

Response to “Consultation Document – Disability
Tax Credit Public Consultations”

CMA Submission to Canada Revenue Agency

December 19, 2014



The Canadian Medical Association (CMA) is the national voice of Canadian physicians. Founded in 1867, CMA's mission is to help physicians care for patients.

On behalf of its more than 80,000 members and the Canadian public, CMA performs a wide variety of functions. Key functions include advocating for health promotion and disease prevention policies and strategies, advocating for access to quality health care, facilitating change within the medical profession, and providing leadership and guidance to physicians to help them influence, manage and adapt to changes in health care delivery.

The CMA is a voluntary professional organization representing the majority of Canada's physicians and comprising 12 provincial and territorial divisions and 51 national medical organizations.



1. Introduction

The Canadian Medical Association (CMA) submits this response to the Canada Revenue Agency (CRA) as part of its public consultation on the Disability Tax Credit.

The CMA has long-standing and significant concerns pertaining to the Disability Tax Credit. Most notable is the recent legislative development that resulted in physicians being captured in the definition of “promoter”. In light of the significant concern with physicians being captured in the definition of “promoter”, this submission will focus exclusively on the regulatory development following the enactment of the *Disability Tax Credit Promoters Restrictions Act*. However, the CMA will follow up at a later date with feedback and recommendations to CRA on how the Disability Tax Credit form and process can be improved.

Prior to providing the CMA’s position for consideration as part of the regulatory consultation, relevant background respecting the CMA’s participation and recommendations during the legislative process is reviewed.

2. Background: CMA’s Recommendations during the Legislative Process

The CMA actively monitored and participated in the consultation process during the legislative development of Bill C-462, *Disability Tax Credit Promoters Restrictions Act*. During its consideration by the House of Commons, the CMA appeared before the House of Commons Finance Committee and formally submitted its recommendations.¹ The CMA’s submission to the Finance Committee is attached as an appendix for reference. Throughout this process, the CMA consistently raised its concern that the bill proposed to include physicians in the definition of “promoter”, to which the response was consistently that physicians would not be captured. The Member of Parliament sponsoring the bill conveyed this message at the second reading stage in the House of Commons:

¹ Canada. Parliament. House of Commons. Standing Committee on Finance (2013). Evidence, May 7, 2013. 41st Parliament, 1st Session. Retrieved from www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6138958&Language=E&Mode=1&Parl=41&Ses=1

“Mr. Massimo Pacetti: Mr. Speaker...[in] her bill, she says that the definition of a promoter means a person who directly or indirectly accepts or charges a fee in respect to a disability tax credit. Who is a promoter exactly? Is a doctor, or a lawyer or an accountant considered a promoter?”

Mrs. Cheryl Gallant: Mr. Speaker, that is an excellent question from my colleague opposite. We are looking at third party promoters quite apart from the regular tax preparers and accountants. It is a new cottage industry that sprung up once the 10-year retroactive provision was made. It recognizes that there are volunteer organizations and even constituency offices that do this type of work. They help constituents fill out applications for tax credits. There is a provision for exemptions so people who volunteer their time at no charge or doctors do not fall into this.”²

In contradiction to this statement, during the Senate National Finance Committee’s study of Bill C-462, CRA Assistant Commissioner Brian McCauley confirmed the CMA’s concerns, stating explicitly that physicians would be captured in the definition of “promoter” and explained “they have to be captured because, if they weren’t, you leave a significant compliance loophole”.³

As will be explained further below in this submission, this statement reveals a lack of understanding of the implications of capturing physicians in the definition of “promoter”, in that it has established duplicative regulatory oversight of physicians, specific to the Disability Tax Credit form.

3. Priority Issue: Identify Physicians as an Exempt Profession in Regulation

The CMA has been consistent in our opposition to the approach that resulted in physicians being included in the definition of “promoters”. The definition of “promoter” captures physicians who may charge a fee to complete the disability tax credit form, a typical practice

² C. Gallant. (2013 Feb. 5) Parliament of Canada. Debates of House of Commons (Hansard). 41st Parliament, 1st Session. Retrieved at www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5962192#Int-7872066

³ Canada. Parliament. Senate. Standing Committee on National Finance (2014). Evidence, April 2, 2014. 41st Parliament, 2nd Session. Retrieved at www.parl.gc.ca/Content/SEN/Committee/412/nffn/09ev-51313-e.htm?Language=E&Parl=41&Ses=2&comm_id=13.

for uninsured physician services.

