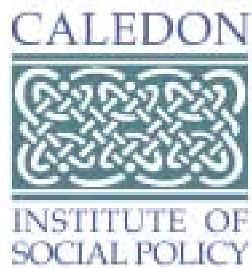

The Disability Savings Plan: Policy Milieu and Model Development

by

Richard Shillington

November 2005

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Executive Summary

Canadian families are united by the common concern: "What will happen to our relatives with disabilities when we die?" Planned Lifetime Advocacy Network (PLAN) has developed policy solutions that recognize and assist families in their efforts. One of the solutions is a disability savings plan which would:

- Provide a savings mechanism for persons with disabilities and their family members to promote self-sufficiency and improve their standard of living
- Develop a new partnership among families and governments
- Ensure Canadian families have tools to plan for the time when they cannot care for family members with disabilities.

To deepen our understanding of the implications of implementing a Disability Savings Plan, this paper seeks to answer four questions:

1. How do current social assistance and income tax regulations affect the accumulation, transfer and utilization of assets?
2. What policy rationale supports the current regulations?
3. What are the public policy precedents in taxation and transfer programs?
4. What are the public policy implications for each of three possible disability savings plan models?

Current Social Assistance and Income Tax Regulations

Transfers of funds to relatives with disabilities occur within two policy arenas: (i) tax assistance that encourages and rewards savings, and (ii) social assistance for the poorest Canadians. These arenas use public funds to benefit different populations. They are, however, at cross purposes as the tax advantages for savings and transferring funds are often negated by the design of income- and asset-tested social assistance.

A scan of provincial and territorial social assistance programs finds that rates are consistently inadequate to enable a quality life. Furthermore, eligibility is dependent on asset, income and needs testing. The scan also shows significant unevenness between jurisdictions, particularly with respect to the treatment of trusts and income from public compensation funds.

Policy Rationale

Social assistance for persons with disabilities is part of the provincial/territorial generic welfare program. Consequently, the policy rationale of the generic program – limiting assistance to those who are truly without options – influences social assistance for persons with disabilities. Social assistance provides an income level below which beneficiaries are prevented from falling but regulations make it difficult for beneficiaries to rise above these levels without escaping welfare altogether. Beyond a designated minimal exemption, welfare generally is reduced by one dollar for every dollar of the value of outside income or gifts.

Policy Precedents

The most common treatment of 'gifts' by income tax leaves the tax liability on the transferred funds with the donor. Providing a tax deduction for gifts to relatives with disabilities occurs only in special circumstances, such as an enduring relationship of dependence or assurance that benefits do not flow back to the donor.

The receipt of gifts is treated differently by each of the four major public income security programs in Canada: (i) social assistance, (ii) Guaranteed Income Supplement, (iii) Old Age Security and (iv) the Canada/Quebec Pension Plan. At one end of the spectrum is social assistance, where each dollar of a gift received reduces benefits by one dollar. Near the other end of the spectrum is Old Age Security, which is subject to a tax-based clawback where recipients have an income above $59,790. The clawback is applied at a rate of 15 percent and OAS benefits are not fully eliminated until net annual income exceeds $97,075. A more detailed discussion of the social assistance treatment of 'gifts' to family members with disabilities is provided in a companion paper entitled *The Disability Savings Plan: Contribution Estimates and Policy Issues*, written by Keith Horner.

Assets are also treated differently by the four major income programs described above. Eligibility for social assistance is asset-tested. RRSPs are considered assets and affect eligibility in all jurisdictions. Trusts, public compensation awards and settlements for pain and suffering affect eligibility in some jurisdictions but not others. Assets are not considered in determining eligibility for any of the other income security programs. Furthermore, assets are not counted in determining eligibility for mechanisms designed to promote self-sufficiency (e.g., RRSPs, RESPs) or tax measures designed to promote tax equity (e.g., medical expense tax credit; child care expense deduction).

Potential Models

Three options for a new savings mechanism to assist families in securing the future for their relatives with disabilities are considered:

1. Modified RRSP rules

2. Disability Savings Plan (tax-deferred)

3. Disability Savings Plan (tax-prepaid).

To promote savings behaviour that will lead to self-sufficiency, a tax deferral would be necessary. This could be achieved through modified RRSP rules or a tax-deferred Disability Savings Plan. A Disability Savings Plan has the added advantage of raising the profile of this issue and better promoting savings behaviour. A more thorough discussion of influencing savings behaviour can be found in *The Disability Savings Plan: Contribution Estimates and Policy Issues*.

Tax incentives, however, provide fewer benefits to families with lower incomes. There are two options for assisting families with lower incomes secure the future for their relatives with disabilities. The National Disability Investment Fund would pool family funds and create a stream of income to benefit lower-income families. Asset-building mechanisms, such as Individual Development Accounts and Canada Learning Bonds, provide options for assisting persons with disabilities who do not have families or whose families have lower incomes.

In short, the current policy regime offers few incentives and presents substantial deterrents to families that wish to secure a good life for their relatives with disabilities. An examination of the present disability social assistance system shows that it creates an income 'ceiling' above which it is difficult for persons with disabilities to rise, rather than a 'floor' from which they are encouraged to improve their lives. Furthermore, clawbacks on 'gifts' from families and consideration of assets in determining eligibility are found only in social assistance programs. Similar treatment does not exist in other Canadian income security programs. A tax-deferred Disability Savings Plan, in conjunction with reforms to disability social assistance, would assist families in securing the future for their relatives with disabilities.

Background

Parents have a natural desire to improve the quality of life of their children. Family members have a natural disposition to care for each other. These caring relationships are the fundamental elements of a strong, healthy society.

Parents, brothers, sisters, grandparents and other relatives often play an even more active role when a family member has a disability. One of the means by which family members care for their relatives with disabilities is by providing financial assistance. One of the most universal concerns shared by families is that of securing the future for relatives with disabilities.

Table 1
Income for single employable persons on social assistance by province and territory, 2003[4]

Province/territory	Single employable	Single with a disability	
	Value in 2003 ($)	Value in 2003 ($)	Change in purchasing power 1989-2003 (%)
Newfoundland and Labrador	7,395	8,928	-18.8
Prince Edward Island	6,155	8,048	-42.3
Nova Scotia	5,195	8,822	-23.9
New Brunswick	3,383	6,911	-51.2
Quebec	6,758	9,714	+8.2
Ontario	6,838	11,765	-8.8
Manitoba	5,567	8,354	-10.8
Saskatchewan	6,155	8,833	-26.7
Alberta	5,039	7,743	-8.5
British Columbia	6,445	9,812	-7.6
Northwest Territories	12,462	13,973	+20.2
Nunavut	12,792	16,428	n.a.
	10,427	12,609	n.a.

Planned Lifetime Advocacy Network (PLAN) seeks to establish a new policy framework that will assist Canadian families in securing a good life for their relatives with disabilities. In particular, PLAN seeks policy vehicles that will achieve the following social policy objectives:

- Provide a savings mechanism for persons with disabilities and their family members to promote self-sufficiency and improve their standard of living.

- Develop a new partnership among families, federal and provincial/territorial governments, and the private sector to share the responsibility for securing a good life for people with disabilities.

- Ensure Canadian families have tools to plan for the time when they cannot take care of, and provide financial assistance to, family members with disabilities – tools that strengthen families' problem-solving capacity and enhance their self-sufficiency.

