



**BLAIR CORKUM**  
FINANCIAL PLANNING INC.

P.O. Box 1201  
Charlottetown, PE  
C1A 7M8

T. 902-393-1248 (direct)  
CorkumFinancial@pei.sympatico.ca  
www.CorkumFinancial.ca

January 2, 2019

Honourable William Morneau, P.C.  
Minister of Finance  
House of Commons  
Parliament Buildings  
Ottawa, ON, K1A 0A6

Dear Minister Morneau,

**Re: Shared children of separated parents – Parents with similar incomes receive thousands of dollars difference in Federal Government benefits and tax credits based on current law**

I wish to review three questions and answers about current legislation that concern me:

1. If separated parents each earning \$30,000 per year share custody of two children in a 60/40 ratio, neither one needs to pay the other parent basic child support because household cash flow would be the same, correct? Yes (and that makes sense).
2. They can also share about \$13,000 in Canada Child Benefits between them, correct? No. Only one parent will get the full \$13,000. One parent gets Canada Child Benefits equal to enhance their cash flow by about 50% of their net annual salary to spend on the children and the other parent gets nothing. (This makes no sense)
3. Single parents supporting a child can claim an eligible dependant amount. In my example, they should each be able to claim the amount for an eligible dependant saving about \$2,500 in taxes, correct? No, if the parents agree on one “set-off” amount of child support instead of each person making a payment back and forth to each other (and that makes no sense). Yes, if they each make a payment back and forth to each other.

I have reviewed the report of the House of Commons Standing Committee on Finance and noted that the Committee did not make a recommendation based on my submission and presentation to fix this unfairness (re: the tax claim for the Amount for an Eligible Dependant when set-off payments are made.)

The above comments represent the crux of my letter. Do you agree with my conclusions about what makes sense? One of the above issues is a recent development, and has made shared parenting even more financially difficult, as explained below. The current status of legislation, followed by my recommendations to fix this unfairness, is as follows:

**Federal Child Support Guidelines, Section 9**

In the **Federal Child Support Guidelines**, legislation by the Department of Justice sets out that child support payments must be shared by parents when they have physical custody of “a child

*Financial Planning For a Balanced Lifestyle*

for not less than 40% of the time” (i.e. custody is between 40% and 60%). **This means that custody between 40% - 60% is close enough to being equal that child support payments are offset between parents.** This threshold makes a significant difference in the amount of child support being paid by one parent, with equal incomes resulting in no basic child support payments required by either party. (A \$30,000 salary would normally trigger basic child support payments of \$442.00 per month.) This provision makes sense because they each have the children roughly equal in time, and would have the same child rearing expenses. A line needs to be drawn somewhere, and the Department of Justice established this threshold in 1997.

#### **Canada Child Benefit, Income Tax Act, Section 122.6, and Tax Court case of Lavallee v. The Queen (2018 DTC 1152)**

In the **Income Tax Act**, shared-custody exists when the parents “resided with the qualified dependant on an equal or near equal basis.” In a recent development, the Tax Court case of Lavallee v. The Queen (2018 DTC 1152), the Honourable Justice B. Russell concluded that the Canada Child Benefit (CCB) should not be shared by the parents because the custody ratio was 42%/58%. The judge stated that “equal or near equal” would require no more than a 25% differential. **This means that custody between 44.45% and 55.55% is required before the CCB can be shared by the parents.** A 40% – 60% ratio used in the Child Support Guidelines legislation would not meet this test, creating a hardship condition for certain parents because of the inconsistency. The magnitude is demonstrated in my item #2 above and later in my letter.

#### **Amount for an Eligible Dependant, Income Tax Act 118(5) and 118(5.1), Case of Verones v. R (2013 FCA 69) and CRA Interpretation 2013-0502091E5**

This particular point is the one I presented to the FINA Committee on October 1, 2018 in Charlottetown, and in much correspondence over the past couple of years to the Department of Finance and others (as outlined in the article on my web site at <https://www.corkumfinancial.ca/shared-custody-and-the-eligible-dependant-amount-july-2017/> ). Section 118(5) and (5.1) of the Income Tax Act do not consider **the physical custody ratio as a relevant factor for determining who can claim the eligible dependant amount**, which ironically is a tax credit designed to help single parents with the costs of raising a child. **Only the method of child support payment is considered** although the amount to be paid is determined by the Child Support Guidelines.

