

An Assessment of the Federal Child Support Guidelines

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Christopher Sarlo, PhD.*
Professor of Economics
Nipissing University

Summary

The Federal Child Support Guidelines were implemented by the federal government in May 1997. The Guidelines are stated to be based on studies of the actual expenditures on children and equitable to both the paying and recipient parents. A close examination of the Guidelines, and the Formula used to create the child support payments, demonstrates that neither statement is true. Rather, the Guideline amounts are based on a Formula which uses an arbitrary equivalence scale and unrealistic assumptions. This Report analyzes the development of the Guidelines Formula, and compares the outcomes of the Formula using the assumptions postulated by the federal government (and specifically the Department of Justice) against models with more realistic assumptions, as well as against the costs of raising children as determined by other agencies. This analysis leads to the conclusion that the Guidelines have no connection to economic studies on the average spending on children (and does not legitimately assess the costs of children), nor does it equitably distribute child maintenance obligations between parents according to their means and relative abilities to contribute to those obligations.

**I am a Professor of Economics at Nipissing University in North Bay, Ontario. My research over the past twenty-five years has focussed on Canadian living standards, poverty and inequality. I have reviewed all of the sources in the references to this Report and my analysis is based on my understanding of these and related sources. I have also read and consulted extensively over the years to deepen my understanding of the workings of the Federal Child Support Guidelines. In my teaching career, I have taught a variety of economics and mathematics courses at the university level. In the course of my research on poverty and Canadian living standards over the years, I have become familiar with equivalence scales and their use.*

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SECTION 1 INTRODUCTION

1.0 Purpose, Approach, and Scope of this Report

The purpose of this Report is to assess whether the Federal Child Support Guidelines (“Guidelines” or “CSG’s”) are based on the parents’ relative abilities to contribute, and whether they reasonably determine the monetary amounts required to maintain the children of a marriage. To achieve that purpose, this Report carefully reviews the Federal Child Support Guidelines from the perspective of economic science.

In the course of this review, I discuss how the Guidelines were constructed; what the goals and objectives of the Guidelines were; and how valid the research and analysis underpinning the Guidelines were.

A key objective of this Report is to examine the quantum of child support in the Guidelines’ tables and to compare that amount both to the cost of maintaining a child (or children) and to the “means” of both parents. The term “means” here is intended to be synonymous with the phrase “relative abilities to contribute”.

The scope of this Report is restricted to situations in which the child(ren) of a non-custodial parent (“NCP”) and a custodial parent (“CP”) under the age of majority live at least 60% of the time with a CP. In such circumstances, the Guidelines stipulate presumptive table amounts of child support. In addition to the table amounts, a Court can award further amounts for items listed under the Guidelines as eligible “Section 7” extraordinary expenses.

A critical question which lays at the foundation of any child support framework is: What is the cost of a child? It is crucial that a system that requires the parents to pay for the maintenance of the child(ren) of the marriage, on marital breakup, reasonably establish what those costs are. In addition to the review of the costs of a child, the scope of this Report is further defined by the economic issues of how costs should be shared; and how are “means” to be defined.

There is a significant literature in economic science addressing the cost of a child. Approaches and estimates vary substantially, and not all estimates are equally thorough or reliable. It must be appreciated that there is no one true “cost” of a child. The “essential” needs of a child may be fairly modest and we may be able to agree on what those costs are, at least within a reasonable range. However, beyond that level, the amount that parents actually spend on children will depend on a number of factors including the “means” of the parents, the style of parenting, the security of the parents’ sources of income, etc.

On the question of sharing the costs of a child, there can be different perspectives on how to measure the relative ability to contribute. However, a useful starting point is after-tax income, which would include any income derived from assets and any source of non-taxable income. This total represents, in general, what a person has available to spend without impinging on their assets. In some cases, where parents and/or their assets are deliberately unemployed or underemployed, an imputation of income may be required.

Clearly the question of "ability to pay" is not just a matter of determining income. Two people with the same after-tax income may have quite different abilities to pay depending on their personal situations. For example, family obligations, the presence of special needs, and health issues are factors that matter when determining a person's "ability to pay". These, and other factors, are ignored by the Guidelines.

I understand that, both before and after the development of the regulatory CSG's, the relevant federal statutory law in this area was and is the *Divorce Act*. However, to my knowledge there was no specific reference to any provisions of this Act, either to note the constraints or guidance prescribed by the Act, in any of the research or position papers of or commissioned by the federal Department of Justice leading up to the development of the Guidelines. For example, there are no references to section 26.1(2) of the *Divorce Act*, nor its specific requirements that the Guidelines be based on the principle of the parents' "relative abilities to contribute" to the costs to "maintain the children", nor were there any references to predecessor provisions that dictated how child support was to be shared between parents.

As a final note, the Province of Quebec was represented on the Federal/Provincial/Territorial Family Law Committee but ultimately developed its own guidelines. Any reference in this report to Guidelines excludes Quebec unless otherwise specifically mentioned.

1.1 Definitions

The following definitions are used in this Report:

"CP" – means a parent covered by the CSG's having more than 60% of the custody time of their children.

"CSG's" or "Guidelines" – mean the Federal Child Support Guidelines.

"DOJ" – means the Federal Department of Justice.

"DOJ Assumptions" – means the standard assumptions behind the Guidelines' Formula as explained in subsection 7.1.1.

"DOJ Consultants" – means the team of Ross Finnie, Daniel Stripinis, and Carolina Giliberti.

"FLC" – means the Federal/Provincial/Territorial Family Law Committee assembled during the early 1990's to review and determine a way to standardize child support payments under the *Divorce Act*.

"Formula" – means the equation used to derive the presumptive child support payments set out in the Guidelines.

"LIM" – means Low Income Measures, as defined by Statistics Canada.

"NCP" – means a parent covered by the CSG's having less than 40% of the custody time of their children.

“Section 7’s” – are child support payments that the court may order over and above the table amount as set out in the Guidelines.

“SSAG’s” – refers to the Spousal Support Advisory Guidelines published by the DOJ, dated July 2008.

“Tables” or “Table Amounts” – are the tables (or amounts specified therein) comprising part of the Guidelines which prescribe how much a NCP should pay in child support for any given NCP level of income and number of children.

1.2 Introduction to Content of the Report

In Section 2 of this Report, I provide a brief history of the process leading up to the Guidelines and Table Amounts. I pay special attention in this Section to the Formula which underlies the calculation of the Table Amounts including a description of the equivalence scale used in the Formula and a review of the explicit and implicit assumptions underlying the Formula.

Section 3 of this Report provides a general discussion on the “costs” of children together with further detailed analysis on how the Formula calculates such costs. I then demonstrate how the equivalence scale used in the Guidelines is not, in fact, based on any actual studies on the average spending on children in families with different income levels. Rather the choice of the equivalence scale was based on non-specific “public consultations” and unconvincing, misrepresented “empirical evidence”. I further describe in Section 3 that the outcome of the Formula, i.e., a fixed percentage of after tax income for child support at all income levels, is a direct result of using a set equivalence scale, and that such fixed percentage approach is contradicted by the DOJ’s own research and firmly established economic spending theory.

In Section 4, I review a number of material matters which are ignored by the Guidelines in producing the Table Amounts payable by non-custodial parents. Those matters include the substantial government benefits available to custodial parents, the ignoring of any costs to a non-custodial parent who has less than 40% custodial time, and the differential costs of children at different ages. I also show that the original intent of the “40/30” equivalence scale used by the Guidelines to set the costs of children was to cover all costs, yet the Guidelines ultimately allowed for additional “extraordinary costs” resulting in double counting. I further demonstrate that the Guidelines essentially ignore the beneficial effects re-partnering will often have to a custodial parent and a corollary detrimental effect re-partnering will often have on a non-custodial parent.

Section 5 of this Report briefly reviews the effect and interplay of spousal support with child support, and particularly the Spousal Support Advisory Guidelines which have been introduced by the DOJ. A brief understanding of the Spousal Support Advisory Guidelines is important when reviewing the mathematics of the Guidelines presented in Section 7 below.

Section 6 outlines additional sources of support for the conclusions and analysis I provide in this Report. This review includes the public criticism of the Guidelines presented notably by the economist Ross Finnie (who was one of the original framers of the Guidelines and one of the DOJ Consultants). I also compare the Guidelines to the child support system implemented in Quebec specifically noting that the longer list of factors considered in the Quebec guidelines led

to both lower and non-linear child support payments. I also contrast expert estimates of the cost of raising children against the amounts derived from the Formula.

In Section 7, I carefully review the mathematics underlying the Guidelines. In particular, I review an example from the Department of Justice, which itself establishes that the Formula does not equitably distribute the child maintenance obligations between parents, even based on the unrealistic assumptions that underlie the Guidelines. I further undertake a “should pay – do pay” analysis using both the equivalence scale underlying the Guidelines and using a more realistic equivalence scale and reasonable assumptions. That analysis demonstrates that not only is the child support obligation not equitably distributed between parents, but the custodial parent can, in fact, receive a net wealth transfer from the Guidelines.

Finally, I provide some concluding comments and observations regarding the Guidelines in Section 8.

1.3 Notes Regarding Exhibits

Unless a particular Exhibit in this Report has a footnote to the contrary, it was either prepared by me, or done under my direction and review.

In many cases information from a number of sources was assimilated to complete the Exhibit. Examples include: amounts payable under the Guidelines for a specific income level; amounts payable under the *Spousal Support Advisory Guidelines* for an assumed fact situation; income tax calculations; and information on benefit programs.

Determining the amounts payable under the Guidelines is simply a matter of looking them up on a table. Numbers under the SSAG’s were generated by “DIVORCEmate”, a computer program specifically designed for the purpose.

The income tax calculations were done on the “T1 Tax Prep” software.

Information on benefit programs is available online from the Canada Revenue Agency “Child and Family Benefits” online calculator. The numbers generated by these benefit programs for any assumed fact situation are also calculated by the DIVORCEmate software.

To confirm the amounts in the Exhibits were calculated correctly, the accounting firm of Kapasi & Associates, Chartered Accountants, has submitted an Advisory Report in this action confirming:

- (i) The Exhibits utilize the correct payment numbers from the Guidelines;
- (ii) Utilizing the DIVORCEmate software, that the SSAG’s numbers were correctly calculated. All of the print-outs from the DIVORCEmate examples have been kept and are available upon request.
- (iii) The SSAG’s numbers were correctly utilized in the Exhibits;

- (iv) The discussion in this Report regarding government benefits for children is correct;
- (v) The income tax calculations and the calculations with respect to the government benefits are correct in all the Exhibits and Attachments; and
- (vi) The mathematics in the Exhibits are all calculated in accordance with their stated assumptions.

SECTION 2 UNDERSTANDING THE CHILD SUPPORT GUIDELINES

2.0 A Brief History

The process which culminated in the Guidelines becoming law originated with an agreement by federal, provincial and territorial Ministers of Justice to form the Family Law Committee to review child support. This was announced in June 1990 and the FLC was given the specific mandate to "...study child support in Canada upon family breakdown in the context of the actual costs of raising children in Canada".¹ There does not appear to have been any formal terms of reference or specific ground rules beyond that or any references to the then existing provisions in the *Divorce Act* relating to child support.

Various research reports were commissioned for the FLC including that of noted economist Martin Browning who did a careful review of approaches to determining the cost of children, and whose own research showed a preferred approach.

By 1992, the research appears to have focussed on child support guidelines as the favoured solution to the various identified issues. The further research that followed examined various theoretical approaches to determining the cost of children and various models of child support that could be used to derive guideline amounts.

By 1995, much of the early research had been set aside and the FLC had determined that a "revised fixed percentage" approach, based on an equivalence scale to account for the costs of children, was going to be the foundation of the Federal Child Support Guidelines.²

The Technical Report describing the ultimate Formula based on the revised fixed percentage approach³ was released sometime after the Guidelines were implemented.⁴ The Formula is the source of the numbers in the Tables that are part of the Guidelines and dictate the quantum of a NCP's child support obligations. It appears to be the case that parliamentarians and senators did not have this Technical Report available to them as they voted on the changes proposed for the *Divorce Act* that allowed the implementation of the regulatory Guidelines.⁵

¹ Federal/Provincial/Territorial Family Law Committee, *The Financial Implications of Child Support Guidelines: Research Report*, May 1992, p.1.

² R. Finnie, C. Giliberti, D. Stripinis, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, 1995, p.91; Federal/Provincial/Territorial Family Law Committee, *Report and Recommendations on Child Support*, January 1995, p.68.

³ Department of Justice Canada, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, Research Paper CSR-1997-1E, December 1997.

⁴ Prior drafts of the *Technical Report*, which were obtained under an *Access to Information Act* request contained examples (discussed in detail below in sections 7.0-7.2) which were removed from the ultimately published *Technical Report*.

⁵ The Guidelines came into force May 1, 1997, whereas the *Technical Report* explaining the Formula is dated December 1997.

2.1 The Formula

The DOJ claims that the Formula used to determine the child support awards is intended to equalize the “living standards” of the two households following a marital split if the income of the paying, non-custodial parent is equal to the income of the receiving, custodial parent. Essentially, it states that the amount of the award is set to the level that would ensure that both households have the same (after-award) disposable income, adjusted for family size, assuming that the two parents earn the same gross income. In equation form, the Formula is expressed as follows:

$$\begin{array}{ccc}
 \text{PAYING PARENT (PP or NCP)} & & \text{RECEIVING PARENT (RP or CP)} \\
 \\
 \frac{\text{Income}_{PP} - \text{Taxes}_{PP} - \text{Table Amount}}{\text{AEU for the Paying Parent}} & = & \frac{\text{Income}_{RP} - \text{Taxes}_{RP} + \text{Table Amount}}{\text{AEU for the Receiving Parent and Children}}
 \end{array}$$

In the Formula, AEU stands for adult equivalent unit. An AEU is simply a number which reflects the "equivalency" for different sized families consistent with the equivalence scale one is using. In this case, the Formula uses a 40/30 equivalency scale, where 1.0 is the AEU for one person living alone, 1.4 is the AEU for a single parent and one child; 1.7 is the AEU for a single parent and two children, and each additional child adds .3 to the costs. The "living standard" of a household, according to this Formula, is its after-tax income divided by the AEU value.

The Formula is solved by assuming that both parents have exactly the same pre-tax income (at every level of income). However, it is solely the income of the NCP that is used to set this assumed equal amount of income. The CP’s actual income is completely ignored (i.e., it is always assumed that the CP’s income is the same as the NCP’s income).

Since each province will have somewhat different tax provisions, the Tables have to be determined separately for each of the provinces.

While the mathematics is fairly simple, the concepts behind the math are more involved and so this equation requires more explanation. To fully understand how the child support Table Amounts are determined, it is critical to review each of the components of the Formula and how the Formula is applied.

2.2 Explaining the Terms

“Taxes” under the Formula initially meant the federal and provincial income taxes applicable at a particular level of income as well as mandatory government deductions such as CPP and EI, but the meaning of Taxes has now been modified somewhat.⁶

⁶ Originally, the net or after-tax income was used in the Formula to determine Table awards, but with the advent of the Universal Child Care Benefit in 2006 (“UCCB”), the Formula has been modified so any net benefit (which is included in income and subject to tax) received by the CP from the UCCB is ignored. (See Note 73, p.48, s.6.4 of the SSAG’s).

“Income” under the Guidelines is determined only for the paying spouse, and is generally the amount on the payor’s income tax return. As noted above in section 2.1, the recipient spouse’s actual income is not considered, but rather is simply deemed to be equal to that of the payor.

“Personal disposable income” is a somewhat related term used by the DOJ to assess how each parent is doing (in terms of living standard) after government benefits have been received and the child support award has been paid. This concept, “personal disposable income”, is used by the DOJ to analyze the financial effects of the child support award. There is more on this point in section 7.0 below.

The “AEU” is dependent on the equivalence scale selected (under the 40/30 rule, it is $1.4 + .3(n-2)$ where ‘n’ is the number of members in the household).

2.3 The Role of Equivalence Scales

An equivalence scale is a set of percentages that purport to tell us the marginal cost of adding people to the household assuming that the standard of living remains the same. These percentages reflect the economies of scale when people live together and share space, appliances, furnishings, etc. For example, when two single people decide to cohabit, the spending required to maintain the same standard of living as the first single person will not double. Looked at another way, we can say that an equivalence scale also shows us what percentage of total costs are (deemed to be) the incremental costs of each member of the family.

To illustrate, let's assume an equivalence scale of 40/30 and suppose we have one adult to begin with. Let us further assume that this person has an after-tax income of \$35,000 and spending of \$35,000. The second adult adds 40% to costs (not 100%, due to economies of scale in living together), which in this example is an additional \$14,000 ($1.4 * \$35,000$). In order for both persons to enjoy the same level of well-being as did the first adult alone, then, according to the 40/30 scale, combined spending must rise to \$49,000. The incremental costs of the extra adult accordingly accounts for $(.4/1.4) * 100$ or 28.6% of the total costs. Suppose the second person brings in an after-tax income of \$30,000 for a combined income of \$65,000. Given the deemed costs and new combined income, there is now savings of \$16,000.

Extending the analysis to include a child, suppose the couple has a newborn baby, (ignoring any tax or benefits ramifications of that). According to the 40/30 equivalence scale with two parents, the child adds another 30% to the cost of the first person. Once the 3 person family is in place and spending begins, the household would now have to spend a total of \$59,500 ($1.7 * \$35,000$) in order to maintain the same level of material well-being as the couple (and as the first single person). In terms of cost shares, the incremental costs of the child accounts for 17.6% ($(.3/1.7) * 100$) of the total expenditure. Since total spending is \$59,500, the ascribed incremental “cost” of the child is \$10,500 (i.e., $\$59,500 - \$49,000$).

Again, it is critical to understand that the amount of \$10,500 is the extra amount that, according to the mathematics of the 40/30 equivalence scale, the couple must spend (in this case, on the child) once the child is in the household in order to keep the same standard of living. It is not surprising that saving has been reduced (to \$5,500) because more is spent overall and the child

does not add to income. In terms of shares, the incremental cost of the two additional persons is 41.2% (.7/1.7) with 58.8% deemed to be the cost of the first person.

2.4 An Illustration of the Formula using the 40/30 Equivalence Scale

The equivalence scale selected for the Guidelines is the "40/30" scale which previously had been employed by Statistics Canada in constructing the Low Income Measures ("LIM"). The 40/30 scale will be more thoroughly discussed later in this Report, but it is generally part of a methodology to measure poverty and the relative well being of families of different sizes at low income levels. For now, the intention is to take the 40/30 equivalence scale and see how it is used to construct the child support awards in the Tables.

It is also important to note at the outset that even if the parents have the same income, they may still be subject to different taxes where children are involved. For example, using 2010 values, the single parent in the receiving household gets an eligible dependant credit of \$10,382 and an 'amount for children' credit of \$2,101 for each child, which reduces taxes. This means that while total gross incomes are the same, after-tax incomes will be different. The tables were determined first in 1997 with the tax regimes (federal and provincial) at that time. They were updated in 2004 and were updated again, effective January 2012 (to reflect 2010 tax rates).

An Example Using the Formula and taxes for Ontario in 2010:

As mentioned, the number of children with the CP is incorporated into the AEU value. For example, consider an Ontario situation in 2010 of a CP with \$40,000 income and one pre-school child and a NCP with \$40,000 income. The after-tax income for the NCP is \$31,580, whereas the after-tax income (calculated without UCCB as the Guidelines ignore UCCB as will be explained later) for the CP is \$33,836 due largely to the "eligible dependent and amount for children credits". In this case, the table amount of child support is \$4,404 and equation (1) would be

$$\frac{\$31,580 - \$4,404}{1.0} = \frac{\$33,836 + \$4,404}{1.4}$$

The numerators here are, respectively, \$27,176 (NCP Net Income: after-tax, after award) and \$38,240 (CP Net Income: after tax and after award). Now, dividing by the respective AEU values, we get, \$27,176 (NCP living standard) and \$27,314 (CP family living standard. The AEU takes into account the 40% additional cost of the child in the denominator).

These resulting values are a determination of the overall (40/30) living standards, as defined earlier, of *all the members of the family*. So, in this case, the living standard of the CP and child family is just slightly higher than for the NCP. This very small difference in living standards may be the result of minor tax changes between 2004 and 2010 since the table amounts used for this Report (the 2010 Tables) are based on the 2004 tax regime. In this illustration the taxes are based on the actual 2010 taxes, which are marginally different than the 2004 taxes.

The Formula is adjusted for payers with very low-incomes. A basic needs amount for self support was established below which no payment was required. Above that, some "smoothing" of the Formula was needed to ensure "catch up" until the Formula was fully implemented. This smoothing appears to end at a NCP income somewhere below \$25,000 after which the full Formula kicks in. This report does not address the technical details relating to smoothing.

2.5 DOJ Principles and Assumptions Underlying the Formula

In 1993 the DOJ made a clear reference to a "principle" that they intended to use as a guide in the choice of a child support mechanism. They stated, as their 4th principle: "Responsibility for the financial support of children should be in proportion to the means of each parent".⁷ This appears to be very similar to what I understand is the guidance provided by the *Divorce Act*. By the time the Guidelines' Formula was developed, however, the principle of proportionate sharing of the costs was no longer one of the stated guiding principles⁸, which were now stated in the DOJ's Technical Report (with page references noted) as:

1. The principle aim is to maintain spending on the children "as closely as possible" to pre-divorce levels. (p. 1)
2. The Formula equalizes the financial circumstances of the two households assuming that both parents have equal incomes to start (p. 2, 4) and further, "...if the incomes of the parents are equal, it is fair and equitable that each should contribute equally to the financial support of the children...". (p. 1)
3. The choice to go with an equivalence scale rather than alternative ways to account for the costs of children.
4. The choice of the 40/30 equivalence scale (as opposed to other scales). (p.3)
5. The assumption that the CP and NCP have the same income in order to generate table values from the Formula. (p. 4) This is quite different from the point in #2 above which essentially states that if the two parents have equal incomes then it is "fair" that each contributes the same amount to maintain the children. #5 is a technical assumption needed to determine table values from the Formula.
6. Table values apply only to the NCP. (i.e. the "paying" parent, p. 1)
7. Explicitly excludes government benefits for children in the equalizing Formula. (p. 5)
8. Implicitly assumes that CP bears all of the costs of the children (with the corollary assumption that the NCP has no child related costs).

⁷ D. Stripinis, R. Finnie, C. Giliberti, *The Construction and Implementation of Child Support Guidelines*, Technical Report TR1993-17e, 1993, p.65.

⁸ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report* (with page references in text).

9. Implicitly assumes that the CP pays their share of children's costs whereas the NCP is required to explicitly pay the amount given in the Table.

There are additional "technical" assumptions of the model. Specifically, it is assumed that:

. . . the household of the paying parent has one member: the paying parent. The receiving parent is also assumed to be single; the household of the receiving parent is made up of one parent and all of the children of the marriage. Both parents earn income and pay taxes. These technical assumptions have the narrow purpose of producing the mathematical model. They do not restrict the application of the tables to real life situations which may involve more complex family arrangements.⁹

Each of these critical elements of the Guidelines will be addressed in the following sections.

⁹ *Ibid*, p.2.

SECTION 3

HOW THE GUIDELINES FORMULA DETERMINES THE COST OF CHILDREN

3.0 Brief Discussion of Costs of Children

Any assessment of the Guidelines should be preceded by some discussion of the cost of children which necessarily lies at the heart of the construction of a set of child support tables or guidelines. There is a significant literature relating to the cost of children. While there is no consensus amongst economists as to how best to measure the costs involved, there appears to be general agreement that parents tend to spend more on their children the higher the household income, other things being equal. It is also the case that experts can and do estimate reasonable costs for the "raising of a child", especially at the basic requirements level. Indeed, we can view the cost of children as having two components: (1) a basic needs component which is the essential costs required for the normal healthy development of a child within the social context of a Canadian standard of living, and (2) the discretionary spending on a child that parents undertake given the financial resources available to them.

