



Welcoming the Contributions of Citizens with Disabilities

"If I were to summarize what you (PLAN) are working on, it is to enable individuals to exercise their citizenship."

- His Excellency, John Ralston Saul
Honorary Patron, PLAN

Submitted to: Technical Advisory Committee on Tax Measures for
Persons with Disabilities
Sherri Torjman, Robert Brown, Co-chairs

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Summary of Recommendations

Immediate

- Permit expenses that result in companionships, friendships or other supportive and caring relationships to be claimed under the Medical Expense Tax Credit.
- Allow the tax deferred rollover of RRSP's/RRIF's to discretionary trusts, the beneficiary of which is a person with a disability, without the purchase of an annuity.
- Create an exemption for disability related distributions from trusts for persons with disabilities receiving Guaranteed Income Supplement.
- Re-evaluate eligibility for the DTC to ensure that persons with life-long developmental disabilities qualify.

Medium Term

- Develop a Registered Disability Savings Plan
- Improve the RRSP/RRIF rollover provisions
- Create a Disability Expense Tax Deduction
- Improve the Disability Tax Credit
- Synchronize Old Age Security with provincial disability pensions
- Support the Creation of a Provincial Disability Tax Deduction

Introduction

“In a sense what has happened is that we've developed our sense of community. We've become much more aware of who we are, and what it is like to be a citizen in a community. What is wonderful about PLAN, this organization, is that it is focussed on community and on the long term. Community is, after all, about the long term. It's about today, it's about yesterday, but it's about the long term, otherwise it's not community.” – John Ralston Saul

Canadian families are resilient, self sufficient and capable. We have never relied on or expected government to provide exclusive support for our family members with disabilities. Beyond the basic necessities of life, such as providing direct care and support with the tasks of daily living, we love, support, inspire and nourish our family members in body and soul. This is what caring parents do. There are, however, additional pressures and costs associated with our sons' and daughters' disabilities.

Like all parents, we too have dreams. We envision our family members living a good life, being safe, contributing to their community, having deep and enduring friendships, and enjoying committed loving relationships. We want what our sons and daughters dream and desire – that they have the opportunity to share and be recognized for their gifts. In other words, that they be full citizens of Canada. Like other parents, we will do anything to enable our children to realize their dreams. Our limits are often financial. Most of us are not wealthy enough to provide the best for our children for their lifetime.

'Citizen' is one of the most important roles each of us plays in society. The 'caring citizen' is the glue that holds our society together. Citizenship involves three components: rights, responsibilities and access.

- Rights of belonging, of access to justice, to due process, of mutual recognition and approval of our distinctiveness, uniqueness and differences both as individuals and groups.
- Responsibilities to respect and care for each other; to commit to the well being of the community, to contribute to the health and vitality of our communities, to engage in creating a vital society.
- Access to the forums, institutions, associations and public spaces where citizens meet, discuss, share, work, contribute, play and socialize.

Thus our common vision is clear: to secure a good life for persons with disabilities; to secure a caring society. A good life is universal. It includes: caring relationships with family and friends; having a place to call home; being able to make choices and pursue our passions; having adequate resources to live with dignity; and becoming contributing citizens.

Progress has been made in recent years, and many persons with disabilities are living a good life. However, there are many challenges and much more can be done. Persons with disabilities still live, disproportionately, in poverty and isolation.

Achieving our vision is a responsibility shared by all citizens and sectors of our society: persons with disabilities, family members and other citizens, business and government. We invite you to consider the following recommendations to enhance the capacity of Canadian families who have always taken responsibility for caring for their family members with disabilities. Indeed, approximately 75 percent of persons with developmental disabilities are cared for by their families without government support.¹

The Challenges

An Outdated Paradigm

The way in which disability is understood in our society leads to the conditions in which persons with disabilities live.

“Disability is not measles. It is not a medical condition that needs to be eliminated from the population.”² The paradigm that situated the disability inside the person and therefore resulted in the need to “fix” the person has formed the basis for statutes, policies and programs for persons with disabilities. The result is a system that propagates this way of thinking.

Aspirations for a good life and citizenship require the adoption of a new way of thinking and subsequently, the transformation of the existing system. The emerging paradigm is one in which all citizens are expected to contribute their gifts. Contribution is the cornerstone for a good life and citizenship. The state can guarantee the rights of citizenship but full citizenship is only realized through our contributions. The reason for this is simple. We gain full citizenship by contributing to the common good.

The gifts of persons with disabilities have too long gone unrecognized. They have neither been encouraged nor expected to contribute. This is a terrible waste.

Isolation and loneliness stand as major barriers to becoming full contributing citizens and the realization of a good life. They are also barriers to the development of a new paradigm of disability in our society.

