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LEMBI BUCHANAN'S "Fight for Fairness"

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A Brave Woman’s Fight For Fairness For Those With Psychiatric Disabilities In Canada

By Lembi Buchanan

I am quite overwhelmed with such an honour but then I could not have fathomed how difficult it would be to fix an injustice affecting some of our most vulnerable citizens.

Even today, the Canada Revenue Agency (CRA) is cheating thousands of Canadians by denying them the Disability Tax Credit (DTC) on questionable grounds. Just as shameful, is the blatant disregard for its own policies and procedures designed to protect the interests of the taxpayer. How does this happen?

It is a “system that has gone a little mad,” acknowledged MP Wendy Lill during the House of Commons debate in November 19, 2002. “When it comes to providing a relatively modest amount of
additional financial support to a group of citizens who are by definition among the lowest incomes and most vulnerable in society... we tie ourselves into knots.”

Nevertheless, our elected representatives took matters into their own hands that year and pushed for a complete overhaul of the DTC. And yet, I am discovering that CRA continues to find surreptitious means to deprive the benefit to people who meet the eligibility criteria set out in the Income Tax Act.

Why?

There is nothing new about government taking advantage of disabled Canadians when it comes to keeping a lid on rising costs. We don’t know if performance bonuses were offered to senior executives at CRA based on their contributions to a target of $4-billion in 2012. Nevertheless, the facts speak for themselves: it has become increasingly more difficult in recent years to access the DTC. In all likelihood, there are no villains, only victims in this saga of mismanagement, intimidation, deception, corruption and fraud?

Fighting for Fairness

I was certainly naïve when I launched my “Fighting for Fairness” campaign in March 2001. Surely, I thought, it would be easy to right a wrong. After all, we were not asking for special treatment; we were only asking for fairness.

However, I quickly discovered that fairness was only an illusion despite allegations by Minister of National Revenue, Herb Dhaliwal when he addressed a Fairness Symposium in Ottawa. “I want to ensure that Revenue Canada has fairness at the very heart of how it is organized, in the way it operates, and in the way it deals with its clients. Fairness is absolutely fundamental.”

Unfortunately, fair treatment in our tax system does not apply to people with mood disorders and other serious psychiatric illnesses.

My husband Jim was first diagnosed with bipolar disorder in February 1973. He had climbed to the roof of St. Patrick’s Cathedral in New York City and was waiting for a helicopter to take him to God. The police took him to the hospital instead.

Thanks to clinical trials of lithium, still the gold standard for people diagnosed with bipolar disorder, Jim recovered. For almost 20 years, he managed to lead a relatively normal, productive life in corporate public relations. In December 1990, however, he suffered a major setback and never fully recovered.

When he applied for the DTC, his application was reviewed by specialists, medical advisors in another government department, Health and Welfare Canada and approved for five years.
Court of Appeal upheld Judge Campbell’s ruling and set a legal precedent for people living with severe mental illnesses.

When Jim was asked to reapply in 1996, there had been major revisions to Form T2201 to simplify the format for doctors although there were no legislative changes in the eligibility criteria. The question regarding mental functions was designed to exclude virtually everyone living with serious mental impairments. When asked, “Can your patient think, perceive and remember?” doctors were left with no choice but to check the “yes” box automatically disqualifying their patients regardless of the severity of their illness. Jim would have also flunked out on basic questions in a follow-up clarification letter such as “What percentage of time is your patient unable to think, perceive and remember?” The correct answer was 90 per cent, the description of someone who is practically comatose. The manic mind, however, is always in overdrive. My favourite question is “Can your patient make a simple purchase?” What about the Jaguar Jim bought on a whim?

I wrote to Paul Martin, former Minister of Finance who was kind enough to respond to my concerns. He explained that people with mental impairments were not disabled enough to qualify for the DTC citing budgetary restraints: “If eligibility for the DTC were broadened to include situations like you have described as well as people with severe disabilities, the federal cost would be much more than the current $275 million.”

