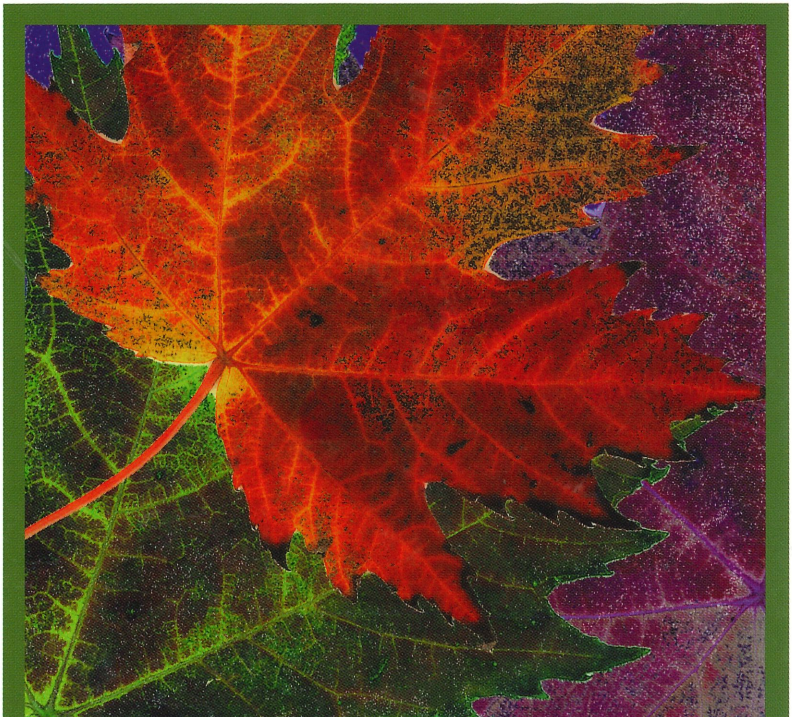
SOCIAL UNION SERIES

Federalism, Democracy and Health Policy in Canada



EDITED BY DUANE ADAMS

Federalism, Democracy and Health Policy in Canada

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The future of health policy is centre stage in Canadian politics today with declining public confidence in the quality and timeliness of available health services. Fixing the situation is high on governments' agendas. Since both federal and provincial governments play a role in the health-care system, part of addressing these issues requires that the different orders of government learn to work more effectively with one another.

The focus of this volume is on how federal and provincial governments relate to one another, and to citizens and stakeholder groups, in the development and implementation of health policy. The chapters include an assessment of the political landscape surrounding health policy and a careful and systematic analysis of intergovernmental relations in the following areas: Canada-wide goals and objectives for the health system, cost containment, the interpretation and enforcement of the *Canada Health Act*, the system for health surveillance, and the regionalization of provincial health systems. The authors focus on the tensions and trade-offs associated with advancing health policy goals in each of these areas in ways that are consistent with federalism principles and democratic accountability.

The case studies speak to the way the Canadian social union is functioning at the very time when the 1999 Federal-Provincial Social Union Framework Agreement is up for review. In a context where health policy is an overriding concern, this volume sheds new light on governance in the health sector and on ways it can be improved to better serve the health needs of Canadians and of the Canadian federation.

ISBN 0-88911-865-5
ISBN 0-88911-845-0 (set)

ISBN 0-88911-865-5
9 780889 118652

Social Union Series

Federalism, Democracy and Labour Market Policy in Canada, Tom McIntosh, editor

Federalism, Democracy and Health Policy in Canada, Duane Adams, editor

Disability and Federalism: Comparing Different Approaches to Full Participation, David Cameron and Fraser Valentine, editors

Health Policy and Federalism: A Comparative Perspective on Multi-Level Governance, Keith G. Banting and Stan Corbett, editors

Federalism, Democracy and Disability Policy in Canada, Alan Puttee, editor

Federalism, Democracy and Disability Policy in Canada

EDITED BY ALAN PUTTEE

Published for the Institute of Intergovernmental Relations
School of Policy Studies, Queen's University
by McGill-Queen's University Press
Montreal & Kingston • London • Ithaca

National Library of Canada Cataloguing in Publication

Main entry under title:

Federalism, democracy and disability policy in Canada / edited by Alan Puttee.

(Social union series)
Includes bibliographical references.
ISBN 1-55339-001-6 (bound).—ISBN 0-88911-855-8 (pbk.)

1. Handicapped—Government policy—Canada. I. Puttee, Alan H., 1944-
II. Queen's University (Kingston, Ont.). Institute of Intergovernmental Relations.
III. Series.

HV108.F43 2002 362.4'04561'0971 C2002-901522-7

The Institute of Intergovernmental Relations

The Institute is the only organization in Canada whose mandate is solely to promote research and communication on the challenges facing the federal system.

Current research interests include fiscal federalism, the social union, the reform of federal political institutions and the machinery of federal-provincial relations, Canadian federalism and the global economy, and comparative federalism.

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CONTENTS

INTRODUCTION TO SERIES

This is the fifth of six volumes being published by the Institute of Intergovernmental Relations related to the Canadian social union. Three of the volumes, including this one edited by Alan Puttee, are based on case studies of how Canadian governments manage intergovernmental relations in particular areas of social policy. The other three volumes compare the way in which different federations handle social policy.

The work for this series began in 1997, well before the 1999 signing of the Social Union Framework Agreement. Even at that time, it was clear that, as a result of the substantial cuts in federal fiscal transfers to the provinces, a new set of relationships was going to be required between federal and provincial governments in order to improve both the quality of social policy in Canada and the health of the federation.

In conceiving of the volumes for this series, two considerations were paramount. The first was that there was relatively little empirical literature on the way in which federal and provincial governments relate to one another, and to citizens and interest groups, in designing and delivering social programs. Yet it is at the level of programs and citizens, as much as at the level of political symbolism and high politics, that the social union is in practice defined. To help fill this knowledge gap, we thought it appropriate to design a series of case studies on the governance of Canadian social programs. And to ensure that the results of the case studies could be compared to one another, the Institute developed a research methodology that authors were asked to take into account as they conducted their research. This methodology built on earlier work by Margaret Biggs in analyzing these governance relationships from the perspective of their impact on policy, federalism, and democracy.

The second consideration was that Canadians were insufficiently aware of how other federations handle these same kinds of social program relationships. As a result, we thought it important to recruit authors from other federations who could explain the governance of social policy in their countries.

While the research for these volumes was under way, a series of roundtables and workshops (nine in total) was held. Those invited included officials from provincial and federal governments, representatives from stakeholder groups and individuals from the research community as well the case study authors. The purpose of these roundtables and workshops was to review and comment on the Canadian and comparative case studies. I thank the numerous participants in these events for helping the authors and editors with their work.

This series received financial assistance from the federal government and the governments of New Brunswick, Ontario, Saskatchewan, and Alberta. An advisory committee that included officials from these same jurisdictions as well as from academe also assisted in the development of the project. In fact, it was this committee that helped in the selection of the three social sectors that are the subject of this series: disability, labour market, and health.

The 1999 Social Union Framework Agreement is open for review in 2002. The agreement states that this review process will "ensure significant opportunities for input and feedback from Canadians." It is hoped that this volume and series will constitute a significant input to that process.

Harvey Lazar
General Editor
Social Union Series

PREFACE

This volume is part of a series that examines the formation and operation of social policy in Canada. The focus of the volume is on governance, specifically interaction between Canada's federal system and the disability sector.

The authors — academics, NGO representatives and social policy analysts — were asked first to evaluate various Canadian disability programs and then to consider whether an alternate governance arrangement could be expected to improve outcomes. Each step employed a common set of criteria provided by the Institute of Intergovernmental Relations, Queen's University: the effectiveness with which the programs meet their policy objectives, embody democratic values, and respect federalism principles.

Draft versions of the papers were discussed at a June 1999 workshop in Toronto. The workshop afforded the authors, editors, representatives of disability groups, federal/provincial government officials, and academics the opportunity to discuss and debate the issues and questions arising from the papers. The authors revised their papers based on the information from the workshop. A second workshop in June 2000 with similar representation considered the "lessons learned" from these papers and those in its companion volume, *Disability and Federalism: Comparing Different Approaches to Full Participation*, edited by David Cameron and Fraser Valentine which examines and compares the approach to disablement and disability policy in five federations.

I would like to thank each of the authors for their valuable contributions to this study of a complex and under-analyzed area. I also thank the workshop participants whose comments throughout the process were of great assistance in the preparation of this volume. I wish to extend a special thanks to Harvey

Lazar for his insight and assistance. Harvey's colleagues at the Institute of Intergovernmental Relations, Patti Candido and Mary Kennedy, provided administrative support in the preparation of the manuscript and Marilyn Banting, Valerie Jarus and Mark Howes of the Publication Unit of the School of Policy Studies provided copyediting, desk-top publishing and design.

Alan Puttee
March 2002

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FEDERALISM, DEMOCRACY AND DISABILITY POLICY IN CANADA: AN INTRODUCTION

Alan Puttee

INTRODUCTION

Like many of Canada's social programs, the jurisdiction over the bundle of public programs directed at people with disabilities is divided: each order of government, federal and provincial, plays important roles in program governance. To enrich understanding of governance issues in the disability area, the authors of the case studies that follow were given two tasks. First, they were asked to determine the impact of governance on the overall quality of the programs under review, that is, on the extent to which the programs meet their policy objectives (e.g., equity, efficiency), whether they reflect democratic values (e.g., accountability and transparency), and whether they respect the principles of Canada's federal system (e.g., respect for the division of powers). Second, the authors were asked to consider whether postulated changes in governance would serve the public interest, as measured by the impact on the same three elements: policy outcomes, democratic values and federalism principles.[1]

These are important questions of interest both to those concerned with disability policy itself and with federalism issues generally. The questions are particularly pertinent now during a period when governments in Canada are, in non-constitutional ways, redefining the federal-provincial relationship with respect to social programs (e.g., the 1999 signing of the Social Union Framework Agreement[2] by the federal government and all provinces except Quebec).

But the questions are also inherently difficult: clear-cut answers are not always available and the judgements of informed observers will differ. The task is made more difficult by the sheer complexity of the network of disability programs in Canada and the fact that the impact of policy changes that affect them, such as the mid-1990s replacement of the Canada Assistance Plan (CAP) by the Canadian Health and Social Transfer (CHST), are not yet fully determined.

This chapter briefly describes each of the five papers that follow, setting out the lessons that can be drawn from them, and then seeks to identify the lessons that can be drawn from the studies as a group. Three main themes emerge from the analysis:

- there are serious policy problems within Canada's disability programs;
- the governance of the programs is at least partially responsible; and
- governance arrangements based on collaboration between federal and provincial governments offer the best chance for improved policy outcomes.

THE CHAPTERS THAT FOLLOW

The second chapter in this volume, "The Canadian Political Landscape of Disability: Policy Perspectives, Social Status, Interest Groups and the Rights Movement," by Marcia Rioux and Michael Prince, provides an introduction to the four case studies that follow by examining the political landscape within which disability policy and programs operate. The key finding is that two competing perspectives underlie the manner in which disability issues are approached and understood. Under the first, the "worthy poor" perspective, the state, which is seen as having an obligation to care for people with disabilities, establishes separate programs (e.g., sheltered workshops) to protect and rehabilitate, programs that often result in the institutionalized exclusion of people with disabilities. By contrast, the "human rights" perspective sees much of disability as resulting from systemic barriers and conditions, which need to be removed in order to ensure that people with disabilities have the same bundle of rights and opportunities as other citizens. Rioux and Prince note that while the "worthy poor" perspective (typified by fundraising efforts based on charity and pity such as the Jerry Lewis telethon) continues to inform many policies and programs, the influence of the "human rights" perspective (typified by the use of the Charter of Rights and Freedoms to advance claims) is gaining ground.

The authors illustrate this advance by examining the growing trend to "individualized funding initiatives." Under this approach, people with disabilities receive funds from government to buy the supports and services they need. The authors argue that this direct funding mechanism puts more control in the hands of people with disabilities than does the traditional arrangement where government provides funds to agencies, which then dispense the supports/services according to their criteria. (This individualized funding approach is examined in more detail in the last two chapters in the volume.)

The first case study, "Designing Disability Policy in Canada: The Nature and Impact of Federalism on Policy Development," by Michael Prince, classifies the disability policy-making initiatives of the last 90 years according to the governance regime — classical, federal-provincial collaborative, unilateral federal, and interprovincial collaboration — under which they were conceived. In assessing these regime types with regard to their impact, Prince's principal conclusion is that the disability policy sector is, generally, truly federalist and typified by both independent and interdependent policy and program actions. Specifically, he finds that:

- the goals of giving greater emphasis to socio-political rights and economic integration of people with disabilities are more likely to be achieved under classical and collaborative governance regimes (these regimes have dominated in the disability area, a situation that Prince expects to continue): unilateral federalism has not been associated with the achievement of these goals;
- classical and collaborative regimes have been democracy-friendly by, for example, encouraging public participation and accountability, a conclusion of particular interest since the federal-provincial collaborative regime is conventionally criticized as damaging to democratic values: democratic values are least likely to be upheld under unilateral federalism; and
- federalism principles are most likely to be upheld under classical regimes and least likely to be upheld under unilateral federalism: collaborative regimes have entailed less intergovernmental conflict in the disability area than elsewhere.

"Reforming the Disability Insurance System: A Collaborative Approach," by Alan Puttee examines Canada's public disability insurance programs, that is, those financed by premiums paid by employers, employees, and auto owners. He concludes that:

- the disability insurance system has serious policy flaws, disbursing widely varying benefits to people with similar disabilities at significant administrative cost, one effect of which is the high incidence of people with disabilities who must resort to social assistance and related programs: the disability insurance system scores better on upholding democratic and federalism principles;
- the classical federalism that characterizes most of the disability insurance system has played a role in frustrating comprehensive reform in this area; and
- comprehensive reform is most likely to be achieved via a collaborative federal-provincial process designed to increase the chances that at least one province would replace current programs with a comprehensive disability insurance program; the advantages of such a program may lead other provinces to follow suit, bringing the country closer to a nationwide plan.

"Disability Supports and Services in the Social Union," by Roy Hanes and Allan Moscovitch describes and assesses the operation and governance of programs that provide supports and services (e.g., wheelchairs, transportation, counselling, job training, attendant care) to working-age people with disabilities, principally those with little or no income of their own. The chapter considers the impacts of the federal decision to replace the cost-shared Canada Assistance Plan, which the authors classify as "federal unilateralist," with the block-funded Canada Health and Social Transfer, an example of classical or "disentangled" federalism. Hanes and Moscovitch conclude that the shift in governance regimes associated with this change:

- had negative effects on disability policy via reduced social assistance benefit rates and narrowed eligibility for the able-bodied unemployed: this is characterized as representing a re-emergence of the view of the able-bodied recipient as the "undeserving poor" and people with disabilities as the "most deserving" of the poor: in some provinces the corollary has been a move in the direction of targeting only the most severely disabled for eligibility; and
- was typical of the change from a more activist federal role in social policy apparent in the 1945–84 period, when most of Canada's welfare state was constructed, to the smaller federal role that has emerged since.

Hanes and Moscovitch set out two reform options for consideration, a return to federal-provincial cost-sharing for supports and services and a federal income tax-based program that would make direct payments to people with disabilities who purchase eligible supports and services. The authors conclude that the success of each option depends on cooperation between federal and provincial governments.

The final case study, "Governance Regimes in Disability-Related Policy and Programs: A Focus on Community Support Systems," by Michael Bach, focuses on the relationship between the community support systems that actually deliver many of the disability-related supports and services (e.g., community agencies, volunteer groups) and the intergovernmental regimes within which they work. As with Hanes and Moscovitch, Bach cites the increasing disentanglement (i.e., classical governance) which has recently characterized the disability sector and the severe fiscal pressures that have been associated with it. He also finds, however, that the recent shift to classical governance has had some advantages such as fostering greater innovation and improved program responsiveness.

Bach sets out the broad outlines of a reform agenda, which includes direct payments to people with disabilities to finance the purchase of supports and services and measures to secure the information-gathering and auditing functions that disentanglement has sent into some decline. He concludes that the successful implementation of the reforms requires greater federal-provincial collaboration, but argues that the advantages of disentangled governance in areas such as program delivery should be maintained.

LESSONS FROM THE PAPERS

The chapters, taken together, suggest a number of broad conclusions regarding the disability sector. With respect to the significance of the disability sector as a whole, the authors make clear that the sector represents a key area of public policy, one that engages the federal and every provincial and territorial government. Fully one in six Canadians self-identifies as having a disability,[3] and this proportion is likely to grow as the population ages. The fiscal significance of disability is larger than many would guess: adding just the direct cost of public programs (which is seldom done) shows annual public expenditures probably in excess of $15 billion,[4] ranking disability near the top of Canada's social expenditures (currently larger, for example, than Employment Insurance). And its relative public policy significance is the greater since, given the relatively small role of private disability plans, these public expenditures account for most of the funds flowing to people with disabilities.

With respect to governance, the chapters make clear that while each order of government plays an important role in the disability area, much of the control over the expenditure programs rests in the hands of provincial governments: the classical regime dominates and its dominance increased with the disappearance of CAP. While the role of the federal government in the sector's fiscal arrangements is now relatively small, it has nonetheless played a crucial role in two areas. First, by including a disability component in the Canada Pension Plan (CPP) in the mid-1960s, the federal government (together with the Quebec government with respect to the Quebec Pension Plan) initiated Canada's first nationwide disability insurance plan, an example of federal-provincial collaboration in the disability area that has not been matched since. As well, the federal government has significantly advanced the "rights agenda" of people with disabilities, by including their equality rights in the Charter of Rights and Freedoms and through programs such as the Charter Challenges Program.

A key conclusion of the case study evaluations of the disability insurance and supports/services programs is that they have serious policy problems, that is, policy objectives such as the equitable and efficient distribution of adequate benefits are frequently not met. While there are some problems on the democratic and federalism fronts, these are smaller. The policy problems include the patchwork character of the disability insurance system which leads to widely varying outcomes for people in similar situations and to high administrative cost; inadequate benefits stemming from the stricter eligibility requirements now facing many people with disabilities who depend on last-resort-type programs; the equity problems that are sometimes associated with the use of community support systems to disburse supports and services; the provincial disparities in service levels associated with the CAP-to-CHST change — disparities that are likely to grow over time if, as is likely, the effects of economic downturns put poorer provinces under greater fiscal pressure than wealthier provinces.

The chapters differ somewhat with respect to the link between the shortcomings they identify in the disability sector and the prevailing intergovernmental regimes. With respect to disability insurance, the relationship between governance arrangements and the policy blockage is suggestive but not definitive. The inability of the federal government to act alone, together with the difficulties faced by reform-minded provinces represent immense governance-related barriers to reform. But other barriers to reform are cited, for example, the likely opposition to comprehensive reform by powerful private interests. What seems clear, though, is that the sheer magnitude of the governance barriers have at least played a role, and perhaps a significant role, in the policy blockage in disability insurance. The keen interest that governments have shown in comprehensive reform, as evidenced by several major policy reviews by both orders of government, which, however, have led to few concrete results, also suggests that governance has played a role in blocking reform.

Each of the two chapters that deal with supports and services for people with disabilities concludes that there is a clear relationship between intergovernmental regimes and the many policy problems that they identify. Hanes and Moscovitch draw a clear link. They argue that the move to classical governance associated with the CAP-to-CHST change led directly to the undesirable changes in policy they identify. They place this shift to classical governance in historical perspective, arguing that it is a return to a pre-World War II view of federalism that was overtaken by the more activist federal role in social policy of the 1945–84 period. Bach also identifies negative policy outcomes from the shift to classical governance in this area, but he also sees advantages — the greater scope for innovation and an improved responsiveness that has come with the disentanglement associated with the CHST.

Perhaps the most significant finding of the chapters is the link that is identified between intergovernmental regimes and the prospects of reform: each of the three papers that propose disability reforms concludes that significant reform in the disability sector is dependent on collaboration between the federal and provincial governments. In disability insurance, some form of federal-provincial collaboration is clearly a condition for comprehensive reform: jurisdictional realities would doom any federal-only attempt at nationwide comprehensive reform and reform attempts by one province or several provinces acting together would face major barriers (except in Quebec). With respect to supports and services reform, the same conclusion applies: both of the chapters examining this topic conclude that success of the reform measures they set out is dependent on federal-provincial collaboration.

Summarizing then, the chapters identify serious policy problems within the disability sector, a sector that makes up a significant part of Canada's social programming. Most of the disability sector is under classical governance and, while views will differ as to degree, some part of the problems identified can be traced to the classical governance, which dominates in the sector. The chapters conclude that a change in regime is a necessary precondition to the achievement of the proposed reforms: each concludes that a federal-provincial cooperative regime is required.

PREPARING FOR A REFORM AGENDA

With the need for significant reform apparent and with reform dependent on cooperation between federal and provincial governments, the way ahead seems clear: concerted, collaborative action on the part of federal and provincial governments working with the disability community and others to fashion a wide-ranging reform agenda. And, Prince's work suggests that much might be expected from such an effort. His review of designing disability policy indicates that both the federal and provincial governments have long been involved in disability programming and have a comparatively successful history of working together (e.g., the constitutional amendment that allowed for CPP Disability). The success has not only been on the policy side but also in the protection afforded democratic values and procedures by extending the policy-making process beyond ministers and bureaucrats to legislators, the disability community, and others. This too is encouraging since it is in just this area that collaborative federalism, with its risks of behind-closed-doors executive federalism, has frequently been criticized. Further encouragement is offered by Rioux and Prince who note that the policy that would emerge from a concerted and collaborative effort by federal and provincial governments would be more likely to be informed by a human rights perspective than by the worthy poor perspective that held such influence in the past.

In addition to these advantages there has been progress on establishing the bureaucratic and ministerial structures to deal with disability in the federal-provincial forum. And federal and provincial ministers of social services have been working together within these structures for some time. In the late 1990s, these ministers identified disability policy as a priority area, which led, *inter alia*, in 1998, to the release of the discussion paper, *In Unison: A Canadian Approach to Disability Issues*.[5] The paper dealt with many of the same issues raised in this volume, for example, the "full citizenship approach" to disability, the incorporation of the needs of people with disabilities in the initial design of all programs and activities, the need for the reform of supports and services and of disability income programs. Two years later, a follow-up document by the same ministers, *In Unison 2000: Persons with Disabilities in Canada*, cited the agreement of ministers to examine the feasibility of a new disability tax benefit linked to disability supports and jointly to analyze labour market needs of people with disabilities.

But despite these positive indicators — the past successes of collaborative policy-making cited by Prince; the identification by ministers of disability as a priority area; and an apparent consensus that significant reform is needed; the establishment of federal-provincial structures to pursue reform — little of significance has emerged from the federal-provincial work. Whether because of the complexity of the problems disability reform presents, the ideological issues regarding the role of government it raises, budgetary considerations, the simple lack of political will or other reasons, no major disability reform has yet been implemented.[6]

Some will take the so-far meager output of the federal-provincial process as an indicator that major disability reform is not in the cards, at least in the foreseeable future. More optimistic observers will take the positive indicators set out above as signposts on a lengthy road to major reform. Perhaps the intervention of the first ministers is necessary to ensure the road to major reform is followed: a decision on their part to invigorate the reform process would give the enterprise the profile and momentum that only political will can provide. Their intervention could result in a broader and deeper joint planning process reflective of their undertakings in the 1999 Social Union Framework Agreement. This could result in a set of fully articulated and costed options for reform that would form the basis for public consultations and then the design of a concrete agenda for disability reform. The chapters that follow make clear that the scope of such an enterprise is large and would require concerted effort by governments over a significant period of time. Devoting such effort to the disability area would breathe life into the Social Union Framework and, more importantly, holds the possibility of securing significant advances in a large and crucial part of Canada's social programming.

NOTES

[1] Each of the five papers in the volume adopt the four-way classification of governance regimes established by the *Governance of the Social Union* project:

- unilateral federalism where the federal government, without provincial approval, attaches conditions to financial transfers to provincial governments in an area of exclusive provincial jurisdiction;

- "classical" or disentangled federalism where each order of government acts independently in its area of constitutional competence; in areas where each has jurisdiction and chooses to exercise it, the two orders of government act independently of the other;
- collaborative federalism where the two orders of government, recognizing their interdependence, act jointly with no undue reliance on "carrots or sticks"; and
- interprovincial collaboration where there is collaboration among provinces with no federal involvement.

[2] Under the agreement, governments agreed, *inter alia*, to eliminate measures in social programs that hamper mobility, to restrict the federal "spending power," to monitor and report on outcomes of social programs, to undertake joint planning, and to identify priorities for collaborative action.

[3] This estimate is from Statistics Canada's Health and Activity Limitation Survey. The survey identifies mild, moderate and severe disability by assigning points to partial/total losses of function. In 1991, 15.5 percent of the population reported a disability (7.9 percent mild; 4.6 percent moderate; 3.1 percent severe).

[4] This is an estimate. Puttee's chapter cites public expenditure levels of over $13 billion in the mid/late 1990s. This does not include the cost of disability-related tax measures (e.g., disability tax credit, tax-free status of Workers' Compensation payments), the cost of employment and related programs for people with disabilities and the cost of disability supports and services not covered under the income programs.

[5] The Government of Quebec did not take part in the development of this or related papers.

[6] S. Torjman, *First Ministers' Last Priority* (Ottawa: The Caledon Institute, 2000).

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THE CANADIAN POLITICAL LANDSCAPE OF DISABILITY: POLICY PERSPECTIVES, SOCIAL STATUS, INTEREST GROUPS AND THE RIGHTS MOVEMENT

Marcia H. Rioux and Michael J. Prince

INTRODUCTION

The purpose of this chapter is to provide an overview of some central features of the political landscape of Canadian disability policy. The elements of the political landscape — the political, economic and social forces driving changes in policy and programs in the disability area — are complicated and intertwined. Our focus here is on those characteristics and trends in disability policy that have ramifications for the social union.

We define the political landscape of disability to include four dimensions:

- the assumptions and beliefs about the causes and nature of disability;
- the social and economic living conditions of persons with disabilities;
- the prevalence and orientation of interest groups in this policy community; and,
- program and service provision practices and reform ideas.

A major preoccupation of this chapter is the role of underlying and persistent beliefs and assumptions that shape our thinking and action toward disability issues. Our main argument is that two distinct perspectives are coexistent in contemporary disability policy and politics in Canada. The first and much older perspective is what we refer to as the "worthy poor" viewpoint of persons with disabilities. This perspective is evident in the historical origins of much of Canada's social programs as well as in the present-day disparities faced by many people with disabilities and in many existing services. The origins of this regime lie in a political landscape that has its roots in the English Poor Laws, shaped by conflicting definitions of disability and a multi-level policy and program process. The second perspective is a "human rights" framework that has both an international and domestic dimension and has served as the preferred discourse of many disability groups in the past generation. We suggest that the trend on the Canadian political landscape is increasingly toward the human rights perspective.

The chapter's six sections each focus on one or more of the political dimensions of the Canadian scene. The first section traces the history of how the notion of the worthy poor gave rise to policy choices that continue to disadvantage people with disabilities. The second section examines the social and economic status of persons with disabilities as background for understanding the barriers to participation they face. Third, alternative positions on disability are outlined, each of which have shaped policy-making and service provision. The fourth section traces the emergence of the disability rights movement in Canada over the past 30 years or so, noting trends in the formation and orientation of major interest groups. The fifth section elaborates on these themes by examining the growing scope and application of a human rights perspective in disability policy, including in intergovernmental relations. The sixth section explores individualized funding; a reform idea that would change how Canada's social union is experienced by persons with disabilities.

A BRIEF HISTORY OF PEOPLE WITH DISABILITIES AS WORTHY POOR

The roots of the welfare state in Canada can be found in the English Poor Laws, which established a distinction between the worthy and the unworthy poor, a distinction that remains relevant today.[1] Able-bodied and able-minded men and women considered capable but unwilling to work were regarded as unworthy. For those who fall into this category today, the modern welfare state has been minimalist and residual, incorporating the less-eligibility principle.[2] The "worthy poor" — people with disabilities, the aged, and infirm — were those the state established some obligation to care for. For this group, the welfare state has been in some respects minimalist but not necessarily residual, with the problem sometimes being one of over-serving rather than underfunding.

Different obligations were established for the worthy poor than for those considered unworthy. And, crucially, these obligations could only be exercised by constructing legal and social differences that served to legitimate dissimilar treatment and duties between the worthy and unworthy poor[3] (see Table 1).

TABLE 1
Worthy Poor Perspective of Disability Policy

- Policy-making based on a deserving/non-deserving distinction.
- Disability viewed as individual impairment or pathology.
- Persons with disability typically deemed as unemployable and with special needs, treated as objects of charity.
- Welfare state provision perhaps minimal, but also institutionalized and segregated.
- Program and service goals to rehabilitate, to protect, and offer basic security.
- Separate and disparate benefits and services result in exclusion and weak citizenship status.

The development of the Canadian welfare state in the immediate postwar period illustrates how this segregation occurred. The framework of obligations for the welfare state emphasized security, citizenship, and democracy and these became the pillars of the Canadian state, the framework for well-being, and provided the basis for massive investment in the institutional infrastructure for welfare provision. The figure of the citizen embodied in the framework was of the self-made, rational, and independent individual exercising basic democratic and legal rights. However, these developments had the effect of entrenching the worthy/unworthy distinction described above. Because many people with disabilities did not meet the tests imposed by such a concept of citizen, they were to be cared for through the security pillar of the welfare state. Considered incompetent to function in society, this being the ticket to becoming worthy, the welfare state established systems of segregation for people with disabilities. In this way, the postwar framework for securing the welfare and well-being of Canadians ironically institutionalized exclusion for people with disabilities.

Under the resulting legal and social regime people with disabilities became the object of charity and lost many of their basic citizenship rights. Investment in institutional facilities, special education, segregated vocational training and employment, and community services exclusively for persons with disabilities grew substantially in the postwar period. These systems segregated targeted individuals from their communities and specifically from: (i) their families by commitment to institutions; (ii) their educational institutions by declaring uneducable; (iii) the labour markets by designating as unemployable; (iv) political participation by determining ineligibility to vote; and (v) the exercise of rights of self-determination by basing entitlement to services and housing because of category.

The monuments to people with disabilities as worthy poor are the parallel programs and services initially set up as charity, but now financed by the public purse. Thus, we find separate classes or separate schools paid for through the public school system; para-transit systems operated by municipal transportation systems; and, sheltered workshops paid for out of social assistance and vocational rehabilitation budgets managed by non-profit societies.

The costs of being worthy poor have been high for people with disabilities, including extremely high rates of unemployment, violence and abuse, illiteracy, poverty, illness, social isolation, and discrimination.

THE SOCIAL STATUS OF CANADIANS WITH DISABILITIES

The social stratification or patterns of inequalities in a society is another fundamental feature of the political terrain.[4] As individuals and as a particular group, Canadians with disabilities tend to be at the lower end of status hierarchies, with fewer resources and poorer life chances, than most other citizens.[5] This troubling position or status of people with disabilities in contemporary Canada has raised the question of exclusion from the enjoyment of the full range of citizenship rights.

Persons with disabilities represent a large and growing segment of the Canadian population, increasing from 13 to nearly 16 percent between the 1986 and 1991 post-censal surveys on disability (HALS).[6] (Note that disability is not a static state: the Labour Market Activity Survey shows that more than half of working-age people who report having a disability subsequently report no longer having one.) Since people with disabilities are, on average, older than other Canadians, with the aging of the population, the incidence of disability will continue to rise.

The highest level of education achieved by persons with activity restrictions as defined by the National Population Health Survey (NPHS) is, on average, lower than that of other Canadians. Partly as a result, persons with disabilities are poorer than other Canadians, women with disabilities particularly so, and are more likely than others to rely on the social security system for personal and family income.[7]

The self-reported general health of people with activity restrictions is poorer than others. They are more likely than others to be in families where another family member is in very bad health and likely to die, or has a drug or alcohol problem. This is particularly true for people who rely on the social security system as the main source of family income. Persons whose activities are restricted due to a long-term health condition or disability are nearly twice as likely as others to be living alone. They are more prone than others to violence, abuse or other harms. They are less likely than others to have someone they can confide in about their private feelings or someone they can turn to in crises, for personal decisions, or for emotional support. According to the NPHS, some 1.7 million people with activity restrictions need help with one or more everyday activities such as meal preparation, shopping or household chores.

With respect to labour force status, people with disabilities have both significantly lower labour force participation rates (the percentage of the population in the labour force) and higher unemployment rates (the percentage of those in the labour force looking for work) compared to those without disabilities. The difference in participation rates increases with age: in the 55 to 64 age group, the participation rate of those without disabilities is almost double that of people with disabilities (61 percent versus 32 percent). The unemployment rate in all age groups is around half again as high for those with disabilities compared to that for those without disabilities.[8]

On employment supports for people with disabilities, Fawcett reports that the availability of these falls considerably short of the need. Moreover, her work suggests that even modest workplace accommodations would increase the labour force participation rate of people with disabilities. She finds, for example, over two-thirds of people with disabilities do not require extensive job accommodations in order to work and that the most widely needed supports are ones that call for employer flexibility and creativity rather than those that entail major cash outlays.[9]

In light of these socio-economic conditions, persons with disabilities, supported by their families and other advocates, have formed groups so as to mobilize politically to obtain action at all levels of government. Over the past

30 years in particular, these groups have articulated new perspectives and advanced new claims in order to improve their position in Canadian society. Disability has emerged, in other terms, as a notable feature of the politics of citizenship rights and status.

ALTERNATIVE PERSPECTIVES ON DISABILITY

The history of the treatment and care for people with disabilities reflects two distinct perspectives on the condition of disability and its aetiology. For much of the twentieth century, disability was understood as an individual pathology; a condition grounded in the physiological, biological, or cognitive impairment of the individual. The resulting incapacity was the consequence of that biomedical or functional condition. Research that is more recent suggests that disability is also, or even principally, the result of the social, political, and economic conditions in which people with disabilities live. It results from systemic conditions that act as barriers to participation and inclusion of people with disabilities in the various institutional domains of Canadian society.[10]

This recognition that disability is more than the biomedical impairment or individual pathology has led to a shift in expectations of people concerned with disability and in the way in which the disability issue is defined in policy and program terms. If a person's disability is attributable to social conditions rather than a biological impairment, then providing rehabilitation services, for example, will not be sufficient to enable them to live inclusively in their communities. If the outcome of services and programs is to enable people with disabilities to exercise citizenship, then "separate but equal" services will not achieve it.

Disability understood from this perspective is a condition resulting from the socio-political circumstances that affect the individual, a social model that is detailed in many recent analyses.[11] The acceptance that the locus of the problem is not the individual but socio-political circumstances has had repercussions on both generic and specialized service systems, and on the work of federal and provincial policymakers and administrators, community advocates, and people with disabilities.

These different assumptions about disability and its aetiology have operated historically to create varying and conflicting program definitions of disability. Some programs require that an individual seeking access to programming based on disability have a loss of physical, sensory, intellectual or psychological functioning so severe that he or she has little or no employment potential. Typically, such requirements are embedded in social service and pension programs and create major obstacles to employment for those seeking, for instance, attendant services available under those programs, who also want employment. Some individuals may only qualify for a disability-related support by removing themselves entirely from the labour force. Individuals demonstrating a capacity for employment by, for example, attending courses or doing volunteer work could lose the supports available to them.

In contrast to these definitions, the federal *Employment Equity Act* stipulates that a person will be considered disabled for the purpose of the Act if their prospects of employment are substantially reduced as a result of an ongoing or recurring physical, mental, sensory, psychiatric or learning impairment. The Act relies on self-reporting rather than formal assessment of disability status. The *Canadian Human Rights Act* adopts a broader approach to defining disability, including within its scope any previous mental or physical disability, as well as disfigurement and dependence on drugs or alcohol.

THE EXPANDING DISABILITY INTEREST GROUP COMMUNITY

The disability rights movement first emerged 30 to 40 years ago and is now a key part of the disability interest-group community. This section traces its development and contrasts it with other parts of the disability interest-group community. Disability rights groups and the broader disability policy community in Canada are part of a larger movement around the world. Akin to many fields in social policy, economic and fiscal considerations have driven change in disability policy and programs, but those shifts have in some cases coincided with ideological agendas of people with disabilities and the equality rights movement. Indeed, public policy and social movements in one country can and do provide models of change for groups in another in light of their struggles and results.[12]

Non-governmental organizations (NGOs) for people with disabilities have been in existence for about 80 years. Two types of disability interest groups in the international and domestic arenas have relevance for Canadian policy, politics, and federalism. First, most of the older (pre-1970) organizations, and some newer ones, focus on a single type of disability. The philosophy expressed by these traditional NGOs is commonly some mixture of charity, paternalism, and a medical model of care. In terms of membership and control over decision-making, these organizations tend to be *for* persons with disabilities rather than *of* persons with disabilities.

Second, many of the more recently established NGOs developed in reaction to the traditional hegemony of the groups noted above and are based on the view that people with disabilities are citizens entitled to the same bundle of rights and opportunities as everyone else in society. From the beginning, they sought to plant the seeds of a view of disability based on the assertion of individual autonomy and self-control that was strictly differentiated from the sickness or medical model. The groups were created and remain controlled and represented by people with disabilities and, for the most part, consist of multi- or cross-disability groups, acting as coalitions and policy networks. The disability rights groups include the consumer movement of disabled people which emerged in the United States in the early 1970s arguing that as consumers of health, social and public services, people with disabilities had a right to a voice in making service choices and in monitoring service quality. This consumer philosophy became pronounced in Canada in the 1970s where consumer groups for people with disabilities formed in every province as well as the national level.[13] These groups emphasize collective advocacy and political mobilization to achieve accessible mainstream services and equal opportunities.

The aims of both sets of disability groups include offering mutual support, as well as the more political goals of seeking changes in policies, programs, and professional practices and securing equality rights through law reform. But since the equality-seeking groups view disability as a matter of social justice, human rights, and citizenship, their strategies of advocacy are broader, spanning such activities as articulating a clear vision; building coalitions; creating public awareness and influencing public opinion through the media; lobbying governments about the impacts of existing services and benefits; and sharing information and research with politicians and public servants.[14]

A key development for both sets of disability groups was the 1982 adoption of the *Canadian Charter of Rights and Freedoms,* which included equality rights for persons with disabilities (making Canada the first country in the world to include such rights in a fundamental constitutional document). Section 15(1) of the Charter accords equal protection and equal benefit of the law without discrimination based on mental or physical disability. Further, section 15(2) identifies individuals or groups with mental or physical disabilities as target groups for affirmative action laws or programs. While both sets of disability groups have used the Charter as a legal resource to advance their claims (often supported by gender, ethnic and race groups) the constitutional recognition of Canadians with disabilities has, in particular, raised hopes and provided a focal point for disability rights groups, encouraging them to express their interests in the language of equal rights as well as to seek clarification of these rights through the courts.

By the 1990s, interest groups in the disability field included organizations grounded in the disease model and in the equality rights and discrimination model. In public campaigns, these organizations reflected quite distinct perspectives on disability. Fund-raising campaigns range from Tiny Tim campaigns and Jerry Lewis telethons based on charity and pity, to slogans such as “Real Work for Real Pay” and “Label Jars not People.” Legal cases challenging segregation and denial of services were winding their way through the court systems. Some concrete achievements emerged, for instance, statutory human rights were amended to include physical and mental handicap as prohibited grounds of discrimination, first in employment and then in services, facilities, and accommodation.

Governments began to recognize, as early as the 1960s, that their investment in bricks and mortar were very costly and they began closing the large institutions that housed people with disabilities, addressing first the closure of psychiatric hospitals. The next wave of closures and policy initiatives that took place in the 1980s recognized the numbers of people with psychiatric disabilities living in the street with no support due to the first wave of deinstitutionalization. Account was taken of the need to shift at least some proportion of the dollars saved in deinstitutionalization back into the community to ensure at least minimal levels of care and in some cases very fine care. De-institutionalization was not simply about closing institutions but also included the development of community resources. Pressure for the closure of these large institutions came from government recognition of the high cost of such care; a series of public disclosures of the deplorable conditions within the institutions; and the emerging advocacy movement which argued that segregation was a contravention of the individual’s right to choice and self-determination. Both the federal and provincial governments have provided resources for demonstration programs in response to demands by people with disabilities themselves to be out of institutional care or total service systems, and to have control over the services they receive.

