

# A New Beginning

THE REPORT OF THE MINISTER OF  
FINANCE'S EXPERT PANEL

*on*

FINANCIAL SECURITY FOR CHILDREN  
WITH SEVERE DISABILITIES

*December 2006*

Copies of this document may be obtained from the:

Distribution Centre  
Department of Finance Canada  
Room P-135, West Tower  
300 Laurier Avenue West  
Ottawa, Ontario K1A 0G5  
Telephone: 613-995-2855  
Facsimile: 613-996-0518

*Cette publication est également disponible en français.*

# A New Beginning

THE REPORT OF THE MINISTER OF  
FINANCE'S EXPERT PANEL

*on*

FINANCIAL SECURITY FOR CHILDREN  
WITH SEVERE DISABILITIES

*December 2006*

# Table of Contents

<b>ACKNOWLEDGEMENTS</b>	<b>1</b>
Federal Government Officials	1
Concerned Canadians and Organizations	1
<b>I. INTRODUCTION</b>	<b>2</b>
<b>II. THE MANDATE OF THE PANEL</b>	<b>8</b>
<b>III. THE COMPOSITION OF THE PANEL</b>	<b>9</b>
<b>IV. THE CONSTITUTIONAL CONSTRAINTS</b>	<b>10</b>
<b>V. THE FISCAL POLICY FRAMEWORK</b>	<b>11</b>
<b>VI. PLAN CONCEPTS</b>	<b>14</b>
<b>VII. PLAN DEFINITIONS AND DETAILS</b>	<b>24</b>
Plan Expectations	25
Eligibility to Become a Beneficiary	29
Eligibility to Become a Plan Initiator	33
Eligibility to Become a Contributor	34
Contribution Limits	35
Withdrawal Parameters	38
Refund of Contributions	44
Plan Transfers	47
Qualified Investments	48
Tax Avoidance Issues	48
Disability Savings Grant and Canada Disability Bond	49
<b>VIII. FEDERAL-PROVINCIAL ISSUES</b>	<b>58</b>
<b>IX. COSTING THE PLAN</b>	<b>60</b>
Administrative Costs	60
Revenue Costs Associated with Deferral of Tax	60
Direct Costs of Grants and Bonds	63
Total Cost	66
<b>X. FUTURE DIRECTIONS</b>	<b>67</b>
<b>XI. RECOMMENDATIONS</b>	<b>68</b>
<b>APPENDICES</b>	<b>76</b>
Appendix “A”: Press Release	76
Appendix “B”: Terms of Reference	78

# Acknowledgements

---

The work of the Panel was assisted by a large number of people. Some of these were from the Department of Finance, Ottawa and other Federal Government departments. Others were citizens and organizations who contacted Panel Members and made oral and written submissions. The Panel wants to thank all those who assisted and acknowledge the important contribution made by each of them to its deliberations. Of course, this Report is entirely the responsibility of the Panel Members who apologize for any errors or omissions that may have crept into the Report.

## Federal Government Officials

Ms. Andrea Venneri, Policy Advisor in the Office of the Minister of Finance

Mr. Baxter Williams, Director, Personal Income Tax Division, Tax Policy Division, Department of Finance

Ms. Lise Potvin, Senior Chief, Personal Income Tax Division, Tax Policy Branch, Department of Finance

Ms. Catherine Cloutier, Chief, Deferred Income Plans, Tax Legislation Division, Tax Policy Branch, Department of Finance

Mr. Ian Pomroy, Senior Tax Policy Officer, Personal Income Tax Division, Tax Policy Branch, Department of Finance

Mr. David Wurtele, Senior Tax Policy Officer, Tax Legislation Division, Tax Policy Branch, Department of Finance

Mr. Pierre LeBlanc, Senior Tax Policy Officer, Personal Income Tax Division, Tax Policy Branch, Department of Finance

Ms. Annik Bordeleau, Tax Policy Officer, Personal Income Tax Division, Tax Policy Branch, Department of Finance

Mr. Richard Beaudry, Tax Policy Officer, Personal Income Tax Division, Tax Policy Branch, Department of Finance

Mr. John Rietschlin, Manager Disability Supports, Policy Division, Office for Disability Issues, Human Resources and Social Development Canada

## Concerned Canadians and Organizations

Mr. John Dowson, LifeTRUST Planning, Newmarket, Ontario

Mr. Jack Styan, Planned Lifetime Advocacy Network, Vancouver, British Columbia

Mr. John Toft, Families Matter Co-operative Inc., Kanata, Ontario

Mr. Steve Brown, North Sydney, Nova Scotia

Mr. Richard Lewin, C.A., Toronto, Ontario

Mr. John McVicar, Kitchener, Ontario

Mr. Mike Deschenes, Sault Ste. Marie, Ontario

Mr. Peter Nares, Social and Enterprise Development Innovations, North York, Ontario

Mr. D. Adrian Wilkinson and Dr. Martha Sanchez-Craig, Toronto, Ontario

John & Carolyn Farrell

Sharon Gallant, Alberton, Prince Edward Island

# I. Introduction

Each family of a person with a disability has its own individual story. For the most part they are stories of struggle, hardship and Herculean efforts to overcome barriers. But they are also stories of love – and of hopes and dreams. Those dreams are for a better life for a family member with a disability and one of those hopes is that when they are no longer there to provide financial assistance to their loved one with a disability, that loved one will have available to him or her the financial resources to live a rich and fulfilling life.

Today the cold reality for many born with a significant disability is that they will live a life of poverty. As a nation Canada has made significant efforts to address the poverty of seniors through the creation of programs and supports such as Old Age Security and the Guaranteed Income Supplement. We have also made efforts to reduce child poverty through initiatives such as the Child Tax Benefit.

However, substantively similar efforts have not been made by previous governments to address the poverty of Canadians with disabilities. The interest of Canada's New Government in addressing the admittedly complex issues related to the future income security of Canadians with disabilities is gratifying indeed. For far too many Canadians with disabilities social assistance has become their sole possible source of income. This means that many live their entire lives on an income of less than \$10,000 annually. As a nation Canada can and must do better. For this to occur the provincial, territorial and federal governments must work together so that their respective constitutional jurisdictions are harnessed to create solutions and not used to provide reasons for inaction.

The issue of income support for today's needs of Canadians with disabilities is not a part of the mandate of this Panel. This is a much broader and extremely important issue that will need to be tackled – and tackled soon. The Mandate of this Panel is to make recommendations on how families can provide for the future financial security of their family member with a disability. It is not the end of the story. It is only a beginning.

We call our Report "A New Beginning". This title reflects the fact that the implementation of our recommendations will be an important first step in addressing the income security concerns for the future of Canadians with

disabilities and their families. It also reflects the fact that we are recommending a novel approach to this important issue. More importantly, however, this title reflects our view that the implementation of our recommendations will certainly be the beginning – that faint sliver of light that is dawn – of brighter and more promising days for Canadians with disabilities and their families. It is our hope that our recommendations will be implemented and that as a consequence thereof Canadians with disabilities and their families will be better able to realize future opportunities and their hopes and dreams.

It is not only the families of persons with disabilities that worry about the future. Canadians with disabilities share that worry. The story of Robert is a case in point.<sup>1</sup> Robert is 29 years old and has Turret's Syndrome. He cannot read or write and does not understand numbers. He can be relatively independent, but he cannot live alone as he needs someone to make sure that he eats properly and gets up in the morning. Robert has a job which he goes to every day. He does not consider himself to be a person with a disability, but rather as a capable person with some limitations. Robert's mother died in 2004 and he wonders how long his father will live. Robert most certainly does not need to live in an institution and could live on his own quite independently with friends who would look after his meals and get him up in the morning for work. With his reading and writing limitations, Robert's employment is tenuous and at best his earning potential is very limited. Financial security would go a long way towards making Robert's future a good one and allow him to continue to be a happy and productive member of his community.

John was born with cerebral palsy into a family with many challenges and few resources. His speech and ability to walk are affected by his disability. John's family abandoned him when he was three, and until he was a teen, he was raised by his elderly grandmother and then lived in a variety of foster homes. John is now 30 years old and has lived on social assistance since he was 18. Although unable to be employed, John is fascinated by technology and spends whatever small gifts he receives from others on computer equipment. He is supported by others within the disability community and receives some services from a voluntary organization. John looks forward to the day he will turn 65 and be eligible for the far greater income supports for which seniors qualify. John requires additional financial support so that he can live in a safer neighbourhood. Although John has no family who could contribute to a Disability Savings Plan, the Panel's proposal for a Canada Disability Bond could provide some hope to John for a better future.

---

<sup>1</sup> Robert's story is taken from the website of the Families Matter Co-operative Inc., [www.familiesmattercoop.ca](http://www.familiesmattercoop.ca).

No government or government agency can entirely replace a family or friend as a caregiver. The love and emotional attachment that a family member or close friend brings add so much to the quality of life. But government and government agencies can do better than they are doing today. We urge all levels of government to do more. Over and above the recommendations in this report for a Disability Savings Plan, Disability Savings Grants and the Canada Disability Bond we encourage all levels of government to seek ways to expand the availability of disability related supports and alleviate the poverty so disproportionately experienced by Canadians with disabilities. The burdens borne by so many families must be reduced so that individuals with disabilities can become more independent and enjoy family relationships that are not impaired by issues of dependency.

Government and government agencies, as proxies for the broader community, can assist a great deal to support families in their endeavours to provide some modicum of financial security for their loved ones with a disability. Some will require the full support of the broader community. A few families may have the means to fully support the financial needs of their child with a disability for his or her lifetime. Most will find themselves in a middle position where they have the ability and the desire to make their loved one with a disability somewhat financially self-sufficient, but insufficient resources to go it alone. Many, because of their financial circumstances and the additional costs they are already experiencing in providing support to a family member with a disability, will be able to contribute only small amounts to a Disability Savings Plan. Some will not be able to contribute at all.

In its recommendations the Panel has tried to ensure that all Canadians with a disability and their families will be able to participate in the endeavour to provide a better future for them. In so doing the Panel has targeted programs for families of all income levels including those with significant resources and a clear ability to save for the future, those with some, but only a limited ability to save, and those for whom it will be difficult or impossible to save at all. The Panel recognizes that its recommendations will not be a panacea. What its members hope is that its recommendations can make a modest, but real, difference in the future of families with a person with a disability – the difference between a life of abject poverty and a life of modest comfort.



The 2001 Participation and Activity Limitation Survey (PALS)<sup>2</sup> identified some 3.6 million (1 in 8) Canadians as having a disability serious enough to limit their daily activities. Five percent of those identified were under 15 years of age, 55 percent were of working age (15 to 64) and 40 percent were 65 and older. Among children under 15 years of age, 57 percent have mild to moderate disabilities and 43 percent have severe or very severe disabilities. Among adults 15 and older, 34 percent report mild disabilities, 25 percent moderate and 41 percent severe or very severe disabilities.

The PALS survey found that working age adults with disabilities are at higher risk of having a low income and in 1998 nearly half of them (48 percent) relied on government programs as their primary source of income. In 2001, 43.5 percent of Canadians with disabilities had a job. This is just over half the rate of those without disabilities (74%).

In 2003, the most recent year for which tax return data are available, approximately 370,000 individual Canadians met the eligibility criteria of a severe and prolonged disability that markedly restricts activities of daily living<sup>3</sup> and claimed a Disability Tax Credit on their own income tax return. Another 186,000 Canadians claimed a Disability Tax Credit in respect of a person with a disability whom they supported.<sup>4</sup> Because the Disability Tax Credit may be claimed in part by the person with a disability individually and in part by a supporting person these two statistics cannot simply be added together. The actual number of Canadians with a disability for whom a Disability Tax Credit was claimed in 2003 was somewhere between 370,000 and 556,000. For 2001 the number was estimated at 400,000.<sup>5</sup>

These statistics tell only part of the story. In order to claim a Disability Tax Credit a person with a disability or a supporting individual must have sufficient income to be taxable. For many in the disabilities community this will not be the case. How many additional Canadians have a disability serious enough that they would qualify for the Disability Tax Credit is not known. For 2001 the number was estimated to be between 498,000 and 745,000.<sup>6</sup>

---

<sup>2</sup> Statistics Canada, Participation and Activity Limitation Survey, 2001 (Ottawa: 2003).

<sup>3</sup> The full definition is found in s. 118.3 of the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.) as amended. The Report of the Technical Advisory Committee on Tax Measures for Persons with Disabilities (Ottawa: Department of Finance, December, 2004) recommended substantial changes to this definition. These changes were implemented by S.C. 2006, c. 4, s. 63.

<sup>4</sup> Background Information provided to the Panel by the Department of Finance, Ottawa.

<sup>5</sup> 2004 Tax Expenditures and Evaluations Report, Department of Finance, Ottawa.

<sup>6</sup> *Ibid.*

Some Canadians with disabilities reside in provincial institutions. However, the vast majority of people with a disability live on their own with support from or with a supporting relative or friend. It is impossible to calculate or place a value upon the enormous support that families, friends and neighbours provide to people with disabilities. Behind this reality lurks one of the many serious issues facing the families of persons with disabilities.

It must also be acknowledged that for many families who support and care for their family member with a disability the family also lives with a reduced income. This arises as a result of a number of factors. In many cases one member of the supporting family (most often a mother) absents herself or himself from the labour force to provide full time support to the person with a disability. The other spouse will often have a reduced attachment to the labour force or will find it necessary to forego promotions that carry greater responsibility because of their responsibilities to care for the person with a disability or to provide respite to their spouse who is the primary care giver.

In this context, is it reasonable to expect lower income families to be able to save for the future of their loved one with a disability? The obvious answer is no. However, studies have shown that low income families can and do save, especially when provided with the right incentives and so long as disincentives are not placed in their path.<sup>7</sup>

It is very difficult to understand the challenges faced by families who care for a member with a significant disability. Many parents or other caregivers of persons with disabilities are extremely concerned with what will happen to their child or ward with a disability if he or she outlives them. The question of who will care for that person with a disability for whom they have cared for so many years can become an oppressive preoccupation that interferes with their ability to provide the necessary care for the person with the disability and also prevents the caregivers from having any kind of fulfillment in their own lives. The issue of what financial resources will be available for the person with a disability who has been both physically and financially dependant upon them for so long can be and often is deeply worrying.

---

<sup>7</sup> See for example the data from the learn\$ave program, Social and Enterprise Development Innovations, internal data from learn\$ave Management Information Software as of January, 2004 and Duflo, Esther, Gale, William, Liebman, Jeffrey, Orszag, Peter and Saez, Emmanuel, "Savings Incentives for Low- and Middle-Income Families: Evidence from a Field Experiment with H&R Block." (National Bureau of Economic Research: October, 2005), [www.nber.org](http://www.nber.org), p. 1.

It is in this context that the Panel has met, studied, received submissions and reached its conclusions. In its deliberations the Panel has been guided by one central question. How can parents and grandparents of a child with severe disabilities be assisted by the Government of Canada to establish savings to secure the long-term financial security of that child or grandchild? A secondary question has been how the assistance to be provided by the Government of Canada can be targeted so that it reaches those most in need of that assistance.

In the Panel's view a Disability Savings Plan is but a small piece in a much larger puzzle. Communities and Governments have to come together so that Canadians with disabilities can participate equally in our society. We look forward to the day when all Canadians have the supports they require to live full and productive lives.

## II. The Mandate of the Panel

In his Budget Speech of May 2, 2006 Minister of Finance, James M. Flaherty, P.C., M.P., included the following paragraph:

"Also Mr. Speaker, parents and grandparents of a child with severe disabilities face an important consideration. They need to find a way to secure their child's long-term financial security when they are no longer able to provide support.

- This government will appoint a small group of experts to examine ways we can help to ease this concern."

On July 31, 2006 the Minister of Finance announced the appointment of the Panel to undertake the examination promised in the budget speech. A copy of the Press Release is appended to this Report as Appendix "A". Included with the Press Release was a document entitled "Terms of Reference". A copy of the Terms of Reference is part of Appendix "B".

In summary, the Mandate of the Panel was to examine ways to help parents and grandparents save for the long-term financial security of a child with a severe disability.

