IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *True North Disability Services Ltd. v. Canada (National Revenue),* 2021 BCSC 2142

Date: 20211104
Docket: S1914169
Registry: Vancouver

Between:

True North Disability Services Ltd. and Shane Nercessian

Applicants

And

Minister of National Revenue and The Attorney General of Canada

Respondents

Before: The Honourable Mr. Justice H. Slade

Reasons for Judgment

Counsel for the Applicants:	M. Faille A. Christoff
Counsel for the Respondents:	S. Singh L. Chun J. Paoletti
Place and Date of Hearing:	Vancouver, B.C. June 2-3, 2021
Place and Date of Judgment:	Vancouver, B.C. November 4, 2021

The Disability Tax Credit

[1] 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. The purpose of the DTC is to provide relief for some of the additional expenses incurred as a result of living with a disability.

[2] The DTC may be claimed by an individual or for a minor or adult dependent, where the individual or dependent has a severe and prolonged impairment in physical or mental functions (as defined in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) [*ITA*] and certified by a medical practitioner), or that requires life-sustaining therapy. The DTC is claimed by the taxpayer, along with other non-refundable tax credits, on their T1 Individual Income Tax and Benefits Return that is filed with the Canada Revenue Agency (CRA) at the end of each taxation year.

[3] The DTC is a gateway to a number of other benefits for disabled persons, including the Child Disability Benefit, Registered Disability Savings Plan (qualifying for up to $70,000 in government grants and $20,000 in bonds, until the age of 50), as well as provincial DTC supplements. Applicants are not eligible to receive these benefits unless they are first approved for the DTC.

[4] A claimant who is eligible for the DTC can also qualify for other federal, provincial or territorial programs. DTC claimants may also be eligible for the DTC for previous taxation years and can request reassessments of past income tax returns for up to a maximum of nine taxation years.

[5] People with disabilities or their family members can apply for the DTC on their own or with the assistance of another person.

[6] To apply for a determination of eligibility for the DTC, an individual or his or her representative must complete Form T2201, also known as the Disability Tax Credit Certificate (the "DTC Certificate").

[7] The DTC Certificate consists of two parts: Part A, which requires basic personal information to be filled out by the claimant or his or her representative; and Part B, which requires medical information to be filled out by a medical practitioner as recognized under the *ITA*. Under Part B, the medical practitioner must certify as to the effects of the claimant's impairment on his or her daily activities. Accordingly, it is the medical practitioner that has the responsibility for completing the majority of the DTC Certificate.

[8] Since the inception of the DTC an industry has developed around assisting persons in the preparation of the DTC Certificate to be presented to the CRA for a determination of eligibility, request for the application of the tax credit, and reassessment(s) for previous tax years.

The Disability Tax Credit Promoters Restrictions Act

[9] Bill C-462*,* an act restricting the fees charged by promoters of the disability tax credit and making consequential amendments to the *Tax Court of Canada Act*, R.S.C., 1985, c. T-2 was introduced in the House of Commons in 2012 by way of a private member's bill and was unanimously supported by Members of Parliament across all parties. The *Disability Tax Credit Promoters Restrictions Act*, S.C. 2014, c. 7 [*DTCPRA*] received royal assent on May 29, 2014.

[10] The *DTCPRA* was enacted to limit the fees that can be charged by a person who makes a disability tax credit request under the *ITA* on behalf of a claimant. The *DTCPRA* also establishes certain reporting requirements, and offences and penalties for failure to comply with the *Act*.

[11] Pursuant to the *DTCPRA*, the maximum fee must be prescribed by regulation, and until that is done, the *Act* remains inoperative.

[12] In June 2019, the *Disability Tax Credit Promoters Restrictions Regulations*, (the "Proposed Regulations") were proposed and published in the Canada Gazette, Part I. The Proposed Regulations propose setting the maximum fee as follows:

a. $100 for a request made for a determination of DTC eligibility; and

b. $100 per taxation year for a request in respect of a deduction for an individual or for a dependent, or in respect of any deduction or overpayment of tax under the *ITA* that is contingent upon DTC eligibility for that individual or for a dependent.

[13] On April 14, 2021, the final regulations, the *Disability Tax Credit Promoters Restrictions Regulations*, SOR/2021-55 (the "Regulations") and the Regulatory Impact Analysis Statement prepared by the CRA (the "RIAS") were published in the Canada Gazette, Part II. The *DTCPRA* and the Regulations will go into force on November 15, 2021.

Orders Sought

[14] The applicants seek, in their unfiled petition, declarations of constitutional invalidity on the grounds that the impugned legislation and regulations:

(a) in pith and substance purport to regulate a profession and generally to regulate property and civil rights, and are therefore properly the subject of provincial jurisdiction pursuant to s. 92(13) of the *Constitution Act, 1867,* and therefore *ultra vires* Parliament; and

(b) discriminate against disabled persons, contrary to s. 15 of the *Constitution Act, 1982* (the "Charter"), and are not demonstrably justified in accordance with s. 1 of the Charter.

[15] The present application seeks:

1. A pre-trial injunction before the start of a proceeding enjoining the Government of Canada from proclaiming into force the *Disability Tax Credit Promoters Restrictions Act* (and *Disability Tax Credit Promoters Restrictions Regulations* pursuant to s. 12 of the Act, or in the alternative, suspending the operation of the Act and Regulation, to take effect at such time the Act is proclaimed into force, in order to preserve the *status quo* pending determination of the matter;
2. An Order dispensing with the need to provide an undertaking as to damages;
3. Costs; and
4. Such further and other relief as this Honourable court deems just.

[16] The *Act* and Regulation will not enter into force until November 15, 2021.The Petition is not being filed at this time, on the basis that it would be premature.

The Parties

[17] The applicant, True North Disability Services Ltd. (“TNDS”), is a company founded in 2014 for the purpose of assisting eligible Canadians in accessing the DTC. TNDS is one of the many entities in the business of assisting Canadians in accessing the DTC (the “DTC consulting industry”).

[18] The applicant, Shane Nercessian, is a co-founder of TNDS and an eligible DTC claimant.

