Docket: 2020-1960(IT)I

BETWEEN:

LUIGI GINO AUDDINO,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 15, 2023, at Toronto, Ontario with written submissions received from the parties on July 27, 2023, September 15, 2023, and October 12, 2023

Before: The Honourable Justice David E. Spiro

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Lalitha Ramachandran
	Andrea Jackett

JUDGMENT

The Respondent's motion to extend time to serve the Reply to February 4, 2021 is granted, without costs.

The Appellant's appeal is allowed, without costs. The redeterminations made by the Minister of National Revenue (the "Minister") on March 20, 2020, for the periods July 2015 to June 2016; July 2016 to June 2017; July 2017 to June 2018; July 2018 to June 2019; and July 2019 to June 2020 are referred back to the Minister for reconsideration and redetermination on the basis that the Appellant is entitled to 50% of the Canada Child Benefit under subsection 122.61(1.1) of the *Income Tax Act* in respect of the following 33 months as he was a "shared-custody parent" in respect of his two youngest children in those

months: February 2016, March 2016, November 2017, December 2017, January 2018, February 2018, March 2018, April 2018, May 2018, June 2018, July 2018, August 2018, September 2018, October 2018, November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020 and May 2020.

Signed at Toronto, Ontario, this 31st day of January 2024.

"David E. Spiro"

Spiro J.

Citation: 2024 TCC 13
Date: 20240131
Docket: 2020-1960(IT)I

BETWEEN:

LUIGI GINO AUDDINO,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] The Appellant, Mr. Gino Auddino, claims 50% of the Canada Child Benefit (the "CCB") as a "shared-custody parent" from July 2015 to June 2020 under the provisions of the *Income Tax Act* (the "Act"). The Minister of National Revenue (the "Minister") disallowed the Appellant's claim by notices of redetermination dated March 20, 2020. The Appellant challenges those redeterminations.

[2] The Court heard evidence on June 15, 2023 from the Appellant and his former spouse. Because the Appellant was self-represented, and in light of the amount of evidence dealing with various parenting schedules over a period of five years, I asked the parties to submit written argument. The Court received written argument from the parties in July, September, and October 2023.

[3] The Appellant has demonstrated, on a balance of probabilities, the facts justifying entitlement to 50% of the CCB as a "shared-custody parent" for the following months: February 2016, March 2016, November 2017, December 2017, January 2018, February 2018, March 2018, April 2018, May 2018, June 2018, July 2018, August 2018, September 2018, October 2018, November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019, August 2019, September 2019,

October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020 and May 2020.

[4] The Crown made a preliminary motion before the trial opened to extend the time for service of the Reply. For the following reasons, I granted the motion and proceeded to hear the appeal.

Crown's Motion to Extend Time to Serve the Reply

[5] Subsection 6(2) of the *Tax Court of Canada Rules (Informal Procedure)* provides:

> 6(2) Within five days after a reply is filed, the Minister of National Revenue shall serve a copy of it by registered mail addressed to the appellant's address for service of documents.

[6] The Minister filed the Reply on January 18, 2021. The Minister was, therefore, required to serve the Reply on the Appellant on or before January 25, 2021. The Minister did not serve the Reply until February 4, 2021, some ten days late.

[7] Before the hearing, the Appellant told Crown counsel that he planned to raise late service of the Reply as a preliminary issue at trial. In response, the Crown filed and served a motion to extend time to serve the Reply. The motion record included an affidavit from Ms. Elli (Yan) Song, a litigation officer at the Toronto Centre Tax Services Office of the Canada Revenue Agency (the "CRA").

[8] On January 19, 2021, the Toronto Centre TSO, which drafted the Reply, sent it to the Sudbury Taxation Centre for mailing by registered mail. I do not know what happened at the Sudbury TC as the Crown offered no evidence from anyone who worked there at the time.

