

**THE CASE FOR COMPREHENSIVE DISABILITY INCOME REFORM**

**A Report prepared for Mainstream 1992**

**By Harry Beatty**

**August, 1992**

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EXECUTIVE SUMMARY**

Many articles and reports have examined Canada's disability income programs. In the 1980's, there was a major Joint Federal-Provincial Study of a Comprehensive Disability Protection Program. Most, if not all, who have looked at the issues in depth have reached the conclusion that very fundamental reforms to the disability income protection system are required. But no comprehensive reform has been carried out.

Despite very substantial public and private expenditures on disability income programs, Canadians with disabilities are still, on the whole, poor. They often lack essential assistive devices, adequate housing, and appropriate support services. Disability income programs have failed too many in the disability community.

The purpose of this paper is not to once again make the case for comprehensive reform. Rather, it takes as a premise that fundamental reforms are required to assist Canadians with disabilities much better than occurs at the present time. Its purpose is to stimulate thinking about the obstacles that are preventing reforms from occurring, and how these might realistically be overcome. Its purpose is also to further the public discussion about the directions reform might take, and what the priorities are.

Our goal will be to examine the issues in the light of governmental and public realities. We will not seek to define the "perfect system". In fact, it will become clear that there is no such thing. Disability income programs can and should attempt to meet a significant number of conflicting objectives. Nor will our goal be the development of "one big system".

At the same time, our goal will not be a "shopping list" of reforms to individual existing programs. We shall argue that these programs are highly interdependent with one another. The impact of improvements to one program, even apparently significant and costly improvements, can in fact be minimal to those persons with disabilities dependent on the program for support if they are "offset" by reductions in other programs.

A major theme of this paper is that it is necessary for the federal and provincial governments to take steps to harmonize or co-ordinate reforms, to avoid this kind of "off-loading". Harmonization does not require that the administration of the various programs be unified. It does not require a major shifting of jurisdiction and responsibility between the federal and provincial governments. It does require that there be a public process or "mechanism" which monitors changes and developments within the programs on an on-going basis, and that the recommendations of the public monitoring process be taken into account by all levels of government.

Attempts to improve the circumstances of Canadians with disabilities

through isolated program-by-program improvements have largely failed. We need a better public understanding of what reforms are needed, and a commitment to work together to achieve them. Essentially, this requires co-operative federalism to work.

## **SUMMARY OF PART I**

In this Part, we discuss in general terms two overall perspectives on and five broad objectives of comprehensive disability income program reform. The perspectives are the affordability of reforms and how the reforms should reflect the changing understanding of disability in our society. The objectives are employment, community living, adequacy, equity and effective administration.

Each of these perspectives and objectives is complex. Each is general, covering many more specific issues. And all of these perspectives and objectives must be related to each other.

In assessing existing disability income programs, or in considering reform proposals, it is essential to look carefully at this whole complex range of issues. It is necessary to look beyond the specific disability income programs to what is occurring within other disability-related programs, and to social and economic trends affecting the lives of persons with disabilities. If a sufficiently careful and comprehensive analysis of this kind is not done at the outset, reform initiatives are unlikely to reach their intended goals.

## **SUMMARY OF PART II**

In this Part, we review some of the strengths and weaknesses of seven major disability income programs:

- (1) Social Assistance
- (2) Canada Pension Plan Disability Pensions
- (3) Workers' Compensation
- (4) Long-Term Disability Insurance
- (5) Motor Vehicle No-Fault Accident Benefits
- (6) Tort Awards and Liability Insurance Settlements
- (7) Income Tax Credits and Exemptions

We look at some of their program features, and at the implications of making changes to them, in light of the perspectives and objectives of disability income programs and reforms identified in Part I.

It must be emphasized that our discussion in this Part is the sketch of an analysis rather than the analysis itself. The intention was to illustrate the kinds of considerations and arguments that would have to be examined in a comprehensive review of disability income programs. Within the context of this paper, no definitive conclusions can be drawn about these matters. We can only show the range and complexity of the issues which should be addressed.

### **SUMMARY OF PART III**

In this Part we examine a few of the many reform proposals that have been made with respect to disability income programs. While some advantages and disadvantages of these proposals have been identified in a very preliminary manner, clearly we are not in any position to offer any type of comprehensive analysis or assessment. How we might get to this point is the theme of the next Part.

### **SUMMARY OF PART IV**

We have identified 8 broad strategies or approaches which would serve as stages in a comprehensive reform process. These are:

1. THE "MODEL PROGRAM" APPROACH
2. THE "EMPLOYMENT-FOCUSSED" APPROACH
3. THE "SPECIAL NEEDS" APPROACH
4. THE "COMPREHENSIVE APPEALS TRIBUNAL" APPROACH
5. THE "ENRICHED SOCIAL ASSISTANCE" APPROACH
6. THE "INCOME TAX-BASED" APPROACH
7. COMBINING OR ELIMINATING EARNINGS-BASED PROGRAMS (CPP, WC. LTD)
8. ELIMINATING PERSONAL INJURY TORT (T/LI)

(1)-(8) identify in a broad, "generic" way approaches that can be taken to reform. A realistic approach would combine some or all of these approaches, and perhaps others that could be identified as well. Until a broad strategy is agreed upon by the federal, provincial and territorial governments in Canada, the reform process is unlikely to ever proceed in any effective manner at all. Because of the potential benefits to everyone, all levels of government should make consultation with the disability community towards comprehensive reform a priority.

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The purpose of this paper is not to once again make the case for comprehensive reform. Rather, it takes as a premise that fundamental reforms are required to assist Canadians with disabilities much better than occurs at the present time. Its purpose is to stimulate thinking about the obstacles that are preventing reforms from occurring, and how these might realistically be overcome. Its purpose is also to further the public discussion about the directions reform might take, and what the priorities are.

Our goal will be to examine the issues in the light of governmental and public realities. We will not seek to define the "perfect system". In fact, it will become clear that there is no such thing. Disability income programs can and should attempt to meet a significant number of conflicting objectives. Arguments can be made for any number of different models to address these objectives. Rather than proposing an ideal plan of reform, we will look for reform directions which have strong arguments in their favour, and which should command a wide consensus.

Nor will our goal be the development of "one big system". If we were designing a new society with no established programs, administrations or entitlements, perhaps we would have one giant disability income program. In Canada, as in other developed industrialized nations, various major disability income programs are well-established. To literally abolish their separate identities and develop one comprehensive "big program" would require a governmental initiative much larger than the development of Medicare and the Canada Pension Plan in the 1960's. It simply isn't going to happen.

At the same time, our goal will not be a "shopping list" of reforms to individual existing programs. We shall argue that these programs are highly interdependent with one another. The impact of improvements to one program, even apparently significant and costly improvements, can in fact be minimal to those persons with disabilities dependent on the program for support if they are "offset" by reductions in other

programs. A major theme of this paper is that it is necessary for the federal and provincial governments to take steps to harmonize or co-ordinate reforms, to avoid this kind of "off-loading". Harmonization does not require that the administration of the various programs be unified. It does not require a major shifting of jurisdiction and responsibility between the federal and provincial governments. It does require that there be a public process or "mechanism" which monitors changes and developments within the programs on an on-going basis, and that the recommendations of the public monitoring process be taken into account by all levels of government. Attempts to improve the circumstances of Canadians with disabilities through isolated program-by-program improvements have largely failed. We need a better public understanding of what reforms are needed, and a commitment to work together to achieve them. Essentially, this requires co-operative federalism to work.

Briefly, the structure of this paper is as follows. Part I deals with the perspectives and objectives of disability income program reform. Before we look at reforms, it is necessary to appreciate the complexity of the targets we are trying to reach. Part II gives an overview of the program features of existing disability income programs, and highlights some of their strengths and weaknesses. Part III discusses some reform options that have been proposed by various reports and studies, and provides a preliminary analysis of these. Finally, Part IV outlines an action plan leading towards reform, including eight approaches or strategies, which are designed to be co-ordinated with the other initiatives proposed as part of MAINSTREAM 1992.

## **PART I: PERSPECTIVES AND OBJECTIVES**

There are many significant issues and questions associated with comprehensive disability income program reform. These issues are highly interdependent rather than separate, and fall into clusters under certain main headings. Two of these main headings are of such pervasive importance to our inquiry that we shall call them perspectives. The broad perspective clusters of issues are the affordability of reform and the emerging concept of disability which should be reflected in reform. Then we shall identify five clusters of issues which we call objectives, which are somewhat more limited and defined in focus than the perspectives, but which nevertheless involve many significant questions. The five objectives are: employment; community living; adequacy; equity; and effective delivery.

It is the interplay of the perspectives and objectives, in all their complexity, which gives rise to the significant opportunity to make things fairer and better for Canada's citizens with disabilities through comprehensive disability income program reform. The same complex interplay, of course, also creates the significant challenges to be overcome on the road to this goal.

## **THE AFFORDABILITY PERSPECTIVE**

A common response to the issue of comprehensive disability income reform is that it most definitely ought to be carried out, but it is simply not affordable. Concerns about the cost implications of reform in the current economic climate are, without doubt, restricting the willingness of the federal, provincial and territorial governments to carry the reform process forward. If these concerns cannot be addressed effectively, everything else we recommend about the disability income system will be irrelevant, for all practical purposes. But we shall see that these concerns can be addressed. In fact, there are strong economic arguments in favour of the reform process.

### **A Realistic Approach to Cost-Effectiveness**

Among Canadians with disabilities, disability advocates and service providers, there is a strong consensus that significant reforms are achievable and affordable. While this has been accepted on a broad conceptual level by governments, however, it has not effectively been translated into co-ordinated governmental action. We need to understand why.

The disability community and its advocates believe that significant disability income program reforms would help persons with disabilities to become more independent and self-sufficient, and reduce the various social, economic and health problems which make them more dependent on the state. An effective set of reforms promoting independence, community living, employment would do more good and, at least in the medium- to long-term, cost no more (and perhaps even less) than the current patchwork of programs. Many governments have "officially" endorsed this viewpoint. However, the shared vision of the need for reform has not actually led to reform.

Governments in Canada have failed to take an essential step. They have failed to invest the resources to make the case for disability income program reform rigourously and carefully. They have failed to make the critical links between the costs of reforms and the benefits which would result from them. In particular, they have failed to take the long-term perspective which is necessary. For the disability income system, the costs of reforms tend to be immediate, while the benefits continue and accrue over much longer periods. This point is central to understanding the reform process.

Because governments have failed to take the long-term perspective, they have allowed the reform process to be repeatedly diverted and stalled by current socio-economic conditions. They have not been able to appreciate the impact of these delays on future socio-economic conditions as they relate to the disability community. Failure to address the problems and the need for reforms just results in the problems getting worse. Canadians with disabilities are paying the price now for the failure of governments to act decisively in the

early 1980's. Many are dependent who should not be, with resulting costs to governments. If governments fail to act now to reverse this trend, in another decade the situation will be even worse.

Taking the short-term perspective, governments say "We can't afford to act now". If they took a more realistic longer-term perspective, they would say "We can't afford not to act now".

What is needed is a more realistic and enlightened approach to the cost-effectiveness of improving disability income programs. This approach should include:

- (a) a long-term perspective on the cost-effectiveness of reforms;
- (b) a recognition that any short-term savings from reform will create even bigger long-term "payoffs" if they are used to further improve the programs rather than being diverted;
- (c) a commitment to tempering cost-effectiveness criteria with considerations of social equity and justice, so that reforms designed to provide a better system in the long run will not penalize persons with disabilities in the short term; and
- (d) an understanding of the essential relationship between the effectiveness of disability income programs and broader socio-economic policies, particularly those related to employment.

#### **Seven Ways in which Reform can be Cost-Effective**

We can begin by identifying, in general terms, the ways in which a reformed system providing improved benefits to persons with disabilities would come to save governments money (or at least cost no more than the present programs):

(1) If a reformed system improved the prospects for persons with disabilities to become employed, then more persons would be economically independent rather than economically dependent. They would become taxpayers rather than benefit recipients. This is a major potential source of cost benefits through reform. It would, of course, be a more effective strategy in a society with lower unemployment, but the current levels of unemployment among Canadians with disability are so high that it is important to pursue this strategy in any event. Our concern with pursuing employment should not, however, lead us to accept coercive policies directed against persons with disabilities who are really not able to work, or who do not have appropriate jobs or job accommodations available to them. (We shall shortly examine the employment objective in more detail.)

(2) If a reformed system improved the prospects for persons with disabilities to live more independently, then more persons could live in community settings rather than in (generally) more costly institutions. The move from institutional to community settings is



not always cheaper immediately, and may not be cheaper for some individuals ever in the longer term, depending on their needs. We should not sanction "dumping". But for many persons with disabilities, a transition is possible towards a more independent and self-sufficient lifestyle, provided that the necessary supports are in place. (Those who can't make such a dramatic transition have a right to live in the community, too!)

(3) If a reformed system improved the health and socio-economic conditions of persons with disabilities, there would be lessened demands on the health and social service systems. This may be a major potential area for cost savings. At present, persons with disabilities may wind up in hospitals or other institutional settings because needed health services, drugs or equipment was not available to them because of cost. The result, of course, is an unnecessary expenditure of several hundred dollars each day by government, as well as an unnecessary risk assumed by the person.

(4) If a reformed system improved the ways in which private resources could be utilized for the support of persons with disabilities, then more persons could rely more on their own resources and those of their families rather than on governmental support. At present, there are strong disincentives in some programs to doing this. Reform of these programs, to be equitable, must draw a careful balance between private and public support. We should have rules which are fair both to those who have private resources and those who do not.

(5) If a reformed system reduced the administrative overlaps among programs, there would be cost savings which could be redirected into improving benefits. There would be no additional costs to governments. As we shall see in our discussion of the effective delivery objective, the administrative savings may not be as easy to achieve as is sometimes thought. If the administrative savings are created by reducing staff, this may be particularly difficult for governments to initiate. Nevertheless, the potential for savings through administrative efficiencies is definitely there.

(6) If a reformed system reduced the overlaps among programs, there would be some cost savings due to the elimination of cases in which persons are compensated twice for the same disability or expense. (This is sometimes called "double recovery", "collateral benefits", or "stacking".) There are some difficult issues here in defining when exactly both payments are "for the same thing", and in treating people who may have special justice claims ("it's compensation for the wrong done to me") or equity claims ("I paid into that program and should be able to get something back from it") fairly.

(7) If a reformed system moved costs from programs funded out of general revenues to programs funded by premiums and contributions, there would be cost savings to government. If the premiums and contributions related to the payor's actions in causing or preventing disability, they would also encourage prevention measures which would

lead to still further cost savings. Of course, the cost of the premiums and contributions to those paying them can be an important public issue as well.

There certainly seems to be a major opportunity for governments to provide better disability income protection without increasing spending, by using strategies (1)-(7) effectively and fairly in the reform process. A cost-beneficial approach to reform is possible. But we can also see that it is important to proceed carefully and thoughtfully.

In summary, by changing disability income programs we can create a society in which more persons with disabilities will be employed, will live more independently, and will require fewer health and social services. We can encourage families to engage in long-term planning for their family members. We can have more effective and equitable administration of programs. We can require contributory programs to be more comprehensive. But this will not happen in six months, or one year, or two years. The cost-effectiveness benefits will not be widely apparent, in many cases, for five or ten or fifteen years. Governments must be persuaded to look beyond current-year budgets and take the longer view of this type of reform.