If both parents make *individual payments to each other based on a legal obligation to do so*, and there are two children being shared, both parents can both claim the eligible dependant amount. However, regardless of the custody ratio, if the higher income parent only pays a *set-off amount* (the logical thing to do), that parent is denied the credit (even if custody is 60% with that parent). If there is only one shared child, the eligible dependant amount cannot be split. The parents must agree who gets the credit. The Department of Finance will only allow a tax credit to the recipient parent when only one payment is made, regardless of how it is determined or what sharing ratio exists.

The federal government apparently believes this is appropriate, even though the impact of the eligible dependant amount is built into the legislated tables of the Federal Child Support Guidelines<sup>1</sup>. By design of the Guideline tables, if the eligible dependant amount is not shared, the custody amounts are biased in favour of the recipient of a set-off payment by the full amount of that tax credit. In addition, our government apparently also does not understand or wish to care about the financial problems to one parent dealing with a “deadbeat parent,” which are exacerbated by a two payment requirement when one parent’s payment is returned NSF.

### **My Recommendations**

I suggest the following:

1. The definition of “shared” in both the Income Tax Act for the Canada Child Benefit and the Federal Child Support Guidelines for child support calculations should be identical. I propose using the specific ratio of 40% – 60% set out by the Guidelines, which has been used since 1997 and analyzed often by the courts in custody trials.
2. The amount for an eligible dependant and other related child amounts, such as the Canada Caregiver Amount and the Disability Tax Credit, should be mandatorily shared by both parents whenever the Canada Child Benefit is shared. The Canada Child Benefit is required by law to be shared when custody is “equal or near equal”. Apply the same sharing rules to all tax credits related to children after fixing the definition of shared custody.
3. The aforementioned technical corrections to the laws would result in treating all parents sharing custody between 40% and 60% of the time as equal. This would also significantly reduce confusion and professional fees related to negotiations around tax claims. With respect to such fees, current legislation only allows the “net” recipient of child support to claim professional fees regardless of whether two individual payments are made or one set-off amount. In shared custody situations, fairness would dictate similar treatment for both taxpayers. I recommend professional fees for parents to obtain child support, either as a sole custody parent, or as a shared custody parent regardless of the form of payment, be tax deductible.

### **Attachment**

I attach a supporting schedule showing sample numbers to demonstrate the impact of shared custody legislation and policy issues on parents and children. I apologize for the complexity, and perhaps you need not review the detail. I hope the magnitude of these differences, referenced in my opening paragraph is obvious to you, especially on lower income Canadians struggling as single parent families.

### **My Concluding Remarks**

Many separated parents are low income families, and the money being taken from the parents are those funds supposedly being offered by the federal government to help the children. As a member of the

---

<sup>1</sup> The Department of Justice Canada, Child Support Team Research Report, titled, Formula for the Table of Amounts Contained in the Federal Child Support Guidelines: A Technical Report, sets out the formula used to determine child support amounts. Specifically, it says, “Not included in the calculation of the receiving parent's taxes are the federal Child Tax Benefit and the GST rebate for children. These are deemed to be the government's contribution to children and not available as income to the receiving parent. The only difference in tax calculations between the two parents is the inclusion, in the calculations for the receiving parent, of the federal equivalent-to-spouse deduction and certain provincial tax reductions and credits.” The equivalent-to-spouse deduction is now called the amount for an eligible dependant.

Advisory Committee on Child Support to the federal Deputy Minister of Justice in the late 1990's, I recall the Department of Justice slogan that "Children Come First?" What happened?

I would think a joint meeting of competent personnel from the Department of Finance, the Canada Revenue Agency and the Department of Justice would quickly agree that this situation is unacceptable, has been outstanding too long, and deserves action. I also think the solution is straight forward and could be implemented promptly.

