

# **What Were They Thinking? The Development of Child Support Guidelines in Canada.**

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## **Abstract**

In the early 1990's Canada began a process designed to increase the amount of child support to be paid by non-custodial parents in an effort to reduce child poverty. In 1997, after several years of study and coordination among the federal, provincial and territorial governments, Parliament passed a set of guidelines that linked the level of child support to the income of the non-custodial parent. This paper examines the historical development of the guidelines, and the assumptions that underpin them. The original goals of the guidelines are compared with their apparent and likely results in an attempt to provide a map for future adjustments and policy revision.

## **Introduction**

Canada, like other industrialized nations, witnessed a rising divorce rate in the 1970s and 1980s. During the 1980s, concerns arose in Canada and the U.S. that divorce was a cause of poverty for women and children. Inadequate awards of child support were specifically identified as the aspect of divorce that was thought to be causing women and children to be poor in increasing numbers. In response to this problem, the Canadian federal

government, in conjunction with the provinces and territories began a program to develop guidelines to ensure consistent, and higher, child support awards. This program culminated in 1997 with the enactment through parliament of federal child support guidelines that affected all divorced and divorcing couples with children in Canada, with the exception of the province of Québec, which adopted its own guidelines. However, some of the original research that led to the belief that raising child support awards was an important tool for reducing child poverty has since been proven inaccurate. This study traces the development of the Canadian child support guidelines and finds that mistaken beliefs and special interest groups led the government to ignore key research findings, resulting in guidelines that have considerable room for improvement.

### ***Early Support Legislation***

Child support legislation is by no means a recent phenomenon in Canada. Canada's colonial law and common law tradition derive from Great Britain, which passed its first support law, the first Poor Relief Act in 1601,<sup>1</sup> which made the parents, grandparents and children of the poor responsible for their maintenance. This statute was subsequently reinforced in 1662<sup>2</sup> and 1718<sup>3</sup>. This legislation was enacted in the context of the onset of the Industrial Revolution, which saw the unit of economic production change from the rural family to the urban factory. The resulting unemployment and separation of families left many families without support, since:

"...it could no longer be assumed that the labourer who hired out his services or the man who left his family in search of employment necessarily passed on his resources to the other members of his family."<sup>4</sup>

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<sup>1</sup> 63 Elizabeth I, c.2, 1601, p.702-705, *An Act for the Relief of the Poor*.

<sup>2</sup> 13 Charles II, c.12, 1662, p.243-247, *An Act for the better Relief of the Poor of this Kingdom*.

<sup>3</sup> 5 George I, c.8, 1718, p.185-186, *An Act for the more effectual Relief of such Wives and Children, as are left by their husbands and Parents, upon the Charge of the Parish*.

<sup>4</sup> Eekelaar, John and Mavis Maclean, *Maintenance after Divorce* (Oxford: Clarendon Press, 1986) at 2.

This, combined with the decline of the Church, which had provided some social services, created a problem that required government intervention. Criminal legislation was enacted against deserting husbands in 1740<sup>5</sup>, and in a foreshadowing of modern maintenance enforcement policy, the 1834 Poor Relief Act allowed the property of a deserting husband to be seized to pay for his family's poor relief.<sup>6</sup> The first Canadian custody and maintenance law was enacted in 1855 in Upper Canada<sup>7</sup>. The Custody of Infants Act allowed a mother in Upper Canada to petition for custody and to receive maintenance for her children<sup>8</sup>. This was followed in 1859 by legislation which allowed a mother to sue the father of illegitimate children for support<sup>9</sup>, and the Maintenance of Deserted Wives Act in 1888<sup>10</sup>.

### ***A Child Support Revolution***

While the individual provinces, with the exception of Québec, followed Ontario's lead in enacting similar child and spousal support legislation, little changed in the application of this legislation until the 1980s. The impetus for an increased focus on child support awards in North America was fueled most prominently by the research of American sociologist Lenore Weitzman, and specifically the publication of her book *The Divorce Revolution*.<sup>11</sup> In this work, Weitzman claimed that no-fault divorce laws were the cause

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<sup>5</sup> 13 George II, c.42, 1740.

<sup>6</sup> 4&5 William IV, c.76, 1824, ss. 56 & 57, *An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales*.

<sup>7</sup> Consolidated Statutes for Upper Canada, c.76, s. 8, 1859, *An Act respecting the appointment of Guardians and the Custody of Infants*.

<sup>8</sup> Jane Ursel, *Private Lives, Public Policy: 100 years of State Intervention in the Family* (Toronto: Women's Press, 1992) at 331

<sup>9</sup> Consolidated Statutes for Upper Canada, c.77, s. 4, 1859, *An Act respecting the action of seduction, and the support of illegitimate Children*.

<sup>10</sup> Ursel, *Supra* note 8, p.331, Maintenance of Deserted Wives Act, SO 1888 c.23.

<sup>11</sup> Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1985).

of increased women's and children's poverty in California. In particular, Weitzman found that a woman's standard of living decreases by 73% after divorce, while a man's increases by 42% on average.<sup>12</sup> It is hard to overestimate the influence of this particular finding.

According to Peterson:

*"The Divorce Revolution* received considerable attention in academic, legal, and popular publications. It was reviewed in at least 22 social science journals, 12 law reviews, and 10 national magazines and newspapers. The book received the American Sociological Association's 1986 Book Award for "Distinguished Contribution to Scholarship" (Weitzman 1986). From 1986 to 1993, it was cited in 348 social science articles (based on a search of the Social Science Citation Index), and in more than 250 law review articles (based on a search of periodicals indexed in Westlaw). *The Divorce Revolution* was also discussed widely in the popular press: It was cited over 85 times in newspapers and over 25 times in national magazines from 1985 to 1993. Remarkably, *The Divorce Revolution* has also been cited in at least 24 legal cases in state Appellate and Supreme courts (based on a search of legal cases indexed in Westlaw), and was cited once by the U.S. Supreme Court."<sup>13</sup>

Earlier versions of Weitzman's findings were published in 1980<sup>14,15</sup>, 1981<sup>16</sup> and 1982<sup>17,18</sup>.

Although Weitzman's work was based on research in the United States, her findings were nonetheless influential in Canada as well. A number of publications that directly influenced the development of the Canadian child support guidelines mention her results. For example, a 1983 legal conference entitled "Women, Law and The Economy" featured a paper that cited Weitzman ten times, including her finding of a 73% decline in women's

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<sup>12</sup> Ibid. at 338.

<sup>13</sup> Peterson, Richard R., *A Re-Evaluation of the Economic Consequences of Divorce* (1996) 61 American Sociological Review 528 at 529.

<sup>14</sup> Weitzman, Lenore and Ruth B. Dixon, *The Alimony Myth: Does No-fault Divorce Make a Difference?* (1980) 14:3 Family Law Quarterly 141.

<sup>15</sup> Weitzman, Lenore and Ruth B. Dixon, *Evaluating the Impact of No-Fault Divorce in California* (1980) 29:3 Family Relations 297.

<sup>16</sup> Weitzman, Lenore, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards* (1981) 28:6 U.C.L.A. L. Review 1181.

