

THE CANADIAN DISABILITY TAX CREDIT CERTIFICATE

SUBMISSION TO THE PARLIAMENTARY SUB-COMMITTEE ON  
THE STATUS OF PERSONS WITH DISABILITIES  
REVIEW OF THE DISABILITY TAX CREDIT CERTIFICATE (FORM T2201)

Chair, Dr. Carolyn Bennett, MP St. Paul's

November 2001

by

Joan Montgomery, Chief Executive Officer  
Schizophrenia Society of Canada  
75 The Donway West, Suite 814  
Don Mills, ON. M3C 2E9

(416) 445-8204

**INTRODUCTION**

The Schizophrenia Society of Canada (SSC) is a national not-for-profit organization whose mission is *to alleviate the suffering caused by schizophrenia*. Our goal is to help those who have the disease, as well as their families, to secure a better quality of life today, while we search for a cure for tomorrow.

Schizophrenia is a treatable brain disorder that drastically affects the behaviour of its sufferers. Research indicates two neurotransmitters, dopamine and serotonin in particular, play significant roles in schizophrenia. Evidence suggests that people with schizophrenia have too much dopamine in certain areas of the brain and abnormalities in serotonin activity also play an important role in the disease. Genetic predisposition is also a key factor.

Symptoms of the disease include delusions, hallucinations, thought disorders, hostility and extreme suspiciousness as well as emotional and social withdrawal, difficulty in abstract thinking and extreme tiredness.

Schizophrenia usually strikes individuals in their late teens or early twenties, and it is invariably a lifelong illness. It affects all races, cultures, social classes and both genders. Men usually develop symptoms earlier than women.

Statistics show that one person in 100, or about 300,000 Canadians will experience an episode of schizophrenia in their lifetime. They also show that individuals with schizophrenia occupy the most hospital beds in Canada at approximately one in every 12 beds. While drug treatments are available, they are unable to cure schizophrenia. Approximately 40 per cent of people with the illness attempt suicide, and one quarter of those individuals succeed.

Stigma is a barrier frequently encountered by people with schizophrenia. Negative responses and attitudes towards people with schizophrenia encourage those with the illness and their family members to hide the problem and stop them from seeking help. Stigma can also lead to social isolation, frequent episodes of institutionalization and to discrimination in employment, accommodation and education. Moreover, misconceptions about schizophrenia held by legislators, government officials and even health professionals can result in under-funding of essential treatment services.

The SSC strives to improve the public's understanding of this seriously debilitating neurobiological disease through its advocacy and awareness endeavours. The society's volunteer board of directors and other volunteers work diligently to analyse the issues related to the disease; educate Canadians on the realities of the illness in hopes of eliminating the stigma and discrimination associated with it; develop relationships with community workers who interact with those who have the disease; and recommend solutions to all government levels whose policies affect our members.

Provincial associations and local chapters also offer information and provide one-on-one as well as group support to families whose lives have been devastated by the disease. There are over 100

Chapters of the Society across Canada whose programs are designed to specifically meet the needs of their communities. As well, The Schizophrenia Society of Canada Foundation, a separate body, promotes and supports research into effective treatments leading to a cure for schizophrenia.

The Society's approach to schizophrenia involves: 1) Working to define the problems related to the disease, and developing specific proposals to solve them; 2) Through our research foundation, providing support to scientific research for a cure; 3) With our various affiliates, offering information and support to families and their ill loved ones; 4) promoting public awareness so that everyone has the opportunity to understand what schizophrenia is really all about, thereby removing the unnecessary stigma; and, 5) working and networking with other organizations that are involved with the seriously mentally ill, to improve the status quo for all who are affected by schizophrenia.

Schizophrenia is a devastating illness that strikes people in their prime. An estimated 300,000 Canadians have schizophrenia and many are dependent on family members to act as their primary caregivers for the rest of their lives. The federal government's Disability Tax Credit (DTC) is intended to provide the individuals and families affected with some economic relief from the draining emotional and financial burden of providing for someone who struggles with a disability such as schizophrenia.

It is the submission of the Schizophrenia Society of Canada that the goal of this tax credit program is currently compromised by the application and procedures employed in the determination process. Difficulties with the tax credit program are experienced acutely by people with mental illnesses, and our Society welcomes this opportunity to address those issues. We also congratulate the federal government and the Committee on the Status of Persons With Disabilities in particular for taking up this serious and pressing matter.

