

2019 FIRST **ANNUAL REPORT** OF THE  
DISABILITY ADVISORY COMMITTEE

# Enabling access to disability tax measures

Report in brief



This report is dedicated to **Wendall Nicholas**,  
for his commitment and leadership as a member  
of the Disability Advisory Committee.



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# Preface

The Disability Advisory Committee was originally formed in March 2005 after the Technical Advisory Committee on Tax Measures for Persons with Disabilities had completed its mandated work and released its report Disability Tax Fairness in 2004. The Committee subsequently was disbanded in 2006. Because of increased attention to the disability tax credit (DTC) and its administration, the Honourable Diane Lebouthillier, Minister of National Revenue, announced the reinstatement of the Committee in 2017.

The Committee provides a way for the Canada Revenue Agency (CRA) to connect with Canadians to hear their views about how the Agency administers tax measures designed for persons with disabilities.

The Committee's role is to:

- provide advice to the minister of national revenue and the commissioner of the CRA for administering and interpreting laws and programs related to disability tax measures; and
- identify how the CRA can better respond to the needs and expectations of the disability community and increase awareness and the take-up of measures for persons with disabilities.

See [Appendix 1](#) for the list of Committee members who contributed to the report. More information about the Committee can be found at [canada.ca/disability-advisory-committee](http://canada.ca/disability-advisory-committee).



# Introduction

Although the Committee's mandate covers the full range of disability-related tax measures, the Committee focused primarily on the disability tax credit (DTC) during its first year. The DTC is a non-refundable tax credit that helps persons with disabilities or family members who support them to cover the costs associated with living with a disability. The CRA receives an average of more than 250,000 applications for the DTC each year. Beyond the DTC itself, access to the credit is important, because people often need to first qualify for the DTC to be eligible for other disability-related benefits.

DTC eligibility requires that an applicant meet one of the following criteria:

- is blind;
- is markedly restricted in at least one of the basic activities of daily living;
- is significantly restricted in two or more basic activities of daily living; or
- needs life-sustaining therapy.

The person's impairment must meet both of the following criteria:

- be prolonged, meaning the impairment has lasted, or is expected to last, for a continuous period of at least 12 months; and
- be present all or most of the time (at least 90% of the time).

In addition to the DTC, the Committee examined the efficiency and effectiveness of the CRA's delivery of several related tax measures targeted to Canadians with disabilities. These include the:

- medical expense tax credit;
- refundable medical expense supplement; and
- disability supports deduction.

Several other tax measures and programs that require DTC eligibility, including the child disability benefit and the registered disability savings plan, were also reviewed.

To inform its work, the Committee consulted with Canadians living with disabilities, disability-related organizations, and health providers who work with persons with disabilities and complete the DTC application form on their behalf. The consultations included a mix of meetings, submissions, and surveys.

This synopsis of the 2019 Annual Report of the Disability Advisory Committee: *Enabling access to disability tax measures* summarizes the key findings of the Committee's research and provides the context for the suite of resulting recommendations, which can be found in Appendix 2.

Read the full report at [canada.ca/disability-advisory-committee](https://canada.ca/disability-advisory-committee).

# Enabling DTC access through improved eligibility criteria

To be eligible for the DTC, an individual must have a severe and prolonged impairment in physical or mental functions, as defined in the *Income Tax Act* and as certified by a health provider. Eligibility is not based on a diagnosis, but on the effects a person's impairment has on their ability to perform the basic activities of daily living.

Eligibility criteria are long and complex, making it difficult for many Canadians with disabilities to determine whether they qualify for the DTC.

There are five broad issues related to the criteria that pose problems:

- the definition of mental functions;
- the interpretation of marked restriction and the 90% guideline;
- equality in the treatment of physical and mental functions;
- life-sustaining therapy; and
- designated conditions.

This section outlines the obstacles associated with the current law that prevent many persons with disabilities from benefiting from the DTC.

## Definition of mental functions

Health providers told the Committee that Form T2201, *Disability Tax Credit Certificate*, is totally inadequate when it comes to impairment in mental functions. The eligibility criteria are confusing and are not clinically meaningful, because they include a mix of functions and activities of daily living. For example, memory, problem solving,

goal setting, and judgment are all mental functions. Abilities related to self-care, health, and safety are activities.

The *Income Tax Act* also requires that problem solving, goal setting and judgment be “taken together.” This means a person must have a severe and prolonged impairment in all three mental functions to qualify for the DTC.


The eligibility criteria for mental functions are more rigorous than for physical functions. This results in unequal treatment of impairment in physical and in mental conditions. This inequality is reflected in acceptance rates. Activities related to mental functioning represented the largest category of DTC claimants in five of the last six years, yet they had lower approval rates.

## Update the criteria for mental functions

There are important internationally recognized standards that can help shape a new definition of mental functions, including international classifications from both the World Health Organization and the National Institute of Mental Health in the United States. Adopting such standards would ensure the criteria are clearer, more consistent with clinical practice, and more easily applied.

## Use easy-to-understand terms

Administrative clarifications are needed to make Form T2201 easier to understand and fill out. For example, a question on page 5 of the form that asks health providers about the likelihood of improvement is confusing. It is not clear whether the CRA is asking if the underlying condition is likely



to improve or if the individual's functional capacity is expected to improve.