<sup>17</sup> Weitzman, Lenore and Ruth B. Dixon, *When Husbands File for Divorce* (1982) 44:1 Journal of Marriage and the Family 103.

<sup>18</sup> Weitzman, Lenore, *Changing Families, Changing Laws: The Revolution in Family Law* (1982) 5:1 Family Advocate 2.

standard of living.<sup>19</sup> Weitzman's findings on parental incomes after divorce were presented to the Ontario Bar in 1987 in a legal education seminar,<sup>20</sup> and in 1993 a Report to Parliament quotes Weitzman and says the findings are "...equally observable in Canada, and for many of the same reasons".<sup>21</sup> The developers of the Canadian child support guidelines cite Weitzman as a "classic" work on the U.S., supporting the underlying goal of the development of Canadian guidelines "...to increase their average amounts, based on the accumulation of evidence that divorce has led to wide disparities in the economic well-being of men versus women and their children."<sup>22</sup> Thus Weitzman's findings, and in particular the finding of an average drop of 73% in women's standard of living after divorce, were seminal in the movement to develop child support guidelines in Canada and elsewhere, and particularly the goal to increase child support as a way to solve the problem of child poverty.

While there is earlier criticism of Weitzman's work,<sup>23</sup> the most thorough examination of her data and analysis was first published by Peterson in 1996.<sup>24</sup> Peterson re-analyzed Weitzman's results using the original data and the same income-to-needs ratio as a measure of living standard and found that "...it is clear that the results reported in *The Divorce Revolution* for the change in the average standard of living are in error.

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<sup>19</sup> Steel, Freda M. *The Role of the State in the Enforcement of Maintenance* in Pask, E. Diane, Kathleen Mahoney and Catherine A. Brown, *Women, the Law and the Economy* (Toronto: Butterworth & Co., 1985) at 203.

<sup>20</sup> Rogerson, Carol, *Winning the Battle; Losing the War: Plight of the Custodial Mother After Divorce*, p.6 in Canadian Bar Association - Ontario '87 Annual Institute on Continuing Legal Education.

<sup>21</sup> Douglas, Kirsten, *Child Support: Quantum, Enforcement and Taxation*, (Ottawa: Library of Parliament 1993 rev. 1996) Document BP-345-E, p.3-4.

<sup>22</sup> Stripinis, Daniel, Ross Finnie and Carolina Giliberti, *The Construction and Implementation of the Child Support Guidelines* (Ottawa: Department of Justice, 1993) at xi.

<sup>23</sup> Abraham, Jed H., *The Divorce Revolution Revisited: A Counter-Revolutionary Critique* (1989) 3:2 A.J.F.L. 87.

<sup>24</sup> Peterson, *Supra* note 11.

They could not have been derived from the data and methods described in the book."<sup>25</sup> Peterson also found that "Weitzman's inaccurate estimates were widely circulated, and the conclusions drawn from them have seriously distorted policy discussions about no-fault divorce."<sup>26</sup> Despite finding that one of the most influential findings of recent social science was wrong, Peterson agreed that, based on the income-to-needs living standard measure used by Weitzman, men on average experienced an increase in standard of living, while women experienced a decrease. However, a number of assumptions used by Weitzman to estimate standard of living have been challenged as well. Braver and O'Connell<sup>27</sup> point out that, among other things, Weitzman's standard of living assumes that there are no tax benefits of children and that a non-custodial parent has the same costs as a single person. In reality, there are tax benefits to having a child and a non-custodial parent has significantly more costs than a single person. For example, a typical access or visitation arrangement – half of school holidays and half of weekends – would result in a child being with the non-custodial parent 20-25% of the time. Thus the costs of raising a child are not all with the custodial parent. In addition, the non-custodial parent must provide an adequate environment for the children to stay in, and therefore has comparable fixed costs to the custodial parent.<sup>28</sup> Thus the costs for the non-custodial parent are better approximated by the custodial parent's costs than by the costs of a single person. Based on a sample of 89 non-custodial fathers and 84 custodial mothers from Maricopa County, Arizona in 1986, Braver and O'Connell found that men and women

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<sup>25</sup> Ibid. at 532-533.

<sup>26</sup> Peterson, Richard R., *Statistical Errors, Faulty Conclusions, Misguided Policy: Reply to Weitzman* (1996) 61 *American Sociological Review* 539 at 540.

<sup>27</sup> Braver, Sanford, Diane O'Connell, *Divorced Dads: Shattering the Myths* (New York: Penguin Putnam, 1998).

<sup>28</sup> Ibid. See pages 65-82 for a detailed discussion of these issues.

had similar standards of living after divorce, based on their actual reported incomes and expenditures.<sup>29</sup> In other words, even allowing that women on average earned less than the men in this sample, even though only the child support actually received was accounted for, there was "no appreciable difference in how mothers and fathers fared economically one year after divorce."<sup>30</sup>

### ***Poverty and Support***

The term *feminization of poverty* has been developed to describe an increase in women's poverty: "the increasing numbers of poor, working women with children."<sup>31</sup> This popular idea of the feminization of poverty led to a movement to increase child and spousal support as a solution. This was supported by the claim championed by Weitzman that inappropriate support awards by divorce courts were a cause of this purported trend. However, it appears as if women's poverty in Canada, like men's poverty, has been declining, both in absolute numbers and as a percentage of the population.<sup>32</sup> Moreover, women's share of poverty in Canada has remained relatively constant over the years, leading one author to write:

"...the phrase 'the feminization of poverty' does not accurately describe women's poverty over this period, a poverty that is characterized more by stability than by change."<sup>33</sup>

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<sup>29</sup> Ibid., at 80.

<sup>30</sup> Ibid., at 82.

<sup>31</sup> Gender Bias Committee of The Law Society of British Columbia, *Gender Equality in the Justice System*, Vol. 2 (Vancouver: Law Society of British Columbia, 1992) at 5-2.

<sup>32</sup> Pulkingham, Jane, Private Troubles, Private Solutions: Poverty Among Divorced Women and the Politics of Support enforcement and Child Custody Determination (1994) 9:2 Canadian Journal of Law and Society 73 at 80.

<sup>33</sup> Evans, Patricia, *Gender, Poverty and Women's Caring* in Baines, Carol, Patricia Evans and Sheila Neysmith eds., *Women's Caring: Feminist Perspectives on Social Welfare*, second edition (Toronto: Oxford university Press, 1998) at 49-50.

The situation in Canada may be different than that of the United States. In the United States poverty rates for both men and women have decreased substantially, but women's poverty has decreased more slowly than men's, so that "there has been an increase in the poverty rate of women relative to men."<sup>34</sup> Whereas in Canada:

"... the risk of poverty has *always* been greater for women than men. We tend to lose sight of this fact, however, when discussing women's poverty, especially when it is subsumed under the rubric of the feminization of poverty thesis."<sup>35</sup>

While the feminization of poverty thesis seems to lack an empirical basis, at least in Canada, it should not blind us to the "reality that women have *always* been poor in greater proportions than men."<sup>36</sup>

The feminization of poverty thesis nonetheless remained a popular concept and inspired the organization of groups to solve a problem which seemed to have a clear cause. For example, in 1990 the Vancouver Association of Women and the Law (VAWL) and the Society for Children's Rights to Adequate Parental Support (SCRAPS) sponsored a conference on child support guidelines to gain public awareness "on the issue of child support guidelines as one way of approaching the problem of child poverty in single parent homes."<sup>37</sup> The problem of women's and children's poverty came to be seen, not as a social problem that required a social solution, but instead as a legal problem involving judges who were too lenient on divorcing fathers when ordering support. And

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<sup>34</sup> McLanahan, Sara, *Sex Differences in Poverty, 1950-1980* (1989) 15:1 Signs: Journal of Women in Culture and Society 102 at 109.