## **THE BURDEN FOR FAMILIES OF PERSONS WITH SCHIZOPHRENIA**

In the past many of the families of persons with schizophrenia were able to access the tax credit for disabilities, and thus obtain some modest financial assistance as they coped with the responsibility and burden of supporting someone who struggles with simple day-to-day tasks (e.g. taking their medications, bathing, laundry, cooking, etc.) because they cannot "think, perceive or remember" at a level required to carry-out these functions.

However changes made to the process of accessing this tax credit over the past years now mean that families with these responsibilities and needs have been largely unsuccessful in readily securing or renewing this benefit. Nowhere is the burden of this unfortunate situation felt more acutely than for the large number of Canada's senior citizens on limited and fixed incomes who must continue to provide care to adult children with schizophrenia.

A typical but all-too-common case is that of Mr. William-Critchlow. We quote from his letter to Dr. Bennett dated September 20, 2001:

I the undersigned, a 67-year-old senior widower, who is caring for two severely mentally disabled children suffering from schizophrenia as their mother also did, has after many years claimed the Disability Tax Credit which was allowed for all of them, including my wife. Now the Tax Credit is disallowed for Joan (who is 37) for the year 2000 because, as the tax office suggests, through the changes of the wording in the DTC form. I was also reminded by the tax office that my son Philip, even more severely mentally disabled is due to be affected next year when his present form expires.

The tax credit is a needed help, but no substitute for the pain and sacrifice I suffer. My children are very dependent on me for their survival and well-being. If they were in a group home, it would cost the government an awful lot more than the tax credit. Then I would have the benefit of my freedom and to live my life instead of this.

For years, Mr. Williams-Critchlow benefited from the tax credit and then suddenly he is rejected. However the Income Tax Act has not changed, nor have the eligibility criteria. Furthermore, it is the same diagnosis and prognosis, and the same doctor filling out the form. What has changed is the wording and interpretation of the form used to apply for this benefit.

How, and why, have these changes to the administration of the disability tax benefit form resulted in so many families including persons with schizophrenia being denied this modest economic relief to which they are justly entitled?

## **BACKGROUND**

The Disability Tax Credit (DTC) was first expanded in 1986 to include individuals other than the blind, and people who are bed-ridden or in wheel chairs. Terminology such as “severe and prolonged mental or physical impairment” as well as “markedly restricted in the activities of daily living” were introduced. By 1989, the government appeared to be concerned that too many people who were not sufficiently disabled were applying and qualifying for the DTC. In 1991 the Income Tax Act was amended to provide the following conditions under which an individual’s impairment would qualify for the DTC (Excerpts from “Answers to Your Tax Questions for the 1999 Taxation Year”, Harry Beatty, ARCH, Toronto, ON):

- (a) an impairment is prolonged where it has lasted, or may reasonably be expected to last, for a continuous period of at least 12 months;
- (b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;
- (c) a basic activity of daily living in relation to an individual means
  - (i) perceiving, thinking and remembering;
  - (ii) feeding and dressing oneself;

- (iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual;
- (iv) hearing so as to understand, in a quiet setting, another person familiar with the individual;
- (v) eliminating (bowel or bladder functions); or
- (vi) walking; and

(d) for greater certainty, no other activity, including working, housekeeping or a social or recreational activity, shall be considered as a basic activity of daily living . [Income Tax Act, Section 11 8.4(1)].

The T2201 Form now incorporates in certain items an even more restricted interpretation of eligibility for the DTC than the legislation would require. Additional comments on the information sheet, Disability Tax Credit Information (which comes with the T2201) also serve to limit eligibility in practice.

Let us consider the components of the legislated criteria for an impairment which would qualify for the DTC, as reflected in the definition set out above and in the questions asked of the health professional on the 1999 T2201 form, with particular respect to the issue of mental disability.

(a) "Prolonged"

Because the impairment must be for a continuous period of at least 12 months, people who have severe but episodic disabilities, such as multiple sclerosis or mood disorders, will have great difficulty qualifying in many cases.

(b) "All or substantially all of the time"

Canada Customs and Revenue Agency (CCRA) apparently interprets this to mean 90% of the time or more. Someone whose disability has a variable effect from day to day will have difficulty qualifying for the DTC, even if they are very significantly disabled most of the time.