[9] By way of background, the Court originally scheduled the Appellant's appeal for hearing on April 6, 2023. The Appellant requested, and the Court granted, an adjournment on the basis that he was required to attend a work-related training program shortly before trial. He told the Court that he was concerned that he would not be able to prepare for the hearing in the short period between the end of the course and the commencement of the hearing. The

important point for present purposes is that he expressed no concern about late service of the Reply.

[10] In her cross-examination of the Appellant on the motion, Crown counsel, Ms. Ramachandran, established that the Appellant suffered no prejudice from the Minister's delay in serving the Reply in early 2021. Indeed, in requesting that I dismiss the Crown's motion, the Appellant did not allege any prejudice by the late service of the Reply. He simply argued that this was:

> … a case of [CRA] failing to do their due diligence and in getting the paperwork to me in the required amount of time.[1]

[11] In the absence of any prejudice to the Appellant, I granted the Crown's motion to extend the time for service of the Reply to February 4, 2021.

Issue

[12] Few tasks are more frustrating than reading a pleading that does not clearly identify the issue. The Reply states that the issue is "whether the Minister has properly determined the Appellant's CCB entitlements" from July 2015 to June 2016; July 2016 to June 2017; July 2017 to June 2018; July 2018 to June 2019; and July 2019 to June 2020. The issue was framed too broadly. Here, the real issue (often called the "deep issue") is whether the Appellant was a "shared-custody parent" in respect of his two youngest children in each month from July 2015 to June 2020 and, in particular, whether he resided with the children at least 40% of the time in each of those months.[2]

[13] No other condition for the Appellant's entitlement to 50% of the CCB for those 60 months was in issue.

Law

[14] The CCB is a tax-free monthly payment to families to assist them financially in raising children under 18 years of age. A separate benefit is payable for each child. Payments occur over twelve months, beginning in July and ending the following year in June. The amount of the CCB is determined based on a parent's income, the number of children in respect of whom the benefit is claimed and the age of the children. The CCB phases out with increasing income levels, thereby targeting low and middle-income families.

[15] The Appellant claims that he was an "eligible individual" with respect to his youngest children from July 2015 to June 2020 because he and his former spouse were "shared-custody parents".

[16] "Shared-custody parent" is defined in section 122.6 of the Act as (emphasis added):

> … an individual who is one of the two parents of the qualified dependant who
>
> > (a) are not at that time cohabitating spouses or common-law partners of each other,
> >
> > (b) reside with the qualified dependant either
> >
> > > (i) at least 40% of the time in the month in which the particular time occurs, or
> > >
> > > (ii) on an approximately equal basis, and
> >
> > (c) primarily fulfil the responsibility for the care and upbringing of the qualified dependant when residing with the qualified dependant, as determined in consideration of prescribed factors.

[17] The only issue in his appeal is whether the Appellant satisfied the 40% test in the definition of "shared-custody parent" for each month in issue.

Facts

[18] The Appellant is a casino table games dealer. Until March 2020, he worked at a casino in Port Perry, Ontario. He then started work at a casino in Pickering, Ontario. His former spouse, Ms. Marianne Csikai, is employed as an executive assistant in the financial industry.

[19] The Appellant and Ms. Csikai had three children together. The first was born in August 2003, the second was born in May 2006 and the third was born in September 2008. As the oldest child resided exclusively with Ms. Csikai, the two youngest children are the only ones relevant to the Appellant's claim as a "shared-custody parent".

[20] The Appellant testified that he and Ms. Csikai entered into a separation agreement on October 12, 2017.[3] That agreement provided an access and parenting schedule for the two youngest children.

[21] The Appellant and Ms. Csikai testified that their youngest children were at school from 8:45 a.m. to 3:10 p.m. and that, during the school year, the exchange of the children would happen at school pick up and drop off.

[22] Before February 2016, the Appellant's work schedule did not permit him to host the children overnight.

The Various Schedules

[23] The Appellant and Ms. Csikai presented various schedules during the hearing:

- Regular schedule as provided in the separation agreement;
- Holiday schedule as provided in the separation agreement;
- Appellant's actual schedule summarizing his evidence of how the schedules operated; and
- Ms. Csikai's calendar summarizing her evidence of how the schedules operated.