We appealed to the Tax Court of Canada.

“It is an obvious case,” concluded Judge Diane Campbell when delivering her ruling. She recognized that Jim’s “ability to perceive, think and remember, although not non-existent, is of such a severity that his entire life is affected to such a degree that he is unable to perform the necessary mental tasks required to live and function independently and competently.”

Worried about opening the floodgates to similar challenges, CRA asked for a judicial review. However, a unanimous decision by the Federal Court of Appeal upheld Judge Campbell’s ruling and set a legal precedent for people living with severe mental illnesses.

It was time to push for major reforms. I appealed to my MP Carolyn Bennett, chair of the Subcommittee on the Status of Persons with Disabilities. Unfortunately, the Parliamentary sub-committee was attending to other “urgent matters” and my submission was put on hold. In the meantime, I learned that people with physical impairments were also having difficulty accessing the modest tax credit. We banded together and created a coalition of several national health charities.

And then, we got lucky.

We had help from the enemy.

In October 2001, CRA sent letters to 106,000 Canadians who were already receiving the DTC and asked them to reapply.

The backlash to such an unprecedented audit was huge. MPs across the country were being deluged
with letters from angry constituents. Many were permanently disabled like Colin Contie, former president of the Canadian Hard of Hearing Society:

“I am rather warm under the collar and I am asking the government to stop this form of intimidation. It is a cold and faceless way of putting citizens down. I find this disrespectful and degrading not to say it will cost (to have the doctor complete another application for the DTC).”

Priorities for the Parliamentary sub-committee shifted quickly. I was even asked to help organize the hearings to be held the following month. I still remember so vividly, entering the Parliament building, feeling very humble but nonetheless, empowered by the knowledge that an individual in our country can make a difference.

Ours was the first of many hearings held with representatives of several disability organizations and medical associations. We also heard from senior officials from the two departments that shared responsibility for the DTC, Finance and National Revenue. They justified the unorthodox review on the basis of a limited pilot project that discovered “many instances where people should not have been approved in the first place.”

**Fraudulent claims**

I learned from a reliable source (who wished to remain anonymous) that the CRA had already been taken to task for approving as many as 300,000 fraudulent claims, costing an estimated $220 million that year. “Why must honest taxpayers continue to subsidize bureaucratically sanctioned fraud?” he asked. According to him, 80 per cent of all applications submitted to CRA were fraudulent. In a letter to Minister Herb Dhaliwal in July 1999, he blamed senior staff at the CRA with gross mismanagement of the DTC program, suggesting that doctors “knowingly aid and abet the unentitled claimants.” He submitted that “physician endorsement had even less legitimacy than before, that is, no legitimacy,” since CRA had “quietly absolved physician complicity by transferring all responsibility and (presumably) culpability, to the claimants themselves.”

Is it any wonder that CRA continues to distrust the endorsement of physicians who certify that their patients are markedly restricted in mental functions and other areas of basic activities of daily living?

Even today, CRA feels the necessity to question the integrity of the medical profession with the following warning underneath the signature on follow-up clarification letters: “It is a serious offense to make a false statement.”

In March 2002, the Parliamentary sub-committee issued a scathing report, Getting it Right for Canadians, stating that the tax department’s handling of the DTC was unfair to the very people it was designed to help.
One of our recommendations was the creation of the Disability Advisory Committee to act as a watchdog over the administration of the DTC.

Disability Tax Fairness

The federal government not only ignored the recommendations of our elected representatives, but also proposed amendments to the Income Tax Act to further tighten the eligibility criteria,

Carolyn Bennett was furious. “I am extraordinarily disappointed by the Department of Finance,” she said.

“Everything that we have done to move this process forward in a democratic way has been undone.”

Our coalition intensified its lobbying efforts. Eventually our persistence paid off. In November 2002, House of Commons unanimously supported a motion calling for a complete overhaul of the DTC.

In the February 2003 budget, the government set aside an annual budget of $80 million to improve assistance for persons with disabilities. Although I was appointed to the new Technical Advisory Committee on Tax Measures for Persons with Disabilities, it was clear that my fight for fairness was just getting started.

