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**Children Come First: A Report to  
Parliament Reviewing the Provisions  
and Operation of the  
*Federal Child Support Guidelines***

**Volume 1**



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Minister of Justice  
and Attorney General of Canada



Ministre de la Justice  
et Procureur général du Canada

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Ottawa, Canada K1A 0H8



I am pleased to table *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines*, in accordance with the provisions of section 28 of the *Divorce Act*.

When the Guidelines came into effect on May 1, 1997, they significantly changed the way Canadian parents determine child support amounts. Five years later, it is clear they are working well. Child support amounts are now predictable and consistent, ensuring that children receive the financial support they deserve from both their divorcing parents. The Guidelines have reduced conflict and tension between parents by making the calculation of child support orders more objective. This, in turn, has improved the efficiency of the legal process and most parents are now setting child support amounts without going to court.

The success of the Guidelines would not have been possible without the collaborative efforts of both levels of government as well as the contributions of the legal community and the Canadian public. I would like to commend the Federal-Provincial-Territorial Task Force on the Implementation of Child Support Reforms, the Federal-Provincial-Territorial Family Law Committee and the Advisory Committee on Child Support for their valued input.

A handwritten signature in black ink that reads "M. Cauchon".





## INTRODUCTION

The tabling of this report before Parliament fulfills a statutory commitment for the Minister of Justice to report to Parliament on the results of the Child Support Initiative, which was implemented five years ago. Volume 1 contains information on this implementation and on the related research findings of the federal Department of Justice. The appendices that make up Volume 2 contain additional background and research information that will be useful to readers.

The Government of Canada took a huge step in reforming the child support system when it implemented the Child Support Initiative. The Initiative has been a solid success. Fair, consistent and predictable amounts of support for children whose parents are separated or divorced have been established across the country, and every effort is being made to ensure children receive that support in full and on time.

The Guidelines have helped reduce conflict and tension between parents by making the calculation of child support more objective, and by improving the efficiency of the legal process to such an extent that most parents are now setting child support amounts without going to court.

In reviewing the operations and provisions of the Guidelines, the Department of Justice consulted with the legal profession and worked with the provincial and territorial governments. In addition, the Department invited public opinion in the form of consultation papers and focus groups. The work of two Parliamentary Committees also helped in this review: The Standing Senate Committee on Social Affairs, Science and Technology; and the Special Joint Committee on Child Custody and Access.

While the Guidelines have been a solid success, the Department's review has resulted in recommendations for improving some aspects; therefore, this report includes the Government of Canada's recommendations for amending the Guidelines.





# I. FEDERAL CHILD SUPPORT GUIDELINES: A COMPREHENSIVE REVIEW

## **Section 28 of the *Divorce Act***

The Minister of Justice shall undertake a comprehensive review of the provisions and operation of the Federal Child Support Guidelines and the determination of child support under this Act and shall cause a report on the review to be laid before each House of Parliament within five years after the coming into force of this section.

When they were implemented in 1997, the Federal Child Support Guidelines significantly changed the way Canadian courts determined child support amounts. Five years later, it is clear that the Guidelines are working well. Child support amounts are predictable and consistent, and the vast majority of parents are setting child support amounts without going to court.

Still, there is room for improvement—in terms of what the law says and how it works. This volume reviews various aspects of the Guidelines and recommends reforms. For analysis of particular provisions of the Guidelines and the *Divorce Act*, readers should consult the section-by-section reviews in Volume 2.

This part of the report also describes how the federal Department of Justice has worked since 1997 with its provincial and territorial counterparts to implement the Guidelines across Canada. These varied activities include funding family law services in all provinces and territories; conducting public awareness and information campaigns for parents, judges, and lawyers; carrying out a comprehensive research program; and working with the provinces and territories to improve the enforcement of child support orders.

## **BACKGROUND**

In the late 1980s, many separating and divorcing parents, family law professionals, and others were looking for better ways to determine the amount of financial support parents pay for their children.

Critics said that the system in place at that time for determining child support was producing amounts that were too low, inconsistent, and unpredictable. The lack of predictability was a particular concern, since it tended to encourage parents to go to court over child support, which increased the costs of separation and divorce, and increased conflict and the demands on the family law system.

In 1990, the federal, provincial, and territorial ministers of justice and attorneys general directed the Federal-Provincial-Territorial Family Law Committee to examine these concerns and recommend improvements to the family law system.

The Family Law Committee's work is documented in a series of reports and studies published between 1991 and 1995, including two public consultation documents: *Child Support: Public Discussion Paper* (June 1991) and *The Financial Implications of Child Support Guidelines* (May 1992).<sup>1</sup>

<sup>1</sup> Federal-Provincial-Territorial Family Law Committee, *Child Support: Public Discussion Paper*, Ottawa: Department of Justice Canada, June 1991; and, Federal-Provincial-Territorial Family Law Committee, *The Financial Implications of Child Support Guidelines*, Ottawa: Department of Justice Canada, May 1992.



In its *Report and Recommendations on Child Support* (January 1995),<sup>2</sup> the Committee proposed that child support guidelines be established under the *Divorce Act* for parents, judges, and lawyers to use to determine child support. Such guidelines would set the amount of child support based on the number of children concerned and the income of the parent who would be paying the support.

At this time, Canadians were also criticizing the way the tax system dealt with support payments. Many said it was unfair that parents paying child support could deduct the payments from their taxable income, while parents receiving child support had to pay tax on what they received. The deduction-inclusion tax rules for child support provided a tax benefit when the support-paying parent was in a higher tax bracket than the custodial parent because the tax savings from the deduction exceeded the tax paid due to inclusion. It was seen as unfair that whether or not there was a tax benefit available to a family depended solely on the income discrepancy of the two parents, and not at all on the needs of the children.

In addition, many parents disliked the cumbersome process of managing payments and deductions throughout the tax year. Moreover, judges, lawyers, and parents found that the tax calculations involved were so complex that they made determining child support amounts very difficult.

A third area of concern was enforcement. Many parents had found there was no way for them to ensure that they received their support payments in full and on time. The Government of Canada had already helped the provinces and territories with enforcement by putting a law into place that allowed federal employees' wages to be garnisheed if the employees were not making their support payments. Another law allowed the provinces and territories to use federal databases to trace parents who were not paying their support, and to garnishee federal payments such as income tax refunds and employment insurance. Still, many people felt that governments could do more in the area of enforcement.

In March 1996, the Government of Canada announced its intention to address these concerns by improving the way child support amounts were determined, taxed, and enforced.

- It amended the *Divorce Act* to introduce child support guidelines to help parents, lawyers, and judges set fair, predictable, and consistent child support amounts in divorce cases.
- It changed the tax treatment of child support payments made under orders or agreements dated on or after May 1, 1997, so they would no longer be taxed as income for the parent who receives them nor be tax deductible for the parent who pays them.
- It introduced new federal measures and enhanced services to help provincial and territorial enforcement agencies ensure that support is paid in full and on time.

The federal Department of Justice, through the Child Support Initiative, introduced the Federal Child Support Guidelines and enhanced family support enforcement measures. The federal Department of Finance and the Canada Customs and Revenue Agency (formerly Revenue Canada) implemented the new tax treatment of support payments, along with an increase in the maximum level of the Working Income Supplement of the Child Tax Benefit, which was announced at the same time (see Appendix 2 for a complete discussion of the tax-related measures).

## THE CHILD SUPPORT INITIATIVE

The Child Support Initiative was a five-year program to pursue seven key activities:<sup>3</sup>

- amend the *Divorce Act* and other legislation to introduce child support guidelines and provide additional enforcement tools to help the provinces and territories;

<sup>2</sup> Federal-Provincial-Territorial Family Law Committee, *Report and Recommendations on Child Support*, Ottawa: Department of Justice Canada, January 1995.

<sup>3</sup> An internal Department of Justice Canada evaluation that looked at the success of the Initiative focussing on its programming elements, rather than on the impact of the legislative changes, has taken place.



- strengthen federal assistance for provincial and territorial enforcement procedures to ensure family support obligations are respected;
- improve the public's awareness, knowledge, and understanding of family support obligations through a general communications campaign;<sup>4</sup>
- implement a cooperative education program for provincial and territorial justice officials, justice service providers, and the public;
- provide financial help so that provinces and territories could provide innovative, efficient, and cost-effective services to help parents set up child support orders;
- provide financial help so that provinces and territories could enhance their Maintenance Enforcement Programs; and
- conduct research to monitor the effects of the child support guidelines and the new enforcement measures.

## THE GUIDELINES AT A GLANCE

The Federal Child Support Guidelines are a set of rules and tables for determining the amount that a parent paying child support should contribute toward his or her children.<sup>5</sup> They are designed to advance the best interests of children and to ensure that children get an appropriate level of child support from both parents. They also make it faster, easier, and less expensive for parents to arrive at an amount.

The Guidelines (and the *Divorce Act*, of which the Guidelines are a part) apply to legally married parents who separate and then seek a divorce, as well as to parents who are already divorced.

Tables containing child support amounts for each province and territory are generated using the Federal Child Support Guidelines formula. Each table sets out the amounts based on two elements: the income of the parent who will pay child support (called the paying parent) and the number of children involved.

The tables are useful for parents whose situations are relatively straightforward. However, when there are special circumstances, the Guidelines provide flexibility. For example, parents can adjust the table amounts to account for special expenses such as day care, situations of undue hardship, shared or split custody arrangements, exceptionally high income, and children the age of majority or over.

The word *guidelines* may suggest that the rules and child support tables are only for reference. This is not the case. In fact, judges must use the Guidelines in almost every case. (The *Divorce Act* allows a few exceptions, such as situations in which both parents agree to an arrangement that the judge finds reasonable.) This can be helpful for couples who wish to make their child support arrangements without going to court. Parents can look at the child support tables to see what a judge would order, and this may help them agree on a child support amount.

<sup>4</sup> To support the implementation of the Initiative, a wide variety of public education and communications activities were undertaken to help parents, family law professionals and Canadians generally. These included a toll-free information line, direct-mail campaigns, publications and an advertising drive. For detailed information please consult Volume 2.

<sup>5</sup> Between 1991 and 1994, the Department of Justice Canada did extensive research on behalf of the F-P-T Family Law Committee to develop the formula that generates the amounts in the child support tables. This involved balancing the interests of all the parties involved and searching for a solution that was not only fair and equitable, but that also worked well in practice. Following a thorough evaluation of various methods of sharing child costs between parents, a process that involved statistical evidence on expenditures on children, data from court orders and extensive consultations, the committee opted for a method known as the Revised Fixed Percentage Formula. See: Finnie, Ross, *et al.*, *Highlights - An Overview of the Research Program to Develop a Canadian Child Support Formula*, Ottawa: Department of Justice Canada, Communications and Consultation Branch, 1995; Finnie, Ross, *et al.*, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, Ottawa: Department of Justice Canada, Communications and Consultation Branch, 1995; Child Support Team, *Formula for the Table of Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, Ottawa: Department of Justice Canada, (CSR-1997-1E/1F), 1997.



## PROVINCIAL AND TERRITORIAL GUIDELINES

Since 1997, most provinces and territories have implemented child support guidelines in law. Alberta, the one exception, has implemented them in practice. A thorough review of the provincial and territorial child support guidelines can be found in Volume 2.

## TAXATION OF CHILD SUPPORT

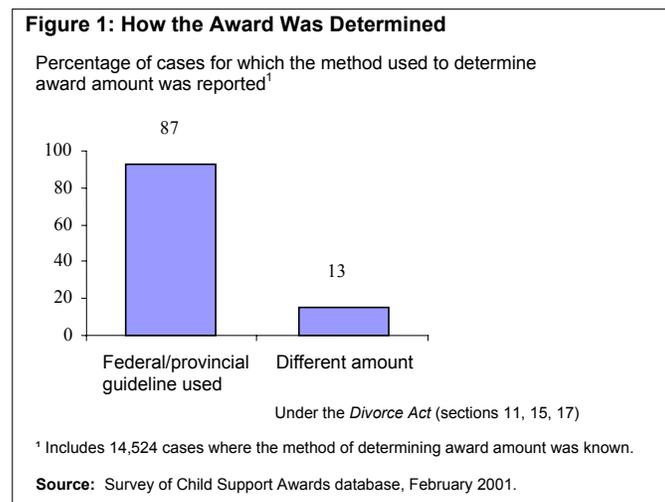
When the Government of Canada amended the *Divorce Act* to introduce the Federal Child Support Guidelines, it also amended the *Income Tax Act* to change the way child support payments are treated for tax purposes.<sup>6</sup>

The child support reform package was announced in the 1996 federal budget. This package included new rules for taxing child support and enriched the Child Tax Benefit. Before child support reform, if you paid child support you could deduct the payments from your income for tax purposes, but if you received child support you had to treat the payments as income for tax purposes.

## A SOLID STEP FORWARD

Since 1997, when the Guidelines came into effect, the federal Department of Justice has been keeping track of how Canadians have used the Guidelines to determine child support. Doing so has helped the Government gather valuable information it is now using to update and improve the Guidelines.

One way to measure the success of the Guidelines is to look at how often Canadians use them to determine child support (Figure 1). A particularly valuable source of information about the Guidelines is the Survey of Child Support Awards,<sup>7</sup> a database of information on 23,688 divorce cases involving children from across Canada (except Quebec and Nunavut) as of February 2001.



<sup>6</sup> Additional information on the tax issue can be found in Appendix 2 attached at the end of this document.

<sup>7</sup> See Appendix 3 for a description of the Survey of Child Support Awards.



In 14,524 of these cases, there is a record of the method used to determine child support.<sup>8</sup> The vast majority of these cases (87 percent) used the Guidelines. In the remaining cases a “different amount” was awarded as allowed under sections 11, 15, and 17 of the *Divorce Act*.

One can also use the Guidelines’ objectives to see how well the Guidelines are helping Canadian children and parents (and others, such as lawyers, judges, and mediators) deal with child support issues. These objectives are intended to be a guide for parents, judges, and lawyers as they interpret the Federal Child Support Guidelines (see section 1).<sup>9</sup> The objectives are as follows:

- (a) to establish a fair standard of support for children that ensures they continue to benefit from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and by encouraging settlement; and
- (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

With the help of the provinces and territories, the federal Department of Justice commissioned research that used these objectives to monitor how the Guidelines were working. This research looked at a number of issues related to each of the four objectives. Researchers collected child support information from divorce cases and studied surveys of such interested parties as parents, lawyers, and family justice services providers (such as mediators).<sup>10</sup>

## **OBJECTIVE 1: TO ESTABLISH A FAIR STANDARD OF SUPPORT FOR CHILDREN THAT ENSURES THEY CONTINUE TO BENEFIT FROM THE FINANCIAL MEANS OF BOTH SPOUSES AFTER SEPARATION**

Research in this area answered four questions.

- Do parents and professionals see the Guidelines as fair?
- Is there any indication that the intent of the Guidelines to ensure fair support from both parents has been circumvented in any systematic way?
- How do the child support amounts awarded under the Guidelines compare to pre-Guidelines amounts?
- Have the child support tables, which were published in 1997, become outdated as a result of subsequent changes to federal, provincial and territorial tax structures and parameters?

*Do parents and professionals see the Guidelines as fair?*

In a November 1998 survey of clients registered with the Family Maintenance Enforcement Program in British Columbia,<sup>11</sup> parents who had child support orders made under the Guidelines were asked whether they thought the amount was fair.<sup>12</sup>

<sup>8</sup> The 2,260 cases categorized as being “silent on child support/previous order dealt with support” were excluded from this analysis. *Survey of Child Support Awards, February, 2001.*

<sup>9</sup> The section-by-section review of the Guidelines suggests that the objectives are working well for these purposes, see Volume 2.

