

An Assessment of the Federal Child Support Guidelines



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Executive summary

The Federal Child Support Guidelines (Guidelines) were implemented by the Canadian federal government in May 1997. The Guidelines chiefly lay out how the courts are to decide issues dealing with custody, child support, and related matters. The Guidelines claim to be based on studies of the actual expenditures on children and claim to be 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 claim is true. Rather, the Guideline table amounts are based on a formula, which uses an arbitrary equivalence scale and a number of unrealistic assumptions that make them unfair. This paper analyses 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), and compares those results against models with more realistic assumptions, as well as against the costs of raising children as determined by other agencies. This analysis concludes that the Guidelines have no connection to economic studies on the average spending on children (and do not legitimately assess the costs of children), nor do they equitably distribute child maintenance obligations between parents according to their means and relative abilities to contribute to those obligations.

The Guidelines ignore important considerations that bear on each parent's ability to pay. Specifically, they ignore government benefits that help defray the cost of raising children in lower and middle income families; they ignore the costs to the noncustodial parent of access time with their children (which some studies calculate is up to a third of the total cost of children); they ignore the fact that extraordinary costs (the section 7 part of the Guidelines) were intended to be covered by the choice of a high-end equivalence scale but ended up being an add-on to the table amounts; and they ignore any re-partnering that might (and often does) occur and make no adjustments for the extra costs of dependents. As well, the Guidelines assume that children are only costs and do not have any value—that is, their parents do not derive any benefit from the time spent with their own children. These issues alone should cause political leaders and policymakers substantial concern. We have a mandatory set of directives that impact hundreds of thousands of Canadian

families that simply are not based on economic studies of children's costs and violate their own stated goals.

The policy implications of the Guidelines are serious and far-reaching. Tracing the development and implementation of the Guidelines, this paper finds them to be gender-biased. They favour mothers at every turn and are punitive to fathers. Courts routinely grant sole (physical) custody of children to mothers under the guise of "the best interests of the child." The Guidelines award table amounts of support that, in most cases, substantially exceed the intended goal of ensuring an equitable sharing of the costs of children, thereby producing net wealth transfers from noncustodial to custodial parents. Custodial parents are assumed to have the children 100% of the time which is, in fact, rarely the case. Fathers are effectively disenfranchised. They are not considered equal parents.

The Guidelines also promote discord and litigation. Precisely because children are of value to both parents, custody is the principal matter that brings parents to court. However, section 7 and other aspects of the Guidelines are also often disputed. The paper asks whether it is helpful to put parents through litigation and the high expense of legal counsel. The time, energy, and money could presumably be better spent on the children. Arguably the greatest concern is that the Guidelines discourage marriage and promote divorce. It makes marriage a much less attractive option, especially for higher income men. And it makes divorce, in marginal marriages, more attractive for women with children. Neither effect is good for children or for society.

Section 1: Introduction

Purpose and scope of this paper

This paper is a critical evaluation of the Canadian Child Support Guidelines (Guidelines). The Guidelines are a regulation of the federal government and were established in May of 1997. This evaluation intends to deal comprehensively with the following aspects of the Guidelines: legal basis; the formula for determining the amount of child support; the economic research (or lack thereof) underpinning the Guidelines; the possible biases underlying the construction of the Guidelines formula; the differential treatment of the separated parents; the possible net wealth transfers between the separated parents; and the potential adverse implications on families and children.

Canada's *Divorce Act* specifies that child support must be based on the divorced parent's relative ability to contribute. The primary purpose of this paper is to review whether this requirement is met by the Federal Child Support Guidelines. Specifically, do the Guidelines, in fact, reflect parents' relative abilities to pay and do they reasonably determine the monetary amounts required to maintain the children of a marriage?

In the course of this review, I discuss how the Guidelines were constructed, what the goals and objectives were, and whether the research and analysis underpinning the Guidelines are valid. Further, I examine the quantum of child support in the Guidelines tables and compare that amount to the cost of maintaining a child (or children) and to the means of both parents. The term "means" is intended to be synonymous with the phrase "relative abilities to contribute."

The scope of this paper is restricted to situations in which the child or children of a noncustodial 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 lays at the foundation of any child support framework: What is the cost of a child? A system that requires parents to pay for the maintenance of their children upon breakup must reasonably establish what those costs are. In addition to the review of these costs of a child, this paper further examines how costs should be shared, and how “means” are to be defined.

There is a significant economic literature addressing the cost of a child. It must be appreciated that there is no one true cost of a child. Measurement approaches and estimates vary substantially, and not all estimates are equally thorough or reliable. The essential requirements 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, and socio-cultural considerations.

On the question of sharing the costs of a child, there can be different perspectives on what counts in terms of “ability to pay” and different methods 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.

Clearly the question of “ability to pay” may not be just a matter of determining income. It can be argued that two people with the same after-tax income may have quite different abilities to pay depending on their personal situations. In other words, ability to pay may not be solely a question of wealth. Circumstances may also be relevant. For example, family obligations, the presence of special needs, and health issues are factors that (some argue) matter when determining a person’s ability to pay. These, and other factors, are ignored by the Guidelines.

Both before and after the development of the regulatory Guidelines, the relevant federal statutory law in this area was and remains 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 (DOJ) leading up to the development of the Guidelines. For example, there are no references to s. 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. Thus, despite the fact that the *Divorce Act* is supposed to be the overarching legislation, the

Guidelines seem to ignore its provisions. This, of course, raises issues of the appropriateness and, perhaps, the legality of the Guidelines.

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

The Guidelines have a far-reaching effect in Canadian society. With a divorce rate close to 40% and about 70,000 divorces every year (Anderssen, 2011, March 25), a great many families are directly or indirectly influenced by the provisions of the Guidelines, especially those involving the payment of regular child support to the custodial parent. Those directly impacted will have court-ordered support payments transferred between parents based on the Guidelines. Those indirectly impacted will establish amounts of support, either through mediation or even less formally via consent, that are, nevertheless, influenced by the Guidelines. If there are flaws, inequities, or biases inherent in the Guidelines so as to produce unfairness, net wealth transfers, and perverse incentives (such as increasing the likelihood of divorce), then this is a matter of great importance to policymakers and society in general.

Overview

Section 2 of this paper provides 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 the paper provides a general discussion on the costs of children together with a further detailed analysis on how the formula calculates such costs. I show that 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 what the developers of the Guidelines refer to as (non-specific) “public consultations” and misrepresented “empirical evidence.” Further, I show 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 federal DOJ’s own research and firmly established economic spending theory.

Section 4 reviews a number of important matters that are ignored by the Guidelines in producing the table amounts payable by noncustodial 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. The impact of re-partnering is also ignored to the detriment of noncustodial parents (and to the benefit of custodial parents). Also included here are the criticisms 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). As well, there is a comparison of 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. Expert estimates of the cost of raising children are also contrasted with the amounts derived from the formula.

Section 5 contains an important discussion of the mathematics of the Guidelines, which includes an analysis of net wealth transfers. The relevant work of economist Doug Allen is reviewed. Original illustrations provided by the DOJ in its explanation of the working of the formula are used to illustrate the basic math involved. These illustrations show clearly that the formula does not equitably distribute the child maintenance obligations between parents, even based on the unrealistic assumptions that underlie the Guidelines. Further, I use a comparative analysis using alternate assumptions and scales to demonstrate that not only are the child support obligations (generated by the Guidelines) not equitably distributed between parents, but the custodial parent can, in fact, receive a net wealth transfer from the Guidelines.

Finally, I provide some policy implications and concluding comments and observations regarding the Guidelines in Section 6.

Section 2: Understanding the child support guidelines

A brief history

The process that culminated in the Guidelines becoming law originated with an agreement by federal, provincial, and territorial Ministers of Justice to form the Family Law Committee (FLC) 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” (DOJ, 1992: 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 by the FLC including one by respected economist Martin Browning. He did a careful review of approaches to determining the cost of children and his own research showed a preferred approach.

A variety of issues were examined in the research documents, including child poverty, feminization of poverty, and income redistribution between former spouses, as well as technical issues with each of the models being considered. By 1992, the research appears to have focused on child support guidelines as the favoured solution to the various identified issues. The further research that followed examined various theoretical approaches for determining the cost of children and various models of child support that could be used to derive guideline amounts.

However, by 1995, much of the early research was 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 (Finnie et al., 1995: 91; DOJ, 1995a: 68).

It is noteworthy that the technical report describing the ultimate formula based on the revised fixed percentage approach (DOJ, 1997) was released sometime after the Guidelines were implemented.¹ The formula is the source of the numbers in the tables that are part of the Guidelines and dictates 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.²

Allen (2009) has a more detailed history of the development of the Guidelines. His research shows, among other things, that a feminist perspective of the family underpins the Guidelines and its provisions and that this has led to greater marital instability due to perverse incentives inherent in the Guidelines. These ideas and Allen's analysis are explored more fully in the next section of the paper.

The formula

The following is a fairly detailed and technical review of the formula underpinning the Guidelines. While this may be difficult for some lay readers, some technical discussion is necessary for a full and exacting evaluation.

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 separation of the two parents as long as the income of the paying, noncustodial 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:

$$\frac{\text{Income}_{\text{PP}} - \text{Taxes}_{\text{PP}} - \text{Table Amount}}{\text{AEU for the Paying Parent}} = \frac{\text{Income}_{\text{RP}} - \text{Taxes}_{\text{RP}} + \text{Table Amount}}{\text{AEU for the Receiving Parent and Children.}}$$

- 1 Prior drafts of the *Technical Report*, which were obtained under an Access to Information Act request, contained examples (discussed in detail below in section 5) that were removed from the ultimately published *Technical Report*.
- 2 The Guidelines came into force May 1, 1997, whereas the *Technical Report* explaining the Formula is dated December 1997. See also Allen (2009), p. 26.

In the formula, AEU stands for adult equivalent unit. An AEU is simply a number that purportedly reflects an 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. It is important to underline that the 40/30 rule is a strictly theoretical statement about the relative costs of households of different sizes. It is an arbitrary choice and, one can argue, a choice better suited to lower income households. More discussion of this point is below under “the role of equivalence scales.”

The formula is solved by assuming that both parents have exactly the same pre-tax income (at every level of income). This process generates the table amounts that noncustodial parents must pay. However, equal pre-tax incomes are rarely the case in reality. Nevertheless, by making this assumption (equal pre-tax incomes) the DOJ was able to generate table values just using the income of the noncustodial parent. As Allen explains, this approach of requiring only the noncustodial parent’s income follows the “Wisconsin model” of child support determination.

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

While the mathematics is simple, the concepts behind the math and the implications of the choices made by the FLC 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.

“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.³

“Personal disposable income” is a 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.

3 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 (UCCB) in 2006, 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 DOJ, 2008, Spousal Support Advisory Guidelines, p. 48, s. 6.4.)

The role of equivalence scales

As mentioned, the FLC made a deliberate choice to capture the cost of children using an equivalence scale. Instead of relying on economic research relating to the cost of raising children, they simply assumed that a child (in a two parent family) adds another 30% to the family's costs—regardless of the income of the family. The following discussion provides an explanation of the role that equivalence scales play in the formula using some simple illustrations.

An equivalence scale is a set of ratios that purport to tell us the extra cost of adding people to the household while assuming a constant standard of living. The Guidelines use the 40/30 equivalence scale. This means that the first adult in a household is given an equivalence value of 1. The second adult is assumed to add 40% more to costs. In other words, in order to have the same standard of living as the first adult, 40% more spending is required for the second adult.⁴ Each child, regardless of age, is assumed to add an additional 30% to costs up to a maximum of 4 children. So, the 40/30 equivalence scale would be 1.0; 1.4; 1.7; 2.0; 2.3; etc. These ratios reflect the economies of scale when people live together and share space, appliances, furnishings, etc. For example, when two single people decide to cohabitate, the spending required to maintain the same standard of living as the first single person will not double.