Schedule from February 1, 2016 to April 10, 2017

[24] The Appellant testified that the regular schedule, as set out in the separation agreement, was in place as of February 1, 2016 when he was able to host the children overnight. The regular schedule, as described by the Appellant, operated on a two-week rotation:

- On week one, the Appellant would have the children on the weekend from Friday afternoon school pick up to Monday school drop off and from Wednesday afternoon school pick up to Thursday morning school drop off.
- On week two, the Appellant would have the children from Wednesday afternoon school pick up to Friday morning school drop off.

[25] The Appellant testified that in addition to the regular schedule, he had access to the children for Christmas, March Break, Thanksgiving, Mother's Day, Father's Day, and birthdays. In the separation agreement, this is described as the holiday schedule.

[26] The Appellant presented an actual schedule, as he described it, which he prepared for the Court based on the actual combined workings of the regular schedule and the holiday schedule as set out in the separation agreement.

[27] The actual schedule reflects a summary of the Appellant's evidence on how the schedules in the separation agreement actually operated. For example, to the extent that the regular schedule and the holiday schedule were inconsistent, the separation agreement provided that the holiday schedule would prevail and that is how it actually worked.

[28] Ms. Csikai's evidence with respect to this period is generally consistent with the Appellant's evidence. In the course of her testimony, she presented a calendar that she prepared before trial to reflect the days that the children were with the Appellant.[4] This was her version of the actual schedule. She explained that as of June 2016 the Appellant was with the two youngest children on alternate weekends and at least one day, and sometimes two days, during the week.

[29] She explained that in November and December 2016 there was no agreed schedule but she elected to follow the Appellant's preferred schedule. According to Ms. Csikai, at this time, the two youngest children were with the Appellant on alternate weekends and one day, sometimes two days, during the week.

[30] Finally, she explained that from February 2017 to April 2017 there was no agreed schedule. The Appellant had the two youngest children one or two days during the week and every other weekend, but much would depend on who actually picked up the children at school.

Schedule from April 10, 2017 to October 11, 2017

[31] The Appellant testified that the actual schedule remained in place from February 2016 to the date of the hearing. During cross-examination, Crown counsel showed the Appellant an email he had written to Ms. Csikai, which reflected certain modifications to the schedule.[5] That email refreshed the

Appellant's memory that from April 10, 2017 to the date of the separation agreement on October 12, 2017, the parties modified the schedule to allow the two youngest children to stay with the Appellant on alternate weekends and every Wednesday. Ms. Csikai testified that on April 10, 2017, the Appellant agreed to the "every Wednesday and every other weekend" schedule that she had been seeking. Ms. Csikai testified that this modified schedule applied until the separation agreement came into effect in October 2017.

Schedule from October 12, 2017 to June 20, 2020

[32] After signing the separation agreement, both the Appellant and Ms. Csikai testified that, for the most part, they followed the regular schedule reflected in the separation agreement. Ms. Csikai testified that there were days on which the Appellant's schedule did not allow him to pick up the children. On those days, she would pick them up.

[33] The holiday schedule in the separation agreement was a different story. The days were the same, but the pick-up times were earlier. For Christmas, Ms. Csikai and the Appellant would decide whether the Appellant would have any additional days with the children. They would then communicate their agreed arrangements by way of a shared application called "Our Family Wizard".

[34] Ms. Csikai testified that the allocation of additional days over the holidays depended on the Appellant's work schedule. As an executive assistant, she had a 9 a.m. to 5 p.m. schedule while the Appellant did shift work. The Appellant confirmed that, depending on his schedule, they would negotiate the allocation of additional days. Ms. Csikai testified that she would do her best to accommodate the Appellant's work schedule and that the Appellant would do his best to accommodate hers.

[35] The Appellant and Ms. Csikai testified that they followed the March Break schedule set out in the separation agreement. For Thanksgiving and Easter, they also followed the regular schedule (the two-week rotation) set out in the separation agreement.

