

Alice's Adventures in Wonderland

In the classic novel, *Alice's Adventures in Wonderland*, Lewis Carroll provides a satirical look at government bureaucracy when Alice is asked by the Queen of Hearts to play croquet. She complains, saying:

“I don't think they play at all fairly... they don't seem to have any rules in particular, at least, if there are, nobody attends to them – and you've no idea how confusing it is.”

Introduction

I have been advocating on behalf of people living with mental illness for almost 20 years, helping to ensure that they are not discriminated against by government programs and policies.

Over the years, I have successfully assisted dozens of individuals access the Disability Tax Credit.

I do not charge a fee for my services. These individuals have no one else to turn to, unless they want to sacrifice one-third of their refund to companies that charge contingency fees. Or pay a hefty legal bill.

I also have a website, fightingforfairness.ca with information about the application and appeal process, as well as guidelines for taxpayers and qualified health-care practitioners.

I was a member of the Technical Advisory Committee on Tax Measures for Persons with Disabilities. We made a number of recommendations that led to major reforms of the *Income Tax Act* in 2005 and the creation of a Disability Advisory Committee. Despite its role to ensure fairness in tax policy for all Canadians with disabilities, it was disbanded the following year due to budgetary cutbacks.

Disability Tax Credit

In recent years, it has become evident that individuals, who previously qualified for the DTC for 10 years, 20 years, and more, are asked to reapply, and then denied the tax credit on questionable grounds.

We are certainly pleased that Minister of National Revenue, the Honourable Diane Lebouthillier responded to our request to reinstate the Disability Advisory Committee, which met for the first time in Ottawa last week.

Nevertheless, there are several concerns with the administration of the DTC that need to be addressed without further delay.

1. The CRA has created an insurmountable barrier for many by imposing the inflexible guideline that defines being markedly restricted, in a basic activity of daily living “all or substantially all of the time” as being “at least 90% of the time.”

Such an arbitrary and rigid interpretation of the *Income Tax Act*:

- i. has no statutory basis;
 - ii. is not supported by CRA’s own policy documents;
 - iii. and, is not recognized by the Tax Court of Canada as an absolute threshold in both DTC and GST cases.
2. CRA exercises the right to question the description of disabling effects of the impairment provided by qualified health-care practitioners in Form T2201 and the follow-up “clarification letter.”
 3. The Notice of Determination, when rejecting the claim for the DTC, is a form letter that does not always provide a valid reason.
 4. The Notice of Determination may refer to additional information provided by the qualified health-care practitioner, but it does not include a copy of the “clarification letter,” even though this is an essential document, if one wishes to appeal the decision.
 5. The Notice of Determination, when disallowing the DTC, does not advise holders of RDSPs that their Plan will be terminated unless they take steps to protect their investment during the appeal process.

Registered Disability Savings Plan

The unintended consequence of individuals having to reapply for the DTC, and being unjustly denied, is the loss of a substantial portion of a savings plan designed to assist with their future financial needs.

There is no rationale to penalize Canadians with disabilities, no longer eligible for the DTC, by asking them to repay all of the grants and bonds contributed by the federal government in the previous 10 years.

How can an individual eligible for the DTC for a number of years be suddenly treated as if he or she was never eligible for the tax credit?

These individuals never abused the system. These individuals never broke the rules.

Surely, these individuals are no less deserving, even though they may no longer qualify for the DTC.

Recommendations

1. We need to address the systemic problems with the administration of the DTC without further delay.
2. Unless there is clear evidence of fraud, CRA should not have the authority to disregard medical evidence, certified by qualified health-care practitioners, acting in good faith.
3. Individuals with life-long mental impairments should not be required to reapply for the DTC every three to five years.
4. When the DTC is denied, stop undermining the internal appeals process by withholding documentary evidence.
5. When the DTC is denied, provide clear information to enable individuals to take the proper steps to ensure that their Plan stays open during the appeal process.
6. When individuals are no longer eligible for the DTC, do not claw-back contributions made by the federal government.

In a letter to his MP, Colin of Peterborough wrote the following:

"How does the government justify creating a program to help those with disabilities and challenges, and then take back what they have given, after the fact? This is not only unfair, it is wrong, it is unjust..."

Please do the right thing and fix this."