Illustration

To illustrate how the 40/30 scale works, let's assume 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 ($.4 \times \$35,000$). 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 $(.4/1.4) \times 100$, 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 (defined as income not spent) of \$16,000.

Extending the illustration 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 ($1.7 \times \$35,000$) in order to

4 Statistics Canada assumes that the first child in a single parent household also adds 40% to spending.

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%, or $(.3/1.7) \times 100$, of the total expenditure. Since total spending is \$59,500, the ascribed incremental cost of the child is \$10,500 ($.3 \times \$35,000$).

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 will 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 household 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.

How does the 40/30 equivalence scale work in the Guidelines Formula?

The equivalence scale selected for the Guidelines is the 40/30 scale that previously had been employed by Statistics Canada in constructing the Low Income Measures (LIM). Clearly, this was a deliberate choice made by the FLC and it has implications for the amount of child support to be paid. A different equivalence scale, for example 30/20, would generate substantially different child support amounts. The analysis, critique, and comparison of this choice of equivalence scale are left for the next section of the paper. For now, our purpose is to understand how it works in the formula and how it is used to construct the child support awards in the tables.

An example using the formula and taxes for Ontario in 2010

As mentioned, the number of children with the CP is incorporated into the adult equivalent unit (AEU) value. For example, take an Ontario CP with a \$40,000 income and one pre-school-aged child and a NCP also with \$40,000 income. The after-tax income for the NCP is \$31,580, whereas the after-tax income for the CP is \$33,836.⁵ In this case, the table amount of child support is \$4,404 and formula equation would be

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

5 Slight differences are due to the UCCB and the more favourable tax treatment of adults with dependents.

Now, dividing the numerators by the respective AEU values, we get \$27,176 (NCP living standard) and \$27,314 (CP family living standard). Note that the AEU takes into account the 40% additional cost of the child in the denominator.

DOJ principles and assumptions underlying the formula

The above discussion and illustration should give the reader a basic understanding of the formula and how it works to generate the table amounts of child support. However, also critical to understanding the Guidelines are the stated principles that underpin the Guidelines.

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. The fourth principle reads: “Responsibility for the financial support of children should be in proportion to the means of each parent” (Stripinis et al., 1993: 65). This appears to be very similar to the guidance provided by the *Divorce Act*. However, by the time the Guidelines’ formula was developed, the principle of proportionate sharing of the costs was no longer one of the stated guiding principles. Those guiding principles, which were stated in the DOJ’s Technical Report (1997), were:

1. The principle aim is to maintain spending on the children “as closely as possible” to pre- divorce levels (1).
2. The formula equalizes the financial circumstances of the two households assuming that both parents have equal incomes to start (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” (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) (3).
5. The assumption that the CP and NCP have the same income in order to generate table values from the formula (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. In contrast, this 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) (1).

7. Government benefits for children are explicitly excluded in the equalizing formula (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).

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. The DOJ stated that these assumptions do not restrict the application of the tables to real life situations which may involve more complex family arrangements (1997: 2).

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

Section 3: Problems with the Guidelines

Determination of the cost of children

Any child support guidelines involve, directly or indirectly, some determination of the “cost of a child.” There is a significant literature relating to the topic, both philosophical and practical. 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. This observation refutes the notion that there is a single, correct “cost of a child.” Nevertheless, there is often a need to determine in some reasonable way, the cost of a child.

For example, helping agencies may wish to assist low-income families with children—either directly with aid or indirectly with advice on budgeting. In this case, the notion of the “cost of a child” might employ a budget-based approach to measurement and tend to focus on essential costs required for the normal healthy development of a child within the social context of a nation’s own standard of living. Similarly, any formal scheme determining child support will have to be related, in some way, to the costs of children. And, of course, government programs designed to assist needy families with children will also want to have some handle on the costs of raising them. Any of the methods used to determine the costs of a child will necessarily be arbitrary and will involve measurement and data issues.

One possible framework for understanding how child costs are determined (and how parents make the choice as to how much to spend) is to consider a model that divides child spending into a basic needs component and a discretionary component. While spending on children in reality is never that clear-cut, this model suggests that parents might tend to spend on basic needs for children

first (and as a priority) and then spend greater amounts depending on the family's ability and willingness to do so. Another possible framework is to consider that the cost of a child is a simple and linear function of the parent's income. As it turns out, the latter approach was adopted for use in the Canadian Guidelines.

It is important to appreciate that families at every income level have children and raise them successfully. Furthermore, 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. Again, however, some estimate for the cost of a child must be made and some alternatives are more defensible than others. Simple, expert-guided, budget-based approaches can be helpful in some circumstances. At the very least, they may serve as checks against other, more elaborate methods.⁶

Issues relating to the cost of children

We 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 led to little additional cost. 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, however, require some additional amount for food, clothing, toys, books, diapers, some new furnishings, and age-appropriate games and accessories. Again, budget-based methods might be helpful in determining many of these extra costs, or at least the range of additional expenses 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

⁶ It is notable that the US Department of Agriculture has used a method for estimating child costs which involves a series of “rules” (arbitrary choices, really) to divide up recorded family spending into the portion attributable to children and that for parents. See Lino (2010).

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 savings 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" (Stripinis et al., 1993: 95).⁷

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 to children 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. It is important to recognize that while this accounting approach is somewhat arbitrary, so are other methods for estimating child costs.⁸

Factors that determine spending on children

It is useful to return to the central idea of this section, which is that there is no single correct cost of a child. The actual marginal or incremental cost of a child will depend on a variety of factors including the economic security and circumstances of the family (employment and financial situation, as well as debt issues); the availability of extra resources (such as government benefits for children, help from relatives, etc.); other obligations of parents such as spousal support payments and second families; the age and the specific requirements of the child (special needs, expensive activities, post-secondary education, etc.); and the size of the family. Arguably most important, the

7 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(b), the DOJ decided to opt for an equivalence scale (the 40/30) rather than any direct estimation of child costs.

8 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.

amount parents actually spend on their children depends on choices made by the parents. Choices made regarding overall spending and saving, spending between luxuries and necessities, and between spending on children versus spending on adults vary considerably from household to household. And intact families in society are free to exercise their choice and discretion about how much to spend on their child—without interference by the state. As mentioned, there are a variety of methods that can be used to estimate the cost of a child, including budget-based methods. None are perfect, for sure. However, in the end, the FLC rejected alternative approaches to estimate the cost of children and used the 40/30 equivalence scale for that purpose.

All of the considerations that go into determining how much parents spend on their children are ignored by the Guidelines. All of the choices that parents make, about their values, religion, and how liberal or conservative their parenting styles are, are set aside in favour of a simplistic approximation. The Guidelines' application of the 40/30 scale reduces the cost of a child to a simple linear function of the noncustodial parent's income and family size. Allen (2009) in his critique of the Guidelines points out that "families are not completely defined by size and income" (10). As will be seen, this choice of scale has far-reaching implications. And, as will be explained, there were certainly more realistic approaches to the determination of the costs of children available to the framers of the Guidelines.

A central principle underpinning 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" (DOJ, 1997: 1). This is a curious objective considering the DOJ/FLC's own claim that spending on children cannot be decomposed from overall family spending. It is also 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. Families make these decisions all the time and are permitted to by the state as long as they remain intact. Once they split, somehow they are no longer capable of making those same kinds of decisions and a rigid, simplistic state rule takes over. 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 well, nothing was done to even determine what that prior spending was.

The thinking behind the Guidelines

As the DOJ's 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” (1). 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 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 noncustodial “payer” who will be left with “an adequate reserve for self support.” The paying parent, who is almost always the higher earner (frequently the only earner) and who has had his children removed from his life by the government, now gets to keep a small amount of his own money for self support. The attitude and the level of state interference here is quite remarkable.

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 vast 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.

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.

The scientific basis of the 40/30 scale

What empirical studies are there that support the 40/30 equivalence scale? This is an 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 (DOJ, 1995b: 60; 1997: 3).

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.⁹ 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” (Finnie et al., 1995: 12). The DOJ consultants further elaborate that these public consultations were with “social policy advocacy groups” (6).

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. The December 1997 version of the Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A *Technical Report*, points out that this (40/30) “scale is based on econometric evidence and a consultation process” (3).

However, Statistics Canada has a wholly contrary view of the 40/30 scale. First of all, the 40/30 scale is associated with the low income measure (LIM) and is therefore aimed at assessing relative well-being of families of different compositions at low incomes, not all levels of income. 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 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%

9 This is based on the consumption method preferred by Browning (1991: 70–72).

and 30% seemed to be in the general range of most other estimates. 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) (1999a: 1–2; emphasis added).

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 40/30 scale was indeed an arbitrary choice with no direct econometric evidence underpinning it.¹⁰

The choice of the 40/30 equivalence scale

However, while the choice of 40/30 was arbitrary for Statistics Canada (for use in developing the low income measure), the choice of the 40/30 equivalence scale by the DOJ for use in its Guidelines was quite deliberate. Allen (2009) argues that of the 15 scales they had to choose from, the DOJ intentionally chose one that was high and that would generate high child support payments (Allen, 2009: 6–8).

Nevertheless, the use of the 40/30 scale, which after all, was drawn from Statistics Canada, gives the appearance of having a scientific basis. But there was no research study or science behind it. It was a choice; an arbitrary choice, at that. 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 child expenditure data or models, but living standard ‘equivalence scales,’ specifically the Statistics Canada ‘40/30 Equivalence Scale’ (261).

The current version of the Federal Child Support Guidelines law continues the misrepresentation in stating that “[t]he amounts in the tables are

¹⁰ 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” (Finnie et al., 1995: 10, 12). This claim is made with no evidence, reference, or citation.

based on economic studies of average spending on children in families at different income levels in Canada” (DOJ, 2010: 23). This is simply not true. There are no economic studies underlying the 40/30 equivalence scale and the above extended quotation by Statistics Canada expressly acknowledges this.

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. On the surface, therefore, it is 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. Table 1 below shows this using a comparison between the 40/30 scale and a lower 30/20 scale. Compared to other scales they could have used, the 40/30 scale was at the top end of the range.¹¹ 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.¹² For example, the DOJ consultants stated that “[t]he 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” (Finnie et al., 1995, 13).

Allen (2009), in his comprehensive analysis of the Guidelines, concurs and shows that, compared to a more common equivalence scale used in economic studies, the 40/30 scale overcompensates (leads to excessive child support payments) with more than two children and, especially with higher

11 In their comparison table of equivalence scales (Finnie et al., 1995: 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. The other scales available to the FLC ranged from 9/14 all the way up to the 40/30.

12 It is not hard to find references to this central objective. For example, see Stripinis et al. (1993), where the DOJ consultants state: “Another goal has been to not just standardize awards, but also to increase their average amounts” (xi). And as early as 1991 in the *DOJ Child Support: Discussion Paper*, there were multiple references to “inadequacy of awards” (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” (9).

NCP incomes (6–10, particularly the graph on p. 8). Allen also emphasizes that the consultations that were done were exclusively with feminist groups, in keeping with the ideology of the DOJ at that time (26).

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.¹³ As well, higher income families spend a lower proportion of their disposable income in every region of Canada and presumably tend to save more (DOJ, 1992: table 6).

In fact, 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 20/10¹⁴ 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 cost compared to the first in his scale (his scale was determined just for the children), but even 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.¹⁵

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 (Stripinis et al., 1993: 21, 23). This is sharply different than the ultimate choice of the 40/30 (and a further 30 for each extra child) scale.

13 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* (DOJ, 1992: table 9).

14 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 Browning (1991), p. 58.

15 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).

The idea that, in a single parent family, the first child costs 40% of the parent is questionable. 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 would do so, if we exclude day care costs. The latter is considered an extraordinary expense and is treated separately in the Guidelines under section 7. We must keep in mind the economies of scale in living and the fact that the parent will already have many of the shared goods and furnishings in the household prior to the child. In some cases, a small child may add very little cost to an existing household.