<sup>10</sup> For complete information on the research program, see: Child Support Team, *Child Support Initiative: Research Framework*, Ottawa: Department of Justice Canada, (CSR-1999-1B), 1999.

<sup>11</sup> In British Columbia, Family Maintenance Enforcement Program services are available at no cost to parties who choose to file their orders with the program. For most recipients, it operates as an opt-in system. The exception to this is recipients who are receiving income assistance. For this group, enrolment may not be voluntary. See Canadian Facts, *Child Support Guidelines Evaluation Highlights Summary*, (unpublished report), Burnaby, B.C., Family Maintenance Enforcement Program, British Columbia Ministry of the Attorney General, 1998.

<sup>12</sup> Canadian Facts, 1998 (footnote 11) at pp. 7-8.

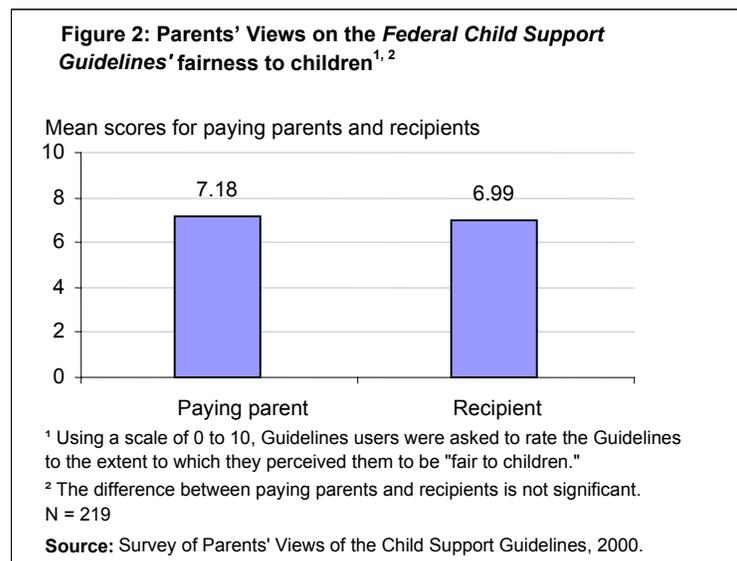


Among the 280 parents receiving child support who responded, 56 percent agreed that the amounts were fair, compared to 41 percent of the 279 paying parents in the sample. When those who felt the child support amounts were unfair were asked why, the most common responses among receiving parents were that the “amount does not cover costs” (69 percent) and that the paying parent “could afford more” (23 percent). Paying parents who found the amounts unfair often said that they could not afford them (34 percent), that they have obligations to another family (11 percent), and that the amount is simply too high (11 percent).<sup>13</sup>

In 1999, Alberta parents who had attended Parenting After Separation seminars were asked to assess the fairness of the Guidelines, based on their experience in arriving at an arrangement for payment of child support. Seventy percent of the 547 respondents who had used the Guidelines agreed or strongly agreed that the Guidelines “set a fair standard of support for children that makes sure they benefit from the financial means of both parents.”<sup>14</sup> Although women were more likely to give a high rating for fairness (74 percent) than were men (65 percent), there was a high level of satisfaction overall.

In a later general population telephone survey, parents who had experience in using the Guidelines were asked to rate them in terms of fairness. For this survey, respondents were specifically asked to rate the Guidelines on a scale of 0 to 10 in terms of fairness to the paying parent, fairness to the recipient, and fairness to the children.<sup>15</sup>

Paying parents gave the Guidelines a rating of 5 out of 10 in terms of fairness to themselves. In contrast, receiving parents gave a score of 8 out of 10 in terms of fairness to paying parents. On the other hand, when parents were asked to rate the Guidelines in terms of their fairness to children, both paying and receiving parents rated the Guidelines at about 7 out of 10 (Figure 2).



<sup>13</sup> Canadian Facts, 1998 (footnote 11) at p. 8.

<sup>14</sup> Sieppert, J., et al., *An Evaluation of Alberta's Parenting After Separation Seminars* (unpublished paper submitted to Alberta Children's Services), Calgary: Canadian Research Institute for Law and the Family, 1999, Appendix E, and secondary analysis of these data by Lorne Bertrand, 2001.

<sup>15</sup> Canadian Facts, *Survey of Parents' Views of the Federal Child Support Guidelines* (unpublished background research), Ottawa: Department of Justice, 2000.



Lawyers and mediators who have completed questionnaires at conferences<sup>16</sup> and continuing legal education sessions<sup>17</sup> rate the Guidelines highly in terms of fairness to children and parents, and in terms of the predictability they have brought to child support amounts.

*Is there any indication that the intent of the Guidelines to ensure fair support from both parents has been circumvented in any systematic way?*

Early in the implementation of the Guidelines, there was some concern that the table amounts might not set a “floor” (or minimum acceptable amount) for child support payments, as was intended by the Family Law Committee, but rather a “ceiling.”

Another concern was that the child support arrangements of parents who had a consent order or a written agreement might be exempt from the usual judicial scrutiny required by the *Divorce Act*. Although the *Divorce Act* makes it clear that judges must use the Guidelines when making original orders for child support, interim orders, and variations, judges may award a different amount<sup>18</sup> in certain circumstances.

Sole custody cases from the Survey of Child Support Awards were divided into two types (consent/uncontested cases and contested cases) to determine the extent to which the awards conformed to the applicable table amounts in each case.<sup>19</sup> Figure 3 shows that, for both types of cases, the proportions of cases in which the child support amounts were “less than,” “equal to,” or “greater than” the table amounts were virtually identical.<sup>20</sup> The amounts were less than the table amounts in between 5 and 6 percent of the cases. Two thirds of both types of cases had amounts that were equal to the table amounts and 30 percent had awards that were greater than the table amounts.

<sup>16</sup> Some respondents commented that the Guidelines were fair in simple cases, but not so fair when discretionary matters were involved, see: Paetsch, J., et al., *Consultation on Experiences and Issues Related to the Implementation of the Child Support Guidelines* (unpublished paper), Calgary: Canadian Research Institute for Law and the Family, September 1998.

<sup>17</sup> Child Support Team, *The Child Support Guidelines Through the Eyes of Mediators and Lawyers*, Ottawa: Department of Justice, (BP23E), 2000, at p. 7.

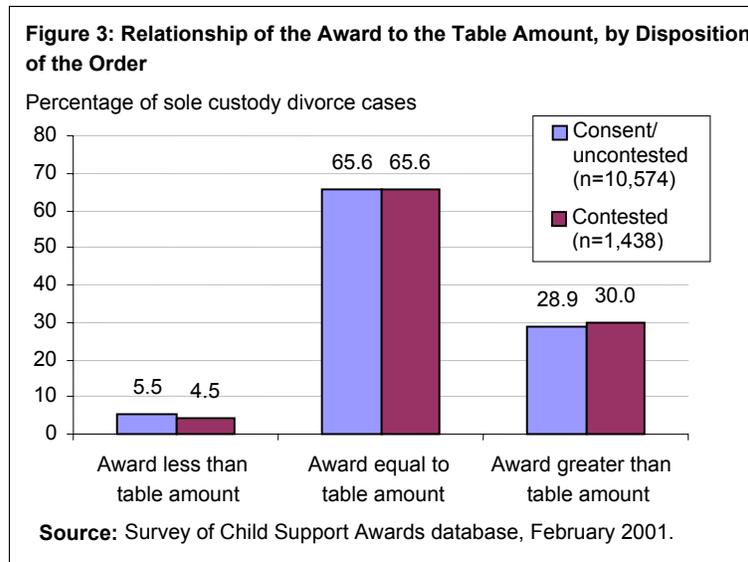
<sup>18</sup> See sections 15.1(5), 15.1(7), 17(6.4) and 17(6.5) of the *Divorce Act*.

<sup>19</sup> Because the distinction between “consent” and “uncontested” cases varied in the courts that were included in the study, it was necessary to combine these two categories when analyzing the data from the Survey of Child Support Awards. When this was done the vast majority of cases (88 percent) fell into the “uncontested/consent” category, and 11 percent were contested (Survey of Child Support Awards database, February 2001). For the purposes of the Survey of Awards, consenting cases included those in which it was clear that both parties consented to the order. Uncontested cases included cases for which it was clear that a judge had to make the finding in the absence of the respondent or the preamble stated that the finding was made by default. Variations were significantly more frequently contested (29.8 percent) than were original divorce orders or judgments (6.8 percent).

<sup>20</sup> To allow for minor variations from the table amounts as coded on the Survey of Awards data collection instrument, the child support award amount was considered to be equal to the table amount if it was within five percent (either higher or lower) of the table amount.



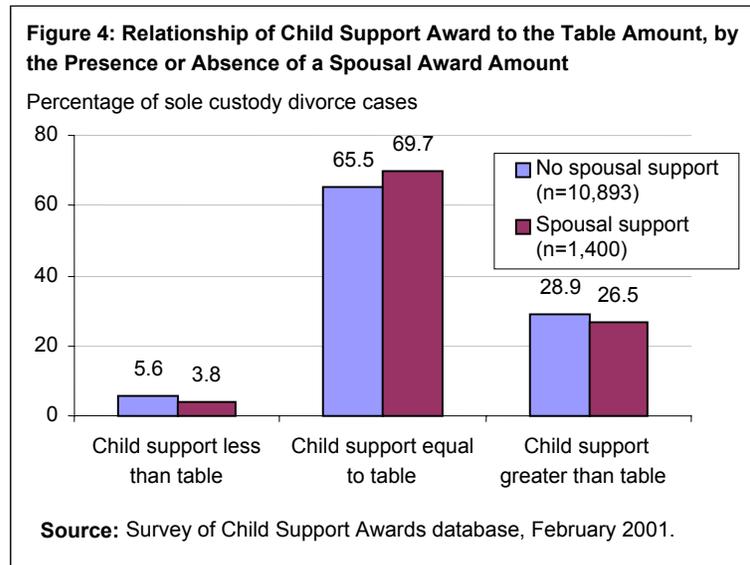
Based on this analysis and a review of related case law, it is clear that parents, judges, and lawyers view the table amounts as the minimal acceptable amount in the vast majority of consent and contested cases alike. (For more information, see the review in Volume 2 of sections 11, 15.1, 15.3, and 17 of the *Divorce Act*.)



Anecdotal evidence gathered soon after the Guidelines went into effect suggested that some paying parents were agreeing to generous tax-deductible spousal support orders to avoid paying taxable child support awards or to significantly reduce the amount of child support.<sup>21</sup> A spousal support amount was included in 11 percent of the cases in the database.

Figure 4 compares sole custody cases with and without spousal support amounts. It shows that there is little or no difference between the two groups in the proportion of cases with child support award amounts that are less than, equal to, or greater than the applicable table amounts.

<sup>21</sup> The *Divorce Act* ss. 15.3(1) stipulates that spousal awards are to be considered after child support has been determined. Similarly, although spousal support continues to be tax deductible for the payor, and to be taxable income in the hands of the recipient, tax deductions for spousal support are only allowable when evidence has been presented that the child support amount has been paid in full.



In approximately 70 percent of the cases that included spousal support, the child support portion of the order was equal to the table amounts, compared to 66 percent of the cases without a spousal support component. More importantly, cases that included a spousal support amount were slightly *less* likely to have child support amounts that were below the applicable table amount (4 percent of cases) than if spousal support was not included (6 percent of cases).<sup>22</sup>

*How do the child support amounts awarded under the Guidelines compare to pre-Guidelines amounts?*

Many concerned observers have asked how the child support amounts ordered under the Guidelines compare with those made in the pre-Guidelines era. The federal Department of Justice compared post-Guidelines amounts (as recorded in the Survey of Child Support Awards database) with information in the 1992 Current Awards database, which was collected while the Guidelines were being developed.

Extensive testing and comparison of the two databases has shown that, generally speaking, post-Guidelines amounts were much more consistent at each payer income level than were pre-Guidelines amounts. The post-Guidelines amounts were generally higher than the pre-Guidelines amounts. These effects had been intended.<sup>23</sup>

Because there had been a particular concern about the impact of the Guidelines on low-income families, the federal Department of Justice analyzed cases in which both parents had incomes of \$20,000 or less. This analysis showed that for one- and two-child families,<sup>24</sup> median and mean<sup>25</sup> amounts were considerably higher in post-Guidelines cases than in pre-Guidelines cases. In addition, post-Guidelines amounts were generally higher than the table amounts, even in cases without special expenses. This evidence shows that low-income parents are receiving higher award amounts than they were before the Guidelines were developed.

<sup>22</sup> Although the number of cases with child support amounts falling below the table amounts is very small (661 cases out of 12,293), a detailed analysis of these cases show some interesting differences between the cases with and without spousal support. The median income for the paying parents in cases with spousal support is relatively high (\$74,227) compared to only \$36,976 for those who are not paying spousal support. Survey of Child Support Awards database, February, 2001.

<sup>23</sup> After controlling for tax treatment, inflation, payor income and number of children.

<sup>24</sup> The small number of cases made it impossible to perform the tests on larger sized families.

<sup>25</sup> The median amount is the one above and below which 50 percent of the amounts fall. The mean amount is the average of all the amounts.



*Have the child support tables, which were published in 1997, become outdated as a result of subsequent changes to federal, provincial and territorial tax structures?*

Ongoing research has ensured that changing federal, provincial and territorial tax regimes have not had a large impact on the table amounts generated by the formula.

Thus far the formula has been found to be robust. The significant changes to federal, provincial and territorial income tax regimes since 1997 have had minimal impact on the table amounts. When the child support tables are regenerated using the most recent tax information available, there is as yet no appreciable difference from the published 1997 table amounts.

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## RECOMMENDATION 1

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*The federal Department of Justice recommends that the child support tables be updated every five years, or sooner when changes in federal, provincial, or territorial tax regimes would have a significant impact on table amounts.*

## SUMMARY

Most professionals who have been asked to comment on the Guidelines say that the Guidelines establish a fair amount of support for children. There is strong evidence that the table amounts have been viewed as a “floor” in virtually all cases, whether the child support arrangements were contested or arrived at by consent.

## OBJECTIVE 2: TO REDUCE CONFLICT AND TENSION BETWEEN SPOUSES BY MAKING THE CALCULATION OF CHILD SUPPORT ORDERS MORE OBJECTIVE

Research in this area answered five questions.

- Do parents and professionals see the Guidelines as reducing conflict and tension between parents?
- Has the overall proportion of cases that result in litigation been reduced?
- Has there been any change in the proportion of cases that result in litigation when child support is the only issue being dealt with by the court?
- Has there been any change in the proportion of cases that result in litigation when custody is the only issue being dealt with by the court?
- What impact, if any, has the new “40 percent” timethreshold for shared custody had on levels of litigation?

*Do parents and professionals see the Guidelines as reducing conflict and tension between parents?*

Family Maintenance Enforcement Program clients in British Columbia were asked to rate the amount of conflict they experienced while they or the judge determined the child support amount. The clients used a seven-point scale, with 1 meaning “no conflict at all” and 7 meaning “a great deal of conflict.”

For child support recipients, the Guidelines have not affected the amount of conflict; their average rating for level of conflict before and after the Guidelines were introduced is about 5 out of 7. There is a slight difference in paying parents’ assessment of the conflict. The average score for paying parents after the Guidelines was 4.5 out of 7, compared with 4.1 out of 7 for paying parents before the Guidelines.<sup>26</sup>

<sup>26</sup> Canadian Facts, 1998 (footnote 11) at pp. 10-11.



