

This is the 1<sup>st</sup> affidavit  
of Peter Weissman in this case and  
was made on May 11, 2021

No. S1914169  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

TRUE NORTH DISABILITY SERVICES LTD. and SHANE NERCESSIAN

APPLICANTS

AND:

MINISTER OF NATIONAL REVENUE and CANADA (ATTORNEY-GENERAL)

RESPONDENTS

**AFFIDAVIT**

I, Peter Weissman, of the City of Toronto, in the Province of Ontario, AFFIRM THAT:

1. I am a Partner at Cadesky Tax, an independent tax-specialist firm based in Ontario. I have been a professional accountant and tax specialist for over 30 years. I received my CPA in 1988 and, in 2017, was honoured to be appointed an FCPA (Fellow of CPA Ontario), a designation that is granted "to those members who have rendered exceptional service to the profession or whose achievements in their careers, the community, or in the profession have earned them distinction and brought honour to the profession." From 2014-2016, I served as Governor of the Canadian Tax Foundation. I am also the 2018 recipient of the STEP (Society of Trust and Estate Practitioners) Founder's Award for Outstanding Achievement.
2. A Canadian with a disability, I co-chaired the inaugural Disability Advisory Committee ("**DAC**"), which was established in 2005 to advise the Minister of National Revenue and the Canada Revenue Agency ("**CRA**") on methods to improve the CRA's administration

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of tax measures for Canadians with disabilities, including in particular as regards the federal disability tax credit (“DTC”). In 2017, I co-founded and now co-chair the Disability Tax Fairness Alliance (“DTFA”).

3. Though I am myself a recipient of the DTC, my tax practice does not include DTC applications or DTC dispute resolution, and thus I do not make any money from assisting with DTC applications, and as such I do not stand to be directly personally or professionally affected by the *Disability Tax Credit Promoters Restrictions Act* (the “Act”) (and *Disability Tax Credit Promoters Restriction Regulations*, the “Regulation”) (together, “the DTCP legislation”) that are the subject of this litigation. However, on occasion I do assist special cases on a *pro bono* basis and am a passionate advocate for disability and tax issues.
4. As such, I have personal knowledge of the following matters, except where stated to be on information and belief, in which case I believe the same to be true.
5. I make this affidavit in support of the application of Shane Nercessian and True North Disability Services Ltd. seeking a pre-trial, interlocutory injunction to suspend the operation of the Act and Regulation, upon proclamation into force, in order to preserve the status quo pending determination of the constitutionality of the Act and Regulation.
6. Specifically, I make this affidavit to provide my evidence as to the impact of the DTCP legislation on persons with disabilities, and on the broad public interest of suspending the operation of the Act and Regulation until such time as their constitutionality can be determined.
7. It is my evidence, for the reasons set out below, that (1) the current DTCP legislation as adopted would unfairly curtail or indeed risk eliminating the access of Canadians with disabilities to the DTC professional advisors of their choice, based on a demeaning, belittling and patronizing basis that is insulting and perpetuates prejudice and harmful stereotypes against such persons, and is an affront to their dignity; and (2) the public interest would not be harmed by a suspension of the DTCP legislation pending a final determination as to its constitutionality. To the contrary, for the reasons set out herein, in my view the public interest is best served by such a suspension, and would be significantly harmed if the Act and Regulation are permitted to operate pending a final court determination as regards their constitutionality.



8. Simply put, in my view, the operation of the DTCP legislation, as currently formulated, would cause significant harm to taxpayers with disabilities – the very people this legislation is ostensibly designed to protect.

#### Issues with the Disability Tax Credit

9. The DTC is a non-refundable tax credit intended to compensate for some of the additional costs involved in living with a disability. In addition to providing significant tax savings to eligible individuals, it is a gateway to further benefits such as the registered disability savings plan (RDSP), child disability benefit (CDB), and more. I often call the DTC the “building block” of any special-needs tax and financial planning.
10. Despite the government’s assertions that the DTC application process is simple and efficient, it is widely known that the opposite is true. Applying for the DTC is a complex and onerous process, and this has been raised by numerous organizations. The Senate Standing Committee on Social Affairs, Science and Technology concluded there were significant barriers in its June 2018 report, “Breaking Down Barriers.” Diabetes Canada had to go public with its concerns regard to the DTC in 2017. Around that time, in light of the ongoing problems people with disabilities were facing in order to access the DTC, I and others pressed the current government to re-instate the DAC, which had been disbanded by the previous government in or around 2006. The government agreed, and the DAC was reinstated in 2017.
11. Among numerous other issues, people with mental infirmities such as Schizophrenia, Bi-Polar Disorder, Tourette’s Syndrome, ADHD, Severe Learning Disabilities, and an inordinate number of other infirmities have had repeated and ongoing issues accessing the DTC due to the CRA’s poor administration of, and lack of transparency regarding, the DTC. In many instances, individuals have been required to take the CRA all the way to Tax Court to access the DTC. The Tax Court has repeatedly ruled in favour of persons with disabilities and rejected the CRA’s narrow and often arbitrary application of the DTC.
12. Among the many challenges that afflict the DTC are the complex and burdensome application process, lack of assistance from and active opposition by the CRA based on incorrect internal policies, and lack of knowledge among medical practitioners as to whether certain conditions qualify (e.g., Type 1 diabetes, mental health issues) and what



activities count toward the 14-hour weekly average of eligible activities for qualification based on the need for life sustaining therapy.

### Disability Advisory Committee

13. The DAC was established in 2005 by the Minister of National Revenue in order to advise the Minister and the CRA on how the Agency can improve the way it administers and interprets tax measures for Canadians with disabilities, including in particular the DTC. Indeed, the DAC was established as a direct response to the difficulty Canadians with disabilities were experiencing in claiming the DTC. The DAC currently has 13 members, appointed by the government, representing a wide range of persons with direct experience in regard to issues of disability and taxation. I was honoured to serve as the inaugural co-chair of the DAC, a position I held until the original DAC was cancelled by the government in 2006.
14. Despite the initial DAC being disbanded by the government, several of its members, including myself, continued to informally meet with the CRA representatives from the DAC given our passion for furthering the improvements we were making. This informal collaborative group of public and CRA representatives eventually ended as we lost the CRA members to attrition.
15. The improvements made by the CRA were also lost due to said attrition of CRA members who had worked with the DAC. Beyond applicants being unfairly rejected, previously approved taxpayers with lifelong conditions such as diabetes were stripped of their eligibility when they applied to renew their eligibility. This problem and an unannounced change of policy only came to light because a DTC professional noticed the problem. It was only due to pressure from the press, opposition critics, myself and many others that, because of this bad publicity, the CRA reluctantly reinstated the DAC in 2017 (“**the 2017 DAC**”).
16. The 2017 DAC includes some members of the inaugural DAC and continues to advocate for improved fairness in the tax system for Canadians with disabilities, including with respect to ongoing problems with the DTC. In its recent 2020 second report (<https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/disability-advisory-committee/2020-full-report.html>), the relevant sections attached to this affidavit as **Exhibit “A”**, the 2017 DAC observed “many tax measures are hard to



understand. The DTC, in particular, is especially complex because of its complicated eligibility criteria and onerous application process."

17. Unfortunately, the 2017 DAC is in my view being used as a smoke screen to imply it agrees with the amount of the fee cap included in the *Disability Tax Credit Promoters Restrictions Act and Regulation*.

#### Disability Tax Credit Promoters Restrictions Act and Regulation

18. The *Disability Tax Credit Promoters Restrictions Act* was passed in 2014 to restrict fees chargeable by "promoters" (in fact, any and all consultants or professionals) who assist taxpayers in filing for and claiming the DTC. The idea of imposing certain limits on such fees was supported by the DAC and is an idea that I personally support. However, neither the DAC nor I have ever supported or contemplated preventing DTC professionals from earning a reasonable fee in line with the considerable expertise and assistance they bring to bear, nor setting the fee limitation at such a low amount that the DTC consulting industry will disappear altogether and essentially any and all professional assistance in claiming the DTC will be effectively foreclosed. The current DTCP legislation and its \$100 fee limit will clearly do this.
19. As I will set out below, such a result will only hurt Canadian taxpayers with disabilities and help the CRA operate with a free hand in respect of the DTC, to the detriment of persons with disabilities. The nefarious treatment of people with diabetes, noted above, is a perfect example of the CRA's desire to operate with an unchecked, free hand.
20. When the DTCP Act was passed in 2014, it provided that the fee cap would be set by regulation, but no such cap was prescribed at that time. It was not until five years later, on June 1, 2019, that the government proposed its draft Regulation, which would set a \$100 fee cap. This was followed by a 30 day "consultation" period. The consultation period was just a "submission" period as there were no consultations. I know, because I tried to engage the government in discussion without even receiving acknowledgment of my outreach.
21. On June 28, 2019, I made a submission to the government urging it to rethink the \$100 fee cap, attached hereto as **Exhibit "B"**. Despite being the former co-chair of the DAC, a



tax practitioner of over 30 years and a person with a disability, I never heard back from anyone regarding my submission. My offers to volunteer on the 2017 DAC also went unanswered.

22. The DTFA, in a letter to the DAC, wrote that the proposed flat fee "has neither fully taken into consideration the complexity of the application process nor the countless hours consultants spend to rectify errors made by the CRA, not only in the determination process but also with the misapplication of adjustments for previous years..." I attach a copy of the letter as **Exhibit "C"** to this affidavit.
23. More recently, the government has moved quietly, behind the scenes, to implement the fee cap, before recently announcing that Regulation, as proposed, would enter into force on November 15, 2021.
24. The Regulation and fee cap it contains appears to have been drafted and will be implemented with minimal, if any, "consultation" with relevant stakeholders, or at least, without actually taking into consideration submissions made in the course of any so-called consultation period.
25. While I have personally been in favour of a limit on the fees consultants can charge for assisting Canadians in obtaining the DTC (though obviously cannot comment as to whether this is a matter of federal or provincial jurisdiction), as was the DAC, I am genuinely concerned about the proposed limitations contained in the Regulation, and in particular, the \$100 fee cap.
26. Contrary to the efforts by the CRA to market the Regulation as being based on the DAC recommendation, the DAC did not recommend a \$100 cap on fees, though it did in principle support some kind of reasonable restriction on fees consultants could charge to assist DTC applicants.
27. Support for the \$100 fee cap is fundamentally irreconcilable with the DAC's ongoing stated concerns about the DTC's "onerous application process," since, it seems clear, such a cap will likely wipe out the DTC consultancy industry and, clearly, will make it uneconomical for any professional to provide the level of assistance, advice, advocacy and guidance that is typically (and unfortunately) necessary for many individuals with disabilities to successfully claim the DTC.



