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TAX FAIRNESS FOR PERSONS WITH DISABILITIES

**Report of the Standing Committee on
Human Resources Development and the Status
of Persons with Disabilities**

**Judi Longfield, M.P.
Chair**

December 2002

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**THE STANDING COMMITTEE ON HUMAN RESOURCES
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has the honour to present its

FIRST REPORT

Pursuant to Standing Order 108(2), the Standing Committee on Human Resources Development and the Status of Persons with Disabilities agreed to present a follow-up report on the Disability Tax Credit to its previous report: *“Getting It Right for Canadians: The Disability Tax Credit.”*

After hearing witnesses from the Canada Customs and Revenue Agency and the Department of Finance the Committee agreed to report to the House as follows:

TAX FAIRNESS FOR PERSONS WITH DISABILITIES

INTRODUCTION

The income tax system provides an important means for the federal government to deliver benefits directly to individual Canadians. In recent years, the federal government has successfully used it to put in place benefits that have assisted some of the most disadvantaged Canadians (particularly children). It has also served as a means of delivering benefits to Canadians with disabilities. As far as disability is concerned, the Disability Tax Credit (DTC) is by far the most visible federal disability program. All Canadians who file a personal income tax form - particularly those with disabilities and their families - confront the DTC every year when they prepare their income tax returns. Because it is so visible to a vast number of Canadians, it has become a symbol to them of the federal commitment to level the playing field for people with disabilities. This is even more the case given the result of fiscal cutbacks in recent years, when people with disabilities have experienced what they interpret as an erosion of support for their inclusion in Canadian life and society.

Because of their disabilities, over one-third of adults with disabilities report that they face additional costs that are not reimbursed by any public or private program that provides disability-related supports and services.¹ As a result, the federal income tax system (the Disability Tax Credit and the Medical Expenses Tax Credit, among other measures) has assumed increasing importance as a federal tool that assists these individuals to meet some of the unavoidable personal expenses of their disability.

Four times during the past decade, the symbolic importance, visibility, and economic

¹ These figures are now 10 years old and can be found in the results of the Health and Activity Limitation Survey (HALS) conducted as a post-censal survey following the 1991 census.

value of the tax system for persons with disabilities have collided with the policy and administrative approach of the Department of Finance and the Canada Customs and Revenue Agency (CCRA) and its predecessor Revenue Canada. Each time, Finance and the CCRA tried to restrict eligibility for the DTC. Each time, parliamentarians responded to the outcry of Canadians and studied the way that the income tax system treats persons with disabilities. Each time, House of Commons committees and a ministerial task force tabled unanimous reports that contained essentially the same recommendations. All these reports emphasized the need for the tax system to deal in a humane and compassionate manner with Canadians with disabilities by improving the policies and the administration of the income tax system generally -- and the DTC in particular.

This report is the fifth attempt.

THE PRESENT IMPASSE AND ITS ORIGINS

This Committee decided to prepare this report because we find the response to our previous report, *Getting it Right for Canadians: The Disability Tax Credit*, to be deficient in many respects. First of all, without notifying this Committee or its Chair or our Subcommittee on the Status of Persons with Disabilities or its Chair, the Department of Finance tabled a response to the report on 21 August 2002, in the middle of Parliament's summer recess. Then on 30 August 2002, the Department of Finance announced proposed amendments to the *Income Tax Act* that would restrict eligibility for the DTC for people who cannot feed or dress themselves. These proposed amendments were not even mentioned in the response to our report. Over the summer, the CCRA simultaneously proposed revisions to the application form for the DTC that would have restricted eligibility for the DTC even further.

The response to our report professes to respect the parliamentary process. While this may be the case, this respect does not seem to be very profound given that the response equates Parliament and advocacy; it minimizes the Department of Finance's

accountability to any parliamentary body except the Standing Committee on Finance; it omits any mention of the proposed amendments and it fails to respond to two-thirds of our recommendations. The Appendix to this report provides a comparison of each recommendation that we made with the response to each that we received.

On 20 November 2002, we joined our colleagues in the House of Commons to unanimously pass a motion which called upon the government to:

develop a comprehensive program to level the playing field for Canadians with disabilities by acting on the unanimous recommendations of the Committee report “Getting it Right for Canadians: The Disability Tax Credit” in particular the recommendations calling for changes to the eligibility requirements of the Disability Tax Credit so that they will incorporate in a more humane and compassionate manner the real life circumstances of persons with disabilities and withdraw the proposed changes to the Disability Tax Credit, released on August 30th 2002.²

This Committee believes that in order to carry out the House of Commons’ wishes, the Department of Finance and the CCRA must make some administrative and policy changes both in the short term and also to obtain a long-term solution so that this situation does not arise again.

Following the overwhelming endorsement of our report by 234 Members of Parliament, we invited officials from the Department of Finance and the CCRA to a meeting on 21 November 2002 to explain how they proposed to deal with our previous report and the motion.

The officials from the CCRA indicated that with the approval of their Minister they had moved forward in the spirit of our report. Since the government’s response was tabled, the CCRA has responded to the position taken by parliamentarians and the community. The CCRA has agreed:

² House of Commons, *Debates*, 20 November 2002, 15:25.

- to stop all aspects of the review of the eligibility of current DTC recipients until this Committee is comfortable with the redesigned application form (T2201) and accompanying communications to the recipients;
- to follow the request of the disability community by withdrawing the proposed new T2201 application form and using the existing form for the upcoming year until an appropriate form was designed;
- to hold consultations with the disability and medical communities to redesign the T2201 form as this Committee had requested and;
- to establish a permanent advisory committee with representatives of the disability community and medical practitioners to ensure ongoing consultations on administrative issues.³

The Committee would like to acknowledge the efforts of the Minister of National Revenue and the CCRA and to thank them for their attempt to resolve some of the more contentious issues around the administration of the Disability Tax Credit.

