

SUPPORT THE CHALLENGE

Challenging Canada's Child Support Guidelines

This bulletin is the first of a series on both the longstanding oppression faced by a non-custodial parent (the NCP) under Canada's *Child Support Guidelines* (Guidelines) and the upcoming court challenge (the Action).

The Action has been ongoing since 2013. The road has been long and procedurally difficult. It is now at the point where a hearing on the merits is scheduled for December 2 – 4, 2020 in Edmonton, Alberta.

The Guidelines are a regulation under Canada's *Divorce Act* (the Act). They set out the amount of child support to be paid by the NCP. Section 26.1(2) of the Act requires the Guidelines to allocate the financial responsibility for the children based on each parent's relative ability to contribute to the obligation. However, the Guidelines do not do this. Instead, they are skewed very much in favour of the custodial parent (the CP). The Action targets the inconsistency between Section 26.1(2) of the Act and what the Guidelines actually do.

The applicant is a NCP that has children from 3 different marriages. As a result of the Guidelines, the NCP's financial resources have been disproportionately directed towards the child from the second marriage over the children from his other marriages and his wife. The NCP is a medical researcher of retirement age who makes what would be a comfortable income, but he has been financially devastated by the Guidelines, so he has no material net worth. In contrast, the CP is financially very comfortable as she is a doctor with a husband who is a lawyer.

The Action is underpinned by a one-of-a-kind evaluation of the Guidelines by Professor Christopher Sarlo, "*An Assessment of the Federal Child Support Guidelines*" (the Report). The Report has been reviewed and endorsed by Professor Doug Allen. The clear conclusion of the Report is the Guidelines result in inordinately high amounts of child support being paid to the CP. This injustice arises because the Guidelines contain numerous flaws which favour the CP over the NCP.

Chief among those flaws is the mathematical formula used to calculate the child support tables. The formula is solved for one theoretical situation, and incorrectly for that matter, because the formula is based on patently false assumptions which favour the CP. This incorrect answer is then applied to every NCP that has the same income and number of children.

Specifically, the Guidelines ignore or assume the following:

- the income of the custodial parent is ignored;
- the differing costs of raising children at different ages and in different locations is ignored;
- it is assumed the CP incurs all the costs of the children and the NCP has no costs;
- most of the tax credits and government benefits received by the CP are ignored;
- any responsibilities of the NCP to maintain children from prior or subsequent relationships are ignored; and

- it is assumed parents spend the same percentage of their after tax income on their children at higher income levels as they do at lower income levels, when it is obvious it is a decreasing percentage.

To compound the problems, CPs can almost routinely increase the child support amount under Section 7 for various categories of expenditures, like children's activities, which are already supposed to be covered in the base amount. In sharp contrast, a NCP can virtually never get the amount of child support reduced, and then, only if they can demonstrate undue hardship and a standard of living below the CP, regardless of how much more the NCP may be earning.

The effect of these assumptions and Section 7 expenses is that the Guidelines do not equitably distribute the financial obligations of raising children between their parents, nor do they calculate amounts required to adequately maintain children at the parents' income level.

While the Department of Justice claims that the "amounts in the tables are based on economic studies of average spending on children in families at different income levels", this is simply not true. They are based on a very subjective guess of what, in percentage terms, an extra adult added to a single adult household would cost at the poverty level. The Department of Justice claims this to be 40% for the first person and an extra 30% for each additional person. This same percentage is then used for children.

Ultimately, the Guidelines make the CP and their circle, winners over the NCP and their circle. Although, statistically, more men are the NCP, and therefore the payor under the Guidelines, a woman is often on the losing end if she is part of or related to a family unit involving a NCP. On the other hand, a man is often a winner under the Guidelines if he is part of a new circle with a CP. So we do not consider this to be a battle of the sexes, even if some may jump to that conclusion.

Although the Guidelines were introduced at the federal level for married couples seeking a divorce, they apply almost everywhere in Canada; even if the parents were never married. The only exception is Quebec, which has its own, more reasonable, set of child support guidelines. Further information on Quebec's child support guidelines will be provided in a future bulletin.

While it is impossible to precisely calculate the amount of child support overpayments mandated by the Guidelines, a rudimentary analysis suggests such overpayments are in the billions of dollars per year, with millions of people affected. In the aggregate, the consequences are sufficiently enormous to be another landmark Canadian social injustice.

The ultimate goal of the Action is for the federal government to re-write the Guidelines so they respect the intent of the Act. This would mean reflecting the real-world circumstances of parents and children and making the Guidelines more in line with how the Quebec Guidelines work.

For more information about the Action, the Report and the Guidelines please visit our website at www.supportthechallenge.ca. If you are interested in receiving more information on this issue, including receiving updates on the Action, you can register for future email notifications there.