From the early 1980s to early 1990s, successive federal administrations cultivated a closer, ongoing relationship with organizations in the disability sector. Financial assistance to groups representing persons with disabilities grew significantly more in absolute terms and in relation to the funding to other groups, such as women's organizations.[15] The 1991–96 National Strategy for the Integration of Persons with Disabilities also raised the profile of disability policy on the federal agenda. The 1998 federal budget introduced the Social Development Partnerships program, a new funding regime in Human Resources Development Canada that provides organizational and project funding to national disability organizations and other national social service agencies. Priorities for funding projects are advocacy, capacity-building of the organizations themselves, and citizenship rights.[16] Successive parliamentary committees charged with this policy responsibility have fostered a positive working relationship with disability groups at the national level. Many disability advocates regard the parliamentary approach of including all political parties, reporting directly to the House of Commons, and requiring federal ministers and officials to respond, a useful process for furthering their goals. National disability groups consult with the Department of Finance and the Canada Customs and Revenue Agency over the reform, expansion, and administration of disability tax measures. Nearly all the federal budgets of the past decade have included disability tax initiatives. Moreover, the discourse of citizenship, increasingly advanced by disability groups, along with the Charter, law reforms, and the Charter Challenges Program all serve to encourage a pan-Canadian outlook or national orientation to policy-making.

The 1990s saw yet another shift in priorities related to disability. The Health and Activity Limitation Survey (HALS), a post-censal survey carried out by Statistics Canada for the first time in 1986, made clear the extent of the discrepancy in income and in employment between those with disabilities and those without. That information could hardly be ignored by governments and in any event provided solid information on which disability advocacy organizations advance claims for greater government investment in training programs and employment programs for people with disabilities. Not only was it clear that the investment in bricks and mortar of the mid-twentieth century was very costly, but deficit control and the restraint of program spending became an imperative of governments generally. The explicit agenda to cut costs led to increasing emphasis on program consolidation, particularly in job creation as well as a reduction of dependency on income support and other publicly funded programs. The 1997 federal budget introduced the Opportunities Fund for persons with disabilities. This was originally a three-year initiative and was extended for another three years by the 2000 budget. The fund seeks to offer funding to 30 national disability and other organizations and to about 120 projects designed to offer work experience and employment.

ELABORATING A HUMAN RIGHTS FRAMEWORK

Cracks in the postwar social policy framework began to emerge in the 1970s.[17] Claims for its restructuring gained momentum through the 1980s and 1990s, first from the civil rights movement, and later from the growing disability rights movement. In response to the challenge, a new foundation of rights was established in Canada and internationally in response to such claims.[18] Major elements of this human rights perspective are outlined in Table 2.

TABLE 2
Human Rights Perspective on Disability Policy

- Policy-making based on a discourse of individual and group rights and duties.
- Disability perceived as resulting, in large part, from systemic barriers and conditions.
- Persons with disabilities recognized as individuals with capacities of other citizens for independent living, including employment.
- Restructuring of welfare state provisions toward generic and mainstream services.
- Policy goals to enact and protect rights, to accommodate, to promote employment, reduce dependency on income support, and support community living.
- Removing barriers, shifting attitudes, and promoting inclusion toward full citizenship.

The enactment of rights for people with disabilities within human rights legislation and the entrenchment of constitutional equality rights for people with disabilities within the Charter of Rights and Freedoms have had important consequences in Canada. These are now legally entrenched on an equal basis with the rights accorded to women, and people of minority races, cultures and religions. The prohibition against discrimination under provincial human rights statutes has extended, in the past 15 years, from issues of employment for those with physical handicaps to include services, facilities, and accommodation for people with both mental and physical handicaps. Increasingly, these statutes have become expansive instruments of rights protections. Canada is also a signatory to a number of international agreements that guarantee political, social, and economic rights for people with disabilities. See Table 3 for major examples over the past 50 years.

TABLE 3
International Agreements on Human Rights and Persons with Disabilities

- United Nations (UN) Universal Declaration of Human Rights (1948).
- UN Declaration on the Rights of the Mentally Retarded (1971).
- UN Declaration on the Rights of Disabled Persons (1975).
- UN International Year of Disabled Persons (1981).
- UN World Program of Action Concerning Disabled Persons (1983).
- UN Decade of Disabled Persons (1983–92).
- UN Convention on the Rights of the Child (1989).
- UN Resolution 46-110, Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health (1992).
- UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993).
- UN Human Rights Commission Resolution 2000/51 (2000).

The principles in these declarations and other resolutions are adopted in various ways by numerous UN organizations and programs. They have provided philosophical inspiration and pragmatic direction for Canadian organizations for the disabled in lobbying the federal, provincial, territorial, and local governments.[19]

The impact of the legal entrenchment of this framework has been both direct and indirect. Successful legal challenges have been important; so too have been the indirect ways in which the legal entrenchment of rights has influenced policy and attitudes. There has been a shift from the traditional way of viewing people with disabilities to the introduction of a systemic analysis of the discrimination faced by people with disabilities. The notion that disability is a result of individual pathology has given way to at least a nominal recognition that the roots of inequality are in the state and market organization of social relationships.

There are many examples of this shift in thinking and elaboration of a human rights framework. For instance, in June 1989, a federal House of Commons committee was mandated with the investigation of human rights and disability, a contrast to earlier committees that linked disability to health rather than human rights. Legal and policy questions have been raised about the fairness of keeping people in segregated workshops. Governments have developed policies that plan for the closure of large institutions. Governments are beginning to establish legislative and policy provisions for assisted and supported decision-making as an alternative to the removal of rights through guardianship.[20] Hospitals are being challenged, legally and ethically, on their policies of refusing treatment to new-borns and other persons with severe disabilities. Protocols have been introduced by some provincial attorneys-general to ensure that people with intellectual and other disabilities can give evidence in court and therefore receive the same access to justice as others.[21] Income assistance programs have been established that provide direct funding to people with disabilities to contract for their own choice of services, an alternative to traditional funding through service agencies. There have also been successful legal challenges to the denial of rights in the past 15 years. All of these changes reflect a shift toward ensuring the social well-being of people with disabilities, their self-determination and participation in decisions that affect their person.

POLICY REFORM: FROM PROGRAM ALLOCATIONS TO INDIVIDUALIZED FUNDING

Major changes are under way in the design of social policy and programs that affect Canadians with disabilities. Until recently, the policy sectors that most affected persons with disabilities tended to operate largely in isolation from one another. In the context of the renewal of the Canadian federation, the provinces and territories are gaining more scope to design and deliver programs without having to conform to federal criteria as in the days of the now-defunct Canada Assistance Plan. An underlying aim is to increase intraprovincial/territorial coordination and service integration across program areas while reducing program costs and duplication.

Presently, an entire range of programs once delivered separately as training, education, vocational rehabilitation, and labour market development programs are in a variety of processes and stages of consolidation.[22] Together the programs and services aim to promote employment and reduce dependency on income support and other publicly funded services. The *Employment Insurance Act* and the federal-provincial labour market development agreements reflect this principle. Efforts are underway also to coordinate income support and income replacement programs, such as Canada Pension Plan Disability benefits, Employment Insurance, Workers' Compensation, pensions, and welfare. As well, in most parts of the country, health and social services programs are being integrated into a single system at the provincial level and delivered through regional health and social services councils, boards, and agencies.

Block-funding has been the primary mechanism for funding disability-related supports in Canada. Under this arrangement, provincial governments, often with federal funding contributions, provide block-funding to providers of services such as hospitals and public or private agencies providing housing, personal supports, vocational services, aids and devices, and/or transportation. This funding arrangement has resulted in the development of an infrastructure of disability-related services across the country ranging from rehabilitation hospitals to consumer-run community agencies providing housing and a variety of other supports.

Despite the funding and development of a wide range of supports, people with disabilities and their advocacy organizations have raised concerns that the predominant funding arrangement presents formidable barriers to their capacity to exercise control over their lives and over the kinds of support that will be delivered, where, when, and by whom. The conventional block-funding approach has placed limitations on the self-determination of people with disabilities since the parties to the funding agreement have been the government (the funder) and the agency (the recipient of funding). People with disabilities are usually given no status in the funding agreements, and therefore had limited control over the nature of disability-related supports that are made available. Many have argued that the consequence of not having status and control is that people with disabilities are more vulnerable to exploitation, harm, and abuse than they need to be.

To redress this perceived limitation in funding arrangements, mechanisms have been modelled in various jurisdictions that give greater control to the consumer of services over the nature of the service received, and where, when, and by whom it is delivered. Falling under the general rubric of individualized funding, these mechanisms establish a cost for the device or service on the basis of an individual's actual need, and then give that consumer some degree of control over how the funding allocated will actually be spent.[23]

The most common scheme for funding social service systems in Canada is program-based. Here, service agencies receive funding based on the number of consumers or clients to whom they expect to provide service in a given year. This is a supply-side approach to funding human services. The demand-side approach to financing social services reflects a process in which individual need is the primary criterion for determining the necessary supports for delivery. Individualized funding seeks to strike a balance between demand-side and supply-side funding. Under individualized funding programs, the direct transfer of dollars to the person with a disability enables the person to purchase for him or her, the goods and services that he or she requires. In theory, this scheme also enables individuals to take their dollars elsewhere should they be unhappy with the goods or the quality of services. Individualized funding provides the opportunity for people with disabilities to take the lead role in needs assessment, service determination, and service quality.

This concept is more than just an idea, with individualized funding projects for people with disabilities in various parts of the country. One example is a Centre for Independent Living, a Toronto pilot project sponsored by the Ontario government for self-managed attendant care services.[24] Another is a series of projects for people with intellectual disabilities in British Columbia. Such innovations can provide important lessons to persons with disabilities as well as government officials and community activists on the feasibility and desirability of individualized funding. In addition, such projects generate a broader understanding and support for this funding approach as a viable reform option in disability policy.

CONCLUSIONS

Our aim in this chapter has been to survey important elements of the political terrain for disability policy in Canada. We have examined four political dimensions of the disability sector: specifically, ideas and perspectives; the socio-economic status of people with disabilities; trends in the development of different types of interest groups; and the reform proposal of individualized funding. The analysis showed that this is a policy field that has a legacy of old ideas still shaping policy approaches. It is a policy field that is subject to the influence of ideas and practices in the international context. Moreover, the Canadian policy sector has increasingly been populated by interest groups of various kinds in recent decades spurred on, but only in part, by the Charter. We also have presented two perspectives on disability, social relations, and policy-making. As the twenty-first century begins, both the worthy poor and the human rights perspective are in effect, creating complexities in program design and challenges in mobilizing the disability community. At a fundamental level, the two perspectives of disability remain as solitudes — one emphasizing disability as an individual deficit and the other highlighting the social, political, and economic conditions that disable people.

While strides have been made within the disability movement, away from a worthy poor model to a human rights model, the change of attitude within governments may be more illusory than real. Many pressures drive governments to make changes in disability policy and programs, and disability does not appear to be high priority for any level of government at present, despite the demands advanced by disability advocacy organizations. Public opinion toward disability continues to reflect the ambiguous messages of governments, disability organizations, and public relations campaigns. There is an ongoing debate in the media about the costs of hiring and accommodating people with disabilities, about including children with intellectual disabilities in public schools, and about how much ought to be spent for accessibility. Legal cases, particularly cases challenged under the Charter of Rights and Freedoms, also put these issues before the public. The federal funding of the Charter Challenges Program, which has provided public resources for such cases, has no doubt influenced public debate about disability rights. On the other hand, so have public campaigns for funds for segregated facilities and for biogenetic prevention programs.

Each of the perspectives we have examined has significance for the choice of social policy instruments and the style of federalism practised. The worthy poor model with its emphasis on institutions, rehabilitation, and segregated services for special needs is heavily inclined toward service provision and professional delivery mechanisms. This orientation coincides with a view of provincial responsibilities and activities that, in certain jurisdictions, predate Confederation. The human rights perspective, by contrast, places greater emphasis on the reform of laws and regulations and the use of human rights tribunals, the Charter, and the courts to adjudicate and interpret claims. This is an orientation more pan-Canadian and federalist in discourse and policy direction. That both perspectives coexist today within disability policy simultaneously encourages activities at both orders of government and requires collaboration among disability groups and among governments. As with interest groups in many other Canadian policy sectors, disability organizations look to federal and provincial governments for access, consultation, action, and a more collaborative process and style of intergovernmental relations.

NOTES

[1] James J. Rice and Michael J. Prince, *Changing Politics of Canadian Social Policy* (Toronto: University of Toronto Press, 2000).

[2] The principle of less eligibility required that public support for an individual guarantee a lower standard of living than that of the poorest paid labourer.

[3] Marcia H. Rioux, “Towards a Concept of Equality of Well-Being: Overcoming the Social and Legal Construction of Inequality,” *Canadian Journal of Law and Jurisprudence* 7, 1 (1994):127-47.

[4] Bryan S. Turner, *Status* (Minneapolis: University of Minnesota Press, 1988).

[5] Canada. Statistics Canada, *Selected Socio-Economic Consequences of Disability for Women in Canada* (Ottawa: Supply and Services Canada, 1990); *Selected Characteristics of Persons with Disabilities Residing in Households, 1991 Health and Activity Limitation Survey* (Ottawa: Minister of Industry, Science and Technology, 1994); and *A Portrait of Persons with Disabilities: Target Groups Project* (Ottawa: Minister of Industry, Science and Technology, 1995).

[6] Two major data sources are available on disability in Canada. Statistics Canada’s Health and Activity Limitation Survey (HALS) was conducted after the census of 1986 and 1991. It used a combination of a general census question and variations of the World Health Organization “activities of daily living” indicators to screen survey respondents for disability. HALS explores a wide range of social and economic issues relevant to persons with disabilities and policymakers. The National Population Health Survey (NPHS), which is an ongoing population health survey, uses a general probe on activity limitations arising from a long-term health condition or disability. The NPHS focuses primarily on health indicators, but includes some important socio-economic information of a general nature (e.g., family income) and information specific to labour market activity (e.g., number of jobs held in past 12 months). The most recent NPHS survey data available at the time this chapter was prepared were for 1994.

[7] The mean age of persons with activity restrictions aged 12 and older is 51, compared with 41 for other Canadians. The median education level for persons aged 12 and over who have activity restrictions is secondary school graduation. For others, the median education is some postsecondary schooling (NPHS-Health micro data file). More than 556,000 persons aged 12 and over with activity restrictions, or 11.6 percent, relied on social security programs in 1994 as their main source of household income, compared with 5.8 percent of the rest of the population the same age (NPHS-Health micro data file). Some 845,000 people with disabilities received income for their disability from one or more social programs (25.6 percent) at some point in 1991. This may not have been their main source of household income, however.

[8] Statistics Canada, *Health and Activity Limitation Survey 1991.*

[9] Gail Fawcett, *Living with Disability in Canada: An Economic Portrait* (Ottawa: Human Resources Development Canada, 1996).

[10] Marcia H. Rioux, “Disability: The Place of Judgment in a World of Fact,” *Journal of Intellectual Disability Research* 4, 2 (1997):102-11.

[11] See Michael Oliver, *The Politics of Disablement* (London: Macmillan Press, 1990); Marcia H. Rioux and Michael Bach (eds.), *Disability is Not Measles: New Research Paradigms in Disability* (North York, ON: The Roeher Institute, 1994); Rioux, “Towards a Concept of Equality of Well-Being: Overcoming the Social and Legal

Construction of Inequality"; Roeher Institute, *Disability, Community and Society: Exploring the Links* (North York, ON: The Roeher Institute, 1996); Mariann Corker and Sally French (eds.), *Disability Discourse* (Buckingham, UK: Open University Press, 1999).

[12] Diane Driedger, *The Last Civil Rights Movement* (New York: St. Martin's Press, 1989).

[13] Ibid.; Michael J. Prince, "Touching Us All: International Context, National Policies, and the Integration of Canadians with Disabilities," in *How Ottawa Spends 1992-93: The Politics of Competitiveness*, ed. Frances Abele (Ottawa: Carleton University Press, 1992), pp.191-239.

[14] Roeher Institute, *Disability, Community and Society*, pp.167-75.

[15] Prince, "Touching Us All."

[16] Human Resources Development Canada (HRDC), Office for Disability Issues, "Organization Funding for National Disability Organizations. (Ottawa: HRDC, 2000). At <*http://www.hrdc-drhc.gc.ca/hrib/sdd-dds/odi*>.

[17] James J. Rice and Michael J. Prince, *Changing Politics of Canadian Social Policy* (Toronto: University of Toronto Press, 2000).

[18] Roeher Institute, *Social Well-Being: A Paradigm for Reform* (North York, ON: The Roeher Institute, 1993).

[19] Prince, "Touching Us All."

[20] The governments of Manitoba and the Northwest Territories have legislation enabling persons to use assistance in decision-making as an alternative to meeting the strict and exclusionary standards of competence. How far such provisions go in enabling people with intellectual disabilities to maintain their rights to self-determination remains to be seen.

[21] See, for example, Nova Scotia.Department of the Attorney General and Department of the Solicitor General, "Protocol for Investigation and Prosecution of Cases Involving Persons with Special Communication Needs," 12 April 1991.

[22] Cam Crawford, *A New Picture of Labour Market Programs and Services for People with Disabilities in Canada* (North York, ON: Roeher Institute, 1998).

[23] Roeher Institute, *Direct Dollars: A Study of Individualized Funding in Canada* (North York, ON: The Roeher Institute, 1993); Roeher Institute, *Disability, Community and Society.*

[24] Centre for Independent Living, Toronto (CILT), *Final Evaluation Report, Self-Managed Attendant Services in Ontario: Direct Funding Pilot Project* (Toronto: Centre for Independent Living, 1997).

3

DESIGNING DISABILITY POLICY IN CANADA: THE NATURE AND IMPACT OF FEDERALISM ON POLICY DEVELOPMENT

Michael J. Prince

INTRODUCTION

"Designing Disability Policy in Canada" examines the macro politics of government policy development and federalism. The focus is on the early stages of the public policy process, specifically, the activities of advancing policy proposals, crafting policy designs, undertaking negotiations, and eventual adoption. Canadian federalism is treated as an independent variable focusing on the consequences of federalism for the policy agenda, policy-making, interest groups, and democratic politics.

A central argument of this chapter is that the disability policy field in Canada is a dense network of intergovernmental arrangements, with four regimes or forms of federalism operative during the late 1990s. Disentangled or classical federalism at the provincial level is prominent in Canadian disability-related policies and programs, predating Canada's version of a welfare state. Many of these apparently independent actions by provinces have involved interprovincial diffusion of reforms and relationships with municipalities and/or community organizations. At the same time, the other half of disentangled is and has been in evidence, namely, policy initiatives by the federal government. For classical federalism, the main period of policy development at both orders of government was the 1970s and 1980s.

The history of collaborative federalism in disability-related policy-making goes back further than many people may think, more than 60 years. For collaborative federalism, the first major period of disability policy development was the 1950s and 1960s, when at least five cost-shared programs were established. This chapter suggests that the 1990s represent a second period of collaborative federalism in this policy field. The Employability Assistance for Persons with Disabilities (EAPD) reform over the 1997–99 period, is a case of collaborative intergovernmental relations with elements of both multilateral and bilateral federalism. Likewise, the 1997–98 reforms to the Canada Pension Plan (CPP) disability benefit plus other recent CPP disability projects also represent forms of cooperative federalism, albeit motivated more by policy restraint than by policy expansion.

Federal unilateralism and interprovincial collaboration are recent additions to the intergovernmental regime types in effect in disability policy. The capping of Canada Assistance Plan (CAP) over the 1990–96 period was a signal decision that shifted this program from the cooperative regime to unilateral federalism by Ottawa, with profound consequences for intergovernmental relations and social policy. The demise of CAP and the introduction of the Canada Health and Social Transfer (CHST) triggered concerted efforts since 1996 by the provinces and territories at another form of federalism in social policy, interprovincial collaboration, which is examined in the fifth section of the chapter. By the late 1990s, then, we can observe four kinds of intergovernmental regimes active in the disability policy field and broader social union. This is the greatest complexity the disability policy field has ever had within Canadian federalism. An assessment of the implications of these intergovernmental regimes for social policy goals, democratic values and principles of federalism is given in the final section of the chapter.

CLASSICAL FEDERALISM AND DISABILITY POLICY-MAKING

Both the federal and the provincial governments are involved in disability policy-making, each level within its own area of jurisdiction, and relatively independent and separate from the other level. Ed Black has called the classical model "the most conspicuous concept of federalism in the country" and "primarily legal in its inspiration."[1] The division of legislative and executive powers is distinct with few overlapping responsibilities; a situation described by the courts many years ago as having "watertight compartments." The federal and provincial governments are equal in terms of legal status, with both levels fully sovereign within their jurisdictional spheres. Classical federalism thus embodies two groups of sovereignty in which provincial legislatures and the federal parliament have the legitimacy and authority to enact, if they decide, certain policies and programs for persons with disabilities.

In an age of minimal state intervention in social affairs, classical federalism meant that both orders of government in Canada were not especially active in their respective areas of exclusive jurisdiction formulating disability-related policies. The policy development that did occur in this and other social policy fields was largely under provincial jurisdictions. Consequently, there was relatively little intergovernmental conflict or need for intergovernmental machinery for coordination. Some commentators describe classical federalism as a relatively decentralized model of federalism.[2] While this may have been true in earlier decades of the twentieth century, over the 1980s and 1990s, the provinces and the federal government have each developed a range of programs and services for persons with disabilities. Therefore, disentangled federalism is probably less province-centred today than previously.

Workers' Compensation Programs

The first stage of the modern era in not only Canadian social security, but also disability policy, was the establishment of workers' compensation plans by the provinces. As a form of social insurance against the risk of injury, sickness or death at work, workers' compensation plans were clearly a matter of exclusive provincial jurisdiction under the constitution. Starting in 1914 with Ontario, workers' compensation plans were introduced by the other provinces over the next 30 years or so. Workers' compensation policy is a field in which the provinces exercise disentangled authority over the whole policy cycle, from development to governance through administration to review and reorganization.

In the 1990s, workers' compensation plans apply to most workers in the labour force of each province and territory. Income benefits in most of the provinces are not offset against other income-security benefits, although death and survivor benefits may be offset against CPP benefits in some provinces. While provincial/territorial workers' compensation programs cover a large majority of the Canadian labour force, Ottawa also operates the Federal Workers' Compensation Service. The federal government employees' compensation program is an example of collaborative federalism in that it is administered by provincial Workers' Compensation boards, under agreements between the

Minister of Human Resources Development and the provincial boards. The federal government reimburses the provincial Boards for the cost of all benefits and administrative charges.[3]

Veterans' Benefits

The federal government's earliest lasting involvement in disability-related income-security policy came with the introduction of financial benefits for veterans. As was the case with workers' compensation for the provinces, monetary and other forms of aid to veterans clearly lie within the exclusive responsibility of the federal government. In the immediate aftermath of World War I, the federal government passed the *Pension Act* of 1919, to provide pensions for disabled members of the armed forces and their dependants, on a scale based on the degree of disability and the military rank of the veteran. Over the following decades, the *Pension Act* was amended several times in the direction of expanding eligibility of benefits, increasing benefit amounts, and establishing and reorganizing the structures to hear and give decisions on appeals concerning refusals of pensions.

In 1930, Parliament enacted the *War Veterans' Allowance Act* (WVA) program. It initially provided for means-tested allowances for veterans' aged 60 or over, or who were permanently unemployable because of a physical or mental disability, and for allowances on behalf of their wives and dependants. Both the *Pension Act* and the WVA are examples then, of disentangled federalism, with the federal government introducing its own program within its own sphere of exclusive jurisdiction. These disability-related programs remain in place, continuing to offer workers' compensation, veterans' and civilians' disability pensions as well as the war veterans' allowances, including civilian war allowance and the merchant navy veterans' allowance.

Recent Provincial and Territorial Disability Policies and Programs

Contemporary policy developments at the provincial and territorial levels in a number of areas illustrate the continued relevance of the classical or disentangled regime in disability policy. These developments include:

Deinstitutionalization measures. The downsizing and closure of government-run facilities for persons with mental disabilities in several provinces over the last 20 years and the reallocation of some funds toward supports and services for community living options have shown a notable provincial policy trend in Canada.[4]

Human rights reforms. The human rights codes of all provinces/territories were amended in the 1980s or 1990s to prohibit discrimination based on physical or mental disability. This protection extends to activities within exclusive provincial jurisdiction such as most employment, restaurants, hotels and stores, education facilities and housing. Human rights codes generally also require reasonable accommodation of the special needs of persons with physical and/or mental disabilities.

Government organizations. A number of provinces have established advisory councils or offices for disability-related issues. The Nova Scotia government, for example, established a Disabled Persons Commission in 1990 to provide for the participation of Nova Scotians with disabilities in the development of government policies and programs that directly relate to or affect them. A statutory body, the commission has 12 members, the majority of whom must be persons with a disability or a representative of the community.

Education and training programs. Provinces have been exploring ways of enhancing the life skills and job skills of adults with disabilities. In 1995, Manitoba's education and training minister announced several relatively small grants for programs to assist adult learners with disabilities by offering academic upgrading such as basic education and high school completion and language training.

Rules governing trust funds. Provinces regulate the creation and management of trust funds for people with disabilities. The British Columbia government, in 1996, revised its rules on trust funds to enhance the support available to people with disabilities. Under the new policy, trust fund assets under $100,000 do not affect eligibility for benefits. As well, payments from trusts will be exempted if the money is used to purchase goods or services that address needs arising from the individual's disability.

Disability income benefit reforms. In reforming their welfare systems, some provinces have taken persons with disabilities off their main social assistance program and established new and separate disability programs. Ontario recently passed and proclaimed the *Ontario Disability Support Program Act.* This program, which seeks to improve access to employment supports while addressing unique needs and protecting benefits, is being implemented over 1998–99. Other provinces too are moving toward pension-like benefits for persons with disabilities in place of social assistance.[5]

Taxation measures. Over the past 20 years, most provinces and territories have instituted taxation-assistance measures specifically for persons with disabilities. The most common form of tax relief is retail sales tax exemptions for various medical expenses, aids, and care. A few jurisdictions also offer property tax exemptions and other tax reductions for persons with disabilities.

Recent Federal Disability Policies and Programs

For the federal government, the main period of disentangled policy development on disability issues has been since the early 1980s. The underlying pattern is of increasing initiative and a widening focus on issues to be considered. Federal policy has gone from responding to international events like the United Nations international year and decade for persons with disabilities; to removing obstacles by undertaking various measures in the mid- to late 1980s; toward more of a leadership role in the 1990s, with the 1991–95 National Strategy for the Integration of Disabled Persons[6] and, more recently, the 1996 Scott Task Force and subsequent reforms announced in recent federal budgets.[7]

The federal government has used symbolic policy outputs, such as the prime minister's 1985 *Declaration on the Decade of Disabled Persons* and establishing in 1987 the National Access Awareness Week along with organizational decisions such as the formation of special and standing parliamentary committees on disability matters, designating a minister responsible for the status of persons with disabilities and establishing a status of disabled persons secretariat. The federal government has introduced employment policies to improve the representation of persons with disabilities within the federal public sector and wider Canadian labour force through the *Employment Equity Act* and the Federal Contractors Program. Ottawa has modified existing regulatory instruments within its jurisdiction like the minimum wage under the Canada Labour Code and human rights under federal legislation, and has reviewed and standardized disability-related language across numerous federal statutes.

The federal government has endeavored to improve the accessibility ("barrier free access") to transportation, housing, parks, heritage sites, and Crown-owned and leased facilities and properties within areas of federal jurisdiction. With respect to direct expenditures, the 1998 federal budget, for example, announced the extension of the Residential Rehabilitation Assistance Program (RRAP) for a further five years at a total cost of $250 million, with RRAP funds for persons with disabilities doubled to $8 million a year.

That budget also provides for $14 million per year for grants to postsecondary students with disabilities.

Since the 1980s, the federal government has regularly employed income tax policy as a tool for acting on disability issues.[8] The Special Parliamentary Committee on the Disabled and Handicapped, established by the federal government in 1980, in its reports over the next few years, prompted attention to tax policy. Targeting tax assistance to groups deemed in need is not, of course, unique to persons with disabilities. Charities, students, and parents with young children, among others, are recipients of tax assistance. What is distinctive, though, of disability policy-making by the federal government is the extensive use of tax expenditures during a period of general program restraint. This was especially so in the 1990s, a decade in which six budgets announced over 20 tax assistance measures directed at persons with disabilities.

Lastly, official discourse on disability issues — the language used by decisionmakers in talking about public policy actions — has shifted somewhat over the last 15 years or so. The language commonly used in budget documents in the 1980s and early 1990s, for example, spoke of "helping" and "assisting" the "disabled," in particular those "in need." At times the old discourse still appears, as in the 1996 *Budget Plan,* which referred to "enhancing support for the vulnerable." More recent budgets speak of "offering support" to "Canadians with disabilities" in order to secure "equal citizenship." The 1998 *Budget Speech* evoked this more contemporary discourse, as evident in the following passage: "There are Canadians who, for many reasons, do not enjoy the opportunities others do — but who would grasp them immediately, and lift themselves up, if only given the chance. That is why, in this and previous budgets, we have enhanced assistance to those with disabilities — Canadians who do not seek special rights but simply equal citizenship."

COLLABORATIVE FEDERALISM AND DISABILITY POLICY-MAKING

Collaborative federalism — at times called administrative, cooperative, executive, functional or summit federalism — denotes mutual interdependence, joint problem-solving among officials, and little or no hierarchy in working relations between the two orders of government in Canada. Collaborative federalism does not mean that federal-provincial relations are, or should be, free of conflict. Rather, this regime type implies that conflicts are managed within a shared machinery of intergovernmental relations and that, compared to other regime types and periods of Canadian political history, the mood of federal-provincial relations is not belligerent.

The institutional infrastructure of collaborative federalism includes conferences at the political and operational levels involving consultation, negotiation, and coordination; administrative agreements across the country; and cost-sharing financial agreements for conditional and unconditional programs. In practice, collaborative federalism manifests itself in bilateral relationships between the federal government and one province or territory; multilateral relationships of the federal government and several provinces/territories; and omnilateral federalism involving the federal government and all the provinces and territories in a policy area.

The 1937–66 period can be designated as the first era of collaborative federalism in disability policy-making in Canada. Much of this period is a record of federal initiative on policy design, provincial responsibility for administration, shared responsibility on financing and, in certain programs, a federal role in auditing provincial accounts and records. The main financing instrument was cost-sharing by which federal transfers are related to the amount spent by the province/territory in disability income support or services and supports. The division of shares was and still is usually for a matching share of 50 percent, though for blind person benefits the arrangement was 75 percent federal and 25 percent provincial.

Old Age Pensions as a Template for Disability Policy Designs

With the introduction of the *Old Age Pensions Act* in 1927, the federal government formally entered the social security field in a major way for the second time, following upon financial assistance to veterans. The legislation represented “an ingenious compromise between provincial responsibility and federal initiative.”[9] To deal with provincial resistance to Ottawa entering their jurisdiction of social welfare, and the related constitutional problem, the federal government offered to finance the old age pension in the form of a conditional grant. The legislation authorized federal reimbursement of 50 percent to any participating province for pensions to British subjects (Canada did not pass a citizenship law until 1947) aged 70 or over who had resided in Canada for at least 20 years and in the province for at least five years. Indians were excluded from the program. While the federal government established some broad conditions or parameters for the program, the provinces operated and co-financed the programs. In 1931, the *Old Age Pensions Act* was amended to increase the federal share of pensions from 50 to 75 percent as an extra inducement to attract provinces to enter the plan. By 1936, all provinces had developed public pension programs for low-income seniors.

The early story of the *Old Age Pensions Act* is relevant to collaborative intergovernmental disability policy-making in two respects. First, the initiative served as a precedent of federal action and intergovernmental cooperation in the social welfare field, prompting other groups, even during the Great Depression of the 1930s, to press Ottawa for similar support for veterans and for persons with disabilities. Second, the old age pension program became the model, in terms of program design, for cost-sharing arrangements for benefits for blind persons. In 1937, the *Old Age Pensions Act* was amended, making provision for means-tested plans for the blind and other people with disabilities not covered by provincial workers' compensation plans or the veterans' allowance and pension programs. The qualifying age for the blind was reduced to 40 and the limit of allowable income was set at a level higher than for the aged. The basis for the federal government's contribution was 75 percent and all the provinces rapidly reached agreements with Ottawa.

Blind Persons' Allowance

Most of these design features were replicated in the *Blind Persons Act* of 1951. This federal program offered allowances to blind persons aged 21 to 69, cost-shared with the provinces on a 75 percent federal — 25 percent provincial foundation. The residency requirement of 20 years under the earlier old age pensions law was shortened to ten years and the provision excluding Indians was dropped. The legislation was amended in 1966 to allow provinces to switch the financing and administration of the program to the newly established Canada Assistance Plan. That reform, coupled with the transfer of tax points to the provinces under fiscal arrangements for financing this and other welfare programs, effectively took the blind persons' allowance off the federal policy agenda.[10]

Old Age Assistance

Old age pension policy was reformed in 1951 with the passage of the *Old Age Security Act* and the *Old Age Assistance Act.* These measures were preceded by a constitutional amendment approved earlier that year by all ten provinces and the federal government giving the Canadian Parliament authority to make laws in relation to old age pensions. The *Old Age Security Act* introduced Canada's third universal income benefit (after the WVA and the Family Allowance), with a flat-rate pension of $40 a month offered to persons aged 70 and over regardless of their financial or family circumstances. The *Old Age Assistance Act* introduced a revamped means-tested selective program for people aged 65 to 69, cost-shared on a 50–50 basis with the provinces.

Disabled Persons' Allowance

With the passage of the *Disabled Persons Act* in 1954, the federal government offered to share on a 50–50 basis with the provinces the cost of allowances to permanently and totally disabled persons aged 18 to 69. A person was deemed to be totally and permanently disabled if they were suffering from a major impairment, one likely to continue without substantial improvement over the persons' life, and severely limiting their ability to do self-care and daily activities. Within two years, bilateral agreements were reached between the federal government and all ten provinces. The ensuing story of the program for disabled persons is similar to that of the blind person's allowance — periodic increases in benefit levels; the impact of new intergovernmental fiscal agreements and the CAP in the mid-1960s; and the eventual cancellation of the program in the 1980s.

Vocational Rehabilitation Initiatives for Persons with Disabilities

The 1950s and 1960s also saw collaborative federal-provincial initiatives with respect to the vocational rehabilitation of disabled persons. In 1951, the federal government formed a National Advisory Committee on the Rehabilitation of Disabled Persons. In 1953, the federal Cabinet authorized the minister of labour to enter agreements with the provinces for developing rehabilitation activities for disabled persons. In 1961, this practice was codified with the passage of the *Vocational Rehabilitation of Disabled Persons Act* (VRDP). The VRDP offered agreements to the provinces and the territories of federal sharing of 50 percent of the costs for a range of services designed to help people with physical or mental disabilities become capable of pursuing a gainful occupation. Ottawa's financial offer, and thus financial obligation, was open-ended, a function of how much provinces/territories wished to spend on these rehabilitation services. Except for Quebec, which did eventually participate in the VRDP in the late 1980s, all the provinces entered into two- or three-year agreements with Ottawa which were regularly renewed from the 1960s to the late 1990s when the VRDP was replaced.

Under the VRDP, the federal government specified the terms for obtaining cost sharing, and the provinces were solely responsible for the administration of their programs, including the design, eligibility requirements, and mode of delivery. VRDP benefits and supports were provided directly by provincial government departments and agencies or through provincially supported voluntary agencies. With the exception of maintenance/training allowances, personal financial need was not a consideration for eligibility and provision. Over the life of the VRDP, the number of Canadians served by the program grew from less than 100,000 to over 200,000.[11]

Canada Assistance Plan

The formation of the CAP, Rand Dyck has concluded from a detailed analysis, "was perhaps the most harmonious product of the cooperative federalism period."[12] CAP was the invention of federal and provincial social service ministers and senior program officials with a broadly shared vision of building a more comprehensive and compassionate social security system for the country. At the conception stage of the CAP policy development process, both levels of government recognized the need and the desirability of reforming the bundle of categorical welfare programs established through the 1950s and earlier decades. The initiative for this reform came from the provinces and both levels were involved in establishing the scope of the reform. At the formulation stage, there was extensive consultation among federal and provincial officials on details of the plan.

Much of CAP's origins lie in disability policy. CAP consolidated a number of welfare programs, including the cost-shared programs under the *Old Age Assistance Act*; the *Blind Persons Act*; the *Disabled Persons Act*; and, the *Unemployment Assistance Act*. Viewed in relation to the design features of these earlier programs, CAP's conditions did mark a relatively significant change in social policy. The ten-year residency requirements for old age assistance, blind benefits, and disabled allowances were eliminated, as were those programs' means-testing. Beyond these conditions, CAP did not contain detailed national standards. No minimum or maximum benefit levels, for instance, were set out in the legislation. With CAP, Canadians had not one welfare system but ten or more; it was a multilateral agreement, which relied for its implementation on bilateral federal-provincial agreements negotiated on the specifics of programs and services.

Canada and Quebec Pension Plans

The story of the political struggles surrounding the implementation of the Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) has been well-chronicled elsewhere by academics and participants.[13] One member in that policy process, Tom Kent, has described the creation of the CPP and the QPP as "the constructive expression of the idea of co-operative federalism.... a balanced combination of the best of federal and provincial ideas."[14]

Constant communications, consultations and negotiations played a central part in shaping the CPP and QPP, and with them the disability pensions associated with the plans. Over the policy development stage in 1963 and 1964, there were confidential meetings between Quebec Liberal ministers in the Pearson Cabinet and the Quebec premier; and private meetings and communications between the Quebec premier and the prime minister and his senior policy advisor and the secretary to the Cabinet. There also was a conference of federal and provincial welfare ministers who discussed pensions as well as three federal-provincial conferences of first ministers. Federal officials had numerous meetings with their Quebec and Ontario counterparts, and Prime Minister Pearson had extensive correspondence with the provincial premiers.[15]

The proposed federal plan supplemented retirement benefits with survivor, death, and disability benefits. A constitutional amendment was needed to enable Parliament to make laws in relation to these supplementary benefits. All ten provinces agreed to an amendment, section 94a of the *British North America Act*, in 1964. In return for provincial assent to this constitutional extension of federal jurisdiction, the Pearson government had to grant provincial control over the scope, amending, and financing of the plan. The CPP is not only an example of collaborative federalism, therefore, but also contains within its own legislation elements of classical federalism with opting-out and entangled federalism with an amending formula of multiple vetoes.

Negotiations between Ottawa and Quebec directly influenced the nature of the disability benefit, among several other features of the plans. In their pension plan proposal, Quebec had included a disability benefit but had restricted eligibility to those aged 60 and over, apparently due to financial concerns.[16] When Ottawa added a disability benefit to its proposal in 1965, no age limit was attached. In the end, both plans incorporated a disability benefit without an age restriction. Two other features from Quebec's proposal, important to persons with disabilities with low incomes, which Ottawa adopted, were: that contributions not be collected on the first $600 of annual income; and that benefits be adjusted to cost-of-living increases up to 2 percent a year. In 1974, the retirement pension and the other benefits became indexed to the full annual increases in the cost of living. While the CPP and QPP are separate plans in their financing and administration, they have more or less stayed the same in policy over the years.