We find the position of the Department of Finance far less satisfactory and far less responsive in addressing our concerns about DTC policies. For example, in his appearance before our Committee, Serge Nadeau from the Department of Finance stated that:

...the Department of Finance does not interpret the legislation. The legislation, if we look at the *Income Tax Act*, ... spells out clearly that the objective is to provide assistance to the people who have severe and prolonged mental and physical impairments. So it's not an interpretation. It's in the *Income Tax Act* and was voted by Parliament.

He then went on to state that the Department has an “administrative interpretation”⁴ of the DTC provisions in the *Income Tax Act* that is used to decide the level of disability required to obtain the DTC by generally considering “all or substantially all of the time”

³ Standing Committee on Human Resources Development and the Status of Persons with Disabilities (HRDP), *Evidence*, Meeting No.2 (11:15), 21 November 2002.

⁴ *Ibid.*, (11:35).

as 90 per cent of the time.⁵ The Department’s view can be summarized as “Interpretation if necessary, but not necessarily interpretation.” Given this contradiction, what should we believe?

In our eyes, an official document created at the time that the DTC was inaugurated is more likely to reflect the intentions of those who authorized the DTC in the first place than the current administrative interpretation of the Department of Finance.

Parliament amended the *Income Tax Act* and created the Disability Tax Credit to come into effect in 1988.⁶ That year, the Department of National Revenue (predecessor to the CCRA) produced a pamphlet *How to Certify Disabilities for Income Tax Purposes*. This pamphlet, an official publication, provided the government’s interpretation of how medical practitioners could decide whether an individual met the *Income Tax Act* definition of “disabled” in order to receive the new DTC. The pamphlet sets out the meaning of “severe” and “prolonged” as eligibility criteria and describes the activities of daily living that the DTC refers to. It states that a person may be eligible for the DTC if he or she is unable to perform personal care activities such as *preparing, serving and eating meals*, washing, bathing and personal grooming. *Loss of a lower limb* also made an individual eligible, as did psychotic disorders such as *delusions or hallucinations* that resulted in marked restriction of the activities of daily living. In turn, a “marked restriction” on the activities of daily living was described as one where aids or medications substantially fail to produce *sufficient* compensation of the impairment with the result that an individual experiences *considerable limitation* in the activities of daily living⁷. The guidelines go on to say that even if capable of independent living, a person would be eligible if he or she can only achieve such independence with great reliance on other persons or if it takes the individual an inordinate amount of time to complete (with

⁵ HRDP, *Evidence*, Meeting No.2 (11:35), 21 November 2002.

⁶ According to the Department of Finance’s 1991 evaluation of the DTC, the 1985 Budget expanded access to the DTC once the disability deduction ended in 1986, but the start date was delayed.

⁷ The pamphlet also indicates things that will not be eligible such as unfamiliarity with a spoken language.

aids) the activities of daily living in comparison with a non-disabled person in the same age group.⁸

In our previous report, this Committee perhaps did not indicate clearly enough that we believe that *the Department of Finance and CCRA have moved the goalposts and made it more difficult for people who apply for and receive the Disability Tax Credit by reinterpreting the Income Tax Act*. Given the initial “interpretation” of eligibility for the DTC by the government and the restrictive application of the guidelines that followed, wonder that thousands of Canadians who applied for the DTC in good faith as well as the medical practitioners who followed the government’s instructions in filling out these applications now believe that they have been hoodwinked.

In our last DTC report, the Committee recommended that the CCRA send a letter of apology for the tone and content of the letter sent to those individuals who were asked to re-certify in order to maintain their DTC eligibility. According to the government’s response, the CCRA made every effort to ensure that the tone and content of the re-certification letter were sensitive and appropriate. Obviously, this was not the case, given the many people who were offended by this letter. Moreover, the Committee maintains that more information could have been provided to explain the rationale for the file review and the request for re-certification. Hence, we remain steadfast in our view that the CCRA, which claims to be concerned about maintaining good public relations, should send a letter that provides more detail about its decision to review DTC files and request some individuals to re-certify.

The Committee also believes that any individual who successfully re-qualified for the DTC and who is unable to claim, as a medical expense, any additional costs incurred in doing this should be compensated for these additional costs. In its response to the Committee’s report, the government maintains that any costs incurred to provide

⁸ This text is largely quoted from the brochure *How to Certify Disabilities for Income Tax Purposes*, Revenue Canada (Taxation) 1988. The *Income Tax Act* was amended in 1994 (S.C. c. 7) applicable to the 1991 and subsequent taxation years to add the words “all or substantially all” in referring to the degree to which an impairment restricts the ability to perform one or more activities of daily living.

supporting documentation should be the responsibility of individuals in a self-assessed tax system. We do not object to this general view; however, we remind the government that these individuals have already incurred these costs as a result of an earlier successful application. These people previously went through the DTC application process in good faith and according to the rules that were in place at the time. We do not support the position that they should bear these costs again.

For this Committee, the vote in the House of Commons on 21 November 2002 reaffirmed our commitment to administer the Disability Tax Credit in a humane and compassionate manner. We hope that we will finally be listened to.

AMENDING THE *INCOME TAX ACT*

Recent court decisions regarding the DTC have stated that eligibility should be determined on a case by case basis and that DTC should be given to a claimant who can demonstrate that, as a result of a disability, he or she requires an inordinate amount of time to carry out an activity of daily living. The Department of Finance, on the other hand, seems to take the position that the *Income Tax Act* authorizes DTC eligibility policies that exclude all claims for the credit made by all people who belong to certain groups (e.g. celiacs, asthmatics). In such instances, the Department claims to know what Parliament intended when it passed the statute even though, at the time, Parliament did not even consider these specific issues. Ominously, we fear that if Parliament accepts the approach suggested by the Department of Finance in proposing its recent amendments, there is nothing to stop further amendments that exclude other groups on the same basis.

