

Disability *tax* Fairness

Report of the
Technical Advisory
Committee on
Tax Measures for
Persons with
Disabilities

The views and recommendations put forward in this report are those of the Technical Advisory Committee on Tax Measures for Persons with Disabilities and do not necessarily reflect the views of the Department of Finance or the Canada Revenue Agency.

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Executive Summary

Our Mandate

The Technical Advisory Committee on Tax Measures for Persons with Disabilities was announced in the 2003 federal budget to advise the Ministers of Finance and National Revenue on disability-related tax measures. The Committee was appointed in April 2003 and is composed of members of organizations representing persons with disabilities, health practitioners, and human rights and tax experts (see Appendix 1). In our deliberations, the members of the Committee worked together to address the issues referred to us, using our best personal judgments and experiences. We did not seek to represent the views of the various organizations with which we are associated.

The Committee's mandate was to make recommendations that would help the federal government improve the fairness of the treatment of persons with disabilities under the income tax system, taking into account available fiscal resources. We viewed fairness as requiring equitable treatment among persons with disabilities and between persons with disabilities with taxable income and without taxable income.

As an independent committee, we were able to determine the issues we wished to examine that related to our terms of reference, almost all of which were referred to in submissions from the disability community. While we attempted to address the breadth of concerns raised in the submissions in our deliberations and in our report, it was not possible to cover all the related issues. In fulfilling our mandate, we examined these issues within the context of the total range of supports and programs for persons with disabilities.

Our Process

The Committee actively sought the views of individuals and groups, and welcomed input from all interested parties. Early in our deliberations, we decided not to hold formal public hearings. We chose this route because organizations in the disability community typically face significant time and resource constraints, and recently had been consulted by the federal government on issues related to the disability tax credit, in particular.

We decided instead to build on the extensive consultations previously carried out by various departments, task forces and committees. More specifically, we referred to the work of the Sub-Committee of the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities, which had

embarked in 2001 upon a review of concerns regarding the disability tax credit. The Sub-Committee received submissions from major national disability and professional organizations. The first step in our process was to request permission from the Sub-Committee to obtain and publicly post these submissions to our website (www.disabilitytax.ca). We had created this website in order to share information and ensure the transparency of our work as well as provide a record of the input we received.

We then wrote to these same organizations, indicating our intent to make use of their earlier submissions and representations to the parliamentary Sub-Committee, and asked if they wished to update or add to these previous representations.

In addition to building upon this substantial base, we placed an ad in *Abilities* magazine and sent letters to approximately 400 disability groups and associations of relevant professionals. We invited them to make any submissions they might wish to the Committee and, in so doing, we encouraged them to examine the submissions already posted to our website. We welcomed additional representations that they might want to bring to our attention.

We felt that this process would reduce the burden on disability organizations while still providing them full opportunity to communicate their concerns and issues to our Committee. In response to our letter, we received a further 31 submissions over the course of our mandate for a total of 49 submissions. All submissions, other than representations on personal issues that we deemed confidential, were posted to our website while the Committee's work was under way. A list of organizations and individuals who made submissions to the Committee is attached as Appendix 2.

To supplement the issues identified by various organizations, the Committee commissioned several research papers and met with selected experts. This work is described in Appendix 3. In addition to the submissions and background papers, the Committee reviewed the extensive legacy of government reports on disability that have been written since 1981, the International Year of Disabled Persons. Committee members carried out extensive research and prepared numerous reports for discussion purposes.

Given the range and intricacies of tax measures, our review required considerable time and effort. The issues are complex, and we spent many hours and months debating the current measures and possible reforms. In the course of our deliberations, we received substantial data and assistance from officials of the Department of Finance and the

Canada Revenue Agency. But the conclusions are entirely our own; our contribution is to provide an independent view of the matters that we considered.

In arriving at our decisions, we were conscious of the two main aspects of our mandate: to improve tax fairness for persons with disabilities and to do so taking into account available fiscal resources.¹ We interpreted this mandate as follows.

First, we considered a wide range of possible actions and then developed a set of recommendations for improving the fairness of the tax system from both policy and administrative perspectives. We believe that the changes we are proposing represent significant improvements to the current system. They are important measures in themselves, even though we feel that, in future, additional funding for persons with disabilities should be directed through expenditure programs. We make a recommendation to this effect in the final chapter of the report.

