



HOUSE OF COMMONS
CANADA

**LISTENING TO CANADIANS: A FIRST VIEW OF
THE FUTURE OF THE
CANADA PENSION PLAN DISABILITY PROGRAM**

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

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

**Carolyn Bennett, M.P.
Chair**

Subcommittee on the Status of Persons with Disabilities

June 2003

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Subcommittee on the Status of Persons with Disabilities

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THE STANDING COMMITTEE ON HUMAN RESOURCES DEVELOPMENT AND THE STATUS OF PERSONS WITH DISABILITIES

has the honour to present its

FIFTH REPORT

In accordance with its mandate under Standing Order 108(a)(b), your committee established a subcommittee and assigned it the responsibility of examining the status of persons with disabilities.

The Subcommittee studied the Canada Pension Plan Disability Program.

Your committee adopted the following report with reads as follows:

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FOREWORD

The members of the Subcommittee on the Status of Persons with Disabilities would like to thank every individual, organization, federal department and agency who took the time to participate in our study of the Canada Pension Plan Disability program and to provide us with their views. To those who responded to our e-consultation — we have incorporated your voices so that everyone who reads this report will see the thoughtfulness, wisdom and plain common sense that Canadians who normally do not participate in parliamentary studies can bring to our deliberations. This report tries to capture the richness of your thoughts.

We have combined this with the depth of information from witnesses who attended our hearings, to guide us in making our recommendations about the future of the Canada Pension Plan Disability program.

We hope that this report shows that we have not just heard what you wanted to say but also that we have listened and understood what you told us.

Every parliamentary committee report requires the participation of many people. Because of the complexity of the e-consultation pilot project, the Chair and members of the Subcommittee would like to acknowledge this support that went well beyond the norm. We are grateful to the senior officers of the House of Commons and Library of Parliament who enabled us to undertake our initial foray into the unknown. Without the unstinting assistance of our “team” this project would not have succeeded. This includes all those in the House of Commons Committees Branch and Information Services-Multimedia Services who broke new ground in providing their technical and procedural services and advice. The Parliamentary Research Branch provided research and operational support that enabled our work to remain driven by our needs. Joseph Peters brought his experience with the Romanow Commission to bear and allowed us to build on it.

We would also like to thank from the:

- Committees Branch: Rémi Bourgault, Collette Labrecque-Riel, Mike Macpherson;
- IS-Multimedia: Elaine Diguier, Nathalie Hannah.
- Parliamentary Research Branch: Chantal Collin, Megan Furi, Kevin Kerr, Peter Niemczak, William Young.

CHAPTER 1: ONLINE CONSULTATIONS: THE NEXT STEP IN PARLIAMENTARY DEMOCRACY

Like many studies by parliamentary committees, this study began because members of the Subcommittee recognized a problem. In this case, it concerned difficulties with the Canada Pension Plan Disability program (CPP(D)), the largest single disability income program in Canada; these difficulties were brought to our attention, as Members of Parliament, by our constituents. In very large numbers, people have been visiting MPs, talking with their assistants and corresponding about various issues with them regarding the operation of the CPP(D) and its shortcomings. With the support of colleagues from all parties in the House of Commons, the Subcommittee on the Status of Persons with Disabilities decided that something needed to be done. In addition, no parliamentary committee has immersed itself in the CPP(D) for many years. In an earlier report, *A Common Vision*, we expressed our concerns that:

... current disability income support programs operated by the federal government, notably the Canada Pension Plan Disability (CPP-D) have not recognized the fundamental realities of many people who live with a disability. It does not have human measures in place to provide prompt service; it does not adequately address the issues of cyclical and degenerative disease and it does not address the question of mental illness and disability in an appropriate fashion. As Members of Parliament, we constantly confront this reality in assisting our constituents who come to us for aid in finding a way through the bureaucratic jungle.¹

We wanted Canadians to become more aware of, and involved in, our work as parliamentarians and as members of the Subcommittee but we also wanted to continue to have access to expertise that can enrich our activities. We decided to explore a way to combine the traditional work of a parliamentary committee — drafting a study plan, calling experts and departmental officials as witnesses to provide testimony, receiving briefs from interested parties, and preparing a report — with methods that would allow all Canadians with views on CPP(D) to participate. The Subcommittee, therefore, supported by the House of Commons and the Library of Parliament launched the first online consultation of any parliamentary committee in Canada and among the few carried out by any legislature in the world.

We believe that this report points the way in moving toward the next step in our evolving Canadian democracy. It puts together the wisdom of those who appeared in person before us during our hearings with the insights provided by 1,700 Canadians who participated in our study online. The conclusions and recommendations in this report, therefore, are based on what are probably the most widely-canvassed views ever solicited by a parliamentary committee. The Subcommittee hopes to follow-up on this first view of the future of the CPP(D) with a follow-up report that deals more extensively with the way

¹ Standing Committee on Human Resources Development and the Status of Persons with Disabilities, *A Common Vision: Interim Report*, Ottawa, 2001, p. 19.

that the disability income system works — or does not work — to support Canadians with disabilities.

1.1 How it Began

In order for this complex process to succeed, we had to undertake some extensive preparations. After we agreed to begin our study of CPP(D) on 9 April 2002, the Subcommittee asked the Income Security Programs Branch of Human Resources Development Canada to brief us on the overall operation of the plan. The Office of the Commissioner of Review Tribunals told us about how it handles the appeals of Canadians whose applications for CPP(D) benefits have been turned down by the Department. Then on 21 May 2002, we held a roundtable where we brought together as many of the organizations, experts, and federal departments as we could gather together, to help us identify the issues that we should pay attention to during our study.

In June, the Subcommittee launched its information-based Web site so that all Canadians would be able to follow our work and contribute to our activities. The Subcommittee's Web site includes, among other things, several policy papers on the CPP(D) program, some background documents on the history and past work of the Subcommittee, and a FAQ (frequently asked questions) section. The Subcommittee's researchers from the Parliamentary Research Branch of the Library of Parliament were responsible for preparing these documents. The inclusion of these documents on the Subcommittee's Web site represents a significant departure from the more traditional committee Web site which usually only includes a list of studies, members and reports, a notice of meetings, minutes of proceedings, evidence and index. For the first time, the authors were asked to submit their briefs electronically so that they could be made available to all those who visited the site. All this information was posted in a convenient and accessible location.

Those who were interested in our work could use the site to get information and resources about the Subcommittee's study. For us, it was vital that people have information about what we are doing so that they could understand more about CPP(D), how it works and what suggestions had been made to improve it. We wanted Canadians to understand the challenges that exist with this program and to participate in our search for ways to better deal with them. The Subcommittee's Web site was set up to help meet this goal, becoming the first step in gaining knowledge that allowed all interested citizens to help us with our work. This site also became a source of information about our activities allowing those who were appearing in person at our Subcommittee's meetings to gain information that assisted them in preparing their testimony and briefs. This information site was in place for six months before we launched our e-consultation.

In these months, the site statistics revealed several interesting trends; visitors were coming to the site in impressive numbers and they were using the Web site as a research tool.

1.2 Consulting Canadians

On the International Day of Persons with Disabilities, 3 December 2002, the Subcommittee on the Status of Persons with Disabilities launched the first online consultation by a Canadian parliamentary committee. The e-consultation provided Canadians with an opportunity to participate at their convenience during the 13-week online consultation process, running from 3 December 2002 to 3 March 2003. Three primary means permitted participation: completing an issue poll; sharing stories; and/or offering solutions to a range of issues facing the CPP(D) program. The issue poll, stories and proposed solutions covered a range of issues — from personal struggles to policy suggestions — from the application process to the Review Tribunal.

By completing the online issue poll, participants provided their viewpoints on major issues facing the Canada Pension Plan Disability program. People could either identify themselves and register, or could complete the issue poll anonymously. In a limited number of cases, some individuals filled out a paper version and submitted it to the Subcommittee by mail. Before taking the poll, individuals were informed that their answers would be used to assist the Subcommittee in formulating its report and recommendations. The issue poll allowed input from anyone who was interested in the CPP(D) program. While everyone was invited to participate, respondents were asked to identify themselves as members of particular groups (hereafter referred to as a “category of identification”), which included among others: people with disabilities, family members of people with disabilities, CPP contributors, CPP(D) recipients, medical professionals, advocates and employees of federal and provincial disability income support programs. Clearly, these categories of identification are not mutually exclusive and were only intended to give the Subcommittee a general idea of the type of respondents that would complete the issue poll, and to ensure that the issue poll was not “captured” by a particular interest group. The Web site displayed results of registered participants by province and territory. The Subcommittee had access to all results in real time as they were completed. Anonymous, or registered, all responses were analyzed by the research team.

The Subcommittee also asked Canadians to share the story of their experiences with the CPP(D) program (in no more than 500 words). Although the Subcommittee accepted stories on any subject related to the program, we were specifically interested in stories that addressed identified areas of concern. For example, the Subcommittee suggested that it would like to receive input on:

- possible changes to the eligibility requirements;
- what worked well and what did not in the application, appeal and medical assessment process;

- the financial challenges faced by CPP(D) applicants and appellants in terms of costs associated with fulfilling all requirements of the application and appeal process;
- the adequacy of the benefit level;
- the challenges associated with CPP(D) benefits being considered as taxable income;
- how other programs, such as social assistance programs, private insurance and workers' compensation programs, affected their experience with the CPP(D) program; and,
- how work and a return-to-work strategy fit into a program like CPP(D).

Those who shared their stories also had the choice of registering or remaining anonymous. In the latter case, the stories were not posted on the Subcommittee's Web site, but were analyzed by our research team and used in preparing our report. Those who registered also had a choice: to share their stories on the Web site or with the Subcommittee only. Again, participants were informed that all stories would be used to help the Subcommittee to write its report and recommendations.

The Subcommittee further asked Canadians to present their proposed solutions to a range of challenges currently facing the Canada Pension Plan Disability program, such as:

- how to raise awareness of the CPP(D) program;
- how to enhance or restructure the process behind CPP(D);
- how to improve the application or appeal process; and
- how to address the eligibility requirements.

Participants had the same option for the solutions as they had for the stories; that is to register or remain anonymous.

1.3 Who Did We Reach?

Canadians responded to our effort at outreach in unprecedented numbers. Almost 1,500 Canadians participated in our issue poll, 135 people shared their stories and 28 individuals or advocacy groups provided solutions. The rich new input from this e-consultation has helped to shape the Subcommittee's interim report and recommendations to House of Commons.

Anecdotal information, gathered through some of the stories and solutions presented to the Subcommittee, indicates that many Canadians who initially responded to the issue poll felt compelled to elaborate further on some of the issues that were raised. Accordingly, the profile of issue poll respondents gives, as well, a sense of who shared their stories and presented solutions to the Subcommittee.

With regard to the issue poll, the majority of respondents identified themselves as “persons with disabilities” (757 respondents²). The second most important group, 574 individuals, identified themselves as “contributors to the Canada Pension Plan on pay or income tax.” These groups are followed by respondents who identified themselves as “CPP(D) recipients” and as “family members of a person with a disability” (302 and 226, respectively). Other categories of respondents included CPP(D) applicants, CPP(D) appellants, legal representatives of persons with disabilities, employees of a federal/provincial disability income support program, employees in the insurance business, employees of a member of Parliament, employees of a disability association or advocacy group, rehabilitation specialist, medical doctors and other medical professionals. (Chart 1.1 shows the breakdown by category of respondents.³)

The issue poll results, furthermore, show that individuals from across the country participated in the Subcommittee’s e-consultation. The majority of respondents live in Ontario (519 respondents), followed by residents of British Columbia (187 respondents), the Atlantic Provinces⁴ and Alberta (115 respondents). The lower response rate in Québec can be explained by the fact that Québec has its own disability income replacement program separate from the CPP(D). We can safely conclude that we received information from all those that we set out to reach, and in this sense, our e-consultation succeeded.

² The term respondents will be used in this report to refer to individuals who responded to the issue poll.

³ A small number of respondents did not identify themselves with any of the categories offered in the issue poll. All these categories are not mutually exclusive however. A respondent could identify with more than one category of identification. (This explains why the total in Chart 1.1 exceeds the total number of respondents.)

⁴ Newfoundland (10 respondents), Prince Edward Island (8), Nova Scotia (57) and New Brunswick (41) for a total of 116.

CHART 1.1 - Category of Respondents

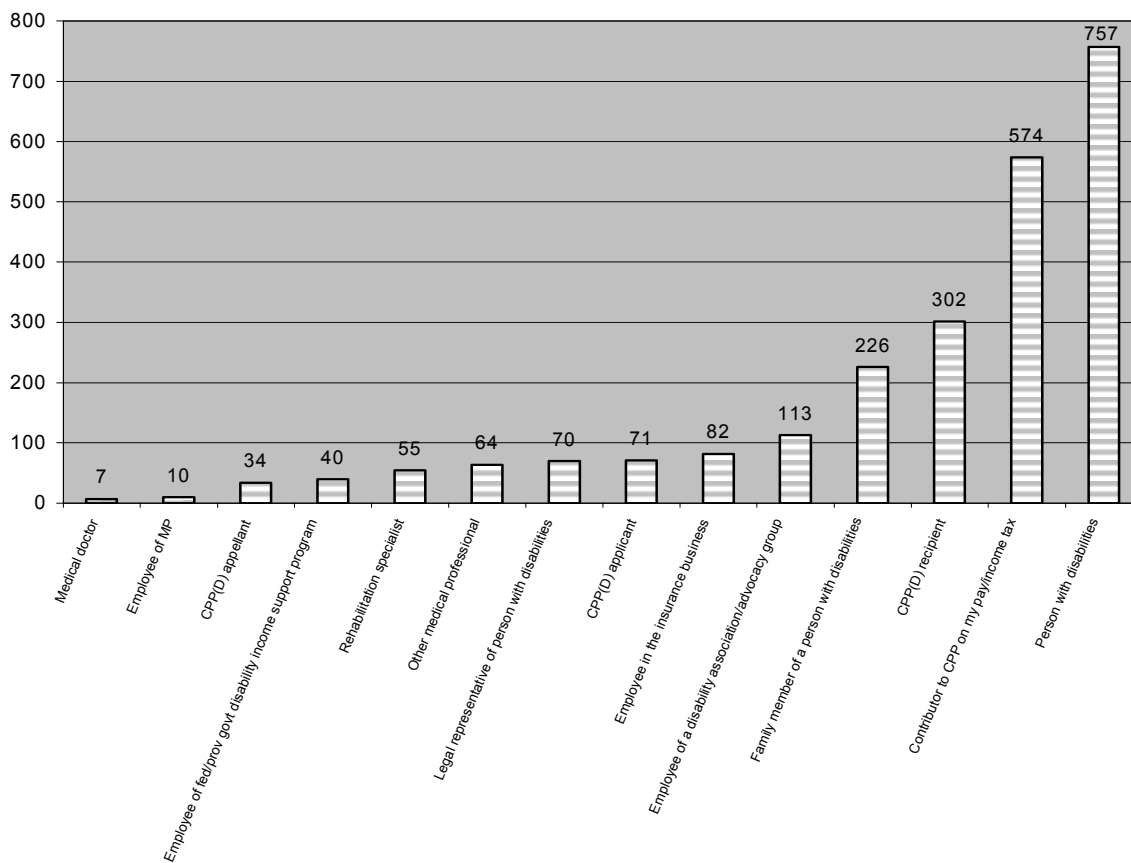
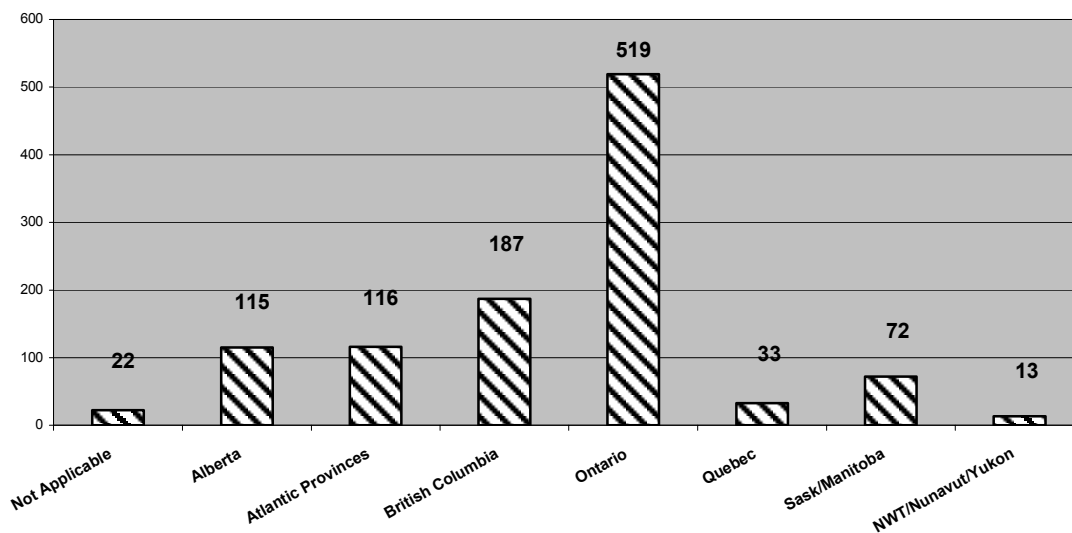


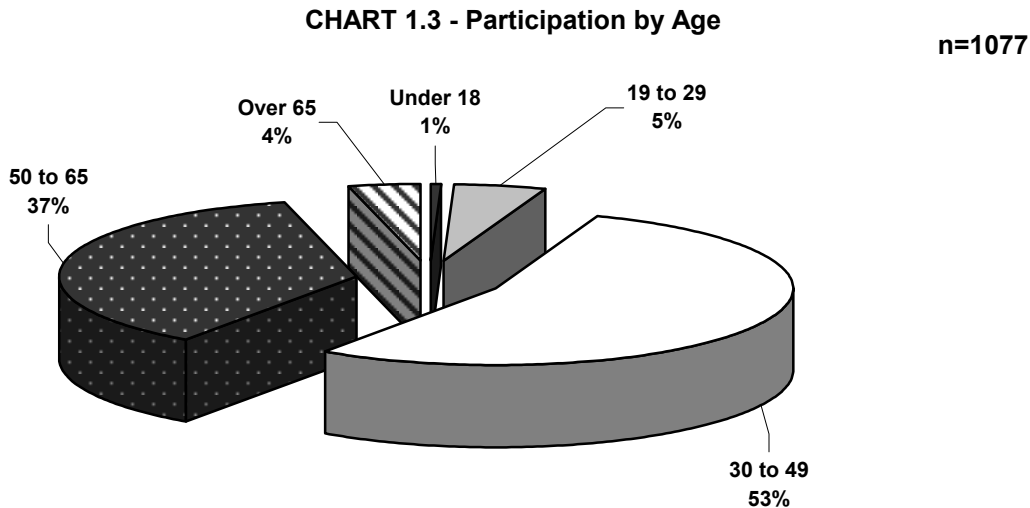
CHART 1.2 - Issue Poll Respondents by Region

n=940



* n = number of respondents

The vast majority of respondents (90%) fell between 30 to 65 years of age. This comes as no surprise, since an interest in income support programs such as the CPP(D) program is more likely to be found within a population that has worked for a certain number of years, contributed to CPP, and falls, as well, within a subset of the population that is also more likely to have disabilities and to be receiving CPP(D) benefits. Indeed, recent data have shown that the proportion of CPP(D) beneficiaries rises with age. In June 2001, approximately 30% of CPP(D) recipients were between the ages of 60 and 64, and 45.1% between the ages of 35 and 54.⁵



More females than males responded to the issue poll (63% versus 37%). We can only speculate about the reason. The e-consultation process will benefit from hearing the voices of women because we know that the number of female CPP(D) beneficiaries has grown rapidly since 1990 and that current issues regarding eligibility to CPP(D) benefits affect women differently than men. For example, women are more likely to be affected by cyclical and fluctuating illnesses that make it difficult to sustain employment and maintain basic life activities. Some studies have shown that women are twice as likely to develop multiple sclerosis (MS) as men, much more likely to develop chronic fatigue syndrome (CFS), and 10 to 20 times more likely to be affected by fibromyalgia.⁶ As well, women are more likely than men to have interrupted their participation in the labour market and to have engaged in part-time work. All these factors have an impact on women's eligibility

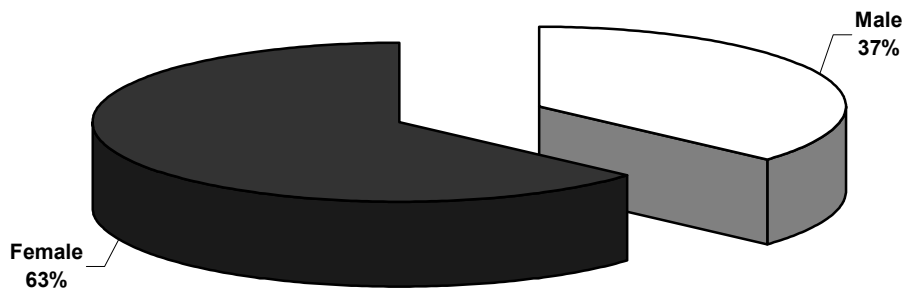
⁵ Kevin Kerr, *Statistical Overview of the Canada Pension Plan Disability program*, Prepared for the Subcommittee on the Status of Persons with Disabilities, Ottawa, 2002, http://www.parl.gc.ca/disability/issues/statistical_2_e.asp.

⁶ At this point in time, there are very few scientific studies reporting on so-called "invisible illnesses" such as CFS and fibromyalgia. Nonetheless, several studies have helped to establish the demographics of those affected by these illnesses and tend to show that females are more likely to be affected than men. For example, a U.S. study conducted by the Centers for Disease Control and Prevention from 1989 to 1993 identified a population of CFS patients that were 85% female, with an average age at onset of 30 years. For more information on this particular study, see <http://www.cdc.gov/ncidod/diseases/cfs/demographics.htm>.

for CPP(D) benefits (e.g., to be eligible, a person must demonstrate that their disability is “severe and prolonged” and that he or she has contributed to CPP during four of the last six years prior to applying for benefits). Women’s interrupted pattern of employment also influence the amount of CPP(D) benefits they receive because the benefit rate is established, in part, on their total contribution to CPP.⁷

CHART 1.4 - Participation by Gender

n=1077



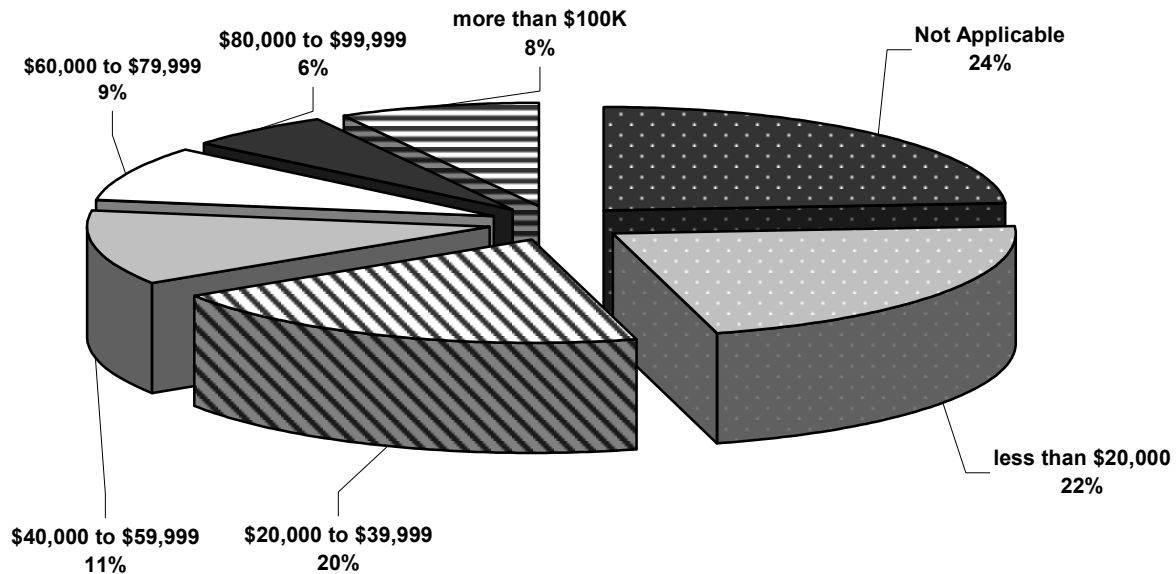
The chart below shows the household income of issue poll respondents. The fact that 42% of respondents indicated that their household income is less than \$40,000 is reasonable given that the majority of respondents identified themselves as persons with disabilities and research has clearly established that persons with disabilities tend to have a lower income than the average Canadian.⁸

⁷ For more information on the adverse impact of CPP(D)’s current definitions of work and disability on women with disabilities, see Tanis Doe and Sally Kimpson, *Enabling Income: CPP Disability Benefits and Women with Disabilities*, Status of Women Canada, October 1999, available online at http://www.swc-cfc.gc.ca/pubs/0662279247/199910_0662279247_e.html.

⁸ As a point of reference, data compiled by Statistics Canada show that the average total annual income for all family types was \$52770 in 1998. The total annual income rose to \$55292 in 2000 and would likely be higher than this amount today. Source: Income Statistics Division, Statistics Canada.

CHART 1.5 - Household Income

n=1079



1.4 A Complementary Process

Because we wanted to integrate the e-consultation fully into the more traditional work of our committee, we simultaneously continued with our regular Subcommittee's hearings as the e-consultation proceeded. We began our study of CPP(D) with meetings to hear witnesses and we continued bringing those with particular views or expertise to our meetings. From February to May 2003, we were fortunate to have the opportunity to hear a full cross-section of views. Our witnesses were: policy experts, national advocacy groups of persons with disabilities, non-government organizations that deal with a particular disability, representatives from government departments, members of the panels that review CPP(D) decisions, the Office of Commissioner of Review Tribunals, polling organizations, medical researchers and practitioners, the Canadian Medical Association, rehabilitation specialists, some provincial representatives, and the insurance industry.

This wide range of witnesses allowed us to test the preliminary results that we were receiving from our e-consultation against their views. They also provided us with a depth of information that allowed us to put the results of our e-consultation into perspective.

In our final meeting on CPP(D), we brought our two "worlds" together — our traditional work and our online consultation. We invited several of the participants from our e-consultation to join us at a regular Subcommittee meeting to discuss the possible recommendations that we could include in this report.

1.5 What We Discovered

The broad range of Canadians who responded to our e-consultation — all types of life experiences, age, gender, occupations and geographical location — clearly indicates that this process reached a good cross-section of individuals and advocacy groups with an interest in the CPP(D) program. Those who sent us their stories or submitted solutions to the Subcommittee confirmed that we had gained access to a wealth of first-hand knowledge about what was important, what worked well, and where improvements could be made. A very important lesson for all of us was that when people are asked their views, they will respond in a thoughtful, constructive, and open way. Despite the ‘decline of deference’ and the perceived irrelevancy that envelops many parliamentary institutions, Canadians, when they believe that they will be listened to and that their views may make a difference, take up the challenge. And this they told us directly.

The majority of respondents indicated that they enjoyed participating in the issue poll (79% either agreed or strongly agreed); 74% did not think the issue poll was too long; 88% thought the information was easy to understand; and 92% either agreed or strongly agreed that based on this experience, they would participate in an issue poll again.

CHART 1.6 - I Enjoyed Participating in the Issue Poll

n=1063

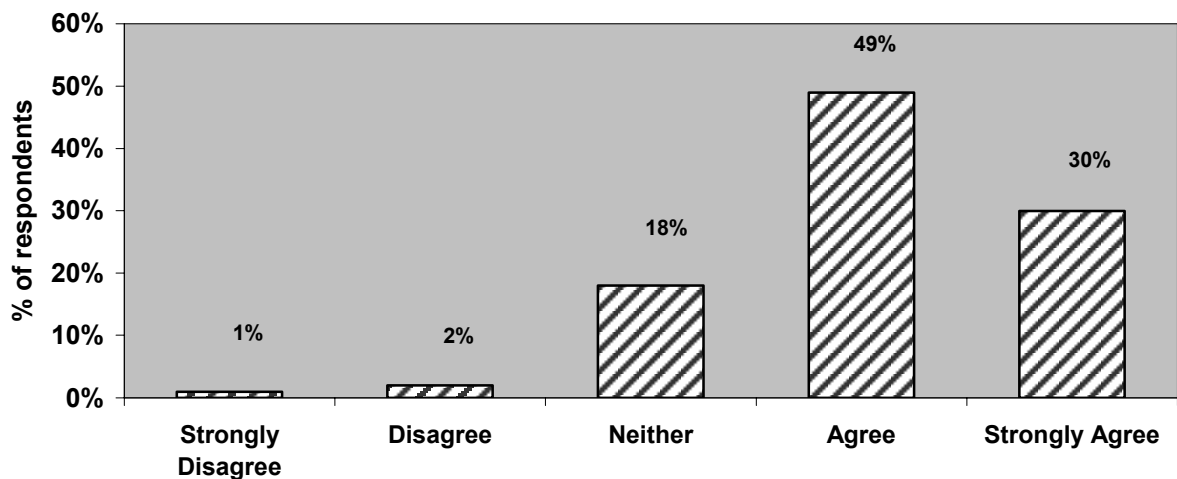


CHART 1.7 - The Issue Poll Was Too Long

n=1063

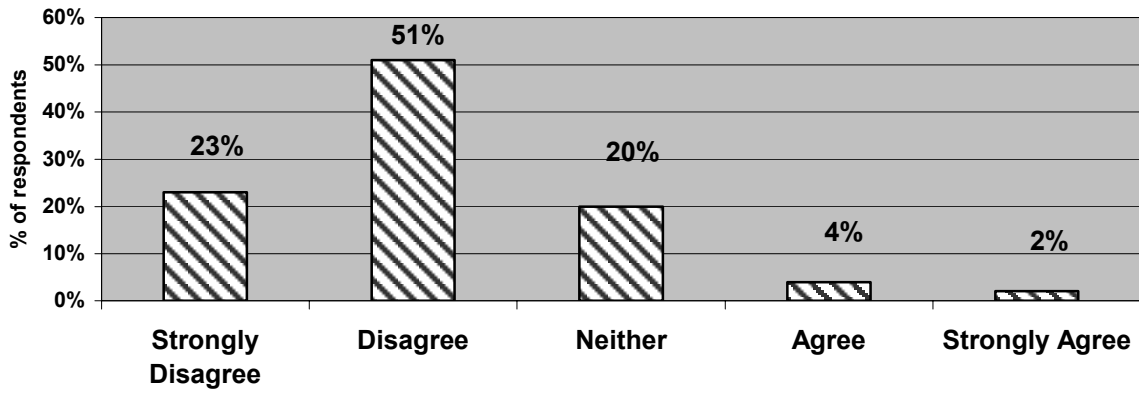


CHART 1.8 - The Information Was Easy to Understand

n=1063

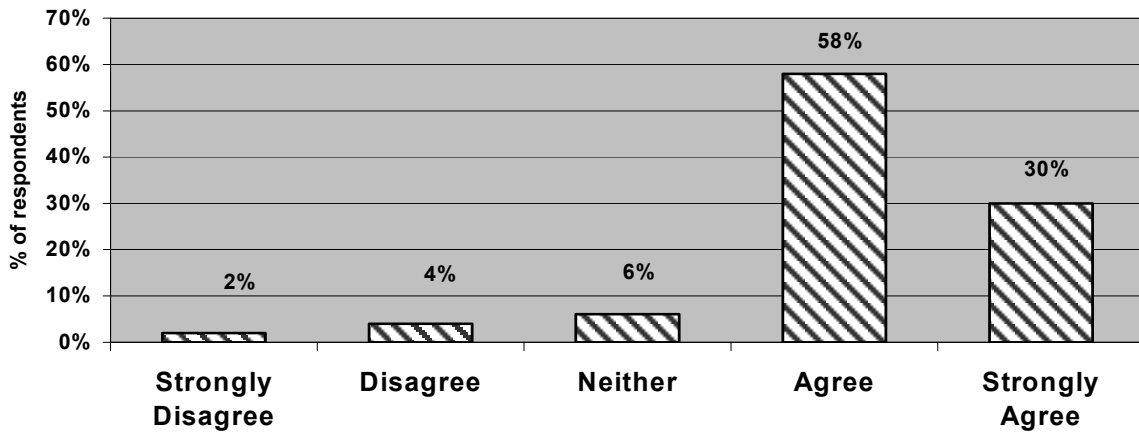
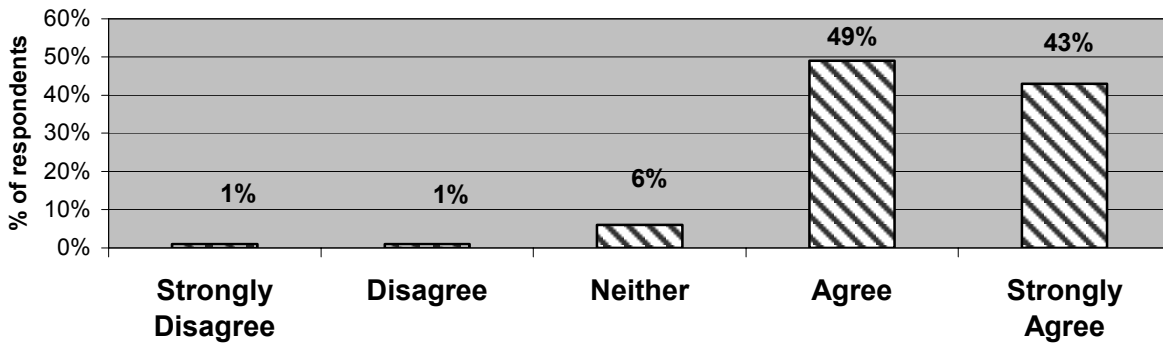


CHART 1.9 - Based on this Experience, I Would Participate in an Issue Poll Again

n=1063



We realize, as should all those who look at these results, that it is important not to confuse the issue poll with a scientific survey. Rather, its purpose was to provide the Subcommittee with a sense of what direction it should take on major issues and challenges facing the CPP(D) program. It also provided participants with some insight into a host of challenges and tradeoffs with potential solutions or action. We feel that we were given access to Canadians' views in an unprecedented and open manner.

By combining the knowledge that we gained from those who joined us online with the insights provided by those who came to our meetings as witnesses, we believe that we have set out on a course that Parliament, and its committees, could usefully follow.

People also showed us that Parliament can serve as an important information resource. For the e-consultation period (December 2002 through March 2003) the site statistics⁹ show that users were visiting the Subcommittee's Web site much more often than they had in the prior months — the Web site received 188,276 page requests. Compared to the same four-month period from the previous year when our Web site had a more traditional format, and only received 1,875 page requests, it represents an astonishing increase in Web site traffic. During the four months from December 2002 through March 2003, 41% of the page requests were generated by interest in policy papers and background documents prepared by the Parliamentary Research Branch.

The e-consultation on the future of the Canada Pension Plan Disability program allowed Canadians a degree of access to parliamentarians that is unprecedented. The Subcommittee strongly believes that online consultations represent the next step in the path towards greater participation by citizens in Canada's democracy.