Some of the most important cost benefits from (1)-(7) are dependent not only on developments within disability income programs but on broader social and economic policies. This is especially true for employment. Whether Canadians with disabilities will be integrated into the work force evidently depends on many factors - the overall performance of the Canadian economy, employment equity, education and training opportunities, and so on. Cost-beneficial strategies (2), (3) and (4) also must be related to wider policy initiatives and social and economic conditions.

The cost-effectiveness strategies will have to be considered within a framework of equity and justice. It is easy enough to design "reforms" which will cut costs in the short term. It is not so easy to design changes which will reduce or control costs without penalizing persons with disabilities, but this is exactly what has to be accomplished.

What is needed, then, is a more inclusive and developed approach to costing out the effects of well-planned disability income program reforms, which will demonstrate that, at least in the longer term, and if combined with other appropriate social and economic policies, the reforms will enable governments to improve programs without spending a lot more money or penalizing persons with disabilities.

#### **THE EMERGING PERSPECTIVE ON DISABILITY**

The way in which persons with disabilities think about themselves, and the way in which others think about them, has been changing and

continues to charge. We shall return to this theme again and again, in our discussion of the employment objective, in our discussion of the community living objective, in our discussion of the equity objective. Because of the overriding importance of this theme, however, it may be useful to outline the main issues here.

When Canada's major national social programs were introduced in the 1960's, persons with disabilities were thought of as unable to work, or at least as unable to be part of the competitive work force. Persons with many kinds of disabilities were believed not to be able to live in the community, and to be better off cared for in large institutions. Participation, independence and equality rights were not discussed.

The stereotypes and misconceptions are changing, if often too slowly. But the major disability income programs have not changed fundamentally to reflect the emerging perspective on disability. For example, "permanent unemployability" is still too often the eligibility test - a theme to which we shall return in the next section, on the employment objective.

What is emerging, hopefully, is a recognition of the diversity of the disability community. Its members are disadvantaged in many respects as a class, but not all are disadvantaged in all respects. Many have excellent employment-related skills, the capacity for independent living, the ability to participate fully in the life of the community. Some require only limited supports to do these things, some require extensive supports, and some cannot be expected to do some things at all. A challenge facing the disability income program reform process is to recognize these individual differences in a fair and equitable manner.

Where the diversity of the community often poses a particular challenge is with respect to categorical eligibility for programs and entitlements. "Categorical eligibility" is a fancy way of referring to the definitions and rules which determine who can get the program or entitlement and who can't. Of particular importance is the definition of disability and the disability determination process in each program which requires individuals to show they are "disabled" to be eligible. Around these, there may be very challenging questions about who the program or entitlement is for, who has priority, and who should decide these things. As we try to think about these questions more clearly, we may come to the view that what is important is not necessarily "disability" as a single attribute that people may possess or not, but rather "disability" relevant to the purposes of the particular program or entitlement.

The emphasis, or lack of emphasis, to be placed upon the definition of disability and entitlements depending on being "disabled" will increasingly be a significant question to be addressed in the reform process. The disability community and our society are moving in two competing directions at once. On the one hand, the drive towards

integration seems to lead away from reliance on categorical eligibility. On the other hand, the movement towards ensuring that "special" needs are met often seems to require the most careful targeting through definitions and eligibility rules. This tension will have to be played out carefully, with a watchful eye to the future of persons with disabilities in our society, throughout the reform process.

#### **THE EMPLOYMENT OBJECTIVE: TOWARDS SELF-SUFFICIENCY**

Employment and employment-related services are a major focus of MAINSTREAM 1992. The observations in this section of the paper must be related to the issues raised by the research done in that area.

In discussing the affordability perspective, we examined the strong connection between the employment of persons with disabilities and the cost of disability income programs. We need to structure the disability income system so that it does not penalize employment and increases the possibility of self-sufficiency. Employment for persons with disabilities is both an end in itself and a road to affordable improvements in disability programs. Recent initiatives taken in co-operation between the federal government and some provincial governments have recognized the need to increase employment opportunities, but more needs to be done to extend these initiatives to persons with disabilities.

The unemployment and underemployment of persons with disabilities in Canada is a national tragedy. The obstacles placed in the way of Canadians with disabilities who are striving to be employed have an often devastating impact on their dignity and morale. We shall focus on the role which disability income programs have played in creating this problem, and how they could be part of the solution.

#### **The "Welfare Trap"**

The "welfare trap", and how to avoid it, has been the topic of many articles and studies. Essentially, it refers to the dilemma which many dependent on social assistance and other income support programs face when seeking to engage in education, training and (especially) paid employment. Because of the way many of the programs are structured, the person has less income or fewer entitlements working than if he or she had simply stayed on the program. This is, of course, especially likely to happen if the person takes an entry-level, lower-paying job. So the person decides he or she can't afford to take the chance of entering the labour market or moving towards employment. The "welfare trap" perpetuates poverty and exclusion from society.

The "welfare trap" particularly affects persons with disabilities. They have generally a greater chance of being caught in the "trap" and

remaining in it for longer periods of time than do members of other groups. The problems they face in becoming employed include paying for employment-related expenses and the lack of employment supports. Because of the size of these obstacles, many persons with disabilities still find themselves at the bottom of the "hiring queue". Even those who are able to get jobs are more at risk of losing them, especially in difficult economic times.

Let us examine some of the specific ways in which the "welfare trap" affects the disability community:

(1) The individual's actual income may be lower if working than if receiving benefits from the program. The person's earnings may mean he or she is disentitled altogether from receiving benefits. But the benefits may have been higher than the wages, because the benefits were based on previous earnings, or because the benefits reflected family size and needs, or simply because the wages earned are quite low. Even where the person can receive some income support while working, this may be time-limited, or there may be a "tax-back" at a very high percentage of earnings.

(2) Even if there is no income loss in the short- to medium-term, the person may be (legitimately) concerned about the impact of working on his or her long-term eligibility for the program. In some programs, particularly those which define "disability" for eligibility purposes in terms of "permanent unemployability", there is a clear risk that a person may lose eligibility permanently by working. If the job is lost as well, through a progression of the disability or simply through labour market conditions, people are concerned that they will be left with nothing.

(3) Many persons with disabilities have significant drug, dental, attendant care or other health-related costs. They may be able to receive these supplementary benefits only through their disability income programs. Even where the programs do not provide supplementary benefits directly, receipt of benefits from the programs may be an eligibility test used by other programs which do provide these benefits. For many persons with disabilities, loss of extended health coverage is a far more significant consideration than \$25 or \$50 of monthly income.

(4) There are also the costs associated with working to be considered. Generally, it costs more to go to work than to stay home. These costs include clothing, lunch, transportation, supplies and equipment. Some of these costs are similar to those incurred by anyone who works, but others may be extra costs related to the disability. For example, if there is poor access to public transportation, the person may be practically required to have a car or van with all the associated expenses, including parking near the place of employment. The employer and government do not pick up these expenses in many cases. The costs associated with working may be incurred at home as well as at work. Those who have rent-geared-to-income housing often find that

their rent goes up when they start to work, because employment income is treated differently than income from programs. There are also costs connected with family responsibilities which relate to the job at least indirectly. If a person with a disability has to be at work from "9 to 5", this may entail extra housekeeping or child care costs, above and beyond what non-disabled workers have to pay.

(5) It is necessary to consider the "rehabilitation obligation" which some programs impose on those who are considered to be only partially disabled, or to be limited in their ability to work without being unable to work. The "rehabilitation obligation" takes many forms, but usually there is a requirement to attend rehabilitation programs or to conduct a job search. The penalties for non-compliance may be a reduction of benefits, for example by "deeming" a person with a disability to be earning a certain amount at an "appropriate" job (when the person is not actually working), or by disentitling the person altogether (by determining the person to be employable, although not actually employed). The "rehabilitation obligation" is a way of dealing with the "welfare trap", but it is often used to put people underneath the trap rather than lifting them above it.

#### **The "Carrot" or the "Stick"**

Both the "welfare trap" and the "rehabilitation obligation" are part of the broader concept of "work incentives". The former covers rules that penalize people for working, however, while the latter covers rules which penalize people for not working. The former raises the question of whether we have an appropriately-sized "carrot": the latter, whether we have an appropriately-sized "stick".

The "carrot" issues, not surprisingly, are considerably easier to address than the "stick" issues, at least on a general level. There seems to be an emerging consensus that people should be better off working than not working, and an understanding that to accomplish this requires rules which permit extended efforts to train or work without permanently ending eligibility, better earnings exemptions resulting in lower "tax-backs", recognition of work-related expenses, and much better extended health benefits coverage while working. To say there is a consensus that this should be done is not to say there is agreement as to how it should be done. Evidently, these problems remain to be resolved. But in general terms "better off working" is coming to be seen as a "win-win" solution.

For persons with disabilities, however, there are significant problems which must be taken into account in giving them the same size "carrot" as other groups. They have significant extra costs which may be hard to determine exactly, and which may vary from time to time. Persons with disabilities often require long-term income supplementation, particularly if their earnings are low and their disability costs high. Short-term transitional programs may not assist them enough to allow them to remain in the work force, even where they have a job which they are capable of doing. Work incentive rules in disability

income programs should take account of this.

The "rehabilitation obligation" or "stick" issues, are much more difficult to resolve than the "carrot" issues. It may help to approach this dilemma historically. Traditionally, disability income programs were designed for those who were "permanently unemployable". By definition, eligibility depended on being totally outside the labour market. Gradually, attitudes have changed towards acceptance of the integration of persons with disabilities into the work force. Disability income programs have changed in this direction as well, but often have not changed very quickly. Eligibility is still based in some programs on "total disability" - the complete inability to work. This must be changed, or persons with disabilities will remain in these programs forever.

### **Major Employment Issues in the Reform Process**

How the twin employment incentive dilemmas, the "welfare trap" and the "rehabilitation obligation", are approached will be fundamental to any comprehensive reform. Existing programs take very different approaches to recipients who pursue training and rehabilitation. It is not just a question of different rules: the underlying fundamental assumptions are entirely different. If these programs are to be made more rational, the alternative approaches to work incentives and disincentives must be examined with the utmost care. The best approaches must be identified if the reforms are going to advance the employment of persons with disabilities.

It is generally accepted that disability income programs should be restructured so that people will be able to undertake training or employment opportunities without making themselves ineligible. This requires turning away from permanent unemployability as the test of eligibility. But this is a very fundamental shift in the basis of this type of program. If the program is no longer based on "unemployability", does this imply that there should be an obligation on the part of recipients to undertake training and employment? Does this imply that there should be a "rehabilitation obligation", with penalties for those who do not comply?

Income support programs for non-disabled adults between 18 and 64 generally contain provisions requiring recipients to undergo training or seek work. Income supports can be stopped to those who do not comply. Other groups besides persons with disabilities are often exempt, such as sole support parents and persons over 60, but the general rule is that society imposes on adults who can work an obligation to do so. Some disability income support programs, in effect, provide a categorical exemption from this obligation for adults labelled "disabled". This is the basis for participation in these programs. But if a major objective of reform is to bring these individuals into the mainstream labour force, and to regard them as capable of employment, what becomes of categorical exemptions from the "rehabilitation obligation"? Can we continue to argue that persons

with disabilities should only have "carrots" and no "sticks"?

This is a fundamental dilemma, which requires very careful and detailed study. Within the scope of this paper, we can only identify some issues which should be considered:

(1) A starting point is that persons with disabilities should not be required to make efforts that are disproportionate to those required of other Canadians. The whole concept of the "obligation to work" as it affects the community generally, and not just persons with disabilities, is always undergoing reconsideration. If jobs are simply not available, how can this obligation be imposed? And what are the boundaries of this obligation? The answers to these questions should be consistent for those in the disability community and for other Canadians.

(2) Clearly, some persons with disabilities are unable to work. Programs (such as workers' compensation) which provide for a "rehabilitation obligation" have a "total disability" category for people regarded as exempt from this obligation. The obligation may also be reduced or modified for other sub-categories of disabled recipients, such as those over 60. If the reform process means that other programs will move away from "permanent unemployability" as a general basis, will it remain as a sub-category within the program? Are there in fact two groups, employable and unemployable persons with disabilities, whose needs are sufficiently different that they should be eligible for separate programs, with very different rules and entitlements? (A separate program for persons with disabilities who are employed is one of the options presented in Part IV). If so, how do we include persons who are "partially unemployable" or "limited in employment"?

(3) Social expectations are changing around the participation of persons with disabilities in the work force. As with any change in social expectations, this may impact unfairly on the group which "grew up" with one set of expectations and now finds another set imposed on it. "Older" persons with disabilities who have never had appropriate training, education and employment experiences in the past will often have a very difficult time integrating into the work force now. Employment opportunities for this group will be very limited (or realistically may not exist at all). Reforms to existing programs on which they depend must be carefully designed so as not to be unfair to them.

(4) A major objection to the "rehabilitation obligation" is the existence of many barriers to employment for persons with disabilities. These have been identified over and over. Given that Canadians with disabilities who desperately want to work often cannot find appropriate and accessible training, or employers willing to hire them, or funding for job accommodations, is it fair to impose a "rehabilitation obligation" on them? There are very real concerns in the disability community about being sent to look for non-existent



"light jobs", and about being required to train for jobs which do not exist.

(5) From a practical perspective, if the goal is to increase the numbers of persons with disabilities participating in the labour force, the "rehabilitation obligation" may be counter-productive. If program participants are required to seek training and employment opportunities, they will all need rehabilitation services to assist them in doing so. This will include a significant percentage who believe themselves, often with good reason, unable to work in our society. The rehabilitation services will be spread too thinly, counsellors will have large case loads, there will be delays, needed accommodations will not be available quickly enough to allow persons with disabilities to take advantage of training, education and employment opportunities. If participation were entirely voluntary, then resources could be targeted at those who are most highly-motivated and ready to enter the work force, and the "success rate" would be better. It seems to make little sense to try to require participation in rehabilitation when the resources and opportunities are not available for those who now want them.

We should examine the implications of (1)-(5) carefully in designing the "work incentive" aspects of a reformed disability income system.

#### **THE COMMUNITY LIVING OBJECTIVE: MOVING TOWARDS INDEPENDENCE**

Community/independent living is another major priority area for MAINSTREAM 1992. The relationships between the broad objectives of community and independent living, and income support programs, will be outlined in this section of the paper. These interactions, unlike the relationships between employment and disability income programs, have received relatively little attention in policy reviews of these programs. Nevertheless, they are well known to and understood by the disability community.

The concept of community/independent living will be addressed in detail by the information prepared for MAINSTREAM 1992 in this area. Here a relatively simply and straightforward characterization will be used. For persons with disabilities, community/independent living means that they have the same range of choices as to lifestyle and personal relationships as other members of our society. What we have to examine is how disability income programs affect that range of choices.

Immediately, we are reminded of the overlaps among the various objectives of disability income program reform which we are identifying. Adequacy (to be discussed in the next section) of income support is clearly a major factor in determining whether the program supports community/independent living. People with adequate incomes obviously have a wider range of choices than those who do not. Just

as evidently, a program can support community/independent living effectively for many people by advancing the employment objective.

There are issues within disability income programs which relate specifically to community/independent living:

(1) If a program is premised directly or indirectly on families providing uncompensated or poorly compensated support, such as attendant care, this may place great strain on family relationships. This type of approach treats family members very unfairly. In the vast majority of cases, of course, it is women who assume the unpaid caregiver role. Society's standards of fairness are evolving to where placing this type of obligation on one person is now unacceptable.