A simpler way to explain the distinction is shown in the following example: "In thinking about the individual's impairment, please consider whether the condition that causes the impairment (for example, blindness, tetraplegia, schizophrenia, or bipolar disorder) can be expected to last for a continuous period of at least 12 months."

### Interpretation of marked restriction and the 90% guideline

DTC applicants are considered markedly restricted if they cannot, or take an inordinate amount of time to, do one or more of the basic activities of daily living, even with therapy (other than life-sustaining therapy) and the use of devices and medication. This restriction must be present all or substantially all the time, which the CRA has interpreted to be at least 90% of the time. A health provider must attest that three times the average time is needed to complete the activity compared to a person of the same age who does not have the impairment.

The *Income Tax Act* does not specify a percentage to define **all or substantially all of the time**. The CRA's 90% guideline has been challenged in several judgments by the Tax Court of Canada.

Form T2201 also asks health providers to identify when the applicant's restriction in mental function(s) became a marked restriction. It is not clear whether this question refers to the year of the diagnosis or to the time when the condition produced severe and prolonged impairments in mental functions.

### Explain through examples

Form T2201 asks health providers whether the applicant is markedly restricted in

performing designated activities related to mental functions. Practical examples would be helpful to health providers in determining their clients' eligibility for the DTC.

### Address children's unique needs

Form T2201 often does not apply when dealing with children, because they typically need adult help with most activities of daily living.

Health providers say the current measures used on Form T2201 are not appropriate and not enough. Health providers need examples that apply specifically to children to help them in completing application forms for child applicants. The examples should include behaviours related to developmental disabilities and autism.

### Equality in the treatment of physical and mental functions

The Committee heard that the current DTC eligibility requirements set the bar higher for mental functions than they do for physical functions. The inequality is made worse by the fact that some of the activities of daily living depend on any number of biological, social, and psychological functions. To create equality between the different forms of impairment, changes need to be made to the statement of physical functions. The revised list of functions should include examples that apply to children.

### Listen to and learn from front-line workers

There has not been enough consultation with the health provider community in defining and administering the eligibility criteria and explaining them on Form T2201. Health providers are in the best position to determine the eligibility criteria, especially for mental and physical functions, to make sure that the DTC eligibility criteria are clinically relevant and conceptually coherent.

## Life-sustaining therapy

Applicants are potentially eligible for the DTC if they require life-sustaining therapy. A medical doctor or nurse practitioner must certify that the following two conditions are met:

- An individual must require the therapy to support a vital function; this condition applies even if the therapy has eased the symptoms; and
- The applicant must require this life-sustaining therapy at least three times a week and for an average of at least 14 hours per week.

The requirement assumes that people need to take time away from their normal everyday activities to receive therapy. The time may also be spent administering the life-sustaining therapy to a child.

The 14-hour time requirement does not include other important activities such as:

- actions related to dietary restrictions or regimes, even when these activities may affect or determine the daily dose of medication;
- travel time for medical appointments or to receive therapy; or
- recuperation after therapy.

The combined time requirement, in terms of both minimum number of hours and weekly sessions, excludes many applicants who receive life-sustaining therapy. Access to the DTC has been severely limited particularly for people living with type 1 diabetes. Any individual who needs life-sustaining therapy, by definition, will spend considerable time every week engaged in that therapy.

Instead of having to submit an account of the number of times and hours per week involved in these therapies, the person needing life-sustaining therapy should automatically meet the criteria.

## Designated conditions

It would be useful to include a statement of condition or diagnosis on Form T2201 to help CRA assessors in making eligibility decisions. A diagnosis would not be the primary consideration in determining eligibility, but it could provide more context to strengthen a case for coverage. This also could reduce time and associated costs in the assessment process for the CRA.





# Enabling DTC access through improved application procedures

CRA procedures are very important when it comes to Canadians' access to the DTC. Hundreds of health providers commented on the eligibility process and the application form specifically.

Health providers' feedback revolved around the following issues:

- health provider roles;
- clarity and layout of Form T2201;
- clarification letters;
- appeals; and
- quality assurance framework.

## Health provider roles

Health providers believe they have become gatekeepers for the DTC, a role they feel is not theirs to take on and one they worry can compromise the provider-patient relationship.

## Health providers qualified to complete Form T2201

Whether or not to expand the list of health providers qualified to complete Form T2201 should depend on whether doing so makes it easier for people to apply for the DTC. People face problems in rural areas, as well as in Canada's North and other remote parts of the country in accessing providers qualified to complete the form. Data should be collected about where gaps in access to providers exist and for which activities of daily living.

## Increase understanding of eligibility requirements among tax preparers

Health providers, tax advisors, applicants, and other Canadians appear to be confused

about disability-related tax measures, in general, and the DTC specifically.

## Recognize the limits of the information health providers can provide

Many health providers indicated they do not feel qualified to respond to some of the questions on Part 2 of Form T2201. Some suggested that parents, teachers and other support workers know exactly what is going on with these individuals, and those caregivers might be better placed to answer these questions than a health provider.

