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Proving Your Status

Establishing Eligibility for the Canada Child Tax Benefit

Ombudsman special report, October 2010 | J. Paul Dubé, Taxpayers' Ombudsman

Taxpayers'
Ombudsman
des contribuables

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TAXPAYER BILL OF RIGHTS

1. You have the right to receive entitlements and to pay no more and no less than what is required by law.
2. You have the right to service in both official languages.
3. You have the right to privacy and confidentiality.
4. You have the right to a formal review and a subsequent appeal.
5. You have the right to be treated professionally, courteously, and fairly. *
6. You have the right to complete, accurate, clear, and timely information. *
7. You have the right, as an individual, not to pay income tax amounts in dispute before you have had an impartial review.
8. You have the right to have the law applied consistently.
9. You have the right to lodge a service complaint and to be provided with an explanation of our findings. *
10. You have the right to have the costs of compliance taken into account when administering tax legislation. *
11. You have the right to expect us to be accountable. *
12. You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances.
13. You have the right to expect us to publish our service standards and report annually. *
14. You have the right to expect us to warn you about questionable tax schemes in a timely manner. *
15. You have the right to be represented by a person of your choice. *

* Service rights upheld by the Taxpayers' Ombudsman

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REPORT SUMMARY

The Office of the Taxpayers' Ombudsman (OTO) commenced operations in February 2008. Within a month of becoming operational the OTO began receiving complaints from taxpayers about difficulties they were experiencing related to the Canada Child Tax Benefit (CCTB). The CCTB is a non-taxable monthly payment paid by the federal government to help families with the costs of raising children. It is administered by the Canada Revenue Agency (CRA) and many benefit applicants and recipients have described to us their difficulty obtaining clear, accurate and timely information from the CRA about the program.

There are factors such as marital status, residency, and the custody of children that affect a taxpayer's eligibility and/or entitlement amount for the CCTB. In a desire to facilitate timely access to the CCTB, the CRA does not require claimants to prove all the eligibility requirements at the time of applying for benefits. The CRA begins to administer benefits once the application is processed. It is only once a taxpayer has received benefits for some time that the CRA may request proof of such things as the marital status of a parent or the citizenship of the applicant and/or their spouse, if applicable. If the taxpayer is unable to provide the documentation requested, the payment of benefits, upon which parents often come to depend, is suspended. Quite often the CRA will demand repayment of benefits that had been paid for years.

The OTO has received complaints that suspension of these benefits, as well as demands for repayment, has caused considerable hardship to families. For example, taxpayers have come to us after having their CCTB payments suspended by the CRA and being told that in order to have benefits reinstated, they must prove to the CRA's satisfaction things like their marital status, the birth of their children, or other factors that affect eligibility. The problem cited by many taxpayers is that they have difficulty obtaining clear, accurate, and timely information from the CRA about what is required from them in order to have their benefit payments re-established. In some cases, they did not feel it was fair that the CRA was suddenly denying their entitlement to benefits, and demanding a repayment, because an ex-spouse refused to acknowledge the end of a marriage, or the role of the CCTB benefit recipient as primary caregiver. In other cases, taxpayers felt they were not receiving professional service from the CRA when it would not provide them with the information necessary to taxpayers to establish their eligibility for CCTB.

The complaints received stem largely from the fact that the CRA's documentation requirements for establishing CCTB eligibility, and the recent changes made to those requirements, are still not clear to taxpayers. We recommend in this report that the CRA take steps to make it easier for taxpayers to find and understand those requirements.

We specifically recommend in this report that the CRA do more to inform Canadians about the CCTB program and how to apply for benefits.

Examples of the types of documents that the CRA accepts as proof should be easily accessible on the CRA Web site and information on how to apply for CCTB should be more widely distributed by the CRA. While the CRA has some informative and helpful materials on the CCTB program, they should be easier for taxpayers to find and to understand.

These recommendations are aimed at helping the CRA provide the complete, accurate and timely information Canadians require from the CRA in order to meet their obligations and receive the benefits to which they are entitled.

ISSUE

Problems experienced by benefit recipients

In 2008-2009, the CRA made more than 90 million benefit and credit payments to more than 11 million recipients. There are eligibility requirements for benefits such as the CCTB which recipients must satisfy. In the vast majority of cases, demonstrating eligibility is a straightforward exercise.