Recommendation 1.1

Given the success of the pilot project on e-consultation in complementing its regular committee study of the Canada Pension Plan Disability and providing Canadians with information as well as involving them, the Committee recommends that:

- a. Each committee of the House of Commons consider putting in place an information-based Web site. Such a site could include common elements (e.g. information about how Parliament works, how committees operate and how to contact the committee) as well as information specifically related to an individual committee's mandate, activities and background information related to its specific studies.**

- b. The House of Commons and Library of Parliament be given appropriate additional resources to put in place**

⁹ Site statistics provided by the House of Commons, Information Services.

information-based committee Web sites with the capacity to facilitate e-consultations.

- c. The House of Commons and the Library of Parliament should put in place an overall framework or suggested course of action to guide any future e-consultations.**
- d. Where circumstances warrant, other committees of Parliament consider including e-consultations with Canadians as one of the options in carrying out a study.**

CHAPTER 2: CANADA PENSION PLAN DISABILITY AND THE GAP BETWEEN VALUES AND PRACTICES

The Canada Pension Plan (CPP) came into being in 1966 after Parliament passed an *Act to Establish a Comprehensive Program of Old Age Pensions and Supplementary Benefits* in the spring of 1965. The Act set up a national contributory public insurance program to provide income protection to workers in the event of a long-term interruption of earnings as a result of retirement, disability or death. The first disability benefit was paid in 1970. At present, the Income Security Programs Branch of Human Resources Development Canada (HRDC) administers the plan.¹⁰

2.1 CPP(D): What It Is and How It Works

The Canada Pension Plan Disability benefit (CPP(D)),¹¹ the focus of our study and of this report, has the goal of providing a degree of income protection to complement private insurance, personal savings and employment benefit programs by replacing a portion of the earnings of contributors who cannot work because of a disability. Children of CPP(D) beneficiaries up to the age of 18, or up to age 25 if they attend an educational institution full time, can apply for children's benefits. Other policy goals are: to promote a return to work by some beneficiaries who are able to re-enter the labour force; to be administered fairly and with appropriate accountability; and to remain sustainable for the future.¹²

The CPP(D) program provides workers with a means to share the financial risks associated with disablement as well as to give them equitable and portable treatment across the country. The universality of the CPP(D) program means that all workers (including those who are self-employed) — no matter the level of risk of injury — have access to benefits that are indexed to inflation if they become disabled. Disability pensions are paid until recovery or death or up to age 65, when they are converted to retirement pensions.

Today, the CPP(D) is the largest single long-term disability income program in the country. According to Human Resources Development Canada, which administers it, in 2002-2003 the CPP(D) provided roughly \$2.74 billion in benefits to more than

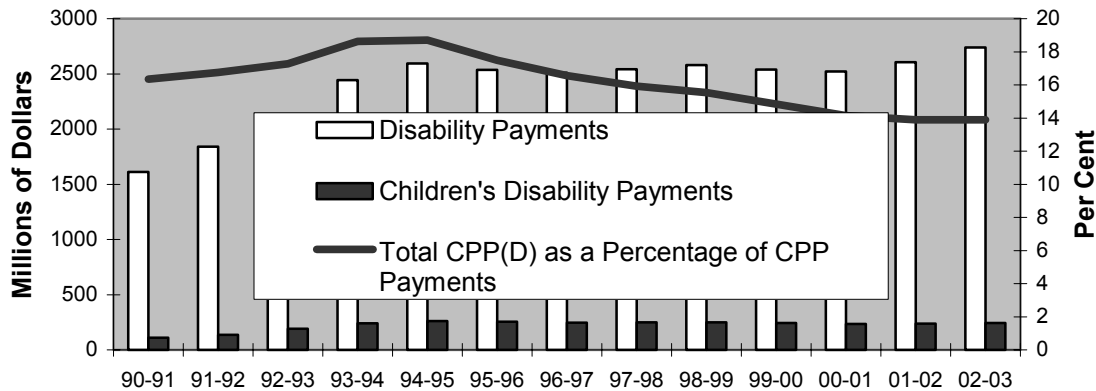
¹⁰ For a thorough history of the CPP's policy development and program administration, see Sherri Torjman, *The Canada Pension Plan Disability Benefit*, Caledon Institute of Social Policy, Ottawa, 2002.

¹¹ It should be noted that Quebec administers its own disability insurance program in a similar manner, under the Quebec Pension Plan.

¹² For a policy history of the CPP program see: Michael Prince, *Wrestling With the Poor Cousin: Canada Pension Plan Disability Policy and Practice, 1964-2001*, paper prepared for the Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security Government of Canada, available online at http://ocrt-bctr.gc.ca/pubs/prince/index_e.html.

282,500 beneficiaries. In addition to this, the program paid children's benefits worth \$244.9 million in 2002-2003. Payments made during the 1990s peaked in 1994-1995 (Chart 2.1), a somewhat surprising result given that the size of the CPP(D) caseload reached its apex in the following year (Chart 2.2). CPP(D)'s share (including children's benefits) of total CPP payments also reached a maximum of 18.7% in 1994-1995, and since then has declined steadily to 13.9% in 2002-2003.

CHART 2.1 - Annual Canada Pension Plan Payments



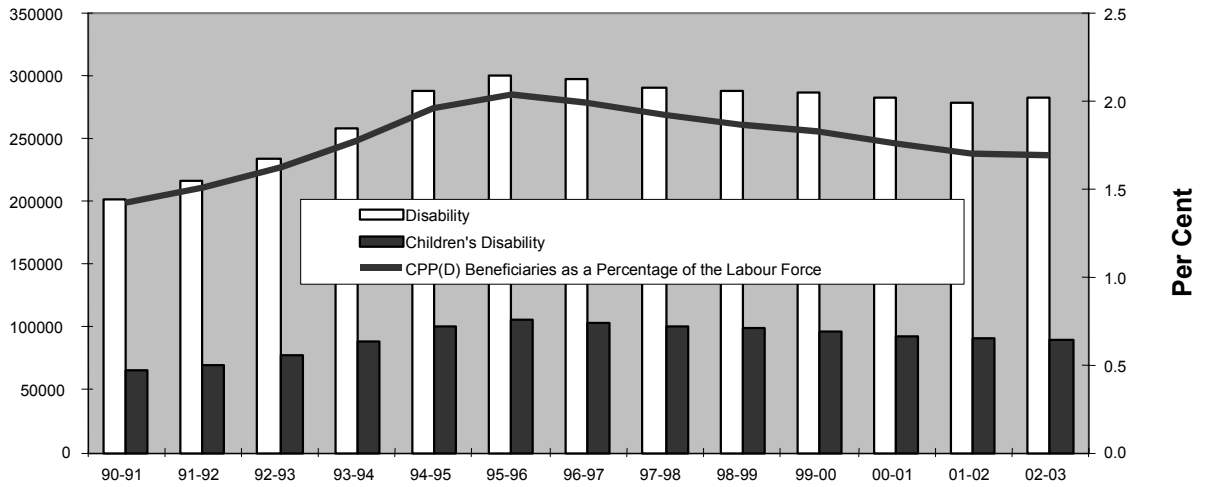
Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

The CPP(D) caseload increased significantly between 1990-1991 and 1995-1996, growing at an average annual rate of 7.8% (Chart 2.2). Thereafter, it began to decline at an average annual rate of 1.2%, falling from 300,118 beneficiaries in 1995-1996 to 282,543 in 2002-2003. Not surprisingly, a similar trend is found for the number of young individuals receiving the flat-rate children's disability benefit.

The growth in the CPP(D) caseload during the first half of the 1990s is attributed to a number of factors. These include legislative changes in 1987 and 1992 that expanded disability coverage; rising unemployment; and increased referrals of potential clients from social assistance and private insurance carriers.¹³ Other factors, such as new adjudication guidelines emphasizing the medical basis for approval, stricter eligibility conditions and improved labour market conditions, are thought to be key contributors to the declining caseload in the late 1990s and early 2000s.

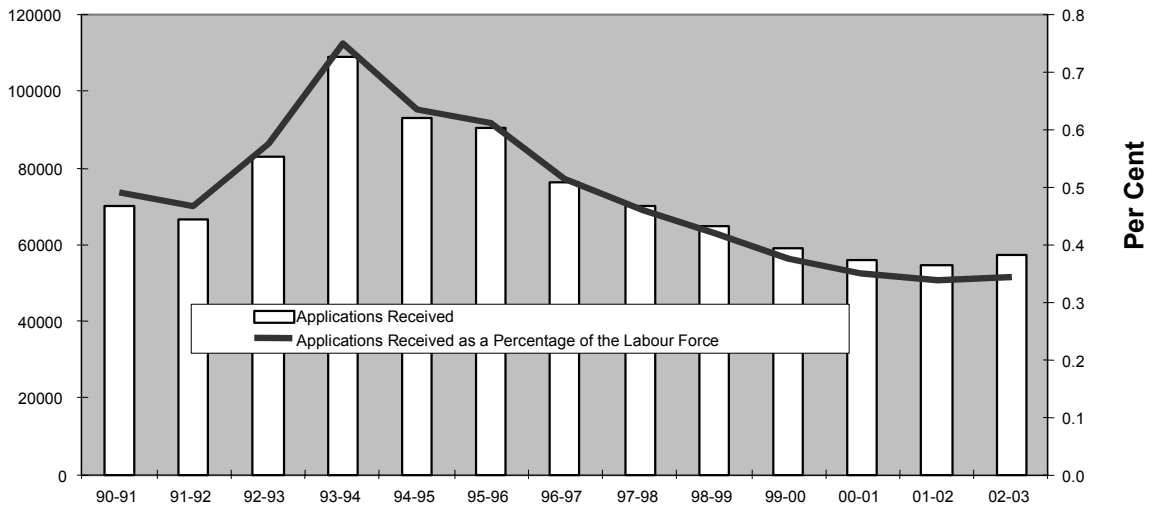
¹³ Canada Pension Plan, *Annual Report of the Canada Pension Plan, 1996-97*, Ottawa, 1997, p. 31.

CHART 2.2 - Average Number of Canada Pension Plan Disability Beneficiaries



Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

CHART 2.3 - Canada Pension Plan Disability Applications Received

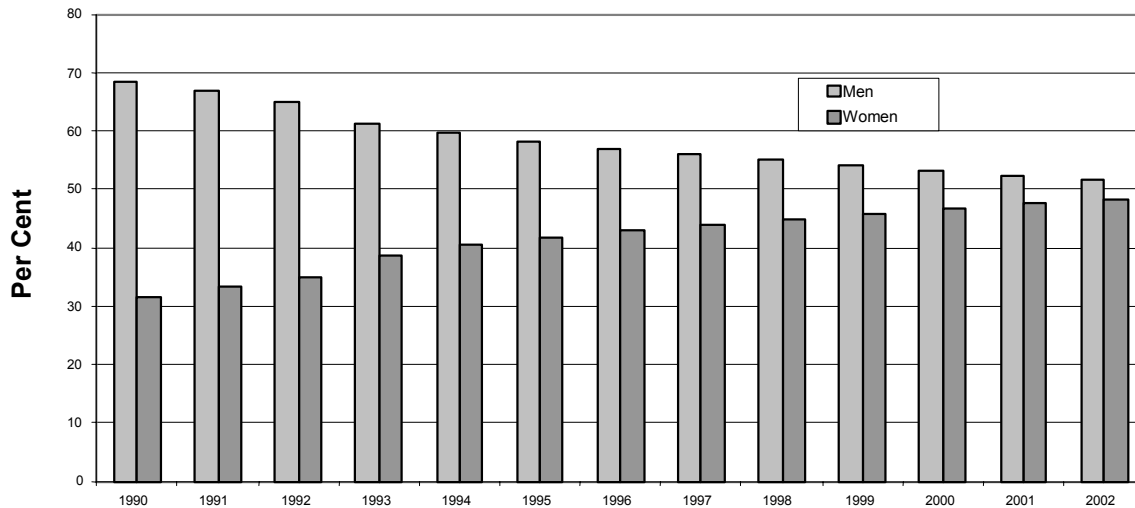


Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

The number of CPP(D) applications declined steadily after 1993-1994 (Chart 2.3). The volume of applications for CPP(D) relative to the size of the labour force is lower today than at the beginning of the 1990s. The relative size of today's CPP(D) caseload, however, has increased. Despite the reduction in the CPP(D) caseload during the last five fiscal years, the number of CPP(D) beneficiaries in 2002-2003 — expressed as a percentage of the labour force in 2002 — was more than 20% higher than at the beginning of the last decade. Moreover, the total number of CPP(D) beneficiaries (including children) expressed as a proportion of the total population also increased during this period by a similar amount.

In 1990, women accounted for 31.6% of the total CPP(D) caseload. By 2002, their share of the total caseload was 48.3%, an increase of more than 50% (Chart 2.4). During the Subcommittee's roundtable on 21 May 2002, labour force growth among women was cited as an obvious explanation for the rapid growth in women's share of the CPP(D) caseload. While this is undoubtedly an important factor, we note that women's share of employment growth during this period was about 58%, well below their more than 85% share of growth in the CPP(D) caseload in the same period.

CHART 2.4 - Distribution of Canada Pension Plan Disability Beneficiaries by Sex, June of Each Year



Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

In order to introduce the Canada Pension Plan in 1966, the federal government had to negotiate an amendment to the *British North America Act* (now the *Constitution Act*, 1867).¹⁴ This allowed the federal government to put a wider range of benefits within the CPP. It also allowed the provinces the choice of setting up a comparable plan. To date, only Quebec has done this and has put in place the Quebec Pension Plan (QPP), a parallel but independent program.

Since its introduction, therefore, federal/provincial considerations have determined, and continue to determine, the nature of changes to the CPP as a whole, as well as to the disability benefit. The Act requires that any major changes proposed by the federal government must be approved by two-thirds of the provinces included in the CPP or a comparable plan, and with two-thirds of Canada's population. Even though Quebec has its own plan, it also has a say in determining changes to the CPP. The provinces must approve amendments dealing with the type and level of benefits, as well as contribution rates, management of the CPP account and the CPP Investment Fund (established in 1998). Both levels of government get actuarial information about the functioning of the CPP from the Office of the Superintendent of Financial Institutions. The Office's Chief Actuary is responsible for conducting an assessment at least once every three years or whenever legislation regarding the plan is introduced. This information is used during a federal/provincial review of CPP that takes place every three years. Changes or amendments to either the disability or retirement provisions of the plan follow these reviews. Such a review began during the fall of 2002.

Many commentators, particularly Michael Prince of the University of Victoria, who also appeared before the Subcommittee, have highlighted the problems with the CPP(D) that have resulted from the low profile of the program compared to the retirement benefits portion of the CPP. Prince has pointed out that compared to recipients of Old Age Security benefits, retirement pensions or veterans' pensions, the CPP(D)'s beneficiaries are not seen as an important political constituency. He has concluded that in government reviews, reports and academic literature on public pension policy, the CPP(D) has not received great attention.¹⁵

Given the fragmentation of the disability income system, one of the issues that remains unresolved is whether the CPP(D) should remain tied to the retirement component of the CPP. If not, what alternatives exist? CPP(D) is very much the smaller part of the CPP benefits system. In 2002-2003, it accounted for about 13.9% of all CPP

¹⁴ The change was to section 94A, which now reads "The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter." This section itself was an amendment added to the *Constitution Act* in 1951 to allow the federal government to enact laws related to old age pensions as long as the legislation did not affect provincial legislation.

¹⁵ For a policy history of the CPP program see: Michael Prince, *Wrestling With the Poor Cousin: Canada Pension Plan Disability Policy and Practice, 1964-2001*, Ottawa, 2002. This paper was prepared for the Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security Government of Canada, available online at http://ocrt-bctr.gc.ca/pubs/prince/index_e.html.

benefits paid out by the plan. Decisions about policies and programs for the CPP(D) have been, to a large extent, driven by the need to preserve the security of the CPP's retirement benefits.¹⁶

Although the CPP(D) has changed since its introduction, the context of the Subcommittee's study has been most affected by the changes introduced since 1994. Starting that year, CPP(D) went through a period of retrenchment prompted by a two-year series of governmental reviews, federal/provincial reviews and a ministerial task force that undertook public consultations.¹⁷ The result of this process, the last set of major changes reflecting the decision to reduce costs by reducing the level of benefits and restricting eligibility, was enacted in 1998 by Parliament as Bill C-2, *The Canada Pension Plan Investment Board Act*. A chronology of recent major changes to the CPP is presented in the following tables.¹⁸

¹⁶ Finance Canada, *The Canada Pension Plan: Securing its Future for All Canadians*, Ottawa, 1997, p. 19.

¹⁷ The report on the public consultations noted that disability benefits had provoked considerable public debate because some people were concerned about the rapid escalation of CPP(D) costs while others wanted a new disability income benefit. Many believed the cost of disability benefits was threatening retirement benefits and should, therefore, be reduced. (Finance Canada, *Report on the Canada Pension Plan Consultations*, Ottawa, 1996 see also <http://www.cpp-rpc.gc.ca>.)

¹⁸ Michael Prince prepared these tables for his paper entitled *Wrestling with the Poor Cousin* (see Charts 13 and 14).

TABLE 2.1
CPP Disability Benefits: Pre-1998 Features and Post-1998 Reforms

CPP Program Element	Pre-1998 Features	Post-1998 Reforms
Retirement Pensions and Earnings-related Portion of Disability/Survivor Benefits	Based on average of last three years' maximum pensionable earnings (YMPE)	Based on average of last five years' YMPE
Contributory Requirements for Disability Benefits	Must work and contribute to CPP in 2 of last 3, or 5 of last 10 years	Must work and contribute to CPP in four of last six years
Combined Survivor/Disability Benefits	Ceiling equal to maximum retirement pension plus larger of two flat-rate components	Ceiling is the maximum disability pension; limits on flat rates
Retirement Pensions for Disability Beneficiaries	Based on maximum pensionable earnings when recipient reaches age 65, then indexed to prices	Based on maximum pensionable earnings at time of disablement, then indexed to prices until age 65
Disability Benefits upon death of Beneficiaries	Benefits paid to estates	No longer paid to estates
Death Benefit	Six times the monthly retirement pension of the deceased contributor to a maximum of \$3,580 (in 1997)	Six times the contributor's monthly retirement pension up to a maximum of \$2,500 (in 1998) and is frozen at that level
Year's Basic Exemption (YBE)	The YBE, which determines the lower earnings level for contribution purposes was, for all benefits under the CPP, 10% of YMPE	For retirement, survivor and death benefits the YBE is frozen at \$3,500, resulting in more people paying into the Plan over time For disability benefits, the YBE remains at 10% of the YMPE, which continues to rise each year. As of 2002, the disability basic exemption is \$3,900. The result is that fewer low-income people will make contributions and therefore not qualify for disability benefits

During the same period, CPP(D) went through a series of other changes either as the result of administrative decisions or rulings by the Courts. These are outlined in Table 2.2.

TABLE 2.2
Related Changes to the CPP Disability Program, 1993-2001

Year	Change	Policy Perspective
1993-1995	Contracts with private insurance companies signed by Government of Canada	Program Integrity
1995	Bill C-54: Additional medical advisors hired and part-time members appointed as judges to deal with increased number of appeals and the backlog of unheard cases; also expanded provision for the disclosure of information to better prevent mispayments and to collect overpayments	Program Integrity and Client Service
1995	New incentives to: allow beneficiaries to volunteer or attend school without losing benefits as long as they have a continuing disability; continue to receive benefits for three months after returning to work; and have their application fast-tracked if the same disability again prevents them from working	Return to Work and Community Participation
1995	New medical adjudication guidelines and appeals procedures “stress the use of medical factors and rule out the use of socio-economic factors in assessing disability”.	Program Integrity Financial Control
1997	Bill C-54 (enacted in 1995 but effective in 1997): Streamlining of the appeals system at the Pension Appeal Board level; the mandate of the Office of the Commissioner for Review Tribunals extended to include appeals from Old Age Security decisions	Program Integrity and Client Service
1997	CPP Disability Vocational Rehabilitation Program introduced by HRDC, based on previous pilot project	Return to Work
1998-1999	Bill C-2: Information-sharing agreements signed between HRDC and workers compensation boards of several provinces	Program Integrity Return to Work
2000	Bill C-23: all CPP benefits and rights extended to same-sex common law relationships	Entitlement to Income Protection
2000	HRDC begins mailing to all CPP contributors annual statements of their contributions	Client Service and Personal Responsibility
2001	Earnings exemption of up to \$3,800 from work while receiving CPP disability benefit	Return to Work
2001	Federal Court of Canada decision in the <i>Villani v. Canada</i> case presents a more generous interpretation of the definition of a severe disability in the <i>Canada Pension Plan</i> legislation	Income Protection
2001	A new newsletter for people receiving a CPP disability benefit produced by HRDC with future issues to be mailed out at least once a year	Program Integrity and Client Service

2.2 What We Discovered

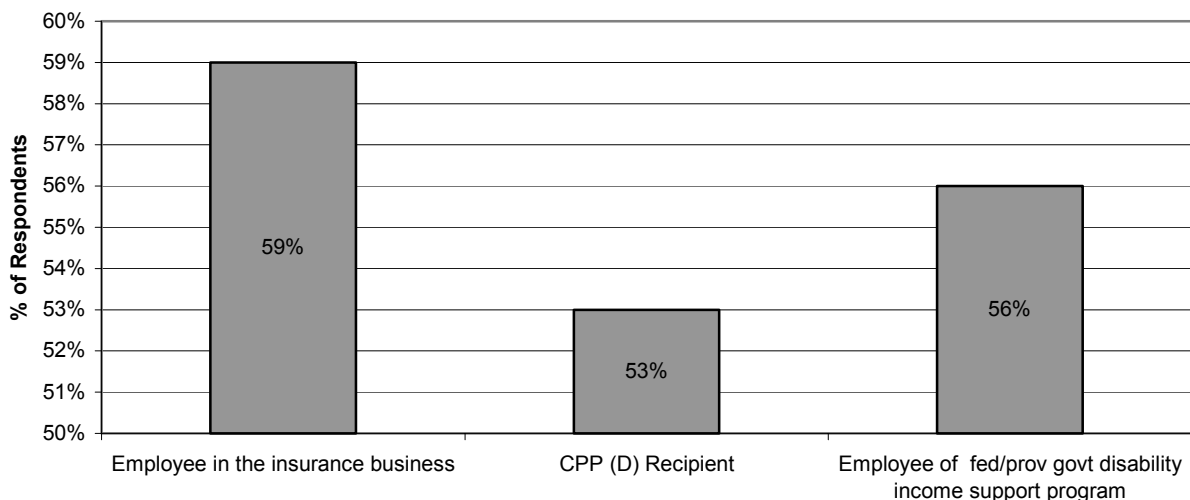
2.2.1 How Relevant is the CPP(D) Program to Canadians?

It's all about values. Since we needed to know how Canadians viewed the Canada Pension Plan Disability program we asked whether or not they valued its existence and whether it embodied the principles that they believed it should. We asked issue poll respondents three questions to determine the relevance of the CPP(D) program to Canadians. Results revealed that a majority of respondents (80%) strongly agreed that it is important to have a public insurance program to provide income support to people with disabilities who can no longer work. As well, a vast majority of respondents (91%) either agreed or strongly agreed that it is important to them that we have a public disability insurance program based on the principles of universality, portability, user contributions, and partial wage replacement.

2.2.2 Is CPP(D) Meeting its Objectives and Principles?

On the other hand, when asked whether the Canada Pension Plan Disability program currently meets its objectives and principles, respondents were divided. Overall, 41% of respondents either disagreed or strongly disagreed that the CPP(D) program currently meets its objectives and principles, whereas 36% either agreed or strongly agreed and 23% neither agreed nor disagreed.

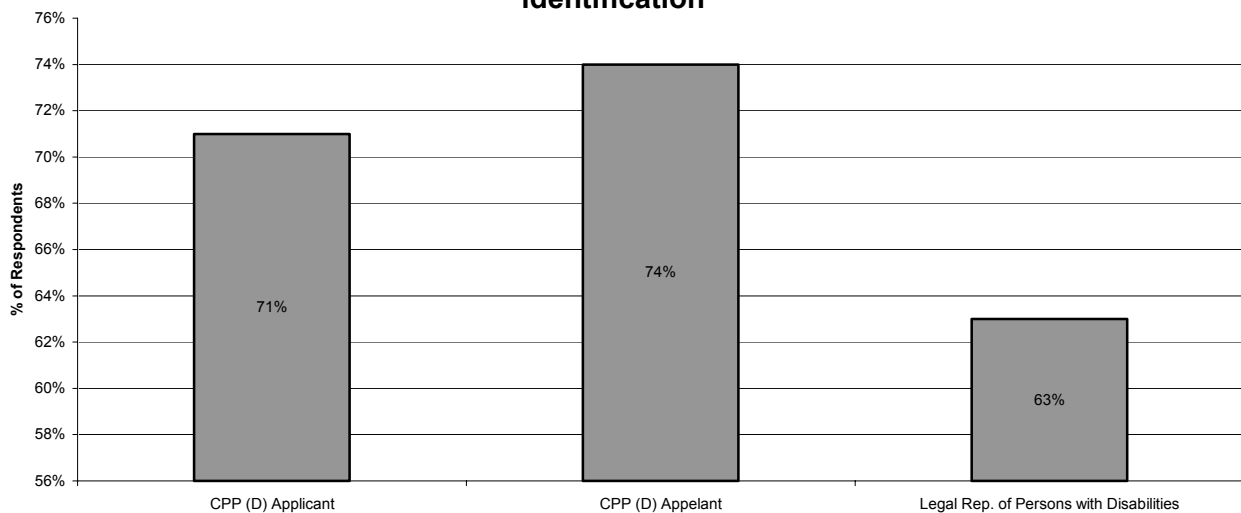
CHART 2.5 - Respondents who either agree or strongly agree that CPP(D) is meeting its objectives and principles by category of identification



* Please note that categories are not mutually exclusive.

The majority of respondents who identified themselves as CPP(D) applicants or appellants and/or as legal representatives of persons with disabilities do not think that the CPP(D) program currently meets its objectives and principles. At the other end of the scale, a majority of respondents who identified themselves as CPP(D) recipients, employees of a federal/provincial government disability income support program, and/or employees in the insurance business indicated that they think CPP(D) is meeting its objectives and principles (Charts 2.5 and 2.6).

CHART 2.6 - Respondents who either disagree or strongly disagree that CPP(D) is meeting its objectives and principles by category of identification



* Please note that categories are not mutually exclusive.

These results are not surprising since it is natural that those who are going through the most difficult part of the process such as applying for, or appealing, a decision about CPP(D) benefits would most likely see the program in a more negative light. They are joined in this view with those who represent persons with disabilities and defend their rights at times of conflict. Their dealings with the CPP(D) program occurred at stages of the process when people have to substantiate their disability according to stringent guidelines, subject to interpretation by CPP(D) staff. On the other hand, those respondents whose applications have been accepted, those working in the insurance business and those who work for a government disability income support program are more likely to appreciate the positive aspects of the program.

CPP, as it is crafted today, is not meeting the legitimate needs of all those who should qualify: by virtue of their contributions and their disability. There are groups of people who have made significant contributions to CPP, and who have severe disabling conditions that prevent them from working, who cannot qualify for the disability benefit. The CPP program is failing these people. **(BC Coalition of People with Disabilities, E-Consultation Participant)**

One of the main problems with the system is that disability benefits are based on the capacity of a person to work. This policy was developed in the 1960s in a social context that did not consider disabled people as active members of the population. With the recent technological breakthroughs and medical progress in the treatment of diseases and injuries, disabled people are increasingly active in society. **(Elisabeth Ostiguy, Director of Public Issues, Canadian Mental Health Association)**¹⁹

Certain things weren't discussed at all [during the CPP review] in 1996, the questions of new diseases, episodic diseases and the greater flexibility you have to build into the disability program to take into account these changes. **(David Walker, former Parliamentary Secretary to the Minister of Finance)**²⁰

2.3 The Need for Flexibility

The study undertaken by the Subcommittee looks at many of the 1998 changes to CPP(D) in light of the circumstances of 2003. In terms of general conclusions, our witnesses — those who appeared in person and those who sent us their views in the e-consultation — agreed. The Subcommittee endorses their views.

The underlying principles of CPP(D) still reflect the values of Canadians.

The CPP disability is an important program. It was a significant achievement of Canadians and the federal-provincial governments in the 1960s. It's worth keeping and doing so within the Canada Pension Plan. It needs some internal reforms, but perhaps even more importantly, it needs to be reinforced with other major changes. **(Professor Michael Prince, University of Victoria)**²¹

¹⁹ Subcommittee on the Status of Persons with Disabilities (hereafter SCSPD), *Evidence* (9:15), Meeting No. 7, 20 February 2003.

²⁰ SCSPD, *Evidence* (10:40), Meeting No. 23, 21 May 2002.

²¹ SCSPD, *Evidence* (16:20), Meeting No. 5, 5 February 2003.

The legislation, practices and administration of the program have not kept up with the times. As an aside, we would note that this shows up particularly in the French-language version of the *Act*. It uses terminology regarding disability that reflects the attitudes of forty years ago. Obviously, this language is also reflected in administrative manuals and materials. It is hard for us not to believe that it affects the approach of those who administer CPP(D) if they are dealing in an environment that uses archaic language unsuited to today's circumstances.²²

The CPP(D) program must reflect human as well as fiscal realities. The Subcommittee shares the view of Sherri Torjman who told us that:

I'm somewhat concerned about the fact that something might come out of the process at the end of the day that does not ensure Canadians are better off. Fiscal responsibility or the fiscal lens is absolutely crucial in anything we do. But it is only one lens. The human lens is extremely important. Personally, I go into a review with that lens. **(Sherri Torjman, Vice-President, Caledon Institute of Social Policy)**²³

The "human lens" will be ineffective without a flexible approach. Universally, everyone argued that CPP(D) must be flexible in order to serve Canadians, both those with disabilities and those without.

Policy needs to be flexible. **(Ainsley Chapman, Canadian Aids Society)**²⁴

[W]e start our brief by emphasizing the importance of supporting and strengthening a public plan that is portable and flexible. We believe the program does need to be strengthened, so that it is a real and continuing part of the social safety network. **(Harry Beatty, Canada Pension Plan Working Group of Ontario)**²⁵

²² In French, section 42 states that:

(2) Pour l'application de la présente loi :

- a) une personne n'est considérée comme invalide que si elle est déclarée, de la manière prescrite, atteinte d'une invalidité physique ou mentale grave et prolongée, et pour l'application du présent alinéa :
 - (i) une invalidité n'est grave que si elle rend la personne à laquelle se rapporte la déclaration régulièrement incapable de détenir une occupation véritablement rémunératrice,
 - (ii) une invalidité n'est prolongée que si elle est déclarée, de la manière prescrite, devoir vraisemblablement durer pendant une période longue, continue et indéfinie ou devoir entraîner vraisemblablement le décès;
- b) une personne est réputée être devenue ou avoir cessé d'être invalide à la date qui est déterminée, de la manière prescrite, être celle où elle est devenue ou a cessé d'être, selon le cas, invalide, mais en aucun cas une personne n'est réputée être devenue invalide à une date antérieure de plus de quinze mois à la date de la présentation d'une demande à l'égard de laquelle la détermination a été établie.

²³ SCSPD, *Evidence* (10:05), Meeting No. 23, 21 May 2002.

²⁴ SCSPD, *Evidence* (9:05), Meeting No. 7, 20 February 2003.

²⁵ SCSPD, *Evidence* (16:25), Meeting No. 6, 12 February 2003.

We really need to have a program that is far more flexible and far more able to meet a whole range of needs. **(Sherri Torjman, Vice-President, Caledon Institute of Social Policy)**²⁶

As a rehabilitation counsellor here are the main issues I see emerging from issues presented by clients: ...

— our systems (legal & financial) are focused too much on "permanent disability" which puts too much emphasis on having an individual prove how unable they are, versus finding flexibility to focus on their abilities and adaptations... **(Anonymous, E-Consultation Participant)**²⁷.

There must be ongoing monitoring and information for true flexibility to be achieved. Obviously, there is a need for systematic research to help bridge the gap between values and practice in the functioning of the CPP(D).

Sometimes you know exactly what you're doing and sometimes you're not sure what the impact is going to be. Then two or three years later it may be positive or it may be negative, but you need to hear voices from the communities. ... to hear back what these impacts have been. **(David Walker, former Parliamentary Secretary to the Minister of Finance)**²⁸

Recommendation 2.1

The Committee recommends that the current Federal/Provincial/Territorial Review of the Canada Pension Plan Disability take into account the fact that the current operations of the plan do not fully reflect the values that underlie the current legislation and regulations. One of these relates to equal access and we recommend that the Year's Basic Exemption (YBE) for the purposes of disability be returned to \$3,500 the same as that for retirement benefits.

Recommendation 2.2

The Committee recommends that the Government of Canada establish a permanent joint government and stakeholder advisory group (the CPP Disability advisory committee) with an ongoing mandate and resources to monitor and appraise the performance of the CPP

²⁶ SCSPD, *Evidence* (15:55), Meeting No. 5, 5 Feb 2003.

²⁷ Stories where participants indicated that they only wish to share their experience with the Subcommittee have been quoted in this report as "anonymous" with the inclusion of their province of residence. It should be noted that participants who chose not to register on the e-consultation Web site but participated in the process by sharing their stories are also quoted as "anonymous" but in those cases, there is no indication as to their province of residence.

²⁸ SCSPD, *Evidence* (10:40), Meeting No. 23, 21 May 2002.

disability program to ensure that it meets its stated purpose and objectives. Representation on the advisory group should include federal officials (Human Resources Development and Finance), health care providers, various disability organizations, patient advocacy groups, return to work and rehabilitation professionals. This advisory group should review performance and recommend changes to the CPP(D) on an ongoing basis and as part of the three-year federal/provincial/territorial review. The advisory committee should submit an annual report on its activities to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

Recommendation 2.3

So that future policy decisions pertaining to CPP(D) will be based on higher quality information, the Committee recommends that the Government of Canada make improvements to the analytical base of information about CPP(D) by encouraging research and establishing:

- a. partnerships between Human Resources Development Canada and the Social Sciences and Humanities Research Council of Canada;
- b. financial support for academic research on disability income and supports to improve quality of life for Canadians with disabilities;
- c. fellowships to lever money for research on the disability income system; and
- d. public sources of data pertaining to the operations of the federal disability income system, at Statistics Canada data centers across Canada.