[19] The respondent, Attorney General of Canada, is the representative of Her Majesty, the Queen in Right of Canada and is named in these proceedings pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended.

[20] The respondent, Minister of National Revenue (the “Minister”), is the Minister responsible for the administration of the *ITA* and the CRA, including with respect to the DTC.

Legislative Context

[21] The affidavit of Cloriss Sharma, a paralegal employed by the Department of Justice, appends extracts from Hansard between November 5, 2012 and May 29, 2014. These extend from the introduction of Bill C-462, the *Act*, at first reading, the motion of the member of Parliament, Cheryl Gallant, that the Bill receive second reading and be referred to Committee, remarks by the Honourable Member upon moving that the Bill receive third reading and be passed, debates in the Senate upon first, second and third reading, and passing, and the May 29, 2014 debates in Senate upon which the Bill received Royal Assent.

[22] On November 5, 2012, Ms. Gallant tabled her private member’s Bill C-462 and explained:

> Since 2005, when the federal government began issuing refunds retroactively for the disability tax credit, there has developed a growing collection of consultants offering to provide so-called help to disabled Canadians in securing these credits. Disabled Canadians, who are often in a vulnerable

> position, are being misled into signing away as much as 35% or more of the refund that they are entitled to receive, simply for the consultant to fill out a two-page form.
>
> Concerns have been raised by those in the medical profession who feel they are being pressured to fill out forms fraudulently by some of these consultants.
>
> Currently these consultants are totally unregulated. My private member's bill seeks to regulate these consultants by restricting the fees they can legally charge to disabled Canadians.

[23] The motion was adopted with the unanimous consent of the House.

[24] On motion for second reading, February 5, 2013, the Honourable Member elaborated further on her reason for bringing the Bill before the House:

> My intention for bringing this legislation before the House is straightforward. I want to see increased protection for disabled Canadians from the predatory practices of some disability tax credit promotors who see the tax credit as an opportunity to profit on the reduced circumstances of others.
>
> . . .
>
> For the average Canadian, the maximum federal amount that could be claimed last year was $7,341. This resulted in a maximum federal tax savings of up to $1,101 for 2011. This is significant tax relief for Canadians living with a disability, and that money should be staying in the pockets of Canadians who need it. It should not be swindled away by unregulated promoters. This tax credit is important to them.
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> . . .
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> I started issuing consumer alerts in my riding last year when I found out that some individuals were being charged 20%, 30% or as much as 40% of the tax credit. I felt, and I am hoping that other members of Parliament will agree, that those kinds of charges are unfair, especially when we consider that the purpose of the disability tax credit is to support Canadians living with serious disabilities.
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> . . .
>
> My intention in bringing the bill before the House is straightforward. I want to see increased protection for disabled Canadians from the predatory practices of some disability tax credit promoters, on the one hand, and also contribute to a fair, functioning marketplace for those who do wish to use the services of a disability tax credit promoter.
>
> . . .
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> This is not an attempt to crack down on those legitimately claiming the credit or to deny claims. It is an attempt to make sure those who qualify and those who require the tax credit are able to receive it without paying unfair charges.
>
> . . .

> The disability tax credit promoters are currently totally unregulated. This is producing a system that is increasingly ripe for abuse. Lawyers charge contingency fees, but they are bound by strict codes of ethics, and bar associations carefully scrutinize actions to ensure appropriate professional ethical behaviour
>
> Perhaps most appropriate for today's discussion is that tax preparers are guided by the Tax Rebate Discounting Act and capped at what they can charge for their service. An accountant cannot take 20 minutes, prepare and submit one's taxes and then charge 40% of one's refund. Tax preparers also have a professional organization that promotes ethics and peer review of business practices.
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> The reason I did not set a specific fee is that we wanted to have consultations with the tax credit promoters and people with disabilities. Some people do want that extra help apart from the regular tax preparers. We want input from tax preparers, as well as accountants and medical professionals. We will be doing the consultations and announcing what the allowable fees will be at that time.
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> . . .
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> Staffing cuts, particularly for regional program officers, have led to the closing of CRA offices where Canadians are accustomed to meeting an advisor who can give them more information and direct them to the proper resources.
>
> It is important to ensure that people with a disability have equal access to the tax credit, which is not currently the case. The bill does not solve any of the many problems with the tax credit, including accessibility.
>
> The application process is still complex, and the tax credit is difficult to obtain. The application process therefore needs to be simplified.
>
> . . .

[25] The Bill was passed with the unanimous support of the House. However, concerns were expressed over the difficulty presented to applicants for the DTC in the course of the debates. For example, Honourable Murray Rankin, an NDP member of Parliament, although in support, said, in part:

> In reference to the question on what number of people are eligible, CRA says that 200,000 new applications are received on a yearly basis. Insofar as what number of people are swindled or how much goes to the tax preparers, we do not know because it is totally unregulated. That is why we are putting these provisions into place so we can keep track and ensure that the tax promoters are being fair to Canadians living with disabilities.
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> . . . .
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> The application process for the tax credit is not transparent and people with disabilities have trouble obtaining it. I would also like to see more information in advance on the way in which the bill would be implemented and how the

> public would be informed as to its existence and to the protections it would create
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> . . .
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> Disability organizations, such as the Council of Canadians with Disabilities, the Canadian Association for Community Living and the myriad of organizations that represent specific disabilities, share our concerns about access to the disability tax credit.
>
> . . .
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> In this Context it would be most appropriate for me to talk a little about my concern about the Conservative government's cuts to the Canada Revenue Agency, which have had a real impact on the services offered to all Canadians. Cuts to jobs and duties of regional program advisers, for example, put information sessions on disability tax credits at risk. These sessions facilitate the understanding of how to obtain the disability tax credit. Of course closures of CRA offices across the country have had a significant and ongoing impact on persons with disabilities who need access to the services provided by those centres.
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> . . .