In contrast, 62 percent of 545 parents at a Parenting After Separation seminar in Alberta either agreed or strongly agreed that “the Guidelines reduce conflict and tension between partners.”<sup>27</sup> Women were more likely to agree with this statement (64 percent) than were men (59 percent).

An even higher proportion (70 percent) of legal professionals said in 1998 that the Guidelines have reduced conflict and tension between parents, although some said the Guidelines increase conflict when the case is complex or has discretionary items.<sup>28</sup>

In the federal Department of Justice’s 1998 surveys of lawyers attending continuing legal education courses, 64 percent agreed or strongly agreed that the Guidelines have successfully reduced conflict and tension between parents by making the calculation of child support orders or agreements more objective.<sup>29</sup> In 1999, mediators were also asked whether the Guidelines had reduced the amount of conflict between separating and divorcing parents. Fifty-four percent said there has been less conflict since the Guidelines were implemented, and 39 percent said that more cases are being settled solely by mediation since the Guidelines were implemented.<sup>30</sup>

*Has the overall proportion of cases that result in litigation been reduced?*

The Guidelines were developed in hopes of reducing the number of cases that result in litigation. This was also a goal of the numerous family justice services that the federal, provincial, and territorial governments offered to parents as the Guidelines were being implemented. Examples of such services include those offering child support workbooks for parents, parenting after separation courses, and increased access to mediation services.<sup>31</sup>

Undoubtedly, the high cost of going to court was an important deterrent to litigation in child support cases. At the same time, parents involved in litigation frequently seem more likely to harden their positions about outstanding issues, to increase conflict and tension, and to parent less cooperatively.

There is a common perception among legal professionals and mediators that the number of child support cases settled without litigation has increased since the Guidelines were implemented, although there is no information about how many pre-Guidelines cases went to trial. Lawyers surveyed at three continuing legal education seminars in 1998 estimated that, on average, 59 percent of their separation and divorce cases were settled by consent before the Guidelines were implemented, compared to 72 percent afterwards.<sup>32</sup>

The Survey of Child Support Awards database confirms that the vast majority of cases involving child support under the *Divorce Act* are settled by consent: from 86 percent of all cases in 1997–98<sup>33</sup> to 88 percent in 1999 and 93 percent in 2000 (see Appendix 4). There are some important differences among the cases, however, depending on specific characteristics. For example, about 31 percent of all variation orders were contested, as compared to only 8 percent of original divorce orders or judgments.<sup>34</sup>

<sup>27</sup> See: Seippert *et al.*, 1999 (footnote 14) Appendix D.

<sup>28</sup> Paetsch Joanne J. *et al.*, *Federation of Law Societies of Canada Consultation on Child Support Guidelines and Custody and Access* (Ottawa: Department of Justice, Family, Children and Youth Section [2001-FCY-10E], 2001b), at p. 6.

<sup>29</sup> Child Support Team, 2000 (footnote 17) at p. 7.

<sup>30</sup> See Child Support Team, 2000 (footnote 17) at pp. 11 and 15.

<sup>31</sup> See Volume 2 for a description of the Guidelines Implementation Program.

<sup>32</sup> See Child Support Team, 2000 (footnote 17) at pp. 6-7.

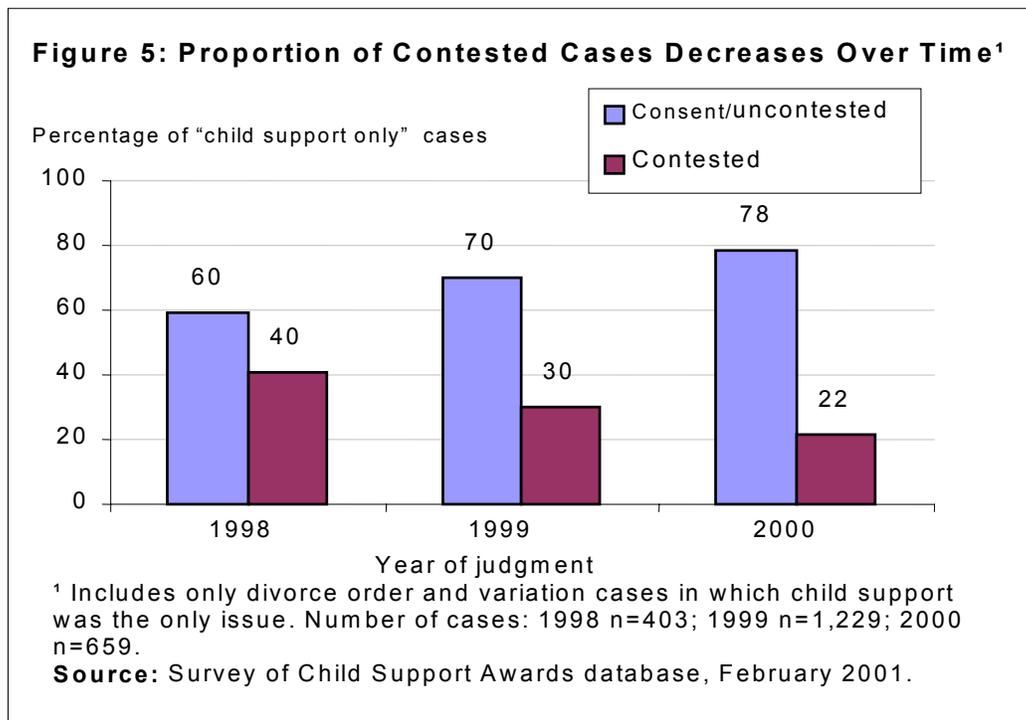
<sup>33</sup> For this analysis, data from the Pilot phase of the Survey and from Phase 2 were combined to provide a 1997-98 average. The Pilot survey data were collected between December 1997 and October 1998. Data collection for the Survey of Awards (Phase 2) started in November, 1998. See Appendix 3.

<sup>34</sup> Tables B and C in Appendix 4 provide frequency distributions of the “issues dealt with” in the Survey of Awards cases as a whole, and by whether the case was a divorce order, or a variation. In most cases, more than one issue is dealt with, the most common combination being “child support, custody and access,” which occurs in about 30 percent of all cases. In 18 percent of the cases the combined issues were child support, custody, access and spousal support. In 13 percent of cases the only issue was child support. Variation orders accounted for nearly two-thirds of the cases in which child support was the only issue. A very high proportion (63



*Has there been any change in the proportion of cases that result in litigation when child support is the only issue involved?*

Cases in which child support is the only issue<sup>35</sup> are much more likely to be contested than other cases. Nevertheless, as can be seen in Figure 5, even among these cases there has been a steady reduction in the proportion of those that are contested, from 40 percent in 1998<sup>36</sup> to 22 percent in 2000.



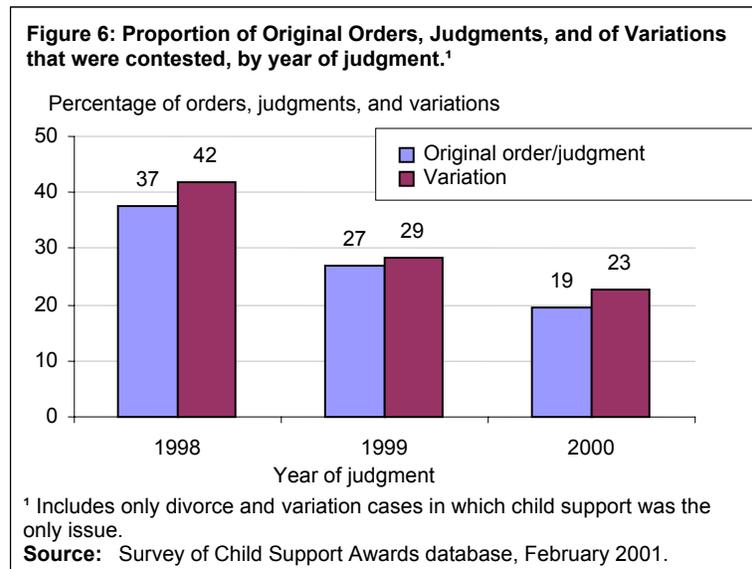
percent) of the divorce cases where child support was the only issue were interim orders for child support. Survey of Child Support Awards database, February 2001.

<sup>35</sup> We are not able to identify the specific issues that were contested in the more complex cases.

<sup>36</sup> In this chart the 1998 data are for November and December only. See Appendix 3.



Figure 6 illustrates that, although variations are still more likely to be contested than original divorce orders, the proportion of cases being contested has declined by almost 20 percent for both types of cases since 1998.



The total number of cases for Figure 5 and Figure 6 differ because a number of contested cases could not be distinguished as original orders or variations.

*Has there been any change in the proportion of cases that result in litigation when custody is the only issue being dealt with by the courts?*

Mediators were asked whether the Guidelines had affected mediation of custody and access issues. While 36 percent of respondents said that it is harder to mediate custody and access since the Guidelines were passed, the majority of respondents (53 percent) said they found no difference or that it is easier now.<sup>37</sup>

The Survey of Child Support Awards database contains a relatively small number of cases in which custody alone, access alone, or custody and access were the only issues to be settled at the time of the divorce or variation order (see Tables B and C in Appendix 4). The proportion of cases in this subgroup that were settled by consent or were uncontested increased from 94 percent in 1998 to 99 percent in 2000.

*What impact, if any, has the new “40 percent” time threshold for shared custody had on levels of litigation?*

The time threshold for determining the difference between sole custody and shared custody arrangements is 40 percent. For shared custody, the children must spend at least 40 percent of the time with each parent.<sup>38</sup>

The Guidelines state that when a parent exercises access to, or has physical custody of, a child for 40 percent or more of the year, the court may order a support amount different from the amount prescribed by the Guidelines. In doing so, the judge considers the table value for each parent, the extra costs of shared custody, and the condition, means, needs, and other circumstances of each parent and any child for whom support is sought.

<sup>37</sup> See Child Support Team, 2000 (footnote 17) at p. 14.

<sup>38</sup> The review of section 9 of the Guidelines in Volume 2 outlines the various approaches that have been taken in the courts with regard to the determination of the two issues of time thresholds and determination of the amount of support.



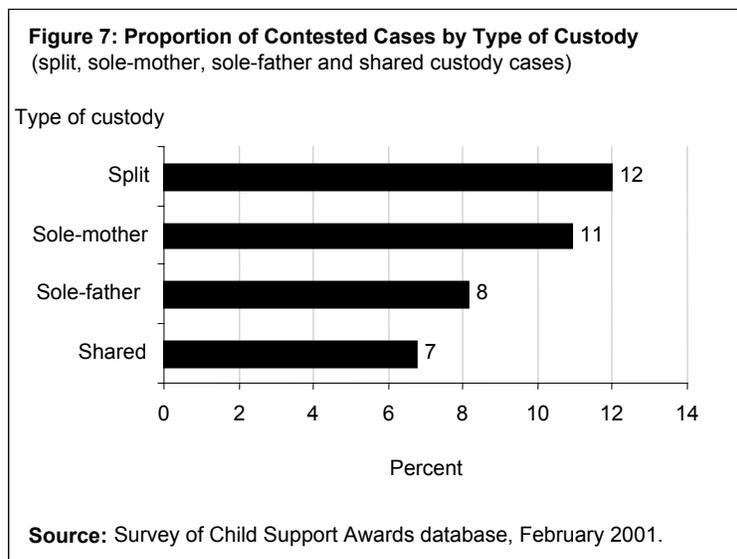
Although the proportion of shared custody arrangements is very small, the Survey of Child Support Awards data show that there has been a slight increase in such arrangements (from 4.7 percent of cases in 1998 to 5.4 percent in 1999 and 6.6 percent in 2000).<sup>39</sup>

One legal commentator reports the following:

Claims for shared parenting are increasing. Whether it's the hope of paying reduced child support pursuant to [section 9 of the Guidelines], or that they want to stay more actively involved in their children's lives after family breakdown, an increasing number of fathers are seeking shared parenting.<sup>40</sup>

When all cases in the Survey of Child Support Awards are grouped by type of custody arrangement, there is very little difference in the proportion of cases in each custody category that were contested. According to these data, shared custody cases were the least likely to be contested—seven percent of 1,185 cases (Figure 7).<sup>41</sup>

By comparison, 12 percent of the 1,006 split custody cases<sup>42</sup> were contested, 11 percent of the 15,621 sole-mother custody cases were contested, and 8 percent of the 1,787 sole-father custody cases were contested.<sup>43</sup>



## SUMMARY

It was not possible to directly, objectively measure levels of conflict between parents before and after the Guidelines. Nonetheless, professionals with experience working on child support cases feel that conflict has decreased under the Guidelines. In addition, the proportion of child support cases under the *Divorce Act* that have had to be settled in court decreased sharply from 1998 to February 2000.

<sup>39</sup> See Appendix 4 – “Supplementary Tables,” Table D.

<sup>40</sup> McLeod, Jay, *This Week in Family Law* (Newsletter), June 26, 2001. McLeod’s Newsletter is posted for subscribers on the Carswell website.

<sup>41</sup> It must be noted that the Survey of Child Support Awards cannot provide information on the number of cases in which there may have been a *failed* application for sole, shared or split custody.

<sup>42</sup> A split custody arrangement exists when each parent has custody of one or more children of the marriage. In these cases the amount of the child support order is the difference between the amount that each spouse would otherwise pay if a child support order were brought against each of the spouses. See Federal Child Support Guidelines, s. 8.

<sup>43</sup> See the review of sections 8 and 9 of the Federal Child Support Guidelines in Volume 2, for more information on shared and split custody.



### **OBJECTIVE 3: TO IMPROVE THE EFFICIENCY OF THE LEGAL PROCESS BY GIVING COURTS AND PARENTS GUIDANCE IN SETTING THE LEVELS OF CHILD SUPPORT ORDERS AND BY ENCOURAGING SETTLEMENT**

Statistical information on family court case flow is not available, so it is not possible to demonstrate definitively that the Guidelines have made processing of child support cases more timely or less costly to parents and the courts. Even if such court processing data were available, several factors would make it difficult to come up with unassailable empirical evidence that the Guidelines themselves have improved the efficiency of the legal process.

For example, when the Guidelines were brought in, many courts set up or expanded services intended to improve the efficiency of the legal process. These services would provide information about the Guidelines,<sup>44</sup> help people file required documents related to child support, and help people calculate child support amounts based on income and other information.

We have evaluated court-based services for separating and divorcing parents in Newfoundland and Labrador, Prince Edward Island, Nova Scotia, Manitoba, Alberta, and British Columbia.<sup>45</sup> Although virtually all the evaluations concluded that clients and professionals working in the vicinity received the additional services positively, none of the evaluations were able to distinguish between the impact, if any, of increased court service levels and the impact of the Guidelines themselves.<sup>46</sup>

*Do parents and professionals feel that the Guidelines have improved the efficiency of the legal process?*

In a follow-up survey of participants in Alberta's Parenting After Separation seminars, 80 percent of the 547 respondents agreed or strongly agreed that "the Guidelines make the legal process more efficient by giving courts and spouses guidance in setting levels of child support." Male (78 percent) and female (82 percent) respondents made this very positive assessment almost equally.<sup>47</sup>

There is a strong perception among legal professionals that the Guidelines have improved the efficiency of the legal process. Three-quarters of all respondents surveyed at a conference and at continuing legal education courses in 1998 agreed or strongly agreed that the Guidelines were improving efficiency. Similarly, 73 percent of mediators said that the process of mediating a child support agreement has improved under the Guidelines.<sup>48</sup>

<sup>44</sup> See, e.g.: Department of Justice, *Federal Child Support Guidelines: A Workbook for Parents*, Ottawa: Department of Justice Canada, 1997.