CHAPTER 3: MODERNIZING CPP(D) DEFINITIONS AND ELIGIBILITY

All disability income replacement programs or pensions contain two general criteria to establish eligibility: a medical condition that results in a disability and constraints with regard to employability. The definition used by CPP(D) contains both of these plus a contributory requirement. The general nature of these eligibility requirements has not changed substantially since 1966. To be eligible, a person must have a severe and prolonged disability, be unable to work and have contributed to the Canada Pension Plan for a defined period of time (currently four out of the last six years).²⁹ If people meet these conditions, they are eligible for benefits; if they do not meet them, they do not receive anything. Michael Mendelson told us that:

... at its heart, the Canada Pension Plan Disability is a kind of program working by binary categorization. By this I mean you set up a fence. On the one side of the fence are the people who are entitled to the program, who acquire the label of being disabled or of having a certain kind of disability; and on the other side of the fence are those who don't manage to make it through that barrier. We know that people don't come in categories... . We know that people come in spectrums, if we can call it that. These are not even one-dimensional spectrums, but very complicated multi-dimensional ones. **(Michael Mendelson, Caledon Institute of Social Policy)**³⁰

In the audit of the Canada Pension Plan Disability in 1996, the Auditor General reinforced the difficulty of setting a fence around a disability program and stated the situation clearly:

The status of persons with disabilities remains a complex social issue and is difficult to determine with precision. It entails especially sensitive human, moral and emotional dimensions. It is made up of individual cases all different from one another, from which it is impossible to draw general conclusions.³¹

When the Subcommittee began this study, the participants in our 21 May 2002 roundtable identified eligibility criteria for CPP(D) as one of the major issues that they believed we should grapple with as we moved forward in our work.³² The fundamental questions we faced were:

²⁹ The *Canada Pension Plan* (R.S. 1985, c. C-8) sets out the minimum contributory period in section 44 and the statutory definition of disability in subsection 42(2).

³⁰ SCSPD, *Evidence* (16:00), Meeting No. 5, 5 February 2003.

³¹ Auditor General of Canada, *1996 Report of the Auditor General of Canada*, Chapter 17, Ottawa: 1996, paragraph 17:23.

³² SCSPD, *Evidence*, Meeting No. 23, 21 May 2002.

Should [the eligibility criterion of severe] include looking at other factors that affect employability? Should it look at the level of literacy, the level of language proficiency, violence somebody may have experienced in their lives, and the unemployment rate in the region where the person is applying?...

Are there other conditions that should be eligible for disability benefits that may actually not fit into the current criteria because they don't have the medically objective features you'd be looking for, but that are nonetheless considered to be disabling conditions? **(Sherri Torjman, Vice-President of the Caledon Institute of Social Policy)**³³

Using the issues raised at the Roundtable, the Subcommittee asked Canadians further questions about CPP(D) eligibility criteria in our online consultation.³⁴ The issue poll questionnaire also outlined possible changes to these criteria.³⁵ Witnesses who came before the Subcommittee as well as participants in the online consultation who sent in stories and solutions raised many concerns related to flexibility in the application of CPP(D) eligibility rules. These dealt with the interpretation of eligibility criteria by CPP(D) staff. Another area of concern deals with the interpretation of the requirement that an individual must not be able to regularly pursue a substantially gainful occupation in order to qualify for CPP(D) benefits.

After looking at all the evidence, the Subcommittee agrees with Professor Michael Prince who told us that:

We need to ensure that one of the values guiding the reforms is that this and other programs have clear, coherent and consistent eligibility criteria that respect the

³³ SCSPD, *Evidence* (10:25), Meeting No. 23, 21 May 2002.

³⁴ To inform respondents about the challenges facing decision-makers with respect to updating the CPP(D) program, arguments for and against changing the eligibility criteria were presented in the issue poll questionnaire. The arguments in favour of changing the eligibility requirements were: 1. The eligibility requirements must be expanded if CPP(D) is to be responsive to changes in technology, medicine and the nature of work. 2. CPP(D) needs to be more flexible to allow for a consideration of mental illness and degenerative diseases like multiple sclerosis or cystic fibrosis where people are only able to work part time to be eligible for benefits. 3. It is unfair to ask older members of the workforce with disabilities to learn a new job that would accommodate their disability. 4. The eligibility requirements should be more flexible and allow for consideration of a person's skills and the local job market.

The arguments against broadening coverage of CPP(D) were: 1. Higher CPP contributions from employees and employers would be required to expand coverage of CPP(D). 2. A person should be willing to retrain to get a new job that can accommodate their disability. 3. People should consider relocating if there are opportunities to find employment elsewhere. 4. EI, not CPP, is designed to deal with local labour market challenges.

³⁵ These were: 1. Persons who have not contributed to the Canada Pension Plan (CPP) during four out of the last six years but who have made substantial CPP contributions throughout their working life (e.g., for 10 or 20 years). 2. Persons with degenerative illnesses such as multiple sclerosis who have difficulty maintaining long-term work and contribution requirements. 3. More persons with mental illnesses and comprehension disabilities. 4. Consideration of "real life" circumstances (e.g. a person's skills, education, residence, age, and local job opportunities).

intentions of Parliament and the legislative assemblies of the provinces agreeing to this program. (Professor Michael Prince, University of Victoria)³⁶

3.1 What We Discovered

3.1.1 Defining Disability

Defining disability, and applying the definition, is a thorny and difficult question. This is particularly the case in light of the need to apply the “binary” categorization to establish eligibility in federal disability programs to a personal circumstance that fits best when it is assessed on a subtle gradient of impairment. The difficulty is compounded by the fact that someone “wins” or “loses” — there is no compromise solution. Where should the line be drawn?

The Subcommittee on the Status of Persons with Disabilities has tried on several occasions to prod the government to address the confusion surrounding the definition of disability used in federal programs. In the 2001 report *A Common Vision*, the Committee recommended that the federal government put together a task force to study ways of harmonizing the various definitions in federally administered disability programs.³⁷ We asked for a progress report by June 2002. Even though the government response accepted our recommendation,³⁸ this deadline has come and gone with no taskforce announced and no progress reported.³⁹

As expected, the definition of disability assumed considerable importance during our study of the CPP(D). Apparently, the definition used in CPP(D) was inspired by the social security system in the United States when that country brought in disability insurance in the mid-1950s and, as we have pointed out earlier, CPP(D)’s definition has not deviated from this model for almost half a century. During the Subcommittee’s study, the issue of definition came up in several contexts:

³⁶ SCSPPD, *Evidence* (16:15), Meeting No. 5, 5 February 2003.

³⁷ Standing Committee on Human Resources Development and the Status of Persons with Disabilities, *A Common Vision: Interim Report*, Ottawa, 2001. See Recommendation 6.

³⁸ Government of Canada, *Government of Canada Response to A Common Vision: Interim Report*, Ottawa, 2001.

³⁹ Since then, the issue of definition arose when the Subcommittee studied and reported on the Disability Tax Credit (DTC) that establishes eligibility by using a similar — but differently administered definition — to the CPP(D). At that time, the Subcommittee again set out its concerns with the need to coordinate the various definitions of disability used by federal programs. Although the report did not contain an overarching recommendation on the issue, it recommended specific changes to the definition of eligibility for the DTC that would make it better fit the circumstances of people with disabilities. Recommendations 3 and 4 specify certain modifications (Standing Committee on Human Resources Development and the Status of Persons with Disabilities, *Getting it Right for Canadians: The Disability Tax Credit*, March 2002, p. 7).

- the wording of the definition of disability used by the CPP(D);⁴⁰
- the interpretation of “severe and prolonged” disability and its determination by nurses and medical professionals working for the Review Tribunal and Pension Appeal Board;
- its relationship of both “severe” and “prolonged” to the ability to work; and
- the incorporation of “real life circumstances.”

Canadians repeatedly told us that they did not understand why someone with a disability could be eligible for one federal program but not another.

I am a correctional officer. I had an injury that became an illness, and I had surgery on my shoulder at 29 years old. I returned to work, but 14 years later, my condition degenerated and more surgery was necessary. I never recovered and surgeons told me that my current career was over.

My disability insurance at work took over and began to pay about 66% of regular weekly earnings. My contract stipulated that I had to apply for CPP(D). I found the application long, though not that difficult to complete. I was satisfied that, with the findings provided by my specialists, my benefits were accepted. For the next 11 years, CPP(D) worked very well for me. However, last year, I found out that I was no longer allowed the disability tax credit, despite my physician’s protests on my behalf. It is my opinion that anyone who qualifies for CPP(D) benefits should also automatically receive the disability tax credit. To lose this credit is a major blow, especially as I have one child in university and another about to start this fall. We needed that money to help with tuition and living expenses for our kids. My income has been reduced by \$1500 because of this change. **(Anonymous, E-Consultation Participant)**

One of the things that confuses ordinary Canadians is why they may qualify for one federal program under one definition of disability, but not under others. HRDC is undertaking a review of these definitions across various federal programs and services. I would urge that this process become more transparent, more public, more accountable to this committee and more participatory, so that groups are

⁴⁰ Section 42 of the *Canada Pension Plan Act* defines disability as follows:

For the purposes of this Act,

- (a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,
 - (i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and
 - (ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and
- (b) a person shall be deemed to have become or to have ceased to be disabled at such time as is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

involved in it. I think this subcommittee should play a role in reviewing the exercise sometime over the next two to five years. **(Professor Michael Prince, University of Victoria)**⁴¹

While the subject matter before the subcommittee today is the CPP disability program, we believe a broader focus on the issue of disability itself and federal health programs in general is needed. Issues related to the CPP disability program are issues common to other federal disability assistance programs...As with our presentation on the disability tax credit program the C[anadian] M[edical] A[ssociation] recommends that a standard of fairness and equity be applied across all federal disability benefit programs. Currently there is virtually a different definition and a different assessment process for each and every program. A common frustration for physicians is that while the patient qualifies as disabled under one disability program, that same patient does not under another.

The CPP criteria define "severe" as preventing an applicant from working regularly at any job and "prolonged" as long term or as that which may result in death. However, the disability tax credit program notes that "severe" is to be interpreted to mean markedly restricting any of the basic activities of daily living and that a disability must be "prolonged" over a period of at least 12 months... Other programs, such as veterans' benefits, that have entirely different criteria have added more to this mixture. **(Dr. Dana Hanson, President, Canadian Medical Association)**⁴²

I know the issue of the disability tax credit has certainly been controversial. One of the things we have heard and are suggesting is that if someone does qualify under CPP as having a serious and prolonged illness, that should automatically qualify them for the disability tax credit, rather than their going through different kinds of criteria, a different kind of screening, and being forced through yet another maze. We recognize that it truly is a maze. There are numerous definitions of disability out there, an absolute patchwork quilt of disability programs. Ultimately we have to pull that together, but as an interim measure certainly we can look at there being some consistency between federal programs. **(Dr. Cheryl Forchuk, Member, CPP Review Tribunal Panel)**⁴³

Recommendation 3.1

Given the ongoing problems with definitions of disability, the Committee recommends that the Privy Council Office establish a taskforce, modelled on the Voluntary Sector Taskforce, to work with relevant partners from the community to address these problems (particularly those associated with CPP(D) and the Disability Tax Credit). The Committee further recommends that the federal government initiate discussions with the provincial and territorial governments to bring some consistency and coherence to the definitions of disability used by programs in all jurisdictions.

⁴¹ SCSPD, *Evidence* (16:40), Meeting No. 5, 5 February 2003.

⁴² SCSPD, *Evidence* (11:25-11:30), Meeting No. 8, 18 March 2003.

⁴³ SCSPD, *Evidence*, (9:25), Meeting No. 9, 1 April 2003.

Recommendation 3.2

The Committee recommends that a comprehensive information package be developed to provide a description of each federal disability program which requires medical assessments, its eligibility criteria, the full range of benefits available, copies of sample forms, and any other relevant material.

3.1.2 What about Degenerative, Cyclical and Mental Disabilities?

Some Canadians have experienced more difficulties with the application of the “severe and prolonged” element of the CPP(D) definition of disability than others. The Subcommittee, therefore, was interested to find out whether CPP(D) should be more flexible in applying the eligibility rules to people with degenerative diseases and mental illnesses. A vast majority of respondents to our Issue Poll either agreed or strongly agreed that CPP(D) eligibility rules should be more flexible for both people with degenerative diseases and people with mental illnesses (92% of respondents). As well, the stories and solutions presented to the Subcommittee highlighted the need for flexibility in applying eligibility rules and for broadening the rules to include persons who suffer from degenerative diseases (e.g. multiple sclerosis, cystic fibrosis, arthritis) and mental illnesses, as well as so-called “invisible illnesses” (e.g. fibromyalgia, chronic fatigue syndrome, myofascial pain syndrome, multiple chemical intolerance or sensitivities). Many CPP(D) applicants have disabilities related to medical conditions for which it is very difficult to test or scan. These people told us that they find it difficult to qualify for CPP(D) benefits because of CPP(D)’s emphasis on so-called objective medical evidence.

Definition of severe and prolonged is too rigid to include the realities of Relapsing Remitting MS for some people. Some people have 10 symptoms and some have one, some symptoms are severe, others are less severe and all of this changes over time, nothing stays the same (except for the ones who were progressive — they deteriorate quickly and stay there). **(Anonymous, BC, E-Consultation Participant)**

... a new and fairer definition of disability [should] be developed to cover people with severe, prolonged or recurrent disabilities, one that will touch people who have cyclical kinds of illnesses. **(Deanna Groetzinger, Vice President, Multiple Sclerosis Society of Canada)⁴⁴**

I have Fibromyalgia, Chronic Fatigue Syndrome, Myofascial Pain Syndrome, and many other known illnesses that fall under the umbrella of the “Invisible Illnesses” of FM/CFS, such as Irritable Bowel Syndrome, MVP, OA, Migraines, GERD, etc. I applied for CPP Disability only after I had tried everything imaginable to cope with and/or improve my life in living with these illnesses. ... I gave up all social activities, changed my lifestyle dramatically by down-sizing the home I lived in, curtailed all my hobbies that I enjoyed (gardening, reading, visiting), and had to quit a job that I loved dearly because I was just unable to do it any longer. ...

⁴⁴ SCSPD, *Evidence* (9:25), Meeting No. 7, 20 February 2003.

My application has been in the “process” now for almost 2 years and there is no need for this to go on that long. ... Their failure to acknowledge our illnesses (request repeat letters, request further tests, paper us to death with routine form letters), and not treat us individually, only intensifies our feelings that we are being treated like liars, thieves, and cheats. **(Sandy, ON, E-Consultation Participant)**

I think you have to acknowledge the emotional mental illness to a greater extent. I think that is a difficulty. It's been alluded to by the Canadian Psychiatric Association, and also the sequela of depression that sets in, in an individual who is not working, and how that even contributes further to the person's disability and can contribute to a greater extent to their disability. **(Dr. Hillel Finestone, Psychiatrist, Elizabeth Bruyère, Health Centre)**⁴⁵

Despite the fact that MCS [Multiple Chemical Sensitivities] is recognized by the Canadian Human Rights Commission as a legitimate disability, I have been denied long-term workers compensation benefits, disability benefits, workplace accommodation, and rehabilitative programs offered to other persons with disabilities. I qualify for superannuation disability, but have been refused CPP disability benefits. No one will explain how my claim can be accepted and refused under the same Treasury Board definition of disability. My disability claim experience typifies that of other MCS claimants. **(Anonymous, E-Consultation Participant)**

We heard that the evaluation tools for people with mental illnesses and impairments do not work well. Dr. Blake Woodside of the Canadian Psychiatric Association told us that a new tool, separate from those assessing physical handicaps, should be developed that would set clear and reliable standards for disability and functional impairment specific to mental illness.⁴⁶ New and specific assessment tools could also be developed for many other illnesses.

Recommendation 3.3

The Committee recommends that the terms “severe and prolonged” in section 42 of the *Canada Pension Plan* be amended to take into account cyclical and degenerative mental and physical conditions.

Recommendation 3.4

Whether Recommendation 3.3 is implemented or not, the Committee recommends that Human Resources Development Canada (HRDC) immediately amend its CPP regulations, administrative guidelines, and manuals to ensure that the interpretation of the term “severe and prolonged” disability properly considers degenerative diseases, as well as mental, episodic and invisible illnesses (e.g. chronic pain, chronic fatigue syndrome, fibromyalgia and multiple chemical

⁴⁵ SCSPD, *Evidence* (12:15), Meeting No. 8, 10 March 2003.

⁴⁶ SCSPD, *Evidence* (11:45), Meeting No. 8, 18 March 2003.

sensitivities). In addition, HRDC should develop, in consultation with the community and health care professionals, specific evaluation tools for these particular disabilities to be used in assessing eligibility for CPP(D).

3.2 Gatekeeping

Many of those who appeared before us and some participants in our online consultations described serious concerns with respect to the application of the definition of disability and how it affects decisions to allow or deny CPP(D) benefits. According to the Act, these benefits are payable only in cases where a person has a mental or physical disability that is “severe and prolonged” enough to interrupt his or her ability regularly to pursue any substantially gainful employment (temporary and partial disabilities are not covered).⁴⁷ The cause of the disability is irrelevant.

We are concerned that the working definition of “disability” seems to change through administrative fiat. Basically we’ve had the same definition in the legislation since the act came in, in the sixties, with no change, but the interpretation seems to be moved back and forth by the department depending on a whole range of factors. **(Harry Beatty, Canada Pension Plan Working Group of Ontario)**⁴⁸

3.2.1 Applying the Definition of Disability

Who decides? There appear to be different parts to this issue. The first of these relates to the position of physicians as gatekeepers at the application stage. Doctors are paid by CPP(D) to provide medical information about an individual who has applied for CPP(D). This information can include consultants’ reports, investigative reports and hospital notes. If a person appeals a negative decision regarding eligibility, CPP(D) may contact the physician again for additional information. Physicians told us that filling out all the different types of medical forms with different criteria was a considerable burden on their time and energy.⁴⁹

Increasingly, physicians are spending more and more of their time filling out forms, forms for federal health programs such as the CPP, for private health insurance claims, pension benefits, tax credit eligibility, pharmaceutical plans and workers’ compensation to name just a few. To figure out all the various forms and

⁴⁷ It should be noted that in the province of Quebec, the QPP office employs a less stringent definition for applicants who are 60-64 years old but is, however, less likely to cover mental diseases and chronic fatigue than the CPP(D) program.

⁴⁸ SCSPD, *Evidence* (16:35), Meeting No. 6, 12 February 2003.

⁴⁹ CPP will reimburse physicians up to \$65 for the initial medical report; up to \$25 for the reassessment medical report and up to \$50 each for the “Scannable Impairment Evaluation for the Medical Report — Recurrence of the Same Medical Problem”. Patients are responsible for any extra costs and physicians are advised to bill them directly. If CPP asks for a narrative report it will pay a physician up to \$150 for it. CPP pays specialists directly for independent medical consultations or functional capacity evaluations or to determine continuing eligibility.

determine eligibility, you almost need to be a physician, a lawyer, and a tax expert. **(Dr. Dana Hanson, President, Canadian Medical Association)**⁵⁰

What I am looking for is, if within the federal programs there could be one simple item with a similar definition yet the criteria could be applied if Veterans Affairs said those criteria had to be something related to work with the armed forces or the RCMP, or what have you, versus for the general population, through the CPP. Those criteria could be applied; however, the basic similarities could be utilized to minimize the paperwork and time consumption that many of us feel quite concerned about. **(Dr Ashok, Muzumdar, President, Canadian Association of Physicians with Disabilities)**⁵¹

There's a different definition and a different assessment process for every program, so that people have to go back to their doctors for a different form every time they apply for something. I would at least like to see somebody look at the programs and at the differences between them to see if they can be justified, or whether there is a possibility of having not necessarily a standardized but at least a more uniform approach in some ways. **(Harry Beatty, Canada Pension Plan Working Group of Ontario)**⁵²

... as a physician when I first began dealing with people who are disabled, I had no idea how to fill out the forms. Nobody has ever told me. I have just been told by one of my colleagues here that there is actually some kind of guideline for physicians but because I am not a family physician, I was never made aware of it. So I feel badly that some of my patients may have been at a disadvantage early on in the process when I didn't have a good understanding of the system and I think it would be essential since doctors are part of the process, to give us some information about how to fill out the forms. **(Dr. Eleanor Stein)**⁵³

In the Committee's view, the government needs to take action to reduce the burden on physicians and to better inform the medical profession as a whole about how to assist and assess patients who are applying for CPP(D).

Recommendation 3.5

The Committee recommends that the mandate of the taskforce to clarify the definition of disability (see Recommendation 3.1) include, as a priority, consideration of specific ways to reduce the administrative burden placed on health care providers and applicants for federal disability benefits by using a common application form (or by consolidating application procedures) and common assessment procedures (e.g. using CPP(D)'s nurse practitioners also to determine eligibility for the Disability Tax Credit).

⁵⁰ SCSPD, *Evidence* (11:25), Meeting No. 8, 18 March 2003.

⁵¹ SCSPD, *Evidence* (11:35), Meeting No. 8, 18 March 2003.

⁵² SCSPD, *Evidence* (17:05), Meeting No. 6, 12 February 2003.

⁵³ SCSPD, *Evidence* (9:45), Meeting No. 13, 13 May 2003.

Recommendation 3.6

The Committee recommends that Human Resources Development Canada provide the comprehensive information package (see Recommendation 3.2) to all health care professionals and put in place an outreach program to provide them with information and education.

Applying the definition of disability also involves the possibility that CPP may decide to send an applicant to a specialist or request an “independent medical consultation” for a second opinion.⁵⁴ In addition, adjudicators who are medical professionals (usually nurses) decide whether an initial application meets the “severe and prolonged” criteria and may consult CPP physicians. The adjudicators do not have face-to-face meetings with the applicant.

The Subcommittee received contradictory evidence on how the definition is applied in practice. The *Physician’s Guide* prepared by HRDC states that “‘prolonged’ means that the disability will prevent your patient from going back to work in the next 12 months or is likely to result in death.”⁵⁵ On the other hand, we heard evidence that this interpretation is inconsistently applied over time and across the country. The panel members who adjudicate appeals submitted a report that told us that they have encountered individuals who are “severely” disabled for a definite period (up to a few years), but that the disability may not be of indefinite duration. When an individual returns to work, a CPP(D) application or appeal may be outstanding and, therefore, not considered prolonged according to the Canada Pension Plan or its administrators. The appeal tribunals have granted benefits for what they call these “closed periods” but believe that the legislative authority to do this is unclear.

The issues most burning in my medical practice were not addressed. That is that applicants have to be “permanently” disabled to qualify. It says prolonged in the initial application but in the appeals process it is clear that “permanent” is what is meant. The patients I see who have severe, chronic but indeterminate disorders like Chronic Fatigue Syndrome, Fibromyalgia and Multiple Chemical Intolerance where some people get better or have long remissions never get approved because of the possibility however remote that they may get better, yet many cannot work for long periods of time sometimes for ever. How are they to survive in the meantime. My patients lose all their possessions, use the food bank and live in poverty at the very time when they should be accessing adjuvant medical care, excellent nutrition, attending educational and supportive groups, resting, etc. The emotional impact of this makes them sicker, sometimes beyond the point of recovery once their case is finally approved. There has to be a better way to consider these types of applicants. **(Eleanor, AB, E-Consultation participant)**

⁵⁴ Human Resources Development Canada, *A Physician’s Guide to Canada Pension Plan Disability Benefits*, Ottawa, 2002, p. 5, 7.

⁵⁵ *Ibid.*, p. 4.

Along with doctors and advocates, a fair number of participants in our online consultation expressed frustration particularly with the process of medical evaluation and decision making and also with the evaluation by “assigned” medical experts or nurses affiliated with the Pension Appeal Board and Review Tribunal. With regard to disability assessment, they argued that these medical professionals:

- do not always complete an in-depth assessment of the medical condition of applicants or appellants to determine disability and often spend only a few minutes with an appellant;
- do not systematically consider other medical evidence presented by other medical professionals who may have a much longer patient/doctor relationship and a better appreciation of the disabilities of a person and whether such a person can maintain employment or not;
- do not use a “real world test” to determine disability (this relates to whether, or to what extent, an individual’s particular life circumstances in relationship to disablement should be taken into account); and
- make arbitrary decisions that ultimately may have a huge impact on the future quality of life of appellants who are completely at their mercy.

... it’s hard for me to understand how — I don’t think it’s fair to expect how a physician can make a determination whether someone who perhaps has difficulty walking is going to be able to perform any other different functions in our society, for the purpose of their short, typically 10-, 15-minute interview. **(Dr. Michael Schweigert)⁵⁶**

A MAJOR INVESTIGATION into the doctors to whom we are sent for evaluation must be done. In my case, Dr. xxxx of Toronto showed no compassion, little knowledge of the disease, made me spend most of my evaluation filling out forms and spent only about 15 minutes with me. He didn’t even take my blood pressure!!! He did some very weird touching and did nothing close to the types of evaluations that I had had by 3 other CFS doctors, all of whom were well aware of his “working” for the government. ... His location, about a 2-hour drive from my home was also complained about. I strongly requested that a doctor closer to home be used, but the person in charge assured me that it would be best if I saw him as he may be able to give me “insight” I had not previously received. He did give me some insight — that, like any insurance company, CPP uses certain doctors that apparently give the answer they want — DENY!!! Why is it that when many doctors evaluate me and say that I am too ill to work, have CFS and should be eligible for CPP, THEIR WORD ISN’T GOOD ENOUGH?!? **(Judith, ON, E-Consultation Participant)**

For the last five years I have been advocating on behalf of individuals who have been denied CPPD benefits. ... My greatest concern is with the medical adjudication of the initial application and the Appeals and Reconsiderations

⁵⁶ SCSPD, *Evidence* (9:25), Meeting No. 11, 29 April 2003.

stage. ... I have seen cases where the medical adjudicator takes a sentence from a medical report and uses only part of it to make their case. If a statement is taken in part the meaning is often altered. For example if a person has experienced an exacerbation of symptoms but they are not going to receive steroids because the attack does not warrant such a high-risk intervention, it does not mean that the person's symptoms are not disabling, it simply means that the physician and/or patient chose to wait out the attack instead of using a medication that has significant side effects! I have seen numerous cases where the medical adjudicator has made statements like; "the AR has refused treatment"; "the AR did not require medication for mild attack" when in fact the information in the report clearly states that the side effects outweigh the benefit of treatment. I struggle to understand how it is ethical for medical adjudicators to make personal interpretations when the facts are stated clearly in the report. I also struggle to understand how a nurse who has never met the applicant can make a determination over a physician who knows the patient. I believe it is the responsibility of the medical adjudicator to contact the physician when there is strong evidence presented but the medical adjudicator has some apprehension about making a decision. I have often wondered if there is an incentive program for medical adjudicators who deny X amount of applications! I think a lot of work needs to be done in the area of training for medical adjudicators at CPPD. **(Anonymous, AB, E-Consultation Participant)**

The reality is that certain individuals with conditions or disabilities may qualify for the CPP disability benefit in one region of the country while in other regions an individual with the same condition will be deemed ineligible. **(Dr. Dana Hanson, President, Canadian Medical Association)**⁵⁷

Recommendation 3.7

The Committee recommends that HRDC immediately commission an independent evaluation of how the "severe and prolonged" eligibility criteria for CPP(D) are applied by CPP personnel in making decisions about eligibility. The Committee further recommends that the results of this evaluation be submitted to the CPP Disability advisory committee (see Recommendation 2.2) for discussion and recommendations no later than June 2004.

Recommendation 3.8

The Committee recommends that the Government of Canada amend the *Canada Pension Plan* to define "prolonged" for the purposes of establishing eligibility for CPP(D) benefits as any period of 12 months or longer regardless of whether an individual has returned to work prior to the approval of his/her application or appeal.

⁵⁷ SCSPD, *Evidence* (11:30), Meeting No. 8, 18 March 2003.

3.2.2 Adding More Gatekeepers

Many comments raised the question of whether physicians should be the only gatekeepers to CPP(D) or whether their assessments should be supplemented by other medical professionals who may better be able to assess the individuals according to the criteria that determine eligibility for the program's disability benefits.

The diagnosis names an illness; it doesn't tell you what the effect of it is. Indeed, one of our other recommendations is to encourage the department to do much more in the way of providing information on functional capacities evaluation, functional abilities tests, etc. We need more information that focuses on a person's capacity to function, as opposed to a diagnosis of illness. **(Anna Mallin, Member CPP Review Tribunals)**⁵⁸

We think that there's also a problem there in the process in terms of the amount of consideration for health professionals and other people who may be involved in the treatment of that individual instead of just the physician who fills out the form or someone hired by the pension appeal board to do an assessment of the client who's never actually met the client before or in some cases are only looking at documentation without even meeting the client.

We think if there's a physiotherapist or speech therapist or whatever who's been involved they should be able to submit information if they wish. Also perhaps an advocate could put all of that information together to combine the cumulative affect and then have the doctor sign off as agreeing with the whole file. **(Randy Dickinson, Executive Director, Premier's Council of New Brunswick)**⁵⁹

Recommendation 3.9

The Committee recommends that qualified health care professionals in addition to physicians be allowed to provide medical assessments for the purposes of determining eligibility for the CPP(D) and to complete application forms.

3.3 About the Real World

Policy issues about the nature of the definition of disability and its interpretation have been making their way to the Federal Court of Appeal for clarification. Some participants in the online consultation referred to the *Villani* case in which the Federal Court of Appeal issued a judgement regarding the definition of severity.⁶⁰ The Court concluded that this provision in the CPP definition of disability has been inconsistently and unfairly applied. It also stated that the "provision must be interpreted in a large and

⁵⁸ SCSPD, *Evidence* (9:50), Meeting No. 9, 1 April 2003.

⁵⁹ SCSPD, *Evidence* (10:35), Meeting No. 11, 29 April 2003.

⁶⁰ *Villani v. Canada (Attorney General)*, 2001 FCA 248, judgement rendered on 3 August 2001.

liberal manner, and any ambiguity flowing from those words [in the definition] should be resolved in favour of a claimant for disability benefits.” Following up on this statement, the Court argued that a “real world” approach should apply to the severity requirement in deciding upon eligibility for CPP(D). In the Court’s view, decisions about an applicant’s eligibility should take into account “the circumstances of his or her background and medical condition.”⁶¹ Our online consultation participants and witnesses agreed.

A determination of disability which does not consider the whole person and his/her circumstances in their entirety, assessed against the complete definition of disability as stated in the legislation is, in my opinion, simply unacceptable. **(John, AB, E-Consultation Participant)**

We’d also like the program to recognize that a person’s ability to work cannot just be measured by physical evidence, that there are psycho-social factors that are really important and need to be taken into consideration. HIV is a terminal illness. It’s also an illness that is associated with a large amount of stigma and discrimination. **(Ainsley Chapman, Program Consultant, Canadian AIDS Society)**⁶²

3.3.1 CPP(D) and the “Real World”

CPP(D) guidelines on including or excluding “socio-economic” factors have changed over the years. In 1989, ministerial guidelines provided for consideration of “socio-economic” circumstances in resolving the issue of eligibility. These were rescinded in the 1990s as a result of the concern about mounting CPP(D) caseloads while medical criteria remained unchanged.⁶³ Yet, the CPP(D) *Physician’s Guide* published in 2002 states that while medical information is key, eligibility is based on an assessment of the whole person and that the program considers factors such as age, education and work history. CPP reserves the opportunity to consult with employers, schools and other third parties who may be able to provide additional information on functional capacity. The *Physician’s Guide*, however, also states that in making eligibility decisions “CPP does not consider socio-economic factors, such as the unemployment rate or the availability of work.”⁶⁴ The Subcommittee wonders what world CPP program administrators live in if they believe that age, education, skills and work history are not “socio-economic factors”? Why are physicians being given contradictory information about the criteria that are considered in determining eligibility?

Unlike CPP(D) administrators, Canadians are not confused about the “real world.” The issue poll respondents were asked if “we should be more flexible in applying the

⁶¹ William Young, *Canada Pension Plan Disability: Policy Overview and Issues*, paper prepared for the Subcommittee on the Status of Persons with Disabilities, Parliamentary Research Branch, Political and Social Affairs Division, 31 May 2002.

⁶² SCSPD, *Evidence* (9:05), Meeting No. 7, 20 February 2003.

⁶³ Sherri Torjman, *The Canada Pension Plan Disability Benefit*, Ottawa, 2002, p. 30.

⁶⁴ Human Resources Development Canada, *A Physician’s Guide to Canada Pension Plan Disability Benefits*, Ottawa, 2002. p. 5.

Canada Pension Plan Disability eligibility rules” to continue to include life circumstances such as age, skills, and education, and to further encompass life circumstances such as where a person lives and the local labour market. A majority of respondents agreed with both sets of circumstances. Eighty-two percent of issue poll respondents either agreed or strongly agreed that we should be more flexible in applying the Canada Pension Plan Disability eligibility rules to continue to include life circumstances such as age, skills and education. Over two-thirds of respondents (71%) agreed or strongly agreed that we should further include life circumstances such as where a person lives and the nature of the local labour market. A breakdown of issue poll results by categories of identification further confirms this broad agreement.⁶⁵ When it comes to going further and including where a person lives and the nature of the local labour market, however, only 36% of issue poll respondents who identified themselves as employees in the insurance business agreed or strongly agreed with this proposal (29% and 7% respectively).

I am 61 years old. I am first of all hard of hearing with a 60% to 90% hearing loss. Next I have had four heart attacks. The problem is I am still capable of working. However I tire easily. ... I feel I should be able to collect disability as I paid in to CPP all my life and was never unemployed since I was 18, but who is going to hire a 61-year-old hard-of-hearing person with heart condition? **(Anonymous, E-Consultation Participant)**

My ex-wife has had hearing problems for a number of years. In the year 1999 she lost her hearing completely. She worked for VON as a nurse practitioner. She could not work any more due to the fact she couldn't hear and had difficulty communicating with patients and doctors. ... She also applied for CPP disability benefits. The initial claim was denied. This was appealed to a tribunal. The tribunal in May 2000 also denied the appeal stating that while the hearing loss was prolonged it was not severe. They further opined that she was capable of finding any work regardless of what that was, or how much it paid. ... My ex-wife has been made to feel like she was trying to beat or cheat the system. She has never been out of work and has paid into the plan all her working life. ... These tribunals must take into account the claimants training, experience, education and age in terms of what type of productive employment might be available. They should use the “real world test” that many of the courts have done. ... She has been forced to take a lesser-paying job. She has been made to feel less than human during this whole process and clearly there has been no justice done here. **(Alex, ON, E-Consultation Participant)**

Recommendation 3.10

Given the inconsistency in CPP(D)'s program administrators' understanding of “socio-economic” factors, the Committee recommends that CPP(D)'s definition of disability be revised to explicitly include the decision of the Federal Court of Appeal in the *Villani* case. All CPP policies, manuals, administrative procedures, medical evaluations, and information to the medical professions and

⁶⁵ Please note that the groups of respondents who identified themselves either as a medical doctor or an employee of a member of Parliament were not considered in analyzing the breakdown of respondents as their total number (n=7 for each group) is too small to have any significance.

to the public should consistently and explicitly incorporate the spirit of the *Villani* decision.

3.3.2 Interpreting “Not Regularly Able to Pursue any Substantially Gainful Occupation”

According to the CPP, a disability is considered severe only if an individual is “incapable regularly of pursuing any substantially gainful occupation.” Each of these words has been interpreted by HRDC to guide physicians in making their medical assessments and to decide an individual’s eligibility for CPP(D). Some witnesses and participants in the online consultation expressed concern with the interpretation of the eligibility criteria requiring that a person have a physical or mental disability that is “severe” and “prolonged” and how it impacts on the determination of whether an individual has a capacity to work.

