

**Response of The Canadian Hearing Society
To the Ministers of Finance and National Revenue's
Technical Advisory Committee on Tax Measures for Persons with
Disabilities**

**Policy and Administrative Issues: Disability Tax Credit and Other
Federal Tax Assistance Intended for Persons with Disabilities**

August 2003

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INTRODUCTION

Founded in Toronto in 1940, The Canadian Hearing Society (CHS) is a community-based, multi-service, non-profit agency serving the needs of the deaf, deafened and hard of hearing communities. It is the largest agency of its kind in Canada. It employs approximately 450 people, including deaf, deafened, hard of hearing, and hearing individuals, in 29 offices. A significant part of CHS's early mandate continues to this day, advocating for and promoting the rights of deaf, deafened and hard of hearing consumers.

CHS has participated in many government consultations to both the House of Commons Standing Committee on Human Resources Development, and the Status of Persons with Disabilities, as well as government initiated reviews. Reports include **Equal Citizenship for Canadians with Disabilities: The Will to Act Federal Task Force on Disability Issues written by Andy Scott, M.P.** have been submitted with recommendations concerning the prevention and removal of barriers. Much time, expertise and expense has gone untapped.

CHS has prepared this brief to assist the Deputy Prime Minister and Minister of Finance and National Revenue as well as their respective appointments to the Technical Advisory Committee on Tax Measures for Persons with Disabilities in its deliberations on Policy and Administrative Issues related to the disability tax credit and other federal tax assistance intended for persons with disabilities. We are pleased that the Ministries of Finance and Canada Customs and Revenue Agency are moving forward with its review of the policy and administrative issues, including criteria and methods used to establish eligibility for the disability tax credit, its treatment of episodic and mental conditions, and the list of disability-related items considered eligible for the medical expenses tax credit.

Your consultations and the policy decisions that will eventually result from them should serve to help persons with disabilities, including those deaf, deafened and hard of hearing, while also increasing public awareness about the stereotypes and negative attitudes associated with deaf, deafened and hard of hearing issues to ensure that fair tax policies do not negatively affect and limit deaf, deafened and hard of hearing persons participation in training, post secondary education, and employment opportunities.

EXECUTIVE SUMMARY

The Canadian Hearing Society considers it time for the federal government to expand its role in rationalizing disability income programs and to more adequately subsidize the costs of disability.

The *Income Tax Act* should be the mechanism through which this process takes place. At present the Act is actually the source of some of the greatest inequities for persons with disabilities.

Persons with hearing loss should be assumed to have the same general level of abilities as other Canadians in all other areas. While hearing loss can occur in combination with

other disabilities, CHS will focus on the issues of particular concern to persons who are deaf, deafened or hard of hearing.

The impact of being deaf, deafened or hard of hearing is not well understood. This has resulted in unfavorable tax treatment of persons who are hard of hearing. In addition, CCRA focuses on hearing loss in isolation, but does not consider the impact of hearing loss on the development of literacy when assessing whether the person's disability restricts his or her ability to perform basic activities of daily living. **A truly functional definition of hearing disability for DTC purposes would be based on an unaided threshold level of 55db.** This would make assessment efficient and clear.

A low literacy level due to a disability means a person is restricted in their ability to communicate. A person who is deaf, deafened or hard of hearing does not have the same ability to learn English as a hearing person, and is at a disadvantage in learning to communicate, compared to a hearing person for whom English is also a second language. For this reason education is a huge issue for persons who are deaf, deafened or hard of hearing. The treatment of post-secondary educational subsidies under the *Income Tax Act* negatively affects those groups more than others with disabilities, and is directly responsible for the declining numbers of deaf, deafened or hard of hearing people in post-secondary education. Canada has the highest post-secondary education participation rate in the world, and yet persons who are deaf are unique in their declining rate of participation. **Bursaries to cover the additional costs of accommodating persons with disabilities should no longer be taxable.**

Because of inadequate educational opportunities and continued systematic discrimination against them by employers, deaf, deafened and hard of hearing persons experience high levels of unemployment and poverty. Disability income programs are of crucial importance to their ability to sustain themselves and their families. The inconsistent tax treatment of these programs means that people on Canada Pension Disability (CPP(D)) and private long term disability (LTD) insurance benefits are worse off than those receiving workers compensation (WCB) or social assistance. All of these programs are acknowledged to be inadequate in keeping people with disabilities above the poverty level. **Disability income benefits should be made non-taxable.**

It is difficult for any person to be aware of the list of disability related expenses that are eligible for the Medical Expense Tax Credit. This is particularly true for people with low literacy skills. For those able to access this information, the list is never current and does not include extra costs incurred in daily living, e.g. repairs to disability specific devices. **The solution is to dispense with the list and allow persons to claim the reasonable costs of coping with their disability.** The definition of what is "reasonable" should be developed over time, through the usual process of audit and litigation.

For those persons with severe disabilities living in poverty, it is particularly important that they receive subsidies available through the tax system. Generally speaking the reverse is true. Persons who are attempting to work their way out of poverty are particularly affected since they are deprived of benefits available to those on social assistance, and do not receive the benefit of the Medical Expense Tax Credit (METC) or the Disability Tax Credit (DTC), because they are not refundable. The refundable

Medical Expense Supplement (RMES) is a step in the right direction, but the cap on the benefit and inclusion of family income is too restrictive. **Both the METC and the DTC should be made refundable and the restrictive limits on the RMES should be removed.**

In order to reduce poverty and encourage self-sufficiency amongst persons with disabilities, **the income tax system should be used as a mechanism for delivering incentives supporting the goal of employment equity.**

