

Notes from the presentation made on January 29, 2002 to the Sub-Committee  
On the Status of Person with Disabilities

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I am very pleased to have the opportunity to speak with you today about the questionnaire and the process that is used by CCRA to establish eligibility for the disability tax credit.

To provide some background for my comments – I offer to you a brief summary of my work experience. Firstly – I retired from statistics Canada in January of 1996 after 40 years of service with the agency. My last position there was the director responsible for the post-censal program that included the 1986 and 1991 Health and Activity Limitation Surveys. In that position – I had the opportunity to consult with:

- Canadians with disabilities – these consultations were organized by ARCH and CCD;
- organizations of and for persons with disabilities; and
- departments and agencies that administered programs and services directed at improving the life of Canadians with disabilities.

The objective of these consultations was to ensure that the questions used to identify persons with disabilities were acceptable to all of the stakeholders and that the information from the two surveys would be useful to all of the stakeholders.

I should point out here as well that the Health and Activity Limitation Surveys used activity of daily living questions that were developed by a working group of the Organization of Economic Co-operation and Development – the OECD.

These questions are widely accepted throughout the world as a means of identifying persons with disabilities who have physical or sensory impairments – and one of them – walking 50 meters is used on the form T2201.

Back to my experience - Statistics Canada was recognized as a leader in the disability statistics field – and so I was offered four international assignments during my last eleven years with Statistics Canada.

Since my retirement in 1996 - I have continued to work in the field of statistics – including some international assignments related to disability statistics in the U.S. and New Zealand. One ongoing contract is with the Bureau of Labor Statistics in Washington to help them design a set of questions to measure the employment characteristics of persons who meet the Americans with Disabilities Act definition of disability.

All this to give you a context for my comments on the transformation of the definition of the Disability Tax Credit in Section 118.3 – Subsection 1 of the Income Tax Act – into the specific conditions as set out in Section 118.4 of the Income Tax Act – and then into the questions that the qualified person answers on T2201 that is used to establish eligibility for the DTC.

In my professional opinion – the form T2201 fails both in terms of validity and reliability – the two basic requirements of any questionnaire.

Let me elaborate by taking you quickly through the information that is in the income tax act. You all know this much better than I – but – I need it to form the basis for my detailed comments on the questionnaire.

Disability Tax Credit  
 (Section 118.3(1) of the Income Tax Act)

.... an individual has a severe and prolonged mental or physical impairment which markedly restricts an individual's ability to perform a basic activity of daily living ....

Let's start with the how the DTC is defined in section 118.3 subsection 1 of the income tax act.

The DTC is defined using three key phrases.

The first one is "severe and prolonged mental or physical impairment".

The second one is "markedly restricts" and the third one is "ability to perform a basic activity of daily living".

Section 118.3(1) of the Income Tax Act	Section 118.4 of the Income Tax Act
severe and prolonged mental or physical impairment	prolonged <i>is defined as</i> "has lasted or can reasonably be expected to last for a continuous period of 12 months or more"  severe is not defined  mental is not defined  physical is not defined

Section 118.4 of the tax act provides the definitions for some of the words in these three phrases. Prolonged is defined in the context of

lasting or can reasonably be expected to last for a continuous period of 12 months or longer. The words "severe", "physical" and "mental" are not defined.

Markedly restricts has two definitions. The first definition includes “frequency” and “blindness” ; the second definition is “frequency” and “ability or time”.

Frequency is defined as all or substantially all of the time. Ability is defined as unable to do the activity, and time is defined as requiring an inordinate amount of time.

So - unable to do – or - takes a long time – for all or substantially all of the time defines markedly restricts. No definitions are given for “blind”, “substantially” or “inordinate” .

Section 118.3(1) of the Income Tax Act	Section 118.4 of the Income Tax Act
a basic activity of daily living	<ol style="list-style-type: none"> <li>1. perceiving, thinking and remembering;</li> <li>2. feeding and dressing oneself;</li> <li>3. speaking so as to be understood, in a quiet setting, by another person familiar to the individual;</li> <li>4. hearing, so as to understand in a quiet setting, another person familiar to the individual;</li> <li>5. eliminating (bowel or bladder functions); or</li> <li>6. walking.</li> </ol>

The basic activities of daily living are set out in Section 118.4 of the Income Tax Act. Not shown on the diagram but in the Act are what is not

included – general activities such as working, housekeeping, or a social or recreational activity.

Speaking and hearing activities include a definition that includes a reference to a person familiar with the individual and a quiet setting.

Both elimination body functions are stated.

The other three categories include no definition of what is included.

So, we have 9 words or terms that have not been defined in Section 118.4 of the Income Tax Act.

- |                  |                             |
|------------------|-----------------------------|
| 1. Severe        | 7. Perceiving, thinking and |
| 2. Mental        | remembering                 |
| 3. Physical      | 8. Feeding and dressing     |
| 4. Blind         | 9. Walking                  |
| 5. Substantially |                             |
| 6. Inordinate    |                             |

Let's now turn to the questionnaire – T2201 and see how CCRA transforms the definitions and explanations into the eligibility questionnaire. It would be helpful if you have a copy of the form in front of you since I'll be addressing a number of specific issues.

