Comments on the Child Support Guidelines

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Executive Summary

As our contribution to the Department of Justice review of the Child Support Guidelines, F.A.C.T. decided to examine the consequences of the Guidelines as implemented. We wanted to see if the problems of our members are the result of unusual situations or an intrinsic problem within the Guidelines. To that end, we have utilised specialists in statistics, finance and taxation to examine the available data and the Guidelines to assess their basic structure.

The first draft of this report was released at the November 30, 1999 date set by the Department of Justice. Since then, the report has been made available to a number of reviewers and some changes have been made. We felt that this was important, in particular when dealing with a field that has been overcome with the flawed mathematical analysis produced by Harvard sociologist Lenore Weitzman in her 1985 book *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America.* Despite the admissions of the author as to the serious misstatement of the financial impact of divorce on women, her flawed numbers continue to be quoted by the less knowledgeable people dealing in the field. We would not produce a similarly flawed analysis. With this version of the report, we believe that we have refined our analysis. The basic message of the report remains the same, but there have been some changes in the analysis and commentary.

The Child Support Guidelines state that thier first objective is "to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation". An analysis of the Child Support Guidelines indicates that the Child Support Guidelines abandoned the principles of fairness and equity in their implementation, in favour of pushing through increased levels of support.

Under the Guidelines as implemented, most support-paying parents – those in the lower 60% of income earners, and many higher earners – will have insufficient funds to support themselves at a level even close to StatsCan's "Low Income Cut Off — Income After Tax" (LICO-IAT) expenditure ratios.

This low income cut off measure is often attributed to be the "poverty line" in Canada, but is more correctly described as a measure of levels of disposable income for a household with a given income level. It provides a measure of relative wealth of the households to other households in similar situations.

Support-receiving parents are placed in a financial situation that is much better than the LICO-

IAT percentage at all income levels. A support-receiving parent's financial situation improves when support is being received for more children, or when the parents have higher personal incomes.

On the other hand, support-paying households are placed in financial situations that are usually more difficult than a household with expenditures at the LICO-IAT levels. Their situation becomes worse at lower incomes, or where there are more children being supported.

Children are in the financial situation of the house that they are then currently occupying, be it with the support-paying or the support-receiving parent. These Guidelines will produce massive differences between the two households, with the support-paying parent's household having significantly less funds to support the standard of living. The Guidelines do not allow children an equitable lifestyle between the two homes.

The Guidelines, as currently implemented, consistently result in a massive wealth transfer from support-paying parents to support-receiving parents under the guise of "child support." This results in relatively "impoverished" support-paying parents and "rich" support-receiving parents. The Guidelines have used a design model that will financially punish any support-paying parent who manages to maintain an active presence in their children's lives by ignoring the costs of maintaining that relationship.

For successful child-raising after divorce or separation, it is clear to most Canadians that there are many issues that need to be dealt with, and not just money. This focus on money as the only issue in maintaining and developing "child-centered" results is wrong. **If money was the primary issue in the "best interests of the children", the Department of Justice and the Ministry of Finance would have clearly stated that the higher income parent should always be the custodial parent.**

The model on which the Child Support Guidelines is based specifically abandoned the objective of fairness and child-centered care in order to increase the level of payments made to support-receiving parents. The Guidelines were constructed based on a Statistics Canada expenditure model, that even StatsCan describes as arbitrary and inaccurate. The basic principles behind that flawed expenditure model were ignored. The promised redirection of funds through tax changes was ignored. The costs of the support-paying parent's access responsibilities were disregarded.

As implemented, the Guidelines reinforce the fracturing of relations between children and parents in divorce. They create a difference in the standards of care between the two households of the separated family. The Guidelines destroy the life of a support-paying parent by significantly transferring wealth on a tax-free basis to the support-receiving parent, with no assurance or accountability that the money will be used in the children's best interests. The Guideline's bias ensures that the support-paying parent, and any other children of that parent, will not have the ability to escape the punishing financial hardship of the Guidelines or have much hope of a life above the "poverty line." The Guidelines have specifically moved the system in a direction that is clearly contrary to the best interests of *all* children and Canadians.

The current Guidelines need a complete and thorough review, and reconstruction.