During the early and middle years of the 1980s, federal and provincial/territorial governments discussed and agreed upon a modest package of changes to the CPP benefits. With the support of all provinces and territories, Ottawa enacted reforms to the CPP in 1987. Among the legislative reforms, disability benefit rates were raised and the number of years of contributions needed for eligibility for disability benefits was lowered. In 1988, through guidelines, the federal government expanded the criteria for assessing eligibility and in 1992, through legislation, authorized retroactive applications for the disability benefits. The direction of these reforms was a liberalization of the administration and benefit payments.

The 1998 CPP Reforms

Recent changes to the CPP have direct consequences for persons with disabilities. In 1996, as part of the statutory review of the CPP which the federal and provincial/territorial governments must do every five years, governments agreed to a joint process of public consultations across the country.[17] The ostensible aim of the consultations was to canvass views on a range of options for ensuring the financial sustainability of the CPP for future generations. The options presented in a discussion paper, *Securing the Canada Pension Plan*, all dealt with various restraints or cuts to the CPP. Following the consultations, federal and provincial/territorial finance ministers participated in a series of intergovernmental meetings to negotiate a consensus on changes. In February 1997, the federal finance minister announced that a federal-provincial consensus on reforming the CPP had been reached. Ottawa and eight provinces supported the reforms, which took effect January 1998, while the NDP governments of British Columbia and Saskatchewan dissented. The Government of Quebec announced changes to the QPP, which are comparable with the changes to the

CPP. Draft legislation to amend the CPP was tabled in the House of Commons and passed in 1997; the Cabinets of the eight provinces passed supporting orders in council.

Several changes have been made to disability benefits under the CPP, prompted by expenditures on disability benefits more than tripling and the number of beneficiaries almost doubling from 1987, when the last reforms were made to the plan, to the mid-1990s. The Auditor General of Canada had criticized the management of disability benefits in his 1996 annual report, suggesting that the disability program was too loosely controlled and potentially subject to considerable fraud, because of imprecise program objectives and incomplete information systems. The auditor general expressed concern that significant changes to disability eligibility practice had been introduced via guidelines rather than by legislation, which requires formal consultations with the provinces and actuarial estimates.

In the post-1998 reforms to the CPP, retirement pensions and the earnings-related portion of disability and survivor benefits are now based on the average of maximum pensionable earnings over the last five working years rather than the last three. This reform has the effect of lowering maximum benefits by $144 a year. The rules for disability and survivor benefits have also been changed to limit the extent to which these benefits can be combined. Retirement pensions for disability beneficiaries are now based on maximum pensionable earnings at the time of the disability, rather than at age 65, and then fully indexed to the cost-of-living index. This will somewhat reduce retirement pensions of disabled contributors since the earnings deemed to have been received during disablement will be price rather than wage indexed. Disability benefits are no longer paid to estates upon the death of the beneficiary. Furthermore, people already receiving early retirement benefits under the CPP are not eligible for disability benefits. Administration of the disability benefits has been tightened in terms of disabilities being scrutinized more closely and reviews of files being done more frequently.

Canada-Provincial/Territorial Employability Assistance for People with Disabilities Initiative: From the VRDP to the EAPD

Another example of collaborative federalism in disability policy is the 1997 agreement to replace the VRDP with the Employability Assistance for People with Disabilities (EAPD). Interest in reforming and ultimately replacing the VRDP can be traced back a decade or more. Compared to medicare, the CPP, CAP and debates over poverty and child benefits, the VRDP was not a prominent item on the intergovernmental agenda for much of the 1980s and 1990s. Yet, in the shadows of these bigger policies and politics surrounding them, disability-related policy developments did occur.

An intergovernmental review of fiscal arrangements affecting persons with disabilities, primarily the VRDP and CAP, was undertaken in the mid-1980s. That review set four priority areas: employment-related services; community or independent living; promotion and prevention; and income support/replacement. There was federal-provincial agreement on the need for a transition to providing services within mainstream programs rather than segregated ones. In response to ideas and suggestions by consumer and service provider organizations at the national and provincial levels, modifications were agreed to by ministers responsible for social services, eight changes to the 1988–90 VRDP agreements and one change to the CAP.[18] These changes were essentially incremental in nature and federal and provincial officials recognized that they fell short of meeting the full range of needs and aspirations of Canadians with disabilities.

In 1989, federal and provincial ministers responsible for social services agreed to pursue further work in this area, including a federal-provincial-territorial vision of principles and objectives. This was part of an intergovernmental review of services affecting people with disabilities, which resulted in the *Pathway to Integration, Final Report* (1993), and a process begun in 1991 by federal, provincial and territorial social ministers. Called *Mainstream 1992*, the review addressed the four priority areas identified in the earlier fiscal arrangement review. The aim of this process was to develop a collective strategic framework or vision, which explored the full integration of Canadians with disabilities in the mainstream of Canadian society. The *Pathway* report noted that VRDP and the CAP were "often viewed as presenting a formidable barrier to working toward the vision."[19] The report added that people with disabilities regarded these shared-cost arrangements as "ultimately unacceptable and unworkable as means of adequately addressing the additional costs of disability."

In the 1994 discussion paper, *Improving Social Security in Canada*, the federal government commented that the VRDP was outdated. "Following on earlier federal-provincial efforts which resulted in several improvements, a further process of renewal should be considered. VRDP could be linked directly to employment development services as a bridge to mainstream training and employment."[20] The discussion paper and a supplementary paper suggested that programs such as VRDP and CAP could be restructured to pursue more actively the goals of increasing employment and independence for persons with disabilities. Curiously, the February 1995 final report of the House of Commons committee that held cross-country hearings on the discussion paper, did not make any recommendations with respect to reforming or replacing the VRDP. By contrast, most witnesses and groups that spoke on the matter, as part of the social security review, did offer creative and fiscally responsible proposals. No doubt a major reason, if not the reason, for this inaction was the unveiling of the CHST in the February 1995 federal budget.

That budget also froze federal transfer payments under the VRDP at 1994–95 levels for the 1995–96 year, the final year of the current set of agreements. This deadline posed the question of what then to do: renew the VRDP or replace it along the lines suggested by previous reviews? Despite the unilateralism of the CHST and the ill will it incited among provincial and territorial governments toward Ottawa, the VRDP renewal process continued. Provincial and territorial social service ministers agreed at an April 1996 meeting to ask the federal government to participate as a full partner in jointly developing integrated programs for persons with disabilities. The process continued over the next several years, because of positive steps on disability issues the federal government was pursuing independently (e.g., tax measures) or jointly (e.g., demonstration projects), and because of the policy advocacy and analysis done by disability research and service organizations.

The EAPD represents a case of collaborative federalism, quite remarkable in that it has taken place in the fiscally constrained and arguably more complicated politics of the 1990s. Over the 1996 to mid-1998 period, there were more than 40 intergovernmental meetings on replacing the VRDP, negotiating the EAPD and related disability policy issues. Meetings have been at all levels: first ministers' meetings; annual premiers' conferences; meetings of ministers responsible for social services; and working groups of officials on benefits and services for persons with disabilities. At times, meetings were omnilateral, involving all 13 governments, though more frequently they were bilateral, and some were multilateral.[21]

A multilateral framework on EAPD was agreed to between the federal government, nine provinces, and two territories in October 1997. The purpose of the multilateral framework is to guide bilateral negotiations and agreements between the Department of Human Resources Development Canada and provincial/territorial departments of employment/human resources/social services. Although the Quebec government did not endorse the multilateral framework, their officials observed the proceedings, and undertook bilateral negotiations with Ottawa, securing a cost-shared arrangement with the federal government in 1999. The framework enunciates five principles that will shape all the bilateral agreements. These principles are: direct support of employability; focus on individual needs and participation; flexibility in program design and delivery; accountability for implementation; and coordination of programs and services related to people with disabilities.

Like the VRDP, the funding for the EADP is based on equal contributions from the province/territory and the federal government in each year of the agreements. Like the VRDP and CAP, EAPD has two parts: a series of bilateral administrative agreements negotiated under an umbrella multilateral agreement. Unlike the VRDP (until 1994) and CAP (until 1990), however, federal funding is limited, rather than open-ended. EAPD has an upper limit to the federal share of $168 million annually.[22] Also unlike the VRDP and CAP, the EAPD is intended to have a stronger focus on employability and labour market activities; consequently, medical treatment services as well as programs provided in sheltered workshops and work activity programs not directly linked to meeting employability needs will not likely be cost-shared. Federal funding for previous VRDP programs inconsistent with EAPD will be phased out over a three-year period.

As of early 1999, all ten provinces had signed bilateral agreements. These agreements will operate for five years until March 2003. Under the multilateral framework, the governments agreed to a joint review of the agreements after three years. The EAPD case illustrates the continuing importance of consultation and collaboration; the role of professional and administrative officials in federal-provincial relations; the ever-present place of finance and treasury considerations; and incrementalism as the main style of policy reform.

UNILATERAL FEDERALISM AND DISABILITY POLICY-MAKING

The most extensive academic analysis of unilateral federalism in Canada is by Kenneth McRoberts, who examined unilateralism as one of the basic models of contemporary federalism.[23] McRoberts noted several possible kinds of unilateralism, but concentrated on the conflictual variant, with its competitive and adversarial elements of one order of government intruding into the policy area of the other order. The fundamentals of this form of unilateral federalism are (a) independent action by one government, (b) in the absence of regular consultation and/or formal agreement among governments, (c) in areas of common concern and involvement (whether exclusive provincial jurisdiction or not), (d) with established norms of intergovernmental collaboration, resulting, therefore, (e) in reviving old intergovernmental tensions and generating new policy conflicts. Like classical federalism, there is independent action by one or other order of government. Unlike the classical model, however, unilateral federalism relates to functional areas of policy that are not clearly separated in practice. Like collaborative federalism, unilateralism takes place against a context of customary procedures of consultation and cooperation, but more in the breach than in the observance of these principles of federalism.

In the disability field, unilateral federalism has emerged more recently, in the 1990s, in relation to policy frameworks. The resort to unilateralism by the federal government, both Conservative and Liberal administrations, was essentially driven by the larger fiscal agenda of deficit reduction and spending limits. Conflict in intergovernmental relations heightened in the 1990s as successive federal governments sought to lower their deficits and avoid political blame.

Through a cap on CAP in 1990, the replacement of CAP with the CHST in 1995 with a sharp reduction in transfer payments, and the freeze on VRDP transfers also in 1995, the federal government was altering financial transfers to some or all provinces and territories with little, if any, advance consultation. The provinces reacted negatively, especially to the cap on CAP and the deep cuts associated with the introduction of the CHST, not based on disability policy concerns, but more on the infringement on provincial budgets, particularly for health care, and on the violation of principles of intergovernmental cooperation. Social policy and other non-governmental organizations raised concerns over the potential negative impacts of the CHST for already disadvantaged groups in Canadian society.

With respect to the cap on CAP, the provinces were unable to thwart this unilateralist action through judicial or other channels. The establishment of the CHST certainly aggravated and provoked the provinces and territories into developing a new process of interprovincial/territorial collaboration for social policy renewal, including discussion of benefits and services for persons with disabilities. Federal unilateralism encouraged interprovincialism. While the provinces and territories were unable to prevent the implementation of the CHST, they have been partially successful in getting the federal government to bolster the amount of cash payments to be transferred in each of the five years of the fiscal arrangement. The unilateral freeze of the maximum federal share for the VRDP lasted for three budget years (1995–96 to 1997–98), during which time the federal government agreed to extend the existing VRDP agreements, and Ottawa and the provinces and territories negotiated the design for a replacement policy, the EAPD. In this case, unilateralism led to an effective exercise of collaborative federalism.

The Cap on CAP: 1990 to 1996

As part of a broader expenditure control plan, the 1990 federal budget imposed a two-year limit of 5 percent annual increases in federal spending under the CAP for the “have” provinces of Alberta, British Columbia, and Ontario. The initial savings were estimated to be about $147 million in the first year and $154 million the next. The 1991 federal budget extended this cap on CAP for three additional years to the end of the 1994–95 fiscal year. For the full five years, the savings to Ottawa were then estimated at $2.1 billion, though this was before the full brunt of the recession of the early 1990s hit the Canadian economy. Any increases in CAP expenditures above 5 percent in these three provinces were no longer cost-shared by Ottawa. Before the cap, of course, the federal government contributed 50 percent of eligible expenditures on social assistance and social services across the country.

Provinces resorted to the judicial arena as the site to challenge this unilateral change to the CAP policy framework. The three affected provinces plus Manitoba and some Aboriginal organizations quickly brought a challenge of the federal action before the British Columbia Court of Appeal. In June 1990, the Court of Appeal ruled that the federal government did not have any statutory, prerogative or contractual authority to limit its obligations under the *Canada Assistance Plan Act* and its agreement with the provincial governments to contribute 50 percent of the cost of assistance and social services. The court also ruled that the terms of agreement between the federal and provincial governments, and the subsequent conduct of the federal government pursuant to agreements and the Act, gave rise to a “legitimate expectation” on the part of provinces, that the federal government would not limit its obligations under CAP without provincial consent.

The federal government appealed the ruling to the Supreme Court of Canada, and in August 1991, the Supreme Court ruled that the federal government acted lawfully in its unilateral decision to limit increases in CAP transfer payments to Alberta, British Columbia, and Ontario. Even though the federal government unilaterally altered the Act, contrary to the statute’s own provisions, the Supreme Court found that this alteration in policy did not violate the

Canadian constitution generally or the Charter of Rights and Freedoms more specifically. The Supreme Court upheld the federal action based on the traditional doctrine of parliamentary supremacy. Agreements under CAP were not subject to contract law nor shielded by the Charter. As the Honourable Ronald Cheffins has pointed out, "If the federal parliament had tried to do something with respect to equalization grants, they would have run squarely into the constitution of Canada, and it would accordingly have been unconstitutional. Nevertheless, if a subject matter is not protected under the terms of the constitution of Canada, the traditional doctrine of parliamentary supremacy still prevails."[24]

In late 1995, the BC government responded to the cap on CAP in an act of unilateral federalism of its own. The province began enforcing a residency requirement to prevent newcomers to British Columbia (all other Canadians and new refugees) from collecting income assistance until they had lived in the province for three months. The federal minister responsible for CAP immediately withheld $47 million from the province because the residency rule contravened the conditions of the *Canada Assistance Plan Act.* The issue generated a serious conflict between the two governments, and in early 1996, the province launched a lawsuit in the BC Supreme Court to recover the withheld funds. By April 1996, CAP no longer existed, having been replaced by the CHST. The lawsuit was later dropped, but not before an impression was created that the conflict had more to do with political posturing and fractious federalism than with either government protecting the social safety net for those most disadvantaged and vulnerable in society.[25]

Canada Health and Social Transfer

Perhaps the most fundamental development in Canadian social policy and fiscal federalism for 30 years was the announcement of the CHST in the 1995 federal budget. The CHST is primarily a child of federal deficit reduction and a cousin of provincial demands for greater autonomy in social policy.

Within this national context of spending restraint and flexible federalism, especially in relations with Quebec, the CHST has four main elements. First, it is a replacement for, and consolidation of the previous arrangements of federal transfer payments for social assistance and social services under CAP as well as for health and postsecondary education under the Established Programs Financing (EPF) agreement, into a single program. The CHST is now the chief device for federal investment in human development and social well-being.[26] Second, the CHST is a block grant of an amount substantially less than the sum of the earlier transfer programs. In the beginning, the CHST was planned to involve a two-year cut of $7 billion over 1996–97 and 1997–98. Third, while the five conditions associated with the *Canada Health Act* remain in place and are enforced by Ottawa, with respect to social assistance and social services, only one of the five conditions under the *Canada Assistance Plan Act* is retained.[27] Fourth, the federal government pledged that any new policy objectives dealing with the social union would be in the form of principles, not standards, to be decided through mutual consent with the provinces and territories and not be imposed on any government.

Aspects of the thinking behind what eventually became the CHST are sprinkled through the 1994 discussion paper, *Improving Social Security in Canada*. In the main, the CHST-like proposals were not strongly supported by the standing committee nor were they widely endorsed by groups participating in the social security review consultations.[28]

While the parliamentary process of reviewing social programs and transfer payments was underway in 1994 and early 1995, a parallel bureaucratic process was at work, centred in the Department of Finance.[29] By November 1994, Finance officials had briefed their minister on a proposal to consolidate EPF and CAP, reduce the size of the transfer, and reduce the scale of conditions attached to the transfer. This would limit Ottawa's expenditure obligations under the transfer and try to appease the provinces' demands for more flexibility in these policy areas. Through December, the ministers of HRDC and Health Canada and their officials became aware of Finance's proposal. While Health resisted the idea of medicare transfers being lumped together with welfare and postsecondary payments, the HRDC minister, who was overseeing the social security review, was supportive of the general concept as he thought it would clarify responsibilities between the orders of government. The federal Cabinet until a mid-January 1995 retreat did not discuss the proposed block grant. Again, the health minister fought to prevent the inclusion of health in the new block grant, but she lacked the necessary backing among Cabinet colleagues.

The outline of the CHST was announced in the February 1995 federal budget, although the details had not been worked out and agreed upon within the government. This was the first formal occasion at which provincial and territorial governments learned of the CHST, though there were leaks reported in the press in mid-January. In many ways, the CHST totally eclipsed the social security review.

Given the secrecy and haste in crafting the CHST, and the ministerial bargaining, the federal government did not decide upon a cash floor for the CHST until six months after the budget announcement. Finance officials favoured a transfer payment floor of $9 billion per year while some ministers, particularly "social Liberals," wanted a floor of $12.5 billion each year. The Prime Minister's Office worried over the size of the cuts and settled for an annual cash floor of $11 billion.[30] Indeed, at the outset of the 1997 general federal election, the prime minister announced that a re-elected Liberal government would raise the cash floor from $11 billion to $12.5 billion. This announcement likely helped the Liberals in keeping the issue of medicare's future largely off the electoral agenda, but it did not meet the provinces' demands for restoring the cuts in transfer payments. The same can be said of the further enrichment of the CHST in the 1999 federal budget.

This unilateral form of federalism undoubtedly disillusioned social Liberals within the federal government; distressed the provinces and territories, badly straining intergovernmental relations; and disturbed social policy groups about the fate of social assistance and social services under the CHST regime. Groups voiced numerous worries about the CHST. For instance, as an open-ended, matching-grant program, CAP involved Ottawa in sharing the costs of offsetting the impact of economic downturns on welfare rolls. As a closed-ended block fund, the CHST lacks this stabilization feature. It deliberately does not provide for the cyclical nature of social assistance expenditures that occur broadly in line with the vicissitudes of the economy.[31]

For people with disabilities, Bach and Rioux believe that the CHST "will create serious hardships" by limiting social obligations to Canadians with disabilities.[32] They offer three main reasons for this bleak prediction. First, "there is less likelihood of governments investing in transition from the legacy of an institutional and segregated system established to serve the 'worthy poor.'" Second, given demands "for an end to provincial budgetary deficits and the political backlash against people on social assistance, governments will be pressured to establish highly targeted and categorical programs that are politically saleable. There is no better target for such a purpose than the 'worthy poor,' no better group to fill the bill than people with disabilities." And third, Bach and Rioux contend that "the CHST signals the end of a role for the federal government in managing and encouraging a national discussion on comprehensive social policy in which public policy and welfare state provision would be critically examined from the perspective of universal rights."[33] With the important exception of health-care transfers being partially restored of late, the 1997, 1998 and 1999 federal budgets underscore this retreat on social welfare provision.[34]

In view of welfare cuts, privatization, and the regionalization of health and social services across the country, Bach and Rioux are not very optimistic about the leadership capacity of the provinces in social policy and disability-related programming. At the macro level of policy development and intergovernmental relations, however, there is evidence, since the publication of the Bach and Rioux article, of provincial and territorial governments working together and taking the initiative on social policy matters. This recent development brings us to the fourth regime of federalism functioning in Canada today.

INTERPROVINCIAL/TERRITORIAL COLLABORATION AND DISABILITY POLICY-MAKING

Interprovincial/territorial collaboration, as a model of federalism, is based on the assertion that it may be possible to achieve pan-Canadian objectives through group effort among the provinces and territories without the direct involvement of the federal order of government. In the purest form of this model, Ottawa would not at all be involved in policy design, administration, evaluation or audit.[35]

In practice, however, as Black reports, “interprovincial cooperation has not been the norm for relations between governments in Canada.”[36] Whittington and Van Loon explain that, “provinces and territories are simply too diverse and their interests shift too quickly for interprovincial institutions to function consistently as instruments of national policy.”[37] In an earlier period in Canadian federalism, Richard Simeon regarded interprovincial conferences as “potentially important sites for negotiation.”[38] Provinces would resort to such conferences to develop synchronized positions, Simeon suggested, “only on those federal-provincial matters where the provincial oxes have all been gored, and when feelings … are running high.”

Unquestionably, federal-provincial conflict has intensified since the late 1980s, driven by several unilateral restraints applied to the EPF transfers, cuts to Unemployment Insurance benefits and increases in premiums, the cap on CAP, and the introduction of the CHST which “gored the ox” of all the provinces and territories. Individually and cumulatively, these measures have encouraged a new take-off of provincialism in federalism and of interprovincialism in social policy-making.

In the wake of the introduction of the CHST and the breakdown of the federal social security review, the provinces took charge of social policy reform. Provincial/territorial conferences and working groups are more prominent in asserting a leadership role in policy development.

The Provincial/Territorial Council on Social Policy Renewal

The Provincial/Territorial Council (PTC) on Social Policy Renewal, created after the 1996 Annual Premiers' Conference, by nine provinces and the territories (Quebec is not participating), is the clearest example so far of institutionalizing this new interprovincialism. The mandate of the PTC is to:

- coordinate an approach to overarching social policy issues of national importance, such as the use of the federal spending power;
- support and coordinate the work of sector ministries, such as social services, labour market and health care, in developing new initiatives;
- report to premiers on progress on social policy renewal on a regular basis; and
- make recommendations on how to advance the social policy renewal agenda.

The PTC has agreed to a set of ground rules to guide their work. These deal with transparency in offers and agreements made; respectful cooperation; each government coming to negotiations as equal partners; having the authority of respective Cabinets to speak for their governments; and a "whole of government" perspective on social policy issues.

The aims of the PTC are to halt federal unilateralism by developing joint proposals for managing the social union and reforming social programs. To varying degrees and in differing ways, the provinces are seeking to limit the future use of the federal spending power in areas of provincial jurisdiction. In addition, they want to establish an intergovernmental mechanism for resolving disputes between the two orders of government on policy issues, such as what constitutes compliance and non-compliance with national health-care standards. This latest form of provincialism resembles earlier kinds in terms of the goals of safeguarding provincial autonomy from federal control and extending provincial influence over federal policies which impact on the provinces.

Since 1996, the nine provinces and the territories have been working more collaboratively on a range of social policy matters than many observers of federalism thought possible. To date, however, this interprovincialism is more a tendency and a posture than a trend and a new period in intergovernmental relations in Canada. Provincial-territorial cooperation is a reaction against unilateral federalism by Ottawa and a change from classical federalism, but it is not a retreat from collaborative federalism, especially with respect to policies and programs for persons with disabilities. Shortly after the PTC on Social Policy Renewal was created, provincial and territorial ministers decided to invite federal participation. Two parallel bodies on social policy reform were therefore established — the PTC and a Federal/Provincial/Territorial Council (FPTC) — so that the models of interprovincialism and collaborative federalism exist side by side.

The nine provinces and two territories have shunned the radical vision of interprovincialism. The federal government has been invited to participate in redesigning disability policies and programs within provincial jurisdictions. The FPTC has a similar mandate and the same set of ground rules for working together as the PTC. As noted earlier in this chapter, federal, provincial, and territorial ministers responsible for social services successfully negotiated a multilateral framework on the EAPD to replace the VRDP. These ministers also worked together on a discussion paper, entitled *In Unison: A Canadian Approach to Disability Issues*, which sets out a long-term vision for the integration of persons with disabilities as full participants and equal citizens in Canadian society.[39] Perhaps disability policy is one of those areas that is less contentious and political than, say, tax sharing or energy policy, and therefore easier in which to develop cooperative machinery.

This acceptance of a continuing federal role in disability policy likely involves a mixture of fiscal prudence, political philosophy, policy pragmatism, and clientele politics. Provinces no doubt want to maintain federal transfers as a revenue source, even at diminished levels, for financing reasonably comparable social programs. The philosophical belief that the federal government has a legitimate role to play in interpreting and articulating pan-Canadian values is reinforced by the pragmatism of recognizing the long-standing interdependence of the two orders of government with the CPP disability benefits, the VRDP and the income tax system. Last, but far from least, consumer groups and advocacy organizations for persons with disabilities have strongly argued for continued collaboration between the two orders of government. They have effectively argued that this is not just to address gaps and overlaps in benefit and service coverage, but to also advance basic rights of citizenship for Canadians with disabilities.

ASSESSING THE REGIME TYPES FOR DISABILITY POLICY

This section assesses the four intergovernmental regimes, applying the following evaluative criteria: social policy paradigms and goals; democratic values and processes; and principles of federalism.

Social Policy Paradigms and Goals

The historical survey of disability-related initiatives presented in this chapter reveals that disability issues have become increasingly recognized as warranting active public attention and lie within the legitimate domain of both the federal and provincial governments. Since the 1980s, in particular, disability issues have achieved regular agenda status in government decision-making processes and structures. Today, disability issues are on the agendas of the courts, in large part aided by the Charter of Rights and Freedoms, government departments and central agencies, human rights commissions, and parliamentary committees, in addition to other public authorities within the overall public sector in Canada.

Informing these agendas, and even influencing the nature of the agenda-setting itself, are policy paradigms, each of which includes certain images and discourse about disability as well as policy analyses and prescriptions. Disability policy paradigms include the individualistic-medical, the income support-economic, and the socio-political rights perspectives.[40] The shift in the way disability is discussed, researched, politically constructed, and responded to (or not) through policies, is apparent in the visions proposed in the *Mainstream 1992* review and again in the *In Unison* process by federal, provincial, and territorial ministers responsible for social services.

The intended shift is from relying on humanitarian and medical approaches toward greater emphasis on economic and socio-political perspectives. In brief, this means a move from labelling persons with disabilities as permanently incapacitated and deemed incompetent, with policies for protecting and caring for the disabled, toward an approach that views persons with disabilities as citizens with rights and responsibilities, with policies designed to accommodate and empower through the adaptation of the social, institutional and physical environments. The replacement of the VRDP with the EAPD is one partial example of this shift. Another is employment-equity legislation with persons with disabilities as a designated group.

The older perspectives on disability persist, though, embedded in various policies and programs at both levels of government in Canada. The individualistic medical model of disability, with assessments by professionals to determine the extent of the incapacity, is still central to the classic programs in this field, workers' compensation plans and veterans' benefits. Furthermore, the model is in effect in more recent policies such as CPP/QPP disability benefits; public auto insurance programs, provincial sales tax relief for medical care purchases, and the federal Disability Tax Credit and Medical Expense Credit. These tend to be the big dollar programs in this sector.[41]

There will always be a need, of course, for programs that provide medical and rehabilitative supports to many persons with disabilities. The aim of the disability movement, and the general direction of recent social policy, however, is that the newer integration and rights perspectives should inform such supports. Based on the policies and programs surveyed in earlier sections, Table 1 outlines how the four intergovernmental regimes relate to the three disability policy paradigms.

Table 1 shows the predominance of the disentangled and collaborative regimes in the disability policy field. The table shows also that the three policy paradigms are obvious in disentangled and collaborative federalism, and that neither unilateralism nor interprovincialism is linked to the socio-political perspective on disability.

Viewed chronologically, the oldest policy initiatives were acts of disentangled federalism informed by the medical-rehabilitation and charity-based paradigm. Disability policies which developed through a process of collaborative federalism have occurred in two waves, the first in the 1950s and 1960s, and the second in the 1990s. The more recent wave is distinguished by a greater emphasis on socio-political rights and duties. The same can be said of more recent disentangled initiatives.

Federal unilateralism is the new paradigmatic kid on the policy block. In the 1990s, it was used to contract as well as expand benefits for persons with disabilities. This analysis suggests another aspect to unilateralism not commonly noted in the federalism literature in Canada. Not only has unilateralism involved expenditure cutbacks and strained federal-provincial relations, it has also, through the vehicle of deficit reduction, concentrated on the individualistic and medical conception of disability, with less attention given to the human rights of this minority group. Spending restraint goals, in other words, have spilled over into disability-related policy and program activities.[42]

A disregard for rights of citizenship is not built into the unilateralist style of intergovernmental relations, nor an inevitable consequence. It has, however, been perceived by many as the usual pattern in our recent era of

TABLE 1
Intergovernmental Regimes and Disability Policy Paradigms

Regime/ Paradigm	*Medical-Rehabilitation*	*Income Support-Economic Integration*	*Socio-political Rights and Duties*
Disentangled	• Workers' Compensation (1914–40s) • Veterans' services (1919-onward) • Public auto insurance plans (1970s) • Some tax benefits (1980s–90s)	• Trust fund rules • Disability income programs (1970s–90s) • Employment Equity and Federal Contractors programs (1985–86) • Provincial education and training measures (1970s-onward) • National Strategy, 1991–96	• Human rights code amendments (1970s–90s) • Disability offices and councils (1980s–90s) • Funding to disability groups (1970s-onward) • Charter Challenges Program (1985) • *On Equal Terms* (Quebec, 1996)
Collaborative	• VRDP (1961–97) • CPP/QPP disability benefits (1970) • CAP social service (1966)	• Blind Persons' Allowance (1954) • Disabled Persons' Allowance (1951) • CAP income assistance (1966) • EAPD (1999)	• Canadian Charter, section 15 (1985) • *Mainstream 1992* • *In Unison* (1998)
Unilateral	• Cap on CAP (1990–96) • Freeze of federal VRDP cost share (1995) • CHST (1996)	• Increase in federal EAPD funding (1998)	
Interprovincial	• Ministers of Health, Labour and others	• Old Age Pension administration (1930s and 1940s)	

cutback federalism and restraint in transfer payments. In principle, the imposition of conditions, as with the *Canada Health Act*, can be viewed as upholding and possibly even strengthening certain rights and duties in relation to important health and social services. Practices in the 1990s, though, with respect to CAP, EPF, and the CHST, have cast unilateralism as a regime of expenditure restraint and reduced federal activism. The capacity for unilateralism to promote disability rights and duties, therefore, is not predetermined. It depends, rather, upon a handful of related factors. These likely include: (i) the nature of the federal conditions being attached, (ii) to what amount of cash transfers over what time frame, in relation to (iii) what provincial governments are doing, (iv) what interest groups are advocating for, and (v) what the general public is willing to support.

If one regime type more than another is associated with the human rights paradigm, it is disentangled federalism. If citizenship (and the social union) is more broadly conceived, to include economic opportunities and inclusion, then collaborative federalism is critical for achieving outcomes of employment, equal access, community living, and effective participation in the mainstream of society.

What makes the classical model of federalism an indispensable vehicle for the human rights paradigm is that matters relevant to civil liberties and civil rights are covered in both federal and provincial areas of jurisdiction of the *Constitution Act, 1867*. By virtue of section 92 (13), “property and civil rights in the province,” most of the field of human rights in Canada is under provincial authority. Peter Hogg has called this “by far the most important of the provincial heads of power” and the one most involved in major constitutional cases dealing with the competition between federal and provincial legislative powers.[43] Throughout Canada’s political and legal history, courts have used the “federalism grounds” of judicial review to invalidate laws inconsistent with the distribution of legislative powers between the federal Parliament and provincial legislatures. At times, this review power has struck down statutes limiting or denying the civil liberties of individuals and groups. In this way, classic federalism has safeguarded some human freedoms and dignity.

From the 1940s into the 1970s, provinces took the lead in developing human rights codes and commissions, and by the 1980s all codes listed disability as one of the prohibited grounds of discrimination. Even with the constitutional entrenchment of the Charter of Rights and Freedoms in the early 1980s, provincial codes remain uniquely significant with their wider scope of application, extending beyond governmental activity to include private activities such as advertising, accommodation, business generally, contracts, employment, family law, and transportation services.[44]

Under disentangled federalism, all major social policy goals can be addressed if there is active intervention in a wide range of programming areas at both orders of government in Canada. In reality, most social goals in this and other fields are primarily dealt with at the provincial level. Provinces address intraprovincial equity (tax measures and human rights codes); human development (health care and education); mobility (training and employment standards, property, and civil rights); and societal risk sharing (workers' compensation and, in some jurisdictions, public auto insurance). The federal government addresses national redistribution and equity between and among groups through intergovernmental transfer programs such as the Equalization program and CHST, through the tax system, and in a modest way through the Charter Challenges Program.

Provinces played a major disability policy-making role in the early decades of the twentieth century with workers' compensation, and more recently with deinstitutionalization and welfare reforms, among other "disentangled" initiatives. As an alternative to welfare, some provinces have adopted pension-like benefits for persons with disabilities. Such reforms, according to the National Council of Welfare, have advantages and dangers: "Taking people with disabilities off welfare, for example, would remove the welfare 'stigma' from a significant portion of the people now receiving assistance. On the other hand, it would mean that the able-bodied people left on welfare would become more vulnerable to the next round of welfare cuts. The other problem with transferring people to other programs is that it makes for great headlines at the expense of accountability. The provinces will no doubt continue to produce welfare statistics, but they may quickly become meaningless."[45]

At the federal level, there have been many notable disentangled initiatives through the tax system. Before 1985, there was essentially one tax measure, the disability tax deduction, which was regressive in impact and restrictive in scope. Its goal was to reduce the costs faced by those with a severe physical disability, such as blindness or confinement to a bed or wheelchair. Many new tax measures have been introduced and older ones have been converted to credits since then. The purposes behind these tax measures, in addition to offering financial assistance in defraying medical expenses and living costs, deal with employment, education, family support, and community living.

For the federal treasury (and provincial and territorial treasuries too), these tax measures narrow, if only slightly, the base of the personal income tax system and, therefore, modestly reduce personal income tax revenues. At the same time, however, these tax measures promote efficiency and mobility by lowering employment barriers and assisting families. In addition, the measures establish a form of equity between able-bodied earners and those who experience extra expenses because of a disability. While improvements to the tax system have taken place for persons with disabilities, a fundamental issue remains. Many Canadians with disabilities do not have a taxable income, and because the disability-related tax credits are not refundable, rather they only reduce taxes owing, the additional costs borne by the individual without a taxable income — the poorest of Canadians with disabilities — are not offset. This flaw is not due to the intergovernmental regime, nor would it be corrected by switching regime types. Instead, the solution lies within federal tax policy, making these tax credits refundable.

In principle, collaborative federalism would potentially be able to tackle the full range of social policy goals, especially if the collaboration involved resource additions rather than resource subtractions to programs and services. In particular, the wider web of cooperation would facilitate mobility, economies of scale, and societal redistribution. In the case of disability income policy development, over much of the past 70 years the federal government took the initiative and the provinces generally responded, be it positively or negatively, quickly or slowly, singly or jointly. As a consequence, much of that history of income policy development is a history of incremental change in programs with occasional new departures in policy. The overall trend has been relatively more favourable action than before toward people with disabilities in terms of financial assistance.

The antecedents of CAP reveal the significance of that intergovernmental agreement for the goals of community, mobility, and dignity. Under CAP, residency requirements that restricted access to the disabled benefits, blind persons' allowance, and the old age assistance were prohibited and the means-testing of these programs was replaced by a needs-test as conditions for federal cost sharing. In a similar vein, replacing the VRDP with the EAPD, with its emphasis on the labour market participation of adults with disabilities, relates to pan-Canadian policy goals of human development, mobility, and efficiency.

The examples of unilateral federalism examined here suggest that this regime type does not effectively promote social rights of citizenship. The cap on CAP destroyed the collaborative foundation of that policy framework and jeopardized social goals of equity and human development. The ceiling on federal transfers for welfare also contradicted the National Strategy for the Integration of Persons with Disabilities.[46] The subsequent abolition of CAP and introduction of the CHST raises questions, with respect to persons with disabilities, as to the future of attendant and respite services, and medical equipment and supplies, formerly cost-shared in CAP.

In some sense, these examples of federal unilateralism are a result of failures in collaborative federalism. The federal Department of Finance was discussing reworking fiscal federalism with the provinces for a number of years before the cap on CAP and the CHST were implemented. To an outsider, it is unclear if one level of government or the other was more at fault, but the federal Finance officials could not strike a deal with the provinces. It may be that the provinces or provincial finance ministries preferred to let the federal government administer the strong medicine and "do the dirty work" of restraining social program transfers. Conceivably, federal unilateralism is an escape hatch from failed collaboration and a device for retrenchment when budgetary times get difficult.

Unilateralism is not just a form of federal-provincial relations but also of intragovernmental relations. The creation of CAP in 1966 and EPF in 1977 were both products of intergovernmental negotiations, *à la* collaborative federalism, and involved a good deal of intragovernmental discussion across federal departments and central agencies. The cap on CAP and the design of the CHST were unilateral actions, not intergovernmental ones, and the products of budget decisions. Consequently, there was little discussion, particularly at the stage of formulating these restraint options, between Finance and other federal departments. These actions illustrate the resurgence of Finance in the later 1980s and 1990s as a powerful decisionmaker within the federal policy-making system.[47] Issues of spending control and fiscal arrangements were central items on the federal policy agenda. Finance's strengthened position was undoubtedly due to the growing sense of crisis over deficits and debt charges, reinforced by shifts in public opinion to greater conservatism; changes in the Cabinet committee and budgeting systems that reduced the autonomy of line departments; the elimination of two other central agencies (the Ministries of State for Social Development and Economic Development) that reduced competition for Finance; and the long tenure of senior ministers as finance minister in both Conservative and Liberal administrations.

That finance departments relate differently to one another than do program departments is important to intergovernmental relations, above all when unilateral actions are taken. As Dupre has noted, central agencies as such, like finance departments, are not hostile to the conduct of collaborative federal-provincial relations among program ministers and officials.[48] They can, for example, effectively communicate the general policy direction of a whole government. They are, after all, horizontal portfolios with government-wide responsibilities and an expertise in economic and fiscal matters. Yet central agencies do have limitations in that they are usually not as connected as operating departments are to program clientele and interest groups on an ongoing basis. If there has been something intrinsic in federal unilateralism that predisposed Ottawa to produce the cap on CAP and the CHST, it is the predominant role of Finance officials. Their task as guardians of the public purse is to hold back the spending demands of line departments and other levels of government.

In sum, there is both stability and change in the evolution of the disability policy paradigms. From a policy perspective, regime types do matter, especially when they are viewed, as they ultimately must be, in their actual historical and political contexts. This evolution suggests that the older paradigms are not sufficient and need to be supplemented, if not supplanted, by the newer ones.

Democratic Values and Processes

Canadian academics have long explored the relationship between federalism and representative democracy.[49] Writers have considered the implications of federalism for such democratic values and processes as the accountability of governments to legislatures; the responsiveness of policymakers to public opinion and organized interests; citizen consultation and participation in policy development; and the openness and transparency of intergovernmental proceedings. The literature has concentrated on just one regime type, namely, collaborative federalism.

From this examination of disability policy-making in four regime types, three overall findings on federalism and democracy can be noted. The first is that unilateral federalism is in considerable tension with democratic values and processes. Second, there is too little experience with the interprovincial regime in disability policy to offer a definite assessment of the democratic consequences of this form of federalism. The Provincial/Territorial Council, though, shows promise as a workable mechanism of intergovernmental relations in social policy. The third conclusion is that both the disentangled and the collaborative regimes show encouraging signs of enhanced accountability, greater public participation and consultation, and a meaningful role for parliamentary committees.