<sup>45</sup> See: Institute for Human Resource Development, *Final Evaluation Report – Support Application Worker Program Newfoundland and Labrador*, (unpublished paper), Ottawa: Department of Justice, Child Support Team (BP18E), 2000; McKenzie, Brad, *Evaluation of Comprehensive Co-Mediation and Mediation Internship Pilot Project*, unpublished Interim Report, 2000; McKenzie, B., and I. Guberman, *Evaluation of For the Sake of the Children: A Parent Education Program for Separating and Divorcing Parents (Phase 2 Final Report)*, Winnipeg: University of Manitoba, Faculty of Social Work, Child and Family Services Research Group, 2000; Richardson, C. James, *Evaluation of the Nova Scotia Child Support Guidelines Intake Assistant Program*, (unpublished paper), Ottawa: Department of Justice, Child Support Team (BP22E), 2000; Roberts, Tim, *An Evaluation of Child Support Clerk Functions, Final Report*, Victoria, B.C.: Ministry of Attorney General, Management Information and Evaluation Division, 2000; and, Sieppert, J., et al., 1999 (footnote 14).

<sup>46</sup> On the other hand, a case could be made that the codification of the calculations found in the Guidelines, and the subsequent availability of computer software to assist in making or verifying calculations done by parents or legal counsel was a pre-requisite for the development of these specialized child support services.

<sup>47</sup> See: Sieppert, 1999 (footnote 14).

<sup>48</sup> See: Paetsch *et al.*, 2001a (footnote 28) and, Child Support Team, 2000 (footnote 17).



When asked specifically about the speed with which cases are being resolved under the Guidelines, 72 to 79 percent of lawyers agreed or strongly agreed that cases are being resolved more quickly. In the survey of mediators, 66 percent of respondents said that agreements are reached more quickly under the Guidelines, 16 percent said there has been no change, and six percent said that the process takes longer.<sup>49</sup>

## SUMMARY

Despite the lack of case processing statistics, the perceptions of parents, lawyers, and mediators alike is that the Guidelines have definitely made the legal process in child support cases more efficient.

## OBJECTIVE 4: TO ENSURE CONSISTENT TREATMENT OF PARENTS AND CHILDREN WHO ARE IN SIMILAR CIRCUMSTANCES

To assess consistency of treatment issues, *similar circumstances* have been defined in terms of the type of custody arrangement, the number of children, and the paying parent's income. Two major components of the Guidelines were examined for consistency of application:

- the child support table amounts; and
- the discretionary components (the use of the special expenses provisions, the outcome of undue hardship applications, and the calculation of time and support amounts in shared custody cases).

*Are the Guidelines table amounts being used as intended in determining child support?*

There is compelling evidence from the Survey of Child Support Awards database and from case law reviews that the table amounts are being used consistently as the “floor” or basic amount being awarded in sole custody cases.<sup>50</sup> Lawyers and mediators also share the perception that the Guidelines objective of “ensuring consistent treatment of spouses and children in similar circumstances” has been met.<sup>51</sup>

*Are the discretionary components of the Guidelines being interpreted consistently across the country?*

It is more difficult to determine whether consensus is developing about how to interpret the discretionary components of the Guidelines. A significant minority of professionals who responded to questionnaires on this are concerned that there is still too much judicial discretion, both in applying the special expenses<sup>52</sup> and undue hardship provisions, and in determining child support in shared custody situations.<sup>53</sup>

<sup>49</sup> See: Paetsch *et al.*, 2001a (footnote 28) and, Child Support Team, 2000 (footnote 17).

<sup>50</sup> Bertrand, Lorne D., et al., *The Survey of Child Support Awards: Interim Analysis of Phase 2 Data (October 1998 – March 2000)*, Ottawa: Department of Justice, Family, Children and Youth Section (CSR 2001-2E/2F), 2001 at p. 54; and, see Figures 2 and 3 above.

<sup>51</sup> See: Sieppert, 1999 (footnote 14) at p. 7; and, Child Support Team, 2000 (footnote 17) at p. 7.

<sup>52</sup> One third (32.3 percent) of the cases in the Survey of Child Support Awards database involved special expenses. Although the reasons for the special expenses varied widely, child care expenses were the most frequently cited (12.4 percent), followed by medical and dental insurance premiums (10.8 percent), and extracurricular activities expenses (10.5 percent). In 867 cases, the only reported child was over the age of majority. Special expenses were awarded in 29 percent of these cases. The type of expense was reported in 387 of these cases. Post-secondary expenses accounted for the greatest proportion (42.2 percent) of these expenses, followed by health-related expenses (20.4 percent), medical-dental expenses (18.6 percent) and extracurricular expenses (10.3 percent). Survey of Child Support Awards database, February, 2001

<sup>53</sup> See: Child Support Team, 2000 (footnote 17) at p. 7; and, Child Support Team, *Federal Child Support Guidelines - A Review of Technical Issues and Proposed Solutions - Consultation Paper and Feedback Booklet*. Ottawa: Department of Justice, 1999.

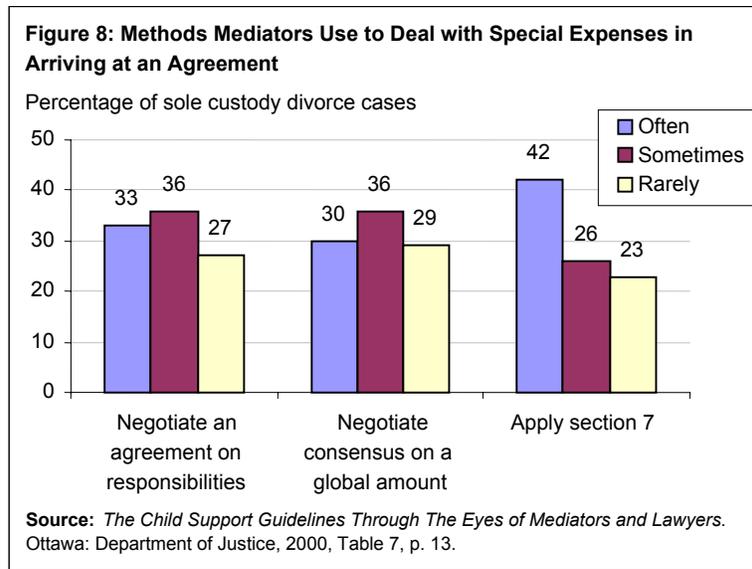


*How are family mediators and courts dealing with special expenses?*

Family mediators were asked how they dealt with special expenses when arriving at a child support agreement. Respondents were asked whether they always, often, sometimes, rarely, or never used three alternative methods:

- negotiate an agreement on responsibilities for current or impending special expenses and do not include a specific dollar amount or proportion in the agreement;
- negotiate consensus on a global amount that is included in the agreement; and
- apply section 7, including calculations for any or all of the prescribed items (using the guiding principles or proportional income and tax relief when applicable), and include a specified dollar amount or proportion in the agreement.

Two-thirds of respondents used all three methods often. They reported using section 7 (the third option) slightly more frequently (42 percent of respondents used it often) than the other approaches (33 percent and 30 percent, respectively). See Figure 8.



When the Survey of Child Support Awards data on sole custody cases are pooled for all provinces, a clear pattern emerges: the higher the income of the paying parent, the more likely the case is to have special expenses. The proportions increase from 13 percent when the paying parent’s income is between \$1 and \$14,999 to 57 percent of cases when income ranges between \$75,000 and \$149,999.<sup>54</sup>

Further analyses compared similarities and differences among the provinces on the extent to which special expenses are used. To do this, all cases in which the paying parent’s income was not above \$150,000 were grouped into three income groups with an equal number of cases in each.<sup>55</sup> The resulting income ranges were as follows:

- group 1 (less than \$27,182),
- group 2 (\$27,182 to \$44,999), and
- group 3 (\$45,000 to \$150,000).

<sup>54</sup> See Bertrand *et al.*, 2001 Interim Analysis (footnote 50). In addition, the amount of special expenses ordered increased as paying parents’ incomes increased.

<sup>55</sup> Thirty-eight percent of all cases in the database (n= 6,684) met the criteria for this analysis (i.e. income of the payor was known, and was \$150,000 or less, and special expenses were included in the order). Survey of Child Support Awards database, February 2001.



Restricting the analysis to the provinces with 100 or more of these cases (Table 1), the overall proportion of cases with special expenses ranges from a low of 22 percent in Nova Scotia to a high of 43 percent in Alberta. In the highest income group, Ontario cases are much more likely to include special expenses (63 percent) than Alberta cases (50 percent), and both provinces have much higher proportions of special expense cases in this income group than do Nova Scotia, New Brunswick, Manitoba, or British Columbia (35 to 37 percent each).

**Table 1: Number and Proportion of Cases Having Special or Extraordinary Expenses Awarded by Percentile Group and by Province**

Province	Proportion of cases with special expenses within income groups <sup>1</sup>				
	Total cases with special expenses		Lowest income group (less than \$27,182)	Middle income group (\$27,182 to \$44,999)	Highest income group (\$45,000 to \$150,000)
	n	%	%	%	%
Nova Scotia	259	21.7	10.4	23.9	36.0
New Brunswick	190	25.9	13.8	31.8	37.5
Ontario	1,731	41.1	19.9	39.4	63.0
Manitoba	477	28.3	21.5	29.5	37.3
Saskatchewan	291	34.5	29.5	34.3	41.2
Alberta	3,455	43.1	30.7	46.1	50.4
British Columbia	174	28.5	21.3	27.0	35.2

<sup>1</sup>Data are categorized by percentile groups, with each group containing approximately the same number of cases.

Three groups have been specified. Group 1 (below the 33rd percentile) corresponds to paying parent incomes less than \$27,182. Group 2 (33rd to 67th percentile) corresponds to paying parent incomes from \$27,182 to \$44,999. Group 3 (over the 67<sup>th</sup> percentile) corresponds to paying parent incomes from \$45,000 to \$150,000.

<sup>2</sup>To avoid bias that may be caused by low sample sizes, distributions across income categories have not been provided for provinces or territories with fewer than 100 cases.

**Source:** Survey of Child Support Awards database, October 1999–February 2001.

Based on this information, provinces clearly vary in their practices and policies on including special expenses.<sup>56</sup>

#### *Are the undue hardship provisions fair?*

Some people are concerned about the overall fairness of the undue hardship provisions and about the consistency with which the standard of living test is applied.<sup>57</sup>

Unfortunately, when a claim for undue hardship is raised and subsequently fails, there may be no record of the application in the case files or reference to the application in the child support order (from which the Survey of Child Support Awards data are extracted). Thus, although the Survey of Child Support Awards contains some data on undue hardship applications (160 cases, or 0.7 percent of the total number of cases), the database does not reliably reflect the total number of cases in which undue hardship is raised.

As mentioned, undue hardship applications were identified in only 0.7 percent of the total cases in the sample of the 160, there was only one cross-application. The paying parent brought most of these applications. Of the 150 undue hardship applications brought by the paying parent, 103 resulted in a decrease of the Guidelines amount, 28 were

<sup>56</sup> See also the review of the Child Support Guidelines, Section 7 “Special or Extraordinary Expenses” in Volume 2.

<sup>57</sup> See also the review of the Child Support Guidelines, Section 10 “Undue Hardship” in Volume 2.



denied, none resulted in an order amount higher than the Guidelines amount, and 19 applications had unknown or missing outcomes.

Of the nine undue hardship applications made by the receiving parent, one resulted in an increased amount, four were denied, and one resulted in an order that was less than the table amount. The outcome was unknown in three cases.

*How are child support amounts negotiated in shared custody cases?*

Once parents agree on shared custody, or a judge determines that it is appropriate, the parents must address child support.

**Who enters into a shared custody arrangement?**

- In the Survey of Child Support Awards, 5.8 percent of all cases had shared custody arrangements.
- Children of parents with shared custody arrangements tended to be younger than those of parents with other types of custody. When the average age of all children in a family was considered, children in shared custody were 9.96 years, compared to 10.2 years for those in sole-mother custody, 12.1 years for those in sole-father custody, and 13.7 years for those in split custody arrangements.
- On average, families with shared custody arrangements had fewer than two children. Families with split custody arrangements had the highest mean number of children (2.47), followed by sole-mother and shared (1.75) and sole-father arrangements (1.70).
- The median incomes for paying (\$50,000) and receiving (\$30,971) parents are higher in shared custody cases than in sole-mother custody cases (\$35,799 and \$23,845, respectively) and split custody cases (\$42,763 and \$20,855, respectively). While the median paying parent income is also lower for sole-father custody cases (\$21,120), the median receiving parent income for sole-father cases is higher (\$40,000).

**Source:** Survey of Child Support Awards database, February 2001.

Mediators were asked how they negotiated child support amounts in shared custody cases. Respondents mentioned a variety of means, but the two mentioned most often were, first, using software or family budgets for each household, and, second, calculating the proportion of the table amount for each parent that corresponds to the amount of time he or she has custody of the children. However, respondents also indicated that they found the lack of direction in negotiating support in these cases to be a big disadvantage of the Guidelines.<sup>58</sup>

The presence or absence of a child support order was specified in 1,226 shared custody cases in the Survey of Child Support Awards database. Of these, 56 percent reported an amount (see Table 2). A majority of these were monthly amounts. In the remaining 44 percent of cases, either there was no award or the amount depended on future circumstances.

<sup>58</sup> See: Child Support Team, 2000 (footnote 17) at p. 12.

**Table 2: Child Support Award Status in Shared Custody Cases<sup>1</sup>**

<b>Award status</b>	<b>n</b>	<b>%</b>
<b>Award amount specified</b>	<b>689</b>	<b>56.2</b>
Per month	631	51.5
Per year	2	0.2
Lump sum	2	0.2
Other amount	54	4.4
<b>No amount specified</b>	<b>537</b>	<b>43.8</b>
Amount contingent on future circumstances	5	0.4
No award	532	43.4
<b>Total</b>	<b>1,226</b>	<b>100.0</b>

<sup>1</sup>Excludes cases where award status and custody type were unknown.

**Source:** Survey of Child Support Awards database, October 1999–February 2001.

A discussion of the issues relating to the 40-percent time threshold, and of approaches to determining amounts in shared custody cases under section 9 of the Guidelines, follows under the heading “Shared Custody”.

## SUMMARY

Based on information from the Survey of Child Support Awards, the table amounts are consistently accepted as the “floor” in relevant cases. There are, however, different practices and policies among the provinces and territories for including special expenses.

## OVERALL ASSESSMENT

The Survey of Child Support Awards confirms that the *Federal Child Support Guidelines* have been used to determine child support orders in the vast majority of divorce cases in the selected courts.

In addition, there seems little doubt that in the vast majority of cases the child support tables have gone a long way toward ensuring that children receive a fair amount of support and toward reducing conflict and tension between parents about child support. In 94 percent of sole custody cases processed under the Guidelines, the child support amount was greater than or equal to the table amount.

The tables have also made the legal processing of cases more efficient and have helped ensure that parents and children in similar circumstances are treated consistently. This is a particularly impressive finding given that the Guidelines were introduced less than five years ago.

In more complex cases involving shared custody arrangements, or special expenses and undue hardship applications, the Guidelines allow for greater discretion in making arrangements. In these cases patterns are less clear and are probably still evolving. The federal Department of Justice is proposing changes to sections of the Guidelines that deal with special or extraordinary expenses and shared custody. These are detailed in the following section.

## LOOKING TO THE FUTURE: CHILD SUPPORT RECOMMENDATIONS

The results of all the consultation and research efforts described in the previous sections lead to one conclusion: the *Federal Child Support Guidelines* have been fully implemented and have achieved their intended effects. Parents are working out their own arrangements or, when parents do go to court, the issues are more clearly defined than before.