28. It must be emphasized that the DTCP legislation does not only apply to DTC consultants. The Regulation states that the definition of "promoters" includes "tax preparers, tax consultants, financial services providers, accountants and lawyers, or any other person who charges a fee to assist a taxpayer to submit form T2201, DTC Certificate (DTC Certificate), or claim or transfer the disability-related tax deductions on their T1, Individual Income Tax and Benefits Return."
29. Indirectly and intentionally shuttering the DTC consultant industry, and effectively barring other professionals such as accountants or lawyers from meaningfully assisting in regard to the DTC, will deny taxpayers their right to "get tax advice about your tax and benefit affairs" afforded them under paragraph 15 of the *Taxpayer Bill of Rights*.
30. This result is all the more assured given that, contrary to CRA's original position in this regard, the Regulation will apparently apply the \$100 fee cap not only to assistance in preparing the initial DTC application, but also to any and all objections, requests for reconsideration and internal CRA appeals, up until the filing of a formal appeal in the Tax Court of Canada. In the June 2019 Q and A, the CRA stated that the \$100 fee "does not include fees associated with help with appealing the decision." This answer was a bit of a relief given that tax preparers, tax consultants, financial services providers, accountants and lawyers, or any other person who charges a fee to assist a taxpayer to submit form T2201 ("Consultants") could apparently help clients with the CRA appeal process with no fee cap.
31. However, in the revised April 2021 Q and A, the CRA now specifies that only appeals to the Tax Court of Canada are exempt from the \$100 base fee. Objecting to the CRA Appeals division will, according to the CRA, be subject to a maximum fee of \$100. Appeals to the CRA are highly time-consuming and demand significant knowledge and expertise. Taxpayers are forced to go through this process because they cannot file an appeal to the Tax Court of Canada without first filing an appeal to the CRA. Given that DTC professionals, accountants or lawyers etc. cannot reasonably afford to do this work for \$100, appeals to the Tax Court of Canada will not even be an option. This will result in the many, many otherwise valid claims to the DTC being denied, with no effective recourse. It also eliminates "due course" for many people with disabilities.



32. I wish to stress that, as noted above, while my practice includes representing clients in appeals to the CRA, my practice does not include appealing DTC determinations. Accordingly, I am not filing this affidavit out of financial self interest.

**Impact of the Regulation and \$100 fee cap**

33. I strongly believe the Regulation and its proposed \$100 fee cap for helping a claimant apply for the DTC – which apparently includes assisting a disabled person appeal a DTC determination internally to the CRA and \$100 per year for helping an approved applicant access the tax benefits of the DTC – will hurt the very people the DTC is intended to help. Simply put, this fee cap will eliminate the legitimate professionals – consultants, accountants and lawyers – who regularly help Canadians with disabilities to navigate an application process that is has always been, and still is, notoriously and frustratingly complex and difficult to access.
34. This is only one reason why the entry into force of the \$100 fee cap pending a determination of its constitutionality would be of great harm to Canadians with disabilities. Many applicants will not be able to afford even the \$100 fee, especially when there is no guarantee of approval. The ability of DTC consultants to operate on a reasonable but “capped” contingency basis eliminates the significant barrier of having to pay out-of-pocket for the service in advance, and eliminates the financial risk for DTC applicants, since they are only required to pay if their claim is accepted and only in proportion to the accepted claim. This feature provides wide access to experienced professional advice that simply would not otherwise be available or affordable to many DTC applicants. Such a model also promotes healthy competition amongst DTC consultants and professionals as they can choose to charge lower fees or charge on some other basis if they like. Furthermore, representation by consultants provides a necessary “check” on the CRA’s administration of this important credit (which, as noted, often prevents eligible applicants from accessing the DTC).
35. Conversely, \$100 would not nearly cover the actual amount of time that CPAs may spend researching and preparing DTC claims – nor would it for any other kind of consultant or professional.
36. Our tax system operates on the basis that when a credit such as the DTC is denied, the onus is on the taxpayer to reverse such a determination – a process that can be daunting,

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onerous, and time consuming, and that typically requires significant experience and expertise. DTC consultants and professionals play an integral part in maintaining the integrity of the DTC by challenging the CRA, and preventing it from operating with a free hand when it comes to approving or denying the DTC. Unfortunately, the history of the administration of the DTC shows that CRA consistently limits the application of the DTC, and frequently denies the credit in circumstances in which it clearly should be allowed. Without the support and availability of professional advice, these will now go almost completely unchecked.

37. At present, the Act and Regulation are using disability as a way for the government to make itself look better, by paternalistically painting people with disabilities as incapable people in need of the government's *protection*, including from themselves and their own ability to make informed choices about their professional advisors – as opposed to people with historical disadvantage in need of *support*. With some limited exceptions, individuals with disabilities are able to care for themselves and look after their interests at least as well as anyone else. Like anyone else, they often need professional advice dealing in any matters with the CRA, particularly complex matters, and they access consultants and professionals of their choice to represent them. People with significant enough disability to render them incapable of making these decisions are represented by family or guardians so they are not likely the vulnerable people who will fall prey to the supposedly nefarious DTC “promoters” as the government has led Canadians to believe.
38. The need for professional advice and assistance in regard to the DTC is not a by-product of the inherently vulnerable or incapable position of people with disabilities; it is a by-product of the byzantine way in which the DTC process is structured by the CRA, a lack of sophisticated understanding on the part of most medical professionals as to the DTC, and the narrow and unhelpful way in which it is managed by the CRA. Few individuals without the requisite expertise and experience – whether disabled or not – would be able to successfully navigate the DTC system as currently designed. That is why access to qualified professionals is critical to maintaining and improving the integrity of the DTC approval process.
39. Eliminating taxpayers' advocates and professional advice creates an imbalance in the administration of the *Income Tax Act*, in favour of the CRA. Persons who are not disabled will still have their selection of advisors to assist them in their tax preparation and relevant

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credits and benefits that may be applicable to them. But the people the DTCP legislation intends to help will not, and will be inexorably harmed as a result.

40. By effectively eliminating access to professional advice in regard to the DTC through the \$100 fee cap, the DTCP legislation will deprive people with disability the ability to make informed and rational decisions by retaining professional advisors to assist them, for a reasonable fee, with the preparation of their DTC application, any re-applications or requests for additional information, objections or internal appeals to the CRA that might be, and frequently are, required in that regard.
41. The underlying basis for this governmental action – the alleged inherent helplessness of persons with a disability to manage their own affairs and make informed decisions in their own best interests – drips with paternalism that borders on contempt. As a person with disability and an advocate for persons with disabilities, I find this presumption to be belittling, degrading and demeaning, and an affront to the inherent dignity of persons with disabilities. It signals and perpetuates, with the stamp of approval of the state, pernicious stereotypes and prejudices about persons with disabilities, i.e., that they are incapable of making informed choices in their own best interests. With few exceptions, that is simply false. Many persons with disability face significant socioeconomic challenges – which the DTC is designed to acknowledge. But this is not synonymous with an incapacity to make informed decisions in matters of professional advice and does not lead to the conclusion that persons with disabilities must be protected from themselves. The reality is that, like any taxpayer, they must in appropriate circumstances have access to representation to balance the power the CRA holds over them.
42. Persons with disability do often require assistance in accessing the DTC, but not because of their disability. Rather, the need for such assistance arises from the DTC system itself and its application by the CRA. Accessing the DTC is very challenging for anyone without significant experience and expertise, regardless of physical or mental ability.
43. By the reinstatement of the DAC, and its own actions, the government has implicitly acknowledged that the DTC administration is neither fair, transparent nor accessible. Dealing with the CRA on DTC matters is no different than dealing with the CRA on other tax matters. Yet, the government is eliminating Canadians with disabilities' rights to

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representation by imposing an unrealistic fee limit on their advocates. This action will only hurt the very people the DTC is designed to support.

44. Accordingly, suspending the operation of the DTCP Act and Regulation, pending a determination by the court as to whether it is unconstitutional, will not in any way harm the public interest that the legislation purports to seek to protect – namely the interests of persons with disabilities; on the contrary, the public interest, and specifically the interests of taxpayers with disabilities who seek to access the DTC, will be clearly advanced and enhanced by such a suspension.
45. I make this affidavit in support of the Petition and Application herein, and for no other or improper purpose.
46. I was not physically present before the commissioner taking this affidavit, but was linked with the commissioner utilizing video technology, as permitted by the Direction to Commissioners for Taking Affidavits during Covid-19 issued by the Ministry of Attorney General on April 30, 2020, and the process described in the notice from the Supreme Court of British Columbia dated March 27, 2020 for remote commissioning of affidavits.

**AFFIRMED** remotely by Peter Weissman from Toronto, Ontario, before me at Vancouver, B.C., on May 11, 2021 (pursuant to the Ministry of Attorney General's *Direction to Commissioners for Taking Affidavits during COVID-19* (April 30, 2020)).



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Emma Hobbs, Articling Student  
(LSBC #515727)  
Commissioner for Taking Affidavits

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PETER WEISSMAN, FCPA, FCA, TEP

This is **Exhibit "A"** referred to in the Affidavit of Peter Weissman Affirmed remotely before me from Toronto this 11<sup>th</sup> day of May, 2021 (pursuant to the Ministry of Attorney General's *Direction to Commissioners for Taking Affidavits during COVID-19* (April 30, 2020)).