An Emerging Challenge

“It’s about stability in the lives of people who have disabilities and need that stability, just the way everybody else needs stability.” – John Ralston Saul

When we think about securing a good life for our family members with a disability, we must also think beyond our lifetime to the lifetime of our family member. In fact,

¹ Moving In Unison into Action, The Roeher Institute, 2002 (1,425,590 families live with and provide support to a relative with a disability. 956,420 families provide support to a relative with a disability who does not live with them.¹ These families represent nearly 12% of Canadians, 15 years or older.)

² Disability is not measles, The Roeher Institute, 1994.

one of our constant worries is “What will happen to my son or daughter with a disability after I die?”

For the first time in history, our sons and daughters can be expected to outlive us. Thanks to medical advances, higher social expectations and community living, persons with disabilities will live long lives. In fact, some of our sons and daughters are about to become senior citizens.

This demographic fact highlights a new challenge for all of us – families, caregivers and our federal and provincial governments. We will need to look at new tools and instruments to permit families to secure a good life; to acknowledge family contributions; and to harmonize disability and seniors’ policy.

Use of the Tax System

The tax system can be an efficient mechanism for accomplishing social policy goals. It is used to compensate families for the costs of child care. It is used to alleviate the impact of poverty on children. The federal disability tax credit recognizes some of the extraordinary costs of supporting a family member with a disability.

Progressive tax policy does not require the administration of a separate delivery system. It enables persons to find personalized solutions, to be innovative and to best utilize their, their families, and their communities’ problem solving capacities. It also enhances their capacity to make decisions in the best interest of their family member with a disability and to contribute in their communities rather than remain passive recipients of charity.

Our Goals

Hence, we seek a policy framework which:

1. Is consistent with the new paradigm of citizenship and contribution;
2. Creates tools and instruments to help families plan for the time when they can not take care and provide financial assistance;
3. Acknowledges the existing contributions of persons with disabilities and their families; and
4. Provides incentives for persons with disabilities, families and various levels of government to contribute and share the responsibility for securing a good life.

Short Term Recommendations

No One be Left Alone

“I know that your dream – I think it shouldn't be your dream, I think it should be your motto – is that no one be left alone. And that sounds like a very grand dream in a society where a lot of people are alone.” – John Ralston Saul

Issue

Isolation and loneliness are major handicaps and are often the most significant barriers to achieving a good life. Relationships are a key component to securing a good life. They are necessary to meet our needs for belonging and meaning. They are critical for participation and for achieving full citizenship. And, relationships are the single most important element in assuring the safety and security of vulnerable persons.

We need a framework of statutes, policies and programs that are designed to facilitate and nurture belonging – relationships and community connections.

Solution

Permit expenses that result in companionships, friendships or other supportive and caring relationships to be claimed under the Medical Expense Tax Credit.

Rollover of RRSPs and RRIFs to trusts

Issue

Discretionary trusts are key tools for families who are trying to secure a good life for a family member with a disability. There are two main reasons for their importance.

First, discretionary trusts enable us to leave a share of our estate to our family member without jeopardizing their provincial disability benefits. Provincial disability income systems serve persons within the “welfare” framework. The result is that persons with disabilities qualify for a disability pension and the associated benefits only in when they have no financial assets and only when they have little or no income. While families want to help their disabled sons and daughters, few are in a position to replace provincial disability income on an ongoing basis. The discretionary trust is the most important tool for planning the long term safety and well being of our family members with disabilities. And second, trusts can provide a mechanism to manage or co-manage an asset in the best interests of the person and thus protect funds and assets against exploitation and misuse.

The recent requirement to purchase an annuity to pass funds from an RRSP or RRIF to a trust on a tax deferred basis, while a positive step, requires the purchase of an annuity. When interest rates are low, an annuity might not be the best investment tool with which to maximize income. Furthermore, it reduces flexibility in the use of the asset because payments are restricted to monthly amounts. For

example, it would preclude the asset being used as a down payment on the purchase of a house for the son or daughter with a disability.

Solution

Allow the tax deferred rollover of RRSP's/RRIF's to discretionary trusts, the beneficiary of which is a person with a disability, without the purchase of an annuity.

Create an Guaranteed Income Supplement Exemption for Disability Related Expenditures from Trusts

Issue

In some provinces, such as British Columbia, distributions from trusts that are used to purchase certain disability related goods and services are not considered income by the disability benefits system. Thus expenditures on "disability related costs"³ can be made without diminishing the income of our family member with a disability. This permits a significant contribution towards securing a good life and protecting the person's safety and thus acts as an incentive for parents to assist their sons and daughters with disabilities.

A similar exemption, however, does not exist when a person turns 65 and then moves to Old Age Security and the Guaranteed Income Supplement. When receiving Guaranteed Income Supplement, distributions from a trust are treated as income and effectively taxed at 50%. Thus when our family members with disabilities turn 65, they lose a mechanism with which to secure a good life.