The most recent attempt at exclusion arose in August 2002 when the government proposed a series of amendments to the DTC provisions of the Act that would define “feeding oneself” to be “the physical act of putting food in one’s mouth or swallowing that food.” The Department suggested that this will clarify both for DTC claimants and Tax Court judges, that:

... feeding oneself does not include, for example, choosing food, shopping for food, preparing and cooking food, reading labels and recipes and washing dishes.⁹

According to the government, the amendments “respond to a recent court decision and will ensure that eligibility for the DTC is consistent with the policy intent to target the credit to people who are severely restricted in their ability to perform the basic activities of daily living.”¹⁰

These proposals, however, do exactly the opposite and propose to amend the Act to reverse the interpretation of the judges and return the DTC rules to what the Department (not the courts or Parliament) suggest are their original meaning. The Department has expressed the view that the court’s interpretation is erroneous because in the line of judicial decisions related to “feeding oneself,” these decisions would extend eligibility to *any* person with special dietary considerations. The Committee believes that this is not an accurate statement. In their decisions (to which the amendments respond), the Court is clear that a claimant will qualify for the DTC *if and only if* he or she can demonstrate that they spend an “inordinate amount” of time involved the activities of feeding themselves.

When it comes to feeding oneself, however, the proposed amendments appear to apply a standard of “markedly restricted” that excludes *absolutely* any person with a medical dietary restriction, no matter how severe nor how disabling. The government appears to be applying a higher *absolute* standard that goes far beyond the standard that applies to other disabilities. Were this same standard applied to other disabilities, it would “raise the bar” for qualifying for the DTC (e.g. a person’s partial inability to walk, hear or see would no longer qualify). Instead, a person would have to be totally bed-ridden, deaf, blind, etc. We believe, and the courts have confirmed our view, that Parliament intended making decisions on a case-by-case approach and not one that excludes entire groups or classes of claimants based on the cause of their disability. The government’s approach

⁹ *Explanatory Note, DTC*, Department of Finance. http://www.fin.gc.ca/news02/data/02-071_2e.html.

¹⁰ *Ibid.*

would, as such, appear to depart from the intention of Parliament as expressed in the plain words of the Act.

We fear that if it accepts these proposed amendments, Parliament (or this Committee) will implicitly also be accepting the Department's restrictive approach. Alternatively, by rejecting the amendments, we are also rejecting the Department's interpretation and substituting our own humane and compassionate view in order to achieve the true purpose of the legislation. We strongly believe that the Act aims to compensate tax payers with severe disabilities for some of the additional cost that results from their disability.

Neither this Committee nor the courts propose to give the DTC to everyone who suffers from a disability, but we do not want to deny it unduly. In the *Johnston* decision, Justice Létourneau indicated that the "provisions must be given a humane and compassionate construction." We agree. The Justice also said that they should not be interpreted "so restrictively as to negate or compromise the legislative intent" which is to "provide modest relief to persons who fall within a relatively restricted category of markedly physically or mentally impaired persons. The intent is neither to give the credit to every one who suffers from a disability nor to erect a hurdle that is impossible for virtually every disabled person to surmount."¹¹

Simply rejecting the proposed amendment, however, might not make Parliament's intentions clear with regard to the Disability Tax Credit. We believe that this situation needs to be clarified for the benefit of current and future claimants.

We acknowledge a positive step occurred when the Minister of Finance agreed on 29 November 2002 to withdraw its proposed amendments of 30 August 2002 and to "take a fresh look" at how to deal with people with eating disorders. He also asked the Department of Finance to consult further for revised proposals. Eligibility issues related

¹¹ *Johnston v. Canada*, [1998] F. C. J. No. 169.

to the administration of the DTC, however, are not restricted – markedly or otherwise – to the nature of the impairment related to feeding or dressing oneself.

Recommendation 1

The Committee recommends that the Minister wait until a full and complete review all of the eligibility criteria for the Disability Tax Credit has been carried out before tabling any revised proposals or amendments. This review should be conducted with the participation of the disability community and medical practitioners.

ELIGIBILITY CRITERIA GOVERNING THE DTC

In our initial report, *Getting it Right for Canadians: The Disability Tax Credit*, the Committee made several recommendations to modify Section 118.4 [Nature of Impairment] of the *Income Tax Act*. Although some of these recommendations were designed simply to ensure that this section of the *Income Tax Act* conformed to recent court decisions, the government characterized these recommendations as changes to the DTC's eligibility conditions. We do not agree with this characterization, nor do we agree with the terse treatment afforded these recommendations in the government's response. According to the government's response, "it is important to remember that the purpose of the DTC is to recognize the effect of supplementary costs incurred due to the effects of a severe and prolonged impairment on an individual's ability to pay tax. The Committee's proposed changes need to be further investigated to ensure that this policy intent is respected."¹² The Committee finds it extremely difficult to comprehend how its recommendations undermine the policy intent of the DTC. Rather, our recommendations that call for modifications to Section 118.4 of the *Income Tax Act* are designed to strengthen, not weaken, the statutory provisions underlying the policy objective of the DTC.

¹² Canada, *The Government of Canada's Response to the Seventh Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities*, 21 August 2002, p. 7.

Basic Activities of Daily Living

In our initial report on the DTC, the Committee recommended several changes to Section 118.4 with regard to basic activities of daily living to better reflect recent case law. Specifically, the Committee recommended that “breathing” be added to the list of basic activities of daily living, that “thinking, perceiving and remembering” be replaced by “thinking, perceiving *or* remembering” and that “feeding and dressing oneself” be replaced by “feeding *or* dressing oneself.” The government did not respond directly to this recommendation.¹³

The Committee also believes that the statutory tests associated with speaking and hearing, which require these basic activities of daily living to occur in a “quiet setting” with “another person familiar with the individual”, are unreasonable and contrary to the real life experience of individuals who suffer from these impairments. The government’s response did not address directly the Committee’s recommendation to modify these statutory tests so that they would better reflect everyday situations.