(2) Some disability income programs use "inability to perform activities of daily living (ADL)" as an eligibility criterion. Sometimes this is combined with an unemployability criterion. An ADL test for eligibility has disincentive effects similar to those discussed in the previous section with respect to the "permanent unemployability" test. If people have to be unable to carry out ADL in order to qualify for needed income, practically this may require them to be dependent rather than independent. Careful consideration has to be given here too as to how to retain targeting of the programs at those truly in need without discouraging efforts to become more independent.

(3) If a program provides greater funding to recipients who live in one type of housing rather than another, this affects decisions about where to live. For example, the program may provide greater benefits to someone living in a group home than to someone living in a more independent apartment program. Sometimes the difference is in income levels, and sometimes it relates to supplementary health benefits. Where the more institutional setting is associated with higher levels of support, this is of course a disincentive to community living.

(4) If a program relates eligibility directly or indirectly to family or marital status, for example by denying eligibility because of spousal income, this will limit the freedom of recipients with disabilities to make certain personal decisions, such as to get married.

Reform of disability income programs must proceed in step with the progress of persons with disabilities towards community living and independence, and must support rather than impede this progress.

#### **THE ADEQUACY OBJECTIVE: ENOUGH MONEY TO LIVE ON**

A widely accepted objective of disability income program reform is that it should provide persons with disabilities with income adequate to meet their needs. We can all accept this in principle. (Clearly, however, our success in designing a reformed program which satisfies

the affordability principle will largely determine how far we can move towards adequacy.) But what do we mean by "adequacy" and what do we mean by "needs"?

### **The Determination of "Needs"**

The "needs" of persons with disabilities can be divided, although not exactly, into two categories: "needs" related to disability and "needs" shared with other members of society. First we look at disability-related "needs".

A starting point is that the "needs" of people, for purposes of income programs, include only things they must pay for individually. Things that are provided without cost by government, by service providers, by employers, or by others are not "needs" in this sense. Because of medicare, for example, routine visits to a doctor are not "needs", but fees requested for a doctor's reports may be "needs", if medicare does not cover these reports.

However, the line between what people pay for individually and what society provides varies from province to province and from community to community. Whether an individual must pay himself or herself for assistive devices, for drugs, for attendant care, for residential care, for home modifications, for specialized training, varies depending on many factors. For example, the coverage provided for drugs and assistive devices varies greatly among the provinces and territories, and may depend on local programs operated by municipalities or service agencies as well.

In some areas of "need", for people with disabilities there may or may not be a specific cost to pay at all, depending on the accessibility of the society. If the "regular" transportation system in a community is accessible to a person, his "needs" are comparable to those of others. But if the system is inaccessible, and no appropriate parallel service is available, his "needs" will often be many times greater than those of others. Similarly, parents of children with disabilities who must pay privately for tutoring or schooling may have very substantial "needs", while those whose children have an appropriate public education have no extra "needs" in this respect.

The "needs" that should be met by an adequate income system, then, are highly dependent on what is provided or required by society. There are certainly different opinions on what society should provide and what people should pay for themselves. We cannot really address the issue of income adequacy without referring to what people with disabilities ought to pay for from their own incomes.

There is no simple and logical way of drawing this line. However, the balance between public and private goods has to be examined carefully, and some principles adopted as to which goods will fall on each side of the line. This is a necessary step in the disability income program reform process. We will not be able to determine what the

income adequacy requirements of persons with disabilities are if we are not able to say with some certainty what disability-related expenses they will have to pay for themselves.

There is a further difficult issue as to how responsive disability income programs should be to individual needs. A purely individualized approach would mean assessing the income needs of each person with a disability. The other extreme is a "flat-rate" approach which provides all qualifying persons with disabilities with exactly the same benefit. Compromise approaches start with a basic level of income or support for everyone, and vary it according to certain selected costs or personal characteristics e.g. drug costs, shelter costs, severity of disability. Generally speaking, individualized approaches are more responsive to individual needs but harder to administer than flat-rate approaches.

### **Poverty Lines**

A major issue is the standard of adequacy which is used. One approach is through poverty lines. There are a number of poverty lines in use in Canada, all of which are defined differently. Because they are based on different approaches and different assumptions, they all set very different "poverty levels". But none of the poverty lines contain any reference to disability costs or have any specific treatment of persons with disabilities, so they are of limited value for our purposes. They may at least define a lower limit beneath which no person with a disability should fall.

Another approach to the standard of adequacy is by comparing the incomes provided by disability income programs with incomes provided to other groups from other sources. We can compare disability income programs to seniors' programs, to programs for sole support parents, or to minimum wage levels, for example. There are difficulties with all of these comparisons, as discussed below under equity issues, but these comparisons at least give some sense of the relative adequacy of disability income protection under various programs. Of course, the comparisons must take account of disability-related costs.

It is important to keep in mind as well that poverty lines and comparisons with other programs tend to focus exclusively on income. The income provided by a disability program is important, but it does not reflect many important considerations relevant to an individual's or family's financial position. It does not reflect the needs issues which we have discussed. It does not reflect the implications of the program for the employment prospects of recipients, which may be much more important than the current income provided. It does not reflect the consequences of the program's rules for the ability of recipients to save, or of their families to provide for them. It does not reflect the long-term income guarantees (especially inflation protection) which may or may not be given to recipients. In short, income levels should not be overemphasized as indicators of the adequacy or inadequacy of disability income programs.

Adequacy, like all of the other objectives we have discussed, proves to be a somewhat elusive idea. It has many dimensions rather than one. We must look, not only at income levels, but at supplementary benefits, costs left to individuals by related programs and by society generally, and at long-term financial implications to determine the adequacy or inadequacy of disability income programs, and to assess reform proposals.

#### **THE EQUITY OBJECTIVE: THE FAIRNESS OF REFORMS**

The next wide objective of disability income program reform we shall consider is equity. Existing disability income programs and any proposed reforms will have to be scrutinized to see if they respect equality rights, both between the disability community and other disadvantaged groups, and within the disability community itself.

Part of the reason for this scrutiny is to determine whether or not the programs and the proposed reforms meet the equality standard set by Section 15 of the Canadian Charter of Rights and Freedoms. But the equity objective comprises more than the legal question of whether the programs and reforms can "survive" a Charter review. It looks at the broader social issues of whether what exists and what is proposed reflects fairness among individuals and among classes of individuals.

Equity judgments have to be made carefully. We shall see in the following discussion that, in reviewing equity in the context of disability income programs, it is necessary to consider fundamental social values. As well, we should be aiming at equity in the context of the overall system of disability programs. A specific rule or distinction within a program may appear either to respect equality or not when considered in isolation, but to make a more informed judgment, we have to consider how the rule functions within the overall program, and how the program relates to the wider system of disability income programs.

#### **Equity With Other Groups**

In a general sense, equity between the disability community and other disadvantaged groups is an important objective. In practice, however, the circumstances of different groups and the range of programs available to them are so different that it is very difficult to substantiate judgments about equity or inequity. Where persons with disabilities and members of other groups receive benefits from the same program, however, the similarities and differences are highlighted, and equity assessments may be more manageable.

For example, comparisons can be made between CPP disability pensions and CPP retirement pensions, or between social assistance provisions for persons with disabilities and sole support parents. But these judgments must be made very cautiously. The circumstances of persons

with disabilities have some similarities to those of seniors on the one hand and to those of single mothers on the other, but there are obviously important differences as well. It is important to consider rules which differentiate among these groups carefully before forming the judgment that their treatment is unequal.

Another wide-ranging issue is whether disability-specific programs should be used to attempt to restore equities which are lacking within the broader society. Persons with disabilities are often less able than others to use public services, such as transportation and recreational facilities. The best approach, of course, is to remedy these inequities directly through accessibility measures. But if this cannot be done, at least in the short term, the question arises of whether disability income programs should provide enough money so that persons with disabilities are able to purchase alternatives.

### **Equity within the Disability Community**

Equity within the disability community itself is likewise a challenging issue. (We have already considered one illustration of this: see the discussion of the "rehabilitation obligation" in connection with the employment objective.) The following are some of the most important dimensions of equality among different groups of persons with disabilities:

(1) Disability income programs for earners (such as workers' compensation and long-term disability insurance) typically provide far higher levels of income (at least if we consider maximums) than do non-earners programs (especially social assistance). [In discussions of disability income programs, "earners" refers to those who were in the work force when they became disabled, and "non-earners" to those who were not. It does not refer to the person's employment status after becoming disabled.] The most obvious justification for this different treatment is that the earners' benefits are paid for by their premiums or contributions, whereas non-earners' benefits come from general governmental revenues. But in some cases this justification requires careful scrutiny. The premiums or contributions may be inadequate to fund all of the required benefits, in which case a direct or indirect subsidy from general revenues will be required. (Tax-exempt status for payments is an example of an indirect subsidy.) Even if we accept the principle of a higher level of benefits for earners than non-earners, there are equity issues around the determination of "earner" status. The benefits provided typically reflect earning levels at the time of becoming disabled. How should the rules provide for "earners" who happen to be unemployed or underemployed at that time? And what is the line between this group and "non-earners", who don't qualify for the "earners" programs at all?

(2) People qualify for certain disability income programs on the basis of the cause of their disability - whether it is work-related, whether it results from a motor vehicle accident, whether it occurred during

military service, and so on. The benefits provided are often much greater in the current system where people can qualify under one of these causes. Is this fair? Again, these benefits are based on motor vehicle insurance premiums or employers' workers' compensation contributions, which may or may not be somehow subsidized out of general public revenues. (As mentioned above, the tax-free status of certain payments is one type of subsidy. If the program "sets off" CPP disability payments, this is really another type of subsidy.)

(3) Where the cause of a disability is the wrongdoing of another, society has often recognized a "special" claim to compensation. The traditional approach to this entitlement has been the civil action for tort. (Tort is discussed in more detail in Part II.) Criminal injuries compensation also falls within this area. In moving towards comprehensive reform, the future role of these "justice-based" programs will have to be considered. (The introduction of workers' compensation in the early part of this century is the primary historical example of moving from "justice-based" to "no-fault" compensation. Prior to this reform, "fault" on the part of the employer had to be proven before there would be compensation for work-related accidents and illnesses. But for several decades, compensation has been largely independent of "fault".) A large part of this discussion will focus on whether it is equitable to disregard these special claims to extra compensation or not. If they are to be considered in some way, further equity issues arise regarding the size of the "special entitlements" and whether they are to be integrated with benefits from other programs. [In discussions of disability income programs, to "integrate" programs means that the payments or benefits from one are partly or wholly set-off or deducted against the payments or benefits from the other.]

(4) Another important consideration is equity among those with different levels of disability. Disability income programs deal with this issue in different ways. Some are set up on a partial disability model, where the degree of disability is assessed either directly or through rules defining loss of earning capacity. Other programs are set up with a relatively strict definition of disability, so that only those with "significant" disabilities qualify. Either approach raises important equity issues.

(5) Disability income programs, particularly those based on accident and illness, often tend to compensate those disabled in the short-term much better than those disabled in the long-term. If there is no indexation or inflation protection, this of course operates to the disadvantage of those most significantly injured, who tend to be injured for a longer time. Time-limits or "caps" on benefits have the same effect. Arguably, the bias should be in the opposite direction - towards providing better levels of income and benefits to those most significantly injured for a longer time. Existing programs and proposed reforms must be assessed from this perspective.

(6) As already noted, the provisions of disability income programs

relating to work incentives involve very significant equity issues. While the promotion of employment for persons with disabilities is a major objective, programs should be fair to those who are not really able to enter the workplace, including some of those in chronic pain, many "older" persons with disabilities and those with extremely severe disabilities. (This is not to deny that some persons with disabilities who fit these descriptions want to work and are capable of doing so.)

(7) One more difficult equity area involves those persons with disabilities with and those without private resources. Treatment of assets and of income from other sources is a challenging area in the design of disability income programs and reforms to them. On the one hand, if there are scarce resources, arguably they should be targeted at those most in need, and not at those who have private resources through savings, trust funds or affluent grandparents. On the other hand, needs-tested or means-tested programs can be intrusive, and it is difficult to design needs- and means-tests fairly. As an ideal (if affordability were not an issue), all disability income programs would be completely universal. But if there are difficulties in finding enough money, consideration has to be given to ways to direct support to those who most need it. Often, income-testing is a compromise position, in that it takes account of ability to pay without requiring in-depth needs- or means-assessment. Income-testing can use the income tax definition and information about income, and not require further assessments. However it is done, the "trade-offs" between equity and intrusiveness are always difficult.

There will always be different perspectives on equity issues of this nature. Like the other objectives we have considered, equity requires careful elucidation.

## **THE EFFECTIVE DELIVERY OBJECTIVE**

Administration and delivery issues are often assigned a secondary role in the discussion of comprehensive disability income reform. Issues relating to the disability determination process, timeliness of benefit delivery, the information available to applicants and recipients, and the training and attitudinal orientation of staff are nevertheless of critical importance to consumers. Disability income programs cannot be described and understood simply through lists of benefits. It is essential to know how persons with disabilities become aware of these benefits, how the application process works, how disputes are reviewed and appealed - in short, what actually happens when people apply to the programs for support.

### **Important Delivery Issues**

Some major delivery issues of importance to persons with disabilities are:



(1) The person (or a family member, service provider, or advocate) must be aware of the program, and in general terms, of its eligibility requirements and benefits, to access it in the first place. Many people with disabilities fail to get benefits to which they are clearly entitled simply because they do not know enough about the program to apply. Or they may not know whom to apply to, or where to call. It is important that this information be available to the disability community, having regard to the generally lower levels of literacy and education among persons with disabilities, the needs of those for whom neither English nor French is a first language, the needs of those who require information in alternative formats (tape, large print, Braille), and others who are "information-disadvantaged". The fragmentation of the "system" into a large number of programs, and the complexity of and frequent changes to individual programs, creates a very significant obstacle to the "information-disadvantaged".

(2) When the person actually gets in touch with the program, the first contact, or intake, is of critical importance. Many people accept the information received on intake as accurate, and on that basis decide either that they are or that they are not entitled to benefits from the program. In fact, however, there are many factors associated with intake, especially where it is done over the telephone, which lead to misinformation. The caller may be nervous, or have limited verbal skills, or simply leave out important facts. The intake worker may be under time pressure, or be a new recruit, or forget one of the special rules or exceptions in the program. The overriding consideration from the consumer perspective is that callers not be told they are ineligible when they may be. They should be encouraged to apply in all cases where eligibility is possible.

(3) The next step is the application procedure. It is important that questions on application forms be clear, and that adequate explanations of how they are to be answered are provided. There should not be misleading questions. Knowledgeable advice regarding how forms are to be filled out is important. In programs where information is provided directly to staff, it is essential that the staff have appropriate training, are given workloads which will permit them to fully explain all requirements, and are oriented towards treating applicants fairly. Typically, disability income programs require a doctor's report to establish eligibility, and this is often the source of considerable difficulty to the person with a disability. If there is no source of funding to pay the doctor, it may be difficult to get a complete and timely report. The necessity to request frequent reports may be a source of irritation to patient and doctor alike. Physicians are confused by the variety of forms and are often asked questions which they are not really in a position to answer fully, especially around employability. There is no standardization of doctors' reports. Some are much more "liberal" in their assessment of disability than others. Programs which rely heavily on physicians as "gatekeepers" and which do not address these problems are often very unfair to applicants.