Solution

Create an exemption for disability related distributions from trusts for persons with disabilities receiving Guaranteed Income Supplement.⁴

³ In the Employment and Assistance Regulation (B.C. Reg. 263/2002), Ch. 40, Sec. 12, "**disability-related cost**" means the cost of providing any of the following to a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre:

- (a) devices, or medical aids, related to improving the person's health or well-being;
- (b) caregiver services or other services related to the person's disability;
- (c) education or training;
- (d) any other item or service the minister considers necessary to promote the independence of that person.

⁴ Income generated within the trust would continue to be taxed and non exempt financial disbursements to the person would also be taxable.

Re-evaluate eligibility for the Disability Tax Credit (DTC)

Issue

Many of our family members with life-long developmental disabilities have been denied the disability tax credit. While they may not have physical impairment to meet the current criteria for the DTC, their intellectual limitations mean that they require ongoing care and support. Their families remain involved throughout their lives by providing financial assistance and watching out for their safety and well-being.

Solution

Receipt of the DTC would assist this group of persons in achieving a good life and, if transferred, would compensate families for some of the extraordinary disability-related expenditures and would recognize families' life-long commitment to their sons and daughters with disabilities.

Re-evaluate eligibility for the DTC to ensure that persons with life-long developmental disabilities qualify.

Medium Term

Registered Disability Savings Plan

Issue

Parents, grandparents and siblings have always demonstrated their willingness to contribute financially to their relative with a disability. These contributions are largely unacknowledged in the tax system – in fact there are disincentives. Often the funds or assets passed on to the individual are clawed back by provincial policy.

The lack of a flexible, tax-deferred savings vehicle that is available to families who want to help their relative with a disability is a major impediment. There is no incentive for families to plan for the future. Neither is there any ability to assist their family members with disabilities to purchase housing and other social, educational, work or rehabilitation supports.

Thus any goal of reducing dependence on publicly funded programs by encouraging self-reliance and promoting the maintenance of quality of life is effectively discouraged for many Canadian's with disabilities.

Solution

Establish a new tax-deferred savings vehicle called a Registered Disability Savings Plan. This would be a commitment to the full participation of citizens with disabilities in Canadian life. It would also encourage the contributions of family members and encourage self-reliance and future planning for citizens with disabilities. These contributions will not only increase the likelihood that many

Canadians with disabilities will achieve a good life; they will also reduce dependence on government-funded social services.

A Registered Disability Savings Plan would have the following characteristics:

- Deferred tax on contributions during the lifetime of the individual with a disability;
- Permits ownership of the Plan by a discretionary trust to recognize varying levels of capacity and the family's desire to protect its assets;
- Expenditures to enhance participation and citizenship would not be considered income and would be exempt from taxation (for example: a home or modifications to a home, devices or medical aids, caregiver or other services related to the persons disability, education or training);
- Contributions could be made by the individual with a disability, a parent or a member of the extended family; and
- Contributions could be in the form of money or other financial assets.

Transfer of Funds in RRSP and RRIF Accounts to Relatives with Disabilities

Issue

The Federal Government recently increased the ability of parents and grandparents to provide for the future well being of their relative with a disability by extending the tax deferred, rollover provisions of RRSPs and RRIFs to adult sons, daughters and grandchildren. The increase in the income threshold and the ability to utilize trusts means that families have an additional planning tool.

There remain, however, several obstacles to the use of this provision as an effective planning tool for families:

- The ability to use a trust as a planning vehicle is limited by the requirement to purchase an annuity before RRSP or RRIF funds can move into it on a tax deferred basis. Thus the flexibility and utility of this option is reduced by the requirement to purchase an annuity.
- Utilization of provincial disability benefits further restricts families from using the RRSP rollover provision to help their relative with a disability. In most provinces, the direct transfer of assets to an adult with a disability makes the person ineligible for disability benefits. Thus an attempt to assist a relative with a disability is nullified by the province.
- The definition of dependent creates a low-income ceiling. The person with a disability must have an annual income of less than \$13,814. This restriction renders the policy of allowing the transfer of such funds meaningless to those Canadians with disabilities who have a very moderate income.
- This mechanism is only available to parents or grandparents. Thus any interest that siblings, aunts and uncles or cousins might have to assist a relative with a disability is thwarted.
- And finally, this mechanism is only available on the death of a parent or grandparent. Thus it cannot be used to assist a relative with a disability during the parents' lifetime.

Solution

Further increase the utility of the RRSP/RRIF rollover provision by removing restrictions on its use. Greater flexibility will encourage contributions, benefit Canadian's with disabilities and reduce dependency on social services.