It is important to appreciate that families at every income level do have children and do raise them successfully. It is virtually impossible to precisely extract, from the Statistics Canada household spending databases, how much families, do, in fact, spend on their children. This is due, in large part, to the "joint" nature of some of the expenditures in a family and the inherent difficulty in identifying what amount is actually spent on which family member. However, the inability to extract this information from the databases does not mean that the cost of a child is indeterminable. It is relatively easy to find a reasonable cost (or range of costs) of a child using budgets determined by experts and geared to a particular standard of living. It is also easy to apportion shared costs (like food, transportation, etc) using simple and reasonable rules.

We also know that, often, the appearance of a child in the household fundamentally changes the time use and spending behaviour of the parents. Parents tend to stay at home more often, engage in child-centric activities and spend differently than they did when they were childless. For this reason some parents report that having their child cost them very little additionally. They spend differently, but not necessarily more.

Perhaps the most important realization about the cost of children is that children represent an incremental (or marginal) cost to the household. This is because, most often, the household already exists prior to the birth or adoption of a child and that household will already have most of the durable goods (appliances, furnishings, electronics, etc) and housing that it requires. Alternatively, such expenditures would be made for the adults in any case. The appearance of the child, therefore, may not require any additional housing, heat, electricity, taxes, autos, or appliances but may, of course, require a small amount for wear and tear in some cases. It will require some additional amount for food, clothing, toys, books, diapers, some new furnishings, and age-appropriate games and accessories. Again, it should be relatively easy to determine, at least, the extra cost of covering the basic necessities for children.

It would be a critical mistake to try to determine the cost of a child by taking an "average cost" approach, that is, by dividing all household costs by 3, in the case of two parents and one child. This sort of erroneous thinking leads to the bizarre conclusion that children actually save the parents money. For example, if a couple spends \$30,000 (\$15,000 each) on non-discretionary

costs (like food, shelter and utilities) when they are childless and \$36,000 when they have a child, attributing one-third of the overall costs to the child means that the parent's costs are now only \$12,000 each. This reduction in costs results in a saving of 20% for each parent. This kind of flawed reasoning underlines why it is important to stress that the addition of a child is a "marginal" or "incremental" cost. One very simple way to look at the cost of a child is to consider what costs would remain in the household if the child was not there. The difference between these remaining costs and the costs with the child would be one way to view the costs that are attributable to the child - i.e., the incremental cost.

In the 1993 DOJ Consultant's report, it is stated that, because of the high degree of joint consumption of commodities within a household and the difficulty of decomposing and attributing costs to the various family members: "...not only must we abandon the idea of measuring the costs of children directly, we must also accept the corollary that the material well-being of the child and parents is inextricably entwined..."¹⁰

While not fully incorrect about the nature of joint consumption and the notion of shared living standards, the DOJ Consultants were far too pessimistic about the possibility of attributing costs in some reasonable (not perfect) way. Also, certain costs, such as private schools, music lessons and sports, for example, are quite separable and identifiable to children and do not require the parents and children to have the same living standard in the same way that a more expensive house or shared vacations do. As well, to the extent it is true that the parents and children share the same standard of living due to some "joint consumption", it is also true for the time the children spend with the NCP and not just the time spent with the CP.

In the end, the FLC rejected alternative approaches to estimate the cost of children and used the 40/30 equivalence scale for that purpose.

3.1 General Overview of the Formula

While the DOJ's use of the 40/30 scale assumes that children's costs depend only on the parent's income, in reality spending on children will depend on many factors. Other important factors include: (1) the economic security and circumstances of the family (employment and financial situation, as well as debt issues); (2) the availability of extra resources (such as government benefits for children, help from relatives, etc.); (3) other obligations of parents such as spousal support payments and second families; and (4) the specific requirements of the child (special needs, expensive activities, post-secondary education, etc.).

In addition, parenting style is also a consideration. Different families with identical incomes may spend differently on children based on their values, religion, cultural norms, and how liberal or conservative their parenting 'styles' are. However, all of these factors are ignored when families split and must deal with the child support system. This is simply to say that the basis of

¹⁰ See Note 7, *The Construction and Implementation of Child Support Guidelines*, at p.95. In the early work of the DOJ, four models of determining child costs were considered. Of the four, only the "Extended Engel" approach was found not to be "theoretically flawed". Nevertheless, by 1995 (see Note 2, *Report and Recommendations on Child Support*), the DOJ decided to opt for an equivalence scale (the 40/30) rather than any direct estimation of child costs.

the Formula is simplistic in gearing children's costs solely to parental income. As discussed later in this Report, there are more realistic approaches to the determination of the costs of children.

A central principle claimed to underpin the Guidelines relates to maintaining pre-separation spending on children, post-separation: "...the Federal Child Support Guidelines aim to approximate, as closely as possible, the spending on the children that occurred in the pre-separation family...".¹¹ This is a curious objective given the catastrophe the family has undergone and the fact that intact families spend highly variable amounts on their children without state interference. There may be understandable and, perhaps inevitable, situations where parents need to reduce spending, including spending on children for a period. Family break-up (and the expenses of two separate households) may be one of them. In any case, while it is a stated objective, nothing explicit was done to ensure that spending on the child would be maintained. And, as important, nothing was done to even determine what that prior spending was.

As the 1997 Technical Report gets down to the matter of the determination of the "...amount to be transferred from the paying parent to the receiving parent...", it states that the "...transferred sum should maximize the amount available to be spent on the children while still allowing an adequate reserve for the self support of the paying parent...".¹² The phraseology here is important. Having just established the principle that the spending on children should be maintained despite the trauma of separation, now, one paragraph later, it is only *the amount available* to be spent that is to be maximized. This, of course, could be fully consistent with the overriding goal if there was a mechanism (which, to my understanding, there is not) to ensure that the amount transferred, plus, in many cases, an amount from the CP, was not only "available" to be spent on the children but, in fact, *was actually spent on the children*. This is critical if the first aim of maintaining spending is to mean anything. In addition, the reference to allowing the paying parent an "adequate reserve" for self support reveals the dramatic transformation the paying parent has undergone - from equal parent participating in all of the decisions affecting their child - to non-custodial "payer" who will be left with "an adequate reserve for self support".

The assumption of equal incomes is designed to both "solve" the Formula and to show that, if incomes are equal, then the living standards (after tax, after award) will be equal (and therefore "fair"). However, if equal incomes are needed to solve the Formula (and produce Table Amounts for child support), why would that same Formula be useful for the majority of cases where incomes are not equal or where the CP does not have 100% custody and does not bear all the costs of the children?

There is no discussion whatsoever of any of these concerns in any of the DOJ or FLC documents. As previously noted, the DOJ states that these assumptions do not restrict the application of the model to real life situations, but nowhere do they demonstrate that the model actually 'works' in any such real life situation.

¹¹ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.1.

¹² *Ibid.*

The Formula, based on the 40/30 equivalence scale, appears to be unique in the world of child support arrangements. As we will see, the Formula does not seem to have been fully thought through or subjected to independent review in the way one would expect when dealing with critically important policies affecting millions of people.

3.2 Is the 40/30 Scale Based on Actual Studies?

What empirical studies are there that support the 40/30 equivalence scale? This is a critically important question because a number of references are made in DOJ documents stating that the 40/30 equivalence scale is based on econometric/empirical studies and economic evidence of spending on children.¹³

Somewhere between 1992 (when the matter of equivalence scales was very much open) and 1995 (when it was not), a decision was made by the DOJ and/or FLC that the Guidelines should be based on the 40/30 equivalence scale and not any of the alternatives, including the substantially lower scale based on the consumption method that Browning preferred.¹⁴ The justification for the choice of the 40/30 scale was that it: "...1) offers a set of reasonable round numbers derived from empirical research, and 2) is based on public consultations...".¹⁵ The DOJ Consultants further elaborate that these public consultations were with "social policy advocacy groups".¹⁶

3.2.1 Empirical Evidence

The first point in the rationale for the use of the 40/30 equivalence scale in the child support Formula, i.e., that it is derived from empirical research, is categorically false. In the December 1997 version of the *Formula For The Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report* [CSR-1997-1E], the author(s) points out that this (40/30) "scale is based on econometric evidence and a consultation process".¹⁷

However, Statistics Canada has a wholly contrary view of the 40/30 scale. First of all, the LIM is aimed at assessing relative well being of families of different compositions at low incomes, not all incomes. Further, and of critical importance, Statistics Canada states in their technical description of the LIM and the 40/30 equivalence scale selected in its construction that:

These data are based on a low income measure (LIM) which is a fixed percentage (50%) of adjusted median family income where 'adjusted' indicates a consideration of family 'needs'. The family size adjustment used in calculating the LIMs reflects the intuitively appealing precept

¹³ See Note 2, *Report and Recommendations on Child Support*, p.60 and Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.3.

¹⁴ M. Browning, *Measuring the Costs of Children in Canada: A Practical Guide – Phase I*, Technical Report TR1991-13a, January 1991, p.70-72.

¹⁵ See Note 2, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, p.12.

¹⁶ *Ibid*, p.6.

¹⁷ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.3.

that family needs increase with family size. In other words, few people would argue with the proposition that a family of four needs a higher income than a family of two in order to enjoy the same 'standard of living'. The question is, "By how much must the larger family's income exceed the income of the smaller family in order for the two families to have equivalent 'standards of living'?" This is yet another topic in the whole field of measuring low incomes about which there is no agreement. **For the LIMs, in keeping with the principle of simplicity and conspicuously arbitrary choices, each additional adult is assumed to increase the families 'needs' by 40% of the 'needs' of the first adult, and each child's 'needs' are assumed to be 30% of that of the first adult. Other values could just as easily have been chosen** (in the academic literature these are known as 'equivalence scales'). The values of 40% and 30% seemed to be in the general range of most other estimates. [emphasis added]

...

The actual calculation of the LIMs proceeds as follows: (i) for each family determine 'adjusted family size' whereby the first adult is counted as one person and each additional adult as .4 of a person, and each child (less than 16 years of age) as .3 of a person (except in a family of one adult and children only where the first child is counted as .4 of a person")....¹⁸

The reader will note the absence of any reference to "econometric" evidence or empirical research of any kind in the Statistics Canada description of the 40/30 equivalence scale. The DOJ stated that these values (40 and 30) are in the range of other estimates but no further information is offered on this, including whether the other estimates had any empirical support. Indeed, the phrase "conspicuously arbitrary choice" stands out in contrast. The 40/30 scale appears to have been an arbitrary choice with no direct econometric evidence underpinning it.¹⁹

In a 2006 article, law professor Rollie Thompson draws attention to this point. He states "...For some time, we were all left with the impression that these "table amounts" were based upon "economic studies of average spending on children in families at different income levels in Canada"...Many lawyers and judges still believe that such "economic studies of average spending" are the foundation of the table formula...the table formula was constructed around, not

¹⁸ Statistics Canada, *Low Income Measures (LIMs)*, 1993, December 1994, p.1,2.

¹⁹ It is important to note here that the DOJ specifically references the Statistics Canada Low Income Measure 40/30 scale as the scale they have chosen. They acknowledge that most scales, including the 40/30 scale, have been constructed to derive poverty lines. They do suggest that such scales may be useful at income levels other than the poverty level. They state that "...when Statistics Canada scales have been estimated at different income levels, the ratios have been relatively stable...". This claim is made with no evidence, reference or citation. (See Note 2, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, p.10, 12).

child expenditure data or models, but living standard "equivalence scales", specifically the Statistics Canada "40/30 Equivalence Scale".²⁰

The current version of the Federal Child Support Guidelines continues the misrepresentation stating that "The amounts in the tables are based on economic studies of average spending on children in families at different income levels in Canada...".²¹ This is simply not true. There are no economic studies underlying the 40/30 equivalence scale and the above quotation by Statistics Canada expressly acknowledges this.

3.2.2 Public Consultations

The second basis of support for the 40/30 equivalence scale was that it was based on public consultations. But what could public consultations possibly contribute to the determination of an appropriate equivalence scale? Equivalence scale research has been the domain of economists, statisticians and other scientists for decades. The topic involves a reasonably high level of complexity and a fair level of expertise is required to use equivalence scales intelligently. It is accordingly very surprising that the DOJ would consider public consultations as relevant to the determination of an appropriate equivalence scale.

What is clear and easily understandable is that a higher equivalence scale will result in higher table amounts for child support. Compared to other scales they could have used, the 40/30 scale was at the top end of the range.²² Even a cursory reading of the various research documents leading up to the implementation of the Guidelines in 1997 shows a clear desire by DOJ to make the "awards" higher and the selection of the 40/30 scale (as opposed to the different equivalence scales developed by economists engaged by the FLC specifically for this exercise) clearly fit with that strategy.²³ For example, the DOJ Consultants stated that: "...The 40/30 scale has the further advantage of generating higher estimates of children's income needs than most of the other scales considered. This results in higher child support awards".²⁴

²⁰ D.A. Rollie Thompson, *The Chemistry of Support: The Interaction of Child and Spousal Support*, [2006] 25 C.F.L.Q., 251, p.261.

²¹ *Federal Child Support Guidelines*, SOR/97-175, p.23, Note 5.

²² In their comparison table of equivalence scales (see Note 2, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, p.11), the 40/30 scale is the highest one listed if the implicit scale for social assistance is excluded because, as the DOJ itself acknowledges in a footnote, it is not a true "equivalence" and is therefore not comparable.

²³ It is not hard to find references to this central objective. For example, see Note 7, *the Construction and Implementation of Child Support Guidelines*, p.xi where the DOJ Consultants state "...Another goal has been to not just standardize awards, but also to increase their average amounts...". And as early as 1991 in the FLC *Child Support: Discussion Paper*, there were multiple references to "inadequacy of awards" (p.1, 4) and "one of the major problems with the present method of determining child support is that the amounts required to meet children's actual needs are generally underestimated" (p.9).

²⁴ See Note 2, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, p.13.

3.3 Was the 40/30 Scale a Reasonable Choice?

The blanket application of the 40/30 scale (or any scale) across-the-board is simply not reasonable. The economic evidence that is available clearly shows, for example, that older children cost considerably more than younger children.²⁵ As well, higher income families spend a lower proportion of their disposable income in every region of Canada and presumably tend to save more.²⁶

The evidence points towards the 40/30 scale not being a reasonable choice. For instance, in 1991, in his work for the FLC, Browning developed a scale designed to be applied to middle income, intact families living in Ontario only. Browning specifically rejected the idea that the same scale could be applied across-the-board at all levels of income. However, if we take the approximate averages (for the various family situations considered by Browning), his "20/10"²⁷ scale means that the first child in an intact family costs an additional 20% of the two parents and the second child, about 10% of the two parents. Browning does not include anything to tell us how much he thinks the second adult adds to costs compared to the first in his scale (his scale was determined just for the children), but if we apply the 40% addition for the second adult (based on the 40/30 scale), then this 'hybrid' scale becomes 28/14 in a single parent situation.²⁸

In addition, in 1993, the DOJ Consultants' preferred expenditure model for the estimate of child costs based on a *single parent family* generated the following equivalence scale: 25/13/15.²⁹ This is sharply different than the ultimate choice of the 40/30 (and a further 30 for each extra child) scale.

While it may be possible that a young person in their late teens might increase costs by 40% (over the costs of a single adult), especially in a low income family, it would be hard to believe that a 2 or 3 year old child in any family, but especially in an affluent family, would do so (excluding daycare costs which are expressly categorized as an "extraordinary" cost under s.7 of the Guidelines).

In a 1995 paper for the FLC, the DOJ Consultants display a variety of equivalence scales relevant to single parents drawn from different approaches or assumptions.³⁰ The majority of the scales have between 20% to 35% for the first child and about 15% to 25% for additional

²⁵ All of the DOJ's early background research showed this pattern, without exception. The best summary of this research is contained in *The Financial Implications of Child Support Guidelines: Research Report*, (see Note 1, Table 9, p.37).

²⁶ *Ibid*, Table 6, p.27.

²⁷ Browning's "20/10" scale is his own approximation of the estimates he provides in his Table 3.10.1 and these are for 2 parent families. See Note 14, *Measuring the Costs of Children in Canada: A Practical Guide – Phase I*, p.58.

²⁸ So, if the children's costs (20/10) are additions to the cost of *both* parents in the intact family case, then the hybrid (for the single parent case) should be 20% of 1.4 (.28) for the first child and 10% (or .14) for the second child – because the single parent is counted as 1.4 (the combination of the two parents in the Browning intact family case).

²⁹ See Note 7, *The Construction and Implementation of Child Support Guidelines*, p.21 and 23.

³⁰ See Note 2, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, p.11.

children. At the high end of the range is the 40/30 scale used in the construction of Statistics Canada's Low Income Measure.

3.4 Effect of Using Different Equivalence Scales

To get some sense of the difference the scale makes to the ultimate child support amounts see Exhibit 1 below. It displays a number of examples, working through the Formula, showing how much more a NCP pays with the 40/30 scale than they would with a 30/20 scale.

Exhibit 1: Calculating the Guidelines Formula Using 40/30 and 30/20 Equivalency Scales

Assumed Income Level	Annual Cumulative Table Amounts For Child Support For 1 or 2 Child (Children) Based on 40/30 scale vs. 30/20 scale							
	40/30		30/20		40/30 - 30/20		30/20 - 40/30	
	40/30 (1 child)	40/30 (2 children)	30/20 (1 child)	30/20 (2 children)	%Decrease (1 child)	%Decrease (2 children)	% Over Pay (1 child)	% Over Pay (2 children)
\$ 30,000	2,880	5,153	1,945	3,614	32.5%	29.9%	48.1%	42.6%
\$ 50,000	5,402	8,913	3,983	6,582	26.3%	26.2%	35.6%	35.4%
\$ 70,000	7,665	12,448	5,747	9,303	25.0%	25.3%	33.4%	33.8%
\$ 110,000	11,498	18,456	8,730	13,919	24.1%	24.6%	31.7%	32.6%

Notes on Exhibit 1:

1. Assumed 2010 Ontario Tax Regime.
2. All government benefits that are ignored in the CSG Formula are also ignored here.

While the numbers in this Exhibit are self explanatory, some differences are worth emphasizing. In comparison to the 30/20 scale (which was a rough average of the scales under consideration by the DOJ), the 40/30 scale generates a payment as much as 48% more for low-income NCP's with one child. It was 43% more for the same low-income NCP with 2 children. The additional payment for other NCP incomes averages about 33%. These are not trivial differences and they are due solely to the choice of equivalence scale.

3.5 Why Use An Equivalence Scale in Any Case?

A layperson might think that equivalence scales simply represent the extra cost, for example, of adding a child to a household. However, this is not quite what an equivalence scale does.

It is important to understand that an equivalence scale estimates the amount of extra spending needed to keep the household equally well-off when they add that extra person. The DOJ 1997 *Technical Report* explaining the Guidelines expresses it this way: "...The values in the equivalence scale are the multipliers required to determine the level of income a larger household

needs in order to be as well-off as the household of a single adult".³¹ This is where the term "equivalence" is relevant. This is a very important distinction.

An example might help clarify. When they have their first child, new parents are likely to modify the way they spend both their money and time. They may, for example, reduce spending on outside entertainment (bars, restaurants, theatres, concerts, etc.) in favour of spending more time at home with the child. They may also reduce personal spending on clothing, recreation, and travel in favour of activities and expenditures relating to the child and the home. These substitutions are natural ways in which parents adjust their own priorities when they have children. An equivalence scale theoretically allows parents to maintain pre-child spending and add on the costs of the child even though they are unlikely to have the time or inclination to devote to both.

Another issue with an equivalence scale is that it does not take account of any government benefits that may exist which effectively reduce the cost of some portion of a family's budget. For instance, a municipality may provide subsidies for low income housing. These subsidies may reduce the cost of a component of the budget that the equivalence scale, however crudely, is factoring in at full cost. This same comment would apply to any activity-based subsidies or credits, such as for sporting activities.

In summary, there are legitimate concerns about the validity of the equivalence scale approach and its application to the determination of the cost of children.

Notably, Quebec, in developing its new child support system, decided not to go with an equivalence scale to account for children's costs.³²

3.6 The Fixed Percentage Issue

The Formula results in the NCPs paying a roughly constant proportion of their net income in child support. Indeed, the Formula is referred to as the Revised *Fixed* Percentage.³³ Since the Formula assumes that both parents' pre-tax incomes are the same, then if we ignore taxes, or assume taxes are the same for the CP as the NCP, the amount of child support paid would be a fixed percent of the NCP's net income. The fixed percentage table amount for one child would literally be $.4/2.4$ or $.167$ (16.7%). For two children, the amount generated by the formula is $.7/2.7$ or $.259$ (or 25.9%) of NCP net income.³⁴

³¹ See Note 3, *Formula for the Table Amounts Contained in the Child Support Guidelines: A Technical Report*, p.3.

³² *Modèle de fixation des pensions alimentaires à l'égard des enfants* (Exhibits "A" and "B" (English Translation) to the Affidavit of Lucien Khodeir dated August 18, 2011, submitted in this matter.

³³ See Note 2, *Report and Recommendations on Child Support*, p.A-11.

³⁴ The denominators here are simply the sum of the equivalence values for the number of people in the family *plus one*, as per the Formula (see ss. 2.2, 2.4 above and especially, Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.4). For one child the calculation is $.4/(1+1+.4)=16.7\%$ and for two children is $(.4+.3)/(1+1+.3+.4)=25.9\%$.

Now, taking taxes into consideration, the difference between the two net incomes arising from the same pre-tax income is greater at lower income levels but, as incomes rise, the difference gets smaller as the child tax amount for the CP becomes proportionately less important. This means that child support, as a proportion of the NCP's after-tax income asymptotically approaches but never quite reaches those percentages (i.e., the 16.7% and 25.9%).

This relationship is confirmed in Exhibit 4 on p.45 below. This graph shows the actual table amounts that the NCP pays as a percentage of NCP after-tax income. We clearly see that, as the NCP's after-tax income rises, that proportion approaches the percentages in the paragraph above. At very high incomes, tax and other credits become proportionately insignificant and we should (and do) observe a virtually fixed proportional relationship between child support amounts and the after-tax income of the payer.

The notion that parents spend a roughly constant proportion of income at all income levels on their children seems to have first appeared in the FLC research in the 1993 report.³⁵ In their discussion of the possible relationship between child costs and parent's income, the DOJ is very clear: "...In reality, child costs are typically found to be very close to proportional...".³⁶ In support of this claim, they point to two things: (1) the FLC commissioned research; and (2) the results of a Wisconsin survey. Both are discussed below, in subsections 3.6.2 and 3.6.3.

3.6.1 Where Did the Fixed Percentage Idea Come From?

Before discussing the stated underpinnings of the fixed percentage, it is worth noting that the idea that child support should comprise a fixed percentage of a NCP's income appears to have originated with the academic Irwin Garfinkel. Garfinkel was a leading advocate of the "fixed-percentage-of-income" approach to child costs and to child support payments. However, even Garfinkel acknowledged that there was little evidence of a fixed percentage relationship. Rather, he viewed it as policy choice about how child costs and child support should be related to parental income and was a question of one's moral values.³⁷ He likens a "declining percentage" approach to a "regressive tax" and makes the point that, "...My values are such that a proportional child support standard is more appealing than one which is regressive".³⁸

Garfinkel was referred to several times in the various reports of the DOJ.³⁹ In the end, the DOJ appears to have adopted a "Garfinkel-style" child support scheme in Canada.

³⁵ See Note 7, *The Construction and Implementation of Child Support Guidelines*, p.35.

³⁶ *Ibid*, p.38.

³⁷ Garfinkel, I., *Assuring Child Support: An Extension of Social Security; Chapter 5 Determining A Child Support Standard*, 1992, p.92.