Effect of using different equivalence scales

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

Table 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 children based on 40/30 scale vs. 30/20 scale							
	40/30		30/20		40/30-30/20		30/20-40/30	
CP & NCP	40/30 (1 child)	40/30 (2 children)	30/20 (1 child)	30/20 (2 children)	% decrease (1 child)	% decrease (2 children)	% increase (1 child)	% increase (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%

Note: 2010 Ontario tax regime is assumed, and all government benefits that are ignored in the Guidelines' formula are also ignored here.

The numbers (and percentages) in this table should be self-explanatory, but 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.

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's 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" (3). This is where the term "equivalence" is relevant.

When parents have their first child, they 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 choices are natural ways in which parents adjust their own priorities when they have children. An equivalence scale, however, only adjusts for economies of scale in living and does not factor in any potential substitution in spending. It theoretically allows parents to maintain their 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.

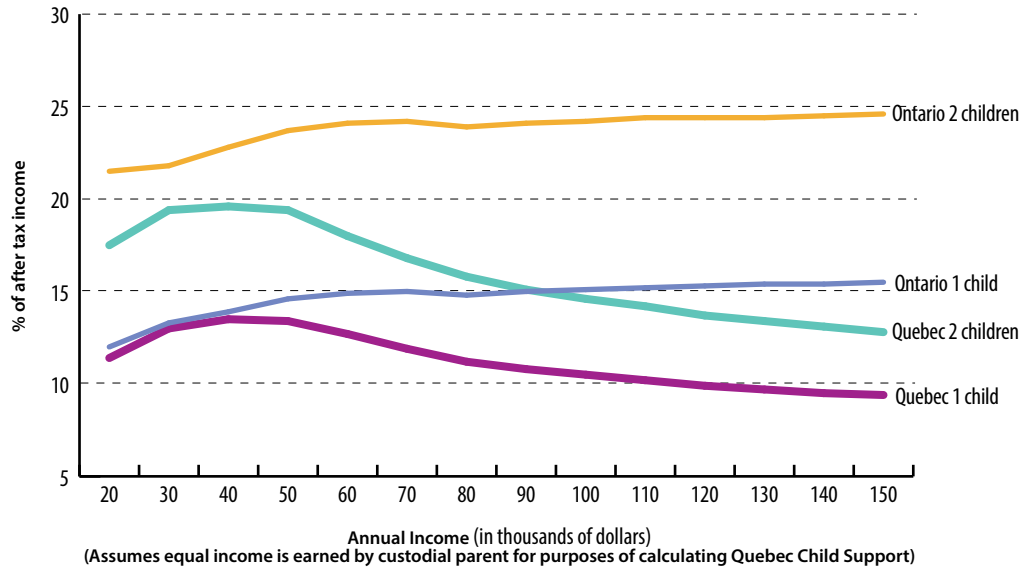
In summary, there are legitimate concerns about the validity of the equivalence scale approach and its application to the determination of the cost of children.

Notably, Quebec, in developing its new child support system, decided not to go with an equivalence scale to account for children's costs (2011). There is a further explanation in section 4 under "Comparison to the Quebec Child Support Guidelines."

The fixed percentage issue

The formula results in the NCP's paying a roughly constant proportion of their net income in child support. This is not surprising since the formula, in the pre-1997 DOJ documents, is referred to as the Revised Fixed Percentage approach (DOJ, 1995b: A-11). Since the formula assumes that both parents' pre-tax incomes are the same, then, ignoring taxes, the amount of child support paid would be exactly a fixed percent of the NCP's income. This can be

Figure 1: Comparison of child support costs paid by the non-custodial parent pursuant to the Federal Child Support Guidelines and the Quebec Provincial Guidelines as a percentage of after-tax income



seen below in figure 1 where annual (table amounts) child support payments are plotted against the NCP’s level of income.

Theoretically, the fixed percentage table amount for one child would literally be .4/2.4. This ratio comes from the formula (discussed in section 2) which can be used to solve for the table amount.¹⁶

Thus, for one child, the ratio .4/2.4 is 16.7% of the NCP income. For two children, the ratio would be .7/2.7 or, in percentage terms, 25.9% of the NCP income.

Figure 1 shows the percentage of NCP (after-tax) income paid in support for one and two children. The same relationship is shown for Quebec, which has a different child support system than the rest of the country.

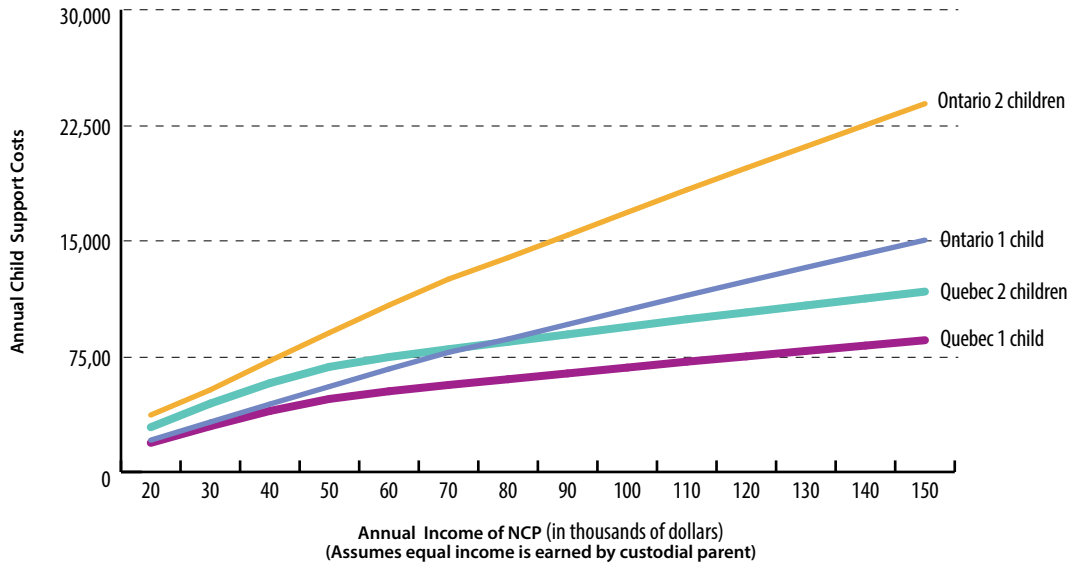
There are two striking differences between the two sets of relationships. Firstly, the Quebec average support awards are lower at all income levels and significantly so at higher income levels. Secondly, the Quebec scheme shows payments constituting a consistently declining proportion of after-tax income

¹⁶ Assuming that the two incomes and taxes are the same, the formula solves for the table amount as follows:

$$\frac{\text{(Paying Parent)} \text{ Income} - \text{Table Amount}}{\text{AEU}_{pp}} = \frac{\text{(Receiving Parent)} \text{ Income} + \text{Table Amount}}{\text{AEU}_{rp}}$$

Letting I = income and T = table amount, and substituting the respective values for AUE, this equation reduces to 1.4 (I - T) = I + T. Thus, T = (.4/2.4) I.

Figure 2: Comparison of child support costs paid by the non custodial parent pursuant to the Federal Child Support Regulations and the Quebec Provincial Regulations.



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 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 graph, the incremental rate (as a percentage of after-tax income) is about 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).

Figure 2 shows the same information only in terms of the dollar amounts paid by NCPs in Ontario and Quebec. It is easy to see that under the federal model, higher income NCPs 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. Similar to the conclusion reached by Allen (2009: 10, 14–15), the Guidelines generate higher awards that overstate the cost of children and the degree of overstatement is greater the higher the NCP income.

In figures 1 and 2, the amount displayed is only what the NCP must pay. They do not address any amounts the CP might also pay. 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 (gradually) approaches but never quite reaches those percentages (i.e., the 16.7% and 25.9%).

The notion that parents spend a roughly constant proportion of income regardless of income levels on their children seems to have first appeared in the FLC research in the 1993 report (Stripinis et al., 1993: 35). In their discussion of the possible relationship between child costs and parental income, the DOJ is very clear: "In reality, child costs are typically found to be very close to proportional" (38). In support of this claim, they point to two things: the FLC-commissioned research; and the results of a Wisconsin survey. Both are discussed below, under "Do the Simulations Provide Support for Constant Proportions?" and "The 1985 Wisconsin Public Opinion Survey."

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 originated with Irwin Garfinkel (an academic in social work and history at the University of Wisconsin). Garfinkel was a leading advocate of the "fixed-percentage-of-income" approach to child costs and to child support payments. However, even Garfinkel (1992: 92) 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. He likens a "declining percentage" approach to a "regressive tax" and makes the point that "[m]y values are such that a proportional child support standard is more appealing than one which is regressive" (100). Garfinkel was referred to several times in the various reports of the DOJ.¹⁷ In the end, the DOJ appears to have adopted a Garfinkel-style child support scheme in Canada.

Do the simulations provide support for constant proportions?

The first argument in support of the fixed percentage assumption is that simulations conducted in 1992 for the FLC by the DOJ consultants (1992: Appendix 4) using various approaches (to determining child support awards) showed "very similar results" (Stripinis et al., 1993: 38).

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

¹⁷ For example, see Stripinis et al. (1993), *The Construction and Implementation of Child Support Guidelines*, p. 38.

economic model (and its underlying assumptions) used. As well, the report making this claim shows only selected scenarios and not the full extent of the research outcomes (DOJ, 1992: 94).

In what follows, I review some of the results of the DOJ consultants' analyses more carefully. There were a variety of approaches used for comparison purposes but, in the end, all of them were abandoned by the DOJ.

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 (1992: 38).¹⁸ 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). 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, with one of the models, it was found that additional children cost more than earlier children (23).

In their summary comparison chart using only gross (pre-tax) incomes (37), the DOJ reveals that, for example, for a child aged 12-18, using one model, 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 approach, the differential is much larger (19.2% versus 10.6%). Yet another approach produced a percentage that is quite flat at about 9.3-9.5%. Finally, a fourth approach 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 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 the FLC present relating to after-tax income is for one of the models (27). This evidence shows that spending on children (on both a pre-tax and after-tax basis) declines as a proportion of income as income rises. Specifically, it suggests that, in Ontario for example, 16%

18 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.

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.

DOJ Contradictions

The DOJ acknowledges this result, stating “[a]s has been found in studies using similar methodologies, upper income families spend more dollars but a smaller proportion of income than lower income families” (29). This is the case both for pre-tax and after-tax incomes. 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*” (36; emphasis added). 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.

So, the FLC started with the claim that children’s costs vary in proportion to parental incomes and they asserted that their own simulations were evidence for this constant relationship. They were not. The simulations clearly contradicted their own claim. However, the FLC 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” (Stripinis et al., 1993: 38). 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. They cannot have it both ways. You can’t maintain that parental spending in children is a constant proportion of parental income and, at the same time, point out that child costs might depend on family income nonlinearly.

The assertion of proportionality is a fundamental principle upon which the child support formula rests. It states that parents pay a constant, fixed percentage of their income on child maintenance regardless of parental income. 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, the fact is that proportionality is simply not supported by the research commissioned by FLC/DOJ 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, what percentage did they have in mind that costs were proportional 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 Browning (1991: 48) 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)" (49). Indeed, he finds it "*a priori* more plausible that the adult equivalence of a child decreases with the income of the household" (49). 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 parental income and it was that perspective (rather than any real evidence) that drove the process.

The 1985 Wisconsin Public Opinion Survey

The second point of support for 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" (Browning, 1991: 38).

A year before the survey was conducted the state of Wisconsin had already implemented a new "Child Support Assurance System"¹⁹ which obliged noncustodial 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 to their normal survey. It was conducted by telephone in a random sample of just over 1,000 households. Sixty-seven percent of the survey respondents were female. The questions asked of respondents were preceded by short vignettes to set up the question.

