

CTB Advocacy for Non-Poverty Law Advocates

Andrea Bryson

Case Manager

intake@womenslegalcentre.ca



DISCLAIMER

Nothing we say in this presentation should be construed as legal advice. This is simply for information purposes only. Please consult with a lawyer if you need legal advice.

NOT LEGAL ADVICE



Commissioner of Oaths

- It is easy.
- It takes a total of 2 hours.
- It is an open book test.
- It is a neat thing for playing 2 truths and a lie.
- It costs \$50 for 3 years.
- It saves your clients so much time and hassle.
- You will use it.
- <https://www2.gov.bc.ca/gov/content/justice/for-legal-professionals/commissioners-for-taking-affidavits>



Context – CRA Audits & Shared Custody

THE BLOG

The CRA Might Ask You to Prove Custody of Your Kids

Single parents with custody receive some substantial tax savings and the Canada Revenue Agency will sometimes ask for proof of custody. Even though your children obviously live with you, you need to prove it to the CRA if they ask. They may want a third-party confirmation so be prepared if they come asking.

03/19/2015 03:17 EDT | Updated 05/19/2015 05:59 EDT

CANADA

CRA asks widow for letter from "someone in authority" to prove she's raising her daughter



By **Laurie Monsebraaten** Social Justice Reporter
▲ Mon., Oct. 24, 2016 | ⌚ 5 min. read

🕒 Article was updated Mar. 01, 2020

Politics

CRA apologizes to single moms fighting for child benefits



Tax agency moves to end battles for mothers profiled by CBC News

Karina Roman - CBC News - Posted: Dec 20, 2017 5:00 AM ET | Last Updated: December 20, 2017

CBC, Hamilton Spector & Huffington Post

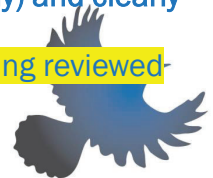
CRA letter

- The letter from CRA is either an audit or is because another parent has applied for CTB
- CRA is very clear that they are the only people who can assess eligibility and the language on the website used to be clear about that.
 - Parents cannot negotiate entitlement of CTB and related benefits.
- CRA looks for who is primarily responsible and is in process of formalizing shared parenting to be 40% of the time.



“Supporting Documents”

- Proof of birth for the child – birth certificate, citizenship, passport, attending practitioner, etc
- Letter from the nursery or school authority **showing the contact information on file for the child**
- a letter from your family doctor or dentist confirming the child is under their care and **who the child lives with**
- a copy of the child's report card, **showing the contact information on file for the child**
- a copy of the child's school registration or enrolment document, or information or emergency contact sheet, **signed and certified by the school to be a true copy**
- if your child is being home-schooled, **a letter from the school board or appropriate educational authority confirming that you have a home school arrangement**
- a registration form or a receipt from an activity or club the child was enrolled in
- **a complete and signed court order, decree, or separation agreement; the document must explain the type of custody arrangement you have (for example, shared custody) and clearly show the living arrangements for the child**
- **any other document showing that the child lived with you during the period being reviewed-**



Statutory declaration

- Who were the children with during the dates in question?

From January 1 2010 to December 31 2019 my child resided with me on the following schedule (insert table with estimated dates)

- What supporting documents you can access? what you can't access and why?

I cannot access any of the supporting documents as it is summer vacation and my school is not open, and I use a walk-in clinic instead of a family doctor. My dentist did not have that information on file and were unable to provide that and my children's birth certificates list both parents. We have no court order.

- What other documents can you access?

I have attached a letter from my landlord confirming that I am renting a 3 bedroom home and that he has seen my children regularly, I am also attaching my proof of income assistance for a family 4 with all of my dependents listed.



I Jane Doe, mother, of [address] affirm that:

I am writing this to support my proof of eligibility for Child Tax Benefit and related benefits for the [period in question].

I am the primary caregiver of [child] born on [date], and have been the caregiver for the [period in question] except for January 31st to March 15th 2020 when [other parent] provided care while I was hospitalized.

I am unable to access any of the supporting documents as outlined as the writer is not able to verify the information requested or we do not have an existing professional relationship.

I have attached as exhibit A, confirmation of my income assistance benefits for the time in question confirming my family size of 2.

I have attached as exhibit B, a letter from my Pastor verifying his knowledge that I am the primary caregiver of [child].

I have attached as exhibit C, a letter from the President of my housing cooperative confirming that my child is regularly at my home.

It is my understanding that this audit is caused by [other parent] applying for CRA benefits, please see the attached text message as exhibit D with him threatening to take the benefits away from me, I understand this is considered financial abuse.



Create a package for the MP

Create a cover letter for the MP spelling everything out.

- Have the letter from CRA
- Explain all attempts to retrieve the requested documents
- Explain why you cannot get something from the other parent
- Explain all the documents that you thought you could get that may prove and what you have attached anything additional that could be collected
- Request that they advocate for the client directly with CRA
- Let them know you are available to help
- Be generous with gratitude



Thank you!

Any questions?

Andrea Bryson
Case Manager

intake@womenslegalcentre.ca



CANADA CHILD BENEFIT (CHILD TAX) REVIEW

Kim Donaldson
Poverty Law Advocate
Archway Community Services



CASE #1 (Background)

- CRA reviewing file to prove Children lived with Mother (2010-2019)
- Single Mother: 3 children, 3 fathers
- Client had been transient and struggled with addiction
- Prior to coming to office client had been reviewed and reassessed 10 times by CRA since 2003.
- Client had one of her children with her entire time of review but not the other two children



Case #2 (Background)

- CRA reviewing file for marital status and whom children lived with for time under review (2016-present)
- Single mother: 3 children, 2 fathers
- Client had lived in 2 different provinces for time under review, had fled the other province due to domestic violence.
- Prior to coming to office, MP's office had assisted client and was only able to resolve part of review. (2 older children from 2016-June 2018)
- Mother had all 3 children entire time under review, and was single the entire time.

Canada Revenue Agency / Agence du revenu du Canada
Winnipeg Tax Centre / Winnipeg MB RSC 3M2
March 18, 2020
[Redacted]
[Redacted]

Dear Madam:

Re: Child and family benefits

We regularly review Canada child benefit (CCB), the Goods and services tax/harmonized sales tax (GST/HST) credit, as well as related provincial or territorial programs. As a result, we selected your account to confirm your marital status.

We calculate the amount of the CCB using the recipient's net income. If you have a spouse or common-law partner, we use the combined total of both incomes in our calculation.

For income tax purposes you are considered to be living in a common-law relationship on the earlier of these two dates:

- the date your partner became the natural or the adoptive parent of your child, no matter how long you have been living together; or
- 12 months after you and your partner started living together.

Please fill out the attached questionnaire and return it to us by May 4, 2020.

If we do not receive a reply to this letter by the above date, we will change your marital status to common-law or married. This change could reduce CCB payments and you may have to repay amounts you received.

You can send us your documents:

- online through My Account;
- by fax to the number provided in this letter;
- by mail to the address provided in this letter.

For more information on how to send documents online, go to

.../2

Benefit Validation Questionnaire

Review period: October 2015 to present

Our records show that you reported your marital status as single and that you and John Doe lived together at the same address during the review period.

We are also sending a letter and questionnaire to John Doe.

Please tell us the following information:

Information about your child (if applicable)

Child's name: Patricia Doe

What is Patricia Doe's relationship to you?

Natural or Adopted child _____

Other (explain) _____

What is Patricia Doe's relationship to John Doe?

Natural or Adopted child _____

Other (explain) _____

Information about your marital status

Please tell us your marital status:

Common-law____ Married____ Widowed____

Divorced____ Separated____ Single____



For income tax purposes you are considered to be living in a common-law relationship on the earlier of these two dates:

- The date your partner became the natural or the adoptive parent of your child, no matter how long you have been living together: or
- 12 months after you and your partner started living together.

Therefore, if you and John Doe are living together and Patricia Doe is your natural or adoptive child, you are considered to be common-law.

Enter the date your current marital status began:

_____ (yyyy/mm/dd)

If your status is common-law, enter the date you began living together:

_____ (yyyy/mm/dd)

If John Doe is the natural or adoptive parent of Patricia Doe and you stated that your marital status was other than married or common-law, please explain why:

Information about you:

Complete this section if the person named above did not live with you during the review period.

Tell us your address during the review period.

To confirm your home addresses for the entire period, we need a copy of the documents listed in the Appendix A.

Please send us documents for Patricia Doe supporting that they were living with you and that you were the primary caregiver for the entire review period.

See Appendix C for a list of acceptable documents.



APPENDIX A

Documents suggested to confirm your home address.

Send us copies of at least three of the following documents that includes your full name, the address, and the date, to confirm your home address for each year we are reviewing:

- your property tax bill(s)
- your rental agreement or letter from the landlord, written on the company or individual's letterhead, that includes all the following details:
 - the date(s) the rent was paid
 - the address of the property you rented
 - the name of the person or business who received the payment
 - the signature of the landlord
- mortgage papers
- insurance policies
- household bills (gas, electricity, cable, telephone)
- driver's licence and vehicle registration (front and back)
- registered retirement savings or employment pension plans
- any other documents or information showing your name, address and the date



Appendix A (Other Options)

- Shelter Information Forms from the Ministry of Social Development and Poverty Reduction
- Letters/Statutory Declaration from Roommates or others living in home stating you live at that address
- I.D. that states address
- Bank Statements/Credit Card bill that have address on them
- Letter from neighbors stating you live at the address



APPENDIX C

For each child listed on your questionnaire, send us documents from two of the following sources to confirm that you live with the child and you are the person mainly responsible for the care and upbringing of the child for the entire review period.