### III. The Composition of the Panel

The Panel was comprised of three individuals, James Barton Love, Q.C., Chair, Rémy Girard, Member and Laurie Beachell, Member. The biographical information that accompanied the Press Release announcing the appointment of the Panel described these members as follows:

**James Barton Love, Q.C., Chair:**

Mr. Love is a lawyer and founding partner of the Toronto law firm Love & Whalen. He is also Chairman and CEO of Legacy Private Trust, which specializes in wills, estates, trusts and guardianships and focuses its service mandate on being a fiduciary. He has practised in the areas of tax, acquisitions, mergers, corporate reorganizations, estate planning, wills and trusts. Mr. Love obtained a Bachelor of Laws and a Master of Laws in Taxation Law from Osgoode Hall Law School, Toronto, Ontario. He was appointed Queen's Counsel by Her Majesty the Queen in right of Canada in 1992.

**Laurie Beachell, Member:**

Mr. Beachell is National Coordinator, Council of Canadians with Disabilities, a national advocacy association for persons with disabilities. Mr. Beachell has over 20 years of experience with voluntary boards in social policy development and advocacy. He was a member of the Technical Advisory Committee on Tax Measures for Persons with Disabilities, which was established in 2003 and tabled an extensive report to the Ministers of Finance and National Revenue in December 2004.

**Rémy Girard, Member:**

Mr. Girard is a well-known actor who is best known for his roles in the films *The Decline of the American Empire*, *Jesus of Montreal* and *The Barbarian Invasions*. He has received numerous awards for his film and television roles. Mr. Girard is also a spokesperson for the Montreal Children's Hospital Foundation and the Federation of Family and Friends of People Affected by Mental Illness. He is the father of a child with a severe disability.

## IV. The Constitutional Constraints

With the exception of those First Nations people who can be defined as Indians within the meaning of Head 24 of Section 91 of the *Constitution Act*, 1867,<sup>8</sup> constitutional responsibility for the income needs of persons with disabilities falls on the Provincial governments.<sup>9</sup> This responsibility is not only a direct one emanating from the terms of the *Constitution Act*, 1867 itself, but also engages the *parens patriae* responsibility of the Crown.

In the case of First Nations people who are included within the term "Indians" in Head 24 of Section 91 of the *Constitution Act*, 1867 the constitutional responsibility for persons with a disability within this group falls entirely on the Federal Government and engages both the specific Constitutional responsibilities and the prerogative duties as *parens patriae*. This is an important Federal responsibility since persons with a disability form a much larger percentage of First Nations communities than they do of the population of Canada as a whole.

Because the Constitutional responsibility for the income needs of Canadians with disabilities is largely a Provincial responsibility, the appropriate Constitutional response by the Federal Government is to use the fiscal power to achieve the goal of bringing innovative programs and responses to bear on an issue that has strong and clear National characteristics. This Constitutional reality has been a factor in shaping our proposals.

The Constitutional realities also present a dilemma for the integration of any type of Federal Program with existing Provincial Programs. This issue will be addressed more fully below in the section titled **Federal-Provincial Issues**.

---

<sup>8</sup> *Constitution Act*, 1867 (U.K.), 30 & 31 Victoria, c. 3 as amended.

<sup>9</sup> *Ibid.*, Heads 7 and 13 of Section 92.

## V. The Fiscal Policy Framework

The fiscal power is a blunt instrument with which to make social policy. However, in the context of designing a savings program that will serve to assist and encourage Canadians with relatives and friends with disabilities, it is a fiscal response that is required. In this context the Panel is of the view that the use of the fiscal power is not only justifiable, it is absolutely appropriate.

In determining a fiscal policy framework within which to design a disability savings plan the Panel was tempted to clear new ground and make use of a modern approach to the fiscal policy framework. Upon reflection, however, the Panel was of the view that this was not the time or the subject matter for a dramatic, new and perhaps controversial approach. The panel, therefore, elected to design a plan within Canada's existing fiscal policy framework.

Although there have been some small refinements to the fiscal framework over the last several years, the fundamental fiscal policy imperatives that inform both the *Income Tax Act (Canada)*<sup>10</sup> (the "Act") and the fiscal framework generally are those described in the Report of the Carter Royal Commission on Taxation.<sup>11</sup> Appointed in 1962 by then Prime Minister John Diefenbaker, the Carter Commission reported in 1966. Its work resulted in a new *Income Tax Act* that came into effect in 1971. In the 40 years since the Commission reported there has been no fundamental rethinking of the policy framework of the Canadian fiscal equation.

The philosophical underpinning of the Carter Royal Commission was fairness. This broad philosophical concept was put into the *lingua franca* of economists by expressing it in terms of two related public fiscal policy parameters called "horizontal equity" and "vertical equity". It is not for this Report to plumb the intellectual depths of these two important concepts. Suffice it to say that "horizontal equity" is achieved when individuals in like circumstances are treated the same. "Vertical equity" is achieved when individuals in different circumstances are treated differently, but in a manner that is commensurate with the differences in their circumstances.

While it is often said that horizontal and vertical equity are merely corollaries of each other — two sides of the same coin — it can also be said that they reflect two very different policy alternatives. Few would quarrel with the broad approach of horizontal equity, though many would quarrel with how it should be achieved. Vertical equity is a more problematic concept.

---

<sup>10</sup> R.S.C. 1985, c. 1 (5th Supp.) as amended.

<sup>11</sup> Report of the Royal Commission on Taxation (Queen's Printer: Ottawa, 1966).

In the context of the Carter Commission it contemplates assigning different treatment based on another more controversial policy alternative, namely, ability to pay. While there are occasional skirmishes between academics and between politicians on the appropriateness of such an approach, the policy is very much a part of the current Canadian fiscal framework.

In the Carter Commission Report and the legislation that implemented it<sup>12</sup> horizontal tax equity was expressed, at least in part, by a series of tax deductions for various purposes. These included a basic personal exemption, exemptions for spouses, dependent children, infirm dependants and senior citizens, as well as a special deduction for persons with disabilities. The argument favouring the deductibility of amounts for these purposes was that the amounts being deducted approximated the additional costs that taxpayers in these situations were faced with and that allowing a deduction for these amounts placed taxpayers of the same income after these deductions in similar positions vis-à-vis the equity of the tax system.

By 1987 this concept of horizontal tax equity had been refined. On June 18, 1987 the then Minister of Finance, the Honourable Michael Wilson, P.C., M.P., tabled in the House of Commons The White Paper on Tax Reform, 1987. In a fundamental restatement and reform of the concept of horizontal tax equity as it had existed in the Canadian fiscal framework since 1971 the White Paper stated as follows:<sup>13</sup>

"Exemptions are currently subtracted from income before computing tax. The tax savings from exemptions therefore depend on the taxpayer's tax bracket, increasing with higher incomes. For example, under the existing system, each \$1,000 of exemption is worth \$60 of federal tax saving to a person in the lowest tax bracket and \$340 to a person in the highest tax bracket, excluding the surtaxes.

---

<sup>12</sup> In November, 1969 a White Paper was tabled in the House of Commons by the then Minister of Finance. This White Paper was extensively debated by politicians in two parliamentary committees, academics, business leaders and the general public. On June 18, 1971 the government introduced the proposed tax reform measures in its Budget. This was followed by the introduction of Bill C-259 which was passed and given Royal Assent on December 23, 1971 as *The Tax Reform Act*, S.C. 1970-71, c. 64.

<sup>13</sup> Wilson, The Honourable Michael H. Minister of Finance, "The White Paper – Tax Reform 1987" (Ottawa: Department of Finance Canada, 1987), p. 29.



It is fairer to provide the same tax saving to all taxpayers in identical situations, regardless of their income. This will be accomplished by converting the personal exemptions and the disability deduction to tax credits. Those credits will be subtracted directly from the tax owing rather than from income."

This change signalled a fundamental shift in the concept of horizontal tax equity. Rather than a system that took as its base the proposition that individual taxpayers should be evaluated to determine their similarities in ability to pay assuming that personal characteristics such as having dependants or being a person with a disability impacted directly on that ability, the new system regarded these "deductions" as tax expenditures<sup>14</sup> and applied the concept of horizontal tax equity to them. In essence the change said that taxpayers should not be evaluated for similarities in income level after determining what income should be taxed, but rather that the benefit of tax expenditures should be distributed equally amongst taxpayers whose income, more broadly calculated, fell into certain brackets.

As a consequence of these changes Canada's tax system now comprehends two concepts of horizontal tax equity, the original Carter approach and the new White Paper approach. Noting that the White Paper approach is the newer model and that it results in a much more targeted approach to horizontal tax equity, the Panel has adopted a highly targeted approach to the proposed incentives to assist in the creation of savings for persons with a disability.

---

<sup>14</sup> The term "tax expenditures" is a euphemism, often used in a pejorative sense, to describe virtually any amount that is charged against a base revenue model. In essence the idea of a "tax expenditure" is based upon an assumption that tax rates should be applied to a very broad definition of income so as to maximize tax revenue at any given tax rate. Any deviation from that broad definition is referred to as a "tax expenditure".

## VI. Plan Concepts

A survey of a number of other jurisdictions failed to turn up a form of tax assisted Disability Savings Plan that was in use in other countries. In the absence of an affinitive plan the Panel determined that the alternatives available to them were to either design a new model for a Disability Savings Plan or to adapt one of the models already in the Act.

The first question that engaged the Panel was the determination of the important characteristics of a Disability Savings Plan that would affect the choice of an appropriate model. This task was not that of establishing Plan Definitions and Details; rather it was that of defining characteristics that would dominate the fundamental decision as to an appropriate plan architecture.

One of the important characteristics of any Plan was that the Plan be available and understood by the largest possible number of potential participants. In order for that to be so the Plan must be "marketed" to potential participants in the sense that its availability becomes well known to potential participants.

There are four obvious channels through which the availability of a Disability Savings Plan would logically be "marketed". These are:

### **Government Advertising and Awareness Programs**

The Government of Canada has advertising and awareness campaigns for many of its programs. These range from traditional media advertising campaigns on television, radio, in the print media and on the internet to direct mail advertising whether by way of stand-alone mailings or as inserts with cheques and other government mailings. The Government of Canada also provides information on its programs through brochures that are made available at its offices and in other public places. Provincial governments have similar programs.

Because of the relatively small number of potential participants it seems unlikely that either Federal or Provincial governments would find traditional media advertising a cost-efficient way to generate awareness of a Disability Savings Plan among the target participants. As well, a direct mail campaign would prove difficult because of the problem of identifying target participants in a way that would make a direct mail campaign efficient and

effective.<sup>15</sup> It seems more likely that a Government awareness campaign would be directed to persons with disabilities themselves since that is the group to which Government would have the most direct and effective access. Getting the information from these persons to those who would likely become contributors to a Disability Savings Plan would probably require a secondary communication. The need for any type of secondary communication argues strongly in favour of a plan that is simple in its architecture or that has obvious similarities to other types of plans that are already well understood by the potential participants.

### **Financial Institutions Offering Disability Savings Plans to their Customers**

Financial Institutions offer their custodial, investment and administrative services to participants in other tax-assisted savings plans. These include Registered Retirement Savings Plans (RRSPs), Registered Retirement Income Funds (RRIFs), Registered Education Savings Plans (RESPs) and the former Registered Home Owners' Savings Plans (RHOSPs). Again, because of the relatively small number of potential participants, it seems unlikely that Financial Institutions would launch extensive advertising campaigns to attract participants in a Disability Savings Plan. To the extent that Financial Institutions offer Disability Savings Plans they are likely to do so as a service to their existing customer base or as a public service gesture. The small number of potential participants is likely to also mean that staff training about Disability Savings Plans will be meagre. These concerns again argue in favour of a plan architecture that is simple or that is so similar to existing forms of plan that it can piggyback onto both the advertising/customer awareness programs and the staff training programs of the Financial Institutions.

### **Non-governmental Organizations and Agencies Providing Services and Advocacy to People with Disabilities**

Non-governmental Organizations and Agencies providing services and advocacy to people with disabilities are likely to be the core source of information and advice to potential participants. These Organizations will have the most effective access to potential participants and will have the capacity and opportunity to recognize circumstances where a Disability Savings Plan will be an appropriate vehicle to assist in the resolution of a family issue. However, it must be recognized that the staff and volunteers of such Organizations have a primary responsibility for and interest in quite different aspects of the needs of

---

<sup>15</sup> Although the Governments of Canada and the Provinces will have some information available on persons with disabilities themselves, they will have only limited information on those who provide support to those persons and other family members and friends.

persons with disabilities and their families. This fact again argues in favour of a plan architecture that is simple or that is so similar to some existing form of plan that both the staff and volunteers of these Organizations and the family members to whom the information is being conveyed can readily understand it.

### **Private, For Profit, Organizations that Might Emerge to Specifically Market a Disability Savings Plan**

Other tax assisted savings vehicles, and in particular RESPs, are marketed not only by Financial Institutions, but also by marketing organizations that have been specifically established by organizations that administer group plans for participants. Because of the relatively small number of potential participants in a Disability Savings Plan it seems unlikely that private, for profit, organizations dealing exclusively with the marketing and administration of such Plans will emerge. If private, for profit, organizations do become involved, it seems likely that they will become involved as an adjunct to some other program that they are marketing and administering. This again argues in favour of a plan architecture that is simple or that is so similar to some existing form of plan that both the organization's employees and those to whom a presentation is being made can readily understand it.

The first fundamental characteristic, then, of a Disability Savings Plan must be simplicity *per se* or affinity to an existing Savings Plan architecture. In so saying the Panel defines simplicity not in the sense of a Plan that lacks detail, but rather in the sense of a Plan that is broadly understood and understandable both to contributors and to those who would market such Plans. As indicated above, the primary reason for the requirement of simplicity is that the pool of potential participants is relatively small. As a consequence, it is most important that those who would market the plan are able to do so without incurring substantial costs in establishing processes to market and administer the Plans. It is also important that the marketing costs be kept to a minimum. It may be argued that having readily understandable basic concepts with which to work can best do this.

A second fundamental characteristic that was identified was that a Plan be easily administered by the Canada Revenue Agency. This characteristic also

encompasses related characteristics. These include assurances that significant opportunities would not exist for inappropriate tax avoidance and that, again because of the small number of participants in a Plan, existing administrative systems could be used.

The potential for inappropriate tax avoidance, including inappropriate tax splitting, inappropriate inter-generational tax deferral and inappropriate tax averaging, is always present in any tax program designed to provide incentives of any kind. Though the opportunities for inappropriate tax avoidance may be few and the potential amount of tax to be avoided may be small, adequate and effective controls are important both to the public perception of the fairness of the tax system as a whole and of the tax incentive program giving rise to the abuse in particular.

Introducing tax avoidance measures into a program is, of course, quite possible. However, such measures can add complexity to a program or result in program restrictions that limit accessibility to the program. New tax avoidance measures may prove inadequate as experience with the program brings to light opportunities for inappropriate tax avoidance that were not originally contemplated.

Achieving the objectives, then, of this second characteristic, administrative simplicity, argues strongly against a plan architecture that does not have an affinitive program within the existing tax-assisted programs in the Act. Meeting the objective of administrative simplicity in a newly designed plan is likely to compromise the primary objective of simplicity, *per se*.

Nevertheless, the Panel did consider a number of suggestions for plans that were different from any that presently exist within the Act. In each case, however, the consideration of a particular architecture was abandoned at an early stage as it became apparent that the proposal was unlikely to achieve the two fundamental characteristics described above.

The conclusion that a Disability Savings Plan should be modeled after an affinitive plan in the Act left the Panel with four essential architectures to examine. The affinitive plans were the RRSP model, the RRIF model, the RESP model and the RHOSP model.

### **The RRIF Model**

The RRIF model was rejected without a detailed examination. A RRIF is not a savings vehicle, but rather a vehicle for managing the disbursement of savings that have accumulated in an RRSP. Such a model provides no affinity with the type of savings plan that is being proposed.