In the *Villani* case, the Federal Court of Appeal, in judging whether an applicant for the CPP(D) can pursue “any” occupation, concluded that a decision about eligibility must look at how the other elements of the definition of disability — “regular,” “substantial,” “gainful” — also applied to an individual. In the words of the Court:

Requiring that an applicant be incapable regularly of pursuing any substantially gainful occupation is quite different from requiring that an applicant be incapable at all times of pursuing any conceivable occupation. ... [T]he hypothetical occupations which a decision-maker must consider cannot be divorced from the particular circumstances of the applicant, such as age, education level, language proficiency and past work and life experience. ... Employability occurs in the context of commercial realities and the particular circumstances of an applicant.⁶⁶

According to the experiences of several participants, it appears that some decisions to deny CPP(D) benefits at all levels of the application and appeal process are based on the more restrictive interpretation of “an applicant be incapable at all times of pursuing any conceivable occupation” rather than on a more contextual interpretation that would take into consideration the factors set out above by the Federal Court of Appeal. We were also told that physicians are frequently unaware that their medical assessments will be used to determine employability.

I had already worked for 30 years and raised my family single-handed as a single parent and now when I was sick and needed it I was not eligible for CPP. The board thought I could still do “something.” The fact that you have to go on welfare first before you can get any money out of CPP that you have paid in over the years is also devastating to a person with a strong work ethic. I think CPP should review their criteria for alternative work if you become too sick to continue on the work you have been doing. You may be able to do some other kind of work but you might not be able to make a living from it. It was a horrific experience for me and one I will

⁶⁶ *Villani v. Canada (Attorney General)*, 2001 FCA 248, paragraphs 38 and 45.

never forget. It caused me mental and physical anguish. **(Anonymous, ON, E-Consultation Participant)**

CPP's edict that says you are not disabled if you can work in "any" substantial gainful employment means that if CPP says you can do some other type of work (even though you were already in a sedentary type position), then you can "work," and you are, therefore, "employable." This is NOT the Real World, people!! Employers that will allow you to come and go, allow you to be off sick more days than you can attend at your job, allow you to work perhaps 15 minutes at a time and provide a place for long rest periods in between just do NOT exist, and is certainly not "gainful" nor "substantial." **(Sandy, ON, E-Consultation Participant)**

The other thing that really bothered my husband is that because he had a very high-paying, labour-intensive job as a welder, he paid high CPP premiums. Now he cannot access funds from the place that readily took his money while his health was failing. He has very little formal education and is almost illiterate. Yet CPP indicated that he should be ready to take any other type of work available. This man has been working in the maintenance-welding field since the age of 16 (40 years). He knows of no other type of work! How unfair! **(Anonymous, E-Consultation Participant)**

What we heard from our witnesses to a large extent contradicts the information that CPP(D) is providing. Its *Physician's Guide* provides the following definitions:

Incapable: Not able or fit to pursue any substantially gainful occupation as a result of the disability.

Regularly: The capacity to work is sustainable.

Pursuing: To actually engage in an occupation — not to be confused with looking for work.

Any: Work that a person might reasonably be expected to do by virtue of:

- possessing the necessary skills, education or training;
- having the capacity to acquire those necessary skills, education or training in the short term; and
- having reasonable access to suitable employment, given the individual's limitations.

Substantially gainful occupation: Work that is productive and profitable. This is measured in part by a dollar amount that is set annually and against which a person's earnings are compared. However, earnings alone do not determine whether the regular capacity to pursue work exists. CPP also assesses elements of functional capacity and productivity.

We are disturbed by the apparent discrepancy between CPP(D)'s guidelines and its practices (as demonstrated by our witnesses and by the online consultation participants). We also note the subjective nature of all the definitions listed above. Science has its limitations. It seems to us that panel members who hear CPP(D) appeals have a better appreciation of what is involved:

The most difficult dilemma facing Appeal Tribunals is how to make an objective finding as to whether a physical or mental impediment is disabling to a degree that an Appellant is incapable of pursuing "a substantially gainful occupation" on a "regular" basis. ...The Task Force strongly recommends that CPP legislation (particularly section 42) regulations and guidelines reflect an interplay between medical and employability evidence. ...⁶⁷

We are left to conclude that something is wrong. Is CPP(D) not communicating with its clients? Is CPP(D) only paying lip-service to its own definitions? Is the CPP(D) system rigidly administering the definitions so that the flexibility that seems to be set out in its public guidelines is eliminated?

Members of the Review Tribunal Panels that appeared as witnesses helped us to gain a better understanding of what is going on here. The report that they tabled with the Subcommittee states that:

Currently "objective" medical evidence of the seriousness of a person's disability is given more weight in many determinations [of eligibility] by Human Resources Development Canada. Independent assessment of non-medical factors affecting an Appellant's employability are rarely offered by HRDC adjudicators when rejecting applications for disability benefits.⁶⁸

They also told us that the United States *Social Security Act* had moved forward so that the onus was on the Department to prove that jobs exist in the national economy that the claimant could perform.

Recommendation 3.11

The Committee recommends that HRDC amend its administrative practices so that no application for CPP(D) shall be deemed completed and assessed for eligibility until it contains a full and complete functional assessment of the applicant that specifically discusses non-medical factors that affect the individual's employability.

⁶⁷ Office of the Commissioner of Review Tribunals, *Report of the Panel Member Task Forces*, Ottawa, 2003, p. 10.

⁶⁸ Office of the Commissioner of Review Tribunals, *Report of the Panel Member Task Forces*, Ottawa, 2003, p. 9.

Recommendation 3.12

The Committee recommends that HRDC conduct a detailed evaluation of how the CPP(D) program administrators are applying CPP(D) legislative guidelines in light of recent Review Tribunal and Federal Court decisions. The results of this evaluation should be submitted to the CPP Disability advisory committee (see Recommendation 2.2) for discussion and recommendations by June 2004.

3.3.3 Kids, Parents and School in the “Real World”

In the “real world”, people drop out of the labour force temporarily to have children, to provide care for spouses or parents, or to go to school or training courses. Currently, some of those who leave the labour market and who later become disabled can take advantage of a child-rearing dropout. This exempts the years that they looked after a child under age seven from the calculations of their minimum qualifying period for CPP contributions. They will also not be penalized by receiving a lower retirement pension. The members of the Review Tribunal Panels told us that because this is calculated in total years, starting at the beginning of a calendar year, a mother whose baby is born in mid-January is penalized because she is not allowed the dropout until the following calendar year.

Both our witnesses and participants told us that the lack of more broadly based dropout provisions in CPP(D) operates to the detriment of those seeking to maintain ongoing eligibility for CPP(D). Others have not sufficiently contributed to CPP because they were caring full time for family members with disabilities before becoming disabled themselves. Still others have failed to qualify because they have gone to school. We believe that none of these “real life” situations should jeopardize eligibility for those who must apply for CPP(D).

I am a 27-year-old male and I applied for disability benefits approximately 3 months ago and have been denied because I have attended school in the year 2000 thus (as I was told on the phone) making my contributions not enough to qualify for benefits. I am 27 years old and was diagnosed with Acute Leukemia in April more recently undergoing a bone marrow transplant in July. While I am now sorry that I had the awful luck to incur an illness at an age and time in my life that denies me the chance to receive any government assistance, I fail to see how my age or my decision to attend schooling (to better my lot in life so I can get a higher-paying job and pay more tax) should have any bearing on whether I qualify for government benefits. Furthermore had I been lucky enough to qualify for benefits they would have been minimal (though appreciated) due, again, to my age. Because a 27-year-old has not contributed enough to “The Plan.” How are a disabled 50-year-old’s financial needs different then mine? They are not. All disabled Canadians should be covered in times of crisis — yet I am not. **(Randall, AB, E-Consultation Participant)**

For many years, I accepted only part-time and term employment, as I had a full-time occupation of caring for an invalid parent. During the last 5 years of her life, my mother required almost around the clock care... leaving for short periods

even to do grocery shopping and the like required careful planning, and the help of other family members.

I chose to do this as the only alternative to placing her in a long-term care facility... a move that, I might point out, saved the health care system quite a bit of expense for her care, and over an extensive period of time. I understood at the time, such a move would require a period of struggling to upgrade my qualifications while my prospects for employment included only very low-paying employment, after her death, and that public opinion took a dim view of such an enterprise... but I remain convinced it was the right thing to do.

As things would have it... I, myself became disabled (extensive and varied complications of congestive heart failure, and the resulting edema, that affects, among other things, my spine). Because of the inability to accept CPP-covered employment, despite working in my chosen field as a health care aide 24/7, 365 days a year... I was ineligible to apply for CPP disability payments, and instead, am now receiving Ontario Disability benefits. **(Donald, ON, E-Consultation Participant)**

About two months ago I had a woman phone. She had worked for a number of years and left the workforce because she had a son who had a significant disability. She chose to stay home to look after her son and to provide support. She was out of the workforce for a considerable period of time. Her husband then became ill and was no longer the primary support to the family. He went onto CPP disability. She went back, got training — entered the job training programs provided — got a full-time job, and then she was diagnosed with terminal cancer. In the meantime, the eligibility and contributory period had changed. She was no longer eligible for CPP disability and she would not apply for social assistance.

It was just one of those cases where the individual had done everything that we would expect them to do. The family had decided to provide support to their son. She chose to go back to the workforce when her husband was unable to work. She got training. She got a job. She did all of that. Then she found she had terminal cancer, and she was three months short of the four of six because she was out for those periods. **(Laurie Beachell, National Coordinator, Council of Canadians with Disabilities)**⁶⁹

Some participants suggested that the federal government should also consider expanding eligibility to those who may not have sufficiently contributed to the plan as a result of staying at home or working only part time to raise their children or to care for family members with disabilities.

In the particular case of the woman I represent, she dropped out of the workforce after marrying late in life. Not having a child herself, she cared for her stepson for six months when he was dying of renal cancer. He would have been in an acute care setting had he not been at home. For six and a half years she cared for her mother, who was dying of diabetes and other complications. Again, she was at least eligible for chronic care, if not more. Every day that she was home caring for her stepson or for her mother, she was saving the government somewhere between \$600 and \$1,500 a day. She was administering very heavy care to her relations. She was obviously making a major contribution to the well-being of not

⁶⁹ SCSPD, *Evidence* (16:40), Meeting No. 6, 12 February 2003.

only her relations but also the community at large. For her pains, she had her Canada pension reduced by a total of 20%. She became disabled as a consequence of caring for her mother and was not eligible for CPP disability.

The point again is that if she were providing care to a child under the age of seven, she wouldn't have had her pension reduced at all. She would not have been disentitled to CPP disability, and her position in life would be significantly different. **(David Baker, Bakerlaw)**⁷⁰

Finally, a small number of participants indicated that some persons with disabilities who are between the ages of 60 and 65 and no longer able to work are refused CPP(D) benefits and redirected to CPP to apply for an early retirement pension. The individuals in these cases may actually end up with less income than if they received CPP(D) benefits for a number of years and applied for their retirement pension at age 65. It was recommended that persons with disabilities who are between the ages of 60 and 65 be entitled to CPP(D) benefits if they meet the eligibility criteria like any other younger Canadian.

Consideration for applicants between the ages of 60-65 who are often refused because they may qualify for CPP early retirement & would cost less for the government. They are still disabled & should be accepted as disabled. **(Joan, ON, E-Consultation Participant)**

Recommendation 3.13

In keeping with the Government of Canada's commitments in the Skills and Learning Agenda and in its promotion of family-friendly workplaces, the Committee recommends that HRDC incorporate dropout provisions in CPP(D) for attending school or training, and for caregiving of family members. These new dropout provisions should be the same as the child-care dropout provisions.

Recommendation 3.14

The Committee recommends that all CPP(D) dropout provisions include identical provisions for allowing partial years in determining the duration of the dropout.

Recommendation 3.15

The Committee recommends that CPP(D) applicants 60 years of age and over be entitled to CPP(D) benefits if they meet the eligibility criteria instead of being encouraged or forced to apply for CPP retirement benefits. CPP(D) administrators should be instructed accordingly.

⁷⁰ SCSPD, *Evidence*, (11:05), Meeting No. 6, 1 April 2003.

3.4 Four Out of Six: A Magic Number?

Since the inception of CPP(D), workers have had to contribute to the plan for a certain minimum period of time in order to collect benefits. In 1998, the eligibility criteria of CPP(D) were changed so that the minimum contributory period is now four out of the last six years.⁷¹ The Subcommittee was interested to find out whether CPP(D) should be more flexible in dealing with people who have contributed to the plan over a significant period of their working life (e.g., 10 or 20 years) but who do not meet the four-out-of-the-last-six-years rule. A vast majority of respondents to our Issue Poll (90%) either agreed or strongly agreed that CPP(D) eligibility rules should be more flexible for these people. A breakdown of issue poll results reveals a strong support for changing the four-out-of-six contributory requirement among all categories of respondents.⁷²

Many members of our group feel strongly that with gradual-onset disabilities, or for people who, as they get older, are outside the workforce for some period for caregiving and so on — we are seeing people who have contributed for 25 years who cannot meet the “recent” test because they haven’t contributed in four out of six.⁷³ **(Harry Beatty, Canada Pension Plan Working Group of Ontario)**

The requirement that CPP claimants must have worked four out of six years prior to disablement discriminates against women, who are more likely to be employed temporarily or part-time. Exclusion of the child-rearing years, while useful in eliminating the low-income years for determining eligibility, prevents women from ever reaching parity with men who do not use those years to care for small children. **(Sally Kimpson)⁷⁴**

I applied for CPP after working many years and contributing. My doctor encouraged me to do so. He sent me to some specialists who wrote their findings and opinions. After being diagnosed with Fibromyalgia, Sleep Apnea and Osteo Arthritis we forwarded these results to CPP. ... My first application to CPP was back in 1993 I think. After the 3 refusals and the Tribunal, which all took about 3 years, I still couldn’t work. In 2002 I was informed by someone that Fibromyalgia was now being recognized by CPP and was encouraged to apply again. This time I was told that I had not worked or contributed for 4 of the past 6 years and so I didn’t qualify even though my condition has worsened and I still can’t work. **(Anonymous, E-Consultation Participant)**

⁷¹ Sherri Torjman notes in her publication that “Between September 1986 and December 1997, workers had to pay into the CPP for two of the last three years or five of the last ten years before they became disabled for CPP purposes. A ‘late applicant’ provision introduced in 1992 allows workers who are disabled more than 15 months before their application to qualify for benefits... Prior to September 1986, workers had to pay into the CPP for five of the last ten years and at least one-third of the total years in their contributory period.” (Sherri Torjman, *The Canada Pension Plan Disability Benefit*, Ottawa, 2002, p. 13).

⁷² Please note that the groups of respondents who identified themselves either as a medical doctor or an employee of a member of Parliament were not considered in analyzing the breakdown of respondents as their total number (n=7 for each group) is too small to have any significance.

⁷³ SCSPD, *Evidence* (16:35), Meeting No. 6, 12 February 2003.

⁷⁴ SCSPD, *Evidence* (16:30), Meeting No. 5, 5 February 2003.

The current requirement to contribute for four out of the last six years in order to be eligible for CPP disability is not fitting for people with disabilities because of fluctuating conditions, etc. **(Mary Ennis, Vice Chair, Council of Canadians with Disabilities)**⁷⁵

The Subcommittee agrees with the panel members of the Review Tribunals who told us that the four-out-of-six rule actually introduces a type of systematic discrimination against people who have certain episodic illnesses where there are ups and downs. Over the course of these illness, periods of wellness may become shorter and periods of illness longer. As a result, many of these people do not qualify for CPP(D) eligibility based on the contributory criteria.⁷⁶

Canadians gave us frank opinions of what they would change. Some participants suggested a limited time frame for the number of previous years an individual would have had to contribute to CPP in order to establish eligibility. For example, some participants in our online consultation recommended that a person should have contributed to CPP for 5 years in the last 10 years to be eligible for CPP(D) benefits. Others suggested that HRDC should revert to the two-out-of-the-last-three-years contribution rule that was in place prior to the current requirement.

... contribution requirements [should] be amended so that applicants are not penalized for not making consistent contributions to CPP or for not submitting an application at the time the person became disabled or for becoming disabled after leaving employment.

One way to help accomplish this would be to reinstate the 5 out of the last 10, or 2 out of the last 3 year rule. **(BC Coalition of People with Disabilities, BC, E-Consultation Participant)**

There should be no disqualification from CPP(D) because of length of time from last contribution till disability. If a person has paid CPP for a set number of years (that number can be determined) than he/she should be eligible. **(Brian, NFLD, E-Consultation Participant)**

The Subcommittee notes that the minimum contributory requirements to establish eligibility for the CPP(D) are more stringent than the requirements for other supplementary benefits. We believe that Canadians with disabilities should be afforded equitable treatment.

Recommendation 3.16

The Committee recommends that the Government of Canada amend the *Canada Pension Plan* after paragraph 44(2)(a) so that it reads:

- (i) for at least four of the last six calendar years included either wholly or partly in the contributor's contributory period or,**

⁷⁵ SCSPD, *Evidence* (15:45), Meeting No. 6, 12 February 2003.

⁷⁶ SCSPD, *Evidence* (9:20), Meeting No. 9, 1 April 2003.

where there are fewer than six calendar years included either wholly or partly in the contributor's contributory period, for at least four years; or

- (ii) for at least one-third of the total number of years included either wholly or partly within an applicant's contributory period but in no case for less than three years, or**
- (iii) for at least ten years; or⁷⁷**
- (iv) for each year after the month of cessation of the contributor's previous disability benefit.**

⁷⁷ The wording for (ii) and (iii) is currently included in paragraphs 44(3)(a) and 44(3)(b) of the Canada Pension Plan as the eligibility requirement for calculating the minimum qualifying period for other supplementary benefits.

CHAPTER 4: IMPROVING THE CPP(D) APPLICATION AND APPEAL PROCESSES

In any government program that requires individuals to meet specific eligibility conditions, the application and approval process is sometimes problematic for applicants and program administrators alike. The CPP(D) program is no exception. In fact, Human Resources Development Canada (HRDC) recently reported that persons with disabilities applying for the CPP(D) continue to find the application and decision-making process difficult to understand.⁷⁸

Applications for CPP(D) benefits are made to the Income Security Programs (ISP) Branch of HRDC. The application consists of an application form, a questionnaire requesting medical information and details on the applicant's education and work history, as well as a medical report completed by a physician. Other supporting documentation is also required. This application is assessed by nurse adjudicators who decide whether the application meets the eligibility criteria or not. During the 1980s, these decisions were made by a two-person panel, one of whom was a physician.

Where an initial application for CPP(D) benefits is denied, an individual may appeal the decision. There are three levels of appeal: a request to the Minister of Human Resources Development Canada for an internal reconsideration of the initial decision, and two levels of formal appeal to independent quasi-judicial administrative tribunals: the Office of the Commissioner of Review Tribunals (OCRT), and finally the Pension Appeal Board (PAB).⁷⁹

4.1 The Facts about Applications

Both the number of applications for the CPP(D) and the approval rate for applications have declined since the mid-1990s. A number of factors have undoubtedly contributed to this downward trend including, among others, an improvement in job opportunities, new adjudication guidelines stressing the medical basis for approval, a stricter interpretation of disability and, of course, stricter eligibility conditions. There has also been a downward trend in the number of applications approved. According to information provided by HRDC based on 2002-2003 volumes, 42.6% of applications are initially approved, 6% of total decisions are approved on reconsideration (or 11% of those

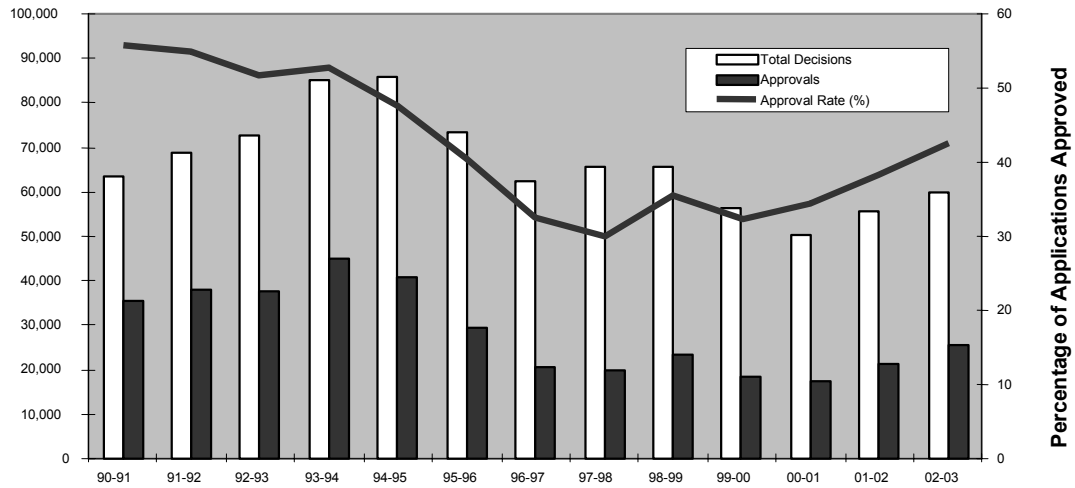
⁷⁸ Human Resources Development Canada, *2002-2003 Estimates, Part III — Report on Plans and Priorities*, 2002, p. 12. See also Kevin Kerr, *Administrative Issues*, paper prepared for the Subcommittee on the Status of Persons with Disabilities, Parliamentary Research Branch, Library of Parliament, 2002.

⁷⁹ The decisions of the Pension Appeal Board may be subject to a judicial review by the Federal Court.

decisions that deny benefits), and roughly one half do not succeed at any level. While the initial approval rate has decreased over time, the rate of second and third level appeals resulting in positive decisions has increased dramatically since the early 1990s.

As may be expected from the decline in the volume of applications received, the trend in initial CPP(D) decisions also declined between 1990-1991 and 2002-2003. The total number of initial decisions for CPP(D) increased until 1994-1995 and has since fallen (Chart 4.1). The approval rate (i.e., the number of applications approved expressed as a proportion of the total number of initial decisions) also declined between 1990-1991 and 1997-1998, but has increased slightly since then. The proportion of initial applications approved in 1990-1991 was 55.7% of all CPP(D) initial decisions in that year. By 2002-2003, the approval rate had dropped to 42.6%.

CHART 4.1 - Initial CPP(D) Decisions and Approvals



Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

4.2 What We Discovered: Applications

Results from our issue poll questionnaire indicated that many people find the application and appeal processes very difficult and time consuming. They told us that these processes are:

- Complicated — Detailed forms and medical records must be completed by a doctor and the person applying.
- Lengthy — There are sometimes delays in getting medical records from doctors.
- Procedurally driven — three stages of appeal that a person could go through could take several years.
- High in volume — the CPP(D) program receives over 50,000 applications each year. There are almost 20,000 appeals each year for applications that have been rejected. It is estimated that over 30% eventually succeed.
- Costly — Applicants and appellants must pay for copies of medical records. Those appealing decisions must pay fees for legal assistance or representation.
- Not optional for some — Some insurance companies and social assistance programs force people to apply for CPP(D) and to even appeal negative decisions. They will not pay benefits if a person does not apply or appeal.⁸⁰

Generally, we found that the application and appeal process is financially and emotionally stressful for those who have to go through it at a time when they are struggling to cope with physical or mental disabilities as well as a change in life circumstances. For example, individuals have to deal with the costs of acquiring medical records, legal representation and other expenses related to the appeal process (e.g., photocopies, travel expenses) when, for many, their household income has decreased significantly. After this, they also face critical financial difficulties while they wait to receive CPP(D) benefits. Some individuals indicated that they had to borrow from family and friends, dramatically change their lifestyle and even worry about their health. This financial hardship compounds an already uncertain and difficult situation and further

⁸⁰ The issue poll also included several ways to improve the process and specified that each would take time and cost money. They were: make the application process easier; spend resources to improve the application process; allow appellants to recover expenses for medical records; reimburse applicants for certain required expenses during application and appeal; streamline the appeal process; combine the different levels of appeal and still ensure that the process is fair; provide access to resources during appeal; provide those appealing a decision with access to resources to assist them in the process.

impacts on the health of CPP(D) applicants and appellants whose illnesses are aggravated by sustained stress.

I first applied to start receiving CPP(D) in 1996. I have fibromyalgia and chronic fatigue syndrome and was unable to perform any kind of work. I was constantly being declined for the disability benefits until a final hearing held last May, 2002. This fight I had to endure cost me my marriage and most of my personal possessions. I had to sell everything I owned in order to pay my bills. My husband finally got tired of watching me fight for these benefits and left me in 2002. I had to endure countless hearings and had to pay for countless documents to be produced from my doctors. I am now receiving these benefits thank goodness but would not want to go through that long fight again. It cost me not only my marriage and my personal things but also cost me my health both physically and mentally. **(Karen, ON, E-Consultation, Participant)**

It can take as long as 3 or 4 years to resolve a case through all stages of appeal. This has a significant financial and emotional impact on applicants who are already coping with disability or illness. **(BC Coalition of People with Disabilities, BC, E-Consultation Participant)**

While [Review] Tribunal Members attempt to make Hearings relatively informal and uncomplicated, some Appellants still find the Hearing a very stressful and emotional experience. Appellants are frequently people with limited education and little familiarity with legal or bureaucratic processes. Some Appellants are frustrated by their experience with HRDC and some may feel intimidated by the Hearing process.⁸¹

We strongly believe that the application and appeals process needs to minimize these stresses and strains on people. The program belongs to them, not to the program administration.

Recommendation 4.1

The Committee recommends that Human Resources Development Canada (HRDC) establish, as a priority, client-friendly policies and practices in the application, assessment and approval processes for CPP(D).

Recommendation 4.2

The Committee recommends that HRDC process and approve all applications from clients who are terminally ill within 30 days of receipt and that the Government of Canada amend the *Canada Pension Plan* to eliminate for them the retroactivity provisions.

⁸¹ Office of the Commissioner of Review Tribunals, *Report of the Panel Member Taskforces*, Ottawa, 2003, p. 36.

4.2.1 The Application Process

We heard that persons with disabilities experienced a number of difficulties with the application process. These ranged from accessing information on the CPP(D) program, filling out the forms, and receiving an informative response to their application in a satisfactory time frame. The majority of respondents to our Issue Poll indicated that developing an easier application process should be the first priority for the government.

4.2.2 Is Information and Documentation Related to the CPP(D) Program Readily Available?

During the Subcommittee's roundtable meeting on 21 May 2002, some participants indicated that it is difficult to get basic information about the CPP(D). Some clients get stuck in a telephone menu that ultimately is unable to provide the necessary information. The time required to process applications for the CPP(D) can be lengthy, an obvious problem for individuals who do not have ready access to savings or other means of income support. In other instances, clients receive correspondence that provides no information as to why benefits are being denied.

While some online participants spoke to us about the helpfulness of staff in local CPP offices, others told us that they found it difficult to get basic information about the CPP(D) program and that, in some instances, the information provided by HRDC was either incorrect or confusing. Many participants stated that the documentation provided by HRDC on the CPP(D) program is either too difficult to understand or not available in an alternate format accessible to persons with disabilities. Making CPP(D) information more readily accessible is a priority of Canadians who participated in the e-consultation.

It is the experience of clinic personnel and of our client group, that it is difficult to access the CPP program. Unfortunately, the program at present, does not have a client service focus and persons inquiring about benefits often find it difficult to obtain information and have their concerns heard. **(Algoma Community Legal Clinic, ON, E-Consultation Participant)**

Clearly there is a feeling on behalf of applicants that they do not have enough information about the program and their eligibility under different circumstances to be assured that they will be provided financial security. **(Canadian Aids Society/Canadian Working Group on HIV and Rehabilitation, ON, E-Consultation Participant)**

[HRDC should] provide applicants with dignity and a robust sense of citizenship through the provision of genuine control over and full engagement with, the CPP(D) application process. That is not the way the system works. Empower applicants with information, skill development and networking. ... **(Traci Walters, National Director, Canadian Association of Independent Living Centres)**⁸²

⁸² SCSPD, *Evidence* (16:00), Meeting No. 6, 12 February 2003.

Raising awareness of the CPP(D) program (a different question than providing program information) is a key issue addressed in the solutions submitted to the Subcommittee. Many participants believe that a large number of persons with disabilities are unaware of the existence of the CPP(D) program and do not know that benefits may be available to them.

An increased awareness program could easily be achieved through cooperation between federal governmental departments. While the T4 is a standard form generated by Revenue Canada, information about the CPP disability benefits could be attached to the T4 slip, perhaps as a tear-off sheet that could be kept for future reference. Each year, all employees Canada-wide would then be reminded of the federal programs that could be available to them. This tear-off sheet could include information about both Canada Pension Plan (including disability, retirement, survivor benefits etc.) and Employment Insurance (regular and special benefits).

This simple measure could result in vastly increased awareness. While this only captures those who had earnings in the prior year, this would reach most potential applicants. **(Northumberland Community Legal Centre, ON, E-Consultation Participant)**

I think that there should be a publicity campaign about this, and perhaps mail outs to persons over fifty, as the older one gets, the less employable one becomes, and the more health problems arise.

Perhaps a web site would be helpful.

Perhaps a flyer included with income tax returns to save funds.

Perhaps media blitzes.

Information circulated through support groups, etc. I am a founder and leader of a large support group for people with chronic pain and this would be an easy way to circulate information. **(Anonymous, NB, E-Consultation Participant)**

Recommendation 4.3

The Committee recommends that CPP(D) prepare and implement a comprehensive communications plan for CPP(D), that includes strategies to provide information to clients or potential clients of the program. People with disabilities, or their representatives, should be consulted during the development of this plan. This communications plan should include:

- a. training for frontline HRDC staff to provide appropriate responses to questions about CPP(D) and to assist people in filling out application forms;**

- b. a targeted campaign to raise awareness of the program among organizations and community groups in contact with large numbers of possible applicants;**
- c. better utilization of the resources of other government departments (particularly the Canada Customs and Revenue Agency); and**
- d. formation of partnerships with other federal departments, provincial governments, income support programs, non-governmental organizations, support groups and qualified health care professionals to provide information about CPP(D).**

4.2.3 Completing the Application and Filling out the Forms

In order for applicants to apply for the CPP(D), they must be able to understand the application form and the application process. Some clients, particularly those with low literacy skills, are unable to complete an application form and many more do not know how to launch an appeal. For many clients, the application process is too complicated for them to carry out on their own. A significant number of people that we heard from expressed frustration at the complexity of the forms that have to be filled out and submitted to apply for CPP(D) benefits.

My first issue is with the length and the detail of the form. ... With the help of a friend, it took WEEKS to complete the forms and I had to be involved as there was information he had no way of attaining. Also, it appears that in the majority of cases, the first application is automatically rejected and most people are forced to apply several times. The appeal is also a lengthy, involved process. If I were well enough to fill out the forms and prepare for a tribunal, most likely I'd be able to work. **(Judith, ON, E-Consultation Participant)**

My worst problem was the difficulty filling out the forms. ... I found it extremely hard to understand the vague instructions, fill out the questions, and even know where to start. ...

The guide was NO HELP in explaining what to do, what information the government required, or where to start. I found it physically/emotionally hard on my entire system, and at that stage of my disease I didn't need to feel worse. ...I can't imagine being illiterate, blind, dyslexic or have some other form of disability and filling out those forms. I believe that the government shouldn't approach it with a 'One Size Fits All' approach, but should tailor the process to each person's ability. **(Joni, BC, E-Consultation Participant)**

What could be done right now to support people? We all know they need appropriate information, they need to understand it, and they need to know about

how to deal with this stuff. **(Traci Walters, National Director, Canadian Association of Independent Living Centres)**⁸³

The Subcommittee wonders why the community has been left to perform the job that the CPP(D) program should be carrying out itself in terms of providing assistance to those who need help. To us, this is a sign that HRDC is not as client-focussed as it claims to be. Many of our witnesses and online comments spoke about the need for accessible documents for CPP(D).

Special extremely large text, oral, or even papers with Braille for those who are blind; oral questions with the guidance of someone who cares for those who are illiterate or have severe cognitive problems; and, utilising the internet with speaking programs such as the one I am using now. The government should look into these types of tailor-made approaches to the application process. I also believe that an improved GUIDE should be developed hopefully with actual disabled people helping develop it. Able-bodied people really have no idea of the barriers that we disabled people face and couldn't even begin to understand. **(Joni, BC, E-Consultation Participant)**

All application processes for CPP(D) must be made accessible by addressing language and cultural adaptation, education and literacy, cognitive and learning capacities. **(Canadian Aids Society/Canadian Working Group on HIV and Rehabilitation, ON, E-Consultation Participant)**

Another issue that people raised constantly, particularly those who assist applicants, is the cost of pulling together all the information that is required to complete the application.

Many clients end up having to cover the cost of medical reports necessary to establish eligibility. In the past our clinic covered some of these costs but still sought to recover from clients when the file was closed. Presently, we are asking clients to cover the costs of such reports up front. In all such cases clients should be reimbursed for costs of these reports as financial considerations work to prevent low income disabled persons from accessing benefits. **(Algoma Community Legal Clinic, ON, E-Consultation Participant)**

...ways to streamline the appeal processes [should] be examined to ensure claims can be resolved more quickly. Because CPP only pays for medical reports it requests, applicants are sometimes unable to provide all the possible medical information to support an appeal. If they cannot afford to pay for medical information, they can lose the appeal. People should not be denied fair appeal because they do not have the means to provide documentation. **(BC Coalition of People with Disabilities, BC, E-Consultation Participant)**

There should be some mechanism for reimbursement of the costs incurred for medical reports and assessments provided by the applicant. Assessments of functional abilities are extremely useful in cases where the primary disability is pain-based and/or subjective in nature. Since the administrators at CPP seldom, if

⁸³ SCSPD, *Evidence*, (16:55), Meeting No. 6, 12 February 2003.

ever, send an applicant for an independent assessment of functioning, applicants are left shouldering the costs of these assessments themselves. If these reports and assessments are used in the adjudication or appeal process, then the applicant should be reimbursed those costs. **(Northumberland Community Legal Centre, ON, E-Consultation Participant)**

Recommendation 4.4

The Committee recommends that the application forms and the accompanying guide be reviewed and revised to ensure that they are written in plain language, are as short as possible and provide clear information on how to submit the application. All information should be made available in alternate formats. Persons with disabilities, advocacy organizations representing them and the health care community should be consulted in this review process.

Recommendation 4.5

The Committee recommends that CPP(D) launch a targeted outreach program for organizations, support groups and individuals who provide information and assistance to applicants for CPP(D). This outreach program should have dedicated resources to answer their questions and provide them with up-to-date information about application procedures.

Recommendation 4.6

The Committee recommends that HRDC, at its own expense, make greater use of independent medical examinations, functional capacity examinations and/or vocational assessments to provide more information about an individual's inability to work.

Recommendation 4.7

The Committee recommends that when an individual's application for CPP(D) is approved, the applicant should be reimbursed for the cost (upon submission of a receipt) of additional assessments (medical or functional) in addition to the physician's report currently paid for by CPP(D).

4.2.4 The Response to the Application

Two themes recurred in the e-consultation as well as testimony from witnesses and previous reviews of the CPP(D) program: the delays in processing the initial application and the unsatisfactory level of detail in the denial letters.

