employment". ARCH argued on behalf of Professor Nagler that the hiring of an assistant was an **implied** term of the contract of employment to carry out his

teaching duties. This was finally agreed to by Revenue Canada, and the result was a consent judgment in his favour. [Tax Court of Canada File No 84-1086(IT), July 4, 1986.]

Next came the Brown case. ARCH's clients the Browns, a couple of modest means, were confronted with the challenge of coping with the wife's multiple sclerosis. Ms. Brown was among a significant percentage of persons with m.s. whose health is significantly adversely affected by heat. As part of a plan to ensure that Ms. Brown stayed at home, rather than going to an institution, they purchased an air conditioner to assist her in coping with hot days in the summertime. The Browns claimed the air conditioner as a medical expense, but this claim was denied. The case finally reached the Federal Court, Trial Division, where it was held that an air conditioner could be described as "designed" to assist a disabled person in walking, because the original purpose of the first air conditioners in the 1850's was for use in hospital settings. [Brown v. M.N.R., [1995] 1 CTC 208 (FCTD)]

Most recently, ARCH has accepted a retainer from the "W" family. The "W" family consist of an "older" couple who have looked after their profoundly disabled son at home for most of his life. He is now an adult. The "W" family have always been strongly opposed to institutionalizing their son, and have made significant sacrifices to keep him at home. However, a number of medical expenses claimed in relation to their son have now been disallowed over a three-year period by Revenue Canada, which has placed the family in severe financial hardship (at risk of losing their home). The "W" family points out that the same expenses would be claimable as included in institutional fees, were their son institutionalized. ARCH will be pursuing this claim on behalf of our clients.

In each of these four cases there is a common theme - that individuals with disabilities and their families have to fight for support to remain independent in work and in living arrangements. The tax system discourages, rather than encourages, these efforts. Our proposals for reforming tax as it applies to persons with disabilities are aimed at changing this direction - to promote the acceptance of persons with disabilities in mainstream Canadian society as opposed to the status quo, which is an unfortunate and costly dependency.

Principles

1. Reforms are proposed on the basis of the support they provide to the **employment and community integration** of persons with disabilities. These directions not only are strongly supported by Canadians with disabilities, but also can be justified in terms of their **long-term cost savings** to governments. Tax provisions intended to support these directions should be designed so they do just that - the provisions should be properly **designed** to meet their objectives.
2. The tax system is an appropriate vehicle to promote a **sharing** of disability-related costs among individuals and their families, businesses and governments. It is a less appropriate vehicle to respond quickly to meet basic, essential or emergency costs.
3. To be fair to all Canadians, tax provisions must be **clear and understandable** so that those who are eligible for claims will make them, and those who are ineligible will understand they should not.
4. It is necessary to have tax provisions which are determined by **disability status** or **categorical eligibility**, such as the Disability Tax Credit (DTC), despite the definitional and administrative problems inherent in them, because there is no other way to meet the indirect, hidden and cumulative costs of disability fairly.
5. It is also necessary to have tax provisions for **specific disability-related expenditures**, such as the Medical Expense Credit (MEC), despite their definitional and administrative problems, in order to support individuals and families striving to pay these costs themselves.
6. Reform proposals should be considered realistically in light of their **cost and practicality**, both for taxpayers and governments. But a "realistic" assessment must include the **long-term cost savings** of initiatives which increase the personal and economic independence of Canadians with disabilities already identified.
7. So far as possible, taxpayers in similar circumstances should be treated **fairly** - this is usually called "horizontal equity".

Note on Reform Recommendations

The authors have classified recommendations on taxation reform for persons with disabilities as follows:

(1997)

These are reforms which we recommend should be implemented for the 1997 taxation year, reflecting important changes which could be brought about without major changes to the tax system.

(1998)

These are reforms which are also priorities, but which would realistically require a consultation process or consideration of significant tax provisions, and could not be implemented until the 1998 taxation year.

(Comprehensive Review)

These are reforms which would have great long-term importance, but which could not be implemented without a comprehensive review process which would look at other disability programs besides tax, including programs in provincial/territorial jurisdiction. These reforms would involve the agreement of provincial and territorial governments to implement, for the most part.

Disability Tax Credit

Purpose

To provide for the indirect, hidden and cumulative costs of disability, well-understood by individuals with disabilities and their families, such as

- having to take a taxi when others could choose to walk or take public transit
- having to use restaurants when others could eat at home
- diminished choice of consumer goods through accessibility problems, leading to higher prices (e.g. can't "comparison shop")
- incidental expenditures related to disability (travel to disability programs, tissues, extra utilities costs for heat and telephone)
- diminished capacity to earn income (e.g. can't work full-time, can't do incidental work at a second job).

These costs are often difficult to itemize but are nonetheless real to those affected.

Current Problems

The DTC is the most controversial disability-related tax provision at present, because

- the administration (e.g., the wording in form T2201) has been made more restrictive, even though the law has not been changed, making many who were formerly eligible now ineligible
- many taxpayers have received re-assessments of up to three years, when they had no notice that their claims for previous years would be questioned
- although the definition is described as relating to restrictions of daily living, in fact significant restrictions in ability to work and look after oneself are disregarded, contrary to the purpose of the definition
- the T2201 form does not really reflect the statutory definition of eligibility (especially in that the specific questions directed to physicians do not include the statutory reference to an "inordinate amount of time" e.g. Question 2 - "Is your patient able to walk, using an aid if necessary? (For

example, at least 50 metres on level ground)?" - There is no reference here to how long it takes the person to walk, and no real justification for limiting the test to "level ground" - unfortunately, the world isn't flat!)