Taxpayers have complained to the OTO that some of the rules around eligibility are not clear and that adequate explanations of those rules are sometimes difficult to obtain. When recipients cannot satisfy eligibility requirements, it usually results in the cancellation of benefits and the recovery of benefits already paid – even if a recipient is actually entitled to benefits but just cannot understand what the CRA is asking them to provide.

Changes in eligibility status often stem from a major life event, such as a divorce or adjustments to child custody arrangements, times that are fraught with emotion, stress, and financial challenges. The cancellation of benefits only adds to personal and financial hardship.

While recognizing that the CRA has a duty to prevent accidental overpayments and fraud and noting that the CRA has already taken steps to improve service and fairness in the administration of benefits, the Taxpayers' Ombudsman finds that more can be done to reduce the compliance burden on benefit recipients. Here are a few examples of the issues benefit recipients have brought to our attention (all names have been changed to maintain confidentiality):

Tara's story – Proof of new marital status

Tara separated from her common-law partner in 2006 and advised the CRA of her change in marital status. Her personal information was updated and her former partner's income was no longer included in the benefits calculation. As a result, the CRA began issuing her higher CCTB payments because she was now recognized to be a single parent.

Two years later, the CRA required proof that Tara was indeed single. Tara sent documents to the CRA, including copies of several utility bills and a copy of her apartment lease, all in her name only, to prove her single status. She also provided several contact numbers for her ex-spouse so that the CRA could contact him to confirm the information she had provided.

The CRA was not satisfied with the proof Tara provided. In March 2008 the CRA retroactively denied her request to change her marital status to 'single' and returned her personal status to 'married'. As a result, Tara received a Notice of Redetermination indicating that she had to repay \$4,200.

Sarah's story – Separated under the same roof

Sarah and her common-law husband Richard separated in November 2006. Sarah and Richard shared custody of their children. Since it was an amicable separation, and since neither party could afford to live on their own, they continued to live under the same roof; Sarah lived upstairs and Richard lived downstairs. They felt that because they were living separately under the same roof for financial reasons, and not as a couple, that they were justified in filing their taxes as single people. Sarah sent the CRA a request to change her marital status to 'separated'.

Shortly after filing her tax return for 2007, Sarah received a notice that her eligibility for CCTB was under review. She was asked to provide proof that she and Richard were separated and living apart. She later learned that she and Richard were considered living as 'common-law' as per the definition of the *Income Tax Act* and that they had incorrectly filed as single. The CRA reversed her marital status to 'married'. Unfortunately, Sarah had already started receiving higher CCTB payments based on her marital status of 'separated'. As a result, she had to pay back a substantial amount to the CRA.

Jason's story – Proof of status as primary caregiver required

Jason had become the primary caregiver of his two children in October 2009, but the CCTB payments continued to be issued to his former spouse rather than to him. Upon contacting the CRA, Jason was advised to send forms RC65 - *Marital Status Change*, and RC66 - *Canada Child Benefits Application* to his local tax centre. Jason was informed that once the CRA had processed his revised information, he would receive a CCTB payment retroactive to October 2009.

Jason contacted our office in December 2009 as he still had not received any CCTB payments and was experiencing financial difficulties. After the OTO put Jason in contact with the CRA, the CRA advised him that proof of care was required to substantiate that his two children had been in his care since October 2009. Jason was asked to submit proof to the CRA with a confirmation letter from the children's school. The information was received by the CRA at the beginning of January 2010 and a payment for the months of November and December 2009 was issued immediately.

Stefan's story – Temporary Shared Eligibility

Stefan sent in an application for CCTB to the CRA. Even though his ex-wife was normally the primary caregiver for their children, he had custody for the summer months. He felt that he was entitled to the CCTB benefits for the months of June, July, and August 2008 when he was the primary caregiver. On his benefits application, he indicated “shared eligibility.” Upon receipt of the application, and according to the normal CRA procedures for temporary shared eligibility applications, the CRA sent questionnaires out to both parents. Both parents were required to complete the questionnaire and provide documents proving the eligibility changes being requested. This procedure delayed the application process. Stefan’s application was denied because the period of the temporary shared eligibility had already passed once the questionnaires were received by the CRA. CRA later advised Stefan that he should have specified “temporary shared eligibility” rather than “shared eligibility” on his original application form.