<sup>35</sup> Pulkingham, Jane, *Private Troubles, Private Solutions: Poverty Among Divorced Women and the Politics of Support enforcement and Child Custody Determination* (1994) 9:2 Canadian Journal of Law and Society 73 at 80.

<sup>36</sup> Evans, *supra* note 33 at 50.

<sup>37</sup> Sellens, Sandra, *Child Support Guidelines: One Approach to Child Poverty* (1990) 11:1 Jurisfemme 15.



so erroneous research findings and false assumptions about women's and children's poverty indicated that support awards were the source of children's poverty in Canada.

### ***Study, Study, Study***

In May 1990, a detailed study of divorces conducted by the Canadian Department of Justice was published, based on data collected between August 1988 and July 1989<sup>38</sup>.

The study examined 1,310 divorce cases in four jurisdictions: St. John's, Montréal, Ottawa and Saskatoon. Detailed interviews with 617 of the protagonists were conducted.

The majority of both custodial and non-custodial parents studied were satisfied with the amount of child support awarded. When there was dissatisfaction, the most common reason for both parents was the affluence of the ex-spouse, not the support awarded per se.<sup>39</sup> In fact, the custodial parents (all women in this study) were more likely than the non-custodial parents to say that their standard of living had improved after divorce.<sup>40</sup> In other words, the divorced people in this study reported, on average, satisfaction with child support amounts. Women in this study reported higher standards of living than men. The authors attributed these findings to the subjective perceptions of the subjects. In other words, the researchers from the Department of Justice felt that the people in its study were not correctly perceiving their standard of living, and were overestimating their economic wellbeing. It is clear, from the following excerpt, that the report was influenced both by the findings of Weitzman and the feminization of poverty thesis:

However, the most widely cited statistic is from Weitzman's California study. She finds that when income is compared to needs, divorced men experience an average of 42 percent increase in their standard of living while divorced women (and their children) experience a 73 percent

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<sup>38</sup> Department of Justice Canada, *Evaluation of the Divorce act: Phase II Monitoring and Evaluation* (Ottawa: Bureau of Review, 1990)

<sup>39</sup> Ibid, p.86.

<sup>40</sup> Ibid., p.97, Table 4.17.

decline. Divorce in other words, is increasingly depicted as a leading cause of feminization of poverty.<sup>41</sup>

Notwithstanding the situation reported by the subjects of their study, the Department of Justice concluded that support needed to be significantly increased. The report concludes that while spousal support would promote economic parity after divorce, it is rarely requested and was not considered justifiable by the subjects of their study. Yet, they asserted that this lack of spousal support operated to the economic detriment of children. In contrast, most of their subjects felt that child support, but not spousal support was justifiable. The report finishes with a criticism of existing law that does not, in estimation of its authors, encourage awards that reflect the needs of children:

"... present legislation with its compromises that protect parents' rights but, by and large, do not sufficiently address the economic plight of children."<sup>42</sup>

So in the final words of the conclusion of this report, the Department of Justice concludes that spousal support should be ordered more often and in larger amounts even though the people involved did not feel this was justifiable. Child support, on the other hand, was justifiable and warranted. Even though the majority of the subjects interviewed were satisfied with the support awarded, the Department of Justice, operating under the paradigm suggested by Weitzman and the feminization of poverty, still advocated increases in both child and spousal support. The implied path to increasing support is clear – spousal support is not popular, whereas child support is considered justifiable and warranted. Thus despite findings to the contrary, the Department of Justice soldiered on in their belief that support payments were a solution to child poverty and that the goal of increasing support should be pursued.

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<sup>41</sup> Ibid., p. 92.

The Federal/Provincial/Territorial Family Law Committee was struck in June 1990 with a mandate to study the development of child support guidelines for use in Canada.<sup>43</sup> A study was commissioned to study existing child support award levels, so that a "before" picture could be developed for the proposed new guidelines<sup>44</sup>. This survey examined 3,196 cases in four provinces and two territories from October 1991 to May 1992. The "before" picture that emerges from this study indicates that, on average, the pre-guideline awards provided custodial parents with about 10% more after-tax income than non-custodial parents, as shown in Table 1. One of the goals of the new

**Table 1 - Pre-Guideline Parental Gross and Net Incomes<sup>45</sup>**

	Non-Custodial Parents	Custodial Parents
Monthly Gross Income	\$2,592	\$1,631
Income After Award, After Tax	\$1,645	\$1,803

**Source: Adapted from the Department of Justice, Canada**

guidelines was to ensure awards were more consistent across provinces since, according to the study of pre-guideline amounts, there was large variation in monthly awards between provinces:

Average awards varied significantly by province. Awards per child ranged from a low of \$195 in New Brunswick to a high of \$294 in British Columbia.<sup>46</sup>

When income is taken into account, however, there is very little variation among provinces. An examination of the results (see Table 2) of the Department of Justice study that examined child support before the guidelines shows that New Brunswick actually

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<sup>42</sup> Ibid, p.136-137.

<sup>43</sup> Finnie, Ross, Carolina Giliberti and Daniel Stripinis, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, (Ottawa: Department of Justice, 1995) at 1.

<sup>44</sup> Stripinis, Daniel, *Study on the Levels of Child Support Awards in Selected Sites in Canada*, Report TR1994-6e (Ottawa: Department of Justice Canada 1994)

<sup>45</sup> Ibid, Table 9, p. 30.

<sup>46</sup> Finnie, et al, supra note 45 at 4.

was awarding proportionally higher amounts than the other provinces.<sup>47</sup> To say that the awards vary significantly, with New Brunswick as the province with the lowest awards is misleading: New Brunswick actually had the highest awards with respect to income of the cases studied. Notwithstanding the uniformity of the awards across provinces,

**Table 2 - Pre-Guideline Child Support by Province<sup>48</sup>**

Province	Sample Size	Average Monthly Support Award per Child	Average Monthly Support Award (Total)	Custodial Parent's Pre-tax Monthly Income	Non-Custodial Parent's Pre-tax Monthly Income	Award/Child as % of Non-Custodial Parent's Pre-Tax Income
Alberta	315	\$239	\$393	\$1,648	\$2,602	9.2%
BC	129	\$293	\$450	\$1,754	\$2,748	10.7%
N.B.	195	\$180	\$260	\$1,222	\$1,659	10.8%
Ontario	63	\$279	\$400	\$1,652	\$2,786	10.0%

**Source: Adapted from the Department of Justice, Canada**

the variation in absolute quantity of the monthly awards was cited to support a need for consistency promised by a set of child support guidelines. It appears that the authors of the guidelines sacrificed accuracy for justification of further work on the guidelines. In addition, the need for guidelines was fueled by concerns that pre-guideline judicial determinations of child support were inadequate. Yet it appears that the amounts ordered provided custodial parents, on average, with more after-tax income than non-custodial parents. Thus the satisfaction of a majority of both custodial and non-custodial parents with these orders that was noted by the previous Department of Justice study does not seem terribly surprising. Given the results of this study, one would expect that the developers of the guidelines would want to pursue similar outcomes, within a

<sup>47</sup> The discrepancy between the amount cited (\$195) and the amount reported (\$180) for New Brunswick is unexplained.