- Encourage families, through tax incentives, to make greater financial investment in their relatives' safety and well-being, toward the extraordinary costs associated with disability and toward a good life for their relative with a disability.

- Replace the welfare mentality associated with the financial well-being of people with disabilities with one of contribution and self-sufficiency.

This report concerns the intersection of the caring relationships families have for their relatives with disabilities with public policy designed to provide financial security – both directly, through income assistance, and indirectly, by encouraging self-sufficiency or transfers from families to support their relatives with disabilities. More specifically, this report will:

- Review current social assistance and income tax regulations as they affect:

  (1) accumulation of assets for future financial security
  (2) transfer of assets to relatives with disabilities
  (3) utilization of those assets.

- Examine the policy rationale which supports the existing regulations.

- Examine policy precedents in taxation and transfer programs.

- Evaluate the implications of three possible mechanisms to assist families in accumulating and transferring assets to benefit their relatives with disabilities:

  (1) modified RRSP
  (2) Disability Savings Plan modelled on the RRSP
  (3) Disability Savings Plan modelled on TPSPs.

Current Programs and Mechanisms

The transfer of funds from families to relatives with disabilities occurs in a policy regime which is well developed in two arenas: tax assistance that encourages and rewards savings, and social assistance for the poorest of Canadians. These two arenas use public funds to benefit different populations, and can also work at cross purposes. Unfortunately, the tax advantages for saving and transferring funds are often wiped out by the design of income-tested supports.[1] This problem is considered in detail in the following section.

Current Tax Assistance for Future Financial Security

Under current tax regulations, retirement savings can be structured to attract tax assistance. The most popular examples are RRSPs and employer or Registered Pension Plans (RPPs).

RRSPs, RRIFs and Pensions

RRSPs (Registered Retirement Savings Plans) and RPPs (Registered Pension Plans) confer a tax deferral on both the capital invested and on the income earned in the fund. Because contributions to the plan are tax deductible, the fund grows tax free and the capital and accrued return on investment are not taxed until the time of withdrawal.

Whole Life Insurance

Tax assistance, in the form of tax deferral on investment income, is available through certain life insurance policies where investment income is not taxed until the funds are withdrawn. These proceeds can then be used on behalf of dependents who will be assisted by the accumulated funds.

RRSP Rollovers

The RRSP rollover provision encourages a parent or grandparent to transfer savings to a child or grandchild with a disability. At death, RRSPs and RRIFs (Registered Retirement Investment Plans) can be transferred on a tax-free basis to children and grandchildren who are financially dependent because of a disability.[2] The future tax burden to be paid on the RRSP funds is thereby transferred from the parent, now deceased, to the child. This provision assists families that seek to secure the future for their relatives with disabilities by extending the tax deferral and by transferring

Table 2
Treatment of assets and income by province and territory, 2004

Province/territory	Required to apply for early CPP	Exempt assets	Treatment of funds received from exempt assets
Newfoundland and Labrador	Yes	B	I
Prince Edward Island	Discretion	A	II
Nova Scotia	Yes	B	I
New Brunswick	Yes	A[a]	I[b]
Quebec	No	A	I
Ontario	No	A	II[c]
Manitoba	Yes	A	I
Saskatchewan	Yes	B[d]	II
Alberta	Yes	A[e]	II
British Columbia	Yes	A[f]	II
Northwest Territories	No	A	II
Nunavut	Yes	(apparently)n/a[g]	III

Table Key

Approaches to Exempt Assets:

a. Discretionary trusts and nondiscretionary trusts to a limit, public compensation like Japanese redress and HEP-C, and pain and suffering awards are exempt.
b. Public compensation like Japanese redress and HEP-C are exempt.

Approaches to Exempt Income:

I - Only income from public compensation funds appear to be exempt (subject to regulations).
II - Only exempt income appears to be from public compensation funds and from 'pain and suffering damage awards.'
III - NWT provides for a lifetime exemption of $100,000 for funds withdrawn from various programs.

Notes

a. New Brunswick: The first $50,000 of the public compensation claims is exempt.
b. New Brunswick: The principal and accumulated interest from a trust can be used to maintain the recipient to live in the home or the community.
c. Ontario: Up to $4,000 a year is exempt in payments from trusts, gifts, insurance and voluntary payments (this amount was increased after the survey to $5,000).
d. Saskatchewan: The first $10,000 of the public compensation claims is exempt.
e. Alberta: Trusts are not exempt if 'deemed to belong to the recipient.'
f. British Columbia: Nondiscretionary trusts are exempt to $100,000.
g. Northwest Territories: First $100,000 of compensation are exempt; no information on discretionary and non-discretionary trusts.

the tax burden from a higher to a lower tax bracket, which is the typical situation when the child is dependent because of a disability.

Access to this tax advantage is limited to dependants of deceased persons. One might ask why this tax advantage could not be available earlier, because individuals with funds in an RRSP may wish, prior to their death, to use them to benefit their child or grandchild now, without losing the tax advantages.[3]

It should be noted that the advantage gained by persons with disabilities who have parents or grandparents with RRSP savings is not conferred on those whose retirement savings are held in pension plans. Neither private pension plans nor the Canada/Quebec Pension Plan permit survivor benefits beyond a spouse.

Trusts

A trust fund is a legal entity which can be established with funds for a specified purpose. Trusts have been useful vehicles for families to defer taxes and split incomes. But because trusts can be expensive to create and administer, they typically are used only where significant sums are involved.

More recently, trust funds have been used by families to secure the future well-being of their dependent relatives. There are numerous reasons why families might choose to use a trust in securing the future.[3] The treatment of trusts by social assistance programs varies by province and territory, and there is often some discretion in the application of the regulations. This discretion is discussed more fully below under Treatment of Assets and Transfers.

Social Assistance

A desire to assist relatives with disabilities on social assistance (also known as ‘welfare’) is natural. This desire is accentuated by the inadequacy of benefit levels to provide the means with which to live with dignity.

Hundreds of thousands of Canadians have a disability and, as a result, face obstacles in seeking employment. These barriers often result in employment at lower wages, and which is part-time or temporary and more precarious. In some instances, paid work is not quickly or easily achieved – if achievable at all – and individuals seek support from provincial/territorial social assistance programs.

The data presented in Table 1 show that the support available through social assistance programs is very low – inadequate for a comfortable or even a decent lifestyle. The data further

demonstrate that the purchasing power of supports provided under social assistance, for those with and without a disability, has declined in recent years despite being far below accepted poverty lines.

In most instances, responsibility for the well-being of adults with disabilities is shared between the state and the family. Family contributions are represented by the extent to which family members provide help to adults with disabilities who require assistance with the tasks of daily living.

Many families are willing and able to financially assist a son, daughter, grandson, granddaughter, sibling, niece or nephew with a disability. Most families are motivated by a desire to help their family member, not to relieve government of its share of the responsibility to persons who require assistance.

Current government regulations hinder this effort; in fact, in many provinces and territories, social assistance regulations effectively prevent any real improvement in the standard of living of individuals so long as they remain on that program of income support. Families are deterred from helping relatives who rely on welfare because generally applicants may possess only limited assets to be eligible for social assistance and family contributions are deducted dollar-for-dollar from support provided by the state. The following section discusses the provincial and territorial treatment of assets and transfers.

Treatment of Assets and Transfers – Provincial/Territorial Scan

Social assistance regulations vary by province and territory. The impact of assets on eligibility for social assistance differs not only by jurisdiction but also by the amount, type and source of these financial assets.