Unilateral federalism does not seem to be a friendly approach for inviting legislatures, interest groups, or other governments to participate in the design and development of policy. By definition, access is restricted to just one government, leaving little or no time to scrutinize or mobilize against any one-sided action. Undoubtedly, unilateral policy-making may stimulate political participation and public debate, but it will most certainly be a reactive and frustrated kind of civic engagement. The federal government’s unilateral cap on CAP provoked this kind of frustration. As Melchers noted of the process, “the unilateral withdrawal of funding must be debated by Parliament on its own grounds. It is improper to abrogate a substantial piece of legislation and the principles it upholds by an amendment hidden in an omnibus finance bill.”[50] The eventual Supreme Court of Canada decision on CAP upheld the federal action on the grounds of the doctrine of parliamentary supremacy, a core democratic value to be sure, but an action made at the expense of several other democratic values. A similar unease was voiced with respect to the process used in introducing the CHST. Ross wrote of the CHST that, “for it to be hastily introduced as a budget bill, aimed almost solely at reducing the deficit, instead of as a well-thought-out major piece of social legislation is a cause for real concern.”[51]

Under the classical or disentangled model of federalism, disability-related claims and issues have found expression through the jurisdictions of both orders of government in Canada. Disability policy responses to the demands of groups are not an entirely new phenomenon. The *War Veterans’ Allowance Act*, 1930, for example, was enacted following “considerable pressure from veterans’ organizations.”[52] Yet, this was more the exception than the general pattern of disability politics and policy-making for most of the twentieth century.

Since the early 1980s, a growing democratization of federal and provincial policy processes for disability groups and issues has taken place. In Ottawa, first a special parliamentary committee, and then a standing House of Commons Committee on Human Rights and the Status of Disabled Persons, have served as vehicles for involving and consulting with disability groups, and as useful catalysts for change. Through their reports, the standing committee has carried out the following activities:

- promoting the equality of rights of persons with disabilities;
- highlighting the costs of inaction;
- recommending legislative and regulatory reviews and reforms;
- proposing improvements to the tax system as it affects persons with disabilities;
- drawing political and public attention to the needs of Aboriginal Canadians with disabilities;
- contributing to the conceptual and programmatic expression of a new disability policy paradigm;
- assessing the achievements and shortfalls of the 1991–96 National Strategy for the Integration of Persons with Disabilities; and

- suggesting protections in the CHST to guarantee funding for disability supports.

A recent variant of this was the federal Task Force on Disability Issues, appointed in June 1996 by the ministers of finance, human resources development, and revenue. Their mandate was to define and to make recommendations regarding the appropriate role of the federal government as it relates to Canadians with disabilities. The task force was chaired by MP Andy Scott and included three other members of Parliament. The Office for Disability Issues within HRDC provided support to the task force.

Representatives of 22 national disability organizations participated in the work of the task force in a variety of ways. The representatives formed a reference group that identified issues and refined research themes, and had observers present at all the public meetings of the task force. Experts commissioned to do research collaborated with a working group of representatives of the national organizations. In 15 forums held across the country, some 2,000 people participated, most of whom were people with disabilities.[53] The final report, *Equal Citizenship for Canadians with Disabilities: The Will to Act*, was released in October 1996. Several task force recommendations, particularly as they dealt with tax reforms, were introduced in the 1997 and 1998 federal budgets. In budget speeches that include disability-related tax changes, a common refrain is that such changes reflect a process of ongoing consultations with representatives of organizations for Canadians with disabilities.[54]

Within provincial jurisdictions, too, consultations between government departments and organizations of and for persons with disabilities take place on a regular basis on various topics. In British Columbia, members of groups representing persons with disabilities took part in consultations with the provincial ministry over a two-year period on developing the disabilities benefits program that came into effect in April 1997. In Manitoba, regular consultations have been underway since early 1997 with a reference group of about 15 individuals, service-providers and members of the disability community. The consultations have dealt with the redesign of the VRDP and the harmonization of benefits and services to persons with disabilities. In Nova Scotia, 26 representatives of organizations of and for persons with disabilities and service-providing agencies have engaged in a consultation process with the province on income and employment support policies, among other matters.

The conventional critique of collaborative federalism by Canadian scholars is that this variant of intergovernmental relations is quite deficient in regards to democratic values and procedures. More than that, scholars condemn this regime type as manifesting several anti-democratic features. In his masterful study of federal-provincial diplomacy, Simeon argued that collaborative structures limited the participation of interest groups in the policy process; that debate was shrouded in relative secrecy, freezing out the public and press; that affected groups were not invited to participate in intergovernmental discussions; and that the role of legislatures was generally minor.[55] He also observed that discussions between the federal and provincial governments tended to focus on concerns of governmental status and away from policy substance. Other writers likewise rebuke cooperative or executive federalism as a closed, elite-dominated policy process.

A review of designing disability policy, however, indicates that the conventional critique of collaborative federalism does not precisely apply to this field. *Collaborative federalism can be democracy-friendly*. This is not to suggest that policy debates and public participation in relation to disability issues are wide-open or that legislatures are strategic actors in the process. Cabinet government and party discipline are too fundamental as concentrators of power in our political systems to permit that. Nevertheless, it does seem clear that the influence of interest groups in intergovernmental relations varies by type of group, policy issue, and historical period.[56] Furthermore, recent collaborative processes in federal-provincial-territorial relations have helped to bring disability interests more to the fore of governments' policy agendas.

This situation is not unique to the disability policy sector. In a study of intergovernmental negotiation over highway transport policy, Schultz found that interest group participation was extensive and central to federal-provincial bargaining.[57] This result is contrary to the hypothesis in the literature, noted above, that interest group access to intergovernmental processes is severely restricted. "Rather than being frozen out," Schultz observed, "there existed close and continuous contact between the CTA [Canadian Trucking Associations] and governmental actors before and especially during the federal-provincial bargaining process."[58] Interest groups influenced the timing of negotiations and the strategies and tactics of governments. As well, the CTA kept the federal government informed of provincial positions and sought to convert some of the provinces. Most importantly, Schultz concluded, the CTA provided the federal government an important political resource by offering support to the federal position.

Intergovernmental policy-making need not exclude the participation of interest groups. Schultz identified two conditions that facilitate openness and transparency for non-governmental actors in collaborative federalism: first, if the nature of the issue is viewed essentially as a public issue rather than one involving constitutional matters or governmental interests; and second, if there is a readily identifiable client group organized in the policy sector. Both these lessons apply to the contemporary disability policy sector. Since each order of government deals with human rights, citizenship, and equality of opportunity, the goals and content of disability programs are generally seen as worthy matters of social policy. A number of organizations of and for persons with disabilities are present at the provincial and the national levels. These organizations are actively mobilizing and connecting with not only the intergovernmental arena, but with the bureaucratic and parliamentary arenas too. A third lesson that can be drawn from this policy sector is that there is no generally organized opposition to disability groups, no competing advocacy coalition that would challenge their message and complicate the decision-making processes of governments.

In disability policy-making, collaborative federalism is broadening participation beyond ministers, senior bureaucrats, and program specialists to include organizations of and for persons with disabilities, legislators, social policy consultants and other service-provider agencies. It is also establishing new lines and strengthening old lines of accountability to legislatures and other stakeholders. The recent process for reviewing and reforming the CPP involved an intergovernmental public consultation process, offering some access points for disability groups and others, and some new accountability to Parliament in terms of reporting requirements on the actuarial status of the fund.[59] In addition to the joint federal-provincial consultations held across the country, the Ontario government conducted its own consultations on the future of the CPP, using a legislative committee to visit at least ten communities throughout the province.

On developing the *In Unison* policy vision document, the nine provincial and two territorial ministers responsible for social services asked their officials to share the draft document with stakeholders from the disability community. In July 1998, three *In Unison* discussions were held to seek the views of stakeholders on future policy directions in the disability area. Approximately 35 stakeholders representing the disability field participated in each of two national sessions. The participants included disability advocates, service-providers, researchers, policymakers and government officials. A third session was held specifically on Aboriginal disability issues. Following this stage, and some further discussions among the governments, the *In Unison* report was released by the social service ministers in October 1998.

Accountability measures, results indicators, and an evaluation component are built into the EAPD bilateral agreements. According to the multilateral framework, bilateral agreements between the federal government and a province, “Mechanisms for assessing and evaluating the anticipated and actual results of this initiative would involve persons with disabilities, using either formal structures or advisory groups.” The multilateral framework notes also that, “results reporting will accommodate a quantitative and qualitative approach and focus on changes in employment/employability status of program participants in the short, medium and long term.” A federal-provincial-territorial planning process will also be established, “which takes into consideration the views of individuals with disabilities, service providers and other stakeholders.” Annual reports on results achieved will be prepared by each province and territory and will be made public. The federal government has agreed to fund incremental costs to provincial and territorial governments associated with fulfilling these accountability requirements.

Principles of Federalism

Principles of federalism include respect for the constitutional division of authorities; commitment to legal and political processes for the resolution of conflict; effective equality between the two orders and, at the provincial level, among the provinces; and independence and interdependence in policy processes. Federalism, as Smiley neatly stated, is about territorial pluralism; it entails multiple territorially defined political communities based along the boundaries of provinces, territories and the nation-state.[60] Canadians with disabilities, however, are not a territorially demarcated policy community. True, many disability organizations do have federal structures with provincial and national associations. Yet, as a human condition and social construction, disability is not based on territory. Within Canada, people with disabilities are not a spatially defined group of rights claimants and holders (unlike, say, Aboriginal communities). Even still, federalism has shaped disability policy-making and, in turn, federalism has been shaped by the democratic activities of disability organizations and advocates. Disability groups want active, collaborative, and comprehensive measures taken by Canadian governments. Advocates and service-providers want to see political leadership at both levels and holistic approaches common in all jurisdictions.

In relation to disability policy then, how does each intergovernmental regime give expression to principles of federalism? Are certain core ideas of federalism connected with and advanced by some regimes more than with others? Table 2 summarizes my assessment of the relation between the intergovernmental regimes and four principles of federalism as they have been articulated in disability policy formation.

When both orders of government are active policymakers, disentangled federalism contributes simultaneously to decentralization and centralization,

TABLE 2
Intergovernmental Regimes and Principles of Federalism

Principles/ Regimes	*Respect for Constitutional Division of Powers*	*Commitment to Conflict Resolution Processeses*	*Effective Equality among and between Governments*	*Independence and/or Interdependence in Policy-making*
Disentangled	yes	not needed in classical model	yes	independent
Collaborative	probably[1]	yes, including constitutional amendment	yes	interdependence in policy development and relative independence in program implementation
Unilateral	no	judicial avenues used on cap on CAP issue	no	independent policy action resulting in coercive interdependence in program implementation
Interprovincial	yes	yes	yes?	provincial independence from the federal order and voluntary interdependence among provinces and territories

Note: [1] At times, what has been called "cooperative federalism" has been based on genuine respect, while at other times it has been marked by conflict. In principle, Quebec governments since the "Quiet Revolution" have not seen collaborative federalism in social policy, with the federal spending power and federal conditions attached to transfers, as reflecting respect for the constitutional division of powers.

effectively raising the profile or status of both values and orders of government.[61] The level of conflict in intergovernmental relations is relatively low compared to other regime types, especially unilateralist, as is the role of intergovernmental structures. The impact of collaborative federalism on decentralization and centralization is mixed, as the CPP/QPP, CAP and EAPD clearly demonstrate. Intergovernmental conflict has fluctuated in this regime, although for disability policy itself the conflict has been moderate. The role of federal-provincial-territorial decision-making structures in the disability area is becoming more important rather than less. Here the main style of policy-making is bargaining among governments.

Unilateral federalism, as we have shown, involves highly adversarial relations between government levels, raising the profile of Ottawa in a critical light, regarded as acting in breach of the spirit of federalism.[62] Under unilateralism, the policy-making style entails command and control. Intergovernmental relations are explicitly and bluntly hierarchical. The initial policy decision is centralized while the consequences, adverse ones if they involve cutbacks, are decentralized across jurisdictions. Finally, interprovincialism is based on decentralization and horizontal collaboration. This regime type raises the profile of provinces and territories in national politics, including those of the smaller governments. The policy style typically involves persuasion. In the field of disability policy, however, the provinces and territories quickly invited the federal government to participate in discussions on the harmonization of benefits and services as well as on developing a new paradigm for policy-making.

Following the classical model of federalism, both orders of government in Canada are active in disability policies and programs. Despite decentralization and devolution, downsizing and downloading, the federal government retains an important range of authorities and activities. Whether the two orders are disentangled is another matter. In fact, there is considerable intergovernmental contact and dealings. The provincial and federal governments are not self-contained jurisdictional domains. Even in an area like income tax policy, federal reforms affect the revenues of provinces.

The relationship between the federal and provincial governments underwent a profound change triggered by the cap on CAP and then made worse by the introduction of the CHST. These and other kinds of "cutback federalism" prompted the provinces (except for Quebec) and territories to embrace interprovincialism. The Provincial/Territorial Council on Social Policy Renewal embodies the institutionalization of this impulse and reaction against federal unilateralism. The council has a mandate, ground rules for working together, and has held several meetings. This is not a new form of government, however. The ground rules are voluntary and stress the non-hierarchical and interdependent nature of their relationships. A collaborative approach is now part of the renewal agenda of the federal public service, and increasing the use of partnerships with other levels of government is seen as a tool for managing collective and particular interests in the social union.

CONCLUSIONS

Canadian state intervention on disability matters, especially with respect to social policy, dates back 80 years or more. Perhaps not surprisingly, early policy actions were of the classical federalism variant — independent interventions by one order of government or the other. Even within this disentangled approach, however, were often elements of interprovincial learning and diffusion of reforms, along with connections between provincial and municipal authorities and the provincial public and voluntary sectors. What may be surprising is that collaborative federal-provincial policy-making occurred in the 1930s, before the construction of the welfare state in the postwar period.

Until the 1990s, the field was characterized almost exclusively by the disentangled and collaborative approaches. During the 1990s, though, four regime types are relevant in characterizing Canadian federalism in the disability area. On balance, the field is chiefly disentangled with significant policy examples of collaboration. Aspects of federal unilateralism are evident with the cap on CAP and the CHST, and of interprovincialism in forming the Social Policy Renewal Council.

Where is the disability policy field heading in terms of intergovernmental relations? The beginning of a wise response is the realization that in Canada's modern political and social systems, with strong governments and active citizens at all levels, there is no single regime type of federalism that can do it all in disability policy to serve the public interest. No one regime type can trump all the others; no one type holds all the cards in meeting the complex, diverse, and, at times, competing needs and interests of Canadians and their public institutions. There is no one best regime type waiting to be discovered and embraced by all governments for all times.

Federalism is always in the making. The regime types examined here are politically negotiated and historically situated practices constituted by various forces. The Canadian constitution sets out, legitimizes, and entrenches the formal framework for the disentangled regime form of federalism. The policy instrument underpinning so much of collaborative federalism, the federal spending power, reflects the historic and ongoing gap in responsibilities and revenues between the two orders of government. Unilateralism can be seen, at least in part, as something Ottawa had little choice to do in the face of tremendous financial pressures from a ballooning deficit and growing national debt.

There is a difference between key decision points and what follows in intergovernmental relations. The CHST was imposed unilaterally, but once imposed, we have a regime that is collaborative in the narrow sense that there is some kind of financial cooperation but which in other respects leaves provinces/territories alone to deliver their disentangled programs (except for the condition of portability). Provinces' contested the cap on CAP in the courts, but lost, ultimately having to accept this budgetary tactic. This propelled provinces to consider interprovincialism as a governance regime in the wider social policy field, but this involves building trust, developing consensus on issues and constructing structures, all of which take time and resources.

Though the main approach of this chapter has been more historical than institutional, some reflections on the role of federal-provincial structures can be offered. The question is not whether institutions matter, but how do they matter for the public interest? Larger economic, fiscal, and political conditions may ultimately shape intergovernmental decisions and outcomes; nevertheless, federalism is also influenced by organizational and interorganizational dynamics. Being an assemblage of legally and politically autonomous structures, federalism needs to be managed in some way. That organizational choices are important is obvious from the deinstitutionalization reforms of the past 25 years. Consider another example. A parliamentary committee is arguably more effective than a premier's advisory council which has been tried in a number of provincial jurisdictions. Many disability advocates regard the parliamentary approach of including all political parties, reporting directly to the House of Commons, and requiring the federal government to respond to reports, as a useful process for furthering their goals.

While the academic literature on federalism has traditionally regarded interprovincialism not to be a workable form over time, the Provincial/Territorial Council is forging networks between officials and ministers, and appears to be facilitating the exchange of information and consultation on a range of policy and program issues. The council is a modest, though not insignificant, political forum for reasserting the place of social welfare values and the needs of social program clientele on the wider public policy agenda in our emerging post-deficit era.

The 1990s were a generally quarrelsome period in Canada's intergovernmental relations, but this combativeness has not defined the nature of federalism in the disability field. The disability policy field has been affected by federal restraint of shared-cost programs (CAP, VRDP); cutbacks in federal transfer payments (CHST); and the Canada-Quebec question; yet, the provinces have not embraced radical interprovincialism, that is, the exclusion of the federal government from social policy. Rather, provinces have continued to work with the federal government on a host of issues dealing with disability income, benefits, and employment services. Disentanglement and collaboration can be in competition with one another, but they can also be complementary.

The current Federal/Provincial/Territorial Working Group on Disability is not merely "old wine in a new bottle." The working group is built upon the legacy of previous work done for ministers responsible for the social services, and the working relations forged among officials vis-à-vis the VRDP and now the EAPD cost-shared agreements and the *In Unison* policy document. Having their own intergovernmental committee has helped somewhat in shielding this policy domain from the disruptive unilateralism and combative politics associated with CAP and the CHST. The activities of the group are also positively informed by the work of their sister sector on the national children's agenda and, most recently, by the 1999 Social Union Framework Agreement. This agreement is essentially about process — about how to make social policy and how to manage the interdependence. It strengthens collaborative federalism and is a modest shift toward citizens and democracy. Each government agrees to enhance their transparency and accountability to its constituents by several measures, such as reporting regularly on the performance of social programs and ensuring effective mechanisms for Canadians to participate in developing social priorities and reviewing outcomes. To avoid and to resolve intergovernmental disputes the agreement states that such dispute mechanisms should provide for the use of third parties for expert assistance. In certain circumstances, this could well involve advice from disability organizations. Along with other social policy groups, organizations for and of persons with disabilities will have opportunities for input on the review of the agreement and the design of any successor arrangement. These are, in my view, significant and relatively concrete commitments by governments to community organizations for involvement, information, and influence. The Social Union Agreement will probably raise expectations and stimulate further demands by citizens and public interest groups for accountability frameworks and program results.

Essential to anyone in government making these regime decisions is a sense of the past, distant and recent, and an understanding that federalism is always in a process of contested development. This is crucial if we are to avoid the trap of ignoring lessons learned and the pitfall of adopting out-of-date paradigms for addressing today's aspirations and needs. It is clear that we have entered a new phase of disability politics, discourse, and policy-making in the past two decades. Persons with disabilities are a "shared client group" between the two orders of government, reflecting the separate and joint constitutional powers of the governments, their divergent fiscal capacities, the reality of spillover effects from programs, and the growing demands articulately and compellingly voiced by disability groups for common efforts. Together, disentangled and collaborative forms of federalism will continue to define and influence this field. Within this intergovernmental dualism, further calls for and moves toward democratizing the regimes, and modernizing the policy paradigms, should carry on.

NOTES

[1] Edwin R. Black, *Divided Loyalties: Canadian Concepts of Federalism* (Montreal and Kingston: McGill-Queen's University Press, 1975), pp. 113 and 144. Before the December 1997 First Ministers' Meeting, Quebec Premier Lucien Bouchard said, "I'm going to Ottawa to defend the law. We have a law and the fundamental law is called a Constitution. So everyone has to respect it, including the federal government"(cited in Gerard Boismenu and Jane Jenson, "A Social Union or a Federal State?: Competing Visions of Intergovernmental Relations in the New Liberal Era," in *How Ottawa Spends 1998-99, Balancing Act: The Post-Deficit Mandate,* ed. Leslie A. Pal (Toronto: Oxford University Press, 1998), p. 61.

[2] Ian Robinson and Richard Simeon, "The Dynamics of Canadian Federalism," in *Canadian Politics,* 2d ed., ed. James P. Bickerton and Alain-G. Gagnon (Peterborough: Broadview Press, 1994).

[3] Human Resources Development Canada (HRDC), *Basic Facts on Social Security Programs* (Ottawa: Supply and Services Canada, 1994), p. 39.

[4] Brian Wharf, *Communities and Social Policy in Canada* (Toronto: McClelland & Stewart, 1992).

[5] National Council of Welfare, *Another Look at Welfare Reform* (Ottawa: Supply and Services Canada, 1997).

[6] Michael J. Prince, "Touching Us All: International Context, National Policies, and the Integration of Canadians with Disabilities," in *How Ottawa Spends, 1992-93: The Politics of Competitiveness*, ed. Frances Abele (Ottawa: Carleton University Press, 1992).

[7] A noteworthy exception to this pattern was the absence of a real response in the February 1995 final report by the Liberal majority on the House of Commons Standing Committee on Human Resource Development in their consideration of the federal government's discussion paper, *Improving Social Security in Canada*. Human Resources Development Canada, *Improving Social Security in Canada: A Discussion Paper* (Ottawa: Supply and Services Canada, 1994). Disability organizations had presented a thoughtful and thorough proposal for a "Canada Disability Resource Program" to be financed with existing funds primarily from the then Canada Assistance Plan and the Vocational Rehabilitation for Disabled Persons programs. The Liberal's final report was essentially silent on the proposal, eschewing, it seems, any reforms that appeared to intrude on provincial responsibilities. In any event, much of the committee's work and thinking was quickly eclipsed by the announcement of the Canada Health and Social Transfer in the February 1995 federal budget. On the later part of this story, see Edward Greenspon and Anthony Wilson-Smith, *Double Vision: The Inside Story of the Liberals in Power* (Toronto: Doubleday, 1996).

[8] The federal disability tax deduction, introduced in 1945, applied to the blind: it was subsequently broadened to include other types of disabilities.

[9] Kenneth Bryden, *Old Age Pensions and Policy-Making in Canada* (Montreal and Kingston: McGill-Queen's University Press, 1974), p. 77.

[10] The *Blind Persons Act* was finally repealed in 1983 having long ceased to be necessary with the Canada Assistance Plan in place.

[11] Prince, "Touching Us All."

[12] Rand Dyck, "The Canada Assistance Plan: The Ultimate in Cooperative Federalism," *Canadian Public Administration* 19, 4 (1976):589.

[13] Judy LaMarsh, *Memoirs of a Bird in a Gilded Cage* (Toronto: McClelland & Stewart, 1968); Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto: University of Toronto Press, 1972); Bryden, *Old Age Pensions and Policy-Making in Canada*; Tom Kent, *A Public Purpose: An Experience of Liberal Opposition and Canadian Government* (Kingston and Montreal: McGill-Queen's University Press, 1988).

[14] Kent, *A Public Purpose*, p. 284.

[15] Simeon, *Federal-Provincial Diplomacy.*

[16] Bryden, *Old Age Pensions and Policy-Making in Canada*,

[17] One of the 1998 changes to the federal legislation is that intergovernmental reviews of CPP are now required every three years rather than every five years.

[18] Prince, "Touching Us All," p. 222.

[19] Federal/Provincial/Territorial Review of Services Affecting Canadians with Disabilities, *Pathway to Integration: Final Report, Mainstream 1992*. Report to Ministers of Social Services (Ottawa: Supply and Services Canada, 1993), p. 49.

[20] Human Resources Development Canada, *Improving Social Security in Canada*, p. 41.

[21] For dates and details of many of these meetings, see the Social Union Website at <http://socialunion.gc.ca>.

[22] In the 1995 federal budget, maximum transfers to provinces and territories under the VRDP were frozen at the 1994–95 level. This freeze was part of the Human Resource Development Canada's global budget reduction of $600 million in 1995–96 and $1.1 billion in 1996–97 and thereafter. In the 1998 federal budget, however, funding for the new EAPD was increased $15 million for 1998–99, and $20 million for each of the two subsequent fiscal years.

[23] Kenneth McRoberts, "Unilateralism, Bilateralism and Multilateralism: Approaches to Canadian Federalism," in *Intergovernmental Relations*, ed. Richard Simeon (Toronto: University of Toronto Press, 1985), pp. 71-129. For other discussions, see the Ministerial Council on Social Policy Reform and Renewal, *Report to Premiers* (Jasper, AB: Annual Premiers' Conference, 1996); and Boismenu and Jenson, "A Social Union or a Federal State?"

[24] The Honourable Ronald I. Cheffins, "Review," *Canadian Public Policy/ Analyse de Politiques* 24, 3 (1998):405.

[25] Prince, "Touching Us All," p. 265.

[26] David P. Ross, "Who Will Speak for Canada's Children?" *Perception* 19, 2 (1995):2-3.

[27] The five principles set out in the *Canada Health Act*, 1984 are: accessibility, comprehensiveness, portability, public administration, and universality. The conditions under the *Canada Assistance Plan Act*, 1966 were that need be the sole basis for determining eligibility for income support; residency rules were prohibited for receipt of social assistance; that there be an appeals system on social assistance decisions; that the provinces and territories commit to data reporting and sharing; and that the federal transfers would go only to supporting the non-profit provision of social services. Under the CHST, like the EPF before it, there are no federal standards for postsecondary education.

[28] The author was the research director to the Standing Committee on Human Resources Development during the October 1994 to February 1995 period, and participated in the hearings on the government's Green Paper and in the drafting of the Liberal majority report.

[29] The following discussion draws on the highly informative account of the CHST's origins provided by Greenspon and Wilson-Smith in *Double Vision*.

[30] Greenspon and Wilson-Smith, *Double Vision*, pp. 273 and 369.

[31] According to Greenspon and Wilson-Smith, *Double Vision*, Department of Finance officials "hated" CAP because the federal government could not control the program's expenditures, and had been trying since the 1970s to convert CAP into a capped program. Finance partly accomplished this in 1990, with the ceiling on CAP for the three "have" provinces, and completely succeeded in 1996, with the elimina-

tion of CAP (ibid., p. 231). Greenspon and Wilson-Smith conclude that, “In the next recession, the indigent would be wards of the provinces: the federal government, by implementing the block transfer, had severed its direct link” (ibid., p. 383).

[32] Michael Bach and Marcia Rioux, “Social Policy, Devolution and Disability: Back to Notions of the Worthy Poor?” in *Remaking Canadian Social Policy: Social Security in the Late 1990s*, ed. Jane Pulkingham and Gordon Ternowetsky (Halifax: Fernwood, 1996), p. 322.

[33] Ibid., pp. 322-23.

[34] Arguably, however, the February 1999 Framework Agreement on the Social Union between the federal government and the provinces (except Quebec) and the two territories, might usher in a renewed federal role in social policy. Time will tell.

[35] Just before the 1996 Annual Premiers’ Conference, the premiers of Alberta and Ontario expressed this radical vision of interprovincialism, but the idea was criticized by premiers of “smaller, less well-off provinces” (see Boismenu and Jenson, “A Social Union or a Federal State?” p. 71).

[36] Black, *Divided Loyalties*, p. 100.

[37] Michael S. Whittington and Richard Van Loon, *Canadian Government and Politics: Institutions and Processes* (Toronto: McGraw-Hill Ryerson, 1996), p. 261.

[38] Simeon, *Federal-Provincial Diplomacy*, p. 139.

[39] The *In Unison* document has been developed by the federal, provincial, and territorial governments, except for Quebec, in conjunction with consultants from the social policy and disability communities. The Quebec government has been an interested observer in the FPTC process, but have formulated their own vision document, called *On Equal Terms,* which the FPTC considers to be consistent with the *In Unison* document. Federal/Provincial/Territorial Ministers Responsible for Social Services, *In Unison: A Canadian Approach to Disability Issues* (Ottawa: Supply and Services Canada, 1998).

[40] In the language of the *Mainstream 1992* report, these correspond to the conceptual frameworks of the “warehouse,” “greenhouse” and “open house.” See Alan Gartner and Tom Joe (eds.), *Images of the Disabled, Disabling Images* (New York: Praeger, 1989); Marcia Rioux and Michael Bach, *Disability Is Not Measles: New Research Paradigms in Disability* (North York, ON: Roeher Institute, 1994).

[41] Thus inertia or “path dependency” plays a role in the fit between disability paradigms and programs. The medical-rehabilitation programs are mainly older programs. Most of the newer programs are linked to the other two paradigms. Future research projects could search for evidence on whether some of the newer programs are more effective and, if so, whether they are more likely to be associated with a particular intergovernmental regime. While interesting questions, they lie outside the scope of this paper.

[42] Another example of this is in collaborative federalism and the latest reforms to the CPP disability benefits. In light of the rising expenditures on disability benefits coupled with the Auditor General of Canada’s criticisms of the program, the

intergovernmental consensus includes a tightening of the administration of the disability benefits. The aim is to ensure that only those eligible are accepted for benefits and continue to receive them, and to reduce the risk of paying benefits to people ineligible or no longer eligible due to changed circumstances.

[43] Peter W. Hogg, *Constitutional Law of Canada*, 2d ed. (Toronto: Carswell, 1985), pp. 453-54.

[44] The Charter of Rights and Freedoms supplements but will never supplant the role of provincial and the federal human rights laws for advancing the rights of persons with disabilities. The Charter has expanded the judicial review powers and likely the judicial activism proclivities of Canadian judges. Charter decisions on disability issues are contributing to the creation of national standards enforceable by the courts.

[45] National Council of Welfare, *Another Look at Welfare Reform* (Ottawa: Supply and Services Canada, 1997), p. 116.

[46] Prince, "Touching Us All."

[47] Greenspon and Wilson-Smith, *Double Vision*.

[48] J. Stefan Dupre, "The Workability of Executive Federalism in Canada," in *Federalism and the Role of the State*, ed. Herman Bakvis and William M. Chandler (Toronto: University of Toronto Press, 1987), p. 250.

[49] John Porter, *The Vertical Mosaic: An Analysis of Social Class and Power in Canada* (Toronto: University of Toronto Press, 1965); Simeon, *Federal-Provincial Diplomacy*; Black, *Divided Loyalties*; Reginald Whitaker, *Federalism and Democratic Theory,* Discussion Paper No. 17 (Kingston: Institute of Intergovernmental Relations, Queen's University, 1983); Kenneth Norrie, Richard Simeon and Mark Krasnick, *Federalism and the Economic Union in Canada* (Toronto: University of Toronto Press, 1986); Donald V. Smiley, *Canada in Question: Federalism in the Seventies*, 2d ed. (Toronto: McGraw-Hill Ryerson, 1976); Keith G. Banting, *The Welfare State and Canadian Federalism*, 2d ed. (Kingston and Montreal: McGill-Queen's University Press, 1987).

[50] Ronald Melcher, "The Cap on CAP," *Perception* 14, 4 (1990):23.

[51] David P. Ross, "Who will speak for Canada's children?" p. 2.

[52] Kenneth Bryden, *Old Age Pensions and Policy-Making in Canada*, p. 79.

[53] The national organizations, local groups, and individuals that participated in the consultation process of the task force are listed in the final report, *Equal Citizenship.* The Federal Task Force on Disability Issues, *Equal Citizenship: Canadians with Disabilities: The Will to Act* (Ottawa: Supply and Services, 1996), pp. 101-13.

[54] Yet, following the February 1999 budget, eight national disability organizations, in a letter to the prime minister, criticized the federal government for lack of substantial action in implementing many of the recommendations of the 1996 Scott Task Force report, *Equal Citizenship*. See Erin Anderssen, "Disability Groups Berate Ottawa for Unfulfilled Promises for Help," *The Globe and Mail* (Toronto), 1 March 1999, pp. A1 and A10.

[55] Simeon, *Federal-Provincial Diplomacy*.

[56] Bryden notes that the 1937 amendment to the *Old Age Pension Act* of 1927 followed "a persistent campaign sparked by the Canadian National Institute for the Blind to have the pension plan extended to cover the blind" (*Old Age Pensions*, pp. 79, 228). The campaign included resolutions and representations to Prime Minister Bennett over the 1930–35 period, "from provincial legislatures, municipal councils, and a host of voluntary organizations, as well as private individuals." On another issue and in another period and intergovernmental regime, "extensive lobbying at Ottawa" by the national federation of pensioners and senior citizens influenced changes in the Old Age Security and Guaranteed Income Supplement programs in the mid-1960s (*Old Age Pensions*, p. 196). These groups did not enjoy the same impact on the formation of the CPP, a point that corresponds with Simeon's analysis.

[57] Richard J. Schultz, *Federalism, Bureaucracy, and Public Policy: The Politics of Highway Transport Regulation* (Montreal: McGill-Queen's University Press, 1980).

[58] Ibid., p. 167.

[59] There were, however, a number of democratic deficits connected with the CPP review and consultative process. In an open letter to the ministers of HRDC and Finance about the CPP, the Chairperson of the National Council of Welfare expressed several concerns about the last reform process. Specifically, the council observed that the consultation paper contained not one proposal for improving benefits; that virtually no information was included on the impact of proposed cuts overall or by gender; and that ample time had not been set aside for all interested parties to participate in the hearings. The eventual changes made to the CPP in 1997–98 also included the elimination of the CPP Advisory Board.

[60] Smiley, *Canada in Question*, p. 1.

[61] For some readers, it may sound implausible that disentangled federalism could contribute to decentralization and centralization simultaneously. Consider the following range of scenarios. Centralization occurs if the federal government is active in the policy sector but most or all of the provinces are not. Decentralization happens when some or all of the provinces are active as policymakers in the sector but the federal government is inactive. If both levels of government are active in a policy sector the result can be competitive and/or cooperative, yielding an increase in decentralization *and* centralization in the sense that both levels are more prominent than before in relation to the community and economy. Because we are talking about two levels of government and two processes, decentralization and centralization are not simply bipolar. Under federalism, policy intervention at one level need not mean the absence of similar intervention at the other level. This point is reflected in recent debates in the social union process with respect to provincial proposals on limiting the federal spending power and federal interests in prescribing the terms under which provinces could opt out of a national social policy initiative.

[62] As Greenspon and Wilson-Smith have written: "The arbitrary and discriminatory nature of the cap [on CAP] had poisoned federal-provincial relations," Greenspon and Wilson-Smith, *Double Vision*, p. 231.

4

REFORMING THE DISABILITY INSURANCE SYSTEM: A COLLABORATIVE APPROACH

Alan Puttee

PURPOSE AND BACKGROUND

The purpose of this chapter is to determine the impact that prevailing intergovernmental regimes have had on the development and operation of key disability insurance programs and to consider the advantages and disadvantages likely to be associated with a change in intergovernmental regime. This case study is one of a number sponsored by the Institute of Intergovernmental Relations at Queen's University designed to shed light on the attributes of particular intergovernmental regimes through the examination of their effects on particular policy areas.

The Canadian federal government and the provincial and territorial governments interact with each other in a myriad of ways as they fulfill their constitutional responsibilities and pursue their policy goals. The Queen's project has classified these relationships into four intergovernmental regimes:

- *unilateral federalism*, where the federal government, without provincial approval, attaches conditions to financial transfers to provincial governments in areas of exclusive provincial jurisdiction with the result that provincial governments must tolerate federal conditions or forego federal revenues;

- *classical or disentangled federalism*, where each order of government acts independently in its areas of constitutional competence (where each has jurisdiction, this can result in a situation of mutual independence);
- *collaborative federalism*, where the two orders of government, recognizing their interdependence, act jointly with no undue reliance on carrots or sticks; and
- *interprovincial collaboration*, where provinces collaborate without federal involvement.

The project has also established three assessment criteria to be used in judging the overall effectiveness of the programs under review, namely, the effectiveness with which the programs meet their policy objectives, embody democratic values, and respect federalism principles.

This case study, one of four in the area of disability policy, focuses on disability insurance programs that furnish cash payments to those whose earnings have been reduced or eliminated by a disability.[1] Since many of the programs in this universe are within the exclusive jurisdiction of provincial governments and since provinces carry out their program responsibilities in these areas with few policy or operational links to other provinces, the so-called "classical" or "disentangled" intergovernmental regime and alternatives to it are the focus of much of the study.

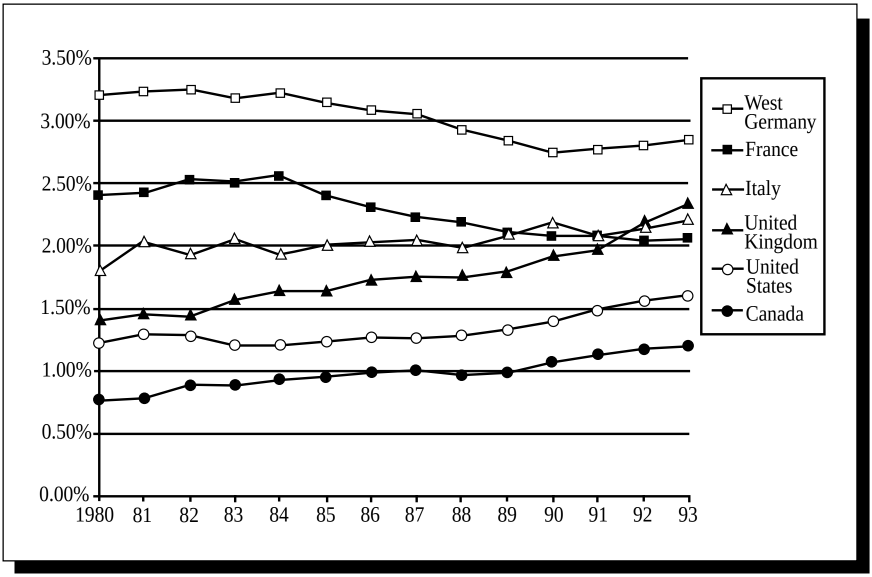
The key questions addressed by the study are:

- Using the assessment criteria set out above, what has been the independent effect of the (mostly) classical federalism governance on the overall effectiveness of the development and operation of disability insurance programs?
- What is the most feasible alternative governance arrangement for these programs?
- To what extent can a change from the current to the alternative intergovernmental regime be expected to lead to superior outcomes on the policy, democratic, and federalism fronts?

INTERNATIONAL COMPARISONS

Figure 1 shows public expenditures on disability cash benefits, occupational injury/disease and sickness benefits as a percentage of gross domestic product (GDP) for Canada and several of its key trading partners. Canada's public expenditures are the lowest of the countries shown (although note the caveats

FIGURE 1
Government Expenditures on Disability Cash Benefits, Occupational Injury/Diseases and Sickness Benefits in Selected Western Countries, 1980–1993 (% of GDP)



Note: International comparisons require interpretative caution. The OECD notes that the quality of the data varies across countries. In addition, the graph does not capture important differences among systems. It does not, for example, include social assistance expenditures flowing to persons with disabilities, an area where Canada's expenditures are likely higher than in other countries shown.

Source: Organisation for Economic Co-operation and Development, *Social Expenditure Statistics of OECD Members Countries, Provisional Version* (Paris: OECD, 1996).

to the OECD data). An important difference between the North American systems and those in continental Europe is that private insurance companies play a larger role in the former than in the latter.

CANADA'S DISABILITY CASH PROGRAMS

Disability cash programs may be divided into two types: social insurance programs: premium-financed programs that replace the earnings of those who become disabled; and social-assistance programs: programs that provide last resort assistance to people with disabilities who have little or no income.

The chapter focuses on social insurance programs, but deals in passing with social assistance programs since reform of the first would affect the size of the second. Canada's disability cash programs are summarized in Table 1 and described below. (Private insurance data are provided for reference.)

TABLE 1
Disability Cash Programs[1] (annual payments, late 1990s)

Programs	*Payments ($billion)*	*Recipients (000)*	*Intergovernmental Regime*
Social Insurance	10.2		
Workers' Compensation (1997)	4.6	792	classical (provincial)
C/QPP Disability (1998)	3.3	437	federal-provincial collaborative
Public auto insurance[4] (1997)	2.0	n/a	classical (provincial)
EI Sickness (1996/97)	0.4	35	classical (federal)
Social Assistance[2]			
Provincial social assistance (1996/97)	3.0[E]	750[E]	classical (provincial) (formerly federal-provincial collaborative)
Total Public Programs	**13.2**	**n/a[3]**	
Private Insurance			
Disability plans (1997) (group and individual; short and long term)	3.0	n/a	Insurance industry is regulated by both federal and provincial governments
Auto insurance[4] (1998)	1.7	n/a	

Notes: [1] Omits some programs, for example, payments to veterans and victims of crime.
[2] Assumes that people with disabilities account for 20–25 percent of social assistance case loads/expenditures. E = Estimate.
[3] Many recipients receive payments from more than one source.
[4] Auto insurance payments are in respect of personal injury. Public auto insurance benefits are those paid by public auto insurance agencies in Quebec, Manitoba, Saskatchewan and British Columbia; the private insurance amounts are claims incurred by insurance companies in 1998 in the remaining six provinces.