³⁸ *Ibid*, p.100.

³⁹ For example, see Note 7, *The Construction and Implementation of Child Support Guidelines*, p.38.

3.6.2 Do the Simulations Provide Support for Constant Proportions?

The first argument in support of the "constant proportion" assumption is that simulations conducted in the previous year for the FLC by the DOJ Consultants⁴⁰ using various approaches (to determining child support awards) showed "very similar results".⁴¹

There are a number of concerns with this evidence. For one thing, the results are, in fact, not that similar, but depend, to a great extent, on the economic model (and its underlying assumptions) used. Also the report making this claim shows only "selected" scenarios and not the full extent of the research outcomes.⁴²

I will review some of the results of the DOJ Consultants' analyses more closely, but, for the purposes of this Report, it is not important to understand the various approaches used and the differences between them. All were subsequently abandoned by the DOJ in any case.

In the May, 1992 "Financial Implications" report, the DOJ shows the percentage of income intact families spend on children at different income levels and under different approaches to estimating the cost of a child.⁴³ Each of these approaches incorporates different assumptions and uses different methodologies in the estimation of child costs. The range of incomes used was fairly small (\$20,000 to \$70,000). Even in the 1990s, there were many households with incomes over \$70,000 (and many under \$20,000). The ultimate results using these different approaches are not consistent with each other. Rather, they are highly variable, and are sometimes contrary to reasonable expectations about spending behaviour (for example, the rather odd finding using the Blackorby-Donaldson approach that additional children cost more than earlier children).⁴⁴

In their summary comparison chart using only gross (pre-tax) incomes,⁴⁵ the DOJ reveals that, for example, for a child 12-18, using one model (Extended Engel), child spending is 11.4% of gross income for lower income families (income = \$20,000) and 9.5% of gross income for higher income families (income = \$70,000). Using another (the "Adult Goods" approach), the differential is much larger (19.2% vs. 10.6%). Yet another (the Consumption approach) produced a percentage that is quite flat at about 9.3-9.5%. The Blackorby-Donaldson approach also reveals a fairly constant outcome, at least for that age group, but at about 18%.

So, we have four quite different models to determine spending on children. Based on simulations using those different models, two of the approaches in the study show that the proportion of gross income spent on children declines as income rises. Another two show that the percentage is fairly flat. But for the two that show that parents spend a roughly constant

⁴⁰ See Note 1, *The Financial Implications of Child Support Guidelines: Research Report*, Appendix 4.

⁴¹ See Note 7, *The Construction and Implementation of Child Support Guidelines*, p.38.

⁴² See Note 1, *The Financial Implications of Child Support Guidelines: Research Report*, pp.94, Appendix 1 (Results of Selected Scenarios).

⁴³ *Ibid*, p.38. For the purpose of this Report, it is not important to understand the various approaches used and the differences between them. All were subsequently abandoned by the DOJ in any case.

⁴⁴ *Ibid*, Table 5, p.23.

⁴⁵ *Ibid*, p.37.

percentage on children (over a fairly limited range of incomes), that "constant" percentage is dramatically different with each approach - in fact one is double the other. *In sum, approaches that produce starkly different results for the same relationship cannot be said to be supportive of each other as claimed by the DOJ.*

As mentioned, all of these calculations are done for gross rather than after-tax income. It would be very difficult to infer what the corresponding values would be on an after-tax basis. Indeed, the only evidence they present relating to after-tax income is the Adult Goods model analysis.⁴⁶ The Adults Goods Model shows that spending on children (on both a pre-tax and after-tax basis) declines as a proportion of income as income rises. Specifically, the Adult Goods model suggests that, in Ontario, 16% of family after-tax income is spent on one child at the lower income and 13% at the higher income. This pattern is repeated, without exception, in every province.

The DOJ acknowledges this result by stating: "...As has been found in studies using similar methodologies, upper income families spend more dollars but a smaller proportion of income than lower income families...".⁴⁷ And, they state the same idea another way by acknowledging that: "...wealthier families spend more on their children than do poorer families, *though not necessarily proportionately more...*" [emphasis added].⁴⁸ Considering these statements, it is extremely surprising that the DOJ later expressed the view that this same research supported a proportional relationship between spending on children and parental income.

Having started with the claim that children's costs vary in proportion to parent's incomes and asserting that their own simulations are evidence for this constant relationship, they then make the strange admission that: "...to the degree that they *do* vary, it is not due to any greater fairness in the sharing of a given set of child costs, but because estimated child costs depend on family income in a nonlinear fashion...".⁴⁹ This statement directly contradicts their central claim which is that child costs and parental income *do not vary* but have a constant relationship, i.e., that parents, regardless of income level tend to spend the same proportion of their income on their children.

The assertion of proportionality is a fundamental principle upon which the child support Formula rests (i.e., again, that parents spend a constant, fixed percentage of their income on their children regardless of what that parent's income level may be). Presumably this provided some support for the FLC/DOJ decision to have the child support amounts depend on NCP income only. If the percentage amount spent on children changes at different total income levels, then the income of both parents would be needed to determine the relevant percentage. However, proportionality is simply not supported by the FLC/DOJ (commissioned) or any other research.

If the developers of the Guidelines believed that child costs were a fixed proportion of parental income (and they clearly state that they did, although they also provide numerous contradictory statements, as noted above), what percentage did they have in mind that costs were proportional

⁴⁶ *Ibid*, Table 6, p.27.

⁴⁷ *Ibid*, p.29.

⁴⁸ *Ibid*, p.36, #3.

⁴⁹ See Note 7, *The Construction and Implementation of Child Support Guidelines*, p.38.

at? They never say. And they never make any connection between the proportionality number generated by the Formula and any of the research work that they did or that they referenced.

Martin Browning⁵⁰ looked at the question of whether equivalence scales were invariant with respect to income (i.e., that the costs of children would be proportional to parent's income). He cites a study by Blundell and Lewbel (1990) that tested and strongly rejected this assumption (of constant proportions). Browning concludes that: "...we have no particular reason to suppose that adult equivalence scales ought to be independent of income...(or, the same thing, that the costs of children should be proportional to income)". Indeed, he finds it: "...*a priori* more plausible that the adult equivalence of a child decreases with the income of the household".⁵¹ This clearly suggests that different equivalence scales should be used at different income levels.

In the end, it is hard to escape the conclusion that, like Garfinkel, the FLC had a preconceived idea that child costs (and child support) *should be* proportional to parent's income and it was that perspective (rather than any real evidence) that drove the process.

3.6.3 The 1985 Wisconsin Public Opinion Survey

The second point of support of the DOJ Consultants' fixed percentage premise is that a public opinion survey conducted in Wisconsin (in 1985) regarding people's subjective notions of what child support payments should be "...were broadly consistent with the fixed percentages system...".⁵²

A year before the survey was conducted, the state of Wisconsin had already implemented a new "Child Support Assurance System"⁵³ which obliged non-custodial parents to pay a simple percentage of gross income in child support based on the number of children. It was in this environment that the opinion survey was conducted. The survey was run by the Institute for Research on Poverty as an add-on part of their normal survey. It was conducted by telephone in a random sample of just over 1000 households. 67% of the survey respondents were female. The questions asked of respondents were preceded by short vignettes to set up the question.

The consultant's use of the Wisconsin survey as evidence supporting a constant relationship between parent's income and child costs is inherently weak. If a public opinion survey could add anything at all to the question of child costs, why didn't the FLC/DOJ do such a survey in Canada?

Interestingly, the DOJ (in 1990) had conducted its own survey about satisfaction levels with the then existing, pre-Guidelines, (Canadian) child support system. That survey found that a large

⁵⁰ See Note 14, *Measuring the Costs of Children in Canada: A Practical Guide – Phase 1*, p.48.

⁵¹ *Ibid*, p.49.

⁵² *Ibid*, p.38.

⁵³ R. Corbett, I. Garfinkel, N. Cate, *Public Opinion About a Child Support Assurance System*, Social Service Review (University of Chicago), 1988, p.632-648.

majority (71%) of custodial parents were satisfied with the amounts of child support they were receiving when first asked.⁵⁴

3.6.4 A Caution Regarding Evidence Drawn From Income and Spending Surveys

Much of the empirical evidence relating to the cost of children, including the evidence done for the DOJ in the process of designing a new child support system, draws data from income and spending databases. In Canada, the primary sources of this data are the Statistics Canada Family Expenditure Survey (FAMEX) and its replacement, the Survey of Household Spending (SHS). These surveys ask a random sample of respondents specific questions about their incomes and request a fairly detailed list of expenditures over a given period. In the course of other research, I have had occasion to question the reliability of such data.⁵⁵ Survey respondents do not always provide accurate information because they may not remember or because they may regard the survey as an imposition and wish to answer quickly and get it over with. As well, people do not always tell the truth, especially when it comes to personal information or if they have something they wish to hide. Despite the best efforts of Canada's statistics gathering agency, the data that is used in the estimations is not without flaws.⁵⁶

In addition to data quality concerns, researchers have used dramatically different assumptions in constructing their models and, as we have seen, these different models can lead to widely divergent results of estimates *of the same question*. It is admittedly difficult to extract, from a spending database, information that would allow us to separate out the cost of a child from other family spending. For this reason, expert analysis on the costs of raising children (using budget studies) can be a useful alternative and should not be ignored (as it was by the FLC).

3.6.5 Economic Theory Relating to Spending on Children

Another factor that weighs against claims that spending on children is a constant proportion of income is the recognized relationship between consumption and disposable income. This relationship is very well-established in economic literature, both theoretical and empirical. This relationship establishes that consumption spending, as a percentage of income, decreases as income rises.

Exhibit 2 below displays some relevant information (which is subject to the same limitations as noted in subsection 3.6.4 above) from the Statistics Canada 2008 household spending database on patterns of consumption by after-tax income levels. The first substantive column shows that, for all households in Canada, overall consumption spending as a proportion of after-tax income declines steadily. By implication, of course, the savings proportion must be likewise increasing. In fact, the ratio of overall consumption spending to after-tax income for households with over \$90,000 income is fully a third less than middle-income households, \$40,000-\$60,000. The

⁵⁴ Department of Justice Canada, *Evaluation of the Divorce Act, Phase II: Monitoring and Evaluation*, May 1990, p.85.

⁵⁵ See, for example, C. Sarlo, *Measuring Poverty in Canada*, Critical Issues Bulletin, Fraser Institute (Vancouver: 2001, p.79); *What is Poverty: Providing Clarity for Canada*, Fraser Institute (Vancouver: 2008, p.20).

⁵⁶ Statistics Canada acknowledges a variety of sampling and non-sampling errors in their surveys. See <http://www.statcan.gc.ca/edu/power-pouvoir/ch6/nse-endaie/5214806-eng.htm>.

same pattern holds if we look only at intact families with a single child. Total consumption is about three-quarters of after-tax income for families with incomes over \$90,000 versus about 1 (or about 100% of after-tax income) for families in the middle range.

Exhibit 2: Patterns of Consumption Spending in Canada - 2008⁵⁷

After-tax Income range	All Households	Intact Parent Families with one child (5-17)	
	Consumption/ Income-after tax ratio	Consumption/ Income-after tax ratio	Spending on Children: Food and Clothing/ Income After-Tax (%)
0-10000	6.44	7.45	59.60
10000-20000	1.24	1.92	11.54
20000-30000	1.13	1.27	9.93
30000-40000	1.02	1.18	8.80
40000-50000	0.97	1.02	6.60
50000-60000	0.91	0.97	5.28
60000-70000	0.87	0.97	5.18
70000-80000	0.86	0.85	4.69
80000-90000	0.82	0.84	3.99
over 90000	0.74	0.76	3.38

Child-specific spending in intact families is elusive and impossible to precisely extract from the spending databases. The only remotely identifiable spending on children in the databases is children's clothing and possibly food. With the latter, the cost assigned to the child could be on the basis of relative caloric requirements. While these two categories are very important components of child-specific spending, there is certainly more than this (such as games, computers, recreation, etc.). However, it is of relevance that these two significant and identifiable categories of child spending also tend to decline as a proportion of income in intact families, as we see on column 4. These percentages decline even more dramatically than consumption spending in general.

3.6.6 Summary Regarding Fixed Percentages

The claim that spending on children is a roughly constant proportion of after-tax income is not supported. It defies economic theory and empirical evidence. It is even contradicted by some statements made by the DOJ Consultants. Expenditures, in general, fall as a proportion of income (more precisely, after-tax income) as income rises. This pattern is well established. There is no compelling reason why spending on children should follow a different pattern. And there is certainly no evidence of a different pattern. Attempting to find reliable evidence of spending patterns from expenditure databases is hampered by the inability to sort out children's expenditures from the family's expenditures which suggests that more attention should be paid to

⁵⁷ Statistics Canada: *Survey of Household Spending (SHS)*, 2008, microdata file and calculations by author; Values calculated for incomes below \$20,000 are less reliable due to very small sample sizes.

expert analysis and budget approaches. However, the evidence that we do have tells us that parents spend a declining percentage of disposable income on their children as income rises, as is implicit with the Quebec Guidelines (discussed in more detail below). There is nothing in the DOJ or FLC research reports that would overturn this conclusion.

Specifically, there is no evidence that any of the equivalence scales employed in the DOJ or FLC research and especially the 40/30 scale, would be valid at all incomes. It appears that the DOJ simply assumed that it would apply universally. The earlier discussion of constant proportions and the evidence presented by Martin Browning seriously undermines the notion that scales can be reliably employed across all income levels.

The result of the fixed percentage approach (with the 40/30 equivalence scale) is that many NCP's pay an inordinately high amount of child support, which worsens as income increases. This conclusion ignores the effects of government benefit programs for children. When they are included, as we see in the next section, the NCP bears a further disproportionate obligation of child maintenance.

SECTION 4

SIGNIFICANT MATTERS IGNORED BY THE GUIDELINES

4.0 Most Government Benefits for Children Are Ignored

The federal and provincial governments provide support for families with children through tax credits, taxable government benefits and non-taxable government benefits. The Guidelines Formula ignores many of these in assessing the means available to a CP for maintaining a child. The failure to include such benefits results in the NCP bearing a disproportionate burden for child support. Ignoring these benefits has a particularly significant impact at lower income levels as this Report demonstrates in Section 7.

Tax credits and benefits specific to children include:

1. Eligible Dependent Credit (“ED”) which is commonly referred to as the equivalent-to-spouse credit;
2. Amount for Children Under 18 Credit (“AC”) which is more commonly referred to as the child tax credit;
3. Certain qualifying child fitness or artistic expenditures;
4. The Working Income Tax Benefit available for low income families;
5. The Universal Child Tax Benefit (“UCCB”) is a taxable benefit for each child under six;
6. The Canada Child Tax Benefit (“CCTB”) is a non-taxable benefit to help eligible families with the cost of raising children under the age of 18 and includes the National Child Benefit Supplement (“NCBS”), which is a non-taxable benefit available for low-income families with children;
7. GST/HST credits are a non-taxable benefit paid to low or modest income families based on their prior year’s earning. The quantum of and eligibility for this credit is impacted by family status and the number of dependents; and
8. The Ontario Child Benefit (OCB) is a non-taxable benefit that is related to the CCTB but funded by the Province of Ontario. Like the CCTB, it is applicable for eligible families with children under the age of 18.

General notes on government credits and benefits:

- Note 1: Most of the above are benefits from the federal government. A variety of benefits are also available from other levels of government and some are summarized in the Kapasi & Associates Chartered Accountants Advisory Report, submitted in this matter. In general, unless it is administered by the Canada Revenue Agency (which some Provincial programs are), it is not considered in this Report. There are also programs at the municipal level of government such as subsidized housing which also

impact on the relative means of the parents and on the net costs of the children paid by the parents, but these are also not covered by this Report.

Note 2: Additional amounts are available in cases where there are infirmities and disabilities. These amounts are not addressed in this Report and they are also ignored by the Guidelines.

Note 3: Government benefits to CP's are based on their taxable income and are never reduced by any child support they receive.

Two of the three benefits that appear on the tax return, the ED and AC, are taken into account in determining the table child support that the NCP pays. However, the UCCB (which is implemented inside the tax system) and all of the government benefit programs for children that are implemented outside the tax system (including the CCTB, NCBS and GST/HST credits) are ignored by the Guidelines. The credits for fitness or artistic expenditures are ignored by the Guidelines except to the extent they are related to a section 7 expense.

The principal program, the Canada Child Tax Benefit (CCTB), provides direct financial assistance to lower and middle income families with children. The current amount of the benefit (for the period July 2011 to June 2012) is \$1,367 per annum for each child under 18 (plus a \$95 per annum supplement for the third and each additional qualified dependent). There is also a National Child Benefit Supplement for lower income families and several other programs which directly or indirectly benefit children. For example, in 2012, a low income custodial parent (for example income of \$20,000) with one child under 6 in Ontario would receive \$6,954 from the various programs (CCTB: \$1,367, NCBS: \$2,118, OCB: \$1,100, GST/HST: \$1,169 UCCB: \$1,200). And this does not include every program that custodial parents are eligible for. The child fitness tax credit, for example, allows parents to reduce taxes if they enrol their children in prescribed activity programs. *However, and this is the important point, none of the amounts described in this paragraph are factored into the Guidelines' Tables resulting in an important source of means available to the CP being ignored in the allocation of child maintenance.*⁵⁸

The framers of the Guidelines have argued that these types of program benefits "...are deemed to be the government's contribution to children and not available as income to the receiving parent...".⁵⁹ But this is not true. First, while most of the ignored amounts are not classified as "income" for tax purposes (by CRA), they are *de facto* tax-free income to the CP. The custodial parent can dispose of these monies, or save them, in any way they see fit without accountability. Second, intact families get to use these monies as part of their overall expenditure budget. But once a separation occurs, somehow these credits/benefits are treated differently. They are ignored. In addition, these benefits will likely be greater than was the case when the family was intact because the CP's income will, in most cases, be lower than the intact family's total income (e.g. CCTB payment is inversely related to family income, as is the net UCCB). Not counting

⁵⁸ Again, except certain activity-specific credits such as the child fitness tax credit are supposed to be taken into account when awarding section 7 expenses.

⁵⁹ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.5.

the government benefits as resources available to the CP fails to acknowledge a significant source of “means” available to the CP.

Since the development of the Guidelines, there appear to have been extensive enhancements to government benefit programs (including the subsequent implementation of the CCTB). The effect of this has been to further distort the stated intention of the Table Amounts and make the results, in many situations, more one-sided. A fairer and more reasonable system would include government benefits in the Formula and the payments would be revised with changes in such benefits.

4.1 Costs to the NCP are Ignored and the CP is Assumed to Incur Costs as if they have the Child 100% of the Time

It is important to recall that unless a NCP has a right of access to, or physical custody of the child for at least 40% of the time over the course of a year, the Guidelines do not recognize that the NCP incurs any child related costs.⁶⁰

However, many NCP’s try to remain active in their children's lives within any restrictions placed on them relating to access. There are clearly costs to doing so and there will correspondingly be cost savings to the CP. Suppose, for example, that the NCP has access to their child 20%-35% of the time. During those visits, the NCP would need almost all of the same durable goods (beds, dressers, desks, bicycles, space for the child, games, toys, educational aids, and so on) as the CP. These would be the "fixed" costs that are incurred if the child lives with a parent for any appreciable period of time. To the extent that some of the housing costs are indeed incremental for the child, such as a parent needing somewhat more space to accommodate their child, these incremental costs would have to be included. Generally, however, most categories of housing costs including heat, taxes, phone and cable TV are costs to the parents and should not be attributed to children. There may be some costs, such as furnishings, electricity and maintenance, part of which can be attributable to children. The critical point here is that the NCP must have housing for the time spent with the children. If we are going to assign a cost of housing as a part of child support, it must be applied consistently to both the NCP and the CP.

The variable costs, food, for example, but also some entertainment and personal care items, would be related to the amount of time spent with the parent. So, for example, if we assume that the NCP has the children one-third of the time, both parents would have approximately the same fixed costs but the NCP would have about one-half of the variable costs of the CP (about one-third of the total for the NCP and about two-thirds for the CP).

Finally, there would be a category of other costs that are generally assumed to be covered entirely by the CP as having the majority of time with the children and as recipient of the child support monies. Clothing could be the main item here but there may be other things like school fees, recreational fees, etc.

⁶⁰ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, at p.2, and s.9 of the *Federal Child Support Guidelines*.

It is obvious that a NCP with significant custody time would incur child related costs. There are studies that have looked at these costs. For example, a budget standard estimate⁶¹ by Henman and Mitchell (2001) using 1997 Australian data, determined that a NCP with 20% access would need to spend approximately \$3,000 per annum to cover the costs of contact at a modest but adequate level for a 6 year old child. In a follow-up study, using 2004 data, Henman et al. (2007) confirmed the earlier findings and dealt specifically with the *pro rata* costs to the NCP taking contact time into account, which they do in the Australian system. He found that the NCP with 20% contact incurs between 28% and 38% of the total annual costs of raising a child.⁶²

The costs borne by the NCP are ignored by the CSG's Formula. The CP is affected because, using our example (one-third / two thirds for modest-income situations) the variable costs to the CP would be correspondingly reduced for the roughly 33% access time with the NCP. To illustrate, suppose that \$2,000 per year is fixed. Both parents pay this amount in terms of 'durables' for the child and the NCP pays \$1,500 in variable costs (like food, entertainment, personal care, etc.) for their one-third contact, then the CP's costs are reduced by the \$1,500. Instead of paying the full \$4,500 for the year for these variable items as assumed in the Guidelines, the CP pays only \$3,000. The CP's costs are clearly reduced and not in a trivial way. The cost to the NCP - the fixed cost of \$2,000 and the variable cost of \$1,500 is substantial at modest levels of income (and will be higher at higher income levels). Yet the NCP is still paying the full (Table Amount) of child support as if they did not have their child at all. And the CP receives the full amount of the child support payment as if there was no reduction in their costs due to the amount of the costs covered by the NCP (the variable cost of \$1,500 in this example).

The Formula simply ignores both the costs to the NCP and the savings to the CP. This situation results in the NCP bearing a disproportionate amount of the child costs and violates the Guidelines' and Formula's stated goal of equity. It would have been a relatively simple matter to have included at least some adjustment for a NCP's child related costs in the Formula, as some other jurisdictions do (Quebec and Australia for example). By ignoring the genuine costs of NCP access or custody, the Federal Child Support Guidelines constitute an overpayment by the NCP. Again, the Guidelines assume that, below 40% contact, the NCP has no costs and the CP has all of the costs of the children. This is clearly not the case. Subsection 7.6 below has a number of examples of the impact of ignoring the costs involved with the NCP's access or custody time.

4.2 Intended Coverage and Section 7 Add-Ons

Related to the choice of the 40/30 equivalency scale for the Formula is the question of what, ultimately, was intended to be covered by the resulting child support awards? This issue was a matter of some discussion by the FLC and DOJ Consultants, especially relating to child care costs.⁶³ Their original preference had been to develop guidelines which treated child care costs separately. However, "...the economic models which allowed us to treat child care costs

⁶¹ This is simply a determination of the cost of a child using expert analysis based on actual budget costs.

⁶² P. Henman, *Occasional Paper #18: Updated costs of Children Using Australian Budget Standards*, Australian Government, Ministerial Taskforce on Child Support, 2007, p.24.

⁶³ See, for example, Note 2, *Report and Recommendations on Child Support*, p.10-12; and Note 7, *The Construction and Implementation of Child Support Guidelines*, p.97.

separately have not been retained...this research now suggests that the 40/30 scale deals appropriately with the child care costs issue...".⁶⁴ Further, they list as the first advantage of the 40/30 scale the fact that: "The use of an equivalence scale which includes child care costs provides more simplicity in the determination of child support".⁶⁵ As well, the whole notion of an equivalency scale is that the costs it generates at different income levels are supposed to be all inclusive.⁶⁶ Therefore, based on the work and assumptions by the DOJ and FLC, there should not have had any "add-on" expenses in the child support system.

