

The objection I am raising relates to CSA's policy position (extract below) relating to section 117(7B) of the CS Act Child Support (Assessment) Act (extract immediately below with emphasis added) relating to parents' earning capacities.

- (7B) In having regard to the **earning capacity** of a parent of the child, the court may determine that the parent's earning capacity is **greater** than is reflected in his or her income for the purposes of this Act only if the court is satisfied that:
- (a) one or more of the following applies:
 - (i) **the parent does not work despite ample opportunity to do so;**
 - (ii) the parent has reduced the number of hours per week of his or her employment or other work **below the normal number of hours per week that constitutes full-time work** for the occupation or industry in which the parent is employed or otherwise engaged;
 - (iii) the parent has changed his or her occupation, industry or working pattern; and
 - (b) the parent's decision not to work, to reduce the number of hours, or to change his or her occupation, industry or working pattern, is not justified on the basis of:
 - (i) the parent's caring responsibilities; or
 - (ii) the parent's state of health; and
 - (c) the parent has not demonstrated that it was not a major purpose of that decision to affect the administrative assessment of child support in relation to the child.

The practical application of this section as it relates to part-time workers is that they interpret criterion 1 of section 117(7B) '*the parent does not work despite ample opportunity to do so*' in a binary manner i.e. if a parent works, no matter how many hours they work per week, they cannot be found to trigger this criteria. To take this to its extreme, if a parent works 1 day per month, or even per year, they cannot according to the policy, be found to '*have a higher earning capacity*' – see policy extract below.

Policy Extract – Child Support Guide

Except where the parent does not work, a parent who has not reduced his or her income cannot be found to have a higher earning capacity.

Does not work despite ample opportunity

A parent who is not working is one who is not engaged in work for remuneration, or in self-employment for profit.

A person can be said to be not working despite 'ample opportunity' to work if he or she has had offers of employment and refused them without adequate reason. Alternatively, if the person is not seeking work but there are job vacancies for which he or she is suitably qualified in their local area, this could also constitute ample opportunity to work.

The CSA's position re part-time workers' earning capacity can be contrasted with their application of the same section to full-time workers. If a full-time worker reduces their hours 'below the normal number of hours per week that constitutes full-time work' they are automatically seen to be not maximising their earning capacity. Again, taken to its extreme, a full-time worker who reduces their

hours by one hour per week below what would be considered full-time work, will automatically trigger section 117(7B).

The double standard evident in the differing interpretation approach is illogical and at odds with the overarching principle governing section 117 which seeks to avoid 'an unjust and inequitable determination of the level of financial support' applicable to parents – extract below.

117(2)(c)

(2) For the purposes of subparagraph (1)(b)(i), the grounds for departure are as follows:

...

- (c) that, in the special circumstances of the case, application in relation to the child of the provisions of this Act relating to administrative assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child:
 - (i) because of the income, earning capacity, property and financial resources of the child; or
 - (ia) because of the income, property and financial resources of either parent; or
 - (ib) because of the earning capacity of either parent; or

It is also at odds with the overarching Objects of the Act itself, which requires the Act to be interpreted in relation to parents having 'like capacity' – extract below.

4 Objects of Act

- (1) The principal object of this Act is to ensure that children receive a proper level of financial support from their parents.
- (2) Particular objects of this Act include ensuring:
 - (a) that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support;

CSA's policy application completely ignores the numerous references to 'earning capacity' throughout the Act and instead applies an overly restrictive interpretation of section 117(7B) - '*the parent does not work despite ample opportunity to do so*' – to focus instead on the word work. The ordinary dictionary definition of 'capacity' is relevant given the lack of a definition of the term in the Act, with capacity being a references as the total amount, or maximum amount that can be achieved.

Clearly a part-time worker is not maximising their 'earning capacity' if they choose not to work full-time hours when they have opportunity to do so.

It cannot be that the drafters of the Act intended for full-time workers to be assessed against a standard where they cannot work '*below the normal number of hours per week that constitutes full-time work*' whilst part-time workers can.

It is for these reasons that the CSA's position cannot be correct at law.

The above position assumes that there are no special circumstances relating to care responsibilities of children or health of the parent, which is addressed in a separate sub-section. In the case I am

pursuing these are not relevant given both children are attending primary school full-time and there are no health issues relevant to the co-parent.