

Michelle D'Elia v The Queen, 2012 TCC 180

Canada Child Tax Benefit as Between Parents

[D'Elia v The Queen, 2012 TCC 180](#)

This case had two main issues: (1) whether the appellant was the "eligible individual" in respect of her son for purposes of claiming the CCTB, and (2) whether her son was a dependent for purposes of the GST credit.

The CRA denied the above benefits to the taxpayer for the four months that the child was not in her care. The CRA assumed that due to the breakdown of the marriage the parents began to live separate and apart, and that the child's primary residence was the spouses house while the appellant had reasonable access. The child resided with the appellant 48 hours every two weeks for some of the periods in question, and 129 hours every two weeks for some other periods.

The Court concluded that for purposes of claiming the CCTB and the GSTC, a female parent with whom a child resides for any period of time in the relevant months is presumed to be the eligible individual, absent assumptions or evidence that bring in the circumstances found in regulation 6301(1) into play.