Introduction

The Objectives of the Child Support Guidelines outlined in the *Federal Child Support Guidelines,* and published by the Department of Justice on their website, are as follows:

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

These objectives are re-iterated in the public release of the Guidelines in the 1996 Federal Budget [*Budget 1996: The New Child Support Package, March 6, 1996* (Ottawa, 1996), p. 12].

The model information, eventually released by the Department of Justice some years after the implementation of the Guidelines, permits the examination of many of the issues with the Guidelines that had been brushed aside as "those would have been considered." This report examines some of those issues that really were *not* considered in the development of the Guidelines, and specifically, a "fair standard of support" and a "consistent treatment of spouses and children."

A fair standard of support for children, within the context of divorce, should allow a relatively stable continuation of their lives — emotionally and financially — at *both* of their homes with their separated parents, at least at the time of separation. Since the same total income is available before and after the separation — and the extra expense of duplicate housing, household contents, etc. is created — there will be a negative impact (relative to the pre-divorce situation) on the standards of living that can be maintained by each of the separated parents in their homes. Fairness would suggest that they standards in each household would be roughly the same. This is **not** the premise of the Guidelines. As stated in the 1996 Budget (p. 13):

> *the child will live at the same standard of living as the custodial parent because they live in the same household.*

In fact, the Guidelines were constructed on the specific assumption that a child will **never** live in the support-paying parent's home — not for one day a year, not for 39% of the year and not for 50% of the year.

There is no consideration of the involvement of the support-paying parent in the children's lives, and no money left in the hands of the support-paying parent to provide the same consistent quality of life between the children's homes. The Guidelines have been derived so that they will purposefully discourage the on-going access of the support-paying parent by erecting large financial barriers.

However, the Supreme Court has also made their comments on these issues. Justice Bastarache, writing for the Court in *Francis v. Baker*, states the following:

> *However, even though the Guidelines have their own stated objectives, they have not displaced the Divorce Act, which clearly dictates that maintenance of the children, rather than household equalisation or spousal support, is the objective of child support payments. Subsection 26.1(2) of the Act states that "The guidelines shall be based on the principle that spouses have a joint financial responsibility <u>to maintain</u> the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation" (emphasis added). While standard of living may be a consideration in assessing need, at a certain point, support payments will meet even a wealthy child's reasonable needs. In some cases, courts may conclude that the applicable Guideline figure is so in excess of the children's reasonable needs that it must be considered to be a functional wealth transfer to a parent or de facto spousal support.*

Therefore, in looking at the reasonableness of the Guidelines, we must look at the reasonableness of the results in the relative maintenance of a child. A common measure used is the "expenditure ratios" — ratios of (some) expenditures to (some) income.

Canada has had a long history of using the Statistics Canada *Low Income Cut Off* (LICO) as such an expenditure measure. LICO takes the expenditures on shelter, food and clothing as the "basic needs", and it measures these relative expenditures to other households at the same income level. StatsCan then comes up with a single percentage that it applies to all income levels. Those households who spend a higher proportion of their income on shelter, food and clothing are less well off than those spending less. The LICO measure changes from year-to-year as determined by the spending habits of Canadians.

StatsCan **does not** produce a number that says "with only this much money you can't have enough of the food, shelter and clothes you need," which most Canadians would consider poverty. However, some organisations have adopted the LICO measure as a poverty line.

LICO is a measure of disposable income after certain "basic" expenditures. Certainly, the disposable income of a high earner may well be greater than the gross income of a low earner. LICO really does not measure poverty in the sense that most Canadians would consider it — irrespective of the poverty-measuring organisations' insistence. For our purposes, it does measure the relative well-being between the households that the children move between as they move between their homes with each parent after divorce or separation.

One of the LICO measures, the least frequently quoted one, uses net after-tax income. "Net after-tax income" is the most consistent measure for determining child support because of the complex tax deductions and credits involved with children and divorce that obfuscate the situation. We have used after-tax income as the income measure for expenditure ratios in our analysis, and compared these to the LICO-IAT (Low Income Cut Off — Income After Tax) percentage (currently 63.6%). Taxes have been, and continue to be, a significant expense to Canadians. Directly reflecting taxes — deductions and tax credits — is important when looking at living standards.