Documentation Requirements – The Common Thread

The similarity in these cases is that the CRA's documentary requirements are unclear to taxpayers, thereby creating a challenge for taxpayers to understand what is actually required in order to receive the benefits to which they are entitled.

THE CANADA CHILD TAX BENEFIT

What is the CCTB?

The CCTB is a tax-free monthly payment made to eligible families to assist them with the costs of raising children under the age of 18. It is administered by the CRA. To be eligible for the CCTB taxpayers must apply to the CRA. In order for the CRA to calculate the amount of CCTB the taxpayer should receive, they (and their spouse if applicable) must file an income tax return.

The CCTB may include the Child Disability Benefit, a monthly benefit providing financial assistance for qualified families caring for children with severe and prolonged mental or physical impairments.

Also included with the CCTB is the National Child Benefit Supplement, a monthly benefit for low-income families with children. The supplement is the Government of Canada's contribution to the National Child Benefit, a joint initiative of federal, provincial, and territorial governments, and First Nations.

The program is administered and the benefits are distributed by the CRA.

Who is eligible for the CCTB?

In order to be eligible for the CCTB, the taxpayer must meet all of the following conditions:

- the taxpayers must live with the child for whom the benefit would be paid, and the child must be under the age of 18;
- the taxpayer must be the person who is primarily responsible for the care and upbringing of the child in question. This means that the taxpayer is responsible for such things as supervising the child's daily activities and needs, making sure the child's medical needs are met, and arranging for child care when necessary;
- the taxpayer must be a resident of Canada; and
- the taxpayer or spouse or common-law partner must be a Canadian citizen, a permanent resident, a protected person, or a temporary resident who has lived in Canada for the previous 18 months, and who has a valid permit in the 19th month.

Once eligibility has been established, the taxpayer and the taxpayer's spouse or common-law partner must file an income tax return every year, even if there is no income to report, in order for the CRA to calculate entitlement.

In cases of separation or divorce, both parents may share more or less equally in the care and upbringing of a child. If each parent wants to apply for the CCTB for alternating periods, they are required to attach a note to the application stating that request.

When can a person apply for the CCTB?

According to the CRA's Web site, parents or primary caregivers should apply for the CCTB as soon as possible after:

- their child is born;
- their child starts to live with them; or
- they become a resident of Canada.

The CRA also advises Canadians that:

“Even if you feel you will not qualify for the CCTB because your family net income is too high, you should still apply. We calculate your entitlement every July based on your family net income for the previous year.”

THE TAXPAYER BILL OF RIGHTS

The Taxpayer Bill of Rights is a set of fifteen rights, eight of which are service rights that entitle taxpayers, among other things, to be served professionally and treated fairly by the CRA. The Taxpayer Bill of Rights is intended to make it easier for taxpayers to understand what they can expect in their dealings with the CRA, and for employees of the CRA to understand what taxpayers expect of them. Of the eight service rights that the Taxpayers' Ombudsman is mandated to uphold, the three most relevant to this review are:

- You have the right to be treated professionally, courteously and fairly (Article 5).
- You have the right to complete, accurate, clear, and timely information (Article 6).
- You have the right to expect [the CRA] to be accountable (Article 11).

THE SCOPE OF OUR REVIEW

Based on complaints received from taxpayers, the OTO identified CCTB as an issue of concern and conducted some preliminary research in September of 2008. The Ombudsman briefed the then Minister of National Revenue, the Honourable Jean-Pierre Blackburn, on the issue. We determined that the administration of documentary requirements for establishing eligibility for CCTB was a systemic issue that warranted further investigation and we launched a systemic review in February 2009.

On May 12, 2009, prior to the completion of our review, the Minister of National Revenue announced that the CRA would be making changes to the way the CCTB was to be administered.

Our preliminary analysis of the changes made by the CRA suggested that they would likely improve the CCTB program.