RECOMMENDATIONS

- 1. The Government of Canada should not treat Special Opportunity Grants for students with disabilities under the Canada Student Loans Program as taxable income.**
- 2. The Canadian Hearing Society out of concern for the deaf and hard of hearing clients that it serves, especially those at universities, strongly urges the Government of Canada to exempt from taxation, the bursaries earmarked for accommodation funding.**
- 3. The Canadian Hearing Society strongly recommends that for the out-of-Canada bursary, the excess over a sum set by the Ministry of Finance to be comparable for tuition and room and board at a local university in Canada, be exempt from taxation.**
- 4. The Canadian Hearing Society endorses the proposal that, as long as persons are eligible for benefits under the Canada Pension Plan Disability Program, they should be deemed to be eligible for the Disability Tax Credit (DTC).**
- 5. The Canadian Hearing Society recommends that the Government of Canada adopt an objective standard when deciding whether to grant the DTC to deaf, deafened and hard of hearing individuals. The Society recommends that the Relevant Paper from the American Speech-Language Hearing Association (ASHA) defining Severely Hearing Handicapped, be used as the objective standard. This paper states that a severely hearing handicapped person is one who demonstrates:**
 - An unaided speech reception threshold in the better ear of 55 dB HL or more, or**
 - An unaided speech reception threshold in the better ear of less than 55 dB HL with any of the following:**
 - a. Aided performance on a recognized measure of speech discrimination ability of 60% or less at a sound field test presentation level of 75 dB SPL (loud conversational speech);**
 - b. Evidence of rapidly progressive hearing loss;**
 - c. An inability to tolerate amplification and unaided performance on a recognized measure of speech discrimination ability of 60% or less at a sound field test**

**presentation level of 75 dB SPL (loud conversational speech),
or**

- **In the event that recognized measures of speech reception or speech discrimination are inapplicable – for example, because of a foreign language barrier, receptive or expressive language disorder, etc. – an unaided pure tone average in the better ear of 55 dB HL or more. *Refer to Appendix 1 attached.* For some Deaf persons, it also eliminates the culturally inappropriate behaviour of being asked to wear hearing aids in an attempt to understand verbal conversation.**
6. **The Canadian Hearing Society supports the concept that individuals deemed to have permanent hearing loss by their audiologist, which meets the above definition, not be required to be tested annually in order to re-qualify for the DTC.**
 7. **The Canadian Hearing Society supports the long standing position of other disability groups, such as the Council of Canadians with Disabilities, in their view that the Medical Expense Tax Credit should be renamed the Medical and Disability Expense Tax Credit, and that it should be extended to all disability related expenditures.**
 8. **The Canadian Hearing Society supports making both the DTC and the METC refundable. In addition, it supports removing the RMES earned income threshold, and making the eligibility cutoff based on individual rather than family income.**
 9. **The Canadian Hearing Society supports recommendation 5:3 of the Standing Committee on Human Resources Development Canada and the Status of Persons with Disabilities in its report entitled *Listening to Canadians: A First View on the Future of the CPP(D) Program (2003)* wherein it recommends that CPP(D) benefits be made non-taxable.**
 10. **The Canadian Hearing Society supports the use of the income tax system as a mechanism through which double taxation of the costs of accommodating persons with disabilities can be ended and positive incentives for employers can be introduced that will enhance employment opportunities for persons with disabilities.**

Some Statistics

- Almost 1 in 4 Canadians experience some degree of hearing loss. (CHS Awareness Survey, October 2001)
- 1 in 10 Canadians with hearing loss are Deaf people who use sign language and/or require a captioner.

- 20% of Deaf Canadians are employed, 42% are underemployed and 38% are unemployed (Canadian Association of the Deaf, 1998).
- 85% of Deaf Ontarians are underemployed and unemployed (CAD, 1998).
- 48% of Deaf Canadians are unemployed (Statistics Canada, 1992).
- Hard of hearing employment rate is 33% lower than non-disabled Canadians (Statistics Canada, 1992)
- Only 8% of hard of hearing persons received work accommodation (Statistics Canada 1992)
- The Canadian Association of the Deaf Report on Employment and Employability of Deaf Canadians indicate that large numbers of persons, especially deaf, deafened and hard of hearing consumers from northern and rural Ontario, have become victims of layoffs from private businesses and governments.

A 1992 Statistics Canada report noted that only:

- 2% of Deaf Canadians held university degrees, compared to 14% of the general population.
- 2.7% of hard of hearing Canadians have university degrees
- 13% of Deaf Canadians received a certificate/diploma.
- 8 % of Deaf Canadians obtained post-secondary education.
- 25% of Deaf Canadians received high school education.
- 52% of Deaf Canadians obtained elementary education.

The Ontario Ministry of Education and Training's *Literacy Survey of Ontario's Deaf and Hard of Hearing Adults, 1998* reported that deaf and hard of hearing individuals are less likely to be employed and that they earn less on the average than other Ontarians. This finding reflects their older age profile, their relatively low level of education, and their low literacy levels.

The Ontario Ministry of Education and Training's *Literacy Survey of Ontario's Deaf and Hard of Hearing Adults, 1998* has also showed high unemployment/underemployment rates, low rates of full-time employment and low rates of participation in post-secondary education and skill training programs. Currently, large numbers of deaf and hard of hearing youth are receiving income maintenance. Unemployment of young deaf adults appears to be increasing: 24% of deaf youth in one study were unemployed 3-4 years after high school and an astonishing 40% of deaf youth with additional disabilities in the same study were unemployed.

Post-secondary education is crucial to the deaf, deafened and hard of hearing community. Dr. Carol Musselman of the Ontario Institute for Studies in Education at the University of Toronto wrote in a 1998 letter to then Minister of Education and Training, David Johnson:

“D/deaf and hard of hearing individuals are disadvantaged educationally and vocationally. Information from Statistics Canada shows that few D/deaf and hard of hearing individuals complete secondary or post-secondary education. For example, only 3.1% attain a university degree, compared to 10.2% of the non-disabled population, a figure which falls to 1.7% among those who are profoundly deaf. It is thus not surprising that labour force participation is only 52% compared to 77.9% for non-disabled peers. In addition to the human cost, the inability of D/deaf and hard of hearing individuals to fully participate in society incurs a social cost in the form of decreased productivity and the need for additional social welfare and mental health services”.