While the Guidelines have been successful, parents, the courts, and others have identified issues that require further work to improve the Guidelines and make them fairer. Some of these issues will require fine-tuning the Guidelines to provide greater clarity while maintaining flexibility. Other issues will require continued monitoring.

“Most agreed that the Guidelines, although needing clarification or modification in at least several respects, were, even at this early date, proving their worth and were achieving most of the goals established for them. By replacing the previous case-by-case litigation framework, it was recognized that the Guidelines have introduced a degree of objectivity into the process of settling child support issues, although there was some disagreement about the degree to which individual cases were actually easier to settle.”

**Source:** *The Federal Child Support Guidelines—Interim Report of the Senate Standing Committee on Social Affairs, Science and Technology*, June 1998, p. 5.

Taking into account the results of the 2001 consultation, as well as previous consultations on other issues, research results, and case law analysis, the following is recommended.

## SHARED CUSTODY

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### RECOMMENDATION 2

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*No change is recommended to the “40 percent rule.”*

The Guidelines state that when a parent exercises access to, or has physical custody of, a child for 40 percent or more of the year, the court may order a support amount different from the amount prescribed in the Guidelines. In making such a decision, the judge considers factors including the table value for each parent, the extra costs of shared custody and the condition, means, needs and other circumstances of each parent and any child for whom support is sought.

Although the use of a threshold based on time has been criticized because of the direct link between child contact and support, no alternative has been found that demonstrably improves the test. Although many other proposals have merit, none simplifies the court process and each represents a radical departure from the status quo. Using anything other than time for the threshold test would likely result in significant uncertainty and increased litigation, contrary to the objectives of the Guidelines.

Selecting a higher time threshold such as “substantially equal” has some advantages. However, these advantages may be offset by other factors, including the potential for increased litigation over the meaning of the term, unfairness to parents with high access time, and uncertainty as to whether this would actually weaken the link between child contact time and child support. In addition, there is an established body of case law interpreting the section; parents and legal professionals are familiar with it. Nevertheless, the case law on this particular issue will continue to be monitored.



## PRESUMPTIVE FORMULA

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### RECOMMENDATION 3

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*It is recommended that the current factors<sup>59</sup> used to determine the amount of support in shared custody situations be replaced by the use of a presumptive formula. A judge would determine the support amount by applying a prescribed formula. The formula amount would be the difference between the table values for each parent given the total number of children in the shared custody arrangement.<sup>60</sup>*

A formula would increase predictability and certainty. The fact that it could be rebutted would maintain judicial discretion to order another amount in the appropriate circumstances. To decide whether to depart from the formula amount, the court could consider any relevant factor; the way spouses shared the child's expenses would be especially relevant. This approach was chosen to account for the increased cost of maintaining two residences for a child, rather than the split custody provision, where the table values only account for the number of children in each parent's care and not the total number of children.

## SPECIAL OR EXTRAORDINARY EXPENSES

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### RECOMMENDATION 4

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*The term extraordinary should be defined to better guide parents and the court and to improve consistency across the country among families in similar circumstances.*

Section 7 of the Guidelines provides that six categories of special child-related expenses can be included in the child support amount if they are reasonable and necessary in light of the child's needs, the parents' means, and any family spending pattern before the separation. Included in those categories are "extraordinary expenses" for education and extracurricular activities.

The term *extraordinary* has been interpreted differently across the country, creating some confusion and inconsistency and resulting in calls to clarify the term. Section 7 should therefore be amended to add a definition of *extraordinary*. Parents and courts will be directed to determine whether the expense is extraordinary, given the income of the parent requesting and paying for the expense. If this does not help, parents and the court will be directed to consider other factors in addition to income:

- the number and nature of the programs and activities;
- the overall cost of the programs and activities;
- any special needs and talents of the child; and
- any other similar factor the court considers relevant.

The recommended approach is consistent with the original intent of the section and with the interpretation adopted by several appeal courts. It is also the approach Manitoba took when it amended its guidelines effective July 2001. This approach would help ensure that guidelines across the country continue to be harmonized as much as possible.

<sup>59</sup> Factors are listed in paragraphs (a) to (c) in Section 9—Shared Custody, Federal Child Support Guidelines:

(a) the amounts set out in the applicable tables for each of the spouses;

(b) the increased costs of shared custody arrangements; and

(c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.

<sup>60</sup> Sometimes referred to as the "set-off formula." This formula subtracts the child support amount (for all children, using that parent's income) from the other parent's child support amount, the resulting difference thus is the amount paid from the parent to the other.



## DISCLOSURE OBLIGATIONS

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### RECOMMENDATION 5

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*Recipients of support for a child the age of majority or over should be required to disclose information about the child's ongoing eligibility for support. This would help reduce conflict and tension between the parents.*

Many people have argued that older children getting support should be accountable and provide financial and other information to demonstrate that they are still entitled to support. Others say this is an unnecessary breach of the older child's privacy that, effectively, involves the child in the parents' litigation.

The Guidelines should be amended to require disclosure of information relevant to the child's entitlement to support. The amendment would require the recipient parent, not the child, to provide the information on the written request of the paying parent, thus insulating the child from direct involvement in the litigation. This requirement would apply in all cases where support is to be paid for children at the age of majority or over, not just in those that include special expenses.

Special expenses, such as tuition for post-secondary education, are those not covered by the child support table amount. Under the Guidelines, a section already requires parents to produce information about any special expenses. However, this provision does not require parents to produce information about ongoing eligibility and other expenses that may be paid with the table amount or another amount paid for older children.

## COMPARISON OF HOUSEHOLD STANDARDS OF LIVING TEST

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### RECOMMENDATION 6

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*The Comparison of Household Standards of Living Test should be adjusted to account for certain statutory payroll deductions.*

Many observers have correctly noted that the current test does not account for statutory payroll deductions. Parents should be able to deduct Canada/Quebec Pension Plan contributions and employment insurance premiums when completing the standard of living test. These statutory payroll deductions are conditions of employment and the deductions are not funds available to a household.

## DETERMINING INCOME

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### RECOMMENDATION 7

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*The income sections should continue to apply as drafted, except for a minor amendment to account for situations where a parent is residing in a country that has higher effective income tax rates than those in Canada.*

Under the *Federal Child Support Guidelines*, it is especially important to correctly establish a parent's income because the child support tables are based on income. The Guidelines use the paying parent's gross income to determine the table amount, which ensures that parents consider child support before any deduction. To ensure fairness for that parent, the formula used to establish the amounts in the tables takes into account provincial, territorial, and federal taxes.



In its interim report on the Guidelines, the Standing Senate Committee on Social Affairs, Science and Technology stated:

The Committee heard some testimony concerning the difficulty of determining income for the purpose of applying the Guidelines. In particular, the problems centered on accurately assessing the income of spouses who are self-employed, a problem, of course, which is equally applicable to both parents. On the other hand, the Committee is aware that difficulties in determining income for self-employed spouses predate the Guidelines. Indeed, one witness pointed out that the Guidelines have merely brought the previous difficulties to light. That same witness felt that, overall, they have been a real improvement in the calculation of income.<sup>61</sup>

A substantial body of jurisprudence on income has developed since the Guidelines were put into effect. Issues that were difficult before that time, such as determining self-employment income, continue to be difficult,<sup>62</sup> as is calculating the income of seasonal workers, farmers, and fishers. The myriad rules (both tax- and Guidelines-related) that apply in these cases can make matters difficult and complicated.

However, the Guidelines and subsequent case law have addressed many questions, such as how to deal with capital cost allowance, carrying charges, and stock options. One such income issue involves deciding what information should be used to determine income amount: the Guidelines clearly state that the most recent information should always be used.<sup>63</sup> This rule has helped the courts interpret the income sections.

The majority of income cases under the Guidelines deal with imputing income, an issue lingering from the pre-Guidelines era. Although a court can impute income when a paying parent lives in a country with lower effective income tax rates than those in Canada, there is no equivalent provision if a paying parent lives in a country with significantly higher rates. This omission will be rectified.

Finally, many people feel that the disclosure requirements in the Guidelines are unfair, because the parent getting support does not usually have to disclose income information (although in certain important circumstances, he or she does).<sup>64</sup> More recently, the disclosure requirements have been seen to be fair and to lessen the procedural burden.<sup>65</sup>

In 1999, as part of the federal Department of Justice's consultations on technical issues,<sup>66</sup> we asked, "Should the Guidelines require the receiving parent to disclose income information to the other parent in all cases?" Less than half the respondents said that this was a significant concern.

<sup>61</sup> Standing Senate Committee on Social Affairs, Science and Technology, *The Federal Child Support Guidelines – Interim Report of the Standing Senate Committee on Social Affairs, Science and Technology*, Ottawa: The Senate (Canada) 1998 at p. 12.

<sup>62</sup> See Justice David R. Aston, "An Update of Case-Law Under the Child Support Guidelines" (1998), 16 C.F.L.Q. 261.

"The Guidelines do provide a useful checklist and have provided specific reference in the past for adjustments such as adding back into income items such as capital cost allowance (in the absence of evidence that the asset is really depreciating in value), wages paid to a second spouse, investment and rental property losses, car allowances and the value of personal use of a vehicle expensed for business purposes, and other personal expenses paid by a corporation, such as travel, meals and the like.

Determination of the real income of self-employed persons is not a new problem since the introduction of the Guidelines, but the Guidelines necessitate some actual finding of income (section 13) which may necessitate a closer analysis and actual reasons than in the past, and even for interim orders."

<sup>63</sup> Federal Child Support Guidelines Subsection 2(3) states: "Where, for the purposes of these Guidelines, any amount is determined on the basis of specified information, the most current information must be used."

<sup>64</sup> Disclosure is required when one of the parties is seeking special expenses or is claiming undue hardship, split custody, or shared custody. It is also required when the income of the support payor is greater than \$150,000.

<sup>65</sup> In writing about the Guidelines rule that, with exceptions, only the payor's income is relevant to the calculation of the basic table amount, the Senate Committee stated the following:

"We have already noted that controversy over the original decision has abated considerably, and it may be that time will prove the choice to have been a wise one, particularly in straightforward cases where having to assess only one income doubtless simplifies the calculation considerably." (Standing Senate Committee on Social Affairs, Science and Technology, June 1998, (footnote 61) at p.16.)

<sup>66</sup> Child Support Team, 1999 (footnote 53).



Since May 1, 1997, several of the income sections in the Federal Child Support Guidelines have been amended to clarify them and make them easier to apply. For a detailed explanation of these amendments, see the section-by-section review of the Guidelines in Volume 2. This review reveals that, generally, the income rules are clear, are consistent from a policy perspective, and provide enough flexibility to take into account different situations.

Any difficulties are caused not so much by the rules set out in the Guidelines as by evidentiary conflicts and competing policies, such as issues related to proper and timely financial disclosure, whether unemployment or underemployment is intentional, how much capital should remain in a business, or the fine line between business and personal expenses. If the Government tried to address these countless income scenarios in the income rules, it would unnecessarily complicate the process and there would still be problems with parents intent on thwarting the system.

## ACCESS COSTS

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### RECOMMENDATION 8

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*The provision dealing with unusually high access costs in the undue hardship section should continue to apply as presently drafted.*

The undue hardship provision recognizes that, in some circumstances, paying the table amount, or the table amount plus special expenses, can cause a parent or a child to suffer undue hardship. This section permits courts and parents to decide on a different amount, in appropriate cases, to relieve this hardship. The undue hardship provision reflects the Guidelines' objectives of consistency and a fair standard of support, while taking into account the particular circumstances of any given family.

The undue hardship provision has been criticized because it has been restrictively applied to spouses who seek to decrease the support amount, notably when access costs are high for paying parents who reside far from the child. Courts are presently reviewing these situations case by case. For the most part, they are applying the section as intended.

When the paying parent resides far from the child, courts sometimes provide for high transportation costs through a separate order, not as part of the child support order. Normally, such an order would require parents to share these expenses in proportion to the parents' incomes. This compensation is provided after the money has been spent. Because it is difficult to predict transportation costs, child support should not be reduced without knowing whether the amount is reasonable and whether it was actually incurred.

## SPOUSE WHO STANDS IN THE PLACE OF A PARENT

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### RECOMMENDATION 9

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*The provision dealing with the child support obligation of a spouse who stands in the place of a parent should continue to apply as presently drafted.*

The *Divorce Act* defines a child of the marriage (a child eligible to receive child support) as a child of two spouses or former spouses, including "any child of whom one is the parent and for whom the other stands in the place of a parent." Once it has been established that a step-parent "stands in the place of a parent," the step-parent's obligations are similar to those of the natural parent.



The *Federal Child Support Guidelines* allow courts to set an appropriate child support amount. Courts must take into account the amount set out in the Guidelines and the legal duty of any parent other than the step-parent to support the child.

Courts have adopted a variety of approaches to this issue and, in light of the resulting inconsistencies, some people have argued that the regulations should give judges explicit direction about how to determine the amount of support for step-children. However, allocating child support among natural parents and step-parents is such a complex task that the process is largely driven by the facts of each case. Most respondents worried that a rigid formula could create unfair results. For all of these reasons, this section should not be amended.



## II. SUPPORTING FAMILY JUSTICE SERVICES

### THE FEDERAL ROLE IN SUPPORTING ENFORCEMENT ACTIVITIES IN CANADA

For the family law justice system to work, family support obligations must be enforced so that parents pay their support fully and on time to children and their families. In Canada, the provinces and territories collect and disburse payments through maintenance enforcement programs. Over the past six years, the Government of Canada has taken a more active role, providing important legislative, operational, and coordinating activities that help provinces and territories improve compliance and, thereby, stabilize families experiencing family breakdown.

Currently, no “national” statistical default rate provides information on the number or proportion of cases of non-compliance, let alone the nature of the default.<sup>67</sup> However, it is generally agreed that between 25 to 30 percent of cases registered with the provincial and territorial Maintenance Enforcement Programs (MEP) receive full payment on time. Another 60 percent of cases involve some sort of default, but some money has been paid within the last year. The remaining 10 to 15 percent of cases involve parents who have either not made a payment in the last year or never made a payment. These proportions fluctuate from jurisdiction to jurisdiction for a number of reasons, including the way jurisdictions run their programs, their enforcement policies, the volume of cases, and provincial and territorial resources.

The Government of Canada has been providing the provinces and territories with legislative, operational, and funding support since launching the administrative MEPs in the early 1980s. On May 1, 1997, new federal measures substantially expanded the Government of Canada’s role in promoting compliance with family support obligations. The Government has helped families to benefit from fairer child support amounts under the new child support guidelines and to receive their support payments in full and on time. To do this, it enhanced federal support enforcement laws, re-engineered the federal enforcement operational system to improve service, established a federal enforcement policy unit, increased project-based funding, and launched a comprehensive program of research on enforcement and compliance issues.

This report summarizes how the Government of Canada has addressed the needs of separated and divorced families in the area of compliance and enforcement of support obligations, and recommends ways to better achieve this objective in the future.

### RECENT CHANGES TO THE FEDERAL ENFORCEMENT LAWS AND OPERATIONAL SYSTEM

The Family Law Assistance Services (FLAS) Section of the federal Department of Justice runs the federal enforcement program services that underlie the *Family Orders and Agreements Enforcement Assistance Act* (FOAEA) and the *Garnishment, Attachment and Pension Diversion Act* (GAPDA). This federal enforcement legislation provides a unique set of programs that benefit thousands of Canadians, including children, who otherwise would suffer the consequences of unpaid support payments.