[36] The Appellant testified that in December 2017 he messaged Ms. Csikai on "Our Family Wizard" and attached his work schedule over the Christmas holidays.[6] He testified that he had the two youngest children for additional days from December 29th to January 1st.[7]

Analysis

[37] The issue in this appeal is whether the Appellant was a "shared-custody parent" in each month with respect to his two youngest children from July 2015 to June 2020. In particular, the issue is whether the Appellant resided with his two youngest children at least 40% of the time each month.

[38] In *Reynolds v The Queen*,[8] Justice Valerie Miller computed the hours that children spent at school in two ways. In the first calculation, she excluded the hours the children spent at school. In the second calculation, she allocated the hours the children spent at school based on who dropped them off and picked them up. The choice of method suggested by the Court in *Reynolds* strikes me as eminently reasonable in light of the absence of any legislative mandate as to which method must be adopted.

[39] The Appellant effectively conceded the months before February 2016 because his schedule before that time precluded him from hosting the children overnight. Those months are not in issue.

[40] At trial, the Crown conceded that the Appellant was a "shared-custody parent" in the months of July 2018 and August 2018 and the months of July 2019 and August 2019.[9] Those months are no longer in issue.

[41] I will divide the remaining period starting February 2016 and ending June 2020 into shorter periods based on the evidence provided at the hearing to determine the Appellant's eligibility for each month in those periods.

February 1, 2016 to February 28, 2016

[42] Ms. Csikai testified that on February 10, 2016, the Appellant agreed to a schedule of one day during the week (Wednesday) and alternate weekends to have the children in his care. She testified that this schedule was in place until the end of February 2016.[10]

[43] The Appellant testified that the schedule before February 2016 was one weekday and alternate weekends, but that schedule did not continue after February 10, 2016.[11]

[44] The evidence includes a partial and reconstructed calendar of the Appellant's work schedule in February 2016 as well as a photograph of a calendar which Ms. Csikai kept contemporaneously and which sets out the days the children spent with the Appellant.[12]

[45] The calendar evidence shows that the Appellant resided with his two youngest children on five weekdays and over two weekends. Exchanges would occur at school pick up and drop off.[13] The Appellant would pick up the children at 3:10 p.m. and drop them off at 8:45 a.m. each day.

[46] In February 2016, there were 672 hours in the month (28 x 24). The children were in school for 126 of those hours (21 x 6). I find that the Appellant resided with his two youngest children in February 2016:

- From Wednesday afternoon school pick up to Friday morning school drop off;
- From Wednesday afternoon school pick up to Thursday morning school drop off;
- From Friday afternoon school pick up to Monday morning school drop off;
- From Wednesday afternoon school pick up to Friday morning school drop off; and
- From Friday afternoon school pick up to Monday morning school drop off.

[47] Under the method that allocates school hours between the parents, the Appellant resided with his two youngest children 39% of the time in February 2016. They resided with Ms. Csikai for 408 hours and with the Appellant for 264 hours.

[48] Under the method that excludes school hours, the Appellant resided with his two youngest children 40% of the time in February 2016. They resided with Ms. Csikai for 324 hours and with the Appellant for 222 hours.

[49] Adopting the latter method, I am satisfied on a balance of probabilities that the Appellant resided with his two youngest children at least 40% of the time in February 2016.

March 1, 2016 to April 10, 2017

[50] The Appellant testified about the schedule that he and Ms. Csikai used from February 2016 to April 10, 2017.[14] Under that schedule, the Appellant had the two youngest children for alternating weekends and one or two days during the week. Ms. Csikai agreed that the Appellant had the two youngest children in his care during this period on alternating weekends and one or two days per week.[15]

[51] During his testimony, Ms. Csikai refreshed her memory by using images of her calendar pages for April and October 2016, and January to April 2017.[16] These images, including Ms. Csikai's contemporaneous notations, confirm that the Appellant had the children in his care on alternating weekends and one or two days per week.