## Better explain what is required when an applicant has more than one severe and prolonged impairment in an activity of daily living

Health providers outlined the complications that arise when an applicant has more than one impairment. In such cases, multiple providers must fill in Form T2201.

In this situation, a client and their family need to go to numerous health providers to receive accurate information, since the primary health provider is often the professional that the applicant least frequently sees. Some health providers expressed frustration that it is not always clear which professional is expected to complete which section of the form or where a person must sign. As well, the current form lacks enough spaces for multiple signatures. The concern was raised that failing to sign in the right places could unfairly disadvantage an applicant if the form isn't sent correctly.

There is also a perception that forms completed by specialists are approved more

easily. This implies that these applicants are more deserving of the DTC. Equally eligible individuals may live in a small community where there is no access to specialists, reducing their chances of acceptance.

## Clarity and layout of Form T2201

The Committee recognizes the challenges involved in creating a form that will satisfy everyone, given the lack of clarity in the underlying legislation. The complex criteria, along with lack of clear explanations and guidance around specific conditions, make it difficult to assess whether persons with disabilities qualify for the credit. There also is ambiguity about the impact of a given condition and the activities of daily living.

Health providers often second-guess whether their answers are written in a way the Agency will accept. Many complained, too, about CRA decisions that appeared inexplicable based on the applicants' assessed ability to function.

Inequities invariably will arise in the treatment of people with similar conditions. But, far too many cases were brought to the Committee's attention in which applicants with moderate functional capacities qualified for the DTC, while others far more severely impaired were refused. This may signal that CRA administrators experience the same confusion as Canadians with disabilities and their health providers about the DTC eligibility criteria.

As well, some health providers indicated that the form does not provide adequate space to include the detailed information required. Several suggested better layout of the form.

Others proposed the inclusion of standardized boxes that could be answered with tick marks.

## Clarification letters

Multiple concerns related to clarification letters were raised, including:

- the purpose of a clarification letter;
- the substance of a clarification letter;
- challenges to professional competence;
- lost eligibility;
- time and costs involved in answering a letter's request; and
- lack of transparency.


Many health providers questioned the CRA's intent in sending a clarification letter. Respondents are often asked to provide more information after already sending substantial documentation in the first application.

There was a sense that individuals with certain conditions are targeted by the CRA, since they are consistently asked for more proof to support an application.

There also was a perception that the CRA issues a clarification letter to delay a decision or deter applicants from pursuing the DTC.

A further concern is that some questions rely on a health provider's recollection of an applicant's medical condition. The responses may involve guesswork, since many of the answers are not in the clinical record when the applicant signs off on Form T2201 authorizing the health provider to provide or discuss information in the applicant's chart. As well, many of the questions are broad and not always relevant to a specific disability.

Several organizations and many health providers raised concerns about the CRA's challenge to professional judgment. They also questioned the clinical expertise of Agency assessors, who are not trained to make complex eligibility determinations concerning health conditions.



Assessors can disregard the objective evidence sent by health providers. The CRA justifies its authority to question evidence on the grounds that it is responsible for administering and enforcing the *Income Tax Act*. We understand and respect the CRA's responsibility to administer the legislation in good faith. However, it should not question or challenge the expertise of regulated health providers when it comes to the assessment of health conditions, as has become most evident for mental functions and, more recently, type 1 diabetes.

When such applicants are denied the DTC, even with a duly completed Form T2201 and supporting documentation, the CRA should require a second internal review from a different set of Agency assessors. If the applicant is still rejected, the CRA should consult with independent external reviewers to get an outside expert opinion on the refused cases. An outside expert advisory committee could be struck for this purpose.

Another area requiring closer scrutiny relates to respect for professional judgment when DTC recipients lose eligibility. People who previously received the DTC for decades have lost access to thousands of dollars from income support programs on questionable grounds (often disregarding the evidence sent by health providers) even though their condition remains unchanged.

Neither the clarification letters nor the responses from health providers are sent to applicants before or when they receive a decision regarding their case. This makes it difficult to decide whether to appeal, because the applicant lacks the substantive information used by the Agency to decide someone's eligibility. The CRA notes that Canadians can contact the Agency and ask for a copy of a clarification letter at any time, but sending these to applicants routinely would make for a more fair and efficient process.

The CRA contends that applicants should speak with their health providers about information sent to government on their behalf. That information is considered confidential between the health provider and the CRA. Individuals own their health information in Canada, so it is difficult to understand how a person's health information can be the basis of a confidential communication between parties and not include the affected individual. Including applicants in the information exchange would increase the accuracy of information provided.

An additional concern raised by health providers is the time and cost involved in providing the extra information requested in the clarification letters. A more open process would reduce the time, expenses, and stress involved in appealing CRA decisions.

## Appeals

The odds favour the applicant when appealing a decision disallowing the DTC. The majority of cases were successfully reversed as a result of additional information provided to the CRA by the applicant.

Most people denied the credit do not appeal their cases. Even fewer consult a lawyer. The low rate of objections reflects the difficulty of filing an appeal. The system is simply too complicated and the costs too high for most to fight CRA decisions. In addition, conditions such as some mental disorders impair the functions that people need to navigate the complex appeal process.