Overall, we found that the changes implemented by the CRA did address many of the issues raised in complaints. The CRA's requests for documentation are now clearer and easier to understand and the CRA has implemented a new policy of allowing taxpayers to prove eligibility factors by submitting letters from third parties.

“... the Canada Revenue Agency (CRA) is simplifying the application process for the Canada Child Tax Benefit (CCTB) to make it easier for recipients to confirm their living arrangements and marital status for eligibility purposes.”

The Honourable Jean-Pierre Blackburn
Minister of National Revenue
News Release May 12, 2009

Unfortunately, we continued to receive complaints about the program and decided to expand the scope of our review and monitor the effects of the CRA's new policies.

The broadened scope of the systemic review included:

- Third Party Confirmation Letters
- Documentation requirements of form RC65 - *Marital Status Change*
- Documentation requirements of form RC66 - *Canada Child Benefits Application*
- Clarity of Information – Temporary Shared Eligibility
- External Communications – Compliance Activities

Third Party Confirmation Letters

One of the changes implemented as a result of Minister Blackburn's May 12, 2009 announcement included the creation of a new "third party confirmation letter" that could be used to satisfy taxpayer documentation requirements.

The CRA advised that the new third party confirmation letter was created to assist in confirming marital status. This letter, from a person in a position of authority, would support whether the CCTB recipient was living at a different residential address from their former spouse for the period under review. The CRA requires that the taxpayer provide letters from two (2) separate third parties. The third party letters must be completed by a person in a position of authority who can attest that the taxpayer and former spouse/common-law partner have lived at different residential addresses due to a breakdown in the marital relationship.

However, the definition of a third party or a person in authority was unclear, both in the material provided to us by the CRA and in CRA publications. We requested clarification regarding who would qualify as a 'third party' for the purposes of these letters. As a result of our requests for clarification, the CRA revised their initial contact and third party confirmation letters to provide examples of individuals who would qualify. The CRA also advised us that the list is not meant to be exhaustive and that every third party letter submitted by a benefit recipient would be evaluated on its own merit.

Documentation Requirements for a Marital Status Change

Benefit recipients can inform the CRA of a marital status change by completing form RC65 - *Marital Status Change*. Taxpayers are not required to provide documentary proof of marital status change at the time they complete form RC65. We asked the CRA to comment on the feasibility of requiring taxpayers to send in documentation proving a marital status change along with form RC65, rather than requiring documentation retroactively at a later date.

Proving a change in marital status was one of the most common CCTB complaint drivers at the Office of the Taxpayers' Ombudsman in 2008 and 2009.

The CRA responded that it was technically feasible for them to require taxpayers to submit documentation proving a marital status change at the same time as submitting the RC65. The CRA stated however, that its objective in removing the paper burden at the beginning was to make the application process less onerous on taxpayers at a time when life events are first and foremost on their minds. The CRA also stated that most taxpayers are already compliant, making it more reasonable for the CRA to validate the information on the "back end" based on certain risk factors, rather than slowing down the processing on the "front end" for everyone. The CRA

does include a notice at the bottom of the RC65 which advises the taxpayer that their marital status may be validated at a later date.

In many of the complaints received, the CRA had re-assessed the taxpayers' benefits according to the date provided on form RC65 and, if the applicant was entitled, it issued a retroactive payment for CCTB. If the CRA later noticed a discrepancy in the effective date of the updated marital status, or a discrepancy with the filing information of the spouse or former spouse, the CRA would determine that the taxpayer was not entitled to the benefits they had received. The taxpayer would then have to reimburse what would be deemed to be an overpayment. This often imposed a significant financial burden on the benefit recipient. In most cases, the taxpayers had simply made a keying or spelling error when filling out the form, and after submitting supporting documentation, the CRA reversed their decision and the taxpayers were again entitled to the benefits.

Documentation Requirements – Canada Child Benefits Application

Taxpayers who wish to apply for the CCTB do so by submitting a completed form RC66 - *Canada Child Benefits Application*. Taxpayers are not required to provide documents to prove eligibility with their application; however, if their file is selected for review at a later date, they will be required to provide documentary proof that they were eligible at the time they applied.

The CRA advised our office that their publications clearly indicate that only the person primarily responsible for a child's care and upbringing should apply for benefits on behalf of that child. CRA materials outline all of the eligibility requirements and inform taxpayers that the CCTB application process is based on the self-assessment tax system and as such, it is assumed that applicants are truthful in their applications.