Barriers to Continued Education, Private Vocational Schools and Post-Secondary Education

- Most School Boards fail to provide accommodation funding for deaf, deafened, hard of hearing and disabled adults enrolled in general interest continuing education (non-credit) courses at high school. Despite the fact that the Toronto District School Board has reached a settlement by establishing a fund for accommodations (e.g., sign language interpreters, note takers, attendant care) and has committed in writing to this effect, it continues not to provide accommodation.
- There is no government funding for sign language interpreters and captioners in private vocational schools and professional schools.
- CHS is concerned about the serious decline in the enrollment of deaf and hard of hearing Canadians at both Canadian and foreign universities and colleges. One of the effects of this decline is that educational institutions serving deaf and hard of hearing students at all levels are experiencing extreme difficulty recruiting qualified deaf and hard of hearing university and college graduates to fill staff teaching positions.
- Deaf and hard of hearing post-secondary students are frustrated that they are unable to commence or continue their post-secondary studies in Canada or the United States for the following reasons:
 - Rising tuition costs.
 - Dramatic reductions in government funding.
 - Changing the classification of accommodation funding from grants to loans.
 - Imposing taxes on disability-related supports and out-of-country bursaries for students with disabilities. For example, students

attending foreign post-secondary institutions receive Revenue Canada tax bills ranging from \$5,000 to \$10,000 each year.

- Changing admission requirements prevent deaf and hard of hearing students from entering teacher-training programs for the education of other deaf and hard of hearing students. For example, deaf candidates with degrees from foreign or out-of-province schools must first obtain a Bachelor of Education degree from a university in their own province – even though these institutions are not accessible to deaf and hard of hearing students.
- Lack of accommodation funding to cover the cost of sign language interpreters for summer or part-time jobs for post-secondary students who are not clients of Human Resources Development Canada, the Ontario Disability Support Program or Ontario Works.

Related Statistics

A Comparison of Conditions Before and After Implementation of Employability Assistance for Persons with Disabilities, EAPD Replacing Vocational Rehabilitation of Disabled Persons Program, VRDP

| Before EADP (VRDP) – 1997 | After EAPD - 2001 |
|--|---|
| - 1,062 VRS clients served | - 385 Ontario Disability Support Program Support to Employment clients served |
| - 200 Ontario deaf and hard of hearing post-secondary students | - 107 Ontario deaf and hard of hearing post-secondary students |
| - 148 deaf and hard of hearing post-secondary students attending foreign institutions in 1997 | - 98 deaf and hard of hearing post-secondary students attending foreign institutions in 2001. |
| - 140 Canadians (92 Ontarians) enrolled at Gallaudet University in 1990 | - 55 Canadians (37 Ontarians) enrolled at Gallaudet University in 2003 |
| - 126 Canadians (89 Ontarians) enrolled at the National Technical institute for the Deaf in 1996 | - 68 Canadians (46 Ontarians) enrolled at the National Technical Institute for the Deaf in 2003 |
| - 35 students enrolled in Adult Continuing Education at Milton in 1997 | - 16 students enrolled in Adult Continuing Education at Milton in 2002 |
| - 42 students registered in the LINC program at the Bob Rumball Centre for the Deaf | - 16 students registered in the LINC program at the Bob Rumball Centre for the Deaf |
| - 147 students registered in the CHS Literacy | - 95 students registered in the CHS |

COMPARISON OF CONDITIONS BEFORE AND AFTER IMPLEMENTATION OF THE EAPD INITIATIVE

| Before EAPD (VRDP) | After EAPD |
|---|--|
| Provided student grants. | Provides student loans. |
| Provided funds for sign language interpreters and captioners in private vocational schools for part- and full-time courses. | Insufficient government funds available for sign language interpreters/captioners in private vocational schools for part/full-time courses. |
| Provided specialized career support and consultation services for deaf and hard of hearing high school graduates and post-secondary students. | No career support and consultation services, specializing in the unique needs of the deaf and hard of hearing are available to high school graduates and post-secondary students. |
| Provided funds to cover the cost of sign language interpreters for summer or part-time jobs for post-secondary students while studying in colleges and universities. | No funds available for sign language interpreters and captioners for post-secondary students who are not also clients of HRDC while studying at colleges and universities. |
| No taxes on disability-related supports and out-of-country bursaries for students with disabilities. | Taxes on disability-related supports and out-of-country bursaries for students with disabilities. |
| A significant increase in the number of professional and highly skilled deaf and hard of hearing individuals hired in the early 1980s. | A significant decline in the number of professional and highly skilled deaf and hard of hearing individuals in the early 2000s. |
| A significant increase in the number of college, university and private vocational school graduates with disabilities hired in the public, private and non-profit sectors during the early 1990s. | A dramatic decline in the number of college, university and private vocational school graduates with disabilities in the early 2000s, making it difficult for employers to recruit qualified deaf and hard of hearing employees. |
| More and more professional and highly skilled deaf, deafened and hard of hearing individuals available, making it easier for employers to recruit and hire these individuals. | Fewer and fewer professional and highly skilled deaf, deafened and hard of hearing individuals, making it extremely difficult for employers to recruit and hire these individuals. |

- EAPD does not provide the maximum grant to students with disabilities who wish to attend foreign institutions of higher learning.
- EAPD does not provide the maximum funding for tuition and other supports (e.g., tutors) for students attending institutions of higher learning in Canada.
- No funding for assistive aids, devices and support services (e.g., sign language interpreters and real-time captioners) for students attending private vocational schools.

- No funding for accommodations for job interviews, summer or part-time jobs or internships for students attending post-secondary institutions, including private vocational schools.