However, just two years later, the Federal Child Support Guidelines⁶⁷ included section 7 "add-ons" for extraordinary expenses and the very first add-on listed was child care expenses. But two years earlier, the FLC made it very clear that, by using the 40/30 scale, the child care costs would already be covered within the Table Amounts. Indeed, at that time, they considered it a disadvantage that the Formula (based on the 40/30 scale) included a child care amount "...*even where no child care costs are being incurred*" [emphasis added].⁶⁸ In the end, they decided that no adjustment needed to be made even if the CP has no child care costs (say, for example, when the children are old enough). But again, this is all prior to the actual implementation of the Guidelines.

The idea for section 7 expenses came very late to the process. Indeed, the notion that extraordinary costs should be added on to the Table Amounts was never discussed and never justified in any of the official DOJ or FLC documents leading up to the Guidelines.

The 40/30 scale was a "high-end" choice even as an all-inclusive method of accounting for children's costs. However, its all-inclusive character was not retained and section 7 expenses were permitted to be added on. In effect, with the section 7 expenses, the 40/30 equivalence scale has become something even higher than 40/30 - perhaps 60/50 in some cases. Accordingly, the disproportionate sharing of child related costs, which already favours the CP is further exacerbated by the Guidelines and the section 7 add-ons through a double accounting of some expenses.

In summary, while it was originally clear that all child costs were to be covered by the Table Amounts (generated using the 40/30 scale), we have ended up (somehow and without any discussion or support) with section 7 add-on expenses. We don't know whether additional section 7 payments can be justified in any particular case because there is no accountability for the expenditure of Table Amounts by the CP and, especially for higher income payers, Table support appears to be sufficient for most if not all of the expenses that can reasonably be attributed to the children. Nevertheless, even in such cases, the Guidelines give the CP the right

⁶⁴ *Ibid, Report and Recommendations on Child Support*, p.10.

⁶⁵ *Ibid*, p.11.

⁶⁶ *Ibid*, p.10.

⁶⁷ *Federal Child Support Guidelines*, SOR/97-175.

⁶⁸ See for example Note 2, *Report and Recommendations on Child Support*, p.11, where the FLC definitively stated that the simplicity of the chosen equivalence scale, which included child care costs, was the most beneficial approach as it would provide certainty for the financial planning of custodial parents and avoid the need for variation of support orders and save significant legal fees for both parties.

to apply for additional amounts.⁶⁹ Conversely, the NCP has no right to apply for a reduction if Table Amounts are excessive.⁷⁰ The system is accordingly asymmetrical in its treatment of the two parents.

Even if a section 7 expense could be justified, there is still the issue of which parent is to pay for it. This issue is addressed in subsection 7.4 below.

4.3 Internal DOJ/FLC Confusion

While it is reasonable to assume that spending on children will tend to vary with parental income (although not proportionately so), the “cost” of children needs to be defined and measured, at least within a small range. This is important, primarily, in order to help determine whether the amount of child support is, in fact, appropriate. It is also important because it allows us to assess the appropriateness of payments when components of the Guidelines interact (as for example, is the case with section 7 expenses and table amounts) and when the Guidelines interact with other programs such as spousal support, and there are combined payments. As we will see, what may appear to be fully separate programs or components of the same program (like Table support and section 7 expenses) in some cases are linked and impact on each other. However, in the development and application of the child support system in Canada, there does not appear to be any such clarity and, indeed, there appears to be a lot of confusion.

Some examples of this confusion include:

1. In DOJ correspondence relating to concerns about NCP’s being given no credit for child costs in the Guidelines, the DOJ cites the CP’s “diminished career advancement opportunities” as a “hidden” cost which offsets the non-recognition of NCP child costs.⁷¹ Yet, in all of the reports and analysis leading up to the Guidelines, there was never any discussion of any kind of “balancing” or “trade-off” that was to be a part of the Table Amounts. The fact that the DOJ mentions this, in the context of an inquiry about “child support”, suggests some confusion by the DOJ about the role that child support plays – as distinct from spousal support.⁷²
2. In 1995, the DOJ emphatically stated that their child support Table Amounts, based on the 40/30 equivalence scale, covered all the child’s costs. The DOJ’s Spousal Support Advisory Guidelines (2008) state that “...*Under the Guidelines, only the direct costs of child-rearing—and not even all of them—are included in child support...*” [emphasis

⁶⁹ Report of Stacie Glazman, family law expert, to be submitted in this matter (at the time of finalization of this Report a draft of the Glazman report was reviewed).

⁷⁰ The Guidelines have no offsetting provision that lists categories of expenditures which allow the Table Amount to be reduced, if less than a certain amount is spent on those categories.

⁷¹ Affidavit of Alar Soever dated March 8, 2012, submitted in this matter.

⁷² It is noteworthy that having children qualifies a CP for spousal support under the SSAG’s even if the marriage is very short so it would appear the diminished career opportunity are already addressed here (see section 5 below).

added].⁷³ This clearly suggests that it is the view of the authors that the Table Amounts do not even cover the direct costs of child rearing and that they are, essentially, below the bare minimum. This statement is made without any evidence or supporting documentation and is in complete contradiction of the views of the DOJ Consultants and FLC as to the scope of the Table Amounts.

3. In the development of the Guidelines, the DOJ Consultants clearly articulated the view that, because the living standard of the child was inextricably tied to that of the custodial parent, child support should be regarded as assisting more than just the child. It can, in some sense, be thought of as “family support”.⁷⁴ **This is a clear admission that the “child support guidelines” really involves more than just child support.** This is confusing since the intent and focus of all the efforts of the DOJ committee was to construct a child support scheme. And this was before the DOJ decided government benefits and the access costs of the NCP should be ignored or that there should be section 7’s. These three alterations substantially improved the Formula from the point of view of the CP, thus increasing the extent to which the payment is for more than just child costs.
4. The Spousal Support Advisory Guidelines simply assume the CP spends an amount on the children equal to the child support (including section 7’s) paid by the NCP and assume the CP spends the Table Amount that would apply to them, plus their “share” (based on the CP’s pre-tax income compared to the NCP’s pre-tax income) of section 7 expenses. This assumed total CP expenditure can, in some cases, be less than the amount of the government benefits received by the CP (which benefits, again, are ignored in the Child Support Guidelines).⁷⁵

The approach to assuming what is spent on the children employed by the SSAG’s is in contrast to the approach used by the Guidelines. The latter (based on the 40/30 equivalency scale) uses a straight percentage of total CP resources including income, government benefits and child support received to determine the amount spent on the children. The former (the SSAG’s) just uses the sum of the two parents Table Amounts (actual for the NCP and “notional” for the CP) as the amount spent. This means two important and interrelated federal government programs (specifically Department of Justice developed programs) have totally different ways of determining how much is spent on the children. Exhibit 3 below illustrates the difference in these approaches and how the difference affects the outcome.

⁷³ C. Rogerson and R. Thompson, *Spousal Support Advisory Guidelines*, Department of Justice Canada, July 2008, p.73.

⁷⁴ See Note 7, *The Construction and Implementation of Child Support Guidelines*, p.25-30, 104.

⁷⁵ See Note 73, *Spousal Support Advisory Guidelines*, p.76, s.8.3.1.

Exhibit 3: Comparison of Assumed Child Care Costs: Federal 40/30 Equivalency Formula vs. SSAG's

**CP Earns \$25,000 and NCP Earns \$40,000
Both Ontario Residents with 2 Children Age 4 and 9**

40/30 Formula		
	CP	NCP
Earnings	25,000	40,000
UCCB	1,200	-
Table Income	26,200	40,000
Taxes	172	5,921
CPP, EI	1,497	2,499
Total Taxes (incl. CPP, EI)	1,600	8,420
After-tax Income	24,531	31,580
Government Benefits not included in taxable income (GST, CCTB, NCBS)	9,711	6
<i>After-Tax and After Benefit Income</i>	34,242	31,586
Guidelines Table Award	7,212	(7,212)
After-tax, Benefits and After Award Income	41,454	24,374
Assumed Direct Expenditures on Children (41.2% of \$41,454) per 40/30 (See Note 1 below)	17,071	
Per SSAG's		
	CP	NCP
Guidelines Income	25,000	40,000
Spousal Support	-	-
NCP Child Support Assumed to be Spent on Children	-	(7,212)
Additional Notional Table Amount – CP Assumed to Spend on Children	(4,500)	-
Taxes and Deductions	(1,669)	(8,420)
Benefits and Credits (Includes UCCB)	10,911	6
INDI (\$)	29,742	24,374
Total Amount Assumed to be Spent on Children per SSAG's	11,712	

Note 1: Under the 40/30 equivalence scale, a family consisting of one adult and two children will have an AEU of 1.7. As the first child has an AEU of .4 and the second child has an AEU of .3, the proportion of costs assumed to be spent on the children is $.7/1.7$ or 41.2%.

4.4 The Cost of Children at Different Ages is Ignored

While there is no one "right" number reflecting the cost of children in all cases, as explained earlier (especially Section 3), economists generally regard children as more expensive as they get older if we exclude day care and special needs. Other things being equal, an older child is more expensive as they typically require more in terms of food, clothing, entertainment and other activities. Anecdotally, parents are aware that 16 year olds cost more than 2 year olds (not including daycare costs).⁷⁶

There was ample evidence before the DOJ/FLC of this difference in costs. Virtually every study (that considered the child's age) done by the FLC in the lead up to the Guidelines shows this positive relationship between age and costs, when daycare is excluded. Examples include Browning;⁷⁷ Douthitt and Fedyk (in every region of Canada), Tables 1- 90⁷⁸; and especially, the 1992 FLC report: *The Financial Implications of Child Support Guidelines*.⁷⁹

In the latter FLC study, equivalence scales were estimated using the "Extended Engel" approach for intact families in the mid-1980's.⁸⁰ A 3 year old child added 7% to the couple's costs; a 9 year old added 9%; and a 15 year old added 13%. The difference between the additional costs of the 15 year old and the 3 year old was 86%.⁸¹ Further, that same research paper compares the actual estimated costs of children using various approaches. The Extended Engel approach for family income of \$40,000 has costs of children in the 12-18 age range 116% higher than children in the 0-6 age range. Browning preferred another approach and concluded child costs were 126% higher for children in the 12-18 range than in the 0-6 range.⁸²

More recently, many other studies of child costs, including Henman,⁸³ Betson⁸⁴ and Lino⁸⁵ show this as well. Finally, Gray and Stanton in their survey article on the cost of children in Australia conclude the following: "A number of Australian studies estimate how the costs of children vary

⁷⁶ We exclude daycare because these costs are specifically mentioned as an "add-on" or section 7 expense. This does not mean that daycare could not be an important cost of young children nor does it legitimize the idea of section 7 expenses. It is simply a recognition of how the DOJ decided, in the end, to treat such expenses. There is certainly a case to be made for table amounts that were not all inclusive (and therefore correspondingly lower) and then treat "special" items like daycare as an add-on expense that could be applied for.

⁷⁷ See Note 14, *Measuring the Costs of Children in Canada: A Practical Guide – Phase I*, p.T4.

⁷⁸ R.A. Douthitt and J. Fedyk, *The Cost of Raising Children in Canada* (Toronto: Butterworths, 1990) at pp.90-193.

⁷⁹ See Note 1, *The Financial Implications of Child Support Guidelines: Research Report*, (Tables 2, 3, 4, 7, and in the summary Table of all of the models used – Table 8).

⁸⁰ *Ibid*, p.13.

⁸¹ *Ibid*, p.13.

⁸² *Ibid*, p.37.

⁸³ See Note 62, *Occasional Paper #18: Updated costs of Children Using Australian Budget Standards*.

⁸⁴ D.M. Betson, *Alternative Estimate of the Cost of Children from the 1980-86 Consumer Expenditure Survey*. Report to U.S. Department of Health and Human Services, Offices of the Assistant Secretary for Planning and Evaluation, University of Wisconsin, Institute for Research on Poverty, Madison Wisconsin.

⁸⁵ M. Lino, *Expenditures on Children by Formulas*, 2004, USDA, Publication Number 1528-2004.

with the age of the child. Almost without exception these find that the costs of children vary with age...".⁸⁶

This age cost pattern is sufficiently important that some government programs account for it. For example, the Alberta government's foster care program provides significantly higher allowances for older children than younger children. Their basic *per diem* rates for 2009 are \$32.77 for 16-17 year old children and \$21.85 for 2-5 year old children. This is a difference of 50% in favour of the older children.⁸⁷

The 40/30 (LIM) equivalence scale itself contains an acknowledgement that older children cost more than younger children. The Statistics Canada scale specifies that the first child in a two parent family or the second child in a single parent family, if it is "less than 16 years of age" will count as .3 of a person, and will be .4 if 16 or over.⁸⁸ The implication is that older children cost more.

4.5 The Guidelines Ignore the Re-Partnering Status of Both Separated Parents

The re-partnering of either the NCP or CP can substantially alter the respective means of the parents but is not a factor taken into account in the CSG's. The failure to take such factors into account impacts the relative abilities of ex-spouses to contribute to child maintenance and often in a manner that favours the CP and disadvantages the NCP.

As discussed earlier, the 40/30 equivalence scale on which the Guidelines' Formula is based assumes that the second person in the household (normally another adult but in the case of a single parent family, it is the first child) has an incremental cost factor of .4 of the first person. As discussed earlier in subsections 3.2 - 3.4, this itself is questionable. However, even if we were to accept the 40/30 scale in the Formula, there are problems applying it to re-partnered situations.

For example, if the CP cohabits with a new partner, there is now a household of three persons. In this case the child, according to the 40/30 scale, would have a cost factor of .3. Yet the application of the Guidelines fails to account for this. If the CP remarries when the child is still fairly young, the NCP potentially faces a decade or more of overpayment of child support just based on the failure to adjust for the scale economies in the new CP family and the subsequent lower costs of the child. The extent of this overpayment could be substantial and can be estimated using the (one child example) calculations in subsection 3.3, Exhibit 1 where we compare the effect of moving from a 40/30 to a 30/20 scale. Specifically, referring to the second last column in that Exhibit, the overpayment ranges from 32% at a higher level income (\$110,000) to 48% at a lower income (\$30,000).

⁸⁶ M. Gray and D. Stanton, *Costs of Children and Equivalence Scales: A Review of Methodological Issues and Australian Estimates*, Australian Taskforce of Child Support, Government of Australia, 2010, section 4.

⁸⁷ See the Alberta Foster Care Rate Schedules:
http://www.child.alberta.ca/home/documents/fostercare/fostercarereview_report_final.pdf, p.46.

⁸⁸ Statistics Canada, *Low Income Measures (LIMs)*, 1997, August 1999, p.10.

The adjustment required to account for this could be a simple one line in the Guidelines: *If the CP remarries (or is cohabiting), the Table Amount for the first child slips over one column as if he/she were the second child.* Such an adjustment in no way expects the (CP's) new partner to contribute to the children but merely recognizes that, due to economics of scale, the child now costs less.

The point is that the Formula, which purports to solve for a reasonable amount of child support based on the 40/30 equivalence scale, does not use that scale consistently when material changes, such as re-partnering, happen. And, such a material change would mean a significant overpayment by the NCP; an average of more than 37% for the examples with one child presented in Exhibit 1.

As well, this analysis looks only at the case of the CP re-partnering. What if the NCP happens to re-partner? In that case, there may well be additional costs for the NCP to support both a new partner and that partner's existing children or new children to the couple. Such circumstances could be said to reduce their means, especially when children are involved. However, none of this is taken into account in the Guidelines and the NCP is still assumed to only have the costs of a single adult regardless of material changes in the NCP's circumstances (subject only to "undue hardship" applications discussed below).

4.6 Does the Undue Hardship Test Offer some Relief?

The undue hardship provision in the Guidelines was cited as and might appear to be a remedy for problems that might occur with the strict application of the presumptive Table Amounts.⁸⁹ However, the eligibility provisions and the "standard of living test" applicable to the undue hardship provision are both so restrictive as to make it unlikely to provide any relief for most of the issues discussed in this Report.⁹⁰

It should be noted that the standard of living test associated with the undue hardship provision does not attempt to determine if the parties are contributing according to their means (relative abilities to contribute). Rather, it purports to measure whether the NCP is worse off than the CP, after making the payments, regardless of how much better off the NCP might have been to begin with.⁹¹

The test suggests a standard of living comparison that is essentially each household's (CP and NCP) after-tax income adjusted for the payment or receipt of child support amounts and divided by the Low Income Measure amounts (effectively the same 40/30 equivalence scale). It is not clear whether this determination allows any costs to the NCP of having access/contact with the children. However, it is the case that the same government benefits that flow to the CP are still ignored and, as has been made clear throughout this Report, this is one of the fundamental flaws

⁸⁹ Senate of Canada, Proceedings of the Standing Senate Committee on Social Affairs, Science and Technology (12 December 1996) p.17:52 (testimony of Alan Rock, then Minister of Justice).

⁹⁰ See Note 69, Report of Stacie Glazman.

⁹¹ See s.10(4) and Schedule II of the Guidelines.

of the Guidelines.⁹² The comparison does, however, appear to allow for some consideration of other responsibilities that the NCP may have (including a child from re-marriage).

⁹² See Section 4.0 above.

SECTION 5 THE SPOUSAL SUPPORT ADVISORY GUIDELINES (SSAG’S)

5.0 The SSAG’s have Aspects to Them that are Important to Consider Regarding the Guidelines

The Spousal Support Advisory Guidelines (“SSAG’s”) are non-mandatory guidelines prepared by third parties at the behest of, and published by the DOJ.

In preparing some of the illustrations in the Mathematics section of this Report (below in Section 7), it was considered important to include, in some of the cases, spousal support awards. This is because spousal support is frequently ordered by courts in conjunction with child support awards. This led to the need to consult both the advisory guidelines themselves and the related software packages.⁹³

The following features of the SSAG’s are of particular interest here:

1. The SSAG’s are constructed around two basic formulas, the “Without Child Support Formula” and the “With Child Support Formula”. The distinction between the two is the presence of a child support obligation.⁹⁴

The Without Child Support Formula is at most peripherally relevant to this Report so I will only note it relies heavily on the length of marriage or relationship.

In contrast, under the With Child Support Formula, if you have the primary responsibility for child care, spousal support is calculated to be an amount that will leave the recipient spouse between 40% and 46% of the spouses’ combined net incomes after child support has been taken out.⁹⁵ Length of marriage is only one consideration for deciding where you fall in this range.⁹⁶

For purposes of determining income under the With Child Support Formula, the SSAG’s include in each spouse’s income all the government benefits amounts that are ignored in the Guidelines. The authors of the SSAG’s gave the following three reasons for including these child-related benefits in income under the With Child Support Formula:⁹⁷

First, these benefits and credits reduce, sometimes dramatically, with increasing amounts of spousal support transferred to the recipient spouse, especially through the lower and middle income brackets. Including these benefits and credits in the recipient’s

⁹³ A standard software package in the industry is DIVORCEmate [<http://www.divorcemate.com/>]. There is also a less expensive alternative that does similar, but less detailed, calculations. See <http://mysupportcalculator.ca>.

⁹⁴ See Note 73, *Spousal Support Advisory Guidelines*, p.viii.

⁹⁵ *Ibid*, p.77, s.8.3.2.

⁹⁶ *Ibid*, p.81, s.8.5.

⁹⁷ *Ibid*, p.47, s.6.3.

income gives a much clearer picture of the impact of spousal support upon the recipient's actual net disposable income. Second, some fine lines would have to be drawn between child and non-child related portions of these benefits and credits. A precise disentanglement would be complicated and for little practical gain. **Third, for lower income recipient spouses, these amounts are sizable, more than \$7,000 - \$8,000 annually for two children. Their removal would produce significantly higher amounts of spousal support, which would cause significant hardship for payor spouses, especially those with lower incomes, unless the formula percentages were adjusted.**⁹⁸ [emphasis added]

These same benefits and credits are ignored if a CP is making more than a NCP (and therefore should perhaps be paying the NCP spousal support). In such a case, the custodial payor formula is based off the Without Child Support Formula, which does not have any benefits for children.

2. The SSAG's With Child Support Formula requires computer software to make the calculations as it is not a simple arithmetic formula. The formula requires the software to "iterate" by transferring differing amounts of spousal support and recalculating until the requisite proportion of individual net disposable income is determined.⁹⁹ In practice, as the SSAG formulas require calculations of taxable income, the computer software appears to be regularly updated to reflect current tax and benefit regimes. This suggests that annual updating of such formula is possible and indeed, workable and therefore supports the proposition that any child support guidelines could be similarly updated as needed.
3. The SSAG's purport to measure the individual net disposable income (INDI) of each spouse and use that to compare living standards. As part of the calculation, any child support, including section 7's, paid by the NCP is deducted from their income and included in the CP's income.¹⁰⁰ However, like the Child Support Formula, the SSAG's ignore both the NCP's costs for the time when they have the children if they have less than 40% custody, and also assume the CP continues to bear costs as if they have the children all the time.¹⁰¹
4. The SSAG's assume a CP spends a certain portion of their income on the children, equal to what the table amount would be for the CP if they were a NCP, and allows this as an expense to the CP in determining INDI.¹⁰² However, there is no obligation on the CP, express or implied, to actually spend this amount and no attempt to in any way determine

⁹⁸ *Ibid*, p.94, ss. 8.9.

⁹⁹ R. Thompson, *Spousal Support Advisory Guidelines: New Help for Lawyers*, LAWPRO Magazine, "Family Law" 17, July 2005, p. 18.

¹⁰⁰ See Note 73, *Spousal Support Advisor Guidelines*, p.76, ss.8.3.

¹⁰¹ *Ibid*, p.163.

¹⁰² *Ibid*, p.76, ss.8.3.

if it has been spent.¹⁰³ Indeed, the CP may not even be aware that they are assumed to be spending a certain portion of their own money on their children. The amount they are assumed to spend is different under the SSAG's than under the 40/30 equivalence scale. See Section 4.3(4) for further elaboration of this difference.

The foregoing brief review of the SSAG's illustrate a number of factors that are important in considering the interplay between child maintenance and spousal support. Those factors include that the SSAG's consider government credits and benefits as important sources of income to CP's. The SSAG's also show that a flexible and updatable system is workable. Conversely, the SSAG's still display a number of problems including the non-recognition of access costs to the NCP and assumes contributions by the CP to child maintenance based on the CP's income, but no obligation in fact exists. The review of the mathematics in Section 7 below in light of these factors further shows the inequitable treatment of NCP's in the area of child support.

¹⁰³ Determined through overall reading and analysis of SSAG's text.

SECTION 6 SUPPORT FOR SOME OF THE ISSUES RAISED BY THIS REPORT

6.0 The Ross Finnie Critique

Economist Ross Finnie was one of two main consultants (outside of the DOJ) and a key developer of the child support Formula. Finnie was also part of the DOJ team that moved the child support reform process along, at least until 1995, two years before the implementation of the Child Support Guidelines. In their 1995 "Overview" paper, the DOJ Consultants, including Finnie, had reached the following conclusions for the choice of a revised fixed percentage formula:¹⁰⁴

1. It is a "...child centered formula that...is based on the simple principle of an equal sharing of child costs when the two parents have the same income...";
2. It generates child support awards that are 32% higher than current awards which "...was one of the terms of reference given by the Family Law Committee";
3. "...this formula reduces the gap in living standards of the non-custodial and custodial households more than any of the other formulas...";
4. "...the formula does a good job of reducing poverty levels..."; and
5. The table awards depend only on the income of the NCP and is therefore the simplest formula to implement.