"Even with therapy and the use of appropriate devices and medication "

This appears to mean that people will be assessed as if they had, for example, the best adaptive equipment available, even where this is not really the case. Or, in the case of a person with a psychiatric disability, entitlement to the DTC may be denied on the basis of the person's not taking his or her medication, even where this may be due to legitimate concern about side effects, or where the individual's refusal to comply may itself be a result of his or her disability.

(c) (i) "Perceiving, thinking and remembering"

On the T2201 form, the physician is asked "Is your patient able to think, perceive, and remember, using medication or therapy if necessary (For example, can he or she manage

personal affairs or do personal care without supervision?)"

The T2201 formerly contained a place where the health professional could list other disabling impairments. But this section is now gone from the form. This has removed almost all of the health professional's scope for interpretation.

Finally on the T2201, the health professional is asked, "Has the impairment lasted, or is it expected to last, for a continuous period of at least 12 months," and "Is the impairment severe enough to restrict the basic activity of daily living identified above, all or almost all of the time, even with therapy and the use of appropriate aids and medication?". If the health professional is unable to answer "yes" to either question, it is clear the individual will be ineligible.

### **PROBLEMS IN THE ADMINISTRATION OF THE T2201 FORM**

The health professional is no longer asked to certify that the person is eligible for the DTC in so many words, but he or she is asked to certify that the information is true and complete. In reality, therefore, the health professional is still making the initial decision as to whether or not the person is eligible. It is now much harder than ever before to qualify for the DTC, and it has become more critical that the health professional provide full and accurate information on the T2201 to support the claim.

Unfortunately, CCRA provides no payments for health professionals to complete this form and they are therefore reluctant to do so. Furthermore, the fact that individuals with disabilities and/or their families are responsible for payment causes a particular problem for those with low incomes.

Some health professionals are also reluctant to complete the form because they are fearful of getting involved in a protracted dispute with CCRA and the Medical Advisory Panel at Human Resources Development Canada ("HRDC") over their patient's eligibility for the DTC. The adjudicators at HRDC reject or question eligibility assessments by the person's own health professional in a significant number of cases and may contact the health professional who completed the DTC with a request to provide a significant amount of additional information.

Many health professionals also believe that the wording in the current form has put a stranglehold on their ability to provide a fair assessment of their patient's disabilities without contradicting themselves. It is no wonder therefore that many doctors have actually refused to complete the T2201 for some of their patients.

Many persons with disabilities and advocacy rights organizations view these restrictions in access to the disability tax credit as motivated by government concerns for reducing expenditures. In this regard it is important to point out that the care provided by family members of persons with schizophrenia provides very significant savings to the government as compared to alternate forms of institutionalized support; savings that are undoubtedly much greater than any gains that might be realized through administrative restrictions to legitimate access for disability tax relief.

## **THE DEFINITION AND UNDERSTANDING OF DISABILITY**

It is our view that the recent revisions to the Disability Tax Credit (DTC) Certificate T2201 are either incomplete and ambiguous, or incorrect, and that the current wording of the questions is not justified on scientific medical grounds. Furthermore, it is our submission that they misrepresent the objectives of the Income Tax Act, ignore the legal standards set out in the Income Tax Act and disregard case law. This represents a very disturbing trend for all individuals with disabilities, and one that requires prompt attention and appropriate intervention.

In particular we are deeply concerned with the inappropriate nature of questions requiring simple "yes" and "no" responses with respect to the medical profession's ability to provide a fair and accurate assessment of their patient's disability and the impact of the disability on a "basic activity of daily living," namely "perceiving, thinking, and remembering". At the present time, it appears to be virtually impossible for anyone with a severe mental impairment to receive the DTC without appealing the decision in the Tax Court of Canada.

We are equally concerned that so many doctors (who do not have the benefit of tax law to guide them) appear to have been led by CCRA 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 in the Income Tax Act have not changed. There must be recognition of the fact that the assessment or identification of disability is a specialty onto itself, and that for most health care professionals, this is not the area of their specialty. While there may not be any controversy regarding the diagnosis of a physical or mental impairment, defining the disabling impact of the impairment is a much more complex issue.