I have been trying to get a Member of Parliament or a federal bureaucrat to explain the fairness and logic to me for three years to no avail. I provided a comprehensive analysis of the eligible dependant amount issue, dated January 16, 2017, to you and copied it to about 20 other MPs and civil servants. I received only a few acknowledgment letters, and no explanations of why the status quo is appropriate. All I ask for is a logical explanation of how the above situations are fair, or for action to be taken to correct them. And also the professional respect of a serious response. I want to also let you know, because of my frustrated efforts to date, I will be forwarding a copy of this letter to any individuals or organizations that may be able to help bring more attention to this issue.

I "will continue to make arguments based on logic and common sense and hope that eventually they will prevail against an administration that doesn't always align itself around those principles." This is a quote borrowed from Prime Minister Trudeau, as quoted by the CBC with respect to his negotiations with the United States of America. (<https://www.cbc.ca/news/politics/trump-trudeau-trade-war-1.4685855>) He was speaking about the U.S.A. – I am speaking about our own country. The 2018 federal budget was presented by you as "a plan that puts people first – that invests in Canadians and in the things that matter most to them." I think some work needs to be done.

Yours very truly,



Blair Corkum

CPA, CA, R.F.P., CFDS, CDFA®CFP, CLU, CHS

cc. Various

c:\users\blair\documents\1 - bcfp\administration, office, marketing\opinions, bac publicity, submis. incl\budget\eligible dep amt 2018 further 2018-12\corres re tax and ccb finance issues 20190102wm2.docx

## **SUPPORTING SCHEDULE TO DEMONSTRATE THE IMPACT OF SHARED CUSTODY LEGISLATION AND POLICY ISSUES ON PARENTS AND CHILDREN**

### **Assumptions**

All of the examples will use the following assumptions:

- two children under age 6;
- tax rates based on PEI;
- separated parents who remain single;
- Canada Child Benefit (CCB) based on 2017 income;
- Excludes impacts of the GST/HST credit, the PEI sales tax credit or provisions related to children in other provinces, as well as the caregiver and disability tax credits where applicable;
- Parent A earns \$30,000 per year and Parent B earns \$28,000 per year, which results in a child support obligation of \$5,304 per year for Parent A and \$4,872 for Parent B;
- The parent having custody of the child is assumed to spend an amount for child rearing costs equal to the child support amount determined by the Guideline tables based on their own income. This is in accordance with the assumptions used to build the tables<sup>2</sup>.

### **Three Scenarios with Examples**

I use three examples (A, B and C) and three scenarios (I, II, and III) as follows:

Scenario I – Child support payments are determined in accordance with the Federal Child Support Guidelines (CSG). Each parent’s legal obligation is stated in the agreement/court order and each parent physically pays support to the other parent (no set-off).

Scenario II – The support payments are determined as in Scenario I, but only a set-off amount is paid, eliminating one eligible dependant amount (EDA).

Scenario III – All tax benefits and the Canada Child Benefit (CCB) are based on my recommendations of one definition for shared custody and mandatory equal sharing for shared custody situations, and no difference for using a set-off payment.

Example A - Parent A has custody 70% of the time, making this a sole custody situation.

Example B - Parent A has custody of both children 60% of the time, making this a shared custody situation for the CSG, but sole custody for the CCB.

Example C - Parent A has custody of both children 55% of the time, making this a shared custody situation for both the CSG and CCB.

---

<sup>2</sup> The Department of Justice Canada, Child Support Team Research Report, titled, Formula for the Table of Amounts Contained in the Federal Child Support Guidelines: A Technical Report, sets out the formula used to determine child support amounts. As stated in the report, “Several assumptions have been incorporated into the model. First, it is assumed that within the principal residence of the children, the parent and the children will share the same standard of living. A second assumption presumes that if the incomes of the parents are equal, it is fair and equitable that each should contribute equally to the financial support of the children, regardless of the extent of their contribution to the nurturing of the children.”

## Summary of Results Being Demonstrated

The differing results for each example and scenario are summarized in Table 1 below, with the calculations shown in the subsequent tables (as referenced from within Table 1). However the important issues are as follows, and are primarily the three numbers circled in Table 1 for the financial differences between parents.

