

**No Miracles As Yet
People with Disabilities Still Treated Unfairly**

**CCD's Presentation to
Parliamentary Sub Committee on the Status of Persons with Disabilities
Regarding Disability Tax Credit**

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BACKGROUND: The Disability Tax Credit (DTC) has been and remains of critical concern for persons with disabilities. The community has worked long and hard to find ways of improving the tax treatment of disability and ensuring greater fairness. Work must continue and both the Department of Finance and Canada Customs and Revenue Agency must work with the community to ensure that the additional financial burden resulting from disability is not borne by the individual or his or her family but by society as a whole. Incremental improvements have been made over the years but “incrementalism” at some point without an over all vision can create greater inequities rather than greater fairness. Tax reform is a blunt instrument for addressing social policy. Report after report acknowledges there is no “silver bullet” solutions to the barriers that people with disabilities face. Repeatedly the community identifies the need for flexible program design, less medical orientation, greater ability to respond to individual needs. These are not attributes of the tax system. Conversely it is rigid, slow to respond and can at present only address the needs of those with a taxable income, that being those who are relatively better off. A broad review of the tax treatment of disability overall is required and would be welcomed by people with disabilities and their organizations.

A starting point for the discussion of the DTC is the 1996 Report of the Task Force on Disability Issues.

**TAKEN FROM THE REPORT OF THE FEDERAL TASK FORCE
ON DISABILITY ISSUES**

These were the recommendations of the Federal Task Force on Disability Issues in their report of 1996. Essentially they provided the rationale for the Disability Tax Credit (DTC) and the principles by which it should be implemented. They also provide recommendations for increasing the value of the DTC which this government has done, for allowing transfer of the DTC to any supporting person, and expansion of the list of professionals who might certify an individual as eligible. These recommendations have been implemented to a certain extent however, if the DTC were evaluated against meeting the original objective of offsetting the additional costs of disability it would fall far short of that goal.

FROM EQUAL CITIZENSHIP FOR CANADIANS WITH DISABILITIES: THE WILL TO ACT.

“Chapter Seven; Dealing fairly with the costs of disability

Living with a disability almost always entails additional costs. These costs which vary significantly from one individual to another, are currently paid for by the public system, by a private insurer, or by the person who has a disability. A person with a disability may need to cover the cost of a special diet or nutritional supplements. There are extra costs to make one’s home accessible, or for personal supports and services, technical aids and devices, and the intangible costs associated with daily living that are greater because of disability.

Participants in our consultations made us aware of these in several ways. Some people pointed out the problems they experience in gaining access to disability-related supports and services that respond to their individual needs. Others described costs that varied significantly from one part of a province to another, or from one province to another. In turn, the discrepancies between ways of compensating for the additional cost of disadvantage meant that many people with disabilities could not move to another province without jeopardizing their access to supports and services or assuming additional costs that had been paid for by their province of origin.

We recommend...

41. The Government of Canada should recognize that measure that deal with the costs of disability need to be separated from measures that provide income to persons with disabilities.

Taxation And the Costs of Disability

The federal government should take action to address the issue of the costs of disability in areas where it has jurisdiction. This includes the tax system. The federal government, therefore, should follow specific principles for the tax treatment of disability that will help to avoid the anomalies that presently reflected in the federal tax system.

We recommend...

42. The Government of Canada should base all future revisions to income tax legislation as it affects persons with disabilities to reflect principles that deal with the additional costs of disability. These principles are:
 - For persons with disabilities normal activities bring extraordinary costs which are involuntary.
 - 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.

You Can't Do It Alone

We are aware that any comprehensive reform to deal with disability-related costs requires the collaboration of provincial governments. Collaboration can ensure that a move towards fairness by one level of government would not be cancelled out by a move to save money by another. We want to create a situation where an increase in federal expenditures leads to a net gain for people with disabilities. We want to minimize the risk, for example, that if the federal government moves to make refundable any tax credit dealing with the costs of disability, the provinces reduce the amount they spend on disability-related supports. We want to avoid the possibility that they might also reduce provincial income support for those who receive social assistance – most of whom would, for the first time, benefit from the tax credit if it were refundable.

Canadian government should attempt to devise a pan-Canadian program that would address the concerns of mobility and equality of outcomes across the country. The aim of such a program would be to ensure that individuals in similar circumstances are treated fairly and equitably.