- no consistency among physicians as to tests applied (while the Department rejects many DTC claims endorsed by physicians, persons with significant disabilities who should be eligible may find their physicians "unwilling to sign")
- the DTC is not refundable and therefore doesn't benefit the most disadvantaged members of the community, including those who are working.

Judges of the Tax Court of Canada have now decided a significant number of cases on eligibility for the Disability Tax Credit. Several have commented on the restrictiveness of the statutory test for eligibility. For example, Justice Rowe in Thorpe v. The Queen, [1995] E.T.C. 172 stated: "... I indicate that in the language of the section, there is a requirement of a level of disability that in my view is excessive in order that the disability tax credit be permitted." Accordingly, while Revenue Canada has succeeded in the majority of cases which the authors have reviewed, this often reflects the narrowness of the statutory eligibility test rather than a judicial perception that the cases are "undeserving".

In other cases, the Tax Court has relieved against the strictness of the statutory test through a liberal interpretation of the provisions - a good example is Justice Bowman's decision in Radage v. The Queen, [1996] E.T.C. 443. In Radage, the taxpayer's 24-year-old dependent son was described as having a borderline range of intelligence, impaired manual dexterity and hand-eye coordination, and impaired receptive language skills. Because of these disabilities, care and supervision by his parents was required. Justice Bowman held, in effect, that the sum of these disabilities constituted a "marked restriction" in "perceiving, thinking and remembering" within the meaning of the Income Tax Act. But for every individual with a "moderate" mental disability who benefits from the type of careful consideration of his or her disability carried out in this case, a hundred are "turned away" as apparently not qualifying for any "Yes" answers on the T2201 form.

Recommended Reforms

1. Review the T2201 form, in consultation with the disability community, to make it consistent with the statutory definition. **(1997)**

Comment: The authors have already raised this issue with the Minister of Revenue, the Honourable Jane Stewart, in response to her recent request for input from ARCH on a revised draft of the T2201 form.

2. Limit "retroactive" reassessment of DTC to cases where no bona fide DTC valid on its face was submitted (i.e. don't retroactively reassess cases where the physician/optometrist certified the individual as eligible). **(1997)**

Comment: Revenue Canada has apparently already decided to adopt this policy, stating that starting with the 1996 taxation year the Department will review all new DTC claims as they come in, and indicating a willingness to review "retroactive" cases which have already been assessed.

3. Make the DTC refundable to those who have income from employment or self-employment sufficient to contribute to the CPP/QPP (i.e. more than the "Year's Basic Exemption", which was \$3,400 in 1995). **(1997)**

Comment: Refundability of the DTC for those who are employed on a limited basis or starting their own business would provide support for them to continue and increase their efforts. This would be a relatively modest incentive, but would meet some of the costs of starting to work. (Discussed further below under "Employment-Related Initiatives".)

4. Conduct a review of the DTC statutory definition of eligibility in consultation with the disability community, aimed at making persons eligible who have indirect, hidden or cumulative costs of disability. **(1998)**

Comment: There is widespread concern among members of the disability community about the fairness of the current definition and the way it is applied - however, there is no existing consensus on the most appropriate approach. This is a difficult issue because of the range of definitions of "disability" in use, because of the individual variability of the impact of disability, and because of the expense inherent in implementing a truly effective disability determination process including assessment, review and appeals. As well, broadening eligibility may influence the government's willingness to increase the value of the credit.

5. Consider refundability in general of the DTC with provinces/territories and the disability community. **(Comprehensive Review)**

Comment: Refundability of the DTC for everyone has been recommended by many as part of a strategy to address the widespread poverty in the disability community. The federal government has already implemented a refundable Child Tax Benefit as a response to the issue of child poverty, and in principle there is a strong argument that the same approach should be taken for disabled Canadians. However, if no coordinated strategy has been agreed upon with the provinces/territories, they may simply view DTC refundability as an "excuse" to cut or freeze social assistance or other disability-support programs, so nothing will have been achieved. (Arguably, this has been the outcome of the Child Tax Benefit strategy so far, at least in some provinces.) Federal officials have estimated the cost to the federal government of full DTC refundability at \$200 million, so this initiative would have to be considered carefully in light of other priorities - however, in Recommendation #3 we have recommended refundability for disabled **earners** as a first step.

Medical Expense Credit

[Note: Because of its significance, attendant care is covered as a separate main topic.]

Purpose

To compensate individuals and their families for health-related and disability-related costs which are specific and itemized. The MEC is becoming more important to individuals and families as direct funding programs are cut by all levels of government (home renovation programs are a good example) and they must use private resources. The MEC is a potentially important source of supports for those who are striving to remain in the community, either with families/friends or independently.

Current Problems

The major problem identified by the disability community with respect to the MEC is that the amount of the credit is insufficient in relation to the expenses incurred. In particular:

- depending on the taxpayer's circumstances, the real value of the MEC is usually 10-20% of the actual health- and disability-related expenditures
- the MEC is not refundable and so does not benefit low-income persons with disabilities and their families
- some taxpayers are still unaware of certain MEC claims that can be made e.g., in relation to home renovations
- some legitimate disability-related expenditures are not covered (e.g. "emerging technologies", vans, computers)
- some provisions favour institutional and "segregated" programs in relation to family/community care and integrated programming.

Recommended Reforms

6. Make the MEC refundable for those eligible for the DTC. (1997)

Comment: Because of current cuts to disability programs by all levels of government, individuals with disabilities and their families increasingly must look to their own resources for health- and disability-related costs. This is obviously much more difficult for low-income Canadians. As the MEC provides only a partial compensation for health- and disability-related

expenditures, it reflects a sharing of costs between taxpayers and the government. This should be extended to those most in need, who are often making extraordinary efforts to keep themselves or their family members living in the community, rather than fully dependent on government support in a residence or institution.