Table 1 shows that the classical intergovernmental regime characterizes all the disability cash programs except Canada/Quebec Pension Plan Disability which is governed by a federal/provincial collaborative regime; provincial programs account for almost three-quarters of the $13.2 billion of payments disbursed by public programs; and cause-based programs, where benefits depend on the cause of the disability (workers' compensation and public auto) disburse half of public sector benefits.

The following sections briefly describe the development and operation of each of the programs listed in Table 1. The description provides a flavour of some of the issues that would need to be addressed by a Comprehensive Disability Insurance Program, a reform option explored later.

Workers' Compensation

History. The disadvantages of leaving the compensation of injured workers to the court system (tort liability) became evident with the industrialization of the nineteenth century. Tort liability was expensive in that a high proportion of system costs went to lawyers. Its financial implications for employers were unpredictable. And it was ineffective for workers in that few injuries were actually compensated: employers won most court cases as co-workers were reluctant to testify, fearing employer retribution, and employers could claim employee carelessness.[2]

In nineteenth-century Britain, the "friendly societies" (employee groups) had begun to compensate injured workers regardless of cause of disablement. Some employers financed this aspect of the societies' activities on the condition that they not be sued in the event of worker injury, a "contract" that remains the basis for the modern workers' compensation programs.

By the early twentieth-century workers' compensation schemes in Germany and Britain were being studied in Canada, and in 1914 Ontario adopted a compulsory no-fault, employer-financed plan for the compensation of workers injured in the course of employment. By 1931, all provinces except Prince Edward Island had done the same. (Today, all provinces and territories have a workers' compensation program.) The key elements of the plans then, as now, were that employers in a given industry were jointly liable for the injuries/diseases related to that industry and were therefore free from tort liability (i.e., no fault), insurance coverage was compulsory in designated industries and was provided by a publicly administered insurance fund.

Governance. Workers' compensation (and other labour-related matters such as minimum wages and labour standards) falls mainly within provincial jurisdiction and, since each province autonomously operates its own compensation system, for purposes of this chapter the governance of the Workers' Compensation Board (WCB) is classical federalism. (An element of federal/provincial collaborative governance is evident in the federal-provincial agreements that apply provincial workers' compensation legislation to federal employees.)

Each provincial WCB is a public monopoly with exclusive jurisdiction to determine when a compensable injury has occurred, its permanence and what benefits are to be paid. In recent years there has been a trend to the creation of independent tribunals to which workers and employers can appeal board decisions. This has given rise to a significant amount of litigation in front of these bodies.

The interrelationships between the provincial boards are limited. Coverage and benefits vary significantly and, although the Association of Workers' Compensation Boards of Canada has done useful work, there remain differences in reporting practices with respect to accounting and statistical matters.

Coverage. Gunderson and Hyatt summarize WCB coverage as follows:

> Coverage … varies considerably by jurisdiction in terms of both the proportion of the workforce that is covered and the scope of the injuries and diseases covered. Slightly over 80 per cent of the workforce are covered in Canada ranging from around 70 per cent in Ontario to over 95 per cent in Quebec. Typical exclusions include the self-employed, domestics, outworkers who perform tasks in their home, casual or seasonal workers, small firms, non-profit organizations, and, in some jurisdictions, banks and financial institutions.
>
> Not all injuries and diseases that may be work-related may be recognized by the workers' compensation system, and the scope of what is recognized varies across jurisdictions. For example, compensation for many diseases, chronic stress, and repetitive strain injuries may be restricted or even precluded. These excluded injuries and diseases may represent a growing proportion of workplace-related injuries.[3]

Wilkinson documents the variation in the range of compensable diseases/injuries by noting:

> Entitlements vary greatly. British Columbia, for example, lists 70 compensable diseases. One province and two territories, by contrast, list only 10 each. Entitlement for such ailments as stress and chronic fatigue depend on which

> province the worker is employed in. Different provinces give different weighting to the work-relatedness of the same illness in determining entitlement.[4]

Some large employers (e.g., governments and their agencies, universities, and shipping and airline companies) are permitted to self-insure.

Benefits. Table 2 sets out the payments made by Workers' Compensation Boards and the number of recipients for selected years.

Most provinces operate a dual-award benefit system for those with permanent disabilities (partial and total): a lump-sum payment is made in respect of permanent physical impairment (often referred to as non-economic loss payments); ongoing pensions are a proportion (usually 90 percent) of the difference between net pre-injury earnings and what the worker earns, or could earn, upon return to work. There is a good deal of variation among the maximum payments payable to those with permanent disabilities: in 1998, British Columbia's maximum annual pension was $42,700; in Newfoundland it was $22,300.[5]

Disputes regarding what a worker could earn are common. If a worker receiving compensation does not feel he or she can work or is unable to find a job, the WCB usually has the discretion to deem post-injury earnings resulting in a lower pension. Labour representatives oppose deeming since the injured

TABLE 2
Workers' Compensation Payments and Recipients

	Payments (1997$)[1]					*Recipients*[2]	
	Temporary Total Disability ($billion)	*Permanent Disability ($billion)*	*Health Care/ Rehabilitation ($billion)*	*Total ($billion)*	*% of GDP*	*Total (million)*	*% of Employed*
1980	1.46	0.80	0.53	2.78	0.44	1.22	11.4
1985	1.91	1.29	0.72	3.92	0.57	1.08	9.6
1990	2.29	1.76	1.17	5.23	0.68	1.03	8.2
1995	2.02	1.79	1.36	5.17	0.63	0.82	6.1
1997	1.91	1.44	1.20	4.55	0.52	0.79	5.7

Notes: [1] Payments made in the year shown, i.e., do not include reserves established to fund future payments.

[2] About half of recipients receive only health-care/rehabilitation benefits.

Source: Human Resources Development Canada Website at <www.hrdc-drhc.gc.ca>.

worker does not receive the replacement expected: business representatives support it and argue that the dual-awards system is too rich to begin with and economies are needed.

Current benefit levels in many provinces are somewhat below those of the 1980s when levels were increased and benefits were indexed with the indexing usually applying to all benefits in pay. In some provinces, the current dual award system replaced one where benefits were paid regardless of post-accident earnings. WCBs also pay compensation in respect of temporary disabilities (total and partial). Automatic inflation adjustment of benefits is the rule in most provinces.

Workers with a severe and prolonged work-related disability may be eligible for benefits from both the WCB and from CPP Disability (described below). The way in which WCBs treat this situation further illustrates the variation in provincial practice. Some provinces do not reduce the WCB benefit, reflecting a view that employers have taken on the liability for workplace accidents and should pay for them regardless of what other income sources injured workers have. (This stacking of benefits together with the non-taxable status of WCB benefits means that some disabled workers have higher take-home income after the injury than before.) Other provinces wholly or partly integrate CPP Disability pensions, that is, the WCB benefit is reduced, reflecting a view that the stacking of benefits from programs with similar goals can result in inappropriately high benefits and unnecessarily high system costs. In Quebec, where the provincial government controls both the WCB and the QPP Disability benefit, WCB beneficiaries cannot receive QPP Disability.

Fortin and Lanoie find another relationship between WCB and other income-security programs: they cite evidence that workers facing layoffs are more likely to report injuries suggesting that, in some measure, the higher benefits of the WCB system are being substituted for the lower EI benefits.[6]

Rehabilitation. WCB plans place significant emphasis on rehabilitation of injured/diseased workers. There is a strong obligation on employers to retain injured workers and to accommodate their return to work (obligations that are legislated in some provinces, e.g., Ontario and Quebec). These obligations generally entail strict vocational requirements together with stringent procedures regarding the claiming of benefits and reassessments of injured status.

The emphasis on rehabilitation reflects: (i) a higher proportion of accident than disease cases in the WCB caseload (accident cases are more amenable to rehabilitation than disease cases which predominate in C/QPP Disability); (ii) the WCB coverage of disabilities that are temporary and partial; (iii) a large body of evidence that vocational rehabilitation efforts are effective; and (iv) the need to offset the work disincentive effects of WCB benefits. Gunderson references “A number of Canadian econometric studies have found (with some exceptions) that increases in benefit generosity under workers’ compensation increases both the frequency of claims and their duration.”[7]

Financing. Employers finance the workers’ compensation systems through assessment rates (payroll taxes) that vary by industry and, usually, by their individual accident experience. The weighted average assessment rate for Canada was 2.6 percent of covered payroll in 1992: Ontario’s average rate was the highest (3.2 percent); Saskatchewan’s was the lowest (1.6 percent). There are wide variations within these averages according to the rate group the employer is in. In Quebec, for example, employers in the business service sector paid 0.7 percent while those in the construction industry paid 7.9 percent.[8]

The policy of WCBs is to pay for the injuries/diseases that occur in a particular year in that year. For disabilities that are expected to give rise to payments over more than one year this means setting aside enough in the year of injury to cover all future costs: in principle, then, WCB is a funded rather than a pay-as-you-go program. In practice, many provincial WCBs have large unfunded liabilities. William M. Mercer Ltd. estimated that promised benefits in 1994 represented a liability of $36 billion while the total assets of the plans were $20 billion. Ontario had the lowest funded ratio (37 percent) while the ratios in the western provinces all exceeded 87 percent.[9]

A substantial fraction of these unfunded liabilities arose during the 1980s when benefits were enriched via full indexing with the enrichment applied to prospective benefits as well as to benefits then in pay. (Ontario’s unfunded liability increased from $2.7 billion to $6.2 billion over the 1984–86 period due mainly to the 1985 retroactive indexing decision.) Benefit cuts in recent years have slowed the growth of unfunded liabilities. Whether and by how much assessment rates should increase to reduce these liabilities is a source of controversy between labour and business representatives.

Canada/Quebec Pension Plan: Disability Benefits

History. The Canada Pension Plan (CPP), which took effect in 1966, included provision for disability benefits for labour force participants. Including an earnings-related disability program in the public earnings-related pension program mirrored the American arrangement. Since the provision of such benefits was an area of exclusive provincial jurisdiction, a constitutional amendment was required to provide the federal government the authority to pay disability benefits. The amendment made disability (and survivor) benefits subject to concurrent federal and provincial jurisdiction with provinces having paramountcy such that federal laws cannot "affect the operation" of provincial laws in the field.

The Act establishing the CPP included a provision enabling provinces to operate their own comparable pension/disability plan. Only the province of Quebec chose to do so. The two plans that resulted — the Canada Pension Plan and the Quebec Pension Plan (C/QPP) — are similar and detailed arrangements between them provide for the recognition of the other's credits with the result that with respect to benefits the two plans are, in effect, a joint plan. The disability component of the plan, referred to as the C/QPP Disability, is Canada's national disability insurance plan.

Governance. The governance of the CPP is federal-provincial collaborative (FPC), reflecting the underlying constitutional arrangement (concurrent jurisdiction with provincial paramountcy). Most amendments to the CPP, including the CPP Disability, which are passed by Parliament, do not take effect without the consent of two-thirds of the provinces having two-thirds of the country's population. In practice this means there is extensive consultation and cooperation among federal and provincial officials and responsible ministers before amendments are presented to legislators.

It is notable that the consent of provinces operating their own plans is included in the two-thirds/two-thirds requirement.[10] The result of this governance structure is that Quebec members of Parliament vote on CPP changes that do not apply to their constituents and the Government of Quebec can unilaterally change the QPP. To date, these arrangements have been uncontroversial and the plans have evolved in a very similar fashion (most of the differences are found in the disability component: see below). This outcome suggests that all governments recognize the advantages of, and are committed to, maintaining the parallelism between the two plans. It is noteworthy that many of the plan amendments adopted by the QPP were later mirrored by the CPP (e.g., the substantial increase in the flat-rate component of the disability benefit).

A province can opt out of the CPP (subject to a notice period) and establish its own comparable plan. It is less clear whether, without a change in federal legislation, a province, wishing to operate its own disability insurance system (as in Quebec), could opt out of only the CPP Disability portion of the CPP.

Coverage. C/QPP Disability covers most workers. Labour force attachment requirements deny benefits only to new entrants and to those with only periodic labour force attachment (around 20 percent of contributors). To be eligible for CPP Disability, a person with a disability must have made contributions in (any part) of four of the last six years. (Quebec requirements differ slightly.)

The definition of disability employed by C/QPP Disability is at once narrower and broader than that used by the WCBs. On the one hand, C/QPP Disability pays benefits only in respect of severe and prolonged disabilities, that is, temporary and partial disabilities are not covered. On the other hand, the cause of the disability is irrelevant; there is 24-hour coverage, whereas under Workers' Compensation the cause must be work-related.

There are some differences in the CPP Disability and QPP Disability definitions of disability, for example, QPP Disability employs a less stringent definition for 60 to 64-year-old applicants than for younger applicants. Differences in interpretation have emerged over the years. The Quebec plan, for example, is less likely to cover mental diseases and chronic fatigue. In the late 1980s, early 1990s, CPP Disability in effect broadened its definition of disability by incorporating various socio-economic factors into the assessment process (e.g., education of applicant, unemployment rate in the applicant's region); as well, the definition of prolonged disability was eased to mean one that was expected to last at least one year. Some of these interpretative changes were subsequently reversed.

Benefits. Table 3 shows benefits payments and recipients for CPP Disability and QPP Disability.

TABLE 3
C/QPP Disability Payments and Recipients[1]

	Payments (1998 $)				*Recipients*			
Fiscal years starting in	*CPP Disability ($billion)*	*QPP Disability ($billion)*	*Total ($billion)*	*% of GDP*	*CPP Disability (000)*	*QPP Disability (000)*	*Total (000)*	*% of Employed*
1980	0.53	0.19	0.71	0.11	117	31	148	1.4
1985	0.99	0.36	1.35	0.20	178	52	230	2.0
1990	1.95	0.40	2.35	0.30	265	53	317	2.5
1995	2.92	0.43	3.35	0.41	404	55	459	3.4
1998	2.79	0.47	3.26	0.36	387	59	437	3.1

Note: [1]Both plans make provision for payments to children of disabled. These are included in the payments and recipient's data.

Source: Human Resources Development Canada Website. At <www.hrdc-drhc.gc.ca>.

The growth in CPP Disability benefits was over twice that of QPP Disability benefits over the 1980–98 period. This reflects *inter alia* the benefit changes and the interpretation changes noted above.

The maximum annual C/QPP Disability benefit was $10,740 in 1998, and consisted of a flat-rate portion ($4,040) and an earnings-related portion equal to 75 percent of the retirement pension that would have been payable if the person were 65 years of age. Since the retirement pension is 25 percent of average earnings and the plan's earnings ceiling was $36,900 in 1998 (approximating the average earnings level in the economy as a whole), the earnings replacement afforded by C/QPP Disability was 40 percent for a person who had been at half the average earnings level, 30 percent for a person at the average earnings level and some 17 percent for a person at twice the average earnings. The average CPP disability pension in 1998 was $8,850 (about 4 percent lower in Quebec).

Rehabilitation. The C/QPP's strict definition of disability means that the role of rehabilitation in the program is relatively small: those with a severe and prolonged disability are the least likely of all people with disabilities to be able to return to work. In addition, a high proportion of those receiving C/QPP Disability are disabled as a result of illness where rehabilitation plays less of a role than in the case of the trauma associated with accidents. (Rehabilitation plays a larger role in WCB and auto plans where most disabilities arise from accidents.) In recent years only about 1 percent of the C/QPP Disability caseload per year returned to work although, in 1996 4 percent of the CPP Disability caseload did so.

A CPP Disability project in the mid-1990s, which devoted extra attention and resources to rehabilitation, led to the establishment of a permanent CPP Disability rehabilitation component. This, however, is expected to operate within quite narrow limits given the plan's strict definition of disability, one effect of which is that beneficiaries who try to return to work and/or engage in some work-related activity lose their benefits — an "all or nothing" approach that entails substantial work disincentives. While recent changes allow for the rapid benefit reinstatement for those beneficiaries whose return to work is unsuccessful, this provision lasts for only three months. QPP Disability, which has an older and on average more seriously disabled clientele than does CPP Disability, undertakes virtually no rehabilitation activities.

Financing. The financing of C/QPP Disability mirrors that of the larger C/QPP program of which it is a part. In 1966, the CPP and QPP were only partially funded: the initial C/QPP contribution rates were set at 3.6 percent of covered payroll, which may be compared to the then estimated long-run expenditures of some 5 percent of covered payroll. In 1987, a federal-provincial agreement mapped out a pay-go future for the plan. Ten years later, in the face of steadily increasing projected future costs, the plan was returned to its partially funded origins via a decision to raise contribution rates rapidly over the 1997–2003 period.

Public Automobile Insurance

History. Agencies of the Saskatchewan, Manitoba, Quebec, and British Columbia governments operate compulsory public automobile insurance plans. The three western plans cover personal injury and property damage/loss; the Quebec plan covers personal injury only. Saskatchewan's plan took effect in 1945; the other plans took effect in the 1969–75 period.

The Quebec and Manitoba (since 1994) plans are pure-no-fault plans meaning that victims of automobile accidents are compensated by the public auto insurance authority according to the seriousness of their injury: tort liability is not permitted, that is, there is no right to sue (mirroring the workers' compensation arrangement). Saskatchewan's program is partial-no-fault (since 1995) in that lawsuits are permitted in limited circumstances. Under the British Columbia program the tort liability system has been largely retained. In the remaining six provinces (and in the property damage/loss segment of the Quebec market) automobile insurance is privately operated in that insurance companies compete for drivers' business. (In British Columbia, Saskatchewan, and Manitoba private and government insurers both sell top-ups to the required auto insurance policy provided by the public agency.)

A high degree of regulation substantially narrows the distinction between public and private automobile insurance. In Ontario, for example, where automobile insurance is private, as the insurance coverage is provided by insurance companies, the government strictly regulates virtually all aspects of the business. For example, the right to sue is limited (i.e., Ontario is a partial-no-fault province) and the minimum no-fault benefit levels (which govern in most cases) are established by the provincial government.

Governance. Provinces have jurisdiction over automobile insurance and the federal government is uninvolved in this area (except for its regulation of the solvency aspects of insurance companies with federal charters). Thus, the governance is classical federalism.

The four public schemes are operated autonomously with little or no policy or administrative relation among them.

Coverage. Accident benefit coverage is compulsory in all provinces except Newfoundland/Labrador. Accident benefit levels are significantly higher in Quebec, Manitoba, and Saskatchewan where tort liability is restricted or prohibited. Muszynski notes that in the late 1980s only 45 percent of people injured in auto accidents drew any benefit from a tort claim, with lower percentages applying to more serious injuries.[11]

Benefits. In 1997, the public auto insurance plans in Quebec, Manitoba, Saskatchewan, and British Columbia paid $2 billion (including health-care costs) to those injured in automobile accidents. Appendix 2 provides provincial details.

Table 4 sets out the maximum annual disability income benefits in the four public auto insurance provinces.

TABLE 4
Disability Income Benefits in the Four Public Auto Provinces (late 1990s)

Quebec	90% of net wages	(maximum allowable gross income: $50,500)
Manitoba	90% of net wages	(maximum allowable gross income: $61,500)
Saskatchewan	90% of net wages	(maximum allowable gross income: $56,855)
British Columbia	75% of gross wage	(maximum annual benefit: $15,600)

Source: Insurance Bureau of Canada Website at <www.ibc.ca>.

In the private auto provinces, maximum annual disability income benefits range from $7,300 (in the three Atlantic provinces) to 80 percent of net wages, maximum of $20,800 (in Ontario, having been reduced from $52,000 in 1996). Since 1989 Ontario has significantly restricted the use of tort liability, the only private auto province to do so. The system is partial-no-fault in that the right to sue remains available in cases of death, permanent and serious disfigurement, and impairment of important physical/mental/psychological functions.

Financing. Public (and private) automobile insurance plans are financed principally by premiums paid by drivers and the investment income earned on the reserves held by the insurance companies.

Employment Insurance Sickness Benefits

History. Sickness benefits have been part of the Employment Insurance (EI) program since the substantial expansion of the program in 1971.

Governance. Governance of EI is classical federalism reflecting the 1940 constitutional amendment (unanimously agreed to by provincial governments) putting unemployment insurance in the federal jurisdiction.

Coverage. All contributors to the EI program with at least 700 hours of insurable employment in the past 52 weeks are covered by the sickness benefit.

Benefits. Table 5 sets out EI sickness payments and recipients.

TABLE 5
EI Sickness: Payments and Recipients

	Payments (1996$)		*Recipients*	
Fiscal Year Starting in	*($million)*	*% of GDP*	*(000)*	*% of Employed*
1980	317	0.05	24	0.23
1985	316	0.05	25	0.22
1990	445	0.06	32	0.25
1995	462	0.06	36	0.26
1996	436	0.05	35	0.25

Source: Human Resources Development Canada Website at <www.hrdc-drhc.gc.ca>.

The EI benefit equals 55 percent of insured earnings to a (1997) maximum of $413 per week paid for a maximum of 15 weeks (higher replacement levels are provided if the recipient has children and if income is low). Recipients must be incapable of performing his/her usual job or a “suitable” job by reason of sickness or injury. There is a two-week waiting period for the benefit.

Financing. EI benefits are financed by payroll taxes levied on employers and employees.

Social Assistance for People with Disabilities

The social assistance system, where payments of a last-resort nature are paid to those with little or no income, is not part of the disability insurance system where, broadly speaking, workers pay premiums that finance the payments to those who become disabled. However, the two systems are related in an important way: a disability insurance system that pays low/patchy benefits will give rise to higher social assistance expenditures on people with disabilities than would a more robust insurance system. This relationship requires a brief description of social assistance for people with disabilities. Other chapters in the volume provide more detail.

History. Prior to 1966 the federal government shared the cost of parts of the provincial welfare (last resort) systems via several programs directed at particular groups, for example, the *Blind and Disabled Persons Act*, the *Unemployment Assistance Act*. The adoption of the *Canada Assistance Act* (CAP) in 1966 subsumed these federal programs and substantially extended federal cost-sharing to rehabilitative and preventive welfare services and to many other services for social assistance recipients. CAP was a vital development for people with disabilities as it is generally estimated that around one-quarter of those receiving social assistance do so as a result of a disability. CAP's 50 percent cost sharing made an important contribution to the subsequent development of provincial welfare policy and programs, including those directed at people with disabilities, and to the narrowing of differences among provincial benefit structures.[12]

During the 1989–95 period a unilaterally imposed federal expenditure-restraint measure, the so-called "cap on CAP," effectively put the program on a block-funded basis for the three wealthiest provinces which together account for over half of the country's population. This reduced the federal share of CAP-eligible social assistance expenditures in these provinces from 50 percent to, in some cases, lower than 30 percent. This period included the 1990–92 recession which saw provincial social assistance expenditures climb to record levels.

In 1996 the federal government replaced CAP cost-sharing and the block transfers in respect of health care and postsecondary education with the Canada Health and Social Transfer (CHST), a smaller block transfer that grows in relation to provincial population and economic aggregates. The CHST contains one social assistance-related condition: a no residency requirement rule. Other CAP conditions were abolished.

Governance. Federal and provincial governments cooperated closely in the design of CAP and, until 1989, in its operation. In contrast to some of the other federal-provincial social programs adopted in the 1960s, provinces supported federal involvement in their social assistance systems and played a decisive role in the design of the program. The federal government, for example, accommodated the preference of Quebec and some other provinces for a flexible program (i.e., few program conditions) and the views of many provinces regarding eligible provincial expenditures, for example, Alberta's wish to include preventative services. A student of the development of CAP concludes that "the Canada Assistance Plan …was probably the most harmonious product of the cooperative federalism process.[13] Thus, until 1989, the governance of social assistance for people with disabilities was federal/provincial collaborative.[14] The collaborative approach ended in 1989 when the federal government unilaterally capped entitlements of the three provinces not in receipt of payments from the Equalization program. The cap on CAP turned out to be a way-station on the road to the adoption of CHST in 1996. Since then the federal government has been essentially uninvolved in provincial social assistance programs (with the exception of the federal no-residency requirement rule). The result is that social assistance, including social assistance for people with disabilities, is now governed by an almost entirely classical federalism regime with virtually no federal involvement.

Coverage. People with disabilities access provincial social assistance after meeting needs tests which vary by province but which all take budgetary requirements, income, and assets into account (Alberta is an exception). Many provinces use a disability definition similar to the “severe and prolonged” employed by C/QPP Disability; in some provinces those with partial disabilities are eligible for the social assistance benefits. Under the Ontario Disability Support Program eligibility is no longer based on permanent unemployability and the former financial penalties associated with failed employment attempts have been eliminated.

Benefits. As not all provinces separately record data for people with disabilities receiving social assistance, Table 6 sets out total social assistance payments and recipients. It is generally assumed that people with disabilities account for nearly one-quarter of social assistance caseloads/expenditures suggesting that in 1996 some three-quarters of a million people with disabilities received around $3 billion of social assistance.

TABLE 6
Provincial Social Assistance Payments and Recipients

	Payments (1996$)		*Recipients*	
Fiscal Year Starting in	*($billion)*	*% of GDP*	*(million)*	*% of Population*
1981	5.7	0.9	1.42	5.7
1985	8.2	1.2	1.92	7.4
1990	9.8	1.3	1.93	7.0
1995	14.3	1.8	3.07	10.4
1996	12.7	1.6	2.94	9.7

Source: Human Resources Development Canada Website at <www.hrdc-drhc.gc.ca>.

Financing. Social assistance for people with disabilities is financed by the general revenues of provincial governments. The federal CHST indirectly assists in the financing in that provincial entitlements are, in part, related to their pre-1996 levels of social assistance expenditure. The block-fund nature of the CHST means that current provincial entitlements are independent of current social assistance expenditures (unless provinces do not comply with, and the federal government enforces, the one social assistance condition noted above).

Private Disability Insurance

Although not a public program, a brief description of the disability insurance offered by insurance companies will be useful as a background for the discussion below.

Coverage. In 1997, about half of employed people had long-term disability (LTD) coverage (when short-term coverage is added, the coverage rate is higher).

Benefits. Claims paid for income replacement under group and individual, short- and long-term plans totalled $3 billion in 1997.[15] (Information on the number of people receiving payments is not available.)

While private disability plans typically have high replacement rates (usually around two-thirds of prior earnings), their $3 billion payout is low compared to C/QPP Disability (which has a $3.3 billion payout, but has a much lower average replacement rate) and compared to WCB (which despite only covering work-related accidents, pays out $4.6 billion). Three principal reasons account for this. First, private disability plans are generally second payers; LTD payments typically begin about four months after the disabling event, i.e., after EI Sickness payments cease and, once in play, payouts are reduced by the amount of any C/QPP Disability and/or WCB payments being received. Second, like C/QPP Disability, eligibility for LTD benefits is usually restricted to those who are seriously disabled (usually this means the recipient is unable to perform his or her job for the first two years after the onset of the disability: after two years the recipient must be unable to perform any “suitable” job). Third, LTD plans cover only about half of workers whereas the coverage of the public plans is higher.

Financing. Private disability income plans are financed by premiums paid by employer/employees and by the investment income earned on the reserves held by the insurance companies.

ASSESSING DISABILITY INSURANCE PROGRAMS

This section considers how the disability insurance system is affected by the intergovernmental regime(s) under which it operates. The assessment considers the impact of the regimes on the extent to which policy goals are met and democratic and federalism principles are respected.

Achieving Policy Goals

Vertical Equity. Vertical equity considerations — fair treatment for those with little or no resources of their own — are not prominent in Worker's Compensation, C/QPP Disability, and public auto plans where earnings-related benefits predominate. Some, however, argue that a disability insurance system that leaves significant room for the operation of private LTD plans raises vertical equity issues. The average earnings of half of employed people who do not have LTD coverage are very likely significantly below the average earnings of the half who do enjoy such coverage. The result is that those who are dealt with most harshly by the disability insurance system — those disabled in a non-work setting and who therefore face the narrow application and low replacement rates of C/QPP Disability — are predominantly lower earnings individuals, an outcome that raises vertical equity concerns. (Note that the high cost of individual disability insurance prevents this product from being used by the great majority of those with low earnings.)

Horizontal Equity. The above description of Canada's classical federalism disability insurance system shows it to be highly fragmented and decentralized. Six programs, four of them publicly operated, have essentially the same goal, to compensate labour force participants for income lost as a result of injury/disease. A key result of this fragmentation is that people with disabilities in similar situations can be treated very differently depending on which program(s) they qualify for, which in turn reflects how their disability arose and in which province they live. Substantial variation in treatment of people in similar situations raises important horizontal equity considerations.

A person seriously injured at work, for example, is covered by WCB with its high replacement rates and its substantial health and rehabilitation benefits. An employed person incurring the same injury at home (failing LTD coverage) must make do with C/QPP Disability benefits which are much lower and which provide few, if any, health/rehabilitation benefits and are only available if the injury is judged "severe" and likely to be "prolonged." The same injury arising from an automobile accident would, in some provinces, give rise to accident benefits close in value to WCB benefits while in other provinces, benefits would be significantly lower unless a court action was successfully pursued. WCB and public auto benefit levels vary significantly among provinces (with these variations, of course, reflected in lower costs in the lower benefit provinces).

Several analysts have described the effects on claimants that can arise from the fragmented system:

> the fact that the different programs are related (but not fully integrated) can mean that the payers will often try to save on payments by shifting claimants to other programs, and claimants may try to access different programs on the basis of ease of access. It also means, however, that claimants could fall between the cracks if they are shifted from one program to another, but denied eligibility in each because the payers hope the cost would be picked up by another program.[16]

> [I]n in times of budget cuts, different departments and agencies will likely try to shift responsibilities and the associated costs to other departments and agencies. Retrenchment in unemployment insurance, for example, can lead to workers trying to access workers' compensation and vice versa. Retrenchment in workers' compensation can lead to attempts to obtain support through the Canada/Quebec Pension Plan disability component, or private long-term disability plans. … This can mean inconsistent treatment for injured/disabled workers if they are shunted from one system to another....

> The complex distribution of responsibilities also means that support for disabled workers will reflect the different institutional values of different departments and agencies, as well as political differences, especially across jurisdictions. With parties to the left, right and centre of the political spectrum this means that workers with similar disabilities may get very different treatment in different jurisdictions, as well as over time in the same jurisdiction, as political fashions change.[17]

> The effect of the gap and overlap problem is that some of the disabled are under-covered and fall onto social assistance, while others are over-covered, have their benefits stacked on top of each other, and have higher net incomes than before their disability. Considerable inequities are the result. People with the same need for compensation, for an inability to earn, get vastly different benefits.[18]

> The results of this uncoordinated conglomeration of systems include a wasteful duplication of administrative and adjudicative structures, the grief of disabled

> people who sometimes have to deal with several agencies when one would be enough, wasteful over-insurance in some cases and tragic under-insurance in others. Eligibility requirements and levels of compensation commonly do not reflect need, loss, blame, or premium contributions so much as they reflect the fortuitous circumstances of how the disability occurred. Some disabled people receive benefits under several systems for a total that exceeds their losses and expenses, while others receive minimal benefits or nothing at all. In particular, the victims of disease commonly fall in the gaps between the systems.[19]

A key outcome of the fragmentation in the disability insurance system is that social assistance rolls are higher than otherwise since those who fall through the insurance system's cracks must often resort to the last-resort system to survive.

Efficiency. The disability insurance system raises two main efficiency concerns: the work disincentives the programs entail and the higher costs faced by both clients and funders which stem from the fragmentation of the system.

The size of work disincentives and whether/how they should be reduced raise controversial questions throughout the income-security system and constitute a noticeable fraction of the income-security literature (e.g., debates regarding the extent to which unemployment insurance programs increase the rate of unemployment; to what extent social assistance systems and disability income systems keep beneficiaries out of the labour market; the degree to which, in addition to income tax rates, tax-back rates of child benefits, tax credits, etc. discourage additional work effort).

Work disincentives in the disability insurance system are likely to be more significant the greater the risk that a return to work will worsen the financial position of the beneficiary. Someone with a disability whose condition is improving but who is unsure he can handle a former job, or a lighter version thereof, will be understandably wary of attempting a return to the labour force. The wariness will be greater the higher the disability benefits being received, the weaker the obligation the former employer has to reintegrate former employees, the lower the probability attached to finding a suitable job, the more likely a failed work attempt would be followed by a lengthy re-application period and the greater the proportion of benefits that would be lost if only low-paid work were found.

The all-or-nothing nature of the C/QPP Disability benefit clearly leads to work disincentives. While there have been some changes in this regard and more are under consideration, it remains the case that the risks associated with a failed return-to-work attempt are large: a beneficiary whose return to work fails could, after a few months, find himself with no job and, during the re-application period, no benefits. The WCB systems have features that reduce work disincentives, for example, partial benefits, employer obligations to former employees. But these features will be offset in some measure where replacement rates are high, especially where stacking of benefits can put them over 100 percent.

A second efficiency concern is the costs the fragmented system entails for clients and funders. The comments by Gunderson, Gildiner and King with respect to clients moving or being moved from program to program suggest a substantial waste of resources. As well, although no data have been presented on the administrative costs of the disability insurance system, it is undoubtedly the case that the multiplicity of administrative and adjudicative structures associated with the program fragmentation keeps these high as does the heavy overhead associated with the tort liability system (e.g., in the auto insurance sector in many provinces).

Adequacy. The earlier discussion of the disability insurance system showed that one of its key feature is its “patchiness.” In some circumstances, people with disabilities receive benefits that most observers would regard as adequate or close to adequate, for example, those in receipt of long-term benefits from many of the WCB plans or from some of the auto insurance plans (with some benefit levels, given stacking, more than adequate). In other circumstances, benefit levels are clearly inadequate — many of those with non-work-related injuries/diseases and without good private LTD coverage are left to depend on the low benefits of C/QPP Disability or, if their disability is not severe and prolonged, on their own resources. The result is that many labour force participants who become disabled must resort to social assistance. Thus, while some of Canada’s disability insurance programs provide adequate benefit levels, these programs cover only a portion of those with disabilities who need to be compensated. (The international comparison set out earlier in Figure 1, with its limitations, suggests the same conclusion.)

Experimentation. Income-security systems can benefit from structures that foster experimentation. If provinces/states adopt a variety of approaches to a particular policy area, over time it could be anticipated that the experiences, good and bad, of each individual system will expand the information base and inform reform efforts leading ultimately to better outcomes generally. Many, for example, would argue that in the case of Canadian health care, an area of provincial jurisdiction, national outcomes were improved as a result of the provincial initiatives in hospitalization and medicare, initiatives that, arguably, the national government would have been less likely to pursue in the absence of provincial action.

The classical federalism intergovernmental regime that characterizes the disability insurance system means there is wide scope for experimentation and, indeed, different approaches are evident in the main program areas. While all provinces operate WCB programs, there are significant differences among them (e.g., benefit levels vary significantly). Four provinces have adopted public auto insurance programs, and even within this group there are significant differences in approach (e.g., pure-no-fault in Quebec and Manitoba, partial-no-fault in Saskatchewan and tort liability in British Columbia). There is also experimentation within C/QPP Disability: Quebec exercised its right to opt-out of CPP Disability and took the development of QPP Disability in a somewhat different direction.

Achieving Policy Goals: Assessment. This brief review indicates there are significant policy problems in Canada's disability insurance system. However, the extent to which these outcomes stem from the governance of the system is not clear-cut. One perspective on the matter is that since provinces have responsibility for much of the disability insurance system they could address its shortcomings, suggesting that the problems stem not from the governance structure but simply from inaction. But a major part of the system, CPP Disability, is operated by the federal government (albeit in a arrangement where there is ample scope for federal-provincial cooperation). With two levels of government involved in separate programs with similar objectives, it could be argued that at least some of the policy problems that arise from the program fragmentation in disability insurance stem from the classical federalism governance of the sector.

Another perspective on this issue is provided by those who regard the multiple decision-making centres that characterize federal states as productive of conservative outcomes. David Cameron's work, which shows that the growth of the public sector during the 1960–75 period was lower in nations with federal structures than in those with unitary structures, buttresses this view.[20]

The pertinence of this view to disability insurance programs is arguable. Some would point to the provincial workers' compensation programs as examples of significant government intervention; while WCB benefits vary widely across provinces they nonetheless furnish replacement rates that are among the highest in the income-security system. Others would characterize provincial disability policy as cautious and conservative, noting the narrowness of the application of the workers' compensation programs and the lack of any provincial action to provide disability insurance protection, regardless of cause, to all labour force participants. Keith Banting, in discussing the CPP retirement pension, for example, notes that "divided jurisdiction insulates contributory pension plans from the expansionist pressures inherent in democratic politics, and more firmly entrenches the existing balance between the public and private sectors in the retirement income field."[21]

These comments may also be taken as applying to CPP Disability. In this view, CPP Disability was kept as a small program so as to maintain a significant role for privately operated LTD plans. The role of the Government of Ontario, which has an effective veto on CPP matters and, as the province where most of Canada's insurance companies are headquartered, is often cited in this regard.

Respecting Democratic Principles

Legislative Role. The classical federalism governance of most of the programs under review means that the legislative role of the provincial legislatures in the disability insurance system is clear. With respect to the CPP, however, for an amendment to take effect, two-thirds of the provinces with two-thirds of the population must agree to the change. In practice, this has somewhat compromised the control of legislatures with respect to CPP Disability policy. The consensus requirement means that reform efforts are characterized by negotiations among federal-provincial officials/ministers that typically result in a package of agreed changes being presented to a federal parliamentary committee and then to Parliament with the implicit warning that any changes will unwind the carefully constructed deal. Since provinces signify agreement to the federal legislative changes via an Order in Council, provincial legislatures are not involved in the process. The limitation on the role presently played by legislatures raises some concerns, although nothing prevents federal/provincial governments from giving legislatures a larger role in the process.

Citizen Participation, Transparency and Accountability. The specifics of the CPP's federal-provincial collaborative governance — the two-thirds/two-thirds requirement to change the plan — have also hindered citizen participation in CPP Disability policy formation. The federal-provincial practice of constructing reform packages that are then presented to legislators, often shrouds the policy-making process in secrecy: in many cases, the positions taken by governments are not made public, making it difficult for citizens to influence the policy process. (The scope for citizen participation is greater in Quebec since changes to the QPP must be passed by the National Assembly.)

Other difficulties stem from the fact that disability insurance receives much less public discussion and advocacy compared to the social assistance and related programs that provide for income support for people with disabilities. The beneficiaries of the income-support programs are, in general, well organized and regularly and expertly advocate for program and system improvements. Advocacy activities relating to disability insurance, on the other hand, are much more limited (e.g., WCB recipients lobbying for WCB improvements). No advocacy group representing all people in the labour force is dedicated to lobbying for overall reform of disability insurance, in part reflecting the sheer complexity of the existing system and the fact that many people in the labour force are poorly informed about their disability insurance coverage.

A further problem affecting WCBs and public auto plans is the difficulty in obtaining a national picture of the system's operation. While an association of WCBs collates data/information from the provincial/territorial boards, variation in accounting procedures and data presentation remain, which makes for some problems in interprovincial comparisons and national analysis. While the Insurance Bureau of Canada provides some information on auto insurance, much basic information on the personal injury part of the auto insurance is not readily available. These are important deficiencies, which stem to some extent from the classical governance of the disability insurance system.

Respecting Federalism Principles

Respect for Jurisdictional/Political Sovereignty. The disentangled nature of most of the disability insurance programs and the consensus requirements of the C/QPP ensure that these sovereignties are respected.