Just a year after his 1995 (joint) paper for the DOJ/FLC, Ross Finnie wrote two papers and a number of newspaper articles that were critical of the child support "package" as it stood at that time and how it had been altered from what the DOJ Consultants had originally envisioned. Finnie took issue with the following features of the scheme in his paper: *Good Idea, Bad Execution: the Government Child Support Package*:¹⁰⁵

1. He wonders how the new Formula would work if the various government tax credits were counted (p. 2);
2. He suggests that it would have been "fair" to adjust the awards to account for the NCP's time with their children and corresponding expenses. He further suggests that this omission would increase custody battles and acrimony amongst ex-spouses stating: "Failure to address this issue would, in short, leave the guidelines seriously flawed in terms of fairness, with a range of undesirable behavioural consequences also likely..." (p. 5);

¹⁰⁴ See Note 2, *An Overview of the Research Program to Develop a Canadian Child Support Formula*, all references on p.91.

¹⁰⁵ The six references below are all drawn from R. Finnie, *Good Idea, Bad Execution: The Government's Child Support Package*, The Caledon Institute of Social Policy, June 1996, and the corresponding page numbers are given after each point.

3. He argues that under the then current proposals, lower-income NCP's end up paying "...extremely high percentages of their incomes towards child support..." (p. 5);
4. He expresses surprise at the appearance of new child related special expenses or add-ons (i.e., section 7's). He points out that "...such expenses can be thought of as already included in the child cost estimates used in the guidelines and are therefore reflected in the base awards. As a result, the proposed adjustments would result in double-counting of such expenses and awards would be higher than they should be" (p. 8-9);
5. He is concerned that there is no accountability on how the child support monies get spent. While acknowledging the inherent difficulty of tracking spending specifically on the child, he argues that some basic principles and avenues of appeal could be established to make the scheme accountable; and
6. Finnie also makes reference to the "invasive" nature of the Guidelines in terms of gathering personal information of the NCP over the entire life of the child support award and "...entwining of the economic and personal lives of the two ex-spouses well beyond what is required to generate a fair and reasonable child support award" (p. 7).

In another article, Finnie expands somewhat on point #1. He states: "In the calculations used to set award levels, all child-related tax credits are assumed away..." and "...the availability of the child tax credits to custodial parents means non-custodial parents will, by the basic formula, pay greater shares of their children's costs than will the custodial parents, which goes against one of the basic principles of the guidelines".¹⁰⁶ In addition, Finnie argues that child tax credit transfers (now rolled into the CTB) count in intact families and may actually displace parental spending. He points out that this works to the disadvantage of the NCP and asks if the asymmetry is justifiable.¹⁰⁷

This critique is significant in its own right, and all the more so coming from someone who was on the inside and who was part of the team responsible for the very development of the Guidelines up to the choice of the equivalence scale and the fixed percentage Formula. Apparently nothing was done at the time to address any of these substantial concerns.

6.1 Comparison to the Quebec Child Support Guidelines

As mentioned above, although Quebec participated in the FLC, the province ultimately decided not to participate in the implementation of the Federal Child Support Guidelines. Rather, Quebec formed its own child support system, and the Quebec Child Support Guidelines provide support for some key issues raised in this report.^{108, 109} Specifically:

¹⁰⁶ R. Finnie, *The Government's Child Support Package*, 1996, 15 C.F.L.Q. 79, p.93.

¹⁰⁷ *Ibid*, p.92-93.

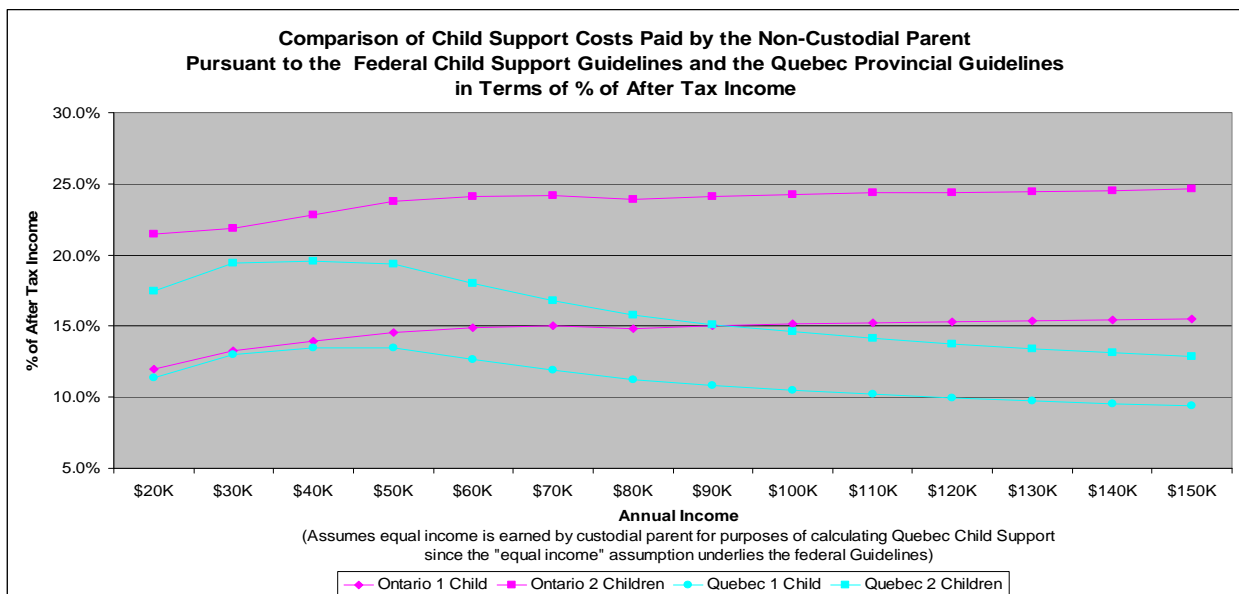
¹⁰⁸ Report of Andrew Heft, Quebec family law expert, Exhibit "A" to the Affidavit of Andrew Heft, submitted in this matter.

¹⁰⁹ See Note 32, *Modèle de fixation des pensions alimentaires à l'égard des enfants*.

1. The Quebec system uses the incomes of both parents (less a personal 'reserve' amount) to determine the amount of child support (and the shares of such amount that each parent is expected to pay) whereas the Canadian system uses only the pre-tax income of the NCP and never determines an amount the CP is expected to pay;
2. The Quebec system starts with basic child costs determined by experts whereas the Canadian system relies on equivalence scales;¹¹⁰
3. The Quebec system, while not fully accounting for the custody time of the NCP, does make an adjustment to the support paid as long as the NCP has the children at least 20% of the time. (In the federal model, the threshold for even considering access or custody time for the NCP is 40%, and even then there is not really an accounting. Rather, the court is simply directed to consider it);
4. The Quebec system makes some effort to accommodate new relationships whereas the federal scheme gives no consideration to second families and the effect of such on the CP or on new responsibilities faced by a NCP; and
5. In terms of outcomes, in the Quebec system NCP table support declines dramatically as a percent of after-tax income as income increases whereas with the federal Guidelines, the percentage is essentially flat - as we see below in Exhibit 4.

The following 3 graphs compare the child support paid under the Quebec and federal (Ontario, as an example) child support systems.

Exhibit 4:



In Exhibit 4, we see a sharp contrast between the (Ontario) Federal Child Support Guidelines and the Quebec system.

¹¹⁰ *Ibid.*

Firstly, the Quebec average support awards are lower at all income levels and significantly so at higher income levels.

Secondly, the Quebec scheme shows payments constituting a consistently declining proportion of after-tax income once we get above \$40,000 of NCP income. This is in contrast to the Federal program which has support payments increasing as a percentage of after-tax income at lower levels and then staying at essentially a fixed percentage, the highest percentage the Formula ever generates, above about \$60,000 of NCP income.

The Quebec percentages are considerably lower at high incomes than the Ontario percentages. The marginal rates of child support at the high end are strikingly different. In Ontario, for incomes that are higher than specifically listed in the Exhibits, the suggested incremental rate (as a percentage of after-tax income) is 16.6% for one child and 26.1% for two. In Quebec, in contrast, the corresponding incremental rates (for NCP incomes above \$200,000 where CP earns a similar amount) are 6.8% for one child and 8.7% for two. This means that the incremental rate (at high incomes) is 2.4 times higher in Ontario for one child and fully 3 times higher for two (than in Quebec). This is graphically depicted in Exhibit 4.5 below.

Exhibit 4.5:

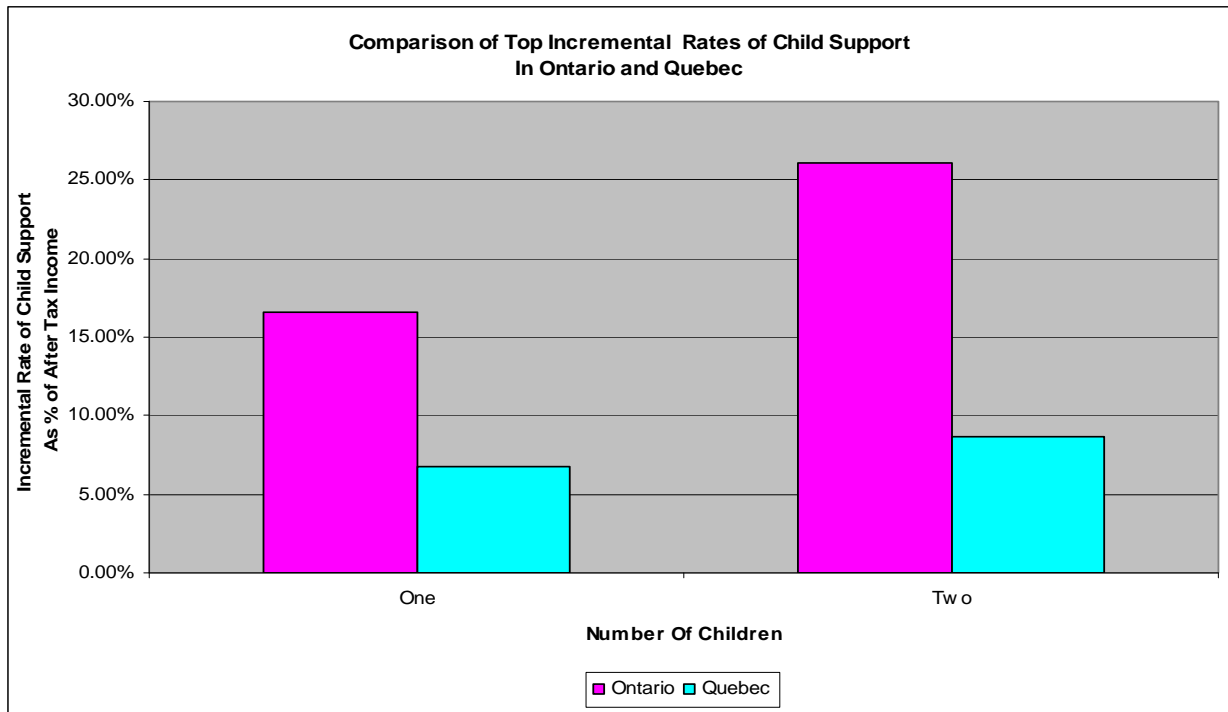
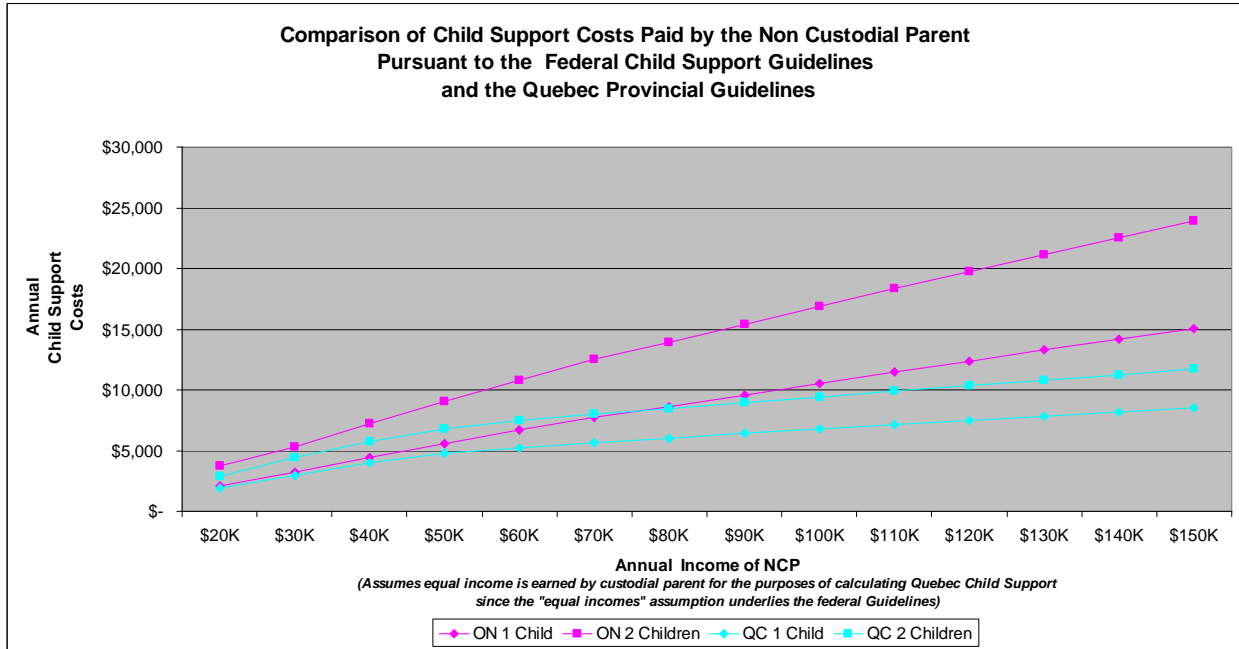


Exhibit 5 shows the same information as Exhibit 4 only in terms of the dollar amounts paid by NCP's in each of Ontario and Quebec. It is easy to see that under the federal model, higher income NCP's pay much higher child support amounts than is the case in Quebec and that the incremental cost (on additional income) is much higher with the federal scheme as can be seen by the relative slopes of the lines.

Remember that in Exhibit 4, 4.5 and 5, the amount displayed is only what the NCP must pay. They do not address any amounts the CP might also pay.

Exhibit 5:



6.2 The SSAG’s

Aspects of the SSAG’s also provide support for some of the concerns and issues regarding the Guidelines raised in this Report. For instance, the SSAG’s calculation of individual net disposable income does include government benefits (federal and provincial) as resources to the CP recipient with children, as this Report suggests is the correct way. These benefits dramatically benefit the CP as is illustrated in Exhibit 6 below.

Exhibit 6: Equalization of Individual Net Disposable Income (INDI) Pursuant to SSAG’s

**Both Ontario Residents, CP Earns \$25,000 and NCP Earns \$51,410
2 Children, 1 Under Age 5**

	CP	NCP
Guidelines Income	\$25,000	\$51,410
Spousal Support	-	-
Child Support – Table Amount	-	(9,288)
Notional Table Amount	(4,500)	-
Taxes and Deductions	(1,699)	(12,390)
Benefits and Credits	10,907	-
INDI (\$)	\$29,738	\$29,732
INDI (%)	50.0%	50.0%

Note that the INDI is effectively the living standard of each parent individually once child costs have been accounted for. The two amounts for the children: (1) the \$9,288 (child support actually paid by the NCP); and (2) the \$4,500 (the 'notional' amount of child support from the CP) sum to equal the deemed amount spent on the children under the SSAG's. In this case, no actual spousal support is paid because the CP is already as well off as the NCP. It is notable that the NCP would need to earn \$51,410 (i.e., over twice as much) to have the same standard of living as a CP earning \$25,000.

This SSAG's example illustrates both the importance of the government programs, and that the designers of the SSAG's realized their importance. Recall that the DOJ states that the Guidelines' Formula is designed to equalize living standards at equal income, but this is only using its restrictive assumptions, and if a number of government programs are ignored. But this example shows, if the ignored programs are taken into account, the NCP has to earn over twice as much to be as well off. And this example is with the NCP having no extra costs over the Table Amount because, in this example, there is zero access time, no section 7's and no other circumstances such as a second family.

As well, the SSAG's implicitly acknowledge the Guidelines awards at higher NCP incomes (over \$350,000) may constitute an overpayment when it is stated. "...At some point, the large amounts of child support includes a component that compensates the recipient spouse for the indirect costs of child-care responsibilities, leaving less need for spousal support to do so..."¹¹¹

6.3 Expert Estimates of Child Costs

Arguably the most reliable method of estimating the cost of children is the expert budget method which utilizes the expertise of those who have extensively studied living costs of families and children and are in an ideal position to determine the full extent of those costs. Such estimations of the cost of children lend further support to the issues raised in this Report.

The difficulty of sorting out, from raw expenditure data drawn from surveys (as the DOJ/FLC tried to do), the portion that is spent exclusively on children makes the expert approach an attractive alternative. However, even experts must make judgments as to what items should be included in the budget and at what level of quality. Nevertheless, there is a reasonable range of estimates that can be determined, including higher values at higher incomes.

Typically, most of the expert budgets for children relate to a healthy standard of living and are intended to inform parents (or programs providing financial assistance to families with children) what is, at least, necessary. Discretionary spending above that level would depend on the variety of influences already discussed.

It is noteworthy that the DOJ was consistently dismissive of these expert estimates of the cost of children. They routinely rejected or entirely ignored this approach in favour of econometric estimates based on some theory of how to extract spending on children from overall family spending. In spite of the fact that these theoretical models resulted in a very wide range of

¹¹¹ See Note 73, *Spousal Support Advisory Guidelines*, at p.113, s.11.3.

estimates of the cost of children, some of them counter-intuitive,¹¹² they continued to minimize the usefulness of budget based estimates from experts. And, to the extent that they did give this approach some consideration, they claimed that the results they yielded were similar to estimates from econometric studies.¹¹³ It is fair to say that this is a misrepresentation.

The two sources they cite (the Metropolitan Toronto Social Planning Council and the Montreal Diet Dispensary) regarding expert estimates both relate to low-income situations where there are likely to be challenges for families in achieving economies of scale and where the cost of children, as a percentage of after tax income, is at the high end of the range. These agencies examine the needs of people at or near the poverty line. While one could generate an equivalence scale out of the work these agencies do and the implicit equivalence scales might be comparable to some of the scales estimated using other methods, those implicit scales were not meant to be applied to all income levels because the point of their work was to discover the cost of children only at the poverty level.

It is entirely possible, however, to design a budget based estimate that would be relevant for a middle-class standard of living, something that the Manitoba Agriculture Department has attempted to do with its estimates (see below). Such estimates may not be applicable at all income levels but do provide a useful average cost at a particular standard of living that could be used as a benchmark.

6.3.1 Manitoba Agriculture Estimates

Manitoba Agriculture has, for many years, specifically estimated the annual cost of raising a child to age 18. While these estimates continue to be available online (please see <http://home.gicable.com/~jqgregg/Cost%20of%20raising%20children.pdf>), they appear to have stopped updating them in 2004. That calculation, in 2004 dollars, was a total of approximately \$167,000. This estimate includes the following components: food, clothing, health care, personal care, recreation, reading, gifts, school needs, transportation, as well as child care costs (from 0-12 using the assumption of an employed lone parent) and shelter (which includes furnishings and household operations).

The Manitoba estimates appear to show that the cost of a child does not increase as the child gets older but in fact declines. The most expensive years are 0-5, followed by the next most expensive period, 6-11. The least expensive years, according to this calculation, are the teenage years. However, if child care (daycare) is excluded, as is done consistently in this Report because daycare is considered an extra (section 7) cost, the age pattern of child costs is firmly restored. So, children get more expensive as they get older as long as child care is omitted. In all, child care costs make up fully a third of the cost of raising a child in the Manitoba calculations but about 50% for children up to 5; about 40% for children 6-11; and no cost for daycare after age 11.

¹¹² For example, the Blackorby-Donaldson estimations, discussed earlier, produced an equivalence scale that actually increased, i.e., that additional children added more to costs than the first child.

¹¹³ For example, in *The Construction and Implementation of Child Support Guidelines* (see Note 7), it is stated that “. . . the results turn out . . . quite similar to most of the more theoretically derived scales”, p.18.

It is important to underline that the Manitoba estimates of the cost of raising a child do not vary with the parents' incomes. This does not mean, of course, that parents cannot (or do not) spend more or less than this amount. It simply gives parents a very detailed and comprehensive guide to what they can expect to spend on raising their child. As mentioned, the Manitoba estimates include everything - daycare, transportation, shelter, furnishings and household operations and any other cost that could be attributed to the child. It appears to reflect an average or middle class standard of living. And, by including some costs that might have already existed in the absence of the child (some amount for shelter, utilities, etc.), this approach is not just based on an incremental cost approach. To that extent, it may overstate child costs. On average (over all of the ages), the Manitoba child cost estimate, in 2010 dollars, is about \$9,750 per year or about \$6,577 per year excluding daycare.¹¹⁴

6.3.2 Montreal Diet Dispensary Estimates

The Montreal Diet Dispensary ("MDD") has two estimates for budgeting for children (1) a budget for basic needs, and (2) a budget for a minimum adequate standard of living. The latter includes additional items over and above those in 1. It is fair to say that estimate # 2 constitutes a healthy but modest living standard and will be used for illustrative purposes. In addition, the estimates for children exclude rent and heat, assuming perhaps that these are costs to parents and not children. Also excluded is the cost of daycare which, in other discussions, is often treated as an add-on rather than a definite cost borne by all families with children. The MDD numbers are closer to the incremental cost approach to the cost of children. The estimate for 2010 under #2 for a child (4-5 years old) is about \$5,000 annually.¹¹⁵ This includes nutritious food, clothing, personal care, household supplies, transportation, reading material and school supplies, recreation, entertainment, personal allowance, phone, furnishings, etc. Again, it is important to emphasize that this should be regarded as the essential annual extra or "incremental" cost of a child in Canada.

6.3.3 Summary Regarding Expert Estimates on Costs

In sum, what these expert estimates provide is some perspective regarding the costs of children. They provide some realism to the exercise of determining how much children cost by looking at the analysis of experts who are knowledgeable in providing information and advice to parents, social agencies and the general public about the costs of raising children. These estimates, grounded in the reality of budgeting and accounting, bear no connection to the arbitrary selection of a ratio that tells us that a child adds 40% to the costs of a household. They also bear no relationship to a formula that requires some NCP parents, still recovering from the financial disaster of divorce, to pay \$20,000, \$25,000 or even much more per child per year in child support, over and above any spousal support.

¹¹⁴ This calculation takes the 19 separate values for a male child, then determines a simple average cost both for the total cost and for the cost including daycare and then multiplies those values by 1.11, the inflation factor (using the all-items Consumer Price Index) over the period from 2004 to 2010.

¹¹⁵ Montreal Diet Dispensary, *Budgeting for Basic Needs and Budgeting for Minimum Adequate Standard of Living*, (2010: booklet).

SECTION 7 THE MATHEMATICS OF THE GUIDELINES

7.0 Introduction

The intent in this section is to examine the Formula and its application strictly from a “math” perspective. Specifically, the purpose is to take the child support Formula as it is stated, and determine if the outcomes are consistent with the stated goals and objectives under different circumstances. In many cases, it is simply a matter of seeing if the numbers “add up”. This analysis leads to the conclusion that the numbers in fact do not “add up”, nor do they support the goals of equitably and proportionately splitting child support obligations between the parents according to their means.

To review, the Guidelines Formula for determining the Table Amounts of child support is centered on the 40/30 equivalence scale. This scale also tells us that all the available funds in a household are spent and that a specified percentage is spent on the children (.4/1.4 or 28.6% in the case of a single parent family with one child, .7/1.7 or 41.2% in the case of a single parent family with two children, etc.). Whatever one might think of this scale in relation to children’s costs, it was used to construct the Formula and so will be the benchmark I use in mathematically analysing the Formula.