We then prioritized our recommendations. The Committee recognizes that additional actions can be taken both to improve tax fairness and to expand the system of disability programs. But we also acknowledge that choices must be made among a wide range of potentially valuable investments. We therefore spent considerable time debating these options in order to provide guidance to the government as to our own preferences and priorities with respect to these choices.

Our recommendations focus explicitly upon the changes that can be made within the existing tax system to improve both the fairness and adequacy of several key provisions. We follow these recommendations with some reflections on the limitations of the tax system in addressing disability concerns within the context of the total support that society provides to persons with disabilities. We make some observations that may contribute to future progress in this broader area.

Our Proposals

The legacy of work on disability that has been undertaken in Canada articulates some key principles that influenced our own thinking. The 1996 Federal Task Force on Disability Issues chaired by the Honourable Andy Scott, for example, identified the following assumptions that guided its work around disability costs, in particular.² We were reminded of these in submissions to the parliamentary Sub-Committee from several groups, including the Council of Canadians with Disabilities.

- For persons with disabilities normal activities bring extraordinary costs that are involuntary.

¹In the 2003 federal budget, the government set aside \$25 million in 2003–04 and \$80 million per year starting in 2004–05 to improve tax fairness for persons with disabilities, based on our recommendations and on its own evaluation of the disability tax credit. The 2004 federal budget reprofiled the \$25 million set aside for 2003–04 to future years, so that the annual amount set aside was adjusted to \$85 million per year.

²Federal Task Force on Disability Issues, *Equal Citizenship for Canadians with Disabilities: The will to act*, 1996, p. 87.

- Some of these costs are general and intangible and others can be supported by receipts for expenditures.
- Tax recognition of these costs is not a subsidy based on sympathy or charity but fair tax treatment.
- Tax recognition of disability-related costs should encourage, not discourage, the employment of persons with disabilities.
- The costs associated with disability are more onerous when borne by individuals with limited income.
- The costs associated with disability are not limited to those with taxable income.

In addition to these assumptions, our work was shaped by the following objectives. We sought to achieve fairness in the treatment of persons with different disabilities. We looked for solutions that would support independence and self-sufficiency in terms of education, employment and community participation. We recognized the importance of providing assistance to caregivers of children with severe disabilities. We were concerned with assisting those deemed to be most in need.

Our 24 recommendations for the reform of disability tax measures fall into three major themes, focused on achieving a fairer and more responsive tax system. First, there is a package of proposed changes to clarify the legislative and interpretive intent of the disability tax credit and to improve its administration. The second group of proposals focuses primarily upon the itemizable costs of disability and, more specifically, upon various tax measures that enable persons with disabilities to pursue education, training or employment. The third group of recommendations is intended to improve tax measures that recognize the additional costs of caregiving.

The first theme within the package proposes changes to the disability tax credit – the primary tax measure concerned with the non-itemizable or hidden costs of disability. Our proposals regarding the disability tax credit call for legislative, interpretive and administrative changes that reflect the principle of fairness.

These proposals seek to respond to the recommendations in the March 2002 report of the House of Commons Standing Committee on Human Resources Development and the Status of Persons with Disabilities, *Getting it Right for Canadians: The Disability Tax Credit*. The report called for changes to the eligibility requirements of the disability tax credit so as to clarify and broaden eligibility for the credit, make more fair the administration and appeals processes, and ensure that there is greater knowledge of and access to the measure.

More specifically, in order to improve the fairness of the disability tax credit, we recommend that individuals with multiple restrictions in activity that have a substantial overall impact on their everyday lives be eligible for the credit. We also call for further improvements in the administration of the disability tax credit, with the full participation of the disability community.

Our recommendations seek to achieve a 'full equality standard' for the disability tax credit. The policies and practices regarding the credit must ensure that all Canadians with disabilities are treated with *fairness*, and these policies and practices must be seen as *humane and compassionate*. Our proposals seek to *remove systemic barriers* to individuals who are already vulnerable not only financially but also psychologically.