## The RHOSP Model

The RHOSP model was also rejected without a detailed examination of its program details. Although a RHOSP was a savings vehicle, the fact that it was discontinued as a savings vehicle under the Act in 1985<sup>16</sup> means that it is no longer a familiar format to Financial Institutions, Non-Governmental Organizations or potential contributors to a Plan. Furthermore, the administrative procedures and systems for operating the RHOSP plans have been abandoned and could not be easily recovered by Plan Administrators such as Financial Institutions.

## The RRSP Model

The RRSP Model has two defining characteristics. The first of these is that contributions to such a plan would be deductible in computing taxable income of the contributor and includable in the taxable income of the person who withdraws from the plan. The second defining characteristic is that income earned in the plan is not taxable, taxation being deferred until the income is withdrawn from the plan.

In an RRSP it is usual, though not invariable, that the person making a contribution to the plan is also the person making a withdrawal from the plan.<sup>17</sup> Consequently, in the usual circumstance an RRSP provides a tax incentive for saving and provides a tax deferral with, usually, an expectation of income averaging as well. Only in the case of a contribution to a spousal RRSP is an income-splitting motivation a defining characteristic.

In the context of a Disability Savings Plan the circumstances would be reversed. The usual situation would be that someone other than the contributor, namely the person with a disability, would make withdrawals from the plan.<sup>18</sup> Without some very strict rules on eligibility and holding periods there would be strong motivations in such a plan for both lifetime and inter-generational income-splitting.

---

<sup>16</sup> Section 146.2 of the Act, which provided for the RHOSP was repealed by S.C. 1986, c. 6, s. 82, applicable to 1986 and subsequent taxation years.

<sup>17</sup> Examples of the exception are the provisions permitting contributions to a spousal RRSP, rollovers to a spouse's RRSP on death and transfers of RRSPs to financially dependent children and grandchildren with disabilities on death.

<sup>18</sup> The most likely exception to this usual situation would be when the purpose for which the Plan was established was frustrated by, for example, the death of the intended beneficiary before he or she became entitled to the benefits of the Plan.

Because RRSP contributions provide a deduction from taxable income, RRSPs provide a powerful catalyst for savings. However, for the same reason, the deductibility of contributions has implications for horizontal and vertical equity in the tax system. An example will serve to illustrate. Take two individuals with otherwise equal incomes. Both propose to save an identical sum for their future retirement. Simply put, in the absence of any taxation response to their savings decisions or in the presence of an identical taxation response to those decisions horizontal and vertical equity between the two is achieved. However, if the savings vehicle chosen by one of the individuals permits a deduction in computing taxable income and that chosen by the other does not permit such a deduction, horizontal and vertical equity is not achieved. The tax system has been used to encourage certain behaviour and to discourage another behaviour. This may be sound public policy, but it is not horizontal and vertical equity in the tax system. Furthermore, in a progressive tax system, i.e. one where the rate of tax increases as the amount of income to be taxed increases, there is a powerful incentive to seek deductions from taxable income. Such a deduction creates more benefit for those with higher incomes, those who, arguably, need a lesser incentive to save than do those with lower incomes.

Planned Lifetime Advocacy Network (PLAN) has published two carefully researched and powerfully written papers on the subject of Disability Savings Plans. The first of these, written by Dr. Richard Shillington,<sup>19</sup> analyses the policy considerations important in the development of a Disability Savings Plan and examines the form that such a plan might take. The second paper, prepared by Keith Horner,<sup>20</sup> while not proposing specific details, does make some assumptions about specific details for an RRSP type Disability Savings Plan in order to provide cost estimates and for other analytical purposes. These two papers provide a most valuable contribution to the question of the choice of plan architecture for a Disability Savings Plan and should be read as companion pieces to this report.

The PLAN papers analyse both an RRSP modeled and an RESP modeled Disability Savings Plan and narrowly recommend a RRSP model over a RESP model. This Panel comes down narrowly on the side of a RESP model, not because the Panel has any fundamental quarrel with the PLAN analysis and conclusions, but rather because this Panel gives slightly more weight to the objective of targeting more of the benefits of a Disability Savings Plan to those with lower incomes.

---

<sup>19</sup> Shillington, Richard, "Disability Savings Plan: Policy Milieu and Model Development" (Vancouver: Planned Lifetime Advocacy Network, 2005).

<sup>20</sup> Horner, Keith, "Disability Savings Plan: Contribution Estimates and Policy Issues" (Vancouver: Planned Lifetime Advocacy Network, 2005).

## The RESP Model

Unlike the RRSP model the RESP model does not provide a deduction from income of amounts contributed to the plan. However, the income earned in the plan accumulates without being taxed and the accumulated income is taxed in the hands of the person who withdraws it. This presents two types of tax benefits to participants. First, the accumulation of income in the plan without taxation provides a significant earnings advantage. Secondly, the fact that the accumulated income is taxed in the hands of the person who withdraws it means that this income will likely be taxed at a much lower rate because the person making the withdrawal is likely to have a much lower income level than that of the person making the contribution.

In the case of a student using RESP withdrawals to fund education expenses income is likely to be quite modest, typically being limited to income earned during the summer break. Taxable income is further reduced by education and tuition tax credits. The case of a person with disabilities is likely to be similar. Income is likely to be limited to part-time or low wage employment or to non-taxable provincial government benefits for disability support. To the extent that there is income its taxation will be reduced by various medical expense and disability tax credits.

The consequence of there being no deduction means that a RESP modeled plan results in much more modest costs to the treasury. *Simpliciter*, such a plan does not resolve the problems of the plan not being consistent with the objectives of horizontal and vertical equity. However, the substantial savings arising from the non-deductibility of contributions are available to be used for making grants, grants modeled after the Canada Education Savings Grant program.<sup>21</sup>

By itself the RESP model provides a much lower incentive to saving than does an RRSP model with its generous deduction from taxable income. During the period from the introduction of the RESP provisions of the Act in 1974<sup>22</sup> and until the introduction of the Canada Education Savings Grant program in

---

<sup>21</sup> These grants are made under the authority of the *Canada Education Savings Act*, S.C. 2004, c. 26, s. 5 and are administered by the Department of Human Resources and Social Development.

<sup>22</sup> *Income Tax Amendment Act*, S.C. 1974-75, c. 26, s. 100(1).



1998<sup>23</sup> RESPs were not very popular. That changed dramatically with the introduction of the Canada Education Savings Grant Program.<sup>24</sup>

The Canada Education Savings Grant program provides a grant to a RESP based upon the contributions made to the plan. Under this program contributions are matched by the government at the rate of 20% on contributions up to \$2,000. For low and middle-income families there is a higher match rate. For family incomes up to \$36,378 the match rate is 40% and for families with income between \$36,378 and \$72,756 the match rate is 30% on the first \$500 of contributions.

The consequence of the Canada Education Savings Grant program is that the contributions made by the Government of Canada are targeted to lower and middle-income earners. Unlike the RRSP model which benefits higher income earners more generously than it does lower and middle-income earners, the RESP model, when combined with the Canada Education Savings Grant provides a more equitable distribution of the public contribution to the program. In essence the fiscal cost arising from the deductibility of RRSP contributions which favours those in the higher income tax brackets is, in the RESP/Canada Education Savings Grant model, distributed amongst all income groups with those in the lower and middle-income categories receiving a more significant amount. The Panel regards this result as more desirable than that arising under the RRSP model.

One of the primary disadvantages of establishing a program that is essentially based on the Act is that it excludes participation by those who do not have sufficient income to be part of the tax system. In a program such as a Disability Savings Plan, that excludes a significant part of the group of persons to whom the program is ostensibly directed.

In the Educational Savings Plan context this problem is ameliorated by the use of a program known as the Canada Learning Bond.<sup>25</sup> The Canada Learning Bond is a grant that is provided to kick-start education savings for children in low-income families. A grant is made to an Education Savings Plan in up to 16 instalments to children in families eligible for the National Child Benefit supplement, essentially families with incomes of less than \$36,378. The Canada Learning Bond is not contingent upon other contributions being made to the RESP. The maximum Canada Learning Bond is \$2,000 per child.

---

<sup>23</sup> *Budget Implementation Act*, S.C. 1998, c. 21, s. 72 adding Part III.1 to the *Department of Human Resources Development Act*, S.C. 1996, c. 11.

<sup>24</sup> For a more detailed description of the change to the popularity of the RESP program after the introduction of the Canada Education Savings Grant program see Milligan, Kevin, *Who Uses RESPs and Why* (Vancouver: University of British Columbia Economics Department, Discussion Paper 04-03, March 2004) and Horner, *op. cit.*, note 20, p. 6.

<sup>25</sup> The Canada Learning Bond Program is administered by the Department of Human Resources and Social Development under the authority of the *Canada Education Savings Act*, S.C. 2004, c. 26, s. 6.

The Panel considers that a Canada Disability Bond modeled after the Canada Learning Bond would add a great deal to the fairness of a Disability Savings Plan. By including the lowest income earners in the plan two objectives may be realized. First, the program becomes accessible to a large group of persons with disabilities whose immediate family simply does not have the resources to even consider savings. Secondly, the existence of a Disability Savings Plan for a person whose immediate family does not have the resources to contribute to the plan may encourage other family members and friends to make contributions to the plan.

The Panel has, therefore, the following preliminary recommendations:

*Recommendation 1*

**That a Registered Disability Savings Plan be established under the *Income Tax Act*, broadly modeled after the Registered Education Savings Plan provisions currently in effect and having the particular characteristics described in further recommendations in this Report.**

*Recommendation 2*

**That a Disability Savings Grant be established under new legislation to be administered by the Department of Human Resources and Social Development, broadly modeled after the Education Savings Grant provisions currently in effect and having the particular characteristics described in further recommendations in this Report.**

*Recommendation 3*

**That a Canada Disability Bond program be established under new legislation to be administered by the Department of Human Resources and Social Development, broadly modeled after the Canada Learning Bond provisions currently in effect and having the particular characteristics described in further recommendations in this Report.**

The Panel sees these three aspects of its recommendation as inextricably linked to one another. It is the Panel's view that a proposal that did not include all three of these elements would not achieve the objective that has been established, namely, assistance to parents and others to save for the long-term financial security of a child with a severe disability.

## VII. Plan Definitions and Details

Although the Panel recommends that the architecture of the plan be broadly modeled after the RESP provisions of the Act, the Education Savings Grant provisions of the *Canada Education Savings Act*<sup>26</sup> and the Canada Learning Bond provisions of the *Canada Education Savings Act*,<sup>27</sup> there are, of course, a number of provisions that will differ from the affinitive provisions. The panel does not intend to review all of the circumstances where differences will occur. Many of the changes will become apparent only as formal legislative drafting takes place. There are, however, a number of areas where the changes will be extremely important and have policy implications. It is these areas upon which the Panel wishes to comment.

Before commencing our review of these Plan Definitions and Details it will be appropriate to define, for the purposes of what follows, several fundamental terms. These are as follows:

"Beneficiary" - the term "Beneficiary" will be used to describe the person with a disability for whom a Disability Savings Plan is established and who will become the recipient of the payments made under the plan.

"Plan Initiator" - the term "Plan Initiator" will be used to describe the person who establishes a plan for a Beneficiary whether or not that person also becomes a Contributor.

"Contributor" - the term "Contributor" will be used to describe a person who makes a contribution to a plan for a Beneficiary.

"Plan Sponsor" - the term "Plan Sponsor" means the Financial Institution or other group or organization acting as Trustee or Administrator of a Registered Disability Savings Plan.

---

<sup>26</sup> *Op. cit.*, note 21.

<sup>27</sup> *Op. cit.*, note 25.

## Plan Expectations

Another important preliminary issue that is of great importance in recommending Plan Definitions and Details is a determination of a reasonable expectation as to what could be achieved in a Disability Savings Plan. Certainly, the achievements of such a plan will vary considerably. However, for the purpose of recommending Plan Definitions and Details, the Panel examined a range of options for annual contributions and savings periods to determine what size of annuity could reasonably be expected to be achieved. Some estimates of Contribution Levels and Annuity Values are set forth in the following table:<sup>28</sup>

### Estimates of Contribution Levels and Annuity Values

Annual Contribution (\$)	500	1,000	2,000	5,000	7,500	20,000	5,000
Savings Period (years)	20	20	20	20	20	10	40
Cumulative Contributions (\$)	13,435	26,870	53,741	134,352	201,528	200,000	200,000
Assets (\$)	23,708	47,417	94,834	237,084	355,626	273,204	872,021
Age of Child at Annuity Commencement	35	35	35	35	35	35	55
Age of Parent at Annuity Commencement	65	65	65	65	65	65	85
Life Annuity Value (\$)	1,004	2,008	4,017	10,042	15,064	11,572	46,346
Life Annuity Value PV (\$)	676	1,352	2,703	6,758	10,137	9,493	20,990
20 Year Term Annuity Value (\$)	1,653	3,307	6,613	16,533	24,799	19,052	62,493
20 Year Term Annuity PV (\$)	1,113	2,225	4,450	11,126	16,689	15,629	28,302
Single Contribution (\$)	50,000	50,000	100,000	100,000	200,000	200,000	200,000
Holding Period (years)	0	20	0	20	0	20	40
Assets (\$)	50,000	148,679	100,000	297,357	200,000	594,714	1,768,425
Age of Child at Annuity Commencement	35	35	35	35	35	35	55
Age of Parent at Annuity Commencement	65	65	65	65	65	65	85
Life Annuity Value (\$)	2,118	6,298	4,236	12,595	8,472	25,191	93,987
Life Annuity Value PV (\$)		4,238		8,476		16,953	42,566
20 Year Term Annuity Value (\$)	3,487	10,368	6,973	20,736	13,947	41,472	126,733
20 Year Term Annuity PV (\$)		6,977		13,955		27,910	57,396

#### Assumptions:

1. Annual contributions made over the 20-year savings period are assumed to grow at 3% per year from their initial levels.
2. Annual rate of return is 5.6%.
3. Annuities indexed at 2%.
4. To obtain present value (PV) of annuity level at beginning of savings period, annuity level at end of savings period is discounted over a savings period at 2% per year.

<sup>28</sup> Chart prepared by officials of the Department of Finance, Ottawa and reformatted by the Panel.

The information in the table provides a series of most informative illustrations of what can be achieved in a Disability Savings Plan. For example, a family that is able to save \$2,000 per year (indexed at 3%) for 20 years, whether as a result of their own individual savings or whether as a result of their own individual savings and some combination of their own individual savings, Canada Disability Grants and Canada Disability Bonds, will have savings in a Disability Savings Plan of \$94,834 and will be able to provide for their child with a disability an additional income of \$4,017 per year from the time when the child turns 35 years of age through a normal life expectancy. Even a person who is only able to save \$500 per year (again indexed at 3%) over that same period, and again from a combination of sources, will be able to provide \$1,004 per year for life for their child with a disability, starting when the child turns 35. The figures in the table show that even modest amounts of savings can provide a real income over a very long period of time. This is because of the power of compound interest accruing free of tax over a lengthy period of time.

The numbers in the table take on a larger significance when viewed from the context of the information in the following table. This table, prepared by the National Council of Welfare, a citizens' advisory body to the Minister of Human Resources and Social Development using 2003 data, shows, among other things, the incomes provided to a Person with a Disability by each of the Provinces under its particular disability support plan, the Poverty Line<sup>29</sup> and the percentage that the particular disability support plan provides of the amount required to get to the Poverty Line as determined for the particular Province.<sup>30</sup> These percentages range from a low of 41% in New Brunswick to a high of 59% in Ontario. Even the most generous Province is providing a person with a disability just more than half of what is required to just get to the Poverty Line.

---

<sup>29</sup> The Panel uses the term "Poverty Line" with some trepidation. This is the term used by the National Council of Welfare, an advisory body to the Minister of Human Resources & Social Development and is the term used on the Charts and Tables prepared by them. The term is, however, a controversial one and one that is not supported by Statistics Canada. Statistics Canada prefers to use the term "Low Income Cut Off" to describe the statistical phenomenon of having an income within the lowest statistical category. The Panel has reluctantly used the term "Poverty Line" since it is the term that properly appears in the Table that is being presented. To use two different terms to describe the same thing would in the Panel's view create some confusion. The Panel does, however, wish to acknowledge the controversy over the use of the term "Poverty Line" and direct users of this report to an article written in September 1997 by Mr. Ivan Fellegi, then the Chief Statistician of Canada, which can be found at <http://www.statcan.ca/english/research/13F0027XIE/13F0027XIE1999001.htm>.

