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DISABILITY, POVERTY, AND THE INCOME TAX: THE CASE FOR REFUNDABLE CREDITS

LISA PHILIPPS*

Résumé
Les politiques fiscales à l'égard des personnes handicapées ont été sensiblement améliorées au cours des dernières années, mais elles n'ont pas aidé les plus démunis, qui n'ont pas un revenu suffisant pour profiter des crédits et déductions établis. L'article qui suit plaide en faveur du crédit d'impôt remboursable comme solution partielle à ce problème, tout en faisant ressortir que les mesures fiscales doivent s'accompagner d'interventions gouvernementales directes pour entraîner une véritable participation des personnes handicapées à la vie sociale et économique. On y examine le crédit d'impôt remboursable en tant que soutien destiné aux personnes handicapées à faible revenu par opposition aux crédits non remboursables existants et aux mesures non fiscales telles que les dépenses de programmes directes. L'auteur explique ensuite comment les crédits d'impôt remboursables pourraient être conçus de façon à éviter les lacunes des dépenses fiscales sur le plan de la politique générale et les obstacles constitutionnels que suppose un programme de soutien pan-canadien à l'intention des personnes handicapées. Elle s'oppose à l'adoption d'un programme de crédits subordonnés au revenu comparable à la Prestation nationale pour enfants du gouvernement canadien ou au crédit d'impôt pour personnes handicapées instauré par l'Angleterre. Son article fait plutôt l'éloge d'un crédit universel accordé à chaque personne handicapée et remboursable en cas de faible revenu. Cette mesure de soutien est le plus susceptible de nous permettre d'atteindre les objectifs fixés en matière de lutte contre la pauvreté, en plus de rendre l'impôt sur le revenu plus simple et équitable. On suggère un moyen de concevoir un tel soutien de manière à tenir compte des différences de sexe, de race et de classe sociale, ainsi que des idées et de la compétence mêmes des personnes visées.

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1. An earlier version of this article was prepared as a consultation paper for the Roeher Institute. I thank Simon Archer and Sameer Sandhu for their energetic research assistance, Cam Crawford of the Roeher Institute for providing information and support, and David Duff and Margot Young for generously sharing materials and ideas.
I. INTRODUCTION

The past several years have seen steady improvements in the tax treatment of people with disabilities. Every federal budget since 1996 has in some way increased the amount of tax recognition for the costs of living with or accommodating disabilities. In the year 2000 the federal government made further promises to raise the Disability Tax Credit by over 30% across the board, and by over 100% for children with disabilities. These advances can be credited to the work of advocacy groups and researchers who have targeted the income tax system as a key instrument for improving disability supports, and also to the responsiveness of tax policy makers working under the leadership of Finance Minister Paul Martin. Disability tax reform is far from complete, however, and many gaps remain to be filled. The most glaring problem is that existing tax measures are almost all "non-refundable," and therefore do not benefit the lowest income members of the community.

For those with sufficient taxable income to absorb them, the disability-related deductions and credits in the Income Tax Act can reduce an individual's tax payable, leaving them with a higher after-tax income. For a person who is too poor to owe income tax, however, these provisions are of no benefit. A non-refundable deduction or credit cannot be received as a cash payment from government by individuals whose tax liability is already nil. Given the high rates of poverty among people with disabilities, this can only be seen as a gaping hole in the system of disability supports and a serious inequity in the tax system.

This problem has not gone unnoticed among commentators, and many have called on governments to make disability-related tax measures refundable. Yet none has exam-
ined in detail how such provisions might be designed and administered. In this article I take up this challenge. I begin in Part II by evaluating refundable tax credits as a policy instrument for improving disability supports to low-income people. I compare the non-refundable mechanisms used in the current Income Tax Act (ITA) to refundable credits in terms of their technical operation and their distributive impact on taxpayers. I then step back to consider whether a new disability support program is best delivered through the tax system at all, or whether a direct transfer or some other instrument would be preferable. I conclude that a refundable tax credit could play a highly progressive role in delivering disability supports, provided that it is designed creatively to mitigate some of the drawbacks of tax based programs. I also caution against over-reliance on refundable tax credits alone to assist those with low incomes. Individualized cash benefits must be coordinated with direct investments in the supply of needed goods and services, and with regulatory measures to promote the full participation of people with disabilities in all aspects of social, political, and economic life.

Part III considers in more detail how best to design and administer refundable tax credits for people with disabilities. I first discuss some key policy choices that will affect the design of such a program, such as what needs it is meant to address and whom exactly it is meant to assist. I explain why, in designing a refundable credit, policy makers will need to attend carefully to differences of class, gender, and race among people with disabilities. Part III then turns to examine three possible models for reform, placed on a continuum from more incremental to more innovative approaches:

1. Rework existing refundable credits to take better account of disability-related needs
2. Add refundability to existing disability-related deductions and credits
3. Create a new refundable tax credit that would improve upon and replace some of the existing disability-related provisions

I evaluate each of these models against objectives of reducing poverty, enhancing autonomy, providing access to disability-related goods and services, and integrating people with disabilities more fully into all aspects of society. I also consider how well

each model coheres with traditional tax policy criteria, especially the principles of equity and simplicity.

Concluding that the third model—creating an entirely new refundable credit—is by far the most attractive, I go on to discuss some of the specific design issues it would raise, particularly the choice between universal *versus* income-tested benefits. Canada’s National Child Benefit and Britain’s Disabled Person’s Tax Credit are reviewed as examples of income tested refundable credits. I argue that a universal refundable credit, available to all people with disabilities, regardless of income, is a far better option. I suggest how such a credit could be designed with some redistributive features that would channel a larger share of resources to those with lower incomes.

II. **WHY REFUNDABLE TAX CREDITS? CHOOSING A POLICY INSTRUMENT FOR IMPROVING DISABILITY SUPPORTS**

A. **Tax Mechanisms: What’s so Special about Refundable Credits?**

This section compares four distinct mechanisms used by the *ITA* to provide tax relief to individuals with disabilities and to others who support, care for, or employ them: (1) income exclusions; (2) deductions; (3) non-refundable credits; and (4) refundable credits. I provide examples of each mechanism, explaining how it affects the calculation of tax liability, and why it has such different effects on the distribution of the tax burden among people with higher and lower incomes. My analysis demonstrates why refundable credits are the only reliable means of delivering tax relief to those with very little or no taxable income. A more difficult question, however, is whether the tax system is the right vehicle for delivering such benefits at all, as compared to a direct spending program or some other policy instrument. I reserve these larger issues for the next section of the paper.

The most basic distinction among the four tax mechanisms I will discuss is that each operates at a different stage in the calculation of tax liability, as illustrated by Table 1 on the next page.

Taking each of the four mechanisms in turn, I provide examples of how they are used currently to grant tax relief in relation to disability, and compare their distributive impact on taxpayers in different income groups.

1. **Exclusions from Income**

The first way in which the *ITA* provides tax relief to people with disabilities is to exclude certain payments or amounts from the definition of taxable income. It is important, however, that these exclusions are based not on the status of the taxpayer as disabled or poor, but on the type of income received. As a consequence, income exclusions are, distributively speaking, a rather arbitrary form of assistance. If a low-income person does not receive income from the “right” sources, all of her income will be subject to tax.
Table 1: Steps in the Calculation of Federal Income Tax Liability

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross income</td>
<td>mechanism 1: exclusions</td>
</tr>
<tr>
<td>minus deductions</td>
<td>mechanism 2: deductions</td>
</tr>
<tr>
<td>= &quot;income&quot;</td>
<td>mechanism 2: more deductions</td>
</tr>
<tr>
<td>minus further deductions</td>
<td></td>
</tr>
<tr>
<td>= &quot;taxable income&quot;</td>
<td></td>
</tr>
<tr>
<td>Taxable income x progressive</td>
<td></td>
</tr>
<tr>
<td>marginal tax rates</td>
<td></td>
</tr>
<tr>
<td>= preliminary tax payable (before credits)</td>
<td></td>
</tr>
<tr>
<td>minus non-refundable credits</td>
<td>mechanism 3: non-refundable credits</td>
</tr>
<tr>
<td>= federal tax payable</td>
<td></td>
</tr>
<tr>
<td>minus refundable credits</td>
<td>mechanism 4: refundable credits</td>
</tr>
<tr>
<td>= federal tax owing or refund owing to taxpayer</td>
<td></td>
</tr>
<tr>
<td>(a negative balance or ‘overpayment’ due to refundable credits is</td>
<td></td>
</tr>
<tr>
<td>paid to taxpayer)</td>
<td></td>
</tr>
</tbody>
</table>

6. Note that after computing federal income tax, provincial income-tax liability is computed, and the two are added together to reach the taxpayer's final tax bill. Each province maintains its own separate income tax legislation, but all provinces except for Quebec have largely incorporated the federal system under a set of administrative arrangements known as the Tax Collection Agreements. The interaction of federal and provincial tax mechanisms is discussed further in Part II.B., infra.

7. The term income refers to a taxpayer's net income after deducting certain expenses and other amounts allowed under Division B, Part I of the ITA: s. 3. Income is then adjusted to reach taxable income under Division C, which allows a second layer of deductions: s. 2(2). Thus a taxpayer may be entitled to claim deductions at two different stages in the calculation of tax liability.

8. For the 2001 taxation year, the marginal rates are 16% on the first $30,754 of taxable income; 22% on taxable income over $30,754, up to $61,509; 26% on taxable income over $61,509, up to $100,000; 29% on any taxable income over $100,000: see Legislative Proposals, supra note 2, cl. 58(2), amending s. 117(2).

9. The most important non-refundable tax credit is the basic personal credit in 2001, which effectively exempts from tax the first $7,412 earned by all taxpayers: s. 118(1)(c). This "basic personal amount" is scheduled to rise to at least $8,000 by 2004: see Legislative Proposals, id., cl. 59(3.1).
People with disabilities receive income from a wide range of sources. Though it is useful to categorize them loosely as public or private, it should be remembered that many “private” income plans are in fact publicly subsidized through tax incentives or otherwise, while “public” support is sometimes conditioned upon prior participation in the labour force and payment of contributions or premiums. Private sources of income would include, for example, employment or self-employment, investments in corporate shares, bonds, or other income-producing properties, pensions and other retirement savings, private disability-insurance plans, and court-awarded damages or settlements in personal injury actions. Public sources of income for people with disabilities include provincial automobile accident insurance, worker’s compensation and social assistance schemes, and federally the Old Age Security (OAS), Canada Pension Plan (CPP), Quebec Pension Plan (QPP), and Employment Insurance (EI) programs.