7. The MEC should be increased in value for those eligible for the DTC. **(1997)**

Comment: Persons with severe disabilities (i.e. those qualifying for the DTC) typically have the highest and most urgent disability-related costs. Increasing the value of the federal MEC to them (e.g. to 30% or 35%) would go some way towards meeting these costs. (Given that the 3% net income "threshold" would remain, the sharing of costs between individual taxpayer and government would be about 50/50 on this proposal.) The authors believe there would be merit in exploring an even clearer targetting of the MEC towards those with relatively high needs and relatively lower incomes, which could be achieved through a variety of mechanisms (e.g. retaining the 3% as a "threshold" but not deducting it from disabled persons who meet the threshold). These are presumably the people most in need and most likely to request residential or institutional care for themselves or a family member.

8. The name of the MEC should be revised to indicate clearly that (many) disability-related expenditures may be included in it. **(1997)**

Comment: Individuals with disabilities and family members with limited literacy skills may "miss" allowable disability-related claims (such as home renovations) because they don't seem "medical".

9. Nutritional supplements should be added as an allowable claim under the MEC, if prescribed by a physician. **(1997)**

Comment: Nutritional supplements are essential to many who are most disabled or ill e.g. multi-handicapped children, people living with AIDS.

10. The list of claimable technological devices should be reviewed in detail with the disability community, health professions, and provincial/territorial governments to insure comprehensiveness. **(1998)**

Comment: Particular attention should be paid to emerging technologies which may further the independence of individuals with disabilities. While we recommend an initial review to be completed in time for the 1998 taxation year, the authors would also favour a permanent committee or other process to review the list of MEC-claimable items on an annual basis.

11. The list of MEC-claimable items should be expanded to include those which are **disability-related** but not **disability-specific**, such as adapted vans and computers, but on a "partial-claim" basis. **(1998)**

Comment: Items like accessible vans and computers are especially required by many disabled individuals to support their independence, but at present only the **modifications** to these items are claimable under the MEC. This is too restrictive. For example, while a disabled individual who purchases a van might have bought a vehicle anyway if not disabled, typically the van is much more expensive (and costs much more to insure and operate) than a "regular" vehicle. Similar issues are raised by integrated programs, such as nursery schools, which are not designed specifically for persons with disabilities but may be more appropriate to their needs. The authors' view is that this differential cost should be recognized under the MEC on a percentage basis - perhaps 50% of the total price of the van or other item or service.

12. The list of MEC-claimable items and MEC "planning devices" should be reviewed to ensure their appropriateness. Inappropriate provisions should be removed to "fund" improvements to the MEC for those who need them most, as recommended above. **(1998)**

Comment: While we have recommended several increases in MEC-claims, the authors also recognize that some existing MEC provisions may be too broad. In particular, there should be consideration of whether the MEC ought to be limited so it won't support expenditures relating to "two-tier" health care, contrary to the principles of the Canada Health Act. Artificial "MEC-planning" devices, like choosing a fiscal year different from the calendar year, should also be reviewed.

Attendant Care

Purpose

To support taxpayers with disabilities and taxpayers who have dependants with disabilities in paying for attendant care. This is directly related to governmental initiatives aimed at community living and family support, as opposed to institutional/residential care.

Current Problems

Taxpayers, whether disabled themselves or having disabled dependants, are limited in the claims they can make for attendant care by the following:

- by claiming "full-time" attendant care, they lose the Disability Tax Credit, and if they claim "part-time" attendant care, the claim is limited to \$5,000
- the concept of "attendant care" itself is not clearly defined
- while child-care expenses **may** be available in relation to care for an adult son or daughter who is disabled, this is somewhat unclear, and the same option is not available where it is another family member who is disabled.

There are also very significant concerns relating to family members (usually women) who act as full-time unpaid caregivers, often over several decades, thereby losing not only potential employment income but pension rights and other employment benefits as well.

Recommended Reforms

13. A claim for full-time attendant care, or for part-time attendant care in excess of \$5,000, should be permitted to be made in conjunction with a claim for the DTC. **(1997)**

Comment: Those in respect of whom a claim for full-time or part-time (over \$5,000) attendant care is made are typically those who are most significantly disabled. Their other disability-related costs presumably would be relatively high as well. They should not be denied the DTC claim simply because they have claimed the costs of attendant care under the MEC.

14. "Attendant care" should be defined broadly to include all personal services necessitated by the disability of the individual. **(1997)**

Comment: At present, there is considerable uncertainty as to just what constitutes "attendant care" for purposes of the MEC claim. Persons with disabilities require personal supports for many things besides direct personal care. Depending on their disabilities, they may need help with housekeeping, shopping, basic finances, etc. In order to support independent living in the community, a wide definition of "attendant care" should be adopted by Revenue Canada.

15. The claim for nursing home or institutional care as a medical expense should be made consistent with the attendant care claim, by deducting the costs of room, board and personal expenses from the nursing home/institutional claim, but allowing the nursing home/institutional claim to be made together with a claim for the DTC as recommended for attendant care (Recommended Reform #13).
(1998)

Comment: The view of the authors is that the tax system should treat people in different living situations as equitably as possible. At present, the effect of allowing full claims to be made for nursing home/institutional fees is to allow this claim to include in effect **all** living expenses, not just disability- or health-related expenses. This new system, however, would require study and consultation.

16. The claim for payments to an attendant should be permitted to include payments to the taxpayer's spouse, who would then become an employee of the taxpayer for all purposes, including participation in the CPP/QPP and other employee benefits. **(1998)**

Comment: This would be a marked departure from current policy and would require some study. However, full time caregiving is definitely a job, and there is no reason in principle why it should not be able to be recognized as such, complete with employee benefits, where the taxpayer is providing the caregiver's salary out of private resources. It must be acknowledged, however, that this approach would only assist families where private resources are sufficient to pay the spouse's salary.