<sup>30</sup> National Council of Welfare, an advisory body to the Minister of Human Resources & Social Development, [www.ncwcnbes.net/htmldocument/reportWelfareIncomes2003/FactSheetWIPL\\_e.pdf#search=%22poverty%20line%22](http://www.ncwcnbes.net/htmldocument/reportWelfareIncomes2003/FactSheetWIPL_e.pdf#search=%22poverty%20line%22).

It is instructive to compare the statistics in the table that follows with those in the table immediately above. Looking again at the person who is able to make contributions of \$2,000 per year from all contribution sources, it can be seen that a person with a disability will have an income of \$4,017 from the Disability Savings Plan. In no Province would that additional income bring a person up to the Poverty Line. Using our examples of New Brunswick and Ontario it will be seen that in New Brunswick such a Disability Savings Plan would raise a person with a disability in New Brunswick to \$10,928 per year or 64.36% of the Poverty Line and would raise a person with a disability in Ontario to \$15,782 per year or 79.73% of the Poverty Line.

In proposing specific plan definitions and details the Panel has kept these statistics very firmly in mind. It will be obvious that what the Panel is proposing is no panacea for a person with a disability. However, in some Provinces a \$2,000 per year plan will almost double a person's annual income, an important contribution to be sure. However, even this important contribution is but a beginning.

### 2003 Welfare Incomes and the Estimated Poverty Line by Province and Household Type

	Total Income	Poverty Line	Total Welfare Income as % of Poverty Line
<b>NEWFOUNDLAND AND LABRADOR</b>			
Single Employable	\$7,395	\$16,979	44%
Disabled Person	\$8,928	\$16,979	53%
Single Parent, One Child	\$15,056	\$21,224	71%
Couple, Two Children	\$18,162	\$31,952	57%
<b>PRINCE EDWARD ISLAND</b>			
Single Employable	\$6,155	\$16,862	36%
Disabled Person	\$8,048	\$16,862	48%
Single Parent, One Child	\$13,330	\$21,077	63%
Couple, Two Children	\$19,991	\$31,731	63%
<b>NOVA SCOTIA</b>			
Single Employable	\$5,195	\$16,979	31%
Disabled Person	\$8,822	\$16,979	52%
Single Parent, One Child	\$12,515	\$21,224	59%
Couple, Two Children	\$18,134	\$31,952	57%
<b>NEW BRUNSWICK</b>			
Single Employable	\$3,383	\$16,979	20%
Disabled Person	\$6,911	\$16,979	41%
Single Parent, One Child	\$13,232	\$21,224	62%
Couple, Two Children	\$16,852	\$31,952	53%

**2003 Welfare Incomes and the Estimated Poverty Line  
by Province and Household Type** (continued)

	<b>Total Income</b>	<b>Poverty Line</b>	<b>Total Welfare Income as % of Poverty Line</b>
<b>QUEBEC</b>			
Single Employable	\$6,758	\$19,795	34%
Disabled Person	\$9,714	\$19,795	49%
Single Parent, One Child	\$14,071	\$24,745	57%
Couple, Two Children	\$18,063	\$37,253	48%
<b>ONTARIO</b>			
Single Employable	\$6,838	\$19,795	35%
Disabled Person	\$11,765	\$19,795	59%
Single Parent, One Child	\$13,917	\$24,745	56%
Couple, Two Children	\$18,471	\$37,253	50%
<b>MANITOBA</b>			
Single Employable	\$5,567	\$19,795	28%
Disabled Person	\$8,354	\$19,795	42%
Single Parent, One Child	\$12,946	\$24,745	52%
Couple, Two Children	\$18,907	\$37,253	51%
<b>SASKATCHEWAN</b>			
Single Employable	\$6,155	\$16,979	36%
Disabled Person	\$8,833	\$16,979	52%
Single Parent, One Child	\$12,433	\$21,224	59%
Couple, Two Children	\$18,492	\$31,952	58%
<b>ALBERTA</b>			
Single Employable	\$5,039	\$19,795	25%
Disabled Person	\$7,743	\$19,795	39%
Single Parent, One Child	\$11,897	\$24,745	48%
Couple, Two Children	\$18,638	\$37,253	50%
<b>BRITISH COLUMBIA</b>			
Single Employable	\$6,445	\$19,795	33%
Disabled Person	\$9,812	\$19,795	50%
Single Parent, One Child	\$13,673	\$24,745	55%
Couple, Two Children	\$18,086	\$37,253	49%

**How to Read This Table**

Column one shows the total welfare incomes of four different types of households in the largest city in the ten provinces in 2003. The three territories are not included in this table because they are specifically excluded from the survey used to generate the low income cut-offs which the National Council of Welfare uses as the poverty line.

Column two indicates the estimated 2003 poverty line (Statistics Canada's low income cut-offs, 1992 base) for the largest city in each province. The third column represents the total welfare income as a percentage of the poverty line, that is, total welfare income divided by the poverty line.

For example welfare incomes for single employable people remained by far the least adequate during 2003. The welfare income for this household type ranged from a low of 20 percent of the poverty line in New Brunswick to a high of 44 percent of the poverty line in Newfoundland and Labrador.



## Eligibility to Become a Beneficiary

In considering the issue of who should be eligible to become a beneficiary, the Panel considered a number of possible eligibility criteria. From these, two appeared to be appropriate for detailed consideration.

The first of these, of course, is the question of "disability". This is the primary test of eligibility and engages the questions of both an appropriate definition of disability and the administrative issues related to testing that definition in a way that will enhance participation in a Disability Savings Plan by both Beneficiaries and Plan Sponsors. In its deliberations and report the Technical Advisory Committee on Disability Tax Fairness that reported to the Ministers of Finance and National Revenue in December, 2004 also wrestled with this issue.<sup>31</sup>

The 2001 Participation and Activity Limitation Survey<sup>32</sup> estimated that approximately 12 percent of the Canadian population, approximately 3.6 million individual Canadians, experienced some limitations in their everyday activities because of physical, psychological or health conditions. The Panel would have preferred to be able to recommend that all of those identified as experiencing limitations in their everyday activities because of physical, psychological or health conditions be eligible for a Disability Savings Plan. However, the Panel considered that it would be difficult to construct a definition that was at once sufficiently broad to encompass all those for whom a Disability Savings Plan would be appropriate and also sufficiently narrow to ensure that no abuses would occur in establishing eligibility for such a Plan. Furthermore, the Panel was conscious of the need to document a disability in a way that ensured that a Plan Sponsor could easily and reliably ensure eligibility at the time a Disability Savings Plan was established.

In light of the need to be able to document eligibility to provide certainty of eligibility for Plan Sponsors, the Panel considered the definition of "disability" used for the purpose of the Disability Tax Credit.<sup>33</sup> The primary benefit of this definition is that persons applying to be eligible for the Disability Tax Credit apply to the Canada Revenue Agency to confirm their eligibility for the Disability Tax Credit by filing a certificate known as a Disability Tax Certificate.<sup>34</sup> For the last few years eligibility for the Disability Tax Credit has been confirmed in writing to the taxpayer by the Canada Revenue Agency. Although there will be many taxpayers whose qualification for the Disability Tax Credit was determined before written

---

<sup>31</sup> *Op. cit.*, note 3, pp. 15-17.

<sup>32</sup> *Op. cit.*, note 2.

<sup>33</sup> *Op. cit.*, note 3.

<sup>34</sup> A Disability Tax Certificate is applied for using Canada Revenue Agency Form T2201.

confirmations were provided and many who have received a written confirmation who have misplaced it, the Canada Revenue Agency does maintain a record of those who qualify for the Disability Tax Credit and it would, therefore, be possible for an individual to obtain a confirmatory letter to present to a Plan Sponsor.

The Act<sup>35</sup> currently defines eligibility for the Disability Tax Credit as follows:

**"118.3.** (1) Where

(a) an individual has one or more severe and prolonged impairments in physical or mental functions,

(a.1) the effects of the impairment or impairments are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted where the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a basic activity of daily living or are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that

(i) is essential to sustain a vital function of the individual,

(ii) is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week, and

(iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired,

(a.2) in the case of an impairment in physical or mental functions the effects of which are such that the individual's ability to perform a single basic activity of daily living is markedly restricted or would be so restricted but for therapy referred to in paragraph (a.1), a medical practitioner has certified in prescribed form that the impairment is a severe and prolonged impairment in physical or mental functions the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be

---

<sup>35</sup> *Op. cit.*, note 3.

markedly restricted, but for therapy referred to in paragraph (a.1), where the medical practitioner is a medical doctor or, in the case of

- (i) a sight impairment, an optometrist,
- (ii) a speech impairment, a speech-language pathologist,
- (iii) a hearing impairment, an audiologist,
- (iv) an impairment with respect to an individual's ability in feeding or dressing themselves, an occupational therapist,
- (v) an impairment with respect to an individual's ability in walking, an occupational therapist, or after February 22, 2005, a physiotherapist, and
- (vi) an impairment with respect to an individual's ability in mental functions necessary for everyday life, a psychologist,

(a.3) in the case of one or more impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted, a medical practitioner has certified in prescribed form that the impairment or impairments are severe and prolonged impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted and that the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a single basic activity of daily living, where the medical practitioner is, in the case of

- (i) an impairment with respect to the individual's ability in feeding or dressing themselves, or in walking, a medical doctor or an occupational therapist, and
- (ii) in the case of any other impairment, a medical doctor,

has certified in prescribed form that the impairment is a severe and prolonged mental or physical impairment the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy referred to in paragraph (a.1), "

Because producing confirmation of eligibility for the Disability Tax Credit to a Plan Sponsor would be a relatively simple exercise and would provide a simple and reliable way to determine eligibility for a Disability Savings Plan the Panel recommends that the definition of a person eligible to be a Beneficiary of a Disability Savings Plan be the same as that for qualifying for the Disability Tax Credit.

The second eligibility criterion that was considered by the Panel was "dependency". After careful consideration the Panel concluded that the concept of "dependency", if it was applicable at all, could only be defined and determined in relation to the Beneficiary and his or her income level. This was so because of the Panel's other conclusion (see below) that contributions to a Disability Savings Plan not be restricted to those made by a parent or caregiver, but could include a much broader group. Although it would be possible to test this concept of "dependency" for administrative purposes by having a Plan Initiator or other contributor exhibit the Beneficiary's last tax assessment, the Panel ultimately concluded that the issue of "dependency", so defined, did not correlate well with any policy in relation to a Disability Savings Plan and would not materially assist in regulating any form of avoidance. Furthermore, the Panel noted that no other *Income Tax Act* recognized savings plan, either current or past, had included any such restriction. Consequently, the Panel does not recommend that "dependency" be included in the eligibility criterion for a Disability Savings Plan.

Of course, in considering the issues of a Disability Savings Grant and a Canada Disability Bond (see below) different considerations will come into play. Means testing at some level is an essential aspect of the Panel's view that the benefit of public contribution to these parts of disability savings should be targeted to those most in need.

#### *Recommendation 4*

**That eligibility to become a Beneficiary of a Registered Disability Savings Plan be coincidental with eligibility for the Disability Tax Credit as defined in sub-section 118.3(1) of the Act and that there be no additional eligibility requirements.**

## Eligibility to Become a Plan Initiator

The Panel's recommendation as to who should qualify to be a Contributor to a Registered Disability Savings Plan engaged the question of whether any Contributor could also be the Plan Initiator. This becomes an issue because within the basic framework of the legislative requirements for registration of a Disability Savings Plan there will be room for plan variations just as there are for Registered Retirement Savings Plans, Registered Retirement Income Funds and Registered Education Savings Plans.

Unquestionably, the most important person in making the decision on a particular plan will be the Beneficiary himself or herself. Where the Beneficiary has capacity and is of an age to participate in such decisions, the Panel strongly believes that he or she should have considerable input into that decision; conversely, the more remote a Contributor is from the Beneficiary, the less input that Contributor should have in determining the form of the plan itself.

There will, of course, be many circumstances where the Beneficiary either lacks capacity or is not of an age to participate in the decision. As well, the person most closely connected with the Beneficiary, the parent or other caregiver to the Beneficiary, is the most likely to be the major Contributor to a Disability Savings Plan for the Beneficiary. Because the Panel is recommending that there be only one plan for any one Beneficiary, the Panel is of the view that the Plan Initiator be the Beneficiary himself or herself or the person's legal or *de facto* guardian. In determining who the legal or *de facto* guardian is the Panel recommends that the determination be made through a simple certification on the application to register a Disability Savings Plan.

### *Recommendation 5*

**That only a Beneficiary or his or her legal or *de facto* guardian be eligible to apply to register a Disability Savings Plan and that the determination as to whether an applicant is the legal or *de facto* guardian of a Beneficiary be made by a simple certification on an application to register a Disability Savings Plan.**

## Eligibility to Become a Contributor

It is not only family members who are acting as primary caregivers who worry about the future of a person with disabilities. Other family members, friends, neighbours and sometimes even strangers express concerns over the future wellbeing of those with disabilities. All of us are familiar with the trust fund solicitations that frequently go out after a particularly well publicized tragedy that has left some individual with an unexpected and disabling injury.

The Panel was unable to discern any policy reason within the confines of a tax-paid savings plan to in any way restrict the eligibility of persons to become Contributors to a Disability Savings Plan. Indeed, if the fundamental objective of such a plan is to create a pool of savings to ensure the future economic security of a person with disabilities, encouraging the broadest possible pool of contributors is a highly desirable end.

An open-ended criterion to become a Contributor raises a host of other issues in the context of a plan that grants a tax deduction for contributions. In the context, however, of a tax-paid savings plan, there appear to be only two minor issues.

The first of these is to ensure that the establishment of a plan and its plan variations is not dictated by a person or persons who is remote from the Beneficiary in the sense that the person is not the Beneficiary himself or herself or a primary caregiver who is keenly aware of the Beneficiary's needs. This issue is dealt with by our **Recommendation 5**, above, where we recommend that only a Beneficiary himself or herself or legal or *de facto* guardian be eligible to be a Plan Initiator.

The second issue is an administrative issue for the Plan Sponsor. With contributions coming from multiple sources a Plan Sponsor will necessarily have to monitor the lifetime Contribution Limit (see below) to which a Disability Savings Plan will be subject. The Panel does not regard this as a difficult administrative burden as Plan Sponsors will already be tracking contributions for the purposes of determining the amounts that will be taxable and tax-free on withdrawal.

### *Recommendation 6*

**That there be no restriction on who may become a Contributor to a Disability Savings Plan. Consequently, a Beneficiary himself or herself, other family members, friends and even strangers could become Contributors to any Disability Savings Plan.**

### **Contribution Limits**

While it can be argued that Contribution Limits are unnecessary for a Disability Savings Plan because the objective of such a plan is to accumulate as much as possible for the future income security of a person with disabilities, there are several reasons why this issue must be addressed. First, the affinitive programs under the Act do have Contribution Limits and the policy rationales behind those provisions must be explored to see whether they have any resonance in the case of Disability Savings Plans. Secondly, and perhaps inclusively, although a tax-paid savings plan does not result in the same revenue costs as a plan whose contributions are tax deductible, there remains a revenue cost to the deferral of tax on the investment income earned in a plan.

The Registered Retirement Savings Plan regime has an annual contribution limit but not a lifetime contribution limit. The annual contribution limit contributes to at least two policy objectives of the Registered Retirement Savings Plan program. It limits the amount of the deduction that can be taken, thereby limiting the revenue cost of the program overall. In addition it encourages regular and systematic saving for retirement.

Neither of these objectives is engaged by the proposed Disability Savings Plan. First, the proposed Disability Savings Plan is a tax-paid savings plan and, therefore, an annual contribution limit to restrict the revenue cost is not necessary. Secondly, although the Disability Savings Plan has a savings objective, a primary policy objective is to provide peace of mind to Contributors that a plan is in place to ensure the future income security of a Beneficiary. In that context having a plan funded as quickly as possible can best achieve that primary policy objective.