The consultants' use of the Wisconsin survey as evidence supporting a constant relationship between parental income and child costs is inherently weak. People's opinions about what "seems right" when faced with a vignette-based question will depend on the framing of the vignette and the questions asked. It appears to blur the distinction between a normative question (what should happen) and a positive question (what does happen). This is an unusual and unreliable way to gather information about what is ultimately an empirical relationship.

Of course, 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

19 Corbett, Garfinkel, and Schaeffer, (1998), "Public Opinion About a Child Support Assurance System," *Social Service Review*. Note that this new child support system in Wisconsin was in the context of AFDC. States are given considerable scope to craft their own child support system.

satisfaction levels with the existing (Canadian) child support system. That survey found that a large majority (71%) of custodial parents were satisfied with the amounts of child support they were receiving when first asked (85).

A caution regarding evidence drawn from income and spending surveys

Much of the empirical evidence relating to the cost of children, including the evidence collected 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.²⁰ 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.²¹

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). Data issues are certainly not critical problems with the Guidelines. There are far more important issues with the Canadian system.

Economic theory related 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.

20 See, for example, Sarlo (2001), *Measuring Poverty in Canada*, p. 79; and Sarlo (2008), *What is Poverty: Providing Clarity for Canada*, p. 20.

21 Statistics Canada acknowledges a variety of sampling and non-sampling errors in their surveys. See Statistics Canada (2013).

Table 2 below displays some relevant information (which is subject to the same limitations as noted above in “A Caution Regarding Evidence Drawn from Income and Spending Surveys”) 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 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.

Table 2: Patterns of consumption spending in Canada, 2008

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 (%)
0–10,000	6.44	7.45	59.60
10,000–20,000	1.24	1.92	11.54
20,000–30,000	1.13	1.27	9.93
30,000–40,000	1.02	1.18	8.80
5.2840,000–50,000	0.97	1.02	6.60
50,000–60,000	0.91	0.97	5.28
60,000–70,000	0.87	0.97	5.18
70,000–80,000	0.86	0.85	4.69
80,000–90,000	0.82	0.84	3.99
Over 90,000	0.74	0.76	3.38

Note: Values calculated for incomes below \$20,000 are less reliable due to very small sample sizes.

Sources: Statistics Canada (2009), *Survey of Household Spending (SHS) 2008*, microdata file and calculations by author.

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 in column 4. These percentages decline even more dramatically than consumption spending in general.

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 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.

In addition, 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 undermine 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 NCPs 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

Section 3 examined a range of technical problems with the Guidelines, such as the basic principles and biases that underpin the Guidelines, the formula that determines the table amounts to be paid, assumptions about the cost of children, and the role of equivalence scales. Section 4 now builds on that base. It looks at the matters that are important for families and children but are completely ignored by the Guidelines. It was useful, though, for us to have the more technical aspects of the formula and its assumptions in place prior to a careful examination of these other matters.

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 is demonstrated later in this paper.

- ◆ Tax credits and benefits specific to children include:²²

22 While most of these are benefits from the federal government, there are a variety of benefits are also available from other levels of government. In general, unless it is administered by the Canada Revenue Agency (which some provincial programs are), it is not considered in

- ◆ the Eligible Dependent Credit (ED), which is commonly referred to as the equivalent-to-spouse credit;
- ◆ the Amount for Children Under 18 Credit (AC), which is more commonly referred to as the child tax credit;
- ◆ certain child fitness or artistic expenditures;
- ◆ the Working Income Tax Benefit available for low income families;
- ◆ the Universal Child Care Benefit (UCCB), which is a taxable benefit for each child under six;
- ◆ the Canada Child Tax Benefit (CCTB), which 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;
- ◆ GST/HST credits, which 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
- ◆ the Ontario Child Benefit (OCB), which 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.

Two of the three benefits that do appear on a 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

this paper. There are also programs at the municipal level of government such as subsidized housing that also have an 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 in this paper. Additional amounts are available in cases where there are infirmities and disabilities. These amounts are not addressed in this paper and they are also ignored by the Guidelines. Government benefits to CPs are based on their taxable income and are never reduced by any child support they 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.*²³

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" (DOJ, 1997: 5). 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 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 have been extensive enhancements to government benefit programs (including the subsequent implementation of the CCTB). Because these benefits are ignored, the steady enhancements have served to place an increasing and disproportionate burden on the NCP. Any increase in these benefits increases the means of the CP but does not correspondingly reduce the child support paid by the NCP. Given the stated intent of the Guidelines formula, a fair and reasonable system would have included government benefits in the formula and the payments would be revised with changes in such benefits.

NCP child costs are ignored: The CP is assumed to bear 100% of child costs

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 the child-related costs incurred by the NCP (DOJ, 1997: 2; 2010: s. 9). This claim, that the NCP has no child-related costs,

²³ Again, except certain activity-specific credits such as the child fitness tax credit that are supposed to be taken into account when awarding section 7 expenses.

is wrong in most cases and this error has important implications for the formula that generates the table amounts.

It is the case, in fact, that most NCPs try to remain active in their children's lives within any restrictions placed on them related 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 the cost of housing as a part of child support, it must be applied consistently to both the NCP and the CP.

The variable costs, for example, food, some entertainment, and personal care items, would be related to the amount of time spent with the parent and so are not fixed at one level. So, 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 are other costs that are generally assumed to be covered entirely by the CP, who has the children for the majority of time and who is the 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.

The critical point here is that, to the extent that the NCP has any child related costs at all, the NCP's adult equivalent unit (AEU) as defined earlier is no longer equal to one. It will be greater than one. This means, bluntly, that the formula is wrong and the table amounts generated (even if we assume that everything else about the Guidelines is right) will also be wrong. An AEU = 1 means that the NCP lives alone for 100% of the time and that his children never visit. This is simply not the usual pattern for NCPs in Canada.

It is obvious 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 estimate²⁴ by Henman and Mitchell (2001) using 1997 Australian data determined that a NCP with 20% access would need to spend

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

approximately AU\$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. They found that the NCP with 20% contact incurs between 28% and 38% of the total annual costs of raising a child (24).

And yet, the costs borne by the NCP are ignored by the Guidelines' 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 if 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. It will clearly 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 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 Guideline amounts constitute an unfair and excessive payment 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. In section 5, under "Additional Cases Including More Variables," there are a number of examples of the impact of ignoring the costs involved with the NCP's access or custody time.

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.²⁵ 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 separately have not been retained . . . this research now suggests that the 40/30 scale deals appropriately with the child care costs issue” (1995a: 10). Further, they list as the first advantage of the 40/30 scale the fact that “[t]he use of an equivalence scale which includes child care costs provides more simplicity in the determination of child support” (11). 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 (10). Therefore, based on the work and assumptions by the DOJ and FLC, no “add-on” expenses in the child support system were necessary.

This was in 1995. However, just two years later, the Federal Child Support Guidelines 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*”²⁶ (emphasis added). 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 was 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 already 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. 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.²⁷

25 See, for example, DOJ (1995a), *Report and Recommendations on Child Support*, pages 10-12; and Stripinis et al. (1993), *The Construction and Implementation of Child Support Guidelines*, p. 97.

26 See for example DOJ (1995a), *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.

27 Allen (2006) concurs and states that it has become a major source of litigation between ex-spouses. He says that “The extra-expense provision amounts to double counting since the Guidelines were created based on all expenses” (5).

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 with section 7 add-on expenses. It is not clear whether additional section 7 payments can be justified in particular cases because there is no accountability for those payments, nor is there for the table amounts paid themselves. 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 to apply for additional amounts. Conversely, the NCP has no right to apply for a reduction if table amounts are excessive. 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 pays for it. The whole question of which parent is assumed to pay (and which actually does pay) for the cost of children is taken up below in section 5 under “Should Pay/Do Pay Analysis.”

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 in 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. While mid-teens (and older) can often work at part-time jobs to offset costs, in terms of actual costs, parents are aware that 16 year olds cost more than 2 year olds (not including day care costs).²⁸

There was ample evidence in front of 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 showed this positive relationship between age and costs, when day care is excluded.²⁹ In the 1992 FLC study, equivalence scales were estimated using the one approach for intact families in the mid-1980s (Browning, 1991: 13). A 3 year old child added 7% to the couple’s costs;

- 28 We exclude day care because these costs are specifically mentioned as an add-on, or section 7, expense. This does not mean that day care 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 day care as an add-on expense that could be applied for.
- 29 Examples include Browning (1991), *Measuring the Costs of Children in Canada: A Practical Guide – Phase I*, p. T4; Douthitt and Fedyk (1990), *The Cost of Raising Children in Canada*, at pages 90–193; and especially, the 1992 DOJ/FLC report: *The Financial Implications of Child Support Guidelines*, tables 2, 3, 4, 7, and in the summary table of all of the models used—table 8).

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% (13).³⁰

Many other studies of child costs³¹ show this as well. Finally, Gray and Stanton (2010) 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 with the age of the child. Almost without exception these find that the costs of children vary with age” (section 4).

This age-cost correlation 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.³²

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 (Statistics Canada, 1999b: 10). The implication is that older children cost more.

While ignoring the age of a child in determining child support can be regarded as a minor flaw of the Guidelines, it does add to the weight of evidence that this policy was not carefully thought through and reviewed prior to implementation. In the end, we don’t know whether the table amounts reflect an average for children of all ages or whether it takes the most expensive age and uses that across the board.

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 Guidelines. The failure to take such factors into account leads to incorrect assessments

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- 30 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 (37).
- 31 Henman (2005), *Occasional Paper #18: Updated costs of Children Using Australian Budget Standards*; Betson (1990), *Alternative Estimate of the Cost of Children from the 1980-86 Consumer Expenditure Survey*; and Lino (2010), *Expenditures on Children by Families, 2009*.
- 32 See the Alberta Foster Care Rate Schedules: <http://humanservices.alberta.ca/foster-kinship-care/15436.html>.

of 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. 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 now have a cost factor of .3. Yet the Guidelines make no adjustment 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 account 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 table 1 where a comparison was made of moving from a 40/30 to a 30/20 scale. Specifically, this analysis showed that the annual overpayment ranges from 32% at a higher level income (\$110,000) to 48% at a lower income (\$30,000).

Accounting for re-partnering would have been a simple matter. It could have been accomplished with the addition of 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 same analysis would apply for NCP re-partnering. 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" application).

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 changes, such as re-partnering, happen. This is a very significant issue given the amount of re-partnering that occurs. By failing to account for this, the DOJ has further advantaged the CP and further disadvantaged the NCP (Allen, 2009: 13, 28).

Children are valued; they are not just costs

Arguably the most important omission in the Guidelines is the acknowledgement that children are of value. According to the Guidelines, children are solely costs to their parents; expenses to be shared somehow. The children-as-burdens ethic runs right through the body of research documents by the FLC without interruption. No one ever considered the possibility that children might be of value to parents; that they might generate benefits as well as costs. Such a recognition alone would have derailed the well-laid plan for the Guidelines. If children are valued by parents, then the cost-benefit trade-off relating to custody and support changes dramatically. If the custodial parent gets the children 75% of the time, then that same parent enjoys 75% of the benefit of the children. In this case, it would have been impossible to argue that the parent who derives the least benefit should be responsible for most (or all) of the costs. By consistently portraying children only as costs, the state could claim that all it is doing is equitably apportioning the costs.

It is quite remarkable that, at the time (1992–1997), no one raised this concern. Perhaps it was raised but was lost in the ideological push driving the process. Economists would generally argue that if parents continue to have children, despite the sacrifices and the costs, they must be generating benefits. One does not even have to be a parent to understand the joy and satisfaction that comes from parenting. Enjoyment comes at all stages of childhood and, generally, extends for a lifetime. But there is nothing in all of the papers and studies at the time about that critical part of the equation.