Normal practice is to deduct, dollar for dollar, from social assistance benefits any support received by a beneficiary. Earnings are frequently treated differently; often there will be an exempt amount of earnings that is not deducted from benefits. After the exemption, earnings are reduced by one dollar for every dollar earned.

The treatment of gifts and windfalls is complex and can depend on whether or not they are of a recurring nature and how the funds are used. The effect of this policy is that if a family gives $100 to a relative on social assistance then, by regulation, recipients must report this gift to their social assistance worker who may, depending on the circumstances and often their discretion, deduct that amount from the next welfare cheque.

Social assistance represents a standard of living below which a beneficiary should not fall. But the impact of these regulations is that it is also a standard of living above which people are unable to rise (unless they escape welfare totally).

The following general observations about which assets affect eligibility for social assistance are based on our survey of provincial/territorial policies:

- Readily available assets, such as an RRSP, make the individual ineligible for welfare.

- Pension entitlements, through employer pension plans, do not affect eligibility if the individual cannot access the funds.

- Assets from certain public compensation funds[5] often do not affect eligibility for benefits.

- Assets from damage awards, which compensate the individual for "pain and suffering," are treated as exempt assets in some jurisdictions but not in others.

- Discretionary trusts, sometimes referred to as Henson Trusts, are treated as exempt assets in most provinces.

- Nondiscretionary trusts, up to a specified size, are treated as exempt assets in some provinces. In these jurisdictions, assets in the trust do not make a potential beneficiary ineligible for social assistance.

- The treatment of income received, or disbursements[6] made, from discretionary trusts also differs from jurisdiction to jurisdiction. Limited amounts often can be received without reducing social assistance benefits. The purpose of the disbursements can also affect the treatment of a disbursement.

Thus, in many provinces and territories, families that wish to help a relative with a disability whose source of income is social assistance are effectively prevented from improving the standard of living of their relative.

For a potential beneficiary with thousands of dollars in public compensation funds or in a trust fund, Table 2 illustrates that the financial impact of different treatment by provincial and territorial supports can amount to hundreds of thousands of dollars. Thus, current treatment results in significant inequities between individuals in different jurisdictions and also between individuals with assets from diverse sources.

In some provinces, for example, an individual can benefit from income and specified disbursements from a discretionary trust without affecting their eligibility for social assistance. In other provinces, either income or disbursements from a discretionary trust will affect an individual's eligibility for social assistance. The policy motivation for these distinctions is unclear.

As part of this project, a survey of provincial agencies was conducted in the summer of 2004. The survey questions concerned the impact of various assets on eligibility for welfare. Further, the

questions focused on the impact on welfare benefits when funds are received from various assets. Practice varies by jurisdictions. In the summary below, provinces and territories are grouped where they use similar approaches to the treatment of assets. The grouping was unavoidably subjective, and some interpretation was necessary. Moreover, one should note that regulations frequently change. Since the survey, several provinces have changed their regulations so that Registered Educational Savings Plans (RESPs) are now treated as exempt assets.

Discretionary and Nondiscretionary Trusts

For those on welfare, where eligibility for benefits depends on financial assets, trusts have complicated eligibility requirements. Trust funds may be interpreted as an asset available to persons on welfare. In some jurisdictions, the courts have forced welfare regulators to ignore certain trusts when determining eligibility for welfare. In these cases, some individuals who could benefit from a trust can remain on social assistance.

Several provincial/territorial authorities have developed regulations to determine how trust funds affect welfare recipients' eligibility for benefits. The special case of discretionary trusts (Henson Trusts) is instructive. These are trusts administered on behalf of a beneficiary who does not have control over the assets or their disposition. Discretion rests with the trustees and not the beneficiary.

An article in the periodical *Advisors' Edge* compared the provincial/territorial treatment of discretionary (Henson) trusts. Table 3 summarizes the treatment of discretionary trusts by jurisdiction.

Table 3
Treatment of discretionary trusts across jurisdictions[7]

Province/territory	Status of Henson Trusts
Northwest Territories	Challenged; current laws do not permit Henson trusts
Nunavut	Challenged; current laws do not permit Henson trusts
British Columbia	Active
Alberta	Defunct*
Saskatchewan	Active
Manitoba	Active
Ontario	Active
Quebec	Active
New Brunswick	Active
Prince Edward Island	Active
Nova Scotia	Active
Newfoundland and Labrador	Challenged; any trust settled with more than $100,000 makes beneficiary ineligible for support

* Our research indicates that the Government of Alberta has the power to determine that a beneficiary of a discretionary trust is entitled to the trust assets. If that determination is made, the beneficiary's entitlement to social assistance (AISH can be eliminated. Assets consisting of up to one residence (plus furnishings), two cars and $100,000 are considered exempt.

Access to Pensions

The welfare treatment of retirement savings is another policy area in which there seems to be little consistency.

Savings are generally exempt from asset limits if the individual does not have access to the funds. Thus a pension entitlement through a vested pension plan or a locked-in RRSP does not affect eligibility for social assistance. But even modest funds in an RRSP make one ineligible for social assistance. While there is a consistency and logic in requiring claimants to exhaust any available assets, the impact will clearly disadvantage self-employed individuals who do not usually have employer pension plans.

In a similar vein, one can understand that social assistance recipients are required to apply for Canada/Quebec Pension Plan (C/QPP) disability benefits. But most jurisdictions go further and require that social assistance beneficiaries apply for early C/QPP retirement benefits at age 60. The early application simply reduces the public cost of administering social assistance with no benefit to the claimant. Because C/QPP benefits will be reduced by 30 percent for the remainder of the beneficiaries' life, the impact will be to deepen the impoverishment of the beneficiaries beyond age 65.

The following policy statement was in place when Saskatchewan did not require welfare recipients to access early CPP retirement benefits and explains very well the rationale:

> Retirement pension plans (specifically the Saskatchewan Pension Plan and the Canada Pension Plan) are not considered as financial resources for social assistance clients until age 65, because drawing early retirment means a lifetime reduction in monthly entitlement. Funds withdrawn from SPP are exempt as long as they are retained for retirment purposes. Policy 17-1-5.

Saskatchewan's current policy follows:

> The Saskatchewan Pension Plan (SPP) is not considered a financial resource to clients until age 65. Clients are required to explore other early retirement options (e.g., CPP early retirement benefits). [Source: Ch. 19 of the Social Assistance Program Manual].

The Policy Motivations

Social assistance for persons with disabilities is delivered as part of generic welfare programs. Social assistance is motivated by a desire to provide income for a tolerable standard of living and to reward employment, while limiting assistance to those who are truly without options.

Because these programs target persons most in need, a structure is necessary to determine who is eligible, how much is payable and how support is reduced as their income increases.

In recent years, however, there has been a presumption that welfare recipients are deficient in some fashion, are somehow *at fault* for their predicament and may not really need assistance. Consequently, a 'culture of inspection' has developed.[8] Regulations have become preoccupied with ensuring that beneficiaries are *truly needy*.

Moreover, the objectives of adequate support at minimal cost and limited to those *truly in need* lead to eligibility rules that often restrict beneficiaries' autonomy and limit their ability to improve their situation. As a result, welfare programs frequently serve to reinforce dependency without alleviating poverty.

Welfare benefit levels create an income below which beneficiaries are protected from falling. The regulations make it difficult for welfare beneficiaries to rise above these benefits levels – unless they escape welfare altogether. Welfare recipients often face benefit reduction rates at or near 100 percent due to the dollar-for-dollar clawbacks.