A particular concern is a notable increase in the rejections of individuals reapplying for the DTC after receiving it for 5, 10 and 20-plus years, even though their medical condition remains the same. Losing financial assets and access to other programs or services is serious, especially if applicants lose their registered disability savings plan.

Judicial appeals should not be needed, but they represent an essential safeguard. In fact, the data indicate that it pays to appeal, since the bulk of decisions either have errors or misrepresent the *Income Tax Act*.

The current appeal process requires reform to make it less complex and intimidating. It must be more transparent and compassionate.

### Quality assurance framework

Eligibility that involves a determination of functional incapacity may give rise to errors in judgment and perceived inequity. Improvements to the quality assurance framework would help deal with inconsistencies in eligibility decision making. A baseline set of procedures should be introduced to assess and monitor progress on an ongoing basis.

Any assessment process should include several layers of checks and balances. Especially critical, it is essential that CRA assessors assigned to review applications have adequate and consistent training, especially around impairment in mental functions and episodic conditions that can be more complex to assess.

Quality assurance procedures could also include second-opinion screening for cases considered particularly difficult to evaluate. This would add to the cost of assessment, but there may be considerable savings in the long run. Cases are often overturned at the appeal stage, which represents a costly quasi-judiciary process.

Finally, a quality assurance framework would require collecting and analyzing program data, including the number of applications and the number of approvals and rejections by physical or mental function. Demographic information, including age, gender and location, is equally vital to collect. This information would provide the basis for ongoing monitoring and assessment of progress.



# Enabling access through improved communications

Making sure people know about the changes in DTC administration and how to take advantage of them is crucial.

Priorities for action include:

- raising awareness;
- improving transparency;
- providing clear information;
- clarifying the criteria;
- improving client contact; and
- providing personal help.

## Raising awareness

The CRA has launched various initiatives to improve communications with Canadians. As helpful as they are, more must be done to raise awareness about disability tax measures. The CRA needs to better explain the purpose of the tax measures and provide user-friendly information about applying for the benefits.

The CRA web content must provide up-to-date and easy-to-understand information.

Every document should be written in plain language to remove wording that acts as a barrier to understanding various tax credits and how to apply for them. The Agency should consult with groups representing Canadians with disabilities to test the language and terminology used in CRA materials.

Also, increasing awareness means all Agency communications need to keep pace with technological change. Many persons with disabilities use special technical aids and equipment to communicate with the CRA.

## Improving transparency

Academics and experts working on disability tax measures and income security told us how difficult it is to get up-to-date statistical information on the DTC. Committee members experienced the same problem due to the lack of demographic data on current DTC beneficiaries. We want to review the demographic breakdown to determine who is receiving the credit. We are especially interested in DTC beneficiary data by age.

The CRA has begun to make information on the DTC more publicly available. Its [Disability Tax Credit at a glance](#) web content is an excellent start. However, many areas of vital data are still missing.

## Providing clear information

The DTC is more than just a tax measure that helps offset disability-related costs. It also is a requirement for other essential disability benefits. The CRA needs to explain this additional function in its materials and communication.

## Offer electronic options

Tax preparers and organizations suggested tax beneficiaries should be able to file their application and associated materials online. This would make it easier for many individuals to apply for the DTC.

## Clarifying the criteria

The CRA should introduce a process to gather feedback from both current and former DTC beneficiaries. A survey could be done each year with different clients, as part of the proposed quality assurance framework.

### **Improving client contact**

Better communications are essential, but they may still not address all the challenges facing persons with special needs. The CRA must provide in-person assistance, when required, to answer questions about first and continued DTC eligibility.

The CRA does offer a telephone assistance service, but many organizations and health providers complained that the phone lines are hard to get through. It can often take days to reach a person who can help with an enquiry.

### **Providing personal help**

Many Canadians need help completing the required income tax forms and associated materials, such as Form T2201. The Committee is especially concerned about assistance for Indigenous Canadians, who have a disproportionately higher rate of disability than other Canadians. There are serious problems surrounding access to disability supports in northern and other remote regions of the country that are home to many Indigenous peoples. Canadians living on low income, those with literacy challenges, newcomers to Canada, young people, and seniors also face access challenges.

The CRA administers the Community Volunteer Income Tax Program. Through this program, community organizations host free clinics where volunteers complete income tax and benefit returns for eligible individuals. In Quebec, the service is called the Volunteer Program and it is administered jointly by the CRA and Revenu Quebec. The Committee would like to see continued support for this valuable program.



# Enhancing access to other disability benefits

Access challenges to the DTC have become more serious, since many individuals apply not only, or even necessarily, for the financial assistance part of the DTC. The same eligibility criteria now act as the screen for wide-ranging programs and services. The DTC has become the centerpiece of disability policy.

## Review the DTC

The federal government must pay more attention to the implications of this profound shift. In fact, we question whether the *Income Tax Act* needs to be amended to reflect the DTC's broader role. There appears to be no legislative basis for this expanded function.

## Increase access to RDSPs

The registered disability savings plan (RDSP) is one of the most important initiatives linked to DTC eligibility. An RDSP is a savings plan designed to help individuals and their family members and friends save for the long-term financial security of someone who is eligible for the DTC.