Allen (2009) argues that children are often the most valuable “asset” in a marriage or domestic relationship and that, in economic terms, children generate utility to parents that exceeds the costs. He states that “[n]ot only do the Guidelines ignore this fact, they consider time spent with children in the custodial home a cost. Worse still, they consider time spent by the non-custodial parent is not a cost” (17).

Allen makes a persuasive case that these choices were intentional and were part of a radical feminist ideology that dominated the DOJ at the time. He examines the history of the DOJ after the *Divorce Act*; the influence of Lenore Weitzman’s 1985 book;³³ the influence of feminist Kim Campbell during her time at the helm of the DOJ; and the prevailing view at the time, which was that “it was well known that divorce benefitted men, hurt women, and often left children in poverty” (Allen, 2009: 22).

33 In *The Divorce Revolution*, Weitzman famously claimed that after divorce, a woman’s living standard fell by 73%, while a man’s standard of living increased by 43%. The claim ended up being false (sampling and data issues) and more rigorous studies find that both genders are worse off after divorce. Nevertheless, Weitzman’s “facts” continue to be accepted and used to guide policy changes.

Evidence of this ideological bias is not hard to find. Allen discusses a 1991 national symposium organized by Campbell at which a series of recommendations were made and the DOJ accepted virtually all of them. One of the statements made in the DOJ documents was: “We must look at the assumption that it is always better for the child to have access to both parents . . . Even when men are not violent, it should not be assumed that continued contact with the father is positive. The primary custodial parent should decide” (Allen, 2009: 25).

And, the following resolution was passed and accepted by the DOJ:

Department of Justice would henceforth represent only feminist legal arguments in any future constitutional cases and would consult with feminists on any future appointments to the Judiciary, Administrative, Tribunals, etc. (Allen, 2009: 25).

What is most striking about these views and the idea that children have no value to their parents is that no one appeared to object. Actually, there were a few lonely voices of dissent (prominently, Senator Ann Cools) who attempted to question some provisions of the Guidelines as well as the feminist bias. But where were the opposition politicians? Where were the watchdogs while the Guidelines were being pushed through the process without full information being available to Parliament? Where was the inquisitive media? And where were the scholars, writers, and other social critics when this ill-advised change was happening?

The Guidelines ignore the emotional and financial catastrophe of separation

The breakup of a relationship is a stressful event in life. If children are involved, the stress is likely to be heightened. For many couples with children, separation can be an emotional catastrophe. The change from having an intact family living together in one household to a broken family living in two separate households is profound. It is truly one of life’s great tragedies. For the noncustodial parent there is a magnified sense of loss and sadness at suddenly being, at best, a visitor in his child’s life. The countless day-to-day interactions, the playtime, the hugs, the guidance, the bedtime stories, and the family laughter are gone or are relegated to nervous visits on alternate weekends. For a period of time, the misery and loneliness (and often the hurt and bitterness at having to be a part-time parent) are unrelenting and all-consuming.

The financial losses can be significant as well. Both households are immediately worse off because of the loss of economies of scale and the additional costs of maintaining two separate households. In some cases, there will

be legal costs as well, because of the nature of the existing system and especially the fact that matters of custody, support, and property division are decided in court³⁴ and disputes can be very costly. Ultimately, in many cases, litigation is futile as there are a number of unspoken givens within the system. Nevertheless, ex-spouses feeling aggrieved by the Guidelines continue to spend small fortunes on lawyers. Then, of course, there is the property settlement. Significant transfers are not all that common because, in many cases, people couple with others in a similar economic situation. As well, many separations occur earlier on in a relationship and so the asset division is fairly minimal. However, in some cases, very substantial amounts are transferred. Finally, there are the ongoing support payments—child support and spousal support.

To suggest that most of these financial transfers are gender neutral would amount to ignoring the elephant in the room. The fact is, despite all of the changes that have happened since the 1960s (relating to gender equality), family law is decidedly not neutral. Women get custody of children. Men pay support (excessively so, as we see in this paper). And, in cases where property division is significant, it continues to flow predominantly from men to women. As Allen (2009) has stated, “the Guidelines essentially allow the custodial parent to leave and take a disproportionate share of marital wealth with them” and that the Guidelines are a “property law that make husbands worse off” (30).

Focusing attention just on the financial losses, while in some cases both parents may be worse off, it is more likely that the bulk of the financial hit is on the NCP, who is often the main source of income for the family. In some instances of significant asset transfer, legal costs, ongoing support payments, and the loss of economies of scale, the economic impact could be huge. If a shock of similar magnitude happened to an intact family, that family would necessarily implement some kind of austerity plan to allow their finances time to recover. They would spend less on most items, including the children. And the state would have nothing to say about it. Yet, when family breakup occurs, the state intervenes and declares that, despite the financial disaster, the principle earner is obliged to maintain spending on the children.³⁵ Not only is this an unrealistic and unfair expectation placed on the NCP but it is likely

34 Even voluntary, duly signed separation agreements between the two parties can easily be overturned in favour of other rules crafted by the state. Once one party engages in litigation, the other party is often obliged to do so and the end result is much less money for the children. The process is akin to a game where the end result is often predetermined and the only players that win are the lawyers.

35 In fact, it is worse than that. As we will see, the child support payments are, in fact, excessive and overcompensate the custodial parent for the costs of the child. Indeed, there is implicit spousal support within child support payments as the intent of the formula is to equalize the living standards of the two households.

to produce undesirable and inefficient behaviour changes. The implications of the Guidelines are explored in more detail in the final section of the paper.

In addition to the important aspects that were ignored by the Guidelines, there are additional criticisms that serve to undermine the core features of the Guidelines or certain aspects of them. Some of the most important criticisms are contained in the following 3 subsections.

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:

- 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”;
- 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”;
- “this formula reduces the gap in living standards of the non-custodial and custodial households more than any of the other formulas”;
- “the formula does a good job of reducing poverty levels”; and
- the table awards depend only on the income of the NCP and is therefore the simplest formula to implement (Finnie et al., 1995: 91).

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 (1996) took issue with the following features of the scheme in his paper *Good Idea, Bad Execution: The Government Child Support Package*:

- He wonders how the new formula would work if the various government tax credits were counted (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. “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” (5).

- He argued that under the then current proposals, lower-income NCPs end up paying “extremely high percentages of their incomes towards child support” (5).
- He expressed 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” (8–9).
- 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 argued that some basic principles and avenues of appeal could be established to make the scheme accountable.
- Finnie also made 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” (7).

In another article, Finnie expanded somewhat on the first point. 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 (1997: 93).

In addition, Finnie argued that child tax credit transfers (now rolled into the CTB) count 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 (92–93).

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. Nothing was done at the time to address any of these substantial concerns.

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 developed its own child support

system, and the Quebec Child Support Guidelines (2011) provide, in fact, support for some key issues raised in this report. Specifically:

- ◆ 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.
- ◆ The Quebec system starts with basic child costs determined by experts whereas the Canadian system relies on equivalence scales.
- ◆ 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).
- ◆ 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.
- ◆ 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 saw in figure 1, which compared the percent of NCP income paid in support under both systems.

Not only are the Quebec support awards lower at all income levels but payments are a consistently declining proportion of after-tax income once we get above \$40,000 of NCP income. Under the federal system, in contrast, the percentage of after-tax income rises at lower levels and then stays at essentially a fixed percentage above about \$60,000 of NCP income. Figure 2 showed the same information only in terms of the dollar amounts paid by NCPs in each of Ontario and Quebec.

The Quebec child support system demonstrates that more factors ignored by the federal Guidelines—particularly the income of the CP—can be incorporated into a set of child support Guidelines to make them more reasonable. And such a system can lead to more reasonable child support awards in contrast to the federal system, which produces excessive awards. The claim of overpayment of child support under the Guidelines will be made even more emphatically in the next section. All of this suggests that the Quebec system is more reasonable than the federal system and this, alone, constitutes a powerful criticism of the federal Guidelines.

The SSAG

The federal Department of Justice also has a formula for the calculation of spousal support. However, the Spousal Support Advisory Guidelines (SSAG) are a non-mandatory plan that has some features of interest to the review of the Child Support Guidelines. In some cases, the two schemes are intimately linked as spousal support is frequently ordered by courts in conjunction with child support and, more importantly, the quantum of spousal support will depend on the amount of child support received, if dependent children are present. While the SSAG are non-mandatory, courts tend to use them for the awarding of spousal support.

There are two key differences between the SSAG formula and the child support formula: both parents' incomes are variables in the SSAG formula, and all of the government benefits that are ignored under the Guidelines are included in the SSAG.³⁶ It is also important to note that the software used to determine the SSAG is periodically updated online in order to reflect current tax and benefit regimes. This suggests that an annual updating of such a formula is possible and indeed, workable and therefore supports the proposition that any child support guidelines could be similarly updated as needed.

The SSAG 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 (DOJ, 2008: 76). However, like the child support formula, the SSAG 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 (164). The SSAG 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.³⁷ However, there is no obligation on the CP, express or implied, to actually spend this amount and no attempt to in any way determine if it has been spent.³⁸ 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 than under the 40/30 equivalence scale. Table 3 below compares, using a simple example, the assumed spending on children using the Guidelines versus using the SSAG.

36 The SSAG's "with child support" formula requires computer software to make the calculations. 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 (INDI) is determined (Thompson, 2005: 18).

37 See table 3 for the precise determination of the INDI.

38 Based on my reading and analysis of SSAG text.

Table 3: Comparison of assumed child costs: federal 40/30 equivalency formula versus Spousal Support Advisory Guidelines [SSAG]

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	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*	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	

The rationale for raising the matter of the SSAG here is threefold: there is considerable interplay between the SSAG and the Guidelines, and the SSAG do factor in the child support paid; the SSAG include both parents' income and include in the CP's income government benefits that are ignored under the Guidelines; and the SSAG use software that is regularly updated showing that a flexible and updatable scheme is workable. However, the SSAG still have a number of the problems inherent in the Guidelines including the non-recognition of access costs to the NCP and the fact that contributions by the CP to child maintenance based on the CP's income are simply assumed but no obligation in fact exists. Finally, there appears to be a recognition in the SSAG that Guidelines awards at higher NCP incomes (over \$350,000) may constitute an overpayment when it states, "[a]t 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” (DOJ, 2008: 113).

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 concerns about the Guidelines raised in this paper.

The difficulty of sorting out from raw expenditure data the portion that is spent exclusively on children (as the DOJ/FLC tried to do) makes the expert approach an attractive alternative. However, it must be acknowledged that all estimates of child costs have arbitrary aspects. 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 essentially ignored the budget-based expert approach to estimating the cost of children. They routinely passed over this approach in favour of econometric estimates based on various theories of how to extract spending on children from overall family spending.³⁹ In spite of the fact that these theoretical models resulted in a very wide range of estimates of the cost of children, some of them counter-intuitive,⁴⁰ 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.⁴¹ It is fair to say that this is a misrepresentation.

The two sources the FLC consultants do 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

39 See Sarlo (2013) for a review and critique of these theories.

40 For example, the Blackorby and Donaldson (1991) estimations produced an equivalence scale that actually increased, i.e., that additional children added more to costs than the first child.

41 For example, in Stripinis et al. (1993) it is stated that “the results turn out . . . quite similar to most of the more theoretically derived scales” (18).

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.

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, they appear to have stopped updating them in 2004. And that calculation, in 2004 dollars, totalled 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 (day care) is excluded, as is done consistently in this paper because day care is considered an extraordinary expense (and, of course, is treated that way under the Guidelines), the rising 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 day care after age 11.