Payments from some of these sources are excluded from the ITA’s definition of income, either by legislative exemption or by judicial or administrative interpretation, while others must be included in income and fully or partially subjected to tax. Thus the tax status of income received by people with disabilities depends very heavily on its source, and sometimes upon fine distinctions about the exact circumstances in which it was received. This is well illustrated, for example, by the tax treatment of payments under a disability insurance plan arranged through an employer. When an employee becomes disabled and makes a claim under such a plan, the insurance payments may be taxable or non-taxable, depending on who paid the premiums under the plan. If the premiums were paid exclusively by the employee, the insurance benefits are tax free. If an employer or other person (such as a union) paid all or any portion of the premiums, however, the employee must report payments under the plan as income. Where the cost of premiums was shared, the employee may deduct her portion and report only the net benefit for income tax purposes. Further complications can arise if the insurance company disputes an employee’s eligibility for benefits, and eventually settles the claim with a lump-sum payment. In two recent cases, the Tax Court of Canada held that such lump-sum payments are not caught by the ITA and can be received tax free, regardless of who paid the premiums under the plan. However, the same Court held in another case that the lump sum settlement was taxable because, inter alia, the employer had paid the premiums under the plan. Finally, if an employee has no disability insurance benefits but instead receives sick pay or...

10. See Fawcett, supra note 4 at 140-46.
12. See s. 6(1)(f), and Interpretation Bulletin IT 428, Wage Loss Replacement Plans (April 30, 1979).
compassionate payments directly from an employer, these amounts are fully taxable in the same manner as regular wages.\(^{15}\)

The tax treatment of public income support also varies, depending on the program. Sickness or disability benefits received under the CPP, QPP, EI, or OAS must all be included in income.\(^{16}\) By contrast, social assistance and worker’s compensation are not subject to income tax, though they are included in determining eligibility for certain income tested tax credits.\(^{17}\) Thus receipt of welfare or worker’s compensation may result in the loss of other tax-based benefits such as the age credit for those over 65,\(^{18}\) the goods and services tax credit,\(^{19}\) the Canada child tax benefit,\(^{20}\) and the refundable medical expense supplement.\(^{21}\) Payments under a provincial auto accident insurance plan are not required to be included in income at all.\(^{22}\)

Income exclusions may be helpful to some low-income people with disabilities who happen to receive their incomes from non-taxable sources. But overall they are highly inefficient and unfair as a mechanism for tackling poverty among people with disabilities. First, the income exclusions are of no value to those earning less than the basic personal amount, which is received tax free in any event by all individuals ($7,412 in 2001, scheduled to rise to $8,000 by 2004).\(^{23}\) Nor do they assist those who live on poverty-level incomes from fully taxable sources, such as wages, CPP, EI, OAS, or employer-paid disability insurance. The system could be made more horizontally equitable by treating all forms of disability income the same, instead of exempting some and taxing others.\(^{24}\) But exempting all disability income from tax would be vertically inequitable as between lower and higher income individuals. This is because the value of an income exclusion in terms of tax dollars saved rises directly in proportion to income. A single person with a disability, living modestly on $10,000 of

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15. S. 5(1), 6(1)(a). There is a narrow exception that allows employees with disabilities to receive certain cash or in-kind benefits from their employers tax-free. If an employee meets the stringent definition of disability needed to qualify for the disability tax credit (discussed infra at note 40 and related text), two types of fringe benefits are expressly excluded from income: the cost of hiring an attendant to assist the employee in the performance of her duties, or, where the employee has a mobility impairment, the cost of transportation to and from work and parking near the workplace: s. 6(16).


17. This is accomplished by including such benefits in the definition of income (s. 56(1)(u),(v)), but then deducting them from “taxable income” (s. 110(1)(f) preamble, (ii)). Note 7 explained the difference between income and taxable income.

18. S. 118(2).

19. S. 122.5.

20. S. 122.61.

21. S. 122.51.

22. Duff, supra note 5, citing a private opinion letter from Revenue Canada.

23. Supra note 9.

24. For an argument in favour of full taxation of all disability income, with full deductibility of all contributions to income-replacement plans, see Duff, supra note 5, at 879-81. Schulze makes the opposite case, calling for a comprehensive exemption for all forms of disability income and full taxation of amounts contributed to income-replacement programs (supra note 11, at 150-60).
non-taxable social assistance per year, for example, receives far less support through the tax system than someone who lives much more comfortably on $50,000 of non-taxable disability insurance payments. The person with $50,000 not only enjoys a tax exemption on more dollars but avoids tax at higher rates on a portion of her income. And as noted above, the lowest income group comprising those earning less than the basic personal amount of $7,412 receives no benefit at all from income exclusions. No matter how comprehensive or well designed, in other words, income exclusions are a wholly ineffective and inequitable way of delivering tax-based support to low-income people with disabilities.

2. Deductions

Deductions are the second mechanism by which the income tax system recognizes the costs of living with or accommodating disabilities. The ITA allows certain disability-related expenses to be deducted when computing a taxpayer’s income if the expenses are linked directly to an income-producing activity or (in some cases) to educational activities. For example, the cost of attendant care can be deducted if it enables a taxpayer to engage in employment, business, grant-funded research, or certain education programs, up to a limit of two-thirds of the taxpayer’s earned income. Likewise, the 2000 federal budget created an enhanced child-care expense deduction for parents who engage in these same activities if they have a child with a disability. Finally, business owners who make buildings more accessible for mobility-impaired individuals or who purchase certain disability-related equipment can deduct 100% of such expenses in the year they are incurred. Normally, capital expenditures of this nature must be deducted more gradually over a number of taxation years under the capital cost allowance rules in the ITA.

These deductions can be justified in tax policy terms on the basis that they recognize costs of earning income. The presence of disabilities often increases the cost of engaging in income-producing activities. Since a taxpayer has not augmented her personal income until such overhead expenses are recovered, they must be deducted

25. Standard rates of social assistance for single people with disabilities are below $10,000 in all jurisdictions in Canada except Ontario, Yukon, Northwest Territories and Nunavut, and in all jurisdictions are well below Statistics Canada’s low-income cutoff: National Council of Welfare, Welfare Incomes 1999 (Ottawa, Minister of Public Works and Government Services Canada, 2000), tables 2 and 3.

26. An individual must qualify for the disability tax credit in order to claim this deduction, and must not claim the cost of the attendant care as a medical expense for purposes of the medical-expenses tax credit: s. 64, as proposed to be amended by Legislative Proposals, supra note 2, cl. 26. For those enrolled in educational programs, the maximum claim is effectively limited to $10,000 per year.

27. S. 63, as proposed to be amended by Legislative Proposals, supra note 2, cl. 25. Such parents can deduct up to $10,000 for child care expenses each year, compared to the maximum of $7,000 for a non-disabled child under seven years of age and $4,000 for a non-disabled child over age six. The claim is also limited to two-thirds of the taxpayer’s “earned income” per year, and where there are two parents or other supporting persons, the one with the lower income generally must claim the deduction.

28. S. 20(1)(qq),(rr), 18(3.1). The specific improvements and items of equipment covered by these deductions are prescribed by s. 8800 and s. 8801 of the Regulations under the ITA.

29. S. 18(1)(b), 20(1)(a); Regulations Part XI, Schedules II-VI.
simply to achieve a realistic measurement of ability to pay. Alternatively, they can be justified in social policy terms as measures designed to promote access to education, jobs, and commercial establishments for adults with disabilities and parents of disabled children. Certainly the accelerated deduction for disability-related improvements and equipment is more generous than the normal method of recognizing capital expenses, suggesting strongly that there is a social-policy objective at play beyond the strict requirements of tax policy.

Whatever the justification, however, it is clear that people with little or no taxable income receive minimal if any benefits from these deductions. Obviously, no deduction is available to those who cannot afford to purchase these items in the first place. A tax deduction at the end of the year provides no cash in hand to help finance the purchase of disability-related goods and services. Where a person does manage to purchase items needed to work or attend school, the deductions may still be of no value if her income is low. For example, someone starting her own small business could claim nothing for attendant care or for care of a child with a disability, if the business loses money or just breaks, even initially. Because deductions for these costs are limited to two-thirds of the income earned in a year, they are simply lost to the extent that income is too low to absorb them. Likewise, a small-business owner would obtain no immediate recognition for the costs of making the premises physically accessible if profits were insufficient that year to absorb the cost of renovations, though in this case the expense could be carried over and deducted in another year, if and when profits become available. A similar problem would arise for a low-wage or part-time employee who earns $9,000 per year. If the employee could afford to purchase attendant care or child-care services at all, the costs could in principle be deducted up to a maximum of $6,000 (two-thirds of $9,000). However, after taking into account the basic personal credit, which shelters the first $7,412 of earnings from tax in any event, the deductions could at best remove tax liability from the remaining $1,588 of the taxpayer’s income. The potential value of the deductions is eroded due to lack of sufficient employment income. The first problem is that deductions will be partially or entirely lost to those whose market activities produce low returns. A further problem is that the value of a deduction rises with the claimant’s tax rate. A $1,000 deduction is worth $200 in tax savings to a taxpayer with a marginal rate of 20%, for example, but is worth $500 to a higher-income person with a 50% marginal rate. Like income exclusions, deductions raise a number of vertical equity problems.

30. Attendant care might be deductible beyond this limit, if it can be characterized as a regular expense of carrying on business, similar to hiring an administrative or other business assistant (see Sherman, supra note 11, at 161). However, such a claim may be challenged if the employee is thought to be attending to the taxpayer’s personal needs rather than to business-related needs. In Symes v. R., [1993] 4 S.C.R. 695, the Supreme Court of Canada refused to allow the taxpayer to deduct her child-care expenses as a general business expense, holding that she was limited to the maximum amount specified in s. 63.

31. Business losses due to expenses deducted under ss. 20(1)(qq) or (rr) are classified as “non-capital” losses and can be carried forward to reduce taxable income in any of the next seven taxation years, or back to any of the previous three taxation years: ss. 111(1)(a),(8). Alternatively, such expenses could be capitalized and deducted over time as capital cost allowance, as profits became available.
One response to these complaints is that the deductions simply recognize overhead costs to ensure that a person's taxable income reflects her real ability to pay. Using this reasoning, denying such expenses to those with no earnings does not violate principles of tax equity, since these individuals will have no income that is subject to tax in any event. Likewise, from this perspective, the fact that deductions technically are worth the most to taxpayers in the highest rate bracket is not a distributive problem, because the amount deducted is not really available as disposable income but is consumed by work-related expenses. This conventional tax-policy logic is unsatisfying in the present context, however, because the purposes of disability-related deductions go beyond the narrow objective of measuring income accurately. They were clearly also designed to advance broader objectives of social and economic policy of improving access to education and job markets for a specific group: people with disabilities. However, the lowest-income members of the disabled community, for whom these access needs are perhaps most urgent, are excluded from the provisions. As a means of supporting the participation and independence of low-income people with disabilities, tax deductions are a grossly ineffective and inequitable policy instrument.