A copy of the child's school registration, enrolment document, or emergency contact sheet that includes the name and address of the parent or guardian as well as the child's name and address. The school must sign the copy and certify that it is a true copy.

A letter from the daycare or school authority that includes the following information from their files:

- name and home address of the parent or guardian of the child
- attendance records for the child
- name and contact number of the person writing the letter

If your child is being home schooled, send us a letter from the school board or appropriate educational authority, confirming that you have a home school arrangement. The letter must be on letterhead and include the information shown above.

A copy of the bus transportation letter indicating the address of the child, the bus number and street where the child will be picked up in the morning and left in the afternoon, if the child has to take the bus to go to school.

A letter from your family doctor or dentist stating the home address of the parent or guardian based on the information they have on file for the child for the review period. The letter must be on letterhead and signed by the doctor or dentist.

A letter from a community support organization or a nursing station that states your home address and that you live with the child and are the person mainly responsible for the care and upbringing of the child for the entire review period. The letter must be on letterhead and be signed by a person in authority.

For each child who was not of school age and was not in a daycare during any part of the review period, we need a letter from your family doctor, medical clinic or nursing station confirming the following information:

- name and home address of the guardian of the child
- dates that they saw the child during this period

Appendix C (Other Options)

- Letter from MCFD or Aboriginal Family Services Organization if there have been any involvement with the children
- Letter from other parent/family member
- Letter from counsellor/therapist
- Letter from RCMP
- Letter from Probation Officer

Case #1 (Documents)

- Questionnaire
- Shelter information forms for time under review from MSDPR
- Letter from supervisor from MSDPR with a timeline of children being on and off IA file.
- Letter from Social Worker
- Letter from one of the fathers of her children
- Letter from oldest child



Case #2 (Documents)

- Copies of ID and vehicle registration/insurance of younger child's father
- Copy of school registration and attendance records from school of oldest 2 children
- Letter from Landlord
- Copy of clients ID
- Proof from MSDPR that all 3 children are on her IA file
- Copy of household bills, showing different addresses where they lived



Case #1 (Results)

- After submitting documents to CRA (Questionnaire, support letters, copies of shelter information forms)
- Client was reassessed and back payed more than \$10,000 owed to her for debts they had wrongfully collected on and child tax that the client was always entitled to.

Case #2 (Results)

- File still active and have no results at this time

CANADA CHILD BENEFIT/GST REVIEW & NOTICE OF OBJECTION

Amy Taylor

Poverty Law Advocate

The Advocacy Centre (Nelson CARES Society)



The Advocacy Centre

Case Background

- Single mother, two children.
- Separated from spouse in August 2016. Went onto assistance/PWD.
- Filed income taxes as separated and collected full CCB as children with her more than 60% of the time.
- Family home in ex's name only. At time of separation, he moved off the property; client paid rent and stayed in house with children.



The Advocacy Centre

Case Background (cont.)

- May 2017 – Ex injured. Moved back into home due to financial difficulties. Lived separate and apart under the same roof. She remained the primary caregiver for children.
- October 2018 – Ex moved into cabin on the property.
- Winter 2018/19 – MSDPR carried out file review and found not in marriage like relationship.
- March 2019 – CRA sent letter. Reviewing CCB/GST entitlement from August 2016 to present. Issues – Marital status; custody.



The Advocacy Centre

Benefit Validation Questionnaire

Review period: August 2016 to present

According to our records you reported your marital status as separated during the period above and that [REDACTED] may have lived with you during this period.

We are also sending a letter and questionnaire to [REDACTED].

To update our records, we need the following information:

Your name (print) [REDACTED]

Your social insurance number (SIN) [REDACTED]

Your current home address [REDACTED]

[REDACTED]

Your mailing address if different than above address

[REDACTED]

Please tell us your marital status during the entire review period: single, separated, widowed, divorced, married, or common-law, and the dates of all changes. Include all periods of reconciliation, if applicable. If you are or were common-law, tell us the date that you began living together.

Marital status Separated from August 2016 to present

Marital status _____ from _____ to _____

Marital status _____ from _____ to _____

If you need more space use a separate sheet of paper.

If you are now married or common law, please give us your spouse's or common law partner's social insurance number (SIN) and print their first and last name:

SIN: _____

Name: _____

Please see Appendix D for marital status definitions or, go to



The Advocacy Centre

canada.ca/cra-marital-status.

To help us determine your correct marital status or your home address for the entire period of separation, we need a copy of three documents listed in the attached Appendix A.

Please see Appendix B for a definition of shared custody to answer the following question.

Do you share custody of a child where the child lives part of the time with you and the rest of the time with another individual in a separate residence on a more or less equal basis (at least 40 % of the time)?

Yes ☐ No ☒ If Yes, since when?

First and last name of the child	Date of birth (yyyy-mm-dd)	% per court order
[REDACTED]	[REDACTED]	60%
[REDACTED]	[REDACTED]	[REDACTED]

Please make sure that you include your supporting documents to confirm your home address and living arrangements for the review period.

Please note that statements or letters from friends, neighbours or relatives are not enough to confirm your marital status.

For more information about validating your eligibility to the child and family benefits go to canada.ca/cra-benefits-validation.



The Advocacy Centre

APPENDIX B

What is shared custody?

You share custody if the child lives with you and another individual in separate residences and both individuals are considered eligible individuals.

These eligible individuals must:

- live in separate locations;
- live with the child on a more or less equal basis (at least 40% with each individual); and
- be primarily responsible for the child's care and upbringing when living with the child.

The child may regularly alternate between residences:

- four days with one person and three days with the other;
- one week with one person and the following week with the other; or
- any other regular alternating cycle.

When two individuals share custody of a child on a more or less equal basis, each individual may be entitled to receive 50% of the amount they would have received if the child resided with them on a full time basis.

Please note that although a court order might state which individual should receive the Canada child benefit, the Canada Revenue Agency is bound by the Income Tax Act, which is the legal authority used to determine the eligible individual.

For more information on shared custody, go to canada.ca/child-family-benefits.



The Advocacy Centre

APPENDIX D

We recognize these marital statuses: single, married, common-law, divorced, separated, and widowed.

Consider these factors when determining your marital status.

Spouse:

This applies only to a person to whom you are legally married.

Common-law partner:

You have a common law partner if you are living in a marriage like relationship with someone who is not your spouse. Your common law relationship starts when one of the following applies:

- you have been living together for at least 12 continuous months. This could include any period you were separated for less than 90 days because of a breakdown in the relationship;
- he or she is the parent of your child by birth or adoption.

Involuntary separation:

If you and your spouse are living apart due to health, work, school, or incarceration reasons, this separation is not a breakdown of the relationship and we still consider you to be married or common-law.

Separation:

For separation to occur, you must be living separate and apart because of a breakdown in your relationship for a period of at least 90 days. Separation of less than 90 days is not considered a legal separation.

Once you have been separated for 90 days (because of a breakdown of your relationship), the effective date of your separated status is the day you started living separate and apart.



The Advocacy Centre

APPENDIX E

Documents showing that you and your spouse or common-law partner lived at different home addresses during the review period.

To help us determine your marital status, we need documents showing that you lived at a different home address than your spouse or common-law partner. The documents should show that there has been a change to your situation. For example you can provide a rental agreement showing both your name and your spouse's or common-law partner's name, and one dated after the separation, in your name only.

Please give us at least three of the following documents:

- property tax bills
- mortgage papers
- rental agreement or letter from the landlord, written on the company or individual's letterhead, that includes all the following details:
 - the dates the rent was paid
 - the address of the property you rented
 - the name of the person or business who received the payment
 - the signature of the landlord
- insurance policies
- household bills (gas, electricity, cable, or telephone)
- driver's licence and vehicle registration (front and back)
- registered retirement savings or employment pension plans
- individual car insurance showing the effective date of the change, from family coverage to single
- individual medical insurance or any other type of insurance showing the effective date of the change or the date your spouse's name was removed from the file
- credit card statements
- any other documents or information that shows a change in your situation.

If you are unable to provide any of the above or you cannot provide documents for the entire review period, you may give us two third-party letters instead.

The letters must be completed by a person in a position of authority who can attest that you and the other person lived at different home addresses during the review period.

The following are examples of third parties who can prepare this letter: your landlord, your employer, a social worker, a school authority, a band council, an insurance company, a clergy, a



The Advocacy Centre

medical doctor, a lawyer, and a notary (in the province of Quebec).

For your convenience we have attached two third-party letters that you can use.



The Advocacy Centre

THIRD PARTY CONFIRMATION LETTER

Third party information:

Name: _____

Position of authority: _____

Address: _____

Telephone number : (____) _____

How long have you known _____

_____, confirm that I
have personal knowledge that _____ were
living at different addresses during the period, _____
to _____, because of a breakdown in their relationship.

I declare that the information given in this letter is correct.

Third party signature: _____

Date: _____

Please include in the space below your business's or
organisation's seal, stamp, or provide a business card.



The Advocacy Centre

NOTE: The Canada Revenue Agency may contact the individual who
prepared this letter to verify the information given.

Definition - “cohabiting spouse or common law partner”

Section 122.6 of the Income Tax Act:

*“**cohabiting spouse or common-law partner**” of an individual at any time means the person who at that time is the individual’s spouse or common-law partner **and who is not at that time living separate and apart from the individual** and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time”*



The Advocacy Centre

Information provided at review

- Letter from client explaining circumstances
- Rent receipts
- Application for income assistance
- MSDPR shelter information form
- 2017 letters from client and ex regarding living arrangements
- Letters from friends, family, MCFD social worker confirming living arrangements/separation



The Advocacy Centre

Information provided at review (cont.)