CASE STUDY

Jennifer is profoundly deaf. She uses American Sign Language as her primary means of communication. There is no university in Canada that offers programs in ASL to its students. The cost of providing a range of university programs in ASL would be prohibitively expensive. Providing individual students with ASL interpreters would likewise be prohibitively expensive as well as providing a less effective learning experience for the student.

As a matter of post-secondary education policy, the federal and provincial governments have agreed that students such as Jennifer should be permitted to attend one of the two post-secondary institutions in the United States [Gallaudet University in Washington D.C., and Rochester Institute of Technology, National Technical Institute for the Deaf, Rochester, New York], and provided with student loans and bursaries sufficient to cover the necessary costs.

Like many deaf students, Jennifer graduated from high school having demonstrated strong academic ability despite having low literacy skills. Before being admitted to an actual university program, she was required to take a make up year in order to enhance her literacy skills.

As with many deaf students, Jennifer was unable to achieve the necessary academic standing and maintain a full course load. In order to graduate with her four-year social work degree, she was required to be in full time attendance at the university for an additional six years. Thus, in order to graduate with a degree that would take a hearing student in Canada 3 or 4 years, it was necessary for Jennifer to attend post-secondary school for 7 years. In the process she accumulated approximately double the student loan that would be assumed by a comparably intelligent and motivated hearing student (i.e. \$50,000 compared to \$25,000).

The cost of attending a U.S. post-secondary institution is approximately \$40,000 Cdn. per year for residence and tuition. Students are responsible for their own travel costs home. This is at least three times the rate payable to attend a Canadian college or university. The student assistance is supposed to cover costs over and above the amount of the loan (approximately \$7,000 annually) and is payable in what is termed a bursary. The bursary is not repayable, but Jennifer must include the full amount of her bursary in her income, and pay tax on it. Thus while every dollar Jennifer receives from the government must be allocated to cover her educational expenses, she is responsible for paying approximately \$10,000 in income tax annually. None of this money comes from the university so Jennifer must assume additional debt or rely on her family for this money.

When Jennifer graduated she was fortunate to find employment as a social worker. Her combined modest income, plus attributed income for her bursary, meant that she

was in a higher tax bracket. With the few after-tax dollars remaining she was expected to make payments on her student loan and her bank loan to cover the taxes paid on bursaries over previous years. Not surprisingly, her remaining income was less than if she had never attended school and had simply gone on social assistance. She will be carrying a high level of debt for years to come.

It is surprising that, at a time when post-secondary education is more important than ever before, fewer and fewer deaf students are receiving one. Unless the tax treatment of Jennifer's bursary income is changed there will be fewer and fewer Jennifer's in the future.

THE DUTY TO ACCOMMODATE

Currently, individual complaints of discrimination have to wind their way to the Supreme Court of Canada before change occurs. In 1997, the Supreme Court of Canada granted intervenor status to CHS, the Canadian Association of the Deaf, and the Advocacy Resource Centre for Persons with Disabilities in *Eldridge v. British Columbia*. The Court ruled that the failure to provide sign language interpretation where it is needed for effective communication in the delivery of health care services, social services, education and training and employment violates the rights of deaf consumers. Further, the Court stated that governments couldn't escape their constitutional obligations by passing on the responsibility of policy implementation to private entities not directly under the jurisdiction of the *Charter of Rights and Freedoms*.

In the Fall of 2000 CHS, along with the Canadian Hard of Hearing Association and the Canadian Association of the Deaf, was granted intervenor status in a case that deaf lawyer Scott Simser planned to take before a tribunal of the Canadian Human Rights Commission against the Tax Court of Canada. Negotiations resulted in a mutually satisfactory out-of-court settlement. On September 5, 2000, the Tax Court announced a landmark policy that acknowledges and accepts responsibility for arranging and paying for accommodation for deaf, deafened and hard of hearing lawyers, articling students and any parties they represent.

Even with landmark decisions such as *Eldridge* and Simser's out-of-court settlement, deaf, deafened and hard of hearing students still bear sole responsibility to fight for their right to access if Ministries fail to comply. The Canadian Hearing Society believes in the principles of the *Charter* and human rights legislation. The obligation to accommodate rests upon the service provider (eg. a post-secondary educational institution) or employer. The cost of accommodation should not be treated as a benefit or income and made subject to tax, regardless of whether or not the cost of accommodation actually passes through the hands of the disabled person being accommodated. Unless the *Income Tax Act* recognizes that the costs of accommodating a person's disability is a matter of equality, people with disabilities will stop asserting their rights, and Canada's primary means of ensuring their inclusion and full participation will be lost.

Colleges and Universities in Canada will not start to pay to accommodate a student with disabilities until a student has demonstrated that the maximum bursary has been applied

for, received and fully expended. They categorically refuse to reimburse a student such as Jennifer for tax paid on bursaries received.

Even if it could be said students with disabilities should be suing universities, seeking to make them the primary payors for the costs of accommodation, whom is Jennifer going to sue? Unless she was willing to pay tuitions that reflect the high costs of providing her with an inclusive education, she would not have been admitted to a U.S. post-secondary educational institution equipped to meet her needs. The same governments that receive a major source of their revenues from the income tax system fund colleges and universities. It makes no sense to tax and reimburse in the same amounts. It is both unnecessary and unfair to impose the responsibility for reforming the system of funding post-secondary education, established by governments and post-secondary institutions, on persons with disabilities who seek equitable treatment. They have more than enough to do to achieve academic success, and they have every right to expect that the system will encourage rather than discourage their efforts.

TAXES ON ACCOMMODATION FUNDING

What is unthinkable to a rational person occurs on a daily basis. The average person would think it is wrong for a person with a disability to pay extra tax simply because they receive accommodation funding. But this is happening.