17. A claim analogous to that for child-care expenses should be available for care expenses relating to an adult with a disability, subject to the same qualifications and restrictions. **(1998)**

Comment: Parents who must pay for child-care in order to work are entitled to a deduction from income. If taxpayers must pay for care of a disabled adult in order to work, this seems to us an analogous situation in which a similar claim should be allowed, regardless of whether the disabled adult

is a son or daughter of the taxpayer. (At present, there is no specific age limit on "child-care" for a disabled son or daughter - it seems unclear whether a parent could make this claim for an adult son or daughter attending a day program - would this really be "child-care"?)

18. Unpaid caregivers should be permitted to participate in the CPP/QPP, probably through a mechanism like the current "child-rearing drop out". (**Comprehensive Review**)

Comment: This is really a CPP/QPP rather than a tax proposal, but it has been included because of its relationship to the other proposals in this section. Where caregivers (mostly women) have been outside the labour force for extended periods, it is unfair that they lose even the limited retirement and disability pension rights they have acquired under CPP/QPP. This has been identified as a "Comprehensive Review" proposal because a CPP amendment would require provincial approval under the CPP amending formula.

Moving Expenses

Purpose

At present, there is a moving expense claim under the Income Tax Act only where the move is necessitated by employment or post-secondary education.

Current Problems

Moving expenses are not claimable when the move is necessitated by the need to have accessible housing, even where buying or renting an accessible home is a better option than renovating for accessibility (which is claimable as a medical expense).

Recommended Reforms

19. Allow moving expenses to be claimable under the MEC for individuals/families moving into accessible housing. (**1997**)

Comment: Sometimes Revenue Canada has apparently allowed this type of claim on an "ad hoc" basis in the past. In any event, there is no reason for the tax system to favour what may be a less appropriate option for people needing accessible housing.

Claims for Disabled Dependants

Purpose

To provide assistance to taxpayers with the costs of supporting a dependant with the disability. There are three claims:

- credit for infirm dependants over 18
- equivalent to spouse credit
- transfer of the Disability Tax Credit (DTC)

Current Problems

The problems reported by taxpayers with these claims for disabled dependants include the following:

- the eligibility rules for the different claims are complex and confusing
- receipt of social assistance income affects the claim for an infirm dependant and the equivalent-to-spouse claim but not transfer of the DTC - many taxpayers are confused by this and don't make the appropriate claim
- eligibility may be denied if the relative is not "close" enough even where actual support is provided (e.g. can't get DTC transfer for disabled aunt living with you and your spouse even if you actually support her)
- claims are not refundable and so don't benefit low-income taxpayers.

On the other hand, because "dependant" is not defined in the Income Tax Act, claims for disabled "dependants" are sometimes made where the actual support provided is very small.

Recommended Reforms

20. The three claims for disabled dependants should be reviewed, in consultation with the disability community and provincial/territorial governments, to determine whether they could be replaced by **one** claim that would be more clearly defined, and based on **actual support provided** rather than on "closeness" of the family relationship. (1998)

Comment: It seems unfair to deny a disabled dependant claim to someone providing extensive support in one case, and to allow it in another where little support is given, simply because of the closeness of the family relationship. **Actual support** should be based on documented expenditures in cases where the dependant does not live in the same household as the taxpayer. (Where an individual with a significant disability actually lives with the supporting person, in most cases support can be inferred.) One disabled dependant claim defined clearly would be fairer.

Employment-Related Tax Measures

Purpose

There are some limited measures in the Income Tax Act to support the employment of persons with disabilities, including

- treating certain employer-provided allowances as non-taxable to the disabled employee
- the special \$5,000 maximum employment-related attendant care claim
- treating certain accessibility measures by employers and businesses as immediate expenses rather than under the capital cost allowance rules.

Current Problems

While these measures are a beginning, they are very restricted in scope. The non-taxable allowances to disabled employees are really an administrative convenience - the employer could pay these items directly as business expenses. Very few employees with disabilities are able to pay their own attendants directly. And the accessibility measures are quite limited in scope. Revenue Canada estimates the total cost of these measures at \$20 million/year - a small investment in the employment of persons with disabilities.

Recommended Reforms

[Note: Refundability of the Disability Tax Credit for those with enough earnings to contribute to CPP/QPP has already been recommended (see Recommendation #3).]

21. An employer incentive system to encourage the hiring of employment-disadvantaged persons with disabilities, similar to the grant-levy system now operating in many industrialized countries, should be developed in consultation

with the disability community and provincial/territorial governments.
(Comprehensive Review)

Comment: Despite a variety of measures in relation to disability employment over the past two decades, Canada still has a major problem with unemployment and underemployment of its disabled citizens. This can only be addressed for those who are most "employment-disadvantaged" through creation of a subsidized labour market. As a first stage, a \$2/hour subsidy for employers (private, public and non-profit) hiring a "disabled" worker could be considered, where the "disability" is defined in terms of receipt of disability income due to inability to work (under social assistance, WCB, CPP/QPP, LTD, etc.) for at least two years. Employers would get the subsidy (which might be delivered as a refundable tax credit to employers) essentially for those unable to find work without it (the authors believe that most people on disability income for 2 years or more would fall into this category). A minimum period of employment (e.g. 6 months) would be required before the employer qualified for the subsidy. A person who is employed under this program would not lose their eligibility if they moved to other employment. The program should be based on self-identification by persons with disabilities - no one should be forced into the program.