[26] Another member, Honourable Massimo Pacetti, a Liberal member of Parliament, said, in part:

> Based on that, I do not see how anyone can be opposed. I am comfortable with it and I will support sending the bill to committee. The Liberal Party has always supported cracking down on fraudulent consultants who take advantage of disabled Canadians or any type of Canadians, but especially disabled Canadians. However, we think Bill C-462 requires careful study at committee to ensure that it achieves the stated objectives and avoids unintended consequences.
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> . . .
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> Despite the good intentions in the bill, I believe that the government could be more helpful to Canadians with disabilities by simplifying the application process through which they receive their tax credit. For example, the documents to be completed and the process itself are complicated—doctors have many responsibilities in this area— which means that many Canadians are not able to complete them without assistance.
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> . . .
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> I just want to quickly highlight some of the concerns I found in looking at the bill. In the bill it states that the definition of a promoter is "a person who, directly or indirectly, accepts or charges a fee in respect of a disability tax credit request". Would that mean a doctor or an accountant? I asked the question to the sponsor of the bill, and she seems to think it would not be, but that is not how the bill reads. I just want to make sure the bill will be corrected so that doctors, accountants or other professionals would not be included as being promoters.

> . . .
>
> In my experience as an accountant, especially when the government introduced retroactively requesting a change as far back as ten years to the income tax form for a disability tax credit, the first year is normally the most complex time. Even though one may be using software, one has to determine which credits and deductions a client is eligible for and which are more advantageous. If one is claiming the disability tax credit, one may not be eligible for some other credits. As well, one's dependents would be a consideration. It is complex and one wants to make sure that the professional involved in preparing the tax return or giving advice is not being penalized because he or she has said to go and get the disability tax credit certificate.
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> . . .

[27] Concerns similar to those mentioned above were raised by these and other members over the entirety of the legislative process.

[28] On October 24, 2013, Ms. Gallant moved that the Bill be read for the third time and passed. She said, in part:

> The fact that my bill has the support of all parties reinforces something that all members of Parliament recognize. We must take action to solve the problems caused by those individuals who seem willing to take advantage of Canadians with disabilities. Whatever our political affiliation, we realize that Canadians living with disabilities face exceptional challenges. We understand that the last thing they need is to see an important source of additional income reduced by tax promoters who would profit from these very challenges.
>
> Of course, I am not suggesting that all of these businesses deserve such hard criticism. This legislation is not directed toward legitimate tax practitioners who provide a valuable service. Make no mistake this bill is all about going after those whose intentions are not so honourable.

[29] After Royal Assent on May 29, 2014, the next step was the formulation of a regulation to establish the maximum fee that a "promoter" can charge in respect of an application for the DTC. On June 1, 2019, under the authority of the *DTCPRA*, and sponsored by the CRA, the RIAS was published in the Canada Gazette (2019-06-01 Canada Gazette Part 1, Vol. 153, No. 22).

[30] Under the heading "background" the RIAS says, in part:

> In order to protect Canadians living with disabilities and their supporting family members, the Act, which received royal assent on May 29, 2014, was enacted to limit the fees that can be accepted or charged, directly or

> indirectly, by a promoter who makes a DTC request to the CRA on behalf of a claimant (i.e. an individual who is the subject of a DTC request or who has a dependent on behalf of whom a DTC request is made). The Act defines "promoter" as a "person who, directly or indirectly, accepts or charges a fee in respect of a disability tax credit request." This definition 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*. Medical practitioners whose only role is to certify the extent of a patient's medical condition for purposes of a DTC request are not considered "promoters" under the Act.

[31] Under the heading "regulatory development" the RIAS says, in part:

> During public consultations held from November 4 to December 15, 2014, the CRA heard from nearly 900 Canadians: over 80 individuals participated in the in-person sessions (held in Vancouver, Toronto, Montréal and Halifax), over 750 comments were provided online, and over 50 written submissions were received. These stakeholders were Canadians with disabilities, supporting family members, promoters, tax professionals, medical practitioners, associations representing persons with disabilities and members from the general public. The Disability Tax Credit Public Consultations report, available on the CRA website, provides a summary of the public consultation input received. As part of these consultations, participants discussed various topics, including the fee structures and proposed opinions for the maximum fee. . .
>
> Participants also made suggestions as to which cost elements should be considered in determining a fair maximum fee, such as the time it takes to fill out the forms and returns, the hourly rate of pay for some professionals, and whether any promoters, like accountants and lawyers, should be exempt from the new reporting criteria. Although the term "promoter" was universally disliked, it is the language used in the Act. The proposed maximum fee was developed taking these extensive consultations into account and reflects fair market value for the type of services being offered.

[32] The RIAS, under the heading "other improvements" says, in part:

> While not part of the proposed Regulations, the CRA has also simplified and clarified the DTC application process based on the input received during the public consultations, by implementing new administrative measures, which will greatly reduce the time spent in completing the necessary paperwork. . . .

[33] It was not within the mandate or authority of the persons tasked with preparation of the RIAS to propose changes to the *DTCPRA*. The above statement of inclusion of lawyers and accountants as "promoters" remains.

[34] The following appears under the heading “setting of maximum fee”:

> 1(1) For the purposes of subsection 3(1) of the *Disability Tax Credit Promoters Restrictions Act*, the maximum fee for a disability tax credit request made by a promoter is set at
>
> (a) $100, for a request for a determination of disability tax credit eligibility under subsection 152(1.01) of the *Income Tax Act*;
>
> (b) $100 per taxation year, for a request made in respect of a deduction under subsection 118.3(1) or (2) of the *Income Tax Act*; or
>
> (c) $100 per taxation year, for a request made in respect of any deduction or overpayment of tax under the *Income Tax Act* that is contingent upon the eligibility for a deduction under subsection 118.3(1) or(2) of that Act.

Evidence of the Applicants

[35] Mr. Nercessian deposes in his affidavits that in 2018, according to the CRA, DTC consultants assisted in filing approximately 29,880 claims for the DTC for adults with disabilities, and roughly 6,120 claims for the DTC in respect of minors with disabilities.

[36] Mr. Nercessian further deposes that the DTC consulting industry charges on a contingent basis, by which:

a) clients are not required to pay fees in advance;

b) clients pay no fee in the event their application for DTC is denied, after exhaustion of appeals; and

c) fees payable are based on a percentage of the credit received.

[37] Members of provincially regulated professions, such as lawyers and accountants, also assist clients in accessing the DTC.