In the past, institutions provided accommodations to disabled persons and paid for them. With the recent off-loading of government responsibilities, governments now channel funds to disabled persons, rather than institutions, and require them to monitor and arrange for their own accommodations. Often the funds are given on the condition that the money is only for accommodation, and any money spent elsewhere or unused must be returned. Yet the Canada Customs and Revenue Agency treats those funds as income to the disabled person. Often those disabled persons have to pay a higher percentage of tax relative to their earnings compared with non-disabled individuals, further marginalizing them from society and reducing their spending power.

In the context of the deaf and hard of hearing at university or college, in the past there was a program called the Vocational Rehabilitation Services (VRS). Under the VRS program, the Ontario government directly paid money to the universities and colleges for the accommodations of deaf, deafened, and hard of hearing students; the institutions managed the funds and the services on behalf of the students. This program was closed a number of years ago. Under that program, many different and effective accommodation services were provided, yet no taxes were imposed on students for receiving the accommodations.

Currently, deaf and hard of hearing students must negotiate with the university or college that they attend for accommodations. They use the rationale of the Supreme Court of Canada decision *Eldridge*, which states that service providers must provide effective communication, by way of sign language interpreters or similar accommodations. For the hard of hearing, or some deaf persons, often real-time captioning is preferred. For those services there are no funds granted to the students, and hence no tax liability.

However, universities and colleges insist that the deaf and hard of hearing students first apply for the Bursary for Students with Disabilities before being granted any services. Under the current funding model in many provinces, universities and colleges face cash crunches and seek out alternate sources of funding such as the Bursary. However, when the unfortunate deaf or hard of hearing student actually receives the Bursary, the result could be a tax imposed upon that student, especially if they have earned income through the school year. Some deaf and hard of hearing students do not qualify for the Disability Tax Credit, and hence have no alternate tax relief. Even if they did qualify for the Disability Tax Credit, it was never intended to be item-specific. The intention was to lessen the burden of everyday living and the hidden costs associated with a disability, such as longer study times, lack of educational and employment opportunities, and other intangible difficulties.

The Government of Canada has chosen not to implement recommendation number fifty in the report by the Federal Task Force on Disability Issues, entitled "Equal Citizenship for Canadians with Disabilities", chaired by Andy Scott, M.P. The recommendation reads as follows:

The Government of Canada should not treat Special Opportunity Grants for students with disabilities under the Canada Student Loans Program as taxable income.

It is important to note that in Ontario, the Special Opportunity Grant is renamed as the Bursary for Students with Disabilities.

Despite the apparent unfairness of such taxes on bursaries that are only intended for accommodation funding, deaf and hard of hearing students have met with disappointment when challenging the relevant provisions under the *Income Tax Act* in the courts.

CASE STUDIES

On 8 June 2001, the Canadian Human Rights Tribunal decided the case of *Scott Wignall v. Department of National Revenue*. The adjudicator was Guy Chicoine and the decision is reported at 40 C.H.R.R. D/117. In this case, the complainant, Mr. Wignall, was a Deaf student attending the University of Manitoba. He was asked by the university to apply, personally, for accommodation funding in order to offset the university's sign language interpretation costs. Mr. Wignall complied with the request, and applied for accommodation funding through a bursary program jointly administered by the provincial and federal governments. The bursary was called a "Manitoba Government Bursary Award." The federal portion of the award was called the Special Opportunity Grant for Students with Permanent Disabilities. (The Special Opportunity Grant is now called the Canada Study Grant.) The bursary was available only to students with permanent disabilities and could only be used to cover exceptional educational accommodation costs. Mr. Wignall received the bursary, in the amount of \$3000, and handed the money over to the university as a contribution toward the university's sign language interpretation costs. He received no personal benefit by acting as a conduit for the accommodation funding.

Revenue Canada (now the Canada Customs and Revenue Agency) nevertheless taxed the \$3000 grant in the hands of Mr. Wignall. Mr. Wignall complained that doing so was discriminatory and contrary to the Canadian Human Rights Act. The cost of Mr. Wignall's education, because he was assessed tax on the accommodation funding, was tuition plus tax on the grant, entailing that he paid more for his education than his classmates living without disabilities. Ultimately, the Canadian Human Rights Tribunal ruled against Mr. Wignall. Despite ruling against Mr. Wignall, the Tribunal stated that Mr. Wignall had "a strong argument that the taxation of the Special Opportunity Grant was unfair" and that "Having given with the one hand, it may seem anomalous that the government should take away a portion with the other."

The decision of the Tribunal was the subject of a Judicial Review hearing on 2 June 2003 before the Federal Court (Trial Division). The decision of the Court is pending.

On 22 May 2003, the Tax Court of Canada decided the case of *Simser v. Canada (Minister of National Revenue)*. The judge was Mr. Justice Rowe and the decision has been reported at 2003 D.T.C. 617. In this case, the appellant, Mr. Simser, was a Deaf student attending the Bar Admission Course of the Law Society of Upper Canada. Mr. Simser testified that because the Law Society would not provide him with sign language interpretation accommodation, he was compelled to apply, personally, for accommodation funding in order to obtain sign language interpretation and to finish his education. Mr. Simser applied for accommodation funding through a bursary program jointly administered by the provincial and federal governments. The bursary was called a "Bursary for Students with Disabilities." The federal portion of the award was called the Special Opportunity Grant for Students with Permanent Disabilities. (The Special Opportunity Grant is now called the Canada Study Grant.) The bursary was available only to students with disabilities and could only be used to cover exceptional educational accommodation costs. Mr. Simser received the bursary, in the amount of \$2000, and used the money only to pay for sign language interpretation costs.

Revenue Canada (now, the Canada Customs and Revenue Agency) nevertheless taxed the \$2000 bursary in the hands of Mr. Simser. Mr. Simser appealed his tax assessment on the grounds that taxing his accommodation costs was contrary to his right to equality under the Canadian Charter of Rights and Freedoms. The cost of Mr. Simser's education, because he was assessed tax on the accommodation funding, was tuition plus tax on the bursary, entailing that he paid approximately \$600 more for his education than his classmates living without disabilities. Ultimately, the Tax Court of Canada ruled against Mr. Simser. Mr. Simser has filed an appeal to the Federal Court of Appeal. No date has been set for hearing.