The Registered Education Savings Plan has both an annual contribution limit and a lifetime contribution limit. These limits appear to be complementary and to be directed to the objective of balancing the revenue cost of the deferral of tax on income earned so that those with the means to do so do not maximize the deferral benefit to them while Canadians of more modest means receive smaller benefits.

The arguments that favour annual and lifetime contribution limits in the case of Registered Education Savings Plans apply also to the proposed Disability Savings Plan. However, in the view of the Panel the objective of providing peace of mind to Contributors earlier rather than later argues in favour of a more generous annual contribution limit than is the case with an Education Savings Plan.

The Panel has approached the task of setting annual and lifetime contribution limits from a statistical point of view. The Panel is of the view that once a lifetime contribution limit has been defined, the task of defining an annual contribution limit becomes one of balancing the objective of restraining excessive tax deferrals by those with means and the objective of providing peace of mind to Contributors by permitting early funding of a Disability Savings Plan.

While considering the issue of Lifetime Contribution Limits it will be useful to have reference to the table on page 25, Estimates of Contribution Levels and Annuity Values. Each of the columns is of assistance in formulating a response to the question of an appropriate level of lifetime contributions. However, it is particularly instructive to have reference to the Columns showing Annual Contributions of \$5,000 and \$7,500 and the Column showing a Single Contribution of \$200,000 with no Holding Period. In the case of the \$5,000 annual contribution made for 20 years the Cumulative Contributions are \$134,352 and the Assets become \$237,084. The Life Annuity Value on the assumptions used is \$10,042. In the case of the \$7,500 annual contribution made for 20 years the Cumulative Contributions are \$201,528, the Assets become \$355,626 and the Life Annuity Value is \$15,064. In the case of the \$200,000 Single Contribution with no Holding Period (certainly a potential scenario for a family who are unable to save in ordinary times, but may be able to make a large single contribution when, for example, a family home is sold) the Assets are, of course, \$200,000 which produces a life annuity of \$8,472.

When these life annuity values are correlated with the statistics found in the table at pages 27 and 28, **2003 Welfare Incomes and the Estimated Poverty Line** the cumulative results are far from excessive. To set the lifetime Contribution Level to \$200,000 would, in the Panel's opinion, be a most reasonable level that could not be criticized for providing excessive benefits by way of income deferral.



The Panel's opinion is that of the two competing objectives informing the question of establishing an annual limit the objective of providing peace of mind to Contributors weighs much more heavily than that of restricting revenue loss by way of income deferral. Consequently, the Panel is of the view that no limit on annual contributions is a very supportable approach. Even taking into account the legitimate concerns with respect to excessive tax deferral, the Panel believes that having no annual contribution limit balances both objectives appropriately and should not be a source of criticism.

Of course in order to administratively monitor the lifetime Contribution Limit it will be necessary to ensure that there is only one Disability Savings Plan opened for any one Canadian with a disability.

#### *Recommendation 7*

**That the following rules relating to plan administration and Contribution Levels be adopted:**

- (a) Only one Disability Savings Plan may be established for any individual;**
- (b) The maximum contributions that may be made to a Disability Savings Plan by all Contributors to the Plan during the lifetime of the Beneficiary be limited to \$200,000; and**
- (c) There be no Annual Contribution Limit to a Disability Savings Plan.**

## Withdrawal Parameters

In the context of what follows the concept of Withdrawal is used to refer to regular payments from a Disability Savings Plan to its Beneficiary. These are referred to hereafter as "Disability Savings Payments". Special circumstances that would give rise to a lump sum withdrawal from a Plan are discussed in the next section entitled Refund of Contributions.

The issue of Withdrawals raises six fundamental issues. These are:

- (a) When can or must Disability Savings Payments commence?
- (b) Should there be a limitation on annual Disability Savings Payments or a requirement that Disability Savings Payments be in a minimum amount?
- (c) If a limitation is to be made on annual Disability Savings Payments, should additional withdrawals be permitted for special purposes?
- (d) When a decision is made to commence Disability Savings Payments, should it be a requirement that the amounts then in the Plan be invested in an annuity contract?
- (e) What should be the tax treatment of Disability Savings Payments?
- (f) At what point in the withdrawal process should the Contributions be withdrawn?

The question raised in point (a) is really two questions. The first of these is whether there should be a minimum hold period after a Disability Savings Plan has been established before Disability Savings Payments can begin. The second is whether there is a point in time when Disability Savings Payments must commence.

With respect to the question of whether there should be a minimum hold period after a Disability Savings Plan has been established before Disability Savings Payments can begin the Panel was unable to find any policy basis for requiring any minimum hold period. Indeed, the Panel was able to envisage circumstances where a very short or no hold period would be appropriate. An example would be a Disability Savings Plan that was wholly or substantially funded by a testamentary gift in circumstances where the immediate commencement of Disability Savings Payments would be of real importance

to a Beneficiary. The disadvantage of a very short hold period to a Beneficiary and a Contributor would be that the contributions would not have had an opportunity to earn tax deferred income. This disadvantage to the Beneficiary and the Contributors will, of course, be an advantage to the Federal and Provincial Treasuries. Different considerations will apply to any portion of the Disability Savings Plan that arose from a Disability Savings Grant or a Canada Disability Bond. Those issues will be discussed below.

The question of whether there should be a requirement that Disability Savings Payments commence on or before a particular point in time raises somewhat different concerns. On the one hand it may be argued that the primary purpose of a Disability Savings Plan is to accumulate savings to generate Disability Savings Payments when assistance is most necessary. That point in time cannot be accurately determined in very many cases and argues in favour of a position that there be no requirement that Disability Savings Payments commence on or before a particular point in time. On the other hand there is the legitimate concern that the tax deferral benefit of a Disability Savings Plan not be abused by permitting a multi-generational transfer of tax deferred income. This could occur, for example, if a Beneficiary who survives to a normal life expectancy were to forego receiving Disability Savings Payments and provide under his or her Will or as a consequence of Intestacy legislation that his or her children or nephews and nieces receive the Refund of Contributions that would arise on his or her death. The Panel was most concerned that it err on the side of Beneficiaries in balancing these two competing objectives. Two points in time suggest themselves as times when it would be appropriate to require that Disability Savings Payments commence under a Disability Savings Plan. These times are the death of the primary caregiver (or in the usual case where parents or other persons are providing primary physical care jointly, upon the death of the survivor) and the time when a Beneficiary attains a particular age. The Panel has concluded that, although the time of death of the primary caregiver would be a usual time for a Beneficiary to begin to receive Disability Savings Payments, there is no compelling policy reason to require Disability Savings Payments to commence at that time. The attainment of a particular age appears to be a more rational time to require the commencement of Disability Savings Payments. In selecting an age the Panel weighed the competing policy objectives of a requirement to commence payments at some time to avoid multi-generational tax deferral against a Beneficiary's wish not to begin to receive payments too early to permit the savings to grow. In the result the Panel concluded that it would be reasonable to require that Disability Savings Payments commence no later than the beginning of the year in which a Beneficiary attains the age of 60.

The question of whether there should be a limitation on annual Disability Savings Payments or a requirement that Disability Savings Payments be in a minimum amount once again engages competing policy considerations. Many advocates for Canadians with disabilities will argue that for those Beneficiaries who are *sui juris* and competent to manage their affairs it is appropriate that the Beneficiary choose the timing and amount of Disability Savings Payments. Some of those same advocates would go further and argue that in the case of minors and those not competent to manage their own affairs the person or agency who is the legal guardian of that Beneficiary should likewise have the ability to choose the timing and amount of Disability Savings Payments to be received by the Beneficiary. However, a large number of Plan Initiators and Contributors will argue that the Disability Savings Plan has been established to ensure that the Beneficiary is financially secure throughout his or her lifetime and that permitting the Beneficiary or Guardian unlimited access to the Disability Savings Plan might result in the Plan being exhausted long before the Beneficiary's lifetime needs had been fulfilled. The Panel has concluded that both of these concerns can be generally accommodated in a Disability Savings Plan. However, a default position needs to be established from which variations can be accommodated. The Panel is concerned that a default position favouring withdrawals at any time of any size by a Beneficiary might discourage Plan Initiators and Contributors from setting up a Disability Savings Plan. Therefore, the Panel is recommending that the default position be that the maximum annual Disability Savings Payment be the amount determined by the formula

$$\frac{A}{B - C}$$

where

A is the fair market value of all of the property held in the Registered Disability Savings Plan at the beginning of the year,

B is life expectancy of the Beneficiary plus 3, with life expectancy being as defined below, and

C is the number that is, or would be, the age in whole years of the Beneficiary at the beginning of the year.

For the purposes of determining life expectancy for B, life expectancy is Life Expectancy at birth for the year of the Beneficiary's birth, for the Beneficiary's sex, for the province of birth of the Beneficiary as prescribed by Regulations. These life expectancies will have to be defined by Regulation because, although they are compiled by Statistics Canada, there are a number of tables that are prepared with differing information that could be confused.

Insofar as Life Expectancy is concerned, there should also be a provision permitting a Beneficiary to provide evidence of a shortened life expectancy that could be substituted for the value prescribed by Regulation.

In order to provide additional flexibility there should be a provision to permit a Disability Savings Plan to include or no provision to restrict a Disability Savings Plan from including a provision or provisions permitting an encroachment on the capital of the Disability Savings Plan either in an unrestricted or restricted annual amount and for specific or general purposes. This would permit the flexibility that Beneficiaries would so much desire while at the same time permitting the Plan Initiator to make the decision as to the purposes for which the Plan is being established.

In the context of Registered Retirement Savings Plans and Registered Retirement Income Funds the regime under the Act provides, essentially, that once the savings period ends and a retiree begins to receive funds the RRSP becomes a RRIF. The Registered Education Savings Plan has no such double regime. The Panel does not consider that any such double regime is appropriate in the context of a Registered Disability Savings Plan.

However, it may be argued that at the time Disability Savings Payments begin, the capital and accumulated income of a Disability Savings Plan should be capitalized in an annuity to safeguard the payment stream and to ensure that the savings last for the lifetime of the Beneficiary. No such requirement exists in the context of the RRSP/RRIF regime or in the RESP regime and the Panel recommends that no such provision be made a part of the Registered Disability Savings Plan regime.

The Panel is of the view that there is no policy reason why the taxation regime for Disability Savings Payments should differ from that of RESPs. As a result the Panel recommends that the contributions made by Contributors should be received by the Beneficiary without further taxation and that the income earned in the Registered Disability Savings Plan and the amounts representing Disability Savings Grants and Canada Disability Bonds be taxed in the hands of the Beneficiary when received by him or her as Disability Savings Payments.

In a RESP the contributions made may be withdrawn first and the taxable portion of Education Assistance Payments may be withdrawn after all of the tax-free contributions have been withdrawn. Because Education Assistance Payments are designed to be used over a short period of time, the order of withdrawal is not a significant issue. In the context of a plan that may be providing funds over a much longer period and where the amounts are much larger, this question becomes a very real one. The Panel is of the view that the contributions should be withdrawn as part of each Disability Savings Payment on a proportionate basis. This provides a more rational approach and does not encourage inappropriate tax deferral.

***Recommendation 8***

**That the following rules relating to Disability Savings Payments be adopted:**

- (a) There be no minimum period during which a Registered Disability Savings Plan be in existence before a Beneficiary begins to receive Disability Savings Payments;**
- (b) Disability Savings Payments under a Registered Disability Savings Plan be required to commence no later than January 31 of the year in which the Beneficiary is expected to attain the age of 60 years;**
- (c) There be provisions providing that:**
  - (i) the maximum annual Disability Savings Payment be the amount determined by the formula**

$$\frac{A}{B - C}$$

**Where**

**A is the fair market value of all of the property held in the Registered Disability Savings Plan at the beginning of the year,**

**B is life expectancy of the Beneficiary plus 3 with life expectancy being as defined below, and**

C is the number that is, or would be, the age in whole years of the Beneficiary at the beginning of the year.

For the purposes of determining life expectancy for B, life expectancy is Life Expectancy at birth for the year of the Beneficiary's birth, for the Beneficiary's sex, for the province of birth of the Beneficiary as prescribed by Regulations;

- (ii) a Beneficiary be permitted to provide evidence of a shortened life expectancy and that upon the provision of such evidence the Beneficiary be permitted to substitute that value for the value otherwise determined as the life expectancy of the Beneficiary;
  - (iii) it be permitted or at least not prohibited that a Plan Initiator provide as part of a Disability Savings Plan that a Beneficiary or the Beneficiary's Guardian be permitted to make encroachments from the capital and accumulated income of a Registered Disability Savings Plan in addition to Disability Savings Payments in such amounts and for such purposes as a Disability Savings Plan may provide; and
  - (iv) a Plan Initiator be permitted to amend a Registered Disability Savings Plan from time to time.
- (d) There be no requirement that the property of a Registered Disability Savings Plan be invested in an annuity contract at the time that Disability Savings Payments commence or at any other time;
- (e) The contributions made by Contributors not be included in income when received by the Beneficiary as part of a Disability Savings Payment, but that amounts in respect of accumulated income, Disability Savings Grants and Canada Disability Bonds be included in the income of a Beneficiary when Disability Savings Payments are made to the Beneficiary; and
- (f) Each payment of a Disability Savings Payment include a proportionate amount of non-taxable amounts and taxable amounts.

## Refund of Contributions

In the previous section the procedures for and the consequences of withdrawals from a Disability Savings Plan for its intended use in providing support to the Beneficiary were discussed. In this section issues relating to other types of withdrawals are reviewed. These include the issue of whether a Contributor can withdraw the whole or any part of his or her contributions should he or she wish to do so, the issue of what happens to the balance in a Disability Savings Plan in the event of the death of the Beneficiary before the entire Plan has been exhausted and what happens in the circumstance when, *miraculum miraculorum*, a disability ceases.

In the case of a RESP or a RRSP the contributor is not prohibited from withdrawing the contributions that he or she has made to the plan.<sup>36</sup>

In the case of a Disability Savings Plan a cogent argument can be made that a contributor be permitted or not prohibited from withdrawing his or her contributions to a plan. To permit such a withdrawal would encourage a Contributor to make contributions in circumstances where the Contributor anticipates that he or she will be able to make the payment but has concerns as to his or her future financial wellbeing.

However, in light of the Panel's recommendations that there be only one Disability Savings Plan for a particular beneficiary and that multiple Contributors be permitted, permitting a withdrawal of contributions would add some complexity to a Plan. Subsequent contributions may have been made based upon the fact that earlier contributions had been made. A Beneficiary may have made plans based upon the likely amounts to become available to him or her as future Disability Savings Payments.

It might be argued that these impediments to permitting a withdrawal of contributions do not apply where there is, in fact, only one Contributor. However, to permit a withdrawal in this circumstance and not others could result in a Plan Initiator or initial Contributor discouraging other contributions to the plan in order that his or her options are kept open to initiate a contribution withdrawal.

---

<sup>36</sup> In the case of RESPs see paragraph 146.1(2)(e) of the Act; in the case of RRSPs see paragraph 146(2)(a).



In the result the Panel has concluded that it would be better to prohibit a withdrawal of contributions by a Contributor. Although this may discourage some Contributors from making a contribution, the Panel regards the other potential consequences as more problematic.

What should happen to contributions to a Registered Disability Plan when a beneficiary dies before the whole of the fund has been exhausted? It will be the hope of most Plan Initiators and Contributors that the fund last throughout the lifetime of the Beneficiary. That will mean that a surplus should be left in most plans at the time of a Beneficiary's death. The provision that Disability Savings Payments be calculated using life expectancy plus 3 years is intended to facilitate this expectation.

There are a number of possible answers to the question posed above. One answer would be to return the contributions made by each Contributor to that Contributor, tax the accumulated income to the Beneficiary in his year of death and refund any Disability Savings Grants and Canada Disability Bond payments to the Crown. Such a response seems imminently reasonable where the death occurs in close temporal proximity to a Contribution having been made. It seems less reasonable where there is a significant temporal difference between the making of the Contribution and the death of the Beneficiary, particularly if the death occurs well into the period during which Disability Savings Payments are being received by the Beneficiary.