The fiscal decision of the federal government to remove the tax deductibility of support payments to the struggling support-paying household will have a major impact on many homes. The government expects that this will generate more taxes being paid to the government, i.e. less will be available to households affected by divorce. Estimates of the long-term tax increases have been as high as $2 billion per annum eventually — an amount that is realistic given the estimates of $120 million in 1999 that were made in the 1996 Federal Budget (p. 9). The federal government has committed itself to returning this huge amount of extra tax revenue to the children in other forms. Specifically the government has stated (1996 Federal Budget, p. 10):

> *Because the purpose of these reforms is to help children, the federal government will reinvest its anticipated revenue gains from the new tax rules in measures to benefit children. Specifically, they will fund the implementation costs of the Federal Child Support Guidelines and the new enforcement measures...*

To fairly and equitably redistribute the income from these additional tax programs, a more complex method of calculations is required than was used by the Department of Justice.

Since taxes in Canada are a major source of expenditure, we have reflected these tax effects. In computing the LICO-like "expenditure ratios", we have looked at the "net income", i.e. income after income tax and tax credits. This ignores PST, GST and other consumption taxes, but it is consistent with the LICO-IAT measure.

As with all families, when circumstances change, whether it is a new child, unemployment, a return to school or divorce, there may be a need to adjust standards of living to accommodate these new circumstances. While paying lip service to the flexibility to make such adjustments, the Guidelines create, at best, a complex and expensive continuing method to adjust support in only limited circumstances — circumstances where it is unlikely that the affected parent would have the funds or resources to seek such an adjustment.

We therefore have to look at the Child Support Guidelines to see if they provide the fair and equitable balancing that operates in the best interests of the child.

The Impact on Families of the Child Support Guidelines

In order to measure the impact of the Guidelines on families, we had to construct a model of family expenditures. To accomplish this we constructed a cash flow model for both support-paying and support-receiving parents.

To accomplish this we have considered, as did the Department of Justice in their implementation, two parents that, after separation, each earn the same gross income. Child support is computed based on the Guidelines. It was expected that each parent would attempt to live by the average budget that would be appropriate for a family unit with a similar gross income.

Expenditures were derived from the Statistics Canada publication *Spending Patterns in Canada, 1997* (No. 62-202-XIB, Table 2). These were adjusted somewhat to reflect the nature of the households created by divorce.

First, we assumed that all couples would incur child care expenses, so the raw values were adjusted to scale them to the full value of child care. Child care was assumed to be paid by the support-receiving parent, but the support-paying parent would be required to pay 50% of the amount of child care.

Next we adjusted the food, clothing and child care expenses to reflect the number of children in the family using Table 11 of the Statistics Canada Publication *Family Expenditures in Canada, 1996* (No. 62-555-XPB).

Food and clothing expenses for the children were split between the families in such a way that the support-paying parent would assume approximately 1/3 of the cost of food and clothing and the support-receiving parent would pay approximately 2/3 of the cost. Roughly, this would translate to approximately the same proportion of time with the child.

Finally, we computed taxes for each parent based on the 1998 Ontario tax rates. Since the taxes will depend on the age of the children. We assumed that if there was one child, it was 4 years old; for two children they were 4 and 7 years old; if there was three children they were assumed to be 4, 7 and 11; if there are four children 4, 7, 11 and 13.

We computed two financial measures — the cash surplus and the expenditure ratio — for each parent.

The first number is the cash surplus — the amount by which the parent’s income exceeds the expected expenditures, including taxes and tax credits, under the model. This would measure whether the parent can afford the expenses of a family of the income level at which one would expect for similar Canadians. It should be noted that in no instance is the support-paying parent in a cash surplus position. On the other hand, except for the lowest quintile salary with one child, the support-receiving parent is never in a deficit position.

The second number is the “expenditure ratio” that is computed in the manner the LICO-IAT is computed by Revenue Canada. For this the expenditures for shelter, food and clothing —

including support which is for the maintenance for the children — are divided by the after tax income of the parent. Implicitly it is assumed that any budget deficiencies are absorbed out of the "other expenditures" categories of the family unit. For the support-paying parents in the lower quintile groups, the amount of the deficiency exceeds the amount of "other expenditures."