[52] I am satisfied on a balance of probabilities that in each month with thirty days during this period, the Appellant resided with his two youngest children for six weekdays and two weekends.

[53] Based on all of the evidence, this is how a typical thirty-day month during this period would look. The "X" indicates the dates on which the Appellant resided with his two youngest children:

SUN	MON	TUE	WED	THU	FRI	SAT
			X		X	X
X			X	X		
			X		X	X
X			X	X		

[54] A typical thirty-day month has 720 hours (30 x 24). The two youngest children would have been in school for 126 of those hours (21 x 6). I find that the Appellant resided with his two youngest children each month during this period:

- From Wednesday afternoon school pick up to Thursday morning school drop off;

- From Friday afternoon school pick up to Monday morning school drop off;

- From Wednesday afternoon school pick up to Friday morning school drop off;

- From Wednesday afternoon school pick up to Thursday morning school drop off;

- From Friday afternoon school pick up to Monday morning school drop off; and

- From Wednesday afternoon school pick up to Friday morning school drop off.

[55] Under the method that allocates school hours between parents, the Appellant resided with his two youngest children 39% of the time in a typical thirty-day month. The Appellant would have resided with his two youngest children for 285 hours and with Ms. Csikai for 435 hours.

[56] Under the method that excludes school hours, the Appellant resided with his two youngest children 40% of the time in a typical thirty-day month. The Appellant would have resided with his two youngest children for 240 hours and with Ms. Csikai for 354 hours.

[57] Adopting the latter method, I am satisfied on a balance of probabilities that the Appellant resided with his two youngest children at least 40% of the time each month from March 2016 to April 2017.

April 10, 2017 to October 11, 2017

[58] The Appellant and Ms. Csikai gave evidence that from April 10, 2017 to the date of the separation agreement (October 12, 2017) the two youngest children would spend alternate weekends and every Wednesday with the Appellant.[17] A contemporaneous email from the Appellant to Ms. Csikai confirms this fact.[18]

[59] In the absence of any evidence that the two youngest children spent any additional time with the Appellant during that period, the Appellant has not demonstrated on a balance of probabilities that he resided with his two youngest children at least 40% of the time in any month from April 2017 to October 2017.

October 12, 2017 to June 20, 2020

[60] The separation agreement set out the schedule that applied from October 12, 2017 to June 20, 2020. As noted above, it provided a regular schedule and a holiday schedule that set out the days on which the Appellant would reside with his two youngest children at various times.

[61] Although both the Appellant and Ms. Csikai took those schedules seriously, the occasional exception was inevitable. For example, if one of the children became ill, the parent who was then available would pick them up from school, regardless of the schedule.[19]

[62] In a typical thirty-day month during this period, this is how the schedule would work. The "X" marks the days on which the Appellant resided with his two youngest children:[20]

SUN	MON	TUE	WED	THU	FRI	SAT
			X		X	X
X			X	X		
			X		X	X
X			X	X		

[63] To the extent that the regular schedule was inconsistent with the holiday schedule, the latter prevailed. This is how the holiday schedule modified the regular schedule:

- The children would reside with the Appellant on December 24th from 9 a.m. to 11:30 p.m.;[21]

- The Appellant and Ms. Csikai would share the March Break equally;[22]

- The children would reside with Ms. Csikai on Mother's Day weekend from Saturday at 7 p.m. to Monday morning school drop off even if the children were then residing with the Appellant in accordance with the regular schedule;[23] and

- The children would reside with the Appellant on Father's Day weekend from Saturday at 7 p.m. to Monday morning school drop off even if the children were then residing with Ms. Csikai in accordance with the regular schedule.[24]

[64] During Christmas holidays, the Appellant and Ms. Csikai would negotiate additional days between them, depending on the Appellant's work schedule.[25]

[65] A typical thirty-day month has 720 hours (30 x 24). The two youngest children would have been in school for 126 of those hours (21 x 6). I find that the Appellant resided with his two youngest children each month during this period:

- From Wednesday afternoon school pick up to Thursday morning school drop off;

- From Friday afternoon school pick up to Monday morning school drop off;

- From Wednesday afternoon school pick up to Friday morning school drop off;

- From Wednesday afternoon school pick up to Thursday morning school drop off;

- From Friday afternoon school pick up to Monday morning school drop off; and

- From Wednesday afternoon school pick up to Friday morning school drop off.

