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September 28, 2016

The Honourable Bill Morneau  
Minister of Finance  
House of Commons  
Ottawa, ON K1A 0A6

Dear Minister:

I write further to my letter of July 25, 2016, a copy of which is attached. This relates to the Disability Tax Credit (DTC). More specifically, it is recommended that you re-establish a Disability Advisory Committee (DAC) and introduce legislation to ensure that qualified mental health disorders are eligible for the disability tax credit.

I have been advised by Ms. Lynn Gaucher of the Canada Revenue Agency that your government has no immediate interest in re-establishing a Disability Advisory Committee. Reference was made to the consultation that occurred during the recent reform of legislation concerning disability tax promoters, which is an unrelated issue. The DAC would serve in an advisory capacity to ensure that the legislative intent of the *Income Tax Act* is not compromised.

I am writing to you because the Canada Revenue Agency is unable to consider proposed revisions to the criteria defining "all or substantially all of the time" in the Act; only Finance Canada has the mandate to make the changes necessary.

There is an urgent need to address the application process for people living with severe mental illnesses. Many such individuals find themselves largely shut out of the disability tax credit regime therefore reform is urgently required. I have set out below the legislative history of the problem.

1. *Prior to 2005 "mental functions" were defined as perceiving, thinking and remembering. In 2005 the Income Tax Act was amended, defining mental functions necessary for everyday life as the following:*
  - a) *Adaptive functioning (for example abilities related to self-care, health and safety, abilities to initiate and respond to social interaction and common simple transactions);*

- b) *memory (for example, the ability to remember simple transactions, basic personal information, such as name and address, or material of importance and interest);*
- c) *problem solving, goal setting or judgment, taken together (for example, the ability to solve problems, set and keep goals and make appropriate decisions and judgments).*

For many years after the amendment to the *Income Tax Act* in 2005, Form T2201 described “markedly restricted” and “inordinate amount of time” in the following manner:

*Your patient is considered markedly restricted in performing the mental functions necessary for everyday life, if, all or substantially all of the time, he or she is unable to require an inordinate amount of time to perform them by himself or herself, even with appropriate therapy, medication and devices (for example memory aids and adaptive aids).*

However, Form T2201 for the 2015 taxation year describes “markedly restricted” and “inordinate amount of time” in the following manner:

*Your patient is considered markedly restricted in performing the mental functions necessary for everyday life if, even with the appropriate therapy, medication and devices (for example memory aids and adaptive aids):*

- *he or she is unable to require an inordinate amount of time to perform them by himself or herself; and*
- *this is the case for all or substantially all of the time (at least 90% of the time).*

This 90% requirement is simply unworkable since medical practitioners do not have the tools to quantify mental functions to satisfy a mathematical model. The 90% rule also has no statutory basis. Furthermore, there is no jurisprudence that defines “substantially all of the time” as 90%. In fact, there is considerable jurisprudence both with DTC and GST cases to the contrary. Therefore, it is misleading to incorporate the 90% guideline as the rule of law in the F RC 4064 Disability-Related Information 2015, the Income Tax S1-F1-C2, Disability Tax Credit Folio as well as Form T2201.

Serious injustice occurs when otherwise qualified mental health patients cannot meet the arbitrary 90% criterion and medical practitioners refuse to complete the T2201 for their patients. There are reports that many individuals diagnosed with MS and epilepsy are also being discriminated against because the signs and symptoms of their diseases are perceived to be intermittent even though they are always vulnerable for a relapse that compromises their activities of daily living. I believe this issue requires your immediate attention.

Now, more than ever, it is of critical importance to create productive dialogue between stakeholders of the special needs community and experienced professionals and the CRA, to address problems with the administration of the DTC. Past consultations with the public in 2014 have failed to address these concerns.

Yours very truly,

A handwritten signature in blue ink that reads "Murray Rankin". The signature is written in a cursive style with a large, sweeping 'M' and 'R'.

Murray Rankin  
Member of Parliament  
Victoria, BC

Copy: Lynn Gaucher, Canada Revenue Agency  
Ms. Lembi Buchanan