With respect to education and employment measures, the Committee explored several options for enhancing existing, and creating new, incentives to work. In January 2004, we recommended the introduction of the disability supports deduction, which subsequently was announced in the 2004 federal budget. The new measure provides a deduction, rather than a limited credit, for certain costs incurred to enable persons with disabilities to participate in the labour force or attend school. This measure is described in more detail in the chapter on employment- and education-related measures.

The Committee then worked to propose enhancements to the new provision in order to expand the list of items that may be claimed for employment and educational purposes. The deduction also addresses the taxation of government assistance of disability supports. We strongly suggest that the government take immediate steps to rectify the situation if, in future, it finds instances of this assistance being subject to tax.

The Committee calls for an increase to the refundable medical expense supplement that would provide additional assistance to low-income working Canadians who incur very high disability-related costs. We also recommend changes to registered education savings plans to accommodate the diverse needs of persons with disabilities.

The disability supports deduction and associated enhancements are directed toward individual taxpayers. We recommend that the government review, as part of its efforts to encourage the full participation of persons with disabilities, a tax measure used in the United States to encourage employers to hire persons with disabilities and other groups with high unemployment rates.

The third cluster of proposals focuses upon the tax measures that provide some recognition of the costs that caregivers incur in providing support for adults with disabilities and that families sustain in raising children with disabilities. For direct costs, we recommend a doubling of the limit of medical expenses that caregivers may claim

in respect of a dependant with a severe disability. We also propose an increase to the Child Disability Benefit paid to the parents of children who are eligible for the disability tax credit.

Finally, we recommend that the government examine ways to allow greater flexibility as to how the private savings of a caregiver can be used to provide ongoing support to a dependent child or grandchild with a disability in the event of the caregiver's death. This measure will help these families to ensure a better quality of life for their children or grandchildren with severe disabilities.

All the recommendations put forward by the Committee were made within the context of the current tax system. Taken together, the proposed changes represent limited, but important, steps toward promoting the equality rights of persons with disabilities and encouraging their participation in the workforce and society. The suggested measures will better reflect the ability to pay income tax by recognizing the direct and hidden costs of disability. We believe that the long-term effects of the changes we propose will improve the quality of life of persons with disabilities and their families by enhancing their independence and self-sufficiency.

We also note throughout the report a number of possible measures that warrant future consideration and study. These include the potential for expanded use of a social model of disability for disability-related measures. We also support a move towards the full deductibility of all disability-related support costs. Other noteworthy initiatives could include the simplification of tax provisions for caregivers, the introduction of measures to encourage savings by family members to assist persons with disabilities and the extension of the Child Disability Benefit to middle-income families.

The estimated total annual ongoing cost of our recommendations amounts to \$110 million in direct tax relief to persons with disabilities, plus \$2 million in administrative costs (see Table). While we recognize that our proposals modestly exceed the government's allocation of \$85 million, we believe that all of our recommendations represent important steps to improve tax fairness for persons with disabilities.

The recommendations outlined below are only those with cost implications. Our full list of recommendations is attached at the end of this report.

While we have made a total of 24 recommendations for improving current tax measures, we acknowledge that the concerns and needs of persons with disabilities go well beyond the specific provisions we were asked to explore. Many of the remedies that have been proposed over the years are found in mechanisms that lie outside of the tax system. We suggest that as additional resources become available they should be directed to non-tax measures. We share some of our thoughts on these related issues in our final chapter, Future Directions.

Summary of Recommendations with a Fiscal Cost

Legislative and Interpretive Recommendations	Estimated Annual Ongoing Cost ^{1,2} (\$ millions)
<i>Disability Tax Credit</i>	
1. Changing the eligibility criteria <i>Recommendation 2.4</i>	50
<i>Employment- and Education-Related Tax Measures</i>	
1. Introducing a disability supports deduction <i>Recommendation 3.1</i>	15 ³
2. Expanding the disability supports deduction <i>Recommendation 3.2</i>	5
3. Enhancing the refundable medical expense supplement <i>Recommendation 3.5</i>	20
4. Changing registered education savings plans <i>Recommendation 3.6</i>	\$ ⁴
<i>Measures for Caregivers and Children with Disabilities</i>	
1. Increasing the limit of expenses claimable by caregivers under the medical expense tax credit <i>Recommendation 4.1</i>	5
2. Changing the rules regarding rollovers of proceeds from registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs) <i>Recommendation 4.2</i>	\$ ⁴
3. Increasing the Child Disability Benefit <i>Recommendation 4.3</i>	15
Total of legislative and interpretive recommendations	110
Administrative Recommendations	
<i>Disability Tax Credit</i>	
1. Implementing administrative changes <i>Recommendations 2.7, 2.11⁵</i>	2
Total	112