(4) The timeliness of the processing of the application is understandably often a matter of great concern to applicants. Persons with disabilities cannot afford the delays in processing which are all too common in many programs. This is true not only for income benefits but for all benefits. For example, if the program in some way relates to training and employment opportunities, it is essential that decisions as to eligibility be made before these opportunities are lost.

(5) Once benefits are granted, there are a number of issues to consider with respect to the on-going relationship between the individual and the program. The establishment of continuing entitlement to benefits raises basically the same concerns just discussed with respect to initial applications. It is important that recipients be notified in a timely way of changes to the program. They should also be made aware of proposed changes so they can have input into how these might affect their eligibility. Recipients often need information about how changes in their personal circumstances (e.g. getting married, starting a part-time job) will affect their entitlement. Staff involved in program delivery need not only the expertise but also the time to provide this important information.

(6) If benefits are denied, then the review and appeal processes come into play. There are a number of delicate balances to be weighed in designing the review and appeal system. The reconsideration of the case should be timely yet thorough. It should be easy to access yet provide procedural fairness. There should be an eventual independent adjudication, but this should not relax the requirement on the program's administration to resolve the case fairly without requiring an appeal.

These are just some of the administration and delivery issues relating to the objective of delivering benefits fairly to the consumer. In fact, administration and delivery impacts on all of the other objectives of disability income programs, because none of the other objectives can be met unless the delivery system can be structured so as to actually provide the benefits in accordance with the program's design and intent.

### **The Relationship Between Program Design and Delivery**

The design of delivery systems impacts on their ability to deliver benefits in accordance with these objectives. In many cases, there is a "trade-off" between efficient administration and individualized program design.

(1) The delivery system is to a considerable extent constrained by the program design. If the program structure requires a large number of discretionary decisions, or regular monitoring of information from consumers, or detailed calculations, the delivery system has to provide for these if the program is to work at all. For example, if persons who have returned to work, but are still on the program must

report not only earnings but their earnings-related expenses, there must be an administrative process to accept this information and process it, to answer recipients' questions about it, and to calculate its impact on payments and benefits. A standard flat-rate allowance for work-related expenses avoids these administrative complexities, but may be less fair to individuals. This is an example of how administration and delivery issues must be considered together with benefit structure issues.

(2) Some programs are rule-based, with little discretion provided to local managers, supervisors and case-workers. These programs are generally easier to access and administer, but are more or less insensitive to individual considerations and circumstances. Programs which provide for more local discretion in the application of rules and provision of benefits can take account of individual circumstances, but are susceptible to inequities, not only among regions but also among individual staff in the same office. They are also more time-consuming to administer. More centralized programs can be more consistent, but they also can be slower than de-centralized programs. Larger programs can hire more specialized expertise than smaller programs, but they can also be more bureaucratic.

(3) In discussions of how to reform disability income programs, it is often assumed that there would be major cost savings created by combining the administration of different programs, but this would depend on how the new administration was designed. It could certainly be imagined that combining programs would cost more administrative dollars, especially in the short- to medium-term. Proposals to eliminate or combine programs, if they involve the elimination of existing staff positions, are extremely difficult for governments to implement. If job guarantees are given to existing staff, however, any savings due to "down-sizing" are at best considerably postponed. In any event, the real issue is whether combining programs better assists in achieving all of the objectives of reform, not just whether it would save administrative dollars.

### **Cost-Efficiency**

The cost-efficiency of disability income programs can be defined as the percentage of dollars spent that goes out in payments and benefits to persons with disabilities, as opposed to that spent on administration and appeals. [There are other definitions of "efficiency" that may be relevant to disability income programs. Administrative efficiency is basically the effective management of administration of the program. Target efficiency refers to the numbers of persons covered by the program.] Thus defined, it is often proposed as a criterion to evaluate programs and proposed reforms. It can be a useful test. If one program spends 88% of its dollars on benefits and another spends 58%, this is a significant argument in favour of the first program. However, reducing administrative dollars in itself should not be seen as an over-riding objective. Delivery staff, information services and so on must be adequate to deliver the

program fairly. Further, to assess "administrative costs" fully we must look beyond the costs internal to the program itself. If programs impose "external costs" on consumers, other programs or governments (e.g. for review of decisions in the courts, which may impose significant costs on all three) this must be taken into account as well.

Disability income program reform, then, is not simply an exercise in defining a "model program" on paper. Careful consideration must be given to the structural considerations of administration and delivery to determine how the proposed reforms can actually be carried out. Major changes in delivery agents and staffing cannot be made overnight. If reform is to take place, these issues must be addressed earlier rather than later in the reform process.

## **SUMMARY OF PART I**

In this Part, we have discussed in general terms two overall perspectives on and five broad objectives of comprehensive disability income program reform. The perspectives are the affordability of reforms and how the reforms should reflect the changing understanding of disability in our society. The objectives are employment, community living, adequacy, equity and effective administration.

Each of these perspectives and objectives is complex. Each is general, covering many more specific issues. And all of these perspectives and objectives must be related to each other.

In assessing existing disability income programs, or in considering reform proposals, it is essential to look carefully at this whole complex range of issues. It is necessary to look beyond the specific disability income programs to what is occurring within other disability-related programs, and to social and economic trends affecting the lives of persons with disabilities. If a sufficiently careful and comprehensive analysis of this kind is not done at the outset, reform initiatives are unlikely to reach their intended goals.

## **PART II: STRENGTHS AND WEAKNESSES OF EXISTING PROGRAMS**

In this Part, we shall review the major disability income programs in Canada. While in Part I we looked at the perspectives and objectives arising out of issues, in Part II our focus will be on programs. This will in no way be a comprehensive assessment or evaluation of these programs. While such a comprehensive study is essential if the reform process is to succeed, it is far beyond the scope of the present paper. Our goal here is simply to illustrate the kind of analysis that such a comprehensive study would involve.

We will look at certain selected "program features" of each program. By "program feature" we mean characteristics and rules of the

programs, including:

- jurisdiction to regulate the program
- the process by which rules are set
- how the program is funded
- the definition of disability used
- the disability determination process
- financial eligibility requirements
- contribution requirements
- income benefits
- indexation
- health-related benefits
- other supplementary benefits such as transportation
- rehabilitation provisions
- work incentive provisions
- who delivers the program
- discretionary decisions within the system
- internal reviews of decisions
- appeal processes.

All of these (and many other things besides) are essential parts of a complete description of a program. Of course, within the scope of the present study we will only be able to highlight a few program features related to each program.

The programs discussed in this section are the seven most important disability income programs in Canada. They are:

- (1) Social Assistance (SA)
- (2) Canada Pension Plan (Quebec Pension Plan) Disability Benefits (CPP)
- (3) Workers' Compensation (WC)
- (4) Long-Term Disability Insurance (LTD)
- (5) Motor Vehicle No-Fault Accident Benefits (MVAB)
- (6) Tort Awards and Liability Insurance Settlements (T/LI)
- (7) Income Tax Credits (IT)

These seven programs have been selected because they form the basic existing structure for disability income compensation in Canada. T/LI and IT have been included as "programs", although they would probably not ordinarily be considered as such, because of the significant number of dollars they provide in income support and because of their important inter-relationships to the other five programs.

Other programs could have been included, and would be considered in a more comprehensive analysis. For now, Unemployment Insurance Sick Benefits have been left out because this is essentially a short-term program. Veterans' Benefits and Criminal Injuries Compensation, while important, are more limited in scope and smaller in size than the seven programs selected. We also do not consider programs specifically providing non-income benefits only, such as drug plans, assistive devices programs, and attendant care programs, although a

full review would look at all of these in relation to the disability income programs.

Of the seven programs, only CPP and IT truly are national programs with one description and set of rules. (Quebec has its own pension plan, the QPP, but it is essentially the same as CPP. Quebec also has its own provincial IT. For IT there are some variations among the other provinces and territories as well). SA varies among provinces and territories. The Canada Assistance Plan (CAP) does set some common principles for federal cost-sharing, but these guidelines are subject to very different provincial and territorial interpretations and applications. WC and MVAB are different systems in different provinces and territories. LTD plans vary from insurer to insurer and employer to employer, although there are some generally common features. Tort, and the liability insurance plans which essentially respond to the tort system, also varies among provinces and territories in significant aspects. In discussing these "programs", then, we must keep in mind that there are very important variations in all of them except CPP and IT (and some variations even in these two).

Because of the complexity of the programs, and in many cases the limitations of the information available about them, we are not in a position to assess them. Rather, we can relate certain of their program features and characteristics to the objectives we have identified, to point the way to the further kinds of analysis required. The "conclusions" drawn during our discussion of these programs must be viewed in this light. They are very preliminary and suggestive of directions for further consideration.

## **1. SOCIAL ASSISTANCE (SA)**

SA is a provincially and territorially administered program, although the federal government shares in its costs under the CAP. The provinces determine the rules, but this must be done within the CAP guidelines if the expenditures are to qualify for cost-sharing. Cost-sharing under CAP was formerly on a 50/50 basis between the two levels of government, but there is now a "cap on CAP" affecting the three "have" provinces - British Columbia, Alberta and Ontario - which now limits their annual increases. In effect, any further improvements to SA in these provinces would be entirely provincially funded.

SA is essentially a "last resort" or "safety net" program. It is characterized by relatively low income payments and needs-testing. Generally, it is a secondary source of support to the other programs - those eligible for payments from other sources will have them deducted from their social assistance. Supplementary benefits of various kinds are provided: these vary among provinces and territories.

Some of the main program features of SA which require careful analysis are the following:

(1) Because of the CAP structure, while SA programs are under provincial and territorial jurisdiction, the framework of the program is based on the CAP agreements and guidelines. Provinces and territories are reluctant at best to implement SA changes unilaterally if they believe they will lose cost-sharing. Changes to CAP require federal-provincial agreement, which is difficult to obtain. While the cost-shared basis of CAP was instrumental in improving the "safety net" when it was introduced in the 1960's, and has provided a measure of protection against cutbacks in this program since, the effect has also been to create a structure within which reform is very difficult. It is now time to re-assess carefully the strengths and weaknesses of the CAP framework, to determine whether priorities and objectives for persons with disabilities could be met better through another federal/provincial/territorial co-operative model.

(2) The relatively low levels of income support provided under SA raise major concerns in relation to adequacy. Reviews of the disability income system often identify raises in SA levels as a priority. The difficulty is that, as these programs continue to grow, concerns are raised about the affordability of higher income levels. On the other hand, if persons with disabilities do not have enough to meet their basic needs, arguably they will be unable to pursue the steps towards training, employment and community living which would provide a real basis for reducing the case loads in the long term. In addition, persons with disabilities who cannot get sufficient support from SA may receive very costly institutional services or health-related services. As argued in Part I, many in the disability community believe that a careful long-term cost-benefit analysis would justify an increase in the basic income guarantees provided by "safety net" programs such as SA. The savings through the long-term benefits would fund the improvements.

(3) SA programs typically cover a number of different disadvantaged groups - persons with disabilities, sole support parents, those who are unemployed for a long period, and older persons who do not qualify for full Old Age Security. These different groups are all entitled to equitable consideration, but they have different needs, and it may be questioned whether it is efficient to have them all in the same system under the same administration. Once the groups are in the same program, it makes reforms more cumbersome from an administrative point of view. Also, if rules are introduced for one group that do not apply to other groups, there will be concerns raised about equity, even if the differential treatment is justified. The strengths and weaknesses of including persons with disabilities in comprehensive social assistance programs, rather than in a separate program, needs to be evaluated more carefully than has been done in the past.

(4) SA programs have relatively high "tax-back" rates (75% and up) for earnings, perhaps imposed after a small initial exemption. There may or may not be a provision for work-related expenses. While some work has been done on improving the earnings exemption provisions in the provincial and territorial programs, there is still considerable room

for progress.

(5) The very low "liquid asset" levels permitted under CAP are reflected in provincial SA programs. A good case can be made for permitting persons with disabilities, who may be on SA for a longer time than members of other groups, to retain their savings, and for allowing their families to make provision for them (e.g. through their wills). A \$3000 savings limit to provide for lifetime security is hardly adequate in 1992. At the same time, a significant raise in liquid asset levels would raise difficult equity problems (as discussed under the equity objective in Part I. It may seem unfair that someone with \$100,000 in savings or an inheritance would receive the same level of support from a "last resort" program as someone with no savings at all. A partial answer is that the \$100,000 would generate income which would then reduce the SA payable. (Basically, this is how GIS for seniors works.) This kind of compromise would permit a sharing of support between public and private resources. One problem is that it is becomes more difficult to implement if we try to take the special circumstances of persons with disabilities into account. It seems, for example, that the rules should take account of extraordinary expenditures, such as a van or attendant care. (CAP permits this.) If liquid assets are permitted to be used for these purposes, there is an argument that SA should be available for basic needs as well.

(6) Important issues are raised by the relationships among SA eligibility, supplementary benefits, and work incentives. For many SA recipients, supplementary benefits such as drug coverage or attendant care may have a cash equivalent value of several hundred dollars per month. If SA eligibility is a criterion for getting supplementary benefits of this nature, then continued eligibility while working is essential if work incentives are to be effective. People with disabilities often are forced into remaining outside the labour force by concerns about the loss of supplementary benefits. In this case as well, the solution is not simple. One answer would be to give all persons with disabilities who are working drug coverage, attendant care and other supplementary benefits through a governmental program, perhaps on an income- or needs-tested basis, but with much higher entitlement levels than exist under SA. A potential problem with this, however, is that it would allow employers, some of whom are providing these benefits through company plans, to pass the cost of the benefits over to the government program. This should be investigated and solutions explored before this approach were recommended.

## **2. CANADA PENSION PLAN (QUEBEC PENSION PLAN) DISABILITY BENEFITS (CPP)**

CPP disability pensions are part of what is primarily a retirement benefit system. CPP is administered by Health and Welfare Canada. (Quebec has its own pension plan - the QPP - which is very similar to



CPP but has some different provisions.) Pensions are paid from a separate CPP fund, which has been created by employees' and employers' contributions since the beginning of CPP in 1966.

The definition of "disability" used for CPP eligibility is "severe" and "prolonged". It is interpreted effectively to mean a more-or-less total inability to work over a period of several years. There have been recent pilot projects aimed at re-integrating CPP disability pensioners into the work force, but this initiative is not yet part of the legislative framework.

Eligibility for a CPP disability pension, and the amount of that pension, depends on contributions to the CPP during one's "contributory period". These are contributions made from earnings through employment, including self-employment, for years when a person earns over a certain minimum amount. There are a number of complex rules relating to the contributory period and contributions which may affect entitlement, such as "credit-splitting" on marriage breakdown, the relationship between disability pensions and early retirement pensions, and contributions made in other countries with which Canada has a Social Security Agreement.

Some key issues relating to CPP disability pensions are the following:

(1) Because of the aging of Canada's population, costs to the CPP relating to retirement pensions are projected to increase very significantly over the next 20 years. In order to pay for these pensions, contribution rates to CPP will be increased every year for the next 15 years. The financial crisis in which the CPP fund finds itself raises significant affordability concerns about improvements to the program, including improvements to disability pensions.

