

Family discrimination claims go to court

A challenge is under way on differing applications of tax credits to families under human rights legislation, writes **Keith Rankin**.

Catriona McLennan alerted Independent Financial Review readers on March 26 to a human rights case going before the courts which looks at the way government agencies discriminate against families based on the source of their incomes.

In particular, tax credits are available to support children of parents defined as "in work" which are not available to parents whose source of income includes a benefit (eg, unemployment benefit [UB] or domestic purposes benefit [DPB]) or a pension (New Zealand Superannuation).

The matter is potentially serious for reasons other than social equity. In particular, the social and economic consequences during the next substantial economic downturn of unemployed families facing a loss of tax credits in addition to a loss of wages could become politically ugly, while aggravating any downturn in expenditure associated with such a recession. The economy could simply implode through what economists call a "negative multiplier".

The issue is an important matter for debate. Further, the specific issue of non-payment of "in work tax credits" (IWTCs) to beneficiaries is not the only matter in tax-benefit law that is discriminatory.

In particular, there are issues on child support (who supports who and what is the source of income?) and the "woman-alone" DPB (otherwise known as the widow's benefit). Further, some people who are not in any paid employment are deemed to be "in work" (because of their partner's work status) and therefore qualify for an IWTC, whereas other people who work very hard (including substantial hours of paid work) are deemed not to be "in work".

First, we should note the precise issues at stake, and the likely defence of the government.

By the definition of the relevant legislation, a parent can be defined as "in work" in four different ways:

- * A single parent employed for at least 20 hours a week and not receiving an abated benefit (such as an abated DPB).
- * A partnered parent employed for at least 30 hours a week.
- * A parent not in paid work, but with a partner employed for least 30 hours a week.

* A parent working between 0 and 30 hours, with a partner employed for sufficient hours to take the combined total more than 30 hours a week.

(Without pressing the matter, the definition poses significant problems for parents, especially single parents who are in part-time self-employment or who work variable hours. It may also cause problems for part-time lecturers/teachers who may get paid for, say, eight hours a week, but where each paid hour of contact with students is understood to represent three hours of actual work.)

Subject to income limits, a family with children meeting the above definition of "in-work" receives an IWTC of \$60 a week (more if there are four or more children). Politically, this is labelled "tax-relief", but in practice IWTCs can result in at least one parent paying negative tax.

The following scenarios illustrate the anomalies and discrimination associated with the working-for-families programme. Note that I illustrate these points with families on lowish incomes in order to avoid the additional complications that arise from abating family support payments. In the scenarios below, all families get full family support, before and after the changes in family circumstances.

Scenario One: A family earning \$670 a week ceases to be "in-work" because of the death of the breadwinner. Typically, this family will lose the salary of the deceased and the IWTC. The family will move on to a DPB. The DPB has a base payment of \$186 a week (widow's benefit), with a 37.5% loading for children (\$70 in 2008). After allowing for normal income tax the family loses \$600 a week, while gaining a benefit of \$256; a net loss of \$344.

In the Human Rights court case, the government will probably argue the \$70 child-loading on the DPB is, in fact, the IWTC by another name. One problem here is the child-loading on the DPB existed long before working-for-families was thought of.

A more honest approach by government would have been to abolish the child-loading on the DPB and then remove the "in-work" requirement as a condition of gaining the IWTC. That, of course, would have been seen as a politically damaging benefit cut. A more sensitive approach would be to recognise single parents are, in reality, "in-work". Not all work is paid work.

There is a very strong incentive (bordering on compulsion) for the surviving parent to find a steady paid job of at least 20 hours a week. It might, however, not be the best scenario for the children, and the parent might not be able to find such a job. (An alternative incentive would be to quickly repartner with an employed man or woman.)

Further, the parent may have to accept a job on the minimum wage. The IWTC can be construed as a wage subsidy that discriminates against people without children.

If the surviving parent is a woman, she will be able to stay on the DPB (as a widow's benefit) when the children grow up. A man in identical circumstances is unable to stay on the DPB, a clear example of discrimination by gender.

Scenario Two: A family earning \$670 weekly ceases to be "in-work" because of marital separation.

In this scenario, the remaining "non-working" parent can: (a) go on the DPB, and lose the right to child support (paid by the "liable parent") and lose the IWTC; (b) receive

child support and family support but no primary benefit. If she chooses the second option, like the widow in scenario one, she really has little choice but to seek 20 hours a week of paid employment.

The main point of legal interest here is that she (the "non-working" parent with day-to-day care of the children) was deemed to be "in work" before the separation, and ceased to be in-work on account of the loss of a partner rather than the loss of a job.

The child support she receives is assessed to be the about same as she should have received from her partner before separation. That's the whole point of the child support scheme. How then can a woman (or man) receiving child support within a marriage be any more or less "in- work" than the same woman receiving the same amount of child support after separation? The money continues to come from the same source (namely the liable parent's employer).

At the very least, the definition of "in-work" needs to be expanded to include all parents whose source of income is child support (whether or not it is paid through the child support agency).

Another problem arises. If the parent looking after the children chooses to go on the DPB, the first \$256 a week of the former partner's child support money is paid to the government. The problem here is the first \$186 of the DPB is for the parent, and only the final \$70 is for the support of the children. Because only the first \$70 of the DPB is for child support, only the first \$70 of the liable parent's child support deduction should be withheld for benefit recovery purposes.

Scenario Three: A family earning \$670 ceases to be "in-work" because of the breadwinner is unemployed.

In this case the family goes on the UB at \$307 a week for both adults (just over \$153 each).

Unlike the DPB, the UB has no allowance for children. As in scenario one, the family loses \$600 a week in wages and IWTCs. What are the choices if the breadwinner cannot get another fulltime job? A part-time job would be little use because of the harsher (than the DPB) income- abatement conditions attached to the UB, and because it would not be enough to restore the lost IWTC.

If the non-employed parent caring for the children formerly but no longer classed as "in work" separated from the former breadwinner and kept the children and switched to the DPB, the family would be just \$51 worse off with one less adult mouth to feed. The former breadwinner would pay some child support (\$14.85) from his paltry UB (\$184), but to Inland Revenue and not to support his children. Further, if the caregiver of the children can get some part-time work, she would get to keep most of her wages if she's on the DPB but not if she's on the UB.

The incentive for a family subject to unemployment to separate is especially great if the caregiving parent happens to work between 20 and 30 hours per week in a substantial part-time job. She can regain her status as "in-work" by separating from her unemployed partner.

Further, because she is not on a benefit, she will be able to lay claim to the \$14.85 child support from her former partner if she continues to provide day-to-care care for her children.

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CAPTION:

Court to decide whether government agencies are discriminating against families with children who receive benefits. FAIRFAX/DANIELLE SMITH

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