While those collecting social assistance as a result of disability are usually excluded from harsh moral judgments about their need for assistance, their income support is nevertheless subject to similar regulations and administered by the same staff who oversee welfare. Placing supports for persons with disabilities within a welfare program mechanism virtually ensures pernicious and perverse policies. On the one hand, public officials have an obligation to spend public funds prudently and consequently do not wish to pay social assistance to someone with adequate alternative means of support. On the other hand, individuals on social assistance should be able to better their circumstances by employment or using other available resources.

Clearly, a person with a disability who has one million dollars in the bank should not be eligible for social assistance. But when every dollar of support received from family or friends reduces welfare benefits by a dollar, governments' desire to be frugal has been taken to an extreme. This practice attempts to reduce government costs but effectively prevents any net benefit to the social assistance recipient.

Logically, however, families cease to provide any support since it affords no additional benefit to their loved one. When individuals accept a gift of $1,000 from a relative, they cannot benefit if their next welfare payment is reduced by $1,000. This practice is counterproductive, particularly in cases where the funds might have been used to purchase a better wheelchair, assistive device or medication required because of the disability. Furthermore, these regulations encourage covert and in-kind transfers.

While acknowledging that benefits should only go to those 'in need,' regulations should allow for additional support to social assistance recipients.

Precedents for Policy Initiatives [9]

Prior to refining new policy initiatives for improving the financial supports for persons with disabilities, it is useful to review the analogous provisions in taxation and transfer programs. These precedents can help provide a more sound basis for thinking consistently about the appropriate tax and transfer treatment of private support for persons with disabilities. Such support will be called private transfers or gifts. We first examine taxation provisions and then transfer provisions; in each case, we seek to derive general guidance for policy toward private transfers for persons with disabilities.

Taxation Policy Precedents

In the literature on personal income taxation, three alternative approaches to the taxation of gifts have been proposed:[10]

- The amount gifted is not deductible to the donor and is taxed as income to the donee; in effect, the consumption power afforded by the gift is taxed twice, once as a psychic benefit to the donor and again as a tangible benefit to the donee.
- The amount gifted is deductible to the donor and is taxed as income to the donee; this arrangement limits the taxation to a single party but ascribes the consumption benefit solely to the donee.
- The amount gifted is neither deductible to the donor nor taxable income to the donee; the consumption benefit is taxed in the hands of the donor alone, and the act of giving is not a taxable event nor does it need to be reported.

The first approach described above has been justified as consistent with the basic principles of a personal income tax.[11] The amount gifted represents potential consumption by the donor, and he or she must derive enjoyment from gifting at least equal to the utility derived from spending that sum for own consumption. The recipient of the gift also enjoys the consumption benefit from use of the gifted funds. Hence both parties should bear tax for the same funds. However, most analysts have not found this proposed tax treatment intuitively compelling. In fact, it would be difficult to enforce, and no known jurisdiction employs this approach.

The second approach would, in effect, transfer the tax liability on the gifted funds from the donor to the donee. Normally for gifts of any size, the donor has greater wealth and income than the donee. In the context of a progressive tax rate schedule, an act of gifting would reduce total tax liabilities; the donor saves more from the tax deduction than the donee incurs from taxability of the

gift. Hence, this approach would open the door for tax avoidance maneuvers among individuals (where the gifted funds were covertly transferred back to the donor).

This approach is used in the RRSP/RRIF rollover, where an owner may transfer assets at his/her death to a spouse, minor child or adult child or grandchild who is financially dependent on the owner as a result of disability. At the same time, the tax liability on the gifted funds is transferred to the donee. Spousal RRSPs are another example of this approach where the tax liability is transferred from the donor to the donee.

The third approach leaves all of the tax liability on the transferred funds with the donor. Given that the donor is usually in a higher marginal tax bracket than the donee, this practice prevents the use of gifting for tax avoidance. It is also much simpler for operating the tax system, since gifts are neither reported to the tax authorities nor verified. In addition, it avoids the revenue loss that

Table 4

Treatment of gifts in various programs

Program	Clawback or benefit reduction rate on:	
	Receipt of gift (%)	Investment income generated from gift*
Social assistance	100	100 %, no exemption
Guaranteed Income Supplement	0	50$, no exemption
Old Age Security	0	15%, for net income > $59,790
C/QPP	0	0

* Investment income may also be subject to personal income tax, depending on the individual's taxable status; recipients of social assistance and GIS are typically not taxable.

would be associated with the second approach. This approach is almost universally employed around the world (though some countries also apply a gift tax independently of their income tax).

There are good reasons for widespread use of the third approach to the taxation of gifts. Typically, transfers between living persons – which are overwhelmingly between close relatives or to dependants – are a sharing of existing income rather than a creation of new income. These gifts can be thought of as similar to the benefits, both cash and in-kind, which individuals enjoy from living in a common household. The tax authorities do not attempt to tax the consumption and lifestyle benefits that family members derive from the supporting earner; the taxes are paid by the earner on that income without regard to how its benefits are distributed across members of the household.

A related personal taxation issue is the treatment of investment earnings derived from transferred assets or funds. With Canada's progressive tax rate structure and use of the individual as the taxable unit, intrafamilial transfers could be used to split income on investments to reduce the total tax liability. Hence, Canadian tax law requires that most forms of investment returns on assets transferred to a spouse or dependent child be attributed for tax purposes to the donor.[12] These provisions are intended to reduce the opportunities for income splitting and hence for weakening overall tax progressivity. In the case of gifts to unrelated persons or to adult relatives other than a spouse, no income attribution is required on subsequent investment returns of any kind.

The Canadian personal income tax system also contains provisions that make allowance for the additional costs related to disabilities and supporting relatives with disabilities.[13] These include tax credits for eligible dependants (extended above age 18 if mentally or physically infirm),[14] for infirm dependants, for caregiving to dependants with mental or physical infirmity and for disability. Some of these credits are conditioned on support of or income of the dependant, but they are not reduced by the receipt of private transfers. These provisions are structured as tax credits rather than deductions, so that they do not differentially benefit higher-income families in higher tax brackets.

Some general policy inferences can be drawn from the preceding review of tax provisions related to private transfers or gifts. Given the Canadian tax system's choice of the individual as the tax unit, and given the analogies to support of members of an intact family, a tax deduction for private transfers to relatives with disabilities would need to be justified by unusual circumstances. These could be an enduring relationship of dependence and/or assurance that the benefits do not flow back to the donor. These are the conditions present in the RRSP rollover provisions. It should be noted that, as the benefits of a tax deduction are proportional to the taxpayer's own marginal tax rate, this approach would benefit most those families that already are best situated financially to provide support to relatives with disabilities.

In the case of a tax deduction for private transfers, the tax liability would transfer to the donee. This practice would create a situation of inconsistent treatment of those who are dependent on social assistance and those who are not because the transfer system imposes heavy tax-like burdens on the receipt of private transfers by persons with disabilities in receipt of social assistance.

Current tax provisions already provide various tax credits to recognize the value of families supporting their dependants or relatives with disabilities. However, most of those provisions are limited by the net income of that dependant; the term 'net income' includes social assistance benefits received even though those benefits do not enter taxable income.[15] For the eligible dependant credit, the dependant's net income must fall below $7,245 (all figures here are for the 2003 tax year); for the infirm dependants aged 18 or older the credit limit is $8,860; and for the caregiver credit the limit is $16,172. As can be seen in Table 1 (page 4), SA benefit levels for a single person with disabilities would exclude them from the eligible dependant credit in all provinces except New Brunswick; they would obtain only a token or zero benefit from the infirm dependant (aged 18 or older) credit in most provinces.