Commitment to Intergovernmental Processes. The history of the establishment and amendment of C/QPP Disability demonstrates a strong commitment to intergovernmental processes by all governments, including Quebec. (There are few intergovernmental processes underlying the other disability insurance programs reflecting their classical federalism governance.)

Summary

There are a number of serious policy problems with the disability insurance system. A patchwork of social insurance programs disburse widely varying benefits to people with similar disabilities at significant administrative cost: one of the results of the patchwork of programs is that many workers who become disabled fall through the cracks of the insurance system onto social assistance. At least some of these difficulties can be traced to the mainly classical/disentangled nature of the governance of this sector. The wide range of programs and the significant differences among even ostensibly similar programs attests to the wide scope for experimentation afforded by the system.

The disability insurance programs exhibit some problems with respect to upholding democratic principles that stem to some extent from the classical governance of the disability insurance system. C/QPP Disability raises some issues of accountability.

The disability insurance system upholds federalism principles.

POSITING AND ASSESSING AN ALTERNATIVE GOVERNANCE REGIME

The assessment of the disability insurance system identified a number of serious policy problems with the system. These problems can be traced, at least in some measure, to the classical federalism governance that characterizes most of the programs, although views will differ as to the extent of the linkage. This section sets out a general reform path for disability insurance and the governance structure that is necessary to achieve it.

A number of analysts of the disability insurance system (e.g., the 1981 *Obstacles* report of the Special Committee of the House of Commons on the Disabled and Handicapped, the 1988 *Transitions* report of Ontario's Social Assistance Review Committee, and various publications by Ison and Muszynski) have proposed the replacement of current disability insurance programs with a publicly operated comprehensive disability insurance plan. This section sketches the main features of such a plan (as well as a more modest reform agenda) and outlines how, via a federal-provincial collaborative governance structure, it might be accomplished. The FPC regime chosen for analysis has, in this case, some unusual features, notably the uncertainty of outcome: while significant advances on the policy front are possible, so is an outcome not significantly different from the current situation.

Reforming Disability Insurance: A Collaborative Approach

The Governance Conundrum. The "pure" Comprehensive Disability Insurance Plan (CDIP) envisaged by several Canadian analysts would provide sickness and accident insurance, regardless of cause, for all labour force participants (and perhaps others). The plan would replace a significant percentage of the earnings of labour force participants disabled due to accident or sickness (and, perhaps, would also provide an impairment benefit that would compensate for the disability and the loss of earnings capacity). As under the workers' compensation programs, partial disability would be covered as would the cost of rehabilitation and the special needs of clients. And as with C/QPP Disability, the retirement pension credits of disabled people would be filled in by the CDIP. Tort liability would be restricted or eliminated. The plan would be financed by revenue sources similar to those that now finance the programs that a CDIP would replace — employer/employee contributions, taxes on motor vehicles and gasoline and, perhaps, a tax on hazardous activities such as smoking. Some of the many issues that would need to be resolved in the design of the CDIP are apparent from the earlier description of the current disability insurance system. Appendix 1 provides an illustrative and partial list of key issues.

Such a plan would replace virtually all provincial and federal disability insurance programs: Workers' Compensation, personal injury insurance offered by public and private automobile plans, C/QPP Disability, EI Sickness,[22] programs compensating victims of crime. Privately operated plans offering LTD insurance, insurance for personal injury from auto accidents and other private disability plans would not be prohibited but would be more or less unnecessary depending on the specific design feature of the public plan.

Some have argued that despite the fact that a comprehensive plan would pay, on average, higher benefits to more people, the administrative savings it would entail would result in a zero net cost. While this seems unlikely, there is no doubt that the implementation of such a plan could bring many savings from, for example, operating one rather than many administrative and adjudicative systems, the elimination of over-insurance, lower social assistance rolls, and the elimination or substantial reduction of the high costs of the tort liability system.

Simply describing such a plan in the Canadian context immediately raises a conundrum with respect to the implementation of such a plan. A province wishing to establish a CDIP within its borders faces formidable barriers.

- To obtain the needed control over CPP Disability the province would have to opt out of the CPP in its entirety, that is, to get control of the CPP Disability program the province would also have to be willing to operate the (much larger) CPP retirement/survivor program. (This, of course, is not a barrier for Quebec which has operated the QPP, including QPP Disability, since its inception.)

- Should the province proceed with its CDIP, but not take action on the CPP Disability front, the new provincial program would have to integrate the federal benefits, negating some of the simplicity/efficiency gains of a CDIP.
- The province would face heavy opposition from the insurance industry likely including challenges under the terms of the North American Free Trade Agreement (NAFTA).
- Even without the above problems, the task of creating a provincial CDIP would be complex and controversial, for example, some people, including many in the labour movement, may oppose a new program if, as is likely, the proposed replacement rate for the 24-hour coverage it would offer were lower than that of current WCB programs (which offer work-related coverage only).

Major barriers also exist for any federal government that wished to pursue a national CDIP. A federal proposal to create a CDIP would immediately run into provincial refusal to cede jurisdiction over their workers' compensation plans and, in four provinces, public auto insurance plans. Moreover, a federal CDIP, which would essentially displace the LTD and the personal injury portion of the auto operations of private insurance companies, would also face other constitutional barriers in that the solvency of insurance companies operating solely in Quebec is regulated by the Quebec government (unless the company has chosen to obtain a federal charter). NAFTA could also present a barrier to federal action with respect to the agreement's compensation requirements.[23]

Thus, the constitution prevents the federal government from implementing a national CDIP on its own and very significant barriers stand in the way of any province seeking to implement such a program within its borders. In these circumstances it is perhaps not surprising that no government, federal or provincial, has pursued a CDIP beyond the study stage.

The unavoidable conclusion is that cooperation between federal and provincial governments is a necessary condition for progress on the CDIP file. The following offers an outline of an illustrative agenda that federal and interested provincial governments might follow to, at the least, improve outcomes within existing disability insurance structures and, at the most, lay the groundwork for a national CDIP. Two assumptions underlie the illustrative agenda: first, as noted, cooperation between the two orders of government is not only desirable but essential for even modest reform and, second, a national CDIP is possible only if it is built on the prior creation of provincial CDIPs.

Disability Insurance Reform: An Illustrative Agenda. This section outlines two parts of a possible federal-provincial agenda for the reform of the disability insurance sector: reform within existing structures and comprehensive reform. The agenda is illustrative and not exhaustive, there are undoubtedly other avenues of reform that would promote the goal of improved policy outcomes.

Reform within Existing Structures. Two sorts of activity are envisaged within the first and more modest part of the illustrative agenda.

First, working within existing structures, the federal and interested provincial governments would seek to reduce overlap among programs and to reduce work disincentives (which in the case of some provinces would be a continuation and extension of existing initiatives). Initiatives could include: (i) the reduction of the incidence of the stacking of WCB and CPP Disability benefits; (ii) a commitment to pursue efficiencies that might arise from coordinating the activities of the various agencies that determine disability status and those that promote rehabilitation efforts; (iii) a federal offer to include provincial officials in the administrative structures of CPP Disability so as to strengthen the on-the-ground links among programs; (iv) an expansion of existing efforts to reduce work disincentive effects, especially via CPP Disability changes; and (v) the expansion and rationalization of data reporting from provincial WCBs, public auto agencies and private insurance companies so as to enable the regular publication of comprehensive data on the operation of both the public and private parts of the disability insurance system.

Second, the establishment of a federal-provincial commission to undertake a detailed examination of all aspects of the current disability insurance system and of a CDIP. While federal-provincial commissions are unusual, its use in the disability insurance area would greatly increase the chances of a successful reform process. The analysis could build on earlier studies, internal and external to government, which, while useful, are now long out of date or partial in their approach. Given the complexity of the topic the study would likely take at least two years. The necessary financial analysis would require that investigators have subpoena powers in order to access the LTD/auto insurance records of insurance companies. If no provinces agreed to participate in such a study, the federal government could undertake the study on its own.

(The size of the task is similar to that undertaken by the Hall Commission, which laid the groundwork for the federal *Medical Care Act* in 1968.)

The federal government could signal its commitment to reform by offering to pay 80 percent of the research, pilot project, start-up, and related costs associated with the above initiatives.

Comprehensive Reform. While pursuing disability insurance reform within existing structures could produce policy advances their scope would be limited: even with action on all of the above points the program fragmentation and the heavy dependence on cause-based programs such as WCB and auto insurance would continue.

Under a more comprehensive approach the federal and interested provincial government would commit to pursue a CDIP that would be jointly designed by the two orders of government. A possible scenario could include the following elements:

- After consultation with provincial governments the federal government would announce its commitment to pursue a national CDIP and would invite interested provinces to join with it in the design of a specific proposal. (This joint development model is patterned after the successful CAP experience and is in the spirit of the 1999 Social Union Agreement.)
- If a federal-provincial proposal emerged it would be the subject of public consultation (perhaps limited to the participating provinces) led by elected representatives of the participating governments: revisions to the proposal agreed to by the participating governments would be made. (This consultation model is patterned after the consultations that preceded the 1997 amendments to the CPP.[24])
- The federal government would demonstrate its commitment to a CDIP by introducing legislation setting out the detailed provisions of the "model" CDIP that reflected the federal-provincial proposal, giving the federal government authority to split off CPP Disability from CPP proper and to transfer CPP Disability (and perhaps EI sickness) to participating provinces — those that agreed to establish a provincial CDIP with the model design features; the legislation would set out agreed portability arrangements between CDIP and non-CDIP provinces, the extent to which departures from the agreed model would be allowed and the federal responsibility if the terms of a CDIP in a participating province subsequently fell outside the agreed model.

- To increase the chances that one or more provinces would agree to establish a CDIP, the legislation could include financial inducements (which would also carry political advantages) for participating provinces that wished to take them up, for example, provisions authorizing the federal government to levy some of the necessary CDIP-related taxes and to collect, at no cost to the provinces, some of the provincial levies necessary to finance the plan such as payroll taxes on employers.

Under this approach, each order of government would be centrally involved in all aspects — analytical, political and financial of CDIP reform, a feature that past experience suggests is a requirement of major reform in this area. Several possible outcomes of this illustrative agenda can be envisaged: first, no province agrees to participate with the federal government in the design of a model CDIP; in this event the federal government would need to decide whether to drop the project or to complete the design phase on its own; second, one or more of the provinces agrees to participate in the design phase but no province subsequently agrees to adopt a CDIP. In this event, neither the FPC governance necessary to the reform process nor the policy advances it was designed to facilitate takes effect; the federal legislation would remain on the books, which, as an expression of a point-in-time federal-provincial agreement, would likely increase the chances of future policy action in some provinces. Third, one or more of the provinces agrees to participate in the design of the CDIP and at least one subsequently decides to establish a provincial CDIP, a decision made easier by the existence of the federal legislation which would help legitimize the initiative and by the federal financial/political assistance; the advantages of the CDIP would be restricted to the participating provinces. In the short run, the second outcome is perhaps the most likely. There is a reasonable probability but no certainty that, over time, the third outcome would obtain with at least one province adopting a CDIP. If, over time, the anticipated advantages of the plan became clearly evident, other provinces would likely follow.

The position of the Government of Quebec in this matter is special. Since it is solely responsible for QPP Disability it already holds virtually all the major disability insurance levers in its hands and could therefore pursue CDIP reform more or less on its own, an outcome the federal government should encourage in any way possible. However, the inducements for participating provinces outlined above would be less likely to be effective if the Government of Quebec were predisposed to avoid linking its major policy initiatives with an FPC regime.

Assessing a Comprehensive Disability Insurance Plan

This section assumes one or more provinces implements a provincial CDIP as described and evaluates a CDIP, which came into effect via FPC governance, with respect to its impact in affected provinces on policy outcomes and the extent to which democratic and federalism principles are upheld.

Vertical Equity. By providing all labour force participants (and perhaps some others) adequate income-replacement insurance in the event of disabilities arising from sickness and accidents, a CDIP would fully address the problems of the current system where poor coverage is concentrated among those with lower incomes.

Horizontal Equity. The CDIP raises no significant horizontal equity issues. With one program compensating disabled labour force participants regardless of how the disablement came about, people in similar situations would be treated similarly, representing a significant improvement over the current system.

Efficiency. The lower administrative costs that would arise from the economies of scale of administration associated with the CDIP would be a clear improvement over current arrangements (although no attempt is made here to quantify the gain). As well, the highly undesirable features of the current system, for example, “client dumping,” would be eliminated.

The change in governance entailed by the CDIP would, in and of itself, do nothing to address the work disincentive issue: these issues are raised by disability insurance programs no matter how they are governed. However, with one large program, the risk of poor design/operation in this area is greater than in the current system with its many parts: poor design of a large program would have serious consequences since all clients would be affected. The reverse, of course, also applies, careful design and implementation of monitoring and rehabilitation programs have the potential to minimize work disincentives.

Adequacy. The key advantage of a CDIP is that it would provide adequate disability coverage to virtually all labour force participants in respect of all compensable disabilities regardless of their cause. Over time, the incidence of people with disabilities receiving social assistance or like payments would fall.

Experimentation. One result of the outcome assumed above — that not all provinces implement a CDIP — is that Canada would become even more of a laboratory than it now is for the various approaches to disability insurance policy, with the result that the CDIP scenario scores high on the experimentation criteria.

The magnitude of the policy change in the CDIP province(s) would attract a good deal of attention from other provinces, disabled groups, disability researchers and the public at large (which now rarely happens in this policy area). The outcomes and system costs in the CDIP provinces would be continually compared with those in provinces that stuck with the current system and in those provinces, if any, that pursued other disability reforms. This situation would provide valuable information on the advantages and disadvantages of the various approaches. Thus, while the advantages of a nationwide CDIP are unattainable in the current context, the provincial CDIP approach, with its built-in experimentation feature, could eventually lead to CDIPs in all provinces that, given the arrangements among them, would effectively constitute a nationwide plan the design of which would have benefited from years of provincial experience.

Democratic Principles. The current disability insurance system has some deficits with respect to the maintenance of democratic principles. A CDIP would very likely improve matters in this regard although there is always the risk that the amalgamation of current disability insurance programs would result in an unresponsive and unaccountable monolith that would worsen outcomes on this front.

Since in participating provinces disability insurance matters would be mostly under provincial control, the executive federalism features of C/QPP Disability decision-making that somewhat reduce the role of elected representatives would be eliminated. As well, a single plan would likely reduce the problems citizen/advocacy groups sometimes encounter in the present system in determining eligibility for benefits and deciding which government/agency to hold accountable for what.

Federalism Principles. Neither the current disability insurance system nor the CDIP alternative raise problems with respect to the maintenance of federalism principles.

Summary

The current disability insurance system fails to achieve several important policy objectives and has some democratic shortcomings. A CDIP system would significantly improve policy outcomes and would marginally improve the extent to which democratic principles are upheld. The maintenance of federalism principles would be unaffected.

CONCLUSION

Canada's disability insurance system has been the subject of repeated study over the past 20 years. Most of these inquiries have concluded that the system has serious deficiencies. This chapter has briefly described the disability insurance system and has come to what amounts to the usual conclusions with respect to the system's policy problems. While there are some problems with the way in which the system upholds democratic principles, these are less serious than the policy problems.

The many studies of the disability insurance system have not resulted in the wholesale reform — a comprehensive disability insurance plan — that has been repeatedly recommended. Reasons for this policy block include: (i) the adoption of a CDIP would entail a major change in several long-standing institutional arrangements that would require the public sector to take on many powerful interests; (ii) while it is clear that there are significant economies of scale to be reaped by the establishment of a CDIP, the declining support for government intervention results in scepticism that public agencies could do so effectively; (iii) it is difficult to get disability insurance issues on the public agenda since most people, expecting never to come into contact with the system, give little thought to the issues; and (iv) the governance structure of the disability insurance system means that a province wishing to pursue a CDIP faces very significant obstacles; jurisdictional realities mean the federal government could not move unilaterally into this area.

The chapter concludes that the most promising way to unblock this policy area would be for the federal government to commit itself to a CDIP and to pursue it cooperatively with interested provinces. While the current governance arrangements in this area mean that there is no guarantee that, even with the federal commitment and assistance, any province would adopt a provincial CDIP, the collaborative approach outlined here would increase the chances that at least one provincial CDIP would emerge. If, as the many studies of this area predict, the province and its disabled population reap significant advantages, other provinces would likely follow, bringing the country closer to a national CDIP.

NOTES

[1] Some of the programs also make provision for health-care costs.

[2] D. Hyatt, "Workers' Compensation in Canada: An Overview," in *Unfolding Change: Workers' Compensation in Canada,* Vol. 5 (Toronto: Liberty International Canada, 1995), p. 4.

[3] M. Gunderson and D. Hyatt, "Foundation for Workers' Compensation and Reform," in *Workers' Compensation: Foundations for Reform*, ed. M. Gunderson and D. Hyatt (Toronto: University of Toronto Press, 2000), pp. 7, 8.

[4] B. Wilkinson, Study Initiative Director, "Promising Directions for Reform," in *Unfolding Change: Workers' Compensation in Canada*, Vol. 1 (Toronto: Liberty International Canada, 1995), p. 9.

[5] Data provided by the Association of Workers' Compensation Boards of Canada.

[6] B. Fortin and P. Lanoie, "Substitution Between Unemployment Insurance and Workers' Compensation," *Journal of Public Economics* 49(1992):287-312.

[7] M. Gunderson, A. Gildiner and A. King, *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers*. Study Report on Canada (Geneva: ILO, 1998), p. 39.

[8] F. Vaillancourt, "The Financing and Pricing of WCBs in Canada: Existing Arrangements and Possible Changes," in *Chronic Stress, Workers' Compensation in the 1990s,* ed. J. Richards and W. Watson (Toronto: C.D. Howe Institute, 1995), pp. 76, 82.

[9] William M. Mercer Ltd., "Workers' Compensation Systems in Canada: Trends in Critical Parameters," in *Unfolding Change: Workers Compensation in Canada,* Vol. 5 (Toronto: Liberty International Canada, 1995).

[10] This provision reflected a view of the plan's framers that including opted-out provinces in the governance of the CPP would be more likely to lead to a durable parallelism between the plans. If amendments to the QPP made it significantly different from the CPP, Quebec would no longer be part of the two-thirds/two-thirds requirement.

[11] L. Muszynski, "Improving on Welfare," *Policy Option*s 9, 2 (1988):27.

[12] K. Banting, *The Welfare State and Canadian* Federalism (Montreal and Kingston: McGill-Queen's University Press, 1987), p. 94.

[13] P. Dyck, "The Canada Assistance Plan: The Ultimate in Cooperative Federalism," *Canadian Public Administration* 19, 4 (1976):587.

[14] The Hanes and Moscovitch chapter in this volume takes a different view.

[15] Data on claims paid were provided to the author by the Canadian Life and Health Insurance Association.

[17] Gunderson, Gildiner and King, "Foundation for Workers' Compensation and Reform," pp. 40-41.

[17] Ibid., p. 25.

[18] Muszynski, "Improving on Welfare," p. 27.

[19] T. Ison, *Compensation Systems for Injury and Disease: The Policy Choices* (Toronto: Butterworths, 1994), p. 130.

[20] D.R. Cameron, "The Expansion of the Public Economy: A Comparative Analysis," *American Political Science Review* 72(1978):1243-61.

[21] Banting, *The Welfare State and Canadian Federalism*, p. 73.

[22] EI Sickness, which covers short-term sickness, could operate separately from a CDIP.

[23] Major social insurance initiatives such as Unemployment Insurance (1940), Old Age Security (1952) and the disability and survivor parts of the CPP (1966) were accomplished via constitutional amendments that increased federal jurisdiction, amendments that were only possible with the unanimous consent of the provinces. This option is not discussed here given the certainty that such unanimity would not be forthcoming with respect to a federal CDIP.

[24] If no federal-provincial proposal emerged, the federal government could abandon the project or it could, after widespread consultation, independently move to the legislative stage, thereby abandoning the FPC governance model assumed here. An activist federal government might pursue this course in the hope that the existence of federal legislation in this area would increase the chances that a future provincial government would pursue a provincial CDIP.

APPENDIX 1

A COMPREHENSIVE DISABILITY INSURANCE PLAN: SOME KEY POLICY ISSUES

TABLE A1
Issues to be Addressed in the Design of a Comprehensive Disability Insurance Plan: An Illustrative List

Areas	*Issues*
Coverage	partial/short-term disability EI Sickness to remain separate from or be absorbed into CDIP self-employed/part-time unemployed/homemakers/students chronic stress, etc. product liability cases
Benefits	replacement rate earnings ceiling period between disability and start of payments indexation ancillary benefits/rehabilitation
Financing	employer-employee sharing of earnings-related premiums other sources funding ratio investment policy tax treatment
Scope for tort liability	
Operation	whether/what elements of CDIP operation to be contracted-out

APPENDIX 2

COMPENSATION PAID AND PROVISION FOR HEALTH-CARE COSTS FOR ROAD ACCIDENT VICTIMS

No agency publishes a compilation of the data on compensation paid and the cost of health care for those injured in auto accidents in the four provinces operating public auto insurance plans. The Quebec data presented below are published in the annual report of the Société de l'Assurance Automobile du Quebec (SAAQ). Data for the other three provinces were provided by the respective provincial agencies. Total compensation payments and health-care costs in the four provinces in 1997 were $2 billion. This result should be treated with caution since the four agencies have not adopted a common classification system for reporting their results.

With respect to the six provinces with private plans, the Insurance Bureau of Canada publishes annual data on claims incurred by private insurance companies, that is, the cost to the insurance companies of paying for the accidents that occurred in a given year: some of the benefits associated with these costs may be paid out over several years. Data on the annual payments actually *made* in a particular year to those injured in auto accidents are not easily available, which prevents accurate comparisons with the data for the provinces with public plans. The cost incurred by insurance companies in respect of 1998 injury claims in private passenger vehicles was $1.7 billion.

Compensation Paid and Provision for Health Costs in the Four Provinces Operating Public Auto Insurance Plans

Quebec

Quebec's public plan is pure no-fault with respect to personal injury, that is, tort liability is not permitted.

TABLE A2
Compensation/Health-Care Costs for Road Accident Victims
(Societé de l'Assurance du Québec, 1997)

	($ million)
Income replacement indemnities	193
Lump sums for after-effects of injuries	108
Medical/rehabilitation expenses	87
Death benefits	94
Other	23
Payments to other agencies re: health-care costs	134
Total	638

Manitoba

Payments to auto accident victims in Manitoba have been made on a pure no-fault basis since 1994 when the previous plan, which permitted tort liability, was replaced. The $51 million of bodily injury payments made in 1997–98 were in respect of tort liability claims made under the former system.

TABLE A3
Injury Claims/Health-Care Costs for Road Accident Victims
(Manitoba Public Insurance Corporation, 1997–1998)

	($ million)
Total accident benefits (current system)	46
Medical/rehabilitation	30
Impairment benefits	9
Death benefits	7
Bodily injury claims (former system)	51
Weekly indemnity (current and former system)	18
Total	115

Saskatchewan

Payments to auto accident victims in Saskatchewan have been made on a modified-no-fault basis (tort liability only permitted when income loss and rehabilitation costs exceed maximums) since 1995 when the previous plan, in which tort liability was widely permitted, was replaced. The $68 million bodily injury payments made in 1997 were in respect of tort liability claims made under the former system.

TABLE A4
Injury Claims/Health-Care Costs for Road Accident Victims
(Saskatchewan Auto Fund, 1997)

	($ million)
Accident benefits	70
Current system	
Income replacement	12
Permanent impairment	9
Medical expenses/care benefits	34
Death	10
Other	5
Former system	3
Bodily injury claims (former system)	68
Total	140

British Columbia

Tort liability plays a significant role in British Columbia's public auto insurance system as reflected in the substantial payments for pain and suffering.

TABLE A5
Injury Claims/Health Care Costs for Road Accident Victims
(Insurance Corporation of British Columbia, 1997)

	($ million)
Income replacement	299
Medical/rehabilitation	169
General damages (pain and suffering)	438
Death	6
Other	178
Total	1,090

Injury Claims Incurred for Private Passenger Vehicles in the Six Provinces with Private Plans

Accident benefits, a form of no-fault insurance, are compulsory in all provinces except Newfoundland. Accident benefit levels are significantly lower in the six provinces with private plans where tort liability plays a dominant role. The 1998 claims-incurred data below (which, as noted, are not comparable to the data for the public systems) show that total claims incurred from accident benefits ($830 million) are similar to those incurred from third-party liability, that is, the tort liability system ($852 million). However, in Ontario, a partial no-fault province where accident benefit levels are higher than in the other private provinces, these benefits were 69 percent of total claims in 1998. In the remaining five private provinces accident benefits were only 15 percent of total claims.

TABLE A6
Injury Claims Incurred in the Six Private Provinces
(Private Passenger Vehicles, 1998)

	Ontario	*Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Alberta*	*Total*
		($ million)	
Accident benefits	739	91	830
Medical/rehabilitation	538	60	598
Disability income	160	25	185
Funeral/death	26	5	31
Other	16		16
Third-party liability (bodily injury)	339	513	852
Total	1,077	604	1,681

Source: Insurance Bureau of Canada.

5

DISABILITY SUPPORTS AND SERVICES IN THE SOCIAL UNION

Roy Hanes and Allan Moscovitch

INTRODUCTION

This case study describes and assesses the operation and governance of programs that provide supports and services to working-age people with disabilities, principally those with little or no income of their own. The focus is on the effects of the change in governance associated with the replacement of federal cost-sharing of provincial programs under the Canada Assistance Plan (CAP) by the Canada Health and Social Transfer (CHST) under which the federal government disburses almost condition-free block grants to the provinces.

The chapter begins with a definition of disability supports and services and a brief historical overview of the role of the welfare state in the lives of people with disabilities, tracing the origins of the present Canadian welfare state back to the English Poor Law. The fourth section outlines the disability supports and services currently available across the country with particular reference to six of the provinces. Section five describes the federal-provincial regime type that predominates in the provision of disability supports and services. The sections following assess the extent to which prevailing arrangements, respectively, meet policy goals and uphold democratic values and federalism principles. The chapter then sets out two options for reform for the provision of disability supports and services.

DISABILITY SUPPORTS AND SERVICES

“Disability supports and services” refers to a wide range of goods and services that are used by persons with disabilities to assist them in their daily living. Examples include the provision of devices such as prosthetics, beds, wheelchairs, and canes, and aids such as bandages or the provision of dietary foods. Supports and services may also include many items available to those who for other reasons may be in need. They include counselling and advice, dental care, employment training, furniture, transportation, appliances, special clothing, diet supplements for mothers, as well as possible home/attendant care. While the availability of publicly provided disability supports and services varies by province, the provinces are alike in that most publicly funded supports and services are used by those in receipt of social assistance, the group on which this chapter focuses. In most provinces, disabled persons who are employed but at low income may also be eligible for publicly funded supports and services.

BRIEF HISTORY OF PUBLIC PROVISION OF DISABILITY SUPPORTS AND SERVICES

The provision of relief and support to people with disabilities can be traced to the origins of English Poor Law. The English Crown established the early definitions of disability and established methods of relief. Initially, the definition of people with disabilities was quite restrictive: “Lepers, bed ridden creatures and people over the age of sixty; people impotent to serve.”[1]

The British North American colonies adopted either the spirit or the letter of the English Poor Law including the mechanisms for providing supports to people with disabilities (formerly referred to as the defective classes). When the colonies joined to form the Dominion of Canada, the provinces were given the authority for the provision of social welfare under the *British North America Act*. The provincial governments of the time provided very little assistance toward the costs of providing for “dependent and defective populations.”[2] While they claimed authority over the provision of relief, they often made the provision of direct support a municipal or county responsibility or simply left it to other institutions, for example, provincially chartered charitable organizations or the churches.

Income support for persons with disabilities was first legislated by government in the early part of the twentieth century. Provincial workers’ compensation programs and federal pensions for veterans were initiated during the First World War. In 1936 the federal Old Age Pension program, begun in 1927 and administered by the provinces, was extended to blind persons over the age of 40. A more comprehensive program was not initiated until 1953 when the federal government began an income-support program for disabled persons in response to the needs of the many disabled war veterans. In 1966 that program, with others, was folded into the federal Canada Assistance Plan. CAP offered federal cost-sharing for the three major groups of persons in need of income support: widows and single parents, the unemployed, and the disabled. The federal government paid half of eligible provincial costs; the provinces administered the program. CAP encouraged the early development of provincial programs providing income support to persons with disabilities. CAP's subsequent extension to cover 50 percent of the costs of services to people who were poor or likely to be poor, made available a much wider array of services to disabled persons.[3]

The end of World War II brought significant changes for people with disabilities, especially in the provision of care and treatment. The rise of rehabilitation services for World War II veterans laid the foundation for today's rehabilitation arrangements. Starting in the late 1940s, there was a great expansion of medical and social services to people with disabilities. It included the establishment of special schools, training programs, sheltered workshops, summer camps and recreational programs, as well as special trades and industry training, and special hospitals and after-care facilities. Until the 1970s, most of these supports were provided in an institutional setting. In the case of hospitals, supports were generally provided for a fee until the advent of provincial hospitalization plans in the late 1950s. Those who could not afford supports received what was available through private charitable organizations. Since the development of medicare in 1968, more supports became available outside institutions but not enough to keep up with the demand, due in part to the movement for deinstitutionalization.

Social policy has been at the centre of federal-provincial controversies in the postwar period. In the so-called Green Book proposals of 1945 the federal government offered the provinces funding for social programs in return for undisputed control of taxation: the proposal was rejected by both Ontario and Quebec. In the 1960s, the provinces agreed to several programs based on federal cost-sharing in areas of exclusive provincial jurisdiction — funding that had been rejected 20 years earlier. These programs were instrumental in creating a Canadian welfare state that reflected the views of those who believed in state intervention and in a larger federal role in social policy. Shortly after, the Quebec government rejected the social role that cost-sharing had given the federal government. Since the Victoria Conference in 1971, successive Quebec governments have attempted to claim back what was indisputably within their jurisdiction in the 1940s. Federal governments have defended their spending in social areas on the grounds that it is supported by constitutional amendment (pensions and unemployment insurance) or because it is legitimate to use federal revenues to provide an incentive to provincial spending.

In 1984 a federal Conservative government was elected which brought to office considerable scepticism about the role of social programs. At the same time, conservative provincial governments wanted changes in CAP that would provide cost-sharing for workfare schemes. In 1986, without legislative change, federal and provincial governments agreed to effectively bypass the CAP provisions prohibiting workfare. This, together with the 1990 imposition of the ceiling on cost-sharing in three provinces, set the stage for the elimination of CAP in 1996. CAP's strength was that, in return for federal funding, provinces were required to accept a common administrative framework that brought a measure of consistency to the administration of income-security programs. But by the mid-1990s, CAP and its federally imposed framework had come under serious attack by several provincial governments wanting greater freedom to institute their own distinct programs without regard for national standards.

The elimination of CAP and the introduction of the CHST have substantially altered the social roles of federal and provincial governments. Social assistance and social services, including disability supports and services, are now exclusively in the hands of the provinces. Each province determines independently which benefits and services to provide, when and how to provide them and at what level they will be provided. The federal government has no role to play beyond the transfer of revenues in return for which the provinces are prohibited from instituting a residency requirement. Some have argued that the substantial reductions in the federal expenditures on social programs were made easier under these arrangements.

To summarize, until well into this century, limited disability supports and services were available, provided mainly by families and private charitable organizations. Those government programs that did exist, often operated by municipal governments, were only available to those with little or no income of their own. While the role of the provinces and the federal government in this area began to grow in the 1930s, it has only been since the mid-1960s that they have both taken an active role in providing disability supports and services. The disappearance of CAP in 1996 returned virtually all responsibilities in this area to provincial governments.

THE LEGISLATIVE FRAMEWORK

This section provides an overview of the legislation (as of 1999) that governs the provision of the supports and services that provinces provided to persons with disabilities. The focus here and throughout the chapter is on 18- to 64-year-olds who qualify for supports and services because they receive social assistance, other public benefits or because they have a low income.[4]

All provinces and territories provide, in legislation, a program to meet the basic day-to-day living needs of persons without sufficient resources. Social assistance is generally available "where an individual or an adult member of a family can prove that financial resources are insufficient to provide for needs of daily living."[5]

The six provinces examined for this case study — Newfoundland, Nova Scotia, New Brunswick, Ontario, Saskatchewan, and Alberta — all have legislation that establishes the criteria for the provision of supports and services to people with disabilities. Alberta and Ontario have separate legislation that governs programs for people with disabilities (the Alberta Assured Income Support for the Severely Handicapped Program and the Ontario Disability Support Program).[6] In Newfoundland, guidelines for the provision of supports and services for people with disabilities are provided through the *Social Assistance Act and Regulations*; in New Brunswick a similar framework is established in the *Income Security Act and Regulations*; in Saskatchewan the legislation is the *Saskatchewan Assistance Act and Regulations*. In these provinces there appears to be a direct relationship between the individual who is disabled and the province. Once established criteria have been met and disability has been determined, people with disabilities qualify for services that are provided directly by the province.

In Nova Scotia, persons with disabilities requiring ongoing supports and services receive these under programs governed by the provincial *Family Benefits Act*. Local jurisdictions also provide supports and services but they are short term in nature. The range and extent of supports and services varies as between larger municipalities such as Halifax/ Dartmouth and smaller municipalities.

The provincial statutes set out the disability-related supports and services that will be provided to those eligible for social assistance (or the related programs in Ontario and Alberta). In general, these statutes determine: (i) how and in what context supports and services will be provided to persons with disabilities, for example, via home-based care, institutional care, individualized funding (which permits individuals to purchase their own supports and services); (ii) who determines and diagnoses disabilities, for example, medical practitioners, disability program administrators; (iii) the range and extent of services to be provided, for example, travel and transportation, dental care, vision care, assistive devices, attendant care, furniture, special clothing, consumer durables, counselling and other personal services; (iv) the funds to be allotted for supports and services, the transferability of supports and services within the province, etc.; (v) eligibility criteria for supports and services including the definition of disability and such matters as the treatment of personal assets, family trusts, income from employment; and (vi) which department in each government will administer which program for persons with disabilities.

The definitions of disability found in the provincial statutes/regulations deserve further attention. The provincial definitions generally link disability, and therefore eligibility for supports and services, to the ability to support oneself and one's family. In Newfoundland, for example, disability is defined as follows:

> Adults, children or families who, through mental or physical incapacity, are unable to provide, in whole or in part, by their own efforts, necessities essential to maintain, or assist in maintaining, a reasonably normal and healthy existence, are eligible for social assistance.[7]

In New Brunswick, disability is defined as:

> A major physiological, anatomical, or psychological impairment verified by the medical advisory board using objective medical findings, which are likely to continue indefinitely, and renders an individual severely limited in activities pertaining to normal living.[8]

Ontario's recent legislation notes that:

> Under the new definition a person has a disability if they have a substantial mental or physical impairment that restricts one or more activity of daily living which includes personal care, functioning in the community, and in the workplace and is expected to last at least one year.[9]

In Saskatchewan a "disabled person is one whose major reason for requiring assistance is a mental or physical disability. Disability includes: mental or physical illness, mental or physical disability, unemployability resulting from personality problems, mental retardation."[10] While the definition of disability in New Brunswick makes no direct reference to financial ability to support oneself, the parameters for eligibility appear to imply the ability to work.

The inclusion of an employability element in these disability definitions is a departure from the World Health Organization (WHO) definition of disability which references: "any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being." The WHO also provides definitions for "impairment" and "handicap." "An impairment is any loss or abnormality of psychological, physiological, or anatomical structure or function. A handicap is a disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfillment of a role that is normal, depending on age, sex, social and cultural factors for that individual."[11]

While most of the provincial legislation includes reference to the WHO terms disability, impairment and handicap, the provincial association of disability and capacity to work is not part of the WHO definitions. This is an important distinction and raises issues regarding the role and interests of those who define disability. Many argue that disability is socially constructed and is often determined by characteristics that go beyond biological considerations. Indeed, it can be argued that the provinces have held onto age-old criteria that were used to distinguish the deserving poor from the non-deserving poor, that is, to be disabled and unemployed is viewed as an acceptable social status and deserving of support. Being able-bodied and unemployed is viewed as an unacceptable social status, not deserving of support.

Since it is the provinces that determine all the essential features of the programs that disburse disability-related supports and services, it is not surprising to find that there is substantial variation across the country in the range of services provided and the level of financial support they attract. There is also variation within those provinces where a two-tier (provincial/municipal) system of administration operates. "There are no common standards or common definitions of disability among programs and the extent of the coverage is not always clear."[12] While there was considerable interprovincial variation in the CAP period, in the post-CAP period the extent of the variation has increased.

DISABILITY SUPPORTS AND SERVICES AND INTERGOVERNMENTAL REGIMES

With the passage of the Canada Assistance Plan in 1966, the federal government assumed a major role in the provision of supports and services to people with disabilities. CAP provided for 50-50 federal cost-sharing of eligible provincial expenditures on these supports and services (together with social assistance and related expenditures); provinces continued to administer the social assistance and social service programs. In return for the cost-sharing, the federal government established a range of standards in law, regulation, and administration that determined the framework for policy development and implementation in the provinces. As the following sections will show, these standards were not as extensive as they might have been.

In 1996, CAP was replaced by the CHST. The latter provides block grants to the provinces for social assistance, social services, postsecondary education, and health care. Only one condition now applies to the use of these funds: provincial governments cannot impose a provincial residency requirement on the beneficiaries of social assistance. It appears that even this limited requirement does not apply to the social services. A province need only abide by the provisions of the *Canadian Charter of Rights and Freedoms* and human rights legislation in the provision of social services including disability supports and services.[13]

The concept paper *Federalism, Democracy and Social Policy* identifies four federal-provincial regime types that may be applied to policy development and policy implementation.[14]

- *unilateral federalism*, where the federal government, without provincial approval, attaches conditions to financial transfers to provincial governments in an area of exclusive provincial jurisdiction:
- *classical or disentangled federalism*, where each order of government acts independently in its areas of constitutional competence; in areas where each has jurisdiction and chooses to exercise it, the two orders of government act independently of the other;
- *collaborative federalism*, where the two orders of government, recognizing their interdependence, act jointly with no undue reliance on “carrots or sticks”; and
- *interprovincial collaboration*, where there is a working relationship among provinces with no federal involvement.

This chapter considers that CAP was an example of a mixed regime: unilateral federalism has been dominant, but there have also been elements of collaborative federalism. The CHST, however, is a clear example of classical federalism. A detailed examination of the design and operation of CAP shows that most of its aspects represented unilateral federalism. In the mid-1960s it had long been clear to all that social programs were under the exclusive jurisdiction of the provinces: earlier constitutional amendments had been required to establish federal authority in unemployment insurance (1940) and old age pensions (1952). But, in the case of CAP, provinces did not establish the rules themselves nor did they participate in their interpretation.

A clear hierarchy existed between the two orders of government in the case of CAP: the federal government unilaterally imposed conditions on the provinces and territories. And it was the federal government that was responsible for provincial compliance, not an independent third party or an organization jointly controlled by the federal and the provincial governments. It was the federal government, through the CAP Directorate, that created and amended the rules under which the provinces received the federal share of funding. It was the federal government that could declare a provincial program ineligible. It was the federal government that determined that CAP should be expanded to permit cost-sharing for child care and social services which fell broadly into the category of programs preventive of poverty. And it was the federal government that could unilaterally change the program's conditions. In 1990, the federal government unilaterally reduced CAP funding for three provinces and, in 1996, it unilaterally terminated CAP.

While the 1960s period of social policy development is often described as one of cooperative federalism, it is also clear that during this time the federal government entered an area of exclusive provincial jurisdiction, using its "spending power" to bring about compliance. Cooperation normally takes place between parties who are in a non-coercive relationship: while the federal government signed CAP agreements with all the provinces, it is clear that what drove the process was the availability of federal funding. CAP included some aspects of collaborative federalism. The plan was jointly designed and responded to the frustrations of the provincial administrators with the previous federal programs. It was jointly funded and required that federal and provincial administrators work together to determine what should be funded. It was jointly administered in the sense that the provinces were in a position to suggest ways in which the CAP should be extended (although there was no formal mechanism for doing so).