RDSP account holders may also qualify for associated grants and bonds to boost their long-term savings if their income falls below certain levels. The grant and bond have been especially helpful for persons with severe disabilities living on low or modest incomes. The federal contributions to their RDSP account enable their personal investments to grow significantly.

The DTC should not be the only access point to an RDSP. Individuals should be able to open an RDSP account if they qualify for other disability-related programs intended for persons with severe disabilities. Long-term provincial/territorial social assistance programs are a logical place to start.

## Address unfair clawbacks of RDSP grants and bonds

When individuals apply for the DTC and are accepted, a decision is made about the duration of eligibility. If the first approval is only for a designated period, another application must be filed for the individual to continue qualifying for the credit.

Problems arise when beneficiaries who have already opened an RDSP account are later declared no longer eligible for the DTC. Any federal funds they may have received through an RDSP savings grant bond must be repaid to the federal government, along with any accrued interest. The loss of the DTC can be financially catastrophic to individuals who have opened an RDSP. In the Committee's view, any individual who received a federal benefit for which they were legitimately deemed eligible, in this case the RDSP grant and/or bond, should be able to keep those funds. Granted, they would no longer be eligible for any new or additional funds. But they should be permitted to retain the funds that they legitimately and legally received from the federal government during the time they were DTC eligible.

The Committee is particularly concerned about individuals with lifelong conditions that involve severe and prolonged impairment in physical and/or mental functions. If their functional capacity improves even slightly, say as a result of a new medication or technical aid, they may be deemed no longer eligible for the DTC. If their condition deteriorates, however, they may have difficulty re-establishing their DTC eligibility. It is not a certainty. In the meantime, they would have lost access to the only funds they have been able to save for their future survival. These individuals continually live on the brink of poverty and are particularly vulnerable as a result of the punishing clawback rule.

### **Ensure continued access to the child disability benefit**

Access to other vital programs and services should not be revoked if individuals no longer receive the DTC, particularly since it acts as a gateway to the vital child disability benefit. Access to all benefits and services should stay intact until a set of checks and balances is in place to determine whether the assistance provided through other programs should be cut off.

### **Simplify access to disability programs and benefits**

The Committee considered whether the disability screening process should be removed from the CRA altogether and moved to a social agency like Service Canada. That agency would determine access to a range of disability benefits and services, including the DTC. One solution is to identify a cluster of gateway programs, such as long-term social assistance and the Canada Pension Plan disability benefit, in addition to the DTC.

At the very least, the DTC should be better integrated with Quebec's disability tax credit, which uses its own eligibility criteria. In the longer term, we believe the CRA should explore related program alliances that could lead to automatic DTC access.





# Recognizing the additional costs of disability

Most persons with severe disabilities face additional costs related directly and/or indirectly to their condition. Direct costs refer to goods and services that can be easily itemized. Other disability-related expenses are considered indirect and are more difficult to quantify.

A range of cost issues was brought to the attention of the Committee, including:

- DTC procedures;
- Form T2201;
- extraordinary costs;
- DTC refundability; and
- the medical expense tax credit and disability supports deduction.

## DTC procedures

The complexities surrounding the DTC application process force many persons with disabilities to turn to tax promoters and others who charge high fees for their services. Some promoters even take a percentage of the DTC claim if the application is successful. Fees can amount to 35% or more of a tax refund, for assisting the application and appeals process.

The CRA has been considering a cap on the fees of tax promoters, and regulations are being drafted.

Many Canadians appeal their rejected applications on the grounds of unfairness or inconsistency in interpreting eligibility. Such individuals may need help from health providers or other experts, which can add extra costs. Appeals that end up in the Tax Court

of Canada may be costly if an individual is represented by a lawyer.

Earlier recommendations to reform the DTC eligibility criteria and procedures, and the proposed quality assurance framework, should reduce the appeals of CRA decisions.

## Form T2201

Many health providers are not compensated adequately, or at all, for the time spent completing Form T2201 and follow-up questionnaires or providing additional medical evidence when required. Some charge a fee to the applicant for their time. There are no standards regarding billing for this work, so charges vary widely by health provider.

It seems reasonable to ask the CRA to pay the costs incurred in providing additional information or clarification if Form T2201 has already been completed.

## Extraordinary costs

Many individuals and households face astronomical disability-related costs. Families struggle with very high expenses, particularly when they have children with severe disabilities.

The financial challenges that families often face go beyond the Committee's mandate. However, the federal government needs to consider alternative ways to address these serious financial challenges.

### **DTC refundability**

Since the DTC is non-refundable, it is of no value to Canadians who are too poor to pay income tax. Yet, these individuals and households still face high costs if they have a severe disability. There have been discussions over the years about converting the non-refundable DTC into a refundable credit. This would provide financial assistance to lower- and modest-income individuals with severe disabilities to help cover their disability-related costs.

### **Collect and share better data**

It is impossible to make good policy decisions without reliable data on actual and potential numbers of refundable DTC beneficiaries and the associated costs.

### **Medical expense tax credit and disability support deduction**

The medical expense tax credit (METC) provides financial relief for the cost of designated health and disability-related items. This non-refundable tax credit is available to all Canadians, not just persons with disabilities.