From the outset, senior officials responsible for the public purse fretted that our recommendations would be fiscally irresponsible. There was a deep sense of paranoia that the number of people accessing the DTC would exceed conservative projections by their frugal bean counters.

Nevertheless, our report, Disability Tax Fairness issued in December 2004 led to major reforms of the Income Tax Act the following year benefitting thousands of people with disabilities who had previously been denied the DTC.

One of our recommendations was the creation of the Disability Advisory Committee to act as a watchdog over the administration of the DTC. Although we made significant progress on a number of important issues during our first year, our committee was canceled soon after the Conservative government was sworn in on February 2006. Not only was the DAC’s tenure cut short but also, many of the significant improvements to the administration of the DTC have been all but lost. And there were a number of concerns regarding the CRA’s narrow interpretation of mental functions that still needed to be resolved.

Once again, CRA is denying thousands of legitimate claims and relying on tax system that is too complicated or expensive for most
people to fight back. Like employees of heartless insurance companies following orders, civil servants with no medical training are sending rejection notices without providing valid reasons for their decisions.

Even more disturbing is the fact that many psychiatrists and psychologists are no longer completing Form T2201 for their patients, because the criteria and examples for mental functions do not conform to episodic symptoms of an illness, regardless of its severity. And yet, virtually all of the judgments in the Tax Court of Canada have recognized that individuals living with schizophrenia and bipolar disorder are “markedly restricted in their mental functions all or substantially all of the time” even though the external signs and symptoms of their illness may be perceived to be intermittent.

One unintended consequence of problems with the increasingly restrictive administration of the DTC is the growth of a highly profitable industry. Currently, there are approximately 24 companies in Canada, called “promoters” that are charging contingency fees between 20 and 30 per cent to assist taxpayers navigate the complex DTC application and other related benefits.

There has been considerable concern expressed by some of the organizations representing people with disabilities that their members are being exploited by unscrupulous “promoters.” These companies advertise refunds up to $40,000, indicating substantial payouts for everyone involved.

Akiva Medjuck, president of National Benefit Authority, testified at a Parliamentary hearing reviewing Bill C-462*, an Act to restrict the fees charged by promoters. He expressed concerns if the new legislation restricted the ability of his company to represent clients, stating, “...many qualified and deserving Canadians will not receive this benefit. Canadians with disabilities need to have someone in their corner with the expertise and resources necessary for representing their interests.”

The status quo is no longer acceptable.

Canadian taxpayers should be able to access the DTC without having to pay excessive contingency fees to companies to act on their behalf, or expensive legal bills for lawyers to represent them in court.

There is an urgent need to fix the systemic problems in the administration of the DTC that continue to discriminate against people living with severe mental illnesses.

Now it is all about protecting the integrity of my award to ensure fair tax treatment for people living with mood disorders and other psychiatric illnesses.
We also need to reinstate the DAC to get back on track. Maybe this time, we will get it right.

*Bill C-462 has yet to be implemented.

From the Canada Revenue Agency Website:

The disability tax credit (DTC) is a non-refundable tax credit that helps persons with disabilities or their supporting persons reduce the amount of income tax they may have to pay. An individual may claim the disability amount once they are eligible for the DTC. This amount includes a supplement for persons under 18 years of age at the end of the year.

The purpose of the DTC is to provide for greater tax equity by allowing some relief for disability costs, since these are unavoidable additional expenses that other taxpayers don’t have to face.

Further information on topics such as the Registered Disability Savings Plan, The Canada Disability Saving Grant and Canada Disability Savings Bond can be found at:


Lembi Buchanan of Victoria has been awarded the prestigious Meritorious Service Medal by His Excellency the Right Honourable David Johnston, Governor General of Canada. The honour recognizes her passion and courage, her patience and persistence, in the face of numerous obstacles and setbacks, to achieve fair treatment in the tax system for Canadians with disabilities.

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