3. Non-refundable Credits
Non-refundable credits are by far the most important mechanism by which the ITA recognizes the costs of disability. As illustrated above in table 1, credits come into play later than deductions in the calculation of tax liability. Whereas deductions reduce the base of taxable income that is subject to tax under the marginal rate scheme, credits are subtracted after the marginal rates have been applied, as a direct reduction of tax payable. The basic personal credit and many of the other personal credits in the current ITA used to be offered as deductions. They were converted to non-refundable credits in 1988 in order to equalize their value to taxpayers in higher and lower tax brackets. As has been discussed, the value of a deduction rises with an individual's tax rate. A credit, however, reduces tax payable by the same dollar amount for all, or more precisely for all those who have tax liability against which to claim it. A credit of $1,000, for instance, represents a $1,000 tax saving, regardless of the taxpayer's marginal rate, provided she has at least $1,000 of taxes owing after the marginal rates are applied to her taxable income. Unlike income exclusions or deductions, then, the value of non-refundable credits does not rise with a person's income. However, the lack of refundability means that those with the very lowest incomes are wholly or partially excluded from such credits. People with incomes at or below the basic personal amount may qualify technically for a disability-related non-refundable credit, but it will provide no additional tax saving to them. As we shall see, to enjoy the full benefits of the non-refundable credits, a person with a disability must earn well over the basic personal amount of $7,412.

Two measures—the disability tax credit$^{32}$ (DTC) and the medical expenses tax credit$^{33}$ (METC)—are the principal means of providing tax relief to people with disabilities.

32. S. 118.3.
and their families. In addition, family members of people with disabilities may be eligible to claim the non-refundable caregiver credit or infirm dependent credit. Each of these four credits has been substantially enriched in recent years. However, the following discussion explains why the enrichments have provided little benefit to low-income taxpayers.

The DTC reduces federal tax payable in 2001 by a flat dollar amount of $960, plus a supplement of $560 where the person with a disability is under age 18. More precisely, the credit is calculated as a dollar amount of $6,000 (plus $3,500 for the supplement), multiplied by the lowest marginal tax rate of 16%. The lowest marginal rate was adopted as the credit rate for almost all personal credits when they were converted from deductions in 1988, effectively reducing their value for those in higher tax brackets. Another way to understand the DTC is that it eliminates tax liability from $6,000 of taxable income (up to $9,500 in the case of a child) over and above the basic personal amount. This means that in 2001 adults with taxable incomes of less than $13,412 ($6,000 + $7,412) will be unable to claim the full amount of the DTC. These individuals will receive only partial benefit, or in some cases (those with less than $7,412 of taxable income), no benefit from the DTC. In order to qualify for the DTC, a taxpayer must be certified by (usually) a medical doctor as having a "severe and prolonged mental or physical impairment" such that "the individual's ability to perform a basic activity of daily living is markedly restricted," or would be markedly restricted but for certain therapies (such as kidney dialysis) needed to sustain vital functions. A person who meets this definition is entitled to claim the DTC, regardless of her income level or whether she incurred any specific out-of-pocket costs for medications, equipment, or other goods or services related to her disability. The DTC is not designed to compensate for these specific expenses, many of which are covered by the METC. Rather, it recognizes the less easily accounted for daily costs of living.

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33. S. 118.2.
34. The revenue foregone by virtue of the DTC and METC is projected to be about $310 million and $430 million, respectively, in 2001. The next most significant measure is the caregiver credit (118(1)(c. 1)), at a projected cost of $70 million in 2001: Canada, Department of Finance, Government of Canada Tax Expenditures and Evaluations 2000 (Ottawa: Department of Finance, 2000).
35. S. 118(1)(c.1).
36. S. 118(1)(d).
37. For a detailed history, description, and policy evaluation of the non-refundable credits, see Duff, supra note 5; and Gena Katz, "Tax Assistance for the Disabled" 47 Can. Tax J. 663.
38. s.118.3(1), as proposed to be amended by Legislative Proposals, supra note 2, cl. 62(5). Note that the supplement for children with disabilities may be reduced or eliminated if certain deductions or credits are claimed in respect of caregiving services for the child.
39. See the definition of appropriate percentage in s. 248(1).
40. S. 118.3(1)(a. 1), as proposed to be amended by Legislative Proposals, supra note 2, cl. 62(2)-(4). See also the explanatory notes at 406 of the Legislative Proposals. An impairment is defined to be "prolonged" where it lasts for a continuous period of at least 12 months (s. 118.4(1)(a)). Basic activities of daily living are defined in terms of vital physical and mental functions such as feeding and dressing oneself, speaking, hearing, walking, etc, and are expressly stated not to include working, housekeeping, or recreational activities (s. 118.4(1)(c),(d)).
with a disability, such as the loss of income-earning opportunities, having more limited choices about where one can shop or do business, or needing more personal services such as food delivery and taxi rides.\textsuperscript{41}

The METC, by contrast, can be claimed only for specific, receipted "medical expenses" as defined by the \textit{ITA}.\textsuperscript{42} The METC applies to expenses over and above an annual threshold equal to 3\% of the claimant's income, or a dollar figure of $1,678 for 2001, whichever is less.\textsuperscript{43} Some of the expenses covered by the METC are not in any way limited to people with disabilities, such as the cost of eyeglasses, dental work, lab tests, or prescription drugs. However, many others are frequently disability related, such as the cost of wheelchairs, wheelchair vans, and artificial limbs. Some cannot be claimed unless an individual qualifies for the DTC or meets another definition of impairment or incapacity, including, for example, the cost of attendant or nursing home care, guide dogs, home renovations, caregiver training, medically prescribed therapies, and educational tutoring.

Low-income people receive limited benefits from the METC because it is non-refundable, but also because they have relatively little money to spend on the goods and services covered by the METC. In addition, the requirement that low-income individuals spend over 3\% of their income on qualifying medical expenses each year before they can begin claiming the METC further limits their access to the credit. Indeed, this aspect of the METC is starkly regressive, because taxpayers earning over about $56,000 can use the dollar threshold of $1,678, which is less than 3\% of their income.

It must be noted that some of the problems of non-refundability have been alleviated by making the DTC and the METC transferable to other family members. A person who pays the medical expenses of a disabled spouse or dependent relative is entitled to claim the METC.\textsuperscript{44} And where a person who qualifies for the DTC has insufficient tax liability to use it up, any excess credit can be transferred to a spouse,\textsuperscript{45} or on certain conditions to a parent, child or other relative with whom the individual resides or on whom she is dependent for support.\textsuperscript{46} The transferability of these credits reduces the costs of non-refundability to some degree by allowing a low-income person to access the credits indirectly if she has a family member with enough tax liability to absorb them. However, transferability has serious limitations. It is of no value to those who have no spouse and who are not supported by relatives. Notably, people with disabilities are more likely not to have a spouse and to live alone than people without disabilities.\textsuperscript{47} And living alone greatly increases their chance of being poor: 39.7\% of men and 48.2\% of women with disabilities who lived alone in 1991 had incomes below

\textsuperscript{41} See Duff, \textit{supra} note 5 at 834-36; and Katz, \textit{supra} note 37 at 666.
\textsuperscript{42} The detailed list of items that qualify as "medical expenses" is contained in s. 118.2(2).
\textsuperscript{43} S. 118.2(1).
\textsuperscript{44} Ss. 118.2(2)(a), 118(6).
\textsuperscript{45} S. 118.8.
\textsuperscript{46} S. 18.3(2), as proposed to be amended by \textit{Legislative Proposals}, \textit{supra} note 2, cl. 62(6).
\textsuperscript{47} Fawcett, \textit{supra} note 4 at 40, and 163-165.
the poverty line, compared to 16.5% of those who lived in households with other people.\textsuperscript{48} Even where a spouse or supporting relative is present, the transferability of non-refundable credits will be of no value if she has a low income, and therefore insufficient tax liability to absorb unused DTC or METC amounts. Thus transferability fails to alleviate the problems of non-refundability for many of the most economically disadvantaged people with disabilities.

Transferring unused credits is not an ideal approach, even for those who can take full advantage of this mechanism. As Young points out, the transfer of credits “gives the tax subsidy to the economically dominant person in the relationship. This increases the economic dependence of individuals with a disability on the spouse [or other relative, I would add] and deprives them of what could be a small source of income.”\textsuperscript{49} In this regard, tax statistics show that in 1997, the latest year for which data is available, men reported more than four times the amount of personal credits transferred from a spouse than women.\textsuperscript{50} Though this figure includes not only the disability-related credits but also a number of other personal credits, it illustrates how transferability may simply reproduce a gendered pattern of financial dependence within families. Income-tax law has a long history of reinforcing women’s economic subordination by assuming that women’s needs will be met privately by a male breadwinner, and that tax benefits provided to a man will automatically be shared with a female partner.\textsuperscript{51} Instead of transferring the DTC and METC away, making them refundable directly to their intended beneficiaries would be a far better way of recognizing disability-related costs and promoting the autonomy of individuals with disabilities, especially women with disabilities, regardless of their family circumstances and income level.

The infirm dependants credit and the caregiver credit are smaller credits that are targeted at certain family members of people with disabilities. Either can reduce federal taxes by up to $560.\textsuperscript{52} In order to claim the infirm dependants credit, an adult must be dependent on the taxpayer due to a mental or physical infirmity. The caregiver credit was first announced in 1998 and is available to taxpayers who reside with an adult relative who is elderly or has a mental or physical infirmity. There is no requirement for the elderly or infirm relative to be financially dependent upon the taxpayer, but the credit is lost if the relative has income over $15,453. The federal government presented the caregiver credit as a step towards fulfilling its promises to value women’s unpaid work.\textsuperscript{53} However, it has not been carefully designed to achieve this objective. Any member of the household is allowed to claim the credit whether or
not she actually provided any care to the relative. In fact, the provision makes no reference to caregiving at all, requiring only that the relative is co-resident. Because it is non-refundable, a primary caregiver who has little or no income of her own will receive no direct benefit from the credit. Instead, the drafters made the standard assumption that there will also be a household breadwinner who will claim the credit and somehow use it to help “look after” a stay-at-home caregiver. Despite its billing, the credit is not well crafted to recognize the work of unpaid caregivers, because it gives them no direct access to any income unless they also work for pay and earn enough to claim the credit. Households in which all members have little or no taxable income will gain nothing from either the infirm dependants credit or the caregiver credit. For example, a single woman who loses her paid job and goes on social assistance while she cares for a partner or other relative with a disability would have no access to either of these non-refundable credits.54

4. Refundable Credits
Refundable credits are applied at the final stage of computing tax liability. They are the only relieving mechanism that can result in a payment from government to the taxpayer. Technically this is accomplished by finding the individual to have made a fictional payment on account of tax, which she is then entitled to have refunded. In reality, refundable credits should be viewed as transfer payments from government, which are delivered through the income tax system.

There is only one refundable credit in the ITA of special relevance to people with disabilities: the refundable medical expense supplement, which pays up to $520 to individuals who earn modest amounts of income from employment or self-employment and who have at least $2,000 of medical expenses that qualify for the METC.55 This supplement to the METC was introduced in 1997 as a means of partially offsetting the loss of provincial social assistance benefits by those entering paid work.56 It is targeted exclusively at lower-income individuals, phasing out gradually once a taxpayer’s income exceeds $19,705. For those on social assistance it does not enhance after-tax income but merely lessens the impact of losing welfare benefits.