The CRA further stated that if taxpayers were required to provide documents up front to prove eligibility for all benefits and credits, delays and processing costs would increase significantly. This would be a result of increased processing and handling time for all files instead of only for those which are being reviewed. The CRA has estimated that costs are approximately seven times higher to process CCTB applications in which documentation and/or proof is submitted and/or required.

The CRA has recently introduced the Automated Benefits Application (ABA) service - a system whereby all new births in a participating province will be automatically registered for the CCTB, upon consent of the mother. Once the ABA system is fully implemented in all provinces, form RC66 will only be used for mothers who did not consent to the ABA service but still wish to receive benefits, or when there is a new

primary caregiver. This includes changes in custody arrangements on a permanent or temporary basis.

Clarity of Information – Temporary Shared Eligibility

Temporary shared eligibility is described as two individuals sharing the care of an eligible child (or children) for equal periods of time during a determined **temporary** period of time - for example, summer vacation periods. During this period, the two individuals share the CCTB eligibility equally and can request ‘temporary shared eligibility’ for CCTB purposes.

Temporary shared eligibility refers to two individuals sharing CCTB eligibility equally for a determined temporary period of time.

The CRA advised that they will only process applications for temporary shared eligibility if the period is greater than 4 weeks and the application is received within the requested care period. If the application for temporary shared eligibility is received after the requested temporary care period, the application will be denied.

We reviewed the CRA Web site, the pamphlet T4114 - *Canada Child Benefits*, and the RC66 - *Canada Child Benefits Application* but we were unable to find any information regarding temporary shared eligibility and its requirements. The CRA advised that because the number of requests was rare (although they do not maintain statistics) and because of the different circumstances surrounding each case, there is no formal information regarding temporary shared eligibility available to the public. This makes it difficult for a taxpayer to know how to complete an application. The CRA’s service to taxpayers would be enhanced by improving its communication to taxpayers and making them aware that they can apply for temporary shared CCTB eligibility. It is unfair to reject a taxpayer’s claim for benefits because they did not comply with a policy when they could not readily obtain information about the policy from any of the CRA’s publications or Web site.

External Communications – Compliance Activities

One of the CRA’s objectives is to ensure that the right benefit entitlements are issued to the right individuals. They accomplish this by conducting reviews to identify possible areas of non-compliance. The reviews may decrease or increase benefits to a particular recipient depending on the CRA’s determinations about that individual. These reviews are conducted by the Validation and Control (V&C) section within the CRA.

The CRA informed us that V&C has streamlined its procedures to better identify higher risk recipients as opposed to general validation of all recipients. This allows V&C to reduce the compliance burden for compliant taxpayers, while focussing more on potential non-compliant individuals.

Taxpayers, tax professionals and benefit recipients have claimed that the validation processes for the CCTB have become onerous. Our research found that the actual number of reviews undertaken by V&C have declined steadily throughout the last few years. There were 310,069 reviews completed in 2006. This number steadily decreased to 163,292 for the first three quarters in 2008.

The CRA also stated that they are continually improving voluntary compliance by taxpayers and benefit recipients through education. Validation letters from the CRA to taxpayers contain an educational component to assist recipients in understanding the rules associated with the benefits they are receiving. As well, compliance messaging is included in the Canada Child Tax Benefit and the Goods and Services Tax/Harmonized Sales Tax Credit guides, their posters, outreach presentations, and Web site information.

The CRA did advise that they intend to include the following text in pamphlet T4114 - *Canada Child Benefits*, to highlight the importance of compliant behaviour under section "What happens after you apply?":

"Each year we conduct a number of review activities that promote awareness of and compliance with the laws we administer. These reviews are an important part of the compliance activities we undertake to maintain the integrity of, and Canadians' confidence in, the Canadian benefit system."

Compliance is only successfully achieved if the subject is well informed. In order for taxpayers to comply with their obligations, they must first fully understand their obligations. Taxpayers can consult the pamphlet, T4114 - *Canada Child Benefits*, which explains who is eligible for the CCTB, how to apply for it, how the CRA calculates the benefit, and when a benefit recipient should contact the CRA.