Prolonged Impairment

According to Paragraph 118.4(1)(a) of the *Income Tax Act*, an individual’s impairment must be “prolonged” to be eligible for the DTC. While we accept that the duration of an individual’s impairment must be extended, we do not accept the current definition of prolonged (i.e. a continuous period of 12 months). This definition is too restrictive and excludes many people whose impairments are serious and long lasting. Moreover, these serious, but periodic, impairments also entail additional non-discretionary spending on basic daily living, which, of course, inhibits the ability to pay tax just like those of people whose impairments last for a continuous period of at least 12 months. The critical

¹³ Although not part of the government’s response to the Committee’s report, the government proposed several amendments to Section 118 of the *Income Tax Act*. One of these amendments would replace “feeding and dressing oneself” by “feeding or dressing oneself.” These proposed amendments are dealt with elsewhere in this report.

element for determining the prolonged nature of the impairment should be its continued or recurrent existence over a long period of time. The government did not respond directly to our initial recommendation dealing with the need to modify the definition of a “prolonged” impairment.

Markedly Restricted in Performing One or More Basic Activities of Daily Living

To be eligible for the DTC, an individual must be markedly restricted in terms of performing one or more of the basic activities of daily living. According to Paragraph 118.4(1)(b) *Income Tax Act*, a marked restriction is one in which an individual is unable to perform one or more basic activities of daily living “all or substantially all of the time.” On more than one occasion, we have been told by the Department of Finance that the *administrative interpretation* of these words is 90% or more of the time. While this may be the administrative interpretation used by the Department of Finance or the CCRA in other income tax matters (e.g. deductions for business expenses), the Committee is opposed to its use as the benchmark for quantifying one’s inability to perform a basic activity of daily living. In our opinion, this interpretation was arrived at by stealth through amendments to the *Income Tax Act* that were passed in 1994 without an adequate explanation of how the Department of Finance intended to apply or “interpret” these amendments. Obviously, an individual who, for example, is unable to perform a basic activity of daily living 75% of the time is markedly restricted in this aspect of daily living. In addition, it might be more appropriate to apply a different threshold to different impairments. As noted in *Getting it Right for Canadians: The Disability Tax Credit*, individuals who, for example, are unable to remember half of the time may be more markedly restricted in their daily living than individuals who cannot hear 90% of the time.

This administrative interpretation is even more onerous when one considers the fact that the 90% rule is applied individually to each activity of daily living. What about individuals who have multiple impairments? In our view, the cumulative impact of multiple impairments could easily result in a marked restriction in basic activities of daily

living. When representatives from the Department of Finance appeared before the Committee on 21 November 2002, the Committee was told that it seems to make sense that someone with multiple impairments, which, when taken individually, do not meet the 90% rule, may be equally or more restricted than someone with an impairment that meets the 90% rule.¹⁴ Unfortunately, this type of discussion was markedly restricted in the government's response to our recommendation on this matter.

Recommendation 2

The Committee recommends that the Government immediately amend the *Income Tax Act* by:

- (a) Adding “breathing” to the list of basic activities of daily living in paragraph 118.4(c);**
- (b) Amending the wording in subparagraphs 118.4(1)(c)(i) and (ii) to replace “thinking, perceiving and remembering” and “feeding and dressing oneself” by “thinking, perceiving or remembering” and “feeding or dressing oneself.”**
- (c) Rewording subparagraphs 118.4(1)(c)(iii) and (iv) in order to better reflect the everyday situations of individuals with severe speaking and hearing impairments.**

Recommendation 3

The Committee recommends that, following consultations with organizations representing persons with disabilities and medical practitioners, the Government amend the *Income Tax Act* to:

- (a) Define “markedly restricted” in the context of each of the basic activities of daily living or some combination thereof. The Committee believes that these changes must clarify the meaning of “all or substantially all of the time” to reflect the reality of living with a disability; and**
- (b) Redefine “prolonged” in order to capture individuals who have an impairment that is substantial and recurrent, although not necessarily lasting for a period of 12 continuous months.**

¹⁴ HRDP, *Evidence* (12:45), Meeting No. 2, 21 November 2002.

THE DISABILITY TAX CREDIT CERTIFICATE: FORM T2201

During our hearings on the DTC, we were constantly reminded of the need to develop a better application form - one that corresponds to the legislation, one that is less prescriptive, one that provides a better opportunity for describing an applicant's disability, one that minimizes the need for supplementary information, and one that is more comprehensible and oriented toward the needs of applicants and not bureaucrats. Furthermore, in developing a new DTC certificate, the Committee recommended that the Department of Finance and the CCRA consult widely and that the revised form be referred to the Committee for consideration, prior to its use.

Except for a terse reference to initial discussions on 28 May and 20 June, 2002 between the CCRA (apparently the Department of Finance was absent) and groups representing persons with disabilities, these issues were not addressed in the government's response to the Committee's report. During our meeting on 21 November 2002, we learned that the CCRA held two more meetings with groups representing medical practitioners. Following these meetings, the CCRA circulated a first draft of a revised DTC application form. We were told "the volume and depth of comments made it clear that further review and consultation were needed."¹⁵ While we congratulate the CCRA's efforts to establish an advisory group, the Committee continues to believe that the Department of Finance's involvement in this process is essential. In addition, we commend the Minister of National Revenue for instructing her Agency to continue consultations on this matter and produce a redesigned application form. Nevertheless, the Committee remains steadfast in its view that the revised application form should reflect the content of our recommendation on this matter.

¹⁵ Ibid., (11:15).

Recommendation 4

The Committee recommends that all forms used to assess eligibility for the Disability Tax Credit be redesigned. The new Form T2201 should conform to the *Income Tax Act*; be less prescriptive; afford greater prominence to, and space for, a qualified person’s diagnosis; and be designed primarily to meet the needs of applicants instead of those who process the applications. If necessary, the form should be either expanded or separated into different forms so that it (or they) contain questions related to an individual’s specific disability. A revised form should be referred to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities for consideration and study well in advance of its printing date.