Unlike tax deductions, credits offer the same proportionate benefit for support from lower- and higher-income families. The existing credit provisions, though, offer little for relatives receiving social assistance disability benefits, since eligibility for and size of the tax credits hinge on a net income measure that includes welfare benefits. To remedy that barrier would require either a sharp increase in the dollar limits on net income associated with the credits or, perhaps better, the use of taxable income (which does not include social assistance benefit receipts).

Transfer Policy Precedents

On the income transfer side of the fiscal system, several methods of treating receipts of various types have been employed. Each approach is worth considering for the current issue of how to treat private transfers of resources to support persons with disabilities. In each case, the underlying rationale for the treatment is important, though it is often difficult to ascertain the precise rationale intended by legislators. Four models for treating the resources of beneficiaries are considered: social assistance, Guaranteed Income Supplement, Old Age Security and the Canada/Quebec Pension Plans.

At one end of the spectrum for treatment of beneficiaries' receipts of private gifts, provincial/territorial social assistance programs typify the welfare approach. In most cases, each dollar of gift received reduces welfare benefits by one dollar; that practice constitutes a 100 percent reduction rate on such transfers.[16] The motivation for this approach is to concentrate available funds on the neediest individuals and thus to minimize the program cost for a given level of public support. An underlying rationale for this approach is to provide a firm income floor for welfare beneficiaries with disabilities. Unfortunately, given the strong disincentives posed to family support of relatives with disabilities on social assistance, this approach is equally likely to erect an income ceiling.

It is interesting that most provincial and territorial welfare programs allow an exemption from the benefit clawback on limited amounts of earned income by beneficiaries with disabilities. For some jurisdictions, the exemption is larger than for 'employable' beneficiaries; for others it is smaller, and for yet others it is the same.[17] Yet in almost every jurisdiction, the exemption for earned income is larger than the (zero) exemption for unearned income, including the receipt of private transfers.

A somewhat less restrictive approach to offsetting benefits with the receipt of unearned income arises with the Guaranteed Income Supplement (GIS). Single individuals aged 65 or older with no other income receive the maximum GIS benefit of $561 per month (at the rates of October 2004). Both unearned and earned income face a benefit reduction rate of 50 percent, with no exemption. However, the income measure used for this income test is the tax system's net income, which does not include the receipt of private transfers, such as gifts. For that reason, gifts received do not affect the level of GIS benefits even for the very low-income seniors dependent on the

program.[18] This practice contrasts sharply with the treatment of gifts under provincial and territorial welfare programs.

A still less restrictive approach to offsetting benefits with the receipt of unearned income arises with the Old Age Security (OAS) program. OAS benefits of $472 per month (as of October 2004) are available to all Canadians upon attaining age 65 so long as they have resided in the country for a specified period; no prior contribution or earnings history is required. OAS benefits are subject to a tax-based clawback, but only for individuals with net incomes above $59,790 in 2004. This clawback on higher-income beneficiaries is applied at a rate of just 15 percent, so that OAS benefits are not fully eliminated until the individual has an annual net income exceeding $97,075. Like the GIS income test, the OAS clawback is based on the tax definition of net income and thus excludes receipts of gifts.

The least restrictive approach to offsetting public transfer benefits with the receipt of unearned income is typified by a social insurance program such as the Canada/Quebec Pension Plan. Benefits under this program are based on entitlements established through contributions related to the individual's annual earnings over the lifetime. As of 2004, the maximum monthly benefit for retirees at age 65 is $814 and for disability is $993; to obtain these benefit levels, the individual must have earned at the maximum annual insurable level (currently $40,500) in most years. No clawback or benefit reduction is applied for C/QPP retirement beneficiaries based on the receipt of either earned or unearned incomes.[19] Hence the receipt of private transfers also does not affect benefits.

Table 4 summarizes the cited programs' benefit reduction or clawback provisions with respect to the beneficiary's receipt of gifts and any associated investment returns. Clearly, social assistance stands out from the other programs as being extremely restrictive in its treatment of gifts; both the receipt of gifts and any investment earnings on those gifts reduce benefits dollar-for-dollar. The other three programs (GIS, OAS and C/QPP) all leave benefit levels unaffected by the receipt of gifts, and they reduce benefits by rates ranging from 0 to 50 percent for investment earnings generated from gifts. The OAS program has a clawback of just 15 percent on investment income generated by gifts, and this applies only for individual net incomes above a $59,750 threshold.

Given this highly discrepant treatment of private transfers to beneficiaries by major income support programs, a natural question is whether there exists a sound policy basis for these differences. One can only speculate as to the reasons that have motivated the differences, but some candidates include the following:

- Social assistance serves primarily the non-elderly, whereas the other three programs are for seniors;[20] there may be stronger political support for adequate benefits and less asset- and income-testing for a state (old age) that most voters expect to attain.

- Familial financial transfers to seniors (from their children and other relatives) are less common and less substantial than transfers from families to help support their non-aged

relatives with disabilities (often their children).

- Social assistance for persons with disabilities evolved from more generic social assistance programs and continues to be provided by the same administrative system, usually under the jurisdiction of one statute.

- Social assistance falls under provincial/territorial jurisdiction, whereas OAS and GIS are purely federal jurisdiction, and CPP is the responsibility of the provinces jointly along with the federal government.

- Political pressures for budgetary restraint and for targeting expenditures tightly to needs may be stronger at the provincial/territorial than the federal level, and social assistance for persons with disabilities may be viewed with the same welfare mentality of last-resort support as for employable social assistance beneficiaries.

Of course, these potential explanations need not be independent; provincial/territorial jurisdiction for social assistance and budgetary pressures are joint phenomena.

All of these assertions warrant further exploration. For public policy purposes, a key item is the notion that the current welfare treatment of private transfers to beneficiaries with disabilities serves the goal of budgetary economy. This argument is flawed to the extent that the current social assistance provision either inhibits such private transfers or induces families to pursue covert means of making the transfers without reducing the welfare benefits. If every dollar transferred to relatives on social assistance means a loss of one dollar in benefits, then there is no incentive for making such transfers. Hence the current social assistance benefit rules with respect to private transfers cannot be effective in reducing program costs in most situations.

The only circumstance in which the full offset provisions could have any impact on program costs is where the supporting family has sufficient resources to bring the beneficiary substantially above the social assistance benefit level. In that case, the relative with a disability will lose all welfare benefits and the program will save those funds. However, relatively few families are able to support their relative to that extent, so the quantitative significance of this case is likely limited.

A more appropriate way for social assistance policy to deal with these problems is to offer a relatively large exemption on gifts and to apply a benefit reduction rate of well under 100 percent on any additional gift receipts. This approach would reflect the much more accommodating treatment of receipt of unearned incomes under programs for seniors, such as the OAS and C/QPP (which do not have any offsets for gift receipts). It would also reflect the perspective that persons with severe disabilities typically have few options for augmenting their incomes and should not be unnecessarily confined to a sub-poverty level existence.