We recommend....

43. Taking into account the principles in recommendation 42 the Government of Canada should work with the provinces to deal with the direct costs of disability in order to identify key elements that could be funded through a pan-Canadian program. The federal government should engage two or three provinces to:
 - a) devise new approaches to ensuring that disability-related supports are in place consistent with economic participation and citizenship; and
 - b) identify the transitional financing issues that need to be addressed through federal-provincial collaboration.

QUESTIONS ARISING FROM CCRA'S CURRENT REVIEW

Since the Federal Task Force report there have been a number of initiatives particularly in 1996 and 1997 to reduce the number of eligible claimants. In fact Canadian Customs and Revenue Agency readily admits that 10,000 individuals were cut from eligibility at that time. Presently there is a review being undertaken by CCRA targeting between 75,000 to 90,000 individuals who have claimed the DTC for some time. CCRA says they require

more information to ensure that individuals are still eligible. The letter individuals have received states “ After reviewing your file, we have determined that we do not have enough information to continue to allow your claim for the 2001 and future tax years.” Why if the Agency simply requires more information are they not simply asking for more information rather than saying you are no longer eligible. Past reviews have cut the number of eligible individuals, CCD can only be skeptical of the intent of this review. That skepticism grows when we know that there has been no change in the legislation that provides the definition for eligibility. If there is no change in definition, is process being used to simply reduce the number of eligible individuals?

Additionally in the broader discussion of disability initiatives, disability supports have been identified as the priority. The first step in what we all hope will be a more substantial initiative, has been discussion of a refundable DTC. Is there an attempt to reduce eligibility in order to make a refundable DTC less costly?

During a phone call discussion with a representative of CCRA it was suggested that medical advances may be such that some individuals are no longer limited in their activities of daily living. While this may be true for a small portion of the community those who use wheelchairs are not now walking nor are those who are blind regaining their sight. A member of CCD facetiously suggested that his doctor write to CCRA and lament the lack of a “miracle” and indicate that while they continue to hope for miracles until such time as one occurs the individual would continue to claim the DTC. Are there reasonable medical advances to suggest that a significant number of those who were eligible for the DTC would now no longer be eligible?

CCRA suggestion that files are incomplete may have little to do with what documents have been filed by individuals seeking the credit. This program has been administered by various departments of government over the years. Are files incomplete because records have been lost in the transfer from department to department? Certainly persons with disabilities understand the need for ongoing audits of programs to determine if they are meeting their objective. CCD would suggest that this audit process not simply look to making individuals ineligible but also determine if the present system is capturing appropriately those individuals with disabilities who have additional costs related to their disability. Is the review’s goal to save dollars or to fulfill the original intent of the program? If it is the former, then the goal of the DTC has changed.

Long Term Issues

The DTC is a critically important program for individuals with disabilities and it does provide significant benefit to many individuals, however there are limitations as well that should be addressed in any review of the program.

THE PERENNIAL QUESTION OF DEFINING DISABILITY

There is no silver bullet in defining disability. Definitions have evolved over the years as we have come to understand disability not in terms of individual impairment with the problem fixed within the individual but rather as a social construct that should focus more on environmental barriers to participation than on physical or mental functioning. The current definition of disability for the DTC states:

- “You may be able to claim the disability amount if a qualified person certifies either of the following;
- You are blind all or almost all the time, even with the use of corrective lenses or medication, and the impairment is prolonged.
- You have a severe mental or physical impairment which causes you to be markedly restricted in any of the basic activities of daily living, and the impairment is prolonged.”

Additionally there is a new category of “life sustaining therapy” that allows those requiring therapies such as dialysis.

The Income Tax Act states the definition then CCRA has the task of administering eligibility. CCD suggests there is need for a review of the definition as well as a better methodology of determining eligibility. There are a number of problems to overcome. They include:

- Using the medical system to certify eligibility
- Limitation of the definition of “basic activities of daily living”
- Using appropriate questions to get information

USING THE MEDICAL SYSTEM TO CERTIFY ELIGIBILITY

Canadians with disabilities face this problem repeatedly. In fact many individuals with disabilities visit their medical doctor more for certification of the DTC, CPP Disability Pension, Disabled Parking Certificates, etc. than they ever do for any medical reason. Within the medical community itself there may not be any controversy regarding the diagnosis of a physical or mental impairment however, defining the disabling impact of the impairment is a much more complex issue and one in which CCD would argue medical practitioners are not well skilled. Additionally the question must be asked; Why are we using an already overtax system for purposes beyond provision of health services or health care? Do medical doctors have an understanding of conditions and how they impact on the activities individuals are involved in at home, at work, at school or in the community?