The METC does little to help lower- and modest-income households, which pay little or no income tax. Fortunately, a medical expense supplement was introduced by the federal government to address this very issue. The disability support deduction can be claimed when disability-related expenditures are needed to earn employment or self-employment income, or to attend an educational institution. However, most Canadians do not know about this tax provision.

### **Expand tax deductible items**

The current list of items allowed under the deduction is extensive, but important items may be excluded. New technologies may take some time to be recognized.

### **Research the tax implications of different credits**

Questions about the disability supports deduction, in comparison to the medical expense tax credit, require further exploration. The preferred option from a tax perspective is not clear. The Committee has asked that the CRA analyze the tax impacts of the two initiatives. Although the comparison would be a theoretical analysis only, it would advance our understanding of the benefits of each of these measures. This comparative data can provide a foundation for future recommendations.



# Appendix 1 – List of Committee Members

The Committee members whose work produced this report are:

- Frank Vermaeten, Co-Chair of the Committee, Assistant Commissioner with the Canada Revenue Agency, from Ontario
- Dr. Karen R. Cohen, Co-Chair of the Committee, CEO, Canadian Psychological Association, from Ontario
- Sherri Torjman, Vice-Chair of the Committee, former vice-president, Caledon Institute of Social Policy, from Ontario
- Laurie Beachell, Baker Law, from Manitoba
- Gary Birch, Neil Squire Foundation, from British Columbia
- Dr. Jeff Blackmer, Canadian Medical Association, from Ontario
- Lembi Buchanan, Coalition for Disability Tax Credit Reform, from British Columbia
- Michael Edgson, RBC Financial, from British Columbia
- Roberta Heale, Nurses Practitioner Association of Canada, from Ontario
- Emily Johnson, Diabetes Canada, from Alberta
- Véronique Vézina, COPHAN, from Quebec
- Karen Wiwchar, H&R Block Canada, from Alberta

# Appendix 2 – Recommendations

1

That in the determination of DTC eligibility, the CRA ensure that the principle of parity guides its actions with respect to physical and mental functions including, but not limited to, the removal of multiple screens of eligibility for persons with impairment in mental functions.

2

That the CRA amend the list of mental functions on Form T2201 as follows:

- attention;
- concentration;
- memory;
- judgment;
- perception of reality;
- problem solving;
- goal setting;
- regulation of behaviour and emotions (for example, mood disturbance or behavioural disorder);
- verbal and non-verbal comprehension; and
- learning.

3

That the CRA replace on page 5 of Form T2201 the term “effects of the impairment” with the following:

“The effects of the individual’s impairment must restrict their activity (that is, walking, seeing, dressing, feeding, mental functions, eliminating, hearing, speaking or some combination thereof) all or substantially all of the time, even with therapy and the use of appropriate devices and medication.”

4

That the CRA delete the reference to “social activities” on page 5 of Form T2201 due to the contradiction on page 3 of the form. Page 5 states that one is ineligible on the basis of social and recreational activity, while page 3 states that the inability to initiate and respond to social interactions makes one eligible, as does the inability to engage in common simple transactions.

5

That the CRA change the question on page 5 of Form T2201 about the likelihood of improvement to ask health providers whether the individual’s illness or condition that is responsible for the impairment in function, such as walking or cognitive functions, is likely to improve, as in the following example:


“In thinking about the individual’s impairment, please consider whether the condition that causes the impairment (for example, blindness, paraplegia, schizophrenia or bipolar disorder) can be expected to last for a continuous period of at least 12 months.”

6

That the CRA no longer interpret all or substantially all as 90% of the time and no longer interpret an inordinate amount of time as three times the amount of time it takes a person without the impairment.

7

That in the DTC assessment process, the CRA employ the following definition to determine marked restriction in mental functions:



“The individual is considered markedly restricted in mental functions if, even with appropriate therapy, medication and devices (for example, memory and adaptive aids):

- all or substantially all the time, one of the following mental functions is impaired, meaning that there is an absence of a particular function or that the function takes an inordinate amount of time:
  - attention;
  - concentration;
  - memory;
  - judgment;
  - perception of reality;
  - problem solving;
  - goal setting;
  - regulation of behaviour and emotions (for example, mood disturbance or behavioural disorder);
  - verbal and non-verbal comprehension; or
  - learning; OR
- they have an impairment in two or more of the functions listed above none of which would be considered a marked restriction all or substantially all the time individually but which, when taken together, create a marked restriction in mental functions all or substantially all the time; OR
- they have one or more impairments in mental functions which are:
  - intermittent; AND/OR
  - unpredictable; AND
  - when present, constitute a marked restriction all or substantially all the time.”