**Scenario I** – This demonstrates the problem of inconsistent definitions of shared custody between the CCB and CSG – CCB not shareable when support payments are offset.

First, in a basic sole custody case as in Example A, no changes need to be made to any legislation. The custodial parent will have \$25,701.71 of funds available to raise their two children. (Table 1 and 2)

However, a significant discrepancy and unfairness arises in Example B, which is classified as shared custody for support purposes but not for the CCB. Even though both parents have custody a substantial amount of time, **Parent A has \$12,559.92 more cash to pay child expenses.**

It should be noted that Parent A has a higher income, and so this accounts for a legitimate \$432.00 difference between the parents in every scenario. The higher income parent should contribute more. However, Parent A receives the full \$12,991.92 of CCB because a 60/40 sharing ratio is still considered sole custody for CCB purposes. **This gives Parent A the ability to pay \$20,297.71 towards child expenses in contrast to Parent B of \$7,837.79.** When considering that the net pay from these parent's wages would only approximate \$26,000, this is significant.

Not only does Parent A receive all of the CCB, but Parent B is expected to pay \$4,872.00 in child support because it is “shared custody” for the CSG. The difference in definitions for CCB versus CSG creates this inequity. This situation should be embarrassing to the government because the higher income parent in this example is actually receiving the CCB.

As Example C in this Scenario 1 shows, this inequity disappears once both definitions are consistent and the CCB is shared – there is only the \$432.00 difference, which is fair based on Parent A's higher income. (Table 1 and 3)

You will note that total money available for the children's expenses is \$28,235.50 in both Examples B and C – it is only the sharing that varies. Furthermore, the figure is \$2,533.79 higher than the sole custody scenario (\$25,701.71). Both parents are entitled to the EDA because they are both single parents supporting a child. A sole custody parent is limited to one EDA (formerly the equivalent to spouse deduction) regardless of the number of children, which is reasonable.

**Scenario II** – This demonstrates the problem of a “set-off” payment of support versus individual payments - unfairly eliminating one EDA.

Scenario II is the unfair situation for which I have been lobbying for correction for three years, and has been a problem since at least the 2013 court decision. Scenario II shows the same differences as Scenario I, combined with the fact that one parent is not allowed to use the EDA, resulting in a cash loss of \$2,533.79 to Parent A. (Table 1 and 4) Parent B's cash flow is not affected. **The only reason for this \$2,533.79 change is because one set-off payment is made, instead of two individual payments.**

Looking at Example C, instead of the only difference being \$432.00 because of the higher income of Parent A, the government is also withdrawing the EDA from Parent A creating a total difference of \$2,965.79. (Table 1 and 4) As explained in footnote 1 above, the EDA is built into the child support tables. The EDA is being “double counted” in the support calculation, but is only available once, which is wrong and needs to be corrected as I suggest.

One problem that is reduced in Scenario II by use of a set-off payment is the consequence of non-payment. If Parent A does not pay, Parent B is only short by \$36.00 per month to pay bills. In Scenario I with separate payments, Parent B would be short by \$442.00 per month. Another reason the government should fix this problem.

**Scenario III** – This demonstrates the benefit of making the definitions of shared custody the same for CCB and CSG, mandating equal sharing of all tax credits, and allowing both parents to claim the EDA in shared custody arrangements.

Example B and Example C would only show a \$432.00 difference between parent obligations and would result in the same total money available for child rearing costs if legislation was made consistent and fair. As noted above, the \$432.00 is solely because of differing income levels of the parents and is appropriate. (Table 1 and 5)

These examples have ignored the GST/HST credit and the PEI sales tax credit considerations (or other relevant credits in other provinces), and the differences would also be greater where there is an infirm or disabled child, which would create entitlements to higher CCB payments, and tax savings from a caregiver credit and a disability tax credit.

