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October 10, 2024

Via email: minister-ministre@wage-fegc.gc.ca

The Honourable Marci Ien, P.C., M.P.
Minister for Women and Gender Equality and Youth
P.O. Box 8097, Station T CSC
Ottawa ON K1G 3H6

Dear Minister Ien:

Re: Addressing Gender Inequities in Family Law Taxation: Recommendations for Fairer Treatment of Separated Parents and Their Children

I write on behalf of the Canadian Bar Association's Family Law Section (CBA Sections), the Women's Law Forum and the Equity Subcommittee to seek your support in addressing critical taxation issues that disproportionately affect women, children, and youth in Canada. Many of the current tax policies around family law matters fail to reflect the realities of modern family dynamics, often creating gendered financial hardships, particularly for women in caregiving roles.

These inconsistencies in tax treatment not only exacerbate financial vulnerabilities for separated parents but also contribute to inequities in the distribution of benefits and access to financial support. Our recommendations aim to rectify these disparities by advocating for changes that will promote fairness and better align tax policies with the principles of gender equality and the evolving needs of Canadian families.

The Canadian Bar Association is a national association representing over 40,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice and effective law reform, and offer expertise on how the law touches the lives of Canadians every day. The CBA Family Law Section addresses substantive and practice issues in family law and promotes the fair, effective and efficient resolution of family matters. The CBA Women Lawyers Forum promotes women's stature and influence in the legal profession in Canada. The CBA Equity Subcommittee is dedicated to achieving equity in the legal profession, in particular on the basis of sex, gender, sexual orientation, gender identity, race, national or ethnic origin, colour, religion, language, age or disability.

When people separate, their marital status and their ongoing relationship with children impacts their income tax obligations and the related federal benefits they may be eligible to receive. The family law bar has observed there is inconsistent tax treatment for separated parents and their children¹.

Key Issues:

1. Terminology Update:

The Canada Revenue Agency (CRA) continues to use outdated terms such as "custody," which are no longer consistent with the language used in the amended Divorce Act (DA) and Child Support Guidelines (CSG), as well as provincial family law legislation. The term "custody" has been replaced by "parenting time" to better reflect how parenting decisions are made under these laws. We recommend that the Department of Finance which is in charge of amending the *Income Tax Act* therefore update terminology to align with current legal terms, which would help eliminate confusion and better reflect modern family dynamics.

2. Shared Parenting Definition:

The CRA currently defines a "shared custody parent" as one who has the child for at least 40% of the time on a monthly basis. This contrasts with the DA and provincial family law legislation, which consider shared parenting time as 40% over the course of a year. The CRA's monthly requirement is overly burdensome and does not accurately reflect the realities of how children spend time with their parents throughout the year. This discrepancy can affect the benefits available to children and complicate family budgeting. We recommend that the Department of Finance revise CRA criteria to align with the broader annual perspective used in family law and use "shared parenting time arrangement" which is consistent with terminology used in the CSG (see CSG s.9)

3. Tax-Free Transfers for Separated Spouses:

Currently, separated spouses who are not married and meet the definition of a common law couple may only be eligible for a tax-free rollover of a corporate interest within three months of separation because of the language used to define a common law couple (see *Income Tax Act*, s.252(3)), while married spouses have up to the date of their divorce. This distinction is unfair and a significant impediment to common law spouses who have separated as it would be rare to be in a position to have the terms of their property division finalized within three months of separation. We propose that the eligibility period for tax-free transfers be extended to up to five years post separation for spouses who have separated from a common law relationship and to the date of the divorce for married spouses.

4. Eligible Dependent Credit (EDC):

The current interpretation of the Eligible Dependent Credit (EDC) under ITA s. 118 has led to inconsistent application, particularly in cases involving shared parenting arrangements. While all parents in shared arrangements are legally obligated to pay child support, many are denied the EDC due to the CRA's restrictive interpretation. As shared parenting arrangements become more common, disputes over the EDC are increasing, we seek an amendment to permit when there are

¹ A federal analysis published by Finance Canada on gender and tax expenditures found that while Canada's tax system narrows the wealth gap between men and women, significant disparities persist. This is particularly relevant for separated parents, as inconsistent tax policies on shared parenting and tax benefits disproportionately burden women (iPolitics News).

two or more children and there is shared parenting, each parent can claim the EDC for one child. We urge the CRA to create an explanatory document that can be publicly available, clearly outlining when a parent is eligible to claim the EDC.

5. Deductibility of Legal Fees:

The CRA currently permits the deduction of legal fees related to increasing or defending against a claim to decrease support, collecting unpaid support, or establishing child support for the first time (see Income Tax Folio S-1F3-C3 3.81 to 3.85). However, these deductions are only available to recipients of support, not payors. This discrepancy is discriminatory. We advocate for an amendment by the Department of Finance to allow all legal fees incurred in family law matters to be tax-deductible, regardless of the party. This change would make legal representation more accessible and align with the federal government's commitment to supporting victims of violence and coercive control, and access to justice for all families.

6. Access to Income Information from CRA:

Accessing personal income information from the CRA can be challenging, especially for those who do not have an online account or who have fled abusive situations. The current process requires a code to be mailed to the address on file, which may no longer be accessible. To mitigate these challenges, we recommend streamlining the process for accessing CRA information, including providing a checklist on My CRA for spousal or child support claims and offering plain language guides on relevant documents. Additionally, establishing a dedicated phone line and email address specifically for family law matters would greatly improve accessibility. We also suggest providing resources and training in courthouses or public law libraries to assist individuals without internet access in obtaining necessary information.

We would welcome the opportunity to meet and discuss these issues in greater detail, share any further insights your department might have, and explore how we can collaborate to improve the fairness of tax treatment for families in Canada.

Yours sincerely,

(original letter signed by Julie Terrien for Shelley Hounsell Gray, Kyla Lee and Carley J. Parish)

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cc. WAGE
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