

## Recommendations of the Coalition for Disability Tax Credit Reform

<b>Amend the <i>Income Tax Act</i></b>	<b>Issues and concerns</b>
Recognize that Section 118 of the <i>Income Tax Act</i> needs to evolve not only to address the technological advances in medicine but also the diagnostic research related to disabling impairments.	The <i>Act</i> remains virtually unchanged since 1985.
Broaden the definition of disability to recognize the reality of living with a severe and prolonged disability as well as the supports required to manage one's day-to-day affairs.	Many persons with a severe and prolonged disability do not fit the existing eligibility criteria for the DTC.
Re-evaluate the "activities of daily living (ADLs)" in the <i>Act</i> .	The "activities of daily living" are very narrowly defined in the <i>Act</i> and not an accurate assessment of the burden of living with a serious mental or physical impairment. Also, there is confusion about the eligibility criteria because the medical profession has a very different interpretation of ADLs.
Re-evaluate the purpose of the exclusions i.e. "working, housekeeping, social or recreational activities" for both physical and mental impairments.	These exclusions are improperly biased toward persons with physical disabilities. Functional difficulties in "perceiving, thinking and remembering" are often manifested by the inability to learn, work or maintain relationships.
Re-evaluate the use of the term "inordinate amount of time."	The legislation does not define the meaning "inordinate" which makes the evaluation too subjective to ensure fairness of the DTC program across Canada.
Re-evaluate the weight of the diagnosis when establishing disability.	The current "rule" that eligibility cannot be established on the basis of diagnosis can impact negatively on people with mental impairments. For example, the diagnosis of paraplegia or legally blind will automatically qualify an individual but a serious mental illness such as chronic paranoid schizophrenia will not.
Redefine "prolonged" to incorporate impairments that are substantial, persistent and recurrent to recognize the episodic and unpredictable nature of chronic mental and physical impairments.	Many persons severely impaired by a mental illnesses or multiple sclerosis do not meet the absolute criteria of "substantially all or all of the time."

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<p>Replace the phrase “all or substantially all of the time” with “primarily” to reflect the reality of living with a severe and prolonged disability.</p>	<p>“Primarily” has been accepted as an appropriate replacement when referring to the business use of a personal vehicle.</p>
<p>Recognize the cumulative effect of multiple impairments on an individual even though each impairment, if assessed separately may not meet the eligibility criteria of the <i>Act</i>.</p>	<p>There is no assessment for the cumulative burden of disability across separate categories of ADLs. For example, a person with MS may have difficulty walking 50 metres on some days because of balance problems or severe fatigue and also have cognitive problems that impair the ability to perceive, think and remember.</p>
<p>Provide an appropriate legal test for all mental impairments, including mental illnesses, neurological conditions and cognitive disorders.</p>	<p>The intent of the wording of the questions regarding mental functions does not address mental impairments such as psychiatric illnesses, brain injuries and learning disabilities and their impact on ADLs. For example, a learning disability is often mistaken as a reading disability.</p>
<p>Re-evaluate the intent of the statement: “For the purpose of the disability amount, basic activities of daily living do not include general activities such as working, housekeeping, or social, or recreational activities.”</p>	<p>These activities define some the adaptive functions required to establish the ability to perceive, think, and remember. CCRA uses similar activities in its supplementary questionnaire for medical clarification to determine the severity of disability. For example, “Could your patient go out in the community alone?”</p>
<p>Incorporate the interpretation of the <i>Act</i> by the Federal Court of Appeal in a clear manner into the guidelines for the DTC. For example, an individual with a mental impairment qualifies for the DTC if the inability to perceive, think and remember is of such severity that the individual is “unable to perform the mental tasks required to live and function independently in every day life.”</p>	<p>The question “Can your patient perceive, think and remember?” is not a conclusive test to determine eligibility for individuals with mental impairments. Many psychiatrists, who are not familiar with case law, have refused to complete the T2201 for their patients because they believe that the only correct response is “yes,” regardless of the severity of the illness.</p>
<p>Review the disabling impacts of HIV/AIDS.</p>	<p>When the current legislation was written in 1985, we knew very little about this devastating disease.</p>