The size of the appropriate social assistance exemption for private transfers to beneficiaries depends on how one conceives of the policy objectives. At a minimum, one might argue for an exemption sufficient to bring the social assistance beneficiary up to the Statistics Canada low income cut-off (LICO) level, which is often regarded as a poverty threshold. That is, the amount of the exemption should equal at least the LICO minus the welfare benefit level. In 2003, the LICO for individuals ranged from $12,055 for urban areas of less than 30,000 to $15,907 for urban areas of 500,000 and over.[21] Based on egalitarian and compassionate grounds, one could well argue for a higher exemption level.

The other key issue in a reformed social assistance treatment of private transfers is the benefit reduction rate to be applied to transfers in excess of the exempt level. The cited argument about incentive effects on transfers is again relevant; even with an exempt level of private transfers, a 100 percent benefit reduction applied to any incremental transfers will essentially preclude them. A benefit reduction rate of no more than the 50 percent used for GIS or perhaps lower (such as the 15 percent clawback rate used for higher-income OAS beneficiaries) would be more appropriate. A moderate rate of benefit reduction would encourage additional private transfers and thereby reduce the public costs of social assistance.

Asset Policy Precedents

Treatment of assets must also be considered for two reasons:

(1) the options being explored are asset building mechanisms; and

(2) many persons with severe disabilities depend on social assistance, which is needs-tested (a needs test takes into account assets, income and needs). Examination of social and tax programs, including social assistance and other programs that assist Canadians in achieving financial security, is illuminating.

A principal residence and primary vehicle are exempt assets in all jurisdictions, although some limit the value of these assets. On the other hand, RRSPs are considered an asset by social assistance programs in all jurisdictions. Hence the mechanism with which Canadians are encouraged to save for their future financial security is of no use to Canadians with severe disabilities who depend on social assistance. Registered Education Savings Plans were also, until recently, considered an asset by social assistance programs. Since the introduction of the learning bond program by the Government of Canada, however, most jurisdictions have moved to exempt them so that recipients of social assistance are also encouraged to save for their children's education.

As outlined in Tables 2 and 3, assets receive differential treatment by social assistance programs throughout the country. Trusts, public compensation awards and settlements for pain and suffering affect eligibility for social assistance in some jurisdictions and not in others. Furthermore,

some jurisdictions consider disbursements from trusts as income, others permit some disbursements and Ontario permits up to $5,000 per year to be used for any purpose.

Other social programs, whose policy motivation is to assist Canadians to achieve financial security, include OAS, GIS and C/QPP. In contrast to social assistance, these programs do not take into account the level of assets.

Mechanisms designed to assist and encourage Canadians to achieve future financial security include RRSPs, pensions and the RRSP rollover. The Registered Education Savings Plan (RESP) is designed to assist Canadian families to plan for their children's education. All of these measures receive public financial support through tax incentives. None of these mechanisms is asset-tested.

Finally, numerous tax measures exist to assure tax equity. Examples of tax deductions or tax credits, which are designed to promote tax equity include:

- disability tax credit
- medical expense tax credit
- child care expense deduction
- education tax credit.

None of these measures is asset-tested.

One result of the asset-testing for social assistance is that persons with severe disabilities who rely on social assistance for income are not able to accumulate or own any financial assets – with a few exceptions in some jurisdictions. The impact is twofold. First, as previously noted, these restrictions create a very low financial ceiling above which they cannot move without being disqualified from social assistance. These families face numerous and significant barriers in assuring a secure financial future for their relatives with disabilities.

Another result is that persons with disabilities who rely on social assistance are treated like other social assistance recipients rather than like people who receive benefits from other income security programs, such as OAS, GIS or C/QPP. This practice is paradoxical as persons with severe disabilities more resemble seniors, who are not expected to be employed, than non-disabled persons on welfare, who are assumed to be employable. Consequently, persons with disabilities are encouraged to remain dependent.

The policy motivations that explain the different treatment of assets by social assistance from that of other income security and tax incentive programs are probably similar to those discussed above in the section on Transfer Policy Precedents (pp. 17-20).

If social assistance for persons with disabilities were based on the model of supports for seniors (Old Age Security and the Guaranteed Income Supplement), it would not have an asset test and would permit transfers from family members. The result would be that persons with disabilities

would be able to rise above the poverty of disability benefits and family members would be encouraged to assist them. Modelling supports for persons with disabilities on similar supports for seniors makes sense since, in both cases, society has a reduced expectation of employment. Benefits are not primarily based on *need* but rather on recognition of entitlement due to circumstances beyond the individual's control – that of being a senior or having a disability.

Options for Reform

Three options have been proposed that would encourage families to help relatives with disabilities, including those who rely on social assistance, by providing tax relief for the accumulation and transfer of savings.

In all three options, the savings would be used to improve the quality of life for these persons, both during and after the lifetime of their parents. The three options are:

(1) Modified RRSP Rules

(2) Registered Disability Savings Plan (tax-deferred)

(3) Registered Disability Savings Plan (tax-prepaid).

Modified RRSP Rules

Change the RRSP rules to permit families, while they are still alive, to transfer RRSP savings to relatives with disabilities, without incurring tax liabilities.

Disability Savings Plan (tax-deferred)

Create a Disability Savings Plan (DSP), which would operate much like an RRSP, in which tax liabilities on the savings and accrued income are deferred, to encourage savings and the transfer of funds to relatives with disabilities. DSPs would be structured to enjoy the same tax advantages as an RRSP. DSPs would be created for the benefit of relatives with disabilities.

Disability Savings Plan (tax-prepaid)

Create a Disability Savings Plan, modelled after the proposed tax-prepaid savings plan (TPSP), to encourage savings and the transfer of funds to relatives with disabilities.

Unlike the existing RRSP, however, TPSPs do not provide a tax deduction for savings. Instead, income on the savings and withdrawals from the plan would be non-taxable.[22] Such plans are in place in the United States and the United Kingdom and are being considered for Canada. They have been proposed by some, including the author, as one mechanism to provide savings incentives which could work better for lower-income Canadians.[23] Finance Canada has signalled some interest in TPSPs (in the 2003 and 2004 Budgets) and has discussed the proposals with some experts but there is presently no proposed legislation.

Discussion

In considering the three options, we must assess the potential benefits and costs to family members and governments, both federal and provincial. It is assumed that all of the options, by encouraging transfers from families to relatives with disabilities, will benefit persons with disabilities. Only those without families or whose families have no willingness or capacity to assist will not benefit. Options to benefit these individuals are discussed in the following section.

A modified RRSP option, permitting tax exempt transfers of RRSP savings to relatives with disabilities, would represent a twofold improvement to the existing situation. First, families could transfer RRSP savings while they are still alive, whereas the present RRSP rollover provision is available only at death. Second, the provision would be extended beyond parents and grandparents to other family members. Consequently, families would be encouraged to share some of their RRSP savings with their relatives with disabilities.

Of note, though, is that for families with relatives with disabilities, the RRSP would be expected to serve two purposes: saving for future economic security during retirement and saving for the future well-being of a relative with a disability. Because of this change, an increase in the cap on RRSP contributions for families with a relative with a disability would need to be considered.

As noted above, a Disability Savings Plan (DSP) could take two forms: one modelled after our existing RRSP and the other after a proposed TPSP. Both would differ from a modified RRSP by creating a new savings vehicle designed specifically for persons with disabilities. A DSP provides several benefits. It creates a savings mechanism beyond an RRSP, owned by the person with the disability, with the potential for tax savings in recognition of additional costs and barriers faced by persons with disabilities. A DSP would also create a visible mechanism through which families can cooperatively assist their relatives with disabilities, both in the present and in future.

