

# **Brief Submitted to the Sub-committee on the Status of Persons with Disabilities**

by Lembi Buchanan  
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Thank you, Chair, Dr. Bennett and members of the Sub-Committee on the Status of Person with Disabilities for recognizing the urgency for a full review of the current DTC Certificate T2201 that affects hundreds of individuals with mental illnesses in our country who are being treated unjustly.

I will be following the progress of this submission throughout the parliamentary process until the issues brought forward today are resolved.

Are these individuals less deserving than people with physical disabilities?  
Not according to the Tax Act.

Mental illness is one of the least understood and least accepted of all illnesses. Individuals with mental illnesses remain among the most vulnerable members of our society. Unlike individuals with physical disabilities, they do not have the intellectual capacity or the mental stamina to pursue their causes. For many people, and their families, these illnesses are a source of shame and embarrassment. As a result they are unwilling to stand up for their rights or to protest when an injustice has been done to them.

That is why I am here today.

In recent years, it has become virtually impossible for anyone with a serious mental illness to qualify for the DTC without appealing the decision by the CCRA to the Tax Court of Canada. Even for people who have qualified previously for the benefit.

Questions requiring a simple “yes” or “no” answer trivializes the complexities of a serious mental illness such as bipolar disorder or schizophrenia.

The question, “Can your patient think, perceive and remember” essentially excludes all individuals with severe and prolonged mental illnesses because they can still think, perceive and remember although their thought patterns may be dysfunctional, erratic, bizarre or confused.

Such discrimination is unlawful.

Such discrimination is a poor reflection of our society’s values.

My husband who suffers from bipolar disorder (also known as manic depressive illness) was first diagnosed in February 1973 after he was discovered on the roof of St. Patrick's Cathedral, only partially clothed in frigid weather waiting for a helicopter to take him directly to God. He has not always been disabled by this medical illness caused by a biochemical disorder in the brain. For almost 20 years, he managed to lead a relatively normal, productive life because of a new "wonder drug" called lithium carbonate, which is nothing more than a common salt.

In December 1990, my husband suffered a major setback and never fully recovered. At the time, he was working as a public relations officer for a major mining company. This time, he actually believed that he was God and that it was within his power alone to cure me of cancer. He had to be committed to the psychiatric ward because he was considered to be a danger not only to himself but others. Since then, he has been unable to work in any capacity. There is not a moment in the day or night that he is not held hostage by an illness that can have devastating consequences not only for him but the rest of his family. The roller coaster ride can begin at any time, set off by a manic high with grandiose delusions and ultimately plummeting into the depths of a debilitating depression.

For years, my husband and so many others with serious mental illnesses qualified for the tax credit. And now they are being rejected.

Why is this happening?

The Tax Act hasn't changed. The eligibility criteria haven't changed. It is the same diagnosis and prognosis. It is even the same doctor filling out the form. Only the form has changed.

I believe that the government bureaucrats and politicians do not always perceive mental impairments to be as severe as physical impairments.

The Minister of Finance wrote in a letter addressed to me on September 13, 1999: "The DTC provides tax assistance for individuals that are severely impaired in a basic activity of daily living such as walking, feeding and dressing oneself which would indicate a much more severe disability." Than my husband? Mr. Martin neglected to mention that one of the "basic activities of daily living" is "thinking, perceiving, and remembering."

And why does government want to exclude individuals with mental illnesses?

It's costing too much money.

Once again, Paul Martin explains: "If eligibility for the DTC were broadened to include situations as you have described as well as persons with severe disabilities, the federal cost would be much greater than the current \$275 million.

Are these individuals less deserving?

Judge Diane Campbell of the Tax Court of Canada didn't think so when she ruled in favour of my husband in *James Buchanan v. the Queen*. She said, "It is an obvious case..."

With due respect to Mr. Martin, the main problem facing government officials is the lack of understanding of the disabling impacts of a server and prolonged mental illness.

There is no question that setting appropriate parameters or thresholds for mental impairments is a more complicated process than for physical impairments but only for someone who does not have the medical knowledge to do so. Instead of consulting with health professionals, the federal government has arbitrarily decided that mental functions can be measured in the same manner as physical disabilities. As far as the government is concerned, the functions of thinking, perceiving and remembering can be measured on a scale of 1 to 100. One of the questions in a supplementary form sent to doctors for clarification asks the following. "During the year, what percentage of time is your patient unable to think, perceive and remember?"

The question defies common sense. As far as I know, there is no piece of technological equipment that can provide such a measurement, unless the individual is brain dead. Any other answer is pure speculation by the doctor.

