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How the Canada Child Benefit Affects Separated Parents: The Post-relationship Breakdown Family Unit of Taxation

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Matter Commented On: The Liberal Government's [Fall Economic Update](#), Indexing Canada Child Benefit Payments to Inflation

In its fall economic update last Tuesday, the Liberals announced that beginning in July 2018, Canada Child Benefit (CCB) payments will be increased amidst a smaller-than-expected deficit (of \$18.4 billion this year, down from the spring projection of \$25.5 billion), and a generally favourable economic outlook. This increase of \$5.6 billion over five years is significant because it addresses what was the primary criticism of the CCB when it first came into place – that the benefit amounts were not indexed to inflation. The Liberals previously committed to indexing the amount to inflation if they were re-elected in 2019, and this upward adjustment represents a realization of that promise.

Prior to its election in October 2015, the Liberal Government campaigned on a promise to consolidate the previous government's Universal Child Care Benefit, the Canada Child Tax Benefit, and the national Child Benefit Supplement into one non-taxable benefit. On December 3 2015, [Bill C-15](#) was introduced to amend certain budgetary provisions with this goal in mind. The bill came into force on July 1, 2016, and the first payments of the CCB to families began on July 20, 2016.

While the increase in spending means that low and middle-income families with children will see greater payments, it does little to increase the equality or efficiency of the program. There are a number of things worthy of discussion when it comes to the CCB – from the presumption of paying benefits to the female parent creating a disincentive for mothers to enter the labour force, to high numbers of indigenous families not applying for those benefits – but I will focus this post on the issues that face separated parents seeking to claim the benefit. My biggest criticism of the CCB is of the disparity in benefit amounts that can exist when parents of a child separate. In this post I will explain how the CCB works, discuss that criticism and others, and illustrate why the increase in payments announced last week exacerbates the problem.

The Taxation of Post-relationship Breakdown Family Units

When CCB payments began in July 2016, I was [researching Charter challenges](#) to the *Income Tax Act*, [RSC 1985, c 1 \(5th Supp\)](#) (*ITA*) with Jonnette Watson Hamilton, Jennifer Koshan and Saul Templeton – specifically those based on equality rights under section 15 of the *Charter*. We found that of the 134 challenges examined, 22% involved taxation not of the individual (Canada's expressed unit of taxation), but of separated couples (post-relationship breakdown family units). All of those challenges were brought by separated parents, and some were brought

against [section 122.6 of the ITA](#) – the section of the *Act* containing provisions for child benefits. Examining Canada’s child benefit system closely has revealed a number of its shortcomings, and I am not the first to comment on these.

There are some relevant differences between the CCB and the provisions it replaced that affect how divorced and separated couples are taxed — specifically couples who share custody of their children. These differences are that the CCB is “income-tested” where the UCCB was not, and the CCB is non-taxable where the UCCB was a taxable benefit.

Historically, the UCCB was paid to parents with minor children irrespective of their income. However, eligibility for the new CCB is contingent entirely on the income of the parents, as long as they satisfy the criteria in section 122.6 of the *ITA* and are “eligible individuals”. Parents may currently receive up to \$6,400 annually (\$533 per month) for each eligible child under the age of 6, and \$5,400 annually (\$450 per month) for each eligible child aged 6 to 17. Because the credit is income-tested, amounts paid will reduce when the adjusted family net income exceeds \$30,000. Come July 2018, that annual maximum will rise from \$6,400 to \$6,496, and to \$6,626 by 2019-2020.

How the CCB is Calculated

By way of example, for families with one eligible child, the reduction is 7% of the amount of adjusted family net income (“AFNI”) between \$30,000 and \$65,000, plus 3.2% of the amount over \$65,000. For families with two eligible children, the reduction is 13.5% of the amount of AFNI between \$30,000 and \$65,000, plus 5.7% of the amount of AFNI over \$65,000. The adjusted family net income is calculated by taking the income of both spouses or common-law partners less any child benefits and registered disability savings.

When the spouses live together, the spouse who is primarily responsible for the care and upbringing of the child will receive the CCB payments, and pursuant to the definition of ‘eligible individual’ in section 122.6, must be the one to apply for them. [Section 122.6\(f\)](#) of the *ITA* states that this primary caregiver is presumed to be the female parent. Indeed, in [form RC66](#), the Canada Revenue Agency (CRA) says that it “usually consider[s] the female parent to be the applicant”.

This statutory presumption is the topic of much debate. It is, however, rebuttable if the male parent is primarily responsible and applies, attaching a [signed note from the female parent](#) that states he is primarily responsible for all of the children in the household. [As Frances Woolley notes](#), the feminist case for paying benefits to mothers is that women suffer if they have no independent access to economic resources. The maternalist case for the presumption rests on the idea that money paid to mothers is more likely to be spent in ways that benefit children.

While the presumption is archaic given the changing makeup of families in Canada, I don’t take particular issue with it if the CCB must be paid to families, whether the parents are separated or not. Because [female parents tend to have lower incomes than male parents](#), the presumption has the effect of keeping child benefit amounts higher rather than lower. As I will discuss, though, it would be more advantageous for parents and children if the benefit was paid to individuals,

rather than separated couples, making the question of which parent should receive it a moot point.