(2) The minimum levels of earnings required to contribute to CPP are quite modest. The 1992 level, for example, is \$3,200. So those in the work force even to a limited extent qualify as contributors. (Of course, their eventual pensions, retirement as well as disability, would be higher if they contributed more, but at least they are qualifying as contributors for the year, and that would help them to obtain at least a minimum level of pension.) From this perspective, coverage under CPP disability is quite broad. On the other hand, since eligibility for CPP disability depends on contributions having been made in 2 of the last 3 or 5 of the last 10 years in the contributory period, there are some gaps in coverage. Consideration could be given to extending the coverage of the CPP program.

(3) CPP disability pensions are, of course, much fewer in number than retirement pensions. Combining disability and retirement benefits within the same program, in which the latter are of primary interest, may inhibit reforms to the rules governing disability pensions.

(4) Under the CPP legislation, significant changes require the approval of two-thirds of the provinces with two-thirds of the

population. In practice, unanimous approval of the provinces is sought. This is a restriction on the ability of the federal government to implement CPP reforms. Together with (3), this constitutes a significant obstacle to using CPP disability, at least as it is presently structured, as a major vehicle for implementing disability income reform.

(5) As noted above, CPP has a strict definition of disability, based on prolonged total disability. The effect is that CPP disability pensioners resist attempting training or re-employment, because of concerns that their pensions may be lost forever. It is true that the CPP administration has developed more liberal policies in this area and has engaged in pilot projects to encourage return to work. However, these policies are not enshrined in the legislation (and thus cannot be relied upon in an appeal) and are not well publicized. If the employment objective of disability compensation reform is to be achieved for CPP disability pensioners, it is essential that more emphasis be placed on continuing eligibility while in training or educational programs, or during return to work. CPP disability pensioners often receive other benefits as well, such as SA, WC or LTD. Concern about losing the CPP pension may inhibit people from participating in work incentive initiatives through these other programs as well.

(6) It is generally accepted that CPP disability pensions are too low, in themselves, to provide adequate incomes to persons with disabilities. The monthly maximum for 1992 is \$783.89, and of course many CPP disability pensioners receive less than that amount. However, like CPP retirement pensions, CPP disability pensions are probably intended to provide only a partial income to recipients, who are anticipated to have income from other sources. In fact, as already noted, many CPP disability pensioners also receive SA, WC, LTD, or MVAB. In most cases, the amount of the CPP disability pension is totally or partially deducted from the other benefits as a "set-off". If CPP disability benefits were to be increased again (as they were in 1987), and the other programs were to "set off" the increases, only a limited percentage of the increased benefits would actually go to assist recipients. It is sometimes proposed that "set offs" be prohibited, but this raises equity issues within the other programs. Should someone on both SA and \$700 monthly income from CPP receive the same SA as someone with no outside income? Probably, the answer is "no". We can look for a compromise solution, such as a partial exemption (perhaps equal to the SA earnings exemption, on the theory that CPP is "earnings replacement"). Or the other programs could be allowed to "set off", but then be required to use the dollars saved through the CPP increase to improve benefits to all recipients with disabilities. As we design a more equitable compromise solution, however, we are faced with efficiency considerations - we must ask how difficult the solution will be to implement.

(7) An advantage of the CPP disability program to recipients is that it does not "set off" benefits from other programs in any

circumstances. Nor does it disqualify recipients on the basis of income or assets, whether the individual's own or that of other family members. From this perspective, it can be seen as supporting the community living objective. People continue to receive CPP disability pensions so long as they are unable to work, regardless of other lifestyle or personal relationship choices. If, for example, a person with a disability is a spouse of someone with a modest income or savings, CPP disability is often the only benefit they qualify for. On the other hand, CPP disability does not respond at all to individual needs, which is the "trade-off" for having a fixed and definite pension benefit.

### **3. WORKERS' COMPENSATION (WC)**

Workers' compensation is a no-fault disability income program for persons disabled by accidents in the workplace or industrial diseases. The program is "no-fault" because the injured worker does not have to prove any fault on the part of the employer to get benefits. In return, the employee gives up the right to sue the employer civilly. This is the historic "trade-off" on which workers' compensation is based. Fault on the part of the employee is also irrelevant except in cases of "serious and wilful misconduct".

Workers' compensation is under provincial and territorial jurisdiction and is administered in each province by a "Workers' Compensation Board" (sometimes the name is somewhat different). It is funded by employers' contributions which are placed in a separate fund.

Workers' compensation provides income replacement to the injured worker. These benefits are typically staged, differing in the short-, medium- and long-term. At some point, those disabled over the long-term will have an assessment of their level of disability, which is usually some degree of partial disability except for the most significant disabilities. Some WC programs use a "clinical assessment" approach (the "meat chart") while others use either actual or deemed wage loss. WC programs pay for medical and health costs, a range of supplementary benefits, and have extensive rehabilitation programs as well.

As WC programs vary significantly from province to province, here we can only identify briefly a few major issues.

(1) Like CPP, WC has a serious underfunding problem. Governments have come under significant pressures relating to WC from two directions. On the one hand, injured workers and labour have demanded improvements, including indexation of benefits. On the other hand, employers have objected vociferously to increasing assessments. Governments have often given in to both pressures, and increased income and other benefits, even retroactively, without increasing assessments to cover the future cost of these improvements. The

result is an "unfunded liability" which places a downward pressure on benefits and an upward pressure on assessments. The WC funds are faced with a deficit problem not unlike that of the national and provincial Treasuries. Consideration has to be given to strategies which will enhance the long-term fiscal stability of the WC funds, rather than simply postponing the "day of reckoning" into the future.

(2) A strength of WC is the relatively high level of benefits, both income and supplementary, in comparison with other programs. This high level of benefits is often cited as a barrier to including WC in a comprehensive reform package with other programs. If we look at long-term WC recipients, however, we find that many are unemployed and have only partial income support. While WC compensates those injured in the short-term very effectively, often it does not provide support on anything like an adequate level to those injured workers who are dependent on it for support in the long term. They often wind up on permanent pensions (determined through a rating schedule or through an estimated loss of earning capacity) of 10%, 20% or 30%, while for social and economic reasons they are completely unable to work.

(3) For most "higher-risk" kinds of employment, WC coverage is compulsory, which provides considerable protection to workers. But there are gaps which should be addressed. For some kinds of employment coverage is only optional. "Independent contractors" are not eligible for coverage. While WC coverage is generally broad in scope, these are still significant problems.

(4) There are numerous problems in WC programs relating to the cause of disability. Without using legal terminology, the problem for the person with a disability seeking benefits from a WC program is often to show that the disability is sufficiently work-related. Difficult causation problems may involve whether an injury incurred while travelling is work-related, whether a heart attack was caused by job stress or exertion, and whether lung cancer resulted from exposure to asbestos 20 years ago, to take three examples. Significant administrative costs and equity concerns are raised by the need to resolve these causation questions. The equity concerns are particularly highlighted when fine distinctions have to be drawn between cases where there is eligibility and those where there is not. For example, there are precedents to the effect that an employee injured in the company parking lot has WC coverage, but an employee injured in a parking lot shared by the company with others does not. Does it make sense to have entitlement to compensation turn on this type of distinction?

(5) Many WC boards are heavily involved in providing rehabilitation as well as benefits. As well, WC typically involves a strong formulation of a "rehabilitation obligation" which requires the injured worker to participate in training or employment to continue receiving support from the program. The combination of these two factors can result in a coercive environment in which workers may resist efforts to force them to engage in work or training which they believe is unsuitable.

As argued in Part I, it is plausible to assume that a less coercive, more voluntary approach might assist more in achieving the employment objective for injured workers.

#### **LONG-TERM DISABILITY INSURANCE (LTD)**

Long-term disability insurance is provided by employers, through group plans for professionals and others, and is also purchased by individuals. Some major employers self-insure their plans and may retain an insurance company to provide administration, especially claims handling. Where the plan is through the employer, the employer or the employee may pay, or the contributions may be shared.

In 1983, the Canadian Life and Health Insurance Association estimated that 43% of the work force had LTD coverage. Typically, employees in better-paid positions or with larger employers are most likely to have LTD.

LTD plans are under the regulatory jurisdiction of the provincial and territorial governments. However, their provisions are not standardized, and may vary from insurer to insurer and from employer to employer. We can say that the level of income replacement provided is typically in the 60%-75% range. CPP is usually deducted (although sometimes CPP increases are "passed through"). A standard provision is that eligibility during the first two or three years is based on inability to perform one's previous job, and after that time the recipient must show that he or she cannot work at any job. Indexation is unusual except in government-sponsored plans. There is typically provision for supplementary benefits, although what is actually provided varies from plan to plan.

While LTD plans can vary greatly, we can venture some generalizations about their strengths and weaknesses:

(1) An efficiency problem is that persons who become disabled are often not informed of the provisions of their LTD plan, especially if it is offered through an employer. Usually employees receive a booklet or handbook outlining the benefits in very general terms. Invariably, there is a disclaimer saying that the booklet is only a summary, and that the policy should be consulted for an authoritative statement of the rules and benefits. But the individual has not been provided with the policy, and often is refused a copy by the insurer on the grounds that it is the property of the employer! Equity and fairness demand that the policy be made available to anyone covered by an LTD plan, especially if they have become disabled and need to know what benefits are available to them.

(2) LTD plans are not standardized. They are open to negotiation, especially where large employee groups are involved. This is both a strength and a weakness. On the one hand, the program can be designed

to meet the needs of employees. On the other hand, the variation among programs combined with the information problem described in (1) makes it difficult for employees and others to understand what should be in their LTD program. The pros and cons of regulating the content of LTD plans more closely should be carefully considered.

(3) While there are variances among LTD plans, some have much better work incentive provisions than government plans. Unlike SA, some LTD plans have exemptions of a few hundred dollars per month, or tax-back rates of 50%. These plans certainly provide better incentives to employment than do the public plans.

(4) A major adequacy problem with many LTD programs is the lack of indexation. This raises a major concern especially for those most seriously disabled. Those who require income support over their lifetimes will find this support completely eroded by inflation. Insurers express concern that employers and other insurance purchasers would find indexed plans too expensive, and will not purchase the coverage at all. This is a valid concern, but it ought to be addressed in some way. Lack of inflation protection simply has too detrimental an effect on those disabled over the long-term to be left out of any disability compensation program.

(5) LTD plans invariably contain provisions excluding pre-existing disabilities from coverage. From an insurance perspective, there is a rationale for not covering those disabilities which participants have when they join the plans. At the same time, pre-existing disability exclusionary clauses are a major obstacle to achieving the employment objective for persons with disabilities. Not having full disability coverage poses a major risk for a person with a disability deciding to enter or re-enter the work force. It forms a significant component in the "welfare trap" which has especially adverse consequences for persons with disabilities.

#### **5. MOTOR VEHICLE NO-FAULT ACCIDENT BENEFITS (MVAB)**

MVAB are benefits provided through motor vehicle insurance to those injured in accidents, regardless of fault. (Sometimes those who have committed certain major criminal offenses, such as driving while impaired, have their eligibility limited.) Motor vehicle insurance is under provincial jurisdiction, and there are significant variations among provinces. But all have some form of MVAB.

In two of the provinces, Quebec and Ontario, limitations have been placed on the right to sue civilly for motor vehicle accident personal injuries. In Quebec, the right to sue has been abolished, while Ontario currently has a "threshold" system where only those with serious and permanent disabilities can sue. In these provinces, MVAB are significantly higher than in the other provinces where the full right to sue has been maintained. Motor vehicle insurance programs cover both MVAB and liability against lawsuits by others, in all of

the provinces except Quebec where the latter has been abolished.

MVAB are funded by motor vehicle insurance premiums. Motor vehicle insurance is compulsory in all of the provinces. In four of the provinces, Quebec, Manitoba, Saskatchewan and British Columbia, there is a public automobile insurance plan, while in the other six provinces the coverage is provided by private insurers.

MVAB share some characteristics with WC and some with LTD. The issues discussed in the previous two sections for these plans are similar to issues that arise in the context of MVAB. Like WC, there are significant issues relating to funding of benefits, problems with proving causation, and concerns about the major role played by public and private insurers in the rehabilitation process. Like LTD, there are significant variances as to coverage, benefit levels and inflation protection.

In all of the provinces except Quebec, MVAB are funded within the same policies and structure as tort liability. This often leads to confusion on the part of the public about MVAB, which may be believed to be available only to those "not at fault". Where the right to sue has not been restricted (i.e. everywhere in Canada except for Quebec and Ontario), MVAB constitute a sort of "secondary program" to personal injury lawsuits. Arguably, this "secondary status" leads in some cases to difficulties in accessing the benefits. People are unclear about the nature of MVAB and about how to apply for them.

Discussion of the prospects for reforming and improving MVAB will be postponed until after we have discussed the characteristics of the personal injury tort system in the next section of this paper. The two are closely related, as funding for major improvements to MVAB is usually proposed to come from a tort limitation, either partial (as in Ontario) or total (as in Quebec).

## 6. TORT AWARDS AND LIABILITY INSURANCE SETTLEMENTS (T/LI)

T/LI is another source of disability income. It is characterized as a "program" here, although it is not usually thought of as such, for two reasons. First, it has significant inter-relationships with the other programs under discussion. Second, it has characteristics which can be compared with their "program features". While it is very different from CPP, WC or MVAB, it still can be compared with them.

Personal injury tort basically involves suing an individual or organization in the civil courts for financial damages. To succeed, the plaintiff (i.e. the person suing) must establish that the defendant caused the injury either through negligence or intentional misconduct. While the vast majority of cases are settled prior to trial, ultimately the decision as to whether there will be compensation rests with a judge or civil jury.

The fundamental principles governing personal injury tort largely come from traditional English common-law in all of the provinces except Quebec, which has a Civil Code. In the nine common-law provinces, whether the plaintiff can succeed depends largely on precedent, which is "judge-made law", although provincial statutory law enters into the determination of many cases. While the system in Quebec is fundamentally different in concept, it is similar to the other provinces as to which injuries will be compensated.

If the plaintiff succeeds in obtaining either a settlement prior to trial or a favourable judgment at trial, the defendant is obligated to compensate him or her. While the individual or corporate defendant is directly responsible for payment, in the vast majority of cases the actual payment will come from some type of insurance. We have already seen that motor vehicle insurance contains a component to pay liability claims to others. Organizations, and some individuals, have comprehensive general liability insurance to cover, among other things, personal injury claims. There is a liability insurance component in property insurance. Medical malpractice is covered by organizations such as the Canadian Medical Protective Association, which is technically not an insurer but functions much like one.

The strengths and weaknesses of the tort system have been debated at great length. There are many articles and studies both attacking and defending this system. The following are some of the main issues:

(1) The costs of accessing the tort system can be very considerable to plaintiffs. ["Plaintiffs" are persons with disabilities seeking compensation.] There are two major sources of costs. First, in almost all cases of significant personal injury a lawyer must be retained and paid. Second, in the Canadian system there is typically an award of costs to the defendant if the plaintiff loses. Costs in each area often, of course, run into the thousands of dollars. There are mechanisms which address this concern, especially Legal Aid and contingency fee arrangements. But they fall short of addressing it entirely.

(2) Personal injury tort actions are essentially an adversarial contest between the plaintiff and the defendant (or, more realistically, the defendant's insurer). The individual plaintiff typically does not have the resources which the defendant does to pursue the action successfully through a complex system. If the case is problematic because there are difficulties in proving the defendant's actions caused the injury, the plaintiff is at a disadvantage in proceeding against a defendant with more resources to research the case, hire experts and so on.