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—day care, transportation, recreation, 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 day care.⁴²

The Manitoba Agriculture estimate is important because it reflects a middle-income standard of living using a budget-based expert panel approach. Most other expert panel estimates are for low-income families with children. So, the Manitoba calculations establish that a budget approach can be used for any standard of living and that such approaches have certain advantages over what this author regards as ambitious attempts to extract a child's portion of overall family expenditures. While all approaches involve arbitrary choices, expert panels have the advantages of the use of experts and experience to guide the budget process; the use of actual costs in particular locations at particular times; and a complete transparency and clarity about the composition of what is being consumed. At the very least, these budget-based expert panel estimates can serve as a useful check or comparison against the utility-based alternatives.

Montreal Diet Dispensary estimates

The Montreal Diet Dispensary (MDD) has been assisting low-income families since the 1950s. It has two estimates for budgeting for children: a budget for basic needs, and a budget for a minimum adequate standard of living. The latter includes additional items over and above those in the former. It is fair to say that the second estimate 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 day care 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 the second estimated budget for a child (4–5 years old) is about \$5,000 annually (42). 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 might be regarded as the approximate “essential” annual incremental cost of a child in Canada at a minimum adequate standard.

42 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 day care 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.

Summary regarding expert estimates on costs

What these expert estimates provide is some perspective regarding the costs of children. These budget-based estimates, one relevant to a middle-income situation and the other relevant to a low-income family, are determined by experts who are knowledgeable in providing information and advice to parents, social agencies, and the general public about the costs of raising children. These measurements, grounded in the reality of budgeting, bear no connection to the arbitrary selection of a ratio that tells us that a child adds 40% to the costs of a household.

Section 5: The mathematics of the Guidelines

Introduction

The intent in this section is to examine the formula and its application strictly from a mathematical 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 centred on the 40/30 equivalence scale. This scale also tells us that all the available funds in a household are spent (no saving) 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 analyzing the formula.

What follows is an analysis using:

- ◆ the 40/30 scale for the assumed costs of children;
- ◆ the comparison of the parents' disposable income; and

- ♦ 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*).⁴³

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 government is not paying for” (Stripinis et al., 1993: 96). 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 the DOJ believed was correct, is clearly at odds with the ultimate decision to ignore government benefits in determining the Guideline table amounts. In any case, this approach will be employed in this section to compare the amounts that the parents should pay with what they actually do pay.

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. It provides 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 final 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.

The following analysis is based on the assumption that the DOJ determined the tax and government benefits values correctly for 1996. The

43 Received from R. Gallaway (former Member of Parliament).

mathematical calculations in this section follow exactly the approach used in the Newfoundland illustration.

Basic assumptions of the Newfoundland illustration

It is very important to highlight the assumptions in the formula as applied to the Newfoundland illustrations (referred to throughout as the DOJ assumptions):

- ◆ 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).
- ◆ The custodial parent has the children 100% of the time and bears 100% of the costs of the children.
- ◆ Both the CP and the NCP remain single persons throughout the analysis and there are no other children from other relationships involved.
- ◆ There are no section 7 extraordinary expenses for the children.
- ◆ No spousal support is paid.
- ◆ 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.
- ◆ In all of the illustrations in this section, unless otherwise stated, the above basic DOJ assumptions are used.⁴⁴

General Notes on these Illustrations:

1. Not all benefits that may flow to families with children are included in the analyses (example: child fitness benefit).
2. The initial examples, tables 4 and 5, replicate the DOJ's Newfoundland illustrations, and table 5 simply "updates" the original example to 2010.
3. Tables 6, 7, and 8 extend the Newfoundland illustration using other more typical assumptions, including amounts for spousal support. In the exhibits

44 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).

where there is a SSAG award, a mid-point estimate of the SSAG, 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 examples simply because that is the jurisdiction the DOJ chose for their Newfoundland illustrations. In section 5 under "Additional Cases Including More Variables," 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 tables 4 through 8 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.

Original DOJ Newfoundland illustration

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

Table 4: Original DOJ Newfoundland illustration

	Custodial parent	Noncustodial 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 (ie, 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 government tax expenditure*	\$4,010	35.58
Paid by custodial parent	\$2,825	25.07
Paid by noncustodial parent	\$4,435	39.35

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

"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"* (i.e., not equalized; emphasis added) and that, despite having equal incomes, their contributions to the children's costs are unequal, with the NCP paying considerably (i.e., 57%) more.

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.

Table 5: Newfoundland illustration, NCP income = \$26,000

	Custodial parent	Noncustodial 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 gov't tax expenditures	\$4,010	35.36
Paid by custodial parent	\$2,725	24.03
Paid by noncustodial 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 with all of its underlying and highly questionable assumptions.

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 a child support award that “equalises the financial circumstances of the two households” (1997: 2). 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” (1).

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 table 4) finds that the CP has 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, which was the case in this example. The DOJ notes that, if the government benefits that flowed to the CP were not included, then the "numbers would be the same." 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* 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 "[t]hese are deemed to be the government's contribution to children and not available as income to the receiving parent" (1997: 5). 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."

Table 6a 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.

Table 6a: Newfoundland illustration with 2010 taxes; both CP and NCP \$25,000

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
After-tax and after benefits income	31,962	20,867
Guidelines table award	4,452	(4,452)
After-tax, benefits, and after award income	36,414	16,415
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	Amount	% 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. 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. above]	1,200	8.00
Paid by government benefits (outside the tax return and not counted in the formula) [see General Note 6.c. above]	6,750	45.01
Paid by noncustodial 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. As well, 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 table 6a, the CP 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 same template and math the DOJ provided, the living standards were not equalized in 1997 and are even less equal in 2010.

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 to 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, 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. In determining the amount that "should" be paid by each parent, which requires a determination of their relative after-tax income (their 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 paper, 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 table 6a. This analysis can easily be extended to the case where the parent's incomes are not equal.

Table 6b: Should pay/do pay analysis for Table 6a

		Should pay (%)	Do pay (%)
Total (assumed) cost of the 2 children	\$14,99		
Government tax credits portion	\$3,14		
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%)

From table 6a, we have the total assumed cost of the two children, \$14,995. As described, we subtract from the government benefits portion a total of \$6,750. This leaves a total of \$3,900 to be covered by the two parents. Since their incomes are equal the DOJ claims that their contribution should also be equal. Thus, under the Should Pay column, both parents should pay an equal share or \$1,950 each. However, the table amount of child support is the NCP's share. This is \$4,452 as we saw in table 6a. This leaves the custodial parent with no scope for payment. Indeed, in this case, there is a net wealth transfer to the CP. The NCP has overpaid, given the DOJ's own analysis, by an amount of \$2,502. So, even in this relatively low income situation, the CP pays none of the net cost of the child. As we will see, as NCP incomes increase, the amount of overpayment increases as well.

The formula and different incomes

The DOJ's December 1997 *Technical Report* 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" (2). 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.⁴⁵ The DOJ report simply assures the reader that the formula is designed to apply generally.

The following examples (tables 7, 8, and 9), 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 (for example, 41.2% for the 2 children plus 58.8% for the single parent) sum to 100%.

45 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.

Table 7a: Additional case: CP \$25K, NCP \$75K, no spousal support

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	–
<i>After-tax and after benefits income</i>	31,962	53,279
Guidelines award	12,180	(12,180)
After-tax, benefits, and after award income	44,142	41,099
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	Amount	(%) 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. above]	3,145	17.30
Paid by government through UCCB (included on tax return but not in the child support formula) [see General Note]	1,200	6.60
Paid by government benefits (outside the tax return and not counted in the formula) [see General Note 6.c. above]	6,750	37.13
Paid by noncustodial parent	12,180	67.01
Paid by custodial parent out of own resources	(5,097)	-28.04

Table 7a shows the case of a NCP earning three times the pre-tax income (or 200% more) than that of the CP. However, as we see, 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, the CP does not have to contribute to the children's costs. A negative payment means, effectively, a net wealth transfer to the CP. The overpayment by the NCP is so large that it eliminates any scope for CP contribution. This, of course, violates the DOJ's basic assumptions. 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.

The results of applying the “should pay/do pay” analysis are summarized in the table below.

Table 7b: Should pay/do pay analysis for table 7a

		Should pay (%)	Do pay (%)
Net cost to be shared by the parents	\$7,083		
NCP share (based on after tax incomes)		\$5,089 (71.9 %)	\$12,180 (172.0%)
CP share (based on after tax incomes)		\$1,993 (28.1%)	(\$5,097) (-72.0%)

Table 8a: Additional case: CP \$25K, NCP \$75K, with spousal support

Category	CP	NCP
Earnings	25,000	75,000
Spousal support	3,444	(3,444)
UCCB (included in taxable income)	1,200	
Taxable income	29,64	71,556
Taxes	808	17,557
CPP, EI	1,497	2,911
Total taxes (incl. CPP, EI)	2,305	20,468
After-tax income	27,33	51,088
Government benefits not included in tax return (GST, CCTB, NCBS)	6,339	–
<i>After-tax and after benefits income</i>	33,67	51,088
Guidelines award	12,18	(12,180)
After-tax, benefits, and after award income	45,85	38,908
Direct expenditures on children (41.2%)	18,88	
Personal disposable income for each parent	26,97	38,908
Summary of payments for 2 children	Amount	(%) Shares
Expenditures on the children	18,88	100.00
Paid by government tax credits (included on tax return and in the child support formula) [see General Note 6.a. 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. above]	928	4.91
Paid by government benefits (outside the tax return and not counted in formula) [see General Note 6.c. above]	5,958	31.55
Paid by noncustodial parent	12,180	64.50
Paid by custodial parent out of own resources (including spousal support received)	(3,444)	-18.24

Table 8a takes essentially the same case as table 7a 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. However, the total cost of children 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.

Table 8b: Should pay/do pay analysis for table 8a

		Should pay (%)	Do pay (%)
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. And, as with the previous example (i.e., without spousal support), the CP effectively profits from this differential in the sense that the NCP pays more than the calculated costs of the child.

Table 9a 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 1.8 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 by both parents could very well occur, which reduces the amount spent on the children (below the number used in table 9a). As has been pointed out earlier in section 3 under “Summary Regarding Fixed Percentages,” the 40/30 equivalence scale as used in the Guidelines assumes there is no savings at any level of income. It is worth reminding the reader as well that while \$58,741 is supposed to be spent on the children, there is no mechanism to ensure that this is done.

Table 9a: Additional case: CP \$50K, NCP \$350K, spousal support; CP earns \$50K and NCP earns \$350K and pays spousal support to CP; 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)	–	–
Guidelines award	49,116	(49,116)
Income after-tax, benefits, spousal and child support	142,644	112,450
Direct expenditures on children (41.2%)	58,741	
Personal disposable income for each parent	83,903	112,450
Summary of payments for 2 children	Amount	(%) 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. 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. above]	679	1.16
Paid by government benefits (outside the tax return and not counted in formula) [see General Note 6.c. above]	0	0.00
Paid by noncustodial parent	49,116	83.61
Paid by custodial parent out of own resources (including spousal support received)	6,265	10.67

Table 9b: Should pay/do pay analysis for table 9a

		Should Pay (%)	Do Pay (%)
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.

While it is possible to construct an example where the CP will mathematically pay at least close to a proportionate share of the presumed costs of

the children (according to the 40/30 scale),⁴⁶ generally that would be unusual, as is shown in the many cases below and in the appendix. 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, of course, the CP will only have been presumed to have paid a share, whereas the NCP actually pays the prescribed amounts to the CP. The CP is deemed to have spent their proportionate amount on the children but there is no accountability to ensure how the amount is actually spent.

Additional cases including more variables

Beyond the cases reviewed in the tables above, additional examples were prepared using a variety of scenarios. 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 were used. It was decided to use Ontario since it is Canada's most populous province and therefore a large proportion of the cases related to child support will be in that jurisdiction. 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.⁴⁷ For that reason, and because this study is focusing on the Guidelines, the majority of these additional examples do not include spousal support.