What follows is an analysis using:

- (1) the 40/30 scale for the assumed costs of children;
- (2) the comparison of the parents’ disposable income; and
- (3) the breakdown of the relative shares of support for the children *using the template* (the “Newfoundland Illustration”) *set out by the DOJ itself in 1996* (in earlier draft versions of the December 1997 Technical Report).¹¹⁶

The Newfoundland Illustration uses a set of assumptions to demonstrate how the new child support Formula would work in practice. It specifically shows the results in terms of deemed expenditures on children and the bottom line comparison of the standard of living of both parents. I replicate the Newfoundland Illustration here but also extend the example (using exactly the same methodology) to include a range of other scenarios. In some of my examples, I will be replacing the original Newfoundland assumptions with what I believe are more realistic and more reasonable assumptions (i.e., for NCP access time; for section 7 expenses; for savings; for a somewhat different equivalence scale; and even for the possibility of spousal support). Support for these new assumptions is provided in the preceding sections.

It is important to remember that the DOJ itself provided a very simple mechanism to determine the share of child costs each parent *should* pay. They state: “...the cost is actually split between the government and the two people. The parents only have to split that part of the cost which the

¹¹⁶ See Exhibit “A” to the Affidavit of Roger Gallaway (former Minister of Parliament) dated June 2, 2011 at sequential p.111, submitted in this matter.

government is not paying for”.¹¹⁷ It is clear from this that parents only share the “net” cost of children, i.e., the cost left over after government benefits have been taken into account. This approach, which I agree is correct, will be employed in this section to compare the amounts that the parents *should pay* with what they *do pay*.

7.1 The Newfoundland Illustrations

Leading up to the implementation of the *Federal Child Support Guidelines*, the DOJ was preparing a technical report that explained how the new system would work. Drafts of that report are included as Exhibit “L” to my Affidavit submitted with this Report. They provide a detailed illustration of how the Formula would work and how the Guidelines would impact each parent assuming the parents resided in Newfoundland. These illustrations did not appear in the ultimately published Technical Report dated December 1997.

What is notable about this illustration is it clearly shows several fundamental contradictions between the stated goals and assumptions of the Formula and its reality.

Assuming that the DOJ determined the tax and government benefits values correctly for 1996, the year for which the Newfoundland illustration was done, I can verify that the mathematics and methodology in the tables is correct.

7.1.1 Basic Assumptions of the Newfoundland Illustration (the “DOJ Assumptions”) and General Notes on Exhibits

It is very important, at the start of this discussion, to highlight the assumptions in the Formula as applied to the Newfoundland Illustrations (referred to throughout as the “DOJ Assumptions”):

1. There are two children of the marriage (ages are not specified in the original Newfoundland examples but in my updates (for 2010) it is assumed that the children are 4 and 9 years old). (Recall that the Guidelines assume that children cost the same at all ages);
2. The custodial parent has the children 100% of the time and bears 100% of the costs of the children;
3. Both the CP and the NCP remain as single persons throughout the analysis and there are no other children from other relationships involved;
4. No section 7 extraordinary expenses for the children;
5. No spousal support; and
6. The CP spends all their after tax income, benefits and child support at all income levels (i.e., no savings). Note that whether the NCP saves is irrelevant to the Formula.

¹¹⁷ See Note 7, *The Construction and Implementation of Child Support Guidelines*, p.96.

In all of the illustrations in this section, unless otherwise stated, the above basic DOJ Assumptions are used.

The following abbreviations are used in these analyses:

“GST” – GST or HST credit which is a direct payment to lower and modest income Canadians.

“CCTB” – Canada Child Tax Benefit for lower and modest income Canadians raising children.

“NCBS” - National Child Benefit Supplement which are payments to low income Canadians with children.

“EIS” - Earned Income Supplement was a program to assist low income earners. It no longer exists.

“UCCB” - Universal Child Care Benefit (given to all children under 6 regardless of parental income).

General Notes on Illustrations and Exhibits :

1. Not all benefits that may flow to families with children are included in the analyses (example: child fitness benefit).
2. The initial examples, Exhibits 7 and 8, replicate the DOJ’s Newfoundland Illustrations, and Exhibit 9 simply “updates” the original example to 2010.
3. Exhibits 10, 11 and 12, extend the Newfoundland Illustration using other more typical assumptions, including amounts for spousal support. In the exhibits where there is a SSAG’s award, a mid-point estimate of the SSAG’s, as calculated by the DIVORCEmate software, is used, except where specifically noted.
4. The Tables in the Child Support Guidelines were updated effective January 1, 2012, using 2010 tax rates. All the work in this paper has been done using the Guidelines’ Tables that were applicable in 2011. The new tables have been compared to the 2011 Tables and, using such new tables would not change the analysis in this Report in any material way.
5. The Newfoundland tax regime and tables are used for the first set of extended examples simply because that is the jurisdiction the DOJ chose for their Newfoundland Illustrations. In subsection 7.6 more examples are prepared using the Tables, tax and benefits regimes applicable in Ontario. Based on my understanding of the underlying reasons for the different outcomes for the NCP and CP illustrated in all these examples, it is clear to me that these same differences will exist in all the provinces using the Guidelines, although the degree may vary somewhat.
6. The following explanatory notes regarding applicable government benefits are applicable to Exhibits 9 through 12 inclusive:

- a. “Paid by Government Tax Credits (included on tax return and in the child support Formula)” - represents the amount federal and provincial taxes are reduced by tax credits attributable to the children.
- b. “Paid by Government through UCCB (included on tax return but not in the child support Formula)” - is the after tax impact of the receipt of the UCCB.
- c. “Paid by Government Benefits (outside the tax return and not counted in the Formula)” - represents the amount of the non-taxable government benefits (i.e. GST, CCTB, NCBS) received that relate solely to the children.

7.1.2 Original DOJ Newfoundland Illustration

In their analysis of the Newfoundland examples, the DOJ is showing three things: (1) how the cost of the children is calculated at a given income level; (2) how the cost of the children is shared between the CP and the NCP, and; (3) which of the two (post-separation) households has the higher standard of living. The original Newfoundland Illustration is reproduced below:

Exhibit 7: Original DOJ Newfoundland Illustration:

	Custodial Parent	Non-Custodial Parent
Earnings	\$25,000	\$25,000
Actual taxes	-\$2,066	-\$6,076
Taxes Ignoring GST/CTB for custodial	-\$4,806	-\$6,076
Actual After-tax, pre-award Income	\$22,934	\$18,924
Ignoring GST/CTB/EIS for custodial	\$20,194	\$18,924
Award (i.e., table amount)	\$4,435	-\$4,435
Actual after-tax, post-award Incomes	\$27,369	\$14,489
Direct Expenditures on Children (.7/1.7 of the Actual after-tax, post-award income)	\$11,270	\$0
Personal (Parental) Disposable Income	\$16,099	\$14,489
SUMMARY	AMOUNTS	(%)
Total Expenditure on Children	\$11,270	100.00
Paid by Govt Tax Expenditures (see Note 2 below)	\$4,010	35.58
Paid by Custodial Parent	\$2,825	25.07
Paid by Non-Custodial Parent	\$4,435	39.35

Note 1: One line has been deleted from the original example for simplicity because it provided information which does not add to the analysis.

Note 2: “Government Tax Expenditures” in this Original Newfoundland Illustration is understood to mean any government benefit the taxpayer receives because of the children that is derived through the tax system. This includes the GST credit, which was outside the Tax Return, but derived from the Tax Return. In the above Newfoundland example, total stated government tax expenditures are \$4,010. EIS, the GST credit and the CTB, totalling \$2,740 (already included in the \$4,010) are

ignored in the Guidelines Formula for the purpose of determining table child support amounts. There may or may not have been other benefits relating to children paid by the provincial or federal governments at the time. For these early examples it was not considered worth the effort to determine if there were other benefit numbers that were ignored in the illustration.

It is important to stress here that the DOJ includes government benefits for children in its analysis (as to whether the CP or the NCP is better off); it refers to the total income of the CP (including those benefits) as the "actual" income; and it includes those same benefits in the determination of each parent's disposable income. This analysis reveals that: "...the standard of living of the custodial household is 11.1% higher than that of the non-custodial..." [emphasis added] (i.e., not equalized) and that, despite having equal incomes, their contributions to the children's costs are unequal, with the NCP paying considerably (ie. 57%) more.¹¹⁸

Included in the DOJ Newfoundland Illustrations is the case of the NCP who earns \$26,000 while the CP earns \$25,000. This analysis is useful to see the impact on living standards and on contribution shares of a marginal increase in NCP income. It is reproduced below.

Exhibit 8: Newfoundland Illustration with NCP Income = \$26,000

	Custodial Parent	Non-Custodial Parent
Earnings	\$25,000	\$26,000
Actual taxes	-\$2,066	-\$6,412
Taxes Ignoring GST/CTB for custodial	-\$4,806	-\$6,412
Actual After-tax, pre-award Income	\$22,934	\$19,588
Ignoring GST/CTB/EIS for custodial	\$20,194	\$19,588
Award (i.e., table amount)	\$4,605	-\$4,605
Actual after-tax, post-award Incomes	\$27,539	\$14,983
Direct Expenditures on Children (.7/1.7 of the Actual after-tax, post-award income)	\$11,340	\$0
Personal (Parental) Disposable Income	\$16,199	\$14,983
SUMMARY	AMOUNTS	(%)
Total Expenditure on Children	\$11,340	100.00
Paid by Govt Tax Expenditures	\$4,010	35.36
Paid by Custodial Parent	\$2,725	24.03
Paid by Non-Custodial Parent	\$4,605	40.61

In this example, of the incremental \$1,000 of earnings, about \$336, or about one-third is taxed away. However, the NCP pays an additional \$170 in child support out of the \$664 after tax amount. Curiously, of the additional \$170 in child support, spending on the children increases by only \$70 (from \$11,270 to \$11,340) and the CP keeps the remaining \$100. This means the children do not get the entire extra amount of child support paid by the NCP. Such an odd result is a direct consequence of the Formula and its underlying assumptions.

¹¹⁸ See Note 116, Exhibit "A" to the Affidavit of Roger Gallaway at sequential p.114-115.

7.2 The Equal Living Standards and Equal Financial Contribution Contradictions

The Formula assumes that both parents have equal (gross) incomes and, with equal incomes, the DOJ claims it is supposed to generate child support awards that "...equalises the financial circumstances of the two households...".¹¹⁹ It is further stated that a key underlying principle of the Formula is that "...if the incomes of the parents are equal, it is fair and equitable that each should contribute equally to the financial support of the children, regardless of the extent of their contribution to the nurturing of the children".¹²⁰

While the assumption that both parents have the same income is very unrealistic and would only hold in a small minority of cases, let's set that objection aside for the moment. The DOJ's own example (in Exhibit 7, where both parents have the same income) finds that the CP ends up with an 11.1% higher living standard than the NCP and the NCP pays 57% more than the CP to support the children. Yet, the Formula is supposed to equalize living standards and the financial contribution if the parents start out with equal incomes. The DOJ notes that, if the government benefits which flowed to the CP were not included, then the "numbers would be the same".¹²¹ However, those benefits contribute to the (CP) household living standard and it is, after all, living standards that are to be equalized (when incomes are equal to begin with). And the DOJ included those benefits in its own example.

With this illustration, the DOJ explicitly acknowledged prior to the final published Technical Report, and I agree with the DOJ's approach on this, that government benefits (especially for lower income families) are important and do contribute to the living standard of the child and the CP. However, in the published final Technical Report just months later, they make the point that government benefits (such as the CTB, EIS and GST rebate for children) do not and should not count as income to the receiving parent (CP) because "...These are deemed to be the government's contribution to children and not available as income to the receiving parent...".¹²² This rationale is as bizarre as it is incorrect. The CP has complete discretion as to how (and even whether) to spend these funds. Government benefits for children count in intact families and they count as available resources in CP families when comparing living standards as the DOJ's own illustrations show.

The DOJ did not seem to or did not want to appreciate that their own Newfoundland example showed that, while the parents started out with equal incomes, their living standards and financial contribution did not end up "roughly equal".

Exhibit 9, below, shows the Newfoundland Illustration updated to 2010 using exactly the same methodology and the same underlying basic assumptions as set out above. All the provincial and federal programs of general applicability are in the analysis.

¹¹⁹ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.2.

¹²⁰ *Ibid*, p.1

¹²¹ See Note 116, Affidavit of Roger Gallaway, Exhibit "A", sequential p.111.

¹²² See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.5.

Exhibit 9: Newfoundland Illustration with 2010 Taxes

Both CP and NCP earn \$25,000

Financial Summary:

Category	CP	NCP
Earnings	25,000	25,000
UCCB (included in taxable income)	1,200	
Taxable Income	26,200	25,000
Taxes	(128)	3,017
CPP, EI	1,497	1,497
Total Taxes (incl CPP, EI)	1,369	4,514
After-tax Income	24,831	20,486

Government Benefits not included in taxable income (i.e., GST, CCTB, NCBS)	7,131	381
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<i>After-Tax And After Benefits Income</i>	31,962	20,867
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Guidelines Table Award	4,452	(4,452)
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After-tax, Benefits and after Award Income	36,414	16,415
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Direct Expenditures on Children (according to the Formula, this is 41.2% (.7/1.7) of after-tax, after benefits and after-award income)	14,995	
Personal Disposable Income for each Parent	21,419	16,415

Summary of Payments for 2 Children	Amounts	% Shares
Expenditures on the Children	14,995	100.00
Paid by Government Tax Credits (included on tax return and in the child support Formula) [see General Note 6.a. in s.7.1.1 above]	3,145	20.97
Paid by Government through UCCB (included on tax return but not in the child support Formula) [see General Note 6.b. in s.7.1.1 above]	1,200	8.00
Paid by Government Benefits (outside the tax return and not counted in the Formula) [see General Note 6.c. in s.7.1.1 above]	6,750	45.01
Paid by Non-Custodial Parent	4,452	29.69
Paid by Custodial Parent out of own resources	(552)	-3.68

Note: This and most of the subsequent tables break the “Government Tax Expenditures” category into three separate components (the Newfoundland Illustrations used one category) because the information is more readily available than it is for the initial Newfoundland Illustrations, which are over 15 years old. See General Note 6 above.

Over the years Government benefits flowing to the CP appear to have been significantly enhanced. Also, it may be that the original DOJ Newfoundland Illustration did not consider all the benefits. *In any event, the CP's situation appears to have improved in both absolute and relative terms compared to the original Newfoundland Illustration. In the example in Exhibit 9, the CP now has a 30% higher living standard than the NCP, based on the personal disposable income of each parent, as defined by the DOJ. This identical (Newfoundland) illustration, updated to the present, shows that the "equal living standards" principle is once again not achieved and, in fact, the differential is far worse, about three times worse.*

In this example, a case where both parents have low incomes, and even using the DOJ Assumptions (some of which favour the CP), the CP does not contribute to the expenses of the child (using the DOJ's basic template) and can be said to *receive a net wealth transfer* from the child support system. To summarize, using the math the DOJ provided, the living standards were not equalized in 1997 and are *even less equal* in 2010.

7.3 Should Pay - Do Pay Analysis

At this point, it would be useful to compare what share of net child costs is being paid by each parent as against what should be paid based on each parent's “means” or relative ability to pay. For this purpose, I define “net costs” precisely the same way as the DOJ (see section 7.0), that is, as the amount deemed to be spent by the parents on the children after first counting the child related government contributions (tax credits and deductions, including provincial programs) as having been spent on the children. See section 7.0. In determining the amount that “should” be paid by each parent, which requires a determination of their relative after tax means, I, of course, exclude from their means those government benefits that they may have received but which I have already accounted for as having been spent on the children. *Described another way, the “should pay” amount is based on relative after-tax income after removing all government benefits/deductions related to the children.* For the purpose of this Report, this is considered to be the parent's relative abilities to contribute or simply their “means” for short.

The following table shows this calculation for the case displayed in Exhibit 9. This analysis can easily be extended to the case where the parent's incomes are not equal.

<u>Should Pay-Do Pay Analysis for Exhibit 9 (Newfoundland Illustration):</u>			
		<u>Should Pay (%)</u>	<u>Do Pay (%)</u>
Total (Assumed) Cost of the 2 Children	\$14,995		
Government Tax Credits Portion	\$3,145		
Government UCCB Portion	\$1,200		
Government (non-taxable) Benefits Portion	\$6,750		
Net Cost to be shared by Parents	\$3,900		
NCP share		\$1,950 (50%)	\$4,452 (114.1%)
CP share		\$1,950 (50%)	(\$552) (-14.1%)

7.4 The Formula and How Section 7 Expenses, if any, Should be Allocated

As the DOJ Consultants and FLC stated, and as Ross Finnie later reiterated, the Formula, based on the 40/30 equivalence scale, was originally intended to cover all of the costs of the children, without exception. There is a more detailed discussion of this above in subsection 4.2. However, while "add-on" expenses may not be justified given the history of the process, the section 7 expenses do exist and so are included in this review. The first question that needs to be asked is whether the base income for determining section 7 awards is appropriate. According to my understanding of the Guidelines' rules, section 7 expenses are to be shared according to the parents' respective pre-tax incomes. However, this ignores the non-discretionary amounts paid (like taxes) that are not available to spend. To the extent that add-on expenses for the child are appropriate, it would be reasonable to apportion the shares based on "means". This determination would be similar to what has already been used for the "should pay-do pay" analysis, as described in subsection 7.3.

If the net cost of the children is not allocated appropriately, according to the parents' means, then a case can be made that - as a first step - section 7 expenses should be adjusted to correct any disparity that might exist. Indeed, a reasonable case could be made that the section 7 awards be "reversible" in some circumstances where table support is more than sufficient to cover all of the actual expenditures of the child. This is not to say that the current system can or should be adjusted in this way. The Guidelines are so fundamentally flawed that modest adjustments and fine-tuning are not the solution.

As an illustration of how section 7 expenses, if any, should be shared, consider Exhibit 10 below. There, the Newfoundland Illustration methodology is extended to the case where the parents have unequal incomes - specifically, the NCP earns \$75,000 and the CP earns \$25,000. Once taxes have been accounted for, and tax and other benefits related to children are excluded, but before child support payments have been deducted from the payor or included for the recipient, the total resources available to the two parents to support the children are roughly a 2 to 1 ratio (rather than the 3-to-1 based on pre-tax incomes). This is also the ratio at which section 7 expenses should be shared, if the parent's relative "means" is actually considered.

7.5 The Formula and Different Incomes

The DOJ's December 1997 Technical Report (DOJ 1997) insists that the DOJ Assumptions, especially that of equal incomes, are necessary to produce the mathematical model but that, "...They do not restrict the application of the tables to real life situations which may involve more complex family arrangements".¹²³ However, there is no further discussion or explanation as to how a framework specifically claiming to equalize the "financial circumstances" of the two households if they have equal incomes would apply to other situations.¹²⁴ The DOJ report simply assures the reader that the Formula is designed to apply generally.

The following examples (Exhibits 10, 11 and 12), using the same template as the Newfoundland Illustration but with different incomes for CP and NCP households, show that even with the restrictive DOJ Assumptions (which make it appear the CP has higher costs than they actually do and the NCP has lower costs than they actually do due to the 100% custody assumption) the CP makes little or no financial contribution in support of the children and, in some circumstances, can even *receive a net wealth transfer* from child support payments.

It is worth re-emphasizing that the Formula specifies the shares of after tax, after benefits and after child support income allocated to children (for example, 41.2% for the (2) children plus 58.8% the single parent) sum to 100%.

¹²³ See Note 3, *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report*, p.2.

¹²⁴ Such as if the paying parent has a much higher income than the receiving parent (which is often the case); or the receiving or paying parent is remarried; or the paying parent has the children a third of the time with all of the costs that might entail.

Exhibit 10: Additional Case: CP \$25K, NCP \$75K, No Spousal Support

CP earns \$25K and NCP earns \$75K

Financial Summary:

Category	CP	NCP
Earnings	25,000	75,000
UCCB (included in taxable income)	1,200	
Taxable Income	26,200	75,000
Taxes	(128)	18,811
CPP, EI	1,497	2,910
Total Taxes (incl. CPP, EI)	1,369	21,721
After-tax Income	24,831	53,279

Government Benefits Not Included in Tax Return (GST, CCTB, NCBS)	7,131	-
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<i>After-Tax And After Benefits Income</i>	31,962	53,279
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Guidelines Award	12,180	(12,180)
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After-tax , Benefits and after Award Income	44,142	41,099
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Direct Expenditures on Children (according to the Formula, this is 41.2% of after-tax, after benefits and after-award income)	18,178	
Personal Disposable Income for each Parent	25,964	41,099

Summary of Payments for 2 Children	Amounts	(%) Shares
Expenditures on the Children	18,178	100.00
Paid by Government Tax Credits (included on tax return and in the child support Formula) [see General Note 6.a. in s.7.1.1 above]	3,145	17.30
Paid by Government through UCCB (included on tax return but not in the child support Formula) [see General Note 6.b. in s.7.1.1 above]	1,200	6.60
Paid by Government Benefits (outside the tax return and not counted in the Formula) [see General Note 6.c. in s.7.1.1 above]	6,750	37.13
Paid by Non-Custodial Parent	12,180	67.01
Paid by Custodial Parent out of own resources	(5,097)	-28.04

Exhibit 10 shows the case of a NCP earning three times the pre-tax income (or 200% more) of the CP. The NCP's share of the total assumed spending on the children is now 67% and the CP's share is actually negative. The shares of the "net cost" (after deducting the amount the government has contributed) of the children will be used below in the "should pay-do pay" analysis. So, not only does the CP not have to contribute to the children's costs but actually makes money on the child support. In this case, we include no spousal support. However, in the next example (with the same gross incomes as this example) we do include a mid-range spousal support payment.

Applying the "should pay-do pay" analysis the results are summarized in the chart below:

<u>Should Pay – Do Pay Analysis for Exhibit 10</u>			
		<u>Should Pay (%)</u>	<u>Do Pay (%)</u>
Net Cost to be shared by the Parents	\$7,083		
NCP share (based on after tax income)		\$5,089 (71.9 %)	\$12,180 (172.0%)
CP share (based on after tax income)		\$1,993 (28.1%)	(\$5,097) (-72.0%)

Exhibit 11: Additional Case: CP \$25K, NCP \$75K, Spousal Support

CP earns \$25K and NCP earns \$75K and Pays Spousal Support to CP		
Financial Summary:		
Category	CP	NCP
Earnings	25,000	75,000
Spousal Support	3,444	(3,444)
UCCB (included in taxable income)	1,200	
Taxable Income	29,644	71,556
Taxes	808	17,557
CPP, EI	1,497	2,911
Total Taxes (Incl. CPP, EI)	2,305	20,468
After-tax Income	27,339	51,088
Government Benefits Not Included in Tax Return (GST, CCTB, NCBS)	6,339	-
<i>After-Tax And After Benefits Income</i>	33,678	51,088
Guidelines Award	12,180	(12,180)
After-tax , Benefits and after Award Income	45,858	38,908
Direct Expenditures on Children (41.2%)	18,884	
Personal Disposable Income for each Parent	26,973	38,908

Summary of Payments for 2 Children	Amounts	(%) Shares
Expenditures on the Children	18,884	100.00
Paid by Government Tax Credits (included on tax return and in the child support Formula) [see General Note 6.a. in s.7.1.1 above]	3,263	17.28
Paid by Government through UCCB (included on tax return but not in the child support Formula) [see General Note 6.b. in s.7.1.1 above]	928	4.91
Paid by Government Benefits (outside the tax return and not counted in Formula) [see General Note 6.c. in s.7.1.1 above]	5,958	31.55
Paid by Non-Custodial Parent	12,180	64.50
Paid by Custodial Parent out of own resources (including spousal support received)	(3,444)	-18.24

Exhibit 11 takes essentially the same case as Exhibit 10 but includes a spousal payment of \$3,444 to the CP.