EXPLANATION FOR NEGATIVE DECISIONS

In our original report on the DTC, the Committee felt strongly about the need to inform applicants and “qualified persons” associated with the applications of the reason or reasons why their applications were rejected. Both time and money are spent applying for the DTC and in our view there should be an obligation on the part of the CCRA to advise rejected applicants as to why they are not eligible. In addition, advising “qualified persons” about rejected applications could prove instructive in relation to completing subsequent applications.

While the government’s response to our report defended the existing appeal process, it did not respond to our recommendation to provide an applicant with a written explanation of why DTC eligibility was not granted. The Committee is fully aware that all tax filers receive a Notice of Assessment and that this document identifies appeal mechanisms that a tax filer may pursue if the tax filer disagrees with a CCRA decision. Nevertheless, this correspondence fails to provide the explanation that the Committee has requested and members continue to believe that all rejected DTC applicants deserve this explanation. Moreover, the Committee deserves an adequate response to its recommendation regarding this matter.

Recommendation 5

The Committee recommends that when the CCRA rejects an application for the DTC, the Agency provide the claimant with a written explanation setting out the reasons that the application has been refused and setting out the applicant's rights and procedures for an appeal.

THE NEED FOR REVIEW AND REFORM

In its original report, the Standing Committee recommended both an evaluation and a comprehensive examination of the tax system's treatment of disability. We were pleased that the government response agreed to conduct an evaluation of the DTC once new data from the 2001 Participation and Activity Limitation Survey becomes available in the spring of 2003.

Recent experiences, however, have confirmed to us, more than ever, the need for a comprehensive review of the federal tax measures to support persons with disabilities. The debate and vote in the House of Commons on 19 November 2002 provided specific direction to the Department of Finance to develop a comprehensive program to level the playing field for persons with disabilities. During its study and report on the DTC, the Committee wrote that it had "received testimony, too voluminous to cite here, that the Disability Tax Credit must be considered in the light of social policy objectives for persons with disabilities and not just in the light of its place as a tax measure."¹⁶ The Committee also stated its belief that these questions needed to be the subject of public debate. We have not changed our mind. Until this public debate takes place, the Department of Finance will continue, we suspect, to insist on its view of the DTC as a tax measure, and that Canadians and parliamentarians will still see it as a social measure. And there will probably be more Committee reports to Parliament produced by our successors repeating the same recommendations that have been going forward for the

¹⁶ *Getting it Right for Canadians: The Disability Tax Credit*, March 2002, p. 27.

past 10 years. This is an unsatisfactory future to look forward to. We believe that a long-term solution needs to be found.

Recommendation 6

The Committee recommends that the government:

(a) undertake a comprehensive examination of all the federal tax system's measures to support persons with disabilities;

(b) as part of this examination, prepare and release a public discussion paper by 31 December 2003 outlining possible options for reform. This paper should specifically include a discussion of combining tax measures (e.g. the Disability Tax Credit and the Medical Expenses Tax Credit), refundability and a registered savings plan (with a grant component like the RESP) for children with disabilities who may not be able to benefit from higher education but who require financial support to live;

(c) use the consultation paper as the basis for public consultations to be conducted in a transparent manner with the participation of all stakeholders and;

(d) Report the outcome of these discussions and present an action plan for legislative and administrative changes to this Committee by 1 September 2003.

AN URGENT NEED

As the federal government prepares the next federal budget and its measures to implement the promises in the recent Speech from the Throne, the Committee believes that one important issue remains to be considered. This pertains to the way that the budget will deal with the government's promise to "put in place targeted measures for low-income families caring for severely disabled children, to help meet the needs of the child and of the family."¹⁷

¹⁷ *The Canada We Want: Speech from the Throne to Open the Second Session of the Thirty-Seventh Parliament of Canada*, 30 September 2002.

We believe that using the Disability Tax Credit is a good place to start. Recent evidence makes clear that the tax system can indeed be an effective tool for social policy. The Canada Child Tax Benefit has begun to make a significant dent in child poverty in this country. The DTC could also become a tool for addressing the poverty that results for children with disabilities and family members who support them, in part because of their out-of-pocket expenses for disability-related needs. The DTC could be used to deliver the Throne Speech commitment to introduce targeted measures. Along with the current supplement for families with children with severe disabilities, the value of the credit is approximately \$1500 for those who can take full advantage of it. By turning this into a refundable tax credit for this group, the government could easily deliver its Throne Speech commitment and provide assistance for those families that cannot now take advantage of the DTC because of low or non-existent taxable income.

Such a step would move forward and begin the job of addressing another aspect of fairness. It would also create a platform to move to the longer-term objective of better addressing the out-of-pocket cost of disability-related supports for all low-income Canadians with disabilities.

Recommendation 7

The Committee recommends that the Government:

- (a) consider making the Disability Tax Credit refundable for families who have children with severe disabilities and;**
- (b) acknowledge that refundability for families with severely disabled children is the first step in addressing the needs of the poorest Canadians with severe disabilities.**

APPENDIX

A COMPARISON OF THE GOVERNMENT'S REPOSE WITH THE COMMITTEE'S RECOMMENDATIONS IN THE REPORT *GETTING IT RIGHT FOR CANADIANS: THE DISABILITY TAX CREDIT*

CHRONOLOGY AND BACKGROUND

12 March 2002: The Subcommittee on the Status of Persons with Disabilities unanimously adopted its report, *Getting it Right for Canadians: The Disability Tax Credit*.

14 March 2002: The Standing Committee on Human Resources Development and the Status of Persons with Disabilities unanimously adopted the Subcommittee's report without changes.

21 March 2002: The Chair of the Standing Committee tabled the report in the House of Commons as the 7th report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities. As authorized by the Committee's motion, the Chair requested a response within 150 days.

21 August 2002: The Minister of Finance tabled the Government Response to *Getting it Right for Canadians: The Disability Tax Credit*. Because the House of Commons was not sitting the response was deposited with the Clerk.

30 August 2002: The Department of Finance released proposed amendments to the *Income Tax Act* to define "feeding oneself" and "dressing oneself" as activities of daily living.