Some low-income people with disabilities or their family members may be eligible for the Canada child tax benefit or the goods and services tax credit, both of which are income-tested refundable credits paid in regular instalments through the taxation year. However, these are not targeted in any specific way at people with disabilities, nor do they recognize extra costs associated with a disability.

5. Conclusion
This discussion has shown why refundable credits are the only mechanism by which tax measures for people with disabilities can be fully extended to reach low-income people. In particular, refundable credits would assist two groups of people who cannot

54. See Philipps, supra note 51 at 94-95; and Young, supra note 5, at 60.
55. S. 122.51.
56. See Duff, supra note 5 at 865-69.
benefit directly from income exclusions, deductions, or non-refundable credits. The first group comprises those who live in households in which no one's income exceeds the basic personal amount. For example, single people or couples living on social assistance or CPP disability payments, or on low wages, simply have no income or tax liability against which to claim non-refundable tax benefits. The second group comprises those who are financially supported by a partner or other person who claims tax relief for a disability. This group includes, for example, a woman with a disability who has no taxable income but whose partner earns a $50,000 salary. It would also include a non-disabled woman who remains out of paid work in order to care for a spouse or parent with a disability who receives taxable disability income of $50,000 per annum. This second group may benefit indirectly from existing deductions and credits if they can be claimed by the income-earning member of the household. However, they have no direct access to current tax benefits and have no legal right to share in the tax savings realized by the income earner.

A refundable credit therefore has significant appeal as a way to correct inequities in the tax system as well as reduce poverty and increase autonomy among people whose lives are affected by disabilities, directly or as supportive family members. Because they put new cash in hand, refundable credits could help some low-income people to finance the purchase of previously unaffordable equipment or services that facilitate independent living, enable participation in paid work, or otherwise improve the quality of life. Finally, if a refundable credit was designed to be paid in advance at regular intervals throughout the year, it could ease the cash-flow problems associated with tax deductions or credits that can be claimed only after the end of a taxation year. While they are clearly superior to other tax mechanisms, however, a more challenging question is why we should choose the tax system in the first place as the vehicle for deploying new public resources for people with disabilities. The next section of the paper compares refundable credits to other possible policy instruments outside the tax system.

B. Why the Tax System?
A policy decision to increase support to low-income people with disabilities need not be implemented through the tax system at all. The most obvious alternative would be a direct payment through the social assistance system or some other transfer program. Or the resources could be used instead by governments to provide disability-related goods and services such as more accessible public infrastructure, housing stocks, or personal services to support domestic, educational, or income earning-activities. Yet another approach would be to invest more heavily in regulatory systems or subsidies to induce employers, commercial vendors, and other public and private actors to accommodate people with disabilities. A full comparative evaluation of these different policy instruments is beyond the scope of this paper. However, in this section I review the main attractions as well as the drawbacks of tax-based programming relative to its alternatives. Dealing first with issues of policy effectiveness, I highlight concerns about the technical complexity of tax law, the slowness and rigidity of its annual assessment cycle, and the limited sensitivity of tax administration to the objectives of disability support. I also discuss problems of intergovernmental coordination that
would arise because of the constitutional division of powers over taxation versus social programs. None of these difficulties is insurmountable. However, they do suggest the need for careful and creative work by policy makers in pursuing a refundable tax credit for people with disabilities. I return to these points in part III, in the discussion of design options for a refundable credit.

1. **Policy Effectiveness of Tax Benefits versus Direct Expenditures**

The tax system has some attractions as a vehicle for achieving public policy objectives, as well as some clear limitations. One of the principle attractions is the relatively low cost of administering tax-based programs, from the perspective of both government and individual recipients, because claims can be processed through the existing filing requirements and bureaucratic machinery of the tax system.\(^{57}\) The Canada Child Tax Benefit, for instance, is delivered purely on the basis of income figures reported in the annual tax return. The only additional information needed is the income of a spouse. For those low-income people who would not otherwise file a tax return, of course, even this requirement imposes an administrative burden.\(^ {58}\) By comparison, however, provincial social assistance schemes are far more complex and burdensome, requiring extensive and ongoing documentation of all sources of potential and deemed income, including gifts and payments on any debt owing to the applicant, as well as assets.\(^ {59}\)

Politically, tax-based programs are often more viable than direct spending initiatives because they are widely, if wrongly, perceived to involve less government interference in the economy. The federal government regularly publicizes the estimated cost of deductions and credits in its budget documents and tax expenditure reports,\(^ {60}\) but decisions to forego revenue are nonetheless still seen as somehow less costly and less activist than direct expenditures. Tax-based measures may be especially convenient in a period of heightened fiscal restraint and skepticism about the state’s proper role in the market. At least in the short term, the fiscal-political environment likely favours any program that can be framed as a tax cut.

Beyond these general attributes there are several reasons that tax measures may be particularly appropriate in the context of disability support. First, it is important to note that the tax system’s own policy framework requires some recognition of the costs of disability. Most would agree that the expenses of coping with disability are non-discretionary, at least to some basic standard, and that such costs therefore reduce the ability to pay tax of those who must bear them. To ignore these extra expenses in computing tax liability would violate the tax policy principle of horizontal equity, that people with the same ability to pay should bear the same amount of tax.\(^ {61}\) Thus even

57. Berman, * supra* note 5 at 989.


60. See, for example, *Government of Canada Tax Expenditures and Evaluations 2000, supra* note 34.
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if all public disability supports were delivered outside the tax system through direct transfers or state provision of goods and services, there would still be a need to recognize any privately borne costs of disability in some fashion in determining relative tax burdens. To put this another way, if a decision was taken that no public resources should be used to support high-income people with disabilities, tax policy principles would still suggest it is unfair for such individuals to pay the same amount of tax on their incomes as those who have no disability-related expenses. Some disability-related tax measures are needed, in other words, just to cohere with the internal logic and objectives of the tax system.

While tax policy principles such as horizontal equity are often distinguished conceptually from social policy goals such as income security, the two cannot be entirely disentangled. Determining what expenses are non-discretionary, in particular, involves normative judgments about what minimum quality of life people with disabilities must be able to enjoy before they are considered to have excess economic capacity that is properly subject to tax. The decision to refund tax deductions or credits to those who are below the horizon of tax liability can be understood as a natural extension of this moral judgment about basic acceptable living standards. In any event, whether it is justified in terms of tax policy or social policy, the tax system can be used to advance objectives such as reducing poverty, increasing autonomy, and promoting social and economic integration for people with disabilities.

Certainly people with disabilities have lobbied very actively for tax reforms over the last two decades. Some of this work has been in reaction to restrictive interpretations of existing tax provisions by revenue authorities or courts. However, advocacy groups have gone well beyond this to call for more fundamental reform of the tax system as it relates to people with disabilities. Several reasons have been posited in the literature for this increasing focus on tax reform within the disability rights movement. There is significant frustration that welfare and other income security programs have been so resistant to reform and so vulnerable to cutbacks in recent years. As well, tax benefits are often viewed as a less stigmatized form of support than direct transfers, especially social assistance. Felicite Stairs has documented the ways in which taxpayers are treated as honest, rights-bearing citizens entitled to privacy, trust, and fair treatment by bureaucrats, compared to welfare recipients for whom these social citizenship rights are often suspended. Being treated with dignity and respect is

62. See Duff, supra note 5 at 804-808.
63. See Kesselman, supra note 58 at 302.
64. See Standing Committee on Human Rights and the Status of Disabled Persons, supra note 5 at 5-8.
66. See Sherri Torjman, Will the Children's Budget Include Kids with Disabilities? (Ottawa: Caledon Institute, 1999) at 6.
67. Supra note 59 at 136-41.
important to all low-income people but may have particular significance for people with disabilities. The relative impersonality and universality of tax-filing requirements may contribute to this lack of stigma, compared to welfare programs, which apply only to the disadvantaged and require far more personal contact with administrative officials. Stairs cautions that tax-based benefits may become more stigmatized and intrusive over time, noting that revenue authorities have already come under pressure to institute monitoring and enforcement systems for the Canada child tax benefit akin to those used by welfare authorities.68

Finally, the shift away from public provision of services toward more privatized models of caregiving by families and community agencies may help to explain the rising appeal of tax assistance.69 Tax deductions and credits do not require governments to provide goods or services to people with disabilities or those who support them. Rather, they provide a partial subsidy for the privately borne costs of disability. So they effect a sharing of costs between people with disabilities and governments.70 While overall this trend clearly disadvantages low-income people with disabilities, the pursuit of tax concessions has at least offered a way of mitigating the offloading of disability-related costs onto individuals and families. Similarly, a refundable tax credit could provide individuals with cash income to offset at least part of the cost of securing private supports, while the struggle for adequate public services continues.

Tax-based delivery of disability supports also has some notable drawbacks and dangers, from the perspective of both governments and people with disabilities. Tax expenditure programs in general are notoriously susceptible to poor cost control and a lack of transparency as to how benefits are distributed and whether policy objectives have been attained.71 Unlike a direct spending program with a specified budget allocation, there is no upper limit to the potential cost of offering a tax deduction or credit. Policy makers have tools for estimating the likely take-up rate and cost of tax concessions, but if such projections are mistaken, there is no discretionary power in the administration of the ITA to accept only a limited number of claims. Moreover, distributive effects that would be glaringly problematic in a direct-spending program tend to be far less visible in a tax-based measure. For example, a transfer or granting program that purported to assist all people with disabilities but explicitly excluded those with incomes less than $7,412 would likely come under attack fairly quickly. However, the same effect when created by the non-refundable DTC is totally obscured to most members of the public. The risks of non-transparency may be less in the case of a refundable credit that involves actual payments from government to individuals and is designed and justified explicitly in terms of measurable policy objectives such as the reduction of poverty among people with disabilities. By contrast, most new tax expenditures are accompanied by only the vaguest justifications about encouraging

68. Id., at 152.
70. Baker and Beatty, supra note 5, at 4.
71. See N. Brooks, "Comment" in N. Bruce, ed., Tax Expenditures and Government Policy, supra note 58, 324, at 325-29.
certain types of economic activity or assisting certain groups. Certainly it would be wise for the designers of a refundable disability credit to build in requirements for regular reviews of its policy effectiveness and distributive impact. People with disabilities from outside government should be involved in conducting these reviews, and their results should be made public.