In each example in the appendix, the analysis of should pay/do pay is done in the same manner as for the previous examples, except that the should

⁴⁶ In the next subsection, where we review several additional cases and in the appendix, 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, assuming 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 pre-tax income.

⁴⁷ For example, if spousal support issues had been settled long ago.

pay/do pay numbers are not calculated as percentages, but as actual dollar values. A smaller selection of the highlights appears in table 10.

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. 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 amount (as determined using only table amounts of child support). With the examples that include section 7 payments, this means the SSAG numbers are now somewhat above the mid-point SSAG, because the payment for section 7's reduces the mid-point SSAG. Some experimentation was done with no material change, so I did not reduce the SSAG payment on introduction of section 7 payments in these examples. In any event, the focus of this paper is the Guidelines, not the SSAG.

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 that 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 table 10 below.

Table 10: Should pay/do pay analysis of further additional cases, analyzing more variables

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	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 Earnings = \$30,000	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	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 Earnings = \$60,000	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	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 Earnings = \$30,000	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	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 Earnings = \$60,000	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	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 Earnings = \$30,000	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	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 Earnings = \$ 0	CP should pay	48	60	73	63	49
	CP does pay	-89,959	-96,292	-114,196	-122,144	-133,495

These selected cases have a wide variety of incomes and income differentials, as well as several new assumptions relating to NCP access, section 7 awards, savings, and a lower equivalence scale. What is striking here is the fact that, in most cases, the CP's contribution is negative. This means that the NCP, most often not only covers all of the (deemed) net cost of the children but, in fact, the CP receives a net wealth transfer from the NCP. There is simply no scope for the CP to make any contribution at all. In the single case (i.e., each parent earns \$60K) where the CP does make, consistently through all scenarios, a positive contribution, that contribution declines as the scenarios become less restrictive and, in my view, more realistic.

Additional observations about table 10 and the Appendix

Some of the results in table 10 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 direct spending on the children will be reduced by 10%, 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 section 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 table 10, 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 the appendix, note that the case where the CP has a zero income, receives no spousal support, and the NCP has 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. Nevertheless, the NCP still pays a substantial amount (\$15,372 in the basic case) in child support.

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 table 10 are typical of the results in the entire appendix. In every single 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, e.g., 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 paper 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 ability to contribute." By any standard, the child support formula is not equitably distributing both parents' responsibility to maintain their children. The DOJ's own core assumption is violated in every case.

In 1995, the DOJ made the following statement about the formula they had constructed to determine child support payments.

Each parent is expected to meet the children's financial needs and each parent pays a portion of those expenses. Although the formula appears to be based solely on the noncustodial parent's income, this does not imply that the custodial parent does not contribute to the financial needs of the child. On the contrary—because the child lives with the custodial parent and shares the same living standard as this parent, the custodial parent will continue to pay for the remaining expenses in proportion to his/her income. (1995b, i)

This statement is utterly false and cynically so.

Comparison using the Manitoba Agriculture Estimate as a benchmark

In the earlier discussion of "Expert Estimates of Child Costs," the Manitoba Agriculture expert estimate of the cost of raising a child was reviewed.⁴⁸ It would be useful, now, to compare this estimate with the assumed costs of children generated by the Guidelines. Table 11 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

48 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.

are a reasonable (middle-class) determination of the costs of raising a child, then the Guidelines appear excessive at most levels of NCP income.

Table 11: 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 day care	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	10,561	5,171	5,304
70,000	11,514	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, it is appropriate here to exclude day care costs from the comparative Manitoba estimate as the Guidelines deem day care to be a section 7 expense. If there was day care, 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) \$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 table amounts are already bringing up the CP's standard of living as prescribed).

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.

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 table 11, i.e., CP income of \$25,000 and one 4 year old child, figure 3 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. The mid-point SSAG is calculated with the assumed section 7 payment in the SSAG 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 prescribe spousal support to be zero at NCP income below \$60,000.

Figure 3: Assumed expenditure on one child and who is paying

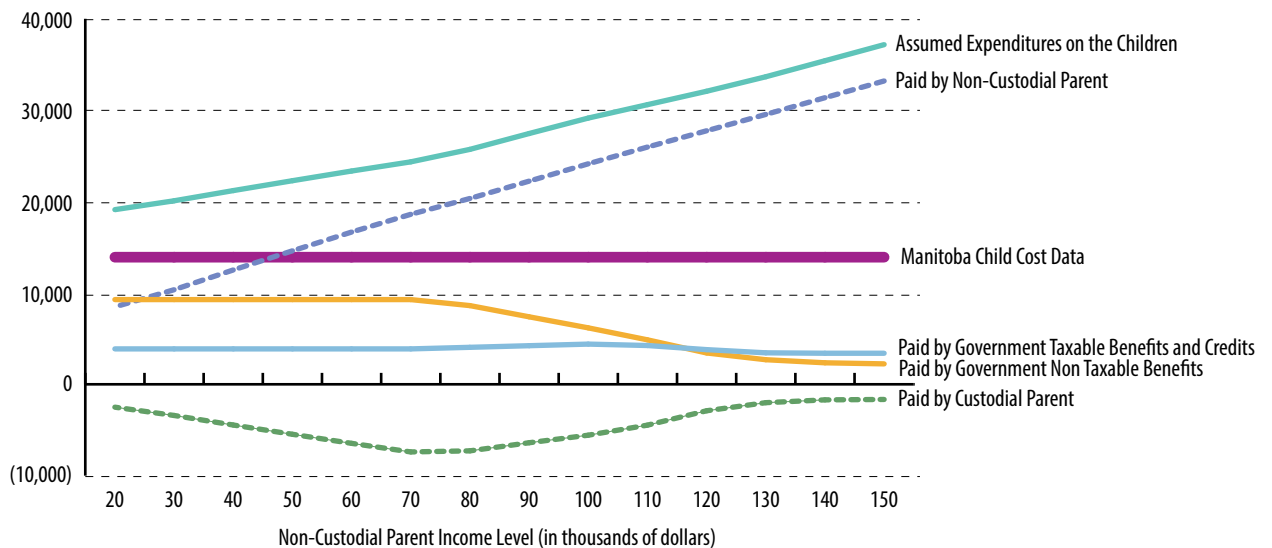
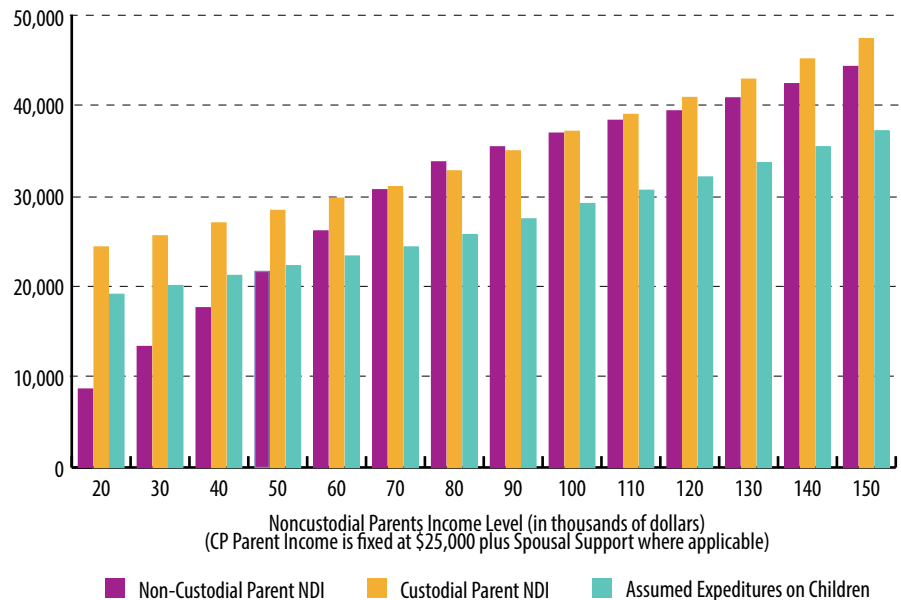


Figure 4: Comparison of each parents Net Disposable Income (NDI) after child care expenses at varying NCP income levels



What is particularly striking about Figure 3 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.

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, costs of access, and child expenses determined according to the 40/30 equivalency scale. The calculation uses the same assumptions used to generate figure 3 (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 prescribe spousal support to be zero at NCP incomes below \$80,000.

Figure 4 clearly shows that under a set of common assumptions, 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 graph 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.⁴⁹ Figure 4, in combination with figure 3, 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.

49 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 6: Policy implications

Issues and implications

So, the Guidelines were structured, from the beginning, to maximize the payments to custodial parents. The DOJ dressed up the process to make it appear as a scientific exercise designed to serve the “best interest of the child.” However, honesty would have compelled them to use a different motto. Every step of the way, the new system favoured the custodial parent. 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 paper, they are not even-handed in their treatment of the two parents. They are very generous to the CP and punitive to the NCP.

To summarize, the Guidelines use an equivalence scale to determine the cost of children. That scale, the 40/30, was originally designed for use in poverty situations and not across the board. As well, while it is grounded in a utility framework, it was not calculated as the result of economic research but rather was arbitrarily selected. It was also at the high end compared to alternatives. Finally, this higher-end equivalence scale was in part selected because it incorporated all costs, including day care. Yet, at the eleventh hour, the DOJ decided to add on day care and other extraordinary expenses that custodial parents could ask for. The implication of using a fixed equivalence scale for all income levels is that support payments end up being a linear function of after-tax income. This defies both common sense and established economic theory that has spending as a declining function of after-tax income.

The Guidelines ignore a range of considerations that make the end result even more biased and unrealistic. They completely ignore government benefits (tax and non-tax) that help pay for some of the cost of children; they ignore the costs to the NCP's access time with the children; they ignore the child's age as a factor determining costs; they ignore the re-partnering status of both separated parents; they ignore the rather obvious fact that children are of value and are not just costs to their parents; they ignored the rather profound and constructive criticisms of Ross Finnie, who was a member of the FLC until at least 1995 and was an intimate part of the process of developing the Guidelines; and finally, they ignore the fact that the Guidelines, in practice, violate the fundamental principles and assumptions underpinning the whole scheme. These points alone should have, long ago, convinced politicians and analysts that the system was simply wrong.

However, what about the argument that no policy is perfect and that no policy is completely fair to everyone? Is it enough that the Guidelines are unfair to noncustodial parents, violate their own core assumptions, and were slipped by Parliament without full information? It turns out that there are additional issues with the Guidelines that go well beyond the criticisms already articulated.

1. The Guidelines are gender biased

The simple fact is that the vast majority of NCPs are men and the vast majority of CPs are women. According to a 2004 DOJ research report, in contested (court order) cases, women get custody about 90 percent of the time (25–26). Many other cases are not contested because men, and their lawyers, understand what an uphill battle that would be. Allen (2009) discusses the Guidelines as a feminist family law construction intentionally designed to favour custodial parents. Citing the expressed criticism of the Guidelines by Senator Ann Cools, he states “the evidence suggests that rather than being designed for the interests of children, the Guidelines were designed for the interests of mothers” (2). The Guidelines make husbands “worse off as most custodial parents are mothers” (30).

This is, of course, an issue because the *Charter* is supposed to ensure that the application of laws in Canada is gender neutral. Presumably, women (and many men along side them) did not fight decades ago for equal rights in higher education, in the labour market, and under the law only to have family law practise reverse discrimination. This particular branch of the law clearly violates fundamental Canadian values of equality and fairness.