- Results of recent MSDPR file review regarding marital status
- Court order re: parenting time
- Court summary sheet detailing issues in family court
- Letter from advocate highlighting case law (included decisions):
 - *Gartner v. Canada 2000 Tax Court Judgement No 261*
 - *Rangwala v. Canada 2000 Tax Court Judgement No. 624*



The Advocacy Centre

Dear Madam:

Re: Child and family benefits

We finished reviewing your marital status. We determined that you have a spouse or common-law partner for income tax purposes. We changed your marital status to married from May 1, 2017 to October 31, 2018. We changed your current marital status to separated effective November 1, 2018.

For income tax purposes, we may consider you to have a spouse or common law partner for a period, even though you might not consider yourself in a marriage like relationship, if:

- you said that you and your spouse or common-law partner continued to live together or started to live together again at the same address. When this happens and a couple continues to share parental or financial responsibilities or both, we will not consider them to have separated for the Canada child benefit and the goods and services tax/harmonized sales tax (GST/HST) credit, even though they may consider themselves roommates.

If required, we will send you notices explaining any changes.

If you have any questions, go to canada.ca/cra-benefits, call 1-800-387-1193 or write to us using the address or fax number indicated on this letter.

Yours sincerely,




The Advocacy Centre

Notice of Objection

- 90 days from date of notice of (re)assessment or (re)determination to file Notice of Objection
- Unclear about process for requesting extension
- Can do online, through representative, by mail, fax or in person



The Advocacy Centre

 **Canada Revenue Agency** / **Agence du revenu du Canada** Protected B when completed

Notice of Objection - Income Tax Act

Use this form to file an objection to a notice of assessment or a notice of determination (includes re-assessment and re-determination) issued under the Income Tax Act. You can also file an objection electronically by using the "Register my formal dispute" option in My Account, My Business Account or Represent a Client. For more information, go to canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/income-tax.html

To: Chief of Appeals		Name and address of any authorized representative (if applicable)	
From		Printed name	
Printed name		Address	
Address		Telephone number	
Telephone number		Social Insurance number or Business number	

Please provide the following information or enclose a copy of your notice of assessment or notice of determination.

Date of notice	Number of the notice	Tax year (or T1s)	Fiscal year-end (for T2s)	Social Insurance number
Year Month Day	(If printed on the notice)	Year Month Day	Year Month Day	or Business number

Please state the issues, reasons and all relevant facts for your objection (if you need more space, attach a separate sheet).
Ensure to include a copy of all relevant documents to support your objection as this will speed-up the process.

Certification (if a corporation or trust is filing an objection, an authorized person's signature)

Printed name	Signature	Year	Month	Day
--------------	-----------	------	-------	-----

Privacy note

Personal information is collected under the Income Tax Act and is used to resolve income tax and charity objections and appeals, determine eligibility for the GST credit, Canada child benefits, Working Income Tax benefit and other federal and provincial credits. It may be shared or verified with other federal, provincial/territorial government institutions to the extent authorized by law. Failure to provide this information may result in the refusal of your application. Personal information is described in personal information bank CRA PPU 172. Under the Privacy Act, individuals have a right of protection, access to and correction or notation of their personal information and to file a complaint with the Privacy Commission of Canada regarding our handling of their information.



The Advocacy Centre

Notice of Objection

- Submission from law student summarizing relationship between client and ex and citing case law – both Family and Tax Court
- Relevant considerations:
 - Physical separation
 - Separation of household duties/meals
 - Absence of sexual relations
 - No social activities together/community views as separated
 - Separate finances
 - Parenting as if separated
- Courts have found that must consider all – no one factor determinative



The Advocacy Centre

Notice of Objection

- Statement from client
- Additional letters from friends, family, MCFD social worker
- Outcome – successful. Client reimbursed for withheld CCB/GST.



The Advocacy Centre

Staying in touch

- Alison Ward, lawyer, CLAS: casl@clasbc.net (or award@clasbc.net)
- Andrea Bryson, case manager, Rise Women's Legal Centre:
abryson@womenslegalcentre.ca
- Kim Donaldson, legal advocate, Archway Community Services:
kim.donaldson@archway.ca
- Amy Taylor, advocate, Advocacy Centre:
advocacycentre@nelsoncares.ca

Canada Child Benefits Workshop

October 29, 2020

Alison Ward, lawyer, Community Advocate Support Line (“CASL”), CLAS

Andrea Bryson, case manager, Rise Women’s Legal Centre

Kim Donaldson, legal advocate, Archway Community Services

Amy Taylor, advocate, Advocacy Centre, Nelson Cares Society

Canada Child Benefits: Eligibility Criteria and Legal Issues

October 29, 2020

Alison Ward, lawyer, Community Legal Assistance Society

Canada Child Benefits

- Are paid by the federal government on the 20th of each month to eligible parents/ caregivers under the *Income Tax Act*
- Canada Child Benefits are administered by the Canada Revenue Agency (“CRA”)
- Were introduced in 2016; replaced a prior scheme called the Canada Child Tax Benefit

Canada Child Benefit Audits and Reviews

- CRA can audit and review someone’s eligibility for the Canada Child Benefit at any time
- Audits and reviews are quite common
 - The CRA sends about 350,000 Canadians a letter letting them know their eligibility for the CCB is being reviewed
 - BC has just over 13% of the national population; we can assume about 46 000 CRA review letters are sent to parents/caregivers in BC each year
- Frequent complaints that CRA’s reviews are onerous and administratively unfair
- December 2019 the Office of the Taxpayer’s Ombudsman launched a review of CRA’s services in administering Canada Child Benefits.
 - Report was expected March 31, 2020 but is still pending.

Amount of Canada Child Benefits

- Amount is based on family net income, number of children, and ages of children
- Payments for children under 6 include the Universal Childcare Benefit of \$100 per month
- The maximum Canada child benefit is now \$6,765 per year for children under 6, and \$5,708 per year for children aged 6 to 17
- For July 2019 to June 2020 CCB payments, a parent/caregiver with an adjusted net family income under \$31,711 qualified for the maximum CCB rates

Concept: Base year and benefit year for CCB

- The CCB rate someone is entitled to now (i.e. in this 'benefit year') is determined by the person's "adjusted family net income" in the past (i.e. the "base year")
- A CCB "benefit year" is from July 1st to June 30th
- The "base year" is the calendar year before that.

Base Year (Tax return for calendar year)	Benefit year (CCB payments)
2016	July 2017 to June 2018
2017	July 2018 to June 2019
2018	July 2019 to June 2020

- **To make sure eligibility for CCB is not interrupted, it is very important to file taxes on time**
- May 2020 –Covid-19: \$300 per child extra CCB payment, based on 2018 taxes filed.

Eligibility criteria for the Canada Child Benefit

- To qualify for the Canada Child Benefit, you must:
 - live with a child under 18 years old;
 - be **“primarily responsible” for the care and upbringing of the child;**
 - be a resident of Canada (for tax purposes); and
 - You (**or** your spouse or common law partner that lives with you) must be:
 - a Canadian citizen;
 - a permanent resident;
 - a protected person under the *Immigration and Refugee Protection Act* this category includes people who have been accepted as Convention Refugees;) or
 - a temporary resident who has lived in Canada for the previous 18 months, and who has a valid temporary residence permit for the 19th month; OR
 - have status under the *Indian Act*.

NOTE: Only CRA can determine who is eligible for the Canada Child Benefit. Some parents may enter into family law agreements or Orders stipulating one parent is to receive the CCB. **These orders are not binding on CRA.**

Who is **not** eligible for Canada Child Benefits

- the federal *Children’s Special Allowances Act* sets rules about when some primary caregivers are not eligible for CCB benefits
- rule is that where a child is maintained by a federal or provincial government or government agency, the Canada Child Benefit is paid to that agency, not to the person primarily caring for the child
 - E.g. foster parents and group homes
 - Family or friends with custody of a child transferred under section 54.01 of the Child, Family and Community Services Act (“CFCSA”)

There are other situations where a caregiver remains eligible for Canada Child Benefits:

- E.g. Family and friends who receive benefits through MCFD’s Extended Family Program;
- Informal arrangements where a child goes to live with an auntie or other relative.

Where do we find the legal eligibility criteria?

- The legal eligibility criteria for the Canada Child Benefit are found in:
 - sections 122.6 to 122.63 of the federal *Income Tax Act* ("the Act");
 - section 248 (definition of "common law partner") of the Act;
 - Section 242 (definition of "child") of the Act; and
 - sections 6300, 6301, 6302 and 6400 of the federal *Income Tax Regulations*.

The CCB legislation is lengthy and hard to read. For example, under the Act:

- a child is referred to as a "qualified dependent"
- a person who can get Canada Child Benefits is called an "eligible individual" and
- Canada Child Benefits are described as a refund of an overpayment of income tax (s 122.61 of the Act), rather than as a "benefit."

"Primarily responsible for a child's care and upbringing" - meaning

Section 6302 of the *Income Tax Regulations* sets out eight factors that CRA uses to assess who is primarily responsible for a child's care and upbringing. It includes, e.g.

- supervision of the child's daily activities and needs;
 - making sure the child's medical, recreational, educational and hygienic needs are met;
 - providing guidance and companionship;
 - tending to the child when ill;
 - the existence of a court order in the jurisdiction where the child lives is also one of the eight factors
- The primarily responsible person can be a parent, aunt, family friend, grandparent or guardian, etc.
 - Section 252 of the *Income Tax Act* essentially includes a person the child lives with, and on whom the child relies wholly for their support, as a *de facto* parent for CCB purposes.