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Emma Hobbs (LSBC #515727)  
Commissioner for Taking Affidavits within Ontario





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> [Disability Advisory Committee \(DAC\)](#)

# 2020 Second Annual Report of the Disability Advisory Committee

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## Introduction

In November 2017, the Minister of National Revenue, the Honourable Diane Lebouthillier, announced the creation of the Disability Advisory Committee to provide advice to the Canada Revenue Agency (CRA) on interpreting and administering tax measures for persons with disabilities in a fair, transparent and accessible manner. The committee’s full mandate is attached as [Appendix A](#). Key disability tax measures are described in [Appendix B](#).

Members of the Disability Advisory Committee very much appreciate the opportunity to advise the Minister of National Revenue and to work with CRA officials on improving disability tax measures. The full list of committee members is attached as [Appendix C](#).

Our first annual report, Enabling access to disability tax measures, was published in May 2019. Since that time, we believe there has been important progress with respect to the administration of and communications about the disability tax credit (DTC). Our second annual report describes in detail the many improvements that the CRA has



introduced over the past year in response to the recommendations in our 2019 report. These changes are summarized in “The Client Experience” on the following pages.

Section 1 of this second annual report presents a review of the 42 recommendations made in our first annual report. Each recommendation summarizes the relevant context and associated follow-up actions.

Section 2 covers the new areas of conversation during the second year of our mandate. Selected topics focus, for example, on DTC data, concerns of Indigenous peoples and eligibility for a registered disability savings plan.

Section 3 includes the appendices, which provide details not covered in the text.

As in the first year of our mandate, the DTC has continued to be the primary focus of our work. The committee recognizes the challenges involved in the fair and consistent assessment of DTC eligibility. We know that this determination is no easy task.

The key eligibility criterion is not the **presence** of a severe and prolonged disability, but rather the **effect** of this condition on day-to-day functioning. Eligible applicants must be markedly restricted in at least one of the basic activities of daily living as specifically defined in legislation and administered by the CRA.

Moreover, the DTC story is especially complex because this particular tax measure fulfils two distinct purposes.

First, **the DTC reduces the income tax payable of applicants who qualify because they have a severe and prolonged impairment in physical and/or mental functions that impedes their ability to carry out the basic activities of daily living.** Canadians with severe disabilities are likely to incur additional costs not experienced by persons without disabilities.

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These extra expenses are often not readily itemizable, like the costs that may be claimed under the medical expense tax credit or the disability supports deduction (DSD).

Second, the DTC plays a vital role in the landscape of disability-related measures. **The DTC has become the gateway to establishing eligibility for a number of federal disability benefits and programs.** These are listed in Appendix D.

While access to the DTC has been a long-standing concern, access challenges have become all the more pressing as many Canadians apply not only, or even necessarily, for the financial assistance component of the DTC. They are applying instead for the various benefits and programs linked to DTC eligibility.

As a result of its expanded role, the DTC has effectively become a centrepiece of federal disability policy. Many Canadians with disabilities may not be aware of this dual role. The recent federal announcement of a COVID-19 benefit for persons with disabilities is a prime example of the DTC gateway function and its associated challenges.

In June 2020, the federal government announced a one-time, tax-free, non-reportable payment of up to \$600 to DTC-eligible individuals in order to assist with additional expenses incurred during the pandemic. These expenses include, for example, higher costs for personal protective equipment, hiring personal support workers or accessing other disability supports.

When the COVID-19 payment was first announced, the disability community was concerned that many Canadians with disabilities would not receive this financial assistance because they are not eligible for the DTC.





While the new measure was positive in its intent, it would have been limited in its impact, as most persons with disabilities would not have qualified for this pandemic-related assistance.

The federal government subsequently expanded the eligibility criteria in July 2020 to include:

- Canadians who are eligible for the DTC
- persons who may be eligible for the DTC (they have up to 60 days to apply after the bill receives royal assent)
- recipients of the Canada Pension Plan or Quebec Pension Plan disability benefit
- recipients of disability supports provided by Veterans Affairs Canada

The expanded criteria will help an estimated 1.7 million Canadians with disabilities benefit from the new financial assistance. The original announcement actually had served to highlight the problems in using the DTC as the sole gateway to other benefits. It was too narrow an entry point. The committee discussed this concern in our first annual report and identified it once again in the recommendations review section of this second annual report.

While there have been many significant improvements in CRA administrative processes and communications, we acknowledge that significant challenges remain around the DTC and other disability tax measures, such as the DSD. We recognize the difficulties experienced by certain groups, including Indigenous Canadians with disabilities, individuals with impairment in mental functions and persons who live with severe, but episodic, conditions.



by communities of persons with disabilities

## **Background**

The committee pointed out in our first annual report that most Canadians are unaware of the various tax provisions from which they can benefit.

Moreover, many tax measures are hard to understand. The DTC, in particular, is especially complex because of its complicated eligibility criteria and onerous application process.

We also wanted to ensure that the CRA is using the most up-to-date, disability-related communications technology. At the same time, we recognize that some individuals still use older technologies because they do not have the financial means to upgrade or replace existing communications equipment or they live in rural or remote areas where these upgrades may not be available.

## **Actions**

The CRA has consulted with communications advisors in the Public Affairs Branch and CRA field agents on this recommendation. The Outreach Program and Community Volunteer Income Tax Program continue to work with communications advisors in the Public Affairs Branch to ensure that all materials are reviewed for plain language and are accessible. Outreach field agents are working with individuals claiming the DTC and disability community organizations to solicit feedback on DTC-related material. Comments on CRA products and services are welcome during all outreach events.

It should be noted that the committee received a letter from an individual who had encountered challenges associated with hearing technologies when trying to communicate with the CRA. The committee hopes that the CRA will increase the technological options available to individuals with

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This is **Exhibit "B"** referred to in the Affidavit of Peter Weissman Affirmed remotely before me from Toronto this 11<sup>th</sup> day of May, 2021 (pursuant to the Ministry of Attorney General's *Direction to Commissioners for Taking Affidavits during COVID-19* (April 30, 2020)).

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*Emma Hobbs (LSBC #515727)*  
*Commissioner for Taking Affidavits within Ontario*

PW

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June 28, 2019

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By email: [lprreregulag@cra-arc.gc.ca](mailto:lprreregulag@cra-arc.gc.ca)

Dear Ms. Bertrand:

**Re: Canada Gazette, Part 1, Volume 153, Number 22, June 1, 2019 Disability Tax Credit Promoters Restrictions Regulations**

I am writing as a Canadian with a disability who has been a tax specialist for over 30 years. While I have been in favour of a limit on the fees consultants can charge for assisting Canadians in obtaining the Credit for Mental or Physical Impairment, generally referred to as the "Disability Tax Credit" (DTC) since the Disability Tax Credit Promoters Restriction Act was proposed by MP Gallant in 2013, I am concerned about the proposed limitations contained in the Disability Tax Credit Promoters Restriction Regulations that were published in the Canada Gazette on June 1, 2019 (the "Regulations").

I am not writing out of self-interest. My tax practice does not include DTC applications or DTC dispute resolution but, on occasion, I assist special cases on a pro-bono basis. I am writing as a concerned Canadian who, despite not making any money from DTC work, has co-chaired the inaugural Disability Advisory Committee (DAC) to the Minister of Revenue and the CRA in 2005 and 2006, requested the reinstatement of the DAC in 2016 and subsequently co-founded and co-chair the Disability Tax Fairness Alliance.

The proposed \$100 fee limit for helping a claimant apply for the DTC and the \$100 per year fee for helping an approved applicant access the tax benefits of the DTC will hurt the very people we want to help. Some applicants will not be able to afford the fee, especially when there is no guarantee of approval. Some of my wheelchair tennis colleagues can't afford the \$80 annual registration fee.

Despite the perception that the DTC application process is simple and efficient, for many people it is not. If the DTC were easy to access, the Senate Standing Committee on Social Affairs, Science and Technology would not have concluded the opposite in its June 2018 report, Breaking Down Barriers. Diabetes Canada would not have had to go public with its concerns in 2017 and the CRA would not have needed to reinstate the DAC. People with Multiple Sclerosis, Bi-Polar Disorder, Tourette Syndrome, Severe Learning Disabilities, Schizophrenia PKU, and an inordinate number of mental infirmities would not have to fight the CRA all the way to Tax Court to get their credits. While these cases should never have gone to court, the people we want to protect were forced there by the CRA, not by DTC consultants.

Our tax system operates on the basis that the CRA is right unless a taxpayer can prove them wrong (except for the assessment of certain penalties and reassessing old tax years). DTC consultants play an integral part in maintaining the integrity of the DTC by challenging a CRA that holds all the power.

While DTC consultants have a right to earn a living, they don't have the right to charge abusive fees. The "Disability Tax Credit Promoters Restrictions Act" was passed in 2014 but no fee cap was prescribed. We've gone all this time with no fee cap only to have it announced on June 1, with a 30 day "consultation" period. This is really just a "submission" period as there are no ongoing consultations.

Rushing these rules will yield undesirable results. For example, the Regulations do not apply to dispute resolution. The CRA has acknowledged, in question 11 of the Q&A document that the fee cap "does not include fees associated with help with appealing a determination". Has no one considered that predatory consultants will still be free to charge excessive fees once an application has been denied? The Regulations do nothing to stop the exact behavior we want them to stop? If this isn't a reason enough to slow this process down and get the fee cap "right" I don't know what is.

The proposed fee cap will force legitimate DTC consultants out of business, thus reducing access to professional assistance required for anyone with less than a clearly visible disability and certainly for most people with mental infirmities.