3 September 2002: The Chair of the Subcommittee on the Status of Persons with Disabilities commented on certain deficiencies in the government response in a letter to the Minister of Finance.

COMPARISON OF THE RECOMMENDATIONS WITH THE GOVERNMENT RESPONSE

The Government's response was prepared in a narrative format without specifically referring to the Committee's recommendations by number or by addressing them consecutively. Sometimes, the response deals with recommendations without referring to them specifically or by dealing with them inferentially. This analysis, therefore, includes statements in the response that appear relevant to the recommendations.

RECOMMENDATION 1

The Committee recommends that:

- (a) The CCRA send a letter to every individual who received the letter dated 19 October, 2001 requesting DTC re-certification. This correspondence should apologize for the tone of the letter and provide a complete explanation as to why the CCRA requested re-certification.
- (b) All individuals who obtain re-certification as a result of the 19 October letter be compensated upon the production of a receipt for any costs incurred in obtaining the services of a qualified person to complete Form T2201 or for providing the CCRA with any supplementary information.
- (c) The CCRA inform all recipients of the 19 October letter that anyone who has been reassessed and refused the DTC can reapply once Form T2201 is redesigned (See Recommendation 5). In the meantime, the CCRA should also advise these individuals of their right to appeal the decision.

Government Response 1 (a):

The response maintains that the CCRA made every effort to ensure that the request for re-certification letter had the proper tone and content. Given this position, the response did not specifically address Recommendation 1(a).

Comment:

It is interesting to note that the response does implicitly suggest that the initial letter did not contain the proper content, since individuals who contacted the CCRA after receiving this letter received subsequent correspondence explaining the purpose of the DTC review of eligibility status.

Government Response 1 (b):

The government maintains that in a self-assessment tax system, taxpayers should bear the costs of providing documentation when needed. The government believes that it would be inequitable to compensate only those involved in the DTC review when compensation is not available to others claiming the DTC or other tax credits. In addition, all DTC claimants may be able to receive partial compensation for application costs by claiming them as an allowable medical expense when they file their tax returns.

Comment:

The Medical Expense Tax Credit (METC) reduces the cost of a number of specified medical expenses. It is universally available to Canadian taxpayers and not restricted to people with disabilities. It reduces the federal tax of the claimant by 16 per cent of qualifying non-reimbursed medical expenses in excess of \$1,678 or 3 per cent of net income, whichever is less.

Government Response 1 (c):

No response.

RECOMMENDATION 2

The Committee recommends that no new requests for re-certification be sent to individuals who have claimed the DTC in whole or in part during the period 1986 to 1996 until Form T2201 is redesigned (See Recommendation 5).

Government Response:

No specific response.

Comment:

The Response states that file reviews such as the DTC review of eligibility status are necessary to maintain tax fairness and ensure that those who are entitled to this tax credit can continue to benefit from it.

RECOMMENDATION 3

The Committee recommends that the government immediately amend the *Income Tax Act* to incorporate judicial decisions. For greater clarity, the Committee recommends that the government:

- (a) add “breathing” to the list of basic activities of daily living in paragraph 118.4(c) and;**

(b) amend the wording in subparagraphs 118.4(1)(c)(i) and (ii) to replace “thinking, perceiving and remembering” and “feeding and dressing oneself” by “thinking, perceiving or remembering” and “feeding or dressing oneself.”

Government Response 3 (a):
No response.

Government Response 3 (b):
No response to the changes regarding thinking, perceiving or remembering. The Minister of Finance separately proposed amendments to the *Income Tax Act* regarding feeding or dressing.

Comment:

On 30 August 2002, the Minister of Finance proposed changes to the *Income Tax Act* to come into effect for the 2002 and subsequent taxation years that would provide separate treatment to feeding oneself and dressing oneself, and defined these activities as “feeding oneself means the physical act of putting food in one’s mouth or swallowing that food” and “dressing oneself means the physical act of putting on and removing one’s clothes.”

RECOMMENDATION 4

The Committee recommends that following consultations (See Recommendation 6) the government amend the *Income Tax Act* to:

- (a) define “markedly restricted” in the context of each of the basic activities of daily living or some combination thereof. The Committee believes that these changes must clarify the meaning of “all or substantially all of the time” to reflect the reality of living with a disability;
- (b) redefine “prolonged” in order to capture individuals who have an impairment that is substantial and recurrent, although not necessarily lasting for a period of 12 continuous months;
- (c) reword subparagraphs 118.4(1)(c)(iii) and (iv) in order to better reflect the everyday situations of individuals with severe speaking and hearing impairments; and
- (d) add “registered nurse” to the list of qualified persons for those residing in a remote part of Canada where access to other medical professionals, especially a medical doctor, is extremely limited.

Government Response 4 (a):
No specific response.

Government Response 4 (b):
No specific response.

Government Response 4 (c):
No specific response.

Comment:

Instead of addressing the recommendations, the response states that the Committee recommended a number of changes to the DTC's eligibility criteria. Before these changes can be implemented, they must be further investigated to ensure that the policy intent of the DTC is respected and that the costs of these changes be considered within the context of overall tax and spending priorities. The response did not indicate how, or by whom, this investigation would be carried out.

The proposed revisions to the T2201 Form distributed in the summer of 2002 define markedly restricted as "unable or extremely limited."

Government Response 4 (d):

The government's response indicated that the Government (no department specified) would consult with the provinces and territories and with medical professional associations to determine whether registered nurses have the necessary qualifications needed to certify some or all types of physical and mental impairments.

RECOMMENDATION 5

The Committee recommends that all forms used to assess eligibility for the Disability Tax Credit be redesigned. The new Form T2201 should conform to the *Income Tax Act*, be less prescriptive and afford greater prominence to, and space for, a qualified person's diagnosis. If necessary, the form should be either expanded or separated into different forms so that it (or they) contain questions related to an individual's specific disability. A revised form should be referred to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities before 1 December 2002 for consideration and study before it is publicly distributed.