Another limitation of the tax system as an instrument for delivering disability supports is the sluggish and inflexible annual assessment cycle. Tax is assessed for individuals each calendar year through a process that is not completed until several months after the end of each year. Deductions or credits often will not translate into a tax refund until more than a year after an expenditure was incurred. This is especially problematic for those low-income people who lack the cash to finance expenditures or to carry them for months or years pending reimbursement. Some refundable credits such as the Canada Child Tax Benefit have mitigated this problem by determining each year’s benefits in advance, based on the taxpayer’s income in previous years, and paying the credit in periodic instalments throughout the year.72 However, this means that benefit calculations are always based on out-of-date information. In the case of the Canada Child Tax Benefit, there is at least a year’s lag time between a change in the taxpayer’s income and an adjustment in benefits. Social assistance is far more responsive and flexible, by contrast, allowing for benefits to be adjusted monthly as income from other sources rises or falls, and for extra one-time payments to deal with crises or extraordinary expenses.73 The tax system in general lacks this capacity to respond very quickly to urgent needs, a function that is critically important to the poorest individuals.74

There are serious concerns as well about the administration of disability-related tax expenditures by revenue authorities. While the efficiency of utilizing an established administrative structure is one of the advantages of tax-based programs, it is also a weakness, because the administrative mandate and technical training of revenue authorities is not well suited to delivering a disability support program. As an institution oriented toward maximizing revenue collections and administering a wide range of tax expenditure programs, the Canada Customs and Revenue Agency is unlikely to have the specialized knowledge or flexibility to apply a disability support program liberally and generously in keeping with its objectives. Nor is the tax system procedurally very accessible for non-expert members of the public. The technical complexity of the ITA discourages some individuals from claiming tax benefits at all and makes it difficult for others to verify how much they should be receiving.75 This

72. The Canada Child Tax Benefit is paid monthly. Entitlement to the benefit and the amount of payments depends on the taxpayer’s income (combined with any income earned by a spouse) for the second preceding calendar year (for January to June benefits), and the immediately preceding calendar year (for July to December benefits): s. 122.6 “base taxation year,” and 122.61(1). The GST credit is paid quarterly, beginning in July of each year, based on income in the immediately preceding calendar year: s. 122.5(3),(4).
73. Stairs, supra note 59 at 159-60.
74. Baker and Beatty, supra note 5 at 4.
75. See Berman, supra note 5; Katz, supra note 37, at 690-91; and Stairs, supra note 59, at 144-45.
leads to costly disputes that must be worked out through an appeal process that is far slower, less accessible, and more technical than a social assistance appeal. To be successful, a refundable tax credit for people with disabilities would have to be accompanied by substantial administrative reforms. Revenue agencies would need to ensure they have staff who are knowledgeable about the diverse circumstances and needs of people with disabilities, and would need to involve people with disabilities themselves in designing and operating administrative systems. Taxpayer education and assistance programs would also be essential.

2. Constitutional Hurdles: Coordination of Federal Tax Benefits with Provincial Welfare Programs

In addition to their pitfalls as policy instruments, tax-based income-support programs raise daunting problems of intergovernmental coordination. This is because the federal government, though it has clear constitutional authority to enact a refundable credit, could not prevent the provinces from treating the credit as income for social-assistance purposes and reducing welfare benefits accordingly. For example, all but two provinces, New Brunswick and Newfoundland, claw back social assistance from those receiving the Canada Child Tax Benefit. The National Council of Welfare has estimated that as a result of this clawback, only 36% of poor families with children have experienced any net increase in income by virtue of the Canada Child Tax Benefit, and in the case of single parents only 17% have been net beneficiaries. While provinces agreed under the joint National Child Benefit initiative to reinvest any welfare savings in other programs for families with children, those reinvestments have been selective, often focusing on the “working poor” to the exclusion of those on welfare and difficult to track. Unless a refundable disability credit was higher than provincial welfare rates, or the provinces agreed not to claw it back from social-assistance recipients, one of the most disadvantaged groups of people with disabilities

76. Stairs, id., at 149-51.

77. The Constitution Act, 1867 gives comprehensive taxing powers to the federal government, and more limited, concurrent taxing powers to the provinces: ss. 91(3), 92(2). However, the provinces have exclusive authority over most social-welfare matters. This misfit between revenue-raising powers and spending responsibilities has been resolved historically through the transfer of federal funds to finance provincial programs. See M. Young, “The Constitutionalisation of the Private” (draft on file with author, February 2001) at 3-4.


79. Id. at 19-25; Stairs, supra note 59 at 163. Some have defended the decision to focus new child benefits on low-wage families to the exclusion of social-assistance families as a means of lowering the “welfare wall,” referring to the possible disincentives to paid labour caused by the loss of health benefits and other in-kind benefits upon leaving the welfare system: see, for example, K. Battle, “Child Benefit Reform: A Case Study in Tax-Transfer Integration” (1999) 47 Canadian Tax Journal 1219, at 1232-38. Others have responded that the total exclusion of social-assistance families severely undermines a major objective of the National Child Benefit, to reduce child poverty, and that the welfare wall could be lowered in other ways without neglecting those still on welfare, such as by extending in-kind benefits to low-wage families: see, for example, R. Shillington, “Assessing Tax-Transfer Programs: Comments on the Paper by Ken Battle” (1999) 47 Canadian Tax Journal 1263; and Stairs, supra note 59 at 164.
would receive no net benefit. Indeed, some would be worse off, because the tax credit would replace their entitlement to social assistance altogether, and hence they would lose access to the emergency funding and supplementary health, child care, and other benefits provided through the welfare system.

The danger that refundable credits would simply substitute federal for provincial money without increasing support levels to those on welfare may be viewed as an argument against using the tax system to deliver income support. Indeed, the Ontario Fair Tax Commission gave this as one of its reasons for opposing tax-based disability supports altogether, and recommending instead that Ontario provide direct transfer payments or subsidies outside the tax system for people with disabilities. This type of direct income support could be provided unilaterally by any individual province willing to pay the full cost on its own, avoiding the need to coordinate benefits across two levels of government. If the goal is to create a pan-Canadian disability income support program, funded jointly by both levels of government, a direct spending program would pose at least as many coordination challenges as a refundable tax credit.

In past times, the federal government was able to exert considerable influence over the nature of provincially delivered social programs and services. However, in recent years it has ceded much of this power, as the Canadian welfare state has evolved sharply toward a more decentralized model in which the provinces are seen as the more legitimate authors of social policy, and federal intervention is increasingly resisted. This shift initially coincided with dramatic cutbacks in federal transfer payments in the mid-1990s, as the Liberal government made deficit reduction its main fiscal priority, but it has continued into the era of federal budget surpluses. Until 1995 the federal government could impose conditions on social program funding to the

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80. According to Fawcett, approximately 9.7% of people with disabilities relied at least in part on social assistance in 1991. Comparing poverty rates among people with disabilities who receive their income from different sources, she concluded that those on social assistance had by far the greatest likelihood of being poor, with 64% living below Statistics Canada’s low-income cut-offs: supra note 4, at 145-46. More recent data from 1999 indicate that the level of welfare benefits received by single persons with disabilities fell well short of the poverty line, ranging from 42% in Alberta to 70% in Ontario: National Council of Welfare, supra note 25 at 23-26.

81. Stairs, supra note 59 at 154.

82. Supra note 49 at 316-21. When the Commission reported in 1993, these recommendations were moot, because the Tax Collection Agreements between the federal government and all-provinces except Quebec required provincial governments to levy their income taxes simply as a flat percentage of federal tax payable, severely limiting their control over tax policy. The Tax Collection Agreements have since been amended to allow provinces to design their own rate structures and tax credits. The provinces have undertaken to maintain non-refundable credits from the federal system, such as the DTC, at no less than their 1997 values, but they are not bound to match post-1997 increases in the DTC. Thus they could decide to devote funding instead to new direct-spending programs for people with disabilities, as recommended by the Ontario Fair Tax Commission. The provinces have less flexibility on expenditure-based credits such as the METC, which must keep pace with any increases enacted federally. See Canada, Department of Finance, Federal Administration of Provincial Taxes: New Directions (Ottawa: Queen’s Printer, January 2000).

provinces, under the legal framework of the Canada Assistance Plan (CAP). The CAP was abolished in 1995 and replaced by the Canada Health and Social Transfer (CHST), a virtually unconditional block transfer payment that each province can use to finance social programs of its own choosing. Whereas CAP may have been an effective vehicle for the federal government to initiate a new shared-cost income support program for people with disabilities, the CHST is not. There are no guarantees that new CHST monies would be used by any province for any purpose remotely related to federal policy objectives.84

The reduced federal role in social programming was further concretized by the 1999 Social Union Framework Agreement in which the federal government accepted restrictions on the exercise of its constitutional spending power.85 Specifically, it undertook not to introduce any new conditionally funded programs outside the CHST in the areas of health care, post-secondary education, social assistance, or social services, without first obtaining agreement from half the provinces. Even if provincial consent is secured, the federal government may not develop programs unilaterally but is bound to work jointly with the provinces to determine objectives, priorities, and any accountability measures such as national standards. A province also has the right to opt out of such initiatives and to receive equivalent federal funding, provided it has programs that address the same or related objectives.

Under the system envisioned by the Social Union Framework Agreement, the federal government could offer funding to the provinces for a disability support program that would be financed separately from the CHST. It could be delivered through federal or provincial legislation, but in either case the broad parameters would have to be developed jointly by both levels of government. Any province that did not approve of the jointly negotiated program could opt out and simply take its share of the money. If more than half the provinces objected to the program, they could block the initiative entirely. The risks for the federal government of pursuing this avenue include the risk of deadlock or failure to reach agreement, and the risk that no coherent program would emerge across the country, but rather a series of quite different local programs. Certainly the federal government would have less control over the design and delivery of a shared-cost program than over a refundable tax credit, which it could legislate directly. The one form of unilateral social spending left open to the federal government under the Social Union Framework Agreement is to bypass provincial structures entirely and simply make transfer payments directly to individuals with disabilities. A straight transfer payment could not be vetoed by the provinces, though they are entitled to be notified and consulted about the development of the program. Again, however, the provinces would be free to claw back any federal transfer payment from social assistance, leaving welfare recipients with no net benefit and possibly worse off.

What this discussion has shown is that any new income-support program for low-income people with disabilities, if it is to be available in some form everywhere in the country, would pose significant challenges to intergovernmental coordination. Whether delivered federally or provincially, in the form of a refundable tax credit or a direct spending program, its details would have to be developed jointly by negotiation between the two levels of government if it was to have any hope of fulfilling its objectives, particularly in relation to those on social assistance. These are the new constitutional facts of life in Canada, and in themselves they give no advantage to direct-spending programs over tax-based benefits.

Part III considers design features that could help to overcome these constitutional hurdles as well as the tax system's limitations as a policy instrument, discussed in the previous section. The seriousness of these limitations suggests, however, that we should not aim to rely exclusively on refundable tax credits to address all the unmet needs of low-income people with disabilities. At best they should be seen as a partial strategy that must be coordinated with better direct-spending programs. It is especially difficult to see how refundable tax credits could ever meet the need for emergency or discretionary one-time payments. Further, Torjman has observed that tax-relief deals only with the "demand side" of accessing disability-related goods and services, and argues that "... helping parents pay for services is important—but is not a complete answer... There must be sufficient and appropriate services to purchase. An investment in the supply of supports and services... is crucial." Similarly, individualized tax benefits by themselves cannot ensure that public and private institutions will work to accommodate and fully include people with disabilities. Clearly, therefore, tax-based benefits would need to be complemented by more direct forms of subsidization, regulation, and intervention.