In *Wignall v. Canada (Department of National Revenue Taxation)* [2001] C.H.R.D. No. 9 (C.H.R.T.) and *Simser v. Canada* 2003 D.T.C. 617 (T.C.C.) both deaf students lost when challenging the taxes they incurred on funds used to help them communicate in the classroom.

The Canadian Hearing Society, out of concern for the deaf and hard of hearing clients that it serves, especially those at universities, strongly urges the Government

of Canada to exempt from taxation, the bursaries earmarked for accommodation funding.

The Canadian Hearing Society is also very concerned about taxation on out-of-Canada bursaries for Deaf students attending Gallaudet University (in Washington, D.C.) or the National Technical Institute for the Deaf (in Rochester, New York State). Often Deaf students enroll at those institutes because they are frustrated at the lack of ease of an all-inclusive sign language environment. There is no comparable institution in Canada. In fact, Canada saves a lot of money by “shipping” the Deaf students to these two institutions in the United States, since it does not have to pay for accommodation services such as sign language interpreters and real-time captioning. Yet when Canada gives its Deaf students large bursaries to attend those American institutions, the Deaf students incur inordinately high tax bills due to the size of the bursaries, which often run in the \$20,000 to \$40,000 range per student per school year. We have personally met and attempted to reassure many Deaf students who were distraught because their tax bills ranged in the thousands of dollars.

The Canadian Hearing Society strongly recommends that for the out-of-Canada bursary, the excess over and above a sum set by the Ministry of Finance, be comparable to tuition and room and board at a local university in Canada, and be exempt from taxation.

Disability Tax Credit

The Disability Tax Credit (DTC) is unduly restrictive and punitive to many persons with disabilities across Canada, and is much too subjective. Physicians are the gate-keepers to the DTC and often deaf and hard of hearing individuals must pay exorbitant fees. Writing on the issue of DTC, the Tax Court of Canada has had much to complain about regarding the criteria of the Disability Tax Credit and its application. For example, the many key Judge Bowman decisions from the Tax Court of Canada on the Disability Tax Credit.

The DTC serves a social function in recognizing that deaf and hard of hearing individuals must incur non-discretionary and intangible costs because of their disability. Deaf and hard of hearing individuals are not treated fairly under the eligibility criteria set out in the legislation. David Duff, in his article “Disability and the Income Tax,” (2000) 45 *McGill L.J.* 797, provides a cogent observation (at paragraph 61) of the DTC’s narrow eligibility standards:

Regarding speech and hearing impairments, it seems unreasonable to establish a statutory test based on communication in a “quiet setting” with “another person familiar with the individual”, rather than everyday situations which are likely to give rise to additional undocumented costs which the DTC is designed to recognize.

Persons who have a limited ability to speak or hear will not, in day-to-day living, try to speak and hear in public environments and among strangers. The eligibility criteria for speaking and hearing disabilities do not allow qualification with regard to realistic and natural environments. Those that have intangible costs associated with real-world

environments do not qualify for the DTC since access is restricted to those who qualify under an eligibility criteria based on an artificial environment.

Another common concern among disabled and deaf, deafened, and hard of individuals is the apparent inconsistencies among the many disability support programs administered through various government departments. Many cite the inconsistency in qualification and eligibility for the Canada Pension Plan Disability Program and the DTC. This issue was addressed by the Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities, “Listening to Canadians: A First View of the Future of the Canada Pension Plan Disability Program” Chaired by Judi Longfield and Carolyn Bennett, at page 33:

One of the things that we have heard and are suggesting is that if someone does qualify under CPP as having a serious and prolonged illness, that should automatically qualify them for the disability tax credit, rather than their going through different kinds of criteria, a different kind of screening, and being forced through yet another maze... Ultimately we have to pull together, but as an interim measure certainly we can look at there being some consistency between federal programs. (Dr. Cheryl Forchuk, Member, CPP Review Panel)

The Canadian Hearing Society endorses the proposal that, so long as persons are eligible for benefits under the Canada Pension Plan Disability Program, they should be deemed to be eligible for the Disability Tax Credit (DTC).

These are our particular concerns with the Disability Tax Credit as applied to deaf and hard of hearing persons. The test is mainly whether a person “cannot hear enough to understand a spoken conversation in a quiet setting”. This is highly subjective. What does “understand” mean? If the deaf or hard of hearing person misses five or six words, does that qualify him? From our experience, physicians often over-estimate the ability the deaf or hard of hearing person has to hear. Physicians may not realize that every word of a spoken conversation is key to understanding the overall context, and that many voice cues, such as inflection, tone, stress, and pitch may be missing to a deaf or hard of hearing person.

Hearing aids are still an imperfect solution to a very complicated problem. The Canadian Hearing Society would like to see the questions about improved hearing with the hearing aid, and speech reading ability, removed altogether from the eligibility process. By indicating that you are measuring someone’s disability when wearing a hearing aid, often disqualifies applicants. Do we say that people in wheelchairs cannot get a tax credit when using their wheelchair because it partially negates their mobility issue? The answer is no, and the same should apply to individuals who have to wear hearing aids. Their disability does not go away just because they are using a hearing aid.

Another group to consider are Deaf persons who strongly identify with the Deaf culture, but have not worn hearing aids for several years. They may feel awkward at being asked to wear hearing aids for the purpose of qualifying under the current regime for the Disability Tax Credit. We need to expand to include deaf oral, signing hard of hearing, oral hard of hearing, signing, and oral deafened individuals who still require

communication accommodations and alerting devices, such as hearing and signal devices. Although these groups bear the responsibility of covering the costs of necessary hearing technology, the vast majority of public and recreational events are still not accessible to them.