A contingency based fee cap of say, 20 or 25% will allow applicants, whose claims are not straightforward, to access the assistance they need and are entitled to<sup>1</sup> from legitimate

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<sup>1</sup> Item 15 in the Taxpayer Bill of Rights states "You can choose a person to represent you and to get advice about your tax and benefit affairs."



consultants who will not be able to charge excessive fees. This model will also promote healthy competition amongst DTC consultants as they can choose to charge lower fees or charge on some other basis if they like. Furthermore, representation by consultants will provide a necessary "check" on the CRA's administration of this important credit.

I am sure there are other models that are worthy of discussion but the one proposed in the Regulations is not one of them. As a Canadian with a disability who does not depend on the DTC I ask that you help the ones that do. Please encourage the CRA to withdraw the Regulations and consider more viable and effective alternatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Weissman", with a stylized flourish at the end.

Peter Weissman FCPA, FCA, TEP

A small, handwritten signature in blue ink, consisting of the initials "PW".

This is **Exhibit "C"** referred to in the Affidavit of Peter Weissman Affirmed remotely before me from Toronto this 11<sup>th</sup> day of May, 2021 (pursuant to the Ministry of Attorney General's *Direction to Commissioners for Taking Affidavits during COVID-19* (April 30, 2020)).

---

Emma Hobbs (LSBC #515727)  
*Commissioner for Taking Affidavits within Ontario*



## Disability Tax Fairness Alliance

180-260 Adelaide Street East  
Toronto, Ontario M5A 1N1

Frank Vermaeten, Co-chair  
Karen Cohen, Co-chair  
Disability Advisory Committee

June 10, 2019

We are writing as Co-Chairs of the Disability Tax Fairness Alliance (DTFA), a collaborative group of approximately 30 organizations working to ensure fair tax treatment for all Canadians living with mental and physical disabilities in a way that reflects the parliamentary and legislative intent of the Income Tax Act and Canada's principles of inclusion, gender equality and accommodation.

We are pleased that the Honourable Minister of National Revenue Diane LeBouthillier has released the First Annual Report issued by the Disability Advisory Committee (DAC) and agree that many of the recommendations will go a long way to make it easier for more, eligible Canadians to qualify for the Disability Tax Credit (DTC) and make fairer the DTC application process administered by the Canada Revenue Agency (CRA).

We are particularly pleased with the recommendation to overhaul the mental functions category and expand eligibility for the "Life Sustaining Therapy" category. We thank the members of DAC for their work and commitment.

However, we are concerned that the DAC discussion regarding capping fees for consultants, referred to as "Promoters" in Bill C-462 by imposing a "modest flat fee of \$100 to \$200" has neither fully taken into consideration the complexity of the application process nor the countless hours consultants spend to rectify errors made by CRA, not only during the determination process but also with the misapplication of adjustments for previous years, just to name a few of the many services provided by these consultants. The fee cap, of which one of the authors was a proponent when it was introduced in 2014, paints all consultants with the same brush. There are a few bad apples in the bunch. It is not necessary to cut down the orchard. For the record, both authors of this letter assist claimants on a pro bono basis.

Our concerns were heightened when we read the text of the proposed regulation issued, shortly after the DAC report, in the Canada Gazette for public comment on June 1, 2019.

In this respect, we are concerned that the proposed regulation, as we understand it, would cap only the fee for an initial application at \$100, and neither addresses limits on fees for the elements of the dispute resolution process nor the situation when CRA sends a clarification letter to the certifying medical professional about an initial application. A cap on only the initial application could create perverse incentives for

PW



nefarious consultants to submit applications likely to be denied in order to trigger the dispute resolution process when there are no caps on fees. Such a scenario would make a mockery of the good work of the DAC.

We do not support the principle of dollar caps on these fees because of the diversity and complexity of the circumstances of eligible Canadians. However, we support the principle of regulations setting a cap on contingency fees. It is important to remember that a cap on contingency fees will still allow promoters to compete with each other as to how much they will charge, and it should not be assumed that all firms will charge the maximum fee. Allowing promoters to work within a maximum fee range will allow claimants to access the resources they need based on the complexity of their situations in a "regulated free market" that will not allow abusive fees. We do not believe that the intended consequence of the DAC's recommendation is to significantly impair an industry that is providing an indispensable service to eligible Canadians with disabilities and/or physical and mental impairments. If the intent of the recommendation is to protect claimants from aggressive consultants, we believe our recommendations should be seriously considered before any regulations are implemented.

We respectfully request that the DAC give further consideration to the complexities of the DTC application and dispute processes and ensure that its advice to the government takes into account those complexities when recommending limits on these consultants' fees.

To assist the DAC in understanding these complexities, we are submitting a report prepared by one of our members, Shane Nercissian of True North Disability Services.

When the federal government closed information services at regional tax centres in 2013, Canadians with physical and mental impairments did not have anyone else to turn to if they were having difficulty accessing the Disability Tax Credit (DTC). Not surprisingly, others recognized the need and created businesses willing not only to assist their clients navigate the complexities of the application, review and appeal processes but also access relevant documents on file with CRA such as clarification letters that are not sent to the applicant and which are not freely disclosed to taxpayers.

We believe that these companies, referred to as "promoters" in Bill C-462, The Disability Tax Credit Promoters Restrictions Act provide an indispensable service to Canadians with disabilities and/or physical and mental impairments. The facts speak for themselves: 90% of their appeals are accepted in comparison to only 55% of the overall average when individuals file their own objections according the data provided by the CRA.

As members of the Disability Tax Fairness Alliance (DTFA), True North and Disability Tax Services (DTS) also provide an invaluable service to the disability communities by sharing their knowledge, skills, experiences and concerns with our non-profit and charitable organizations. By assisting large numbers of individuals in each category of basic activities of daily living or those needing life-sustaining therapies, they have

PW

considerable knowledge of the decision-making processes that affects their clients' access to the DTC even though there have been no amendments to relevant sections of the *Income Tax Act* or its regulations since 2005.

People living with mental impairments are the most vulnerable of all the applicants for the DTC. The rejection rate of 19% for the 2016-2017 tax year provided by the CRA is considerably higher than the average of all other categories. There is also a bias against individuals living with diabetes with a rejection rate of 13.4% requiring them as well to jump through several hoops in order to qualify or requalify for the DTC.

True North, along with Diabetes Canada and the Juvenile Diabetes Research Foundation, was instrumental in advocating on behalf of hundreds of individuals living with type 1 diabetes that were unjustly denied the DTC when asked to reapply for the tax credit for the 2017 tax year. Concerned that there was a major policy shift in the eligibility criteria, True North appealed to CRA to review 100 applications since Shane Nercessian suspected that "something has changed, and that something is not right."

An Access to Information and Privacy Directorate (ATIP) request revealed that the CRA was implementing updates to the eligibility criteria in an email dated May 2, 2017 informing staff that the Tax Operations Manual (TOM) would reflect the new procedures for claims of persons with disabilities over 18 with the following directive: "Unless there are exceptional circumstances, adults with diabetes can generally manage their insulin therapy without taking 14 hours per week." Furthermore, the question in the clarification letter was very specific, noting that "An adult who independently manages insulin therapy on a regular basis does not generally meet the 14 hours per week criterion, unless there are exceptional circumstances."

Our DTFA advocated on behalf of people living with type 1 diabetes and, in January 2018, the CRA responded to the outcry from the public and elected representatives and reversed its position requiring "exceptional circumstances" to access or re-access the DTC.

We continue to be concerned about multiple reports from True North and DTS that the CRA has become increasingly rigid in its interpretation of the *Income Tax Act* and more aggressive as far as denying the DTC to individuals who are required to reapply for the DTC. Such actions have led to three times the number of cases appealed to the Tax Court of Canada during the 2017-2018 tax year. The majority are cases where both the assessment and appeals branches have unjustly denied the DTC and are resolved in favour of the taxpayer before a trial.

We have also learned that many qualified practitioners will no longer complete form T2201 for their patients because their applications are routinely rejected without cause. Furthermore, the strict parameters of many of the questions in follow-up clarification letters for psychiatric patients calling for or requiring absolute "yes" and "no" responses are inappropriate and discriminatory since they do not fairly address the marked

PW

restrictions in mental functions for people living with chronic and persistent brain diseases.

We are concerned when our members acting on behalf of taxpayers are treated disrespectfully when speaking to CRA representatives, service complaints officers and appeals officers on behalf of their clients. We have learned that an appeals officer informed a member that he is no longer required to speak to the representative, despite there being a Form T1013 on file authorizing a representative. There have been several reports that CRA staff have advised claimants that they do not require a consultant's services and should cancel the appointment of a representative. Such interference is reprehensible and illegal.

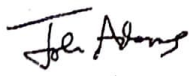
In its report, attached, True North provides details of the advantages of a contingency fee basis and the pitfalls of a specific fee schedule due to the variability of hours required with each client's file. Even if an hourly rate were established, the most vulnerable individuals will not be able to afford to retain the services of a "promoter" considering there are no guarantees that their application would be successful.

We recognize that there have been considerable challenges applying or reapplying for the DTC that led to the creation of the DAC by the Honourable Diane LeBouthillier, Minister of National Revenue in November 2018. Again, we applaud the federal government and the Minister for reinstating DAC and we look forward to improvements in the application and dispute resolution processes for the DTC inside the CRA. Nevertheless, there will always be individuals who will require the services of a "promoter" and we all want to ensure that these companies operate with integrity and in the best interests of their clients.

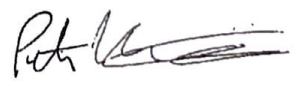
We believe that contingency fees enable our poorest and most vulnerable citizens to have access to the expertise and services provided by companies who are willing to accept all of the risks when there are no guarantees of a tax credit or a refund.

Nevertheless, the viability of companies such as True North and DTS cannot be supported if the contingency fee falls below 20% of the refund.

We thank all the members of the DAC for their attention to these concerns on behalf of Canadians with physical disability and/or mental impairments.