Financial eligibility for the CCB

- Eligibility for the CCB is calculated based on “family net income”
- “family net income” means your income plus the income of any “*cohabitating spouse or common-law partner*”
- the lower a person’s “family net income,” the greater the amount of CCB they are eligible for;
- Many CCB dispute involve CRA claiming someone is living with a spouse or common-law partner, where the person says they are:
 - just roommates;
 - living separate and apart under the same roof, or
 - not living together at all
- What CRA considers a “spouse or common law partner” is an important question in many CCB reviews and appeals

Cohabitating spouse or common-law partner

- Section 122.6 of the Act provides that “in this sub-division”:
cohabiting spouse or common-law partner of an individual at any time means the person who at that time is the individual’s spouse or common-law partner and who is not at that time living separate and apart from the individual and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time; (*époux ou conjoint de fait visé*)
- Section 248 of the *Income Tax Act* defines “**common law partner**” as someone who the person lives with, and has lived with for a continuous period of at least one year, in a conjugal relationship.
- Under both definitions, two people can be considered separated while living separate and apart under the same roof (this is a family law concept);
- The Income Tax legislation does not define “conjugal relationship.” Caselaw guides us here. Samples in Sched.

Special rules for shared custody situations

- Two people can share the Canada Child Benefit; they must both apply
- Sharing happens if a child lives equally, or near equally, with two separate people who are each primarily responsible for the child's care and upbringing while the child is in their care
- CRA interprets "equally, or near equally" to be 40 to 60% of the time
- each parent will get exactly 50% of what they would have gotten if they had full custody of the child, calculated based on their respective adjusted family net income

Temporary sharing of Canada Child Benefits

- If not in a shared custody situation
- Temporary sharing happens when two people share time with a child more or less equally for a temporary period of time e.g. summer holidays
- To be eligible for CCB, the other (non-primary) parent must have the child for a temporary period of at least a full month
 - E.g. a parent who has their child for a month in the summer may be eligible for CCB for that month (e.g. June 30 to July 31st)

Tips to avoid CCB problems

- Ensure clients with children file their tax returns on time, even if they have no income
- Advise CRA right away of any changes in:
 - marital status (e.g. separation, marriage, new common law partner)
 - if a child is born or adopted or otherwise added to your family
 - If a child moves out or into your house (in or out of Ministry care, going to live with the other parent or friend or family member)
 - If a shared custody situation starts or ends
- If a parent receives CCB for any period when the child does not live with them (e.g. child lives with an aunt for 6 months) they may well face a CCB overpayment
- Applications made for a period over 11 months in the past are considered late. CRA will require additional documents.

Canada Child Benefits Reassessments and Objections

- A person can dispute decisions about Canada Child Benefits including
 - whether they are eligible for the CCB
 - *(e.g. CRA thinks a child does not live with them, or that they are not primarily responsible for the child, or finds they are only eligible for shared custody CCB)*
 - the rate of CCB benefits they are eligible for
 - *(e.g. CRA thinks an ex still lives with them, so includes the ex's income in adjusted "family net income". The person gets a lower CCB rate)*
 - whether they owe an alleged overpayment of Canada Child Benefits
 - *(e.g. the person received CCB as a single parent in the past, but now CRA thinks they had a spouse or common law partner living with them at the time, or that their kids were not living with them at the time)*

Reassessments and Objections: calculating deadlines

- Appeal deadlines run from the date a Notice of Assessment or Reassessment is issued (e.g. Notice of Assessment includes ‘adjusted family net income’ and determines a client’s marital status)
- For some CCB issues (e.g. if found ineligible for a period) this may not be reflected in a Notice of Assessment. Here, the date of CRA’s decision about CCB eligibility starts appeal deadlines running.

CCB reconsideration and appeal: Step 1: CRA internal review

1. Contact the person’s tax centre and ask CRA to *reassess* eligibility
 - Providing CRA with more information and evidence, or providing information in a more structured way, can sometimes be enough to resolve the issue
 - CRA can generally reassess an amount of tax or benefit up to 3 years after the initial Notice of Assessment
 - CRA can reassess an amount of tax at any time within 10 years if
 - The person consents; or
 - CRA has grounds to believe that there has been fraud or misrepresentation

CCB reconsideration and appeal:

Step 2: Notice of Objection

2. File a Notice of Objection with CRA's Appeals Division

- CRA has a sample Notice of Objection form on its website
- Deadline: within 90 days after the date a Notice of Assessment / Reassessment or other CRA decision about CCB was sent
- A Notice of Objection can be filed without including all relevant evidence
 - In your cover letter, include a request to provide more evidence later
 - can provide information in writing, by phone, in person
- No formal hearing
- CRA appeals division either confirms or varies the decision

CCB reconsideration and appeal:

Step 2: Notice of Objection extensions of time

If necessary, can apply for an extension of time to object

The deadline to file a Notice of Objection is 90 days after the date on a Notice of Assessment/ Reassessment (or other decision)

- If this deadline is missed, can apply to CRA's appeals division for an extension of time.
- Test: the person applying must show that:
 - they intended to meet the 90 day deadline;
 - they were unable to act or instruct someone else to meet it during the 90 days;
 - an extension would be just and equitable, and
 - they applied for the extension as soon as circumstances permitted.

CCB reconsideration and appeal:

Step 3: Appeal to the Tax Court of Canada

3. Appeal to the Tax Court of Canada

- Appeal must be filed within 90 days of receiving CRA's decision about a Notice of Objection
- Extensions of that deadline are also possible
- **Get legal help if considering an appeal to the Tax Court of Canada**

Questions?



nelson
CARES
society



The Advocacy Centre

250.352.5777
fax: 250.352.5723

521 vernon st
nelson BC V1L 4E9

www.advocacycentre.org
advocacycentre@nelsoncares.ca

April 23, 2019

Canada Revenue Agency
Winnipeg Tax Centre
66 Stapon Rd.
Winnipeg, MB R3C 3M2

Re: JD – Child and Family Benefits – Reference No. XXXXXX

To Whom it May Concern,

I am working with JD. I understand that CRA is reviewing her Child Canada Benefit (CCB) and has asked for information to determine her marital status from August 2016 to present. The questionnaire she received from CRA also asks for documentation showing that she and MJ lived at separate addresses.

JD has provided a letter explaining her marital status and living arrangements. For part of the review period (May 2017-October 2018), JD and MJ were living separate and apart under the same roof. I would like to highlight some relevant case law where married, co-habiting spouses were considered separated for the purposes of the (then) Canada Child Tax Benefit (CCTB). My understanding is that this case law would also apply to the CCB, as the definition of "cohabiting spouse or common-law partner" in section 122.6 of the *Income Tax Act* has not changed:

*"cohabiting spouse or common-law partner" of an individual at any time means the person who at that time is the individual's spouse or common-law partner **and who is not at that time living separate and apart from the individual** and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time"*

Gartner v Canada 2000 TCJ No 261 (attached)

Two married co-habiting spouses can be considered to be living separate and apart for CCTB purposes, even where they are still living under the same roof.

In this case, the spouses had separated for two years. During this period, the children lived with their mother in the family home and the father moved out. The mother could not afford to buy out the other party. After two years, the father moved back in as he was on title. The evidence showed they lived separate lives, not interacting socially, not sharing meals or chores or funds, etc while under the same roof.

Rangwala v Canada [2000] Tax Court Judgment No. 624 (attached)

Another case in which two married spouses were found to be living separate and apart under the same roof (i.e. while still living together, not to be spouses for CCTB purposes).

The case contains a good discussion of the meaning of "separate and apart" at paragraphs 18, as follows:

In defining the meaning of "separate and apart", Bowman, T.C.J. quoted Holland, J. in Cooper v. Cooper (1973) 10 R.F.L. 184 (Ont. H.C.) at p. 187 as follows:

Certainly spouses living under the same roof may well in fact be living separate and apart from each other. The problem has often been considered in actions brought under s. 4(1)(e)(i) of the Divorce Act and, generally speaking, a finding that the parties were living separate and apart from each other has been made where the following circumstances were present:

- (i) Spouses occupying separate bedrooms.*
- (ii) Absence of sexual relations.*
- (iii) Little, if any, communication between spouses.*
- (iv) Wife performing no domestic services for husband.*
- (v) Eating meals separately.*
- (vi) No social activities together.*

Sincerely,

Amy Taylor
Advocate



nelson
CARES
society



The Advocacy Centre

250.352.5777
fax: 250.352.5723

521 vernon st
nelson BC V1L 4E9

www.advocacycentre.org
advocacycentre@nelsoncares.ca

July 26TH 2019

Chief of Appeals
Western Appeals Intake Centre
Fraser Valley and Northern TSO, 2nd floor
9755 King George Boulevard,
Surrey BC V3T 5E1

RE: JD – SIN # XXX XXX XXX
Notice of Objection

To Whom It May Concern,

I am writing on behalf of JD. Canada Revenue Agency (CRA) reviewed her Child and Family Benefits and Credits. As a result of the review, her marital status for May 1, 2017 to October 31, 2018 was changed from separated to married or common law. As a result, CRA says that JD was overpaid for her Canada Child Tax Benefit (CCTB) and GST credit during this period.

Request for an Extension:

JD is requesting an extension to her Notice of Objection. The rules around requesting an extension do not appear clear. The language on the CRA website appears to suggest that an extension can only be requested once the deadline for filing her Notice of Objection has passed. It is my understanding that JD did not want to risk having her Notice of Objection rejected, and so she is requesting her extension while submitting her paperwork in case the extension is denied.