<sup>48</sup> Ibid, combining tables 12 and 13, p.33

mathematical framework to enhance consistency. However, as we shall see, their interest in increasing support awards was undiminished.

### ***The Costs of Children***

What are the costs of children? This seemingly simple question is, in reality, a difficult one because the answer invariably depends on how you go about answering the question. For example, when a couple has a child their costs may not go up significantly, since their time is now occupied with child-related activities.<sup>49</sup> Before children, the parents may have spent their time in activities that cost more money. This change in activity could be viewed as a lower standard of living. Further complicating the question is the method of estimating child expenses.

Most child-related expenses are shared with the rest of the family - for example Statistics Canada's Canadian Family Expenditure Survey only includes child-care and clothes as separate expenses specific to children.<sup>50</sup> There are several approaches to the problem of the cost of the children, given shared expenses: the "basket of goods", "constant income" and "constant standard of living" approaches.<sup>51</sup> The *basket of goods* approach measures the cost of goods required to provide children with a decent standard of living. It is essentially a comparison of needs across households. This approach can produce variable outcomes because what is considered essential for a child may be a matter of judgement. The *constant income* approach reasons that if a child is added to a family at a constant income, more expenditures are made on the child at the expense of

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<sup>49</sup> Gauthier, Anne H. 'Nouvelles estimations du coût de l'enfant au Canada'. (1987) 16:2 Cahiers québécois de démographie 187.

<sup>50</sup> Gauthier, Anne H., *Estimating the direct cost of children: methodological issues*, in: O. Ekert (ed.), *Standard of Living and Families: Observation and Analysis*. (Paris: John Libbey, 1994) at 166.

<sup>51</sup> Ibid. Gauthier refers to the basket of goods approach as the "normative" approach, but since all approaches are in some degree normative, the term "basket of goods" is used here.

the adults. The cost of the child is therefore the amount of expenditure re-allocated to the child. The *standard of living* approach estimates the amount of income the family would need if the adults continued to spend the same amount on themselves after the addition of their child. These last two approaches share the assumption that as a family's income increases, a proportionate amount of the increased income will be directed towards child-related expenditures.<sup>52</sup>

The developers of the Canadian child support guidelines used four different economic models, employing either the constant income or the standard of living approaches to estimate child-related expenditures, in order to observe the variation in results using different methods. A comparison of the estimates of the annual cost of children by these four methods for different incomes and ages of children is given in Appendix A. All of the models estimated the costs of children using the same database, the Statistics Canada Family Expenditure Data Base (FAMEX) which contains household expenditure data for 1986. Although the results from the different models demonstrate wide variation in child costs depending on the method used for estimating, they also show a few consistencies. For example, the amount spent on children increases with the age of the child and with income, although not proportionally. Also there are significant economies of scale in families with multiple children.<sup>53</sup> The four models of child costs considered above were reviewed with a panel of leading Canadian economists who found that, while there were problems with all the models, the "...Revised Extended Engel model was probably the most reasonable in terms of both the underlying theoretical

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<sup>52</sup> Ibid., see p.166-168 for a more detailed discussion.

<sup>53</sup> Ibid., at 38.

principles and the empirical results achieved."<sup>54</sup> Thus the Department of Justice now had a range of estimates for the costs of children and a set of expert opinions that indicated which of these was the most accurate. This best estimate that resulted from the above-described economic analysis is shown in Table 3.

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<sup>54</sup> Finnie et al, *supra* note 45 at 6.

**Table 3: Estimated Annual Costs of Children in Canada (1986)<sup>55</sup>**

<b>Annual Gross Income:\$20,000</b>	
	Annual Cost
1 child (0-6)	\$1,057
1 child (7-11)	\$1,693
1 child (12-18)	\$2,285
<b>Annual Gross Income:\$40,000</b>	
	Annual Cost
1 child (0-6)	\$1,755
1 child (7-11)	\$2,811
1 child (12-18)	\$3,796
<b>Annual Gross Income:\$70,000</b>	
	Annual
1 child (0-6)	\$3,072
1 child (7-11)	\$4,919
1 child (12-18)	\$6,644

**Source: Adapted from the Department of Justice, Canada**

Unfortunately, it seems that some special interest groups were unhappy with these results, so this research was abandoned in favour of the "Statistics Canada Subjective Estimate" which was "Based on a consultation process."<sup>56</sup> Later this subjective estimate was referred to as the "Statistics Canada 40/30 scale", "based on econometric evidence and a consultation process."<sup>57</sup> According to the developers of the guidelines, "The main advantage of the 40/30 scale is that it is based on econometric evidence and consultation with social policy advocacy groups."<sup>58</sup> Interestingly, the developers of the guidelines saw social policy advocacy groups as a more important source of information than research by leading Canadian economists. The 40/30 scale has the advantage of being simple: the first child is considered to cost 40%, and each subsequent child an additional 30% of an adult. The developers of the guidelines claim that this scale is

<sup>55</sup> Ibid., at 37.

<sup>56</sup> Stripinis et al, *supra* note 22 at 20.

<sup>57</sup> Finnie et al, *supra* note 45 at 11.



similar to scales developed by others, and so there is "strength in numbers".<sup>59</sup> However, it seems that the consultative process used by Statistics Canada in developing the 40/30 scale resulted in child costs generally higher than estimated by any of the other estimates examined (see Table 4). It is interesting to note that some of the estimates, such as the Blackorby/Donaldson, misapprehend the notion of economy of scale. In addition, publicly provided support from provincial welfare departments is considerably lower than the 40/30 scale. The 40/30 scale is also much higher than cost estimates that the authors of (this report) describe as a "...thorough piece of research."<sup>60</sup> Thus the 40/30 scale for child costs adopted by the developers of the Child Support Guidelines reflects to a greater degree the goal of increasing child support rather than an attempt to gauge the actual costs of children in Canada.

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<sup>58</sup> Ibid, at 6.

<sup>59</sup> Stripinis et al, *supra* note 22 at 22.

<sup>60</sup> Ibid., at 21.

