

The New Canada Child Benefit

What Family Lawyers Need to Know

In July 2016, the government of Canada introduced the new Canada Child Benefit. This new benefit will have an impact on the advice you give to family law clients.

Q: What is the new “Canada Child Benefit” and what has changed?

A: The new Canada Child Benefit was introduced in July 2016. The Canada Child Benefit (CCB) is a tax-free refundable tax credit based on family net income that is paid monthly. It replaced a number of other tax-delivered benefits for families: the Canada Child Tax Benefit (CCTB), the National Child Benefit Supplement (NCBS) and the Universal Child Care Benefit (UCCB).

The major change is that all but the wealthiest families will see an increase in the amount they receive as a tax-delivered benefit to assist with raising children.

The now-eliminated Universal Child Care Benefit was a taxable benefit. It has now been merged into a tax-free benefit.

Q: How much is paid through the Canada Child Benefit?

A: The amount parents receive is based on their prior tax year's family net income.

The CCB provides a maximum annual benefit of \$6,400 per child under the age of six (\$533.33 per month) and \$5,400 per child between the ages of six to 17 (\$450 per month). These amounts start to be gradually reduced when the adjusted net family income is over \$30,000.

The Canada Revenue Agency's (CRA) online Child and Family Benefits Calculator can assist in determining the amount of CCB payments a family with children may be eligible for: <http://www.cra-arc.gc.ca/benefits-calculator/>.

The CCB is separate from provincial benefits, such as the Ontario Child Benefit, although the two benefits are delivered on the same monthly cheque.

Q: Who is eligible for the Canada Child Benefit?

A: To be eligible, the parent must live with their child and the child must be under 18 years of age. The parent must be the person primarily responsible for the care and upbringing of the child. The parent must be a resident of Canada for tax purposes.

This means that eligibility for the CCB is the same as it was for the Canada Child Tax Benefit with one addition: the legislation clarifies that status Indians are eligible for the benefit. This fills a gap for those Indigenous people who are registered as status Indians but do not have Canadian citizenship or permanent residence.

Migrants without Canadian citizenship or permanent residence do not qualify for the CCB unless they are a “protected person,” have been a temporary resident for at least 18 months, or if their spouse or common law partner is a citizen, permanent resident or has been a temporary resident for 18 months.

Q: When parents separate, who is eligible for the Canada Child Benefit?

A: Eligibility in cases of separation has not changed from the eligibility rules that applied under the Canada Child Tax Benefit.

In cases where parents are separated, eligibility for the CCB depends on who is responsible for the care and upbringing of the child. The benefit will go to:

- a) The parent who primarily fulfils the responsibility for the care and upbringing of the child, unless the parent is a “shared-custody” parent. This is presumed to be the female parent unless that presumption has been rebutted with evidence that the other parent primarily provides care. Another option is for the female parent to write a letter to the CRA confirming they are not claiming the benefit;
- b) Both parents, where there is shared custody on an equal or near equal basis and each of the parents primarily fulfils the responsibility for the care and upbringing of the child when they are with them. As discussed below, the parents share the benefit.

Q: How is the Canada Child Benefit split in cases of shared custody?

A: Where shared custody is on an equal or near equal basis, each parent will get 50% of the payment they would have received if the child lived with them all of the time. A 60/40 custody arrangement is the type of arrangement that is typically considered to be “a near equal basis”. However, in such situations the parents would still each receive 50% of the CCB benefit payment, rather than 60% and 40% respectively.

If the shared custody is not equal or near equal, only the parent who has primary responsibility for the care and upbringing of the child is entitled to the benefit. In this instance, they would be entitled to the entire amount.

Q: Can the separating parents decide between them who will receive the Canada Child Benefit?

A: No. Parents cannot decide on an allocation of the CCB that is inconsistent with the rules in the *Income Tax Act*. Nor does a Family Court have jurisdiction to do so.

If there is a dispute between the parents over who should get the benefit, the CRA (or ultimately the Tax Court) will apply the tests in the *Income Tax Act* to decide – i.e. who has primary care and responsibility or whether custody is shared equally (*Laurin v. R*, 2007 FCA 44). A court order or separation agreement identifying which parent should receive the benefit is only one factor to be considered.

Q: How does the Canada Child Benefit affect the calculation of child support?

A: No changes have been made to the *Child Support Guidelines* in terms of the way the CCB is treated.

If the CCB is to be treated in a manner similar to the previous Canada Child Tax Benefit, then it should be excluded from income when determining the Table amount (*Dickey v. Moore*, 2011 ONCJ 707) but may be considered:

- as a parent's "means" in some shared custody cases (s.9(c) of the *Child Support Guideline*; *Ciutcu v. Dragan*, 2014 ONCJ 602);
- possibly in cases about financial hardship;
- in some cases where one parent is seeking a higher child support payment because of "special or extraordinary expenses". Previously, courts considered the Canada Child Tax Benefit a "means" available to the parent.

Q: How does the Canada Child Benefit affect the calculation of spousal support?

A: No changes have been made to the *Spousal Support Advisory Guidelines* in terms of the way the CCB is treated.

If the CCB is to be treated in a manner similar to the previous Canada Child Tax Benefit, then the CCB would only be included as income under the "with child support" formula (*Spousal Support Advisory Guideline*, ss. 6.3, 6.4.).

Q: When do parents have to tell the federal government about changes to their marital status?

A: Changes in marital status can change entitlement to the CCB.

When marital status changes, parents must inform the CRA before the end of the month, after the month in which their status changed. For example, if their marital status changed in August, they must tell the CRA about the change by the end of September.

The CRA does not consider parents to be separated until they have been apart due to a breakdown in the relationship for at least 90 consecutive days.

Q: I am working with low-income clients. How does the Canada Child Benefit affect eligibility for income support programs like social assistance?

A: In Ontario, the CCB is not considered income for the purposes of calculating eligibility for or the amount of benefits for social assistance or for Healthy Smiles Ontario, rent-geared-to-income programs, child care subsidies, and housing supplements.