The ability to hear and the ability to work are not the only activities of daily living that can be restricted when a person is deaf or hard of hearing. Another activity is the ability to learn a language such as English. Literacy levels amongst persons who are deaf and who use sign language are low because American Sign Language is very different from the English language. It is reasonable to assume that persons with 55dB loss in terms of speech reception ability are severely impaired in their ability to hear normal speech and engage in normal conversation, and consequently their literacy levels in English will likewise be impaired. As indicated, where the minority of such individuals will be able to develop basic levels of English language literacy, they will only do so after “an inordinate amount of time”. For this reason professional bodies, such as the American Speech Language Hearing Association (see attached) have recommended that severity of hearing disability cannot be assessed without considering unaided speech discrimination measures. This is a conclusion with which the Canadian Hearing Society agrees.

By setting an objective standard which is functionally linked to the restrictions on a person’s ability to perform one or more basic activities of daily living, the government will be assisting the person applying, the health care practitioner and CCRA to establish a standard which is easily administered. Once hearing below this level has been lost, only those who have had their hearing restored to above this level should be required to report to CCRA. The necessity of annual filings of T2201 forms by health care practitioners creates a great hardship on all concerned. A clear objective standard would ensure persons who are deaf, deafened or hard of hearing know whether they are eligible for the DTC.

The Canadian Hearing Society recommends that the Government of Canada adopt an objective standard when deciding whether to grant the DTC to deaf, deafened and hard of hearing individuals. The Society recommends that there be a threshold level of 55 dB above (e.g. cannot hear anything below 55 dB), where the person with a hearing loss qualifies for the Disability Tax Credit. It eliminates subjectivity and is easily measurable. The 55 dB loss standard is a common threshold for deaf and hard of hearing persons to identify who is deaf, for the purpose of qualifying for special programs earmarked toward the deaf. For some Deaf persons, it also eliminates the culturally inappropriate behaviour of being asked to wear hearing aids in an attempt to understand verbal conversation.

Medical Expense Tax Credit

The Medical Expense Tax Credit (METC) provides a non-refundable credit against basic federal income tax. Those who receive services deemed medical expenses under section 118 of the *Income Tax Act* are eligible for the credit. There is ongoing concern that the list of expenses eligible for a tax credit is not inclusive, and fails to recognize the

increasing expenditures incurred by deaf, deafened, and hard of hearing individuals that result in their acquiring communication technology.

On 19 June 2003, an amendment to the *Income Tax Act* received Royal Assent and permits, as eligible expenses under the METC, costs of real-time captioning and note-taking services. There is reason to believe that these amendments will not be effective. To claim the METC for note-taking expenses, taxpayers must prove that the note-taker is "in the business of providing such services" and the taxpayer must be "certified in writing" by a medical practitioner to be a person who requires such services. In practice, it will be very difficult for persons with hearing disabilities to access the METC for note-taking, given the inordinate costs both in time and money that they must incur to qualify.

Sign language interpretation and real-time captioning is sometimes an essential component of communication for individuals with hearing loss. Despite the importance of such services, judicial doubt has been expressed with respect to the ability of taxpayers to claim, under the METC, expenses for sign language interpretation and real-time captioning. In *Simser v. Canada*, 2003 D.T.C. 617 (T.C.C.) at paragraph 112, Justice Rowe wrote the following: "Just because the person spending funds on sign language interpretation . . . is referred to within the subsection as a 'patient,' that does not deem it so." In other words, the Tax Court of Canada may only allow the METC for interpretation (sign or real-time captioning) in medical settings.

The list of eligible expenses has been added to and amended since the introduction of the METC in 1942. In his article mentioned above, Duff recommends that the restrictive categorical list in subsection 118.2(2) be replaced by a "general statement of principle." This would facilitate including new and emerging technologies under the METC without having to go through the process of having them added to a legislated list through lobbying efforts. Inclusion of such a general principle would be especially beneficial to deaf and hard of hearing individuals who rely on a rapidly expanding and improving set of technology for their communication needs. In addition, the CHS recommends that the Government of Canada allow, as a valid METC, the costs associated with acquiring physician services in filling out the forms used in applying for the DTC. Costs associated with applying for the DTC are exorbitant and allowing deaf, deafened, and hard of hearing individuals to claim a portion of these costs as a METC would help to alleviate their tax burden.

Persons with low literacy skills are unlikely to be aware that the METC is intended to cover disability related expenses, or to be able to independently consult the endless list of allowable items on the list. For those who do overcome these obstacles, the list of included expenses typically does not include the costs of operating or repairing the devices. Deaf, deafened and hard of hearing people spend large amounts of money on batteries and on repairs to keep their communication, information and safety devices operating. If they were allowed to claim the METC for their "reasonable disability related expenses", these could be included without need of consulting an accountant or a medical practitioner. If challenged on an audit to justify the expenses, they would either do so or have their claim disallowed, as occurs when businesspersons claim their allowable expenses.

The Canadian Hearing Society supports the long standing position of other disability groups, such as the Council of Canadians with Disabilities, in the view that the Medical Expense Tax Credit should be renamed the Medical and Disability Expense Tax Credit, and that it should be extended to all disability-related expenditures.

Refundability of the DTC and METC

Like many other provisions in the *Income Tax Act*, such as the National Child Benefits (NCB) and the GST rebate, the DTC and the METC serve an important social function apart from determining what income should be taxable. These are national subsidies to assist persons with disabilities to cope with the direct and indirect costs associated with their disabilities.

They are not exclusively relevant to the determination of taxable income. On the contrary they are of particular importance to persons with high expenses and low incomes, as is suggested by the reduction of allowable expenses eligible for the METC by 3% of net income. The cap on this reduction along with the failure to make the DTC and the METC refundable were both criticized in the Federal Task Force on Disability Issues. It would be equitable to use the revenue saved by removing the cap to subsidize refundability.

Persons who have a greater amount of disposable income are in a better position to purchase services and devices that will assist them to overcome their disability. It is therefore appropriate that the reduction based on 3% of net income be applied to all taxpayers, and that the current limit of \$1,755 be removed.