### III. Designing Refundable Disability Tax Credits: Three Models of Reform

If and when governments become persuaded that refundable tax credits are needed for people with disabilities, how exactly should such a program be designed? A multitude of different options and features can be envisioned. However, three broad conceptual models of reform can initially be identified. The most incremental type of reform would simply rework existing refundable credits to address some specific needs of people with disabilities. A second, more ambitious approach would add refundability to existing disability-related tax provisions. The third and most appealing option is to start fresh and build a new refundable credit program that would improve upon and replace at least some of the current provisions.

Before elaborating on these reform options, it is necessary to clarify the policy objectives that might be pursued through a refundable tax credit. The ideal form of credit will depend in large part on what needs it is meant to address, exactly who is

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87. *Supra* note 66 at 5.
intended to benefit, and to what extent policy makers wish to address other well-doc-
dumented gaps and problems in the ITA’s treatment of disability. Section A considers
how each of these objectives might be refined in a way that is sensitive to differences
of class, race, and gender among people with disabilities. Section B then goes on to
flesh out and evaluate the three models of reform suggested in this paper.

A. Clarifying the Objectives of a Refundable Disability Credit

1. What Needs Should Be Addressed?

Literature on disability programming generally identifies three distinct, but inter-
dependent categories of need: (i) income support, (ii) access to disability-related goods
and services, and (iii) economic and social integration. The first category—income
support—can be broken down further into two objectives: reducing poverty and
enhancing autonomy. The most appropriate design of a refundable credit would
depend partly on the relative priority attached to addressing these different needs, and
to the interplay among them. For example, it is difficult to untangle the first and second
types of need, because income-support requirements depend so heavily on the cost of
disability-related goods and services needed by a particular individual. Thus a flat,
income-tested benefit might be viable as a means of providing income support to
non-disabled individuals, but would be an extremely blunt instrument for assisting
people with disabilities. Because the costs of living with a disability vary so dramat-
ically, and also because some types of disability income are excluded from the tax
base, income as defined in the ITA would be a highly unreliable indicator of actual
need. A credit aimed only at providing income support for the poorest would have to
measure eligibility in a way that both excluded those people with significant levels of
non-taxable income, and included those with significant taxable income that was
consumed largely by unreimbursed disability-related expenses. To be an effective
anti-poverty measure, such a credit would also need to provide supplementary benefits
for extraordinary disability-related costs.

Integration objectives will also interact with needs for income support and access to
goods and services. Refundable credits that cover the cost of certain support services,
for example, would also facilitate labour market and other forms of social and
economic integration. An important issue here concerns the meaning of integration,
which too often is limited to labour force participation. A commitment to full social
and economic citizenship for people with disabilities requires a far broader concept
of integration, for example into the non-profit sector, electoral politics, education
systems, and caregiving roles within families. Feminist and anti-racist writers on
disability have pointed out that a single-minded focus on employment incentives
disadvantages women and radicalized people who face greater employment discrim-
ination and have fewer employment opportunities. It also discounts the need and

88. See A. Vernon, “A Stranger in Many Camps: The Experience of Disabled Black and Ethnic Minority
Women” in J. Morris, ed., Encounters with Strangers: Feminism and Disability (London: The
Women’s Press Ltd., 1996) 48; and O.W. Stuart, “Race and Disability: Just a Double Oppression?”
(1992) 7 Disability, Handicap & Society 177 at 186.
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desire of many people with disabilities, especially women, to care for their children or other family members, and the supports they need to do so. Even feminist literature on women’s unpaid caregiving work, for example, has generally subsumed women with disabilities “under the universal ‘cared-for’ . . . assumed as part of the burden contributing to women’s secondary or privatized status,” rather than considering the specific interests and needs of mothers and other caregivers with disabilities.

A brief look at the ITA demonstrates both how it devalues unpaid care work generally, and how it constructs people with disabilities stereotypically as the recipients of care, while ignoring their responsibilities as caregivers. For example, attendant care expenses are fully deductible to a taxpayer only if they enable income-earning or educational activities, not if they enable unpaid caregiving activities. Likewise, an enhanced child-care expense deduction was created for parents of a disabled child in 2000, but not for parents with disabilities, despite the fact that parents with disabilities may have to incur extra child-care costs in order to engage in business or employment. Another example is the caregiver credit, which gives tax relief to those who reside with an elderly or infirm relative, apparently on the assumption that the relative is always the recipient and never the provider of care for grandchildren, siblings, or others.

If they wish to promote integration in a way that avoids class, gender, and racial biases, policy makers should eliminate assumptions that people with disabilities have no caregiving responsibilities of their own, as well as narrow understandings of integration that value market activity but not unpaid contributions to the social and economic life of the country.

Careful thought is also needed about how best to support participation in employment and other activities. For example, one drawback of income-tested credits is that they necessarily impose high effective marginal tax rates on income around the level where the credit begins to disappear. That is, a person who earns employment income just over the amount defined as the threshold for entitlement to a refundable credit bears

91. S. 64, discussed at note 26, supra and associated text. Though such expenses might be claimed by a caregiver under the non-refundable METC (discussed supra at notes 42 and 43 and associated text), that credit is available only for medical expenses exceeding a defined annual threshold and is granted at the lowest marginal tax rate of 16%, whereas the deduction for attendant-care expenses has no threshold and its value rises with the taxpayer’s actual marginal rate.
92. S. 63, discussed supra at note 27 and associated text.
93. S. 118(1)(c.1), discussed supra at notes 53 and 54 and associated text.
not only the explicit marginal income-tax rate on her last dollar of income, but also loses some or all of her refundable credit, so that she may realize little or no net benefit from increasing her wage income. Marginal tax rates are only one of many factors affecting work choices. However, people with disabilities, who may incur extra transportation, equipment, or personal-service costs to engage in paid work, may be more sensitive to the loss of benefits, and whether a job actually produces any net increase in household income. Indeed, because of these extra costs, a credit designed to improve labour-market access might have to rise when a claimant enters paid labour, rather than fall.

In light of the close interrelationships among all three categories of need, policy makers designing a refundable tax credit should ideally aim to address all three, or at least to avoid cross interference among them. It may be possible to achieve this with a single refundable credit that had multiple components, to ensure, for example, that income-support needs were determined only after the cost of disability-related goods and services had been credited. Another approach would be to address some needs through a refundable credit, while maintaining other types of provisions better suited to meeting other needs. Finally, it is unlikely that these needs can be fully met by tax relief or other cash transfers to individuals with disabilities themselves. Other steps must be taken as well, inside or outside the tax system, to induce others to accommodate people with disabilities. This raises the question of who should be targeted to receive refundable tax credits.

2. To Whom Should Refundable Tax Credits Be Delivered?
Policy makers designing refundable credits would need to define clearly their target group or groups. A non-exhaustive list of possible targets includes:

- low-income people with disabilities
- all adults with disabilities
- children with disabilities
- people with disabilities who engage in paid work, or more broadly in unpaid caregiving, volunteer work, educational pursuits, or other activities considered valuable
- individuals who provide financial support to someone with a disability
- individuals who provide unpaid care to someone with a disability
- businesses that employ or provide access to goods or services for people with disabilities
- other institutions to which people with disabilities need better access

Other target groups could be imagined. The point is that, in order to choose the most appropriate model and develop it effectively, policy makers will need to be clear about who is (and who is not) intended to benefit, and why. For example, existing non-refundable credits such as the infirm-dependants credit, METC, and DTC can be claimed by or transferred to those who provide financial support to people with
disabilities. Rather than paying anything to financial providers, however, refunding amounts directly to individuals with disabilities seems more consistent with the goals of reducing poverty and enhancing autonomy. On the other hand, a good case can be made for providing refundable credits to small businesses and other institutions to help finance more vigorous action to accommodate disabilities. Including these actors in the target group for refundable credits seems consistent with the social model of disability developed in social science literature, which calls for a focus on “disabling barriers” and “disabling environments,” rather than locating all responsibility for overcoming disadvantage and exclusion with individuals who have physical or mental impairments.\footnote{See, for example, C. Barnes, “The Social Model of Disability: A Sociological Phenomenon Ignored by Sociologists?” in T. Shakespeare, supra note 90, 65.} As for people with disabilities themselves, there are good arguments for a universal refundable credit, rather than one targeted exclusively at those with low incomes or those who engage in income-earning or other specified activities. The reasons are discussed in more detail in the final section of the paper, but essentially they relate to avoiding stigma and rationalizing the system.

The choice of beneficiaries should also be made in a way that avoids subtle gender, race, and other biases. For example, providing refundable credits to those who enter paid work but not to those engaged in unpaid caregiving, whether by or for people with disabilities, would discriminate against women, especially women who forego or severely restrict their own income-earning activities in order to provide care. Incentives for employment to the exclusion of other activities may also be biased against those who lack opportunities in the paid labour force due to discrimination based on race, age, or the perceived severity of their disability. The objective should be to provide supports for people with disabilities to participate in any and all aspects of social and economic life, rather than creating categories of deserving and undeserving claimants based on financial independence from government.

3. **Addressing Other Gaps and Problems in the System**

In addition to the lack of refundability, a wide range of other gaps and problems have been identified in the current tax treatment of disability. Though refundability could simply be grafted onto existing provisions, it would be sensible in designing a refundable credit to take the opportunity to rationalize the system and close as many gaps as possible. It is beyond the scope of this paper to itemize these problems in detail, but several common themes can be identified in the literature:

- The first relates to the eligibility criteria for the DTC, which in turn controls access to other tax benefits such as the infirm-dependants credit and the attendant-care expense deduction. The definition has been criticized for treating disability as an “either/or” status, ignoring people with less severe yet still costly disabilities, or with degenerative or episodic conditions that do not meet the statutory requirement for continuous disability.

- A second pervasive theme relates to the current system’s overly medicalized model of disability. Thus health professionals must be involved in certifying facts
that may not call for technical expertise but can best be gleaned from ordinary observation of an individual. Likewise, expenses for care or equipment that can be construed as medical are recognized more easily than crucial expenses of ordinary life, such as housekeeping and shopping. And the multivariable costs of living with a disability are lumped in with "medical expenses" for purposes of the METC. The medical model of disability has been contrasted with a broader and more inclusive citizenship model, in which supports would be designed to promote full participation in all aspects of social, economic, and political life.

- A third and related criticism is that the current system has an institutional bias, in that costs of full-time care in a specialized residential institution or for professional caregivers are recognized more generously than the costs of receiving help in an integrated setting or from unpaid family members.

- A fourth theme, overlapping with the third, is the tendency to under-recognize family caregivers, most often women, who bear substantial indirect costs, including lost income-earning opportunities and lost leisure time, and who have unmet needs of their own for income support, respite services, and more extensive replacement care that would improve their access to labour markets and employment benefits such as retirement pensions. This issue is especially pressing for families that rely heavily on women's wages, including some ethnic minority and racialized families, due to labour market barriers for male family members.

- A fifth critique is that existing provisions fail the narrower tax-policy tests of horizontal and vertical equity. For example, the METC has been criticized on the basis that it tends to give the greatest benefit to higher-income people who can afford medical purchases over and beyond the 3% income threshold, and sometimes gives different amounts of tax relief to households with the same total incomes, depending on how the income is split between spouses.