In all three proposed options, existing clawback provisions in social assistance would nullify any benefit to persons with disabilities, except situations where: the family has sufficient resources to provide for a relative without further need for social assistance; the relative with a disability is not dependent on social assistance; or the province or territory permits the individual to transfer funds to a trust which is an exempt asset. The latter is often cumbersome for many persons with disabilities to administer and unavailable for individuals who might lack the capacity to make sound financial decisions.

The barrier created by the clawback provision would be remedied in two ways: (1) make changes to social assistance regulations, thus permitting persons with disabilities to derive some benefit from the transfer of their relatives' assets, or (2) in the modified RRSP option, allow individuals to lock in RRSPs. This measure would improve equity in the impact of social assistance regulations which ignore employer pension plans but use RRSPs to deny benefits.

Furthermore, family members would have to balance two goals – saving for retirement and assisting a relative with a disability. For family members who are utilizing all of their RRSP contribution limit, the DSP (RRSP model) would provide increased tax advantaged contribution room for family members.

In all three options, the impact on persons with disabilities of modifying RRSP rules will vary by family income and assets. Parents of children with disabilities have lower incomes on average than other families, but their average income still falls within middle-income range.[24] Low-income families have less ability to save and transfer funds to a relative with a disability. These options are of potentially greater value to middle- and higher-income families that can accumulate modest assets in an RRSP (see *The Disability Savings Plan: Contribution Estimates and Policy Issues* by Keith Horner, 2005 for estimates of the number of families that might benefit from these provisions). Middle- and high-income families will find the modified RRSP and DSP (RRSP model) most beneficial because of the immediate tax savings. An advantage for all families, however, is that the DSP (RRSP model) would provide an additional mechanism through which to compensate families for extraordinary expenses that they continually bear on behalf of their relatives with disabilities.

In general, the DSP (TPSP model) would not be as advantageous for families as the other two models because there is no immediate tax deduction. However, this savings instrument has greater potential value if withdrawals are excluded from income not only for the purpose of taxation but also for determining benefits such as social assistance, the Child Tax Benefit and the Guaranteed Income Supplement (for seniors). It should be noted, however, that the other two models also become more valuable if withdrawals are exempted for the purpose of determining other benefits.

Income splitting and cost implications are two considerations of importance to governments. If RRSP transfers from the family to the persons with disabilities are permitted without restrictions, then the modified RRSP could become an income splitting and tax avoidance vehicle. The potential

for income splitting also exists with the DSP (RRSP model) without restrictions. This potential is, however, extremely limited in the DSP (TPSP model).

The cost implications for federal and provincial governments vary with each of the options. The modified RRSP option would result in a loss of future tax revenue from RRSP savings that were transferred to relatives with disabilities, assuming that the deferred taxes paid by persons with disabilities are at a lower rate than they would have been in the hands of the family. If the modified RRSP were modelled after the existing RRSP rollover, the loss of tax revenue would be even greater as no tax would be paid on the transferred funds.

The DSP (RRSP model), like the modified RRSP, would represent an immediate cost to federal and provincial/territorial governments due to the tax deduction. The cost implications, however, would depend on the uptake and the total contributions to such funds. (See *The Disability Savings Plan: Contribution Estimates and Policy Issues*.) Costs would be offset by families that do not make additional savings but instead make RDSP contributions with funds that would otherwise have gone to an RRSP.

The cost implications of the DSP (TPSP model) are likely to be limited. There is no immediate tax cost. Rather, the cost is in the lost revenue on income generated by the savings within the DSP. Because this option does not provide a tax incentive to the donor, the up-take might also be smaller, further reducing the cost.

If any of these three options were accompanied by social assistance reforms permitting persons with disabilities to possess the asset or receive the income, one might see an impact on provincial/territorial social assistance costs if individuals who might have otherwise been made ineligible for income assistance would now continue to receive benefits. This does not necessarily imply an increase in social assistance caseloads. It is unlikely that there are large numbers of persons with disabilities who are not on welfare because of personal assets given to them by their families. Knowing the rules, families have been deterred from transferring assets to children on welfare because of clawbacks. Thus, allowing such assets would have a minimal impact on caseloads but would improve the standard of living of persons with disabilities on social assistance.

Families with Lower Incomes

Not all national programs benefit recipients equally (e.g., RRSPs and the child care expense deduction) or focus resources on those most in need (e.g., OAS). Nevertheless, in implementing a program to benefit persons with disabilities, some consideration of equity is necessary. The options outlined above would not benefit those persons with disabilities who do not have family members or who do not have family members willing or able to assist them. There are several possible paths through which solutions could be sought. We will discuss two:

(1) pooling assets to generate a revenue stream; and

(2) targeted asset-building strategies.

National Disability Investment Fund

PLAN has proposed the creation of a National Disability Investment Fund (NDIF). Two possibilities for pooling exist. The first option would pool the individual contributions to a newly created Registered Disability Savings Plan. The second option would pool DSPs, trusts established by families to benefit their relatives with disabilities and perhaps family RRSPs.

The family contributions would still be held in the name of the individual, much like an RRSP. But the individual savings plans also would be pooled in order to maximize earnings and minimize service fees. A small percentage of the earnings would flow to community organizations to provide services (e.g., personal support networks, trust services, advocacy) that are often needed by individuals who have no family assistance.

This model is based on the 'blended value' approach, a term first coined by Jed Emerson. This approach includes investments designed to yield both financial *and* social returns; the goal is to deliver – *through the private sector* – not only an economic return but a *social benefit.*

Pooled investment vehicles are already available for RRSPs. Because the advantage in pooling could be modest, making contributions conditional on the diversion of some of the investment income to community organizations could have a material affect on the take-up rates. Presently, most families would probably prefer to make donations directly and benefit from the charitable contributions credit. Families, however, increasingly want to escape the *object of charity* stereotype. A National Disability Investment Fund could be an attractive vehicle for families who want to bolster a shift in public perception of persons with disabilities towards that of a *contributing citizen*.

Asset-Building Mechanisms

In recent years, there has been significant focus on asset building mechanisms to assist people who are financially disadvantaged. The DSP would create such a mechanism for persons with disabilities. Because the creation of a secure financial future is often based on building assets, these models would seem to have some bearing on this issue: how to enable low-income families to assist their family members without disabilities. Two approaches for modelling a solution are Individual Development Accounts (IDAs) and Canada Learning Bonds.

By design, all IDAs involve *matched savings*. IDAs thus have two goals: to promote the development of assets and to encourage savings behaviour. Individual savings have been matched at rates as high as three-to-one. Matches are limited in amount on a monthly, annual or multi-year basis and may be as high as $10,000 over a period of years. Programs normally exempt the matching monies from taxation and disregard it for the purpose of determining benefit program

eligibility for which income is a criterion. Matched funds are generally kept in a separate, parallel account and are disbursed for allowable purposes only when the participant successfully completes program requirements, including those related to saving.

Canada Learning Bonds were created to assist low-income families save for their children's education through the Registered Education Savings Plan. This program will give low-income children a $500 endowment into a Registered Education Savings Plan at birth, or later if they subsequently qualify, and additional $100 top-ups every year. In addition, families with incomes less than $75,000 will receive a lower percentage as a matching grant on the first $500 saved into the account.