Persons who have little or no taxable income should receive a higher level of subsidy because their need is greater, and their ability to purchase the services and devices they require is less. The Refundable Medical Expense Supplement (RMES) is therefore a promising beginning to meeting the social policy needs of deaf, deafened and hard of hearing persons.

The RMES increases the value of the METC for low-income persons with high disability costs who are eligible for the METC (which is non-refundable). The value the RMES serves by being refundable is undermined by the fact that the METC is not. It is of no benefit to persons who have less than \$2,719 in earned income, thereby increasing the unfairness to those with the least income and who are therefore in the greatest need of a subsidy. Finally, the eligibility cut-off is based on family, rather than individual income, causing hardship for families with members who have a disability.

The Canadian Hearing Society supports making both the DTC and the METC refundable. In addition, it supports removing the RMES earned income threshold, and making the eligibility cut-off based on individual rather than family income.

Equitable Tax Treatment of Disability Income Programs

It has long been recognized that Canada suffers from an under-funded, complex and inequitable hodge podge of income replacement programs for persons unable to work due to disability. This is of obvious concern to CHS because of the high levels of unemployment and underemployment amongst deaf, deafened and hard of hearing persons.

CHS believes the federal government should be playing an effective leadership role in addressing the crushing poverty experienced by most persons with disabilities, in much the same way it did when the Canada Pension Plan was introduced to address poverty amongst Canada's senior citizens.

While this will require study and cooperation from the provinces, there are steps the federal government could be immediately taking, which would raise incomes and remove inequities between some of the country's most important disability income programs.

It is ironic that workers pay to contribute to the Canada Pension Plan, yet for many they would be financially better off if they had never worked. Social Assistance and Workers Compensation are not subject to tax. Canada Pension Disability (CPP(D)) benefits are taxable. Each dollar of CPP(D) a worker receives is offset dollar for dollar against social assistance and worker's compensation benefits. The net result is that this group of people are financially worse off because they are eligible for CPP(D).

The Canadian Hearing Society supports recommendation 5:3 of the Standing Committee on Human Resources Development Canada and the Status of Persons with Disabilities in its report entitled *Listening to Canadians: A First View on the Future of the CPP(D) Program (2003)* where it recommends that CPP(D) benefits be made non-taxable.

USE TAX SYSTEM TO ADVANCE EMPLOYMENT GOALS

Self-sufficiency and employment remains the goals for most deaf, deafened and hard of hearing Canadians. Employment rates are unacceptably low and much more can and should be done to advance employment opportunities for members of these groups.

We strongly encourage the Technical Committee on Tax Measures for Persons with Disabilities to direct the Ministers of Finance, National Revenue, Human Resources Development Canada and Labour Canada to resolve these serious and longstanding issues as soon as possible. The following are employment recommendations that the Canadian Hearing Society has advanced in other contexts. Each of these recommendations could be supplemented through a process of financial incentives administrated through the income tax system.

- 1) Implement the recommendations of the report by the Federal Task Force, issues entitled "Equal Citizenship for Canadians with Disabilities", chaired by Andy Scott, M.P., 1996.

- 2) Introduce and pass into law a strong, effective and enforceable Canadians with Disabilities Act that will:
 - Strengthen programs sponsored by the Employability Assistance for Persons with Disabilities initiative.
 - Ensure equal access to post-secondary education in Canada by removing taxes on disability supports and out-of-country bursaries, restoring grants to students with disabilities, and removing barriers to accessibility encountered by students with disabilities.
 - Enforce accessibility standards in all federal offices, including Human Resources Development Canada and Labour Canada, and places of business operated by employers on the federal employment equity list.
- 3) Call for federal/provincial/territorial ministers responsible for education and social services to jointly address financial and accommodation barriers that effectively deny deaf and hard of hearing students and consumers access to professional employment opportunities.
- 4) Amend regulations to the *Employment Equity Act* to include the following:
 - Require employers to establish their own disability advisory committees consisting of employees and community members with disabilities
 - Require employers to conduct separate employment reviews of employers who are disabled when hired, and employees who become disabled after being hired, for the purposes of their annual Employment Equity Report and Compliance Audit
 - Require Human Resources Development Canada and Labour Canada to implement a program that guides local offices and employers in the development of policies and procedures to accommodate deaf and hard of hearing job seekers and employees.

It is beyond the scope of this brief to advance a specific proposal for enhancing employment equity for persons with disabilities, however the Task Force can certainly make it clear that this is a policy direction that is to be encouraged and recommend that the Department of Finance cooperate with other government departments that are aware of the employment crisis faces by persons with disabilities by offering the income tax system as an effective mechanism through which to offer incentives.

The Canadian Hearing Society supports the use of the income tax system as a mechanism through which double taxation of the costs of accommodating persons with disabilities can be ended and positive incentives for employers can be introduced that will enhance employment opportunities for persons with disabilities.

CONCLUSION

The Canadian Hearing Society supports the efforts of the Technical Advisory Committee on Tax Measures for Persons with Disabilities to end the systemic discrimination against deaf and hard of hearing children, consumers and individuals with disabilities and their families. To prevent an increase in the number of deaf, deafened and hard of hearing professionals and unskilled workers forced onto the welfare rolls, we strongly encourage the Committee to direct Ministers of Finance, National Revenue, Human Resources Development Canada and Labour Canada to adopt the above recommendations to resolve these serious and long-standing issues immediately. By following these recommendations it will make it easier for employers to recruit and hire more professional and highly skilled deaf, deafened and hard of hearing individuals who will have gained access to training, post-secondary education and employment, and enjoy burden-free and fair tax policies for persons with disabilities. For those who remain unable to work due to disability, their incomes should not be taxed in a rational manner and public support for disability related supports should be available according to need, rather than in the current regressive fashion.

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Appendix 1

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