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¹All cost estimates were provided by the Department of Finance or the Canada Revenue Agency.

²Cost estimates assume full implementation in 2004–05. Ongoing costs for some measures will increase over time.

³This measure was announced in the 2004 federal budget.

⁴Small: less than \$5 million.

⁵Recommendation 2.11 (investigation of alternative dispute resolution process) does not have a recognized ongoing cost in this table because it cannot be determined at this time, but the recommended pilot project is estimated to cost \$4 million over one to two years.

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Summary of Recommendations

Chapter 2: Disability Tax Credit

RECOMMENDATION 2.1

The Committee recommends that:

The *Income Tax Act* be amended to replace the present wording ‘severe and prolonged mental or physical impairment’ with the wording ‘severe and prolonged impairment in physical or mental functions.’

This recommendation is for clarification purposes and does not involve any revenue cost. It is not intended to alter the scope of eligibility for the credit.

RECOMMENDATION 2.2

The Committee recommends that:

The term ‘perceiving, thinking and remembering’ as a basic activity of daily living in the *Income Tax Act* and on the T2201 form, be replaced with the term ‘mental functions necessary for everyday life.’

In our view, mental functions are the range of processes that govern how people think, feel and behave. Based on our consultations and research, they include memory, problem solving, judgment, perception, learning, attention, concentration, verbal and non-verbal comprehension and expression, and the regulation of behaviour and emotions. These functions are necessary for activities of everyday life that are required for self-care, health and safety, social skills and simple transactions.

This recommendation is for clarification purposes and does not involve any revenue cost. It is not intended to alter the scope of eligibility for the credit.

RECOMMENDATION 2.3

The Committee recommends that:

The Canada Revenue Agency state in its explanatory materials and on the application form for the disability tax credit that some impairments in function can result in a marked restriction in a basic activity of daily living, even though these impairments may have signs and symptoms that may be intermittent.

This action is not intended to alter the legislative requirement that a marked restriction in a basic activity of daily living be present ‘all or substantially all of the time.’

This recommendation should not involve any revenue cost.

RECOMMENDATION 2.4

The Committee recommends that:

The *Income Tax Act* be amended to provide that persons with a severe and prolonged impairment who are restricted in two or more basic activities of daily living qualify for the disability tax credit if the cumulative effects of the restriction are equivalent to a marked restriction in a single basic activity of daily living all or substantially all of the time.

This recommendation is estimated to involve a revenue cost of approximately \$50 million annually.

RECOMMENDATION 2.5

The Committee recommends that:

The federal government ensure that the legislative and administrative requirements concerning the present interpretation regarding life-sustaining therapy adequately reflect the time taken for essential preparation, administration of and necessary recovery from life-sustaining therapy as recently interpreted in decisions of the Tax Court of Canada.

The revenue cost of this recommendation will ultimately depend on the nature of the changes implemented by the government.

RECOMMENDATION 2.6

The Committee recommends that:

The *Income Tax Act* be amended to include physiotherapists in the list of qualified practitioners eligible to certify for the purposes of the disability tax credit a marked restriction in walking.

The federal government consult with the Canadian Nurses Association to determine under what circumstances nurse practitioners could be allowed to certify eligibility for the disability tax credit.

This recommendation does not involve any revenue cost.