In cases of shared custody, the presumption is also rebuttable where both parents meet the definition of “shared-custody parents” pursuant to section 122.6 of the *ITA* and one parent applies for the credit indicating shared custody. When the child of a separated couple lives with each parent in separate residences on a more or less equal basis, a parent may apply to receive a 50% share of the benefits they would be entitled to if they were a single parent. In *Fortin v The Queen*, [2014 TCC 209 \(CanLII\)](#) Justice Lamarre found that a taxpayer who had custody of his children 43% of the time was caring for them on a near equal basis with his wife. As far as the CRA is concerned, shared custody is determined not by any separation agreement, but by taxpayer behaviour.

What Does This Mean for Separated Couples?

While parents are required to notify the CRA if they share custody of a child, splitting of the CCB is discretionary. Depending on how this discretion is exercised, the income-tested nature of the benefit scheme means that the amount of benefits that the parent of a child is eligible to receive is significantly variable.

Where two separated parents share custody of their child/children, this variance is most pronounced the greater the income disparity between the spouses, and the greater the number of children between whom custody is shared. By way of example, consider a separated couple with a three-year-old child. Suppose also that the child’s father earns \$150,000 annually and the child’s mother earns \$30,000 annually. Depending on their custody arrangement and who claims the CCB, three possible scenarios arise for this post-relationship breakdown unit. If the mother has primary custody, she may be eligible to receive the maximum amount for the child of \$6,400 annually — \$533 per month. However, if the father has primary custody, he will receive approximately \$614.88 annually — \$51.24 per month. If the parents share custody and apply to split the benefit, each will receive half of their entitlement — a total for the child of approximately \$3,507. This system of child benefits, due primarily to the CCB’s income-testing, has a detrimental effect on the post-relationship breakdown family, and especially so for the lower income parent.

Another problem is that parents who are not intimately familiar with these recently implemented tax provisions may not even be aware of their ability to split the CCB payments, the effect that custody and access has on one’s entitlement to these benefits, or the effect this decision may have on the amount of child benefits a parent can receive.

Bearing these effects in mind, the announced increase in CCB payments from a maximum of \$6,400 to a maximum of \$6,626 will further expand the spectrum of benefit amounts that can be received by separated parents – depending upon whether the parents share custody, and if they do, whether or not the CCB is split between them.

While increasing these benefit amounts theoretically provides more assistance for lower and middle-income parents with children, the move does nothing to remedy the additional

opportunities for a sufficiently informed (and presumably wealthy) spouse to use the CCB as a bargaining chip in family mediation. The reason for this, again, is due to the fact that splitting the CCB is discretionary. Moving toward automatic splitting would preclude this possibility, but this solution would reduce net benefits if the lower income spouse were otherwise able to claim the CCB in its entirety. Recall that the lower a parent's income, the higher the amount of benefits that parent receives.

The elective and even splitting of the CCB in cases of shared custody also represents another instance of the *ITA*'s recognition and occasional taxation of the post-separation family unit, contrasted with its use of the individual as its unit of taxation when custody is not shared. This equivocation sometimes requires former spouses to engage in intricate tax planning discussions if they both seek the best interests of their children.

A Spouse in the House

[Kathleen Lahey has also noted](#) that Canada has moved more than any other jurisdiction away from universal, individually-based benefits like the Canada Child Tax Benefit, and in the direction of joint income tests to limit benefits. This is apparent by the [ITA's requirement](#) that a single parent notify the Canada Revenue Agency if he or she remarries or becomes a common-law spouse to another person. Because a partnering like this will more than likely increase a spouse's adjusted family net income for the purposes of claiming the CCB, the Canada Revenue Agency must be informed so it may limit the delivery of these benefits accordingly. The taxation of post-divorce families that I am critical of extends, for purposes of delivering child benefits, past the initial post-separation unit made up of two spouses and their children to taxation of each partner's new post-separation family unit, should such pairings occur. This is problematic because new spouses commonly have no legal obligation toward the children of their partner's prior relationship, yet their income is used to calculate the benefits to be paid in respect of those children. If this new unit separates and a taxpayer's adjusted net family income drops once again, the taxpayer can notify the CRA of their changed marital status to receive benefits that are increased to reflect it.

If all of this sounds confusing, that is because it is. Opposition finance critic Lisa Raitt raised issues like these in Question Period as long ago as May 4th, 2016 – even before Bill C-15 came into force. Raitt has consistently been critical of the benefit system's silence with respect to how it affects separated parents, noting that [1.2 million separated or divorced Canadians have children 18 years or younger](#).

Despite the breadth of all of these effects, separated parents are unlikely to make decisions based on tax implications alone, especially when faced with the real-life implications of when and how often they will see their children. Indeed, one tax policy aspect through which the income tax system is evaluated – neutrality – holds that the tax system should not affect people's choices (see, for example [Kim Brooks](#) and the [Canada Tax Foundation](#)). Once these implications for separated parents manifest over time, though, the taxation dust settles and their adverse effects become clear. Indexing CCB payments to inflation may help achieve the goal of lifting children and families out of poverty, but significant work still needs to be done to ensure that separated parents who share custody of their children are not left behind in that pursuit.

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