8

That the CRA remove specific references to activities in the T2201 section on mental functions and include examples of activities in the current Guide RC4064 to help health

providers detail all the effects of the markedly restricted mental function(s), as in the following illustration:

“The individual is considered markedly restricted in mental functions if they have an impairment in one or more of the functions all or substantially all of the time or takes an inordinate amount of time to perform the functions, even with appropriate therapy, medication, and devices. The effects of the marked restriction in mental function(s) can include, but are not limited to, the following (this list is illustrative and not exhaustive):

- with impaired memory function, the individual cannot remember basic information or instructions such as address and phone number or recall material of importance and interest;
- with impaired perception, the individual cannot accurately interpret or react to their environment;
- with impaired learning or problem solving, the individual cannot follow directions to get from one place to another or cannot manage basic transactions like making change or getting money from a bank;
- with impaired comprehension, the individual cannot understand or follow simple requests;
- with impaired concentration, the individual cannot accomplish a range of activities necessary to living independently like paying bills or preparing meals;
- with impaired ability to regulate mood (for example, depression, anxiety) or behaviour, the individual cannot avoid the risk of harm to self and others or cannot initiate and respond to basic social interactions necessary to carrying out basic activities of everyday life; or
- with impaired judgment, the individual cannot live independently without support or supervision from others or take medication as prescribed.”

9

That the CRA consider a child and an adult version of Form T2201, with eligibility criteria tailored as necessary.

10

That the CRA revise the list of functions on Form T2201 to the following:

- vision;
- speaking;
- hearing;
- lower-extremity function (for example, walking);
- upper-extremity function (for example, arm and hand movement);
- eliminating;
- eating/feeding; and
- mental functions.

11

That the CRA, in respect of the parity principle, create a list of examples of activities for each impaired function for inclusion in the current Guide RC4064 to help health providers detail all the effects of markedly restricted function(s), as in the following proposed guidelines (this list is illustrative and not exhaustive):

- with impaired lower-extremity function, the individual cannot walk;
- with impaired upper-extremity function, the individual cannot feed or dress themselves, or cannot attend to basic personal hygiene; or
- with impaired eating/feeding, the individual cannot swallow or eat food.

12

That the CRA review the current eligibility criteria for hearing, which are out of date.

13

That the CRA work in collaboration with the Department of Finance Canada to consult with relevant health providers and stakeholders before introducing any legislative changes to the *Income Tax Act* with respect to the definition of mental or physical functions.

14

That the CRA replace the current eligibility criteria for life-sustaining therapies as set out in Form T2201 with the following:

Individuals who require life-sustaining therapies (LSTs) are eligible for the DTC because of the time required to administer these therapies. These are therapies that are life-long and continuous, requiring close medical supervision. Without them, the individual could not survive or would face serious life-threatening challenges. Close medical supervision is defined as monitoring or visits, at least several times annually, with a health provider. These therapies include but are not necessarily limited to: intensive insulin therapy for type 1 diabetes; chest therapy for cystic fibrosis; renal dialysis for chronic and permanent renal failure; and medically prescribed formulas and foods for phenylketonuria (PKU).

15

That the CRA:

- consider whether some conditions, such as a complete paraplegia or tetraplegia, schizophrenia or a permanent cognitive disorder with a MOCA below 16, should automatically qualify for the DTC in the way that blindness does. (MOCA is a mental status examination of cognitive functions used commonly to assess impairment that results from conditions such as dementia, head injury or stroke.); and



- examine the eligibility criteria employed in other federal and provincial/ territorial programs, such as the Ontario Disability Support Program and the programs for Canada Pension Plan disability benefits and, veterans disability pensions, to identify the conditions/diagnoses that establish automatic eligibility for those programs.

16

That the CRA examine the new eligibility form being used for Canada Pension Plan disability benefits to identify areas in which there might be synergies regarding eligibility for the DTC, such as including the presenting condition or diagnosis as supplementary information to identifying functional limitations.

17

That the CRA test or pilot various approaches that would remove the gatekeeper role from health providers. One such approach would be for community tax clinics to take on a screening or advisory function. Another would be to establish a CRA call centre explicitly for this function.

18

That the client experience survey on the DTC and other disability tax measures to be carried out by the CRA include a question as to whether the individual or recipient had any difficulty accessing a health provider for the purposes of completing Form T2201 and, if so, for which activity. Clients should also be invited to provide any additional comments on this question. Special attention should be paid in this survey to the needs and concerns of Indigenous Canadians.

19

That the CRA develop a process for expanding the list of health providers with

the appropriate expertise who can assess eligibility for the DTC.

20

That in the case of determining DTC eligibility for persons with impairment in mental functions, the CRA include relevant specialized health providers, including, but not limited to, psychiatrists and psychologists, in the review process when applications are disallowed.

21

That the CRA:

- copy to the applicant all clarification letters sent to the health provider;
- let the health provider know that all communication to a health provider about an applicant will be copied to the applicant and that any communication the health provider submits to CRA will also be made available to the applicant;
- encourage the health provider to contact and consult the applicant as necessary when providing any clarification to the CRA; and
- extend the time for a health provider to file a clarification letter with the CRA from 45 to 60 days and note this timeline on the first page of the questionnaire.

22

That the CRA:

- provide in notice of determination letters a relevant reason as to why a DTC application was denied;
- include in notice of determination letters a copy of the clarification letter and the health provider's clarification response. This information is vital in case of an appeal; and
- move the consumer survey request to the bottom of the notice of determination letters.

23

That the minister of national revenue review the current appeals process with a view to creating a straightforward, transparent and informed process where the applicant has access to all relevant information (including the precise reason their application was denied) and documents (including copies of all information submitted by health providers that pertain to their application).

