

## Executive Summary

The submission provides several examples, using case law, where judges have ruled in favour of the appellant in Tax Court because of the inadequacies of the current Disability Tax Credit Certificate (T2201 form) and in particular, when the wording is contrary to the objectives of the Income Tax Act.

The Tax Act has not changed since 1991 and the eligibility criteria have not changed. Although the current T2201 form still provides physicians with an opportunity to assess the disabling aspects of many disabilities, Part B with its “yes” and “no” questions often puts them in a position of contradicting their own assessment of the disability when compelled to put a check mark in the box that does not favour the impaired individual because of Revenue Canada’s interpretation of the Tax Act.

These questions are incomplete, incorrect, ambiguous and are not following the legal standard as defined by the Tax Act.

Furthermore, the current T2201 form has created a hurdle that is virtually impossible for every individual disabled by a serious mental illness to surmount because Revenue Canada is making two assumptions of fact that are not true:

1. individuals with a severe and prolonged mental impairment cannot think, perceive or remember, and;
2. individuals with a severe and prolonged mental impairment cannot manage or initiate personal care without constant supervision.

There is nothing implied or stated in the Tax Act to disqualify individuals for the DTC because they can “think, perceive and remember.” Instead, the Tax Act refers to mental “impairment.” Nor does the Tax Act suggest any specific guidelines to define the limitations of these disabled individuals, except to state that the “individual’s ability to perform a basic activity of daily living (i.e. thinking, perceiving or remembering) is markedly restricted” and that the impairment must be “severe and prolonged.” (Sections 118.3 and 118.4 are transcribed on page 3 of this submission.)

Unfortunately, the interpretation of the Tax Act by Revenue Canada is so restrictive that many doctors have refused to complete the revised DTC for their patients. Even more disturbing is the fact that doctors (who do not have the benefit of tax law to guide them) have been led, by Revenue Canada, to believe that many individuals who may have qualified for the DTC in the past no longer qualify even though their disability has not changed, the effect of the disability on the basic activities of daily living has not changed and the eligibility criteria have not changed. Indeed, the administrative guidelines published by Revenue Canada have not provided any elasticity whatsoever for the appropriate assessment of the eligibility criteria by medical professionals.

In *Johnston v. Her Majesty the Queen* 1998 in Federal Court Of Appeal, Tax Court Judge Letourneau with Desjardins concurring, referred to *Radage v. Canada* 1996: “The

(legislative) intent is neither to give the credit to every one who suffers from a disability nor to erect a hurdle that is impossible for virtually every disabled person to surmount. It obviously recognizes that disabled persons need such tax relief and it is intended to benefit such persons... although the scope of these provisions is limited in their application to severely impaired persons, they must not be interpreted so restrictively as to negate or compromise the legislative intent.”

One needs to understand the implications of a “severe and prolonged” mental impairment and its potentially disabling effect on individuals. In *Albertin v. Canada* 1996, the Appellant’s mother-in-law, Mrs. Rybotycka had been exhibiting certain examples of irrational or abnormal behaviour but Revenue Canada denied the DTC. In his ruling, Tax Court Judge Rip managed to clearly define the disabling effects of such a severe and prolonged mental disorder even when the Appellant admitted that Mrs. R. was lucid some of the time. Although Mrs. R. also had other health-related problems and difficulties with eating and dressing, Judge Rip focused only on the impact of the mental impairment on her activities of daily living. The fact that she was lucid 50% of the time was not a factor in his ruling. (Appendix10)

“The fact is that her erratic behaviour could be triggered without warning at any time during a lucid period. This, in my view, makes the impairment continuous for purposes of paragraph 118.4(1)(a) and markedly restricted her ability to perceive, think and remember, even during periods of lucidity.”

James W. Buchanan is used as a case study to provide an understanding of the severity of affective bipolar disorder with some individuals, its unpredictable nature, its disabling effects and the inadequacy of the current T2201 form to assess people with serious psychiatric disabilities. The case study clearly defines how mania distorts thinking and judgment, and how someone can be lucid, still able to think, perceive and remember and yet, suffer from serious cognitive dysfunction and distorted judgment at the same time.

Jim qualified for the DTC from 1990 to 1995 (Appendix 1). Although he has been continuously disabled from December 1990 to the present (Appendix 3), the Minister of Revenue has disallowed claims for subsequent years. Jim was disqualified because his psychiatrist, who certified that he was “markedly restricted” with respect to mental functions on one page, had no choice but to check the “yes” box on another page when asked if Jim can think, perceive and remember. Even though the question whether or not Jim can think, perceive and remember is not a legal test of the Tax Act, the check mark on the second page of Part B apparently carried more weight than the check marks on the first page of Part B.

Surely, the lack of an appropriate and fair DTC Certificate is not sufficient reason to disallow the tax credit for individuals who are disabled by a serious mental illness according to the eligibility criteria of the Tax Act.

[A copy of the submission is available at the following website:  
<http://www.disabilitytaxcredit.com/DisTaxCredit.pdf>.]