To enhance its role, the Government of Canada amended both these acts in May 1997 so that it could provide the provinces and territories with additional federal enforcement measures. These amendments also removed technical and procedural barriers that kept the Government from making existing measures more timely and efficient.

<sup>67</sup> The Canadian Centre for Justice Statistics of Statistics Canada is currently implementing an on-going survey with the provincial and territorial Maintenance Enforcement Programs (MEP) that will provide standardized definitions for compliance and non-compliance with support obligations.



Before the amendments, the FOAEA gave governments tools to find individuals who are not respecting a family provisions (support, custody or access) order. FOAEA also provides for garnishment of federal payments in order to satisfy family support obligations. The amendments streamlined and improved the garnishment procedures. They also allowed the Government to search the Canada Customs and Revenue Agency databanks for information on individuals who are in default of a family support provision and to investigate a parental child abduction charge under the *Criminal Code*.

The amendments also introduced a new enforcement tool. Governments can now deny or suspend passports and specific federal licences to ensure compliance with family support orders and provisions.

The GAPDA allows the Government of Canada to garnishee and attach federal salaries and to divert pension benefits payable under the federal *Superannuation Act* to satisfy family support orders. The 1997 amendments streamlined notice requirements for garnishment of federal salaries and removed restrictive residency requirements for applicants for pension division. To help families whose support payments are in persistent arrears, the amendments included a special provision to allow pensions to be diverted before the pension becomes payable.

Before May 1997, the provinces and territories filled out forms manually to apply for these services. Staff in the FLAS office then key-captured this information and forwarded it on tapes to the participating federal agencies and departments, such as the Canada Customs and Revenue Agency and Human Resources Development Canada.

This system worked, but improved technologies would make it work even better and faster. In May 1997, federal funding made it possible for different levels of government to take enforcement on-line and to speed the transfer of money to recipient families once a garnishee summons has identified federal moneys. By 1999, the computer system was adapted to the Web and made available to the provincial and territorial enforcement programs. This Web-enabled system gave governments the following benefits:

- speedier transfer of information between the FLAS and its clients in the MEPs and in other federal departments;
- immediate access to case status information concerning FOAEA garnishment, tracing, and licence denial activity;
- elimination of the need to fill out applications manually;
- use of on-line or batch filing of application information to transfer information to and from the FLAS operational system, which eliminated the errors and omissions of manual processes; and
- infrastructure that gives provinces and territories an avenue for on-line, secure communication.

## **FEDERAL ROLE WITH PROVINCES, TERRITORIES, AND OTHER PARTNERS**

One of the biggest challenges in the area of maintenance enforcement is to ensure consistency of policies and programs. Each province and territory has its own maintenance enforcement program and legislation to back it up. But enforcing maintenance requires consistent, uniform policies and programs across the country. The establishment of a federal policy unit in the federal Department of Justice has been an important component of the enhanced federal measures on enforcement. Its larger presence allows the Government of Canada to better respond to the needs of families. It has ensured greater coordination of provincial, territorial, and federal efforts to improve compliance nationally and internationally.

The Department has worked to:

- speed up federal policy development based on the previously identified needs of the provinces and territories;
- promote the exchange of information between federal, provincial, and territorial enforcement services;
- administer and coordinate the efforts of various federal-provincial-territorial and international forums; and
- help develop new legislation to improve service delivery to recipients and paying parents.



Since 1997, federal Department of Justice officials have participated in, and often chaired, the activities of three inter-governmental groups—the Federal-Provincial-Territorial Task Force Enforcement Subcommittee (the Enforcement Subcommittee), the Federal-Provincial-Territorial Reciprocal Enforcement of Maintenance Orders/Reciprocal Enforcement of Support Orders (REMO/RESO) Working Group, and the MEPs Directors.

These groups worked well together to produce a more cohesive approach to enforcement. The various committees brought about a better understanding of the areas of concern that allowed them to prioritize and develop action plans for their work. The provinces and territories said federal participation was integral to the groups' success.

The Enforcement Subcommittee worked on many important joint initiatives and reforms. For example, it worked on amending banking legislation to make it easier to serve support order documentation on banking institutions. The subcommittee also prepared a document called *Operation Principles and Goals* (OPG). The OPG “operationalizes” the Inter-Jurisdictional Maintenance Establishment and Enforcement Protocol adopted by FPT Justice Ministers in September 2000. These documents will make it faster and more efficient to enforce inter-jurisdictional support orders nationally.

The Government of Canada has also been bringing provincial and territorial governments together to make it easier for them to reach agreements with other countries. In an increasingly mobile world, the provinces and territories are ensuring Canadian support obligations are respected by establishing more than 390 reciprocal agreements with American state governments and another 260 with European, Asian, African, Caribbean, and South Pacific national or state governments.

Through the Federal-Provincial-Territorial REMO/RESO Working Group, the Government of Canada has made it easier for different jurisdictions to reach agreement. It has done this by organizing in-person meetings (five so far since 1998) between working group members and foreign jurisdictions. Members negotiate reciprocal enforcement of support orders and recommend new foreign jurisdictions for future agreements. So far, the annual meetings have attracted participants from the United States, Ireland, the Czech Republic, Slovakia, Norway, Poland, Italy, Switzerland, Australia and the United Kingdom.

With federal coordination and support, the REMO/RESO Working Group has established important links domestically and internationally. It has developed uniform information materials and processing tools, which have been shared nationally and internationally, highlighting the need for more such tools.

## **NEW UNIFORM RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS STATUTE**

For a number of years, the Federal-Provincial-Territorial Family Law Committee has been working on uniform reciprocal enforcement of maintenance orders legislation. This new legislation will replace each jurisdiction's present Reciprocal Enforcement of Maintenance Orders (REMO) legislation. The new legislation will significantly streamline the process by which support orders are obtained, varied, and recognized in inter-jurisdictional cases, nationally and internationally.

At their September 2000 meeting, provincial and territorial deputy ministers of justice agreed to consider the new uniform *Inter-Jurisdictional Support Orders Act* (ISO). The federal Department of Justice supported and participated in sharing information about this Act, and it examined the Act's impact on related federal legislation and on the way support orders are enforced in Canada.

At their August 2001 meeting, the premiers decided to put new inter-jurisdictional support enforcement legislation in place by fall 2002. Provincial and territorial representatives have identified the need for ongoing federal involvement to assist in implementing activities to do so.



## DIVORCE ACT

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### RECOMMENDATION 10

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*Federal legislation should harmonize with the new provincial/territorial legislation to resolve inter-provincial and extra-provincial support cases. Governments may also want to reconsider all the inter-jurisdictional sections of the Divorce Act.*

When parties do not live in the same province or territory, they can use sections 18 and 19 of the *Divorce Act* to vary an existing order under the Act. If the court is satisfied that the issues can be adequately determined, a party can apply by using a two-stage process. First, one party (the applicant) applies to a court in his or her jurisdiction outlining a claim for a variation of the existing order. The request is then sent to the court closest to where the other party (the respondent) lives. A hearing is set in the second court, where the respondent can give evidence. The second court may then approve, deny, or vary the applicant's request and make an order accordingly.

This variation process was intended to give the applicant an affordable, accessible method of variation. It was based on similar procedures in existing provincial and territorial (REMO) legislation. However, the convenience of the two-stage procedure has been undermined by lengthy delays and the cumbersome hearing procedure. Evolving case law has also highlighted problems with those sections of the Act dealing with the jurisdiction of the court.

As noted, the provincial and territorial premiers plan to bring in new inter-jurisdictional support enforcement legislation by fall 2002. Since changes to REMO legislation will streamline the processes for establishing and varying support orders, there may need to be complementary amendments to the *Divorce Act*.

## WORKING WITH OTHER PARTNERS

The federal Department of Justice worked closely with officials of other federal departments and other governments to better understand the importance of outstanding issues and initiatives related to federal policy and programs on enforcement. Some initiatives are being pursued, while others have been assigned a lower priority or discarded altogether.

For example, the Government has long wanted to amend the compulsory payments parts of the *Queen's Regulations and Orders for the Canadian Forces*. This amendment will make it easier to enforce support orders by removing the requirement for a creditor to get a separate court order on arrears of support.

Other work has involved helping the RCMP assess the costs of recovering passports debtors have surrendered under the new passport denial and suspension program. Also, the federal Department of Justice and the Canada Customs and Revenue Agency are continuing to study the idea that paying parents in default should have to file an income tax return, which was recommended by the Standing Senate Committee on Social Affairs, Science and Technology.

## RESEARCH ACTIVITIES ON SUPPORT ENFORCEMENT

During the Child Support Initiative, the Government of Canada extensively studied support enforcement issues to better inform policy discussions, improve program delivery, and inform the general public on enforcement issues. Before it did these studies, there was little research or national data available on family law issues, especially on enforcement or compliance.

The research had two major components. One component dealt with monitoring the impact of amendments to federal enforcement legislation, as well as the impact of improvements in methods used to exchange information



between provincial MEPs and FLAS. The second component examined the determinants of support compliance and looked for ways to improve federal “trace and locate” information provided to the provinces.

A number of studies looked at the tracing and licence denial reforms. These studies looked at outcomes (such as “location of debtor” and “payments made”) of a random sample of federal trace requests. The studies investigated how the current use of social insurance numbers affects the validation of FOAEA applications. They also studied the idea of instituting standard monthly and quarterly management reports on tracing, interception, and licence denial services.

One study showed that changes to the FOAEA computer system had improved its operational efficiency. However, the study also identified improvements that would take full advantage of the new system. It also showed that data extracted from the Canada Customs and Revenue Agency are most valuable to the MEPs for locating debtors’ places of employment. The new federal licence denial scheme has been especially useful to the MEPs and has produced considerable results on a number of difficult cases.

By studying why people pay or do not pay their child support, the Government can improve programs and policies. Five provinces are collaborating in a federal study that is collecting detailed case information from the provinces’ respective operational information systems. Cases are sorted by compliance status, and then both paying parents and recipients are interviewed by telephone to create profiles of “high compliance payors” and “low compliance payors.” Preliminary results show that “high compliance payors” have some of the following characteristics:

- they began paying child support immediately after separation;
- they spent a lot of time with their children; and
- they provided a real “second” home to the children.

Data are currently being collected from the last two provinces, which will effectively double the current sample of parent interviews. These additional data should help confirm some of the preliminary findings and provide other avenues of analysis to pursue. The final report for this project is scheduled for release in 2002.

The other major project was a feasibility study on developing and creating a “new hires” program in Canada to trace debtors.<sup>68</sup> The study consisted of three components:

- assessing the need for such information based on interviews with provincial enforcement program officials;
- examining the criteria used in American state and federal new hire programs; and
- assessing federal databases for their suitability as sources of “new hire” information.

The study recommended that the best data source for “new hire” information in Canada would be the Human Resources Development Canada (HRDC) databases. These databases frequently and quickly get “new hire” and “re-hire” data from employers. HRDC uses these databases to detect overpayment of employment insurance. The Department of Justice and HRDC are presently discussing issues related to the implementation of the “New Employee Tracing Program.” Administrative, technical and privacy issues will be addressed during these discussions.

## STATISTICS CANADA’S MAINTENANCE ENFORCEMENT SURVEY

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### RECOMMENDATION 11

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*Statistics Canada, working with its partners in the National Justice Statistics Initiative, should continue to explore options for collecting and disseminating information on family law issues.*

<sup>68</sup> A “new hires” program matches employer data or recently new or re-hired employees with debtor data to find a place of employment for immediate garnishment purposes.



In the early 1990s, the Canadian Centre for Justice Statistics, working with its federal provincial-territorial partners in the National Justice Statistics Initiative began feasibility work to explore options for collecting data on family law issues. As part of the Child Support Initiative, the Maintenance Enforcement Survey (MES) was undertaken.

The survey provides a much-needed overview of the characteristics and financial status of support orders, as well as of enforcement activities in Canada. More specifically, the survey provides information on caseload, case flow, and case characteristics (such as reciprocal status, type of recipient, source of orders, etc.). As well, the survey reports on various financial aspects of cases, such as payment history, amount of arrears, length of time since last payment, and some data on types and number of enforcement actions. It represents the first data to standardize definitions across MEPs for such important concepts as default and compliance.

## **FUTURE FEDERAL ROLE IN SUPPORTING PROVINCIAL AND TERRITORIAL SUPPORT ENFORCEMENT ACTIVITIES**

The coming years will be crucial in the development of a national infrastructure for enforcing family support. To maintain the recent progress of all levels of government toward a more coordinated and uniform enforcement system, the Government of Canada needs to continue to assume a national coordinating role. The provinces and territories expect sustained federal involvement.

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### **RECOMMENDATION 12**

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*The Government of Canada should:*

- *work with the provinces and territories and other countries to develop uniform enforcement initiatives that promote compliance and that improve the collection of moneys on behalf of recipients and their children;*
- *support the provinces and territories in their enforcement efforts by improving the federal enforcement operational system;*
- *better integrate the concept of compliance in the family law system by promoting the exchange of information among enforcement services and other federal-provincial-territorial groups dealing with related aspects of family law;*
- *support collaborative activities with other federal departments and agencies and with national organizations focused on educating the public and on giving Canadian enforcement issues a higher profile;*
- *show leadership in efforts to develop international agreements for reciprocity between Canada and other countries; and*
- *continue research on enforcement and other issues related to compliance, in collaboration with the provinces and territories and other countries, to improve understanding of support enforcement.*

For more information on the federal role in supporting provincial and territorial support enforcement activities, please see “Federal Role in Support Enforcement in Canada” in Volume 2.



## FEDERAL FUNDING OF FAMILY JUSTICE SERVICES

Through financial assistance, the Government of Canada has supported “family justice services” as a way to ensure that the family justice system addresses the needs and best interests of children in circumstances of separation and divorce. These programs and services help reduce conflict between parents, encourage parents to settle their disputes out of court when appropriate, and increase compliance with family support obligations. Federal funding has supported important court-based programs, community services, and enforcement activities developed and run by the provinces and territories, such as parenting education courses and mediation.

A key element that helped governments implement the *Federal Child Support Guidelines* was the Child Support Implementation and Enforcement Fund. In effect from April 1996 to March 2000, it provided financial assistance to provincial and territorial governments to cover part of the costs of implementing child support guidelines and new enforcement measures.

In April 2000, the Child Support Implementation and Enforcement Fund was replaced by the Child-centred Family Justice Fund. The new fund enlarged the focus of federal funding from implementing child support reforms to developing a better, more integrated set of family justice programs and services to deal with child custody and access, child support, and support enforcement issues.

Volume 2 includes more detailed information on federal funding activities and some insight into the services available to divorced and separated parents.

## CHILD SUPPORT IMPLEMENTATION AND ENFORCEMENT FUND

The Child Support Implementation and Enforcement Fund made up to \$50 million available for activities that helped governments implement the child support Guidelines. This money allowed the provinces and territories to work with the Government of Canada on innovative, cost-effective programs, services, and procedures that help parties get child support orders and variations to existing orders.

The rest of the fund—\$13.6 million—was set aside for innovative, cost-effective enforcement measures and processes, including national and international reciprocal enforcement of support orders.

For these resources, the federal Department of Justice and the provincial and territorial governments established an annual population-based allocation target for each province and territory.

### *Principles*

As part of the framework for managing the financial assistance program, the federal Department of Justice has identified 11 principles to guide all governments as they decide what projects to propose and approve under the funding program.