- Sixth, there is frequent critical comment on the low amount of existing credits and their failure to recognize all the costs of disability or to reimburse a sufficient share of those costs.

- Seventh are concerns about the complexity of the current network of interrelated tax provisions, the difficulty that taxpayers have in determining their entitlements, and inconsistent or unclear application of these provisions by administrative officials. Many proposals call for rationalization of several provisions into a single tax benefit, better communication of what is available, and more accessible and inclusive appeal and other administrative procedures.


97. See Stuart, supra note 88 at 186.

98. See Shillington, supra note 5; and discussion at notes 42 and 43, supra and associated text.
Finally, people with disabilities have emphasized that it is critical to include them in discussions about tax reform and in the administration of disability-related tax provisions.

Drawing on this discussion of policy objectives, I now turn to an assessment of three alternative models for the development of refundable disability credits in the tax system.

B. Three Models of Reform

The preceding sections of this paper have shown that refundable credits for people with disabilities could focus on any number of specific objectives and target groups, and could take a variety of forms. In this final section I concretize the discussion by fleshing out three models of reform. Starting with the most incremental and working up to the most ambitious, they are:

1. Rework existing refundable credits to take better account of disability-related needs

2. Add refundability to existing disability-related deductions and credits

3. Create a new refundable tax credit that would improve upon and replace a number of existing disability-related provisions

I evaluate each of these approaches in light of the objectives discussed in the preceding section: reducing poverty, enhancing autonomy, providing access to disability-related goods and services, and integrating people with disabilities more fully into all aspects of society. I also consider how well each model coheres with conventional tax-policy objectives, especially equity and simplicity. Concluding that the third model—creating an entirely new refundable credit—is by far the most attractive, I go on to discuss some of the specific design issues it would raise, particularly the choice between universal versus targeted benefits. I review two examples of targeted refundable credits: Canada's National Child Benefit and Britain's Disabled Person's Tax Credit. I argue that a universal credit applicable to all Canadians with disabilities is more desirable and could still be designed to distribute more resources to those with lower incomes.

1. Rework Existing Refundable Credits to Take Better Account of Disability-Related Needs

This model is by definition quite limited in scope, because the ITA contains only a few refundable credits, all designed for specific purposes. Certainly the refundable medical-expense supplement could be enhanced. Duff has argued that the narrow purpose of this supplement—to offset the loss of provincial disability supports upon entering paid work—could be more effectively achieved by eliminating the METC's threshold requirement that medical expenses exceed 3% of annual income or a specified dollar minimum, and by covering a fuller range of disability-related expenses. Other ways

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99. Discussed supra at note 55 and associated text.
100. Supra note 5 at 868-69.
of making the supplement more generous would be to increase the 25% rate at which expenses are credited, to remove the $520 maximum annual refund, and to raise the amount of income that can be earned before the supplement is lost. More ambitiously, the supplement could be extended to those who participate not just in paid employment or self-employment but in a broader range of social and economic activities such as unpaid caregiving, education, volunteer work, or political campaigning. This enhancement would recognize some of the extra costs for low-income people with disabilities of participating fully as citizens. In this case, it would also make sense to remove the requirement that claimants earn at least $2,598 of employment or self-employment income.

This option is consistent with the incrementalist approach to disability tax reform that has prevailed over the last two decades. It may be achievable with relatively little political energy and may contribute to establishing a principle of refundability that could gradually extend to other disability-related provisions. It is focused strongly on integration objectives, offering income support and subsidizing goods and services only for those who participate in specified activities. Thus, it would exclude some of the poorest and most isolated people with disabilities who are not active in the particular ways recognized by the provision. For the original target group—those leaving welfare for employment—it still may do little more than offset the loss of in-kind welfare benefits. Nor would it increase support to those with incomes too high to qualify for the supplement who can claim only the non-refundable METC. Many of these individuals may also be under-compensated by the tax system for tremendous disability-related costs of entering paid employment or other pursuits. Finally, if the supplement was extended to those on social assistance, the provinces may simply claw it back. In short, this option may be worthy on its own terms but could benefit only a narrowly defined group of individuals who have low incomes from sources other than social assistance, and who also participate in specified activities.

Alternatively, some have recommended that the Canada Child Tax Benefit should be enhanced to recognize the extra costs of caring for children with disabilities, in one or more of the following ways:101

• increase the amount of benefits for families who already qualify and have a child with a disability
• raise the income threshold at which benefits are reduced for families who have a child with a disability
• reduce the rate at which benefits vanish above the income threshold for such families
• extend the age of eligibility, perhaps to age 25, where children remain dependent on their parents due to a disability102

101. The Canadian Association for Community Living, Preliminary Proposal to Create an Enhanced National Child Benefit Supplement (NCBS) for Families Who Have Children with a Disability (North York, ON: Canadian Association for Community Living, 1998).

102. Torjman, supra note 66 at 6.
This proposal has the advantage of working from within an existing refundable credit program with an established framework of intergovernmental cooperation through the National Child Benefit. As discussed in Part II, however, this framework severely limits the program’s capacity to reduce poverty, because social-assistance recipients are denied most of its benefits through provincial clawbacks. Worse, some families also lose access to welfare’s emergency and in-kind benefits, because they now receive the Canada Child Tax Benefit instead. For people with disabilities, the loss of in-kind health and other benefits could be especially disastrous. Though provinces agreed to reinvest their welfare savings in related programs, they have strongly preferred to benefit wage-earning families rather than those on social assistance. Provinces could be approached to make an exception to the clawback for any supplement aimed at children with disabilities, but this may well be resisted, given the current anti-welfare environment in many provinces and the fact that welfare benefits are paid to non-disabled parents of these children.

The proposal for flat-rate disability enhancements to the Canada Child Tax Benefit has also been criticized by Torjman, because costs vary so dramatically among families, depending on the nature and severity of disability. Eligibility for the Child Tax Benefit is based on a simple income test that does not measure individual household costs or actual needs (Torjman notes that this is generally a strength of the program). Accordingly, the proposed enhancements would under-compensate low- or middle-income families with high disability-related costs, while overcompensating others. It would also leave out some families with taxable incomes too high to qualify even for an enhanced Child Tax Benefit but whose discretionary incomes, after paying for disability-related expenses, may be very modest. In other words, it would be impossible to set the amount of the supplement or the income-testing criteria at a level appropriate for all children with disabilities. The difficulties of adapting flat-rate, income-tested benefits to the disability context are discussed further in relation to the third model of reform, below. A final point is that even if these problems could be overcome through more radical revisions to the National Child Benefit, this strategy would do nothing to assist the many low-income people with disabilities who have no children or whose children have grown up. In light of the relatively large proportion of people with disabilities who are older, an enhancement to the Canada Child Tax Benefit would exclude much of the target population.

2. Add Refundability to Existing Disability-Related Deductions and Credits
Under this approach, the ITA would be amended to add refundability to all or some of the existing deductions and credits aimed at people with disabilities, so that they could be claimed as a payment from the federal government by those who have little or no tax liability in a particular year. This option has the advantage of being relatively simple and straightforward, and not requiring extensive redesign of the legislation. If extended to all deductions and credits, it could substantially improve the equity of the

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103. *Id.* Note that Torjman does agree with the idea of raising the age limit to 25 for disabled children who remain dependent.
current system. It could speak to all three areas of need, at least to some degree, by providing basic income support to taxpayers living in poverty or without their own independent sources of income (through the DTC), subsidizing out-of-pocket costs for disability-related goods and services needed by the poorest consumers (through the METC), and facilitating labour market participation (through the deductions for employer accommodations and attendant care expenses). The DTC refund, as the main income-support component of the system, could be paid periodically in advance, based on the previous years’ tax information. This would address some of the cash-flow problems of low-income people, but of course the benefit could not be adjusted quickly in response to in-year changes in need.

This approach also has the advantage of potentially reaching other target groups besides people with disabilities themselves, including caregivers and the owners of businesses who accommodate employees, customers, or others with disabilities. Refunding the caregiver credit directly to those primarily responsible for providing care to individuals with disabilities would better recognize the value of this work and offset a small portion of the costs borne by this group. Note, however, that the caregiver credit would have to be amended to link it expressly to the provision of care, rather than simply co-residence. By contrast, it likely is not desirable to make the infirm-dependants credit refundable to taxpayers who support people with disabilities financially. Instead, we should channel these resources directly to people with disabilities through the refundable DTC. With the recent addition of a supplement to the DTC for parents of children with disabilities, making this credit refundable would also deliver some additional assistance to these children.

A disadvantage of this model is that in simply grafting refundability onto the existing network of provisions it would leave in place all the other gaps and problems identified earlier in this Part. While efforts could be made at the same time to fix some of the most serious flaws, the system would remain highly complex. Another disadvantage is the unpredictable cost of making all existing deductions and credits refundable. To the extent that those provisions recognize taxpayers’ out-of-pocket expenses and are not subject to any ceilings, it would be difficult to anticipate the cost to governments of making these items fully refundable. The potential for increased cost is greatest in the case of the METC, the deductions for businesses, and the attendant-care expense deduction. One way to control cost would be to exclude those who are eligible for a refund only because their income is from a non-taxable source (e.g., an employee-paid disability insurance plan). If a person’s taxable and non-taxable income together provide a comfortable standard of living, she could reasonably be denied a refund of excess tax credits. Some might argue that it is inequitable to exclude these individuals from the benefits of a tax expenditure that is functionally equivalent to a direct spending program. However, the counter-argument is that refundability should be focused on those who are truly low income.

Once again, however, the greatest challenge in implementing this model would be to coordinate the federal refundable credits with provincial programs. While the federal government could legislate refundability unilaterally, the provinces would have no obligation to contribute to the cost. More important, they could reduce social-assis-
tance payments by the amount of any refundable credits received, thereby negating any benefit for some of the poorest people with disabilities and possibly leaving some much worse off due to the loss of ancillary welfare benefits. Experience with the National Child Benefit weighs heavily against simply allowing the provinces to reinvest the welfare savings in other disability-related programs. Whatever the value of those programs, there is no guarantee that they would benefit the same individuals who had their welfare payments clawed back. To avoid further disadvantaging this extremely vulnerable group, it would be imperative to reach agreement with the provinces not to claw back the refundable credits. To improve the lot of this group, federal refundable credits would need to be in addition to, not instead of, provincial social assistance.

Provincial cost sharing would also be a matter for negotiation. If a province wished to contribute, it could do so by enacting parallel refundable credits in its own tax legislation. Alternatively it could make a matching investment in direct transfers or programs for the relevant target groups. However, the federal government would have little leverage to encourage provincial participation in the scheme, and provinces might be reluctant to invest in an initiative that is politically associated mostly with the federal government.

Whether the program was purely federal or jointly operated with the provinces, it would be prudent to require a series of regular, public reviews of the cost, distributive effects, and policy effectiveness of the refundable credits. As discussed in Part II, tax expenditure programs tend to avoid this type of scrutiny too easily, so that controls should be built in from the start.