The language around requesting an extension is also unclear as to what must be included in the request. It appears to require providing the Notice of Objection paperwork with the request. It was unclear whether this required JD to provide all the attached documentation when requesting an extension. In order to be prudent and cautious, JD has submitted all the attached information with her request for an extension to ensure that she is not missing anything.

It is my understanding that the reason that JD is requesting an extension is that she is still waiting to receive a response to her access to information request to the government. I understand that my colleague has worked with JD to submit this access to information request. I understand that JD has requested all the documents related to her file as she would like to know the full case against her as a matter of procedural fairness, before finalizing her response to the government in her Notice of Objection. Attached is a letter confirming JD's access to information request.

Notice of Objection:

JD has requested an extension and submitted a Notice of Objection to this decision if that extension is denied or if the additional paperwork is required with her request for extension.

JD maintains that she and MJ were separated starting in 2016 and have not reconciled since. As a result, JD maintains that she and MJ were separated for the period of May 1, 2017 to October 31, 2018. and to adjust her CCB accordingly.

Attached Statements and Additional Evidence

Attached is a statement from JD and additional evidence in support of her Notice of Objection. I note that these statements are not notarized as it is our understanding that a notarized statement is not necessary for this notice of objection. Given that JD is on income assistance and is the mother of two kids, she did not want to spare the additional expense. It is also our understanding that JD does not require a statutory declaration for this notice of objection. Since JD is on disability income assistance, she did not obtain one for the similar reason that she wanted to avoid the additional out of pocket expense.

Further, I am informed that it was difficult to coordinate the notarization of her evidence as many of her witnesses live in different areas or were on vacation. If notarization of the testimony or a statutory declaration, is required, we ask that CRA inform JD so that she can have the opportunity to do so.

The following statements are provided:

1. A letter from MJ, the individual she is in a separation with, stating that JD and he were only roommates, that they had separate bedrooms and bathrooms and 2 living rooms, and that they took turns using the kitchen.
2. A letter from XXX, someone who knew JD and MJ, stating that her understanding is that JD and MJ were living as roommates
3. A letter from XXX, the Ministry social worker for JD and her two daughters, stating that it is the Ministry's understanding that JD and MJ were living as roommates.
4. A second letter from XXX, the Ministry social worker for JD and her two daughters, reiterating that it is the Ministry's understanding that JD and MJ were living as roommates. It also states that it is the Ministry's understanding that JD was and is the primary caregiver for the two children.
5. An email from XXX, the mother of JD, confirming that it is the understanding of JD's family and the community that JD and MJ were living as roommates and were separated.
6. An email from XXX, who knows both JD and MJ stating that JD chose to separate from MJ, that JD was unhappy in the marriage, and that JD wished to date other people. The letter states that JD and MJ lived in separate rooms while they were in the same house and had relationships with other people. The letter states that the respective families and friends of JD and MJ were aware that the two of them were separated. The letter confirms that JD and MJ made everyone aware that they were roommates and separated.
7. A letter from XXX, who knows both JD and MJ, stating that her understanding is that JD and MJ were living as roommates. The email states that XXX was aware that JD and MJ were living together but in separate rooms living separate lives. The email states that XXX was aware that

- JD and MJ were dating different people. The email also states that it is XXX understanding that JD and MJ had separate finances and did their shopping separately.
8. A letter confirming that JD made an access to information request for her records.

Review of JD Relationship with MJ

The following is my understanding based on conversations with JD and based on the documentation that we reviewed together.

[Point form background, highlighting relevant considerations.]

Caselaw Regarding the Separation of Spouses Living Under the Same Roof

The separation of spouses is often referred to by the courts as living “separate and apart”. The Ontario Supreme Court interpreted “separate and apart” in the family law context in the 1990 case *Oswell v Oswell*. The court provided that a couple can be “separate and apart” while living at the same address. Therefore, living under the same roof is not determinative of a couple’s marital status. The court provided a variety of indicia to use to determine whether spouses occupying the same premises are living separate and apart. Therefore, a single indicium is not determinative of a couple’s marital status, but, rather a full contextual analysis will determine whether they are “separate and apart”. This means that the court does not consider living at the same address and sharing parental or financial responsibilities or both as determinative of whether a couple is “separate or apart”. Some indicia considered by the court are:

1. There must be a physical separation. This is often indicated by spouses occupying separate bedrooms. The court notes that *“just because a spouse remains in the same house for reasons of economic necessity does not mean they are not living separate and apart.”*
2. There must be a withdrawal by one or both spouses from the matrimonial obligation with the intent of destroying or repudiating the marriage.
3. The absence of sexual relations is not conclusive but is a factor to be considered
4. Consider discussion of family problems and communication between spouses
5. Consider the presence or absence of joint social activities
6. Consider the meal patterns
7. Although the performance of a household task is a factor, help may be hired for these tasks.
8. The Family Law Act required courts to have regard to the true intent of a spouse rather than the spouse’s stated intent. The court notes that an additional consideration to which the court may have regard in determining the true intent of a spouse as opposed to that spouse’s stated intentions is the method in which the spouse has filed income tax returns.

JD and MJ appear to meet all of the indicia indicated that they were “separate and apart” while living under the same roof. Further, it appears that if CRA is stating that JD and MJ should have been filing their marital status as married or common law, then the courts would arguably interpret this to mean according to the Family Law Act that their true intent was to be together, when JD states that her true intent was to be separated.

The BC Supreme Court has affirmed this judicial interpretation of “separate and apart” in several cases. For example in the case of *Newth v Booth* 2001, it appears that JD and MJ meet the indicia of “separate and apart” to a greater extent than the couple in *Newth v Booth* as JD and MJ did not have any sexual

relations during the period in question. Another example is the case of *Eisner v Baker* 2007 BCSC where the court found key factors in determining the absence of a “marriage-like” relationship as being (1) the absence of sexual relations, (2) a clear statement by one of the parties of his or her desire to terminate the relationship, (3) physical separation into different physical places or different residences, and (4) the parties no longer presenting themselves to the outside world as a couple. I reiterate that JD and MJ appear to meet all the indicia indicating that they were “separate and apart” while living under the same roof during the period in question.

The Tax court has adopted this judicial interpretation of the phrase “separate and apart”. In *Khaira v R* the court provided that, “generally speaking, a finding that the parties were living separate and apart from each other has been made where the following circumstances were present:

- (i) Spouses occupying separate bedrooms.
- (ii) Absence of sexual relations.
- (iii) Little, if any, communication between spouses.
- (iv) Wife performing no domestic services for husband.
- (v) Eating meals separately.
- (vi) No social activities together.”

Again, I reiterate that it appears that JD and MJ appear to meet all the indicia indicating that they were “separate and apart” while living under the same roof during the period in question. Further, I ask that the CRA consider the following quote from this case:

“Marriages take many forms, most bearing little resemblance to the happily-ever-after model held out as the ideal. Separation arrangements are no less varied, their structure depending on the unique situation of the couple involved. The case law is clear that each case must be judged on its own facts. It is equally clear that once the Appellant has made out a prima facie demolishing the Minister’s assumptions, the burden of proof shifts to the Minister. In the present case, the Appellant presented more than enough evidence to challenge the Minister’s assumptions; no one was called by the Crown to rebut the Khairas’ version of events. On the evidence before me, I am satisfied on a balance of probabilities that during 2000 and 2001, Mr. and Mrs. Khaira were living separate and apart within the meaning of the Income Tax Act.”

The Tax court in *Benson v R* 2003 interpreted the phrase “separate and apart” specifically in relation to the CCTB quoting the test set out in *Molodowich v. Penttinen* (1980) and developed the following seven questions or criteria to determine when parties are or are not living separate and apart:

Shelter:

- a) Did the parties live under the same roof?
- b) What were the sleeping arrangements?
- c) Did anyone else occupy or share the available accommodation?

Sexual and Personal Behaviour:

- a) Did the parties have sexual relations? If not, why not?
- b) Did they maintain an attitude of fidelity to each other?
- c) What were their feelings toward each other?
- d) Did they communicate on a personal level?
- e) Did they eat their meals together?
- f) What, if anything, did they do to assist each other with problems or during illness?
- g) Did they buy gifts for each other on special occasions?

Services: What was the conduct and habit of the parties in relation to:

- a) preparation of meals;
- b) washing and mending clothes;
- c) shopping;
- d) household maintenance; and
- e) any other domestic services?

Social:

- a) Did they participate together or separately in neighborhood and community activities?
- b) What was the relationship and conduct of each of them toward members of their respective families and how did such families behave towards the parties?

Societal:

- a) What was the attitude and conduct of the community toward each of them and as a couple?

Support (economic):

- a) What were the financial arrangements between the parties regarding the provision of or contribution toward the necessities of life (food, clothing, shelter, recreation, etc.)?
- b) What were the arrangements concerning the acquisition and ownership of property?
- c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

Children:

- a) What was the attitude and conduct of the parties concerning the children?

The Tax Court also reiterated in this case that “*All factors must be looked at and no one factor is determinative.*”

Again, I reiterate that it appears that JD and MJ appear to meet all of the indicia indicating that they were “separate and apart” while living under the same roof during the period in question according to the Tax Courts interpretation of “separate and apart” when applied to the CCTB.