- The needs and well-being of children are paramount.
- No one framework of post-separation parenting will be ideal for all children.
- Programs and services must be sensitive to the fact that children and youth experience separation and divorce at different stages of development. The programs and services must protect them from violence, conflict, abuse, and economic hardship.
- An integrated approach to planning and delivering child support, support enforcement, and custody and access programs and services is encouraged to respond to the long-term service needs of children and families.
- We should encourage mechanisms for resolving non-adversarial disputes early.
- Activities should address the need for evaluation, project monitoring, and performance measures.
- Research should advance the family law community’s knowledge of specific issues, inform policy and program discussions, help develop or refine policies or programs, and enhance legislative clarity.



- Participants in the family justice system (families, judiciary, bar, court staff, enforcement staff, mediators, and others) should be well informed about family justice reforms.
- We should promote coordinated national, inter-jurisdictional, and international approaches to innovative family justice services and information sharing.
- We need alternatives or modifications to the present court dispute resolution system to reduce cost and delays for parents.
- Programs and services should be efficient and cost effective for the justice system.

In addition, the Government of Canada has worked with the provinces and territories on criteria to help the federal Department of Justice ensure that funded activities support federal objectives, while offering the provinces and territories the benefit of predictability in their year-to-year planning. The following were the priorities of the Government when it implemented the Fund.

- *Coordination*: coordinating activities to implement the Federal Child Support Guidelines.
- *Enhancing existing services*: developing or improving existing client and court services to meet workload increases.
- *Provincial and territorial guidelines*: adopting provincial guidelines that parallel the Federal Child Support Guidelines.
- *Public information*: supporting public awareness and understanding of the Federal Child Support Guidelines.
- *Innovative approaches*: developing, testing, implementing, monitoring, and evaluating innovative ways to meet the demand for variations to existing support agreements and orders, and for new agreements and orders.
- *Monitoring*: monitoring the effects of the legislative changes.

The following were the priorities of the Government for the enforcement component of the Child Support Implementation and Enforcement Fund.

- *FOAEA enhancements*: developing and enhancing provincial and territorial computer systems and applications used to access services under the *Family Orders and Agreements Enforcement Assistance Act*.
- *Monitoring*: monitoring the effects of system and administrative changes, and of enhancements to enforcement mechanisms.
- *Maintenance Enforcement Survey*: supporting changes to provincial and territorial information systems designed to meet the data-collection requirements of the national Maintenance Enforcement Survey managed by the Canadian Centre for Justice Statistics.
- *Innovative approaches*: testing innovative approaches to improving support enforcement mechanisms.
- *Public information*: delivering public legal education and information to increase awareness of changes in Maintenance Enforcement Programs.
- *Responses to workload increases*: changing administrative processes, upgrading systems, adding staff, and enhancing services to meet anticipated demands for variations and new child support orders.

## CHILD-CENTRED FAMILY JUSTICE FUND

All levels of government recognize the need to integrate family justice services to better help parents and children when parents separate and divorce. This recognition led governments to expand the scope of the funding program.

When the child support Guidelines were put in place, provincial and territorial governments modified existing programs and services. They also tested and implemented new approaches. Many of these services can address child custody and access issues, as well as child support and maintenance enforcement. For example, many jurisdictions have introduced parent education programs or broadened existing programs to include child support information and to stress front-end solutions such as consent orders.

Similarly, both child custody cases and child support cases can be effectively resolved with mediation services and other alternative program delivery strategies that increase the involvement of both parents in their children's lives. Recognizing this, and the need to develop and stabilize such services throughout Canada, the Government of Canada



changed its funding to include custody and access services, as well as support and maintenance enforcement services.

The Child-centred Family Justice Fund, introduced in 2000–01, has three components.

- *Family Justice Initiatives*: These activities build on recent, successful collaborative efforts to help provinces and territories develop, pilot, implement, and evaluate family justice programs and services that deal with private family law matters in cases of separation and divorce. These programs and services include child support and support enforcement, as well as reciprocal enforcement, custody, and access activities that promote the best interests of children.
- *Incentive for Special Projects*: This funding develops alternative provincial and territorial mechanisms for resolving disputes, particularly processes for determining, varying, or recalculating the amount of child support.
- *Public Legal Education and Information and Professional Training*: This funding enhances knowledge, develops materials, and informs Canadians—including the legal community—about child support guidelines, support enforcement measures and programs, custody and access services, and related family justice matters. The federal Department of Justice also funds community organizations, professional associations, and other non-governmental groups involved in promoting public awareness and education, or professional development and training for family law professionals.

## FAMILY JUSTICE INITIATIVES—PRIMARY AREAS OF ACTIVITY

The Family Justice Initiatives component is structured and managed the same way as the earlier Child Support Implementation and Enforcement Fund was. In other words, each jurisdiction gets part of the available funds based on its population. It must submit and obtain approval of the projects it proposes to implement or maintain in that year, and the projects must fall within one of the eight priority areas normally eligible for funding, as follows.

- *Coordination*: This funding is used to coordinate child support, support enforcement, and custody and access activities.
- *Consultations*: This funding is used for joint federal, provincial, and territorial consultations on family law.
- *Service enhancements and innovations*: This funding is used to enhance innovative child support, support enforcement, and custody and access activities under an integrated services framework, or to develop, test, implement, monitor, and evaluate new activities.
- *Alternatives for determining support amounts*: This funding is used to enhance alternative mechanisms for determining, varying, or recalculating the amount of child support, or to pilot and establish new mechanisms.
- *Enforcement*: This funding is used to enhance innovative support enforcement activities, or to develop, test, implement, monitor, and evaluate new activities.
- *Reciprocal enforcement*: This funding is used for provincial and territorial efforts in reciprocal enforcement.
- *Policy and research*: This funding covers legislative and policy development, as well as research, monitoring, and evaluation activities related to child support, support enforcement, and custody and access.
- *Public awareness and training*: This funding is used to promote public awareness and understanding of child support, support enforcement, and custody and access issues, procedures, and services.

## INCENTIVES FOR SPECIAL PROJECTS

The Incentives for Special Projects component encouraged innovation among provincial and territorial services through a competitive process. As mentioned previously, this component develops alternative mechanisms for resolving disputes at the provincial and territorial levels, including processes for determining, varying, or recalculating child support. Recalculation frameworks must be timely, cost efficient for parents, and accessible to parents. They should also make it easier for parents to agree on the amount of child support.



## SERVICES TO HELP THE COURTS DETERMINE AND RECALCULATE CHILD SUPPORT AMOUNTS: SECTION 25.1 OF THE *DIVORCE ACT*

The *Divorce Act* was amended in 1997 to provide for agreements between the federal, provincial, and territorial governments to set up a provincial child support service that would help the courts determine child support amounts and that would periodically recalculate child support orders based on updated income information.

“Provincial child support service” is defined broadly in subsection 2(1) of the *Divorce Act* and “means any service, agency or body designated in an agreement with a province under subsection 25.1(1).” It allows a wide scope for provinces and territories to designate an agency appropriate to their particular context.

Section 25.1 also outlines the procedure for recalculating the amounts in a child support order. It was included in the *Divorce Act* in 1997 to respond to two concerns:

- a possible court backlog of variation applications once the Federal Child Support Guidelines came into effect,<sup>69</sup> and
- research in the United States that linked inadequate child support to infrequent updating of child support amounts (child support amounts in Canada were rarely updated because of the prohibitive financial and emotional costs of variation proceedings).

In June 1998, the Federal-Provincial-Territorial Task Force on the Implementation of Child Support Reforms reviewed the application and implementation issues arising from section 25.1.

The provinces and territories realized that the concept of a child support service as set out in section 25.1 was not clear. They also found that a child support service or other mechanism for improving the child support dispute resolution process could not be developed in isolation from initiatives to improve the dispute resolution process for other issues affecting separated or divorcing parents, particularly custody and access.

The provinces and territories intended to share information and to develop faster, cheaper, and more consensual ways to resolve all family law issues, not just child support.

The work of the federal, provincial, and territorial governments in this area since 1997 has confirmed that integrated services are required to help families resolve parenting disputes and child support issues. Integration gives families alternatives to adversarial court processes. It is based on the premise that child support issues are often related to issues of parenting after separation and divorce.

In a child-focused approach, protecting the best interests of children must remain the primary consideration of decision makers when they are determining parenting arrangements. Giving parents an opportunity to resolve disputes without going to court may reduce the negative impacts of conflict that often occur after separation. Services such as counselling, mediation, and parent education programs can give parents the necessary tools and information to resolve disputes relating to parenting their children after family breakdown.

<sup>69</sup> In fact, the expected flood of variations did not occur, but data obtained during the pilot phase of the *Survey of Child Support Awards* (December 1997 to October 1998) show that the most common reason given for variation applications during this period was the implementation of the Guidelines. Thirty-five percent of variation cases collected during the pilot phase of the Survey gave “implementation of the guidelines” as the reason for the application (Hornick, Joseph P., Lorne D. Bertrand, & Nicholas M.C. Bala, *The Survey of Child Support Awards: Final Analysis of Pilot Data and Recommendations for Continued Data Collection. Enquête sur les pensions alimentaires pour enfants: analyse finale des données de l’enquête pilote et recommandations concernant la collection de données*, Ottawa: Department of Justice Canada, Child Support Team, 1999 (CSR-1999-2E/2F)). It should be noted that the coming into force of the Guidelines is a circumstance that allows parents or the court to change the child support amount. No other reason is necessary.



Because it is often impossible to separate child support issues from issues related to parenting of children after separation or divorce, some provincial programs have been able to build on and expand existing services in their jurisdictions to assist parents with issues related to their children after family breakdown. The shift towards integration of services in the provinces and territories is in keeping with the work of federal, provincial and territorial governments to promote existing services and to develop new services to help families undergoing separation or divorce with issues relating to the parenting of their children.

Through the Child-centred Family Justice Fund, some provinces have set up pilot projects to determine and recalculate child support amounts or to encourage early resolution of disputes to develop innovative ways to provide more efficient, consensual, and integrated family dispute resolution processes.

For a description of the various pilot projects in the provinces and an overview of experiences or frameworks in other countries, see Volume 2.

## FUNDING ALLOCATIONS

In 1996–97, before Bill C-41 went into effect, the federal Department of Justice and the provincial and territorial governments established an annual allocation target for each province and territory based on its population. The original allocations have been adjusted to accommodate changes in provincial and territorial planning assumptions and experience. The Department was also able to identify small surpluses in some jurisdictions that were then made available to other jurisdictions that needed more money because of greater demand. The following table identifies the actual allocations by jurisdiction for the period ending in 1999–2000, as well as projected transfers for 2000–01 through 2002–03.

<b>Child Support Implementation and Enforcement Fund and Child-centred Family Justice Fund</b>								
<b>Province</b>	<b>1996–97</b>	<b>1997–98</b>	<b>1998–99</b>	<b>1999–2000</b>	<b>2000–01</b>	<b>2001–02</b>	<b>2002–03</b>	<b>TOTAL</b>
British Columbia	20,000	1,610,478	3,003,501	1,928,133	1,726,133	1,807,591	1,726,133	11,821,969
Alberta	0	1,614,476	1,675,806	1,459,368	1,419,078	1,407,998	1,279,578	8,856,304
Saskatchewan	25,350	688,287	664,305	366,844	508,698	596,844	476,698	3,327,026
Manitoba	7,000	714,719	667,358	644,300	532,530	577,156	532,530	3,675,593
Ontario	0	6,248,734	4,525,321	3,610,133	4,910,133	5,237,401	5,144,287	29,676,009
Quebec	0	4,786,673	4,776,810	3,452,735	2,826,530	4,167,892	3,427,735	23,438,375
Nova Scotia	0	462,133	709,900	439,809	417,809	481,830	439,809	2,951,290
New Brunswick	5,500	340,334	449,753	470,647	410,464	396,200	356,543	2,429,441
P.E.I.	5,000	128,118	268,001	197,430	195,000	181,765	150,000	1,125,314
Newfoundland	0	297,537	404,903	323,276	273,276	310,196	273,276	1,882,464
Yukon	0	143,118	90,000	83,000	272,647	180,391	150,000	919,156
N.W.T.	0	119,500	226,176	144,471	145,000	210,532	150,000	995,679
Nunavut	0	0	0	138,118	137,673	220,345	150,000	646,136
<b>TOTAL</b>	<b>62,850</b>	<b>17,154,107</b>	<b>17,461,834</b>	<b>13,258,264</b>	<b>13,774,971</b>	<b>15,776,141</b>	<b>14,256,589</b>	<b>91,744,756</b>





## APPENDIX 1: CHRONOLOGY OF EVENTS LEADING TO THE TABLING OF THE REPORT

- 1990 Federal-Provincial-Territorial Deputy Ministers of Justice give the Federal-Provincial-Territorial Family Law Committee (the Family Law Committee) a mandate to study the issue of child support.
- 1991 The Family Law Committee releases a report, *Child Support: Public Discussion Paper*, which provides a basis for public consultation.
- The Family Law Committee commissions studies of four expenditure frameworks, which could determine the costs of raising children in Canada.
- 1992 The Family Law Committee releases its second report, *The Financial Implications of Child Support Guidelines*.
- The federal Department of Justice completes *The Construction and Implementation of Child Support Guidelines*, which summarizes research results. This report is presented to the Family Law Committee.
- 1993 The Family Law Committee rejects the four expenditure frameworks in favour of one of the equivalence scales used by Statistics Canada. The 40/30 scale is combined with the four apportioning approaches noted above to produce four formulas. Awards generated by the four formulas are compared to current levels of child support. The Revised Fixed Percentage formula emerges as the preferred child support formula.
- 1994 The *Thibaudeau* decision is announced. The Family Law Committee asks researchers at the federal Department of Justice to examine an alternative child support formula where the non-custodial parent would not deduct child support payments from his or her income and the custodial parent would not include child support as income.
- The Family Law Committee completes its final report on child support and forwards it to the deputy ministers of justice, the ministers of justice, and the solicitors general.
- 1995 The federal Department of Justice releases its final report, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, which summarizes the research done to develop child support guidelines.
- The Family Law Committee releases its *Report and Recommendations on Child Support*, which summarizes its work on the Child Support Project.
- 1996 In March, as part of the federal budget, the New Child Support Package is made public. The package changes the way child support is treated for tax purposes, introduces child support guidelines and new enforcement measures, and increases government spending on benefits for low-income families with children.



- 1997 The Standing Senate Committee on Social Affairs, Science and Technology studies Bill C-41 and recommends, among other things, that custody and access issues be studied further and that the Committee monitor how Bill C-41 and the Federal Child Support Guidelines are implemented and applied.
- Bill C-41 is passed and the Federal Child Support Guidelines come into effect on May 1. Amendments to the *Income Tax Act* are passed. For tax purposes, parents paying child support will no longer deduct the child support amounts paid from their income and recipients will no longer include the amount of child support received in their income.
- 1998 In June, the Standing Senate Committee on Social Affairs, Science and Technology releases an interim report on the Federal Child Support Guidelines.
- As promised by the federal Minister of Justice, the *Child Support Initiative Research Framework Discussion Paper* is widely distributed for comment. The paper was prepared in close consultation with federal, provincial and territorial officials responsible for implementing the Child Support Initiative.
- 1999 The final *Child Support Initiative: Research Framework* is published and made available on the Internet.
- In October, the federal Department of Justice consults on technical issues related to child support, releasing *Federal Child Support Guidelines: A Review of Technical Issues and Proposed Solutions*.
- 2000 The Government of Canada announces in February that it is prepared to provide the provinces and territories up to \$29 million over the next two years to expand court-based programs and to support community services. This expansion focuses on integrating child support, support enforcement, and custody and access services.
- 2001 In January, in the Speech from the Throne, the Government of Canada states that it will work with its provincial and territorial partners to modernize the laws for child support, custody, and access.
- The Family Law Committee launches public consultations on custody, access, and child support. The consultations begin in April with the release of a written consultation document distributed across Canada. In-person consultations in every province and territory are held from April to June.
- Custody, Access and Child Support in Canada: Report on Federal-Provincial-Territorial Consultations* is released.
- 2002 The federal Department of Justice tables *Children Come First: a Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines*.