Rather than attempt to split hairs in assigning a temporal distinction in some arbitrary fashion to the two situations, the Panel has taken solace in another of the fundamental objectives of the proposed Disability Savings Plan, namely, providing a modicum of dignity and independence to Beneficiaries themselves. Having regard to this Objective the Panel has concluded that the more appropriate solution is to have the contributions pass to the Estate of the deceased Beneficiary and to tax the accumulated income to the Beneficiary in his or her year of death tax return. If Disability Savings Payments had commenced at the time of death of the Beneficiary, then any amounts in the Disability Savings Plan representing Disability Savings Grants or Canada Disability Bonds would also be taxed in the year of death tax return of the Beneficiary and would pass to his or her Estate. If Disability Savings Payments had not yet commenced, then for the purposes of recovering Disability Savings Grants and Canada Disability Bonds, the death of the Beneficiary would be treated as though it had been the commencement of Disability Savings Payments.

The cessation of a disability is not an event that occurs with any frequency. However, it does happen and with medical advances, it is hoped that it will become a more frequent occurrence. Although such an event is the very antithesis of death, the Panel is of the view that a Refund of Contributions should occur upon such a happening and that the Refund of Contributions should be treated in the same way as a Refund of Contributions on the death of a Beneficiary.

***Recommendation 9***

**That specific rules relating to Refunds of Contributions be included in the Registered Disability Plan provisions, including the following:**

- (a) No refund of contributions be permitted to a Contributor;**
- (b) On the death of a Beneficiary the proceeds of a Disability Savings Plan pass to the Estate of the Beneficiary;**
- (c) On the death of a Beneficiary the accumulated income of a Disability Savings Plan and the amounts of any Disability Savings Grants and Canada Disability Bonds that are not repayable to the Crown be taxed to the Beneficiary as income earned in the year of death;**
- (d) On the death of a Beneficiary, for the purposes of determining whether amounts are repayable to the Crown in respect of Disability Savings Grants and Canada Disability Bonds, the death of the Beneficiary be deemed to be the time when Disability Savings Payments commenced; and**
- (e) In the event of a cessation of a disability, that event give rise to a Refund of Contributions and that the same rules apply to such an event as apply upon the death of a Beneficiary.**

## Plan Transfers

Other savings plans under the Act permit certain tax-free transfers between plans. For example, RESPs can be transferred to another RESP.<sup>37</sup> RRSPs and RRIFs can be transferred to a spouse in certain circumstances or to a registered pension plan.<sup>38</sup>

It would be inappropriate to consider transfers between plans that have essentially different architectures. Therefore, no transfers should be permitted between Registered Disability Savings Plans and RRSPs, RRIFs or Registered Pension Plans.

Different considerations apply, however, in respect of savings plans that have similar architectures. There may be cases where a disability becomes apparent after a RESP has been established for a Beneficiary. The Panel recommends that in such a case the RESP should be transferable on a tax-free basis to a Registered Disability Savings Plan.

There may also be cases where a Registered Disability Savings Plan has been established and a Beneficiary is or becomes able to enrol in a program of post-secondary education. In such cases the Panel recommends that all or a portion of a Registered Disability Savings Plan be transferable on a tax-free basis to a RESP, up to the total lifetime limit for contributions to a RESP.

### *Recommendation 10*

**That tax-free rollovers be permitted in the following cases:**

- (a) From a RESP to a Registered Disability Savings Plan at the time when a RESP becomes revocable; and**
- (b) From a Registered Disability Savings Plan to a RESP for the Beneficiary in an amount up to the total lifetime limit for contributions to a RESP.**

---

<sup>37</sup> Act, subsection 146.1(6.1).

<sup>38</sup> Act, subsection 146(16) and Act, subsections 146.3(14) and 146.3(14.1).

## Qualified Investments

The Panel has reviewed the "qualified investment" definition used for the purposes of RESPs.<sup>39</sup> This review has led the Panel to recommend that a similar definition be used for a Registered Disability Savings Plan.

### *Recommendation 11*

**That the definition of "qualified investment" found in subsection 146.1(1) of the Act be used for the purposes of the Registered Disability Savings Plan.**

## Tax Avoidance Issues

After formulating its recommendations set out above, the Panel examined the Plan Definitions and Details contained in its recommendations and tested them against three basic tax avoidance considerations. The purpose of this testing was to determine whether special tax avoidance rules would be required as part of a Registered Disability Savings Plan. The tax avoidance policy considerations against which the proposed Registered Disability Savings Plan were tested are the following:

- (a) the policy underlying the Registered Disability Savings Plan is to provide access to a tax supported savings vehicle and not to provide an opportunity for inappropriate tax splitting;
- (b) the policy underlying the Registered Disability Savings Plan is to provide access to a tax supported savings vehicle and not to provide an opportunity for inter-generational tax deferral; and
- (c) the policy underlying the Registered Disability Savings Plan is to provide access to a tax supported savings vehicle and not to provide an opportunity for tax averaging.

---

<sup>39</sup> Act, subsection 146.1(1) "qualified investment".

As a result of this exercise the Panel concluded that no specific tax avoidance measures needed to be introduced into the Registered Disability Savings Plan legislation. The issues had been taken into account in the design of the **Plan Definitions and Details**.

### *Recommendation 12*

**That no specific anti-avoidance provisions be inserted into the Act to counter inappropriate tax splitting, intergenerational tax deferral or tax averaging.**

### **Disability Savings Grant and Canada Disability Bond**

The Panel regards a Disability Savings Grant program and a Canada Disability Bond program as absolutely integral to the overall Disabilities Savings Plan regime. This is because, as detailed above in the **Introduction**, so many of the families for whom a Disability Savings Plan would be important are low and modest-income earners with little capacity to save. Furthermore, as also pointed out in the **Introduction**, the RESP program did not have a significant participation rate until the Canada Education Savings Grants and the Canada Learning Bond were introduced.

The Canada Education Savings Grant provides a grant of 20% of the annual amount contributed to a RESP for the first \$2,000 per annum of contributions. There is also a cumulative limit on the Canada Education Savings Grant of \$7,200 per beneficiary.

The Canada Learning Bond was designed to kick-start education savings for children in low-income families by providing a Grant to a Canada Education Savings Plan that is not contingent on parental savings. The Canada Learning Bond is provided in 16 instalments to children in families eligible for the National Child Benefit supplement that is part of the Canada Child Tax Benefit. Families that are eligible are those with incomes of less than \$36,378. The maximum Canada Learning Bond is \$2,000 per child.

Notwithstanding the apparent generosity of these grant programs in the context of the RESP program, it appears that the Canada Learning Bond has not, at least to date, become a useful tool in encouraging post-secondary education participation or savings for low income families. It would be unfair to reach firm conclusions on a program that has been in existence for only a few short years. However, although no official statistics are available on the participation rate for the Canada Learning Bond program, informal inquiries of a number of financial institutions

that offer Educational Savings Plans suggest that the participation percentage among those who would qualify for the Canada Learning Bond is currently in the single digits and perhaps in the low single digits.

Three reasons for the low level of participation in the Canada Learning Bond suggest themselves. The first is that there has not been sufficient promotion of the program to bring it to the attention of those who would benefit from the grant. The second is that the program is just too new to have come to the attention of the target participants. The third is that the amount of the Canada Learning Bond is too small to induce low-income families to participate.

Looking at what promotional initiatives have been taken with respect to the Canada Education Savings Grant and the Canada Learning Bond, one finds that much has been done to bring these programs to the attention of qualifying families. General information on the enhanced Canada Education Savings Grant and the Canada Learning Bond was included with the Canada Child Tax Benefit notice that was sent to 3.7 million families in each of July, 2005 and July, 2006, over 750,000 brochures describing the Canada Education Savings Grant and the Canada Learning Bond were distributed to individuals and financial institutions and a notice of entitlement was sent to over 281,000 families eligible for the Canada Learning Bond in June 2006. Although this latter initiative did result in a significant increase in Canada Learning Bond applications, it seems clear that the program is still not reaching its intended clientele.

While continued promotion may raise the participation rate of the Canada Learning Bond, and although no formal survey has been taken to determine the reasons why the program has not yet been successful, the Panel believes that it is reasonable to assume that one reason is that the program is not sufficiently generous to induce low-income families to participate in the program. Consequently, the Panel looked to ways to make the proposed disability savings program more relevant.

The Panel's view of the Canada Learning Bond program is not a negative one. Indeed, by modelling the recommended Canada Disability Bond on this program the Panel is strongly endorsing its design. The Panel is, however, concerned that the Canada Learning Bond program is not reaching its intended participants in large numbers, at least at this early stage in its existence.

The Panel did not want to recommend a structure that might not achieve its intended result. As a result the Panel reviewed other programs to see whether an enhanced grant structure was likely to make a grant program more successful. The learn\$ave demonstration project provided useful data.

The learn\$ave program is a national demonstration project funded by Human Resources and Skills Development Canada and launched in June, 2001 that provides grants to individuals who save for learning purposes. The allowable uses for the matched funds are training, education and small business start-up. In order to participate in the learn\$ave program income levels and household size were used to qualify individuals for participation. The income levels varied by geographical area. For example in Toronto a single person could not have income exceeding \$22,045 and a person with a household size of 5 could not have income exceeding \$46,375.

Each dollar saved by a participant in the learn\$ave program is matched by 3 dollars from the program. The program has only been operational since January, 2004 (about the same length of time that the Canada Learning Bond program has been in existence) and already the participants have saved over \$3.7 million and leveraged over \$10 million in matched contributions. The program is, as has been stated above, only a demonstration project and a final evaluation of its effectiveness will not be made for several more years. Nevertheless, the results to date appear impressive.

These results have confirmed to the Panel that people with low incomes can save when proper incentives are in place and when the level of support is sufficient to permit savings to grow to a reasonable amount to accomplish the objectives of the program. The recommendations below are based on this preliminary success. Clearly, however, a Disability Savings Grant and Canada Disability Bond program should be carefully evaluated and re-evaluated against further results of both the Canada Learning Bond program and the Learn\$ave demonstration project.

In selecting income ranges for the purposes of a Disability Savings Grant and the Canada Disability Bond the Panel has used the 2006 ranges for income tax brackets found in the Act.<sup>40</sup> As tax bracket changes occur the Panel recommends that the income ranges for the purposes of the Disability Savings Grant and the Canada Disability Bond are correspondingly changed.

Because qualification for a Disability Savings Grant or a Canada Disability Bond will be means tested, the question arises as to whose income is to be the subject of the test. A number of possibilities presented themselves, including using a dependency test to determine when a

---

<sup>40</sup> Act, subsection 117(2).

person with a disability should have his or her income tested and when one would test the income of a primary caregiver. After consideration, the Panel believes that the fairest methodology is to test the family income of the primary caregiver or caregivers during the minority of the person with a disability and to test the family income of the person with a disability after a person becomes an adult.

In recommending grant amounts the Panel was cognizant of the need to provide a level of grant that would provide a real incentive for families and persons with disabilities to save for future income amounts for a Beneficiary. The Panel was also cognizant of the need for the grant incentives when combined with reasonable savings to produce a reasonable future income stream. In that connection the Panel again used the table on page 25, **Estimates of Contribution Levels and Annuity Values** to assist in establishing amounts. The Panel recommends that the following Disability Savings Grants be established:

**Family taxable income equal to or less than \$72,756**

- \$3 for every \$1 contributed to a Disability Savings Plan by any Contributor on contributions up to \$500 in any year
- \$2 for every \$1 contributed for the next \$1,000 in any year

**Family taxable income over \$72,756**

- \$1 for every \$1 contributed for the first \$1,000 in any year

Grants would be payable at the above rates during the first 20 years after the registration of a Disability Savings Plan.

The purpose of a Disability Savings Plan is to encourage savings. Its purpose is not to provide grants that are not a part of a long-term savings objective. Consequently, the Panel is of the view that Disability Savings Grants that are made close to the time when Disability Savings Payments commence or close to the time when there is a Refund of Contributions, as described above, should be repaid to the government. The Panel is recommending that all Disability Savings Grants made during the 10 years preceding an event that gives rise to a possible repayment obligation be repayable.



As a corollary to this recommendation the Panel notes that since the latest time when Disability Savings Payments can commence is the beginning of the year in which a Beneficiary is expected to attain the age of 60 years, any Disability Savings Grant made after the year in which the Beneficiary is 49 would necessarily become repayable. Only administrative inconvenience would result from allowing Disability Savings Grants after that time. Consequently, the Panel is recommending that no Disability Savings Grants be paid in years after the Beneficiary attains the age of 49 years.

It is not only the amount of the Disability Savings Grants themselves that need to be taken into account. The untaxed income that has been earned on the repayable Disability Savings Grants should also be repaid to the government. Rather than an arbitrary charge or tax to determine the amount of this repayment, the Panel favours a system whereby the average returns in a Disability Savings Plan for the year to which a Disability Savings Grant that is being repaid formed part of the Disability Savings Plan is applied to the amount of the Disability Savings Grant and made repayable. It may be that the administrative systems used by Plan Sponsors will not easily accommodate such a calculation. If that is the case, then the Panel would favour a system that mirrors that in place for the Canada Education Assistance Grants.

### *Recommendation 13*

**That the Disability Savings Grants described in Recommendation 2 have the following particular characteristics:**

**(a) Disability Savings Grants be made at the following rates during the first 20 years of a Disability Savings Plan's existence:**

**Family taxable income equal to or less than \$72,756**

- \$3 for every \$1 contributed to a Disability Savings Plan by any Contributor on contributions up to \$500 in any year
- \$2 for every \$1 contributed for the next \$1,000 in any year

**Family taxable income over \$72,756**

- \$1 for every \$1 contributed for the first \$1,000 in any year;

**(b) In testing for income levels regard be had to family taxable income and that the income level tested be that of the primary caregiver or caregivers while a person with a disability is under the age of 18 years and that the income level tested be that of the person with a disability from the time when he or she attains the age of 18 years;**

- (c) The income ranges used to qualify for Disability Savings Grants be changed to correspond with changes in the income tax brackets established for the purposes of the Act;
- (d) All Disability Savings Grants made to a Registered Disability Savings Plan during the 10 years immediately preceding the commencement of Disability Savings Payments or the time when a Refund of Contributions is required be repaid to Her Majesty in Right of Canada;
- (e) No Disability Savings Grants be paid in respect of a Beneficiary in years after the year in which the Beneficiary attains the age of 49 years; and
- (f) Income earned on Disability Savings Grants that become repayable to Her Majesty in Right of Canada be repayable by determining the amount of such income by applying the rate of return earned in a Registered Disability Savings Plan to the amounts being repaid in respect of that year provided that the administrative systems of Plan Sponsors can readily accommodate such a calculation, failing which an amount in respect of the income should become repayable in the same way as under the Canada Education Assistance Grant program.

In its **Recommendation 3** the Panel has recommended the establishment of a Canada Disability Bond broadly modeled upon the Canada Learning Bond. Many of the aspects of the Canada Disability Bond will be similar to those of the Disability Savings Grants and no additional discussion will be made here on those aspects.

As indicated above in the **Introduction**, the purpose of a Canada Disability Bond is to provide a savings vehicle for those lowest income earners for whom saving for the future will be difficult or impossible. Canadians with disabilities who themselves and whose families fall into this category are, in the view of the Panel, also deserving of some hope for a brighter future. It is in this context that the Canada Disability Bond is recommended.

The participation rate in the Canada Learning Bond program, upon which the Canada Disability Bond is modeled, has not reached a level that the Panel believes would be a useful goal for a Canada Disability Bond program. The Panel believes that the admittedly early results of the Learn\$ave program suggest that a significantly higher grant and Bond amount could make a significant difference in the participation rate. The Panel has again had reference to the table on page 25, **Estimates of Contribution Levels and Annuity Values** to assist in establishing amounts as a basis for the Canada Disability Bond. The amounts to be recommended will produce a modest annuity for a person who would otherwise remain in abject poverty throughout his or her lifetime.

