



**CHILD BENEFITS AND AGREEMENTS
BETWEEN PARENTS: IS THIS A GOOD IDEA?**

Hélène and Denis get along quite well, despite the fact that they separated in April 2015. Before their breakup, Hélène was receiving Canada Child Tax Benefits (CCTB) and child assistance benefits from Québec for both children. The amount of these benefits was calculated on the basis of the income declared by both parents the preceding year, when they were still living together.

When they separate in 2015, they decide to share custody of their children. Because Denis's income is higher than Hélène's income, he would be required to pay her support, even though they share custody of the children. In addition, each of them would be entitled to receive his or her share of the governmental family assistance benefits based on his or her income. Denis proposes the following arrangement to Hélène: He will let her have all of the governmental family assistance benefits if she agrees not to institute court proceedings for support or for custody of the children. Denis tells Hélène that since her income is lower than his, this will be advantageous for her. Hélène agrees.

In order for Hélène to receive all of the benefits, they therefore declare to the government authorities (the Canada Revenue Agency, at the federal level, and Retraite Québec (previously the Régie des rentes du Québec), at the provincial level), that they have been separated since April 2015 and that the children live full-time with Hélène, although, in reality, they still share custody of the children.

In April 2015, Hélène is working for minimum wage. Consequently, the amount of her family benefits increases significantly after their separation, because the amount is now calculated based on her income alone. All of the child benefits continue to be paid to her as if she actually has sole custody of the children. Everyone is happy... for now!

In January 2016, Hélène and Denis have a disagreement regarding the children. Denis learns from a friend that he is entitled to ask for his share of the governmental family assistance benefits, given that they share custody of the children. He contacts the Canada Revenue Agency and Retraite Québec and informs them that he and Hélène have had shared custody of their children since April 2015 and that he wants to receive the family assistance benefits to which he is entitled.

Hélène is shocked to receive a notice from the government authorities claiming from her 50% of the benefits paid to her since April 2015. In order to recover the excess sums paid to Hélène, the two levels of government will be able to reduce her future benefits. As for Denis, he will be able to retroactively receive the sums to which he is entitled based on his income (maximum of 12 months). The fact that Denis did not pay Hélène any support since their separation will not have any impact on the claim sent to Hélène.

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

The masculine gender has been used to designate persons solely in order to simplify the text.



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(Continued)**

Does H el ene have a recourse against the Canada Revenue Agency and Retraite Qu ebec? **NO, because the government authorities are not bound in any way by an agreement such as the one entered into between the two spouses.**

Does she have a recourse against Denis? Perhaps... By unilaterally terminating their agreement, Denis caused harm to H el ene and, especially, to the children: Not only are they deprived of the support to which they are entitled, but their mother must repay the excess sums received, which will have an impact on their needs. Denis is the only winner in all of this: He has no support payments to make and, in addition, he will receive the benefits to which he is entitled. H el ene should therefore contact a lawyer who will assess the possibility (and the costs) of filing an application for retroactive support, i.e. for the years during which Denis did not pay any support.

Another problematic agreement: Agreement to give the other parent half the benefits.

Sometimes, parents agree on another arrangement: They agree, without informing the authorities about a change in their family situation, that the parent who has the lower income and is receiving the benefits will give half of those benefits to the other parent. Such an agreement is also not binding on the government authorities, and if they find out about the situation, they will claim the excess amounts paid to one of the parents and pay the other parent the amounts to which that other parent is entitled.

The moral of the story is: **Parents must promptly inform the federal and provincial governments of any change in their civil status and in the custody of their children.** The information provided must reflect the actual situation of the parents and the children. It is a mistake to think that this type of secret can be kept! The government may learn by chance, such as when carrying out a routine verification of the file, that the information provided does not reflect reality. Claims are bound to follow, with all the ensuing consequences.

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