Resume - The tax system and alimentary pensions for children : a new approach

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SYNTHESIS

THE TAX SYSTEM AND ALIMENTARY PENSIONS FOR CHILDREN : A NEW APPROACH

This study and opinion paper is issued by the Conseil du statut de la femme (CSF) arrives timely : When the Supreme Court of Canada handed down its judgement in the Thibaudeau case, both federal Minister of Justice Mr. Allan Rock and Québec Premier Mr. Jacques Parizeau acknowledged the need for amendments to the tax law to ensure equity between women and men, as well as between all parents.

The CSF's reflections and recommendations reflect its desire to contribute to and enrich the debates surrounding the reform process. Its position is based on a study of the taxation of alimentary pensions, its origins and the consequences of maintaining the tax system as it currently exists.

It is interesting to trace the logic that inspired the federal tax authorities, to allow, in 1944, a deduction of the amount paid as alimony from the taxable income of the paying parent and, conversely, to demand that this amount be declared and considered income by the receiving parent. It is equally interesting to note that despite impressive progress on a variety of levels in women's lives, and despite the transformation of families, the «inclusion\deduction» tax rule has remained unchanged. This opinion paper assesses the consequences of such stasis on custodial parents and children, as well as on equity among families.

Adapting principles and practices to real life

The Conseil wholeheartedly supports the principle that the tax system should be founded on a taxpayer's capacity to pay. However the Canadian tax system has changed so much over the last few years, that the Conseil questions the system's overall fairness and, more specifically, the validity of the inclusion/deduction rule as it applies to alimentary pensions for children. Since 1988, exemptions and deductions designed to take the basic needs of individuals into account have been replaced by tax credits which are considered fairer both in Ottawa and in Québec.

Moreover, unlike Québec, the federal government terminated its policy of universal assistance to families in 1993, replacing family allowances and tax credits with child tax benefits. In the context of these changes, deductions which continue to be offered to parents paying alimentary pensions to their children seem anachronistic. They are also unfair. These deductions afford paying parents universal assistance which rises with income level. Meanwhile, nothing ensures that custodial parents or, more importantly, their children, are compensated with a bigger pensions.

Women who obtain custody of their children are not always in optimal positions to obtain alimentary pensions which take adequate account of the tax laws. Most people regard the relevant tax provisions as complex and incomprehensible, and have to resort to costly assistance from tax experts. It is of note that tax calculations can quickly become useless in the event of changes in family circumstances, changes in the custodial parent's income or a change in the tax rate or family assistance policy. Theoretically, any change to an alimentary pension requires the intervention of a court of law. Such procedures are costly, time-consuming and tension-producing, and the result is far from certain.

It appears that a review of the inclusion/deduction rule as it applies to alimentary pensions is necessary and must take into account all of the tax measures currently applicable to parents as well as the conditions under which they are presently living. This global taxation approach involves the federal as well as the Québec governments. Both levels of government must develop similar rules if a reasonable method of fixing alimentary pensions is to be achieved. Furthermore, it is important that parents understand the reforms and regard them as fair, founded on principles of equity, simplicity, clarity and impartiality.

Doing Away With Inclusion/Deduction

To this end, the taxation system should treat alimentary pensions for children as what they really are — income that non-custodial parents set aside for the support of their children by virtue of the parental obligations listed in the *Civil Code of Québec*. The tax system is having difficulty abandoning the traditional conception of families with men as primary tax payers and women as their complete dependents. The growing participation of women in the job market has meant that fewer and fewer women receive alimentary pensions for themselves after separating from their spouses.

Doing away with the inclusion/deduction rule will also simplify procedures for fixing alimentary pensions for children, making them less vulnerable to changes in living conditions and cheaper to administer. The procedures will also be more comprehensible to the parties involved : ex-spouses, lawyers and judges. Each parent will be taxed according to her or his personal income, and custodial parents will have an exact idea of the sum they actually receive for child support. Managing the alimentary pension will be simpler. Custodial parents will no longer have to save throughout the year for income-tax time to avoid non-budgeted expenses.

Moreover, abolishing the taxation of alimentary pensions for children will reduce the marginal tax rate to which working custodial parents are currently subject. The tax system will thus become more impartial with regards to working women with custody over their children; it will probably also become more efficient. Because the CSF believes in developing a more global approach to the taxation of families, we should also review the policy of taxation assistance for parents.

First and foremost, the CSF believes that advantages gained by abolishing the taxation of alimentary pensions for children should not be negated by reducing government assistance to custodial parents. Second, reform should provide an opportunity to confirm a principle of tax equity widely respected in developed countries : the responsability of a child diminishes a parent's ability to pay taxes. Third, the system must, as it does today, take into account additional needs or costs resulting from specific situations : single parents, handicapped children and, possibly, shared custody. Complementary measures must be used to deal with the problem of inadequate family income.

A New System of Family Taxation

The CSF believes that the system of family taxation should be based primarily on the three following principles :

- a monthly **universal benefit** of a substantial amount for every child, paid to two-parent families or to the custodial parent. The aim of this benefit is to redistribute income in favour of care-giver parents. So that non-custodial parents also benefit from government assistance offered to their child or children, alimentary pensions for children should be determined by virtue of estimated costs for the child or children minus the universal benefit received by the custodial parent;

- a **tax credit** for single parents that takes the needs and added expenses of single parents into account;

- a complementary **credit** for families with inadequate incomes (determined by family income). Given the complementary nature of this credit and a concern for equity among parents, the alimentary pension for children could be included in the definition of income used to calculate the credit whereas the pension paid could be subtracted out.

Publications

Les pensions alimentaires pour enfants et la fiscalité : analyse de la situation actuelle, research paper by the Conseil du statut de la femme, research and writing : Francine Lepage, March 1995, 66 p.

La fiscalité et les pensions alimentaires pour enfants : pour une nouvelle approche, opinion paper issued by the Conseil du statut de la femme, research and writing : Francine Lepage, June 1995, 34 p.

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