For the purposes of the Canada Disability Bond the Panel had reference to the column where the annual Contribution was \$2,000 for 20 years. This produces a life annuity of \$4,017 on the assumptions used. As was seen above, in no province or territory would a payment of this magnitude raise a person on social assistance to more than 80% of the Poverty Line. The Panel regards this level as an appropriate and reasonable level for a Canada Disability Bond.

However, the Panel recognizes that at this level the Canada Disability Bond might be regarded as a too expensive component of a disability savings program. Looking again at the **Estimates of Contribution Levels and Annuity Values** table one sees at the \$1,000 annual contribution level for 20 years a life annuity commencing at age 35 of \$2,008. This is a modest enough addition to income but would still provide some meaningful assistance to those of the most modest incomes.

The Panel is of the view that at the \$1,000 level the participation rate of the Canada Disability Bond would be substantially reduced. While the Panel believes that a \$2,000 Canada Disability Bond would be more appropriate, cost considerations make a \$1,000 Canada Disability Bond more reasonable at this point in time.

Choosing an income cut-off for the Canada Disability Bond is not an easy task. The Panel reviewed a number of possible criteria and finally determined that an appropriate cut-off level would be income of less than \$20,881. This is the average total income of Disability Tax Credit self-claimants in 2001 as contained in the Report of the Technical Advisory Committee on Tax Measures for Persons with Disabilities as reproduced at page 61 below.

The purpose of a Disability Savings Plan is to encourage savings. Its purpose is not to provide grants that are not a part of a long-term savings objective. Consequently, the Panel is of the view that Canada Disability Bonds that are made close to the time when Disability Savings

Payments commence or close to the time when there is a Refund of Contributions, as described above, should be repaid to the government. The Panel is recommending that all Canada Disability Bonds made during the 10 years preceding an event that gives rise to a possible repayment obligation be repayable.

As a corollary to this recommendation the Panel notes that since the latest time when Disability Savings Payments can commence is the beginning of the year in which a Beneficiary is expected to attain the age of 60 years, any Canada Disability Bonds paid after the year in which the Beneficiary is 49 would necessarily become repayable. Only administrative inconvenience would result from allowing Canada Disability Bonds to be paid after that time. Consequently, the Panel is recommending that no Canada Disability Bonds be paid in years after the Beneficiary attains the age of 49 years.

#### *Recommendation 14*

- (a) That the Disability Savings Bond described in Recommendation 3 be in the amount of at least \$1,000 per annum for the first 20 years of the registration of a Disability Savings Plan and be limited to family incomes under \$20,881;
- (b) That in testing for income levels regard be had to family taxable income and that the income level tested be that of the primary caregiver or caregivers while a person with disabilities is under the age of 18 years and that the income level tested be that of the person with a disability from the time when he or she attains the age of 18 years;
- (c) That the income range used to qualify for a Disability Savings Bond be changed to correspond with changes in the average total income for Disability Tax Credit self-claimants as determined from time to time;
- (d) That all Disability Savings Bonds paid to a Registered Disability Savings Plan during the 10 years immediately preceding the commencement of Disability Savings

Payments or the time when a Refund of Contributions is required be repaid to Her Majesty in Right of Canada;

- (e) That no Disability Savings Bonds be paid in respect of a Beneficiary in years after the year in which the Beneficiary attains the age of 49 years; and
- (f) That income earned on Disability Savings Bonds that become repayable to Her Majesty in Right of Canada be repayable by determining the amount of such income by applying the rate of return earned in a Registered Disability Savings Plan to the amounts being repaid in respect of that year provided that the administrative systems of Plan Sponsors can readily accommodate such a calculation, failing which an amount in respect of the income should become repayable in the same way as under the Canada Education Assistance Grant program.

## VIII. Federal-Provincial Issues

The Panel has identified two issues that impact on Federal-Provincial relations in connection with its recommendations. The first of these is that amendments to the Act to establish a Registered Disability Savings Plan will provide for differences in the way taxable income is calculated under the Act. This can impact the revenues of those provinces and territories whose tax base is congruent with that of the federal government. The second issue is that under provincial and territorial social assistance legislation the existence of a Registered Disability Savings Plan and/or the receipt of income from a Registered Disability Savings Plan could disqualify a person with disabilities from receiving provincial/territorial benefits or could reduce the payments to be made under the provincial/territorial social assistance legislation. The result might be that some persons with disabilities would actually be worse off being a Beneficiary under a Registered Disability Savings Plan or at least no better off. The result could be that the recommendations the Panel is making would benefit only the treasuries of the provinces and territories and not benefit persons with disabilities at all.

The first issue becomes, essentially, with the exception of relations with the Province of Quebec, almost entirely an administrative issue based on comity and courtesy. Under the Tax Collection Agreements<sup>41</sup> entered into with all the provinces and territories with the exception of the Province of Quebec the participating provinces and territories have agreed that they will make their tax base the same as that of the federal government. For these provinces and territories, therefore, there is no issue arising from the introduction into the Act of a Registered Disabilities Savings Plan except whatever courtesies are usual when a change of this nature is being contemplated. In the case of the Province of Quebec where no Tax Collection Agreement is in effect the matter will be different. This is not an unusual occurrence and the usual procedures will, presumably, be followed.

As indicated above, the second issue is a *sine qua non*. All of the provinces and territories impose a means test on the social assistance that is made available to persons with disabilities. All impose a limit on the assets that a person can have in order to qualify for social assistance payments. All also impose an income test in order to qualify for social assistance and, in most cases, the amount of income received by a person with disabilities reduces (usually on a dollar-for-

---

<sup>41</sup> The Tax Collection Agreements are entered into under the authority of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

dollar basis) the amount of social assistance payable. Each province and territory has its own limits and exceptions. However, since the proposed Registered Disability Savings Plan is a new plan, there is no provision made for its capital value to be exempt from the asset test or for Disability Savings Payments to be exempt from the income test. Without some such exemptions there will be no point in establishing a Disability Savings Plan for those most in need of it as the result would be no more than a transfer from the federal treasury to provincial and territorial treasuries. It is also important that other provincial programs such as prescription drug programs that are income tested not be reduced as a result of the receipt by a Beneficiary of Disability Savings Payments.

The Panel is of the view that negotiations should be commenced with the provinces and territories as soon as practicable with a view to having Registered Disability Savings Plans entirely exempted from the asset tests in provincial and territorial social assistance regulations and other asset tested programs and that Disability Savings Payments be exempted from any claw-back under the social assistance income calculation rules and other income tested program rules at least to the extent that the Disability Savings Payments and the provincial or territorial social assistance payments combined do not exceed the Poverty Line as defined by the National Council of Welfare for the particular province or territory.

#### *Recommendation 15*

**That negotiations be commenced with the provinces and territories as soon as practicable with a view to having Registered Disability Savings Plans entirely exempted from the asset tests in provincial and territorial social assistance regulations and other asset tested programs and that Disability Savings Payments be exempted from any claw-back under the social assistance income calculation rules and other income tested program rules at least to the extent that the Disability Savings Payments and the provincial or territorial social assistance payments combined do not exceed the Poverty Line as defined by the National Council of Welfare for the particular province or territory.**

## **IX. Costing the Plan**

Estimating the costs associated with any government program is always an inexact science. That, however, is no reason not to make as good an estimate as one is able to do.

There are three types of costs associated with the program as it is being recommended. These are:

- (a) administrative costs;
- (b) revenue costs associated with the deferral of tax on the income earned in a Registered Disability Savings Plan;
- (c) direct costs associated with the making of Disability Savings Grants and paying Canada Disability Bonds.

### **Administrative Costs**

The program has been designed broadly on the templates of the RESP, Canada Education Savings Grants and Canada Learning Bonds. Consequently, no new administrative systems should be required. However, administrative costs for government programs will have aspects that are outside the expertise of the Panel. For that reason the Panel provides no estimates of these costs.

### **Revenue Costs Associated with Deferral of Tax**

In connection with the estimates to be made of this cost and, indeed, the direct costs of grants and bonds some statistics will be useful. The following tables are taken from the Report of the Technical Advisory Committee on Tax Measures for Persons with Disabilities.<sup>42</sup>

---

<sup>42</sup> *Op. cit.*, note 3, pp. 28, 30.



**DTC Self-claims by Age, 2001**

Age of tax filer	Number of DTC self-claims	% of DTC self-claims
< 25	4,900	1.4
25 - 34	12,800	3.7
35 - 44	24,500	7.1
45 - 54	39,200	11.4
55 - 64	54,900	16.0
65 - 74	70,400	20.5
75 - 84	86,500	25.2
85+	50,600	14.7
<b>Total</b>	<b>343,800</b>	<b>100.0</b>

**DTC Self-claims by Total Income, 2001**

Income of tax filer	Number of DTC self-claims	% of DTC self-claims
< \$10,000	59,300	17.2
\$10,000 - \$20,000	135,900	39.5
\$20,000 - \$30,000	68,900	20.0
\$30,000 - \$40,000	34,300	10.0
\$40,000 - \$60,000	28,400	8.3
\$60,000 - \$80,000	9,600	2.8
\$80,000 - \$100,000	2,600	0.8
\$100,000+	4,800	1.4
<b>Total</b>	<b>343,800</b>	<b>100.0</b>

**Average Total Income by DTC Status and Age, 2001**

Age	Average total income for DTC self-claimants	Average total income for others
Under 65	\$20,881	\$32,719
65 or older	\$27,062	\$27,517

Some care needs to be taken with these statistics since they are 2001 numbers. As well, as was indicated above under **Introduction**, there are a number of Disability Tax Credit claims made by others on behalf of claimants, a number that is estimated at approximately 186,000. Some of these will be made on behalf of spouses, others on behalf of other dependants, including children under the age of 18. For the purposes of our analysis we will assume that these claimants are unlikely to have any income.

When the program matures there will be persons in the 65 or older category who are then drawing on Disability Savings Payments and realizing some savings from the deferral of tax on income in a plan. However, these people will be effectively excluded by the requirement to begin to draw on a plan when one turns 60. People in the 65+ category are unlikely to be a cost to the Disability Savings Plan regime for approximately 15 years and, even then, their representation will be small. The potential number of participants can, therefore, be reduced by approximately 175,000, from 400,000 to 225,000.

In the learn\$ave program described above, the average participant (and these were participants who self-selected themselves and challenged themselves to save) saved \$49 per month or approximately \$600 per year. If all 225,000 (a wholly unrealistic assumption) of the potential participants were to save \$600, the total annual savings would be \$135,000,000. A more realistic assumption would be that 25% of eligible participants might save an average of \$600 per year for an annual savings of 33,750,000. It is noteworthy that in the context of the RESP only 14% of those with incomes under \$35,000 participated. If 5% was earned on these savings the total income on the 100% assumption would be \$6,750,000 and on the 25% assumption would be \$1,687,500. Since the average income level of these participants is \$20,881, the average tax rate would be 15.5% (for 2007). This would create a cost of \$1,046,250 in the case of 100% participation and \$261,563 on the 25% assumption.

It is true, of course, that most savings would be coming from parents and grandparents and that the average tax rate might, therefore, be somewhat higher, say 22%. Taking that into account, the annual cost for the first year could be regarded as \$1,485,000 on the 100% assumption and \$371,250 on the 25% assumption.

This cost would, of course, cascade by the additional savings deposited in each year. Because the plan contemplates a savings period of 20 years, the cost in year 20 is estimated at about \$30,000,000. Thereafter, withdrawals from the regime would very nearly match annual contributions and the cost in subsequent years would be met by the tax receipts from Disability Savings Payments.

### **Direct Costs of Grants and Bonds**

The costs associated with the Disability Savings Grant will have three factors, the total number of eligible participants, the participation rate and the amount of savings that participants are able or prepared to invest in the program. The costs associated with a Canada Disability Bond will have only two of these factors, the total number of eligible participants and their participation rate.

The number of eligible participants for the Disability Savings Grant and the Canada Disability Bond will be different from the eligible participants for the program as a whole. Because of the different eligibility criteria they will also be different from each other.

Based upon the number of participants in the Child Disability Benefit program and the Disability Tax Credit supplement for children, the Department of Finance estimates that there are approximately 60,000 children under the age of 18 who are eligible for the Disability Tax Credit. The Department of Finance has also estimated that there are approximately 120,000 individuals between the ages of 18 and 49 who are eligible for the Disability Tax Credit. This number is derived from the starting point that there was a total eligibility in 2001 of between 498,000 and 745,000 individuals. Taking the mid-point between these two numbers of approximately 625,000 and adjusting it to take account of the growth in the number of eligible individuals from 2001 to 2007 and also to take account of recent changes to the eligibility criteria, one arrives at an estimate of 700,000 eligible participants for 2007. If one then deducts the number of children (60,000) who would likely not have claimed the Disability Tax Credit for themselves and then reduces the resulting number by the number of Disability Tax Credit claimants who were over the age of 49, one yields an estimated number of Disability Tax Credit qualifying self-claimants of 120,000. When one adds the number of eligible children to this number, the total eligible participants for the grant program becomes 180,000.

The Canada Disability Bond proposal is restricted to those having annual incomes under \$20,881. In the case of participants under 18 it is the family income of the primary caregiver that is tested. In the case of participants over 18 it is the income of the participant that is tested. The Department of Finance estimates that 17% of Disability Tax Credit eligible individuals under the age of 18 have primary caregivers with family incomes under \$20,881. That means that approximately 10,200 individuals from this group will be eligible for the Canada Disability Bond. The Department of Finance estimates that approximately 50% of those individuals age 18 to 49 who qualify for the Disability Tax Credit have family incomes under \$20,881. This qualifies an additional 60,000 individuals for the Canada Disability Bond. The total, then, who would qualify for the Canada Disability Bond in 2007 is 70,200.

Estimating the participation rate for any government program is always a difficult task. The more generous, accessible, unrestricted, immediate and well-advertised a program, the more likely it will be that the participation rate will be high. The participation rate will be adversely affected where the benefits of the program are deferred and where the target participants do not normally or easily access program information.

Representations have been made to the Panel that the generosity of the proposed Disability Savings Grant and Canada Disability Bond could generate a participation rate similar to those of entitlement programs such as the Canada Child Tax Benefit (which comprises the National Child Benefit Supplement and the Child Disability Benefit) and the Guaranteed Income Supplement. Using these programs as a model it is argued that a participation rate as high as 70% is possible.

The argument has also been made that since the proposed program is modeled after the RESP, Canada Education Savings Grants and the Canada Learning Bond that the participation rates in these programs provide a valid comparison. The most recent period for which information is available, 1998-2001, indicates that 14% of eligible participants with incomes under \$36,000 per annum participated, 27% of participants with incomes between 36,000 and 70,000 per annum participated and 41% of participants with incomes over \$70,000 participated. In the proposed plan those with incomes over \$70,000 would participate in the Disability Savings Grant part of the program at the lowest

matching rate of \$1 for each \$1 up to \$1,000. These individuals would essentially not participate in the Canada Disability Bond program. And, as has been noted above, anecdotal evidence with respect to the Canada Learning Bond puts the participation rate for this program in the low single digits.

The Panel believes that the argument in favour of a 70% participation rate is highly optimistic. While the proposed program is generous, it lacks several aspects of the programs with which it is being compared. The comparison programs all provide immediate and continuing benefits. The proposed plan would require that to receive the full benefits of the plan a holding period of 20 years would be required. Added to this significant deferral disincentive is the administrative difference between applying for and receiving the comparative programs when compared with those required for the proposed program. While the Panel has tried to devise an administratively simple program, it is necessarily more complicated than the comparative programs and more like the RESP program.

Similarly, the Panel believes that the argument in favour of a participation rate that mirrors the RESP program is too pessimistic. The proposed program is somewhat more generous than the RESP program and for that reason would be expected to have a higher participation rate. In addition the proposed program would permit a much wider range of expenditure options than does the RESP program with its restrictions to educational expenditures.

Weighing the two positions and tempering each with the Panel's own expertise within the targeted community as well as the advice that the Panel has received from other interested parties who have provided their advice, the Panel is of the view that a more likely participation rate is 25%. As indicated above this estimate is based upon some comparative data and some experiential estimates from parties with a knowledge of the target community. The Panel also believes that there would be a period of probably several years before a participation rate of 25% could be attained.