Impact of Act and Regulation

[38] Mr. Nercessian deposes that the $100 maximum fee cap as set out in the Regulation would only cover basic data entry and processing, leaving little to no room to assist with issues involving eligibility, advocacy on behalf of the client with

the CRA, and work with the certifying health professional, and other associated services. In the result, most, if not all, DTC companies will be driven out of business as it will no longer be economical to provide many DTC services.

[39] The RIAS estimates that the loss to the DTC industry will be in the order of $5.1-22 million per annum.

[40] Mr. Nercessian deposes that the revenues of TNDS would “decrease by some 65%, resulting in a loss in the hundreds of thousands to millions of dollars, depending on the time between entry into force and any final determination by the court in regard to the constitutionality of the *Act* and Regulation.”

Access to the DTC

[41] The circumstances that created the market for TNDS and other DTC service providers are deposed to in the numerous affidavits filed in support of the application. There are five sworn by Mr. Nercessian. There are also affidavits from John Oakey (accountant); Kim Hanson (Executive Director of Federal Affairs at Diabetes Canada); Lembi Buchanan (member of the Disability Advisory Committee (DAC), which was established in 2005 to advise the Minister of National Revenue and the CRA on tax measures for Canadians with disabilities, including the DTC) and; Peter Weissman (CPA and inaugural co-chair of the DAC)

[42] The affidavits and exhibited materials speak of challenges faced by disabled persons in their efforts to obtain CRA approval of their applications for the DTC. Some of these were raised by MPs in the course of the introduction and readings of Bill C-462, as reported in Hansard.

[43] Mr. Nercessian, in summary, deposed the following on access to the DTC:

1) The majority of Canadians with qualifying disabilities currently do not access the DTC and are therefore also not eligible for the related benefits. It has been estimated that only some 40% of working-aged adults with qualifying disabilities have been approved for the DTC;
2) The significant under-utilization of the DTC and associated benefits is attributable, in large degree, to the challenges that eligible individuals face in applying for this credit, owing to the notorious and widely-

criticized complexity of the process, lack of clarity in the criteria and errors made by the CRA in processing applications;

3) In his Fall 2017 Report, the Auditor General found that 2 in 3 calls to the CRA's call centres go unanswered, due to active call blocking by the agency, and those that were able to get through received wrong answers 30% of the time;

4) An applicant is required to find and pay a health professional to complete their application form, certifying that they are markedly restricted in performing a basic activity of daily living all or substantially all of the time, or that the cumulative effects of a patient's multiple impairments are equivalent to being markedly restricted in one basic activity of daily living;

5) Health professionals have limited understanding of the DTC and its criteria and processes, and typically require significant guidance by someone familiar with the process and criteria in order to fill out the required forms in a manner satisfactory to the CRA. Even minor and inadvertent errors can result in rejection and/or significant delay;

6) Confusing follow-up requests from the CRA to health professionals for additional information may also see some individuals wrongfully denied the DTC, as well as lead to additional costs charged by health professionals;

7) DTC eligibility criteria are poorly administered by the CRA. They have been criticized for lacking clarity, being open to interpretation, failing to accurately reflect the practicalities of living with a disability, and requiring people with impairments in mental functions to meet a higher bar than those for physical impairments;

8) The CRA's position that being "markedly restricted" is defined as an impairment of function "at least 90% of the time" is an administrative position not reflected in the *ITA*;

9) There is a notorious, chronic lack of consistency and transparency in CRA processes in regard to the DTC. As a result, those applicants who have the ability or assistance needed to appeal their DTC rejections enjoy a high success rate on internal appeal and in the Tax Court of Canada;

10) Applicants have repeatedly had to litigate their DTC claims with the CRA in Tax Court of Canada in order to have their claims recognized, including those with Multiple Sclerosis, Bi-polar disorder, Tourette's syndrome, severe learning disabilities, PTSD, schizophrenia, diabetes, PKU, and allied disorders. There are many examples of such successful appeals in Tax Court of Canada;

11) Many organizations, including Diabetes Canada, JDRF, and Autism Canada have publicly criticized the CRA for its pattern of continuously, wrongfully denying legitimate claims for the DTC; and

12) In June 2018, the Standing Senate Committee on Social Affairs, Science and Technology released a report entitled *Breaking Down Barriers* - a *critical analysis of the Disability Tax Credit and the*

> *Registered Disability Savings Plan,* which cited many problems with the DTC, including incompetence of the CRA in their application of the rules under the *ITA,* and made a number of recommendations to improve access to the DTC.

[44] Mr. Oakey, in summary, deposed the following:

1) Baker Tilly Canada professionals (Certified Public Accountants), and I personally, have extensive experience assisting Canadians with disability with their Disability Tax Credit claims under the *ITA*;
2) I am aware of the DTC legislation, including the *ITA*, which was passed in 2014 to restrict fees chargeable by any person assisting a taxpayer in regard to a DTC application, and the Regulation which was passed to make operational a $100 fee cap, and is to go into effect on November 15, 2021;
3) After the Regulation was first proposed on June 1, 2019, there was a 30-day "consultation" period in which stakeholders were invited to make submissions, though there were no real ongoing consultations;
4) According to the most recent Q & A document posted by the CRA regarding the Regulation, the $100 fee cap under the Regulation applies to internal CRA appeals, leaving only appeals to Tax Court of Canada outside the scope of the fee cap;
5) To put the $100 fee cap in perspective, I estimate I would incur average professional costs in the range of $2,000-4,000 to gather all of the information necessary in order to assist a client, that has some level of subjectivity, with making a DTC application; and
6) For all but the clearest cases, the $100 fee cap simply would not allow knowledgeable professionals to carry out the required work to properly complete DTC applications.

[45] Ms. Hanson, in summary, deposed:

1) I am Executive Director of Federal Affairs at Diabetes Canada, the nation's leading provider of diabetes education, research, resources, and services;
2) Many persons with diabetes qualify for and rely upon the federal disability tax credit;
3) Applying for the DTC, however is a notoriously complex and onerous process, due to the application process itself as well as the inconsistently applied criteria for eligibility; and
4) Historically, persons with diabetes have been one of the main groups that have been wrongfully denied access to the DTC due to the CRA's misadministration of the DTC with respect to persons with diabetes.