2. The Guidelines promote discord and litigation

One of the expressed goals of the Guidelines was to “reduce the time, money, and emotional anguish involved in the legal proceedings required to arrive at (final) child support awards” (Stripinis et al., 1993: 1). This objective is

repeated, in different ways, in many of the research documents leading up to the implementation of the Guidelines. Yet, there continues to be a substantial volume of cases brought to court for resolution.⁵⁰

The subject of most litigation is custody. As Allen suggests, children are (for most parents) the most valuable asset of their relationship. People fight over custody for several reasons. Fathers might object to the current (apparent) presumption that mothers get custody because they have the belief that they are an equal parent and deserve equal access to their own children.⁵¹ As well, if they have made a deliberate choice to procreate (realizing the full implications of that), fathers might wish to enjoy the benefits of children and not just pay for the costs. Finally, to the extent that he understands the net wealth transfer that occurs if custody is granted to their ex-spouse, a father would want, at least, shared physical custody because that is financially better.

Litigation related to family matters is surely one of the most stressful, time-wasting, and money consuming exercises in futility. It leaves both separated parents with more resentment and discontent than before and leaves little room for cooperative parenting in the future. If one party initiates legal action, the other party must respond. If they have the means, both parties will come armed with lawyers. Those who do not have the means must try to defend themselves and deal with a fairly complex process. Often low-income people must pay with their time (as well as stress), waiting around court lobbies (with many others) for their name to be called. Noncustodial parents will have a particularly difficult time dealing with accusations of abuse, of being called “controlling,” and providing annual disclosure. The latter is a yearly humiliation where the payer of child support must reveal all of his personal financial information (including tax returns) to his ex-spouse. An objective observer might ask the question: Why are the courts involved at all? No crime has been committed.⁵²

3. The Guidelines produce net wealth transfers which creates incentives for divorce

The Guidelines overcompensate custodial parents for the costs related to raising the child. This paper has carefully documented that. This overcompensation

50 The dearth of DOJ statistical information about such cases prevents useful comparisons.

51 Part of the problem is that, while marriage is a contract and a very important one, there are no terms spelled out in said contract. Each party is left to assume that reasonable Canadian rights and values, principally equality, apply.

52 In a recent *Globe and Mail* article, Toronto family lawyer Michael Cochrane commented on the adversarial system that makes combatants of parents. He stated, “Why would we allow families to be put through this ringer?...If there was ever a new country invented and the government asked us what kind of family law they should have, no one would ever recommend what we’ve got” (quoted in Anderssen, 2011, March 25).

is greater the higher the income of the NCP. This net wealth transfer is not only unfair to NCPs but will, according to Allen (2009) lead to “inefficient divorces,” i.e., divorces based on economic opportunism. Allen argues,

If the custodial parent gets custody of the children and receives a payment which over-compensates for the dollar expenditures of the children, then that individual may end up with a share of the joint wealth much higher than when together. Because it is virtually impossible to fight the Guidelines in court, bargaining often fails to save the marriage. Given the problems of the 40/30 rule in over-compensation when incomes and family size increase, this becomes a serious problem for high income families since the actual transfer of wealth to the custodial parent increases after separation (29-30).

So the Guidelines, by generating net wealth transfers, create incentives to separate. This is a matter not considered by the framers of the Guidelines—namely that this new system that was designed to favour custodial parents might produce more divorce (or, at least, break-ups within families with children). And parental break-up is not good for children. Drawing on his own research and that of others, Allen argues,

When it comes to hazards to the well-being of children, very little competes with family break-up and being raised in a single parent home. If we consider any social pathology for children (high school drop-out rates, drug, alcohol and tobacco use, teenage pregnancy, criminal behaviour, etc.) the probability of participation is, on average, about twice as high if the child comes from a divorced home . . . the Guidelines provide an incentive to separate which leads more children growing up in a bad environment and exposure to these other hazards (31).

4. The Guidelines are likely to discourage marriage and procreation

The Guidelines have been around for less than 20 years. However, there have been hundreds of thousands of divorces over that period and there seems to be an increasing public recognition that things are not working well. Highly publicized

bizarre divorce settlements and a host of critical media assessments⁵³ suggest that there is increasing awareness of the risks of marriage under Canada's prevailing laws. The risks are especially high for males. Men are routinely relegated to visitor status in the lives of their children. They often lose any say in key decisions about their child's upbringing. They may find it very difficult to establish a real and relaxed relationship with their child. They overpay in terms of child support, in some cases, egregiously so. They alone have to endure annual disclosure of their financial situation. Unless the wealth of the two parents is roughly equal, they lose a substantial portion of theirs; if they remarry, the obligations to their second family are not considered; and there is no escape. There is no pre-nuptial agreement or separation agreement that will provide any insurance. And, since about 40% of marriages end in divorce, the risk is substantial. The anticipation of this set of circumstances may be enough to discourage men, in particular, from marriage. If they look at the risks and the profound sadness and demoralization of losing their children and having a substantial financial hit as well, marriage looks increasingly unattractive for men. This is particularly true if they know someone who has gone through it. This, many would argue, is not a good thing.

What can be done?

The purpose of this paper has been to discuss, in some detail, the Guidelines and its problems. This is not a paper about solutions. However, it is hard to escape the conclusion that the existing Guidelines cannot be repaired and that a fundamental re-think is appropriate. This review also suggests that there are certain features that Canada might wish to avoid as part of any new system. Some observations coming out of this review are:

As far as possible, a new system should not send law-abiding parents to court.

As far as possible, a new system should be based on the equality of parents. That equality simply means that, as a starting point, both parents have equal rights and equal responsibilities as parents.

As well, the principle that children benefit from a close relationship with both parents should be assumed.

As far as possible, any income transfers between the parents should be focused on the costs related to raising the child and not on other objectives.

While there is little doubt that the existing system is seriously flawed, there is certainly no consensus about what a new system should look like.

53 A small selection includes: Anderssen (2011, March 25); a series of articles from 2011–2014 by Barbara Kay in the *National Post*; Pigg (2009, Oct. 2), *Divorced Dads Can't Catch a Break*, *Toronto Star*.

There are, on the one hand, those who believe that a rules-based child support system and presumed custody must be in place. The courts or a set of rules would then determine a fair sharing of the costs of the child. However, the rules must be reasonable and be based on evidence. They just have to get it right. An alternate perspective suggests that the whole basis of child support is antiquated and not consistent with values and attitudes of current day Canada. A new system, according to this approach, should be gender neutral in every respect and should avoid court-based resolutions of issues. One variant of this would have, in most cases, shared physical custody as a presumption and voluntary parenting plans for key decisions and extraordinary expenses. Schemes along these lines have been proposed by some social scientists, among them Sanford Braver (1998), Ed Kruk (2013), and Grant Brown (2014). As well, there are certainly fathers' rights groups advocating for that proposal and at least one public policy proposal along those lines.⁵⁴

54 Bill C-560 in Canada is a private members bill which, if passed, would direct the courts to presume shared parenting except in cases of abuse or neglect. See <http://canadianepc.org/2014/03/22/new-poll-shows-overwhelming-support-for-equal-parenting-bill/>.

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Appendix 1.1: Analysis of Parental Shares of Child Care Costs; Case with 2 Children (1 under 5) - No Spousal Support

Scenario	Income levels			One		Two		Three		Four		Five	
	Non custodial parent	Custodial parent		40/30 basic formula	40/30 formula with shared custody	40/30 with shared custody and Sec 7 awards	40/30 with shared custody, Sec 7 awards and savings	30/20 with shared custody, Sec 7 awards and savings	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)
				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	"0	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	\$0	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

Scenario	Income levels			One		Two		Three		Four		Five	
	Non custodial parent	Custodial parent		40/30 basic formula	40/30 formula with shared custody	40/30 with shared custody and Sec 7 awards	40/30 with shared custody, Sec 7 awards and savings	30/20 with shared custody, Sec 7 awards and savings					
				NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)
13	\$240,000	\$0	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)	55,549	(11,961)
16	\$500,000	\$0	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	\$0	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)

Appendix 1.2: Analysis of parental shares of child care costs; case with 2 children (1 under 5); modified with addition of mid point SSAG

Scenario	Non custodial parent	Custodial parent		One		Two		Three		Four		Five	
				40/30 basic formula	40/30 formula with shared custody	40/30 with shared custody and Sec 7 awards	40/30 with shared custody, Sec 7 awards and savings	30/20 with shared custody, Sec 7 awards and savings					
				NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)	NCP (\$)	CP (\$)
1	\$30,000	\$0	Should pay	(3,054)	(304)	(1,653)	(165)	(1,174)	(117)	(1,174)	(117)	(2,867)	(285)
SSAG	\$(1,812)	\$1,812	Do pay	5,328	(8,686)	7,640	(9,457)	8,837	(10,128)	8,837	(10,128)	8,372	(11,524)
3	\$60,000	\$0	Should pay	1,559	391	3,637	912	4,492	1,126	4,492	1,126	1,955	490
SSAG	\$(9,156)	\$9,156	Do pay	10,824	(8,874)	14,722	(10,173)	17,154	(11,536)	17,154	(11,536)	16,361	(13,916)
6	\$60,000	\$120,000	Should pay	13,491	20,260	16,894	25,370	16,894	25,370	16,054	24,108	12,732	19,120
SSAG	\$8,364	\$(8,364)	Do pay	10,824	22,927	24,421	17,843	24,421	17,843	23,896	16,266	21,818	10,034
7	\$90,000	\$0	Should pay	4,429	1,344	7,207	2,187	8,372	2,541	8,372	2,541	4,975	1,510
SSAG	\$(17,028)	\$17,028	Do pay	15,372	(9,600)	20,804	(11,410)	24,258	(13,345)	24,258	(13,345)	23,151	(16,666)
9	\$120,000	\$0	Should pay	6,982	2,279	10,392	3,392	11,862	3,871	11,531	3,764	7,417	2,421
SSAG	\$(24,576)	\$24,576	Do pay	19,728	(10,468)	26,513	(12,729)	30,946	(15,213)	30,836	(15,541)	29,472	(19,634)
10	\$120,000	\$30,000	Should pay	13,234	7,034	16,621	8,834	17,893	9,511	17,347	9,220	13,338	7,090
SSAG	\$(17,856)	\$17,856	Do pay	19,728	540	27,509	(2,054)	31,942	(4,537)	31,732	(5,165)	30,197	(9,770)
11	\$120,000	\$60,000	Should pay	15,496	9,785	19,221	12,137	20,416	12,891	19,576	12,361	15,252	9,631
SSAG	\$(5,832)	\$ 5,832	Do pay	19,728	5,553	28,842	2,515	33,275	32	32,933	(996)	31,169	(6,286)
13	\$240,000	\$0	Should pay	22,490	10,256	27,694	12,630	30,167	13,757	28,494	12,994	22,395	10,231
SSAG	\$(64,836)	\$ 64,836	Do pay	36,432	(3,685)	47,798	(7,474)	55,984	(12,060)	55,375	(13,887)	53,155	(20,548)
14	\$240,000	\$30,000	Should pay	24,616	12,846	30,126	15,722	32,942	16,956	30,277	15,801	23,951	12,499
SSAG	\$(53,364)	\$53,364	Do pay	36,432	1,030	49,010	(3,162)	57,197	(7,749)	56,354	(10,277)	53,947	(17,497)
15	\$240,000	\$120,000	Should pay	30,150	20,135	36,591	24,436	38,750	25,878	35,033	23,396	27,968	18,678
SSAG	\$(17,820)	\$17,820	Do pay	36,432	13,853	52,546	8,481	60,733	3,895	59,183	(754)	56,237	(9,591)
16	\$500,000	\$0	Should pay	46,135	21,667	65,393	30,711	65,393	30,711	56,891	26,718	45,610	21,420
SSAG	\$(145,776)	\$145,776	Do pay	72,624	(4,822)	125,952	(29,848)	125,952	(29,848)	122,828	(39,219)	118,684	(51,653)
17	\$1,000,000	\$0	Should pay	89,596	41,958	107,982	50,569	117,555	55,051	98,624	46,186	79,394	37,181
SSAG	\$(305,088)	\$305,088	Do pay	142,224	(10,670)	182,719	(24,168)	214,678	(42,072)	207,729	(62,918)	200,670	(84,095)

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