The Direct Cost of Disability Savings Grants is directly related to the amount of savings that participants and their families are willing and able to contribute to a Plan and the income levels of the Beneficiaries and their primary caregivers. In this connection it is important to recognize that Disability Savings Grants are not based on the income level of a Contributor. They are based on the income level of the primary caregiver in the case of Beneficiaries under the age of 18 and on the income level of the Beneficiary in the case of Beneficiaries over the age of 18.

A great number of assumptions and calculations can be used to estimate the amount of savings that might be expected in the average Disability Savings Plan. However, perhaps the most useful measure is the amount of savings that were generated by participants in the Learn\$ave Plan. The Learn\$ave Plan has a grant structure that is very close to that being proposed and included only self-selected participants. Their incentive for saving was, therefore, already apparent when they entered the program. This self-selected and highly motivated group had income levels that were lower than the average income level for the likely Contributors to a Disability Savings Plan. Likely Contributors to a Disability Savings Plan will not, however, have the same degree of motivation as the Learn\$ave participants. The Panel is of the view, therefore, that it is reasonable to use a savings rate for costing purposes that is the same as for participants in the Learn\$ave Program, namely approximately \$600 per year.

These assumptions would result in grant costs of \$1,700 per participant. Using our 25% participation rate assumption and our 180,000 participants, that would result in a cost of \$76,500,000 per annum.

Again, using our 25% participation rate for 70,200 participants the estimated cost of the Canada Disability Bond at the \$1,000 rate would be \$17,550,000. At the \$2,000 rate the cost would be double that, or \$35,100,000.

### **Total Cost**

Based on the foregoing, the total annual cost of the program with a \$1,000 Canada Disability Bond would be approximately \$94,421,250. With a \$2,000 Canada Disability Bond the annual cost would be approximately \$111,971,250. The Panel believes that either of these would be a reasonable sum to make available to Canadians with disabilities.

## X. Future Directions

As the title of this Report indicates, the Panel regards the introduction of a disability savings program as a New Beginning for Canadians with disabilities and their families. It is the beginning of a new range of programs that the Panel hopes will bring a new spirit of self-determination and independence to this group of Canadians. It is a new beginning in an approach that gives a hand-up and not a handout.

When the provinces did not provide an adequate system of income supports for senior citizens the federal government showed leadership and developed the Old Age Security and Guaranteed Income Supplement programs. These programs have pulled almost all Canadian seniors out of poverty and provided them with a modest, yet comfortable, future. To provide this kind of federal support to other disadvantaged Canadians may not be possible or desirable. It certainly has constitutional implications. However, this Panel would urge Canada's New Government to take a leadership role in working with the Provinces and Territories to the end that there be a stable future for Canadians with disabilities. A savings plan is a bold New Beginning. Other levels of government must also do their share.

Bold leadership is required to target the poverty and lack of supports that make it difficult for Canadians with disabilities to lead productive lives. The Canadians with disabilities that the Panel have met while producing this Report have made it clear that what they seek is not handouts. No, what they seek is the chance to show that they too can be productive citizens of Canada given the proper level of support for their hopes and aspirations. This, too, is what their families want for them.

The recommendations that the Panel has made propose a substantial change in the way incentives have been made available to persons with disabilities. Fine tuning or more serious changes may be required to the proposals that are being made. To that end the Panel suggests that a review be made of any program that is adopted after the first three years of the program being commenced.

### *Recommendation 16*

**That the disability savings program described in the previous recommendations be reviewed after three years so that necessary adjustments can be made to it.**

## **XI.** Recommendations

### *Recommendation 1*

That a Registered Disability Savings Plan be established under the *Income Tax Act*, broadly modeled after the Registered Education Savings Plan provisions currently in effect and having the particular characteristics described in further recommendations in this Report.

### *Recommendation 2*

That a Disability Savings Grant be established under new legislation to be administered by the Department of Human Resources and Social Development, broadly modeled after the Education Savings Grant provisions currently in effect and having the particular characteristics described in further recommendations in this Report.

### *Recommendation 3*

That a Canada Disability Bond program be established under new legislation to be administered by the Department of Human Resources and Social Development, broadly modeled after the Canada Learning Bond provisions currently in effect and having the particular characteristics described in further recommendations in this Report.

### *Recommendation 4*

That eligibility to become a Beneficiary of a Registered Disability Savings Plan be coincidental with eligibility for the Disability Tax Credit as defined in sub-section 118.3(1) of the Act and that there be no additional eligibility requirements.



*Recommendation 5*

That only a Beneficiary or his or her legal or *de facto* guardian be eligible to apply to register a Disability Savings Plan and that the determination as to whether an applicant is the legal or *de facto* guardian of a Beneficiary be made by a simple certification on an application to register a Disability Savings Plan.

*Recommendation 6*

That there be no restriction on who may become a Contributor to a Disability Savings Plan. Consequently, a Beneficiary himself or herself, other family members, friends and even strangers could become Contributors to any Disability Savings Plan.

*Recommendation 7*

That the following rules relating to plan administration and Contribution Levels be adopted:

- (a) Only one Disability Savings Plan may be established for any individual;
- (b) The maximum contributions that may be made to a Disability Savings Plan by all Contributors to the Plan during the lifetime of the Beneficiary be limited to \$200,000; and
- (c) There be no Annual Contribution Limit to a Disability Savings Plan.

*Recommendation 8*

That the following rules relating to Disability Savings Payments be adopted:

- (a) There be no minimum period during which a Registered Disability Savings Plan be in existence before a Beneficiary begins to receive Disability Savings Payments;
- (b) Disability Savings Payments under a Registered Disability Savings Plan be required to commence no later than January 31 of the year in which the Beneficiary is expected to attain the age of 60 years;

(c) There be provisions providing that:

- (i) the maximum annual Disability Savings Payment be the amount determined by the formula

$$\frac{A}{B - C}$$

Where

A is the fair market value of all of the property held in the Registered Disability Savings Plan at the beginning of the year,

B is life expectancy of the Beneficiary plus 3 with life expectancy being as defined below, and

C is the number that is, or would be, the age in whole years of the Beneficiary at the beginning of the year.

For the purposes of determining life expectancy for B, life expectancy is Life Expectancy at birth for the year of the Beneficiary's birth, for the Beneficiary's sex, for the province of birth of the Beneficiary as prescribed by Regulations;

- (ii) a Beneficiary be permitted to provide evidence of a shortened life expectancy and that upon the provision of such evidence the Beneficiary be permitted to substitute that value for the value otherwise determined as the life expectancy of the Beneficiary;
- (iii) it be permitted or at least not prohibited that a Plan Initiator provide as part of a Disability Savings Plan that a Beneficiary or the Beneficiary's Guardian be permitted to make encroachments from the capital and accumulated income of a Registered Disability Savings Plan in addition to Disability Savings Payments in such amounts and for such purposes as a Disability Savings Plan may provide; and

- (iv) a Plan Initiator be permitted to amend a Registered Disability Savings Plan from time to time.
- (d) There be no requirement that the property of a Registered Disability Savings Plan be invested in an annuity contract at the time that Disability Savings Payments commence or at any other time;
- (e) The contributions made by Contributors not be included in income when received by the Beneficiary as part of a Disability Savings Payment, but that amounts in respect of accumulated income, Disability Savings Grants and Canada Disability Bonds be included in the income of a Beneficiary when Disability Savings Payments are made to the Beneficiary; and
- (f) Each payment of a Disability Savings Payment include a proportionate amount of non-taxable amounts and taxable amounts.

*Recommendation 9*

That specific rules relating to Refunds of Contributions be included in the Registered Disability Plan provisions, including the following:

- (a) No refund of contributions be permitted to a Contributor;
- (b) On the death of a Beneficiary the proceeds of a Disability Savings Plan pass to the Estate of the Beneficiary;
- (c) On the death of a Beneficiary the accumulated income of a Disability Savings Plan and the amounts of any Disability Savings Grants and Canada Disability Bonds that are not repayable to the Crown be taxed to the Beneficiary as income earned in the year of death;
- (d) On the death of a Beneficiary, for the purposes of determining whether amounts are repayable to the Crown in respect of Disability Savings Grants and Canada Disability Bonds, the death of the Beneficiary be deemed to be the time when Disability Savings Payments commenced; and
- (e) In the event of a cessation of a disability, that event give rise to a Refund of Contributions and that the same rules apply to such an event as apply upon the death of a Beneficiary.

*Recommendation 10*

That tax-free rollovers be permitted in the following cases:

- (a) From a RESP to a Registered Disability Savings Plan at the time when a RESP becomes revocable; and
- (b) From a Registered Disability Savings Plan to a RESP for the Beneficiary in an amount up to the total lifetime limit for contributions to a RESP.

*Recommendation 11*

That the definition of "qualified investment" found in subsection 146.1(1) of the Act be used for the purposes of the Registered Disability Savings Plan.

*Recommendation 12*

That no specific anti-avoidance provisions be inserted into the Act to counter inappropriate tax splitting, intergenerational tax deferral or tax averaging.

*Recommendation 13*

That the Disability Savings Grants described in Recommendation 2 have the following particular characteristics:

- (a) Disability Savings Grants be made at the following rates during the first 20 years of a Disability Savings Plan's existence:

Family taxable income equal to or less than \$72,756

- \$3 for every \$1 contributed to a Disability Savings Plan by any Contributor on contributions up to \$500 in any year
- \$2 for every \$1 contributed for the next \$1,000 in any year

Family taxable income over \$72,756

- \$1 for every \$1 contributed for the first \$1,000 in any year;
- (b) In testing for income levels regard be had to family taxable income and that the income level tested be that of the primary caregiver or caregivers while a person with a disability is under the age of 18 years and that the income level tested be that of the person with a disability from the time when he or she attains the age of 18 years;
- (c) The income ranges used to qualify for Disability Savings Grants be changed to correspond with changes in the income tax brackets established for the purposes of the Act;
- (d) All Disability Savings Grants made to a Registered Disability Savings Plan during the 10 years immediately preceding the commencement of Disability Savings Payments or the time when a Refund of Contributions is required be repaid to Her Majesty in Right of Canada;
- (e) No Disability Savings Grants be paid in respect of a Beneficiary in years after the year in which the Beneficiary attains the age of 49 years; and
- (f) Income earned on Disability Savings Grants that become repayable to Her Majesty in Right of Canada be repayable by determining the amount of such income by applying the rate of return earned in a Registered Disability Savings Plan to the amounts being repaid in respect of that year provided that the administrative systems of Plan Sponsors can readily accommodate such a calculation, failing which an amount in respect of the income should become repayable in the same way as under the Canada Education Assistance Grant program.

*Recommendation 14*

- (a) That the Disability Savings Bond described in Recommendation 3 be in the amount of at least \$1,000 per annum for the first 20 years of the registration of a Disability Savings Plan and be limited to family incomes under \$20,881;

- (b) That in testing for income levels regard be had to family taxable income and that the income level tested be that of the primary caregiver or caregivers while a person with disabilities is under the age of 18 years and that the income level tested be that of the person with a disability from the time when he or she attains the age of 18 years;
- (c) That the income range used to qualify for a Disability Savings Bond be changed to correspond with changes in the average total income for Disability Tax Credit self-claimants as determined from time to time;
- (d) That all Disability Savings Bonds paid to a Registered Disability Savings Plan during the 10 years immediately preceding the commencement of Disability Savings Payments or the time when a Refund of Contributions is required be repaid to Her Majesty in Right of Canada;
- (e) That no Disability Savings Bonds be paid in respect of a Beneficiary in years after the year in which the Beneficiary attains the age of 49 years; and
- (f) That income earned on Disability Savings Bonds that become repayable to Her Majesty in Right of Canada be repayable by determining the amount of such income by applying the rate of return earned in a Registered Disability Savings Plan to the amounts being repaid in respect of that year provided that the administrative systems of Plan Sponsors can readily accommodate such a calculation, failing which an amount in respect of the income should become repayable in the same way as under the Canada Education Assistance Grant program.

*Recommendation 15*

That negotiations be commenced with the provinces and territories as soon as practicable with a view to having Registered Disability Savings Plans entirely exempted from the asset tests in provincial and territorial social assistance regulations and other asset tested programs and that Disability Savings Payments be exempted from any claw-back under the social assistance income calculation rules and other income tested program rules at least to the extent that the Disability Savings Payments and the provincial or territorial social assistance payments combined do not exceed the Poverty Line as defined by the National Council of Welfare for the particular province or territory.

*Recommendation 16*

That the disability savings program described in the previous recommendations be reviewed after three years so that necessary adjustments can be made to it.

# Appendices

## Appendix "A": Press Release

Immediate release

Ottawa, July 31, 2006  
2006-036

### **Minister of Finance Appoints Panel to Help Children with Severe Disabilities**

The Honourable Jim Flaherty, Minister of Finance, announced today the appointment of an expert panel to examine ways to help parents save for the long-term financial security of a child with a severe disability. Plans to establish the panel were announced in Budget 2006.

"An important consideration for parents of a child with a severe disability is how best to ensure the financial security of their child when they are no longer able to provide support," Minister Flaherty said.

The panel will examine a range of potential savings vehicles, assess their relative advantages and disadvantages, and recommend the most appropriate measures. Panel members will receive a salary of \$1 for their work. The terms of reference for the panel are provided in the attached backgrounder.

Mr. James Barton Love, Q.C., will serve as Chair of the group. Mr. Love is a partner in the Toronto law firm Love & Whalen and is Chairman and CEO of Legacy Private Trust. Also joining the committee are Mr. Laurie Beachell, National Coordinator for the Council of Canadians with Disabilities, and Mr. Rémy Girard, the well-known actor who is also a spokesperson for the Montreal Children's Hospital Foundation and the Federation of Family and Friends of People Affected by Mental Illness. Biographical information about the members is attached.

Consistent with the six-month timeframe indicated in Budget 2006, the group has been asked to report its recommendations to the Minister by Nov. 9, 2006.



Persons wishing to submit their views to the panel can do so before October 15, 2006, by writing to the Expert Panel on Disability Savings care of (c.o.) the Tax Policy Branch, Department of Finance, 140 O'Connor Street, Ottawa, ON K1A 0G5 or by writing to the panel's e-mail address at [disabilitysavings-epargne-handicapes@fin.gc.ca](mailto:disabilitysavings-epargne-handicapes@fin.gc.ca).

---

For further information, media may contact:

Eric Richer  
Press Secretary  
Office of the Minister of Finance  
613-996-7861

Nathalie Gauthier  
Media Relations  
Department of Finance  
613-996-8080  
[www.fin.gc.ca](http://www.fin.gc.ca)

*If you would like to receive automatic e-mail notification of all news releases, please visit the Department of Finance website at [www.fin.gc.ca/scripts/register\\_e.asp](http://www.fin.gc.ca/scripts/register_e.asp)*

## Appendix "B": Terms of Reference

### Terms of Reference

The panel will advise the Minister of Finance on ways to help parents save for the long-term financial security of a child with a severe disability. The panel will examine a range of potential vehicles, assess their relative advantages and disadvantages, and recommend appropriate instruments that could be implemented. The panel will examine:

- Existing ways for parents to save for a financially dependent child with a severe disability, and their adequacy.
- Potential new savings vehicles including a tax-deferred and tax pre-paid savings plan.

The panel will consider the following issues in assessing the relative advantages and disadvantages of potential vehicles, and in developing its recommendations:

- The relative effectiveness of proposed measures in promoting savings, rather than unintended uses such as income-splitting.
- Appropriate eligibility requirements to ensure that any new vehicle is targeted to financially dependent children with a severe disability.
- Other rules/parameters (e.g., limits, treatment of withdrawals/income for federal income and tax purposes, treatment on death);
- Potential implications of new vehicles on an adult child's eligibility for provincial disability benefits;
- How potential instruments could be integrated with other more general measures aimed at improving the tax treatment of savings;
- Administrative feasibility; and
- Potential take-up, government revenue costs.

The panel will provide their findings and recommendations in a letter to the Minister of Finance.

The panel will be allocated a specific budget and will be required to operate within that budget allotment.