John Adams  
Co-chair



Peter Weissman  
Co-chair





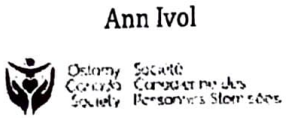
*Joe Adams*



*Fardous Hassiny*



*CEF*



*Ann Ivoll*



PLAN



*Janet Anderson*  
CAPA Canadian Aphasia Patient Alliance



*Canadian Spondylitis Association*



*Lynette Young*  
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Stroke Call Awareness Group of Ontario

*Michael Prince*  
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*Sam Turcott*



*Mike Campagne*



DTS Disability Tax Services Ltd.

*Lembi Buchanan*  
Disability Tax Fairness Campaign

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*K. Kelleher*



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Gastrointestinal Society  
Canadian Society of Intestinal Research

*PW*



# Contingency Fees and the Disability Tax Credit Promoters Restriction Act

PREPARED FOR: DISABILITY TAX FAIRNESS ALLIANCE

MAY 30, 2019

*PW*

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## Executive Summary

True North Disability Services was founded in 2014 with the purpose of providing eligible Canadians assistance with the application process for the Disability Tax Credit (DTC). Our passion for helping others and providing an advocacy-centric, client-first approach has enabled us to assist eligible Canadians from coast to coast to access the DTC as we aim to raise awareness of the DTC and bridge the gap between the Canada Revenue Agency (CRA), health care practitioners and people living with physical and/or mental impairments.

Canadians should have the right to seek out the help and expertise of professionals in any industry. Filing taxes can be completed without hiring a professional, yet many Canadians elect to hire an accountant or tax preparer to assist them. However, if there is a dispute with CRA, these individuals may represent themselves, appoint an agent or hire a lawyer.

Applying for the DTC can be a complicated process. Although there have been numerous amendments to the *Income Tax Act* since the DTC was expanded in 1986 increasing the number of individuals impaired in their physical and mental functions to access the DTC, the tax credit has continued to be elusive to thousands of eligible Canadians.

We assist individuals not only to navigate the application process, but also identify many different aspects of a claim that the average person may inadvertently miss including the following: transferring unused credits to other family members; requesting retroactive credits up to 10 previous years; and advising clients of other income support programs. When errors are made by the CRA, we follow-up with the CRA on behalf of our clients. The Case Studies in Appendix A represent dozens of similar cases requiring numerous contacts with CRA and at times, 40 hours or more for our staff to resolve them.

We also advocate on behalf of individuals who have no one else to turn to when they are denied the DTC and cannot afford to hire a lawyer. The contingency fee model allows our company to provide professional services to all Canadians throughout the application and appeal process regardless of their income and without incurring further financial hardship considering there are no guarantees that their application will ultimately be approved by CRA.

Although CRA refers to companies that assist individuals with the application and appeal processes for the DTC as "promoters," we are concerned that the term carries a negative connotation suggesting that we are taking advantage of vulnerable people who should be able to access the DTC without requiring assistance from a third party.

We support the principle of government oversight and regulation of our industry but the survival of legitimate businesses providing a valuable service depends on a reasonable contingency fee for its services. Also, we do not charge a fee to clients who are asked by the CRA to reapply for the DTC, regardless of the outcome.

Our staff at True North includes professional consultants who want to ensure that all individuals who are eligible for the DTC are able to access the tax credit and other government income support programs. Our aim is "To be the most trusted and beneficial Disability Tax Credit Consultancy in Canada."

- Shane Nercessian & Ameet Gajjar

PW

## Bill C-462

The Disability Tax Credit Promoters Restrictions Act restricting the fees charged by promoters of the disability tax credit and making consequential amendments to the *Income Tax Act* received Royal Assent on May 29, 2014. Bill C-462 was aimed at regulating the industry over the perceived predatory actions and excessive or unjustified fees of a select few companies or individuals.

The Honourable Scott Brison (former President of the Treasury Board) voiced his concerns about painting all "promoters" with the same brush.

*"The regulations under Bill C-462 must ensure that these legitimate businesses remain financially viable under this model. We must not punish these legitimate businesses because of the exploitative actions of some of the other operators who are taking advantage of this system."*

*"One of the key reasons for the hiring of consultants, again, is the complex application process, which leads me to a point that right now the process is so complex that some Canadians feel like the only option available to them is to hire a consultant to guide them through."*

"Promoters" are no different than other legitimate businesses that face fixed and variable costs. However, we are at a disadvantage since our costs for office space, hydro and gas, office supplies, staff, advertising, insurance, legal costs, accounting costs must be paid regardless of assurances of a positive outcome of a client's application or the lengthy time-frame of the review and appeals process when the DTC is denied. Contingency fees are also common in the legal profession allowing lawyers to accept the risks on behalf of their clients who otherwise cannot afford to retain their services.

Our company believes that the present contingency fee model allows eligible Canadians, regardless of their income, to hire a professional, without incurring upfront costs or other out-of-pocket expenses. The contingency fee model enables people with disabilities to elect a service and access the tax credit without incurring a financial risk, considering there are no guarantees that their application will be approved by CRA.

On the other hand, if regulations adopted under Bill C-462 limit promoters to hourly rates, or a specific fee structure for the various services, our clients would be responsible for all upfront out-of-pocket costs with no certainty of the outcome. Regulations based on a specific fee schedule would be prohibitive for those who are already living at or near the poverty level and will, in effect, deny them access to the professional services required not only to access the DTC but also other income federal and provincial supports including the RDSP and the Child's Disability Benefit. In this instance, there is a serious risk that there would not be a sufficient customer base to support a business model for an operation such as ours. Nor could the business model of companies such as True North be supported if the contingency fee falls below 20% of the retroactive refund. As seen on our reviews on all social media platforms as well as the Better Business Bureau and based on the continuous feedback we receive on a daily basis, we have had a tremendous amount of support for our current fee structure. Countless clients continually and openly state that although they are aware that they could attempt to navigate the DTC process themselves, nevertheless they are satisfied with our work and the associate fee arrangement.

PW



## Senate Report: Challenges with the Disability Tax Credit

We confront many of the challenges, on a daily basis, that are outlined in the report, "Breaking Down Barriers" issued by the Standing Senate Committee on Social Affairs, Science and Technology in June 2018 including the following:

The Disability Tax Credit is an important benefit, but it is underutilized

The CRA is sitting on a billion dollars of federal tax credits year after year that does not reach an estimated one million eligible Canadians according to its own estimates.

People with certain types of disabilities have more difficulty claiming the credit

People living with mental impairments have a much higher rejection rate (19%) compared to all other categories.

The Disability Tax Credit is administered in a way that is unnecessarily rigid, complicated and costly

An increasing number of questionnaires are sent to health practitioners requiring further clarification of information provided in Form T2201 Disability Tax Credit Certificate. These clarification letters often ask health practitioners for absolute yes and no answers to questions that are not always a legal test for eligibility but are routinely used to disqualify the patient.

Disability Tax Credit criteria related to mental functioning are especially problematic

The rigid 90% threshold is not appropriate for individuals impaired in their mental functions since there are no tools to measure the disabling effects of the condition.

Requiring people with lifelong disabilities to reapply is an added burden

CRA disregards its own policy that does not require individuals with permanent conditions to reapply for the DTC. Even individuals living with Type 1 diabetes are treated as if there is a cure around the corner.

The costs of completing the application are a significant barrier to receiving the tax credit

Many doctors charge their patients not only to complete Form T2201 for their patients but also to respond to questionnaires for additional information they have already provided.

The appeals process needs to be transparent and more compassionate

Often taxpayers, when applying on their own will not question CRA's decision to deny the DTC. Many do not have the knowledge or the experience to understand the reasoning behind the decision and whether it is justified. CRA does not even provide a copy of the clarification letter that has been the basis to deny the DTC.

PW

## Other concerns

### Eligibility Requirements and the Medical Community

A surprising number of health practitioners still believe that an individual must be confined to a wheelchair or impaired in a number of basic activities of daily living in order to qualify for the tax credit. Nevertheless, many medical professionals we have worked with have taken the time to understand the eligibility criteria and provide the medical evidence required to help ensure access to benefits that their patients are entitled to receive.

### Inaccurate Determinations and the Canada Revenue Agency

The findings of the May 2017 Report by the Auditor General of Canada (*Report 2, Income Tax Objections – Canada Revenue Agency*) found that 8% of the objections filed each year with CRA involved an alleged misapplication of laws, facts and policies by the CRA. We have the experience to review all documents provided by the CRA, and when we encounter errors, then we take all measures necessary to resolve problems on behalf of our clients. If the regulations for Bill C-462 do not support a contingency fee structure for our clients, who will be responsible for covering the costs when the error originates with CRA?

### Inaccuracy of Tax Adjustments for Previous Years

Another challenge we face is the inaccuracy of tax adjustments by the CRA when the DTC is applied to previous years resulting in the loss of hundreds even thousands of dollars. While the majority of tax payers do not question CRA's calculations, we have seen numerous clerical errors, including the application of the incorrect provincial tax credits for the DTC or the CRA stating that no transferable credits exist when they actually do.

pw

## Our Services

True North Disability Services encounters and strives to overcome many of these challenges on a daily basis by offering the following services:

- Screen potential clients to determine whether the tax payer meets the eligibility criteria for the DTC as it is defined in the *Income Tax Act (ITA)* and as interpreted by the Tax Court of Canada.
- Provide a full 10-year tax assessment to ensure the client who has had taxable income receives the maximum eligible refund. We also identify any years with low or no income and make recommendations on transferring unused credits to a supporting family member or spouse if applicable.
- Provide a full 10-year tax assessment on a supporting family member or spouse to ensure they have had sufficient income to support the credit on behalf of the eligible person. It is a policy of our company to be transparent with the client and advise them in the case that they do not have any taxable income or have debt or a bankruptcy that would adversely affect their claim, so they are not subjected to any health practitioner's fees to complete a form if there is no potential benefit.
- Provide an explanation of the T2201 application form to medical practitioners, when applicable, by clearly illustrating eligibility requirements for the DTC as it specifically relates to the individual's case.
- Advocate on behalf of the client in the event the health practitioner is not familiar with the current eligibility criteria or simply doesn't "believe" in the tax credit.
- Review and submit a certified T2201 application along with any medical information provided by the medical practitioner to the CRA on the client's behalf.
- Submit T1 Adjustments to the CRA and ensure that reassessments for both clients and their supporting person(s) take place in a timely manner that is within the agency's standards of service time frames.
- Review reassessed tax years to ensure credits are accurately applied to the client and supporting person(s) if applicable.
- Provide up-to-date status reports to the client about their claim information from the CRA.
- File RC193 Service-Related Complaint to the CRA when:
  - when an error has been made by the CRA
  - when completion timelines have been continuously exceeded.
- File an objection on behalf of the client should the promoter feel the claim was unjustly denied. True North's appeal success rate is just over 90%, compared to the national average of 55%.
- Invoice a client only when the refund has been issued, which can range from 3 to 18 months after our first consultation with the client.