According to evidence presented before the Subcommittee in May 2002, HRDC is supposed to have a service standard of 62 days for processing applications.⁸⁴ External factors, however, can increase actual processing time, as program administrators must wait for applicants and their physicians to provide the necessary information in order to determine benefit eligibility. The experience of a significant number of individuals who shared their stories indicate that it actually takes 4 to 5 months for an application to be processed and a minimum of two to three years to go through the appeal process. Several of our witnesses recommended fixed timelines — 60 days to process an appeal and another 60 days for a reconsideration of decision. The current longer time lag produces much of the stress that applicants told us that they endure.

Improvement of assessment for applications and appeals. Something has to be done to change the one year to decide in both situations. That is not fair financially for the applicant as it is an insurance that people have paid into. The turn around time must be less than three months. Seeing the applicant can shorten the time.

Extra medical reports requested by CPP can be obtained by the applicant/family when visiting the physician & sent to CPP if they are informed of this in the application package. **(Joan, ON, E-Consultation Participant)**

We also heard that many CPP(D) applications result from insurance companies and other income support programs requiring their claimants to apply for CPP(D) benefits. Many of these claims are subsequently denied by CPP(D) but, in the meantime, assessing these claims undoubtedly increases the time required to approve other CPP(D) claimants.

Recommendation 4.8

The Committee recommends that HRDC:

- a. include in the CPP(D) application form a question asking all applicants to identify any third party that required them, for whatever reason, to submit an application for benefits to CPP(D); and**
- b. charge the third party the cost of processing any such unsuccessful application.**

Recommendation 4.9

The Committee recommends that HRDC explore ways of speeding up the flow of information required to complete an application. The department, for example, could encourage the electronic transmission

⁸⁴ SCSPD, *Evidence* (11:40), Meeting No. 23, 21 May 2002.

of medical information from physicians provided this can be done in a manner that ensures confidentiality.

4.2.5 Denying Applications — A Routine Procedure?

Canadians have a perception that the CPP(D) application process is impersonal and designed to keep people out. A majority of those who participated in the online consultation believe that applications are routinely denied to discourage and eliminate people who do not have the strength or resources to go through the appeal process. The following quotation is indicative of the distrust we heard from witnesses:

I complete a CPP application almost every week and do not yet have a patient who was approved on the first go regardless of severity of illness. It seems there must be a covert policy to say no just to weed out those who do not have the persistence, energy, resources etc. to appeal. This is not a fair policy. And perhaps it increases cost since there are so many appeals. **(Eleanor, AB, E-Consultation Participant)**

We heard that applicants receive form letters with few details specific to their case. Some people indicated that letters to CPP(D) applicants might not provide any, or adequate, information about why benefits are being denied or about how to appeal a decision. Even when they are denied during the administrative review, or reconsideration stage, individuals do not receive any comprehensive explanation of the reason for the decision. It is only when an individual appeals a denial to the Review Tribunal that he receives an explanation of the reasons for HRDC's denial that includes the facts of the case, and how the legislation was applied to these facts. Even at this point, the information is not provided in sufficient time (four to six weeks before a tribunal hearing) to allow many people the adequate time to gather together additional information (e.g., reports from medical specialists).

The "form" letters which are sent to clients, advising them of a denial of benefits are confusing and should be revised to provide information to persons in plain language. Moreover such letters should be revised to provide specific information on why persons were denied, and clearer information about the appeals process. **(Algoma Community Legal Clinic, ON, E-Consultation Participant)**

Currently an appellant does not receive the reasons for a minister's decision denying them disability benefits, the detailed reasons specific to that appellant, until just before a review tribunal hearing. This means that they get the detailed reasons specific to them about four or five weeks before a hearing. If this review of the minister's reasons reveals a real hole in their case that they can fix, they have very little time to go to get the additional information.... We think it might make much more sense if the department were encouraged to provide detailed applicant-specific reasons to the applicant at the time of reconsideration so they know the case they have to meet when they go on to a review tribunal, so they have a better understanding. **(Anna Mallin, Member of the Review Tribunal Panel)**⁸⁵

⁸⁵ SCSPD, *Evidence* (9:30), Meeting No. 9, 1 April 2003.

The Review Tribunal Panel members told us in their submission that the problems associated with the failure to communicate a denial in an appropriate manner complicated the whole appeal process. It frustrates applicants (even when the denial may be justified). It makes the rest of the appeal process difficult by encouraging individuals to apply for reconsideration and move forward with appeals that they would ultimately lose. We agreed with them when they outlined the advantages: fewer requests for reconsideration, fewer appeals, better-prepared applications for reconsideration or appeal.

4.2.6 Reassessments

In May 1993, Income Security Programs initiated a pilot project to review the continuing eligibility of CPP(D) beneficiaries who may have regained their capacity to work. Since then, reassessing CPP(D) beneficiaries has become a permanent feature of the program. The proportion of CPP(D) benefits that are terminated as result of all reassessment decisions has declined since 1993-1994 and has remained relatively stable since 1997-1998.

As a result of approximately 8,900 reassessment decisions in 2001-2002, 1,988 individuals (including those who have returned to work) had their benefits terminated. This represents about 22.3% of all reassessment decisions that year. These reassessments generate significant savings for the program: in 2001-2002, the cessation of benefits attributed to CPP(D) reassessments generated annual savings worth roughly \$18.7 million.⁸⁶

Recommendation 4.10

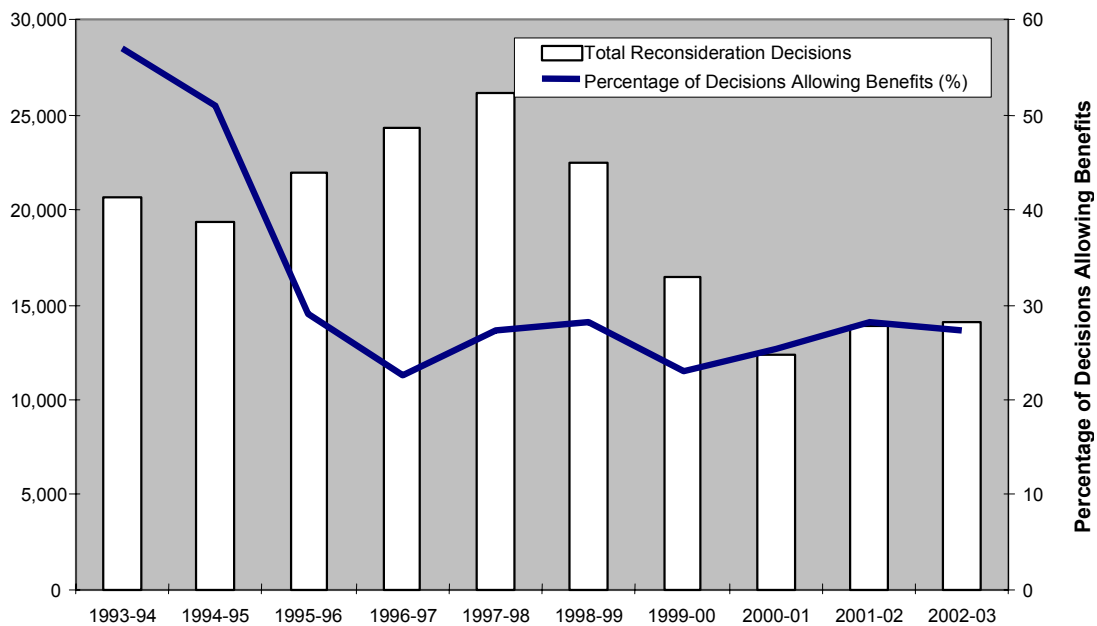
The Committee recommends that HRDC eliminate the use of form letters to deny an individual a CPP(D) benefit. HRDC should provide each client whose application is denied with a personal letter written in plain language (and in alternate formats if requested) that sets out all specific information related to the individual's circumstances, explains the reasons for the denial of benefits and includes all information needed to appeal the decision. The Committee further recommends that similar procedures be followed for all reassessments.

⁸⁶ Kevin Kerr, *Statistical Overview of the Canada Pension Plan Disability Program*, Prepared for the Subcommittee on the Status of Persons with Disabilities, Ottawa, 2002, http://www.parl.gc.ca/disability/issues/statistical_2_e.asp.

4.3 The Appeal Process

When an application for a disability pension is denied, applicants are informed in writing that they have the right to a reconsideration. At this first level of appeal, the applicant who has been turned down may request the Minister of Human Resources Development to conduct an administrative review (reconsideration) of the initial decision. This review of the application is carried out within the Department of Human Resources Development Canada (HRDC). A request for reconsideration must be made within 90 days of the denial, and someone other than the person involved in the initial adjudication reviews the application.

CHART 4.2 - Reconsideration Decisions (First Level of Appeal)



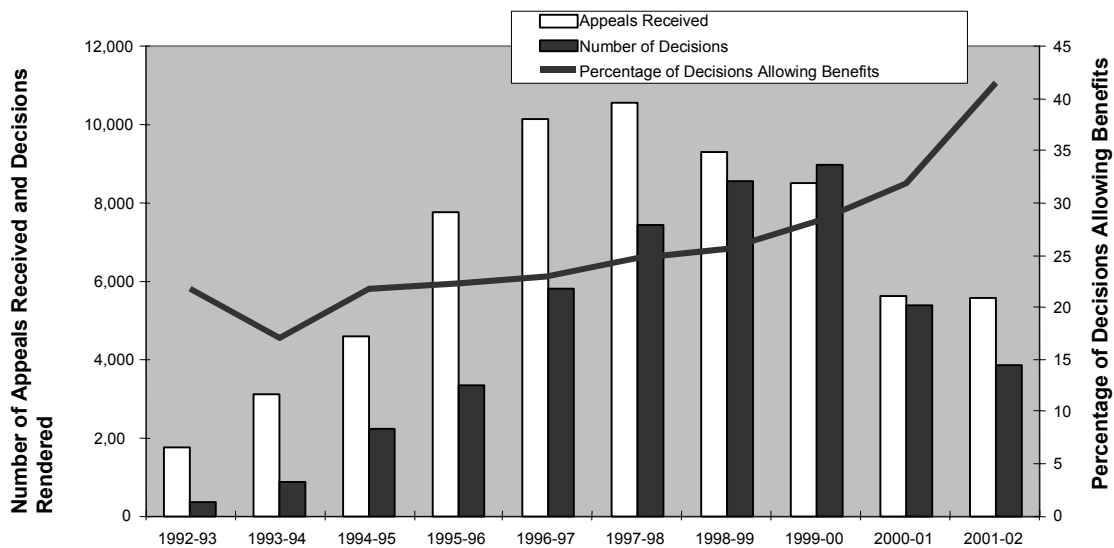
Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

The number of reconsideration decisions has fluctuated since 1993-1994, the earliest period for which these data are available (Chart 4.2). Although the percentage of benefits awarded at the first level of appeal has declined by more than one half during this period, the reconsideration approval rate has been relatively stable since 1995-1996.

When someone is not satisfied with a decision at the reconsideration stage, the individual may appeal this decision to a Review Tribunal (second level of appeal).⁸⁷ The Office of the Commissioner of Review Tribunals is the organization responsible for conducting these appeals. Currently, those who appeal get a hearing before a review tribunal approximately 12 to 18 months after their initial application for CPP(D) benefits was sent to HRDC. Each tribunal is composed of three persons: a legal member (lawyer), a medical member (a physician) and a community member. For each hearing, each of these is selected from a panel of between 100 to 400 people appointed by order-in-council. The panel members serve part-time.

The volume of appeals received reached its highest point in 1997-1998, while the number of decisions rendered peaked in 1999-2000 (Chart 4.3). The number of appeals received and decisions rendered in a given fiscal year do not add up because there is a time lag between the receipt of an appeal and the rendering of a decision.) It is interesting to note that the proportion of appeals decided in favour of claimants has increased steadily since the early 1990s. In 1992-1993, the allowed rate (i.e. the number of favourable decisions expressed as a percentage of total decisions in a given fiscal year) was 21.8%. In 2001-2002, the allowed rate was 41.6%, more than 90% higher than nine years earlier.

CHART 4.3 - Appeals to the Review Tribunal (Second Level of Appeal)

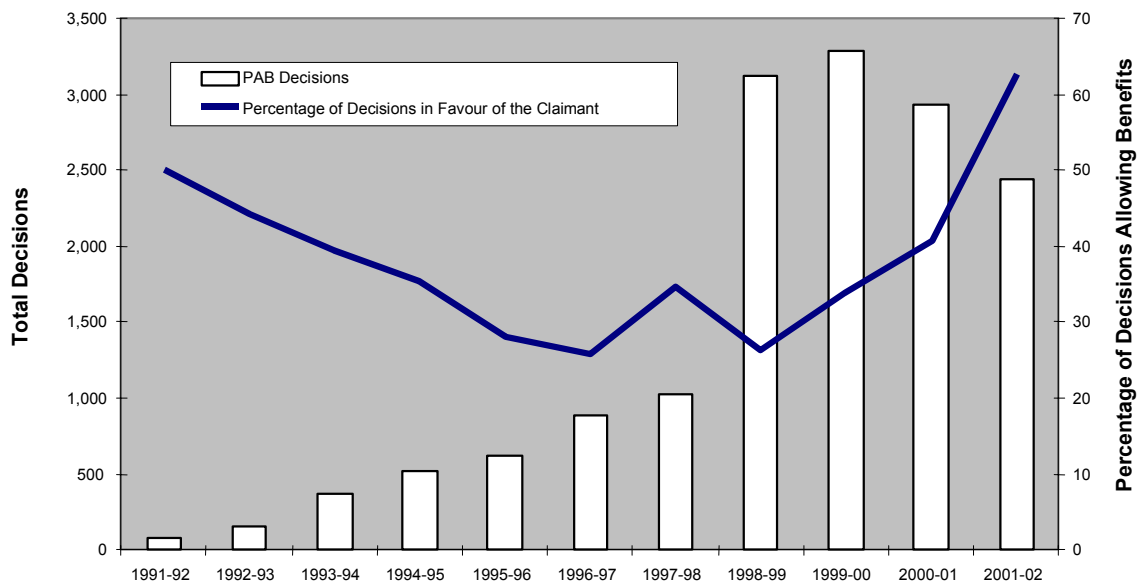


Source: Human Resources Development Canada, Office of the Commissioner of Review Tribunals and the Parliamentary Research Branch, Library of Parliament

⁸⁷ A review tribunal is a quasi-judicial body constituted under Section 82(7) of the *Canada Pension Plan*.

If a client or the Minister of Human Resources Development Canada is dissatisfied with a decision of the Review Tribunal, either of them may appeal this decision to the Pension Appeal Board (PAB) — the third level of appeal. The PAB consists of judges appointed by order-in-council. PAB decisions may be subject to a judicial review by the Federal Court. In order to appeal to the PAB, an appellant must first make a formal request to appeal the decision of the Review Tribunal. If accepted, the case will proceed to a PAB hearing. If not, the decision of the Review Tribunal stands. While the data presented in Chart 4.4 refer to all CPP appeals, appeals related to CPP(D) are estimated to account on average for 95% of all CPP cases at the PAB. The volume of PAB decisions has increased substantially since the early 1990s, a result that is undoubtedly connected to the growth in second-level appeals during the same period. In addition, the proportion of PAB decisions (at or prior to a hearing) in favour of claimants (as opposed to the Minister) has increased steadily since 1998-1999 and today represents some three fifths of all CPP decisions rendered by the PAB.

CHART 4.4 - Pension Appeal Board Decisions (Third Level of Appeal)



Source: Human Resources Development Canada, Office of the Commissioner of Review Tribunals and the Parliamentary Research Branch, Library of Parliament

4.3.1 What We Discovered: Appeals

Some of the key issues that emerged in the online consultation and in the testimony of witnesses to the Subcommittee included the complexity of preparing for a hearing as well as the cost and physical difficulty involved in attending a hearing in person. We also heard that some clients who are not supported by families, friends or advocates can find the appeal process cumbersome and complex. Several witnesses told us that the application and appeal process was too long and stressful. Some people, such as those with low literacy levels, can find the process intimidating.

The Appeal process is “deadly” — far too time consuming. We regularly tell people that if their application is turned down it may be two to three years before the appeal is settled. Many disability rights advocates have experienced the death of a client while waiting. In the field of mental health this could be from suicide. **(Anonymous, BC, E-Consultation Participant)**

People don't realize that some people out there — or half of the people out there — with only a grade five or a grade six education can't even read right or don't understand what they read. I'm going to tell you it's a pretty heartfelt feeling when these people come to me at different times and ask me, “What do I do? These people are intimidating me?” They send out a letter and say it's an informal panel you're going to be before. Whether it's informal or not, these people are terrified to death. **(Dave MacKenzie, Canadian Injured Workers' Alliance)**⁸⁸

4.3.2 Improving the Appeal Process

While we know that the policy intent of the CPP(D) program is a positive one, we acknowledge that the application and appeal process is a negative experience for many people. It would not be difficult both to “humanize the process” and to give applicants and appellants an opportunity to understand what is required.

The Subcommittee is concerned about the large number of applications that are initially rejected, particularly in light of the high rate of successful appeals. This feeds the widespread perception that HRDC is trying to discourage people from accessing CPP(D). It also places undue stress on people at a vulnerable time in their lives. Adjudicators who look at the initial application should also have a better understanding of the ‘whole person’ who is functioning in the real world.

We have concluded, therefore, that the best way to improve the appeal process is to address issues before they reach the point where someone launches an appeal. HRDC must spend the time and resources to take more effective measures to resolve

⁸⁸ SCSPD, *Evidence* (12:05), Meeting No. 23, 21 May 2002.

cases before they reach the Review Tribunal. Members of the Review Tribunal panels emphasized this point in their submission.⁸⁹

Recommendation 4.11

The Committee recommends that HRDC allocate more resources to the initial consideration of applications in order to lower the number of unjustified denials and resulting appeals. In light of the important contribution of personalized contact in determining the eligibility of an applicant, the Committee further recommends that there be person-to-person contact between an applicant and the person adjudicating the application before a decision is reached on the application.

Recommendation 4.12

The Committee recommends that following an initial denial of an application for CPP(D) benefits, HRDC should automatically put in place a reconsideration procedure. This reconsideration should be conducted by a panel consisting of two health care practitioners — one of whom should be a physician. This panel should have person-to-person contact with the applicant.

Recommendation 4.13

The Committee recommends that HRDC offer and provide translation services to all applicants who speak neither English nor French to assist them with their CPP(D) application.

Recommendation 4.14

The Committee recommends that the Office of the Commissioner of Review Tribunals (OCRT):

- a. include in the request for appeal form a question asking all appellants to identify any third party that required them, for whatever reason, to appeal a denial of benefits to the OCRT; and**
- b. charge such third party the cost of processing each unsuccessful appeal.**

⁸⁹ The Panel Member Task Force on Core Policy Issues, composed of Review Tribunal Members, reported on eligibility issues, the appeal process, benefits payment, and the relationship between the CPP(D) program and other programs in a report submitted in March, 2003.

4.3.3 Is the Mistrust Due to Lack of Information?

Members of the Subcommittee believe that some of the distrust and dissatisfaction with the appeal process stems from a lack of information on the part of appellants. We also believe that there is a difference between making information available and actively disseminating information. The Office of the Commissioner of Review Tribunals (OCRT) attempts to provide basic process related information to appellants but from the evidence that we heard, it seems that the information needs of clients are not being sufficiently met. This was also identified as a problem by a client satisfaction survey commissioned by the OCRT:

The “brown brochure” that is put out from the office of the commissioner itself contains useful information; it’s just that most people don’t understand that it’s available, how to get it, what its relationship is to the process. There needs to be some effort to increase the awareness of appellants and non-appellants of the resources that might be available to them...

There needs to be some effort to increase the awareness of appellants and non-appellants of the resources that might be available to them to assist them in the appeal, their rights at the appeal, and their use of representatives in the appeal process... In looking at those areas of improvement, appellants and non-appellants thought communication with both the office of the commissioner and the CPP office needed to be improved. **(Chris Baker, Vice-President, Environics Research Group)**⁹⁰

Recommendation 4.15

The Committee recommends that the Office of the Commissioner of Review Tribunals appoint outreach officers who will personally contact every appellant to explain the appeal process, the resources that might be available to assist them in their appeal, and their right to use representatives in the appeal process. This would also provide an opportunity to explain a decision respecting the applicant’s eligibility for disability benefits under the CPP.

4.3.4 Going through the Appeals Process

Some participants expressed a high level of satisfaction with the decision rendered by the Review Tribunal or Pension Appeal Board and felt vindicated when their application was finally approved. Other witnesses and online consultation participants also indicated that they feel that CPP(D) appellants get respectful and fair hearings. A survey commissioned by the OCRT revealed that many people who had appeared before tribunals, had positive perceptions of the tribunal members and of the staff of the Review Tribunal.

⁹⁰ SCSPD, *Evidence* (16:15), Meeting No. 6, 12 February 2003.

As a legal clinic lawyer, I deal with several disability entitlement bureaucracies. At the sharp end of the stick, that is to say where clients meet those who decide their cases, the C.P.P. is one of the best. My clients almost always get respectful and fair hearings. They are listened to, and they are given enough time to explain their lives. **(Stuart, ON, E-Consultation Participant)**

Despite the level of satisfaction with staff during the appeal process, the Subcommittee is extremely concerned that the rigours of the process itself discourage many people from even starting it. The OCRT's client satisfaction survey found that almost 80% of people who did not appeal cited stress involved in the appeal as a factor in their decision. To us, this means that many people who are entitled to CPP(D) benefits are probably not receiving them. In addition, witnesses and e-consultation participants expressed how their disabilities made it difficult for them to participate in the appeal process.

In September, 2002 my application was denied. I immediately appealed. I had three doctors saying that I am not able to work at all, my disability is permanent and it will worsen as time goes on. I have been unable to work since March, 2001 and for some time prior to that, work was extremely difficult. My entire life has changed. I can't work, I rarely leave the house, I have had to give up so much because of my disability yet CPPD says I'm not disabled. I can appeal again but it requires going to a hearing in Ottawa. Ottawa is approximately 4.5 hours from my location. I can't afford to hire a lawyer, I can't sit in a vehicle for hours because of my disability — my disability makes it impossible for me to get there to prove that I am disabled. **(Patricia, ON, E-Consultation Participant)**

Some of my patients are too ill to even get out of bed never mind to think clearly since CFS/FM/MCI affects cognitive function. It is impossible for them to organize an appeal without help. Usually those who manage have a relative do the work for them. Those without relatives are out of luck. This is not fair. **(Eleanor, AB, E-Consultation Participant)**

Even those Appellants who were successful in their appeal predominantly mentioned negative emotions rather than positive when describing the Review Tribunal process.⁹¹

We hope that our recommendations to reform the application process, to provide assistance to those who apply, to offer better explanations for those whose applications are denied and to implement an automatic reconsideration will reduce the stress on individuals by promoting a more humane treatment during the application process. Hopefully, this will also reduce the number of people who believe they need to launch appeals.

At the same time, we considered whether the appeal process could be further simplified. The panel members of the OCRT recommended that the final level of appeal to the Pensions Appeal Board should be eliminated. Given that about 60% of PAB

⁹¹ Office of the Commissioner of Review Tribunals, *Client Satisfaction Surveys: Final Report*, Ottawa, 2002.

decisions are made in favour of the claimant, we hesitate to recommend the elimination of this highest level of appeal — at least until further measures of protection for CPP(D) applicants and appellants are introduced.

The need for representation in the review process featured prominently in our hearings. We have heard, however, that the cost of securing representation was a barrier for many people. Currently, representation is only available for appellants who are able to afford it. Only half of appellants before the PAB are represented by counsel or an agent. The OCRT survey found that 60% of those who did not appeal cited lack of representation as a reason not to appeal.⁹² Our online consultations supported this finding with personal stories and information.

People with MS face challenges and obstacles every minute of their lives; application and appeal processes should take this into consideration at every juncture: make the processes easy, short unrepitive, less judicial and less inconvenient. For example, getting to a doctor can be a major task that could take hours to actually accomplish and weeks to prepare for. Another ex, asking someone to write and extra letter even or supply one more medical record (while a reasonable request on the surface) doesn't take into account the severity of some people's disease: some people cannot write or hold a pen or phone, or are so cognitively impaired they don't know how to write a letter or who to call. Some people are just too tired to do anything. ...Finally, in our office we have MS advocates who take applicants step by step through the application process and type up applications. If they are denied, the advocates will help them appeal. Sometimes they are referred to lawyers. Without this step by step assistance, many people do not get the benefits they have a right to receive because they haven't filled out the application properly or because the process looks so long and difficult for them. **(Anonymous, BC, E-Consultation Participant)**

Recommendation 4.16

The Committee strongly recommends that HRDC fund disability organizations (e.g. independent living centres) to help them provide advocacy and service delivery supports to individual CPP(D) applicants and appellants.

Recommendation 4.17

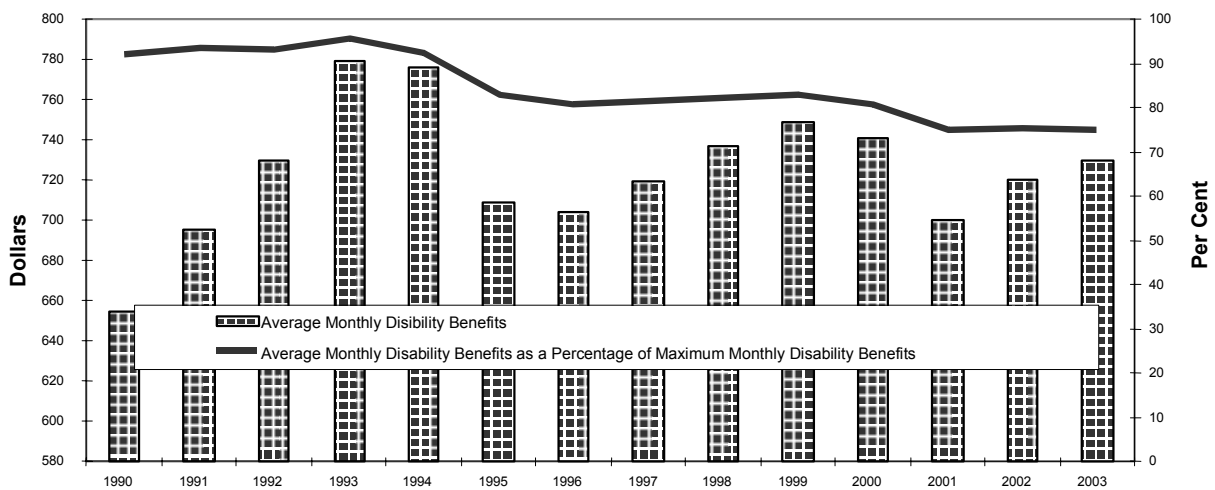
The Committee recommends that HRDC work with the federal Department of Justice to determine to what extent automatic legal assistance can be provided to all those who appeal CPP(D) denials at the Office of the Commissioner of Review Tribunals or the Pension Appeal Board in order to ensure that appropriate representation is available for appellants.

⁹² *Ibid.*, p. 8.

CHAPTER 5: THE ADEQUACY OF CANADA PENSION PLAN DISABILITY BENEFITS

The architects of CPP(D) fully anticipated that beneficiaries would also have access to other sources of income to replace their earnings in the event that a severe disability precludes work. We mentioned this earlier in our report and discuss it in greater detail in the next chapter. Suffice it to say that the expectations of CPP(D)'s architects have only partially been met, since a recent estimate suggests that less than one-half of CPP(D) recipients receive disability income support from another source. Members of the Subcommittee are also concerned that the proportion of CPP(D) beneficiaries with access to multiple sources of income support seems to have declined in recent years, since Statistics Canada estimated in 1995 that 60% of CPP(D) recipients received disability income support from another source.⁹³ The low and declining incidence of multiple sources of disability income support among CPP(D) beneficiaries and the absence of a well integrated disability income support system is of great concern to us and raises the issue of the adequacy of the level of income support provided under CPP(D).

CHART 5.1 - Average Monthly Disability Payments



Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament.

⁹³ Auditor General of Canada, *1996 Report of the Auditor General of Canada*, Ottawa, 1996, Chapter 17, paragraph 17.116.

CPP(D) benefits consist of two parts—a flat-rate component and an earnings-related component. The flat-rate component is a payment set at \$370.32 per month in 2003, while the earnings-related component is a payment equal to 75% of the retirement pension that a CPP(D) beneficiary would have received at age 65 (up to a maximum \$600.94 in 2003). Dependants of CPP(D) beneficiaries may be eligible for a flat rate children’s benefit. CPP(D) benefits in pay are fully indexed⁹⁴ to inflation and are taxable.

In 2003, the maximum monthly CPP(D) benefit was set at \$971.26 or \$11,655.12 per year. However, the average CPP(D) recipient received \$730.08 per month in January 2003. The average monthly CPP(D) benefit is about three-quarters of the maximum payment, down significantly from 1993 when the average CPP(D) monthly payment was equal to about 96% of the maximum allowed (Chart 5.1). In 2003, dependants of CPP(D) beneficiaries may receive a maximum flat-rate children’s benefit worth \$186.71 per month or \$2,240.52 per year.

As a result of concerns over the future viability, sustainability and affordability of the CPP, many changes have been made to this program. Some of the changes that took effect in 1998 that served to reduce the amount that was spent on CPP(D) payouts were:

- The earnings-related part of the disability benefit is now based on the average of maximum pensionable earnings over the last five years (previously it was the last three years);
- The ceiling on the combined survivor and disability benefits was reduced to limit the combined value of these two benefits;
- The conversion of a disability pension to a retirement pension at age 65 is now based on the maximum pensionable earnings when the disability was incurred rather than at age 65 (when the amount would have increased as a result of indexation to the cost of living);
- Estates are no longer eligible to receive the disability benefits upon the death of a beneficiary;
- Files are now reassessed more frequently; and

⁹⁴ CPP(D) benefits in pay are adjusted in January of each year, provided there has been an increase in the cost of living, as measured by the Consumer Price Index — CPI (all items). The change in the CPI that is applied to benefits in pay in January of each year is calculated according to the Variation in Pension Index (rounded to three decimal places). The Variation in Pension Index is the ratio of the most recent Pension Index (i.e., the 12-month average of the CPI for the period ending in October of the previous year rounded to one decimal place) to the Pension Index for the previous year.

- Workers must now work a longer period to qualify (i.e., they must have made CPP contributions during four of the last six years, rather than two of the past three years or five of the past ten years, as previously).⁹⁵

5.1 Should Canada Pension Plan Disability Benefits Be Increased?

Our issue poll asked respondents to agree or disagree with the claim that the CPP(D) monthly benefits should be increased to reflect the high cost of living.⁹⁶ A vast majority of respondents (90%) either agreed or strongly agreed with raising CPP(D) benefits for this reason. The lowest level of agreement in favour of raising benefits was found among individuals who identified themselves as employees of a disability income support program, although approximately 67% of these respondents either agreed or strongly agreed with raising benefits. The highest level of agreement (96%), not surprisingly, was among respondents who identified themselves as a CPP(D) recipient, a CPP(D) appellant or a person with a disability.

I receive \$578/month ... which is topped up \$133/month by the BC government. I can't believe I had to fight so hard for so little. I live alone, with no other source of income. I never knew poverty before becoming ill. Federal and provincial disability benefits are totally inadequate. **(Melissa, BC, E-Consultation Participant)**

All I wish to say is that it is almost impossible to manage on the income provided through the disability pension. I have a small amount of money which is being depleted — I have been using it for food, medication etc. It will be gone soon. The anxiety created by this situation is hard to bear and does increase my symptoms — you see without the ability to earn an income I do not have any control about how my destiny will materialize. **(Elizabeth, ON, E-Consultation Participant)**

The maximum benefit level is now approximately \$960 per month. An annual income of \$11,500 (as a maximum) is clearly NOT adequate as income support, since this amount would still be well below the poverty line for a single person. While we recognize that no income-replacement system will ever equal the amount that earnings would have generated, the rate needs to be increased in order to adequately support the disabled contributor. **(Northumberland Community Legal Centre, ON, E-Consultation Participant)**

⁹⁵ William Young, *Canada Pension Plan Disability: Policy Overview and Issues*, paper prepared for the Subcommittee on the Status of Persons with Disabilities, Parliamentary Research Branch, Political and Social Affairs Division, 31 May 2002.

⁹⁶ Our issue poll provided respondents with some basic data (e.g., monthly benefit level, percentage of recipients with no other source of income etc.) as well as arguments for and against increasing the CPP(D) benefits. Arguments for an increase included: (1) the current level of support is low, given the cost of living in Canada; (2) the low level of support may cause persons with disabilities to sell off their possessions so they can have enough money to live; (3) the current benefit level may put an additional financial burden on family members; and (4) Canada's maximum benefit is lower than any other public disability insurance program in the industrialized world. Arguments opposing an increase included: (1) the CPP(D) was only intended to be a partial wage replacement program; (2) other disability income programs may supplement CPP(D); (3) higher benefit levels would mean that people might not have an incentive to return to work; and (4) CPP contributions would need to be substantially increased if the maximum benefit rate was increased significantly.

Issue poll respondents were also asked if they agree or disagree that the CPP(D) program should raise the monthly benefit for dependent children of CPP(D) recipients. A majority of respondents (78%) either agreed or strongly agreed with this proposal. A breakdown of respondents revealed that people who identified themselves as employees in the insurance business were divided on this question: 44% either agreed or strongly agreed, 30% neither agreed nor disagreed and 26% either strongly disagreed or disagreed. The highest level of agreement was found among people who identified themselves as CPP(D) appellants, as 62% strongly agreed and another 31% agreed (for a combined total of 93%) that the CPP(D) program should raise the monthly benefit for dependent children.

Respondents were further questioned on whether they agree or disagree that the CPP(D) program should consider all sources of income before calculating the level of benefits for an individual. While a majority of issue poll respondents (62%) either agreed or strongly agreed with this statement, 50% of people who identified themselves as legal representatives of persons with disabilities strongly disagreed (29%) or disagreed (21%) and only 39% were in agreement. Of those who identified themselves as CPP(D) applicants, appellants, or contributors; family members of a person with disabilities; rehabilitation specialists; and/or employees of a disability association or advocacy group, over one-third strongly agreed with considering all sources of income before calculating the CPP(D) benefit rate for an individual.⁹⁷ The strongest approval was among respondents who identified themselves as rehabilitation specialists with an 80% rate of approval (40% agree and 40% strongly agree).

Respondents were also asked whether they agree or disagree that the CPP(D) program should be mindful of the costs of increasing CPP(D) benefits. Over two-thirds of respondents (71%) either agreed or strongly agreed that we should consider the costs of increasing CPP(D) benefit levels before doing so. The strongest support for considering the cost implication of higher benefits was found among respondents who identified themselves as employees in the insurance business (95% either agree or strongly agree). The lowest level of support for the need to consider costs before raising CPP(D) benefits was found among individuals who identified themselves as legal representatives of persons with disabilities.

Some of our online consultation participants and witnesses indicated that because CPP(D) benefits are calculated partly on the basis of earnings, this approach affects adversely those with low earnings, particularly women.