**Table 1 – Summary of All Scenarios and Examples** (Individual tables follow)

	Scenario and Example Characteristics	Available for Child Expenses			Difference between parents	Explanation of Differences Between Parents
		Parent A	Parent B	Total		
<b>Scenario I</b>	<b>Individual payments</b>					
Example A Table 2	70% sole custody	\$25,701.71	-	\$25,701.71	\$ 25,701.71	Only Parent A has custody
Example B Table 3	60%/40% custody	\$ 20,397.71	\$ 7,837.79	\$28,235.50	<b>12,559.92</b>	CCB only to parent A - \$12,991.92; Parent A higher income - \$432.00
Example C Table 3	55%/45% custody	\$ 13,901.75	\$ 14,333.75	\$28,235.50	\$ 432.00	Parent A higher income - \$432.00
<b>Scenario II</b>	<b>Same as Scenario 1 but with set-off payment only</b>					
Example A Table 2	70% sole custody	N/A - same as Scenario I				
Example B Table 4	60%/40% custody	\$ 17,863.92	\$ 7,837.79	\$25,701.71	<b>10,026.13</b>	CCB only to Parent A - \$12,991.92; EDA only to Parent B - \$2,533.79; Parent A higher income - \$432.00
Example C Table 4	55%/45% custody	\$ 11,367.96	\$ 14,333.75	\$25,701.71	<b>2,965.79</b>	EDA only to Parent B - \$2,533.79; Parent B higher income - \$432.00
<b>Scenario III</b>	<b>Consistent legislation for defining shared custody and sharing of all tax credits</b>					
Example A Table 2	70% sole custody	\$25,701.71	-	\$25,701.71	\$ 25,701.71	Only Parent A has custody
Example B Table 5	60%/40% custody	\$ 13,901.75	\$ 14,333.75	\$28,235.50	\$ 432.00	Parent A higher income - \$432.00
Example C Table 5	55%/45% custody	\$ 13,901.75	\$ 14,333.75	\$28,235.50	\$ 432.00	Parent A higher income - \$432.00

**Table 2 – Sole Custody**

Scenario I	Example A	
	Parent A	Parent B
Custody	<b>70%</b>	<b>30%</b>
	Parent A Sole Custody	
Annual child support received	\$ 4,872.00	\$ -
Annual Canada Child Benefit (CCB) received	\$ 12,991.92	\$ -
Eligible Dependant Amount (EDA)		
- federal - tax savings on \$11,809	\$ 1,771.35	\$ -
- provincial - tax savings on \$7,780	\$ 762.44	\$ -
Total cash received	\$ 20,397.71	
Actual amount of child support paid	\$ -	\$ (4,872.00)
Amount from same parent's income allocated to child rearing costs	\$ 5,304.00	\$ -
Net amount for child rearing expenses	\$ 25,701.71	N/A
<b>Amount available for the child</b>	<b>25,701.71</b>	
<b>Excess money received by one parent</b>	<b>N/A</b>	

This is a typical sole custody arrangement, and the figures are appropriate.

**Table 3 – Demonstrates Impact on CCB of Differing Shared Custody Definitions**

Scenario I	Each parent pays support to the other parent			
	Example B		Example C	
	Parent A	Parent B	Parent A	Parent B
Custody	<b>60%</b>	<b>40%</b>	<b>55%</b>	<b>45%</b>
	Shared for Support Only		Shared for Support & CCB	
Annual child support received	\$ 4,872.00	\$ 5,304.00	\$ 4,872.00	\$ 5,304.00
Annual Canada Child Benefit (CCB) received	<b>\$ 12,991.92</b>	\$ -	<b>\$ 6,495.96</b>	<b>\$ 6,495.96</b>
Eligible Dependant Amount (EDA)				
- federal - tax savings on \$11,809	\$ 1,771.35	\$ 1,771.35	\$ 1,771.35	\$ 1,771.35
- provincial - tax savings on \$7,780	\$ 762.44	\$ 762.44	\$ 762.44	\$ 762.44
Total cash received	\$ 20,397.71	\$ 7,837.79	\$ 13,901.75	\$ 14,333.75
Actual amount of child support paid	\$ (5,304.00)	\$ (4,872.00)	\$ (5,304.00)	\$ (4,872.00)
Amount from same parent's income allocated to child rearing costs	\$ 5,304.00	\$ 4,872.00	\$ 5,304.00	\$ 4,872.00
Net amount for child rearing expenses	\$ 20,397.71	\$ 7,837.79	\$ 13,901.75	\$ 14,333.75
<b>Amount available for the child</b>	<b>28,235.50</b>		<b>28,235.50</b>	
<b>Excess money received by one parent</b>	<b>12,559.92</b>			<b>432.00</b>