## Indirect Competitor Fees / Services

Tax Preparers, such as H&R Block and Liberty Tax for example, are nation-wide accounting firms charging a range of fees. In an effort to reduce taxes payable, they may recommend that their client apply for the DTC without a clear understanding of the complexities of the eligibility criteria. This may unfortunately cause their client to incur fees to have a T2201 application completed and subsequently denied. Medical practitioners have shared their frustration with us that accounting firms will typically print off a blank T2201 form to be signed without having a valid condition that meets the eligibility requirements.

Tax practitioners are not required to take on assignments with the uncertainties of the final outcome as far as accessing the DTC nor is there a cap on their fee schedule. Although they may provide their clients an estimate based on past experiences, the fee can be higher if the matter is more time consuming than estimated. Also, these companies charge a fee ranging from \$75-\$100 per tax year to perform pre- and post-tax assessments regardless of the refund but there are no regulations capping their fees schedules. The free market is the determining factor of the fees charged by tax professionals, largely based on their expertise.

## Promoters and Contingency Fees

While there have been reports in the past of some firms charging fees upwards of 40%, the Association of Disability Tax Credit Professionals was created in 2015 and imposes a code of conduct on its members (see Appendix B) to help ensure that consumers are protected from exorbitant fees and unprofessional practices. The range of fees is from 15% to 33% with the majority charging 30% of the retroactive refund. We operate on a 20% contingency fee basis.

We are also aware that CRA is very rigorous in the evaluation of application forms, clarification letters and other submissions from health providers submitted on behalf of our clients. In a document disclosed pursuant to the ATIA, CRA staff is provided with specific guidelines when dealing with "Top Promoters" such as ourselves:

"When processing files from our top promoters please be more diligent. We are not advising to always send a CL (clarification letter), but to ensure you are looking at the case as a whole. Follow TOM (Tax Operation manual) and your internal instructions. Ensure it has not been completed and/or modified by a 3<sup>rd</sup> party."

*PW*

# Appendix A

## Case Studies:

### CRA Denies Tax Payer with Multiple Life-Threatening Conditions

Our client started working with us on March 7, 2017. He was an insulin dependent diabetic and also suffered from metastatic tongue cancer which affected his BADL of feeding. He experienced difficulty swallowing and his doctor certified that he required an inordinate amount of time feeding himself due to great difficulty swallowing and experienced severe pain. He also met the eligibility requirements of Life Sustaining Therapy.

#### T2201 Life Sustaining Therapy Section

The section for life sustaining therapy was completed by the doctor inclusive of a great level of detail based on our consultation with the client.

Protected B  
when completed

Patient's name: [REDACTED]

#### Life-sustaining therapy - Medical doctor

Life-sustaining therapy for your patient must meet both of the following criteria:

- your patient needs this therapy to support a vital function, even if this therapy has eased the symptoms; and
- your patient needs this therapy at least 3 times per week, for an average of at least 14 hours per week.

#### The 14-hour per week requirement

Include only the time your patient must devote to the therapy - that is, the patient has to take time away from normal, everyday activities to receive it

If a child cannot do the activities related to the therapy because of his or her age, include the time spent by the child's primary caregivers to do and supervise these activities.

Do not include the time a portable or implanted device takes to deliver the therapy, the time spent on activities related to dietary restrictions or regimes (such as carbohydrate calculation) or exercising (even when these activities are a factor in determining the daily dosage of medication), travel time to receive therapy, medical appointments (other than appointments where the therapy is received), shopping for medication, or recuperation after therapy

1. Does your patient need this therapy to support a vital function? Yes  No
2. Does your patient need this therapy at least 3 times per week? Yes  No
3. Does this therapy take an average of at least 14 hours per week? Yes  No

If yes, when did your patient's therapy begin to meet the above criteria (this is not necessarily the year of the diagnosis, as is often the case with progressive diseases)?

Year  
2010

It is mandatory that you describe how the therapy meets the criteria as stated above. If you need more space, use a separate sheet of paper, sign it and attach it to this form

[REDACTED] IS AN INSULIN DEPENDENT DIABETIC. HE IS ON FOUR INJECTIONS OF INSULIN PER DAY. HE ALSO HAS TO CHECK HIS BLOOD SUGARS MULTIPLE TIMES PER DAY. (CALCULATE A DETAILED LOG OF HIS BLOOD SUGARS AND IS CONSTANTLY ANALYZING TRENDS TO CALCULATE HOW MUCH INSULIN IS NEEDED ON A DAILY BASIS. THE COMBINATION OF THE FOLLOWING EQUATE TO AT LEAST 14 HOURS PER WEEK SPENT ON LIFE SUSTAINING THERAPY

INJECTING INSULIN MULTIPLE TIMES PER DAY 4 +  
 CALIBRATING GLUCOMETER / CHANGING LANCETS  
 TESTING BLOOD GLUCOSE MULTIPLE TIMES PER DAY 6 +  
 KEEPING A DETAILED LOG OF BLOOD SUGAR LEVELS.  
 ANALYZING TRENDS OF BLOOD SUGAR TO MANUALLY CALCULATE INSULIN DOSAGE  
 THE ABOVE ACTIVITIES > 14 HOURS / WEEK

PW

T2201 Marked Restriction In Feeding

Our client's doctor also certified on Form T2201 that he met the requirements for a marked restriction in feeding due to the fact he also had tongue cancer which made it extremely difficult for our client to swallow when feeding and he was in constant pain.

Protected B  
when completed

Patient's name: \_\_\_\_\_

**Eliminating (bowel or bladder functions) – Medical doctor**

Your patient is considered markedly restricted in eliminating if, even with appropriate therapy, medication, and devices:

- he or she is unable or takes an inordinate amount of time to personally manage bowel or bladder functions; and
- this is the case all or substantially all of the time (at least 90% of the time).

Is your patient markedly restricted in eliminating, as described above? Yes  No

If yes, when did your patient's restriction in eliminating become a marked restriction (this is not necessarily the year of the diagnosis, as is often the case with progressive diseases)? Year

**Feeding – Medical doctor or occupational therapist**

Your patient is considered markedly restricted in feeding if, even with appropriate therapy, medication, and devices:

- he or she is unable or takes an inordinate amount of time to feed himself or herself; and
- this is the case all or substantially all of the time (at least 90% of the time).

Feeding yourself does not include identifying, finding, shopping for, or obtaining food.

Feeding yourself does include preparing food, except when the time spent is related to a dietary restriction or regime, even when the restriction or regime is needed due to an illness or medical condition.

Is your patient markedly restricted in feeding, as described above? Yes  No

If yes, when did your patient's restriction in feeding become a marked restriction (this is not necessarily the year of the diagnosis, as is often the case with progressive diseases)? Year

**Dressing – Medical doctor or occupational therapist**

Your patient is considered markedly restricted in dressing if, even with appropriate therapy, medication, and devices:

- he or she is unable or takes an inordinate amount of time to dress himself or herself; and
- this is the case all or substantially all of the time (at least 90% of the time).

Dressing yourself does not include identifying, finding, shopping for, or obtaining clothing.

Is your patient markedly restricted in dressing, as described above? Yes  No

If yes, when did your patient's restriction in dressing become a marked restriction (this is not necessarily the year of the diagnosis, as is often the case with progressive diseases)? Year

PW

The "Effects of impairment" page the doctor included details of his patient's medical condition and difficulty in feeding.

Patient's name: [REDACTED]

**Effects of Impairment - Mandatory**

The effects of your patient's impairment must be those which, even with therapy and the use of appropriate devices and medication, cause your patient to be restricted all or substantially all of the time (at least 90% of the time).

**Note**  
Working, housekeeping, managing a bank account, and social or recreational activities are not considered basic activities of daily living. Basic activities of daily living are limited to walking, speaking, hearing, dressing, feeding, eliminating (bowel or bladder functions), and mental functions necessary for everyday life.

It is mandatory that you describe the effects of your patient's impairment on his or her ability to do each of the basic activities of daily living that you indicated are or were markedly or significantly restricted. If you need more space, use a separate sheet of paper, sign it and attach it to this form. You may include copies of medical reports, diagnostic tests, and any other medical information, if needed.

[REDACTED] WAS ALSO DIAGNOSED WITH METASTATIC TONGUE CANCER  
HE HAS UNDERGONE 6 WEEK RADIATION TREATMENT WITH LIMITED EFFECT  
HE HAS GREAT DIFFICULTY SWALLOWING AND IS IN SEVERE PAIN.

**Duration - Mandatory**

Has your patient's impairment lasted, or is it expected to last, for a continuous period of at least 12 months? For deceased patients, was the impairment expected to last for a continuous period of at least 12 months?

Yes  No

If yes, has the impairment improved, or is it likely to improve, to such an extent that the patient would no longer be blind, markedly restricted, in need of life-sustaining therapy, or have the equivalent of a marked restriction due to the cumulative effect of significant restrictions?