As indicated on page 4 of the CRA's consultation document, the *Disability Tax Credit Promoters Restrictions Act* includes the authority to "identify the type of promoter, if any, who is exempt from the reporting requirements under the Act." Two questions are included on page 7 of the consultation document in relation to this regulatory authority.

It is the CMA's recommendation in response to Question 12 ("Are there any groups or professions that should be exempt from the reporting requirements of the new Act?") that physicians licensed to practice are identified in regulation as an exempt profession.

Specifically, the CMA recommends that CRA include an exemption in the regulations for "a health care practitioner duly licensed under the applicable regulatory authority who provides health care and treatment" from the reporting requirements of the *Disability Tax Credit Promoters Restrictions Act*.

As explained below, this exemption will not introduce a potential loophole that may be exploited by third party companies to circumvent the new restrictions and will mitigate the legislative development that has introduced duplicative regulatory oversight of physicians.

4. Exemption Required to Avoid Duplicative Regulatory Regime; Not a Loophole

By capturing physicians in the definition of promoters, the *Disability Tax Credit Promoters Restrictions Act* has introduced a duplicative regulatory body for physicians: a development which the CMA has fundamentally opposed.

As CMA understands it, the CRA's key concern in capturing physicians in the definition of promoter is with respect to the possibility that third party companies may circumvent these limitations by employing a physician. As previously noted, this issue was raised by CRA's Assistant Commissioner Brian McCauley in his appearance before the Senate National Finance Committee during its study of Bill C-462.

A) CMA's Recommendation Respects Existing Regulatory Oversight Regime of Physicians

The CMA's recommendation and regulatory proposal limits the exemption of physicians as a profession to those currently licensed under the regulatory authority of provincial/territorial medical regulatory colleges. In Canada, medical practice is the regulatory purview of provinces and territories.

Charging a fee for the completion of a form is a typical practice for uninsured services – these are services that fall outside of provincial/territorial health insurance coverage. The practice of charging a fee for an uninsured service by a licensed physician is an activity that is part of medical practice. Such fees are subject to guidelines by provincial and territorial medical associations and oversight by provincial/territorial medical regulatory colleges.

The regulatory oversight, including licensing, of physicians falls under the statutory authority of medical regulatory colleges, as legislated and regulated by provincial and territorial governments. For example, in the Province of Saskatchewan, *the Medical Profession Act, 1981* establishes the regulatory authority of the College of Physicians and Surgeons of Saskatchewan. This regulatory authority is comprehensive and captures: medical licensure, governing standards of practice, professional oversight, disciplinary proceedings, and offences. In Ontario, this authority is established by the *Regulated Health Professions Act, 1991*; in British Columbia, by the *Health Professions Act, 1996*, and so on.

B) CMA's Recommendation Does Not Introduce a Loophole

The exemption of physicians as a profession that is “duly licensed under the applicable regulatory authority who provides health care and treatment” would not constitute a loophole. Firstly, any concerns regarding the practices of a physician that is exempted based on this definition could be advanced to the applicable regulatory college for regulatory oversight and if appropriate, discipline.

The CMA's proposed regulatory exemption would not be applicable in the case of a physician not licensed to practice; in this case, the individual would not be under the regulatory authority of a medical regulatory college and would fall under the CRA's regulatory purview,

as established by the *Disability Tax Credit Promoters Restrictions Act*. With regard to the example raised by CRA's Assistant Commissioner Brian McCauley in his remarks before the Senate Committee of a retired doctor hired by promoter, retired physicians can retain their licence. If this was the case for this particular physician, as noted above, when CRA had concerns regarding this physician's actions, his or her regulatory college could have taken appropriate disciplinary action. If, on the other hand, this retired physician's licence had lapsed, both the individual and the promoter who hired him or her would be potentially liable for fraud (assuming that the term "medical doctor" used in Form T2201 refers to an actively licensed physician) which would convey more serious consequences than those proposed by the *Disability Tax Credit Promoters Restrictions Act*.

5. Conclusion

The CMA strongly encourages the CRA to identify physicians as a profession that is exempt from the reporting requirements of the *Disability Tax Credit Promoters Restrictions Act*. This exemption is critical to ensure that possible unintended consequences, specifically duplicative regulatory oversight of physicians, are avoided.