Barrier Removal by Businesses

(Note: this issue is discussed only very briefly because it is covered in the consultant's report prepared by Gregory Williams for the Task Force.)

Purpose

At present, an immediate expense "write-off" is available to support businesses which make certain modifications aimed at mobility access. This is a more favourable tax treatment than requiring the expenditures to be treated through capital cost allowances.

Current Problems

While this provision was a good beginning, a range of equally important modifications to support removal of architectural, transportation and communication barriers are not recognized by the tax system.

Recommended Reform

22. In consultation with the disability and business communities, tax provisions should be developed to support accessibility-related initiatives by businesses, including accessible transportation and communication systems ("accessible" to include all persons with disabilities, e.g. those with sensory disabilities). (1998)

Comment: Tax provisions in the United States, brought in together with the Americans with Disabilities Act, provide important illustrations of how this can be done successfully.

Long-Term Disability Insurance

Purpose

At present, LTD payments may be taxable, non-taxable or partly taxable, depending on whether the employer or employee paid the premiums. If the employer paid, the LTD payments are taxable, but in an "employee pay-all" plan, they are not.

Current Problems

Where LTD payments are taxable, this often contributes to what is already a significant loss of income for the employee who becomes disabled. (Most private LTD plans are not indexed for inflation.) Even if the employee was aware of this possibility before becoming disabled and wanted to make his or her own contributions, the employer's group contract or the collective agreement often would preclude this.

Recommended Reform

23. Require LTD premiums to be paid by the **employee** (even if through payroll deduction) so that all LTD payments will be tax-free. [Alternatively, at least give individual employees the option of paying the premiums in after-tax dollars.] (1998)

Comment: Presumably, despite the logic of this approach, this recommendation would be opposed by many employees, unions, employers and insurers because it would appear to make LTD less attractive as an employee benefit to those who would never expect to make a claim, and would be concerned more about immediate tax consequences. On the other hand, especially for those who are significantly disabled over the longer term, their LTD benefits are eroded by a lack of inflation protection, and the taxability of LTD just makes things worse. A system of "tax-free" LTD would begin to address this inadequacy issue.

Goods and Services Tax/Harmonization with Provincial Sales Tax

In comparison with income tax issues, GST and PST issues are viewed as much less significant by persons with disabilities and their families.

Both GST and PST (in the various provinces) contain provision for favourable treatment ("zero-rating" under GST, exempt status under PST) for a lengthy list of health and disability related items. Generally speaking, this list is very similar to the list developed for the Medical Expense Credit (discussed above). It would make sense to use the same list for all purposes, once the MEC list were revised in accordance with the recommendations made above (e.g. include nutritional supplements, include "emerging technologies", etc.).

Interestingly, Ontario's PST system permits a full claim for vehicles used by persons with mobility disabilities (subject to medical certification and other restrictions). A "full claim" means that it includes the cost of the vehicle itself, not just the cost of any modifications. This has provided a modest incentive in Ontario for persons with disabilities and their families to obtain their own transportation (although the costs of doing so are, of course, prohibitive for many).

In GST/PST harmonization, the most important consideration is that the GST "zero-rating" concept be continued. Briefly, "zero-rating" means that items (goods and services) are taxable but at a 0% rate. This implies that the businesses producing and selling these goods and services can claim input credits, which removes all GST from the final price to the consumer. It is important to persons with disabilities that "zero-rating" for disability-related items be built into federal/provincial harmonization proposals.

In a harmonized GST/PST system, presumably there would continue to be a refundable sales tax credit, but "harmonized" as well. This would be an opportunity to make more disabled Canadians aware of their eligibility for the credit, and of the need to file a tax return to claim it.

RESEARCH PAPER 10

**PART 1: THE COSTS OF HEALTH
AND DISABILITY AS BORNE BY
EMPLOYERS AS A POTENTIAL
BARRIER TO THE
ACCOMMODATION OF DISABLED
PERSONS IN THE WORKPLACE
AND**

**PART 2: THE ROLE OF TRUSTS,
PRIVATE SAVINGS AND
INVESTMENT IN ADDRESSING
FUTURE COSTS OF DISABILITY**

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Background:

As part of the current review of mechanisms, including the tax system, by which the federal government addresses the costs of disability, **Williams & Assc.** have undertaken to examine two specific areas on which the Income Tax Act (ITA) and its administration that have an impact on the distribution of the costs of health and disability, the health and welfare of Canadians and the viability of business. Part 1 of this report focuses on the issues arising from ITA provisions that affect employers and employer coverage of health and disability as a potential barrier to the accommodation of disabled persons in the workplace, and Part 2 examines the treatment of savings and investment as they might be used to address future health or disability related costs.

Methodology:

The following key issues were identified by through a review of the relevant legislation, jurisprudence, bulletins, etc; published and unpublished literature; and targeted key informant interviews with representative from business, non-government organizations, government officials, and professionals specializing in the field of personal and corporate taxation, estate planning, financial planning, and human resources development management. At the request of representatives from the task force we have also reviewed relevant American tax legislation concerning the costs of disability in the workplace and recent data about its cost and effectiveness.

Key informant interviews were unstructured and are therefore qualitative. However, with respect to the costs of health and disability as borne by employers, all key informants were asked to consider two things. First, does the tax system as it currently exists contain any disincentives, from an employers point of view, to accommodating disabled persons within the workplace. Second, are there appropriate ways in which the tax system could be used to provide incentives to accommodate disabled persons within the workplace.

