

opinion

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TAXES

Accountability, fairness and justice during separation and divorce

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GUEST OPINION

Accountability, fairness, and justice for children does not appear to be a priority for federal politicians.

Current family and tax laws affecting children of separated parents certainly do not promote these principles.

In Canada, 40 per cent of marriages end in divorce before reaching the couple's 30th anniversary. On average, separating couples are in their early 40s and many have dependent children. Family law in Canada encourages parents to make decisions based on the best interests of the children, and the Divorce Act is currently being updated to make this principle stronger. Most of us would agree that children spending equal time with their parents is in their best interests, except in unsafe circumstances.

Families that have a shared parenting arrangement should also share federal benefits. However,

these benefit programs are difficult to navigate, inconsistent, and have unfair rules that often prevent benefit sharing. For example, the government has three definitions for determining shared parenting — one based on who makes the support payment, one based on 40 per cent custody, and another based on 45 per cent custody. Is this fair and logical?

One definition of shared parenting is used to calculate child support.

It states that shared custody exists when each parent has physical custody of a child at least 40 per cent of the time. In such cases, each parent typically owes child support to the other parent for the same child based on a table of parents' incomes. The higher income parent will pay the most.

Parents are able to claim a tax credit worth about \$2,500 (more or less depending on the province) when they support a child as a single parent. This is called the Eligible Dependant Amount. When separated parents have a legal

support obligation and actually make payments to each other for the same child, they can choose which person claims this tax credit. Parents often take turns from year to year. If they have two shared children, they can each claim one.

Here is where common sense falls off the table.

Many parents in a shared parenting situation decide to simplify their child support arrangement. Rather than each parent paying the other every month, the higher earning parent pays the difference to the lower earning parent. This "set-off" arrangement reduces the likelihood of bounced cheques and it is convenient. However, if they do this, only the lower earning parent, not both, can use the \$2,500 credit, cheating the paying parent out of \$2,500. This is the law even though child support table amounts assume that the tax credit will be received by the paying parent in shared custody calculations. Why should simplifying child support change the rules?

Now consider the Canada Child Benefit. When custody of the children is shared on "an equal or near equal basis," the benefit is divided between both parents. Based on recent court decisions, the Canada Revenue Agency (CRA) now defines this as at least 40 per cent of the time with each parent.

Consider two parents making under \$31,000 each with two young children shared between 40 per cent and 44 per cent of the time. Because of the sharing parenting definition used in calculating child support (40 per cent), their support payments will be close to equal and mostly cancel each other out. However, because of the different definition of shared parenting for the Canada Child Benefit (45 per cent), one parent will receive about \$13,000 more in benefits than the other. Is this fair?

To top it all off, there are no defined rules on how to calculate physical custody of the child. Who gets credit for time spent in school, at summer camp, or with

the grandparents? CRA agents and court judges can decide differently.

I want to be clear that CRA personnel and judges are only following the law. This is the fault of legislators and politicians, who are aware but unwilling to act.

In response to my request for change on this issue, Finance Minister William Morneau wrote to me in a March 21, 2019, letter that the Child Tax Benefit is based on 40 per cent custody, which is in conflict with actual practice. (I expect that the minister has not been brought up to speed by his officials.) However, he also stated, "Although our Government continues to monitor the issues you have raised, we are not prepared to recommend any changes at this time."

I ask, "Why not?"

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