Because part of disability payments is based on an earnings-related calculation, not all recipients receive the same monthly benefit. This is particularly important when considering gender. Due to the overall higher earnings of men, women as a whole receive fewer benefits. For example in 2000, the average disability benefit

⁹⁷ It should be noted that people who identified themselves as medical doctors were excluded from this list because the sample is too small to be significant (n=7) but, for interest only, 4 out of 7 medical doctors strongly agreed with considering all sources of income when determining CPP(D) benefit rate.

for men was \$737.21 per month, compared to \$625.15 per month for women. **(Canadian Aids Society/Canadian Working Group on HIV and Rehabilitation, ON, E-Consultation Participant)**

... there are significant gender differences in the benefit amount. These are 2000 figures. Men receive an average of \$737 monthly, and women \$625 monthly. In 2000, men's average monthly benefit was 80% of the maximum amount, which is \$11,473, and women's was 68.1% of the maximum, which is \$7,800 yearly. Women are also less likely than men to receive employer sponsored long-term disability benefits. **(Sally Kimpson)⁹⁸**

The issue of providing partial benefits also surfaced, implying that CPP(D) benefits should be means-tested. While we know that CPP(D) benefits alone are unable to provide an adequate level of income support, we also recognize that this program was never intended to be a stand alone program for covering all the earnings replacement needs of individuals with a severe disability. In addition, as noted elsewhere in our report, CPP(D) offers universal coverage, an important program feature in the Subcommittee's opinion. We fear that if partial CPP(D) benefits were introduced, the universal nature of the current program would be compromised. One way around this problem might be to provide a means-tested supplementary payment on top of the flat rate portion of CPP(D) benefits if the income of CPP(D) beneficiaries is below a certain threshold. However, we hasten to add that this is a role that is supposed to be played by provincial/territorial social assistance programs and in this context, all members of the Subcommittee fully support a stronger interface between both of these programs to address more effectively the needs of low income CPP(D) beneficiaries and their children. In terms of the latter group, it is important to note that low-income CPP(D) beneficiaries with dependent children will benefit from the February 2003 budget measure to increase annual support for a first child under the Canada Child Tax Benefit to \$3,243 by 2007, an increase of almost 25% over the maximum payment as of July 2003.

Continued eligibility under the current program allows CPP(D) beneficiaries to earn some employment income, provided a client does not demonstrate regular capacity to work and earn more than an amount known as Substantially Gainful Occupation (SGO). This amount, discussed further in Chapter 7 of our report, could be increased, but we recognize that a measure of this sort would do little to help the majority of those who are unable to work at all. A change in the SGO could also have an impact on benefit eligibility as this earnings threshold, as previously discussed, is used along with other factors to define a "severe" disability.

Even though we support reforms that would enhance the overall level of income protection afforded by CPP(D), the reality is that this program is poorly integrated with other income disability support programs across the country, as discussed in the next chapter of our report. Suffice it to say that any attempt to raise CPP(D) benefits under the current integrated system may have little or no impact on the level of CPP(D) benefits that recipients actually receive. Furthermore, an increase in CPP(D) benefits could very well

⁹⁸ SCSPD, *Evidence* (16:25), Meeting No. 5, 5 February 2003.

make some recipients worse off, since provincially-provided disability supports are means-tested and if an individual's income rises due to an increase in CCP(D), these disability supports may in fact be withdrawn by the provinces.

Notwithstanding these integration issues, the Subcommittee would like to see the calculation of CPP(D) benefits and retirement benefits of CPP(D) beneficiaries return to the pre-1998 method. Prior to the changes introduced in 1998, retirement benefits were based on an average of the last three years' YMPE (Year's Maximum Pensionable Earnings), instead of the current five years. Since workers' earnings tend to be highest in the most recent periods, any average that captures a longer period of time usually entails the inclusion of lower-earnings years and, therefore, a lower average over that period. Thus the maximum CPP(D) benefit would be higher with a shorter YMPE averaging period. The calculation of retirement benefits of CPP(D) beneficiaries also changed from one based on the YMPE when the recipient turned 65 and then indexed to wages to one based on the YMPE at the time of disablement and then indexed to the Consumer Price Index.⁹⁹

The Subcommittee was informed that CPP(D) payments begin in the fourth month after the date that HRDC deems a person to be disabled. We regard this feature as being nothing more than a way of reducing the cost of benefit payments. Since we do not believe that a moral hazard problem exists in the context of a severe disability, we find this four-month "waiting period," which is akin to a deductible, to be totally unnecessary and unacceptable.

5.2 CPP(D) and Disability Supports

Canadians, who shared their experiences with the Subcommittee through stories and solutions, paid a lot of attention to the need for some form of benefit to help pay for medication and assistive devices for those who are not eligible for any other type of plan or insurance that covers such costs. Depending on where you live in Canada and on the eligibility criteria of various provincial and private programs, two people with the exact same set of life circumstances may not have the same access to benefits to cover the costs of medications and assistive devices. Some participants not only questioned the fairness of such a system but also pointed out the important social and economic impact that such an inequity entails, particularly in view of the fact that individuals who do not take their prescribed medications may aggravate their health, suffer serious complications and become more regular consumers of health care services. Such a situation contributes not only to the high cost of health care to Canadian taxpayers but also — and

⁹⁹ Currently, the calculation of an individual's retirement pension involves converting the individual's annual contributory earnings into five-year average YMPE dollar terms in the year of retirement. The YMPE is based on changes in a wage index, while CPP benefits are adjusted according to changes in the CPI. The extent to which one indexation formula differs from the other can result in a difference in the value of monthly CPP retirement benefits. It is estimated that the 1998 changes in the method of calculating CPP(D) benefits and retirement benefits for a CPP(D) beneficiary resulted in a reduction of \$100 to \$200 annually in maximum payments (see Office of the Commissioner of Review Tribunals, *Report of the Panel Member Task Force on Core Policy Issues*, 12 March 2003, p. 17).

more importantly — to an immeasurable human cost. In the words of one storyteller, “Canada has an enviable standard of living, UNLESS one is disabled.”¹⁰⁰

I just finished going through the Issue Poll for CPP — Disability benefits. I am an authorizer for sight enhancement adaptive equipment through the Assistive Devices Program (ADP, Prov.). I recently dealt with a client who was not able to purchase reading equipment. As a recipient of CPP-Disability Benefits, he was not entitled to benefits to cover the \$600 (for new equipment) or \$200 (for used equipment). His finances were VERY limited and he was not eligible for ODSP (which would have covered all but \$100). This client also experiences costly fees for medication — I don't know the specifics. This scenario illustrates the problem when CPP makes an individual ineligible for a provincial program. He has still not been able to purchase his own equipment. **(Shannon, ON, E-Consultation Participant)**

CPP benefits are often not adequate to allow a reasonable standard of living including medication costs (frequently hundreds of dollars per month). One of our main concerns is for individuals who are covered by CPP, but who are not covered for medication costs by any other program. Therefore these individuals must choose between paying for medication and living in greater poverty or not paying for medication and becoming ill — increasing demands on the health care system and costing taxpayers more money in the long run. Even individuals who are able to access Community Services assistance to cover medication costs — provincial standards result in these individuals still living below the poverty level, with all its negative impacts on health status and increased health costs to all taxpayers. **(Noel, NS, E-Consultation Participant)**

My chief complaint is the fact that CPP benefits do not include medication. It sure is a sad situation when people who do not work or are drunks or druggies can receive pills, dental and glasses etc. through welfare or welfare disability, and someone like me has to pay for them. This is definitely not fair. ... I think it's about time that CPP reconsider the situation of someone receiving benefits and include pills, glasses, etc. Amend the act to include the benefits that the welfare recipients receive. **(Anonymous, ON, E-Consultation Participant)**

Persons in receipt of CPP disability benefits should be provided with coverage for prescription medications and assistive devices. Presently many of our clients whose income exceeds the ceiling for social assistance, must cover their own prescription costs and disability supports. Given the low rates of CPP assistance this results in extreme hardship for such persons and their families. **(Algoma Community Legal Clinic, ON, E-Consultation Participant)**

Our testimony, including the stories and solutions received through the online consultations, supports the findings of numerous studies profiling the lives of persons with disabilities that, over the last 30 years, have concluded that this population is more likely than other Canadians to live in poverty. We recognize that persons with disabilities not only need income support but may require a vast array of disability supports that are also essential to live. We are mindful of the fact the constitutional amendment that gave rise to CPP(D) did not include disability supports and services. Hence, direct federal delivery of

¹⁰⁰ Vida, ON, E-Consultation Participant.

these supports is not something that we are anticipating. However, we do encourage the federal government to continue discussions with provincial/territorial governments regarding a pharmacare initiative, including those recommended in the Kirby and Romanow reports.

The federal government provides some assistance indirectly to help cover the cost of disability supports through the medical expense allowance and the disability tax credit. However, both of these measures are of limited value to those whose incomes are too low to come into contact with the tax system. While the design of a more fully integrated disability income and support system is beyond the scope of this report, we recognize that serious gaps exist and much remains to be done to address the inequities and lack of coherency in the existing system. As we continue to explore a better approach for providing income support to persons who are unable to work, we will, of course, be mindful of the need to enhance the level of support for persons with disabilities, both in terms of income adequacy and disability supports. Some of these are briefly discussed in the last chapter of our report as next steps in our study.

5.3 Taxation of CPP(D)

While the solution to the problem of CPP(D)'s income adequacy is clearly one that will not be resolved in the near term, one step that the federal government could take to bolster the level of income support provided through CPP(D) benefits pertains to a change in the tax treatment of these benefits.

As previously mentioned, CPP(D) is treated as taxable income. In view of the financial challenges faced by persons with disabilities who are reliant on disability income support programs, many online consultation participants and witnesses raised concerns over the appropriateness of, and the rationale for, taxing CPP(D) benefits, given that other disability income such as social assistance, employee-pay-all long-term disability benefits and most workers' compensation payments are not taxed.

CPP disability provides an already low income, and imposing taxes on a low-income program like this one doesn't reflect the disability community's idea of fairness. So we really suggest a review of whether or not the disability benefits should continue to be taxable. **(Mary Ennis, Vice-President, Council of Canadians with Disabilities)**¹⁰¹

The inadequacy of the level of benefit is further compounded by the effect of income tax. CPP benefits should be made tax-exempt, as are worker's compensation payments. Both types of benefits are generated by participation in the workforce. There is no rationale for disabled workers having to pay income tax on the receipt of CPP benefits, but not on their WSIB benefits. **(Northumberland Community Legal Centre, ON, E-Consultation Participant)**

¹⁰¹ SCSPD, *Evidence* (15:45), Meeting No. 6, 12 February 2003.

It is impossible to survive on your monthly disability benefits alone, especially when they are considered "taxable income". **(Stephen, ON, E-Consultation Participant)**

I feel also that the taxability should be addressed. Those on welfare are not taxed and make no monies and few have the education that a lot of people on disability have. However, those who cannot work, are TAXED, WHY? **(Nancy, ON, E-Consultation Participant)**

I don't think CPP(D) should be taxed. I am also really upset when the government says the inflation rate is 3.9 and us disabled people get an 1.6 percent increase... and are expected to suck it up and do without even more and be taxed to death on top of that. Every lousy dime I get in benefits is gobbled up by necessities and taxes ... there is no discretionary money left. ... If my rent goes up ... it does not go up 1.6 percent ... it goes up 5-10 percent. Over the past 7 years of my permanent disability I have had to sell off lots of my personal belongings to survive. This included my share in my house ... because I could not afford the maintenance and property taxes. I have also had to file bankruptcy because I could not keep up with the income tax ... not enough was deducted. And if enough is deducted I have to move to a slum or get a supermarket cart and become a bag lady. I am tired. ... I live in a very bad and dangerous neighbourhood but cannot afford to move. **(Hella, BC, E-Consultation Participant)**

Members of the Subcommittee are fully aware of the taxation principle that if CPP contributions are deducted from income for tax purposes, CPP benefits should be taxable. However, since CPP contributions do not distinguish between amounts paid for retirement benefits and those for disability, it is difficult to apply this taxation principle. Moreover, since CPP(D) only represents about 15% of total CPP expenditures, notional contributions earmarked for CPP(D) should reflect this fact. We do not support the taxation of CPP disability benefits and a way must be found to adjust CPP contributions so that the CPP(D) portion is not deducted from income for tax purposes.

Recommendation 5.1

The Committee recommends that Human Resources Development Canada return to the pre-1998 method for calculating CPP(D) benefits and retirement benefits for CPP(D) recipients.

Recommendation 5.2

The Committee recommends that Canada Pension Plan Disability payments commence on the day that Human Resources Development Canada qualifies a person to be eligible for CPP(D) benefits.

Recommendation 5.3

The Committee recommends that the Technical Advisory Committee on Tax Measures for Persons with Disabilities established by the Minister of Finance examine how best to adjust CPP contributions deducted for tax purposes in order to remove amounts paid in respect of disability benefits and thereby eliminate the taxation of Canada Pension Plan Disability benefits. This measure should be fully anticipated in the next federal budget and be in place by the beginning of the fiscal year 2004-2005. Once in place, similar treatment should be afforded to all Canada Pension Plan Disability benefits in pay.

CHAPTER 6: THE CANADA PENSION PLAN AND OTHER DISABILITY INCOME SUPPORT PAYMENTS: THE NEED FOR BETTER INTEGRATION

Although the CPP(D) is the single largest long-term disability income program in the country, it is not the only source of income support for individuals incapable of regularly pursuing paid employment for a prolonged period of time. Since the inception of CPP(D), federal/provincial/territorial policymakers have always considered CPP(D) as one of several vehicles for meeting the earnings replacement needs of persons who experience a long-term interruption in earnings because of a serious disability. Unlike these other income sources, however, CPP(D)'s universal coverage for working Canadians puts it at the fore in terms of income sources for replacing earnings. The Subcommittee has received a great deal of commentary about CPP(D) being a "first payer." Some have suggested that it be a "last payer."

Irrespective of its ranking as a payer, the Subcommittee would like to emphasize that CPP(D) is first and foremost, assuming eligibility conditions are met, a **guaranteed payer**. Eligible individuals receive CPP(D) benefits regardless of their overall income. And, in our opinion, this is a key characteristic of the program and one we feel should be retained.

So what protections does the Canada Pension Plan afford? There are many of them. We mentioned a very important one at the beginning — the universal coverage of all workers ... It's portable across the country, which means you can work anywhere and you can have the protection when you need it wherever you live ... It's equitable across the country. You get the same benefit regardless of where you live. It is indexed to inflation, which you can't say for many of the other benefits ... any Canadian who makes the required contributions and who qualifies on the basis of definition is eligible. If you look at some of the other plans, especially private plans, it is not that easy to get in. If you have pre-existing conditions, or if you have any genetic condition in your family, you may not qualify. The Canada Pension Plan doesn't ask this. **(Sherri Torjman, Vice-President, Caledon Institute of Social Policy)**¹⁰²

While the payment of CPP(D) benefits does not consider payments made by other disability income support providers, the converse is not true. It is in this context that much of our testimony — both online and the hearings — raised serious concerns about CPP(D)'s interaction with other disability income support providers.

¹⁰² SCSPD, *Evidence* (10:05), Meeting No. 23, 21 May 2002.

Many participants in our online consultations and public hearings expressed concern over variations in the income protection afforded persons with disabilities across the country. They expressed frustration regarding inconsistencies in benefit levels and the inequitable treatment afforded those whose livelihoods depend on disability income replacement and support. As indicated above, similar persons receiving disability income support are treated differently depending on which programs they qualify for and where they live, and not on the nature of their disability. A vast majority of the stories we received through our online consultations dealt with how some disability income support programs reduce their costs by shifting applicants to other programs. Some persons with disabilities also fall between the cracks if they are shifted from one program to another but denied eligibility in each because of one particular program's position vis-à-vis another.

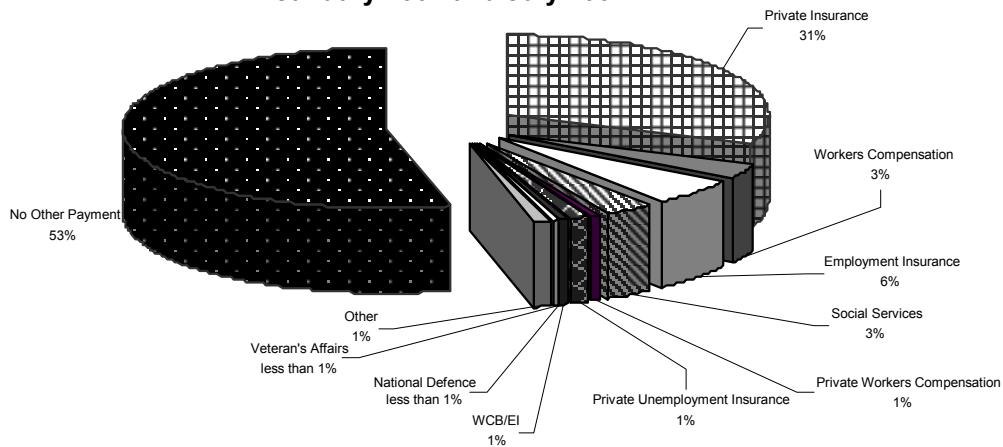
The CPP(D) program operates in conjunction with private insurance, workers' compensation, social assistance, Employment Insurance (EI) and other programs that provide income support. We were constantly reminded that persons with disabilities find it difficult to determine which federal and provincial programs they may be eligible for, which programs to apply for and how to apply. Virtually everyone who addressed this issue suggested that there needs to be a more integrated system to provide people with more help in getting the full range of disability income benefits that they are entitled to receive, particularly when they confront this complex system at a time when they are in difficult circumstances. We totally agree, but the challenge is how do we do this?

6.1 The Incidence of CPP(D) and Other Income Support Programs

The extent of CPP(D)'s interaction with other disability income support providers can be gleaned from the graphic illustration presented in Chart 6.1, which shows the distribution of other types of disability income support received by CPP(D) beneficiaries whose applications were approved between January 2001 and July 2002. According to these data, almost one-half of CPP(D) recipients receive disability income support from another source. Next to CPP(D), payments from private insurers represent by far the second most common source of disability income for CPP(D) beneficiaries. Employment Insurance, Social Assistance and Workers' Compensation were the next most frequently reported sources of disability income among CPP(D) recipients. Given the high incidence of private disability insurance received by CPP(D) recipients, it is therefore not surprising that much of the Subcommittee's testimony, both in terms of our online consultations and public hearings, pertaining to CPP(D) integration, or the lack thereof, focused on private insurers.

CHART 6.1 - Distribution of Other Types of Disability Income Support

Whose Application Was Approved Between January 2001 and July 2002



Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

Many of the administrative and financial challenges facing CPP(D) recipients are inter-related with these other disability income support programs. Persons with disabilities can access provincial social assistance after meeting a needs test that varies from province to province. Provinces generally require applicants' disabilities to be severe and prolonged and render them unable to work. All social assistance systems provide specific disability-related provisions (e.g., higher exemption limits on assets/income, higher benefits, supplementary coverage). Some provinces supplement CPP(D) benefits when these benefits are low relative to the income needs of recipients.¹⁰³ Although some persons with disabilities may be entitled to social assistance benefits, many of those who are also entitled to CPP(D) will likely see their social assistance benefits reduced by the total amount of their CPP(D) benefits. Moreover, the lack of integration between these programs can have serious ramifications well beyond the level of income support provided, such as the loss of a drug card even in instances involving minimal differences in benefits.

Well, I just wanted to mention, first of all ... I was faced with the same thing when I was accepted for CPP disability. I was currently on provincial social assistance. I had the drug card. My medication isn't cheap, but at least with the drug card, I didn't have to worry about paying for it. My CPP put me two dollars over what I was getting on social assistance, which meant I lost my drug card. **(Roy Muise)**¹⁰⁴

¹⁰³ Sherri Torjman, *The Canada Pension Plan (Disability) Benefit*, Caledon Institute of Social Policy, Ottawa, 2002, p. 44-45.

¹⁰⁴ SCSPD, *Evidence* (11:00), Meeting No. 13, 13 May 2003.

Individuals who are unable to work because of sickness, injury or quarantine are entitled to 15 weeks of EI benefits provided they have acquired 600 hours of insurable employment in their qualifying period. Given the short duration of these benefits, EI benefits tend to interact with short-term rather than long-term disability income support programs. Income received from a group wage loss indemnity plan is treated as earnings on claim and, as such, serves to reduce EI benefits according to section 19 of the *Employment Insurance Act*. If a claimant is in receipt of workers' compensation payments and these weekly payments exceed weekly EI benefits, then the claimant's benefit period may be extended in these instances up to a maximum period of 104 weeks. While there is no formal link between EI and CPP(D) benefits, HRDC does inform EI beneficiaries about the possibility of obtaining CPP(D) in the event of a serious long-term disability. Because EI benefits are typically offset by other disability income support payments, members of the Subcommittee are concerned that some CPP(D) beneficiaries may not be entitled to EI compassionate care benefits once they are implemented in January 2004. While we recognize that this problem may emerge in a relatively small number of instances, we believe steps should be taken to ensure that these benefits are not offset by CPP(D) benefits.

Workers' compensation benefits (WCB) provide income support to those who lose employment income as a result of an accident at work. However, WCB varies considerably across the country and this variation carries over into the way WCB interacts with CPP(D) benefits. In a minority of cases, workers receive both WCB and CPP(D) benefits; while in most cases CPP(D) benefits are deducted from workers' compensation payments either in full (e.g., Ontario) or by some other amount (e.g., 50% in British Columbia). According to data provided by Human Resources Development Canada, Workers' Compensation Benefits (WCB) and CPP(D) payments are combined (or stacked) in Alberta, Yukon, Northwest Territories and Nunavut. Another major difference between most WCB payments and CPP(D) is that the former are based on some proportion of net (after tax) earnings and are not treated as taxable income; while CPP(D) benefits, as discussed in the previous chapter, are taxable.

I think the first point is that there is an inconsistent treatment across Canada in terms of the offset of Canada Pension Plan. ... Also the rate of financial relationship is quite different. In Ontario it's 100% offset. In British Columbia it's a 50% offset. In the Yukon and Alberta it's a 0% offset. So it's very inconsistent across the country and I think this is confusing because we have workers who travelled and work in different provinces and they may have accidents or exposure to industrial diseases or occupational diseases in different places and sorting all this out in terms of who's responsible for what, what percentage do you get and all that is often beyond the grasp of the ordinary citizen. **(Blake Williams, Director, Workers' Advisers, Department of Labour, British Columbia)**¹⁰⁵

¹⁰⁵ SCSPD, *Evidence* (10:05), Meeting 12, 6 May 2003.

6.2 CPP(D) and Private Insurers

Long term disability (LTD) plans, usually sponsored by employers or professional bodies and administered by private insurance companies, replace some portion of pre-disability employment income (typically these policies insure 70% earnings replacement),¹⁰⁶ but the total payout by the insurer is lower when CPP(D) and other disability income support payments are involved. The insurance industry has indicated that the reason for this is that the premiums paid by LTD plan members are based on the assumption that a certain proportion of policy holders would be eligible for CPP(D) (and other sources of disability income support) and that, as a result, these other payments serve to offset or reduce the actual LTD benefits paid by private insurers. In other words, private insurers are joint payers (some say second payers) when these other payments are involved. Some of our online participants and witnesses characterized these reduced payments or offsets as a “subsidy”.¹⁰⁷ Moreover, many called for CPP(D) to be a last payer.

We acknowledge the concern raised in our testimony regarding the LTD offset issue, but relegating CPP(D) to last payer status would fundamentally change the nature of CPP(D) payments and move the program in a direction which, in our opinion, is less appealing than the current situation.

It is an area of concern to us and we do discuss issues with various insurance companies to try and address specific problems when they are brought to our attention and also with the industry association ... This idea of the last payer would require a pretty significant legislative change because what we'd have to do is change, as I see it, change the CPP to say that we wouldn't pay benefits to people eligible for insurance benefits. So you'd have those who contributed and received benefits out of the CPP — and it is a contributory program, as was pointed out — and then others who contributed would also be eligible for benefits under the same eligibility criteria but because they had a policy with an insurance company would not get the CPP benefits ... What we are talking about is something that would be quite fundamentally different. **(Susan Williams, Director General, Disability Benefits and Appeals, Income Security Programs, Department of Human Resources Development)**¹⁰⁸

Eligibility conditions under LTD plans are typically less onerous than those for CPP(D). In addition, benefits are restricted to those who are unable to work in their own job for two years and, thereafter, in a comparable occupation. This is vastly different from CPP(D)'s requirement that, in addition to having a severe and prolonged disability, one

¹⁰⁶ These income support payments are often combined with extended health benefits that pay for drugs, assistive devices and so on.

¹⁰⁷ This view is extremely difficult to justify if the premiums paid by individuals covered under group LTD insurance plans reflect the fact that some actuarially determined portion of LTD payments will be offset as a consequence of CPP(D). In the absence of these offsets, we would most certainly observe higher premiums for LTD plans.

¹⁰⁸ SCSPD, *Evidence* (11:15), Meeting 13, 13 May 2003.

must be unable to be employed in any substantially gainful occupation, a matter that is discussed in greater detail in the next chapter of our report.

The Subcommittee was told that private insurance companies currently provide disability coverage to about 8.4 million Canadian workers, slightly more than one-half of total employment. In 2001, total disability payments by private insurers amounted to about \$4.8 billion, a two-fold increase over payments in 1990.¹⁰⁹

The dissatisfaction with the interface between disability income support programs seemed most intense in relation to private insurers.

I think one of the things we have to recognize is that there is a difference of objectives as to what CPP disability benefits are trying to provide. Provincial social assistance ministries are trying to offload clients into the CPP program to avoid paying for it. Private insurers, workers compensation also require people to apply for the CPP disability benefits and yet you pay premiums in the different programs and you pay taxes in the different programs but when it comes time to collect the benefits suddenly you are moved all the way over to different other programs so everybody is the payer of last resort. **(Randy Dickinson, Executive Director, New Brunswick Premiers' Council on the Status of Disabled Persons)**¹¹⁰

As discussed earlier in our report, many individuals described how many private insurers force individuals to apply for CPP(D) benefits as a condition of receiving their long-term disability benefits from the insurance company. Some participants told us that they were coerced to apply for CPP(D) even though they knew that it was unlikely that they would meet the eligibility requirements of that program.¹¹¹

The main issue with respect to private insurers, however, relates to a practice known as “off-setting” benefits. In this case, the insurer deducts the actual or anticipated amount of CPP(D) benefits a person is entitled to from the total amount of long-term disability insurance that the person should be receiving. In some cases, this is done prior to determining an individual’s CPP(D) eligibility, a practice which we find unconscionable. Taking into consideration the length of time for processing a CPP(D) application and, if need be, appealing a negative decision, individuals may receive only part of their legitimate benefits for up to three years. To say the least, this can, and does, result in severe financial hardship for some. In our opinion, “some” is still too many.

¹⁰⁹ The Subcommittee was assured that these expenditures exclude amounts offset by CPP(D).

¹¹⁰ SCSPD, *Evidence* (10:25), Meeting 11, 29 April 2003.

¹¹¹ Many workers with disabilities who receive benefits from private disability insurance do not qualify for CPP(D) benefits because their disability does not leave them unable to carry out **any** substantially gainful employment as specified in the CPP(D). Eligibility for private insurers’ disability benefits, on the other hand, requires that an individual be unable to perform his or her **own** job. (See William Young, *Canada Pension Plan Disability: Policy Overview and Issues*, paper prepared for the Subcommittee on the Status of Persons with Disabilities, Parliamentary Research Branch, 31 May 2002.)

In other cases, the insurer pays the insured the full amount of LTD benefits an individual is entitled to on the understanding, and subject to an agreement, that the insured will repay the full amount of CPP(D) benefits once benefits begin. In our opinion, this is a much better situation than the practice of off-setting benefits prior to determining CPP(D) eligibility. Nevertheless, these delayed off-sets have some short-comings as well.

Back in 2000 I turned the magic age of 41 and with it I developed Stenosis of the spine, osteoarthritis, degenerative disc disease and carpal tunnel in addition to my birth disability arthrogyrosis (immobility of the joints). ... I applied for private insurance and was approved however they deducted the equivalent amount of CPP since they assumed I would be receiving it. I then applied for CPP never thinking that I would be denied. I provided the application form, my specialist detailed 4 page letter, my medical reports and x-rays. I was denied twice. I am now at the tribunal stage. ... My private insurance has now stopped and CPP has not been approved due to budget constraints. I am without any source of income and my wife's income does not cover all of our expenses. We are now living on our line of credit waiting for CPP. **(Anonymous, ON, E-Consultation Participant)**

I am on permanent CPP Disability due to debilitating mental illness. For years prior to the "crash", signs were there, but as is often the case, not quite obvious or serious enough. Hindsight is, as always, quite useless. I was fortunate, in that the company I worked for had a long-term disability plan. By the time that kicked in, we were teetering on bankruptcy. The retro CPP payment came just in time to cover the accumulated financial nightmare, but caused a great debt to the company plan carriers, who should have received the retro payment. Given my mental state, it's a wonder that the cheque didn't wind up as wallpaper, or origami. I was blissfully unaware of any of the goings-on with CPP, the benefit carrier, or pretty much anything that went on. The fortunate part for myself, was a very supportive spouse, NOT falling through the cracks in our medical system re professional help and being, in an ironic sense, lucky. Of course, my job, which I had only had for a short period of time, was a subsistence level one which I had taken basically to pay the rent. My previous professional employment had resulted in maximum CPP deductions for decades, but with the last job, I think it pretty much demolished my pensionable earnings. Sad state of affairs. Someday the overpayment recovery amount to the private carrier will be repaid and if lucky, I'll be able to have my LIRA, small as it is, cashed out to my spouse as keeper of my Power of Attorney in order to bring my standard of living out of the gutter. **(Anonymous, BC, E-Consultation Participant)**

Once CPP(D) is approved the Insurance company deducts or "offsets" the total amount of the CPP(D) benefit and any amounts payable to dependants. I have identified two major problem areas with this. First of all the LTD benefit is typically tax free (in my case it was) and the CPP(D) benefit is taxable. ...The bottom line is that it can be argued that those people who qualify for LTD as well as CPP(D) can be considered to be more seriously disabled than people who qualify for LTD alone. The big problem is that the more seriously disabled are subject to a potential tax exposure due to the CPP(D) being taxable than the less seriously disabled on LTD only. ...The second major problem area I have is that CPP(D) recipients receive a tax free benefit for each child. The Insurance company "offsets" this benefit as well. ... First of all a federal government benefit which is designed to give more money to families with children in this case goes directly into the coffers of profitable insurance companies. This is tantamount to a federal government subsidy to the insurance industry on the backs of the children of disabled people. The second problem I have with this is that two employees with

the same income, one with children the other with no children, will pay the same LTD premium to the insurance company. However if these employees become disabled and both receive LTD and CPP(D) the person with children will receive a lower LTD benefit from the insurance company. ... The third problem is that it is possible for the Insurance company to pay NO benefit at all if a CPP(D) recipient has enough children which could bring the LTD benefit to zero. In this case the Insurance company could receive a premium over many years and yet would not be required to pay a benefit to large families. It should be noted that the total combined LTD and CPP(D) benefit is the same between both LTD only and LTD plus CPP(D) recipients in my illustration however an increased tax liability caused by a taxable CPP(D) and the presence of dependants could create serious financial inequities between different classes of LTD recipients. Coordination of benefits between private insurers and CPP(D) needs a major overhaul to make it fair. **(Sig, ON, E-Consultation Participant)**

As an insurer with signed consent/authorization from disability claimants to contact CPP regarding the status of their CPP Disability application, it is extremely frustrating to call and be told CPP cannot release information. Quite often CPP does not acknowledge our company's Assignment of Benefit form and pays out retro CPP Disability benefits to our claimant, leaving us to attempt reimbursement from the claimant directly, when it should have come from CPP. There must be a better line of communication between CPP and Insurers. **(Anonymous, E-Consultation Participant)**

Many more private insurers withheld an estimated portion of their LTD payments with the expectation that beneficiaries would become eligible for CPP(D) prior to 1993, than today. Since this situation resulted in financial hardship for many LTD recipients, the government enacted changes to the CPP in June 1993 to create the conditions that would encourage private insurers not to offset LTD payments until CPP(D) eligibility was determined. Today, some private insurers, under agreement with the Minister of Human Resources Development Canada, offer recipients of LTD an opportunity to enter into an assignment agreement specifying that CPP(D) benefits, including amounts advanced by a private insurer during a beneficiary's CPP(D) assessment period, would be paid by Human Resources Development Canada (HRDC) to the private insurer. For LTD recipients who enter into an assignment agreement, the CPP(D)-equivalent portion of their LTD benefits is paid while their CPP(D) eligibility is being determined. Members of the Subcommittee were told that these LTD advances represent something akin to interest free loans; we accept this characterization, but note that the assignment of benefits also serves to reduce private insurers' collection and administration costs.

... our policy is if a person is eligible to receive Canada Pension Plan, that's a part of their income replacement and CIBC wraps around that and tops that up to the level that we choose. You know ultimately this isn't a windfall situation. We have to make sure that people are really just meeting the income replacement level set as policy to be appropriate. I think the integration with CPP is important and necessary. **(Gretchen Van Riesen, Vice-President, Pension and Benefits, Canadian Imperial Bank of Commerce)**¹¹²

Overall, the arrangements for integrating disability insurance benefits and CPP(D) benefits works very well in the vast majority of cases both in terms of going forward

¹¹² SCSPD, *Evidence* (09:55), Meeting 11, 29 April 2003.

benefits and retroactive payments. Infrequently though there may be cases in which some unanticipated taxes are owing as a result of the integration of benefits. **(Mark Daniels, President, Canadian Life and Health Insurance Association Inc.)**¹¹³

The philosophical issue is simply what is the significance when we say CPP(D) should be the first payer? On one hand this means that it retains its status as a universal program because we know that this is a program that guarantees coverage as a right for all of those who have made the required contribution. It's not a means-tested program. What would the effect be of making CPP(D) a second payer? Would this turn it into a residual program? It's an important question, but at the same time what is the implication when this public social security program links with private insurance as a result of this first payer principle, resulting in a reduction of benefits overall to recipients ... **(Sue Lott, Lawyer)**¹¹⁴

The Subcommittee was told that many LTD plan members are unaware of how their plans are integrated with CPP(D) and other disability income support payments and the Subcommittee believes that it is incumbent upon private insurers and employers who purchase these plans to better inform plan members of their plan's interaction with other forms of disability income support in the unfortunate event that they become LTD beneficiaries.

We were also told that, despite the benefits to those who enter into an assignment agreement with an LTD provider, an unknown number of individuals encounter an unanticipated tax problem arising from the different tax treatment afforded some LTD benefits and CPP(D).

What happens however as well — we talked about the length of time it takes to get to that stage — is now the tribunal says “Well, I guess that you are disabled, and the date we're picking for your disability is from your minimum qualifying period and everything technically” — I don't have to go into that — “July 1999.” It's almost three years since July 1999. Now what happens, and this is a very practical reason, HRDC issues a cheque through the assignment that they've signed directly to the insurance company for, say, \$24,000. It happens in November of a year. They open their mail in February — and remember they've been getting non-taxable money for all these years — in February they open their mail and there's a T4 from the Canada Pension Plan for \$24,000 to be added to their income, which they didn't, in their minds, receive. It was the insurance company that got it. One of our prime recommendations is that what occurs be a tax neutral situation. In other words, with respect to that lump sum, it should at least be staggered over a few years, and most certainly the insurance companies should only receive the net amount after the tax has been paid. This operates as a tremendous disability on top of another disability which they have suffered. **(Lyle Smordin, Chair, CPP/Disability Insurance, Office of the Commissioner of Review Tribunal)**¹¹⁵

¹¹³ SCSPD, *Evidence* (09:20), Meeting 12, 6 May 2003.