Unsure  Yes  No

If yes, enter the year that the improvement occurred or may be expected to occur.

Year  
1993

**Certification - Mandatory**

1. For which year(s) have you been the attending medical practitioner for your patient?

1993

2. Do you have medical information on file supporting the restriction(s) for all the year(s) you certified on this form?

Yes  No

Tick the box that applies to you:

- Medical doctor
- Physiotherapist
- Optometrist
- Psychologist
- Occupational therapist
- Speech-language pathologist
- Audiologist

As a medical practitioner, I certify that the information given in Part B of this form is correct and complete. I understand that this information will be used by the CRA to make a decision if my patient is eligible for the DTC.

Sign here: [Signature]  
It is a serious offense to make a false statement.

Address  
[REDACTED]  
[REDACTED]  
[REDACTED]

Name (print) [REDACTED]  
Year Month Day Telephone  
Date: 2, 0, 1, 7 | 0, 3 | 2, 1 | [REDACTED]

On March 27, 2017 our client's T2201 was submitted to the CRA. On June 22, 2017, our client was denied for his DTC claim. The CRA did not even send a clarification letter to the doctor for additional information. It is important to note that at the time, the CRA was denying the DTC for insulin dependent diabetics without a second serious condition. However, our client's doctor certified that he was also markedly restricted in feeding. We followed up with our client and his doctor was appalled that his patient was denied and agreed to write letter to provide further information on his patient's "aggressive diabetes" so that we could include it within our request for a second review on his claim.

pw

On July 19, 2017 in addition to a detailed explanation of our client's claim and the wrongful denial, we submitted the letter that the doctor provided to the CRA requesting a second review of our clients DTC claim.

Taxpayers have up to one year from the date of the Notice of Determination to provide additional medical information for consideration by the CRA.

**Doctor's letter sent to CRA on July 19, 2017:**

██████████  
Jul 6, 2017

Birth date ██████████ #7262 Page 1/1  
BT

Dr. B ██████████  
██████████  
██████████  
██████████


06/07/2017

**Regarding:**  
██████████, Date of Birth: ██████████ )  
██████████  
██████████  
Home Phone: ██████████

CRA Disability tax Credit Department;

I am bitterly disappointed to learn that my patient ██████████ application for Disability tax credit has been denied. I strongly disagree with your decision for the following reasons

- 1- ██████ is currently in hospital fighting for his life with metastatic tongue cancer that started in 2016. The outcome is poor with less than 6 months of life expectancy.
  - 2- He has been on four 4 injections of insulin a day since 2010 with blood glucose testing eight 8 times per day thus I respectfully disagree with your decision that he does not meet the 14 hours per week requirement. As you know this kind of aggressive Diabetes is a 24/7 chronic disease that takes considerable time out of his daily life to properly manage and maintain proper glycemic control of which failing to do so would lead to long term health conditions and death.
- Please review my patients application as I have certified that he meets the requirements of life sustaining therapy.

Regards  
  
Dr. B ██████████

On September 12, 2017 our client received a response from the CRA notifying him that he had been denied despite additional medical evidence and clarification provided by the doctor. We followed up with our client and let him know that this was completely unacceptable and that we would be moving through an appeal process.

On October 25, 2017, True North submitted an Objection indicating that the client had been wrongfully denied after the doctor certified him not only through a T2201 satisfying the *Income Tax Act* as it pertains to the disability tax credit but also that the doctor wrote a letter indicating that his patient

*pw*



should not have been denied and as the signing authority he believed that his patient met the eligibility criteria not only for the LST but also the BADL category, feeding.

We were informed on December 12, 2017 that the 90 days from the date of the Notice of Determination to file an Objection had passed although we had submitted a second review that was subsequently denied on September 12, 2017.

We have included the letter (next page) to the Chief of Appeals on December 12, 2017. Indicating the events that had taken place and how our client has been unfairly denied the DTC. We also submitted a subsequent document explaining that the decision on this case was inconsistent with the *Income Tax Act* and that our client should have never been denied.

On March 20, 2018, the appeal for our client's DTC was finally approved from 2010 indefinitely. A full year after applying for the DTC.

On April 4, 2018, CRA adjusted our client's 2014-2016 tax years but stated that his 2010-2013 tax years required a new adjustment request. On April 11, 2018, a second adjustment request was submitted online for his 2010-2013 tax years.

True North contacted the CRA in regards to the 2010-2013 tax years 10 times asking for a follow-up on timelines that were provided but not abided by due to internal errors by the CRA.

It is worth noting that our client did not receive his refund for his 2010-2013 tax years until Nov 8, 2018, which was 20 months after he first began working with us (March 7, 2017).

It should also be noted that the file had more than 80+ interactions between our staff, the client, CRA and doctor's office. Of which more than 10 calls were made to the CRA. Calls with the CRA on average can last from 30-60 minutes (sometimes far more due to hold times) per instance. The 80+ interactions do not include the time required for writing and responding to letters, emails or faxes or review of the case. They also do not include the time required for the analysis and review of the reassessments of the client's tax years to ensure that the CRA had completed them correctly or the initial adjustment requests or tax analysis.

PW

Dec 12, 2017

ATTENTION: Chief of Appeals

RE: [REDACTED]

Our client was recently wrongfully denied for the Disability Tax Credit. We had filed an appeal on their behalf, and we were just informed that this was not filed within 90 days and therefore we must inform the Chief of Appeals why this was not done.

The reason this was not done earlier, is because the CRA was wrongfully denying insulin dependent diabetics the Disability Tax Credit since May 2, 2017. This information was recently released to the public through Diabetes Canada's Freedom of Information request. This showed that seemingly, there was no acceptable answer for a diabetic to be approved under the 14 hour per week criterion of Life Sustaining Therapy. Our client's doctor has certified that not only is he meeting the requirements, but that he does have other severe health problems and his application should never have been denied in the first place.

Therefore, [REDACTED] application should be reviewed despite 90 days passing since the letter of determination was issued due to the fact that it was wrongfully denied to begin with.

Thank you,



Shane Nercessian

Representative

True North Disability Services



### CRA Incorrectly Applies Provincial Disability Amount, Three Times on Same Client

Our client was approved for the DTC in January 2019. The CRA reassessed our client's 2011-2017 taxes on January 17, 2019 as per our request that was submitted in conjunction with his T2201 application form. It should be noted that with the T1 adjustment request for our client we included an adjustment request for the unused DTC to be transferred to his spouse as we had identified unused credits in several tax years.

Upon our review of our client's 2011-2017 taxes we immediately recognized that the CRA had made an error applying the incorrect provincial DTC base amounts to his adjustments. For the 2011-2014 tax years in question, our client resided in Alberta then later moved to British Columbia in 2015. However, the CRA applied the British Columbia provincial base amounts for all years in question.

#### Original Reassessment 2011 Tax Year with incorrect provincial base amounts:

#### 2011 Reassessment

[Help with this page](#)

Filing date: 19 APR 2012      Taxing province: AB  
 Date of assessment: 17 JAN 2019      Province of residence: AB  
 Marital status: MARRIED

Reassessment - 09 APR 2019 [view](#)

[Expand all](#) [Collapse all](#)

#### ▼ Reassessment Information

Line	Description	Amount on previous assessment	Revised amount
316	Disability amount - federal	\$0	\$7,341
5844	Disability amount - provincial/territorial	\$0	\$7,114

Upon further investigation we submitted an online request to have the 2011-2014 tax years adjusted and amended to include the correct provincial base amounts through the online change my return system.

#### 2011 Tax Year Adjustment for provincial base amount fix submitted (2011-2014 years were all submitted for correction):

#### 2011 Tax return

Line	Description	Old Amount	Change Amount	New Amount
5844	Disability amount - provincial/territorial	\$7,114	\$5,981	\$13,095

Keep all your receipts and supporting documents in case we ask to see them.

On March 7, 2019, we followed up with the CRA on the status of our client's adjustment request. We had requested that the error be corrected as well as adjustment request we had originally submitted for his wife for the transfer of our client's unused DTC be processed. The agent advised us that the CRA had sent our client a letter (copied on Page 10) stating that the adjustment request was not necessary and to refer to the notice of reassessments of January 17, 2019.



© Her Majesty the Queen 2019

Date: Mar 8, 2019  
Account Number: [REDACTED]  
Reference Number: [REDACTED]

[REDACTED]

Dear Sir,

Re: Your 2011 to 2014 Income Tax and Benefit Returns

We are writing in response to your request dated February 13, 2019.

We have reviewed your request concerning the disability tax credit for self for the above mentioned tax years.

Since we have previously allowed this claim, no adjustment is necessary.

Please refer to the notice of (re)assessment of January 17, 2019.

We trust this information is satisfactory.

Submitting a T1 adjustment online is easy, efficient, and environmentally friendly with the ReFILE service. ReFILE is available in certified NETFILE software. You can also make an online T1 adjustment with the Change my Return service in My Account or by using form T1 ADJ, T1 Adjustment Request, available at [canada.ca/taxes](http://canada.ca/taxes).

As an information security measure, we have masked the first five digits of the social insurance number (SIN) on this letter. However, if you are making contact with the Canada Revenue Agency, either in writing or by telephone, you are still required to provide the full SIN to ensure correct identification.

If you need more information, call 1-800-959-8281 or visit [canada.ca/taxes](http://canada.ca/taxes).

Yours sincerely,

[REDACTED]  
T1 Adjustments Section  
Individual Returns Division



The agent confirmed that the tax centre had also sent a letter to our client's wife informing her that there were no unused credits to transfer. Upon further explanation of the issues to the agent and performing the calculations together, the agent agreed that errors had been made in both scenarios.

The 2011-2014 tax years had been incorrectly processed not once but twice and there were in fact transferable credits in a multitude of tax years. The agent informed us the only thing that could be done was to resubmit the requests and delaying even further our client's refund while CRA staff processed all

*pw*

of the adjustments. Given the multitude of errors and lack of resolve by the tax centre, we submitted form RC193 with regard to the Service-Related Complaint.