Skipping over “what is the disability amount” and “supplement” – let's look at “who can claim the disability amount”. Three bullets appear under this heading. The first one – “you are blind all or almost all of the time” are part of the definition of markedly restricted that appears in Section 118.4. The impairment is prolonged – but now a new wrinkle is added with the words “even with the use of corrective lenses or medication”. **No mention is made of the use of devices or medication in the Act but it is now a criterion for exclusion.**

The second bullet makes no mention of the use of devices but includes the words “markedly restricted”. And, if you look at the definition of “Markedly restricted” that appears in the second column on the cover page – we now have expanded the definition that appears in Section 118.4 of the Act to include “**even**

**with therapy (other than life-sustaining therapy) and the use of appropriate devices and medication”.**

You’ll also note that the words “inordinate amount of time” that appears in the Act have now been replaced with “an extremely long time” with no definition as to what “extremely long” means.

Before we leave the cover page, I’d like to make a few comments about the definition of qualified person. From my experience – it looks as if the assignment of disabilities to qualified person is made thinking only of persons with physical disabilities. An individual with a disability because of a cognitive impairment might need to be assessed by many of the qualified persons and yet, one qualified person could do it all. For example – an individual who is developmentally delayed may have serious problems in feeding and dressing her or himself, perceiving, thinking and remembering and also difficulty with speaking. Does this mean three assessments if it isn’t a medical doctor that is doing the assessment? What is wrong with having the psychologist or occupational therapist complete the assessment? Maybe there’s something that I’m not seeing – but – at first blush – it seems a complexity that is not necessary.

So now – let’s skip to Part B of the questionnaire. This part combines three methods for determining “yes” or “no” answers – two very objective measures – one for seeing and one for life-sustaining therapy, one quasi-objective measure for determining the “yes”/“no” answer for walking and five subjective measures for the remainder.

But I’m jumping ahead again. Take a look at the lead-in that appears just above the patient’s name. **The qualifier of use of therapy, an appropriate device or takes medication is articulated again – but now no mention is made of time.**

Now the individual questions.

Starting with - “Can your patient see?” The explanation that follows this question and the two sub-questions that deal with visual acuity and visual field is very objective. In terms of reliability – if ten doctors or optometrists filled in a form for an individual – the probability is high that they would all complete it the same way.

Similarly – the last question pertaining to life-sustaining therapy – a very objective definition that includes specifics on number of times per week and the number of hours and how those hours are calculated.

So now we get to what I call a quasi-objective measure to assist the qualified person in determining a ‘yes” or “no” answer for “can your patient walk?” How did CCRA decide that an appropriate measure to determine ability to walk was 50 meters? Yes – it is one of the activities of daily living questions developed by the OECD to measure mobility disabilities but only one of four. And, why does a “yes” response require additional information about the number of hours confined to a bed or wheelchair? Why is this additional information needed?

Also - I started my discussion about this question using the word “quasi-objective”. CCRA attempts to objectively quantify ability to walk but unless you actually have the individual try to walk the 50 meters, you move into a subjective assessment that is not reliable.

Which bring me to the question “can your patient hear?” Why doesn’t CCRA use a similar approach here as they did for seeing? There are objective ways of measuring an individual’s ability to hear. Why not include that objective

measurement on the questionnaire? And another comment about the hearing question – dropped from the explanation that follows the question is “another person familiar with the individual.

Another interesting anomaly on the form is the structure for the subjective responses to the two questions “can your patient feed or dress himself or herself?” And “can your patient perceive, think, and remember?” The feeding and dressing responses are separated – one yes/no response for feeding – one for dressing. This is not the case the perceiving, thinking and remembering. Why the difference?

And take a look at the example that is given for perceiving, thinking and remembering. **Now we have constant supervision thrown in as yet another way of reducing “marked restriction”.**

Let’s not forget the question on speaking. Again – is there not an objective standard test that the speech language pathologist can administer that could be used here. If we’re going to get these qualified professionals to complete the questionnaire, we might as well get them to use a standardized approach. And another thing about this question – the reference “by another person familiar with the individual” is missing from the explanation that follows the question.

Finally – the bowel and bladder function question also includes reference to personal help in terms of caring for his/her ostomy, but no mention is made of needing help to get to the toilet and/or help with transfer to the toilet. Would that be sufficient to answer “no”? Maybe for some it would some qualified persons filling out the form, but for others it would not Ah – the problem with subjectivity!

And finally – before I sum up Part B – take a look at take a look at the explanations for feeding, speaking and bowel/bladder functions – the word “inordinate” is back after having been replaced on the cover page with “extremely long”.

So – now to summarize my comments on Part B. What definitions are provided and what words/categories remain undefined.

1. Blind is defined on the questionnaire.
2. Inordinate is replaced on the cover page with “extremely long” but reappears in the questions’ explanations.
3. An attempt is made to define walking but it remains a subjective response.
4. No definitions are given for dressing, feeding, thinking, remembering or perceiving.
5. **The use of personal help, therapy, medication and appropriate devices is introduced as a way of reducing “markedly restricted” – is this a valid interpretation of the act or does the use of this affect the validity of the outcomes as they pertain to the income tax DTC definition?**

And, two final comments before I close. Turn back to Part A of the form. Look at the paragraph that begins with “We will review your form ..” It appears that the completion of the form may only be stage 1 in the process. Part A goes on to say “We may ask our medical advisors to review your claim to determine if you meet the eligibility criteria, and they may contact you or the qualified person for more information.” If this is part of the process – why can’t the questionnaire be amended to include as many of the additional information requirements as possible?

And now my final comment – I would strongly recommend that the questions and comments that I have put forward be shared with CCRA officials. My concern is that we have an instrument that is neither valid – if the addition of devices, etc are not to be considered – nor reliable - since the questionnaire is mostly subjective AND is subject to the need for additional undefined information requested again only after – it appears – the review of a CCRA employee.

Thank you.