**Table 4: Ranked Estimates of Child Costs used by Statistics Canada<sup>61</sup>**

Source**	Estimate	Cost of child (as percent of single adult)			
		First	Second	Third	Fourth
1	Low income, Quebec	15	15	18*	
1	Low income, Ontario	21	24	27*	
2	Provincial Welfare***		25	20	20
1	High Income, Quebec	21	24	27*	
3	Basket of goods - Montreal	21	39	24	31
4	Extended Engel	25	13	25*	
1	High Income, Ontario	32	27	27*	
5	Canadian Bar Association	33	34	33	33
6	Basket of goods - Toronto	35	31	24	21
7	Statistics Canada (1986)	36	37	26	18
8	Statistics Canada (better name)	36	40	30	19
9	Blackorby/Donaldson	36	65	115*	
10	Delaware/Melson	40	30	30	20
	Statistics Canada (40/30 subjective)	40	30	30	30

\* for both third and fourth child combined

\*\* see Appendix B for a description of these sources

\*\*\* The figure for one child is not shown, since welfare benefits for single people are generally less than subsistence, reflecting the desire of governments that single people work, and so welfare for a single person cannot be validly compared to a single parent with child.

**Source: Adapted from the Department of Justice, Canada**

### ***Support and Standards of Living***

While the costs of children are an important factor in determining support, they are just one factor, since the goal of these guidelines is not to provide the non-custodial parent's share of the costs of raising children, as commonly thought. Rather, the guidelines aim to equalize the living standard of the households of the custodial and non-custodial parents after divorce, providing both spousal and child support, under the auspices of child support. In January 1995, the Department of Justice produced prototypes of child support guidelines pursuant to the principle of the equal standards of living for both former spouses. Three key assumptions underlay these prototypes: that the Statistics Canada

<sup>61</sup> Ibid., at 20-21.

40/30 scale represents the cost of children; that both spouses have the same income after divorce; and that the non-custodial parent has the same costs or needs as a single person. None of these assumptions are correct. First, as has been shown above, the Statistics Canada 40/30 scale almost certainly overestimates the cost of children. Secondly, spouses rarely have the same income after divorce.<sup>62</sup> Both sexes, if not remarried, experience large declines in household income, with women faring considerably worse than men.<sup>63</sup> However, remarried spouses of both sexes have increased household incomes after divorce.<sup>64</sup> And thirdly, as previously discussed, non-custodial parents have costs or needs more closely approximating the custodial parent than a single person. Thus none of the assumptions of the guidelines were based on fact.

Despite these problems with assumptions, the proposed guidelines estimated support amounts needed to equalize standards of living based on the following conceptual equation:<sup>65</sup>

$$\frac{\text{Disposable income of the father}}{\text{Needs of the father}} = \frac{\text{Disposable income of the mother}}{\text{Needs of the mother}}$$

For example, using a gross income of \$50,000 for the father, which by assumption is also the income of the mother, one child, custody to the mother, the Statistics Canada 40/30 scale as a measure of the needs of the mother and a single person as a measure of the

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<sup>62</sup> Finnie, Ross, and Devid M. Betson, Elke B. Kluge, Ellen B. Zweibel, *The Guideline Options* (Ottawa: Renouf, 1994) at 24.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Federal/Provincial/Territorial Family Law Committee, *Summary: Federal/Provincial/Territorial Family Law Committee's Report and Recommendations on Child Support* (Ottawa: Department of Justice, 1995) at 6.

needs of the father, we get the following:<sup>66</sup>

$$\frac{\$50,000 \text{ less taxes, less child support}}{1.0} = \frac{\$50,000 \text{ less taxes, plus child support}}{1.4}$$

If the taxes of both the father and mother can be calculated, this equation can be solved for the amount of child support using only the income of the non-custodial parent. The term "child support" here would be more properly called child and spousal support, or just plain support, since the money, according to the theory underlying the guidelines, is for equalizing the standard of living of the two households. Equalizing the standard of living involves both the spouse and the children. Indeed, the lion's share of the support payment would theoretically be for spousal support, since the needs of the adult exceed that of the child or children, except in large families.

### ***Tax Treatment***

At first glance, it may seem that whether support is paid within or outside of the tax system is a moot point - the amounts paid can be adjusted to allow for the effects of tax. However, since custodial parents on average have a lower income than non-custodial parents, there is a tax consequence that cannot be compensated for. Divorced families that pay support within the tax system<sup>67</sup> have a tax advantage not enjoyed when support orders are not within the income tax system, because for payments within the system the income is usually taxed in the hands of the person with the lower rate. The guidelines proposed in January 1995 were published for both of these cases. Table 5 shows annual

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<sup>66</sup> Ibid.

<sup>67</sup> Where the support is deducted from the payer's taxable income and included in the recipient's taxable income.

support amounts under the guidelines proposed in 1995 for several annual incomes. The amount of support available to the recipient family is considerably higher under the scenario where the award is considered taxable income.

**Table 5: 1995 Proposed Annual Support Amounts<sup>68</sup>**

Income of Non-Custodial Parent	Award (taxed)	Award (not taxed)
\$20,000	\$2,228	\$1,493
\$40,000	\$6,783	\$3,978
\$70,000	\$12,953	\$6,763

**Source: Adapted from the Department of Justice, Canada**

However, since this income did not have tax deducted at source, many recipient parents were unpleasantly surprised at the end of the year with a large tax bill. One such parent was Suzanne Thibaudeau, who challenged the right of the government to tax her support payments.<sup>69</sup> The case went all the way to the Supreme Court of Canada, where it was heard in October 1995. Although she did not win, when the guidelines came out they reflected her wishes. Thibaudeau had been supported by the Charter Committee on Poverty Issues, the Federated Anti-Poverty Groups of British Columbia, the National Action Committee on the Status of Women and the Women's Legal Education and Action Fund (LEAF), all of whom had intervened on her behalf. The Government of Canada estimated that the removal of support payments from the tax system cost divorced Canadian families \$410,000,000 per year in additional taxation, simply by taxing support payments in the hands of the higher (on average) income earner, who pays a higher rate

<sup>68</sup> Federal/Provincial/Territorial Family Law Committee, *supra* note 68.

<sup>69</sup> Thibaudeau v. Canada (1995) 2 S.C.R. 627.

of taxation.<sup>70</sup> As discussed above, both parties of a divorced family are financially distressed following divorce. Increasing taxation on these families would seem counter-productive to the goal of reducing child poverty, especially since there were alternatives, such as the withholding of tax by provincial maintenance enforcement agencies, so that custodial parents are not faced with large tax bills at year-end. As can be seen in Table 5, support payments within the tax system are significantly higher than when the payments are not deductible for the payer and taxable for the recipient. Although the Thibaudeau case highlighted a genuine problem, that of custodial parents facing accumulations of unpaid tax, the solution chosen may have been worse than the original problem.

### ***The Final Guidelines***

The legislation creating the new guidelines was enacted February 19, 1997 and took effect May 1, 1997. Both houses of Parliament heard representations on Bill C-41<sup>71</sup>, as it was called, from a variety of parties and stakeholders, and as a result of amendments, the final guidelines were different from those proposed in January 1995. Table 6 compares the amounts from the proposed 1995 guidelines and the guidelines implemented pursuant to Bill C-41. The most obvious difference is that the amounts of support were raised for lower and middle income payers. In fact, the lower the income, the more the amount was proportionally raised, in a reversal of the usual method of progressive taxation. Upper income amounts were slightly reduced. When estimates of the annual costs of children are compared with the guideline amounts for support, the presence of spousal support in the award is apparent. Child support is to compensate the custodial parent for the

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<sup>70</sup> Government of Canada, Budget 1996: The New Child Support Package (Ottawa: Department of Supply and Services Canada, March 6, 1996) Cat. No. F1-23/1996-6E, at 9.