Upon investigation by the Service-Related Complaint's officer, we were informed that our client's 2011-2014 taxes were to be adjusted correctly and a refund was set to be released. The officer also confirmed that our client's wife's taxes would be adjusted and that a refund would be issued the same day as that of her husband.

On April 8, 2019 the transfer of the unused credits to our client's wife were completed correctly. However, upon further review the tax centre had made another error on the 2013 tax adjustment for our client.

The tax centre credited the 2011 tax year for the correct amount but then debited the 2013 tax year as though the client owed monies in that year although the adjustment resulted in a credit. Instead of receiving \$1062.92, our client received only \$142.62 for his adjusted DTC refund. This was the third error made on our client's account. In all likelihood, all of which would have never been questioned by the taxpayer, and he would not have received the correct refund without our assistance.

**Client Statement of Account April 9, 2019 Showing Credit and errant debit**

Apr. 09, 2019	2011 Reassessment			
	Provincial Tax		598.97	
	Federal Tax		0.11	
	Refund interest paid		1.04	-600.12
Apr. 09, 2019	2012 Reassessment			
	Federal Tax	0.00		-600.12
Apr. 09, 2019	2013 Reassessment			
	Provincial Tax	457.70		
	Federal Tax	0.26		
	Refund interest reversed	4.84		-137.32
Apr. 09, 2019	Refund Interest paid		5.30	-142.62
Apr. 09, 2019	2014 Reassessment			
	Federal Tax	0.00		-142.62
Apr. 10, 2019	Refund Issued	142.62		0.00

Finally, after further follow up with the Service Complaint's officer and explanation of the issue on April 24, 2019 (copied on Page 12), the client received the difference of \$925.60.

Apr. 09, 2019	2013 Reassessment			
	Provincial Tax		457.70	
	Federal Tax		0.26	
	Refund interest paid		4.84	-462.80
Apr. 09, 2019	2013 Reassessment			
	Provincial Tax		457.70	
	Federal Tax		0.26	
	Refund interest paid		4.84	-925.60
Apr. 25, 2019	Refund Issued	462.80		-462.80
Apr. 25, 2019	Refund Issued	462.80		0.00

Our client and his wife confirmed that they would have had no idea that the CRA had made major errors on their reassessments. As a result of our continued diligence, the client and his spouse received an

*pw*

additional \$2244.27 for their DTC refund that they would have never known about. We have had many similar instances with other clients.

**Service-Related Complaint Letter to CRA**



Canada Revenue Agency

Agence du revenu du Canada

April 24, 2019

Reference Number: [REDACTED]

[REDACTED]  
True North Disability Services  
205-5668 192 Street  
Surrey, BC  
V3S 2V7

Subject: Your Service Complaint

Dear [REDACTED],

I am writing in response to the correspondence received by the Service Complaints Program on, March 8, 2019, for [REDACTED] concerning the quality of Canada Revenue Agency (CRA) services.

In response to your service complaint, we confirm a clerical error was made. While line 316 and line 5844 were keyed during the reassessments for 2011 to 2014, line 5844 was not updated in accordance with the correct province of residence, which resulted in our system automatically limiting the claim.

Furthermore, the letter dated March 5, 2019, was also sent in error. We processed manual reassessments to correctly update the disability amount for self for the 2011 to 2014 tax years and the Notices of Reassessment were dated April 9, 2017.

Due to system limitations, the resulting refunds for the 2011 to 2014 will be issued in two parts: the first refund of \$142.62 was direct deposited on April 10, 2019. The second refund of \$462.80, including refund interest, is scheduled for release on April 25, 2019.

Please note, we have processed the 2011 to 2017 reassessments on [REDACTED] account to correctly update the disability amount transferred from the spouse. Please refer to the Notices of Reassessment dated April 8, 2019.

We sincerely apologize for these errors and thank you for bringing this to our attention. We deeply regret any inconvenience this has caused. Should you have any further questions regarding the above, please call [REDACTED] at [REDACTED].

1 of 2

c/o 9755 King George Blvd  
Surrey BC V3T 5E1

c/o 9755 blvd King George  
Surrey BC V3T 5E1

**Canada**

## Two Different Outcomes from Identical Applications

We started working with our client in April 2018 after consulting with her on her condition which had restricted her ability to walk, dating back to 2008 but becoming progressively more severe every year to the point she was markedly restricted as per the CRA application guidelines.

After initially contacting her doctor's office, the doctor stated that she would not qualify for the DTC because she was able to work during the time she had her impairment. This is a common misconception that we encounter daily from many doctors as well as Canadians in general, and we strive to educate both parties. We advised the doctor's office that one may experience a marked restriction in a basic activity of daily living but still be gainfully employed. The doctor subsequently completed her T2201 application which we submitted to the CRA.

The CRA reviewed the claim and sent a clarification letter to her doctor. Although the responses in the T2201 application form already addressed the questions in the clarification letter, the doctor completed the questionnaire and sent it to the CRA.

The Notice of Determination disallowed the DTC due to the fact our client did not meet the eligibility requirements.

### Response from the CRA RE: Denial

August 3, 2018

*"We received the reply from the questionnaire form from Dr. [REDACTED] on July 12th 2018. However, the response to the questions did not provide the effects of the impairment on the ability to perform basic activities of the daily living that were indicated to limit you to a marked or significant restriction. Therefore, we are unable to determine eligibility for this. Will review your claim again once we receive additional medical information from a medical practitioner. This means we can no process the request for your disability amount"*

We believe that the CRA disregarded the medical evidence provided by the doctor and suggested that our client ask him to complete a new application for the DTC. Our client's doctor completed a new application for the DTC as well as the follow-up clarification letter providing exactly the same information and certifying, once again, that his patient was markedly restricted in her walking according to the legislative requirements. This time, the CRA allowed the DTC.

This is not an isolated case. We are concerned about the lack of consistency within CRA as far as the adjudication of applications for the DTC.

*PW*

### CRA Advises Tax Payer to Cancel Authorization

Our client called the CRA for a matter related to their 2018 taxes and asked for an update on her DTC reassessment. The agent questioned our client why was she working with us and that she should cancel her authorization with our company because CRA would provide any further assistance that she might require at no cost. After all, she had already been approved for the DTC. When we followed up with the client when we could not access her account, she recounted the phone call she had with the CRA agent and that she became very confused and felt "bullied" into cancelling her authorization even after insisting that True North was advocating for her.

Our client followed up with the CRA to reinstate our authorization after signing a new T1013. She was upset that she was confused and convince our authorization in the first place. She spoke with multiple agents at the CRA who confirmed with her that we would have authorization shortly. Both the client and True North followed up on the status of the authorization more than five times. On February 26, 2019 we again spoke with another CRA agent who advised us that the authorization had to go to another department due to the way in which the situation unfolded. After more than two months of continuous follow-up with the CRA, with our client signing and submitting three new T1013s, CRA finally accepted her reauthorization for True North to act on her behalf.

During the time our authorization was cancelled, CRA only reassessed the client's 2017 taxation year. Our client was eligible for the tax credit from 2007 for an indefinite period. The T2201 application included T1 adjustment requests for the 2008-2017 tax years, alongside the marking of the checkbox by the client to have her taxes adjusted. It is often the case that the CRA will miss the request for the adjustment of previous years requiring subsequent requests to be submitted

Once the authorization was reinstated, we were able to advocate on our client's behalf and resolve the errors. We followed up with the CRA and spoke with an agent who was unable to provide an explanation why the other years were not included with the request for the adjustment. We were asked to send another T1 adjustment request further delaying the process, but the 2008 tax year would be excluded due to the fact it was now 2019. The client was approved for the DTC in December 2018.

Upon further due diligence, we submitted form RC193, Service-Related Complaint when the agent admitted that it was an error on behalf of the tax centre but "he could not do anything about it." The client's 2008-2016 tax years were subsequently adjusted, and the client received her refund three weeks later.

The CRA agent had no legal right to discuss our client's decision to appoint True North as her representative. The very fact that CRA made an error when processing the taxpayer's adjustments is unacceptable under any circumstances and even more egregious in this instance.



## Appendix B

### Association of Canadian Disability Benefit Professionals

The Association of Disability Tax Credit Professionals, which consists of 12 companies from across the country, has established a code of conduct in regard to fees, marketing and business practices to ensure that Canadians with disabilities are not taken advantage of when choosing to use their services.

#### Fees:

Members of the Association of the Canadian Disability Benefit Professionals:

1. Will not charge contingency fees exceeding 30% of any Disability Tax Credit-related refunds, benefits, or credits.
2. Will not charge any upfront fees.
3. Will only charge for retroactive refunds, benefits, or credits. There can be no fee for future credits.
4. Will fully repay any fees in a situation where their client's refund has been reversed as the result of an error by an Association member.

#### Marketing:

Members of the Association of the Canadian Disability Benefit Professionals:

1. Will not use aggressive sales tactics (e.g. cold-calling) as a marketing technique. A client or their representative must make initial contact with an Association member.
2. Will never infer that applying for the Disability Tax Credit (DTC) CAN NOT be done independently by the taxpayer.
3. Will abide by the competition laws of their province, provincial consumer protection legislation, and the federal Competition Act.
4. Will abide by Canada's Anti-Spam Legislation (CASL).

#### Doctor Relationships:

Members of the Association of the Canadian Disability Benefit Professionals:

1. May not have a doctor on staff, or as an outside consultant that certifies the T2201 Disability Tax Credit form for their clients.

#### Client Relationships:

Members of the Association of the Canadian Disability Benefit Professionals:

1. Will use clear, simple language in their contracts.
2. Will clearly & explicitly disclose all fees, costs, and any interest rates.
3. Will take all possible steps to ensure clients' information is protected.
4. Will have an official privacy policy.
5. Will allow clients a one-week "cooling off" period in which to cancel agreements.
6. Will register their ACDBP contact with a piece of photo identification.