[66] Under the method that allocates school hours between the parents, the Appellant would have resided with his two youngest children 39% of the time in a typical thirty-day month during this period. The children would have resided with Ms. Csikai for 435 hours and with the Appellant for 285 hours.

[67] Under the method that excludes school hours, the Appellant would have resided with his two youngest children 40% of the time in a typical thirty-day month during this period. The children would have resided with Ms. Csikai for 354 hours and with the Appellant for 240 hours.

[68] Adopting the latter method, I am satisfied on a balance of probabilities that the Appellant resided with his two youngest children at least 40% of the time each month starting on the date of the separation agreement.

Conclusion

[69] The Appellant has established, on a balance of probabilities, that he resided with his two youngest children at least 40% of the time in each of February 2016, March 2016, November 2017, December 2017, January 2018, February 2018, March 2018, April 2018, May 2018, June 2018, July 2018, August 2018, September 2018, October 2018, November 2018, December 2018, January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019, August 2019, September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020 and May 2020.

[70] I conclude, therefore, that the appeal should be allowed as the Appellant is entitled to 50% of the CCB as a "shared-custody parent" in each of those 33 months.[26]

Afterword

[71] The Crown pleaded that the Minister made the following assumption in determining that the Appellant was not a "shared-custody parent" for his two youngest children at any time between July 2015 and June 2020 (at paragraph 22 of the Reply):

> (e) during the Subject Periods, the Appellant regularly resided with the Children an average of 37.5% of the time;

[72] The Reply defines the phrase "Subject Periods" as "July 2015 to June 2016, July 2016, to June 2017, July 2017 to June 2018, July 2018 to June 2019 and July 2019 to June 2020."[27] This is a period of 60 months. What the Minister has assumed, then, is that over that five-year period the Appellant regularly resided with his two youngest children "an average of 37.5% of the time".[28]

[73] This "averaging" assumption finds no support in the Act. The relevant legislation does not allow the Minister to "average" the time a parent resides with a child over a period of more than one month for purposes of determining whether the parent meets the 40% test in each month. On the contrary, the Act requires the Minister to consider each month *separately* for purposes of that test. That is made clear by the definition of "shared-custody parent" in section 122.6 of the Act (emphasis added):

> … an individual who is one of the two parents of the qualified dependant who
>
> (a) are not at that time cohabitating spouses or common-law partners of each other,
>
> (b) reside with the qualified dependant either
>
> (i) at least 40% of the time in the month in which the particular time occurs, or
>
> (ii) on an approximately equal basis, and
>
> (c) primarily fulfil the responsibility for the care and upbringing of the qualified dependant when residing with the qualified dependant, as determined in consideration of prescribed factors.

[74] Not only does the Minister's "averaging" method for the 40% test find no support in the statute, it leads to absurd results. For example, assume that the Appellant resided with his two youngest children 40% of the time every other month over a period of 60 months. Also assume that he resided with his two youngest children 35% of the time during each of the months in which he did not reside with them at least 40% of the time.

[75] According to the Act, the Appellant would have satisfied the 40% test for 30 of those months and would qualify as a "shared-custody parent" for each of those months. He would not qualify as a "shared-custody parent" for each of the other 30 months as he would have fallen below the 40% threshold for each of those months.

[76] But according to the Minister's "averaging" method, the Appellant would not have qualified as a "shared-custody parent" for *any* month over that 60-month period because he resided with his two youngest children "an average of

37.5% of the time" in the words of assumption (e) at paragraph 22 of the Reply. Incorrect methods lead to incorrect results.

