

The Basics of Canada Child Benefit (CCB)

Legal Information not Legal Advice



- **This presentation contains general legal information**
- **The law, programs/policies can vary**
- **This presentation is not a substitute for legal advice**
- **If you have a question or problem, please contact us, your local legal clinic or a lawyer**

About SALCO



- **SALCO is a community legal clinic funded by Legal Aid Ontario (LAO).**
- **We are a specialty clinic that serves low-income South Asians (e.g. people originating from India, Pakistan, Bangladesh, Sri Lanka, etc.) in the GTA.**
- **Our office is at 45 Sheppard Ave. East, Suite 106A, Toronto. You can also call us at 416-487-6371 to seek legal advice or to make an appointment.**
- **We can serve you on-site in English, Hindi, Urdu, Punjabi, Bengali, Tamil and Kannada.**

Agenda

- 1. What is CCB?**
- 2. Who is eligible for CCB?**
- 3. How does immigration status impact CCB eligibility?**
- 4. What options are available for community members who have been denied CCB?**

What is CCB?



What is CCB?



- Federal program that provides income support to eligible families
- Introduced by the federal government in 2016
- Tax-free monthly payment
- Intended to help low- and middle-income families with the cost of raising children under 18
- may include an additional amount for the child disability benefit

What is CCB?



- Seen as an important tool for reducing child poverty in Canada
- The federal government has calculated that the CCB will help to lift tens of thousands of children in Canada out of poverty

What is CCB?



➤ Amount of CCB:

- \$6,496 per year (\$541.33 per month) for each eligible child under the age of six
- \$5,481 per year (\$456.75 per month) for each eligible child aged 6 to 17
- Amount of CCB reduced when adjusted family net income is over \$30,450.

Other Benefits:

- The **Child Disability Benefit** provides an additional amount for children with severe and long-term disabilities. (upto \$2,771 per year for each child)
- In Ontario, the **Ontario Child Benefit** provides a maximum of \$1,403 per child per year.

What is CCB?



➤ Calculation of CCB

- based on all the following information:
 - the number of children who live with you
 - the ages of your children
 - your adjusted family net income for the base year
 - your child's eligibility for the [child disability benefit](#)
- The payment period runs from July 1 of the year following the base year to June 30 of the next year.

Eligibility for CCB

Eligibility - General



- The child must be under 18
- The parent must live with the child
- The parent applying must have primary responsibility for care and upbringing of the child
 - Parent who primarily takes care of the child's daily needs
 - Female parent is presumed to be primarily responsible
 - Can be split where there is shared custody

Eligibility - General

- Only one person per household can apply for the benefit
- You and your spouse or common law partner (if applicable) filed last year's income tax



Eligibility: Residence for Tax Purposes



The parent must be resident in Canada for tax purposes

Residency for tax purposes is assessed based on residential ties to Canada, which is not dependent on immigration status

Eligibility: Residence for Tax Purposes



- Ordinarily resident or
- Deemed resident

“Deemed” Resident for Tax Purposes

A person who lives in Canada for 183 days or more in any calendar year is deemed to be a resident of Canada for the whole year for federal tax purposes.



(See Tax Folio S5F1C1)

Eligibility: Immigration Status



The parent or their spouse/common law partner must be a:

- Canadian citizen
- Permanent resident
- Protected person
 - Determined by IRB to be a person in need of protection / Convention refugee
- A “temporary resident” who lived in Canada for the previous 18 months
 - A valid temporary resident visa e.g. as a visitor, worker or student

For those who are not “temporary residents”, PRs or citizens, Canada takes the position that the following “statuses” are not eligible for CCB:

- Refugee Claimants
- Families from countries with a “moratorium” on removals
- Canadian citizen children with parents who do not fall within the allowed categories



Mary has no “status” but cannot be removed from Canada.
She is a single mom with an 11 year-old Canadian-born daughter.
Mary has applied for permanent residence on humanitarian grounds.
No decision has been made.

Question: Is Mary eligible for CCB?

Unequal Impacts



- Children whose parents do not have regularized immigration status are unfairly excluded (kids may even be Canadian citizens themselves)
- Excludes children most in need - deepens the poverty gap: Immigrants without permanent residence already face much higher poverty rates compared to the general population (42.9% v. 12.5%)
- Parents who pay tax are excluded from claiming child benefit

Unequal Impacts



- Perpetuates inequalities based on race and gender
- Reinforces disparate impact of child poverty – experienced by racialized, Indigenous, lone female parent families
- Undermines healthy development of children, with impacts that stretch into adulthood
- Reinforces intergenerational poverty
- Forces women to stay in abusive relationships with partners with citizenship or permanent residence or give up custody of their children

REPORT: EVERY CHILD COUNTS



- Prepared by Income Security Advocacy Centre, Campaign 2000, Chinese and Southeast Asian Legal Clinic, and South Asian Legal Clinic of Ontario
- Documents inequitable access and impacts
- Violates Canada's international obligations
- <http://incomesecurity.org/publications/child-benefits/Every-Child-Counts-Canada-Child-Benefit-for-All-September-2018.pdf>