I add that the Tax Court has similarly analyzed the meaning of “separate and apart” in the context of the GSTC, CTBC and personal credit for a wholly dependent person in many cases such as *Kelner v. Canada*, [1996] 1 C.T.C. 2687, (1995) 17 R.F.L. (4th) 288, [1995] T.C.J. No. 1130, Bowman, T.C.J., *Rangwala v. Canada*, 2000 CanLII 114 (TCC), [2000] 4 C.T.C. 2430, [2000] T.C.J. no. 624, Campbell, T.C.J. and *Roby v. Canada*, [2001] T.C.J. No. 801, Bowman, A.C.J.T.C.

I have attached some of the referenced cases for your convenience, but, I have not provided all of them. Please contact me if you need copies of any of these specific cases as I would be happy to provide them.

Conclusion

JD is asking CRA to change her marital status back to separated for the period of May 1, 2017 to October 31, 2018 and to adjust her CTB accordingly.

Sincerely,

XXX XXXX
 Summer Law Student
 The Advocacy Centre

Some sample caselaw on common issues in Canada Child Benefit appeals¹

Prepared by Alison Ward, lawyer, Community Legal Assistance Society

1 Tax Court of Canada (“TCC”) caselaw on what it means to “reside with” a child:

- *Bouchard v. Canada* 2009 TCC 38, at <http://www.canlii.org/en/ca/tcc/doc/2009/2009tcc38/2009tcc38.html>

A single father was found to have “resided with” his child while the father was incarcerated for 20 months, but continued to provide financially for his teenaged child during that time. Therefore, he was entitled to child tax benefits during his incarceration. This temporary absence by a parent is analogized to temporary absences of children from the home (e.g. while hospitalized or attending school away from home) that do not disentitle a parent to child tax benefits.

In paragraph 18 the Court held “In my view, the child tax benefit provisions should be interpreted in a compassionate way in these types of circumstances so as not to frustrate the obvious intention of Parliament to assist low income families.”

- *Burton v. Canada* 1999 CanLii 264 (TCC), at <http://www.canlii.org/en/ca/tcc/doc/1999/1999canlii264/1999canlii264.html>

The Court took a much more restrictive approach to the term “resides with” and found that a mother who returned frequently to care for 7 children in the family home (after separating from their father and sleeping elsewhere), did not “reside with” the children and so was not entitled to child tax benefits. The Court notes she is living with a new common law partner and appeared to struggle with the idea that she could “live with” the new partner and “reside with” the children under another roof.

- *Buma v. Canada* 2004 TCC 808, at <http://www.canlii.org/en/ca/tcc/doc/2004/2004tcc808/2004tcc808.html>

Again taking a more liberal approach to the interpretation of “reside with,” the Court found that in some circumstances, a caregiver can “reside with” children even if the caregiver does not sleep under the same roof. Here, two spouses operated a dairy farm and had four kids. They separated and the

¹ Tax Court of Canada and Federal Court of Appeal decisions are available at www.canlii.org. Go to the “federal” databases and from there you can either search, or go directly to all Tax Court decisions or Federal Court of Appeal decisions (both of which are also searchable).

mother moved out, but for a period of time she continued to return to the farm each day to do farm and housework and care for the children. The Court found that during this period she “resided with” the kids for child tax benefit purposes, even though she did not sleep in their home.

2. Sample Tax Court of Canada caselaw on who is considered a “spouse or common law partner” for child benefit purposes:

(Note: the definition of “spouse or common law partner” for Child Tax Benefits and the Canada Child Benefit has not changed since July 31, 2000).

- *Gartner v Canada* 2000 TCJ No 261 at <http://www.canlii.org/en/ca/tcc/doc/2000/2000canlii374/2000canlii374.html>

Two married co-habiting spouses can be considered to be living separate and apart for child benefit purposes (and GST refund) even where they are still living under the same roof.

In this case, the spouses had separated for two years, the children lived with the mother in a matrimonial home in joint tenancy. The mother saw a lawyer about getting a divorce in this period but could not afford it. After two years, the father moved back in as he was on title. The evidence showed they lived separate lives, not interacting socially, not sharing meals or chores or funds, etc while under the same roof. They were later divorced. The Court was displeased that CRA forced this issue to come to court, and so ordered the government to pay the appellant’s legal costs.

- *Rangwala v Canada* [2000] Tax Court Judgment No. 624 at <http://www.canlii.org/en/ca/tcc/doc/2000/2000canlii114/2000canlii114.html>

Another case in which two married spouses were found to be living separate and apart under the same roof (i.e. while still living together, not to be spouses for child benefit purposes).

The case contains a good discussion of the meaning of “separate and apart” at paragraphs 18, as follows:

In defining the meaning of "separate and apart", Bowman, T.C.J. quoted Holland, J. in Cooper v. Cooper (1973) 10 R.F.L. 184 (Ont. H.C.) at p. 187 as follows:

Certainly spouses living under the same roof may well in fact be living separate and apart from each other. The problem has often been considered in actions

brought under s. 4(1)(e)(i) of the Divorce Act and, generally speaking, a finding that the parties were living separate and apart from each other has been made where the following circumstances were present:

- (i) Spouses occupying separate bedrooms.*
- (ii) Absence of sexual relations.*
- (iii) Little, if any, communication between spouses.*
- (iv) Wife performing no domestic services for husband.*
- (v) Eating meals separately.*
- (vi) No social activities together.*

- *Sanford v. Canada* 2000 TCJ 801 at <http://www.canlii.org/en/ca/tcc/doc/2000/2000canlii389/2000canlii389.html>

Whether or not two people are common law partners cohabiting in a conjugal relationship, is to be determined by objective standards, not the subjective attitudes of the individuals involved.

In this case, two people had lived together for 10 years, had a child together, shared expenses, owned property jointly, co-parented, ate meals together, and shared household chores, etc the Court found them to be cohabiting in a conjugal relationship, even though they considered each other to be merely “the person with whom they lived.”

- *Brunette v. Canada* 2009 TCC 584, at <http://www.canlii.org/en/ca/tcc/doc/2009/2009tcc584/2009tcc584.html>

Whether or not two people are common law partners cohabiting in a conjugal relationship, is to be determined by objective standards, not the subjective attitudes of the individuals involved.

Case contains a discussion of the factors to consider in determining whether two people are “cohabiting in a conjugal relationship.”

- *Sigouin v Canada* [2001] TCJ No 285, at <http://www.canlii.org/en/ca/tcc/doc/2001/2001canlii685/2001canlii685.html>

Two parents who were previously living together in a conjugal relationship as common law partners, can discontinue that relationship and continue to

live as simply “roommates” such that they are not considered common law partners for CCTB purposes.

The key is providing proper evidence to show that this is the case.

Sigouin contains a good discussion of what is meant by “conjugal relationship.”

And at paragraph 12, the Court holds: “It is my view that, in appeals such as this one, it must also be taken into account that the provisions involved are intended to financially assist people who have limited means or low incomes. This Court’s decision can have an impact on all the monetary assistance that a person has received, and these provisions which were intended to be of assistance may rather become extremely costly for that person where he or she is required to repay the assistance over several years. To dismiss the appeal, I must be thoroughly convinced that the appellant was cohabitating in a conjugal relationship.”

- *Aukstinaitis v. Canada* 2008 TCC 104 (CanLii) at http://www.canlii.org/en/ca/tcc/doc/2008/2008tcc104/2008tcc104.html#_ftn2

Two parents who were previously living together in a common law relationship subsequently became roommates and lived with the child in question. The Court found that, based on the evidence, they were no longer in a conjugal relationship.

The points examined by the Court in determining whether a conjugal relationship existed included:

1. Shelter:

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

2. Sexual and personal behaviour:

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?

- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

3. Services:

What was the conduct and habit of the parties in relation to:

- (a) Preparation of meals,
- (b) Washing and mending clothes,
- (c) Shopping,
- (d) Household maintenance,
- (e) Any other domestic services?

4. Social:

- (a) Did they participate together or separately in neighbourhood and community activities?
- (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

5. Societal:

What was the attitude and conduct of the community towards each of them and as a couple?

6. Support (Economic):

- (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
- (b) What were the arrangements concerning the acquisition and ownership of property?
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

7. Children:

What was the attitude and conduct of the parties concerning children?

The Court noted that the extent to which each of these factors will be taken into account in a particular case, will vary from case to case, and depend on the specific context.

- *Henry v. Canada* [2002] TCJ 534, at <http://www.canlii.org/en/ca/tcc/doc/2002/2002canlii1037/2002canlii1037.html>

A case in which parents who were previously living together in a conjugal relationship as common law partners, are found to have discontinued that relationship and be continuing to live together as simple “roommates” such that they are not considered common law partners for child tax benefit purposes. The key is providing proper evidence to show that this is the case.

The case canvasses the same points as *Aukstinaitis* (above) to determine if a conjugal relationship existed, and contains a good discussion of the kinds of evidence a Court will want to see in determining if two people are, or are not, common law partners in a conjugal relationship.