The Canadian tax system is a self-assessment taxation system and the CRA is required to provide all taxpayers with the information they require to be compliant. They are also required to provide all taxpayers with the information concerning the outcomes of a taxpayer's non-compliance. The understanding by taxpayers of the consequences of not meeting their taxation obligations (either knowingly or unknowingly) is seen as a deterrent to non-compliance.

It would be helpful for taxpayers if the information on the CRA Web site about *Validating Your Eligibility for Benefits and Credits* was added to the CRA's information pamphlet T4114 - *Canada Child Benefits*. Taxpayers would then be able to obtain the

majority of the necessary information about the program in one place. The CRA should also increase the visibility of pamphlet T4114 - *Canada Child Benefits*, on the *Canada Child Tax Benefit (CCTB)* page of the CRA Web site to let the taxpayers know that this is an excellent and useful tool for getting information on the CCTB.

FINDINGS

Prior to the changes announced by the Minister of National Revenue in May 2009, the CRA's documentation requirements for CCTB were unclear to many taxpayers. This resulted in CRA having to contact some taxpayers several times after they had applied for benefits in order to request more documentary proof. Upon review of the changes made to the CCTB documentation requirements, we are satisfied with the changes announced by the Minister and implemented by the CRA. The CRA's requests for documents are now much easier to understand and more options for satisfying requests for documentation are available to the taxpayer. These changes address the issues raised in the complaints received by the OTO. The CRA has taken the necessary steps to inform the CRA employees who deal with CCTB, thus ensuring that the changes were implemented consistently.

These new policies, however, are still not widely known by benefit recipients who would benefit from information about these rules being more readily available. The CRA has advised us that in most cases when an application is made to change the eligibility from one parent to another, or to share eligibility either on a permanent or temporary basis, a questionnaire may be sent to both parents requiring them to submit documentary proof supporting their claim for eligibility. We find that this process would be more efficient if the applicant was advised of the documentary requirements at the time of his or her application. Additionally, the applicant should be advised that the CRA may review their eligibility retroactively. This documentary proof of eligibility may be required at a later date and they should retain their proof of eligibility for the same period as specified by the *Income Tax Act* and other acts for the retention of documents.

Finally, we would like to commend the CRA on actions they have taken to improve service with respect to CCTB prior to the completion of this report. As discussed previously, the rapid changes made to the initial contact and the third party confirmation letters as a result of input from the OTO, and the intended changes to the pamphlet T4114 - *Canada Child Benefits*, are excellent examples of the on-going collaboration between the OTO and the CRA to find solutions to service complaints. The constructive feedback of the OTO helps the CRA improve its service delivery and ensure that taxpayers are receiving the service they are entitled to.

RECOMMENDATIONS

We recommend that the CRA take the following steps in order to make it easier for taxpayers to understand the CCTB eligibility requirements, including the types of supporting documentation that may be required to prove status.

1. Provide clear examples of the types of documents a taxpayer may submit as proof of eligibility and/or marital status during validation and control processes. These examples should be widely distributed and be readily available on the CRA Web site under *Validating Your Eligibility for Benefits and Credits*, as well as in any applicable pamphlets and forms.
2. Form RC65 – *Marital Status Change* should provide examples of the types of documents that the CRA will accept from the taxpayer as valid documentation for a marital status change.
3. Information about ‘temporary eligibility’ and ‘temporary shared eligibility’ should be readily available to taxpayers, including definitions of the terms and the eligibility requirements. The definitions, eligibility requirements, and related information should be on the CRA Web site and applicable publications, and referred to on form RC66 – *Canada Child Benefits Application* in the “Shared Eligibility” section of the form.
4. The information contained in the section *Validating Your Eligibility for Benefits and Credits* from the CRA Web site should be added to pamphlet T4114 - *Canada Child Benefits*. This would enable taxpayers to obtain the necessary information about the CCTB program in one place.
5. Increase the visibility of pamphlet T4114 - *Canada Child Benefits* on the *Canada Child Tax Benefit (CCTB)* page of the CRA Web site. This is an excellent and useful tool for taxpayers and benefit recipients interested in comprehensive information regarding the CCTB.