Government Response
No specific response.

Comment:

During the past summer, the CCRA consulted groups representing persons with disabilities regarding a modified Form T2201. According to a draft version, dated 28 August 2002, the new Form T2201 affords slightly more prominence to a qualified person's diagnosis, but it seems to be more prescriptive, too. Severe feeding and dressing impairments are afforded separate treatment. Unlike the current form, the draft form also contains a separate section for applicants with a severe and prolonged mental impairment. As yet, this revised form has not been referred to the Committee. The disability community has stated that the T2201 form used in previous taxation years (including 2001) was better than the current draft form and requested that it be used for 2002.

RECOMMENDATION 6

The Committee recommends that the CCRA and the Department of Finance take immediate steps to consult widely to develop amendments to the *Income Tax Act* (see Recommendation 4), a better DTC application process and application form. This consultation should include representatives of organizations concerned with various types of disability, representatives of professional groups of medical practitioners qualified to certify eligibility for the DTC, and the Office for Disability Issues. The consultation exercise should pay particular attention to the need to develop eligibility criteria and an application form that treat mental illness, and cognitive disabilities in an appropriate manner. The CCRA and Department of Finance should submit a written report to this Standing Committee about the nature and results of its consultative process by 1 December 2002.

Government Response:

The response indicates that the CCRA intends to expand its consultation process. Particular attention will be given to clarifying the information required on Form T2201 in relation to mental impairments and to reducing the burden placed on medical practitioners by requests for supplementary information.

Comment:

The CCRA held meetings this summer with groups representing persons with disabilities and HRDC's Office of Disability Issues. Following these meetings, the CCRA released a draft version, dated 28 August 2002, of the new Form T2201 (see Government Response to Recommendation 5).

RECOMMENDATION 7

The Committee recommends that the CCRA and the Department of Finance establish a joint senior level advisory group to conduct ongoing consultations among senior level officials (including the Office for Disability Issues), advocacy groups, representatives of organizations of professional groups of medical practitioners who complete Form T2201, and individuals. This advisory group should deal with ongoing issues dealing with DTC program administration and effectiveness to ensure that the DTC is meeting its stated purpose and objectives.

Government Response:

According to the government's response, the initial meetings held by CCRA with persons with disabilities were also first steps in establishing an advisory committee on administrative issues.

Comment:

No mention is made of the Department of Finance's involvement in these initial meetings or in the ongoing activities of an advisory committee on administrative issues.

RECOMMENDATION 8

The Committee recommends that beginning with the tax year 2002, the government pay the cost for the services of a medical practitioner who provides the CCRA with any additional information beyond completing Form T2201 when this information results in a DTC claim or appeal being granted. This includes any charge for providing CCRA with supplementary information about an individual's DTC recertification or a medical appraisal for the purpose of appealing the denial of a DTC claim. For greater clarity, applicants or appellants would not be able to claim these costs for providing any additional information beyond a completed Form T2201 until their DTC claim is approved.

Government Response:

No specific response.

Comment:

According to the government's response to Recommendation 1(b), taxpayers should bear the cost of providing documentation when needed. In addition, some of these costs may be recouped by claiming them as an allowable medical expense when individuals file their tax returns. As noted, this would occur via the Medical Expense Tax Credit which reduces the federal tax of the claimant by 16 per cent of qualifying unreimbursed medical expenses in excess of \$1,678, or 3 per cent of net

income, whichever is less. Moreover, according to the government's response to Recommendation 6, the proposed changes to Form T2201 are intended to reduce the burden of supplementary information requests on medical practitioners.

RECOMMENDATION 9

The Committee recommends that in order to use health-care resources more efficiently and reduce potential costs for DTC claimants, the re-certification process be streamlined to easily identify the instances where an individual's disability has remained unchanged or worsened.

Government Response:

No specific response.

Comment:

The government's response does indicate that the CCRA accepts a previous version of Form T2201 provided it contains enough information to determine continued eligibility. It does not state how taxpayers are informed of this policy.

RECOMMENDATION 10

The Committee recommends that the CCRA put in place an information and education strategy and campaign for the 2002 tax year. Prepared in cooperation with the disability community and medical practitioners, this information strategy should:

- (a) educate the general public about the purpose, nature and provisions of the Disability Tax Credit;
- (b) provide information to assist persons qualified to certify individuals' eligibility for the DTC (particularly those dealing with mental, psychiatric and learning disabilities) to understand the nature of the certification process and the nature of the information required for certification;
- (c) include a detailed guide for tax preparers, financial advisors and their clients that outlines program eligibility criteria and preliminary steps to enable taxpayers to decide whether or not to apply for the credit.

Government Response:

The response states that the CCRA understands that an informed public is a cornerstone of an effective self-assessment tax system. The CCRA is looking at how it can build on existing information dissemination activities as well as increase awareness and understanding of the DTC. In addition, it will examine the possibility of producing a new document to assist medical practitioners completing Form T2201.

RECOMMENDATION 11

The Committee recommends that the CCRA deal appropriately with appeals by:

- (a) including in information materials produced by the CCRA information about the right to appeal for those whose DTC application has been denied. This information should be placed in a prominent position on Form T2201.
- (b) modifying the appeal procedure for those denied the DTC to accommodate persons with disabilities (for example, extending the time limit). These potential modifications should be discussed and agreed to by the advisory group as mentioned in Recommendation 7.

Government Response:

The response defends the current appeal system.

Comment:

The government does not seem to be prepared to modify the appeal procedure for individuals who are denied the DTC. According to the government's response, the right to appeal a DTC eligibility decision is communicated to individuals once the decision is made. It is felt that this is the appropriate time to inform individuals of this right (*N.B. The proposed Form T2201 does not inform applicants of their right to appeal*). The time limit for an individual to launch an appeal is the later of one year from the date the tax return is due to be filed, or 90 days from the mailing of the notice of assessment. In the event that this deadline cannot be met, potential appellants may apply to the Minister of National Revenue for an extension. In the event that the Minister refuses to grant an extension, potential appellants may apply to the Tax Court of Canada for further consideration. The response does not clearly specify how potential appellants are informed of these alternatives.