The transfer of the spousal support of \$3,444 to the CP (less than that after tax) translates into an approximate \$706 increase in spending on the children, but the total that has to be paid by the parents is \$1,653 higher, since the spousal support is income to the CP and thus reduces the benefits.

<u>Should Pay – Do Pay Analysis for Exhibit 11:</u>			
		<u>Should Pay (%)</u>	<u>Do Pay (%)</u>
Net Cost to be shared by the Parents	\$8,736		
NCP Share		\$5,981 (68.5%)	\$12,180 (139.4%)
CP Share		\$2,755 (31.5%)	(\$3,444) (-39.4%)

As with the previous analysis, there is a substantial difference between the amounts that should be paid based on means (given the DOJ Assumptions), and the amounts that are actually paid. As with the previous example (i.e., without spousal support), the CP “profits” from this differential in the sense that the NCP pays more than the calculated costs of the child.

Exhibit 12 below shows the case of a high income NCP earning \$350,000 and a CP who earns \$50,000 and receives \$86,928 in spousal support payments (which is, as with earlier examples, a mid-point SSAG value). In this case, government benefits are nearly irrelevant due to the high incomes of each parent, including the CP. Of note is the fact that while the NCP earns (pre-tax) 7 times the income of the CP, their relative means, as calculated by the should pay-do pay methodology (i.e., after tax, after benefits and after spousal and child support awards), is much closer at 1.3 to 1. The Guidelines child support award is \$49,116 and the assumed expenditure on the two children is now \$58,741. However, at this level of CP income, some savings could very well occur, which would reduce overall spending and likely the amount spent on the

children (below the number used in Exhibit 12). As has been pointed out earlier (see subsection 3.6.6), the 40/30 equivalence scale as used in the Guidelines assumes there is no savings at any level of income. As previously noted, there is no accountability ensuring that the full \$58,741 will be spent on the children. I look at the impact of savings in the next section (7.6).

Exhibit 12: Additional Case: CP \$50K, NCP \$350K, Spousal Support

CP earns \$50K and NCP earns \$350K and Pays Spousal Support to CP
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Financial Summary:

Category	CP	NCP
Earnings	50,000	350,000
Spousal Support	86,928	(86,928)
UCCB	1,200	
Taxable Income	138,128	263,072
Taxes	41,689	98,595
CPP, EI	2,911	2,911
Total Taxes (incl. CPP, EI)	44,600	101,506
After-tax Income	93,528	161,566

Government Benefits Not Included in Tax Return (GST, CCTB, NCBS)	-	-
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Guidelines Award	49,116	(49,116)
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Income After-tax , Benefits, Spousal and Child Support	142,644	112,450
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Direct Expenditures on Children (41.2%)	58,741	
Personal Disposable Income for each Parent	83,903	112,450

Summary of Payments for 2 Children	Amounts	(%) Shares
Expenditures on the Children	58,741	100.00
Paid by Government Tax Credits (included on tax return and in the child support Formula) [see General Note 6.a. in s.7.1.1 above]	2,680	4.56
Paid by Government through UCCB (included on tax return but not in the child support Formula) [see General Note 6.b. in s.7.1.1 above]	679	1.16
Paid by Government Benefits (outside the tax return and not counted in Formula) [see General Note 6.c. in s.7.1.1 above]	0	0.00
Paid by Non-Custodial Parent	49,116	83.61
Paid by Custodial Parent out of own resources(including spousal support received)	6,265	10.67

<u>Should Pay – Do Pay Analysis for Exhibit 12</u>			
		<u>Should Pay (%)</u>	<u>Do Pay (%)</u>
Net Cost to be shared by the Parents	\$55,381		
NCP Share (based on after-tax Income)		\$35,544 (64.2%)	\$49,116 (88.7%)
CP Share (based on after-tax Income):		\$19,837 (35.8%)	\$6,265 (11.3%)

Once again, the NCP ends up paying significantly more than should be paid based on “means” and the CP ends up paying significantly less. This pattern runs through all of the various examples used thus far.

It is possible to construct an example where the CP will mathematically pay at least close to their share, based on means, of the presumed costs of the children (according to the 40/30 scale).¹²⁵ Generally, however, that would be unusual, as we show in the many cases below and in Appendix 2. Also, again, to create an example that appears to distribute the costs of the children in accordance with the means of the parents requires the assumptions that the NCP has no time with the children and therefore has no costs associated with access; the CP has not re-partnered; the NCP has no other children to support; there are no savings; and there are no section 7 expenses. Further, the CP will only have been presumed to have paid such share, whereas the NCP actually pays the prescribed amounts to the CP.

7.6 Additional Cases Including More Variables

Beyond the cases reviewed in the tables above, additional examples, using a range of incomes, were prepared with a variety of incomes. These additional examples assume an Ontario residence for both the CP and NCP. They are based on the Guidelines’ Table Amounts mandated for Ontario for 2011, benefits are from the 2011 base year for the period July 2011 to June 2012 and 2010 Federal and Ontario tax rates. The results using the 2011 Federal and Ontario tax regime would not be materially different. It was decided to use Ontario since it is Canada’s most populous province and therefore a large proportion of the cases relating to child support will be in that jurisdiction. It is my understanding that the tax differences between the provinces would not fundamentally change the overall results of these examples.

While keeping the assumption that the CP has two children, a number of new assumptions were considered (cumulatively) including: NCP access costs; section 7 expenses; savings; spousal support; and an alternate equivalence scale (30/20). It is important to point out that spousal support is not always awarded, even in cases where the incomes are sharply different.¹²⁶ For that reason, and because this Report is focusing on the Guidelines, the majority of these additional examples do not include spousal support.

¹²⁵ In the next subsection, 7.6, where we review several additional cases and in Appendix 2, where we display a multitude of further additional cases, there is a case where both parents have the same income (approximately \$60,000) and where government benefits are not significant because the CP’s income is sufficiently high. In that case, with the assumptions: the NCP has no access; there are no new relationships; and the children are older and therefore more expensive; the “should” pay amounts are close to the “do” pay amounts, using the 40/30 scale, at \$60,000 pretax income.

¹²⁶ For example, if spousal support issues had been settled long ago.

In each example in Attachment #2, the analysis of “should pay-do pay” is done in the same manner as for the previous examples, except that the should pay-do pay numbers are not calculated as percentages, but as actual dollar values. The full set of tables showing all of the cases is contained in Appendix 2 while two summary tables showing selected highlights are contained in Appendix 1. A smaller selection of the highlights appears in Exhibit 13.

The specific DOJ Assumptions that are modified in doing these examples are, in order:

1. NCP has 20%-35% access time with the children (with costs equal to 30% of what the CP’s costs would be if the CP had 100% custody and CP’s costs are reduced to 90% of such full custody costs);
2. Section 7 expenses equal to 20% of the Table Amounts are awarded;
3. The CP is deemed to save 10% of all net family income (after tax, benefits and support) from \$50,000 - \$100,000 and 20% of all net family income above \$100,000; and
4. Finally, on top of all the other aforementioned assumptions, an alternate equivalence scale (30/20) is used in place of the 40/30 scale to examine the effects on parental shares.

As mentioned, each of these assumptions are applied cumulatively.

In addition, some of the cases of high NCP income assume an award of spousal support. The amount used was the mid-point SSAG’s amount (as determined using only Table Amounts of child support). With the examples that include s. 7 payments, this means the SSAG’s numbers are now somewhat above the mid point SSAG’s, because the payment for s.7’s reduces the mid-point SSAG’s. We did some testing and there was no material change, so we did not reduce the SSAG’s payment on introduction of s.7 payments in these examples. In any event, the focus of this Report is the Guidelines, not the SSAG’s.

Support for all these assumptions has been provided above in Sections 3 and 4, except for the savings percentage. It is arbitrary, yet is certainly not unreasonable in this context, and serves to illustrate the point people do save and are unlikely to devote a constant percentage of income to child maintenance as income rises to more comfortable levels.

A few selected examples are displayed in Exhibit 13 below.

Exhibit 13: Further Additional Cases, Analyzing More Variables – Summary (Should Pay – Do Pay Analysis)						
INCOME LEVELS		(1) Base Case (i.e. DOJ Assumptions) (\$)	(2) (1) including NCP Access Cost for 20% - 35% Custody (\$)	(3) (2) including Section 7 Awards (\$)	(4) (3) including Savings (\$)	(5) (4) but assuming a 30/20 equivalence scale (\$)
NCP Earnings = \$30,000 CP Earnings = \$30,000	NCP Should Pay	2,738	4,462	4,725	4,725	2,705
	NCP Does Pay	5,328	10,498	11,696	11,696	10,686
	CP Should Pay	2,738	4,462	4,725	4,725	2,705
	CP Does Pay	148	-1,575	-2,246	-2,246	-5,276
NCP Earnings = \$60,000 CP Earnings = \$60,000	NCP Should Pay	9,912	12,428	12,963	12,635	9,721
	NCP Does Pay	10,824	18,371	20,803	20,639	19,182
	CP Should Pay	9,912	12,428	12,963	12,635	9,721
	CP Does Pay	9,000	6,485	5,122	4,631	259
NCP Earnings = \$60,000 CP Earnings = \$30,000	NCP Should Pay	4,989	7,503	8,193	8,193	5,188
	NCP Does Pay	10,824	16,673	19,105	19,105	17,940
	CP Should Pay	2,750	4,136	4,516	4,516	2,860
	CP Does Pay	-3,085	-5,034	-6,397	-6,397	-9,892
NCP Earnings = \$120,000 CP Earnings = \$60,000	NCP Should Pay	15,097	18,802	20,055	19,294	14,967
	NCP Does Pay	19,728	28,375	32,808	32,512	30,829
	CP Should Pay	8,394	10,453	11,150	10,727	8,321
	CP Does Pay	3,763	880	-1,603	-2,490	-7,541
NCP Earnings = \$240,000 CP Earnings = \$30,000	NCP Should Pay	15,619	20,752	23,828	22,551	16,342
	NCP Does Pay	36,432	45,445	53,631	53,257	51,440
	CP Should Pay	2,664	3,540	4,065	3,847	2,788
	CP Does Pay	-18,148	-21,152	-25,739	-26,859	-32,310
NCP Earning = \$1,000,000 CP Earnings = \$ 0	NCP Should Pay	52,216	64,870	78,913	68,324	53,205
	NCP Does Pay	142,224	161,223	193,181	190,532	186,748
	CP Should Pay	48	60	73	63	49
	CP Does Pay	-89,959	-96,292	-114,196	-122,144	-133,495

7.6.1 Observations and Conclusions of Cases With More Variables

Some of the results in Exhibit 13 require further discussion. For example, the fairly sharp change in the "should pay - do pay" outcomes as a result of including NCP access costs needs to be explained. On top of the deemed "direct expenditures on children", which is geared to total CP resources, must be added the 30% additional cost to the NCP (Assumption #1). As well, the CP will save 10% of direct expenditures on the children, substantially reducing their "do pay" portion. Because the direct expenditures on children is substantial (i.e., over \$17,000 for two children in the case where both parents earn only \$30,000), these percentages swing the should pay-do pay numbers sharply.

The "should pay" amounts change with the addition of the s.7 expenses because the CP now has more money and, in accordance with the 40/30 scale, is assumed to spend a portion of this extra money on the children. Finally, the impact of savings on the "should pay-do pay" outcomes is minimal in the examples in Exhibit 13, largely because the CP's income in every case is fairly low.

The "should pay-do pay" analysis generates what appear to be some anomalous results. In Appendix 1, we note the case where the CP has a zero income, receives no spousal support and the NCP a good mid-level income of \$90,000. Here, the total net spending on the children to be funded by the parents is only \$31. The explanation of this is that the CP's low income results in

the maximum level of government benefits for the two children. This amount is very close to the "deemed" spending on children making the net amount to be shared very little.

In this case, and in others when the resources of the parents are widely divergent or are either extremely high or extremely low, the results can appear to be strange. However, in each case, the application of the 40/30 equivalence scale as per the Newfoundland examples provides an understandable explanation.

The results in Exhibit 13 are typical of the results in the entire Attachment #2. In every case, even the ones using the base DOJ Assumptions, the CP pays less than they should pay, based on their "means" and the NCP pays more than they should pay. As we add in more diverse scenarios, eg. NCP access costs, section 7 expenses, savings by the CP and a somewhat lower (and more realistic) equivalence scale, the results get progressively worse for the NCP and progressively better for the CP. In fact, in more than half of the cases displayed in this table, the CP not only pays nothing towards the cost of their children but actually *receives a net wealth transfer* from the scheme.

The results of the "should pay – do pay" analysis, beginning with the original Newfoundland Illustration, speak for themselves. They demonstrate as well as anything else in this report the severe unfairness and one-sidedness of the Guidelines *in action*. There is virtually no case in which the (deemed) costs of the children are shared according to the parents "relative abilities to contribute". By any standard, the child support Formula is not equitably distributing both parents' responsibility to maintain their children.

7.7 Comparison Using the Manitoba Agriculture Estimate as a Benchmark

In subsection 6.3, the Manitoba Agriculture expert estimate of the cost of raising a child was reviewed.¹²⁷ It would be useful, now, to compare this estimate with the assumed costs of children generated by the Guidelines. The following table, Exhibit 14, displays this comparison using a range of NCP incomes and assuming a constant CP income of \$25,000. The results are notable, especially in the context of the earlier discussion of NCP overpayment. Clearly, to the extent that the Manitoba Agriculture estimates are a reasonable determination of the costs of raising a child, then the Guidelines appear excessive at most levels of NCP income.

¹²⁷ It can be argued that the Manitoba Agriculture estimates of the cost of raising a child display a clear middle class (or middle income) bias. That is certainly this author's view having written extensively on Canadian living standards and on poverty measurement.

Exhibit 14: Comparison of Guidelines and Manitoba Agriculture Estimates of Cost of Children

CP \$25K employment income, Spousal Support at Mid Point SSAG NCP Income (\$)	Assumed Cost of One Child based on 40/30 Equiv Scale (\$)	Estimated Cost of the Child Using the Manitoba values (\$) Excluding Daycare	Excess costs estimated by Guidelines compared to Man. Ag. Est.
20,000	9,036	5,171	3,865
30,000	9,372	5,171	4,201
40,000	9,704	5,171	4,533
50,000	10,030	5,171	4,859
60,000	10,559	5,171	5,304
70,000	11,510	5,171	6,257
80,000	12,401	5,171	7,132
90,000	13,258	5,171	7,968
100,000	14,146	5,171	8,878
110,000	15,022	5,171	9,753

Note 1: Even though the 40/30 Formula underpinning the Guidelines was supposed to generate a payment that includes day care, I consider it reasonable to exclude day care costs from the comparative Manitoba estimate as the Guidelines deem day care to be a s. 7 expense so that if there was daycare the payments (and thus the assumed cost of the child under the Guidelines) would be higher. The comparison assumes a male child of 4 years old, updated to 2011 using the all items Consumer Price Index.

Note 2: The Manitoba Agriculture estimates of the cost of raising a child vary by age and by gender, although the variation by gender is very small. For example, the annual cost, in 2004, for an 11 year old girl is \$5,723 and for an 11 year old boy is \$5,830 (both excluding day care costs). The gap is largely accounted for by different food costs. The age differences are more significant. For example, a 3 year old boy, in 2010, would cost \$4,849 and a 17 year old boy would cost, in 2010, \$8,461. Again, these values exclude day care costs.

Note 3: Spousal support used is as follows (income/SSAG's) \$60,000/\$1,380; \$70,000/\$5,400; \$80,000/\$9,900; \$90,000/\$14,244; \$100,000/\$17,964; \$110,000/\$21,312. Spousal support is zero at NCP incomes below \$60,000, (because the Child Support Guidelines Table Amounts are already bringing up the CP's standard of living).

The importance of this comparison is that the Guidelines appear to overstate the cost of raising children at all levels of NCP income and the overstatement is greater when the children are younger and as NCP income rises. It is useful to stress that this "expert" budget is by no means a stringent, bare bones approach but is very comprehensive and includes all of the expected costs of raising a child as judged by the Manitoba Agriculture experts.

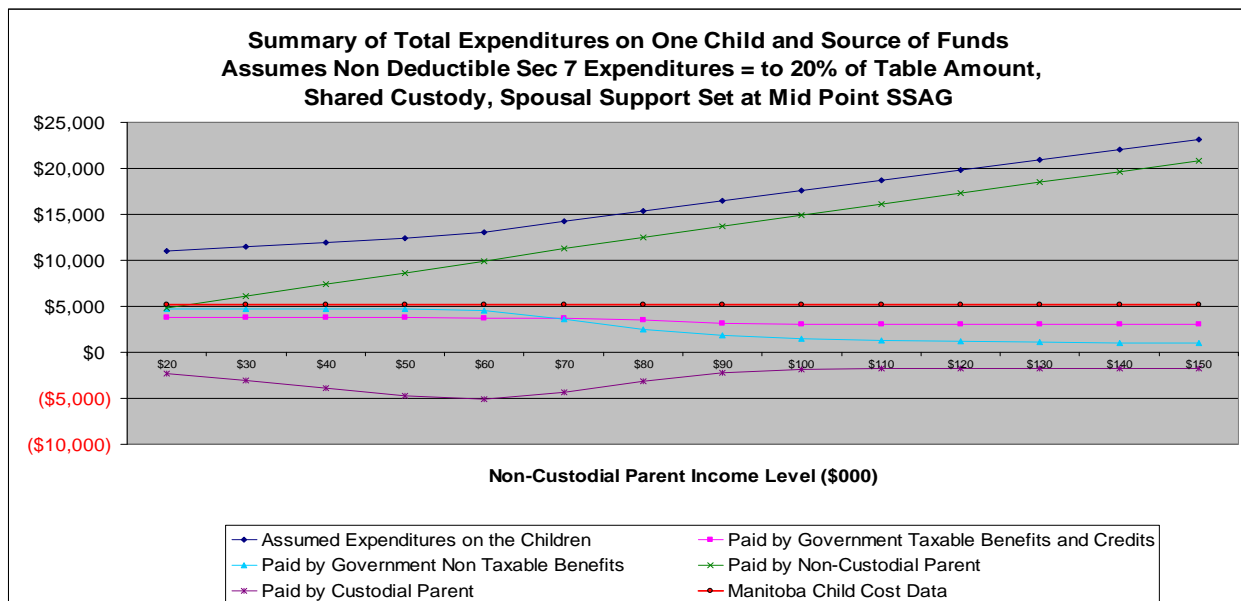
7.7.1 Comparison Using the Manitoba Agriculture Estimate with Additional Assumptions

The comparison with the Manitoba Agriculture estimate becomes more one sided when it is assumed that the NCP has 20% - 35% time with the children.

Using the same assumptions as in Exhibit 14, i.e., CP income of \$25,000 and one 4 year old child, Exhibit 15 sets out the results applying the following additional assumptions:

1. Custody: CP – 65-80%, NCP 20-35%
2. Allocation of Child Care Costs: CP - 90% of costs generated by 40/30 equivalence Formula, NCP – 30% (total of both parents is 120% due to increased costs of shared custody)
3. Section 7 Expenses: 20% of Table Child Care Amount. Assume these are not tax-Deductible. The portion of the section 7 expenses paid by the NCP are counted as income to the CP in determining the total resources of the CP which in turn determines the amount spent on the children in accordance with the 40/30 equivalence scale.
4. Spousal Support: Mid Point SSAG's. The mid point SSAG's is calculated with the assumed section 7 payment in the SSAG's Formula. The spousal support used is as follows: (income/SSAG) \$60,000/\$966; \$70,000/\$4,944; \$80,000/\$9,444; \$90,000/\$13,764; \$100,000/\$17,484; \$110,000/\$20,808; \$120,000/\$24,168; \$130,000/\$27,408; \$140,000/\$30,648; \$150,000/\$33,888. The SSAG's prescribe spousal support to be zero at NCP income below \$60,000 (For an explanation of why there is no SSAG's payment when it intuitively looks like it should, see subsection 6.2).

Exhibit 15: Assumed Expenditure on One Child and Who is Paying



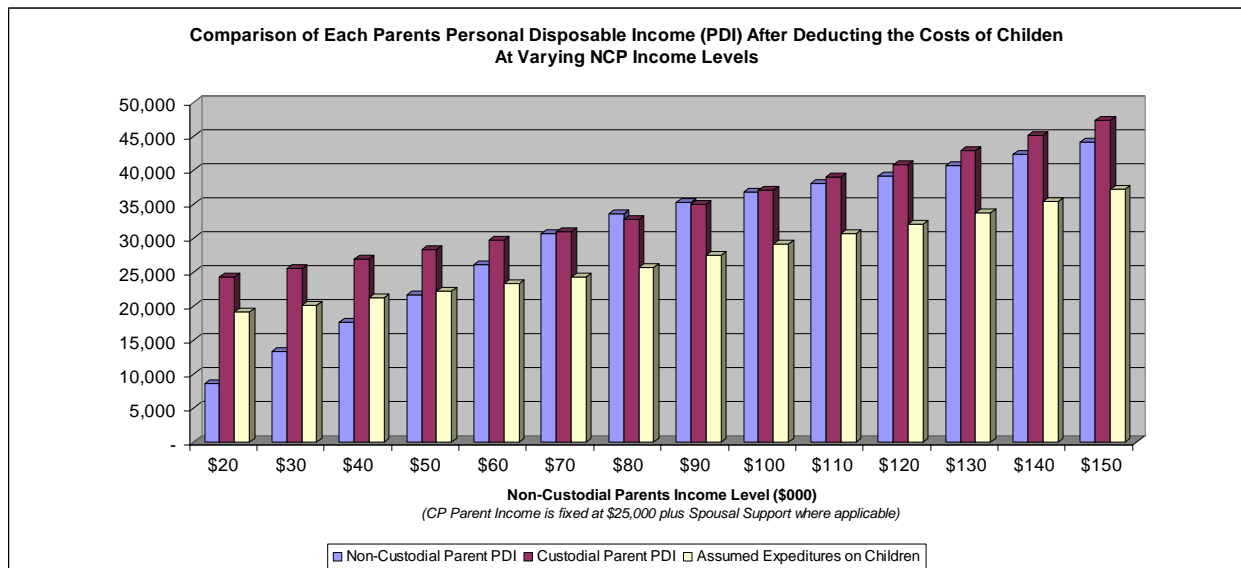
Note: In this Exhibit, the Government Benefits are only broken out into two categories because the UCCB is relatively small as the SSAG's payment increases so the net UCCB is just included in the taxable benefits category.

What is particularly striking about this graph is that in every case the CP *receives a net wealth transfer* from the child support and does not make any financial contribution of their own to the costs of raising the child.

7.8 Comparison of Available Income of CP and NCP

As a further demonstration that the built-in features of the Guidelines are one-sided in favour of the CP, I have calculated a new indicator called "available income". This amount is simply the after-tax income available to each parent after government benefits, child and spousal support, and child expenses determined according to the 40/30 equivalency scale (plus costs of access as per subsection 7.7.1). The calculation uses the same assumptions used to generate Exhibit 15 (except this example uses 2 children). Spousal support has been adjusted (because of 2 children instead of 1) to the following: (income/SSAG) \$80,000/\$2,160; \$90,000/\$5,652; \$100,000/\$9,144; \$110,000/\$13,104; \$120,000/\$17,472; \$130,000/\$21,288; \$140,000/\$24,636; \$150,000/\$27,540. The SSAG's prescribe spousal support to be zero in the assumed fact situation at NCP incomes below \$80,000.

Exhibit 16: Available Income Comparison



This graph clearly shows that under a set of common assumptions and fact situations, the CP is consistently better off than the NCP at virtually every NCP income level, even though the NCP is earning considerably more (up to 6 times more) than the CP in most of the examples). As we have seen with the base assumptions contained in the Formula, there is already an aggressive redistributing mechanism that works to the advantage of the parent given custody of the children. Now, with this Exhibit we have a reasonable set of assumptions relating to spousal support, section 7 expenses and NCP access costs, and the comparison between the CP and NCP is even

more pronounced.¹²⁸ Exhibit 16, in combination with Exhibit 15, shows that, over a wide range of reasonable assumptions, the CP does not financially contribute to the support of the children but in fact *receives a net wealth transfer* from the system.