RECOMMENDATION 2.7

The Committee recommends that:

The Canada Revenue Agency:

- ensure that its staff follow the procedures relating to the disability tax credit in its Taxation Operations Manuals and Interpretation Bulletins;

- ensure that its general staff are able to assist persons with disabilities with respect to completing and filing the T2201 form, or refer them to appropriate specialized personnel where required;
- develop training programs, workshops and guidelines for its staff regarding changes to the legislation and interpretive guidelines for the disability tax credit, and the administration of tax measures for persons with disabilities;
- develop appropriate communications and educational material for qualified practitioners to assist them in completing the T2201 form;
- make clear in its communication materials that a second informal review is available to taxpayers denied the disability tax credit; and
- monitor the achievement of these recommendations.

Elements of this recommendation that are consistent with current practice do not involve any revenue cost. The Committee estimates that about \$2 million annually will be required to implement the components of this recommendation that represent new initiatives.

RECOMMENDATION 2.8

The Committee recommends that:

The Canada Revenue Agency continue to improve the T2201 form by ensuring that:

- its ongoing consultations involve a wide representation of consumers and qualified practitioners regarding the T2201 form or related disability tax credit materials such as clarification letters and letters to individuals whose claim has been denied;
- the guidelines relating to the completion of the form are clear and concise to enable claimants and qualified practitioners to understand the eligibility criteria for the disability tax credit;
- examples and questions on the T2201 form reflect real-life situations to enable an appropriate determination of the severity of the impairment;
- examples and questions on the T2201 form continue to be revised as necessary and appropriate to reflect changes in legislation and court decisions; and
- data are collected, in order to evaluate the impact of the revisions to the T2201 form, on the number and percentage of successful and unsuccessful claims by basic activity of daily living, and claims for which additional information was requested (clarification letters) by basic activity of daily living.

This recommendation is largely consistent with current practice and would involve only minor costs.

RECOMMENDATION 2.9

The Committee recommends that:

The Canada Revenue Agency take the following steps with respect to clarification letters:

- specify in writing why clarification is required in order to help qualified practitioners address specific issues or concerns; and
- ensure that all questions are relevant to the specific disability, instead of using a uniform approach for all impairments.

This recommendation does not involve any additional cost.

RECOMMENDATION 2.10

The Committee recommends that:

The Canada Revenue Agency intensify its existing efforts to ensure that:

- taxpayers who receive a letter denying their disability tax credit claims be:
 - (i) given specific reasons for the denial,
 - (ii) informed about their objection and appeal rights through a copy of the pamphlet, *Your Appeal Rights Under the Income Tax Act*, provided by the Agency,
 - (iii) informed that other persons, such as family members, friends or professional advisors, can act on their behalf, and
 - (iv) informed that they have access to documents in their file when the Canada Revenue Agency acknowledges receipt of the Notice of Objection through a copy of the pamphlet *Resolving your dispute – A more open, transparent process* provided by the Agency;
- appeals officers have access, if required, to competent medical advice when reviewing Notice of Objection and additional medical reports; and
- appeals officers meet with taxpayers or their representative in appropriate cases.

This recommendation should involve only minor incremental costs.

RECOMMENDATION 2.11

The Committee recommends that:

The Canada Revenue Agency develop an alternative dispute resolution process for disability tax credit claims following an Appeals Branch denial, relying on an informal but independent process based on basic fairness criteria.

The Canada Revenue Agency mount a pilot project to test the operation of the suggested alternative dispute resolution process.

This pilot project is estimated to cost \$4 million over one to two years. Ongoing costs would depend on the results of this pilot project.

RECOMMENDATION 2.12

The Committee recommends that:

In order to deal with the administrative aspects of the disability tax credit and the achievement of the previously enumerated recommendations, the Canada Revenue Agency form a consultative committee composed of consumer and professional representatives that would report directly to the Minister of National Revenue on all administrative aspects of the tax system related to persons with disabilities.

This recommendation should involve only minor costs.

RECOMMENDATION 2.13

The Committee recommends that:

The Canada Revenue Agency, in conjunction with the appropriate departments, undertake a review of Canada Pension Plan disability beneficiaries and disability tax credit claimants with the goal of evaluating possible reasons for the low take-up of the disability tax credit by CPP disability beneficiaries.

The Canada Revenue Agency work with other government departments to ensure that all applicants for CPP disability benefits are advised of their potential eligibility for the disability tax credit, and furnished with forms and information so that they can readily consider their eligibility and make an application for the disability tax credit if appropriate. If, as a result of this work, the government finds that there is a significant overlap in eligibility, it should explore whether a simplified application process or joint administration of some aspects of the two programs is warranted.