General issues around both cost-control and the ability of employers to offer employees disability and health insurance were also discussed for two reasons. First, business viability is basic prerequisite for employment. Second, disabled persons must often leave secure income from other sources, social assistance, CPP disability, workers compensation, etc. and/or ancillary benefits like drug plans, to return to work. The absence of basic income insurance and/or important health benefits to cover things like medication costs could pose a significant barrier to employment for disabled persons. It should also be noted that many health conditions have disabling effects which may be partially managed through interventions not adequately insured under public insurance plans. Multiple Sclerosis and HIV/AIDS, which are both to some degree manageable through expensive pharmacotherapy, are examples of disabling

health conditions with associated direct personal costs which, in the absence of supplementary health insurance, may create disincentives to employment

With respect to the tax treatment of savings and investments to offset the future costs of disability the consultant asked key informants to consider the utility of changes to current trust law including the introduction of new savings and investment products that might promote private savings for the purposes of offsetting future costs of health and disability for the individual and/or for dependents.

The implicit criteria underlying this analysis are the standard tax criteria of fairness (horizontal and vertical equity) efficiency, simplicity and certainty.

Part 1(a) Summary of Key Issues Related to the Costs of Health and Disability as Borne by Employers.

- **Differential treatment of premiums for supplementary health benefits for non-incorporated and incorporated businesses.** A recent report by William Mercer & Assc. estimated that the number of self-employed Canadians with small businesses who do not have supplementary health benefits at 600,000. Unincorporated businesses must buy supplementary health benefits with after tax dollars whereas incorporated businesses can fully deduct health premiums. A simple change in the deductibility of premiums would increase the incentive to insure a group of Canadians currently without supplementary health insurance who, including dependents, number 1.08 million (William Mercer, 1996).
- **Ambiguity concerning legitimate costs of rehabilitation.** The grayness between what constitutes a legitimate rehabilitation cost and what constitutes a taxable benefit is creating disincentives to develop innovate training programs to return disabled Canadians to the workplace. For example, are University tuition fees a legitimate rehabilitation cost or a taxable benefit?
- **Differential treatment of disability income for tax purposes, eg. workers compensation vs. CPP disability.** Differential tax treatment of various programs is skewing program reliance in favour of programs that are not taxed. For example, an injured worked collecting workers compensation may have an income sufficiently high that there is no incentive to seek rehabilitation and retraining
- **Disincentives to risk and cost sharing associated with Long Term Disability (LTD) created by the ITA provision that all benefits from plans in which there is an employer contribution are taxable.** Currently, LTD

benefits are taxable if the employer makes *any* contribution to the payment of premiums. If the employee pays the premiums, the benefits are not taxable. Insurance companies and employers have noted that this policy is a disincentive to cost sharing and risk sharing for two reasons. First, it creates administrative problems. Second, the tax outcome of employer participation is negative. This is clearly a case where arguments about tax equity will have to be balanced with arguments about efficiency. Given the rising costs of health care and both public and private disability programs, encouraging both employers and employees to share in the risks thereby distributing the costs of health and disability more broadly would appear to be an efficient public policy if the goal is to adequately insure as much of the population as possible with scarce public resources.

- **Restrictions on capital expenditures for the purposes of accommodation.** Businesses which make a capital expenditure for the purpose of accommodation disabled persons as either employees or consumers are allowed to make a full deduction for capital costs thereby reducing the business marginal tax rate. **However, only a portion of capital costs can be deducted each year.** Allowable renovations are stipulated (Income Tax Regulations, section 8800) as are a list of equipment costs (ITA paragraph 20(1)(rr); Income Tax Regulations section 8801) fully deductible against income providing they are incurred to earn income from the business or property. This list needs to be reviewed to cover a broader range of disability related costs, e.g. communication systems.

Part 1(b). American provisions to address the costs of disability in the workplace.

Background:

There are three specific tax measures available to assist business with the costs of implementing the Americans with Disabilities Act (1990).

Section 190 of the Internal Revenue Code, allows a business deduction for qualified architectural and transportation barrier removal expense. Prior to 1991 the deduction was \$35,000. Since 1991, the amount has been reduced to \$15,000. The IRS does not track the use of section 190 therefore no data is available on the tax expenditure.

Section 44 of the Internal Revenue Code permits small businesses with either gross receipts up to \$1 million or no more than 30 full-time

employees to take an annual tax credit of up to \$5,000 for ADA compliance expenditures in excess of \$250. This credit is known as the Disabled Access Credit (See Appendix A, Table 2 for data on costs and take-up).

Section 51 of the Internal Revenue Code provides for the Targeted Job Tax Credit. Targeted Jobs Tax Credit Program (TJTCP), a tax credit for 40% of the first \$6000 of a disabled employee's first year salary may be claimed. This credit is available to employers who hire disabled persons referred through a network of local, state, and federal agencies (See Appendix A, Table 2 for data on costs and take-up).

The TJTCP is the only evidence in both the Canadian and American income tax systems of economic incentives to promote labour market accommodation of the disabled that offers employers tax relief from costs that cannot be identified as barrier removal.

New data released from the US Census Bureau suggests that these tax provisions are having an impact on the employment rate among disabled Americans. The employment population ratio for persons with disabilities increased from 23.3% in 1991 to 26.1% in 1994 (Survey of Income Program and Participation (SIPP), July 1996). Approximately 800,00 more severely disabled Americans were working in 1994 than in 1991. (See Appendix A, Table 1).

Part 1(c). Discussion of the relevance of the TJTCP to the Canadian Context.

To get an initial sense of the feasibility and the desirability of implementing such a credit in Canada, the consultant explained the credit to key informants and asked for comments. The general response was positive. The following points were noted in the credits favour:

- Such a credit addresses the additional training costs which may be associated with training a disabled person. These costs may have less to do with barrier removal and more to do with the time it takes to train the employee to a specific skill level.
- From a corporate perspective, such credits are easier to administer than complicated job subsidy programs.
- If made available to any individual leaving LTD, CPP disability, Workers Compensation, etc., the credit could make the barrier between disability related unemployment and the labour market more permeable by providing incentive and reducing costs for employers.