¹¹⁴ SCSPD, *Evidence* (09:30), Meeting 12, 6 May 2003.

¹¹⁵ SCSPD, *Evidence* (10:20), Meeting 9, 1 April 2003.

Pursuant to paragraph 6(1)(f) of the *Income Tax Act*, if a long-term disability plan involves employer contributions, then the benefits paid under this plan are taxable and the contributions paid by employees may be deducted for tax purposes. In this case, the tax treatment of LTD payments is the same as CPP(D). This is not the case, however, involving employee-pay-all-plans, because the benefits paid to recipients under these plans are not taxable and plan premiums may not be deducted for tax purposes. This difference in tax treatment can represent a financial hardship for some LTD beneficiaries who receive non-taxable LTD advances, under an assignment of benefits agreement, but end up repaying these advances with CPP(D) benefits that are taxable. If individuals in this situation do not set aside enough income to cover this eventual tax liability, a financial hardship can most certainly result.¹¹⁶

While Subcommittee members realize that LTD recipients are responsible for their own tax matters, we believe that HRDC could play a larger role in explaining, in plain language, the tax issues associated with the different employer-sponsored LTD plans and the arrangements that HRDC has with various private LTD insurers. Notwithstanding our recommendation to make CPP(D) benefits non-taxable, we think that the current situation would be greatly improved if a standard amount of tax was withheld on CPP(D) payments (especially in terms of CPP(D) reimbursements) made under an assignment of benefits agreement.

Another potential shortcoming associated with the interaction between CPP(D) and LTD (as well as other disability income support payments) relates to the treatment of increases in CPP(D) benefits arising from cost of living adjustments. CPP(D) benefits are fully indexed to inflation so that payments can keep up with changes in the cost of living, as measured by changes in the Consumer Price Index. If LTD or other disability income support payments that are integrated with CPP(D) are not similarly indexed, individuals could experience some erosion in the real value of their integrated payments over time. Moreover, there is no doubt that this produces a benefit transfer to other disability income support providers (i.e., private insurers, provincial social assistance and workers' compensation) whose payments do not keep pace with inflation. The Subcommittee is unsure as to the extent of this potential problem, but wants to ensure that this issue is fully examined by HRDC as it relates to all disability support payments, irrespective of any arrangement HRDC may have with another provider. The full impact of CPP(D) indexation must be realized by CPP(D) beneficiaries.

I recently and rather suddenly became disabled due to MS. I was diagnosed in May 2002 and found myself in a wheelchair and very ill by August. Although I had never

¹¹⁶ This situation does not arise when LTD benefits are taxable, since recipients have already paid tax on LTD advances. As the CPP(D) reimbursement represents LTD payments reported as income in the previous year(s), a deduction is permitted thereby avoiding double taxation. However, it is important to note that the onus falls on the LTD recipient to initiate the claim for the deduction.

According to information contained in a letter dated 29 January 2003 sent to Peter Smith, Office of the Commission of Review Tribunals by G. Warren Trickey, CA (McCAY, DUFF and COMPANY LLP), it would appear that HRDC is meeting its obligation to provide all the necessary information needed so that LTD recipients avoid double taxation.

expected to be in the position I find myself in I was very thankful to have insurance through my work place. My insurance covers 50% of my wages, which is a considerable drop in income for anyone but finding out it was not taxable helped somewhat. It was VERY upsetting to then learn that my insurance company requires me to apply for CPP benefits and if I qualify, the gross amount of any benefit I receive from CPP is deducted from my insurance benefits, however CPP is taxable. Basically if I qualify I lose. Also a benefit of CPP over private insurance is supposed to be that CPP is indexed, however any increase again goes to the insurance company, but is taxed in the hands of the disabled! Therefore the insurance company benefits from the CPP indexing but the increase becomes an additional debt in the way of taxes to the disabled. Obviously, the only winner here is the insurance company. One of the "program principles" stated on this website is that CPP is a supplement to private insurance, however, it's the insurance companies that are being supplemented not the disabled. My expenses have sky-rocketed, my income is severely diminished and the government and insurance companies have developed a system to make sure I get as little as possible out of the payments I made over the years towards my "income security". I also understand if I'm turned down by CPP I'll be required to appeal... and appeal... and appeal. I'm wondering who pays for the costs of the appeals — the insurance company who benefits if the appeal is won, or me, who loses if I "win". I am 50 years old. I have worked and paid taxes most of my adult life and I'm now wondering who has been benefiting from those taxes. The money isn't going where I thought it was. **(Anonymous, E-Consultation Participant)**

Finally, some individuals who participated in our study, mainly through our online consultations, expressed concern over the practice of "off-setting" children's benefits paid by the CPP(D) program. In a circumstance where an individual has more than one child, this could result theoretically in an insurer not paying any LTD benefits to an insured person who has paid LTD premiums. In this situation, we can appreciate fully the inequity of not being paid something that is owed. We find it very difficult to accept and believe that the setting of premiums for private LTD plans actually consider potential CPP(D) payments to children of CPP(D) beneficiaries. Aside from the fact that these payments represent less than 10% of total CPP(D) payments, the number of dependants among plan members is constantly changing. Hence, we think that it would be very difficult for private insurers to capture the effect of children's benefits in a meaningful way when they are setting premiums for their own plans. Moreover, we understand that private insurers who have assignment of benefits agreements with HRDC have, as one of the conditions of the agreement, agreed not to offset children's benefits.¹¹⁷ Because these payments are made to children and not the policy-holders, the offsetting of CPP(D) benefits paid to children of CPP(D) recipients should, in our opinion, be unlawful. Rendering this practice unlawful might also prove to be beneficial in creating the conditions that are necessary for encouraging more private insurers to enter into an agreement with HRDC to delay the offsetting of LTD payments until CPP(D) eligibility is determined.

This chapter has clearly indicated that there are significant shortcomings in our disability income replacement and support systems across the country. While much remains to be done to improve the interface between all of the disability-related programs

¹¹⁷ Sue Lott, *Background on CPP and Private Disability Insurance*, Submitted to the Office of the Commissioner of Review Tribunals, 30 April 2002, p. 3. Available online at http://www.ocrt-bctr.gc.ca/pubs/lott/index_e.html

in this system, this issue extends well beyond the scope of this report. We will continue to examine these important program integration issues in the months to come, as discussed in the context of “next steps” in the last chapter of this report. In the meantime, there are some measures that can be taken now to improve what we all believe to be is a poorly structured and fragmented pan-Canadian disability income and support system.

Recommendation 6.1

The Committee recommends that Human Resources Development Canada, in conjunction with the Canada Customs and Revenue Agency, prepare a plain language brochure that outlines the tax treatment afforded long-term disability earnings replacement plans. This brochure should also indicate how these plans operate vis-à-vis the CPP(D) with, and without, an assignment of benefits agreement between Human Resources Development Canada and private insurers.

Recommendation 6.2

The Committee recommends that:

- a. Human Resources Development Canada work vigorously with private insurers, Workers’ Compensation Boards and other providers of disability income support program to ensure that integration improves the economic welfare of CPP(D) recipients, especially in instances where the level of disability income support payments to these individuals is low;**
- b. HRDC broaden the membership of its working group with provincial/territorial social assistance providers to include all disability income providers; and**
- c. This working group report annually to the advisory group we recommended be created (see Recommendation 2.2).**

Recommendation 6.3

Until such time that CPP(D) benefits are non-taxable, (see Recommendation 5.3), the Committee recommends that all payments made under any assignment of benefits agreement, particularly those pertaining to re-imbusement payments, be paid in after tax funds using a standard deduction.

Recommendation 6.4

The Committee recommends that Human Resources Development Canada examine comprehensively the impact of cost of living adjustments made to CPP(D) benefits that are integrated with other disability income support plans. If it is determined that the benefit of indexation on CPP(D) benefits is not being realized fully by CPP(D) beneficiaries, the Government of Canada must ensure that the full impact of cost of living adjustments flows directly to CPP(D) beneficiaries.

Recommendation 6.5

The Committee recommends that the Government of Canada enact the necessary legislative amendments to render illegal the offsetting of CPP(D) benefits paid to dependent children of a CPP(D) recipient.

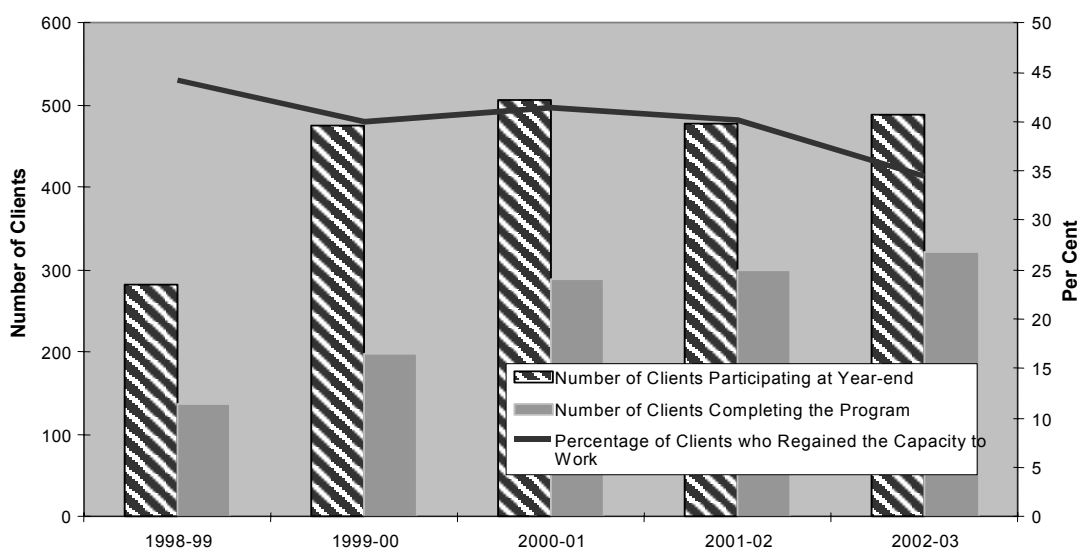
Recommendation 6.6

The Committee recommends that the necessary amendments be made to the *Employment Insurance Act* and *Regulations* to ensure that CPP(D) benefits are not treated as earnings in instances where CPP(D) beneficiaries are entitled to Employment Insurance compassionate care benefits.

CHAPTER 7: RETURNING TO WORK UNDER CANADA PENSION PLAN DISABILITY

Since its inception, CPP(D) has afforded only modest attention to help beneficiaries return to the workplace. In April 1990, approval was given to launch a pilot project in Ontario and British Columbia to identify potential CPP(D) recipients who could benefit from vocational rehabilitation services. The following year, this pilot was combined with a five-year national strategy on the integration of persons with disabilities and was extended to all provinces. In 1996, a proposal was approved to establish a Vocational Rehabilitation Program within CPP(D).¹¹⁸ Since then, vocational rehabilitation has become a permanent feature of CPP(D) and today this voluntary program works with each of those who participate in it to develop a customized return-to-work plan. Clients continue to receive CPP(D) during the rehabilitation period and on completion have a three-month period (with a possible extension of up to one year in certain circumstances) to search for employment. A three-month work trial is also provided and CPP(D) benefits are only terminated after the client has demonstrated the capacity to return to work. To participate in the Vocational Rehabilitation Program, individuals must be: medically stable, motivated and willing to participate, reside in Canada and considered by a doctor to be a suitable participant. Rehabilitation services are provided under contract with private sector vocational rehabilitation providers across the country.¹¹⁹

CHART 7.1 - Vocational Rehabilitation Program



Source: Human Resources Development Canada and the Parliamentary Research Branch, Library of Parliament

¹¹⁸ Sherri Torjman, *The Canada Pension Plan Disability Benefit*, Caledon Institute of Social Policy, Ottawa, 2002, p. 17.

¹¹⁹ Human Resources Development Canada, *Information Guide on Canada Pension Plan Disability Benefits*, November 1999, p. 22.

Even though CPP(D) benefits remain premised on the fact that an individual will be permanently out of the workforce, the goal of helping CPP(D) recipients return to work has assumed a higher profile in recent years. The number of clients completing their participation in the Vocational Rehabilitation Program more than doubled between 1998-1999 and 2002-2003 (Chart 7.1). Some 322 individuals completed their participation in the program in 2002-2003, of which about one third of the participants regained the capacity to work and no longer received CPP(D). In 2002-2003, HRDC allocated \$4.6 million to the Vocational Rehabilitation Program, a modest sum in view of the fact that HRDC estimates that those who successfully completed their participation in this program in that year saved CPP about \$5.3 million over five years. Given the estimated payback associated with the Vocational Rehabilitation Program, the Subcommittee believes that more resources should be allocated to it.

Many of those who participated in our online consultations and public hearings supported vocational rehabilitation and other initiatives designed to encourage individuals to return to work following disablement. Some called for an increase in what was sometimes referred to as an “earnings exemption.” All CPP(D) beneficiaries are required to inform HRDC when they earn more than \$3,900 annually. However, this amount is not an earnings exemption; it is simply a mechanism for HRDC to consider a client’s current capacity to work, future work goals and to discuss supports that are available in the community. More importantly, it is not a threshold at which CPP(D) benefits are terminated. In fact, the earnings threshold for considering whether CPP(D) benefits should cease is much higher and is set at an amount equal to 25% of the most recent five-year average of the year’s maximum pensionable earnings. This amount is known as “Substantially Gainful Occupation” (SGO), which in 2003 is equal to \$9,615, or \$801.25 per month, more than 80% of the maximum monthly CPP(D) benefit.

7.1 What We Discovered

Our issue poll asked respondents if they would agree or disagree with paying higher CPP contributions to: (1) allow people who have tried to return to work to be immediately reinstated if they qualified for the benefit in the past; (2) allow people to engage in more part-time work by increasing the earnings exemption; and (3) encourage more vocational rehabilitation where possible.¹²⁰

A majority of respondents (approximately 85%) either agreed or strongly agreed to pay higher contributions to support these proposals. Overall, a breakdown of respondents

¹²⁰ Our issue poll provided arguments for and against incentives to encourage CPP(D) recipients to return to work. In terms of the former, it was suggested that a higher earnings exemption could encourage persons with disabilities to re-enter the workforce. There should be a way for people to try to return to work at their own pace, without sacrificing their benefits. CPP(D) should be modified to allow for more rehabilitation in the early stages of the disability, when it is most effective. Immediate reinstatement would mean that disabled persons could quickly re-enter the program after attempting a return to work. Arguments against incentives were that the CPP(D) program could put unfair pressure on persons with disabilities to return to the workforce. An increased earnings exemption and payment of partial benefits could result in higher program administration costs. And these administration costs may not be offset by the total amount that CPP(D) pays in benefits. Providing more rehabilitation programs to encourage a return to work could be quite expensive.

by category of identification revealed wide agreement on this particular issue. During our public hearings, government representatives, medical rehabilitation specialists, members of the business community, NGOs and injured workers expressed similar support for measures to encourage CPP(D) beneficiaries to return to work.

So legislation may have to be changed in a way that allows them to return to work and maintain the benefit before they can return to work entirely, which is part-time work. If they could change that rule and then also reward them with more benefit, instead of maintaining the same benefit. ... They are afraid. People are afraid of losing the benefit, which is \$1,000 per month. If they go back to work part-time and they don't have the salary equal to that amount, they won't want to come back to work. So something has to be done with the legislation to allow that to happen. **(Dr. Lily Cheung Past President, Occupational and Environmental Medical Association of Canada)**¹²¹

I feel returning to work is important but this has to be determined on an individual basis and without unnecessary pressure on the individual. Most people want to return to work (I realize that some have no intention to) but, the people who are doing everything they possibly can, have to rehabilitate at their own pace. People also have to be at a certain level of their illness or disability in order to have the energy to put into rehabilitation. After all, who really wants to be disabled and unable to contribute financially to their families and feel worthwhile. **(Marjorie, NB, E-Consultation Participant)**

I have been taking a few courses to improve my marketability — if I feel able to work at least part-time. I have been diagnosed with MS and I live with uncertainty of each day etc. I am a nurse and if I am able to work even casual part-time I will exceed the amount I can earn very quickly. I then run the risk of losing my pension and this is a concern as I cannot commit to the consistency of work as others do. If the pension is withdrawn and I am ill even at a casual part time level I will not have money to eat or pay rent. This is a difficult way to live and if it can be changed it would help many of us. **(Elizabeth, ON, E-Consultation Participant)**

7.2 CPP(D) and Earnings, and the Automatic Reinstatement of Benefits

To promote the development of work-related skills, CPP(D) beneficiaries are not required to report to HRDC if they engage in volunteer work or attend school. However, as noted above, a CPP(D) beneficiary is required to contact HRDC when his earnings reach \$3,900 (2003), at which point a discussion about the individual's current work situation and future work goals takes place. If the CPP(D) beneficiary can only work once in a while, he may be able to earn more than \$3,900 while in receipt of CPP(D) benefits. An assessment is made to determine if, and when, a work trial is appropriate. A three-month paid work trial begins only when the client has demonstrated regular capacity to work and has earnings exceeding the monthly SGO (i.e., \$801.25 in 2003). If the client continues to earn at least the SGO monthly amount during this three-month trial period and is working regularly, then an individual is considered to have successfully returned to work and CPP(D) benefits cease. During the three-month work trial, if an individual's disability precludes a successful return to work, CPP(D) benefits continue. Within a

¹²¹ SCSPD, *Evidence* (12:25), Meeting No. 8, 18 March 2003.

five-year period of successfully returning to work, if a former CPP(D) client is forced to stop working because of the same medical condition, the individual may be able to use the “fast-track” re-application process.¹²²

To be eligible for “fast-track” re-application consideration, a number of conditions must be met that include:

- a client must have received CPP Disability benefits in the past;
- CPP(D) benefits must have ceased, not suspended, and a client must not be appealing the decision to cease benefits;
- a client must have returned to work since cessation of CPP(D) benefits and has stopped working again;
- re-application for CPP(D) must be done within six months of stopping work;
- a client must have stopped working due to a recurrence or progression of the same disabling medical condition for which previous benefits were paid; and
- a client must meet the CPP(D) eligibility requirements for earnings and contributions.

Our online and public testimony generally supported encouraging CPP(D) clients to return to work, provided this was done without exerting undue pressure on them. In this context, many also supported lengthening the return to work trial period and the period for the automatic reinstatement of CPP(D) benefits in the event that an individual’s disability forces a withdrawal from the workplace following a successful return to work. We support both of these positions.

We’d also like to see the program increase the trial period. Currently, the trial period when you go back to work is three months. We don’t feel that is enough time for someone to evaluate their new work environment, to be able to evaluate the skills that are going to be required, whether this is a high-stress job, as well as what kind of physical capacity is going to be required of them. This is especially important for people who have been out of the workforce for a number of years. Currently, many people living with HIV have been on disability for five to ten years, and to return to the workplace is going to take quite a bit of training and rehabilitation. **(Ainsley Chapman, Program Consultant, Canadian AIDS Society)**¹²³

¹²² The fast track re-application is comprised of a short medical form, an Authorization to Disclose Information form and an application. The application has a section for details about the client’s last work activity. Because clients are asked to re-apply no later than six months after stopping work, the medical information on file is usually current and there is no need to ask for additional information. This usually results in a faster decision-making process.

¹²³ SCSPD, *Evidence* (9:10), Meeting No.7, 20 February 2003.

We had several suggestions around the payments; for example, retroactivity going from the date of disability, and incentives for trial returns for work, so that people, again, attempting to return to work are not in essence penalized and losing their benefits if they try for a number of months and then it doesn't work. **(Dr. Cheryl Forchuk, Chair, Core Policies, Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security)**¹²⁴

Many of these people are gainfully employed when they are diagnosed with rheumatoid arthritis, often they need to go on disability because of fatigue, joint pain and inflammation of their joints. ... Often they will go on disability for a short time to get medications regulated to treat their disease. When it comes time for them to try to return to work, they need to start back on a modified work schedule, however the expectations no matter how good the intentions start out to be, the patient is expected to perform the full duties in half or less time than previously expected. It is unfortunate that we do not have a system either insurance or CPP that facilitates these people to return to work in an environment that is organized for them to succeed instead of to fail. It seems that the system is such that it is better for them to remain on disability than to be a burden to the workplace. These people are demoralized and made to feel a burden on society. How about a system that will facilitate them to be productive citizens, as many of them want to be. **(Terri, ON, E-Consultation Participant)**

It is imperative that, given the episodic nature of HIV, individuals can easily make the decision to stop working and have disability benefits reinstated quickly. The mechanisms currently in place require unreasonable waiting periods for evaluation and decision-making. Many people who are on disability do not have a pool of personal financial resources, either through cash, credit or assets, and are not in a position where they can rely on savings to be reimbursed if approved. **(Canadian AIDS Society and Canadian Working Group on HIV and Rehabilitation, ON, E-Consultation Participant)**

It may be that in some cases recipients will be able to reintegrate into competitive employment, either permanently or for shorter periods of time. CPP should be encouraging this outcome by providing recipients with assistance in returning to work, and implementing a "rapid reinstatement" program that would encourage and support recipients who chose to return to work. A "rapid reinstatement" program would allow CPP disability recipients to attempt to return to work, and if that proves impossible, they would be automatically and immediately reinstated to their CPP disability status, without having to reapply. **(Northumberland Community Legal Centre, ON, E-Consultation Participant)**

A major disincentive facing CPP(D) recipients who contemplate a return to work pertains to the negative affect of a modest increase in earnings on other disability income and supports. As noted in the previous chapter, this problem arises because of the poor interface between all these various sources. The combined loss of disability income and supports often outweighs the benefits of earnings and, as a result, undermines the incentive to return to work. A number of years ago, HRDC participated in a pilot project to address this very issue. We understand that the results of this exercise were positive and we believe that HRDC should engage in more of these pilot projects to test various approaches involving other disability income and support providers so as to determine what works best in overcoming these return-to-work barriers.

¹²⁴ SCSPD, *Evidence* (9:25), Meeting No. 9, 1 April 2003.

... this was actually several years ago now. HRDC through Canada Pension Plan and some other programs in the region of BC linked up with several BC ministries ... with the auto insurer, and the WCB, and a private insurer. We actually ran a pilot for about 18 months. A return to work, removing the barriers for people on income assistance who are on more than one program, they had to be on more than one program ... we found about 70 mutual clients. It was really hard to convince them to take the chance of returning to work. We got about 15 people to actually go through a return to work process. Part of it was the fear — well, the fear of losing the benefit. We couldn't guarantee to everybody that if something happened, they could get back on the benefits that they had left. Secondly, there was the interface issue between the various programs that was very hard to resolve. But, that was the purpose of learning more about how to work together in that environment. Fortunately, the people that did try, and got jobs, I think got very well-paying jobs. We found more jobs than we had people who were willing to try ... **(Nancy Lawand, Director of CPP Disability Policy, Income Security Programs Branch, Human Resources Development Canada)**¹²⁵

Although not directly related to an incentive to return to work, many who participated in our a study expressed a desire for CPP(D) to be more supportive of those who have returned to work by providing partial benefits to those engaged in part-time work. While we support incentives to encourage CPP(D) beneficiaries who want to work as much as they believe they can, most members of the Subcommittee do not believe that CPP(D) can offer a bigger earnings supplement than is now being provided (i.e., earnings up to the SGO amount) without compromising the current universal nature of this program by moving it closer to a means-tested benefit. We nevertheless recognize that earnings supplementation would form an essential component of a reconfigured, fully integrated pan-Canadian disability income and support system. Since it is important to better understand the employment incentives associated with this type of support, we think HRDC should undertake a pilot project to test this out.

7.3 Vocational Rehabilitation

Between 1998-1999 and 2002-2003, HRDC's aggregate allocation to the Vocational Rehabilitation Program totalled \$21 million or an average of \$4.2 million annually. In our opinion, this is a very small effort for a program that pays out more than \$2.5 billion in disability benefits each year. This effort seems even smaller considering the testimony we received that outlined the significant benefits from vocational rehabilitation, provided the intervention is early and comprehensive.

¹²⁵ SCSPD, *Evidence* (11:40), Meeting No.13, 13 May 2003.

We believe strongly that there should be strengthening of the vocational rehabilitation initiative. Essentially, the area of people with disabilities returning to work has win-win possibilities. Everyone agrees that it should happen, but it still appears that people with disabilities get a very mixed message. On the one hand, yes, they should work; we're encouraging them to work. On the other hand, if they pursue rehabilitation and return to work, we are going to reclassify them as not disabled enough for our program. I think that is really not something that can be addressed by tinkering but requires a more in-depth look at disability assessment and how it's done, with perhaps a broader perspective than just a medical one, as was indicated before. **(Harry Beatty, Canada Pension Plan (Disability) Working Group)**¹²⁶

According to an evaluation of the National Vocational Rehabilitation Project in 1996, the 160 clients who successfully completed their rehabilitation plans saved the CPP an estimated \$4.5 million after three years, \$15 million after 10 years and \$30 million by the time these former CPP(D) beneficiaries reached the age of 65. However, the evaluation notes that the true cost savings could not be estimated because the longer term impacts of the program were not known.¹²⁷ As far as we can ascertain, this is still the case today and in our opinion, HRDC should try to estimate the longer term impacts of the Vocational Rehabilitation Program.

Medical advances continue to increase the likelihood that some individuals with a severe disability can experience a meaningful return to work. Moreover, we suspect that as our labour force continues to grow more slowly, an increasing number of employers will become aware of the need to provide adequate accommodation measures for persons with disabilities in order to attract the skills they need into their workplaces. We think that these factors will serve to create a more appealing climate for CPP(D) beneficiaries to return to work and, in our opinion, HRDC should begin immediately to enhance the role played by vocational rehabilitation in its overall CPP(D) policy.

I was receiving benefits after a double kidney transplant and things seemed to be going well. I contacted CPP about a year into my recovery to discuss the possibilities of retraining. I am a welder and was unsure if I would be able to handle the heavy work and the fumes etc. that go with the job. I was told that they would gladly retrain me as long as it was within reason and I was stable enough to complete the training. At this point I was still returning to the hospital every month, meds were up and down and I didn't think I was stable enough. I was told to contact them again in six months and we would see. About six months later I was contacted by CPP and notified that my benefits would terminate at the end of November. I thought well that is sudden but if I'm lucky I can get a job. I called the office in Ottawa to find out what happened to my retraining option and this is what I was told. I had been placed on reassessment and my Doctor considered me a successful transplant and so benefits were cancelled. As to retraining I was told they won't retrain me if I'm unstable (which I thought made sense) once on reassessment it is illegal to retrain me and once declared successful they no longer have to. **(Greg, NWT, E-Consultation Participant)**

¹²⁶ SCSPD, *Evidence* (16:30), Meeting No. 6, 12 February 2003.

¹²⁷ Human Resources Development Canada, *Evaluation of the National Vocational Rehabilitation Project: A Working Report for CPP Disability Evaluation*, Evaluation and Data Development Branch, Strategic Policy, October 1996, p. 80.

The Subcommittee was informed of several relatively recent initiatives that have achieved success in helping persons with disabilities return to work. These involved both an early response to an individual's departure from the workplace as well as the joint participation of many stakeholders in facilitating a successful return to work. For example, the Ontario Roundtable Project on Safe and Timely Return to Work involves 15 stakeholder sectors, including the medical community, working together to create a coherent and seamless system from disability, to function and to work.

... let's use stakeholder energy to build this comprehensive system. We need federal government support for these projects. This will help create a clear path from disability to ability and support those who do not have the ability. The benefits of a better system of return to function will result in improved function, health, and productivity at all levels, at the levels of individuals, organizations, communities, and the country. The process must support the person. **(Dr. Lisa Doupe, Co-Leader, Round Table Project on Safe and Timely Return to Function and Return to Work)**¹²⁸

The Sherbrooke model brings together early detection, early participatory ergonomics, reassurance of disabled workers and early rehabilitation initiatives centralized in the workplace.

... the [Sherbrooke model] ... was tested through a randomized trial ... That research included 31 companies ... One group received a more clinical type of intervention and another a workplace-based intervention. Finally, the Sherbrooke model brought clinical intervention into the workplace. You have a statistic here that indicates the time generally required for a person to return to regular work. As you see, the Sherbrooke model resulted in a return to work that was 2.4 times faster, and the main factor for that result is the intervention in the workplace. Is this expensive? Well, we did a follow-up six years later of workers who were included in the model. ... The costs were a little higher at the time of intervention, so there was an initial investment. ... However, in the following years, the costs associated with disability were avoided ... Health care costs are ... much higher for the control group, not to mention the income replacement costs, which were considerably higher ... If the same study were carried out today on the same people, the gap would be greater, because those receiving a pension until their retirement would continue to cost money. **(Dr. Patrick Loisel, Professor, Faculty of Medicine, Longueuil Campus, Université de Sherbrooke)**¹²⁹

In addition, the Canadian Imperial Bank of Commerce has developed a program called "Co-ordinated Return to Work" based on an abilities-based model for disability management in the workplace. It involves third-party intervention to identify a disabled worker's abilities and this approach has helped workers and managers in the vast majority of cases to identify necessary workplace accommodations and job functions that result in the continued employment of persons with disabilities.¹³⁰

¹²⁸ SCSPD, *Evidence* (12:00), Meeting No.8, 18 March 2003.

¹²⁹ SCSPD, *Evidence* (11:20-11:25), Meeting No.10, 8 April 2003.

¹³⁰ SCSPD, *Evidence* (9:10-9:15), Meeting No.11, 29 April 2003.

In our opinion, all levels of government must continue to support the development of timely and comprehensive responses to assist persons whose disabilities either threaten the loss of employment or are likely to result in a prolonged absence from the workplace. These types of initiatives need recognition, encouragement and rewards.

An early intervention is also critical for individuals to gain access to Employment Insurance Part II benefits (i.e., Employment Benefits and Support Measures — EBSMs). Participation in these requires individuals to be eligible for regular EI benefits or to have received regular benefits in the past 36 months or maternity/parental benefits in the past 60 months. Members of the Subcommittee maintain that eligibility for EBSMs is too restrictive for unemployed individuals generally, and for persons with disabilities in particular, given the fact their disabilities often result in a tenuous attachment to the workplace, thus making it very difficult to qualify for these benefits. In addition, we think that the income support provided to individuals who participate in EBSMs should be treated as earnings for the purposes of qualifying for CPP(D).¹³¹

Finally, members of the Subcommittee believe that it is time to realize the long promised commitment in the 2002 Speech from the Throne to fast-track a comprehensive agreement to remove barriers to participation in work and learning for persons with disabilities. We know that provincial Ministers of Social Services approved a framework for a comprehensive strategy in December 2002. But this is not an agreement and we strongly encourage both levels of government to move quickly to help facilitate the return to work of all persons with disabilities capable of doing so.

In addition CPP(D) employment retraining programs are limited to those who are "job ready". People with Multiple Sclerosis do not fit that description due to the unpredictability of their disease. **(Vida, ON, E-Consultation Participant)**

Lastly I would like to address the incentives CPP Disability has for encouraging people with disabilities to return to work. To be brief — fantastic. Because of them I had the courage to return to work. My caseworker was very supportive and I have been successfully working for one and a half years helping other consumers become actively involved in the community again. Working again has had a very positive effect on my mental health as well — almost two years without hospitalization and no major depressive episodes [the longest period of time since before 1991!]. **(Roy, NS, E-Consultation Participant)**

... programs like CPPD that equate disability with unemployability create a huge barrier for people. If a start could be made to changing the provisions so that people who were undergoing training or education could return to work with less possibility of losing their eligibility.... it's almost as if we're saying to people: just remain dependent; don't do anything. **(Harry Beatty, Canada Pension Plan (Disability) Working Group)**¹³²

¹³¹ Section 26 of the *Employment Insurance Act* states otherwise.

¹³² SCSPD, *Evidence* (17:05), Meeting No.6, 12 February 2003.

Recommendation 7.1

The Committee recommends that Human Resources Development Canada double its budget of \$4.6 million (2002-2003) for the Vocational Rehabilitation Program and begin to measure the long-term impact of this program on the success of clients' return to work and the total economic benefits associated with these outcomes.

Recommendation 7.2

The Committee recommends that Human Resources Development Canada undertake a pilot project to measure the impact of increasing the amount associated with substantially gainful occupation (SGO) to 125% of annual maximum CPP(D) benefits. In addition to measuring the impact of this measure on program costs, this pilot project should study the benefits and work incentive effects of a gradual reduction in CPP(D) benefits as the earnings of project participants exceed the experimental SGO threshold following the return-to-work trial period.

Recommendation 7.3

The Committee recommends that Human Resources Development Canada extend the three-month work trial period to six months and provide an immediate and automatic reinstatement of benefits for two years following a successful return to work.

Recommendation 7.4

The Committee recommends that the federal government create the necessary conditions to permit Human Resources Development Canada to implement pilot projects that test various approaches for integrating CPP(D) with other disability income and supports, including the medical community, to strengthen incentives for beneficiaries to return to work.

Recommendation 7.5

The Committee recommends that the federal government increase expenditures under Part II of the *Employment Insurance Act* as well as extend eligibility for these benefits to a much broader population than is currently captured under the definition of "insured participant." Moreover, Part II benefits should be treated as pensionable earnings for the purpose of determining CPP(D) eligibility.

CHAPTER 8: NEXT STEPS

This report focuses on near-term improvements to the Canada Pension Plan Disability program that the Subcommittee believes the federal government can — and should — make. Our recommendations include a host of administrative and program modifications aimed at making the CPP(D) program more flexible and responsive to the needs of Canadians. We realize that the implementation of many of these recommendations could entail additional resources. According to our testimony, a majority of online participants and witnesses are willing to pay for these changes.¹³³

In addition, both our witnesses and participants in our online consultations raised other issues — medium and longer-term — that need to be tackled by Parliament and by the government departments responsible for setting CPP(D) policy. Some of these are mentioned throughout our report, others we have not discussed in any detail. These have not been forgotten or dismissed and we believe that they require further study. The Subcommittee on the Status of Persons with Disabilities will continue its work on CPP(D) and proposes to initiate another study that looks at these questions in greater depth.

8.1 Should CPP(D) be Delinked from CPP Retirement Benefits?

Despite an apparent willingness among contributors to pay more to improve CPP(D) benefits and programs, it is important to note that CPP contributions do not distinguish between contributions earmarked for retirement benefits and those intended for disability benefits. It is important to be able to differentiate between these two objectives to facilitate future CPP(D) reforms. Many return-to-work incentives, for example, cannot be implemented without some kind of separation of disability and retirement contributions. As Michael Prince pointed out, the Canada Pension Plan Disability program has long been the “poor cousin” in the CPP system. Given the changing demographics and the ongoing evolution of the circumstances surrounding disablement, we believe that CPP(D) needs to be considered on its own. And in preparation for our continued study of longer-term CPP(D)-related issues, we suggest that the Department of Finance prepare a background document outlining the various financing options that could be considered in the context of a more inclusive and integrated CPP(D) program.