Details of the computations are presented in Appendix 1, and summarised in Table 1.

TABLE 1: MODEL RESULTS

	Paying Parent Cash Surplus	Paying Parent Expenditure Ratio	Receiving Parent Cash Surplus	Receiving Parent Expenditure Ratio
One Child				
Lowest Quintile	-7,430	103%	-711	50%
Second Quintile	-9,076	76%	1,710	35%
Third Quintile	-9,621	67%	5,063	30%
Fourth Quintile	-8,901	60%	11,348	25%
Top Quintile	-336	49%	32,050	19%
Two Children				
Lowest Quintile	-8,124	111%	2,029	37%
Second Quintile	-10,358	83%	5,746	25%
Third Quintile	-11,727	73%	8,896	21%
Fourth Quintile	-11,942	67%	15,929	17%
Top Quintile	-5,410	56%	39,927	12%
Three Children				
Lowest Quintile	-8,251	112%	4,062	31%
Second Quintile	-11,202	87%	8,528	19%
Third Quintile	-13,419	79%	12,254	15%
Fourth Quintile	-14,363	73%	20,047	12%
Top Quintile	-9,338	61%	44,595	7%
Four Children				
Lowest Quintile	-8,575	115%	5,354	28%
Second Quintile	-12,534	94%	10,826	15%
Third Quintile	-15,267	85%	15,960	10%
Fourth Quintile	-16,907	79%	23,686	7%
Top Quintile	-13,298	66%	49,080	3%

The LICO-IAT ratio is currently computed by Revenue Canada to be at the 63.6% level. As the expenditure ratio increases above this level, then the family would have a more difficult time making ends meet, or becomes "more impoverished" as it is generally stated. The further the expenditure ratio is below the LICO-IAT, the more the family would be considered "better off."

It should be noted that for the first 3 quintiles of support-paying parents — representing 60% of such parents — the expenditure ratio is never below the LICO-IAT level (i.e. the households are "impoverished") irrespective of the number of children. Canadian support-paying parents in the next quintile are better off than the LICO-IAT level if there is one child, and those in the top 20% of earners are at about the LICO-IAT level with 3 children. The financial situation of the support paying-parent's household gets worse as the number of children of the divorce involved increases.

On the other hand the support-receiving parent, except in the lowest quintile salary group with one child, is never in an economically disadvantaged state due to the wealth transfer from the support-paying person. The financial situation of the support-receiving parent increases with the number of children, illustrating that the Guidelines currently treat the children as a profit centre. For those in the lowest quintile group, looking at the salary levels that would be applicable to both parents makes it clear that both parents are "poor" and that it is not surprising that, once divorced, they both remain poor. If one looks at the inability of the support-paying parent to meet his or her own needs, it is clear that there is little ability for such a parent to magically meet the Guideline level of support obligations.

The results of this analysis are dramatic in illustrating the inequity and unfairness inherent in the current Guideline amounts. It illustrates very strongly the huge financial burden placed on the support-paying parent and the large amount of wealth transfer built into the Guidelines. It illustrates that the Child Support Guidelines, by themselves, benefit the support-receiving parent to an extreme that significantly improves their economic situation. The Guidelines, from a financial point of view, will leave the support-receiving parent better off. This makes the dissolution of relationships and the dislocation of children a profitable venture. These Guidelines provide incentive for a parent, who expects to receive support, to dissolve an intact family unit for financial gain even when that is contrary to the children's best interests.

The results are not atypical of the problems that we find many non-custodial parents running into when attempting to support themselves and maintain contact with their children after a divorce or separation. Some of the non-custodial parents' financial difficulties would be alleviated by turning their backs on their children, but this is most certainly **not** in the best interests of the children or of society.

What is the Problem that Caused the Disparate Support Levels?

The Department of Justice, prior to the implementation of the Child Support Guidelines, made an extensive study of models for child support. When the guidelines were actually released there was considerable head scratching because the Guidelines clearly did not follow any of their research material's conclusions.