## **APPENDIX 2: CHANGES IN TAXATION RULES FOR CHILD SUPPORT**

(Provided by the Federal Department of Finance)

### **INTRODUCTION**

The child support reform package, announced in the 1996 budget, included new rules for the taxation of child support and an enrichment of the Child Tax Benefit. This appendix describes: the old rules for the taxation of child support and the rationale for changing them; the new tax rules; the enrichment of the Child Tax Benefit; and, the impact of the new tax rules and the enriched Child Tax Benefit on government revenues.

### **THE TAXATION OF CHILD SUPPORT**

Prior to the child support reform, payers of child support could deduct the payments from their income for tax purposes, while recipients of child support were required to include the payments in their income for tax purposes. In other words, under the deduction-inclusion rules for taxation of child support, support-paying parents were able to claim a tax deduction and receiving parents were required to pay tax on child support.

### **RATIONALE FOR CHANGING THE TAXATION OF CHILD SUPPORT**

In the years leading up to the child support reform, the government became aware that some Canadians had concerns about the deduction-inclusion rules for taxation of child support. In response, the government participated in public consultations on the taxation of child support through the Family Law Committee and the Task Group on the Taxation of Child Support. The consultations revealed broad-based support for change.

Few Canadians were in favour of giving support-paying parents a tax deduction for the costs of raising their children. These costs were seen as the normal obligation of being a parent and were not considered to warrant special tax assistance. At the same time, few Canadians thought it was right to tax child support as income in the hands of the support-receiving parent.

There was widespread agreement among support-paying parents, support-receiving parents, lawyers and judges that the deduction-inclusion tax rules added complexity to the determination of child support awards.

Taking the tax implications into account required lawyers and judges to perform complex tax calculations that added to the expense of family law cases. The complex tax calculations also made it more difficult for parents to negotiate child support amounts that they both perceived as fair.

The deduction-inclusion tax rules for child support provided a tax benefit when the support-paying parent was in a higher tax bracket than the custodial parent because the tax savings from the deduction exceeded the tax paid due to inclusion. It was seen as unfair that whether or not there was a tax benefit available to a family depended solely on the income discrepancy of the two parents, and not at all on the needs of the children.

Parents also complained about the cash-flow impact of the deduction-inclusion tax rules. Under these rules, the support-receiving parent had to set aside the money needed at the end of the tax year to pay the tax liability on the amount of child support received. These parents complained that they did not know how much they needed to set aside and, in any event, found it difficult to do. In the case of payers, they could have the amount of tax withheld from their earnings adjusted to reflect their child support payments. However, some payers of child support may not have been aware of this as they complained that they were required to make high monthly payments throughout the year and had to wait until they filed their tax return to benefit from the deduction.



## NEW RULES FOR TAXATION OF CHILD SUPPORT

The new tax rules for child support are based on the recommendations of the Task Group on the Taxation of Child Support and the Family Law Committee. Under the new rules, child support payments are not deductible to the payer, and are not included in the income of the recipient.

The new tax rules apply to all child support awards under written agreements or court orders made on or after May 1, 1997, regardless of whether the parents were married or in a common-law relationship. They do not apply to orders made before May 1, 1997, unless the orders are varied in one of the following ways:

- (i) a court order or agreement made on or after May 1, 1997 changes the amount of child support payable under the old agreement or court order;
- (ii) the agreement or court order specifically provides that the no-deduction/no-inclusion tax rules apply to payments made after a specified date (which cannot be earlier than May 1, 1997); or,
- (iii) the payer and the recipient both sign and file a form with the Canada Customs and Revenue Agency (CCRA) stating that the no-deduction/no-inclusion tax rules apply to payments made after a specified date (which cannot be earlier than May 1, 1997).

## IMPACT OF THE NEW TAX RULES

When the child support package was announced in the 1996 Budget, the government estimated revenue gains from the new tax rules of about \$15 million in the first year, \$65 million in the second year, and \$120 million in the third year. The estimated revenue impact was due to the loss of the income-splitting tax benefit under the deduction-inclusion tax rules.

The government committed to reinvesting the anticipated revenue gains on measures to benefit children. Specifically, the anticipated gains were to fund the implementation costs of the Federal Child Support Guidelines and new enforcement measures, and contribute to a significant enrichment of child benefits, which are described below.

## ENRICHED CHILD BENEFITS

In the 1996 Budget, it was announced that the benefits under the Working Income Supplement (WIS), which was part of the Child Tax Benefit, would be doubled. The WIS provided a maximum of \$500 in benefits to low-income working families. This maximum benefit was to increase to \$750 in 1997 and to \$1000 in 1998, at a cost of \$250 million annually when fully phased in.

However, with the 1997 budget, the federal government began restructuring and further enriching child benefits. The new Canada Child Tax Benefit (CCTB), introduced in 1997, has two components: a base benefit for low- and middle-income families and the National Child Benefit (NCB) supplement for low-income families. The WIS was replaced by the NCB supplement. In the 1997, 1998 and 1999 Budgets, the federal government announced major enrichments in the CCTB totalling \$2 billion per year. Further enrichments were announced as part of the Five-Year Tax Reduction Plan in the 2000 Budget and the 2000 Economic Statement and Budget Update totalling \$2.6 billion per year. The CCTB has been enriched every year since the introduction of the new child support regime and the yearly maximum benefit for the first child has grown from \$1,625 in July 1997 to \$2,444 in July 2002, and will rise to over \$2,500 by 2004. The enrichment of the CCTB since 1997 has far outweighed the projected revenue gains from switching to the no-deduction/no-inclusion tax treatment of child support.



## CONCLUSION

The federal government responded to the concerns expressed by Canadians about the deduction-inclusion tax treatment of child support by implementing new tax rules that address those concerns. The government has also more than fulfilled its commitment to invest the anticipated revenue gains in measures for children from switching to the new tax rules for child support, by significantly enriching the CCTB.





## APPENDIX 3: SURVEY OF CHILD SUPPORT AWARDS UNDER THE *DIVORCE ACT*

The federal Department of Justice developed the Survey of Child Support Awards in close collaboration with the members of the Federal-Provincial-Territorial Research Subcommittee. The survey monitors the way the Guidelines are being put into effect and whether they are achieving their objectives. For the pilot phase of the survey, data were collected from fall 1997 to September 1998.

Following some minor methodological adjustments, the revised survey was put in place on October 1, 1998, and will continue until April 2002. All jurisdictions except Quebec<sup>70</sup> and Nunavut participated in the survey and provide data from at least one court.

The provincial representatives on the Research Subcommittee selected these court sites for the study:

- St. John's, Newfoundland;
- Charlottetown and Summerside, Prince Edward Island;
- Halifax, New Glasgow, Sydney, Truro, and Yarmouth, Nova Scotia;
- Fredericton, New Brunswick;
- Ottawa, Toronto, and London, Ontario;
- Winnipeg, Manitoba;
- Saskatoon and Regina, Saskatchewan;
- Edmonton and Calgary, Alberta;
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

The survey is designed to record, at each participating court, all decisions under the Divorce Act<sup>71</sup> involving children. As of February 2001, the sample consisted of more than 23,000 cases. Data sources include all interim child support orders in divorce files; final divorce judgments that specifically incorporate separation agreements; minutes of settlement or previous court orders; final divorce judgments that are silent on child support even though children are involved; orders varying divorce judgments; and final divorce judgments that contain corollary relief orders.

Please see the following reports for additional information on the cases in the database, and for more details on case processing in each participating court:

Bertrand, Lorne D., Joseph P. Hornick, Joanne J. Paetsch, and Nicholas M.C. Bala. The Survey of Child Support Awards: Interim Analysis of Phase II Data (October 1998– March 2000). Ottawa: Department of Justice, Child Support Team, 2001 (CSR 2001-2E/2F), <<http://canada.justice.gc.ca/en/ps/sup/pub/rap/phase2.html>>.

<sup>70</sup> As Quebec's system of determining child support awards is different from the Federal Child Support Guidelines, a separate study was designed to collect and analyze data in Quebec. See: Madame Linda Goupil *Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants*, Québec: Ministre de la Justice, procurement générale, ministre responsable de la Condition féminine et de l'application des lois professionnelles, Mars 2000. (See English translation at: Department of Justice, *Report of the Follow-up Committee on the Quebec Model for the Determination of Child Support Payments*, Ottawa: Department of Justice Canada, Family, Children and Youth Section, 2002 (BP33E).

<sup>71</sup> At some court sites data from cases proceeding under provincial legislation has also been collected. These cases have been eliminated from the analyses for this report.



Bertrand, Lorne D., Joseph P. Hornick, and Nicholas M.C. Bala. *The Survey of Child Support Awards: Preliminary Analysis of Phase II Data (October 1998–May 1999)*.

*Enquête sur les pensions alimentaires pour enfants : Analyse préliminaire des données de la phase 2 (octobre 1998 – mai 1999)*.

Ottawa: Department of Justice, Child Support Team, 2000 (CSR-2000-2E/2F).

Hornick, Joseph P., Lorne D. Bertrand, and Nicholas M.C. Bala. *The Survey of Child Support Awards: Final Analysis of Pilot Data and Recommendations for Continued Data Collection*.

*Enquête sur les pensions alimentaires pour enfants: analyse finale des données de l'enquête pilote et recommandations concernant la collecte de données*.

Ottawa: Department of Justice, Child Support Team, 1999 (CSR-1999-2E/2F),

<<http://canada.justice.gc.ca/en/ps/sup/pub/rap/sur/survey.pdf>>. (English)

<http://canada.justice.gc.ca/fr/ps/pae/pub/rap/enq/survey.pdf> (français)



## APPENDIX 4: SUPPLEMENTARY TABLES—SURVEY OF CHILD SUPPORT AWARDS

Table A: Disposition of Child Support Order by Year of Judgment

Disposition of order									
Disposition of order		Year of judgment						Total	
		1997–98 <sup>72</sup>		1999		2000			
			%		%		%		%
<b>Consent/uncontested</b>	<b>Count</b>	9,881	86.6	10,041	88.4	7,854	93.1	20,566	89.1
<b>Contested</b>	<b>Count</b>	1,534	13.4	1,320	11.6	583	6.9	2,527	10.9
<b>Total</b>	<b>Count</b>	11,415	100	11,361	100	8,437	100	23,093	100

Source: Survey of Child Support Awards database.

Notes:

1. Where year of judgment is known.
2. For purposes of this analysis, cases from the pilot phase and phase II of the *Survey of Child Support Awards* were combined to provide a full 12 months of cases for 1997–98. Data for the pilot phase of the Survey of Child Support Awards were collected between December 1997 and October 1998. Data collection for phase II of the survey started in November 1998.

<sup>72</sup> Data from the pilot phase in November and December 1997 were combined with 1998 phase II data.

**Table B: Frequency Distribution of Issues Dealt With in the Survey of Child Support Award Cases**

<b>Combination of issues</b>	<b>n</b>	<b>%</b>
<b>Total cases<sup>1</sup></b>	<b>18,077</b>	<b>100.0</b>
Child support, custody, access	5,315	29.4
Child support, custody, access, spousal support	3,229	17.9
Child support only	2,364	13.1
Child support, custody	675	3.7
Child support, arrears	659	3.6
Child support, custody, access, award termination provision	605	3.3
Custody, access	509	2.8
Child support, custody, access, spousal support, award termination provision	330	1.8
Child support, custody, access, arrears	316	1.7
Child support, custody, access, review clause	302	1.7
Child support, custody, access, other issue	300	1.7
Child support, spousal support	279	1.5
Child support, access	217	1.2
Child support, custody, spousal support	214	1.2
Child support, award termination provision	208	1.2
Custody only	192	1.1
Other combination	2,363	13.1

<sup>1</sup>Excludes cases for which an issue was not reported for the order or judgment.

**Source:** Survey of Child Support Awards database, February 2001.

**Table C: Most Frequent Combinations of Issues Dealt With, by Type of Order**

<b>Combination of issues</b>	<b>Total</b>		<b>Order/Judgment</b>		<b>Variation</b>	
	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>	<b>n</b>	<b>%</b>
<b>Total cases<sup>1</sup></b>	<b>17,400</b>	<b>100.0</b>	<b>13,632</b>	<b>100.0</b>	<b>3,768</b>	<b>100.0</b>
Child support, custody, access	5,082	29.2	4,776	35.0	306	8.1
Child support, custody, access, spousal support	3,160	18.2	3,115	22.9	45	1.2
Child support	2,228	12.8	798	5.9	1,430	38.0
Child support, custody	634	3.6	498	3.7	136	3.6
Child support, custody, access, award termination provision	585	3.4	551	4.0	34	0.9
Child support, custody, access, spousal support, award termination provision	328	1.9	326	2.4	2	0.1
Child support, custody, access, review clause	288	1.7	259	1.9	29	0.8
Child support, custody, access, arrears	300	1.7	209	1.5	91	2.4
Child support, custody, access, other	295	1.7	285	2.1	10	0.3
Child support, custody, spousal support	211	1.2	203	1.5	8	0.2
Other combination	4,289	24.6	2,612	19.2	1,677	44.5

<sup>1</sup>Excludes cases for which an issue or the type of order were not reported.

**Source:** Survey of Child Support Awards database, February 2001.



There has been a small increase in the proportion of cases that result in shared physical custody arrangements (as defined by the Federal Child Support Guidelines) from 1998 to 2000.

<b>Table D: Type of Physical Custody Arrangement by Year of Judgment*</b>						
			<b>Year of judgment</b>			
			<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>
<b>Type of physical custody arrangement</b>	<b>Sole-mother</b>	<b>Count</b>	<b>2,579</b>	<b>8,955</b>	<b>6,355</b>	<b>17,889</b>
		<b>% within year of judgment</b>	<b>80.5%</b>	<b>80.3%</b>	<b>78.1%</b>	<b>79.5%</b>
	<b>Sole-father</b>	<b>Count</b>	<b>282</b>	<b>928</b>	<b>770</b>	<b>1,980</b>
		<b>% within year of judgment</b>	<b>8.8%</b>	<b>8.3%</b>	<b>9.5%</b>	<b>8.8%</b>
	<b>Shared</b>	<b>Count</b>	<b>151</b>	<b>604</b>	<b>541</b>	<b>1,296</b>
		<b>% within year of judgment</b>	<b>4.7%</b>	<b>5.4%</b>	<b>6.6%</b>	<b>5.8%</b>
	<b>Split</b>	<b>Count</b>	<b>169</b>	<b>577</b>	<b>421</b>	<b>1,167</b>
		<b>% within year of judgment</b>	<b>5.3%</b>	<b>5.2%</b>	<b>5.2%</b>	<b>5.2%</b>
	<b>Other</b>	<b>Count</b>	<b>22</b>	<b>84</b>	<b>53</b>	<b>159</b>
		<b>% within year of judgment</b>	<b>0.7%</b>	<b>0.8%</b>	<b>0.7%</b>	<b>0.7%</b>
<b>Total</b>		<b>Count</b>	<b>3,203</b>	<b>11,148</b>	<b>8,140</b>	<b>22,491</b>
		<b>% within year of judgment</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

\*Note: This means the type of custody for purposes of determining child support amounts. This table does not reflect the allocation of legal decisionmaking authority.



## Notes

## Notes