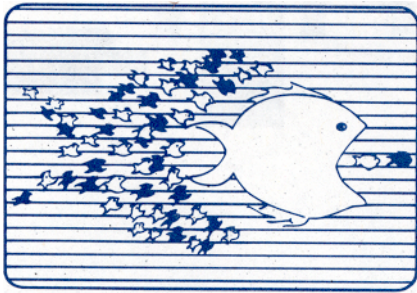


**The
British Columbia
Public Interest
Advocacy Centre**

815 - 815 West Hastings Street
Vancouver, B.C. V6C 1B4
Tel: (604) 687-3063 Fax: (604) 682-7896
email: bcpiac@bcpiac.com
[http://www. Bcpiac.com](http://www.Bcpiac.com)



August 27, 2003

Ms. Sherri Torjman and Mr. Robert Brown
C/o Mr. Charles Smyth
Technical Advisory Committee
Personal Income Tax Division
Department of Finance
140 O'Connor Street
Ottawa, Ontario K1A 0G5

Dear Ms. Torjman and Mr. Brown:

Re: Disability Tax Credit

We represent the BC Coalition of People with Disabilities (the "Coalition"). The Coalition is the largest disability advocacy organization in BC; it works with a broad network of provincial and locally based organizations in communities across the province.

On behalf of the Coalition, we have reviewed the submissions of the Coalition for Disability Tax Credit Reform (the "CDTCR") dated June 8, 2003. In its submissions, the CDTCR calls for reforms to:

- (a) the *Income Tax Act*;
- (b) the T2201 form;
- (c) the administration of the Disability Tax Credit ("DTC") program; and
- (d) the appeal process for the DTC.

The Coalition fully supports the CDTCR's submissions on all of these matters.

We would like to take this opportunity to focus on a narrower problem of particular concern to the Coalition and its members: the fact that **the *Income Tax Act* and the T2201 form define disability too restrictively** for the purpose of the DTC. This makes it very difficult for many people with disabilities to qualify for the DTC, and this greatly impairs their ability to act independently.

In our opinion this concern breaks down into two issues:

1. The T2201 form is inconsistent with the purpose and provisions of the *Income Tax Act*.
2. The *Income Tax Act* itself is in conflict with the *Charter of Rights and Freedoms*

Issue 1: The T2201 Form is inconsistent with the Income Tax Act

The T2201 form is inconsistent with ss. 118.3 and 118.4 of the *Income Tax Act* because it describes the eligibility criteria for DTC more narrowly than is contemplated in the legislation.

First, the T2201 form is configured so an applicant cannot qualify as having a markedly restricted ability to walk unless a doctor certifies that he or she "cannot walk 50 meters on level ground or he or she takes an inordinate amount of time to do so." The language of the *Income Tax Act* does not support this extremely narrow interpretation of what it means to be unable to walk. **It is arbitrary and inappropriate for the T2201 form to require that an applicant must be unable to walk "50 meters on level ground" to qualify for the DTC.**

Second, the T2201 form purports to illustrate the meaning of "markedly restricted ability to perceive, think and remember" using the example of an applicant who "cannot manage or initiate personal care without constant supervision." By using this example, the form sets a very high threshold for what it means to be unable to perceive, think and remember. Physicians we have consulted about the T2201 form say they treat the examples as a *baseline* for their decisions on how to complete the T2201. Given the current wording on the form, most physicians will only certify that a patient is unable to perceive, think, and remember if their patient is *at least* disabled enough to require constant supervision to manage or initiate personal care. **The T2201 form's use of an example to guide the interpretation of what it means to be unable to "perceive, think and remember" is arbitrary and inappropriate.**

As far as we know, there is no regulation under the *Income Tax Act* that prescribes *any* version of the T2201 form, and the CCRA's only authority to create the T2201 derives from the authority to administer ss. 118.3 and 118.4 of the *Income Tax Act*. As a result, we submit that the form must immediately be amended to reflect the legislation.

