



WHO WILL RECEIVE THE CANADA CHILD TAX BENEFIT IN THE EVENT OF A BREAKUP?

The Canada Child Tax Benefit (the “CCTB”) is a tax-free monthly payment made to eligible families to help them with the cost of raising children under the age of 18.

To be eligible for the CCTB, you must meet each of the following conditions:

- 1- You must live with the child and the child must be under the age of 18. However, the child is permitted to live with the other parent temporarily, such as during the summer holidays.
- 2- You must be primarily responsible for the care and upbringing of the child. In cases of shared custody, two people can be considered to be primarily responsible for the care and upbringing of the child.
- 3- You must be a resident of Canada within the meaning of the *Income Tax Act*¹, that is, you must be present in Canada and have sufficient ties with Canada.
- 4- You or your spouse or common-law spouse must be:
 - a. a Canadian citizen
 - b. a permanent resident
 - c. a protected person within the meaning of the *Immigration and Refugee Protection Act*², or
 - d. a temporary resident, under certain conditions.

Obviously, you, as well as your spouse or common-law spouse, must also have filed income tax returns, since the amount of the CCTB is calculated on the basis of the income of the applicant and the applicant’s spouse or common-law spouse.

In the event of a separation or divorce, parents may agree, for example, that the mother (or father) will receive the full CCTB, even though the parties have shared custody. Such an agreement is contrary to the *Income Tax Act*.

In addition, sometimes actual custody and access to the children may differ from the custody and access rights set out in the consent or the judgment. In such a case, for purposes of determining who will receive the CCTB, the facts will take precedence over the consent or judgment.

¹ R.S.C. 1985, c.1 (5th Supp.).

² S.C. 2001, c. 27.

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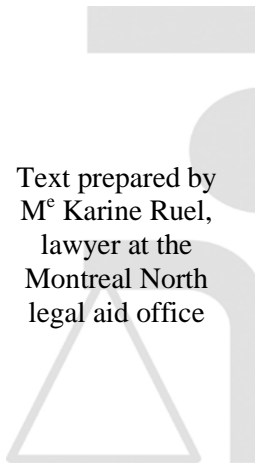
* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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(Continued)**

It is important to keep in mind that in custody, separation or divorce cases, although the Canada Revenue Agency takes into account any agreements, consents to judgment or court orders that are contrary to the law or do not correspond to the facts, it is not bound to do so. It will apply the provisions of the *Income Tax Act* and its regulations and will give precedence to the actual facts.



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