3. Create a New Refundable Tax Credit for People with Disabilities
This model is the most far-reaching, for it contemplates a brand new refundable credit that would likely replace the two primary non-refundable credits under the current ITA—the DTC and the METC—and possibly other provisions such as the attendant-care expense deduction and the infirm-dependants credit. It would be designed specifically for people with disabilities and would be separate from the recognition of medical and health expenses incurred outside the context of disability. Ideally it would be designed to address all the fundamental criticisms of existing disability-related tax measures, and to promote income security, access to goods and services, and the full social and economic integration of individuals with disabilities. In order to achieve these goals, especially the reduction of poverty, political negotiations would be needed in order to overcome the provincial propensity to claw back refundable credits from welfare recipients and to redirect that money to low-income wage earners. This practice is especially problematic for people with disabilities who still face many barriers to employment, and whose labour-force participation is far lower as a group than that of non-disabled people. The success of any refundable credit program delivered federally will be contingent on finding a solution to this problem.

One of the key policy choices in designing a new refundable credit would be the question of universal versus targeted benefits. Both Canada's National Child Benefit (NCB) and Britain's Disabled Person's Tax Credit (DPTC) are examples of targeted, income-tested programs. A brief examination of these programs demonstrates why they are not good models for achieving the broad policy objectives of refundability for people with disabilities.

The NCB at first glance appears to offer a handy template for a joint federal-provincial income-support program in the area of disability. It would target benefits exclusively to lower- and middle-income people, providing a flat-rate annual benefit calculated in advance and paid periodically throughout the year, and phasing out above a defined income limit. Supplementary components could be designed to support paid labour or other forms of social participation. Despite the initial appeal of focusing all new resources on the most needy, however, the NCB model has a host of drawbacks, especially when translated to the disability context.

First, a flat-rate income-tested benefit is not sensitive to the widely varying costs of disability among different individuals. Flat benefits would inevitably fall far short of the real costs borne by some, while possibly overcompensating others. For the same reason, it would be very difficult to set income thresholds in a way that reliably tested need. Second, adding an income-tested credit would increase rather than decrease the technical complexity of the tax system. This is because it could not replace the existing DTC, the METC, or other provisions without seriously violating the principle of horizontal equity. An income-tested measure by definition would exclude those who by any measure are affluent, but who nonetheless incur non-discretionary costs related to their disabilities. These costs reduce ability to pay and can be onerous, even for a higher-income person. They would still need to be recognized elsewhere in the tax system, most likely by retaining existing non-refundable measures alongside the new refundable credit program. Unfortunately this would leave in place all of the defects and inequities of existing provisions, as well as further complicating the tax treatment of disabilities. Depending on their design, an individual might qualify for both non-refundable and refundable credits, or might have to determine which is more advantageous to her each year, as circumstances and costs changed. This points to a third danger of income-tested credits: that by singling out low-income people with disabilities for treatment different from their higher-income counterparts, they may increase the social stigma of receiving the credit.

A fourth issue in designing an income-tested credit is whether eligibility would be based on individual or household income. The NCB uses a spousal unit, disqualifying claimants who are married or living common law if the total income of the partners exceeds a certain level. The problem with this approach is its assumption that income is always shared equally or at least sufficiently to meet the needs of the lower-income or non-earning spouse. Many advocacy groups have stressed the importance of promoting autonomy and independence for people with disabilities, and this must include autonomy within their own families. If the person with a disability is the intended beneficiary of a refundable credit, it should be delivered to her, regardless of her spouse's income. This same concern applies to those who provide unpaid care
for people with disabilities to the exclusion of market work. The cost of delivering refundable credits to individuals with higher-income spouses could be financed at least in part by denying dependency credits that would otherwise be claimed by the breadwinner in the household, such as the spousal credit, caregiver credit, and infirm-dependants credit.

A fifth issue to be confronted in designing an income-tested refundable credit is whether non-taxable forms of disability income should be counted in determining eligibility. It is likely they should be, to avoid inequities between those receiving taxable versus non-taxable forms of income. This too would add complexity to the tax system, because certain types of income would be counted for some purposes but not others.

A sixth problem with the NCB model relates to the rate at which benefits are lost when an individual's market income exceeds a certain level. As discussed earlier in this Part, there is a concern about creating labour-market disincentives if the benefits of earning more than the eligibility threshold for refundable credits are almost entirely lost through the application of regular tax rates plus the clawback of the credit itself.105 This concern is greater where the individual has a disability that must be accommodated at some cost in order to engage in paid work. In many cases, such a person may need more support rather than less upon starting a job, at least in the shorter term, and especially if she is working part time or for low wages.

Britain has attempted to promote labour-market participation by people with disabilities by creating the Disabled Persons Tax Credit (DPTC), a refundable credit paid only to those engaged in paid work for at least 16 hours per week. Originally named the Disability Working Allowance and delivered through the social security system, it was converted to a tax benefit in 1999.106 The DPTC is more generous than the old Disability Working Allowance, but otherwise few changes were made, other than to switch its administration to revenue authorities, and to require that employers deliver the benefit as part of the employee's regular paycheque, rather than having a separate cheque sent by government. Thus the DPTC has many features common to a welfare benefit. Eligibility is based on certain family income and capital thresholds, and applicants must produce documentation to support their claims. Benefits are paid in flat increments, depending on the marital status of the claimant and the number of children, if any, in his or her care. A supplementary amount can be paid to cover child-care costs. As a model for what Canada might do to improve tax-based support to low-income people with disabilities, the DPTC has many of the same limitations as the National Child Benefit. In addition, it applies only to those who are employed or self-employed and therefore could not be useful in reducing poverty or meeting other needs of the relatively high proportion of people with disabilities who are not in the paid labour force. As a mechanism for promoting labour-market integration, the impact of the DPTC is unclear. Take-up rates under its predecessor, the old Disability

105. Supra note 94, and associated text.

Working Allowance, were reportedly very low, with a full third of claims failing because employment failed to meet the weekly 16-hour requirement. While incentives might theoretically attract more people into paid work, it should be noted that in 1991 almost 60% of those Canadians with disabilities aged 15-64 who did not participate in the labour force reported they were completely prevented from doing so by their condition. Certainly income and other supports are needed to ensure that people with disabilities have access to workplaces as well as other public spaces and activities. But a fuller employment strategy by itself would be grossly inadequate to address the high rates of poverty among people with disabilities.

The limitations of targeted, income-tested credits could be avoided by instead creating a universal credit that applies to all people with disabilities, but is refundable to those who have insufficient tax liability to absorb it. An example of such a program is the Disability Expenses Tax Credit proposed in 1996 by the Federal Task Force on Disability Issues. Their suggested credit would replace and improve upon the DTC and METC by:

- relaxing eligibility criteria
- recognizing the full medical and ordinary living costs associated with disabilities, assuming the most independent, integrated living situation possible for each individual
- giving special recognition to the costs of accessing employment or self-employment
- being periodically refundable in advance

The credit would comprise at least two components: a base amount to reflect the hidden, indirect costs of living with a disability, and a flexible amount that would depend on itemized expenditures for equipment, products, or services. Costs of accessing employment or self-employment could be included in the second component or be given preferential treatment in a third component. The Federal Task Force suggested that the base amount could be less than the current DTC, provided that the cost component is more reflective of actual costs than the existing METC. However, it should be noted this would likely disadvantage lower-income people, who can afford to purchase fewer goods and services than those with higher incomes. These individuals would benefit more from a higher base amount. The value to lower-income people could also be enhanced by making the credit rate higher than the 16% now used for most personal credits. For example, the Federal Task Force proposed that the credit be delivered at the rate of 29% for low-income persons and 17% (then the lowest marginal tax rate) for all others, again to target more resources to those with least income.

108. Statistics Canada, supra note 104 at 48.
109. Supra note 5.
Covering all people with disabilities under a single universal tax credit would minimize its chances of being stigmatized as a welfare program. It also has the prospect of simplifying and rationalizing the current system and addressing many of the gaps and problems identified earlier in this Part. If designed broadly enough, it could also replace the attendant-care expense deduction, rationalizing the system even further. The costs of disability would be recognized in their own right, separate from medical expenses that are incurred outside the context of disability, hopefully contributing to a less medicalized understanding of disability within and beyond income-tax law. The integration components of such a credit could be broadened beyond paid work to address the costs of social and economic participation more generally, including full participation in the private sphere of home and family. Thus, it could potentially achieve substantial gains in all three areas of need: income support, access to goods and services, and integration. Other measures would be needed, however, to address accommodation and other costs for businesses, and the unpaid work of caregivers.

If any new refundable credit is indeed created to replace the DTC and METC, it would be critical to address the concerns discussed earlier in this paper, about the relative non-transparency of tax-expenditure programs, and the need for coordination with the provinces to ensure that social-assistance recipients are not left out of the initiative. In addition, designers would have to develop a plan for administering the new provisions. Such a reform would involve substantial changes to the current system, with a need for clear and consistent information and application to individual taxpayers, as well as significant education campaigns. To the extent that such a credit replaced two or more existing credits, the stakes would be higher for an individual in gaining or being denied access to the new credit.\footnote{Caledon Institute, \textit{The Disability Income System in Canada: Options for Reform} (Ottawa: Caledon Institute for Social Policy, 1996) at 1.} One of the chief drawbacks of delivering such a program through the tax system is that administrative expertise is more generalized and focused on tax collection, rather than the specific objectives of disability support. As well, concerns have been raised repeatedly about the inaccessibility of the tax appeal process to people with disabilities. Some advocacy groups have called for an administrative tribunal process for handling disputes over disability tax benefits more quickly and cheaply. Whatever structure is employed to administer a new disability credit, its personnel should include people with disabilities, people knowledgeable about disabilities, and people knowledgeable about the policy objectives and technical design of the new program.

\section*{IV. CONCLUSION}

This paper has demonstrated that despite a complicated network of disability-related provisions and the persistent reform efforts of community advocates and policy makers in recent years, the income tax system still fails people who experience both disability and low income. It argues that refundable credits are a compelling policy option for correcting this problem, but also highlights the very real drawbacks of tax-based programming and suggests how a refundable credit could be designed to
mitigate problems of technical complexity, non-transparency, and lack of administrative expertise. Even the best-designed refundable credit could not perform some of the essential functions of direct-spending programs, particularly social assistance. Nor could it substitute for the regulatory efforts and direct investments in disability-related goods and services that are also needed to ensure full citizenship status for people with disabilities. While transfers to individuals should play a more positive role than they do now, more centralized action by governments is also required to improve the well-being and advance the equality interests of people with disabilities.

Finally, policy makers need to ensure that people with disabilities are included at all stages in developing, designing, drafting, and implementing reforms to the income-tax system. The traditionally closed process of tax-law making must give way if the tax system is to be used effectively to achieve the objectives important to this community. In seeking expert input from people with disabilities, policy makers must also be aware of the community's diversity and the need to avoid subtle race, class, and gender biases in imagining what kinds of support are needed and by whom.