<sup>71</sup> An Act to Amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act.

**Table 6: Comparison of 1995 Proposed Annual Support Amounts and Final Guidelines (One Child)<sup>72</sup>**

Income of Non-Custodial Parent	1995 Award (taxed)	1995 Award (not taxed)	Final 1997 Award* (not taxed)
\$20,000	\$2,228	\$1,493	\$2,052
\$40,000	\$6,783	\$3,978	\$4,164
\$70,000	\$12,953	\$6,763	\$6,144

\*This is the amount for Alberta

Source: Adapted from the Department of Justice, Canada

non-custodial parent's share of the costs of raising their children. The support amounts represented by the guidelines in most cases exceed the *total* costs of the

**Table 7: Annual Costs of Children and Child Support Amounts**

<b>Annual Gross Income:\$20,000</b>		
	Costs** in Two Parent Families	1997 Guidelines Not Taxed*
1 child (0-6)	\$1,057	\$2,052
1 child (7-11)	\$1,693	\$2,052
1 child (12-18)	\$2,285	\$2,052
<b>Annual Gross Income:\$40,000</b>		
	Costs** in Two Parent Families	1997 Guidelines Not Taxed*
1 child (0-6)	\$1,755	\$4,164
1 child (7-11)	\$2,811	\$4,164
1 child (12-18)	\$3,796	\$4,164
<b>Annual Gross Income:\$70,000</b>		
	Costs** in Two Parent Families	1997 Guidelines Not Taxed*
1 child (0-6)	\$3,072	\$6,144
1 child (7-11)	\$4,919	\$6,144
1 child (12-18)	\$6,644	\$6,144

\*The 1997 Guideline amount is for the Province of Alberta

\*\*Costs, in 1986 dollars, of children within two parent families, see Table 3, above.

Source: Adapted from the Department of Justice, Canada

<sup>72</sup> Federal/Provincial/Territorial Family Law Committee, *supra* note 68.

children (see Table 7)<sup>73</sup>. Therefore it could be stated that under the Canadian Child Support guidelines the custodial parent is, in most cases, not contributing financially to the cost of the children and is, in addition, receiving spousal support as part of the child support award. This result is not particularly surprising, since in theory the guidelines aim at equalizing standards of living, which involves providing support for both the children and custodial parent. Thus it is clear that the Canadian Child Support Guidelines, both theoretically and empirically, contain spousal as well as child support.

### ***Before and After***

Before the implementation of the guidelines, the non-custodial parent was paying an average of about 9.8% of gross income or \$255 per month per child from an annual gross income of \$31,104<sup>74</sup>. This amount was tax deductible for the non-custodial parent and was taxable in the hands of the custodial parent (see Table 1, above). Still, the support was enough that the after tax household income of the custodial parent exceeded that of the non-custodial parent by about 10%, as previously discussed. The guidelines legislated in 1997 indicate \$276 per month for this income, which is not deductible by the non-custodial parent nor taxable for the custodial parent. Thus the amount paid by the non-custodial parent has been raised significantly, when tax consequences are considered, since the support is no longer deductible. The custodial parent will receive more money and it will not be taxed, increasing the amount received, despite the increased taxation. Thus the guidelines represent a large increase in support awards, including significant increases for the poor and working classes.

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<sup>73</sup> Since the costs of the children are in 1986 dollars, the amounts would most likely be higher in 1997, due to inflation.

<sup>74</sup> Stripinis, *supra* note 47 at 30.



### ***The Guidelines and Equity***

Marital breakdown in Canada is, on average, an economic disaster for men and women who both suffer a significant decline in income after divorce.<sup>75</sup> However, the economic consequence is much greater for women,<sup>76</sup> so support after divorce can play a role in equalizing the unpleasant financial consequences of divorce. Support can therefore play a role in softening the economic blow of divorce on Canadian children and their families, but care must be taken to apply it appropriately since outcomes vary significantly not only by sex and custodial status, but by marital status as well. This implementation of the guidelines provides many opportunities for unjust situations to unfold.

The assumption of equal incomes for both former spouses will tend to produce inequitable awards when the non-custodial parent has a lower income than the custodial parent, even if the awards were justifiable in the first place. One American study of 180 former couples found this occurred in 35% of cases.<sup>77</sup> In cases where the custodial parent earns more than the non-custodial parent, the awards will be unjustifiably high. Indeed, given that, as shown above, the support payments are for both child and spousal support, there may well be cases where the payments should be made to the non-custodial parent, if the custodial parent earns significantly more than the non-custodial parent. There is also an imbalance of power inherent when only one party is financially reporting to the other. The ability of one party to conduct economic surveillance of the other with the support of the law creates a power imbalance that may be abused. There appears to be little justification, in an age of low cost computers, that the goal of simplifying the

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<sup>75</sup> Finnie, Ross, and Devid M. Betson, Elke B. Kluge, Ellen B. Zweibel, *The Guideline Options* (Ottawa: Renouf, 1994) at 24.

<sup>76</sup> Ibid.

<sup>77</sup> Bianchi, Susan, Lekha Subaiya, and Joan R. Kahn, *The Gender Gap in the Economic Well-being of Nonresident Fathers and Custodial Mothers* (1999) 36:2 *Demography* 195 at 198.

guidelines should take precedence over providing equitable outcomes. When situations such as those outlined above are likely to occur, it makes little sense to design a system that will not take such variations into account. Using only one income to determine support produces too many inequitable situations that could be easily prevented. It is difficult to defend the use of only one income to determine support awards: simplicity of the formula is not as important as equitable awards and the welfare of children.

The legislated guidelines do not account for child-related costs for the non-custodial parent. However, typical access arrangements have the children with the non-custodial parents half of weekends, and half of holidays or about 20-25% of the time. An Alberta study of 19 custodial and 19 non-custodial parents found that 53% of non-custodial and 32% of custodial parents reported this frequency of access or higher.<sup>78</sup> All of these parents reported at least some access.<sup>79</sup> While the reasons reported for why access did not occur varied widely depending on whether the custodial or non-custodial parent was asked,<sup>80</sup> one common factor may have been distance: only 40% of these parents reported living in the same city.<sup>81</sup> So while the direct costs of care may have been lower for those who did not see their children as often, it is likely they experienced higher costs of exercising access. Most studies of economic welfare of families after divorce ignore the costs associated with being a non-custodial parent and so the resulting estimates of standards of living after divorce are unreliable in this respect.<sup>82</sup> By ignoring the expenditures of non-custodial parents, support awards are made higher. These

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<sup>78</sup> Perry, Debra, Floyd H. Bolitho, Janine Alison Isenegger, Joanne Paetsch *Access to Children Following Parental Relationship Breakdown in Alberta* (Calgary: Canadian Research Institute for Law and the Family, 1992) at C-35.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid. at C-41-42.