It should also be understood that the medical system charges in many instances for providing certification. The cost may range from \$15 to \$20 for signing any given form. If the current review of 90,000 individuals requires them to see their doctor and if a fee of \$20 is charged for each visit the cost to individuals is \$1,800,000. There have been

improvements and expansion of qualified persons to certify eligibility but the basic question of the most appropriate gatekeepers has not been satisfactorily answered.

LIMITATION OF THE DEFINITION OF “BASIC ACTIVITIES OF DAILY LIVING”

The DTC defines basic activities of daily living as:

- walking
- speaking
- perceiving, thinking and remembering
- hearing
- feeding and dressing
- eliminating bodily waste

“Basic activities of daily living do not include general activities such as working, housekeeping, or social recreational activities”. The current definition is very limited. Certainly some individuals will experience few limitations in these areas but may have significant additional costs related to their disability. Take for example an individual who as a result of polio does not have the use of their arms. They may well be able to do all of the above and have adapted in ways that make them quite independent but there will still be additional costs. The cost may be in the type of clothing the individuals is forced to buy in order to dress themselves easily, or the type of vehicle they must purchase so they can drive, or the need to park close to work rather than in more distant cheaper lots and walk. All of these result in additional costs and would not be offset in workplace accommodation, vehicle retrofit programs or employee benefits. The extreme limitation of the “activities of daily living” definition will not meet the objective of the DTC, that being offsetting the additional costs individuals with disability experience because of their disability. Additional costs should include costs of working, housekeeping and social and recreational activities that are not offset in other ways.

USING APPROPRIATE QUESTIONS TO GET INFORMATION

CCD has provided input in the past to CCRA on the development of a questionnaire for use in determining eligibility for the DTC. This process should be ongoing to ensure continued improvements in the questions asked to get the necessary information for certification. There was an advisory body to CCRA in the mid 1990’s however it has not been in use for about five years, yet better mechanisms are still required.

Of particular concern to CCD is the question; “Can your patient perceive, think, and remember? The intent of this question is to capture information on those who have psychiatric, developmental, or learning disabilities. While CCD supports the move to a functional definition process this question we believe will not meet the desired objective. Many individuals with episodic mental health problems may at times not be able to perceive, think or remember but that is unlikely to be the case all of the time. Thus medical professions may answer No to the question and thus disqualify the individual.

Many individuals with developmental disabilities have no problem thinking, or perceiving or remembering because they have developed mechanisms for coping which include family and friends support groups, job coaches, advisors, etc. These individuals may not be found to be eligible because of the question but they may very well have additional costs.

Within the “activities of daily living” certification process is the concept of inordinate amount of time to perform certain activities. Again the question really becomes what is inordinate. Yes an individual may be able to walk 50 meters on level ground and he or she may even be able to do so in a reasonable time frame but walking that distance may in essence severely reduce the individuals energies and abilities to do much else that day. The hard and fast definitions may not work and there must be some flexibility in the form to allow those individuals to benefit from the DTC.

There is a section of the form that allows medical practitioners to “state the medical diagnosis related to the impairment and describe the restriction and devices used.” This section is at the end of the form. The form now is essentially a yes or no questionnaire with what appears to be little flexibility. The flexible question at the end regarding diagnosis may not actually be completed because the medical practitioner has already determined the individual ineligible through the yes and no process. There is need for a more flexible component that allows the individual or the appropriate “gatekeeper” to identify additional costs that an individual may incur as a result of his or her disability. The functional definition orientation is an improvement over the categorical medical diagnosis of old but the addition of the following questions may provide more flexibility and better meet the objective of the program:

- Do you experience additional ongoing costs because of your disability that are not offset through another program?
- What is the nature of those additional costs?

The functional definition does recognize the evolution of thinking regarding defining disability however it may not as yet be the perfect tool for determining if individuals have additional costs because of their disability.

CCD seeks greater dialogue between the community and the Departments of Finance and Canada Customs and Revenue Agency to find ways of creating greater fairness in our tax system for Canadians with disabilities.