The current T2201 form has created a hurdle that is virtually impossible for most individuals disabled by a serious mental illness to surmount, because it is based on two assumptions of fact that are not true. The first of these assumptions is that individuals with a severe and prolonged mental impairment cannot think, perceive or remember, and the second is that individuals with a severe and prolonged mental impairment cannot manage or initiate personal care without constant supervision. However there is nothing implied or stated in the Income Tax Act to disqualify individuals for the DTC because they can "think, perceive and remember"; rather the Act refers to mental "impairment." Nor does the Income 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."

## **LEGAL OPINIONS AND PRECEDENTS**

In their rulings, a number of judges of the Tax Court and the Federal Court of Appeal have in fact criticized the current format of the Disability Tax Credit Certificate, and the Committee on the Status of Persons with Disabilities should carefully take note of their remarks.

In Johnston v. Her Majesty the Queen (1998) in the 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."

Associate Chief Judge, Donald G.H. Bowman stated in his decision of May 2000 in Morrison v. The Queen (May 2000):

"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."

In the Federal Court of Appeal, Judge J.A. Sexton indicated in Maclsaac v. The Queen (2000),

"It is not obvious that putting the questions as they are in this form results in a thorough consideration by the doctor of the questions confronting him. Putting checks in a box is perhaps not the best way of eliciting just results."

In Buchanan v. The Queen (2000), Judge Diane Campbell also addressed the confusion doctors experience when completing the Form T2201 when she observed:

"From the facts and the evidence, it is clear, in answering the questions on the form, he (the doctor) clearly held the incorrect view that most individuals with mental impairments did not qualify for the credit."

## **A QUESTION OF EQUITY**

It is our submission that the current Disability Tax Credit (DTC) Certificate form T2201 discriminates against individuals with serious mental impairments. The problematic nature of the questions and their interpretation represents an unfair assessment of the impact of mental disability on an individual. In addition to imposing undue economic hardship on persons with schizophrenia and their family caregivers, a situation has been created in which persons with severe and persistent mental illnesses are not dealt with in a manner that is equitable to that of persons with physical ailments.

The Income Tax Act was designed to provide tax relief to individuals with mental as well as physical disabilities. Furthermore, Members of Parliament have an obligation to ensure that every individual is equal before the law and has the right to equal protection of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age *or mental or physical disability*. It is imperative to rectify a situation in which inappropriate administrative measures have the effect of negating the right to minimal and legitimate tax relief for individuals disabled by a serious mental illness according to the eligibility criteria of the Income Tax Act.

## **RECOMMENDATIONS**

Given the extent of the problems with the application of the current Disability Tax Credit Certificate (T2201 form) and the severity of the resulting hardships for families with members suffering from schizophrenia, we are submitting the following recommendations for your consideration:

- 1) that a suitable process be set up for review of the current form, incorporating appropriate input from consumers and other stakeholders, with a view to completing appropriate revisions within one year;
- 2) that future versions of the form as well as the application of the form reflect the guidelines and objectives of the Income Tax Act in a manner that is fair and equitable, regardless of the specific form of disability, whether physical or mental;
- 3) that the certification of members of the medical profession, based on their assessment of the specific effects of either physical or mental impairment, must be the only legal standard for the application of the Disability Tax Credit as required by the Income Tax Act; and
- 4) that the eligibility of the individual for the Disability Tax Credit be reviewed after a more reasonable period of time, for example a period of five years.

## **CONCLUSION**

The federal Disability Tax Credit must become more equally accessible to all those who are disabled in Canada. Specifically we are asking that the T2201 Form reflect the guidelines and objectives of the Income Tax Act so that the eligibility criteria are administered fairly to all disabled persons regardless of their disability.

To accomplish this compelling objective requires consultation with the parties affected, and the creation of a form which enables medical practitioners to provide a fair and accurate assessment of their patient's disability along with the impact of the disability on a "basic activity of daily living".

It should not be necessary for those with mental illnesses to have to resort routinely to the Tax Court of Canada to obtain this benefit. A more fair and equitable application of the law by the Canada Customs and Revenue Agency would significantly improve the situation.

In conclusion, the Schizophrenia Society of Canada would like to thank the Sub Committee on the Status of Persons With Disabilities for the opportunity to address the important and pressing concern of access to the federal Disability Tax Credit. We are confident that the voices of those who face debilitating mental illnesses such as schizophrenia, as well as the voices of their family caregivers, will not go unheard.