The key difference in Table 3 between Examples B and C is the entitlement to the CCB totalling \$12,991.92. Parent A has about \$20,000 to spend on the child, while Parent B only has about \$8,000 because the definition of shared custody for the CCB is not reached until Parent B has at least custody for 44.45% of the time (after which CCB is shared). Example C demonstrates the way the system should work – Parent B provides an extra \$432.00 per year more than Parent A because his or her annual income is \$2,000 higher.

**Table 4 – Demonstrates Impact on EDA of “Set-off” Payment**

Scenario II	Only a set-off amount is paid			
	Example B		Example C	
	Parent A	Parent B	Parent A	Parent B
Custody	60%	40%	55%	45%
	Shared for Support Only		Shared for Support & CCB	
Annual child support received	\$ -	\$ 432.00		\$ 432.00
Annual Canada Child Benefit received <sup>2</sup>	\$ 12,991.92	\$ -	\$ 6,495.96	\$ 6,495.96
Eligible Dependant Amount				
- federal - tax savings on \$11,809		\$ 1,771.35		\$ 1,771.35
- provincial - tax savings on \$7,780		\$ 762.44		\$ 762.44
Total cash received	\$ 12,991.92	\$ 2,965.79	\$ 6,495.96	\$ 9,461.75
Actual amount of child support paid	\$ (432.00)	\$ -	\$ (432.00)	\$ -
Amount from same parent's income allocated to child rearing costs	\$ 5,304.00	\$ 4,872.00	\$ 5,304.00	\$ 4,872.00
Net amount for child rearing expenses	\$ 17,863.92	\$ 7,837.79	\$ 11,367.96	\$ 14,333.75
<b>Total combined for both parents</b>	<b>25,701.71</b>		<b>25,701.71</b>	
<b>Excess money received by one parent</b>	<b>0,026.13</b>			<b>1,965.79</b>

The difference between Table 3 and Table 4 is that only Parent B is entitled to the Eligible Dependant Amount. This is solely because a set-off payment is made instead of individual payments being exchanged. The government has taken away about \$2,500 of credits from Parent A, even though Parent A has the child most of the time.

**Table 5 – Demonstrates my Recommendations, including use of a “Set-off” Payment or not**

Scenario III	Recommended 60/40 as shared for all purposes			
	Example B		Example C	
	Parent A	Parent B	Parent A	Parent B
Custody	60%	40%	55%	45%
	Shared for Support Only		Shared for Support & CCB	
Annual child support received	\$ -	\$ 432.00		\$ 432.00
Annual Canada Child Benefit received	\$ 6,495.96	\$ 6,495.96	\$ 6,495.96	\$ 6,495.96
Eligible Dependant Amount				
- federal - tax savings on \$11,809	\$ 1,771.35	\$ 1,771.35	\$ 1,771.35	\$ 1,771.35
- provincial - tax savings on \$7,780	\$ 762.44	\$ 762.44	\$ 762.44	\$ 762.44
Total cash received	\$ 9,029.75	\$ 9,461.75	\$ 9,029.75	\$ 9,461.75
Actual amount of child support paid	\$ (432.00)	\$ -	\$ (432.00)	\$ -
Amount from same parent's income allocated to child rearing costs	\$ 5,304.00	\$ 4,872.00	\$ 5,304.00	\$ 4,872.00
Net amount for child rearing expenses	\$ 13,901.75	\$ 14,333.75	\$ 13,901.75	\$ 14,333.75
<b>Amount available for the child</b>	<b>28,235.50</b>		<b>28,235.50</b>	
<b>Excess money received by one parent</b>		<b>432.00</b>		<b>432.00</b>

Table 5 demonstrates the way the system should work – Parent B provides an extra \$432.00 per year more than Parent A because Parent A’s annual income is \$2,000 higher, custody of 60/40 is treated the same as 55/45 for all credits, and the eligible dependant amount is provided to both parents regardless of how the payments are made.