Income Tax Act RSC 1985 c. 1

Extracted from CanLii, October 28, 2020

SUBDIVISION A.1

Canada Child Benefit

Definitions

122.6 In this Subdivision,

adjusted earned income [Repealed, 1998, c. 21, s. 92]

adjusted income, of an individual for a taxation year, means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse or common-law partner at the end of the year if in computing that income no amount were

(a) included

(i) under [paragraph 56\(1\)](#)(q.1) or [subsection 56\(6\)](#),

(ii) in respect of any gain from a disposition of property to which [section 79](#) applies, or

(iii) in respect of a gain described in [subsection 40\(3.21\)](#), or

(b) deductible under [paragraph 20\(1\)](#)(ww) or [60](#)(y) or (z); (*revenu modifié*)

base taxation year in relation to a month means

(a) where the month is any of the first 6 months of a calendar year, the taxation year that ended on December 31 of the second preceding calendar year, and

(b) where the month is any of the last 6 months of a calendar year, the taxation year that ended on December 31 of the preceding calendar year; (*année de base*)

cohabiting spouse or common-law partner of an individual at any time means the person who at that time is the individual's spouse or common-law partner and who is not at that time living separate and apart from the individual and, for the purpose of this definition, a person shall not be considered to be living separate and apart from an individual at any time unless they were living separate and apart at that time, because of a breakdown of their marriage or common-law partnership, for a period of at least 90 days that includes that time; (*époux ou conjoint de fait visé*)

earned income [Repealed, 1998, c. 21, s. 92]

eligible individual in respect of a qualified dependant at any time means a person who at that time

- (a) resides with the qualified dependant,
- (b) is a parent of the qualified dependant who
 - (i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared-custody parent in respect of the qualified dependant, or
 - (ii) is a shared-custody parent in respect of the qualified dependant,
- (c) is resident in Canada or, where the person is the cohabiting spouse or common-law partner of a person who is deemed under [subsection 250\(1\)](#) to be resident in Canada throughout the taxation year that includes that time, was resident in Canada in any preceding taxation year,
- (d) is not described in [paragraph 149\(1\)\(a\)](#) or [149\(1\)\(b\)](#), and
- (e) is, or whose cohabiting spouse or common-law partner is, a Canadian citizen or a person who
 - (i) is a permanent resident within the meaning of [subsection 2\(1\)](#) of the [Immigration and Refugee Protection Act](#),
 - (ii) is a temporary resident within the meaning of the [Immigration and Refugee Protection Act](#), who was resident in Canada throughout the 18 month period preceding that time,
 - (iii) is a protected person within the meaning of the [Immigration and Refugee Protection Act](#),
 - (iv) was determined before that time to be a member of a class defined in the *Humanitarian Designated Classes Regulations* made under the *Immigration Act*, or
 - (v) is an Indian within the meaning of the [Indian Act](#),

and for the purposes of this definition,

- (f) where the qualified dependant resides with the dependant's female parent, the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant is presumed to be the female parent,
- (g) the presumption referred to in paragraph 122.6 eligible individual (f) does not apply in prescribed circumstances,

(h) prescribed factors shall be considered in determining what constitutes care and upbringing, and

(i) an individual shall not fail to qualify as a parent (within the meaning assigned by [section 252](#)) of another individual solely because of the receipt of a social assistance amount that is payable under a program of the Government of Canada or the government of a province for the benefit of the other individual; (*particulier admissible*)

qualified dependant at any time means a person who at that time

(a) has not attained the age of 18 years,

(b) is not a person in respect of whom an amount was deducted under paragraph (a) of the description of B in [subsection 118\(1\)](#) in computing the tax payable under this Part by the person's spouse or common-law partner for the base taxation year in relation to the month that includes that time, and

(c) is not a person in respect of whom a special allowance under the [Children's Special Allowances Act](#) is payable for the month that includes that time; (*personne à charge admissible*)

return of income filed by an individual for a taxation year means

(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under [subsection 70\(2\)](#) or [104\(23\)](#), [paragraph 128\(2\)\(e\)](#) or [subsection 150\(4\)](#)) that is filed or required to be filed under this Part for the year, and

(b) in any other case, a prescribed form containing prescribed information, that is filed with the Minister; (*déclaration de revenu*)

shared-custody parent in respect of a qualified dependant at a particular time means, where the presumption referred to in paragraph (f) of the definition eligible individual does not apply in respect of the qualified dependant, an individual who is one of the two parents of the qualified dependant who

(a) are not at that time cohabitating spouses or common-law partners of each other,

(b) reside with the qualified dependant on an equal or near equal basis, and

(c) primarily fulfil the responsibility for the care and upbringing of the qualified dependant when residing with the qualified dependant, as determined in consideration of prescribed factors. (*parent ayant la garde partagée*)

Deemed overpayment

122.61 (1) If a person and, if the Minister so demands, the person's cohabiting spouse or common-law partner at the end of a taxation year have filed a return

of income for the year, an overpayment on account of the person's liability under this Part for the year is deemed to have arisen during a month in relation to which the year is the base taxation year, equal to the amount determined by the formula

$$(A + M)/12$$

where

A

is the amount determined by the formula

$$E - Q$$

where

E

is the total of

(a) the product obtained by multiplying \$6,400 by the number of qualified dependants in respect of whom the person was an eligible individual at the beginning of the month who have not reached the age of six years at the beginning of the month, and

(b) the product obtained by multiplying \$5,400 by the number of qualified dependants, other than those qualified dependants referred to in paragraph (a), in respect of whom the person was an eligible individual at the beginning of the month, and

Q

is

(a) if the person's adjusted income for the year is less than or equal to \$30,000, nil,

(b) if the person's adjusted income for the year is greater than \$30,000 but less than or equal to \$65,000, and if the person is, at the beginning of the month, an eligible individual in respect of

(i) only one qualified dependant, 7% of the person's adjusted income for the year in excess of \$30,000,

(ii) only two qualified dependants, 13.5% of the person's adjusted income for the year in excess of \$30,000,

(iii) only three qualified dependants, 19% of the person's adjusted income for the year in excess of \$30,000, or

(iv) more than three qualified dependants, 23% of the person's adjusted income for the year in excess of \$30,000, and

(c) if the person's adjusted income for the year is greater than \$65,000, and if the person is, at the beginning of the month, an eligible individual in respect of

(i) only one qualified dependant, the total of \$2,450 and 3.2% of the person's adjusted income for the year in excess of \$65,000,

(ii) only two qualified dependants, the total of \$4,725 and 5.7% of the person's adjusted income for the year in excess of \$65,000,

(iii) only three qualified dependants, the total of \$6,650 and 8% of the person's adjusted income for the year in excess of \$65,000, or

(iv) more than three qualified dependants, the total of \$8,050 and 9.5% of the person's adjusted income for the year in excess of \$65,000,

M
is the amount determined by the formula

$$N - O$$

where

N
is the product obtained by multiplying \$2,730 by the number of qualified dependants in respect of whom both

(a) an amount may be deducted under [section 118.3](#) for the taxation year that includes the month, and

(b) the person is an eligible individual at the beginning of the month, and

O is

(a) if the person's adjusted income for the year is less than or equal to \$65,000, nil, and

(b) if the person's adjusted income for the year is greater than \$65,000,

(i) where the person is an eligible individual in respect of only one qualified dependant described in N, 3.2% of the person's adjusted income for the year in excess of \$65,000, and

(ii) where the person is an eligible individual in respect of two or more qualified dependants described in N, 5.7% of the person's adjusted income for the year in excess of \$65,000.

COVID-19 — additional amount

(1.01) If the month referred to in subsection (1) is May 2020, each amount expressed in dollars referred to in paragraphs (a) and (b) of the description of E in subsection (1) is deemed, for that month, to be equal to that amount (as adjusted under subsection (5)) plus an additional amount of \$3,600. For greater certainty, the adjustment in subsection (5) shall not take into account this additional amount.

Shared-custody parent

(1.1) Notwithstanding subsection (1), if an eligible individual is a shared-custody parent in respect of one or more qualified dependants at the beginning of a month, the overpayment deemed by subsection (1) to have arisen during the month is equal to the amount determined by the formula

$$1/2 \times (A + B)$$

where

A

is the amount determined by the formula in subsection (1), calculated without reference to this subsection, and

B

is the amount determined by the formula in subsection (1), calculated without reference to this subsection and subparagraph (b)(ii) of the definition **eligible individual** in [section 122.6](#).

Exceptions

(2) Notwithstanding subsection (1), if a particular month is the first month during which an overpayment that is less than \$20 (or such other amount as is prescribed) is deemed under that subsection to have arisen on account of a person's liability under this Part for the base taxation year in relation to the particular month, any such overpayment that would, but for this subsection, reasonably be expected at the end of the particular month to arise during another month in relation to which the year is the base taxation year is deemed to arise under that subsection during the particular month and not during the other month.

Non-residents and part-year residents

(3) For the purposes of this section, if a person was non-resident at any time in a taxation year, the person's income for the year is, for greater certainty, deemed to be the amount that would have been the person's income for the year had the person been resident in Canada throughout the year.

Effect of bankruptcy

(3.1) For the purposes of this Subdivision, where in a taxation year an individual becomes bankrupt,

(a) the individual's income for the year shall include the individual's income for the taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy; and

(b) the total of all amounts deducted under [section 63](#) in computing the individual's income for the year shall include the amount deducted under that section for the individual's taxation year that begins on January 1 of the calendar year that includes the date of bankruptcy.

(c) ~~[Repealed, 1998, c. 21, s. 94]~~

Amount not to be charged, etc.

(4) A refund of an amount deemed by this section to be an overpayment on account of a person's liability under this Part for a taxation year

(a) shall not be subject to the operation of any law relating to bankruptcy or insolvency;

(b) cannot be assigned, charged, attached or given as security;

(c) does not qualify as a refund of tax for the purposes of the [Tax Rebate Discounting Act](#);

(d) cannot be retained by way of deduction or set-off under the [Financial Administration Act](#); and

(e) is not garnishable moneys for the purposes of the [Family Orders and Agreements Enforcement Assistance Act](#).