(3) One of the strongest points advanced in favour of the tort system is that it is premised on the principle of full compensation. In theory, the plaintiff is to be put back into the same position as if the accident or disability had never occurred, so far as money can accomplish this. If the case succeeds, the judge or civil jury can



compensate, within the framework established by precedent, for all of the costs associated with the disability. There can be compensation for lost earnings, lost earning capacity, pain and suffering, assistive devices, attendant care, home renovations and many other items. Because of the open-ended nature of personal injury tort compensation, plaintiffs who succeed may be compensated on a much higher scale than they would be under any of the other programs. On the other hand, most plaintiffs do not succeed in full, either because of the expense and financial risk of pursuing their cases, or because of problems of proving causality, or because there are limits on the insurance coverage available, or from some other cause. A review of disability income programs should look at the question of the adequacy of actual insurance settlements and tort awards.

(4) If the plaintiff succeeds in getting a settlement or court award, this is a final lifetime resolution of compensation for the disability. The plaintiff receives either a lump sum payment or, in more serious cases, a "structured settlement", which involves an annuity provided to guarantee lifetime compensation. This is very different from programs like WC, LTD and MVAB, where entitlements are re-assessed and changed on an on-going basis throughout the person's life. There are advantages and disadvantages to the "final resolution" provided by settlements and court awards. For some plaintiffs, the control which they have to design how the money will be spent is of enormous assistance in their integration into employment and community living. They are free to plan this process themselves without the "interference" of disability income program staff. On the other hand, once the settlement is accepted or the award given, there is no provision for adjusting to future circumstances. If the disability subsequently progresses, or turns out to be more significant than originally thought, there is no way of going back and increasing the award. While settlements and awards provide inflation protection, if the projections originally made prove to be very wrong, there is no way of going back and re-adjusting the amount given. Conversely, if the subsequent need is much less than originally anticipated for any reason, there is no way of going back and reducing the award. Careful study is needed as to whether, looking at all the considerations, "one-time" lump sum awards as are available through tort meet the objectives of disability income programs better or worse than statutorily-defined no-fault programs such as WC and MVAB.

(5) Tort is closely linked to the concept of "fault". Compensation under tort is reserved for "innocent victims" - those who can establish that they have been wronged by someone else. In choosing between a tort approach and a no-fault approach to compensating a class of disabilities, we are not just looking at technical issues. We also have to face squarely the question of whether "innocent victims" have a justice or equity claim we should recognize within the disability income system.

Many decades ago the fundamental "trade-off" was made to establish WC.

The "trade-off", as we have already discussed, was that employees gave up their right to sue their employers in exchange for no-fault coverage for work-related injuries. An injured worker only has to show that he or she was injured in the workplace: whether or not it was the employer's "fault" is irrelevant. There remains a general consensus in support of the "trade-off" as a cost-efficient way of protecting workers against the cost of disability. While both business and labour have concerns about WC, few are advocating a return to civil actions. Fundamentally, this is because the advantages of having widely-available compensation for workplace injuries are perceived as outweighing the special equity claims of the minority of injured workers who clearly are injured through the "fault" of their employers.

With respect to motor vehicle accidents, the move towards the "trade-off" where no-fault compensation replaces tort is much more recent and controversial. The "trade-off" accordingly has only been implemented fully in Quebec, which has eliminated personal injury civil actions arising from motor vehicle accidents. It has been implemented partly in Ontario, which has a "threshold" system limiting the right to sue to the most serious cases, and only to a very limited extent in the other provinces, where very low MVAB co-exist with an unrestricted right to sue in court.

For other classes of personal injury accidents, such as "slip and fall" cases and medical malpractice, it is difficult to define the class of compensable injuries clearly enough to design a no-fault program. This could be addressed as part of a general program of comprehensive reform, but it is difficult to design a specific no-fault program for medical malpractice, to take one example. Many people become more disabled after being in the hospital for an operation - if we do not refer to "fault" or "negligence" how can we determine who would qualify for the compensation program?

Gradually, no-fault disability income programs are supplanting tort, essentially because the administrative costs of tort are so high as to make it inefficient. The advocates of retaining tort, however, continue to point to the unfairness of ignoring the justice claims of "innocent victims". Despite the many discussions of this dilemma, it has not been fully and consistently addressed, and this issue would remain a fundamental part of any debate about comprehensive reform.

## **7. INCOME TAX CREDITS AND EXEMPTIONS (IT)**

The income tax system in Canada is used by federal, provincial and territorial governments to collect revenue. In all of the provinces except Quebec, administration of the program is by the federal government. Quebec has its own separate provincial income tax administration.

There are a number of credits and exemptions within the income tax system available to Canadians with disabilities, but of these the three most important are the disability tax credit, the medical expense credit, and the tax-exempt status of payments from some (but not all) disability compensation programs. We shall discuss each of these briefly.

(1) The IT disability credit is available to disabled taxpayers and to taxpayers who have a disabled dependant. Eligibility depends on being certified by a physician as having a marked restriction in one's ability to perform the activities of daily living. Employability or unemployability is not a criterion for eligibility. The credit is non-refundable, which means that it can only be used as a "set off" against tax otherwise payable.

There are concerns about the definition of disability for the DTC and about the determination process. Many in the disability community believe the definition to be too restrictive, and that it excludes many with significant disability-related costs. Requiring physicians to certify people with disabilities as eligible, rather than just providing medical information, creates a number of problems. There is no standardization of determinations of eligibility, and both patients and doctors may feel it is inappropriate for the doctor to make the final decision.

People with disabilities with low incomes or tax-exempt incomes do not benefit from the DTC. If the DTC were made refundable, this problem would be addressed. Low-income persons with disabilities could be sent the DTC through monthly cheques, in the same way as the federal government has chosen to deliver the new child benefit program.

(2) The medical expense credit includes, not only health-related items, but other disability-related costs such as home renovations and, subject to significant limitations, attendant care. There is a detailed list of which expenditures qualify, rather than a general category.

It is important to note that the medical expense credit constitutes far less than a full subsidy for disability-related costs. First, like all of the non-refundable federal tax credits, the actual value to the disabled taxpayer (including the impact on provincial or territorial tax) is around 25%-30% of the amount that was spent. Second, 3% of net income must be deducted before the claim is made, which reduces the value even further.

If persons with disabilities have to pay disability-related costs out of their own pockets, a good case can be made for providing greater reimbursement through the medical expense credit. Like the DTC, the medical expense credit could be made refundable. The value of the credit could be increased for those with long-term disabilities or higher costs, and the 3% of net income reduction taken away for the same group. These would likely be cost-effective steps towards the

promotion of integration into employment and community living.

(3) Of the other six disability income programs we have discussed, SA and WC payments are exempted from IT (although they are taken into account in determining dependency claims and eligibility for some credits). CPP is taxable. LTD, MVAB and T/LI may or may not be taxable, depending on a variety of factors. The inconsistent tax treatment of the different programs creates a number of technical problems in harmonizing them, and is an obstacle to be reconsidered during the comprehensive reform process.

## **SUMMARY OF PART II**

In this Part, we have reviewed some of the strengths and weaknesses of seven major disability income programs:

- (1) Social Assistance
- (2) Canada Pension Plan Disability Pensions
- (3) Workers' Compensation
- (4) Long-Term Disability Insurance
- (5) Motor Vehicle No-Fault Accident Benefits
- (6) Tort Awards and Liability Insurance Settlements
- (7) Income Tax Credits and Exemptions

We have looked at some of their program features, and at the implications of making changes to them, in light of the perspectives and objectives of disability income programs and reforms identified in Part I.

It must be emphasized that our discussion in this Part is the sketch of an analysis rather than the analysis itself. The intention was to illustrate the kinds of considerations and arguments that would have to be examined in a comprehensive review of disability income programs. Within the context of this paper, no definitive conclusions can be drawn about these matters. We can only show the range and complexity of the issues which should be addressed.

## **PART III: PRELIMINARY ANALYSIS OF REFORM OPTIONS**

A number of authors and organizations have put forward proposals to reform Canada's disability income programs. Some of the proposals have been quite specific, while others have been very general. Some have aimed at changes which can be implemented quickly, while others have proposed very fundamental alterations to the basic structure.

## **THE JOINT FEDERAL-PROVINCIAL TASK FORCE ON A COMPREHENSIVE DISABILITY PROTECTION PROGRAM**

The Joint Federal-Provincial Task Force was established by federal and provincial Ministers of Social Services in 1982. It reviewed the available data on disability and on disability income programs. Then it went on to identify the strengths and problems of the existing system, and to look at comparisons between the Canadian system and that in other countries.

In the end, the Task Force concluded that, while a significant restructuring of the system was required, it would be unrealistic to eliminate and replace all of the existing programs. The Task Force set forward six disability income program models, three for earners and three for non-earners. [As explained earlier, in discussing disability income programs "earners" are those who participated in the competitive labour market at the time of or just prior to becoming disabled, and "non-earners" to those who did not. These terms do not refer to a person's current employment status.] These models sought to build on existing approaches rather than to replace them entirely, although some would be quite different from existing programs.

In its Interim Report, the Task Force also identified more limited reforms that would not require comprehensive reform.

### **Mandatory Long-Term Disability Insurance**

The first earnings-replacement model was Mandatory Long-Term Disability Insurance. This would require the federal, provincial and territorial governments to legislate a requirement that all employers provide LTD to their employees. There would be legislated standards (which do not exist now for LTD) regarding benefit levels, inflation protection, classes of persons covered, premiums, rehabilitation benefits and so on. The Task Force also envisaged that limited coverage be extended to dependants of contributors, perhaps through the payment of additional premiums. The insurance (as with motor vehicle insurance, which is compulsory) could be provided through private or public insurers, or a combination of the two.

The Task Force stated that basic changes would have to be made in LTD as it currently operates. As already noted, the programs would have to be made more uniform through regulations. To address long-term adequacy, inflation protection would be required. Apparently, CPP would no longer be "set off" against LTD, and CPP disability might be eliminated altogether, to be replaced by the mandatory LTD and by some option like a government-sponsored flat-rate benefit for those who did not qualify for LTD. (The Task Force estimated a coverage level of about 80% of those in the labour force under mandatory LTD.)

In Part II, we discussed the problems raised by exclusionary provisions under LTD for persons with disabilities seeking to enter or re-enter the work force. The Task Force discussed "high-risk" cases

being covered by an insurance pool, but did not discuss whether the "pre-existing disability" exclusionary rules would be modified.

The Task Force also assumed that mandatory LTD would not replace WC, and there would be a program with a higher earnings-replacement rate for work-related injuries.

The Task Force estimated the cost of mandatory LTD as similar to that for existing LTD programs, between 1% and 2% of payroll. The proposed mandatory LTD would now incorporate inflation protection, would include "high-risk" individuals formerly excluded from coverage, would no longer "set off" CPP (if that program were in fact continued at all), would contain significantly improved benefits (income, rehabilitation and supplementary benefits) and would have to be available to hundreds of thousands of small employers. These improvements would presumably all be funded by the significant increase in the number of employers paying premiums. Of course, a careful costing would be required before this were implemented.

The Task Force also did not discuss fully the administrative complexity of mandatory LTD, were it to be delivered by a multiplicity of private insurers. Under this scenario, people would change insurers every time they changed jobs. There would be a significant number of disputes about which insurer was responsible to provide coverage, especially with intermittent or progressive disabilities. Further, there is the issue of the "waiting period" when people change jobs. At present, typically new employees do not get LTD coverage during the first three months of employment. Under the mandatory LTD proposal, unless this were changed, people who had been regularly in the work force for many years would lose all protection when they changed jobs, even CPP disability which is (perhaps) proposed to be eliminated under this proposal. These issues are not insurmountable, but they would require careful consideration before the mandatory LTD approach were agreed to.

#### **The High Benefit Level C/QPP-Type Disability Protection Program**

The second earnings-replacement model discussed by the Task Force was the "High Benefit Level C/QPP-Type Disability Protection Program". In fact, this proposal would be very different from the existing CPP disability program, and the Task Force suggested that it might in fact have to be delivered by a separate administration.

The proposal would replace the current flat rate plus earnings-related component with a straight earnings-replacement model, but at a very much higher level of replacement, in the 60%-75% range. The ceiling on earnings covered, which is now quite modest (the 1992 upper limit is \$32,200) would be dramatically increased or even eliminated. The Task Force considered additional provisions to protect low earners and the issue of how to average earnings for those whose income fluctuates. It was also suggested that the definition of disability under CPP be broadened, at least to ensure that all those currently

receiving CPP are eligible.

This kind of proposal is somewhat like the previous one, except that it assumes a unified public administration. The Task Force believed that it would reduce or eliminate the need for LTD. This would depend, in large part, on the level of earnings replacement chosen. If it were set below the recommended range, say at 50%, then private LTD could continue as a "top-up" program. Another possibility is that private LTD would be allowed to compete, and that employers who had private plans which complied with certain standards would be allowed to "opt out" of the public scheme. (This would again raise the integration issues we discussed in connection with the mandatory LTD proposal.)

At the time this proposal was put forth, 5 years of contributions were required in every case to qualify for CPP disability pensions. The Task Force said that "some relaxation" of the rules might be necessary. In fact, unless the program were to exclude a substantial number of persons in the work force, those rules would have to be relaxed very considerably. Remember that existing LTD typically has a waiting period of only three months.

This kind of program was argued by the Task Force to significantly increase offsets in both SA and WC, reducing costs to these provincial and territorial programs. WC would especially benefit from savings if there were a partial disability component to the new plan as well, although this was recognized by the Task Force to entail significant increases in program administration, caseload and benefits costs. The reallocation of costs from provincial and territorial governments to employers would be a major issue.

The cost implications of this proposal to employers and to self-employed persons would be significant. The Task Force's estimate would be an immediate increase (in 1983) in the contributory cost of CPP disability benefits from .38 percent to 1.0 percent, rising to 1.4 percent by the year 2000. However, this would largely, if not totally, be offset by decreases in WC and LTD contributions. In the long-term, it might be more cost-effective to have a sufficiently high level of earnings replacement so that income replacement would not have to be provided through these other programs, or through SA (to those who had been "earners" in the work force), MVAB and T/LI at all. Provincial and territorial governments and private insurance could then turn their attention to assistive devices, attendant care, drug costs, and other disability-related programs not involving income support.

This model is at first sight attractive. It holds out the prospect of very wide coverage, separating the federal and provincial roles, and providing one-source income replacement to Canadians who become disabled. It would be simple enough to provide benefits quickly. But there are both administrative and equity issues raised by this proposal which are very significant. The program would presumably not

be able to cover all those currently receiving income benefits from other programs, and would therefore have to co-exist with these programs for a considerable period of time. The program would require a very extensive bureaucracy to deal with disability determination issues and with work incentive and rehabilitation issues too (unless these could be delegated to provincial governments or the voluntary sector). There would be considerable pressure to modify the income averaging rules to take account of the equities of those out of the work force because of child care or other caregiving responsibilities, those not earning because of participation in training or educational programs, those temporarily underemployed, and so on. All of these issues would have to be addressed much more thoroughly in a comprehensive review of this proposal.

### **Expanded Workers' Compensation Proposal**

The third earnings-related proposal was to expand the WC system to cover accidents and illnesses, whether or not they arise on the job. While the first proposal envisaged the expansion of LTD and the second of CPP, this looks at expanding WC to replace the other two programs. It is assumed that this expanded program would retain the tax-exempt status of its benefits. It is also assumed that WC would remain with its current structure.