24

That the CRA include a document (one-page, two-sided information sheet) entitled “Your Rights When a Notice of Determination Denies a Claim for the DTC” that would:

- explain the requirements, timelines and details for filing the following:
  - review;
  - notice of objection with the Appeals Branch; and
  - notice of appeal with the Tax Court of Canada;
- inform taxpayers that other persons (that is, family members, friends or professional advisors) can act on their behalf by submitting Form T1013, *Authorizing or Cancelling a Representative*, or writing a letter;
- inform taxpayers that they have access to all documents in their files, including a copy of the follow-up questionnaire and any clarification letter completed by the health provider;
- inform taxpayers that they can contact the CRA for a copy of Pamphlet, P148, *Resolving your dispute: Objection and appeal rights under the Income Tax Act*, if they do not have access to the Internet; and
- provide the correct contact information and mailing addresses for the submission of any required materials.

25

That the CRA consult on a regular basis with selected community organizations to:

- ensure that all its communications and materials (including letters of correspondence with individuals) are easily accessible by persons with disabilities and are available in plain language. Organizations such as People First can assist with ensuring plain language; and
- determine whether its communications and materials are keeping pace with technological change and with the technologies in common use by communities of persons with disabilities.

26

That CRA web content, which outlines disability tax measures, link to relevant provincial and territorial websites that identify disability-related provisions in those jurisdictions, as well as the range of federal and provincial/territorial disability measures that require DTC eligibility in order to qualify.

27

That the CRA provide and make publicly available relevant data on the DTC, including number of applications, approvals, rejections, and appeals; durations of eligibility by function; and a demographic profile of current beneficiaries by age and gender.

28

That the CRA provide an option for the electronic submission of Form T2201 and related materials that:

- is convenient and accessible for both taxpayers and tax preparers; and
- permits submission of those materials at the same time as, or after, the filing of an income tax and benefit return.





29

That the CRA develop, in collaboration with the Disability Advisory Committee, a client experience survey that would align with the health provider survey, but be modified as appropriate to suit the needs and concerns of the target group comprising a representative sample of current and former DTC beneficiaries.

30

That the CRA provide dedicated support to ensure call centre agents are accessible and have the expertise to answer enquiries related to the DTC form and eligibility.

31

That the CRA, through the Community Volunteer Income Tax Program, which supports voluntary organizations to provide and train volunteers, run community tax clinics and raise awareness about the DTC. There should be a special focus on Indigenous communities.

32

That the CRA revisit and restate the purpose of the DTC in order to reflect its multiple roles.

33

That the minister of national revenue work with the minister of families, children and social development to ensure that individuals are able to keep all contributions they made to, and any and all grants and/or bonds they may have received for, their registered disability savings plan for periods during which they qualified for the DTC.

34

That, as a short-term measure, the federal government should ensure continued eligibility for related DTC-gateway programs, at least at the federal level, even if DTC eligibility has been revoked. This interim measure would allow for the development of secondary screening processes to determine whether individuals or households can continue to remain eligible for gateway-related services and supports.

35

That the CRA, in collaboration with the Province of Quebec, determine a single eligibility process for the DTC in order to avoid separate eligibility at different levels of government.

36

That the CRA cap the fee that consultants can charge to assist with an initial DTC application and act as expeditiously as possible to draft the regulations introducing this cap.

37

That the CRA reimburse an applicant or provider at a reasonable rate in accordance with the provincially recommended fee for the time involved in responding to CRA clarification letters in support of a DTC application or reassessment.

38

That the minister of national revenue work collaboratively with the minister of finance, minister of families, children and social development, and the minister of sport and persons with disabilities to:

- identify ways of addressing the disproportionate poverty of Canadians with disabilities, or alternatively, that the minister of national revenue request the establishment of a parliamentary committee to address this issue and bring forward recommendations;
- transform, as a first step, the current DTC from a non-refundable credit into a refundable credit in order to recognize the non-itemizable costs incurred by lower-income Canadians with disabilities; and
- ensure that the poverty alleviation of Canadians with disabilities is a focus of all relevant federal-provincial/territorial ministers' meetings and that there be no provincial/territorial clawback of any new or improved federal measures.

39

That the CRA, in partnership with the Department of Finance Canada, Statistics Canada and the disability community, undertake a study of the current data needs regarding the DTC and identification of appropriate new ways of tracking needed DTC information, including the estimated number of Canadians who potentially would be eligible for the DTC but are unable to benefit because of its non-refundable status.

40

That the CRA:

- raise awareness about the disability supports deduction, including special information sessions to inform disability organizations, post-secondary educational institutions and student networks, unions, employer organizations, training programs and the general public about the availability, purpose and provisions of this tax measure; and
- in collaboration with the disability community, review on an annual basis the list of allowable items within the disability supports deduction to ensure it keeps pace with technological updates and changes.

41

That the CRA take steps to raise awareness among employers about any tax measures that provide incentives for hiring persons with disabilities and/or that help offset any of the costs of accommodation.

42

That the CRA:

- amend the disability supports deduction to allow the deduction of any form of disability-related technical aid, equipment and service required for education, employment and participation in the community; and
- study and report on the implications of converting the current disability supports deduction from a deduction to a credit.