[46] Mr. Weissman, in summary, deposed:

1) A Canadian with a disability, I co-chaired the inaugural DAC, which was established in 2005 to advise the Minister of National Revenue and the CRA on methods to improve the CRA's administration;

2) In 2017, I co-founded and now co-chair the Disability Tax Fairness Alliance (DTFA);

3) 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;

4) 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;

5) 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*; and

6) Contrary to the CRA's original position in this regard, the Regulation will 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.

[47] The above summaries of the supplementary affidavits cover and corroborate only the most material evidence of Mr. Nercessian, and stop short of summarizing their entire contents. Considered together, they present a credible picture of the challenges presented to applicants for the DTC due to the subjective nature of the eligibility criteria, the potential for uneven application of the criteria for the determination of eligibility, and the potential for arbitrary treatment by CRA personnel.

[48] The material also supports the applicant's assertion that completing an application for the DTC will often require the assistance of persons with knowledge and experience in the CRA's application of the criteria for eligibility for the DTC. This is particularly so in the case of persons with mental disabilities.

[49] The affidavit evidence of the respondent does not refute the evidence of the applicant summarized above.

[50] The affidavit of Ms. Sharma exhibits the above-mentioned extracts from Hansard.

[51] The affidavit of Karen Dobson, Registered Nurse, Senior Medical Advisor in the Assessment Benefit and Service Branch of the CRA, adverts to the 2019 "simplified and more user friendly" application form for the DTC and the publication by the CRA of information about the availability of and access to the DTC. It also confirms that the DAC, which had been disbanded by the Conservative government in 2005, was reinstated by the Minister of National Revenue on November 23, 2017.

Applicant's Services

[52] Mr. Nercessian deposes that:

> TNDS is first and foremost an advocate for its clients, and has a strong history of assisting clients obtain DTC and holding the CRA accountable. TNDS has worked with clients suffering from an array of disabilities, and has a deep understanding of the DTC eligibility criteria and how they work, and how to, effectively navigate through the considerable, notorious obstacles faced by eligible Canadians with disabilities in accessing the DTC.

[53] Mr. Nercessian describes the services provided by TNDS:

> In this regard, assisting with the application form is only one step in a complex process. TNDS provides a number of additional, vital services in connection with the application, including the following:
>
> > screening potential clients to determine whether the taxpayer meets the eligibility criteria for the DTC as defined in the ITA;
> >
> > providing a full 10-year tax assessment to ensure the client who has had taxable income receives the maximum eligible refund;

> providing a full 10-year tax assessment in regard to any supporting family member or spouse to ensure they have had sufficient income to support the credit on behalf of the eligible person;
>
> providing 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 client's case;
>
> advocating on behalf of the client in the event the health practitioner is not familiar with the current eligibility criteria or, as often occurs, simply doesn't "believe" in the tax credit, which may include multiple discussions with such health practitioners;
>
> reviewing and submitting a certified T2201 application along with any medical information provided by the medical practitioner to the CRA on the client's behalf;
>
> submitting T1 adjustments to the CRA and ensuring that reassessments for both clients and their supporting persons take place in a timely manner that is within the agency's standards of service time frames;
>
> reviewing reassessed tax years to ensure credits are accurately applied to the client and supporting persons if applicable;
>
> providing up-to-date status reports to the client about their claim information with the CRA;
>
> assisting clients in providing additional information to the CRA and responding to any additional requests;
>
> filing RC193 service-related complaint to the CRA when an error has been made by the CRA, or when completion timelines have been exceeded; and
>
> filing an objection on behalf of the client if the claim was unjustly denied.

Legal Basis for Application

[54] The test for interlocutory injunctive relief is not in dispute, and is set out in *RJR-MacDonald v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311 [*RJR-Macdonald*]. The party seeking an interlocutory injunction must prove:

(a) There is a serious issue to be tried;

(b) Irreparable harm would result if the injunction is not granted; and

(c) The balance of convenience, considering all of the circumstances, favours granting the injunction.

Serious Issue to be tried

[55] The threshold for finding that there is a serious issue to be tried is low. The Applicants must show that their case is not frivolous or vexatious: *RJR-Macdonald* at para. 48.

Source of constitutional power

[56] Where, as in the present matter, the parties differ on the ostensible source of the constitutional power under which the impugned law (the Regulation) falls, it is necessary to consider its “pith and substance”.

[57] It is not necessary on an application for injunctive relief to reach a definitive conclusion that the action taken by government, in the present matter the enforcement of the Regulation imposing a $100 cap on fees that may be charged for assisting an applicant for DTC benefits, is solely within one of the heads of power under ss. 91 or 92 of the *Constitution Act*, 1867. The evidence need only establish a serious issue to be tried.

Applicant’s Position

[58] The applicant submits that the pith and substance of the *Act* and Regulation is the regulation of the provision of professional services in relation to the DTC (and, by necessary extension, associated provincial and territorial tax credits), and is *ultra vires* as encroaching on the powers of the provinces under s. 92(13).

Respondent’s Position

[59] The respondent submits that the:

> . . . purpose of the *DTCPRA* is to ensure the fair and ethical provision of DTC services in order to ameliorate the tax burden faced by disabled persons by ensuring tax relief in the form of the DTC goes to the intended recipients; disabled persons.

[60] This is achieved by limiting the fees that may be charged by any person (“promoter”), prohibiting fees in excess of the amount set by Regulation, and making it an offence punishable on summary conviction for a breach.

[61] The respondent contends that "[c]onsidering its purpose and effects together, the DTCPRA's pith and substance is ameliorating the tax burden of disabled citizens by prohibiting predatory business practices relating to the DTC." As such, the *Act* is argued to be constitutionally valid as an exercise of Parliaments criminal law power under s. 91(27), and the taxation power under s. 91(3).

Discussion

[62] The respondent does not dispute that the power to regulate professions is vested in the provinces by virtue of their power to legislate in respect of property and civil rights. In this regard, I refer to *Knutson v. Saskatchewan Registered Nurses Association*, [1991] 2 W.W.R. 327, 75 D.L.R. (4th) 723, at p. 5.