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<b>Revise the DTC Form and Program Guidelines</b>	<b>Issues and concerns</b>
Respect Parliament's humane and compassionate intent in expanding the DTC provision in 1986.	The language interpreting the <i>Act</i> and the eligibility criteria has become increasingly restrictive during the past decade.
Review privacy issues and the extent of medical information required to effectively and efficiently process the DTC application.	CCRA staff admit they are <u>not qualified</u> to make medical determinations because they are unable to interpret the detailed medical information provided by a doctor, whether it is in the T2201 form, an accompanying letter, medical documents or the supplementary questionnaire for medical clarification.
Provide clarity regarding both the intent of the program and the target group for the DTC.	The guidelines and questions in the current form are confusing and often misleading.
Provide clarity regarding the certification process.	Doctors are not always aware that they are contradicting themselves by checking the "yes" box indicating the person is <u>not</u> severely impaired in an ADL and then checking the "yes" box certifying that the individual is "markedly restricted" in an ADL.
As long as the health professionals are the "gatekeepers" of the DTC program, their "certification" of the disability must be honoured unless there is good reason to suspect fraud.	Too often, a clerk will deny the DTC even though the health professional has certified that the individual meets the eligibility criteria.
Create a T2201 form that meets the needs of the applicants and health professionals.	The current form only meets the needs of the clerks who process them.
The policy intent of the DTC as it is defined by the Department of Finance must match the legislative and parliamentary intent as it is interpreted by the courts.	The policy intent of the DTC does not always reflect the legislative intent of the DTC.
Substitute "or" for "and" in "perceiving, thinking and remembering."	In the T2201 form, (ii) feeding and dressing oneself is interpreted as feeding <u>or</u> dressing oneself. The same consideration should be given to (i) perceiving, thinking and remembering as noted in the ruling, <i>Radage v. The Queen 1996</i> and the fact that there is ample legal authority to read "or" in place of "and" when carrying out the intention of the legislature.

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Provide appropriate parameters to assess the severity of a disability.	The current parameters for physical impairments (i.e. walking) are not consistent with the language of the <i>Act</i> or Tax Court decisions. The “real world” is not “level” when walking.
Provide appropriate examples that are inclusive, not exclusive of the interpretation of the words describing mental functions such as “think rationally,” “perceive realistically” and “remember accurately.”	Existing criteria unfairly and systematically exclude Canadians with mental impairments. Unless an individual is brain dead, there is still some capacity to “think, perceive and remember” even though these functions may be severely impaired.
If examples are used, they must be appropriate.	The example of whether a patient is able to take care of personal hygiene is not a legal test for the severity of all mental impairments.
Provide an opportunity for health professionals to explain in a narrative format how a patient’s mental or physical disability interferes with his/her ability to perform ADLs.	Only a small space (the equivalent of two lines) is allowed for diagnosis and additional information.
Provide an opportunity for individuals to describe their limitations in their own words.	A space was provided for individuals in the 1989 T2201 form but discontinued in the 1990s.
Provide information about Fairness provisions with the eligibility guidelines regarding certain rights to a refund as far back as 1985.	The information about the Fairness provision is buried in the General Guide.
Reduce the need for the supplementary questionnaire by ensuring that the severity of the disability is addressed in the T2201 form.	Currently, a supplementary questionnaire is sent to the health professionals of 25 % of the claims for the DTC.
The questions for medical clarification in the supplementary questionnaire need to be disability specific.	Questions that are appropriate for an individual with a cognitive disorder or neurological condition are not appropriate for an individual with a psychiatric illness.
The questions for medical clarification in a supplementary questionnaire need to reflect the legislative intent of the DTC.	Some questions further restrict the eligibility criteria, making it more difficult to qualify for the DTC. (The use of the term “rest periods” when walking 50 metres is contrary to the <i>Act</i> which allows for an “inordinate amount of time” to cover the distance because he/she needs to take rest periods.)
Cover the additional costs for health professionals to complete supplementary questionnaires required for medical clarification.	This cost was covered in the past, from 1990 to 1995 when HRDC evaluated the T2201 forms and appeals.