RECOMMENDATION 12

The Committee recommends that by 1 January 2003, any decision by the CCRA to grant or deny an individual's application for the Disability Tax Credit be made by a qualified person as set out in the *Income Tax Act* (118.3(1)(a.2)) (currently a medical doctor, optometrist, audiologist, occupational therapist, psychologist or speech therapist).

Government Response:

No specific response.

Comment:

The response points out that CCRA recognizes the need for competent and well-trained staff. It also states that "the majority of claims for the DTC are easily resolved as the individual clearly either qualifies or does not qualify for the credit." The inference in this statement is that the T2201 form allows the current staff members (whose precise qualifications are not addressed in the response) to make this determination. When an individual's DTC eligibility is not clear, the case is referred to CCRA headquarters where it is reviewed by a medical professional (qualifications unspecified) who makes a determination. The government believes that this process is fair, efficient and cost-effective.

RECOMMENDATION 13

The Committee recommends that when the CCRA rejects an application for the DTC, the Agency provide the claimant with a written explanation setting out the reasons that the application has been refused and setting out the applicant's rights and procedures for an appeal.

Government Response:

No specific response.

Comment:

As mentioned in the government's response to Recommendation 11, the right to appeal a DTC eligibility decision is communicated to individuals once the decision is made. The government's response is silent on providing applicants with a written explanation for the decision not to grant eligibility.

RECOMMENDATION 14

The Committee recommends that the CCRA provide all employees who administer DTC with training regarding the nature of disability, the purpose of the DTC, and the administrative challenges in ensuring fair

administration. This training should involve members of the disability community and should pay particular attention to the complexities associated with assessing cognitive and mental disabilities.

Government Response:

No specific response.

Comment:

The response addresses this issue in the statement used to respond to Recommendation 12 that the CCRA recognizes the need for competent and well-trained staff. It is confident that individuals who administer the DTC and other tax measures do so in a fair and competent manner. The response does not specify who these staff members are or how their competency is achieved.

RECOMMENDATION 15

The Committee recommends that the Department of Finance conduct a comprehensive evaluation of the Disability Tax Credit and that this evaluation be tabled with the Standing Committee on Human Resources Development and the Status of Persons with Disabilities no later than 31 December 2002.

Government Response:

The Department of Finance will evaluate whether the DTC is achieving its stated policy objectives once new data from the 2001 Participation Activity Limitation Survey (PALS) becomes available in the spring of 2003.

RECOMMENDATION 16

The Committee recommends that the government undertake a comprehensive examination of all the federal tax system's measures to support persons with disabilities. As a basis for public discussion, the government should prepare and release a paper by 31 March 2003 outlining possible options for reform. This paper should specifically include a discussion of combining tax measures (e.g. the Disability Tax Credit and the Medical Expenses Tax Credit), refundability, and a registered savings plan (with a grant component like the RESP) for children with disabilities who may not be able to benefit from higher education but who require financial support to live.

Government Response:
No response.

Comment:

The response does mention that the government is developing a comprehensive report on federal programs and services for persons with disabilities. This report will look at the outcomes in relation to the goals identified in the reports entitled *In Unison 2000: Persons With Disabilities* and *Future Directions to Address Disability Issues for the Government of Canada: Working Together for Full Citizenship*. The report that is being prepared will not analyze the tax system specifically nor discuss combining disability tax measures, refundable tax credits or registered savings plans for children with disabilities.

LIST OF WITNESSES

| Associations and Individuals | Date | Meeting |
|---|-------------|----------------|
| Canada Customs and Revenue Agency David Miller Assistant Commissioner Assessment and Collections Branch | 21/11/2002 | 2 |
| Kathy Turner Director general, Benefit Programs Directorate Assessment and Collections Branch | | |
| Department of Finance Serge Nadeau Director, Personal Income Tax Division Tax Policy Branch | | |
| Kei Moray Chief, Charities Personal Income Tax Division, Tax Policy Branch | | |

REQUEST FOR GOVERNMENT RESPONSE

The Committee requests that the Government table a comprehensive response to the Report within forty-five (45) days.

Copies of the relevant Minutes of Proceedings of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities (Meetings Nos. 2 and 5 which includes this Report) are tabled.

Respectfully submitted,

Judi Longfield, M.P.
Chair

MINUTES OF PROCEEDINGS

Meeting No. 5

Tuesday, December 3, 2002

The Standing Committee on Human Resources Development and the Status of Persons with Disabilities met *in camera* at 11:12 a.m. this day, in Room 307, West Block, the Chair, Judi Longfield, presiding.

Member(s) of the Committee present: Eugène Bellemare, Judi Longfield, Serge Marcil, Raymond Simard, Diane St-Jacques and Alan Tonks.

Acting Member(s) present: Reed Elley for Larry Spencer, Madeleine Dalphond-Guiral for Suzanne Tremblay, Sophia Leung for Gurbax Malhi and Wendy Lill for Libby Davies.

In attendance: From the Library of Parliament: Kevin Kerr and Bill Young, Research Officers.

The Committee proceeded to consider its draft report regarding the Disability Tax Credit.

On motion by Eugène Bellemare, it was agreed, -- That the final report (as amended) on "Tax Fairness for people with disabilities" be adopted as the First Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

It was agreed, -- That the Clerk be authorized to make such editorial and typographical changes as necessary without changing the substance of the Report.

It was agreed, -- That the Chair be authorized to table the Report in the House.

It was agreed, -- That the Committee print 400 copies of its Report in a tumble bilingual format.

It was agreed, -- That, the Committee request that the Government provide a comprehensive response to this Report within forty-five (45) days.

At 11:37 a.m., the Committee adjourned to the call of the Chair.

Danielle Belisle

Clerk of the Committee