In sum, there are clear grounds for describing the federal-provincial relationship that underlay CAP as one of unilateral federalism, bearing in mind that some elements of collaborative federalism were also present.

The characterization of the CHST as "classical federalism," where each order of government operates essentially independent of the other, is incontrovertible. While both levels of government share an interest in addressing the needs and concerns of people with disabilities, post-CAP, the provision of supports and services to people with disabilities is fundamentally a provincial responsibility. While the federal government pays some of the bills via grants based on provincial population, it attaches only one condition with respect to the provision of social assistance and none with respect to supports and services. Hence there is a high degree of independence from the federal government in both policy development and the implementation of services for people with disabilities. Each province determines its own priorities regarding social policy, program development, funding, and eligibility. The result is that the federal government has only minimal input in the realm of supports and services outside its role as protector of the rights of people with disabilities under the Charter of Rights and Freedoms.

POLICY GOALS AND OUTCOMES

The change in intergovernmental regime (from federal unilateral to classical) that was associated with the replacement of CAP by the CHST has had an impact on the provision of disability-related supports and services. This section assesses this impact on key policy goals.

Equity

Access to provincial supports and services programs is largely through a social-assistance regime which requires verification of both the disability condition and the income and assets of the applicant. The restrictive access ensures that supports are available only to people who have a medically verifiable condition that prevents employment given the physical, mental, and intellectual limits of the individual, and the social barriers placed in their path. They are also only available to those who do not have either the income or the assets to be self-supporting. Further, since access to social services is usually through the same administrative regime, it is unlikely that public services will be provided to an applicant who is not living in poverty or close to it.

In the last 15 years, and particularly during the recent period of fiscal restraint, several provincial governments reduced social-assistance benefit rates for the able-bodied unemployed and tightened definitions of disability. The benefit-rate reductions were often justified by campaigns, implicit or explicit, that characterized able-bodied, and especially single, unemployed social-assistance recipients as lazy and unwilling to work. The tighter definitions of disability meant that fewer people with disabilities had access to benefits. These developments constitute a return to the past when the able-bodied unemployed were regarded as the undeserving poor and persons with disabilities, who were considered legitimately unemployed, were considered the most deserving of the poor. In the provinces that have adopted these changes the most deserving poor have continued to be favoured, but the tightened disability definitions have reduced their numbers.

It appears that conservative governments have been more likely to target social assistance as a major problem. For example, Alberta's reform of social assistance was developed during the Canada Assistance Plan's existence while Ontario's post-CAP social-assistance reforms were part of a ideologically charged program of change set out in the 1995 election campaign. Social democratic governments, on the other hand, have been more inclined to maintain social-assistance benefit levels despite the fiscal pressures they faced. The Ontario New Democratic Party (NDP) attempted to expand social assistance in the early 1990s while neither of the post-CAP NDP governments have engaged in any draconian change. This suggests that the shift to a form of classical federalism has facilitated the changes introduced by those provincial governments that reduced benefits and tightened eligibility requirements.

Equity concerns are also raised by the disparity across Canada in the provision of disability supports and services. Provincial mandates and priorities are quite diverse and consequently the availability of supports and services varies by eligibility requirements, amount of funding, degree of coverage, etc. In addition to disparity on a national level there is also a high degree of disparity within provinces. Most supports and services are located in the larger municipalities and people with disabilities living in rural or isolated parts of a province may not get the required supports and services simply because there may be no established mechanism for their delivery. In addition, many supports and services such as home-based attendant care or individualized funding for attendant care may be provided on a first-come, first-serve basis, often leading to long waiting lists and competition. These equity concerns are especially evident in provinces that have adopted two-tier systems (e.g., Nova Scotia, and until recently the province of Ontario). In leaving the range of services to the discretion of the municipality, the province ensures that there will be considerable within-province variability of service levels. (This variability may be self-perpetuating. To the extent that people with disabilities move to the higher service jurisdictions, politicians representing low-service areas face less pressure to provide adequate supports and services.)

Determining the impact of intergovernmental regime type on the variation in access to disability-related supports and services is not straightforward. The CAP standards that emerged from the period of unilateral federalism provided for some consistency of treatment across the country. But the CAP standards did not go far. For example, they did not mandate a list of supports and services, benefit levels, or conditions of eligibility that provinces had to adopt in return for the cost-sharing. The wide variation in programs providing disability supports and services that emerged meant that people with similar needs were treated differently depending on their place of residence. The almost complete provincial control over disability supports and services under the classical governance of the CHST means that the variation in availability of supports and services, eligibility criteria, etc. along with resulting inequities, will grow over time. The equity problems will almost certainly be greater during economic downturns when provinces with weaker tax bases will be under more pressure to cut benefits to contain costs than was the case under the CAP arrangement where the federal government shared in the higher social costs associated with economic downturns.

Human Development

In recent decades there has been a "paradigm shift" in the exploration and explanation of disability-related issues.[15] This paradigm shift depicts a move away from a medical pathology model grounded in rehabilitation services to human rights strength-based model grounded in the Independent Living Movement. Over the past two decades this paradigm shift has had a significant impact on the establishment and delivery of support services to people with disabilities across Canada.

Above all else the rights-based paradigm has encouraged people with disabilities to advocate for greater control of the decision-making process and to demand a say in the development of policies and programs, especially those that relate to the provision of supports and services. A rights-based paradigm recognizes that people with disabilities know best what they require on a day-to-day basis. Despite continuous challenges from the private, professional, and public sectors, disability rights organizations at both the provincial and federal levels have a significant impact on policy development and service delivery. Examples include the *Canadian Charter of Rights and Freedoms*, employment equity, interprovincial transportation, greater access to postsecondary education and in many provinces the development of self-directed, attendant care programs.

Despite the evidence of progress in recent decades there is no doubt that more policy and services delivery reforms are required. Herein lies a major debate regarding regime types and the consequences of these regime types for people with disabilities. Many disability-rights advocates view client control, access to and determination of support services as being essential to human rights. Consequently, many people with disabilities through national organizations such as the Council of Canadians with Disabilities and the Canadian Association of Independent Living Centres view a direct relationship with the federal government as being essential to the maintenance of existing rights and the possible extension of others.

In reference to intergovernmental regimes, it appears that a relationship between people with disabilities and federal or provincial governments has shifted back and forth between unilateral federalism and classical/disengaged federalism. For example, during the early 1980s, with the rise of a rights-based paradigm, organizations such as the Coalition of Provincial Organizations of the Handicapped (COPOH) developed and maintained a direct relationship with the federal government. Although limited in results, COPOH through its direct access to the federal government was able to draw significant attention to the needs of people with disabilities. For example, COPOH was instrumental in influencing the direction of the Obstacle Reports, getting the federal government to establish a National Strategy for Disabled Persons and establishing the Secretariat of Disabled Persons. While it can be argued that these federal government initiatives did not go far enough, it can also be argued that without the input of people with disabilities these initiatives would not have been started at all.

Over the years many of these initiatives were abandoned but national disability rights organizations such as the Council of Canadians with Disabilities (CCD) and the Canadian Association of Independent Living Centres (CAIL) have maintained access to federal government ministries. However, in recent years their influence over policy development appears to have been reduced. This change in relationship goes hand in hand with changes in government policy, that is, fiscal restraint and the downloading of services and funding to the provinces. In short, while national disability rights organizations such as CCD and CAILC have attempted to maintain a direct relationship with the federal government, their provincial counterparts have attempted to influence provincial government policies. Because of this dual approach at the federal and provincial levels it can be argued that elements of classical/disengaged federalism influence citizenship, consultation, and participation.

The participation of knowledgeable citizens in consultative processes promotes human development. The disability sector certainly meets the test: it is characterized by a myriad of disability rights groups that have had success at both the federal and provincial levels in influencing policy development and service delivery. While these groups would be the first to point out that governments have not always listened and addressed their concerns, these same disability rights organizations wish to maintain a direct link with government.

Mobility

For many generations, mobility, geographic or economic, was not often a term used in reference to people with disabilities. As Frank Bowe points out, western industrial societies have created social orders based on the exclusion of people with disabilities throughout most of the twentieth century.[16] Indeed, for most of this period the dominant ideology and the dominant social policies were based on principles of segregation and institutionalization. For many decades, particularly in the post-World War II era until the 1960s, government policy was primarily directed by policies that more or less focused on the development of institutional/segregated programs for people with disabilities — special schools, hospitals, training programs, educational programs, etc. Gradually there was a shift in ideology to one that challenged the dominant theme of segregation and resulted in a greater focus on policies directed at integration of people with disabilities. This ideological shift was instrumental in changing provincial policy from providing disability supports and services through institutionally based programs to providing them primarily through community-based programs.

Despite these changes, mobility for people with disabilities remains limited economically and geographically. Wide variations in the availability of disability supports and services limit opportunities for education and employment, reducing economic mobility and increasing poverty levels for people with disabilities. Geographic mobility among provinces and even within provinces is limited, or even made impossible, when the needed supports and services are scarce or not available where people with disabilities want to live. The supports and services an individual receives in one province may not be provided in another. And the variation in social-assistance benefit levels may be so great as to eliminate any realistic prospect of relocation.

The relationship between these mobility problems and an intergovernmental regime is, as above, somewhat ambiguous. If, in designing CAP in the mid-1960s, the federal government had provided for more nationwide standards than it did, the mobility difficulties described above would have been much less acute: the unilateral federalism regime then in play could have delivered much more than it did. With the CHST, the possibility of nationwide standards is, of course, much more remote with the result that it seems certain that the very significant barriers to economic and geographic mobility now apparent and the consequent reduction in the opportunities for employment, housing, and education will continue. The seriousness of the problem is the greater given that the constitution's guarantee of mobility rights has not been interpreted in such a way as to require provinces to provide a consistent set of disability-related supports and services across the country.

Efficiency

All provinces (or their municipalities) provide income support (social assistance) to people with disabilities who meet the income, asset, and other requirements. Provision of disability-related supports and services is most often tied to social-assistance programs, that is, both those needing income support and those with no need of such support access the disability-related supports and services through the same agency. While this gives rise to some administrative efficiencies, from the consumer point of view it would be more efficient to establish a program that can be directly accessed by the applicant as advocated by federal and provincial disability rights organizations.

Other efficiency concerns in the provision of disability-related supports and services are raised in the two-tier provinces. Families and individuals have to deal with at least two levels of government and several departments within each (health, social services). Depending on the supports required, waiting lists may be long and some services are not available because provision is discretionary at the local level. In this respect the movement from CAP to the CHST has not represented a change.

The change from unilateral to classical federalism in disability-related supports and services has had some beneficial efficiency effects. Without the necessity for federal oversight, fewer employees are needed. The termination of CAP has meant a reduction in the federal complement of approximately 100 positions and there have likely been some provincial reductions in administrative staff as well. In those provinces that have cut costs by reducing access to disability-related supports and services it can be argued that this course was facilitated by the change in intergovernmental regime. The reduction in short-term costs may be efficient in the narrow sense that less money is spent, but in the longer term there may be societal losses through a reduction in the well-being of persons with disabilities.

A key feature of an efficient system is the capacity to innovate. The very existence of CAP encouraged provinces to develop modern systems of social assistance and social services and so, in that sense, CAP may be said to have encouraged innovation. On the other hand, the program probably limited innovation somewhat since provincial suggestions for change had to be agreed to by the federal government. For example, in the 1980s, some provinces introduced workfare schemes into their social-assistance systems. The federal government refused to change CAP in a way that would make these schemes cost-sharable.

Since 1996, the classical governance of the CHST has meant that provinces have been free to innovate in any way they wish, unrestrained by federal rules, although political and other limits on change continue to apply. For example, in 1995 the Ontario government's desire to be seen as "reasonable" likely influenced its decision to cut welfare rates to a level close to the average of the rates in the other provinces. It is too soon to tell whether the change in intergovernmental regime that accompanied the CAP to CHST change increased provincial capacity to innovate in the provision of disability supports and services.

DEMOCRATIC VALUES

The change in governance of disability-related supports and services from federal unilateralism to classical federalism does not appear to have had much impact on the extent to which democratic values have been upheld. For example, there is no reason to suppose that the rights of persons with disabilities under the Charter of Rights and Freedoms or human rights legislation will be better protected with the change from unilaterialism to classical federalism. Similarly, transparency and accountability, key requirements of an open and democratic system, are much more dependent on other factors. Both freedom of access to information and the independent funding of non-profit disability organizations that will aggressively advance the interests of their clients are much more important than the nature of the prevailing intergovernmental regime.

For disability rights groups the consequence of both unilateral and classical federalism is that they must have the capacity to invest in research, education, and lobbying at both the federal and the provincial level in order to have any influence in the development of public policy. In fact, the structure of rights groups mirrors the structure of federalism in the country. Only forms of federal-provincial collaboration would facilitate greater participation in policy development for disability rights groups. Neither does the existence of mechanisms for consultation mean that governments welcome input from people with disabilities. While there have been opportunities for legislative input, too often in recent times governments have neither welcomed nor heeded the advice of disability rights groups.

Through a range of committees and special task force reports, the federal legislature has played an important role in the promotion of public understanding of the needs of persons with disabilities. From the *Obstacles Report* in 1981 to the recent federal Task Force on Disability Issues, the House of Commons has promoted the rights of disabled persons. As the federal government reduces its role in disability issues the consequence may be that an important arena for public awareness will be lost.

PRINCIPLES OF FEDERALISM

Division of Powers/Political Sovereignty

Disability issues have undoubtedly not been decisive in the debate on the changing roles of the federal and the provincial governments. They have been relatively minor issues in the Quebec-Canada dispute. The CHST was introduced both to reduce the federal role and to make politically feasible the substantial reductions in the federal expenditures on social programs. Its introduction has greatly altered the social roles of federal and provincial governments in the guise of debt and deficit reduction and without a direct debate on disability supports and services or any other program funded by the programs abandoned in its wake. As a result, disability supports and services are now fully within the sovereign role of the province.

Many disability rights advocates would prefer a strong federal regime because it means one government to work with instead of 13. If the federal government could be persuaded of an approach to supports and services then it would become national in scope. Such a centralized approach has a benefit and a cost — if the federal government takes a position that increases the range and extent of support and service programs then they expand everywhere. But the federal government could also reduce benefits with the result that conditions worsen across the country. Provincial rights advocates argue not only that social programs are the responsibility of the second tier of government, but also that experimentation typically occurs there as well. They argue that provincial authority will not necessarily produce poorer conditions for Canada's disabled persons.

In future, the CHST is likely to produce more widely varying conditions across the country than was previously the case. It is a result that would be at variance with the desire by disability rights organizations to establish common conditions across the country for all disabled persons as a matter of citizenship.

Commitment to Intergovernmental Process

When the Canada Assistance Plan was introduced, its terms were a result of intensive federal-provincial negotiations. There was a commitment on all sides to work within the framework set out by the legislation, by the regulations established under it, and subsequently by the rule book developed by federal administrators. The carrot was a substantial increase in the funds available for income support and social services, including those programs for which persons with disabilities would be eligible. The stick was the standards that programs had to meet to be eligible. For many years CAP provided a reasonable means of ensuring good intergovernmental relations largely because the mood in the country was one of growth. Expansive changes to the administrative rules were welcomed provincially, particularly because cost-sharing ensured that substantial funding would be available. Recurrent criticism from Quebec was not directed at CAP; it was directed at the division of powers between the two levels of government.

When the CHST was passed the federal government did not retain the standards that had been established under CAP. It pared the standards indicating only that an applicant's eligibility for social assistance (but not social services) should not be limited by residence. It left the possibility that through discussions with the provinces a set of "shared principles and objective" for the CHST would be developed. The social union framework evolved from these discussions, but as yet nothing has emerged that could be called standards for administration of the CHST funds. While there have been many federal-provincial discussions on disability issues under the aegis of the Federal/

Provincial/Territorial Council of Ministers on Social Policy Renewal no agreement has been reached on the provision of disability-related programs. While it is too soon to be definitive, the discussions so far provide an indication of the difficulty of finding agreement between governments divided by conceptions of federalism, by region, by language and culture, and by ideology.

ASSESSING THE PROVISION OF DISABILITY SUPPORTS AND SERVICES: A SUMMARY

Of the three assessment criteria adopted by this project — the achievement of policy goals, the upholding of democratic values and of the principles of federalism — the preceding assessment suggests that most of the problems with the public provision of disability supports and services lie in the policy sphere. The policy problems are serious: the wide variation in the availability of disability supports and services in the current system significantly compromises equity, both vertical and horizontal; the same variation drastically reduces both economic and geographic mobility.

Some, but not all, of these problems are associated with the intergovernmental regime. The wide variation in administration that characterizes the provision of disability supports and services and which gives rise to the equity and mobility problems, were a feature of CAP. The CAP era is characterized as one of unilateral federalism combined with some collaborative elements. The change to the classical governance of the CHST is likely to exacerbate these problems.

The chapter finds that democratic values are more or less upheld in the provision of disability supports and services and that the regime shift associated with the change from CAP to the CHST is not likely to have a an effect on these values.

Federalism principles suffered somewhat from the unilateral federalism of CAP, but the decision of the federal government to limit the extent to which national standards were required limited the damage. It is too soon to be definitive regarding the CHST's impact on federalism principles, but the classical federalism governance which underlies the program means that respect for the division of powers and political sovereignty are assured.

These considerations suggest that the abandonment of CAP and the adoption of the CHST have changed the direction of an important part of Canadian social policy, including the provision of disability supports and services. While the classical federalism of CHST respects historic principles of federalism, it is more likely to produce wide variations across the country in the conditions of availability of disability supports and services. These variations will make the goal of national conditions more difficult to achieve and may compromise the ability of people with disabilities to play a full citizenship role in society. For many, the current balance that the CHST entails between poor performance on meeting policy goals and good performance in upholding federalism principles is not beneficial. Change through the federal/provincial/territorial discussion process is likely to be slow.

OPTIONS FOR REFORM

The goal of policy reform is a system of disability supports and services that contributes to greater participation of people with disabilities in all aspects of Canadian society. This requires increased funding of existing programs and the development of new ones that will meet the diverse needs of persons with disabilities. Efficiency considerations suggest that the bulk of the funding be provided directly to those who need the supports and services. Meeting these goals requires a nationwide system so that people with disabilities have access to adequate supports and services wherever they live or move; a nationwide system requires the engagement of the federal government.

These policy goals have been articulated frequently by persons with disabilities and their advocates, for example:

- "Funding for these needs should be at 100% to guarantee equality as citizens to persons with disabilities. This should be guaranteed regardless of age. The focus of the system should be a model which encourages independent living and equality with incentives and opportunities to learn, work and live in the community."[17]
- "We propose that a significant proportion of the dollars which are presently in the social security system be directly invested in the consumers rather the administration of the system and in the providers of disability related services ... This would help to reduce current inefficiencies and waste. It would also help to eliminate program and service arrangements that pigeonhole people through inflexible rules and regulations."[18]
- "There needs to be the ability for mobility across the country.... And there needs to be dedicated services specific to disability within any transfer of dollars from federal government to whatever level of government may end up actually delivering those services.... Federal endorsement of equitable standards across the nation is essential.... Given

its own significant role in ensuring broadly based Canadian citizenship, the Government of Canada should invite the provinces to establish a pan-Canadian approach to disability issues that builds disability issues into the mainstream policies and programs in all areas."[19]

- "Income security can be most appropriately be handled at the national level ... our proposals therefore assume that the delivery agent for general income security programs is most properly the federal government. not the provincial and territorial governments."[20]

This section outlines two options for the reform of disability supports and services. The purpose is to present only a broad-brush description of the options; the many design and implementation details that would need to be worked out are not dealt with here. For example, both options envisage the public provision of disability supports and services to all people with disabilities, not just that group in receipt of social assistance. How these new programs would relate to the provincial Workers' Compensation Boards and the four provincial public auto agencies — public bodies that provide supports and services to people disabled at work and in auto accidents — is not discussed here.

The Social Union Framework Agreement agreed to in 1999 by the federal government, nine provinces, and the territories will influence not only the options that might become the subject of discussion in future but also the intergovernmental regime to implement future policy. In the agreement, the federal government undertook not to introduce a Canada-wide initiative in social assistance and social services, whether block-funded or cost-shared, without the agreement of a majority of the provinces. On the other hand, if the federal government establishes a new Canada-wide initiative funded through direct transfers to individuals or organizations for social assistance and social services, the document requires only that the federal government give three months notice. This suggests that as long as the Social Union Framework Agreement is in force, cost-shared initiatives for disability supports and services will need to be governed by a collaborative intergovernmental regime while direct funding initiatives could be governed by either collaborative or federal unilateral regimes.

National Standards

The CHST has ushered in a new era in federal-provincial relations characterized as classical federalism. In this approach federal and provincial governments go their own way within the areas in which each has authority. In the area of social policy there is little dispute that it is the province that holds authority. In the past the federal government used its control over revenues to establish an incentive framework that directed the provinces to develop aspects of social policy that the federal government wished to support. This was the cost-sharing approach used in the Canada Assistance Plan. It was brought to an end by the CHST in 1996.

The first option is a new program that would establish conditions for the funding of disability supports and services under the aegis of a classical federalism regime. A new federal and provincial program for persons with disabilities would be introduced on the grounds that persons with disabilities require the active protection of the national government despite the issues of sovereignty. The exercise of mobility rights also requires that there be national conditions for supports and services across the country. Further, without a national program conditions will vary widely. From a human rights perspective this is not desirable because disabled persons cannot fully share in the benefits of citizenship if they are able to access services in one jurisdiction but unable to do so in another. A national program holds the possibility of improving human rights, social equity and mobility, key problems with the existing federal structure.

A new program could be established in the following way:

First, under the social union framework a joint federal-provincial committee with representation from interested provincial governments would be established. This committee could be the Federal/Provincial/Territorial Council on Social Policy Renewal. The joint committee would be responsible for recommending conditions for the availability of disability supports and services in the participating provinces. Representation from disability rights organizations would be a part of a consultation process associated with the work of the committee. Conditions would include eligibility, methods of determining disability, purpose of the funding, and a common list of supports and services to be available across the country. Attendant care would be included in the new program.

Second, the goal would be to make a significant portion of the funding available to individuals rather than to agencies or institutions. In this way, disabled persons would be empowered to choose the range and extent of services that suit them within the limits of what is possible in each region of the country.

Third, following precedent and the CHST provisions, the federal government would pass legislation that would enshrine the agreed conditions for provincial expenditures for supports and services for persons with disabilities. This legislation would contain provisions that would parallel the CHST health-care transfers which are conditional on meeting standards set out in the *Canada*

Health Act. (The CHST also calls for further discussion with the provinces of a set of “shared principles and objectives.”)

Fourth, the federal government and the provinces would agree on the amount of federal funds within the CHST to be allocated to disability supports and services. The funds allocated would have to be spent by each province on supports and services. (The CHST currently provides a block grant to provinces for the four areas of programming: social assistance, social services, health, and postsecondary education. Federal funding for supports and services for persons with disabilities is a part of the social services funding. No specific amount of the block grant is identified with any of the four areas.) The agreed conditions would apply to participating provinces. Non-participating governments that agreed to meet the principles and objectives of the program would, in accordance with the social union framework, also receive their share of any new available funding.

The strength of this approach lies in its reliance on a joint agreement with all of the legislative partners: federal, provincial, and territorial. It would require provincial governmental participation on the grounds that persons with disabilities are the responsibility of the provinces. If agreement could be reached, personal mobility would be much easier and there would be greater emphasis on distributive equity. The rights of a neglected minority would be promoted. Greater efficiency would be achieved through reduced administrative costs. Transparency and accountability could be built into the program.

The weakness of the approach lies in the difficulty of achieving some form of federal-provincial agreement. It may only be possible to achieve agreement from some of the provinces, but not all. This could still represent an advance. Were partial agreement to be reached, past experience suggests that there would be considerable pressure on any province or territory to either participate or to emulate the program within their own jurisdiction. There is also the risk that what results will be based on the lowest common denominator. The federal government and at least six provincial governments might agree on a program that was smaller in scope than what is in place now in some provinces e.g., a program based on a narrower definition of disability and a shorter list of eligible supports and services.

A Refundable Disability Expense Tax Credit for Supports and Services

The second option is the development of a refundable disability expense tax credit (DETC). Such an approach involves the transfer of funds for supports and services directly to all eligible persons with disabilities rather than to agencies or institutions. It would do this through the income tax system, establishing a direct relationship between the federal government and individuals with disabilities. A similar relationship was established by the Millennium Scholarship Fund under which the federal government provides scholarships directly to students. While this brought the federal government into an area of exclusive provincial jurisdiction, it justified the program on the basis that the constitution does not prevent it from making direct payments to persons. Acting unilaterally is one way to proceed; it could also attempt to collaborate with the provinces within the context of the Social Union Agreement. Two possible scenarios are foreseen here for this option:

First, under the Social Union Framework Agreement the federal government would inform the provinces of their interest in proceeding with a refundable disability expense tax credit. All persons with a disability and in need of supports and services would be eligible. Discussion with the provincial governments would be undertaken to establish how they would treat this additional income in the hands of people with disabilities who receive provincial social benefits. The two levels of government would come to an agreement between them before any action is taken. If the federal government collaborated with the provinces, it is possible that federal-provincial agreements could be reached under which the provinces would either administer the program, subject to federal oversight, or assist the federal government in the administration. However, if some provinces choose not to participate, a likely outcome, the terms of the federal income tax system would vary by province. This result would leave the federal government with a difficult choice between partial implementation or no program at all.

Under the second scenario the federal government would proceed unilaterally. This would give rise to two difficulties. First, Revenue Canada would have to establish and operate a system to administer the program. It would need to have a method of determining who is eligible. It would have to establish a definition of disability of its own and a system for ensuring need in order to do this.

The second difficulty is more serious. Many disability supports and services are provided by provincially supported non-profit agencies and/or by the provinces themselves. Without agreement with the provinces, a federal refundable disability expense tax credit program would tempt provinces to cut back on their programs since persons with disabilities who were being supported by the federal government could purchase their own supports and services. The potential for such a provincial reaction would likely dissuade the federal government from embarking on this unilaterally unless it was prepared to assume the bulk of the costs of the provision of disability supports and services.

If despite these political obstacles, a refundable disability support and services expense tax credit were implemented it would likely have some of the following characteristics:

- Based on joint agreement with a sufficient number of provinces, the federal government would amend the *Income Tax Act* to provide for a refundable income tax credit for supports and services expenses needed by persons with disabilities. The credit would apply across the country. ("Refundable" means that the credited amount would be paid, whether or not the tax filer owed tax.)
- A refundable disability expense tax credit could take the form of a reimbursement of costs incurred up to a maximum. This form of tax credit would require the submission of receipts, and an administration to process them. Administration could be either federal or provincial.
- Claims for payment would be made through the annual filing of an income tax return. Funds would be made available through quarterly income tax refunds. Each person would be obligated to report changes in their status as they occur and adjustments would be made in the next quarter.

Federal-provincial agreement on the implementation of a refundable tax credit for disability supports and services expenses could result in a standardized nationwide program that would promote equity and economic and geographic mobility. The federal government would be unlikely to proceed unilaterally on a disability tax credit since this step would be opposed by the provinces. Unilateral implementation could also result in a large federal funding commitment. A collaborative approach would have a greater chance of success. However, the federal government would likely be reluctant to proceed without the agreement of a significant group of provinces, a result that would likely be difficult though not impossible to achieve in the present political conjuncture.

CONCLUSION

The federal reforms of 1963 to 1972 created a Canadian welfare state that represented in law the expression of those who believed both in state intervention and in a greater federal role in social policy. Some of these reforms came with the Canada Assistance Plan, 1966, which confirmed a federal role in funding and setting standards in social assistance and social services.

Disability supports and services (and disability income support) were caught up in this rearrangement. The chapter characterizes the governance of CAP that was associated with these changes as unilateral federalism with some collaborative elements.

Post-CAP, the governance of the provision of disability supports and services is now classical federalism. Under the CHST, provinces determine their own priorities in this and in many other areas of social policy. The result is a high degree of provincial independence from the federal government in both policy development and in the implementation of programs.

The chapter finds that the change in intergovernmental regime had negative effects on policy outcomes. In some provinces the principal result has been a reduction in social-assistance benefit rates, stiffer eligibility requirements for the able-bodied unemployed and a move in the direction of providing benefits to only the most severely disabled. Lower benefits and the virtual elimination of national standards means that equity, economic and geographical mobility, and efficiency have been compromised; the expectation is the situation will worsen over time.

The impact of the change in intergovernmental regime on the extent to which principles of democracy and federalism are upheld is mixed.

To address these problems, disability rights advocates generally argue for a strong federal presence so as to guarantee a program that would be national in scope. Provincial rights advocates argue not only that social programs are the sole responsibility of the provinces but also that the country benefits from the experimentation inherent in a variety of provincial approaches. The authors consider that the policy advantages that a strong federal presence can produce — equal access to programs and services across the country, economic and geographical mobility, increased social equity, greater efficiency — should be weighted heavily when choosing intergovernmental regimes.

The chapter sets out two options for reform. The first is for the federal government to propose, within the social union, that provinces participate in a process of establishing principles and objectives for the provision of disability supports and services under the CHST. Within the context of the CHST the slice of funds being expended for supports and services would be identified and additional funds made available as needed to expand the range of supports and services available in participating provinces. Such a process requires the firm collaboration of the federal government with the provinces and territories. This is a possible but far from guaranteed outcome in the present context.

The second option is to establish a refundable tax credit that would reimburse individuals with disabilities for their supports and services expenses.

A federal unilateral or a collaborative approach are both possible here but each route has advantages and disadvantages. The experience of the current Federal/Provincial/Territorial discussions on disability suggest that this and other options would be the subject of prolonged debate.

These considerations suggest that new initiatives will necessarily involve federal-provincial collaboration. Further, past experience suggests that governments would be unlikely to establish new initiatives of the kind described unless they were subjected to substantial, continuing, and informed pressure from the disability rights organizations and their supporters.

Finally, in the further development of these or other options it is crucial that people with disabilities and their representatives be closely involved in the policy process on a partnership basis. They have greater insight into their needs and how they should be met than many able-bodied professionals. The "consumer control" their participation would entail would improve the proposals and the chances that governments would respond favourably to them.

NOTES

[1] Deborah Stone, *The Disabled State* (Philadelphia: Temple University Press, 1984), p. 29.

[2] Richard B. Splane, *Social welfare in Ontario, 1791–1893: A Study of Public Welfare Administration* (Toronto: University of Toronto Press, 1965).

[3] Rod Haddow, *Poverty Reform in Canada, 1958–1978* (Montreal and Kingston: McGill-Queen's University Press, 1993); Allan Moscovitch, "The Canada Assistance Plan: A Twenty Year Assessment, 1966–1986," in *How Ottawa Spends,* ed. K.A. Graham (Ottawa: Carleton University Press, 1988), pp. 269-307.

[4] Disability-related supports and services are provided by other public programs, for example, Workers' Compensation Boards and, in four provinces, agencies that operate public automobile insurance plans. These (and private disability insurance plans) are not dealt with here.

[5] Federal-Provincial Working Group on Benefits and Services for Persons with Disabilities, *Persons with Disabilities in Canada: An Inventory of Programs and Measures* (Ottawa: Canadian Communication Group, 1997), p. 12.

[6] The following sources document the diversity of supports and services in Canada. Federal-Provincial Working Group on Benefits and Services for Persons with Disabilities, 27 August 1997; *Reports from the Analytical Subgroup: Persons with Disabilities*; *Persons with Disabilities in Canada; In Unison,* Backgrounder Information Package, July 1998; Canadian Intergovernmental Conference Secretariat, *News Releases* (8 March 1998); *Persons with Disabilities: An Overview of the Current*

Situation: Backgrounder for the Federal/Provincial/Territorial Ministers of Social Services. Policy Working Group on Disability (22 September 1997); *Media Backgrounder* to the "Federal/Provincial/Territorial Ministers Responsible for Social Services Announce Progress on Disability Related Issues." Based on Concept of "Vision" (18 September 1997); *Media Backgrounder* to the "Federal/Provincial/Territorial Ministers Responsible for Social Services Announce Progress on Disability Related Issues." Based on Concept of "Harmonization." (No Vision) (18 September 1997).

[7] Federal-Provincial Working Group for Persons with Disabilities, *Persons with Disabilities in Canada*, p. 12.

[8] Ibid., p. 13.

[9] Government of Ontario, "Backgrounder, Ontario Disability Supports Program" (Toronto: Queen's Printer for Ontario, 1998).

[10] Federal-Provincial Working Group for Persons with Disabilities, *Persons with Disabilities in Canada*, p. 14.

[11] For example, a person with a spinal cord injury has an *impairment* — a physiological condition that may or may not give rise to a *disability*. If the person could hold a job he or she is not considered disabled from the point of view of employability. The person may nonetheless have a *handicap* if his/her life is made more difficult by the social attitudes and structural barriers faced. World Health Organization, *Classification of Impairments, Disabilities and Handicaps* (Geneva: World Health Organization, 1980).

[12] Federal-Provincial Working Group for Persons with Disabilities, *Persons with Disabilities in Canada*, p. 46.

[13] The provision of supports and services to Aboriginal peoples on reserve, an issue not explored here, is a federal responsibility.

[14] Harvey Lazar and Tom McIntosh, *Federalism, Democracy and Social Policy: Towards a Sectoral Analysis of the Social Union* (Kingston: Institute of Intergovernmental Relations, 1998).

[15] Gerben Dejong, "Independent Living: From Social Movement to Analytical Paradigm," *Archives of Physical Medicine and Rehabilitation* 60 (October 1978):435-46.

[16] Frank Bowe, *Handicapping America: Barriers to Disabled People* (New York: Harper & Row, 1978).

[17] Harry Beatty, *Comparison of Disability Specific Social Assistance Programs and Related Resources in Alberta, Ontario and British Columbia* (Winnipeg: Council of Canadians with Disabilities, 1998), p. 7.

[18] Canadian Association of Independent Living Centres, *A Time for Change, a Time for Choices: A Proposal for Improving Social Security Arrangements for Canadians with Disabilities*. Presentation to the Social Security Review Commission, 1994.

[19] Federal Task Force on Disability Issues, *Equal Citizenship for Canadians with Disabilities: The Will to Act* (Ottawa: Supply and Services Canada, 1996), p. 17.

[20] Canadian Paraplegic Association, *Working Together: Citizens with Disabilities in the Canadian Commonwealth*. Presentation to the Social Security Review Commission, 1994.

APPENDIX 1

HIGHLIGHTS OF SOME PROVINCIAL SUPPORT AND SERVICE-RELATED PROGRAMS

Supports and services as discussed in this chapter relate to provincially funded programs that are provided to people with disabilities who qualify for coverage. Despite the vast differences in the provision of supports and services from one province to the next there appears to be enormous similarities in type of supports and services across Canada. For example, the range of supports and services may include funding for equipment such as prosthesis, orthodics, specialized beds, wheelchairs, canes, walkers, special utensils, and items for the home. In addition to funding for equipment, individuals with disabilities may be eligible for the funding of services such as nursing services, attendant care, home care, transportation, education, vocational training, counselling services as well as funding for dental care.

As indicated above, there are a variety of supports and services that are more or less universally covered through different provincial government programs. However, this does not mean that people with disabilities will always receive the service nor does it mean that all needs will be met by the province. Each province determines who will be eligible for what supports and services and because of this diversity, people with disabilities may be covered for services in one province but not the next. Similarly, diversity may exist in the same province as some services such as the provision of attendant care may only be provided in an urban area; thus, people with disabilities living in a rural setting may not get the service.

Single-Tier Supports and Service Programs

The provision of supports and services involves a complex array of government departments, legislation, and eligibility determination criteria. In single-tier supports and service programs there is a direct relation between the provincial government and the disabled person. These supports and services are tied to the provincial welfare assistance programs.

Newfoundland

Legislation: *Social Assistance Act.*
Primary Administrative Department: Human Resources and Employment.
Determination: medical criteria, evaluation and reporting.

Prince Edward Island

Legislation: *Welfare Assistance Act and Regulations.*
Primary Administrative Department: Health and Social Services.
Determination: medical criteria, evaluation and reporting.

New Brunswick

Legislation: *Income Security Act and Regulations.*
Primary Administrative Department: Human Resources Development.
Determination: medical criteria, evaluation and reporting.

Quebec

Legislation: *An Act Representing Income Security and Regulations.*
Primary Administrative Department: Ministry of Employment and Solidarity, Income Security.
Determination: medical criteria, evaluation and reporting.

Saskatchewan

Legislation: *Saskatchewan Assistance Act and Regulations*.
Primary Administrative Department: Department of Social Services.
Determination: medical criteria, evaluation and reporting.

Documentation for the above information is from: Federal-Provincial Working Group on Benefits and Services for Persons with Disabilities, and Persons with Disabilities in Canada, *Reports from the Analytical Subgroup: Persons with Disabilities. Inventory of Programs and Measures* (Ottawa: Supply and Services Canada, 1997).

Two-Tier Supports and Service Programs

In some provinces, such as Manitoba and Nova Scotia, funding for supports and services is provided through provincial and municipal/county programs.

Manitoba

Legislation: Provincial Level: *Employment and Income Assistance Act.*
Municipal Level: Municipal Assistance Plan.
Determination: medical criteria, evaluation and reporting.

Nova Scotia

Legislation: Provincial level: *Family Benefits Act and Regulations* (long term).
Municipal Level: two types of programs (i) regional municipalities such as Halifax/Dartmouth, industrial Cape Breton and Queens, Income Assistance Programs funded by the province; (ii) smaller municipalities, General Welfare Assistance which provides benefits for short-term and special situations.
Determination: medical criteria, evaluation and reporting.

The provision of supports and services to people with disabilities through provincial government programs is connected to the provincial social-assistance programs. Consequently, people with disabilities who apply for these supports and services must qualify for the programs. If accepted, services and supports may be directly related to disability needs or they may be expanded to include provincial disability pension or financial assistance. They may also include coverage for medical and dental expenses. Basically, supports and service provisions are guided by principles of social assistance which allows the opportunity for people with disabilities to be eligible for the same basic coverage offered to all other recipients and to be eligible for supports and services directly related to disability.

Source for the above material is from: Federal-Provincial Working Group on Benefits and Services for Persons with Disabilities and Persons with Disabilities in Canada, *Inventory of Programs and Measures* (Ottawa: Canadian Communication Group, 1997), *Reports from the Analytical Subgroup: Persons with Disabilities*.

Non-Direct Social Assistance Related Programs

In addition to single-tier and two-tier programs, the provinces of Alberta, British Columbia, and Ontario have established supports and service programs that are not directly connected to social-assistance programs. Instead, these governments have established programs that are distinct to people with disabilities.

Alberta: Assured Income for the Severely Handicapped.

Legislation: *Social Development Act* (and Social Allowance Regulations).
Income Support Recovery Act.
Assured Income for the Severely Handicapped Act and Regulation (AISH).
Primary Administrative Department: Alberta Department of Family and Social Services.
Determination: medical criteria, evaluation and reporting.

The AISH program is an alternative to social-assistance programs, and people with disabilities who are covered under the AISH program are eligible for the same supports and services as those covered through social-assistance programs. For example, AISH covers funding for equipment, medication, dental care, income allowance, medical supplies, etc.

Ontario: Ontario Disability Support Program Act.

Legislation: *Social Assistance Reform Act.*
Primary Administrative Department: Ministry of Community and Social Services.
Ministry of Health: Assistive Devices Program.
Determination: medical criteria, evaluation and reporting.

This program is criticized for having a restrictive definition of disability and is considered to be more complex than other provincial and territorial programs.

British Columbia

Legislation: *Disability Benefits Program Act* (part of the *British Columbia Benefits Act,* 1996).
Primary Administrative Department: Ministry of Human Resources.
Determination: medical criteria, evaluation and reporting can include evaluation from physician or may include evaluation from "assessor" — usually a professional in the health-care or education fields such as a social worker, occupational therapist, teacher, or physiotherapist.