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<b>Improve Program Administration</b>	<b>Issues and concerns</b>
Create a separate DTC unit with health professionals including medical doctors for evaluating all T2201 forms.	At the present time, lay clerks determine eligibility for the DTC by counting the number of “yes” and “no” responses to questions.
Provide consistent training to all staff throughout regional tax centers across Canada in disability issues, sensitivity awareness and respectful management of the DTC program.	Clerks have little or no training in disability issues or special consideration toward individuals who are already very vulnerable and marginalized in our society.
Provide greater accountability for the review process.	From January 1995 to October 25, 2002, 54% of the claims were reassessed when the individual filed a Notice of Objection.
Ensure that the eligibility criteria are uniform across the country.	Depending on where you live in Canada, you may or may not qualify for the DTC if you have a prosthetic arm or leg.
Treat all DTC claims fairly and consistently.	CCRA clerks often ignore the certification of disability when doctors check the appropriate boxes indicating that their patients are “severely” impaired and “markedly restricted.”
Follow-up with all individuals who did not reapply for the DTC as a result of the recent mass audit of 106,000 persons with disabilities.	The lack of response from 36,000 individuals has created a false impression that persons who received the DTC in the past are no longer eligible.
Provide all individuals in the recent mass audit whose claims were rejected an opportunity to reapply retroactively for the DTC when an improved T2201 form is drafted.	The current form discriminates against persons with mental impairments and unjustly disqualifies too many individuals with severe and prolonged physical impairments.
Ensure confidentiality of all information regarding the application process to establish disability.	Applicants with mental impairments are required to reveal very sensitive and detailed medical information far more often than persons with physical disabilities, raising concerns about privacy and confidentiality issues. Persons with mental impairments are particularly vulnerable because the stigma associated with their impairment may result in significant harm and discrimination.
Strive for respectful management of the DTC program.	Persons with disabilities should not be required to jump through endless hoops in order to qualify for the DTC.

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<b>Improve the Appeals Process</b>	<b>Issues and concerns</b>
Provide clear guidelines regarding the Review Process.	An individual can ask to have his/her claim reviewed when the tax credit is denied before resorting to the more formal appeal process by filing a Notice of Objection.
Provide clear guidelines regarding the appeals' processes in the <i>General Income Tax and Benefit Guide</i> .	The current guidelines are inadequate and do not stipulate that additional medical information is usually required for a reassessment.
Provide a clear and specific explanation when the DTC claim is denied.	Most of the form letters sent out by clerks and appeals' officers do not provide specific information about the reason(s) for rejection which an individual requires if he/she wishes to appeal the decision in the Tax Court of Canada.
Apply the appeals' process consistently across the country.	Appeals are not always dealt with in the same manner by the different tax offices across Canada.
Provide better accountability of the appeals' process.	At the present time, an appeal's officer may disregard additional medical information provided by a doctor to clarify the disabling impact of an impairment because he/she is not qualified to make a medical determination.
Provide information regarding appeals to the Tax Court of Canada.	The current guidelines do not provide any information about appealing a dispute with the Tax Court of Canada.
Create an Ombudsman's Office as a pilot project.	Appealing to the Tax Court of Canada is a process that the majority of individuals are unable to undertake because it is too intimidating and humiliating for them. Persons with mental impairments are particularly vulnerable. Also, there can be significant costs in addition to the \$100 filing fee for people who live in remote areas.

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<b>Review Tax Policy as Social Policy</b>	<b>Issues and Concerns</b>
Create a Refundable Tax Credit.	The tax credit only benefits individuals and family members with a taxable income. However, persons with disabilities experience significantly higher levels of poverty than the average Canadian because they do not have a taxable income but they still have additional expenditures because of their disability.
Review the overall intent of the DTC program.	The original intent of the DTC was to offset additional expenses incurred by individuals because of their disability.
<b>Harmonize Federal/Provincial Disability Programs</b>	<b>Issues and Concerns</b>
Review the use of the term “basic activities of daily living.”	At the federal level, activities of daily living refer to activities such as seeing, hearing, walking, perceiving, thinking and remembering. At the provincial level as well as a medical practitioner’s point of view, ADLs also refer to housekeeping, shopping, meal preparation, handling finances and the ability to work and participate in the community, to name a few.
The definition of disability should be consistent with all federal and provincial programs even though the eligibility criteria may vary considerably.	Different definitions of disability used by DTC/ CPP/ ODSP disability programs create confusion for applicants and health care professionals responsible for determining eligibility and completing the forms.
Establish an agreement between federal and provincial jurisdictions that monies for individuals to offset the cost of disability is allocated to these individuals regardless of other provincial government supports.	Claw backs by provincial governments of federal monies designed to assist with the cost of disability is unconscionable.