<sup>81</sup> Ibid at C-37. This question had 55 respondents, due to fewer missing values.

resulting higher awards may prevent, by economic hardship, the non-custodial parent from maintaining a full relationship with his/her children. This can result in undesirable outcomes for children, despite greater economic support for the custodial parent. For example, one American study found that despite enforcement measures implemented in 1984 resulting in increasing receipt of child support, there was a "decline between 1984 and 1988 in the effect of child support income on the probability of graduating from high school".<sup>83</sup> The authors concluded "...some of the beneficial effect of child support income on educational attainment appears to derive from non-financial contributions from the non-custodial fathers who paid it...".<sup>84</sup> In other words, there are beneficial effects of a child having a relationship with his/her non-custodial parent. It is hard to see how children will gain from having this relationship prevented or strained because of unwarranted economic hardship. As shown above, the 1997 Canadian Child Support Guidelines most likely overestimate the costs of the children. This overestimation ensures that support amounts will be, on the whole, higher than warranted.

This is conspicuously true in cases of extremely high income, where a child support award can exceed even some lottery winnings.<sup>85</sup> The developers of the guidelines do not appear to have researched the issue of child support at very high incomes. While overestimating child costs, on average, will counteract part of the assumption that parents earn equal amounts, there is a likelihood that for many cases it

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<sup>82</sup> A recent example is Bartfeld, Judi, *Child Support and the Postdivorce Economic Well-being of Mothers, Fathers and Children* (2000) 37:2 Demography 203.

<sup>83</sup> Hernandez, Pedro M., Anrea H. Belter, John W. Graham *The Child Support Enforcement Amendments of 1984 and Educational Attainment of Young Adults in the United States* (1996) 10:3 Labour 537 at 551.

<sup>84</sup> *Ibid.* at 552.

<sup>85</sup> For example, in *Francis v. Baker* 3 S.C.R. 250, child support was set at \$10,000 (tax free) per month. While the issue needs more study, there is no evidence that there are social benefits to making conception with wealthier individuals like winning the lottery.

will not. It is a little like clothing all Canadians for the average temperature in Canada. Some will get more than they need and others will be left out in the cold.

Another situation not accounted for by the guidelines is marital status. The exception to the norm of a decline in income appears to be those who remarry. Divorced individuals in Canada who remarry actually experience an increase in household income after their divorce.<sup>86</sup> This differential is not accounted for in the guidelines and is likely to produce inequitable outcomes.

### ***A Class Act***

Although child poverty is a major social problem, it is unlikely that child support will play a major role in the solution of that problem. Child poverty exists among poor families. Fathers of the children of poor never-married mothers are also likely to be from a similar social background. When a poor family breaks up, there are extra costs because of the existence of two households instead of one. This is especially true when both parents want to remain active in their children's lives and need accommodation for themselves and their children. Thus the reliance on child support to reduce child poverty puts a large amount of financial strain on one of two poor parents. So while child and spousal support is useful to share financial difficulties pursuant to divorce, it is unlikely to bring a large proportion of divorced custodial parents out of poverty. One American study found that "...in 1994, child support brought 5% of mother-only families that were poor before transfer out of poverty...".<sup>87</sup> Another found that if every cent of child support was paid, less than two percent of custodial parents in the study would have been

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<sup>86</sup> Ibid.

<sup>87</sup> Meyer, D.R. and M.-C. Hu A Note on the Antipoverty Effectiveness of Child Support Among Mother-Only Families unpublished manuscript cited in Bartfeld, Judi, *Child Support and the Postdivorce Economic Well-being of Mothers, Fathers and Children* (2000) 37:2 Demography 203 at 204.

raised out of poverty.<sup>88</sup> So while there seems to be a measurable effect on poverty of child support payments, it is very small.

Child support collected may not even benefit the other parent, but may instead go to replace social benefits that have been accessed by the recipient parent. In this way, child support represents a major initiative to privatize social benefits. This is likely to increase economic stratification, not reduce it. To put it another way, this is a method of circumventing the progressive taxation system by taxing those who can least afford it. Child support, appropriately implemented, may be useful for reducing inequities after divorce among middle and upper class families, where the children are not poor, but unreasonably large amounts and severe enforcement measures may be detrimental to economic stratification for the poor and working classes. One study of low income non-custodial parents who were behind in their support payments found that while these low income parents were desperately looking for opportunities to work, they suffered from feelings of powerlessness and social and economic isolation.<sup>89</sup> The vast majority had extremely tenuous living arrangements.<sup>90</sup> Another study notes that "Both child support and remarriage are important avenues through which children are supported."<sup>91</sup> But that "...child support enforcement reduces remarriage probabilities among low-income fathers."<sup>92</sup> Child support regimes must be carefully implemented in light of these limitations, or the results may be harmful, rather than beneficial to children of poor

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<sup>88</sup> Braver and O'Connell, *Supra* note 27 at 83.

<sup>89</sup> Johnson, Earl S. and Fred Doolittle *Low-Income Parents and the Parent's Fair Share Program* in Garfinkel, Irwin, Sarah McLanahan, Daniel R. Meyer and Judith A. Seltzer eds. *Fathers Under Fire: The Revolution in Child Support Enforcement* (New York: Russell Sage, 1998) at 274-275.

<sup>90</sup> *Ibid.* at 272.

<sup>91</sup> Bloom, David E., Cecilia Conrad and Cynthia Miller *Child Support and Fathers' Remarriage and Fertility* in Garfinkel, Irwin, Sarah McLanahan, Daniel R. Meyer and Judith A. Seltzer eds. *Fathers Under Fire: The Revolution in Child Support Enforcement* (New York: Russell Sage, 1998) at 146.

<sup>92</sup> *Ibid.*

parents. Child poverty needs a predominantly public approach to be effective – heavy reliance on private support will not produce the desired results.

The insidious aspect of using child support to deal with child poverty is that government and society are now off the hook, since the cause of poverty appears to lie with government or social policy. Rather, a parent's poverty is the fault of a former spouse, someone he or she is no doubt already disposed to blame. Claiming lack of child support as the cause, and increased child support as the cure, of child poverty in Canada will most likely increase hostility between divorced spouses, while removing the impetus for society to assist with the problem. Poor families, by themselves, are not likely to pull themselves out of poverty. To insist otherwise only makes poverty increase.

Using a private approach for support of family members is not new. Neither is such a program being a disaster. Canada attempted just such a program before the introduction of public programs to support the elderly:

"...the Parents Maintenance Act, legally requiring children to support their elderly dependent parents, merely served to prove the old adage, "you can't get blood from a stone." Attempts to enforce the act, according to testimony before the Old Age Commission (1933), would in most cases simply drive the whole family into destitution."<sup>93</sup>

Using child support as a panacea for the problem of child poverty may lead us down a similar path.

### ***Other Issues***

The discourse on child support is dominated by the cost of children. But if children were solely a burden, then few couples would enter into the world of parenting. When adoptive parents will spend thousands of dollars to become parents of a child through a

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<sup>93</sup> Jane Urself, *Private Lives, Public Policy: 100 years of State Intervention in the Family* (Toronto: Women's Press, 1992) at 368.

foreign adoption, and separating parents will often both desire child custody, there must be something else at play for the parents than simply lowering their standard of living. So, the change in activities associated with parenthood could be viewed as a lowering of standard of living - or as a choice that parents perceive as having some benefits. Upon divorce the majority of the desired relationship is given to one parent while the costs of the relationship are given to the other parent. This may be seen as inequitable, unless a parent views their children as a burden rather than a blessing.