Eligibility

Any new tax instruments for savings will require regulations limiting eligibility to savings on behalf of those with disabilities. The definition of disability could simply be built upon existing programs. Eligibility could depend on the beneficiary being eligible for any of a list of federal and provincial/territorial programs. The list could include the disability tax credit, CPP disability benefits or a provincial/territorial program for adults or children with severe disabilities.

Conclusions

- It is natural that families wish to provide some assistance to improve the quality of life for their relatives with disabilities but there are few mechanisms to enable or encourage families to assist relatives with disabilities.

- Those who live on social assistance are restricted to a standard of living significantly below any reasonable poverty line.

- Current social assistance regulations deter:

  - families from financially assisting relatives with disabilities
  - persons with disabilities from improving their quality of life.

- There is no solid policy rationale for clawbacks on transfers to persons with disabilities on social assistance.

- Treatment of assets and transfers by social assistance varies across provincial and territorial jurisdictions. There is no apparent policy rationale for the differences.

- Treatment of assets from various sources is not equitable. Generally, compensation funds of a public nature (for example for Hepatitis C) do not affect eligibility for social assistance but

private compensation does.

- There is no apparent policy rationale for the differences between social assistance and OAS and GIS.

- Persons with disabilities would benefit if new options existed to encourage the transfer of families' assets.

- New federal mechanisms would provide an incentive for transfers of funds from families to persons with disabilities and would recognize the extraordinary costs associated with supporting a family member with a disability.

- The dominant tax precedent on private transfers is for the donor to bear the tax liability on transferred funds. However, the RRSP rollover represents a precedent where the tax liability is transferred with the funds.

- A tax credit would provide a more equal benefit across income levels. However, there are precedents for the use of a tax deduction for encouraging behaviour that has a broader social benefit (such as RRSPs or the new disability supports deduction) or to recognize costs of necessary social services (child care costs).

- A modified RRSP would improve the existing future planning environment by permitting more family members to assist persons with disabilities and by encouraging families to provide such assistance before their deaths.

- A DSP would create a new mechanism to assist families to secure the future for their relatives with disabilities. It would promote self-sufficiency and recognize family contributions.

- A DSP modelled on the existing RRSP would benefit middle- and higher-income families more than lower-income families, because of the immediate tax advantage.

- There is also a need to consider persons with disabilities who do not have families that can assist them. A *blended value* mechanism, the National Disability Investment Fund, has been proposed as a partial solution.

- Social assistance regulations create the most significant barriers to families assisting their relatives who rely on that program of income support due to disability.

Consequently, changes to tax policy without changes to social assistance regulations would be futile, since under benefit derived from the transfer of family funds would be nullified by social assistance clawbacks.

Endnotes

1. This problem has been documented by the author for the case of RRSPs and recipients of the Guaranteed Income Supplement (GIS): *New Poverty Traps for Seniors*, CD Howe Institute.

2. The conditions for this practice have changed; in the past, they depended on there being no spouse present.

3. See Styan, J. (2004). *Trusts versus Legal Guardianship as Mechanisms; Securing the Future for a Family Member with a Disability.* Vancouver: Planned Lifetime Advocacy Network (PLAN).

4. National Council of Welfare. (2004). *Welfare Incomes 2003*. Ottawa: Minister of Public Works and Government Services Canada.

5. Examples include the fund to compensate some of those contracting HEP-C, the Japanese Redress Program and various programs to compensate survivors of childhood sexual abuse.

6. Disbursements are expenditures made by the trust that do not pass through the hands of the beneficiary.

7. Source: *http://www.advisor.ca/images/other/ae/ae_0104b_lifesupport.pdf*

8. A term coined by John Stapleton, Social Policy Fellow at St. Christopher House in Toronto.

9. This section was prepared for PLAN by Jon Kesselman.

10. An entire chapter was devoted to this issue in the classic volume on income taxation: Henry C. Simons. (1938). *Income Taxation: The Definition of Income as a Problem of Fiscal Policy.* Chicago: University of Chicago Press, ch. VI: Gratuitous Receipts. Also see the discussion of this topic in later standard references such as Richard Goode. (1976). *The Individual Income Tax.* rev. ed. Washington, DC: Brookings Institution, pp. 98-100; and Robin W. Boadway and Harry M. Kitchen. (1984). *Canadian Tax Policy*, 2d. ed. Toronto: Canadian Tax Foundation, pp. 100-102.

11. This approach was supported by Henry Simons, op. cit., as well as by the *Report of the Royal Commission on Taxation* (the Carter Commission), vol. 3, chap. 17 (Ottawa: Queen's Printer, 1966), although few public finance experts have endorsed the approach.

12. One exception to this rule is capital gains generated on assets purchased with transferred funds. There are also complex rules governing the taxes on investments that stem from intra-familial loans. In countries that use the family unit for taxation and joint filing (such as the US and France), there is no need to attribute income as between spouses.

13. For description of these provisions, see Canada Revenue Agency, *Information Concerning People with Disabilities*, Publication RC4064(E) Rev. 04.

14. Unlike the credit for infirm dependants, the eligible dependant credit requires that the tax filer not be living with a spouse and that the dependant live with the taxpayer.

15. Social assistance benefits must be included on line 145 of the T1 General Return, so that they are entered as 'net income' on line 236, but they are then deducted on line 250 before arriving at 'taxable income' on line 260.

16. As explained elsewhere in this study, some provinces allow limited payments from Henson trusts to social assistance beneficiaries without reducing their benefits.

17. For details on the SA earnings exemption by jurisdiction in 2003 for 'unemployable' and 'employable' beneficiaries, see National Council of Welfare. (2004). *Welfare Incomes 2003.* Ottawa: Minister of Public Works and Government Services Canada, pp. 73-78.

18. Moreover, unlike social assistance programs, the GIS has no asset test for eligibility. Investment income generated by the receipt of gifts that are not quickly consumed or spent will, of course, enter into net income and thus affect GIS benefits.

19. There is a requirement that individuals must be 'retired' for at least one month in order to begin drawing C/QPP retirement benefits, but they can resume employment thereafter without loss or reduction of those benefits. C/QPP disability benefits are paid conditional on the continued disability of the beneficiary, so that the resumption of substantial employment will result in a termination of benefits.

20. Seniors who receive the full OAS and maximum GIS benefits are ineligible for social assistance in almost all jurisdictions. Some provinces offer special supplementary payments to seniors who do not meet the residence requirement to obtain the full OAS benefit.

21. These figures are for the after-tax LICOs, which seem most appropriate for this purpose in view of the non-taxability of social assistance benefits and the proposal that the private transfer (which is not taxable in the hands of the beneficiary) not be subject to social assistance benefit reduction for that sum. Statistics Canada, *Low Income Cutoffs from 1994-2003 and Low Income Measures from 1992-2001*, Income Statistics Division, Cat. No. 75F0002MIE.

22. Jonathan Kesselman and Finn Poschmann. (2001). *A New Option for Retirement Savings: Tax-Prepaid Savings Plans*. Toronto: CD Howe Institute, February.

23. Other mechanisms include a return of the Investment Income Deduction so that some investment income escapes taxes or the exclusion of some income when calculating benefits like the Guaranteed Income Supplement.

24. Tables: Statistics Canada. *Participation and Activity Limitation Survey, 2001.* Catalogue no. 89-586-XIE. Ottawa. Average household income was $62,000 for families with a child with a severe disability compared to $72,000 where the disability did not exist.