The *Disability Benefits Act* has two levels of support. The first level provides for intermediate coverage for "less severe disabilities" — restricted coverage; the second level coverage is for those persons who have been determined to have a "severe" disability.

Disabled persons who qualify for the *Disability Benefits Program Act* may be eligible for coverage under the *British Columbia Benefits Act.* This includes medical supplies and equipment, prosthesis, glasses, beds, wheelchairs, walkers, etc. Attendant-care services are provided under the *Continuing Care Act* of the Ministry of Health.

Source for material on the Alberta, Ontario and British Columbia programs: Harry Beatty, *Comparison of Disability: Specific Social Assistance Programs (and other related programs) in Alberta, British Columbia and Ontario* (Winnipeg, MB: Council of Canadians with Disabilities, 1998).

6

GOVERNANCE REGIMES IN DISABILITY-RELATED POLICY AND PROGRAMS: A FOCUS ON COMMUNITY SUPPORT SYSTEMS

Michael Bach

INTRODUCTION

This chapter outlines work to date on a case study of disability policy that is one of four being conducted as part of the *Governance of the Social Union* research initiative sponsored by the Institute of Intergovernmental Relations at Queen's University.[1] The chapter focuses on the work of community support systems (e.g., community agencies, health/social service agencies, volunteer groups) in delivering disability-related supports (e.g., rehabilitation services, technical aids and devices, recreation services). The purpose of the chapter is to: (i) determine how current and recent intergovernmental arrangements affect the overall effectiveness of the community support systems; and (ii) where possible, point to reforms of the intergovernmental regimes that would better position community support systems to carry out the important tasks they have been given.

The Roeher Institute proposed this case study because of its view that the influences on community support systems are under-explored and that analytical work is needed to assist provincial and national discussions, including those under the aegis of the Social Union Framework Agreement, signed in

1999 by the federal, nine provincial, and two territorial governments. The complexity of the topic, however, makes this chapter only a first step toward the goal of a thorough understanding of the influence of the prevailing intergovernmental regimes on community support systems.[2]

The chapter begins by describing the make-up and operation of the community support systems that deliver disability-related supports: here, the chapter concludes that community support systems are comprised of a complex web of agencies whose organization and responsibilities vary across the country. The chapter then describes the intergovernmental arrangements, or *regimes*, that currently govern the disability area: it finds that "classical" or "disentangled" intergovernmental regimes characterize much of the disability area and that the degree of disentanglement has recently increased. (Under disentangled governance much of what federal and provincial governments do in an area is done with little connection to the activities of the other government.)

The chapter then assesses the impact that the increasingly disentangled governance regime has had on the overall effectiveness of community support systems. The support systems are judged against the criteria set out in *In Unison*, a discussion paper issued in 1998 by federal/provincial/territorial ministers responsible for social services (except Quebec). Here, the paper concludes that while a disentangled approach promotes good outcomes at some stages in the policy process, it is damaging at other stages and, therefore, should be replaced with collaborative governance (federal/provincial or interprovincial). The chapter concludes with preliminary recommendations regarding the governance of the disability supports sector.

COMMUNITY SUPPORT SYSTEMS: A DESCRIPTION

Community support systems comprise: (i) community agencies usually funded by the public sector (e.g., disability-specific agencies like Outreach services for attendant care, local Associations for Community Living, Supported Independent Living agencies, as well as more generic agencies like family service agencies, child welfare agencies, etc.); (ii) health and social service agencies within the public sector (e.g., social workers and behaviour-management specialists who operate within local or regional offices of provincial social service departments, public sector home-care agencies in some jurisdictions, as well as larger publicly funded institutions — rehabilitation centres, psychiatric facilities, residential institutions for people with intellectual disabilities, long-term care facilities (both public and private sector); (iii) voluntary organizations (e.g., those that include many of the community agencies funded to provide services, but also encompasses local charitable organizations that provide funding for disability supports in some communities: Lions Clubs, Rotary Clubs); and (iv) disability advocacy organizations (e.g., local Independent Living Centres, Learning Disability Associations, Associations for Community Living, often service providers, and informal networks and coalitions).

Together, these organizations deliver disability supports to the 15 percent of Canadians who self-identify as having a disability. Supports include technical aids and devices, supported residential units, rehabilitation services, attendant services and other personal supports, counselling, vocational and other information services, advocacy services, peer support, and environmental accommodations.[3] While most of the organizations that deliver these supports are non-profit, the term "community support systems" as used here includes some for-profit enterprises, for example, those that contract with Workers' Compensation Boards, insurance agencies, employers, and individuals to deliver rehabilitation services.

The organizations that make up community support systems have significant responsibilities: they determine who gets what kinds of supports and on what terms. Thus, they crucially affect the quality of life of people with disabilities, such as the extent to which people can move about in society, interact with others, access education and training opportunities, and participate in the labour market. Besides providing disability supports, many of these organizations also play a key advocacy role. Their expertise in dealing with the experience of disadvantage and discrimination puts them in a unique position to provide information and knowledge to the public and to policymakers and to mobilize the disability community in the articulation of its interests and perspectives. Iris Young refers to such organizations as a "resource for enlarging the understanding" of others in the policy-making process, thus helping to realize the ideal of "democratic communication" and deliberation in public life.[4]

The atomistic nature of many elements of community support systems makes them difficult to inventory and describe, particularly since the nature of the systems vary across provinces (e.g., Centre locale de services communautaires [CLSCs] in Quebec, regional boards in Prince Edward Island). Despite their fluid nature, and the difficulty in conceptualizing, demarcating, and coordinating them in any particular locale, there is widespread and growing recognition at a macro policy level of their importance to a number of policy goals:

- *In Unison* notes that in order to secure the overall goal of "full citizenship" for people with disabilities, community development in all sectors and a "healthy infrastructure of disability organizations" is needed. Government policy on its own cannot achieve the policy goal.[5]
- The Social Union Framework Agreement notes the important role played by community organizations in developing social policies and delivering programs; one of the stated principles of the agreement is that both levels of government "work in partnership with individuals, families, communities, voluntary organizations, business and labour, and ensure appropriate opportunities for Canadians to have meaningful input into social policies and programs."[6]
- *Working Together*, a recent federal report on the voluntary sector, cites four key roles played by the over 175,000 non-profit community organizations across Canada, many of which deliver disability-related supports. They provide a vehicle for public policy dialogue, deliver government-funded and other services, engage citizens "in the building of communities," and build links across diverse communities, cultures, regions, and with other nations.[7] The report's recommendations are designed to strengthen the capacity of these organizations: locally, provincially/territorially and nationally.
- The federal government's recent *Future Directions* report (which provides a framework for implementing its commitment to the *In Unison* agreement) emphasizes the need to strengthen the capacity of disability organizations not only to provide services and supports, but to foster citizen engagement in public policy development.[8]

These statements speak to the relevance of a discussion of community support systems in achieving public policy goals. Federal, provincial, and territorial governments recognize their importance, appeal to community organizations, contract them, and consult with them. But what difference do federal-provincial governance regimes make to the capacity of community organizations and broader support systems to achieve the kinds of policy goals and democratic possibilities these statements articulate?

INTERGOVERNMENTAL REGIMES: A DESCRIPTION

The *Governance of the Social Union* project identifies four intergovernmental regime types:

- *unilateral federalism,* where the federal government, without provincial approval, attaches conditions to financial transfers to provincial governments in an area of exclusive provincial jurisdiction;
- *classical or disentangled federalism,* where each order of government acts independently in its areas of constitutional competence; in areas where each has jurisdiction and chooses to exercise it, the two orders of government act independently of the other;
- *collaborative federalism,* where the two orders of government, recognizing their interdependence, act jointly with no undue reliance on "carrots or sticks"; and
- *interprovincial collaboration,* where there is collaboration among provinces with no federal involvement.

In order to determine which of these intergovernmental regimes govern the disability support area, seven disability-related program areas were examined:[9]

- the Canada Health and Social Transfer (CHST), a federal per capita grant program that recently replaced CAP and other programs;
- the Canada Assistance Plan (CAP), a now-defunct federal program that cost-shared a wide range of provincial social assistance and related expenditures and which continues to influence some current programs;
- provincial/territorial health, social services, and education, which provide for many disability-related supports (e.g., health-funded home care, social services-funded family supports, and education-funded teaching assistants for disabled students);
- Labour Market Development Agreements (LMDAs), federal-provincial agreements that govern the transfer of some labour market functions from the federal to provincial governments;
- Employability Assistance for People with Disabilities, a federal program that cost-shares eligible provincial expenditures (and which replaced the Vocational Rehabilitation for Disabled Persons program);
- the Deinstitutionalization Initiative, a part of the recently completed National Strategy for the Integration of Persons with Disabilities; and
- the Opportunities Fund, a federal employment supports program for unemployed people with disabilities not eligible for Employment Insurance/other benefits.

In these programs and others, governments may relate to each other differently at various stages in the policy process. In order to be able to investigate the detailed nature of the intergovernmental governance in the disability area, five steps in the policy process are identified: setting broad policy directions; establishing funding arrangements; choosing of policy/program measures; program delivery arrangements; and monitoring and information collection/dissemination.

Table 1 is meant as a heuristic tool to explore the operation of intergovernmental regimes. It uses the classification of four intergovernmental regimes outlined earlier to characterize the governance regime that operates at each stage of the policy process for each of the seven programs described above. The classifications provided in the table are not meant to be definitive: other perspectives and additional research may lead to revisions. With this proviso, four main conclusions can be drawn from the table.

First, a program can operate under various governance regimes at different stages in the policy-making process: for example, one regime may be in place for the purpose of setting broad policy directions while another is in place for the purpose of establishing financing arrangements, choosing policy and program measures, etc.

Second, disentangled regimes dominate most stages of the policy process in the disability sector with the lead role sometimes being taken by the federal government and sometimes by the provincial governments.

Third, collaborative regimes are sometimes used in the choice of policy measures and financing arrangements. And fourth, the evolution within CAP, the change from CAP to the CHST, and the implementation of the LMDAs in the 1990s increased the already significant degree of disentanglement in the disability sector.

With respect to CAP, it should be noted that the brief descriptors in the table mask a more complicated governance history. Some suggest that while collaboration defined CAP's early years,[10] this later gave way first to increasing federal unilateralism (e.g., the capping of funding to "have" provinces in the 1990s; the actions that displaced earlier cooperative arrangements with respect to the definition of what disability supports were cost-shareable) and, subsequently, to disentangled governance associated with the CHST.

A fifth development, not reflected in the table, is an increasing devolution of provincial control over community support systems to local and regional authorities. Alberta, for example, has shifted to distinct systems of regional authorities for children's services, health care, and services for people with developmental disabilities. Other provinces have been moving in similar directions. While this trend has accompanied the increasing degree of disentanglement, it is not necessarily caused by it.

TABLE 1
Intergovernmental Regimes at Different Stages in the Policy Process

Policy Instrument ∀	*Initiating and Setting Broad Policy Directions*	*Establishing Financing Arrangements*	*Choice of Policy and Program Measures*	*Program Delivery Arrangements*	*Monitoring and Information*
Canada Assistance Plan	collaborative (in its original formulation)	collaborative with some unilateral federal conditions	collaborative (provincial lead with some unilateral federal conditions)	collaborative (provincial lead with some unilateral federal conditions)	collaborative
CHST	disentangled (federal, provincial)	disentangled (federal lead)	disentangled (provincial lead)	disentangled (provincial lead)	disentangled (federal and provincial leads)
Provincial: health, social services, education	disentangled (provincial lead)	disentangled (provincial, federal)	disentangled (provincial, interprovincial)	disentangled (provincial, interprovincial)	disentangled (provincial, interprovincial)
LMDAs	disentangled (federal lead) and collaborative federalism	collaborative	disentangled (provincial lead)	disentangled (provincial lead in most provinces)	collaborative (federal and provincial leads)
EAPD	collaborative and interprovincial collaboration	collaborative	collaborative	disentangled (provincial lead)	disentangled (provincial lead)
NSIPD – Deinstitutionalization	collaborative (federal lead)	collaborative	disentangled (provincial lead)	disentangled (provincial lead)	collaborative
Opportunities Fund	disentangled or unilateral	disentangled or unilateral	disentangled or unilateral	disentangled (federal lead)	disentangled (federal lead)

COMMUNITY SUPPORT SYSTEMS AND INTERGOVERNMENTAL REGIMES

This section seeks to assess the impact that changes in intergovernmental regimes have had on the operation of community support systems: most of the focus is on the shift to an increasingly disentangled governance in the disability sector. Some may argue that the link between what happens "on the ground" in communities — the daily struggle to try and get one more person with a disability a job, or to find a way to cobble together some funding and volunteer support to assist a family in crisis — is too far removed from the nature of intergovernmental regimes for these regimes to make a difference.

The chapter suggests, however, that the manner in which federal and provincial/territorial governments work together (or not) is important in the making and managing of disability-related policy, even if all of the factors and the details of the linkages require further exploration. An assessment of community support systems requires a benchmark against which to measure them. The chapter adopts the framework set out in *In Unison*, which articulates principles that "shape the social union.... compassion, dignity, sharing, fairness, equity, equal opportunity and independence." The principles include mutual respect among jurisdictions, citizen engagement and public accountability.[11] The guiding vision for policy development is "full citizenship" defined as the "inclusion of people with disabilities in all aspects of Canadian society," and the meeting of needs for supports.[12] *In Unison's* specific policy objectives include: improved access, enhanced portability, more consumer control and responsiveness in provision of supports. These objectives are consistent with those found in a number of earlier studies.[13]

There is widespread agreement that the human development and social and economic inclusion of people with disabilities is severely hampered by unequal access to disability-related supports. This problem has two dimensions: first, there are wide variations in the disability supports available to people with similar needs: for example, some individuals and families receive adequate disability supports while the supports available to others living in a different jurisdiction are plainly inadequate (often the result of cutbacks that narrow eligibility to include only those with "severe" disabilities); some are leaving institutions with resources adequate to purchase the needed supports which may in some cases entail the expenditure of $50,000 per year; others, who have been cared for at home but who, as parents age, are often unable to obtain adequate, alternative supports. Second, disability supports are generally not portable between provinces and, with increasing regionalization of disability policy, even among jurisdictions within some provinces, this restricts inter/intraprovincial mobility. The lack of portability also arises when the availability of the needed supports is tied to a particular program or residence in a particular institution, for example, a group-home resident who is ready to leave but who still needs the disability supports often cannot take the funding with him/her to purchase the supports elsewhere.

The result for those who fall through the substantial cracks in the system is that the often significant costs of disability supports must be met out of pocket and/or the proportion of informal care provided by family members must increase with all the attendant economic and personal implications arising from this "burden of care."[14] These deficiencies represent serious departure from the *In Unison* goals.

To a significant extent, the problems outlined above stem from the design of community support systems. Most of the public resources directed to disability supports are allocated through a "supply-side" approach: governments provide funds to community agencies and mandate them to provide specific types of supports to people with disabilities and their families who then must approach individual service agencies, each of which has its own eligibility criteria. In the absence of an overall public mandate to provide for an equitable distribution of the disability-related supports, the distribution that results from the agencies' choices may not reflect the manner in which society at large would prefer to meet the needs.

The supply-side design of community support systems also raises an issue of accountability. While the boards of many of the thousands of community agencies that provide disability-related supports are democratically elected and provide a valuable forum for debate on disability-support issues, the agencies are a generally conservative force because their primary accountability is to the public funder. The corollary is that there is little accountability to the agencies' clients who use the services but do not purchase them. There is usually no broader democratic forum in the community that can hold the agencies to account or to chart new directions. This diminishes the scope for citizen engagement in policy development in the disability sector — an aim central to *In Unison* and the Social Union Framework Agreement.

Part of these supply-side difficulties stemmed from the increasing federal unilateralism that characterized CAP's development. For example, under the welfare services provisions of CAP, provinces could receive federal cost-sharing for expenditures on rehabilitation services, counselling, etc. offered within sheltered day-programs for adults with disabilities. However, CAP required that such services had to be provided by provincially approved agencies: individuals could not be provided with funds to be used to purchase the needed services. The result was that the application of the CAP rules, which reflected a growing federal unilateralism in the plan, provided an incentive for providing disability supports in a segregating way, one that tended to deny people the opportunity to make transitions to the mainstream labour market and other forms of community participation. In doing so, CAP strengthened a supply-driven system of community supports, rather than a demand-driven one. Such a system is unable to meet the goals of portability and flexibility *In Unison* articulates.

The replacement of CAP by the CHST changed the governance of disability supports from the growing federal unilateralism of CAP to a completely disentangled regime. The new regime had both positive and negative effects. One negative effect of the new disentanglement stemmed from the change in financing associated with the adoption of the CHST. CAP's 50/50 cost-sharing had meant that poorer provinces tended to rely to a greater extent on CAP cost-sharing for disability supports than richer provinces. Consequently, the CAP to CHST change was financially disadvantageous for poorer provinces which could no longer rely on 50 cents of outside financing for each dollar of provincial investment in disability supports. (British Columbia, Alberta, and Ontario had lost 50/50 cost-sharing prior to the CAP to CHST shift because of the cap imposed by the federal government on transfers to these provinces: but these richer provinces relied less on CAP cost-sharing for investing in disability supports than did poorer provinces.)

A recent deinstitutionalization project in Newfoundland helps illustrate the impact that a fully disentangled financial arrangement for disability supports can have on community support systems in poorer provinces.[15] Through a federal-provincial partnership (including provincial and national disability organizations) a collaborative regime was established under CAP to produce a deinstitutionalization policy together with joint financing arrangements. Collaboration in financing via a federal contribution to a transition fund secured provincial commitment to the initiative that had not been forthcoming under the previously disentangled approach to deinstitutionalization policy. When CAP cost-sharing was replaced by the per capita grants of the CHST, the initiative almost collapsed. It took another collaborative financial arrangement, outside CHST, to make the initiative viable once more, and to start again the movement of people from an institutional facility to the community. Without a collaborative regime that established the broad policy and financing arrangements, a residential institution would have continued to be a central element of the community support system, an outcome directly at odds with what disability organizations had been advocating for a number of years.

This is not to suggest that the absence of collaborative regimes will always frustrate deinstitutionalization policy. After the introduction of the CHST, Ontario launched the largest deinstitutionalization initiative in the country without collaborative financing from the federal government. But the different experiences of Ontario and Newfoundland at least suggests that poorer provinces face much greater difficulties implementing a large-scale deinstitutionalization initiative without federal assistance for the transition costs. The disentangled federal-provincial fiscal arrangement under the CHST does not address this interprovincial inequity.

A second negative effect of disentanglement (and the devolution of responsibilities to local and regional authorities) is that it is now harder for people with disabilities, their families, and their advocacy organizations to engage in the broader national discourse on disability. Since more time is now spent on local and regional issues, less is left for information-gathering/dissemination, research, and engagement in a national policy process. As a result, the interprovincial and other inequities referred to above cannot be highlighted as effectively and the capacity of community support systems is more likely to remain a “local issue.” This further entrenches a piecemeal approach to disability supports, with all the disadvantages that that approach brings.

A third effect of the increasing disentanglement in the disability policy arena is the diminished role of the federal government in information collection/dissemination and monitoring/auditing — activities to which *In Unison* and the Social Union Framework Agreement give great weight. It was earlier noted that the key policy problems in the disability area are the wide variations in access to disability supports within and across provinces: problems that cannot be adequately addressed unless current and proposed arrangements are properly documented and monitored.

Reporting requirements were a feature of CAP and VRDP. These requirements resulted in a body of national information on expenditures, providers, and delivery systems. While the information base was not ideal, it reflected a commitment to information collection and dissemination. With the shift to a more disentangled arrangement under CHST there is no requirement to produce such information, and no incentive to address the many inadequacies of the information base developed under the CAP regime. (The federal-provincial accountability and monitoring framework for EAPD, VRDP's successor, is still being worked out.) The absence of an information base or the adoption of one that is only local and provincial in nature greatly increases the difficulty of raising national issues regarding community support systems. Moreover, it severely compromises any auditing and monitoring capacity, which means that the inequities that *In Unison* and the Social Union Framework Agreement seek to address will persist.

These negative effects of disentanglement are serious and wide-ranging. But disentanglement is not inherently negative: the disentanglement in the disability area associated with the CAP to CHST change has the potential to bring beneficial effects. The case of sheltered day-programs discussed above, is instructive. The conditions on CAP funding provided inducements to invest in segregating options, rather than those that provided for individualized supports that would assist adults to participate in the mainstream labour market, or in volunteer and other social activities in the community. But now that CAP has been replaced with the CHST, decisions about program measures and delivery arrangements for community support systems are made under the aegis of a disentangled regime. This will likely improve outcomes given the greater responsiveness of provincial/local administration and the greater possibility for innovation that comes with fewer funding restrictions.

While it is too early to be definitive with respect to the impact of disentanglement on innovation in community support systems, significant innovations are in evidence in many communities: for example, individualized funding; introduction of independent planning and advocacy supports to individuals and families, which should improve accountability and lead to more individualized supports; moving from sheltered work to more individualized and inclusive training and employment; supported independent/ individualized living arrangements rather than group homes; and employability programs for those with the most challenging disabilities and most excluded from the labour market. While some of these innovations preceded the CAP to CHST shift, it is likely that the disentangled governance of the CHST will, provided needed investments are forthcoming, strengthen the innovations in place and encourage others.

Despite the favourable effects of disentanglement on innovation, some community-based reform efforts are reaching their limits, in part because of a lack of transition funding.[16] For example, a community-wide effort in Thunder Bay was launched in the early 1990s to shift from the block-funded agency system that was encouraged by CAP, and was characterized by a highly unionized labour force, to an individualized system where fewer group-living arrangements and sheltered facilities would be utilized. The shift would require a scale of change similar at least to that of closing a major institution with the attendant financial pressures. However, as a project evaluation study indicated, without some transition dollars like those arranged for the Newfoundland deinstitutionalization initiative, the shift was going to be difficult to make. As with closing an institution, both the old and the new support systems (the agency-funded and the individually-funded in this case) needed to be funded simultaneously for a limited period.

Other features of a more flexible and responsive, demand-driven community support system would also likely find more fertile ground if the choice of policy/program measures and the program-delivery arrangements are governed by a disentangled regime. For example, as individuals and families obtain purchasing power under a demand-driven system, a wider variety of contractors would be drawn into the support system, making innovation in support arrangements much more likely. In addition, the variety of arrangements would increase. No standard community-planning process would be applicable in all locales. No single human resource strategy would apply across communities. No uniform mix of generic and specialized agencies would be equally effective in rural and urban areas. A disentangled regime for design of community support systems is essential if supports responsive to particular communities are to evolve.

A concrete example of the benefits of a disentangled approach in the area of choice of policy/program measures and program-delivery arrangements (stages 3 and 4 of the policy process outlined above) comes from a recent Ontario demonstration project which instituted demand-side funding for attendant services. The evaluation of the project found that the demand-side model (providing funding directly to those eligible for attendant care who would then hire and manage their own attendants) significantly improved quality-of-life outcomes compared to supply-oriented approaches. Portability, exercise of consumer control over services, social and economic participation, and cost effectiveness (through reduced utilization of acute health-care services), all key policy goals and conditions of citizenship outlined in *In Unison,* were improved.[17]

Moving toward a demand-driven system does not mean that supply-side arrangements would disappear. But different kinds of supply-side investments would likely need to be made: to monitor the markets that emerge to supply disability supports; to train and develop support workers, attendants, etc.; to provide long-term support to agencies that would assist individuals and families in arranging for supports; to support various negotiation and contracting processes associated with emerging markets.

These examples of the impact on community support systems of the increasingly disentangled governance in the disability sector suggest the following conclusions. Increasing disentanglement has given rise to, or is at least associated with, severe fiscal pressures, especially in poorer provinces. Disentanglement encourages innovation and local responsiveness in community support systems, and therefore is an effective intergovernmental regime with respect to two stages in the policy process: choosing policy/program measures and designing delivery systems. Disentanglement at other stages of the policy-making process: setting broad national policy directions, establishing funding arrangements and collecting/disseminating information and auditing outcomes — appears to be weakening the capacity of community support systems to fulfil their mandate, at least at the current juncture of policy development.

Establishing collaborative mechanisms for some stages of policy development need not hamper diversity in provincial delivery systems. A more collaborative regime could provide a set of policy directions that would hold both orders of government accountable for addressing the growing inequities that individuals with disabilities face. The complexity of the disability sector requires an intergovernmental approach based on a recognition that the issues people face cannot be parsed neatly into distinct jurisdictional mandates.

DIRECTIONS FOR REFORM

This section briefly recaps the strengths and weaknesses of community support systems, relating these to the intergovernmental governance structure within which they operate. It then sketches an outline of the reforms that would address current difficulties, highlighting the intergovernmental aspects of the reforms.

The previous section outlined two main problem areas with community support systems: (i) the supply-side design of the system contributes to the differential treatment of people in similar situations, the lack of portability of supports and services, and the lack of accountability to the clients of the many agencies that make up the system; and (ii) the system is underfunded: while the magnitude of this problem was not investigated in detail, it is clear that community support systems, especially those in poorer provinces, are under financial stress. And in richer provinces, the extent of unmet need for supports persists. Some part of these problems can be traced to the prevailing intergovernmental regimes. The supply-side related problems are not wholly the result of the CAP legacy with its collaborative federal-provincial arrangements and some features of federal unilateralism. But the program did have an effect on restricting development of alternative system designs. And the increased disentanglement associated with the CAP to CHST change contributed to serious financial difficulties especially for poorer provinces, for example, those engaged in deinstitutionalization and other demonstration initiatives.

The articulation of these problem areas suggests the direction that reform should take. First, a widely discussed policy response to the difficulties of supply-side design of community support systems is to move to a demand-driven alternative. This would place resources directly in the hands of people with disabilities and let the providers adjust to the demand of those with the needs and the cash. If this approach were more fully available across the country, it would promote greater equity among those dependent on disability-related supplies and services, guarantee portability, and improve the accountability structure for block-funded service providers (who would face smaller budgets and correspondingly less control).

There has already been movement in this direction: individualized funding initiatives exist in most provinces and territories and policy frameworks are beginning to evolve. These provide insights into the implementation issues that would need to be addressed if the demand-driven alternative was aggressively pursued. Labour organization, for example, becomes an issue. In a supply-side system, since the agencies are the employers, collective bargaining is relatively straightforward: in a more individualized system the employers are either independent contractors or the people with disabilities and their families, alone or in groups. Organizing labour in this environment in a way that promotes increased choice and portability in supports while meeting labour's concerns for fair working conditions and job security will be a considerable challenge.

Second, with respect to deinstitutionalization, reform requires new financing. Progress in deinstitutionalization is slowing down in Canada, and in some provinces there is retreat. This is happening at a time when the knowledge base for supporting people with disabilities and very complex health needs has grown substantially. Two instruments are required: first, a national transition fund is needed to enable closure of facilities and corresponding development of support capacity in communities, and, second, a financing arrangement is needed that recognizes that some provinces and communities have, for a host of reasons, long been underfunded in the development of community supports for people with disabilities. The CHST has not provided the financing mechanisms to redress this imbalance. More targeted cost-sharing mechanisms are needed, even if they are short-term as in the example of Newfoundland. Enhanced tax measures for disability supports are one mechanism for getting more dollars for supports into the hands of consumers. But with the non-refundability of many existing measures, and the reality that rates of poverty among individuals with disabilities and their families are so high, existing measures are likely to be an important but relatively small part of the reform agenda.

The nature of these reform directions makes clear that their development requires a collaborative intergovernmental regime for some stages of the policy process. The success of a demand-driven system depends on the ability of all participating jurisdictions to supply the supports that a person with a disability, cash/vouchers in hand, wishes to purchase. If the system is to extend across provincial boundaries, as is highly desirable, collaboration among provinces and, very likely, the federal government would be required. Thus, the implementation of a demand-driven system, which constitutes the adoption of a new broad policy direction, item one on the policy process list, requires a collaborative intergovernmental regime. The same conclusion applies to financial arrangements that would improve the ability of poorer provinces to pursue initiatives such as deinstitutionalization and enhancement of community support systems. Since, by definition, such a policy would have implications for both the federal and provincial governments, the policy development and the establishment of the specific financial arrangements — item two on the policy process list — should also be a collaborative enterprise.

It was earlier noted that a demand-driven approach would make the providers of disability-related supports more accountable to their clients. But this would not guarantee that the other key accountability functions would flourish — information-gathering/dissemination, auditing — functions that disentanglement has sent into some decline. And while the same disentanglement has promoted innovation, it is these same functions that are necessary to sustain the innovations and transform them into systemic change. (At recent federal consultations with disability groups the need to improve the exchange of information across communities on best-practices was emphasized.[18]) These considerations lead to the conclusion that the monitoring/auditing function, the fifth stage in the policy process, should also be governed by a collaborative intergovernmental regime as is called for by *In Unison* and the Social Union Framework Agreement. Under such arrangements a coordinated division of labour for funding research, establishing criteria for an auditing, etc. could be established.

These then are the broad outlines of a reform agenda: a demand-driven system, additional funds for poorer provinces in respect of deinstitutionalization and community support systems, and an information and auditing function that rests on an understanding of the best-practices of governments and organizations across the country. Together, these would greatly improve all aspects of the operation of community support systems.

Successful implementation of these reforms requires collaboration between federal and provincial governments, collaboration that is not now institutionalized. The disentangled arrangements that now characterize the choice of policy/programs and program delivery should be preserved since the evidence shows that they promote efficiency and innovation.

CONCLUSION

An increasingly disentangled approach to federalism is taking hold in intergovernmental relations in the disability sector. This chapter suggests that this trend is weakening the capacity of community support systems to fulfil the important mandate they have been given. It has outlined the difficulties that community support systems face and concludes that community capacity would be strengthened if more collaborative regimes were in place at three stages of the policy-making process: setting broad policy directions, establishing financial arrangements, and promoting accountability via information and auditing. The remaining two stages of the policy process, choosing policy/program measures and delivering programs, should benefit from the documented advantages of disentangled governance.

If reforms to the prevailing intergovernmental regimes are to be on the policy agenda two key factors need consideration:

- disability organizations have a unique understanding of the nature of social and economic exclusion and its policy implications: new collaborative mechanisms among governments must include these organizations in the policy process and provide the requisite financing; and
- the choice of intergovernmental regime should be seen as a policy choice in and of itself: the chapter has shown that collaborative regimes (whether federal-provincial or interprovincial) and disentangled regimes are best suited to different stages of the policy-making process. But when a regime

> choice is made it should not be considered forever fixed, the choice of regime needs to be sensitive to the national issue at hand and to the provincial/territorial context.

It is possible to establish community support systems which can address the inequities that people face and can provide conditions for their citizenship and inclusion in society. That much is clear. Strengthening capacities of community support systems to do so will undoubtedly take additional public investment. But, as we have seen, absence of a clear conception of and choice about the regime for managing that investment will likely frustrate achievement of the intended policy goals. CAP made many kinds of investments possible, but the outcomes in some instances defied widely shared policy goals. In part, this was because attention to the CAP governance regime was more focused on the broader politics of federalism. It was less a question about the kind of regime needed to get the job done in the disability sector. For community support systems to thrive, more attention must be given to choosing regimes that bring federal-provincial/territorial collaboration to the issues communities face, to the investments they require, and to generating information about them that can be shared nationally. At the same time, their capacity to achieve policy goals and enliven a local democracy will only come if the regimes are disentangled enough to foster a dynamic of diversity, innovation, and responsiveness.

NOTES

[1] The Roeher Institute proposed a case study as part of this research initiative to explore the hypothesis that when it comes to the disability sector, “community support systems” act as a kind of “intervening variable” between intergovernmental regimes and the extent of achievement on the three assessment criteria. This case study is “in progress.” It provides a conceptual framework for examining the hypothesis, and discusses some preliminary findings. A major challenge in the work has been to conceptualize how community support systems are linked to intergovernmental regimes and to design a methodology for community case studies to help make clear how that link works.

Cam Crawford of the Roeher Institute provided valuable insight in the formulation of early drafts of this chapter.

[2] The background research for this chapter included a review of a number of studies undertaken by the Roeher Institute examining disability-related support systems

as well as key informant interviews about community support systems in five communities: Alberta, Ontario, Quebec, Prince Edward Island, and Newfoundland.

- The “Family, Friends, Community” initiative was announced by the Alberta government 1994 as a joint effort with the federal government and the non-governmental organization disability sector to assist families with children with disabilities and complex medical needs to be supported in the community. The project focused on the Edmonton region, and the Rosecrest facility in that city, which provides short- and long-term health care for children with complex medical needs. See The Roeher Institute, *Towards Inclusion* (Toronto: The Roeher Institute, 1999).
- Local agencies serving people with developmental disabilities and disability advocacy organizations in Thunder Bay launched a “System Re-Design” initiative in the early 1990s to “individualize” the dollars contracted to the agencies so that individuals could purchase supports they required in the community, and to give them status in the contracts between the provincial government and service agencies. See The Roeher Institute, *Evaluation of the Choices Project in Thunder Bay: Final Report* (Toronto: The Roeher Institute, 1997).
- The project “Intégration sociale des enfants handicapés en milieu scolaire (ISEHMS),” operating in communities throughout Quebec is funded, in part, through Health Canada’s Community Action Program for Children. The project aims to provide school-based, child-care services inclusive of children with disabilities. It involves partnerships between educational institutions, child-care agencies, and disability organizations. Research for this chapter examined, through key informant interviews, operation of this project in Longueuil, Quebec.
- “Choice and Opportunity” was a federal strategic initiative announced in 1994, as a partnership between the federal and Prince Edward Island governments, and the Canadian and PEI Associations for Community Living. The initiative was to develop strategies for restructuring and reinvesting dollars for disability-related supports flowing through the provincial welfare system, provincial disability support programs, and those dollars flowing to community agencies through provincial government contracts to deliver disability supports. At the same time a regionalization process in provincial health and social services was underway.
- Supports and services to people with disabilities have been undergoing similar kinds of shifts in Newfoundland as in other jurisdictions. Creation of regional health authorities, deinstitutionalization, individualized funding initiatives, federal-provincial-NGO partnerships, and the demographics of a growing population of people with disabilities, are all part of the new landscape for making and implementing disability-related public policies and programs in the province. The shift from CAP to CHST was projected to

cost the province $100 million in transfer payments. It was in this context that funding arrangements for a major provincial deinstitutionalization and community development initiative had to be managed.

These five initiatives provide a backdrop for the discussion in this chapter: the shape of the community support system, the roles of both levels of government at the community level, the challenges that communities face in implementing the kinds of policy goals and democratic policy-making processes *In Unison* envisions. A review of recent provincial policy trends in regionalization of health and social services was also undertaken by Fraser Valentine for this chapter.

[3] A directory of disability organizations published by the Abilities Foundation lists over 5,000 disability-specific organizations in the voluntary sector alone in Canada. This does not include the generic community agencies (e.g., home-care providers, community health centres), or the public sector and private for-profit sector providing supports to people with disabilities.

[4] See Iris Marion Young, "Difference as a Resource for Democratic Communication," in *Deliberative Democracy: Essays on Reason and Politics*, ed. James Bohman and William Rehg (Cambridge, MA and London: MIT Press, 1997).

[5] See Federal/Provincial/Territorial Ministers Responsible for Social Services, *In Unison: A Canadian Approach to Disability Issues* (Ottawa: Human Resources Development Canada, 1998).

[6] See *A Framework to Improve the Social Union for Canadians: An Agreement between the Government of Canada and the Governments of the Provinces and Territories, 4 February 1999.*

[7] Canada, *Working Together: A Government of Canada/Voluntary Sector Joint Initiative* (Ottawa: Voluntary Sector Task Force, Privy Council Office, Government of Canada, 1999).

[8] See, Canada, *Future Directions to Address Disability Issues for the Government of Canada: Working Together for Full Citizenship* (Ottawa: Human Resources Development Canada, 1999).

[9] While the list of programs chosen for analysis includes key federal, provincial, and federal-provincial programs that shape the organization and delivery of community supports and services, it is not exhaustive, e.g., Workers' Compensation and CPP Disability are not included.

[10] For an analysis of the "cooperative federalism" that defined the early days of the Canada Assistance Plan, see Rand Dyck, "The Canada Assistance Plan: The Ultimate in Cooperative Federalism," in *Perspectives on Canadian Health and Social Services Policy: History and Emerging Trends*, ed. Carl A. Meilicke and Janet L. Storch (Ann Arbor, MI: Health Administration Press, 1980), pp.114-29.

[11] Federal/Provincial/Territorial Ministers of Social Services, *In Unison*, p. 15.

[12] Ibid., p. 15. This notion of citizenship, with its emphasis on social, economic, and political participation, is richer than the usual understanding of citizenship as a legal status. This reformulation is advanced by a number of political theorists and philosophers who argue that current theories of citizenship need to be revisited. The

disability community shares with other groups a sense that a broader notion of citizenship — focused on participation — is required if cultural, linguistic, ethno-racial, and other forms of diversity are to be fully accounted. Fostering citizenship in this sense will help to secure the "deep diversity" that Charles Taylor suggests is necessary for social and political cohesion in Canada. But it also raises new questions about respective roles and obligations of both levels of government concerning the advancement and ensuring citizenship in Canadian society. See, for example, Will Kymlicka and Wayne Norman, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory," *Ethics* (January 1994):352-81; and Charles Taylor, "Shared and Divergent Values," in *Options for a New Canada*, ed. R.L. Watts and D.G. Brown (Toronto: University of Toronto Press, 1991).

[13] Reports from government consultations include, for example, the 1983 and 1985 reports of the federal-provincial, *Study of a Comprehensive Disability Protection Program*; the report of federal and provincial ministers of social services, *Mainstream 1992*; the 1994 federal *Social Security Review*; the 1996 report of the federal Task Force on Disability Issues, *The Will to Act*; and various reports of the Standing Committee on Human Rights and the Status of Disabled Persons. Policy research informing the analysis of *In Unison* and the policy objectives include a number of studies, including background papers prepared for the federal Task Force on Disability Issues, and various studies by the Roeher Institute and others. For example, see Sherri Torjman, *Income Insecurity: The Disability Income System in Canada* (Toronto: The Roeher Institute, 1988); a number of studies by the Roeher Institute, including *Nothing Personal: The Need for Personal Supports in Canada* (Toronto: The Roeher Institute, 1993); *On-Target? Canada's Employment-Related Programs for Persons with Disabilities* (1992); *Poor Places: Disability-Related Residential and Support Services* (1990).

[14] For a review of recent literature on children and youth with disabilities, and their families, see The Roeher Institute, *Beyond the Limits: Children and Youth with Disabilities and their Families* (Toronto: The Roeher Institute, 2000).

[15] For a recent review of this and other deinstitutionalization initiatives see, The Roeher Institute, *Towards Inclusion: National Evaluation of Deinstitutionalization Initiatives* (Toronto: The Roeher Institute, 1999).

[16] For an example of a restructuring effort in community supports in Thunder Bay, and the various transition issues encountered including the lack of funding for transitioning from block-funded services to a more portable system, see The Roeher Institute, *Evaluation of the Choices Project in Thunder Bay, Ontario: Interim and Final Evaluation Reports* (Toronto: The Roeher Institute, 1997).

[17] See The Roeher Institute, *Self-Managed Attendant Services in Ontario: Direct Funding Pilot Project - Final Evaluation Report* (Toronto: Centre for Independent Living in Toronto, 1997).

[18] For reports on these consultations, see The Roeher Institute, *Opportunity Works! Conference: Report on the Parallel Process* (Toronto: The Roeher Institute, May 1999); The Canadian Association for Community Living, *Community Inclusion:*

Report of National Meetings, September 1999 (Ottawa: Canadian Association for Community Living, October 1999). Information networks and Websites for this kind of information have been developed, or are being developed by the Canadian Council on Rehabilitation and Work, the National Institute on Disability Management Research, the Canadian Abilities Foundation, and the Canadian Association for Community living, among others.