Noted Limitations of the TJTCP Model:

- If it were only based on the first year of employment a credit modeled on the TJTCP could create a revolving door effect as opposed to sustainable employment for disabled persons. This could be addressed by modeling a credit that accrued in value over time or was at least available for a period past the first year of employment.
- While a TJTCP-modelled credit may provide incentives to employers it does not address the costs of returning to work that are most significant: those borne by disabled persons. Any successful model of employment reintegration must simultaneously address the costs borne by the individual: transportation, personal aids, etc., and also the potential loss of ancillary benefits, medication, dental, etc. tied to provincial social assistance on which many of Canada's disabled population rely.

Conclusions to Part 1.

The tax system has an indirect impact on the ability of employers to accommodate disabled persons in the workplace and also the ability of disabled persons to seek employment, including self-employment, because of the way it interacts with insurance schemes. Taxation of premiums and/or benefits should be re-evaluated in light of broader public policy goals including the promotion of employment and the health of Canadians.

There is also an important role for the tax system in addressing the costs of disability as a barrier to employment in three specific capacities.

1. Tax credits which address the direct costs of disability as borne by individuals and families (METC, DTC, and attendant care provisions) can ameliorate some costs that are incurred by the disabled individual upon entering the workforce.
2. Broad tax recognition for the costs of rehabilitation and retraining can facilitate innovation and facilitate integration of disabled persons in the workplace.
3. Tax recognition of employer borne costs of accommodation in the form of capital expense deductions and/or targeted credits like the TJTCP in the U.S. can ameliorate costs borne by the employer and provide incentives to hire disabled Canadians.

An efficient tax policy would recognize the complimentary role of all three approaches to ameliorating the costs of disability as a means of integrating and accommodating disabled persons in the workplace.

Part 2. Summary of Key Issues Related to the Role of Trusts, Savings Investment in Addressing Future Costs of Disability.

A summary of relevant trust provisions in the ITA can be found in Appendix B.

- **Changes in Provincial law regarding the treatment of Trust Savings under liquid exemption guidelines may threaten the current practice of setting up discretionary trusts for disabled dependents to subsidize social assistance benefits and/or ancillary benefits, like housing, administered by the provinces.** Although ostensibly a provincial issue, it is worth noting that any federal effort to facilitate savings and investment to provide for future disability costs may have some interplay with provincial policies particularly where the provinces are supplying income maintenance, services, and/or ancillary benefits. Under fiscal pressure provinces may be inclined to disallow these benefits for disabled persons who are the beneficiaries of trusts. It was suggested several times in consultations however, that a better alternative would be to allow for some type of cost sharing based on an income test to arrive at a fair distribution of costs between public and private payers.
- **A recent revision of the Income Tax Act has eliminated the option of electing a preferred beneficiary except in the case of disability as demonstrated by qualification for the DTC (Pending Amendment, Proposed Sec. 104(14)).** The DTC criteria both in its language and its interpretation, are so restrictive as to make this option available to very few disabled Canadians and their families. One financial advisor who was interviewed was concerned that many families are in the process of setting up testamentary trusts for children for whom they have never filed a tax return or claimed the DTC.
- **Currently, RRSP's and RRIF's can be rolled over to a disabled dependent who qualifies under the mental and physical infirmity criteria who can then reinvest them as their own income in a new RRSP or annuity (ITA Section 146, Subsection 8.1). If the child is severely disabled, non-verbal, or under guardianship, this can be a complicated process.** A cleaner process which would protect the disabled dependent's inheritance would be to allow the RRSP's or RRIF's to be rolled directly into a trust which should be set up before death of the parents.

Part 2(b). The Utility of New Savings and Investment Products.

Many of the discussions concerning savings and investments centred on the question as to whether additional tax free savings products should be created promote the use of private savings to address future costs of health and disability. In the United States, a Registered Medical Savings Plan is currently before Congress. The following points capture the highlights of discussions about introducing a similar product in Canada.

- New savings products do not tend to promote savings among those individuals who do not currently engage in long-term financial planning, rather they broaden the options for those who already use RRSP's , RRIF's, etc.
- Canadian RRSP contribution rates are already quite generous compared to those in the United States and RRSP's can be used as a vehicle to save for future disability related costs.
- Advances in diagnostic technology, for example genetic screening, may make it easier for insurance companies to exclude those with pre-existing conditions from insurance plans. Arguably, an individual with a long-term chronic condition or an individual with dependent who has such a condition, should be afforded the opportunity to save for future costs associated with disability including substantial indirect costs associated with potential loss of employment.

Conclusions to Part 2.

While the majority of disabled Canadians have insufficient income to purchase RRSP-type investments¹, it would still be good public policy to give those who do wish to save for future disability-related costs the opportunity to do so in an uncomplicated manner. Trust provisions can address this need to a certain extent but can also be expensive to set up and administer. **A relatively simple solution would be to allow for a higher RRSP contribution rate for those taxpayers who either have disabled dependents or who are themselves disabled.** The Disability Tax Credit definition is too narrow for this purpose. A

¹. 39.1% of Canadians reported annual incomes of less than \$10,000 and over 50% reported annual incomes of less than 15,000 (HALS, 1991).

modified version of the mental and physical infirmity criteria would be a useful model in that it provides a broader definition. Its limitation is that it emphasizes inability to work which is counterproductive as it creates a potential barrier to employment.