Annual adjustment

(5) Each amount expressed in dollars in subsection (1) shall be adjusted so that, where the base taxation year in relation to a particular month is after 2016, the amount to be used under that subsection for the month is the total of

(a) the amount that would, but for subsection (7), be the relevant amount used under subsection (1) for the month that is one year before the particular month, and

(b) the product obtained by multiplying

(i) the amount referred to in paragraph (a)

by

(ii) the amount, adjusted in such manner as is prescribed and rounded to the nearest one-thousandth or, where the result obtained is equidistant from 2 such consecutive one-thousandths, to the higher thereof, that is determined by the formula

$$(A/B) - 1$$

where

A

is the *Consumer Price Index* (within the meaning assigned by [subsection 117.1\(4\)](#)) for the 12-month period that ended on September 30 of the base taxation year, and

B

is the Consumer Price Index for the 12 month period preceding the period referred to in the description of A.

(5.1) [Repealed, 1998, c. 21, s. 93]

Additions to NCB supplement — July 2005 and 2006

(6) Each amount referred to in the description of F in subsection (1) that is to be used for the purpose of determining the amount deemed to be an overpayment arising during months that are

(a) after June 2005 and before July 2006, is to be replaced with the amount that is the total of \$185 and the amount otherwise determined under subsection (5) for those months; and

(b) after June 2006 and before July 2007, is to be replaced with the amount that is the total of \$185 and the amount otherwise determined, for those months, by applying subsection (5) to the amount determined under paragraph (a).

Agreement with a province

(6.1) Notwithstanding subsection (5), for the purposes of any agreement referred to in [section 122.63](#) with respect to overpayments deemed to arise during months that are after June 2001 and before July 2002, the amount determined under subparagraph (5)(b)(ii) for a month referred to in paragraph (6)(b) is deemed to be 0.012.

Rounding

(7) If an amount referred to in subsection (1), when adjusted as provided in subsection (5), is not a multiple of one dollar, it shall be rounded to the nearest multiple of one dollar or, where it is equidistant from 2 such consecutive multiples, to the higher thereof.

Eligible individuals

122.62 (1) For the purposes of this Subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

Extension for notices

(2) The Minister may, on or before the day that is 10 years after the beginning of the month referred to in subsection (1), extend the time for filing a notice under that subsection.

Exception

(3) Where at the beginning of 1993 a person is an eligible individual in respect of a qualified dependant, [subsection 122.62\(1\)](#) does not apply to the person in respect of the qualified dependant if the qualified dependant was an eligible child (within the meaning assigned by subsection 122.2(2) because of subparagraph (a)(i) of the definition **eligible child** in that subsection) of the individual for the 1992 taxation year.

Person ceasing to be an eligible individual

(4) Where during a particular month a person ceases to be an eligible individual in respect of a particular qualified dependant (otherwise than because of the qualified dependant attaining the age of 18 years), the person shall notify the Minister of that fact before the end of the first month following the particular month.

Death of cohabiting spouse

(5) If the cohabiting spouse or common-law partner of an eligible individual in respect of a qualified dependant dies,

(a) the eligible individual shall notify the Minister in prescribed form of that event before the end of the first calendar month that begins after that event; and

(b) subject to subsection (8), for the purpose of determining the amount deemed under [subsection 122.61\(1\)](#) to be an overpayment arising in that first month and any subsequent month on account of the eligible individual's liability under this Part for the base taxation year in relation to that first month, the eligible individual's adjusted income for the year is deemed to be equal to the eligible individual's income for the year.

Separation from cohabiting spouse

(6) If a person ceases to be an eligible individual's cohabiting spouse or common-law partner,

(a) the eligible individual shall notify the Minister in prescribed form of that event before the end of the first calendar month that begins after that event; and

(b) subject to subsection (8), for the purpose of determining the amount deemed under [subsection 122.61\(1\)](#) to be an overpayment arising in that first month and any subsequent month on account of the eligible individual's liability under this Part for the base taxation year in relation to that first month, the eligible individual's adjusted income for the year is deemed to be equal to the eligible individual's income for the year.

Person becoming a cohabiting spouse

(7) If a taxpayer becomes the cohabiting spouse or common-law partner of an eligible individual,

(a) the eligible individual shall notify the Minister in prescribed form of that event before the end of the first calendar month that begins after that event; and

(b) subject to subsection (8), for the purpose of determining the amount deemed under [subsection 122.61\(1\)](#) to be an overpayment arising in that first month and any subsequent month on account of the eligible individual's liability under this Part for the base taxation year in relation to that first month, the taxpayer is deemed to have been the eligible individual's cohabiting spouse or common-law partner at the end of the base taxation year in relation to that month.

Ordering of events

(8) If more than one event referred to in subsections (5) to (7) occur in a calendar month, only the subsection relating to the last of those events to have occurred applies.

(9) [Repealed, 1998, c. 19, s. 142]

Agreement

122.63 (1) The Minister of Finance may enter into an agreement with the government of a province whereby the amounts determined under the description of E in [subsection 122.61\(1\)](#) with respect to persons resident in the province shall, for the purpose of calculating overpayments deemed to arise under that subsection, be replaced by amounts determined in accordance with the agreement.

Agreement

(2) The amounts determined under the description of E in [subsection 122.61\(1\)](#) for a base taxation year because of any agreement entered into with a

province and referred to in subsection (1) shall be based on the age of qualified dependants of eligible individuals, or on the number of such qualified dependants, or both, and shall result in an amount in respect of a qualified dependant that is not less, in respect of that qualified dependant, than 85% of the amount that would otherwise be determined under that description in respect of that qualified dependant for that year.

Agreement

(3) Any agreement entered into with a province and referred to in subsection (1) shall provide that, where the operation of the agreement results in a total of all amounts, each of which is an amount deemed under [subsection 122.61\(1\)](#) to be an overpayment on account of the liability under this Part for a taxation year of a person subject to the agreement, that exceeds 101% of the total of such overpayments that would have otherwise been deemed to have arisen under [subsection 122.61\(1\)](#), the excess shall be reimbursed by the government of the province to the Government of Canada.

Definition of “common law partner” and ‘child’ for CCB purposes

Income Tax Act, R.S.C. 1985 c. 1

Section 248(1)

common-law partner, with respect to a taxpayer at any time, means a person who cohabits at that time in a conjugal relationship with the taxpayer and

(a) has so cohabited throughout the 12-month period that ends at that time, or

(b) would be the parent of a child of whom the taxpayer is a parent, if this Act were read without reference to [paragraphs 252\(1\)\(c\) and \(e\)](#) and [subparagraph 252\(2\)\(a\)\(iii\)](#),

and, for the purpose of this definition, where at any time the taxpayer and the person cohabit in a conjugal relationship, they are, at any particular time after that time, deemed to be cohabiting in a conjugal relationship unless they were living separate and apart at the particular time for a period of at least 90 days that includes the particular time because of a breakdown of their conjugal relationship; (*conjoint de fait*)

Section 252

Extended meaning of child

252 (1) In this Act, words referring to a child of a taxpayer include

(a) a person of whom the taxpayer is the legal parent;

(b) a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;

(c) a child of the taxpayer’s spouse or common-law partner; and

(d) [Repealed, [2005, c. 33, s. 12](#)]

(e) a spouse or common-law partner of a child of the taxpayer.

Income Tax Regulations, CRC, c 945

PART LXIII

Child Tax Benefits

Interpretation

6300 In this Part, **qualified dependant** has the meaning assigned by [section 122.6](#) of the [Act](#).

Non-Application of Presumption

6301 (1) For the purposes of paragraph (g) of the definition **eligible individual** in [section 122.6](#) of the [Act](#), the presumption referred to in paragraph (f) of that definition does not apply in the circumstances where

(a) the female parent of the qualified dependant declares in writing to the Minister that the male parent, with whom she resides, is the parent of the qualified dependant who primarily fulfils the responsibility for the care and upbringing of each of the qualified dependants who reside with both parents;

(b) the female parent is a qualified dependant of an eligible individual and each of them files a notice with the Minister under [subsection 122.62\(1\)](#) of the [Act](#) in respect of the same qualified dependant;

(c) there is more than one female parent of the qualified dependant who resides with the qualified dependant and each female parent files a notice with the Minister under [subsection 122.62\(1\)](#) of the [Act](#) in respect of the qualified dependant; or

(d) more than one notice is filed with the Minister under [subsection 122.62\(1\)](#) of the [Act](#) in respect of the same qualified dependant who resides with each of the persons filing the notices if such persons live at different locations.

(2) For greater certainty, a person who files a notice referred to in paragraph (1)(b), (c) or (d) includes a person who is not required under [subsection 122.62\(3\)](#) of the [Act](#) to file such a notice.

Factors

6302 For the purposes of paragraph (h) of the definition **eligible individual** in [section 122.6](#) of the [Act](#), the following factors are to be considered in determining what constitutes care and upbringing of a qualified dependant:

- (a) the supervision of the daily activities and needs of the qualified dependant;
- (b) the maintenance of a secure environment in which the qualified dependant resides;
- (c) the arrangement of, and transportation to, medical care at regular intervals and as required for the qualified dependant;
- (d) the arrangement of, participation in, and transportation to, educational, recreational, athletic or similar activities in respect of the qualified dependant;
- (e) the attendance to the needs of the qualified dependant when the qualified dependant is ill or otherwise in need of the attendance of another person;
- (f) the attendance to the hygienic needs of the qualified dependant on a regular basis;
- (g) the provision, generally, of guidance and companionship to the qualified dependant; and
- (h) the existence of a court order in respect of the qualified dependant that is valid in the jurisdiction in which the qualified dependant resides.

Child Tax Credits

6400 For the purposes of [subsection 122.2\(1\)](#) of the [Act](#), the prescribed date for each of the 1978 and subsequent taxation years is December 31st of that year.