¹²⁸ Indeed, there are additional considerations not in this graph, such as the age of the children (if younger), a new spouse for the CP or a second family for the NCP, all of which will work to the advantage of the CP, as discussed earlier.

SECTION 8

ADDITIONAL COMMENTS AND CONCLUSION

8.0 The Guidelines View Children Only as Costs (and Not Benefits)

Throughout the research documents and various statements of those responsible for the development of the Guidelines, one is struck by the singular focus on the costs of children and the virtual absence of any discussion of the benefits of children. It is as if the framers of these Guidelines regard children as a huge burden on a family, like a loan on an investment that has soured. The reality, of course, at least for most, is that children bring joy to a family. By ignoring these benefits, the state can claim that all it is doing is equitably distributing the costs. Yet, what often happens is that one parent, the non-custodial parent (NCP), gets significantly less than half of the benefits and pays most (or all, or even more than all) of the costs.

8.1 The Guidelines Ignore the Emotional and Financial Catastrophe of Separation

When a separation occurs there is a whole new category of expenses to be paid, namely, the expense of divorce. These expenses are not factored into the 40/30 (or any other) equivalence scale. Inevitably, except in cases where there are substantial accumulated savings, these costs result in less money for the two households to share on an ongoing basis during the divorce proceedings. None of the research or discussion of how to reform child support spent even a moment on how the Guidelines might be structured to allow people to recover from one of life's great tragedies. If there were a financial shock of similar magnitude to the family and it remained intact, the parents would very likely decide jointly on some kind of austerity plan to allow the finances to recover. Such a plan would inevitably involve less spending on most items, including the child. In the circumstances of divorce, in general, maintaining spending on the children is a very unrealistic expectation.

8.2 The Guidelines Clearly Favour the Custodial Parent

As an economics professor who teaches a course analyzing government policies and programs, I have not seen any policy scheme in Canada that is more flawed, more one-sided and more patently unfair than the Federal Child Support Guidelines. Having reviewed the Guidelines thoroughly and having worked with the Formula and the mathematical examples, I find a system that is fundamentally and egregiously wrong.

While the stated intention was to be a fairer, more equitable and less contentious scheme for ensuring parents attend to their responsibilities to their children after divorce, the Guidelines are, in fact, distinctly unfair and highly contentious. As shown throughout this report, they are not even-handed in their treatment of the two parents. They are very generous to the CP and punitive to the NCP.

The Guidelines are unfair even when the assumptions used by the DOJ to rationalize the Formula are close to the real world facts of a particular case. The Guidelines are extraordinarily unfair when considered in the light of factors that are totally ignored. Those factors include: (1) meaningful custody time for the NCP; (2) the fact that younger children cost less than older children; (3) when circumstances exist (such as a second family) which creates another charge on

the NCP's resources or which reduce the CP's costs; (4) when s.7 expenses are awarded; or (5) in the case of very low or very high incomes. Support for this conclusion is found above in section 7 where the Newfoundland Illustration is reviewed and extended together with the "should pay-do pay" analysis.

It would be hard for an objective observer to escape the conclusion that, every step of the way, the construction and implementation of the Guidelines was ideologically driven,¹²⁹ and that it consistently ignored the best scientific and economic analysis available. More egregiously, the explanations and justifications for some key elements of the Guidelines contain serious misrepresentations and falsehoods. Despite all of this, the Guidelines have remained essentially unchanged since their 1997 implementation, other than to update the schedules for changing tax rates.

8.3 The Guidelines Create Second Class Citizens

The fact that NCP's dramatically overpay has a very significant impact on any other family (spouse and children) they may have that are not covered by the Guideline's mandated payments. This report deals only peripherally with this issue (i.e., second families), however, it does seem clear that if you are paying substantially more than your appropriate share for one set of children, you will have less remaining to support the members of your second family. In contrast, the CP will often benefit from a new family arrangement as was discussed in subsection 4.5. It can be fairly said that the CP (along with the CP's new spouse) are "winners", economically, with the existing child support system in Canada.

This systematic bias is further compounded by the fact that, to my understanding, the NCP is not entitled to treat their child support payments as a deduction to their income in determining whether they may qualify for any government benefits for the children they do have custody of.

8.4 What Things need to be Part of a Child Support Scheme?

While a single formula to determine child support payments does have the advantage of simplicity, it runs a high risk of being fundamentally unfair in many cases. A simplistic formula will seldom fit because of the complexity of life and of relationships. This has happened, extraordinarily so, with the existing Federal Child Support Guidelines, as this report has amply demonstrated. With advances in computer software, it would be a rather trivial matter to have a user friendly program to account for a number of reasonable considerations such as NCP's access costs; both parent's actual means; second families; government benefits flowing to the CP; and differential costs based on the child's age - to name a few of the more important factors.

As well, it would be desirable to have a scheme that greatly reduces the incentive to use the courts to settle issues relating to child support. This gets to be very expensive in many cases and simply adds to the conflict between the parents - both of which disadvantage the children. Reducing the frequency and extent of disclosure (both income and net worth are currently

¹²⁹ D. Allen, *The Anatomy of Canada's Child Support Guidelines: The Effects, Details, and History of a Feminist Family Policy*, in Lloyd Cohen and Joshua Wright (eds) *Research Handbook on the Economics of Family Law*, (Chelthan: Edward Elgar Press, 2011).

required)¹³⁰ should be an objective of a new child support system. It is unnecessarily intrusive for the task at hand. And to the extent that any disclosure is necessary, it should be scrupulously equal for both parents. Equal disclosure would be a requirement if the principle of sharing child costs according to the "means" of the parents is re-instated.

Finally, a child support scheme must be accountable. This means that, as part of its very design, it must have built-in testing and review checkpoints. In particular, it must have a mechanism to allow both policy makers and parents to verify that the system is meeting its objective of covering the children's costs and splitting those costs equitably between the parents. Reasonable accounting protocols could be used in the design stage as well as in the verification process. While there is no suggestion that custodial parents be required to account for every dollar spent, the use of budgets and the keeping of records (as even small businesses are required to do for tax purposes) is not unreasonable since there is really no other way of determining how much each parent is in fact contributing.

This report does not make reference to the numerous different child support programs in use around the world. I am not an expert on these but I do know there is a wide variety of systems in place. It is simply beyond the scope and purpose of this report to analyze these systems and compare them to the Canadian scheme. The intent of this report is to thoroughly assess the federal child support system in Canada. However, it is the case that many of these other programs have dealt with some of the issues raised with this report, such as accountability, second families, the costs of the NCP and savings. This means there is a lot of available material to assist in preparing new Guidelines.

One issue that seems to get considerable media attention is the matter of "over-the-top" child support awards. These exorbitantly high awards, some of them a base amount of in excess of \$10,000 per month for one child, with no accounting as to where this money goes, plus s.7 add ons, bring discredit to the existing Canadian system and the whole idea of "maintaining" a child.¹³¹ In response to this problem, some jurisdictions, New Zealand for example, have instituted a taxable income "cap" for the purpose of determining a child support award.¹³²

Ideally, a restructured child support system will both allocate (and be perceived to allocate) costs of the children in accordance with the relative means of the parents and will work in the vast majority of cases. Such a system should take much of the business of supporting children of divorced parents out of the court system, a saving of much anguish, financial resources and delay for both the parents and the courts.

8.5 Conclusion

In my opinion, the Federal Child Support Guidelines do not equitably distribute the obligation to financially support children between custodial and non-custodial parents in accordance with their relative abilities to contribute to that obligation. This conclusion is supported by a close analysis of the flawed assumptions and choices that underlie the Formula used to derive the Table

¹³⁰ See Note 69, report of Stacie Glazman.

¹³¹ *Ibid.*

¹³² <http://www.ird.govt.nz/childsupport/paying-parents/workout-payments/calculation>

Amounts. Those flaws include: (1) the use of the unrealistically high and arbitrary 40/30 equivalence scale; (2) the invalid assumption of parents spending a constant proportion of income on children at all ages and income levels; (3) ignoring the costs of the NCP while continuing to assume the CP has 100% of the costs; and (4) the failure to account for government benefits in assessing the means of the parties. As shown above, even when using the assumptions and choices underlying the Formula, the non-custodial parent is not treated equitably. That inequitable treatment is further exacerbated by the inclusion of section 7 extraordinary expenses when the Formula and Table Amounts were designed to account for all child related expenditures.

My conclusion is supported by a mathematical analysis of these factors which show not only that the custodial parent does not contribute an equitable amount to the maintenance of children, they may, and often do, receive a net wealth transfer from the present system.

Attachment #1 Additional Cases - No Spousal Support

Analysis of Parental Shares of Child Care Costs

Case with 2 Children (1 under 5) - No Spousal Support

Scenario	Income Levels			One 40/30 Basic Formula		Two 40/30 Formula With Shared Custody		Three 40/30 With Shared Custody and Sec 7 Awards		Four 40/30 With Shared Custody, Sec 7 Awards and Savings		Five 30/20 With Shared Custody, Sec 7 Awards and Savings	
	Non Custodial Parent	Custodial Parent		NCP	CP	NCP	CP	NCP	CP	NCP	CP	NCP	CP
1	\$ 30,000	\$ -	Should Pay	\$ (4,022)	\$ (83)	\$ (2,658)	\$ (55)	\$ (2,142)	\$ (44)	\$ (2,142)	\$ (44)	\$ (3,799)	\$ (78)
			Do Pay	\$ 5,328	\$ (9,432)	\$ 7,416	\$ (10,128)	\$ 8,613	\$ (10,799)	\$ 8,613	\$ (10,799)	\$ 8,190	\$ (12,067)
2	\$ 30,000	\$ 30,000	Should Pay	\$ 2,738	\$ 2,738	\$ 4,462	\$ 4,462	\$ 4,725	\$ 4,725	\$ 4,725	\$ 4,725	\$ 2,705	\$ 2,705
			Do Pay	\$ 5,328	\$ 148	\$ 10,498	\$ (1,575)	\$ 11,696	\$ (2,246)	\$ 11,696	\$ (2,246)	\$ 10,686	\$ (5,276)
3	\$ 60,000	\$ -	Should Pay	\$ (1,821)	\$ (21)	\$ 3	\$ 0	\$ 1,061	\$ 12	\$ 1,061	\$ 12	\$ (1,225)	\$ (14)
			Do Pay	\$ 10,824	\$ (12,665)	\$ 13,591	\$ (13,588)	\$ 16,023	\$ (14,950)	\$ 16,023	\$ (14,950)	\$ 15,445	\$ (16,684)
4	\$ 60,000	\$ 30,000	Should Pay	\$ 4,989	\$ 2,750	\$ 7,503	\$ 4,136	\$ 8,193	\$ 4,516	\$ 8,193	\$ 4,516	\$ 5,188	\$ 2,860
			Do Pay	\$ 10,824	\$ (3,085)	\$ 16,673	\$ (5,034)	\$ 19,105	\$ (6,397)	\$ 19,105	\$ (6,397)	\$ 17,940	\$ (9,892)
5	\$ 60,000	\$ 60,000	Should Pay	\$ 9,912	\$ 9,912	\$ 12,428	\$ 12,428	\$ 12,963	\$ 12,963	\$ 12,635	\$ 12,635	\$ 9,721	\$ 9,721
			Do Pay	\$ 10,824	\$ 9,000	\$ 18,371	\$ 6,485	\$ 20,803	\$ 5,122	\$ 20,639	\$ 4,631	\$ 19,182	\$ 259
6	\$ 60,000	\$ 120,000	Should Pay	\$ 12,756	\$ 22,944	\$ 15,555	\$ 27,978	\$ 15,938	\$ 28,665	\$ 15,103	\$ 27,164	\$ 11,990	\$ 21,566
			Do Pay	\$ 10,824	\$ 24,876	\$ 22,574	\$ 20,960	\$ 25,006	\$ 19,597	\$ 24,422	\$ 17,845	\$ 22,244	\$ 11,312
7	\$ 90,000	\$ -	Should Pay	\$ 31	\$ 15,372	\$ 2,233	\$ 18,701	\$ 3,740	\$ 22,155	\$ 3,740	\$ 22,155	\$ 937	\$ 21,448
			Do Pay	\$ 15,372	\$ (15,341)	\$ 18,701	\$ (16,450)	\$ 22,155	\$ (18,385)	\$ 22,155	\$ (18,385)	\$ 21,448	\$ (20,504)
8	\$ 90,000	\$ 90,000	Should Pay	\$ 15,075	\$ 15,075	\$ 18,510	\$ 18,510	\$ 19,270	\$ 19,270	\$ 18,368	\$ 18,368	\$ 14,469	\$ 14,469
			Do Pay	\$ 15,372	\$ 14,778	\$ 25,677	\$ 11,343	\$ 29,131	\$ 9,408	\$ 28,680	\$ 8,056	\$ 26,731	\$ 2,208
9	\$ 120,000	\$ -	Should Pay	\$ 1,814	\$ 11	\$ 4,375	\$ 28	\$ 6,313	\$ 40	\$ 6,313	\$ 40	\$ 3,016	\$ 19
			Do Pay	\$ 19,728	\$ (17,903)	\$ 23,595	\$ (19,192)	\$ 28,028	\$ (21,675)	\$ 28,028	\$ (21,675)	\$ 27,198	\$ (24,163)
10	\$ 120,000	\$ 30,000	Should Pay	\$ 8,730	\$ 2,675	\$ 12,276	\$ 3,762	\$ 13,769	\$ 4,219	\$ 13,383	\$ 4,101	\$ 9,119	\$ 2,795
			Do Pay	\$ 19,728	\$ (8,322)	\$ 26,677	\$ (10,639)	\$ 31,110	\$ (13,122)	\$ 30,984	\$ (13,500)	\$ 29,592	\$ (17,678)
11	\$ 120,000	\$ 60,000	Should Pay	\$ 15,097	\$ 8,394	\$ 18,802	\$ 10,453	\$ 20,055	\$ 11,150	\$ 19,294	\$ 10,727	\$ 14,967	\$ 8,321
			Do Pay	\$ 19,728	\$ 3,763	\$ 28,375	\$ 880	\$ 32,808	\$ (1,603)	\$ 32,512	\$ (2,490)	\$ 30,829	\$ (7,541)
12	\$ 120,000	\$ 120,000	Should Pay	\$ 19,683	\$ 19,683	\$ 23,966	\$ 23,966	\$ 24,941	\$ 24,941	\$ 23,312	\$ 23,312	\$ 18,542	\$ 18,542
			Do Pay	\$ 19,728	\$ 19,639	\$ 32,577	\$ 15,355	\$ 37,010	\$ 12,872	\$ 36,196	\$ 10,429	\$ 33,811	\$ 3,273
13	\$ 240,000	\$ -	Should Pay	\$ 8,673	\$ 30	\$ 12,612	\$ 44	\$ 16,200	\$ 57	\$ 15,939	\$ 56	\$ 10,803	\$ 38
			Do Pay	\$ 36,432	\$ (27,729)	\$ 42,362	\$ (29,706)	\$ 50,549	\$ (34,292)	\$ 50,483	\$ (34,488)	\$ 49,195	\$ (38,353)
14	\$ 240,000	\$ 30,000	Should Pay	\$ 15,619	\$ 2,664	\$ 20,752	\$ 3,540	\$ 23,828	\$ 4,065	\$ 22,551	\$ 3,847	\$ 16,342	\$ 2,788
			Do Pay	\$ 36,432	\$ (18,148)	\$ 45,445	\$ (21,152)	\$ 53,631	\$ (25,739)	\$ 53,257	\$ (26,859)	\$ 51,440	\$ (32,310)
15	\$ 240,000	\$ 120,000	Should Pay	\$ 29,707	\$ 16,537	\$ 36,094	\$ 20,093	\$ 38,407	\$ 21,380	\$ 35,042	\$ 19,507	\$ 27,943	\$ 15,555
			Do Pay	\$ 36,432	\$ 9,813	\$ 51,345	\$ 4,842	\$ 59,531	\$ 256	\$ 58,222	\$ (3,673)	\$ 55,459	\$ (11,961)
16	\$ 500,000	\$ -	Should Pay	\$ 23,564	\$ 42	\$ 30,485	\$ 55	\$ 44,515	\$ 80	\$ 40,802	\$ 73	\$ 30,926	\$ 55
			Do Pay	\$ 72,624	\$ (49,018)	\$ 83,025	\$ (52,485)	\$ 114,983	\$ (70,389)	\$ 114,054	\$ (73,179)	\$ 111,580	\$ (80,599)
17	\$ 1,000,000	\$ -	Should Pay	\$ 52,216	\$ 48	\$ 64,870	\$ 60	\$ 78,913	\$ 73	\$ 68,324	\$ 63	\$ 53,205	\$ 49
			Do Pay	\$ 142,224	\$ (89,959)	\$ 161,223	\$ (96,292)	\$ 193,181	\$ (114,196)	\$ 190,532	\$ (122,144)	\$ 186,748	\$ (133,495)

Attachment #2 Additional Cases - With Spousal Support

Analysis of Parental Shares of Child Care Costs

Case with 2 Children (1 under 5)
Modified With Addition of Mid Point SSAG

Scenario	Income Levels			One 40/30 Basic Formula		Two 40/30 Formula With Shared Custody		Three 40/30 With Shared Custody and Sec 7 Awards		Four 40/30 With Shared Custody, Sec 7 Awards and Savings		Five 30/20 With Shared Custody, Sec 7 Awards and Savings	
	Non Custodial Parent	Custodial Parent		NCP	CP	NCP	CP	NCP	CP	NCP	CP	NCP	CP
	1 SSAG	\$ 30,000 \$ (1,812)		\$ - \$ 1,812	Should Pay Do Pay	\$ (3,054) \$ 5,328	\$ (304) \$ (8,686)	\$ (1,653) \$ 7,640	\$ (165) \$ (9,457)	\$ (1,174) \$ 8,837	\$ (117) \$ (10,128)	\$ (1,174) \$ 8,837	\$ (117) \$ (10,128)
3 SSAG	\$ 60,000 \$ (9,156)	\$ - \$ 9,156	Should Pay Do Pay	\$ 1,559 \$ 10,824	\$ 391 \$ (8,874)	\$ 3,637 \$ 14,722	\$ 912 \$ (10,173)	\$ 4,492 \$ 17,154	\$ 1,126 \$ (11,536)	\$ 4,492 \$ 17,154	\$ 1,126 \$ (11,536)	\$ 1,955 \$ 16,361	\$ 490 \$ (13,916)
6 SSAG	\$ 60,000 \$ 8,364	\$ 120,000 \$ (8,364)	Should Pay Do Pay	\$ 13,491 \$ 10,824	\$ 20,260 \$ 22,927	\$ 16,894 \$ 24,421	\$ 25,370 \$ 17,843	\$ 16,894 \$ 24,421	\$ 25,370 \$ 17,843	\$ 16,054 \$ 23,896	\$ 24,108 \$ 16,266	\$ 12,732 \$ 21,818	\$ 19,120 \$ 10,034
7 SSAG	\$ 90,000 \$ (17,028)	\$ - \$ 17,028	Should Pay Do Pay	\$ 4,429 \$ 15,372	\$ 1,344 \$ (9,600)	\$ 7,207 \$ 20,804	\$ 2,187 \$ (11,410)	\$ 8,372 \$ 24,258	\$ 2,541 \$ (13,345)	\$ 8,372 \$ 24,258	\$ 2,541 \$ (13,345)	\$ 4,975 \$ 23,151	\$ 1,510 \$ (16,666)
9 SSAG	\$ 120,000 \$ (24,576)	\$ - \$ 24,576	Should Pay Do Pay	\$ 6,982 \$ 19,728	\$ 2,279 \$ (10,468)	\$ 10,392 \$ 26,513	\$ 3,392 \$ (12,729)	\$ 11,862 \$ 30,946	\$ 3,871 \$ (15,213)	\$ 11,531 \$ 30,836	\$ 3,764 \$ (15,541)	\$ 7,417 \$ 29,472	\$ 2,421 \$ (19,634)
10 SSAG	\$ 120,000 \$ (17,856)	\$ 30,000 \$ 17,856	Should Pay Do Pay	\$ 13,234 \$ 19,728	\$ 7,034 \$ 540	\$ 16,621 \$ 27,509	\$ 8,834 \$ (2,054)	\$ 17,893 \$ 31,942	\$ 9,511 \$ (4,537)	\$ 17,347 \$ 31,732	\$ 9,220 \$ (5,165)	\$ 13,338 \$ 30,197	\$ 7,090 \$ (9,770)
11 SSAG	\$ 120,000 \$ (5,832)	\$ 60,000 \$ 5,832	Should Pay Do Pay	\$ 15,496 \$ 19,728	\$ 9,785 \$ 5,553	\$ 19,221 \$ 28,842	\$ 12,137 \$ 2,515	\$ 20,416 \$ 33,275	\$ 12,891 \$ 32	\$ 19,576 \$ 32,933	\$ 12,361 \$ (996)	\$ 15,252 \$ 31,169	\$ 9,631 \$ (6,286)
13 SSAG	\$ 240,000 \$ (64,836)	\$ - \$ 64,836	Should Pay Do Pay	\$ 22,490 \$ 36,432	\$ 10,256 \$ (3,685)	\$ 27,694 \$ 47,798	\$ 12,630 \$ (7,474)	\$ 30,167 \$ 55,984	\$ 13,757 \$ (12,060)	\$ 28,494 \$ 55,375	\$ 12,994 \$ (13,887)	\$ 22,395 \$ 53,155	\$ 10,213 \$ (20,548)
14 SSAG	\$ 240,000 \$ (53,364)	\$ 30,000 \$ 53,364	Should Pay Do Pay	\$ 24,616 \$ 36,432	\$ 12,846 \$ 1,030	\$ 30,126 \$ 49,010	\$ 15,722 \$ (3,162)	\$ 32,492 \$ 57,197	\$ 16,956 \$ (7,749)	\$ 30,277 \$ 56,354	\$ 15,801 \$ (10,277)	\$ 23,951 \$ 53,947	\$ 12,499 \$ (17,497)
15 SSAG	\$ 240,000 \$ (17,820)	\$ 120,000 \$ 17,820	Should Pay Do Pay	\$ 30,150 \$ 36,432	\$ 20,135 \$ 13,853	\$ 36,591 \$ 52,546	\$ 24,436 \$ 8,481	\$ 38,750 \$ 60,733	\$ 25,878 \$ 3,895	\$ 35,033 \$ 59,183	\$ 23,396 \$ (754)	\$ 27,968 \$ 56,237	\$ 18,678 \$ (9,591)
16 SSAG	\$ 500,000 \$ (145,776)	\$ - \$ 145,776	Should Pay Do Pay	\$ 46,135 \$ 72,624	\$ 21,667 \$ (4,822)	\$ 65,393 \$ 125,952	\$ 30,711 \$ (29,848)	\$ 65,393 \$ 125,952	\$ 30,711 \$ (29,848)	\$ 56,891 \$ 122,828	\$ 26,718 \$ (39,219)	\$ 45,610 \$ 118,684	\$ 21,420 \$ (51,653)
17 SSAG	\$ 1,000,000 \$ (305,088)	\$ - \$ 305,088	Should Pay Do Pay	\$ 89,596 \$ 142,224	\$ 41,958 \$ (10,670)	\$ 107,982 \$ 182,719	\$ 50,569 \$ (24,168)	\$ 117,555 \$ 214,678	\$ 55,051 \$ (42,072)	\$ 98,624 \$ 207,729	\$ 46,186 \$ (62,918)	\$ 79,394 \$ 200,670	\$ 37,181 \$ (84,095)

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