Issue 2: The Income Tax Act infringes s. 15 of the Charter of Rights and Freedoms

In addition to the discrepancy between the provisions of the T2201 form and the wording of the *Income Tax Act*, we believe that the eligibility criteria in the *Income Tax Act* itself are too

restrictive. They make it extremely difficult for those with mental health disabilities to qualify for the DTC. Indeed, we believe the criteria are restrictive in a discriminatory manner that infringes s. 15 of the *Charter*. S. 15 provides:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or **mental or physical disability**.

Many people with disabilities have a combination of conditions that work in concert to cause a *cumulative* marked restriction in their ability to perform basic activities. Yet such individuals can only qualify for the DTC if there is at least one statutory "basic activity" which they are always or substantially always unable to do. This fails to reflect the reality that a person's ability to perform basic activities is often markedly restricted by a *combination* of conditions none of which is, in isolation, sufficient to cause a marked restriction. For example, if a person suffers from severe osteoarthritis and chronic severe depression, her conditions will seldom prevent her altogether from doing anyone of the daily activities. However, the combined effect of her disabilities may well markedly restrict her ability to perform the class of statutory "basic activities" as a whole, by limiting (but not removing) her ability to walk, feed herself, dress herself, perceive, think, and remember. **The current wording of the *Income Tax Act* discriminates against those who have a combination of disabling conditions that act together to create a marked restriction when viewed holistically.** We call for a revision of the *Income Tax Act* to recognize that multiple impairments can combine to create a marked impairment.

Another major problem is that the *Income Tax Act's* approach to mental impairments is far narrower than its approach to physical impairments. In order to qualify for the DTC as a person with mental impairment, an applicant must be unable to perceive, think and remember. Yet most people with mental impairments retain some capacity to "think, perceive, and remember" even while these functions are severely impaired. **The *Income Tax Act* sets an extremely high threshold, one that discriminates against people with impairments such as psychiatric illnesses, brain injuries, and learning disabilities** by systemically excluding them from the DTC program. Accordingly, we call for a rewording of the *Income Tax Act* to provide a broader test that allows people with serious mental impairments to qualify for the DTC even where they retain some ability to think, perceive., and remember.

Recommendations

In conclusion, the Coalition's recommendations are as follows:

- Amend the portion of the T2201 form headed "Can your patient walk?" to reflect the language of ss. 118.4 of the *Income Tax Act*. Specifically, remove the words "50 meters on level ground."
- Amend the portion of the T2201 form headed "Can your patient perceive, think, and remember?" to reflect the language of ss. 118.4 of the *Income Tax Act*. Specifically, remove the example under this heading.

- Amend s. 118.4 of the *Income Tax Act* to recognize that multiple impairments can combine to create a marked restriction in a person's ability to perform the basic activities of daily living.
- Amend s.118.4 of the *Income Tax Act* to provide a broader test that allows people with serious mental impairments to qualify for the DTC even where they retain some ability to think, perceive, and remember.

We thank the Technical Advisory Committee for its work consulting with the public about tax assistance for persons with disabilities.

Yours truly,

BC PUBLIC INTEREST ADVOCACY CENTRE

Jessie Kate Hadley

Articled Student

cc. Carolyn Bennett, M.P.
 Scott Brison, M.P. (Progressive Conservative finance critic)
 Right Hon. Joe Clark, M.P.
 Libby Davies, M.P. (New Democratic Party Human Resources critic)
 Norman E. Doyle, M.P. (Progressive Conservative Human Resources critic)
 Gilles Duceppe, M.P.. (Bloc Quebecois leader)
 Stephen Harper, M.P. (Canadian Alliance leader)
 Jack Layton (New Democratic Party leader)
 Wendy Lill, M.P.
 Peter MacKay, M.P. (Progressive Conservative leader)
 John Manley, M.P. (Minister of Finance)
 Brian William Pallister (Canadian Alliance Human Resources critic)
 Pierre Paquette (Bloc Quebecois finance critic)
 Monte Solberg, M.P. (Canadian Alliance finance critic)
 Jane Stewart, M.P. (Minister of Human Resources)
 Suzanne Tremblay, M.P. (Bloc Quebecois Human Resources critic)
 Judy Wasylcia-Leis (New Democratic Party finance critic)