This proposal is like the previous two but with a new proposed delivery agent, the provincial Workers' Compensation Boards. If WC is to retain its current structure, the proposal looks administratively very unwieldy. The Task Force noted that WC covers a multitude of small partial disabilities. In fact, it covers "no lost time" claims as well, through paying medical benefits. If it were expanded to a more comprehensive program, equity considerations might demand that these "small cases" be dealt with generally, which would create a huge system. There are other significant issues, such as what happens to the existing WC unfunded liabilities. WC currently has so many complexities to deal with that it may well be counter-productive to give it a tremendously increased job to do.

### **Expanded Protection for Non-Earners**

The Task Force also had three proposals for non-earners i.e. those who would not qualify under the programs set forth in the previous three proposals. However, they were assumed to be similar enough to be discussed together rather than separately. The first proposal was to improve SA by a "special benefit" or "disability amount", as some provinces have already done. The second proposal would be to take the earnings-related proposals and add flat-rate benefits for spouses and dependants, with the payment of additional premiums (presumably mandatory). This could be made into a fully universal plan by having government contribute for those who are not dependants of any earner, or permitting those who were able to, to contribute from non-earned income. The third approach would be an Old Age Security model, with a flat-rate benefit either restricted to non-earners or income-tested.



The Task Force characterized these proposals as for "those persons with very severely incapacitating conditions". It suggested that it would be difficult to incorporate partial disability into these models (this is a significant problem, in fact, with many comprehensive reform proposals), but that it might be easier to incorporate special needs funding, especially if it were income-tested.

These proposals of course would entail different responsibilities, both administrative and financial, on the parts of different levels of government. The best way to allocate these responsibilities would depend in large part, of course, on the model chosen to provide income replacement to earners and on the structure of non-income disability programs. An important consideration might be to not readjust the system fundamentally unless there is a compelling reason to do so. This would point to the "disability top-up" approach under SA as the simplest way to address the needs of those more or less permanently outside the work force. And it would be easier to target at those most in need than either of the other two options. However, inherent to this approach would be all of the problems identified in our discussion of SA in Part II, including asset-testing, work disincentives, and so on.

#### **APPROACHES TO FUNDING DISABILITY-RELATED COSTS: THE NEIL SQUIRE/MARIO BOLDUC PROPOSALS**

The proposals of the Joint Task Force were primarily aimed at providing reforms to disability income programs. Two recent papers, both presented at the "Independence '92" Conference, propose taking a more comprehensive approach to disability-related costs other than income replacement.

##### **The Neil Squire Foundation Participation Enhancement Plan (PEP)**

The Neil Squire Foundation has presented a very wide-reaching proposal to assist Canadians with disabilities to receive assistance with their disability-related costs on a universal basis. Disability-related costs are defined widely to include "supplies, equipment, technical aids, special medications, personal assistance/attendant services, workplace/home/vehicle modifications, interpreters, and transportation". The proposed Participation Enhancement Plan (PEP) would fund all of these costs 100% without regard to income, assets, cause of disability or type of disability. The benefits would be non-taxable and would not be "set off" against income from disability income programs.

PEP would provide individualized funding directly to the consumer. It would be a national plan. There would be no disincentives whatsoever to participating in PEP: recipients would not lose eligibility for any other benefits or services.

PEP would target adults of working age living in the community with permanent, moderate to severe, physical and mental disabilities. Those with disabilities that could be fully compensated for by assistive devices, or who did not have disability-related costs as defined, would not be eligible. Disability-related expenses incurred in relationship to employment would be covered. A major goal of PEP would be to encourage employment, although work force participation would not be a criterion of eligibility.

Two options are presented for determining benefit entitlement. The first would be based on determination of severity of disability. The second would be based on assessment of disability-related needs. The former is believed to be simpler, while the second would be administratively more complex but fairer. As an observation, it would seem very difficult to make this type of program work without a very careful assessment of disability-related costs, even if this entailed administrative costs. For this type of approach to work, there has to be a way to determine carefully the need for extraordinary costs to be covered, such as vans, adapted computer equipment, and home renovations. This kind of assessment cannot be done on a routine basis by a physician. However, it can also be argued that any comprehensive approach to disability-related needs involves us in the same requirement for detailed assessment.

The PEP proposal involves a radical shift away from "supply-side funding" (i.e. funding of services for persons with disabilities) to "demand-side funding" (direct funding to individuals). It involves quantifying disability-related costs and paying the person directly for those costs. (It is recognized, however, that certain services, such as accessible transportation, will still have to be funded directly.) What are some of the implications of this approach?

For the program to be affordable, it would have to be targeted at those with significant disability-related costs, as the PEP proposal is. If the program is targeted in this way, however, there remains an incentive for persons to be labelled as "moderately disabled" or to have higher disability-related costs in order to qualify. A great deal of pressure would be placed upon the eligibility determination process, whether the assessment were of degree of disability or of disability-related costs. It would be difficult to ensure equitable treatment of those with different disabilities, but perhaps not impossible. Again, any truly comprehensive special-needs program would have to face this problem.

Direct cash benefits under PEP would have to be administered carefully by the individual, with the assistance of family or advocates where necessary. Not everyone with a disability can manage his or her own funding without support. The need for these supports and appropriate advice would have to be addressed.

Very large cash benefits from a public plan, as many persons with disabilities would require, would raise issues of equity with other

disadvantaged groups. Separate plans for drug coverage, assistive devices, home modifications and so on may be more acceptable to the public than large direct cash payments, even though this is not a logical distinction.

These are only very preliminary observations. The plan developed by the Neil Squire Foundation is certainly worthy of further exploration, and should be part of a comprehensive review of disability. It would provide maximum flexibility for persons with disabilities to pursue training, education, employment and community living to participate more fully with non-disabled Canadians, and presents a vision worthy of further exploration.

#### **Mario Bolduc's Proposal**

At the same conference, Mario Bolduc also presented a paper, "Making Equal Opportunity a Reality", advocating a universal insurance plan to cover special needs. He advocated that the system be based on "rigorous assessment of each individual's needs". (Thus, he did not fully support the "supply-side" approach of Neil Squire.) Like the Neil Squire Foundation, he proposed that cause of disability, type of disability and income be irrelevant, and he went further to propose that age be irrelevant as well. The list of disability-related costs proposed by Bolduc was essentially similar to the PEP proposal.

Like the Neil Squire Foundation, Bolduc favoured a single comprehensive plan, but he felt that for practical reasons it might be difficult to implement. So he considered other alternatives.

One alternative was a "complementary" or residual program, to which individuals could go if no other program would meet their special needs. He was concerned that this might not really address the unfairness in the present system, however. Simply to create yet another program might make the system even more complex and difficult to access. At the same time, it would be much preferable to not having those needs addressed at all!

Another alternative would be to try and co-ordinate or harmonize the special needs provisions in various plans, and to have a central funding agency which would cover recipients of benefits from various programs and bill the costs back to them. This may be a more promising approach. It would seem practically feasible, especially if it built on existing programs (such as SA administrations). If a province has a drug benefit plan or an assistive devices program, for example, it would make sense to have WC, LTD and MVAB recipients receive their drugs and assistive devices directly from this plan, which would then bill the whole cost or a specified percentage to the specific plan. This would at least provide "one-stop shopping" for these particular needs to persons with disabilities, and prevent their being sent from program to program.

### **SUMMARY OF PART III**

In this Part we have examined a few of the many reform proposals that have been made with respect to disability income programs. While some advantages and disadvantages of these proposals have been identified in a very preliminary manner, clearly we are not in any position to offer any type of comprehensive analysis or assessment. How we might get to this point is the theme of the next Part.

### **PART IV: TOWARDS AN ACTION PLAN FOR REFORM**

There are a great many ways in which Canada's disability income "system" could be improved. At the same time, there are many obstacles to reform, which so far have prevented any substantial reform. How can we move towards an implementable action plan which will start to address reform in a real way?

The essential starting point appears to be a joint commitment by the federal, provincial and territorial governments to making progress in comprehensive disability compensation reform. As a first step, they must create some type of forum in which all of the existing information (such as the Reports of the Task Force) about the various programs can be brought together and analyzed, and in which some overall directions can be agreed to. Because so much work has already been done, this does not need to be too lengthy a process. Specific time frames should be established and adhered to!

Within a reasonably short period (say 1-2 years) the broad framework of a reform plan should be established. If there is no basic agreement about the overall plan, only very limited progress can be made. If disability income programs are "reformed" in isolation without any co-ordination, the primary results may be "off-loading" of costs from one program to another, or the creation of yet more "gaps" in the system. The risk is especially great, of course, when the "reform" process takes place in a climate of financial crisis and restraint. At the same time, the various levels of government should be strongly motivated to co-operate, given the magnitude of the gains that can be made on behalf of the disability community and the significant opportunity to improve their respective programs.

For these issues to be addressed on behalf of Canada's disability community, co-operative federalism has to work. All levels of government must be able to agree on a comprehensive plan, whatever it is, and abide by it over a relatively long term. We didn't get into this mess in a week and we won't get out of it very quickly either!

The Joint Task Force was an attempt in this direction in the early 1980's. While some excellent work was done, it was not done in a public enough manner. The ideas remained, by and large, in reports that only a few of "the initiated" ever read. It is essential to have active participation from insurers, Workers' Compensation Boards, and other program deliverers. It is essential to involve business and

labour, so that these important constituencies can come to see the advantages of a reformed system. It is even more essential to involve the disability community actively, especially program recipients, who usually can identify better than anyone else the actual impact of program characteristics and rules.

The task is a very formidable one. But the potential benefits are enormous, and they can be achieved through win-win solutions. More persons with disabilities can be successfully employed and be independent rather than dependent. Income supports and replacement can be provided more quickly and fairly to those who need them. We can have a much better and fairer system of special needs funding. What is needed is for the federal, provincial and territorial governments to agree that this is a priority, and to work with the disability community to set up a structure so that we can begin to make progress.

## **THE STAGING OF REFORMS**

A key question for the reform process is how reforms can be effectively staged. On the one hand, only a limited amount can be accomplished through reforming programs "one at a time", which is the approach that has been taken by all levels of government up to now. The end result of these reforms may be primarily to transfer costs between programs. In any event, the gains through improving one program are obviously limited to those persons with disabilities who are eligible for that program. A more co-ordinated and harmonized approach is needed.

On the other hand, we have argued that it is highly unlikely that all levels of government will co-operate to abolish all current disability income programs and replace them with "one big program".

So what is needed is an approach that is "not too little, not too big" that will make effective progress for the disability community while being practically achievable. We shall consider a number of alternative approaches to this "medium-sized" sort of reform.

### **1. THE "MODEL PROGRAM" APPROACH**

This is essentially based on the "uniform law reform" model. The idea would be for the federal, provincial and territorial governments, with public input, to design a model disability income program, and then structure reforms to existing programs so that they moved towards this uniform model. The administration and delivery of existing programs would not be combined on this approach, but the different programs would become more similar.

There would be different approaches to defining the "model program". One way that might be effective is through specification of standards for certain program features. Some illustrations (and these are

examples only) will demonstrate what this might entail. Each standard would apply to all persons with disabilities, regardless of the program which provided income to them:

- \* a monthly income guarantee equal to OAS/GIS
- \* full indexation of payments
- \* a three-year period to undertake education, training or employment without any risk to on-going entitlement
- \* no reduction in payments for the first \$250 of monthly earnings
- \* review of all discretionary decisions
- \* appeal decisions within 60 days.

Clearly, these standards would require much discussion and elaboration before governments would agree to incorporate them in a "model system".

The big advantage of the "model program" approach is that it would not require any fundamental change in the existing programs at the outset. The process of discussing the standards to be included in the "model program" could be started without requiring any major commitment on the part of the participating governments.

But the lack of any required commitment at the outset is also the major drawback of this approach. There would have to be a process to develop an agreement to actually move the existing programs towards the "model program". The "have-not" provinces would require increased federal cost-sharing to achieve the same standards as the richer provinces. We can anticipate that all sorts of objections would be raised to making the programs more similar - it would be argued that each program meets the needs of a different group, and that these different groups have different entitlements. Therefore, development of a "model program" might well be a constructive first step towards comprehensive reform, because it would provide a focus for better elaboration of the varying objectives of disability compensation outlined in Part I. Even if the details could not be agreed to, it would be significant progress to have a set of agreed-upon fundamental principles which still permitted some flexibility in approach.

[NOTE: The next three approaches involve a unified approach to certain aspects or parts of existing disability income programs, without replacing the programs themselves.]

## **2. THE "EMPLOYMENT-FOCUSSED" APPROACH**

For many reasons, increasing the employment opportunities of persons with disabilities is a primary reform objective. Not the least of these reasons is that helping more persons with disabilities to become self-sufficient through employment will free up resources to provide more income and other supports to those unable to work or not yet able to find work. So we can consider an "employment-focussed" approach to reform, where governments and other stakeholders would emphasize work incentive provisions in disability income programs during the first

stage of reform, with other reforms to follow.

We discussed employment-related issues in some detail in connection with the "Employment Objective" in Part I. Here we need only reiterate some of the main elements of the "welfare trap" as it affects persons with disabilities:

- \* high "tax-back" rates
- \* concern that attempting employment may jeopardize eligibility for income support in the long-term
- \* exclusion from employee health benefits and insurance coverage
- \* lack of funding for job accommodations and needed equipment
- \* delays in determining eligibility for "rehabilitation" support.

Programs which are in large part directed at those persons with disabilities outside the labour force are difficult to re-design to accommodate those who are going to work. Logically, it can be done, but in practice it is difficult to change existing disability programs towards a work incentive orientation. Program staff are not familiar with employment issues and program consumers are suspicious of attempts by those delivering income support programs to move them towards employment.

Given the importance of employment to the disability community, to governments and to all other stakeholders, and given the lack of success in this area, it might be reasonable for the federal, provincial and territorial governments to jointly design and administer a new program for employed persons with disabilities, with features like the following:

- \* generous employment income exemptions
- \* guarantees of on-going eligibility to benefits for those who are unsuccessful in staying in the paid labour force
- \* ending exclusions from employee health benefits and insurance coverage (perhaps through mechanisms like government-sponsored re-insurance for individuals who present high risks or high costs to these plans)
- \* direct government funding and tax incentives for job accommodations and equipment
- \* "fast-track" rehabilitation and job accommodation funding that responds quickly to needs identified by consumers and employers.

The program would be funded in large part by "charge backs" to the existing disability income programs, which would pay out of the savings they achieved through those formerly dependent on the programs for income support becoming employed. It would also be appropriate to provide funding through tax incentives, particular as it would be helping persons with disabilities to become taxpayers.

It is evident that there can be great improvement in the employment area if governments take a more aggressive and coordinated approach.

This has been demonstrated by the success of countries like Germany in advancing the employment of persons with disabilities.

The disadvantage of the "employment-focussed" approach is that it involves the creation of another new program, but any costs associated with this would soon be outweighed by the long-term benefits if the program achieved any measure of success.

### **3. THE "SPECIAL NEEDS" APPROACH**

The "special needs" approach proposed here is basically a staged variation on the Neil Squire Foundation and Mario Bolduc proposals discussed in Part III. On this approach, the federal, provincial and territorial governments would, together with the disability community and other stakeholders, identify key special needs areas:

- \* drug costs
- \* assistive devices
- \* attendant care/personal assistance
- \* transportation
- \* home modifications.