¹³³ For example, our issue poll asked respondents whether they would agree to make a higher CPP contribution to allow more people to qualify for benefits. Although a majority of respondents (66%) either agreed or strongly agreed with making higher CPP contributions for this reason, 18% neither agreed nor disagreed, and another 16% either strongly disagreed or disagreed to increase their contributions. As to be expected, the highest level of agreement was found among respondents who identified themselves as CPP(D) appellants with 80% who either agreed or strongly agreed to make a higher CPP contribution to allow more people to qualify for benefits. The highest level of disagreement was among people who identified themselves as employees in the insurance business, with 48% who either strongly disagreed or disagreed to make a higher contribution to CPP.

8.2 Making Disability Income Benefits Work for Canadians

The need to develop a more integrated and effective income and disability support system remained a constant theme throughout our study.

... We are looking for national leadership. Without it we will ... probably continue to tinker to the point where the mobility rights of people with disabilities become further eroded ... You will not move across this country to accept other jobs, to be closer to family or friends, or just to explore a different part of this great country. You will live, if you have a disability, within your environment, within a specific geographic region in which you've established eligibility and where you can get to work, get to school, meet your friends, and do those kinds of things. There is a huge big-vision challenge here, and I don't pretend that advocacy associations have all the answers on this. ... Let's not inflict further harm on people as we explore that broader vision. What we see is having to fight battles where harm is inflicted upon people, people who are not presently anywhere near being assured of equal citizenship in this country. **(Laurie Beachell, National Coordinator, Council of Canadians with Disabilities)**¹³⁴

But we're looking right now at the income security system and its adequacy. ... Do current programs enable people to pay for basic needs? ... Then if we look at other needs, or the additional cost of disability, we try to deal with them in another way. So conceptually, what we're dealing with today is this income security system. ... I want to say I use the word "system" advisedly; it's an undeserved compliment in the sense that it doesn't really work as a system. There are many different pieces to it that don't work together, as you know. Primarily it's because your eligibility is based mainly on the cause of your disability. So you may have the same level of functioning as somebody else, but you receive an entirely different level and set of benefits, and you're living under entirely different circumstances because of the cause of your disability. **(Sherri Torjman, Vice-President, Caledon Institute of Social Policy)**¹³⁵

Could we think about the possibility of designing an income security system and a services support system that never uses the word "disability", or at the very least doesn't require categorization of human beings as either disabled or not disabled? **(Michael Mendelson, Policy Analyst, Caledon Institute of Social Policy)**¹³⁶

... consider looking even more boldly, farther afield and farther ahead, and to undertake considering recommending a new disability income benefit, or a refundable tax credit, and to link this with the national strategy on disability supports. I think a comprehensive approach like this is essential to your work to address the issues of categorization ... and the longstanding and well recognized fragmentation in the current systems of disability income and support. And if we really mean it, a comprehensive approach is essential to advancing the vision of full citizenship that has been expressed over the last five or six years in intergovernmental agreements, both by the Quebec government on its own and by the federal, provincial, and territorial governments, through the "In Unison"

¹³⁴ SCSPD, *Evidence* (16:45), Meeting 6, 12 February 2003.

¹³⁵ SCSPD, *Evidence* (15:45), Meeting 5, 5 February 2003.

¹³⁶ *Ibid.*, (16:00).

documents. **(Michael Prince, Lansdowne Professor of Social Policy, Faculty of Human and Social Development, University of Victoria)**¹³⁷

Before suggesting ways of moving forward, we feel that it is necessary to gather more evidence from private insurers, workers' compensation boards and provincial/territorial social assistance authorities across the country. Would a single point of entry allow the provinces and territories to integrate the delivery of CPP(D) and their income security programs, similar to the way that the disability income programs are currently delivered in Quebec? How could this be done without limiting the federal government's ability to control costs and to maintain the principles of the CPP(D) program?¹³⁸ This would enable all levels of government to refer individuals to a single point of service where information and application assistance would be provided and only one medical evaluation would be required. We envisaged that this model would involve substantial coordination and cooperation between the federal and provincial/territorial governments, but could raise concerns about privacy due to the transfer of personal information between programs and levels of government.

It is time for government and the private sector to begin working together to develop a disability income and support system that results in single entry characteristics and improved levels of support to better serve one of this country's most vulnerable segments of the population. As we discussed in Chapter 6 of our report, the interface between CPP(D) and other disability income and support programs is, at best, wanting and we believe that there is great deal of potential for improving how these programs interact.

¹³⁷ Ibid., (16:10).

¹³⁸ Our issue poll asked participants to respond to three options for delivering the CPP(D) program. These options were: (1) provincial delivery, (2) single point of entry or (3) leave the system the way it is. Under the provincial delivery model we suggested that the provincial/territorial governments could deliver the CPP(D) program and the federal government would provide the funds for CPP(D) benefits. We also know that we must examine more fully the interaction between income support and disability support services across the country. Finally, we believe that it is important to study other avenues for providing disability income. The Subcommittee heard a proposal to develop and implement a new disability income benefit, perhaps a refundable tax credit, to get disabled people off of welfare. This measure would not replace CPP(D), but rather free up provincial funding to provide more disability supports. We also heard that we should stop categorizing disabilities and emphasize individual's employability prospects as a means for determining levels of income support. We hope to explore these and other issues when we resume our study following the Parliamentary summer break.

We asked issue poll respondents to rank the above options from the most favourable to the least favourable option for delivery of the CPP(D) program. Overall, respondents were most favourable to a single point of entry for the delivery of the CPP(D) program, followed by provincial delivery and, as the least favourable option, the status quo. The breakdown of respondents by category of identification indicated that there was wide agreement among all groups that a single point of entry would be the most favourable option.

Recommendation 8.1

The Committee recommends that the Department of Finance and the Department of Human Resources Development collaborate in the preparation of background documents that can be provided to the Subcommittee on the Status of Persons with Disabilities by 1 November 2003. Officials from the two departments will be asked to appear as witnesses to present the results of their research. The background documents should :

- a. outline the issues, options and costs to disaggregate CPP(D) contributions into two components: one for retirement benefits and the other for disability benefits;**
- b. discuss the possibilities and costs for a single point of entry for federal/provincial disability income programs; and**
- c. examine various options and costs for alternative income programs. These options should include:**
 - applying the national child benefit model to a disability income program;**
 - examining the applicability of programs in other countries such as the Netherlands where non-categorical income programs integrate disability into a broader set of programs based on overall criteria regarding employability; and**
 - incorporating partial benefits into the Canada Pension Plan Disability program.**
- d. Examine the options to establish a case-management system of addressing problems that arise because of the lack of integration between CPP(D) and other disability income support programs (e.g. workers' compensation, social assistance and long term disability).**

Recommendation 8.2

In order to monitor the implementation of the recommendations in this report, the Committee recommends that for the next five years, the Departmental Performance Report of the Department of Human Resources Development Canada contain a section setting out progress in addressing our recommendations.

LIST OF RECOMMENDATIONS

CHAPTER 1: ONLINE CONSULTATIONS: THE NEXT STEP IN PARLIAMENTARY DEMOCRACY

Recommendation 1.1

Given the success of the pilot project on e-consultation in complementing its regular committee study of the Canada Pension Plan Disability and providing Canadians with information as well as involving them, the Committee recommends that:

- a. Each committee of the House of Commons consider putting in place an information-based Web site. Such a site could include common elements (e.g. information about how Parliament works, how committees operate and how to contact the committee) as well as information specifically related to an individual committee's mandate, activities and background information related to its specific studies.
- b. The House of Commons and Library of Parliament be given appropriate additional resources to put in place information-based committee Web sites with the capacity to facilitate e-consultations.
- c. The House of Commons and the Library of Parliament should put in place an overall framework or suggested course of action to guide any future e-consultations.
- d. Where circumstances warrant, other committees of Parliament consider including e-consultations with Canadians as one of the options in carrying out a study.

CHAPTER 2: CANADA PENSION PLAN DISABILITY AND THE GAP BETWEEN VALUES AND PRACTICES

Recommendation 2.1

The Committee recommends that the current Federal/Provincial/Territorial Review of the Canada Pension Plan Disability take into account the fact that the current operations of the plan do not fully reflect the values that underlie the current legislation

and regulations. One of these relates to equal access and we recommend that the Year's Basic Exemption (YBE) for the purposes of disability be returned to \$3,500 the same as that for retirement benefits.

Recommendation 2.2

The Committee recommends that the Government of Canada establish a permanent joint government and stakeholder advisory group (the CPP Disability advisory committee) with an ongoing mandate and resources to monitor and appraise the performance of the CPP disability program to ensure that it meets its stated purpose and objectives. Representation on the advisory group should include federal officials (Human Resources Development and Finance), health care providers, various disability organizations, patient advocacy groups, return to work and rehabilitation professionals. This advisory group should review performance and recommend changes to the CPP(D) on an ongoing basis and as part of the three-year federal/provincial/territorial review. The advisory committee should submit an annual report on its activities to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

Recommendation 2.3

So that future policy decisions pertaining to CPP(D) will be based on higher quality information, the Committee recommends that the Government of Canada make improvements to the analytical base of information about CPP(D) by encouraging research and establishing:

- a. partnerships between Human Resources Development Canada and the Social Sciences and Humanities Research Council of Canada;
- b. financial support for academic research on disability income and supports to improve quality of life for Canadians with disabilities;
- c. fellowships to lever money for research on the disability income system; and
- d. public sources of data pertaining to the operations of the federal disability income system, at Statistics Canada data centers across Canada.

CHAPTER 3: MODERNIZING CPP(D) DEFINITIONS AND ELIGIBILITY

Recommendation 3.1

Given the ongoing problems with definitions of disability, the Committee recommends that the Privy Council Office establish a taskforce, modelled on the Voluntary Sector Taskforce, to work with relevant partners from the community to address these problems (particularly those associated with CPP(D) and the Disability Tax Credit). The Committee further recommends that the federal government initiate discussions with the provincial and territorial governments to bring some consistency and coherence to the definitions of disability used by programs in all jurisdictions.

Recommendation 3.2

The Committee recommends that a comprehensive information package be developed to provide a description of each federal disability program which requires medical assessments, its eligibility criteria, the full range of benefits available, copies of sample forms, and any other relevant material.

Recommendation 3.3

The Committee recommends that the terms “severe and prolonged” in section 42 of the *Canada Pension Plan* be amended to take into account cyclical and degenerative mental and physical conditions.

Recommendation 3.4

Whether Recommendation 3.3 is implemented or not, the Committee recommends that Human Resources Development Canada (HRDC) immediately amend its CPP regulations, administrative guidelines, and manuals to ensure that the interpretation of the term “severe and prolonged” disability properly considers degenerative diseases, as well as mental, episodic and invisible illnesses (e.g. chronic pain, chronic fatigue syndrome, fibromyalgia and multiple chemical sensitivities). In addition, HRDC should develop, in consultation with the community and health care professionals, specific evaluation tools for these particular disabilities to be used in assessing eligibility for CPP(D).

Recommendation 3.5

The Committee recommends that the mandate of the taskforce to clarify the definition of disability (see Recommendation 3.1) include,

as a priority, consideration of specific ways to reduce the administrative burden placed on health care providers and applicants for federal disability benefits by using a common application form (or by consolidating application procedures) and common assessment procedures (e.g. using CPP(D)'s nurse practitioners also to determine eligibility for the Disability Tax Credit).

Recommendation 3.6

The Committee recommends that Human Resources Development Canada provide the comprehensive information package (see Recommendation 3.2) to all health care professionals and put in place an outreach program to provide them with information and education.

Recommendation 3.7

The Committee recommends that HRDC immediately commission an independent evaluation of how the "severe and prolonged" eligibility criteria for CPP(D) are applied by CPP personnel in making decisions about eligibility. The Committee further recommends that the results of this evaluation be submitted to the CPP Disability advisory committee (see Recommendation 2.2) for discussion and recommendations no later than June 2004.

Recommendation 3.8

The Committee recommends that the Government of Canada amend the *Canada Pension Plan* to define "prolonged" for the purposes of establishing eligibility for CPP(D) benefits as any period of 12 months or longer regardless of whether an individual has returned to work prior to the approval of his/her application or appeal.

Recommendation 3.9

The Committee recommends that qualified health care professionals in addition to physicians be allowed to provide medical assessments for the purposes of determining eligibility for the CPP(D) and to complete application forms.

Recommendation 3.10

Given the inconsistency in CPP(D)'s program administrators' understanding of "socio-economic" factors, the Committee recommends that CPP(D)'s definition of disability be revised to explicitly include the decision of the Federal Court of Appeal in the *Villani* case. All CPP policies, manuals, administrative procedures,

medical evaluations, and information to the medical professions and to the public should consistently and explicitly incorporate the spirit of the *Villani* decision.

Recommendation 3.11

The Committee recommends that HRDC amend its administrative practices so that no application for CPP(D) shall be deemed completed and assessed for eligibility until it contains a full and complete functional assessment of the applicant that specifically discusses non-medical factors that affect the individual's employability.

Recommendation 3.12

The Committee recommends that HRDC conduct a detailed evaluation of how the CPP(D) program administrators are applying CPP(D) legislative guidelines in light of recent Review Tribunal and Federal Court decisions. The results of this evaluation should be submitted to the CPP Disability advisory committee (see Recommendation 2.2) for discussion and recommendations by June 2004.

Recommendation 3.13

In keeping with the Government of Canada's commitments in the Skills and Learning Agenda and in its promotion of family-friendly workplaces, the Committee recommends that HRDC incorporate dropout provisions in CPP(D) for attending school or training, and for caregiving of family members. These new dropout provisions should be the same as the child-care dropout provisions.

Recommendation 3.14

The Committee recommends that all CPP(D) dropout provisions include identical provisions for allowing partial years in determining the duration of the dropout.

Recommendation 3.15

The Committee recommends that CPP(D) applicants 60 years of age and over be entitled to CPP(D) benefits if they meet the eligibility criteria instead of being encouraged or forced to apply for CPP retirement benefits. CPP(D) administrators should be instructed accordingly.

Recommendation 3.16

The Committee recommends that the Government of Canada amend the *Canada Pension Plan* after paragraph 44(2)(a) so that it reads:

- (i) for at least four of the last six calendar years included either wholly or partly in the contributor's contributory period or, where there are fewer than six calendar years included either wholly or partly in the contributor's contributory period, for at least four years; or
- (ii) for at least one-third of the total number of years included either wholly or partly within an applicant's contributory period but in no case for less than three years, or
- (iii) for at least ten years; or¹
- (iv) for each year after the month of cessation of the contributor's previous disability benefit.

CHAPTER 4: IMPROVING THE CPP(D) APPLICATION AND APPEAL PROCESSES

Recommendation 4.1

The Committee recommends that Human Resources Development Canada (HRDC) establish, as a priority, client-friendly policies and practices in the application, assessment and approval processes for CPP(D).

Recommendation 4.2

The Committee recommends that HRDC process and approve all applications from clients who are terminally ill within 30 days of receipt and that the Government of Canada amend the *Canada Pension Plan* to eliminate for them the retroactivity provisions.

Recommendation 4.3

The Committee recommends that CPP(D) prepare and implement a comprehensive communications plan for CPP(D), that includes strategies to provide information to clients or potential clients of the

¹ The wording for (ii) and (iii) is currently included in paragraphs 44(3)(a) and 44(3)(b) of the Canada Pension Plan as the eligibility requirement for calculating the minimum qualifying period for other supplementary benefits.

program. People with disabilities, or their representatives, should be consulted during the development of this plan. This communications plan should include:

- a. training for frontline HRDC staff to provide appropriate responses to questions about CPP(D) and to assist people in filling out application forms;
- b. a targeted campaign to raise awareness of the program among organizations and community groups in contact with large numbers of possible applicants;
- c. better utilization of the resources of other government departments (particularly the Canada Customs and Revenue Agency); and
- d. formation of partnerships with other federal departments, provincial governments, income support programs, non-governmental organizations, support groups and qualified health care professionals to provide information about CPP(D).

Recommendation 4.4

The Committee recommends that the application forms and the accompanying guide be reviewed and revised to ensure that they are written in plain language, are as short as possible and provide clear information on how to submit the application. All information should be made available in alternate formats. Persons with disabilities, advocacy organizations representing them and the health care community should be consulted in this review process.

Recommendation 4.5

The Committee recommends that CPP(D) launch a targeted outreach program for organizations, support groups and individuals who provide information and assistance to applicants for CPP(D). This outreach program should have dedicated resources to answer their questions and provide them with up-to-date information about application procedures.

Recommendation 4.6

The Committee recommends that HRDC, at its own expense, make greater use of independent medical examinations, functional capacity

examinations and/or vocational assessments to provide more information about an individual's inability to work.

Recommendation 4.7

The Committee recommends that when an individual's application for CPP(D) is approved, the applicant should be reimbursed for the cost (upon submission of a receipt) of additional assessments (medical or functional) in addition to the physician's report currently paid for by CPP(D).

Recommendation 4.8

The Committee recommends that HRDC:

- a. include in the CPP(D) application form a question asking all applicants to identify any third party that required them, for whatever reason, to submit an application for benefits to CPP(D); and**
- b. charge the third party the cost of processing any such unsuccessful application.**

Recommendation 4.9

The Committee recommends that HRDC explore ways of speeding up the flow of information required to complete an application. The department, for example, could encourage the electronic transmission of medical information from physicians provided this can be done in a manner that ensures confidentiality.

Recommendation 4.10

The Committee recommends that HRDC eliminate the use of form letters to deny an individual a CPP(D) benefit. HRDC should provide each client whose application is denied with a personal letter written in plain language (and in alternate formats if requested) that sets out all specific information related to the individual's circumstances, explains the reasons for the denial of benefits and includes all information needed to appeal the decision. The Committee further recommends that similar procedures be followed for all reassessments.

Recommendation 4.11

The Committee recommends that HRDC allocate more resources to the initial consideration of applications in order to lower the number of unjustified denials and resulting appeals. In light of the important contribution of personalized contact in determining the eligibility of an applicant, the Committee further recommends that there be person-to-person contact between an applicant and the person adjudicating the application before a decision is reached on the application.

Recommendation 4.12

The Committee recommends that following an initial denial of an application for CPP(D) benefits, HRDC should automatically put in place a reconsideration procedure. This reconsideration should be conducted by a panel consisting of two health care practitioners — one of whom should be a physician. This panel should have person-to-person contact with the applicant.

Recommendation 4.13

The Committee recommends that HRDC offer and provide translation services to all applicants who speak neither English nor French to assist them with their CPP(D) application.

Recommendation 4.14

The Committee recommends that the Office of the Commissioner of Review Tribunals (OCRT):

- a. include in the request for appeal form a question asking all appellants to identify any third party that required them, for whatever reason, to appeal a denial of benefits to the OCRT; and**
- b. charge such third party the cost of processing each unsuccessful appeal.**

Recommendation 4.15

The Committee recommends that the Office of the Commissioner of Review Tribunals appoint outreach officers who will personally contact every appellant to explain the appeal process, the resources that might be available to assist them in their appeal, and their right to use representatives in the appeal process. This would also provide an

opportunity to explain a decision respecting the applicant's eligibility for disability benefits under the CPP.

Recommendation 4.16

The Committee strongly recommends that HRDC fund disability organizations (e.g. independent living centres) to help them provide advocacy and service delivery supports to individual CPP(D) applicants and appellants.

Recommendation 4.17

The Committee recommends that HRDC work with the federal Department of Justice to determine to what extent automatic legal assistance can be provided to all those who appeal CPP(D) denials at the Office of the Commissioner of Review Tribunals or the Pension Appeal Board in order to ensure that appropriate representation is available for appellants.

CHAPTER 5: THE ADEQUACY OF CANADA PENSION PLAN DISABILITY BENEFITS

Recommendation 5.1

The Committee recommends that Human Resources Development Canada return to the pre-1998 method for calculating CPP(D) benefits and retirement benefits for CPP(D) recipients.

Recommendation 5.2

The Committee recommends that Canada Pension Plan Disability payments commence on the day that Human Resources Development Canada qualifies a person to be eligible for CPP(D) benefits.

Recommendation 5.3

The Committee recommends that the Technical Advisory Committee on Tax Measures for Persons with Disabilities established by the Minister of Finance examine how best to adjust CPP contributions deducted for tax purposes in order to remove amounts paid in respect of disability benefits and thereby eliminate the taxation of Canada Pension Plan Disability benefits. This measure should be fully anticipated in the next federal budget and be in place by the beginning of the fiscal year 2004-2005. Once in place, similar treatment should be afforded to all Canada Pension Plan Disability benefits in pay.

CHAPTER 6: THE CANADA PENSION PLAN AND OTHER DISABILITY INCOME SUPPORT PAYMENTS: THE NEED FOR BETTER INTEGRATION

Recommendation 6.1

The Committee recommends that Human Resources Development Canada, in conjunction with the Canada Customs and Revenue Agency, prepare a plain language brochure that outlines the tax treatment afforded long-term disability earnings replacement plans. This brochure should also indicate how these plans operate vis-à-vis the CPP(D) with, and without, an assignment of benefits agreement between Human Resources Development Canada and private insurers.

Recommendation 6.2

The Committee recommends that:

- a. Human Resources Development Canada work vigorously with private insurers, Workers' Compensation Boards and other providers of disability income support program to ensure that integration improves the economic welfare of CPP(D) recipients, especially in instances where the level of disability income support payments to these individuals is low;
- b. HRDC broaden the membership of its working group with provincial/territorial social assistance providers to include all disability income providers; and
- c. This working group report annually to the advisory group we recommended be created (see Recommendation 2.2).

Recommendation 6.3

Until such time that CPP(D) benefits are non-taxable, (see Recommendation 5.3), the Committee recommends that all payments made under any assignment of benefits agreement, particularly those pertaining to re-imbusement payments, be paid in after tax funds using a standard deduction.

Recommendation 6.4

The Committee recommends that Human Resources Development Canada examine comprehensively the impact of cost of living adjustments made to CPP(D) benefits that are integrated with other

disability income support plans. If it is determined that the benefit of indexation on CPP(D) benefits is not being realized fully by CPP(D) beneficiaries, the Government of Canada must ensure that the full impact of cost of living adjustments flows directly to CPP(D) beneficiaries.

Recommendation 6.5

The Committee recommends that the Government of Canada enact the necessary legislative amendments to render illegal the offsetting of CPP(D) benefits paid to dependent children of a CPP(D) recipient.

Recommendation 6.6

The Committee recommends that the necessary amendments be made to the *Employment Insurance Act* and *Regulations* to ensure that CPP(D) benefits are not treated as earnings in instances where CPP(D) beneficiaries are entitled to Employment Insurance compassionate care benefits.

CHAPTER 7: RETURNING TO WORK UNDER CANADA PENSION PLAN DISABILITY

Recommendation 7.1

The Committee recommends that Human Resources Development Canada double its budget of \$4.6 million (2002-2003) for the Vocational Rehabilitation Program and begin to measure the long-term impact of this program on the success of clients' return to work and the total economic benefits associated with these outcomes.

Recommendation 7.2

The Committee recommends that Human Resources Development Canada undertake a pilot project to measure the impact of increasing the amount associated with substantially gainful occupation (SGO) to 125% of annual maximum CPP(D) benefits. In addition to measuring the impact of this measure on program costs, this pilot project should study the benefits and work incentive effects of a gradual reduction in CPP(D) benefits as the earnings of project participants exceed the experimental SGO threshold following the return-to-work trial period.

Recommendation 7.3

The Committee recommends that Human Resources Development Canada extend the three-month work trial period to six months and

provide an immediate and automatic reinstatement of benefits for two years following a successful return to work.

Recommendation 7.4

The Committee recommends that the federal government create the necessary conditions to permit Human Resources Development Canada to implement pilot projects that test various approaches for integrating CPP(D) with other disability income and supports, including the medical community, to strengthen incentives for beneficiaries to return to work.

Recommendation 7.5

The Committee recommends that the federal government increase expenditures under Part II of the *Employment Insurance Act* as well as extend eligibility for these benefits to a much broader population than is currently captured under the definition of “insured participant.” Moreover, Part II benefits should be treated as pensionable earnings for the purpose of determining CPP(D) eligibility.

CHAPTER 8: NEXT STEPS

Recommendation 8.1

The Committee recommends that the Department of Finance and the Department of Human Resources Development collaborate in the preparation of background documents that can be provided to the Subcommittee on the Status of Persons with Disabilities by 1 November 2003. Officials from the two departments will be asked to appear as witnesses to present the results of their research. The background documents should :

- a. outline the issues, options and costs to disaggregate CPP(D) contributions into two components: one for retirement benefits and the other for disability benefits;
- b. discuss the possibilities and costs for a single point of entry for federal/provincial disability income programs; and
- c. examine various options and costs for alternative income programs. These options should include:
 - applying the national child benefit model to a disability income program;

- **examining the applicability of programs in other countries such as the Netherlands where non-categorical income programs integrate disability into a broader set of programs based on overall criteria regarding employability; and**
 - **incorporating partial benefits into the Canada Pension Plan Disability program.**
- d. Examining the options to establish a case-management system of addressing problems that arise because of the lack of integration between CPP(D) and other disability income support programs (e.g. workers' compensation, social assistance and long term disability).**

Recommendation 8.2

In order to monitor the implementation of the recommendations in this report, the Committee recommends that for the next five years, the Departmental Performance Report of the Department of Human Resources Development Canada contain a section setting out progress in addressing our recommendations.

APPENDIX A LIST OF WITNESSES

Associations and Individuals	Date	Meeting
37th Parliament, 1st Session		
Department of Finance	30/04/2002	21
Réal Bouchard, Director, Social Policy		
Department of Human Resources Development		
Nancy Lawand, Director, Canada Pension Plan Program Policy		
Paul Migus, Assistant Deputy Minister		
Doug Taylor, Director, Disability and Reconsideration Division		
Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (CPP/OAS)	07/05/2002	22
Guy Arseneault, Deputy Commissioner of Review Tribunals		
Émile Bergeron, Officer		
Tina Head, Senior Counsel		
Pat Iannitti, Director		
Chantal Proulx, Legal Counsel		
G. Peter Smith, Commissioner of Review Tribunals		
Advocacy Research Centre for the Handicaped	21/05/2002	23
Harry Beatty		
Caledon Institute of Social Policy		
Sherri Torjman, Vice-President		
Canadian Association of Occupational Therapists		
Donna Klaiman, Director of Professional Development and Education		
Canadian Association of Physicians with Disabilities		
Ashok Muzumdar, President		
Canadian Association of Rehabilitation Professionals		
Linda Simpson, Representative		
Canadian Injured Workers Alliance		
Vincent Boyce		
Dave MacKenzie		
Canadian Labour Congress		
Bob Baldwin, National Director		

Associations and Individuals	Date	Meeting
Canadian Mental Health Association Wendy Steinberg, Policy Analyst	21/05/2002	23
Canadian Paraplegic Association François Bélisle, Chief Executive Officer Neil Pierce, Chief Executive Officer of CPA — Alberta Division		
Canadian Psychiatric Association Francine Knoops, Director		
Canadian Working Group on HIV and Rehabilitation Stephanie Nixon, Representative Gerard Yetman, Representative Elisse Zack, Representative		
Council of Canadians with Disabilities Laurie Beachell, National Coordinator		
Department of Human Resources Development Susan Williams, Director General		
Institut Roehrer Institute Cam Crawford, President		
Mood Disorders Society of Canada William P. Ashdown, Vice-President		
Multiple Sclerosis Society of Canada Deanna Groetzinger, Vice-President		
National Institute of Disability Management and Research Wolfgang Zimmerman, Representative		
Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (CPP/OAS) Tina Head, Senior Counsel G. Peter Smith, Commissioner of Review Tribunals		
As Individual George Cameron Sue Lott, Lawyer Peggy Proctor Allison Schmidt David Walker		

Associations and Individuals	Date	Meeting
Department of Human Resources Development Jane Clinckett, Special Advisor, Office of Disability Issues Georges Grujic, Director, Programs Pauline Myre, Director, Policy and Research Vangelis Nikias, Special Advisor Deborah Tunis, Director General, Office of Disability Issues	28/05/2002	24
37th Parliament, 2nd Session		
Systemscope Joe Peters, Director	29/01/2003	4
Caledon Institute of Social Policy Michael Mendelson, Policy analyst Sherri Torjman, Vice-President	05/02/2003	5
University of Victoria Michael Prince, Lansdowne Professor of Social Policy		
As individual Sally Kimpson		
Canada Pension Plan Working Group of Ontario Harry Beatty	12/02/2003	6
Canadian Association of Independent Living Centres Traci Walters, National Director John Young, Managing Director		
Council of Canadians with Disabilities Laurie Beachell, National Coordinator Mary Ennis, Vice-President		
Environics Research Group Ltd Chris Baker, Vice-President		
Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (CPP/OAS) Guy Arseneault, Deputy Commissioner of Review Tribunals Tina Head, Senior Counsel Pat Iannitti, Director		
Canadian AIDS Society Ainsley Chapman, Program Consultant Paul Lapierre, Executive Director	20/02/2003	7
Canadian Mental Health Association Elisabeth Ostiguy, Director		

Associations and Individuals	Date	Meeting
Multiple Sclerosis Society of Canada Deanna Groetzing, Vice-President	20/02/2003	7
Canadian Association of Physicians with Disabilities Ashok Muzumdar, President	18/03/2003	8
Canadian Association of Rehabilitation Professionals Judy Marshall, National Executive Director		
Canadian Medical Association Dana Hanson, President William Tholl, Secretary General and CEO		
Canadian Psychiatric Association Blake Woodside, President elect		
Elizabeth Bruyère Health Centre Hillel Finestone, Psychiatrist Milan Unarket, Psychiatrist		
Occupational and Environmental Medical Association of Canada Lily Cheung, Past President		
Round Table Project on Safe and Timely Return to Function and Return to Work Lisa Doupe, Co-Leader		
Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (CPP/OAS) Guy Arseneault, Deputy Commissioner of Review Tribunals Bernie Clayman, Member Cheryl Forchuk, Chair Tom Kelly, Senior Advisor Anna Mallin, Chair G. Peter Smith, Commissioner of Review Tribunals Lyle Smordin, Chair Chris Spiteri, Chairperson, Canada Pension Plan/Old Age Security Review Tribunal	01/04/2003	9
As individual David Baker, Lawyer Allison Schmidt		
“Université de Sherbrooke” Patrick Loisel, Professor	08/04/2003	10

Associations and Individuals	Date	Meeting
Canadian Council for the Rights of Injured Workers Stéphane Paquin Maria York, President	29/04/2003	11
Canadian Imperial Bank of Commerce David Brown, Medical Director Lynne Gutteridge, Manager Gretchen Van Riesen, Vice-President		
Canadian Labour Congress Bob Baldwin, National Director Marie Clarke Walker, Executive Vice-President		
New Brunswick Premiers' Council on the Status of Disabled Persons Randy Dickinson, Executive Director		
As individual Michael Schweigert		
Canadian Life and Health Insurance Association Inc. Mark Daniels, President Irene Klatt, Director Greg Traversy, Executive Vice-President and Chief Operating Officer	06/05/2003	12
Workers' Advisers Blake Williams, Director		
As individual Sue Lott, Lawyer		
B.C. Coalition of People with Disabilities Elizabeth Davis, Senior CPP Advocate	13/05/2003	13
Department of Finance Réal Bouchard, Director, Social Policy, Susan Kalinowski, Senior Policy Analyst, Income Security Anthony Pizarro, Policy Analyst, Income Security and Social Policy		
Department of Human Resources Development Nancy Lawand, Director, Canada Pension Plan Program Policy Susan Scotti, Assistant Deputy Minister Susan Williams, Director General, Disability Benefits and Appeals		

Associations and Individuals	Date	Meeting
New Brunswick Mental Health Consumer Network	13/05/2003	13
Marjorie Edwards, Vice-President		
As individual		
Michael French		
Michelle Kristinson		
Roy Muise		
Walter Nash		
Ellie Stein		
John Wodak		

APPENDIX B — LIST OF BRIEFS

37th Parliament, 1st Session

Caledon Institute of Social Policy

George Cameron

Canadian Alliance on Mental Illness and Mental Health

Canadian Paraplegic Association

Department of Human Resources Development

Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (CPP/OAS)

37th Parliament, 2nd Session

Caledon Institute of Social Policy

Canadian Life and Health Insurance Association Inc.

Canada Pension Plan Working Group of Ontario

Canadian AIDS Society

Canadian Association of Independent Living Centres

Canadian Council for the Rights of Injured Workers

Canadian Labour Congress

Canadian Psychiatric Association

Council of Canadians with Disabilities

Elizabeth Bruyère Health Centre

Environics Research Group Ltd

Sally Kimpson

New Brunswick Premiers' Council on the Status of Disabled Persons

Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (CPP/OAS)

Ontario March of Dimes

Round Table Project on Safe and Timely Return to Function and Return to Work

University of Victoria

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to the report within one hundred and fifty (150) days.

Copy of the relevant Minutes of Proceedings of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities (*Meeting No. 36 which includes this report*) is tabled.

Respectfully submitted,

Judi Longfield, M.P.
Chair

MINUTES OF PROCEEDINGS

Monday, June 11, 2003
(Meeting No. 36)

The Standing Committee on Human Resources Development and the Status of Persons with Disabilities met *in camera* at 3:23 p.m. this day, in Room 209, West Block, the Chair, Judi Longfield, presiding.

Members of the Committee present: Eugène Bellemare, John Finlay, Monique Guay, Ovid Jackson, Judi Longfield, Gurbax Malhi, Larry McCormick, Raymond Simard, Monte Solberg and Larry Spencer.

Acting Members present: John Godfrey for Diane St-Jacques, Reed Elley for Jim Gouk and Sébastien Gagnon for Suzanne Tremblay.

Other Member present: Wendy Lill.

In attendance: From the Library of Parliament: Chantal Collin, Kevin Kerr, William Young and Julie Cool, research officers.

The Committee resumed consideration of its draft report on literacy.

It was agreed, — That the final report on “Building a Brighter Future for Urban Aboriginal Children” be adopted as the Fourth report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

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

It was agreed, — That the Chair be authorized to table the report in the House.

It was agreed, — That the Committee print 350 copies of its report in a bilingual format.

It was agreed, — That, pursuant to Standing Order 109, the Committee request that the government provide a comprehensive response to this report within one hundred and fifty (150) days.

It was agreed, — That the final report on “Listening to Canadians: A First View of the Future of the Canada Pension Plan (Disability) Program” be adopted as the Fifth Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities.

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

It was agreed, — That the Chair be authorized to table the report in the House.

It was agreed, — That the Committee print 550 copies of its report in a bilingual format.

It was agreed, — That, pursuant to Standing Order 109, the Committee request that the government provide a comprehensive response to this report within one hundred and fifty (150) days.

It was agreed, — That a letter be sent to Minister Stewart regarding recommendations for Main Estimates.

It was agreed, — That the press release as amended on the literacy report be adopted.

At 3:45 p.m., the Committee adjourned to the call of the Chair.

Danielle Belisle
Clerk of the Committee