[63] The applicant is, in relation to the service it offers to applicants for the DTC, characterized in its submissions as a professional service, provided by "professionals". The service providers are not professionals in the sense of being members of a provincially regulated profession. The respondent does not make anything of this distinction, and has not put in issue the question of whether the regulation of TNDS's fees would fall within the provincial powers under s. 92(13). In any case, the *DTCPRA* does impose a fee limit on professionals, namely lawyers and accountants, for services to DTC applicants.

[64] Here, as in *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 [*Reference re GNDA*], the parties disagree about whether the impugned provisions relate to a matter within the powers of Parliament or the Legislatures of the provinces. It is not strictly a question of whether the power is exclusive to one or the other. At para. 66 of *Reference re GNDA* Justice Karakatsanis (Abella and Martin JJ. concurring) explains as follows:

> The parties disagree about whether the impugned provisions relate to a matter that comes within Parliament's s. 91(27) power over criminal law or primarily within the provincial legislatures' s. 92(13) power over property and civil rights. Both heads of power are broad and plenary, and may overlap when a given subject is approached from two different perspectives, one supporting the exercise of federal authority and the other supporting the exercise of provincial authority, i.e. when the subject has a double aspect: see *Firearms Reference*, at para. 52; *Chatterjee*, at para. 13. Given the

> reference question posed by the Government of Quebec, the only question the Court must answer in this part of the division of powers analysis is whether the provisions at issue come within Parliament's s. 91(27) criminal law power.

[65] It is, therefore, necessary to determine the law's essential character: *Reference re GNDA* at para. 30. As Karakatsanis J. elaborated at paras. 28-29:

> At the characterization stage, a court must identify the law's "pith and substance", or "*caractère véritable*". Since the Constitution gives Parliament and the provincial legislatures the authority to "make Laws in relation" to certain "Matters", the pith and substance analysis aims to "identif[y] the [law's] 'matter'": *Constitution Act, 1867*, *ss.* 91 and 92; see also *Canadian Western Bank*, at para. 26. As this Court recently described it in the *Reference re Pan-Canadian Securities Regulation*, at para. 86, the goal is to determine the law's "true subject matter", even when it differs from its apparent or stated subject matter: *Firearms Reference*, at para. 18. Generally, the court will first look to characterize the specific provisions that are challenged, rather than the legislative scheme as a whole, to determine whether they are validly enacted: *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641, at pp. 666-67.
>
> This Court has articulated the concept of the law's matter or pith and substance in a number of other ways, including by describing it as the law's "dominant purpose", "leading feature or true character", "dominant or most important characteristic" [cites omitted] and the "essence of what the law does and how it does it" [cites omitted].

[66] As stated in the dissenting reasons of Justice Kasirer (concurred in by Wagner C.J.C. and Brown and Rowe JJ.):

> [165] I agree with the view that "[t]he focus is on the law itself and what it is really about" (Karakatsanis J.'s reasons, at para. 31). In order to rise to this degree of precision, and because it is the constitutionality of enactment that is at issue, the court's inquiry into pith and substance must be anchored in the text of the impugned legislation. In the final analysis, it is the substance of the legislation that needs to be characterized, not speeches in Parliament or utterances in the press by well-meaning sponsors or opponents of the law.

[67] The text of the *DTCPRA* reveals the subject matter: The preamble, "An Act respecting the fees charged by promoters of the disability tax credit and making consequential amendments to the *Tax Court of Canada Act*", and the provision for a regulation setting the maximum fee, appears on its face to put the matter squarely within the jurisdiction of s. 92(13) as a matter of property and civil rights. Both place

the fee charged by promoters (i.e. professionals in some cases) as the central feature.

[68] The legislative history, in particular speeches recorded in Hansard, show that the purpose of Bill C-462 was to prevent persons assisting applicants for the DTC from charging a high contingency fee based on the amount of the credit approved by the CRA. The respondent argues that the dominant purpose of the *DTCPRA* is the protection of DTC applicants from the predations of persons who unfairly and undeservedly profit from servicing DTC applicants. This objective is revealed in the debates in the House of Commons.

[69] The *DTCPRA* prohibits charging a fee in excess of the amount set by Regulation and a penalty for a breach. The respondent argues that the *Act* is thus a valid exercise of the s. 91(27) Criminal law power.

[70] In *Reference re GNDA*, Karakatsanis J. sets out at para. 67 the conditions for the exercise pf the criminal law power:

> Section 91(27) of the *Constitution Act, 1867* gives Parliament the exclusive authority to make laws in relation to "[t]he Criminal Law". Sections 1 to 7 of the *Genetic Non-Discrimination Act* will be valid criminal law if, in pith and substance: (1) it consists of a prohibition (2) accompanied by a penalty and (3) backed by a criminal law purpose: *Firearms Reference*, at para. 27; *Reference re Validity of Section 5(a) of the Dairy Industry Act*, [1949] S.C.R. 1, at pp. 49-50 (*Margarine Reference*), aff'd [1951] A.C. 179 (P.C.).

[71] Justice Karakatsanis found that the first two requirements were met:

> [68] There is no dispute that the challenged provisions meet the first two requirements. They prohibit specific conduct and impose penalties for violating those prohibitions. The only issue is whether the matter of ss. 1 to 7 of the *Act* is supported by a criminal law purpose. As I will explain, a law is backed by a criminal law purpose if the law, in pith and substance, represents Parliament's response to a threat of harm to a public interest traditionally protected by the criminal law, such as peace, order, security, health and morality, or to another similar interest. I conclude that the prohibitions established by ss. 1 to 7 of the *Act* have a criminal law purpose, protecting several public interests traditionally safeguarded by the criminal law.

[72] In the present matter the central question that will be raised by the petitions is whether the *Act*, "… in pith and substance, represents Parliament's response to a threat of harm to a public interest traditionally protected by the criminal law such as peace, order, security, health and morality, or to another similar interest".

[73] The first two elements required for the exercise of the criminal law power appear, on the face of the *Act* and Regulation, to be met. The Regulation made under the *Act* provides for a prohibition: Persons who assist applicants for the DTC, "promotors", may not charge a fee exceeding $100. The *Act* requires that a "promotor" report a charge exceeding $100 to the Minister. Failure to report is an offence, and the offender is liable on summary conviction to a fine.

