

“Injustice is when the equal are treated unequally, and the unequal are treated equally.”

Aristotle

Learning Disabilities and the Disability Tax Credit

The Learning Disabilities Association of Canada (LDAC) and its nation-wide membership is grateful for this opportunity to share our collective views on the Disability Tax Credit (DTC) with members of the Sub-Committee on the Status of Persons with Disabilities of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities. This paper is intended to make members of the Sub-Committee aware of our concerns with the DTC and offer recommendations for the future.

Originally established during the Second World War to assist persons who were totally blind, the DTC and other government programs have evolved to recognize the needs of **all** Canadians with disabilities including those with learning disabilities. Central to these programs is the understanding that “injustice is when the equal are treated unequally, and the unequal are treated equally”. In other words, if persons with disabilities, including learning disabilities, are to benefit from, participate in and contribute to Canada, they require additional support. The DTC is one government program intended to provide such additional support.

CONCERNS AND RECOMMENDATIONS

At the outset, it should be made clear that LDAC has never suggested or claimed that all Canadians with learning disabilities should qualify for the DTC. However, a small percentage (approximately 2%) of the 10% of Canadians with **severe** learning disabilities should qualify for the DTC. A learning disability is a disorder that affects a person’s ability to either interpret what they see and hear or to link information from different parts of the brain. One person’s learning disabilities may affect his/her ability to write, remember and think critically, while another person’s learning disabilities may affect his/her ability to stay on task, read and recall words.

Our general concern relates to what appears to be the random and erratic treatment of DTC applications from LDAC members. During the past few years an increasing number of applications for the DTC from LDAC members have been turned down by Canada Customs and Revenue Agency (CCRA) officials. Such applications may involve members who had previously been deemed eligible for the DTC by CCRA officials as well as new applicants. While an applicant in one part of the country may qualify for the DTC an identical case in another part may be denied. Some are informed that they pre-

qualify for a number of consecutive years while others are flatly turned down. When applicants are denied the DTC a form letter from CCRA officials is forwarded to the claimant. These form letters do not include any information or explanation other than the general CCRA guidelines and leave applicants at a loss to know why their applications have been rejected.

Recommendation That applicants who are denied the DTC be provided with detailed information by CCRA officials as to why their claim is turned down.

While the design of form T2201 has been reviewed and amended a number of times since its first inception, it remains very much focused on physical disabilities even though eligibility for the DTC was extended beyond physical disabilities to include all “severely disabled Canadians” in 1985. Part B of the form “*Can your patient perceive, think, and remember? Answer no only if, all or almost all the time, even with therapy,.....For example, answer no if he or she cannot manage or initiate personal care without constant supervision*” was clearly designed to respond to physical disabilities alone. While CCRA officials may suggest that Part B, *Can your patient perceive, think and remember* is intended to address learning disabilities and other cognitive disabilities, the meaning is immediately translated into a physical activity, e.g. personal care.

Again under section B, *Can your patient perceive, think and remember*, is narrowly interpreted. According to CCRA officials, in order to qualify, claimants with learning disabilities would have to be unable to perceive, think or remember 100% of the time. The very fact that this formula (100% of the time) is applied demonstrates the extent to which learning disabilities and other cognitive disabilities are misunderstood. According to this formula one would have to be in a coma or deceased to qualify.

In our view, the design of form T2201 undermines the potential impact of learning disabilities and other cognitive disabilities on basic activities of daily living. The effect of the questions and examples cited on the form, including the explanatory notes, is to exclude persons with severe learning and other cognitive disabilities from the DTC contrary to section 15 of the *Charter of Rights and Freedoms*.

How do learning disabilities impact basic activities of daily living? One recent example includes the man with learning disabilities who has been telephoning the LDAC office every day for the past two week threatening drastic measures including suicide. His ambition is to find a suitable job but his reading, writing and non verbal learning disabilities are such that he may never achieve his goal. Because of his disability he is unable to read want ads and fill out application forms. Equally pervasive are his non verbal learning disabilities which affect his ability to read social cues. This means that when he walks into an office building he has absolutely no sense of who the commissionaire is, how he should ask for information, can't tell right from left, etc. Another example involves young offenders with undiagnosed learning disabilities. Typically, they have poor memory, organizational and conceptual skills. From one

interview to the next, they cannot recall the sequence of their offense in the same order. In the eyes of the police they seem aloof and inconsistent which infuriate the authorities. A third example involves children with severe learning disabilities who attend specialized schools. According to CCRA officials the fact that they attend such schools disqualifies them for the DTC. They argue that just as a prosthesis disqualifies the amputee from receiving the DTC so does attending a specialized school disqualify children with learning disabilities from receiving the DTC. Does this mean that a child with learning disabilities who begins attending a specialized school on September 8 will no longer have learning disabilities on September 9?

Recommendation We recommend that form T2201 be revised so that each disability group can be evaluated in its own right.

CCRA officials have admitted that DTC applications involving learning disabilities and other cognitive disabilities are the most difficult to evaluate. Unlike physical disabilities where the answers to DTC questions may be clearer, learning disabilities and other cognitive disabilities fall into the grey area (literally and figuratively). The fact that these disabilities are invisible makes CCRA's evaluation process challenging. It is our understanding that CCRA officials do not have any formal training in learning disabilities or other cognitive disabilities yet they are expected to render a judgment on these complex disabilities.

LDAC's position has always been that licensed professionals with experience in learning disabilities and other cognitive disabilities are the only medical practitioners (as defined by Finance Canada) capable of conducting assessments and delivering a legitimate diagnosis. These formally trained medical practitioners fully appreciate and understand the extent to which learning disabilities and other cognitive disabilities can affect basic activities of daily living.

Recommendation That CCRA officials be provided with regular and ongoing training on learning disabilities and other cognitive disabilities.

In closing it is our belief that the challenges experienced by the disabilities community as a whole with the DTC program points to a much broader malaise. Canadians with disabilities including learning disabilities are turning to the courts in record numbers to seek justice in cases involving income support, education, employment equity, transportation, etc. While they have every right to seek justice in our courts, it is just plain wrong that they have to do so.

Respectfully submitted,

Pauline Mantha
Executive Director