



Proceedings from the  
2009 Sho Sato Conference  
on Tax Law, Social Policy,  
and the Economy

# Tax and the Family: The Gendered Impact of Rules That Take Spousal Status into Account for Tax Purposes

Claire F.L. Young  
University of British Columbia

All rights reserved by the author.

This paper was presented at a Sho Sato Conference held on March 9-10, 2009, under the auspices of the Institute for Legal Research and in cooperation with the Robbins Religious and Civil Law Collection, School of Law, University of California, Berkeley.

# Tax and the Family: The Gendered Impact of Rules That Take Spousal Status into Account for Tax Purposes<sup>1</sup>

Claire F.L. Young<sup>2</sup>

## Abstract

The last 30 years have seen dramatic changes in the legal definition of “family” and “spouse” in Canada. Today we recognize common law relationships through ascription for many legal purposes. Based on a period of cohabitation, many of the rights and duties of marriage have been extended to common law cohabitants. Furthermore, common law relationships include both heterosexual and same-sex relationships. Most recently in 2005 the Canadian government legalized civil same-sex marriage in Canada.

These changes, and in particular the recognition of same-sex relationships for tax purposes have led me to re-examine how we treat spousal relationships in tax law and policy. Currently in Canada the individual is the unit of taxation, but there are a myriad of tax provisions that take spousal (married) or common law partner relationships into account. That is, if you have a spouse or common law partner, you must declare that relationship on your tax return and the result is that a variety of tax rules will apply in a different manner to you than they would if you were a single individual. A common law partner is defined as a person living in a conjugal relationship with the taxpayer for at least 12 months.

In this paper, I shall examine some of these rules and my conclusion is threefold. First, many of the rules that take spousal or common law status into account benefit those with high incomes and penalize those with low incomes. Indeed when the federal government extended the definition of spouse to include same-sex couples, the result was a \$1.2 billion windfall in new tax revenues for the government. Secondly, many of these rules discriminate in their impact against women and in favor of men. Thirdly, many of these rules are based on outdated and stereotypical premises about women and their role in society that are simply not correct in the 21st century. For that reason, I argue that these provisions should be repealed.

---

<sup>1</sup> This paper was published in *Japanese Family Law in Comparative Perspective* (Harry N. Scheiber and Laurent Mayali, eds., Berkeley: Robbins Collection, 2009).

<sup>2</sup> Professor of Law, University of British Columbia.