How to Help Community Members Denied CCB

Overview of the Appeal Process



If there is an argument that the decision to deny the CCB was wrong:

- Step One: An “objection” must be made within 90 days of the date the decision was put in the mail
- Step Two: If the objection is denied, an appeal can be made at the Tax Court of Canada within 90 days from the date the decision was mailed

Objections



- File an objection with CRA Appeals Branch
 - online at [My Account](#) by selecting "Register my formal dispute";
 - online at [Represent a Client](#); or
 - by mail, using [Form T400A, Objection – Income Tax Act](#), or writing to the chief of appeals at the Eastern Intake Centre (Sudbury Tax Service Office; 1050 Notre-Dame Avenue; Sudbury, Ontario P3A 5C1)
- Explain why you disagree and include all relevant facts and supporting documents

Tax Court



- Only lawyers can represent at the Tax Court
- Rules of the Tax Court tell you exactly what to do
- Start with the Notice of Appeal (Form 21)
- There are two streams of appeals
 - Informal procedure has a simpler process for cases under \$25,000
 - General procedure has more steps and is for cases over \$25,000

Informal Procedure

Advantages

- Simple process with few steps
- No filing fees
- Quick hearing date (within 180 days of reply)
- No pre-hearing disclosure of documents
- Cost orders if you lose are rare and are lower

Disadvantages

- Only available for smaller claims
- No pre-hearing disclosure of documents
- Risk of having to pay CRA legal costs if you lose

General Procedure

Advantages

- Can deal with claims higher than \$25,000
- Get full disclosure of the other side's evidence before the hearing
- Has a process for bringing a "lead" case

Disadvantages

- More complex process (documentary and examinations for discovery, pre-hearing conferences)
- Filing fees
- Negative cost award if you lose will be higher

When a CCB Overpayment is Assessed

Common Scenarios Causing Overpayments – Marital Breakdown



Marital breakdown or separation and the parent with custody is no longer eligible for CCB due to their immigration status but does not inform the CRA right away.

There are cases where one spouse is taken out of the country, the other collects CCB even when the kids are not with them, and the partner (often wife) gets dinged with an overpayment

When marital status changes, parents must inform the CRA before the end of the month after the month in which their status changed.

Parents are “separated” when they have been apart due to a breakdown in their relationship for at least 90 days.

When parents are separated, the benefit goes to:



The parent who “primarily fulfils the responsibility for the care and upbringing of the child”, who is presumed to be the female parent unless there is evidence to the contrary;

OR

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.

Each parent gets 50% of the payment they would have received if the child lived with them full-time.

What is a remission order?

A remedy available under subsection 23(2) of the *Financial Administration Act*.

Provides Cabinet the power to grant relief from tax, or penalty (including any interest).

Available where the collection of the tax or the enforcement of the penalty is unreasonable, unjust or contrary to public interest.

Factors that will be considered

- All other avenues for relief have been tried and failed
- Extreme hardship (example financial hardship)
- Incorrect action or advice on the part of the CRA
- A financial setback (e.g. job loss due to illness)
- Unintended results of the legislation

Process for Application



- File application with CRA's Remissions and Delegations Section (part of Legislative Policy and Regulatory Affairs Branch)
- See CRA Remission Guide (available online)
- Make sure to submit evidence that shows CRA was at fault (if applicable) and financial hardship
- CRA officer makes a decision
- Takes a very long time (sometimes years)



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Vol. 147, No. 4 — February 13, 2013

Registration

SI/2013-10 February 13, 2013

FINANCIAL ADMINISTRATION ACT

Xiu Que Hong Remission Order

P.C. 2013-39 January 31, 2013

His Excellency the Governor General in Council, considering that the collection of the amount is unjust, on the recommendation of the Minister of National Revenue and the Treasury Board, pursuant to subsection 23(2.1) ([see footnote a](#)) of the *Financial Administration Act* ([see footnote b](#)), remits the amount of \$8,060.90 paid or payable by Xiu Que Hong as repayment of Canada child tax benefits under Part I of the *Income Tax Act* ([see footnote c](#)) with respect to the 2005 and 2006 base taxation years.

EXPLANATORY NOTE

(This note is not part of the Order.)

The Order remits the amount of \$8,060.90 with respect to Canada child tax benefits received by Xiu Que Hong, for the 2005 and 2006 base taxation years, to which she was not entitled. The remission is based on extreme hardship and financial setback with an extenuating circumstance.



Every Child Counts

**Making sure the Canada Child Benefit
is a benefit for all children**

A Report Prepared by:
Campaign 2000,
Chinese and Southeast Asian Legal Clinic,
Income Security Advocacy Centre, and
South Asian Legal Clinic of Ontario

May 2018

- Join our working group as we build cross-Canada support to end the exemptions
- Use our report for public education and lobbying
- Write to your MP, the Minister of National Revenue, the Minister of Finance and the Minister of Families, Children and Social Development, Minister of Status of Women



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