Furthermore, CCRA officials have ignored case law from previous appeals in the Tax Court of Canada that provide significant guidelines in the determination of whether or not an individual's specific disability falls within the eligibility criteria.

In *Radage v. The Queen 1996*, Tax Court Judge Donald Bowman suggested that the legislators, when drafting the Tax Act referred to the basic activity of daily living, that is thinking, perceiving and remembering, "in a manner that conforms to common human experience." Judge Bowman explored the meaning of each word in depth and concluded that Taavi Radage, at 24 years of age, was markedly restricted in his ability to think, perceive and remember because of his intellectual limitations even though he was in a work placement program and earning \$60 per week.

In *Buchanan v. The Queen 2000*, Judge Diane Campbell ruled in favour of the Appellant, quoting extensively from the Radage case. "Although the Appellant is certainly able to operate adequately in some areas, his impairment permeates his entire existence. The facts that support that while engaged in some seemingly rational activity to an outsider, all other though processes are otherwise exploding in an array or erratic, bizarre and potentially harmful activities. However, the Appellant's ability to perceive, think and remember, although non-existent, is of such severity that his entire life is affected to such a degree that is unable to perform the necessary mental tasks required to live and function independently and competently in everyday life... the Appellant's condition and resulting behaviour so far exceeds the normal and reasonable ambit that he comes within the otherwise very narrow confines of these sections of the Act."

CCRA not only ignores the wisdom of the Tax Court Judges but also the provisions of the Canadian Charter of Rights and Freedoms.

The Supreme Court of Canada has recognized the distinct disadvantage and negative stereotyping faced by persons with mental disabilities and has held that discrimination against individuals with mental disabilities is unlawful.

In fact, the Charter does not allow lesser benefits to individuals with mental impairments than to individuals with physical impairments.

When Supreme Court Justice J. Sopinka delivered the judgment in *Battlefords and District Co-operative Limited v. Gibbs*, he stated the following: “One of the reasons such legislation (referring to human rights legislation) has been so described is that it is often the final refuge of the disadvantaged and disenfranchised... the last protection of the most vulnerable member of society.”

All employees were covered by a disability insurance plan until 65 as long as they were disabled. However, Betty Lu Gibbs had her disability benefits cut back after two years because she suffered from a mental disorder. The Court ruled that she was discriminated against by her employer.

The consequences of the changes to the DTC form, whether intentional or not, is that the tax credit has been cut back for individual with serious mental illnesses. Even though they may have qualified previously for the tax credit like my husband, and so many others with serious mental illnesses, they no longer qualify. They are being discriminated against in much the same manner as Mary Lu Gibbs.

As far as Judge Campbell was concerned, in her ruling for *James Buchanan v. The Queen 2000*, my husband’s psychiatrist misinterpreted the Tax Act when completing the DTC Certificate for his patient. But that is hardly surprising because the question regarding mental functions is incorrect, incomplete and ambiguous. “From the facts and the evidence, it is clear, in answering the questions on the form, he (Dr. Cooke) clearly held the incorrect view that most individuals with mental impairments did not qualify for the credit and that it was intended instead for those (as he wrote in his correspondence to the Appellant ) who had difficulty ‘feeding themselves, dressing, using the toilet or carrying on a simple conversation.’ He clearly did not understand that the six items defining a basic activity of daily living, as contained in subsection 118.4 (1) (c), are not to be read together, but each activity is treated separately.”

A number of judges have also criticized the form.

Judge Bowman stated in his ruling in *Morrison v. Her Majesty the Queen*: “It is clear that Parliament should reconsider the wording that led the Federal Court of Appeal to the decision it reached... Having heard dozens of these cases, I have found that such certificates are often unreliable, contradictory or confusing... Section 118.3 is an important section and it means a great deal to many small taxpayers... The result of the

decision of the Federal Court of Appeal is that severely disabled people have no recourse when a doctor or his secretary ticks the wrong box, whether negligently or deliberately, or refused to sign a certificate.”

We cannot condone a government department that has abandoned its responsibility to the most vulnerable members of our society by creating a form. The fact that the assessment process of the mental disorder may be perceived by CCRA officials to be more difficult than a physical disability is no excuse.

We expect our government to be fiscally responsible. But it is unconscionable when cost-saving measures are carried out by targeting our most vulnerable members of society.

Surely, as a society, we can do better.

I am asking that a new DTC Certificate is drawn up that provides the medical profession an opportunity to make a fair assessment of their patients based on their medical knowledge and the disabling impact of the illness.