[77] What is the takeaway for the Minister? Simply put, the Minister cannot deny entitlement to a statutory benefit based on a method of computation that finds no support in the words of the statute.[29]

Signed at Toronto, Ontario, this 31st day of January 2024.

"David E. Spiro"

Spiro J.

CITATION:	2024 TCC 13
COURT FILE NO.:	2020-1960(IT)I
STYLE OF CAUSE:	LUIGI GINO AUDDINO AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 15, 2023 (written submissions received on July 27, 2023, September 15, 2023, and October 12, 2023)
REASONS FOR JUDGMENT BY:	The Honourable Justice David E. Spiro
DATE OF JUDGMENT:	January 31, 2024

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Lalitha Ramachandran Andrea Jackett

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada

[1] Transcript, page 52, lines 1-4.
[2] My criticism of the Reply is not directed at Crown counsel who appeared at trial. They did not draft the Reply.
[3] Exhibit A-1: Ontario Superior Court of Justice Order dated October 12, 2017.
[4] Exhibit R-3: Appellant's 2016-2017 schedule calendar (three pages).
[5] Exhibit R-1: Email from the Appellant dated April 10, 2017.
[6] Exhibit R-2: "Our Family Wizard" email chain between the Appellant and Ms. Csikai starting December 18, 2017.
[7] Transcript, page 105, lines 21-28.
[8] *Reynolds v The Queen*, 2015 TCC 109 at para 28. Although that decision was based on the previous version of the provision, the amendment does nothing to change the validity of either method.
[9] Transcript, pages 115-117.
[10] Transcript, page 143, lines 1-13.
[11] Transcript, pages 91-92.
[12] Exhibit R-3: Appellant's 2016-2017 schedule calendar (three pages).
[13] Transcript, page 92, lines 3-23 and page 144, lines 2-5.
[14] Transcript, page 69, pages 95-96, pages 99-100, and Exhibit A-2.
[15] Transcript, page 144, lines 23-28 and page 145, lines 1-11.
[16] Exhibit R-3: Appellant's 2016-2017 schedule calendar (three pages); Exhibit R-5: Continuation of the Appellant's 2016-2017 schedule calendar; Exhibit R-4: Continuation of the Appellant's 2016-2017 schedule calendar (two pages).
[17] Transcript, pages 95-96; confirmed by the Appellant after reviewing his email messages at page 99, line 13; page 157, lines 20-23.
[18] Exhibit R-1: Email from the Appellant dated April 10, 2017.
[19] Transcript, page 82, lines 14-17.
[20] Exhibit A-1: Ontario Superior Court of Justice Order dated October 12, 2017 at para 4.
[21] Exhibit A-1: Ontario Superior Court of Justice Order dated October 12, 2017 at para 5(a).
[22] Exhibit A-1: Ontario Superior Court of Justice Order dated October 12, 2017 at para 5(b).
[23] Exhibit A-1: Ontario Superior Court of Justice Order dated October 12, 2017 at para 5(d).
[24] Exhibit A-1: Ontario Superior Court of Justice Order dated October 12, 2017 at para 5(e).
[25] Transcript, page 163, lines 19-28 and page 164, lines 1-10.
[26] I have not dealt with the Ontario Child Benefit, which the Appellant also claimed in his Notice of Appeal, as the Court has no jurisdiction over statutory appeals under provincial legislation.
[27] Preamble to the Reply to the Notice of Appeal.
[28] It is also unclear why the Minister used the phrase "regularly reside" when the definition of "shared-custody parent" in section 122.6 of the Act simply requires the parent to "reside" with the qualified dependant at least 40% of the time in each month.
[29] Notwithstanding this fundamentally-flawed assumption, the Appellant still had to prove sufficient facts to allow the Court to conclude, on a balance of probabilities, that he satisfied the statutory requirement that he reside with his two youngest children at least 40% of the time

in each month. Once again, my criticism of the Reply is not directed at Crown counsel who appeared at trial.