The 1997 Canadian Child Support Guidelines also assume that the proportion of expenditures on children remain constant at all income levels. This assumption is used to extrapolate, in a linear fashion, even to very high income levels. This approach likely adds to the overestimation of support awards.

The guidelines, in their approach to women's and children's poverty, assume custody awards that overwhelmingly favour women. While this may be the case presently<sup>94</sup>, the guidelines may not seem as equitable to women in the future if custody awards become more evenly distributed between the sexes.

### ***Changes in Circumstance***

When implementing child support guidelines, particular care must be taken to ensure they produce equitable results, especially when the amounts are set by court order and are therefore difficult to change. The need for equitable outcomes is also emphasized when the severe measures of enforcement for non-payment are considered. A non-equitable support award can entail economic deprivation, loss of basic rights of citizenship<sup>95</sup> and even jail. Negative changes in circumstance will most likely cause hardship and support

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<sup>94</sup> See Millar, Paul and Sheldon Goldenberg *Explaining Child Custody Determinations in Canada* (1998) 13:2 C.J.L.S. 209 for a discussion on the distribution of child custody in Canada.

arrears for the non-custodial parent, whose order no longer reflects their ability to pay. Changing such an order through the courts can be difficult for someone in that position, since it requires legal expertise that is expensive to purchase. Legal Aid assistance is limited and eligibility formulas do not always take support payments into account. Thus the onus of legal fees is on support payers whose financial situation is already very difficult. This may lead to arrears, which bring about stronger enforcement measures, which in turn may bring even more tenuous financial circumstances. Even if circumstances warrant a reduction in arrears and ongoing payments, the reduction may not reflect the decrease in ability to pay.<sup>96</sup> The guidelines do not provide for a practical method of dealing with non-custodial parents who experience a decrease in income.

### ***Future Research***

Since, as shown above, child support is not the solution to women's and children's poverty this is an interesting question for further research. One study suggests that other countries may offer insight on how to reduce the gender poverty gap<sup>97</sup> Children's poverty remains an important challenge to Canadian society. Such measures as low cost child care and re-institution of universal family benefits may merit investigation as tactics to ameliorate this problem. With respect to the economic consequences of divorce, the development of an accurate indicator of non-custodial parent's costs would enable the proper comparison of standards of living between custodial and non-custodial households. In general, the current research leaves a great deal of questions unanswered

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<sup>95</sup> For example, a passport.

<sup>96</sup> According to an Alberta Court of Appeal precedent, support arrears should *never* be forgiven, since it is possible the payer may, at some time, win the lottery. See Haisman v. Haisman (1995) 7 R.F.L. (4th) 1 (Alta. C.A.)

<sup>97</sup> Casper, Lynne M., Sara S. McLanahan, Irwin Garfinkel The Gender-Poverty Gap: What we can Learn from Other Countries (1994) 59:4 American Sociological Review 594.



about the contribution of non-custodial parents and fathers to the welfare of children, other than through child support. A comparison of the Canadian Child support Guidelines with those implemented in Quebec may also be instructive. The Québec Child Support Guidelines take the income of both parents into account, and allow for some costs of the non-custodial parent. A comparison of outcomes for the two regimes may shed light on the advantages of one model versus the other.<sup>98</sup>

## **Conclusions**

The Canadian child support guidelines were developed with the goal of increasing the amounts of support awards, because of social science evidence that much of women's and children's poverty was the result of low support awards upon divorce. This clearly defined problem had an unambiguous solution: increased amounts of child support. Unfortunately, the research findings supporting this paradigm were flawed and likely caused the overlooking of important research findings during the development of the guidelines. In particular, the developers of the child support guidelines disregarded the fact that the system in place prior to the guidelines, whereby judges awarded support, was on the whole satisfactory to the protagonists and produced reasonable economic outcomes for divorced families. The guidelines, as implemented, contain not only child support, but spousal support and overestimate expenditures on children. None of the key assumptions that underlie the new support formulas are based on fact. The Canadian Child Support Guidelines produce too many inequitable situations and do not provide a practical way for these inequities to be corrected. In addition, they unfairly target the poor and working classes, in an attempt to circumvent the progressive taxation system.

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<sup>98</sup> See Maisonneuve, Tina *Child Support under the Federal and Quebec Guidelines: a Step forward or Behind?* (1999) 16:2 C.J.F.L. 284. This article provides only a descriptive comparison of the two systems.

The system does not respond easily to changes in circumstance, and issues like the desirability of a parental relation are ignored. While support awards may not be a major cause of women's and children's poverty, the problem of poverty remains a serious one. Too many Canadians, and especially too many Canadian children are poor. However, the solution to this problem does not, in all probability, lie with child support. Future research should target tactics more likely to succeed.

## Appendix A:

### Estimated Annual Costs of Children using four Methods<sup>99</sup>

<b>Annual Gross Income:\$20,000</b>				
	Extended Engel	Blackorby /donaldson	Adult Goods	Consumption
1 child (0-6)	\$1,057	\$2,499	\$3,137	\$401
1 child (7-11)	\$1,693	\$3,145	\$3,475	\$766
1 child (12-18)	\$2,285	\$3,739	\$3,834	\$1,854
<b>Annual Gross Income:\$40,000</b>				
	Extended Engel	Blackorby /donaldson	Adult Goods	Consumption
1 child (0-6)	\$1,755	\$4,198	\$4,531	\$1,671
1 child (7-11)	\$2,811	\$5,810	\$5,020	\$2,200
1 child (12-18)	\$3,796	\$7,227	\$5,538	\$3,776
<b>Annual Gross Income:\$70,000</b>				
	Extended Engel	Blackorby /donaldson	Adult Goods	Consumption
1 child (0-6)	\$3,072	\$7,347	\$6,097	\$3,576
1 child (7-11)	\$4,919	\$10,167	\$6,754	\$4,351
1 child (12-18)	\$6,644	\$12,648	\$7,451	\$6,659

Source: Department of Justice, Canada

<sup>99</sup> Finnie et al, *supra* note 45 at 37.

## Appendix B: Sources for Child Cost Estimates

Source	
1	Douthitt, Robin A. and Fedyk Joanne, <i>The Cost of Raising Children in Canada</i> (Toronto: Butterworths, 1990).
2	An average of provincial welfare assistance. Since social assistance for a single person is less than subsistence, the ratio of one adult to an adult plus child cannot properly be applied.
3	Based on comparisons of the price of a basket of goods compiled by the Montreal Diet Dispensary.
4	This is the single parent version of Phipps' calculations - as opposed to the two parent version. Child care is excluded.
5	Canadian Bar Association
6	Based on comparisons of the price of a basket of goods compiled by the Social Planning Council of Metropolitan Toronto..
7	Equivalence scale from a 1986 Statistics Canada study using Extended Engel method
8	Equivalence scale from a Statistics Canada study using Extended Engel method and after-tax dollars
9	Phipps' Blackorby/Donaldson calculations. Child care is excluded.
10	"parental reserve" in the Delaware/Melson method