The following changes will increase the flexibility of this mechanism:

- Permit families to transfer funds held in RRSPs and RRIFs on a tax deferred basis directly to discretionary trusts established for the benefit of their family members with disabilities;
- Link the cut-off for determination of financially dependent to the Low Income Cut-off⁵ and make dependence solely based on income;
- Broaden eligibility to permit extended family and siblings to assist a family member with a disability; and
- Permit family members to utilize this mechanism prior to their death.

Disability Expense Tax Deduction*Issue*

Families bear a wide range of direct costs of caring for dependents that have a disability. Numerous income tax provisions recognize and provide some relief for these costs. There are, however, significant issues. Most significantly, the tax relief is much less than the actual costs incurred by families.

The Medical Expenses Tax Credit, which provides recognition for some expenditures, has four major problems:

- It is a credit against tax and as a result only a fraction of costs are reimbursed;
- It has a high deductible that is unfair when applied to expenses that recur year after year;
- Some legitimate disability related expenses, such as expenses to facilitate and enhance social networks, are not recognized; and
- Families who have relatives with disabilities often overlook the opportunity to claim benefits because of the name.

Solution:

Re-create a Disability Expense Tax Deduction to recognize the real costs incurred by Canadians with disabilities and their families for disability related expenses. This will recognize and promote family contributions in a much more meaningful manner.

The Disability Expense Tax Deduction will:

- Permit the deduction of the full costs of disability-related expenses;
- Not have a minimum deductible;

⁵ An income level used to define poverty levels, the calculation of which is dependent on regional living expenses.

- Recognize a wider range of disability related expenses incurred, including planning, social network development and maintenance, and the procurement of information;
- Be transferable to family members who incur eligible expenses; and
- Retain a modified Disability Tax Credit as outlined below.

Disability Tax Credit***Rationale***

The Disability Tax Credit was designed to provide “more complete relief” than the medical expense deduction, in particular for expenses that are difficult to quantify, and to compensate for unpaid time expended by family members. These items are most appropriately recognized through a credit of a fixed amount.

It is, however, inadequate for several reasons, including:

- It is not refundable and therefore is of little or no value to individuals with disabilities or families with low income to whom it might be transferred;
- Its fixed dollar value, just over \$1,000 when provincial taxes are taken into account is inadequate; and
- “Disability” is narrowly defined, and eligibility excludes many persons with disabilities, especially persons with mental handicaps.

Solution

Modify the Disability Tax Credit to better fulfill its purpose of recognizing disability-related costs that are indirect and difficult to itemize. The new Disability Tax Credit will:

- Be refundable;
- Be increased to recognize the real value of these expenses; and
- Have broadened eligibility requirements to ensure that persons with mental handicaps are included.

Old Age Security System***Issue***

At age 65, individuals with disabilities, like everyone else, enter the federal old age security system. This creates a dynamic between the federal old age security system and provincial disability systems that neither was expected to accommodate. The two systems differ, are unclear or conflict in several ways, including:

- the treatment of earned and unearned income;
- medical, dental, drug and other benefits;
- asset exemption and qualifying limits; and
- the treatment of trusts.

The treatment of discretionary trusts is the most significant issue of concern here. Individuals receiving provincial disability benefits are often the beneficiaries of trusts that augment their modest disability benefits. There is concern that federal policy

will diminish the utility of trusts as planning tools for families with disabled members.

Solution

Establish protocols between the federal and provincial governments to address the issues of transition from disability benefits to old age security. Ensure that tools and mechanisms for securing the future retain their value when persons with disabilities turn 65. Implement laws and policies to protect the interests of persons with disabilities turning 65.

Support the Creation of a Provincial Disability Tax Deduction***Issue***

Provincial governments have the jurisdiction to provide disability income (prior to age 65) and disability services. Provincial investment is primarily in the supply side. This limits the options available to persons with disabilities and their families. This is a disincentive to family investment; and it ties persons to services that often preserve barriers to relationships and citizenship.

Persons with disabilities, families and provinces all need mechanisms that will:

- provide opportunities for individualized solutions that utilize the capacities of the person, the families and the community;
- stimulate systemic change;
- recognize contributions and leverage investments; and
- promote collaboration and innovation.

Solution

Provincial governments have had the capacity for several years to enact refundable and non-refundable tax credits and low-income tax reductions since the ratification of the joint federal/provincial/territorial tax-on-income (TONI) paper in 1998. Some provinces, for example Newfoundland, have utilized this mechanism to benefit citizens with disabilities and their families.

Investment through the tax system in a provincial disability tax credit, deduction or rebate has the potential to efficiently accomplish, promote or support many of the social policy goals of the Federal Government, provincial governments, families and persons with disabilities.

These social policy goals might include:

- Investment in the development of social networks;
- Enabling individuals, families and communities to utilize their capacities to solve their own problems;
- Increasing choices available to individuals with disabilities and families, including the option of individualized funding;
- Promoting a shared responsibility; and
- Leveraging investment by families and the Federal Government

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