Recommendations:**Short-Term**

1. *Allow non-incorporated businesses the same tax treatment of supplementary health and dental benefits as incorporated businesses. This simple change would remove disincentives to insure for small businesses to insure and expand supplementary health coverage for a significant portion of the population who currently have no coverage.*
2. *Allow for a broad interpretation of what constitutes expenses related to vocational rehabilitation. This could be accomplished by Revenue Canada through a bulletin without changing legislation.*

Mid-Term

3. *Design and implement a Canadian version of The American Targeted Jobs Tax Credit Program after a thorough consultation with all stakeholders including the business and disability communities. Although the preliminary qualitative research supporting this report indicates that it is feasible to implement such a credit and that business might respond favourably to it, a thorough survey of Canadian businesses, particularly small businesses, should be undertaken to gauge the response to the introduction of such a credit in Canada and obtain substantial input into its design. Such a survey was recently completed by Global Strategy Group Inc. to ascertain the impact the ADA is having on American Corporations. Additional analysis of the American data and research on their experience with this approach is also recommended.*
4. *In consultation with employers, employee representatives, and insurance industry representatives, develop a strategy for the taxation of LTD insurance premiums and benefits that is fair and promotes insurance coverage as a mechanism for sharing risk and distributing costs more broadly.*

5. *Develop a new definition of disability for purposes such as restricting the use of the preferred beneficiary election and increasing the allowable contributions to RRSP's for tax filers with disabled dependents or tax filers who are themselves disabled.*

Long-Term

6. *Develop a fair and rationale treatment for all disability related income for the purposes of taxation.*

Appendix A.
Table 1.

SIPP Data: U.S. Census Bureau
(Working Americans -- 21 to 64 yrs of age)

<i>Persons with Severe Disabilities* Employed</i>	1991	1993	1994
Percent of Population	23.3%	25%	26.1%
Number	2.91 million	3.45 million	3.71 million
<i>All Persons with Disabilities Employed</i>			
Percent of Population	52.2%	52.4%	52.3%
Number	14.26 million	15.11 million	15.39 million
<i>Persons with Non-Severe Disabilities Employed**</i>			
Percent of Population	76.0%	77.7%	76.9%
Number	11.35 million	11.66 million	11.68 million
<i>All Persons Employed</i>			
Percent of Population	80.5%	80.6%	82.1%
Number	93.90 million	96.25 million	98.49 million

* A person with a severe disability is one that is unable to perform to perform one or more activities of daily living; or, has one or more specific impairments; or, is a long term user of assistive devices such as wheelchairs, crutches, and walkers.

** A person with a non-severe disability is one that has difficulty performing functional activities such as hearing, seeing, having, one's speech understood, lifting and carrying, climbing stairs and walking; or, difficulty with activities of daily living.

Data Supplied By President's Committee on Disability and Employment

**Appendix A.
Table 2.**

**Disabled Access Credit (DAC) and Targeted Jobs Tax (TJC) Credit By Type
of Income Tax Filed for Tax Years 1992 and 1993.**

	1992		1993	
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FORMS 1120 - U.S. Corporation Income Tax Returns Other Than Forms 1120S.

	Number	Amount	Number	Amount
TJC	4,762	\$329,054,000	4,329	\$290,861,000
DAC	1,129	\$2,763,000	534	\$1,845,000

FORMS 1120S - This form is used to report the income, deductions, gains, losses, etc. of a domestic corporation that has elected to be an S corporation by filing Form 2553, election by a small business corporation.

	Number	Amount	Number	Amount
TJC	3,477	33,767,000	3,534	\$29,317,000
DAC	593	2,489,000	1,320	\$3,190,000

TOTAL CORPORATIONS

	Number	Amount	Number	Amount
TJC	8,239	\$362,821,000	7,773	\$320,178,000
DAC	1,722	\$5,252,000	1,854	\$5,035,000

FORMS 1040 - Businesses Filing Individual Income Tax Returns

	Number	Amount	Number	Amount
TJC	20,579	\$47,044,000	20,398	\$41,644,000
DAC	7,026	\$11,640,000	10,874	\$15,544,000

Source of Data: Internal Revenue Service, Statistics and Income Division

Appendix B: Summary of Relevant Trust Provisions in the ITA

Discretionary Trusts

Limits the depositive obligations of trustees. It is used to provide resources for a family member with a disability without affecting entitlement to government benefits.

Support Trusts

Involves obligations on trustees to use trust property for the care and support of a handicapped beneficiary. Normally limited to situation where government benefits and their regulations are not a factor in estate planning ie. trust assets will be enough to cover all the dependents needs.

Testamentary Trusts

Are created out of the estate. If necessary, assets can be sold from the estate to fulfill the terms of the will. For those provinces with time limits imposed on the accumulation of assets in a trust, the testamentary trust postpones the creation of the trust, and therefore the commencement of the time limit. Taxed at lower rates than an *in vivo trust*. The disadvantage is that disadvantage is that the estate is tied up until the death of the parents, if the parents become incapacitated the estate remains locked up.

Inter Vivos Trusts

Revocable: allows the settlor to revoke the trust any time before, death, incompetence, or until a specified time. The settlor may add to or withdraw property from the trust and change the trustees or the nature of the trust. The settlor may want to transfer property to the trust until a certain event occurs, for example, the settlors incapacity. Has adverse consequences under the income tax laws if the trust earns income or capital gains.

Irrevocable: the settlor gives up the right to change the terms of the trust. Irrevocable trusts have been a useful method of limiting federal and provincial income tax.

Preferred Beneficiary Status

Restricted to trusts for which the beneficiary qualifies for the DTC. All or part of the trusts income is treated as though it had been paid out to the beneficiary even even though the funds stay in the trust. Up to \$6,500 of interest income, or about \$24,000 in dividend income, can be allocated this way without any tax being paid by the beneficiary.

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