The various areas would be prioritized, and a comprehensive national/provincial/territorial plan developed for each in sequence (e.g. at two year intervals). If the five areas listed above were chosen, at the end of the decade there would be a comprehensive plan for each.

It is difficult to specify what form the various comprehensive special needs plans would take, but they should focus on the most essential special needs requirements. There should be an emphasis on meeting the higher-cost needs of those with lower incomes (continuing and hopefully improving the partial subsidies for those with higher incomes through the tax system). The comprehensive special needs programs would be funded in part through "charge backs" to those existing programs which currently provide (usually on a restricted basis) for these special needs.

The advantage of this approach is that funding would be targeted at those with significant and clear special needs. Eligibility would depend on an individual having significant disability-related costs rather than on whether the person met some global definition of "disability". Arguably, this would be fairer and less stigmatizing, as it would focus on specific needs rather than on personal characteristics. It would also avoid many problems in defining and pro-rating benefits for those who are "partially disabled", since the emphasis is on the expense rather than the individual. As well, it could cover the special needs related to employment. Because of these factors, the "special needs" approach would probably command a wide base of support.



There are disadvantages, however. For each category, there would be difficult questions as to which "special needs" would be funded, and on what basis. Income-testing or co-payment would be controversial (although ultimately the disability community would have to consider whether these were better than not having the special needs met at all). The order in which the "special needs" were prioritized would certainly be a matter for debate.

Finally, it is worth noting that this approach could be combined with the previous one (the "employment-focussed" approach) to achieve a very wide-ranging reform without requiring the elimination or combination of any existing programs.

#### **4. THE "COMPREHENSIVE APPEALS TRIBUNAL" APPROACH**

A radically different approach to staging a comprehensive reform of the various programs would be to create a significant new alternative dispute resolution (ADR) or tribunal process that would be common to the different programs. Most of the existing programs have appeal tribunals, but LTD and T/LI require recourse to the courts. A more limited proposal would be to combine all appeal processes except for LTD and T/LI and to leave the latter in the courts. A wider-ranging proposal would be to move LTD and T/LI to the new comprehensive ADR/tribunal system as well. This would require a particularly high standard of decision-making by the new tribunal.

The comprehensive appeal tribunal would have the advantage of assisting persons with disabilities to avoid a common dilemma - if more than one program is a potential payor, the consumer may have to pursue more than one appeal process at once. And his or her case may be dealt with inconsistently by the various decision-making and appellate systems. At a systemic level, the comprehensive tribunal would be a focus for identifying problems in the existing disability income programs, especially overlaps, gaps and inconsistencies in approach.

But the disadvantages are also very significant. The tribunal members would have to be very knowledgeable and skilled to deal fairly with issues arising from the various programs. The comprehensive tribunal would have a massive caseload and would be at risk of being "swamped" by cases from one program or another.

[NOTE: The final four approaches depend on significantly strengthening, combining or alternatively eliminating one of the seven major disability income programs we have identified.]

#### **5. THE "ENRICHED SOCIAL ASSISTANCE" APPROACH**

Social Assistance (SA) is the "safety net" or "last resort" system of disability income compensation in Canada. (Its strengths and

weaknesses were discussed in Part II.) It provides the minimum guarantee to those persons with disabilities who have no other source of income at all, or who have no other sufficient source of income. One approach to disability compensation reform would be to strengthen SA, or to replace it with a different plan which would cover at least the same recipients with disabilities as SA and perhaps some additional persons with disabilities.

One model for improving SA is found in Ontario's Transitions report, produced by the Social Assistance Review Committee in 1987. Transitions recommended a wide-ranging set of reforms to SA, including reforms specific to persons with disabilities as well as reforms for other groups and general reforms. These reforms included improved measures to support employment, a liberalized treatment of liquid assets, better funding for special needs, and so on.

Alternative models for improving or replacing SA are found in the three Federal-Provincial Task Force approaches to providing benefits which we discussed in Part III. Some of these approaches would cover a wider range of persons with disabilities than does SA, however. In particular, the first model, which would in effect extend the OAS/GIS guarantee from seniors to persons with disabilities, would be a very significant advance in disability compensation.

This kind of approach would be targeted directly at those persons with disabilities who are most in need, and would achieve a great deal towards moving people away from poverty. If it were not combined with significant efforts to get people with disabilities into the work force, however, as well as efforts to achieve the other forms of cost savings discussed in Part I, the cost implications would be a very major barrier.

## **6. THE "INCOME TAX-BASED" APPROACH**

The ways in which Income Tax (IT) benefits people with disabilities was discussed in Part II. From that discussion, we can identify some broad strategies through which the IT provisions could be turned into a more comprehensive component in a disability-compensation program. The disability tax credit could be made refundable, so it would assist those with low incomes. The medical expense credit could be widened to cover more disability-related expenses, and increased in value. (Consideration could be given to making it refundable as well.) There could be strengthened IT provisions to encourage employment, giving tax relief for accommodations and equipment to disabled employers, employers and the self-employed. A uniform approach to the tax treatment of disability income could be introduced.

There are significant advantages to using the IT system as a vehicle for disability income reform. It incorporates a detailed approach to income-testing. IT has a well-developed and sophisticated

administrative structure, within which targeted reforms can be fitted. Within this structure, both individual and family income can be taken into account in determining the level of tax relief or incentive that each person gets. Income tax involves the co-operation of federal, provincial and territorial governments already, so a new co-operative structure does not have to be devised.

On the negative side, IT is a complex system which many persons with disabilities and their families have problems in "accessing". Those with limited access to tax expertise often are not able to file their returns properly to take advantage of the tax benefits available. Disability concerns compete with many other priorities within the tax system.

IT reform, with respect to disability provisions, is probably best seen as a method to be used in combination with other reform approaches, rather than as a primary vehicle of disability income program reform.

#### **7. COMBINING OR ELIMINATING EARNINGS-BASED PROGRAMS (CPP, WC, LTD)**

CPP, WC and LTD are three wide-scope disability income protection programs based on contributions or premiums made by or on behalf of earners. As there are considerable overlaps among the three in coverage (and with MVAB as well in so far as this involves motor vehicle accidents in the course of employment), it is reasonable to advance combining or eliminating one or two of the three as a step in the reform process.

The Joint Federal-Provincial Task Force, in effect, developed three models for earnings-based programs by considering what would happen if CPP, WC and LTD, in turn, were emphasized over the others. (We have discussed these three models in Part III.) Certainly, the Task Force's proposals are worth re-considering. The major obstacle to this type of reform, of course, is that all three programs are very large and well-entrenched already, with various stakeholders ready to defend each against any attempt to reduce its importance.

#### **8. ELIMINATING PERSONAL INJURY TORT (T/LI)**

The final major strategy we shall consider is the reduction or elimination of personal injury tort actions. We discussed personal injury tort, and the liability insurance which responds to it, in Part II. Essentially, the primary advantage of replacing tort with no-fault coverage is that, in general, it allows persons who have been injured significantly to recover compensation more quickly and easily than does the court system. The disadvantage is that moving from tort to no-fault replaces, for those "innocent victims" who have a special justice claim to compensation, their entitlement to full compensation for their injuries.

## **SUMMARY OF PART IV**

We have identified 8 broad strategies or approaches which would serve as stages in a comprehensive reform process. These are:

- 1. THE "MODEL PROGRAM" APPROACH**
- 2. THE "EMPLOYMENT-FOCUSSED" APPROACH**
- 3. THE "SPECIAL NEEDS" APPROACH**
- 4. THE "COMPREHENSIVE APPEALS TRIBUNAL" APPROACH**
- 5. THE "ENRICHED SOCIAL ASSISTANCE" APPROACH**
- 6. THE "INCOME TAX-BASED" APPROACH**
- 7. COMBINING OR ELIMINATING EARNINGS-BASED PROGRAMS (CPP, WC. LTD)**
- 8. ELIMINATING PERSONAL INJURY TORT (T/LI)**

(1)-(8) identify in a broad, "generic" way approaches that can be taken to reform. A realistic approach would combine some or all of these approaches, and perhaps others that could be identified as well. Until a broad strategy is agreed upon by the federal, provincial and territorial governments in Canada, the reform process is unlikely to ever proceed in any effective manner at all. Because of the potential benefits to everyone, all levels of government should make consultation with the disability community towards comprehensive reform a priority.

## **SELECTED BIBLIOGRAPHY**

### **1. Studies of Comprehensive Disability Income Reform in Canada**

The essential starting point for any consideration of comprehensive disability income reform in Canada is the report of the Joint Task Force in the 1980's:

Joint Federal-Provincial Study of a Comprehensive Disability Protection Program (Ottawa: Health and Welfare Canada)

Volume I (Main Report and Executive Summary)  
Volumes II-V (Appendices)  
(September, 1983)

Stage II Report (Program Design Options)  
(December, 1985).

Considerable information about programs across Canada, especially social assistance, is found in:

Torjman, Sherri  
Income Insecurity: The Disability Income System in Canada  
(Downsview, Ont.: The G. Allan Roeher Institute, 1988)

Other articles which look at the prospects for comprehensive reform include:

Beatty, Harry  
"Comprehensive Disability Compensation in Ontario: Towards an Agenda"  
(1991 7 Journal of Law and Social Policy 100-142)

Belobaba, Edward  
Products Liability and Personal Injury Compensation in Canada: Toward Integration and Rationalization  
(Ottawa: Consumer and Corporate Affairs, 1983)

Coyne, Deborah  
"Compensation without Litigation"  
(Policy Options, April, 1987, 3-8)

Ison, Terence  
Human Disability and Personal Income  
(Kingston, Ont.: Industrial Relations Centre, Queen's University, Reprint Series No. 42, 1978)

Ison, Terence  
A Universal Plan of Disability Compensation  
(Toronto, Ont.: Osgoode Hall Law School, 1987 - prepared for a conference organized by Corpus Information Services)

Muszynski, Leon  
Comprehensive Disability Income Security Reform  
(Downsview, Ont.: The G. Allan Roeher Institute, 1992)

Rioux, Marcia H. and Crawford, Cameron  
"Poverty and Disability"  
Canadian Journal of Community Mental Health  
(Volume 9, No. 2, 97-109)

Weiler, Paul  
Protecting the Worker from Disability: Challenges for the Eighties  
(Toronto, Ont.: Ontario Ministry of Labour, 1983)

## **2. Studies of Specific Disability Income Programs in Canada**

### **(a) Social Assistance**

To understand the social assistance system in Canada, it is important to know something about the Canada Assistance Plan. A general study which is an excellent starting point is:

Hum, Derek  
Federalism and the Poor: A Review of the Canada Assistance Plan  
(Toronto, Ont.: Ontario Economic Council, 1987)

A study of CAP as it relates to persons with disabilities is:

Beatty, Harry  
"Federal-Provincial Fiscal Arrangements: Their Impact on Social Policy and Current Prospects for Reform"  
(1988 3 Journal of Law and Social Policy 36-65)

An extensive review of Ontario's social assistance system, including issues related to persons with disabilities, was carried out by the Social Assistance Review Committee and is an excellent overview of social assistance issues:

Social Assistance Review Committee  
Transitions  
(Toronto, Ont.: Ontario Ministry of Community and Social Services, 1988)

It has been followed up by a new report:

Advisory Group on New Social Assistance Legislation  
Time for Action: Towards a New Social Assistance System in Ontario  
(Toronto, Ont.: Ontario Ministry of Community and Social Services, 1992)

[As noted above, Income Insecurity by Torjman contains considerable information relating to social assistance issues affecting persons

with disabilities on a national level.]

**(b) Canada Pension Plan**

There are few published resource materials on CPP disability. A good starting point to understanding the rules is the pamphlet material produced by Health and Welfare Canada. The dimensions of the program and the characteristics of recipients are perhaps best shown by the periodic surveys done of CPP disability pensioners. The 1980 survey is found in Volume II of the Joint Federal-Provincial Task Force Report listed above.

**(c) Workers' Compensation**

A comprehensive textbook in this area is:

Ison, Terence

Workers' Compensation in Canada (2nd ed.)  
(Toronto, Ont. and Vancouver, B.C.: Butterworths, 1989)

Paul Weiler's Protecting the Worker from Disability listed above is largely directed at workers' compensation issues and is a good introduction to them.

**(d) Long-Term Disability Insurance**

Very little writing about LTD from a policy or academic perspective is available in Canada. Volume V of the Joint Federal-Provincial Task Force Report contains a study by William M. Mercer Ltd. of the concept of a national mandatory LTD program, and is a good introduction to these issues.

**(e) Motor-Vehicle No-Fault Accident Benefits**

A comprehensive textbook in this area is:

Brown, Craig

No-Fault Automobile Insurance in Canada  
(Scarborough, Ont.: Carswell, 1988).

**(f) Tort Awards and Liability Insurance Settlements**

The issues in this area most relevant to comprehensive disability compensation are related to the tort/no-fault debate. The studies cited above by Belobaba, Ison and Weiler are representative of legal writing on the no-fault side of the debate. These can be contrasted with the following Canadian studies, of motor vehicle insurance and medical malpractice respectively, which came out for the retention of personal injury tort actions, in co-existence with an effective no-fault scheme:

Report of the Commission of Inquiry into Motor Vehicle Accident Insurance in Ontario (Chair: The Honourable Mr. Justice Coulter A. Osborne)

(Toronto, Ont.: Ontario Ministry of the Attorney General and the Ministry of Financial Institutions, 1988)

Liability and Compensation in Health Care: A Report to the Conference of Deputy Ministers of Health of the Federal/Provincial/Territorial Review on Liability and Compensation Issues in Health Care (Professor Robert Prichard)

(Toronto, Ont.: University of Toronto Press, 1990)

### **(g) Income Tax**

An extensive discussion paper identifying the issues relating to disability raised by the income tax system was prepared for the Coalition of Provincial Organizations of the Handicapped (COPOH) and submitted to the federal government:

Baker, David

Tax Reform and People with a Disability

(Toronto, Ont.: Advocacy Resource Centre for the Handicapped, 1991)

### **3. Studies of Employment, Disability and Income**

The current discussion of employment equity for persons with disabilities in Canada, and for other disadvantaged groups, began with a landmark Royal Commission Report:

Equality in Employment: Report of the Royal Commission

(Commissioner: Judge Rosalie Silberman Abella)

(Ottawa, Ont.: Ministry of Supply and Services Canada, 1984)

The Studies for the Abella Commission were published in 1985. An important research study relevant to the present paper is:

Rioux, Marcia

"Labelled Disabled and Wanting to Work"

(Research Studies, 613-636)

As Ontario has moved towards employment equity legislation, it has also commissioned research:

Baker, David

Learning from the Best: Lessons for Ontario from the Employment Programs for Disabled People in Germany and Sweden

(Toronto, Ont.: Office of the Employment Equity Commissioner, 1992)

Significant international comparisons are found in:



Haveman, R.H. (ed.)  
Public Policy Toward Disabled Workers  
(Ithaca, N.Y.: Cornell University Press, 1984)

Finally, the U.S. journal The Milbank Quarterly in 1989 published an important and wide-ranging collection of essays on disability policy, which includes many relating to the issues discussed in this paper:

Fox, Daniel M. and Willis, David P. (eds.)  
The Milbank Quarterly, Volume 67, Supplement 2, Parts 1 and 2  
(New York, N.Y.: Milbank Memorial Fund, 1989)