[74] The present matter raises the question whether Parliament may attach a penalty to a breach of a restriction that it lacks the power to impose.

[75] Considered on its own, the imposition of a fee for a service falls squarely within the s. 92(13) power. This, however, is a measure taken in furtherance of a broader objective, namely to prevent the ostensible "evil" or protect the public from an "injurious or undesirable effect" which it seems that Parliament considers inherent in the charging of contingency fees based on the amount of the tax credit. However, if the aim of the Regulation is to prohibit the charging of a contingency fee based on a percentage of the tax credit, this too is within the power of the provinces.

[76] The third element is discussed in para. 71 of *Reference re GNDA*:

> To that end, the Court in the *Margarine Reference* established the substantive criminal law purpose requirement. Rand J. famously stated that a criminal law prohibition must be "enacted with a view to a public purpose which can support it as being in relation to criminal law" and identified "[p]ublic peace, order, security, health, morality" as the typical but not exclusive "ends" served by the criminal law: p. 50. Rand J. also stated that criminal prohibitions are properly directed at "some evil or injurious or undesirable effect upon the public", and represent Parliament's attempt "to suppress the evil or to safeguard the interest threatened": p. 49.

[77] The two preceding paragraphs point to the need for the criminal law to respond to "new and emerging matters", but remain limited such that Parliament not

be allowed “to bring virtually any matter within s. 91(27), so long as it used prohibition and penalty as its vehicle:”

> [69] Parliament’s criminal law power is broad and plenary: see *RJR-MacDonald*, at para. 28; *R. v. Hydro-Québec*, [1997] 3 S.C.R. 213, at para. 34; *R. v. Malmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 73. The criminal law must be able to respond to new and emerging matters, and the Court “has been careful not to freeze the definition [of the criminal law power] in time or confine it to a fixed domain of activity”: *RJR-MacDonald*, at para. 28; see also *Proprietary Articles Trade Association v. Attorney General for Canada*, [1931] A.C. 310 (P.C.), at p. 324.
>
> [70] But the use of the criminal law power to respond to those new and emerging matters must also be limited. This Court has rejected a purely formal approach that would have allowed Parliament to bring virtually any matter within s. 91(27), so long as it used prohibition and penalty as its vehicle: *Margarine Reference*; *Scowby v. Glendinning*, [1986] 2 S.C.R. 226, at p. 237.

[78] The law will have a criminal law purpose if it responds “to a threat of harm to public order, safety, health or morality or fundamental social values, or to a similar public interest”: *Reference re GNDA* at para. 78. The social value asserted by the respondent is the protection of disabled persons. The applicant cites the absence of evidence that disabled persons are vulnerable to influence from persons offering application services, and maintains that presuming them so by imposing a law for the ostensible purpose of their protection is patronizing and discriminatory as it denies them a service available to others in connection with tax matters. From this vantage point the *Act* and Regulation create the vulnerability of disabled persons as preventing access to services that better enable them to advance their applications to the CRA for eligibility to the DTC.

[79] The debates in the House reveal the moral outrage of Parliamentarians over the actions of those who, under the guise of providing a service, exact a fee calculated based on a percentage of the tax credit allowed by the CRA. The target of the *Act*, the “evil” that it seeks to restrain, is conduct falling outside of ethical norms. The response, namely the *Act* and impugned Regulation, address this “evil” by effectively denying to applicants all services related to DTC applications, including those provided by professionals whose ethical standards safeguard the public from such abuses.

[80] If the purpose of the Regulation is directed at unconscionable behavior by promoters, the evil to which it is directed may be considered an ethical matter; the protection of DTC applicants from unethical conduct by “promoters”.

[81] It may be unconscionable to condition the provision of a service to disabled persons on payment of a contingency fee based on the value of a tax credit. Unlike in the case of lawyers charging contingency fees in personal injury and class action lawsuits, other “promotors” are not investing significant time and financial resources over a period of years to pursue the client’s cause.

[82] Ethical norms are an aspect of public morality. On the question of the use of the criminal law power to curb actions in order to protect public morality, consider the finding of Karakatsanis J. in *Reference re GNDA* at para. 73:

> Many of this Court’s decisions illustrate how the criminal law purpose test operates. A law directed at protecting a public interest like public safety, health or morality will usually be a response to something that Parliament sees as posing a threat to that public interest. For example, prohibitions aimed at combatting tobacco consumption and protecting the public from adulterated foods and drugs were upheld because they protect public health from threats to it: see *RJR-MacDonald*, at paras. 30 and 32; *R. v. Wetmore*, [1983] 2 S.C.R. 284, at pp. 288-89, per Laskin C.J., and 292-93, per Dickson J.; *Standard Sausage Co. v. Lee*, [1933] 4 D.L.R. 501 (B.C.C.A.), at pp. 505-7; *Malmo-Levine*, at paras. 73 and 77-78, per Gonthier and Binnie JJ., and para. 208, per Arbour J. In *Reference re AHRA*, McLachlin C.J. referred to laws that “target conduct that Parliament reasonably apprehends as a threat to our central moral precepts” as valid criminal law grounded in morality: para. 50. Targeting conduct that merely implicates central moral precepts will not suffice as a criminal law purpose; the conduct must threaten those precepts.
>
> [Emphasis added.]

[83] On the same question, I have considered the finding of Kasirer J. (in dissent) at para. 257:

> Moreover, I respectfully disagree with the view that just because the impugned law “‘target[s] conduct that Parliament reasonably apprehends as a threat to our central moral precepts’”, this means that the impugned provisions are validly backed by a criminal law purpose (Karakatsanis J.’s reasons, at para. 73, citing with approval *AHRA Reference*, at para. 50, per McLachlin C.J.). It bears emphasizing that McLachlin C.J. went on to state that “[t]he role of the courts is to ensure that such a criminal law in pith

> and substance relates to conduct that Parliament views as contrary to our central moral precepts" and upheld the legislation because "[i]t targets conduct that Parliament has found to be reprehensible" (para. 51; see also para. 30 (emphasis added)). Yet, as LeBel and Deschamps JJ. explained, while "the criminal law often expresses aspects of social morality or, in broader terms, the fundamental values of society . . . . care must be taken not to view every social, economic or scientific issue as a moral problem" (*AHRA Reference*, at para. 239). In other words, "Parliament's wisdom" cannot trump the requirement to identify a real evil, even from the standpoint of morality (paras. 76 and 250). To do otherwise has the potential to amplify the scope of s. 91(27) beyond any constitutional precedent (paras. 43 and 239).