This recommendation has an unknown revenue cost. Additional tax relief offered through the disability tax credit arising from this recommendation should already be provided under existing legislation. This recommendation should involve only minor administrative costs.

Chapter 3: Employment- and Education-Related Tax Measures

RECOMMENDATION 3.1

To recognize the cost of required accommodation for persons with disabilities, the Committee recommended prior to the March 2004 federal budget that:

The government introduce a disability supports deduction to allow the full deductibility of the cost of disability supports purchased for the purposes of employment or education.

The March 2004 budget implemented this proposal by introducing a disability supports deduction. The measure has an estimated cost of \$15 million annually.

RECOMMENDATION 3.2

To further improve the disability supports deduction, the Committee recommends that:

The cost of such items as job coaches and readers, Braille note takers, page turners, print readers, voice-operated software, memory books, assistive devices used to access computer technology, and similar disability-related expenses be added to the list of expenses recognized by the deduction.

We estimate that this improvement would cost \$5 million annually.

RECOMMENDATION 3.3

The Committee recommends that:

The government change the name of the medical expense tax credit to the ‘medical and disability expense tax credit.’

There is no cost associated with this recommendation.

RECOMMENDATION 3.4

The Committee recommends that:

The Department of Finance and the Canada Revenue Agency review currently available data and, where possible, gather new data on the actual expenses being claimed under the medical expense tax credit, and consider the appropriateness of these claims.

The estimated cost of this recommendation is nominal.

RECOMMENDATION 3.5

The Committee recommends that:

The maximum credit under the refundable medical expense supplement be increased from \$562 to \$1,000 and continue to be indexed to the cost of living.

The estimated cost of this recommendation is \$20 million per year.

RECOMMENDATION 3.6

To address the special needs of students with disabilities, the Committee recommends that:

The time over which contributions may be made to a registered education savings plan for a person with a disability be extended to 25 years from 21 years, and that the time before the plans must be liquidated be extended from 25 to 30 years from inception.

The government broaden the list of educational programs that qualify under registered education savings plans to ensure that they accommodate the more diverse needs of persons with disabilities.

The estimated cost of these measures is nominal.

RECOMMENDATION 3.7

The Committee recommends that:

Information for businesses about the deductibility of capital expenses to accommodate persons with disabilities be made more widely available in Canada Revenue Agency guides.

The estimated cost of this recommendation is nominal.

RECOMMENDATION 3.8

The Committee recommends that:

As part of its efforts to develop measures to encourage the full participation of persons with disabilities, the government review the effectiveness of the United States' Work Opportunity Tax Credit.

Chapter 4: Measures for Caregivers and Children with Disabilities

RECOMMENDATION 4.1

The Committee recommends that:

The limit of expenses claimable under the medical expense tax credit by caregivers be increased from \$5,000 to \$10,000 for those with dependent relatives eligible for the disability tax credit.

The estimated cost of this measure is \$5 million annually.

RECOMMENDATION 4.2

The Committee recommends that:

The government review the RRSP/RRIF rules in order to allow additional flexibility in respect of a deceased's RRSP or RRIF proceeds left to a financially dependent child or grandchild with a disability. Such provisions should include allowing these proceeds to be rolled over to a discretionary trust for that individual, provided that no person other than the disabled beneficiary may access the income or capital of the trust during his or her lifetime.

The revenue cost of this measure is small.

RECOMMENDATION 4.3

The Committee recommends that:

The federal government increase the amount of the Child Disability Benefit by \$600 to raise the total maximum annual benefit from \$1,653 to \$2,253, and that this amount continue to be indexed to the cost of living.

The estimated cost of this measure is \$15 million annually.

Chapter 5: Future Directions

RECOMMENDATION 5.1

Our previous recommendations represent priority actions to improve tax fairness for persons with disabilities. Going forward, the Committee recommends that:

Priority should be given to expenditure programs rather than tax measures to target new funding where the need is greatest. The Committee recognizes that the development of such programs would involve consultations with provincial and territorial governments and the disability community.