[84] There may be potential for abuse, in particular by a taxation service provider to facilitate fraudulent claims. There is no evidence that this has occurred. The speeches recorded in Hansard and the content of the RIAS reveal that that the central objective of the legislation is the restriction of fees that may be charged for services in relation to applications for the DTC. It is, in my view, open to question whether the Regulation, which prohibits the charging of a contingency fee based on the value of the DTC, falls within the criminal law power by addressing aspects of social morality or, in broader terms, the fundamental values of society.

[85] The applicant cites the nine year delay in bringing the Regulation forward as evidence that there is at present no real or reasonable apprehension of threat to the interests of those eligible for the DTC or the general public.

[86] I am mindful of the finding in *Reference re GNDA*, at para. 78, that once the criminal law power is engaged it is for Parliament to determine the means by which the criminal enterprise will be prevented, and it is not the role of the courts to govern over matters in the public interest by interlocutory order. However, the present question is whether the *Act*, together with the Regulation, is valid as an exercise of the criminal law power. This is as applicable in a division of powers case as in a case that engages the *Charter*. The question, for the purposes of the application, is whether the threshold for Parliament's exercise of the criminal law power has been achieved.

[87] The respondent also relies on the s. 91(3) taxation power. This is on the basis, as argued, that: "The *DTCPRA* relates to a federal power under s. 91(3) of the

Constitution Act, 1867, which is 'the raising of money by any mode or system of taxation', including the redistribution of tax dollars." (Respondent's Submissions, paragraph 54) This argument is without merit: the exercise by a person of the right to choose how to spend the money that would otherwise be paid as tax is not a "redistribution" of tax dollars. It is a personal choice. The Respondent has not cited any regulation limiting DTC recipients to categories of expenditure of money saved by relief from taxation.

[88] The matter presents significant questions of constitutional law, including the reach of the criminal law power.

[89] The ultimate determination of the Constitutional question framed by the parties will be with the Court on hearing the petition. For the purposes of the present application I find that the applicant has raised a serious issue to be tried.

Infringement of s. 15 Charter rights

[90] As I have found that the question whether the *Act* and Regulation are *ultra vires* Parliament is a serious issue to be tried, the first stage of the test for injunctive relief as set out in *RJR-Macdonald* is satisfied. I therefore find it is unnecessary for me to address the applicant's second ground of constitutional invalidity, namely whether the *Act* and Regulation are contrary to s. 15 of the *Charter*.

Irreparable Harm

[91] The applicant maintains that the service it provides could not be offered within the $100 fee prescribed by the Regulation.

[92] The applicant submits that the *Act* and Regulation "… will effectively gut TNDS' business by:

(a) … imperiling the continued viability of TNDS and its business model;

(b) potentially forcing TNDS to lay off employees, causing lost jobs and livelihood;

(c) damaging TNDS's relationship with its clients, goodwill, and market share; and

(d) causing a significant and non-recoverable loss of revenue.

[93] The respondent submits that the anticipated impact on TNDS business and revenues is speculative. The respondent contends that the simplified form of application for the DTC and improvements to the process for review by the CRA, all of which followed the 2014 passage of the *Act* and the period of consultation that followed, will benefit TNDS by enlarging its client base.

[94] The evidence gives rise to a valid concern that the fee restriction would have a detrimental impact on TNDS business and result in financial loss. The suggestion that its business would benefit has no evidentiary foundation.

[95] It is common ground that resulting losses would not be recoverable in the event the Applicants are ultimately successful, given that losses incurred as a result of a statute that is subsequently declared unconstitutional cannot be recovered: *RJR-MacDonald* at paras. 65 and 89. Those losses are, therefore, irreparable.

Balance of Convenience

[96] The third branch of the injunction test requires the Court to assess which party will suffer the greater harm from the granting of or refusal to grant an interlocutory injunction, pending a decision on the merits: *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110 at para 35 and *RJR-MacDonald* at para. 67.

[97] The respondent would suffer no tangible harm if an injunction is issued to restrain the respondent from enforcing the Regulation, and hence the prohibition and penal provisions of the *Act*, before a determination is made as to its constitutionality.

[98] It is well established that laws of Parliament are presumptively in the public interest. The public interest includes the legitimacy of public institutions and requires a high degree of respect for decisions of the legislative and executive branches of government. The Court should be wary of interfering in legislative and executive decisions and usurping those roles, which would amount to governing by interlocutory order: *Snuneymuxw First Nation et al. v. HMTQ et al.*, 2004 BCSC 205 at paras. 71-72.

[99] The applicants are pursuing their own interests as private litigants. They must prove that the public interest they rely on is of such significance that it tips the scales of the balance of convenience in their favour: *RJR-MacDonald* at para. 73 and *Manitoba Federation of Labour et al. v. The Government of Manitoba*, 2018 MBQB 125 at para. 58.

[100] The public interest adverted to by the applicants is access by persons eligible for the DTC to services in aid of their applications. It is significant in this regard that the *Act* effectively precludes their representation by professionals, lawyers and accountants, whom members of the public are generally able to retain to represent their interests with branches of government in relation to taxation, including eligibility for the DTC. The importance to the public of their services tips the balance in favour of the remedy sought on this application.

Order

a) The applicants are granted an interlocutory injunction suspending the operation of the *Disability Tax Credit Promoters Restrictions Regulations*, to take effect at such time the *Act* is proclaimed into force and to continue in effect for until the determination by the court of the constitutional question.

b) The need to provide an undertaking for damages is dispensed with.

c) Costs in any event of the cause, to be taxed upon determination of the cause.

d) The applicants shall file the petition with the court forthwith after November 15, 2021.

“Slade J.”