The discussion paper of the Department of Justice entitled *An Overview of the Research Program to Develop a Canadian Child Support Formula* (January, 1995, Cat. No. J2-130/1995-1E) clearly outlines the total abandonment of the fairness process by the use of the "Revised Fixed Percentage" formula. This formula is said to be "unique to this process" (p.5) and the booklet touts amongst its benefits (p. 8):

- *it generates awards that were 32 percent higher, on average, than current awards...*
- *it produces higher awards than any of the other formulas for high income support-receiving parents...*
- *it would be the simplest....and does not depend on the custodial parent's income*

Here it is clear that the fairness and equity issues in the mandate of the development of the guidelines were not issues in the production of the results.

There is an abandonment of the concept of equalisation in favour of more money being paid by the support-paying parent with no consideration of the support-receiving parent's income. Fairness has been thrown out. Simplicity replaced equity in the objectives. The objective has clearly become solely to remove more and more money from the support-paying parent.

The production of higher support amounts and the destruction of equitable living standards between the households are touted in this Overview as being "child-centered" — but if money is really the only issue for "child-centered" solutions, the higher income parent would always be the support-paying parent. If it is not the overriding issue, then we need to look at what the real goal of the legislation should be.

Clearly there is another underlying goal of the Guidelines, that may or may not have been conscious in the minds of the authors. That goal is to punish the support-paying parents, and to force more support-paying parents away from their families. The Minister of Justice's comments at the time of the development and release of these Guidelines certainly made the point that he was out to "get" someone, but it is difficult to understand how a reasonable person could have purposefully pursued such an unfair regimen.

Perhaps, the problem has come from the model, and the lure of a mathematical model in giving concrete definition to a situation. Unfortunately, if the model is wrong the results are as well.

The Mathematical Model Used to Distribute Income

The model used in the child support calculations as described in the Department of Justice publication *Formula for the Table Amounts Contained in the Federal Child Support Guidelines: A Technical Report* (CRS-1997-1E, December 1997, p. 3) was constructed "*in accordance with the Statistics Canada '40/30' Equivalence Scale, which allows expenditure variables to be expressed as a set of ratios.*" In particular reference footnote 2 in the publication says:

> *This scale is based on econometric evidence and a consultation process. See Statistics Canada, Income Distribution by Size in Canada, Cat. no. 13-3027 (Ottawa, 1991). The 40/30 is used because the particular percentage values that increment with size of family, from a 40% increase for the first member in addition to a single adult to a 30% increase for each additional member. The ratios have been found to be relatively stable at different income levels.*

These comments are definitely misleading and not supported by Statistics Canada documentation or techniques. The 40/30 model used in the calculation of the child support guidelines is not a standard of any sort used by Statistics Canada to support an **equitable** system of calculation. Specifically, the discussion of the StatsCan publication *Low income measures, low income after tax cut-offs and low income after tax measure* (catalogue 13F0019XPB, p. 10-11) states:

> *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 family's 'needs' by 40% of the 'needs' of the first adult, and each child's 'needs' are assumed to be 30% of that of the first adult. Other values could just as easily have been chosen (in the academic literature these are known as 'equivalence scales'). The values of 40% and 30% seemed to be in the general range of most other estimates. (In the case of the LICOs, these values are not chosen as such. Rather they are produced implicitly in the course of the calculations. The values change each time the calculations are performed on new family expenditure data.)*
>
> *The LIMs use adjustment for family size only. Many other characteristics could have been adjusted for in an equally*

> *arbitrary fashion, but adding all of these adjustments would have sacrificed the simplicity which is a deliberately chosen feature of the LIMs.*

The 40/30 model is arbitrary and inequitable — especially disappointing since fairness was one of the main goals of the Child Support Guidelines. In fact, when dealing with different income levels or situations and where the needs of a family are important (e.g. the LICO calculations), Statistics Canada does not utilise the crude and arbitrary 40/30 model and uses real data.

This type of family expenditure analysis is performed by sources other than Statistics Canada. Similar analyses, as that in *Assessment of Personal Injury Damages* by Christopher J. Bruce (Buttersworth, 1992), deal extensively with "dependency rates" in determining identical expenditure factors for different purposes. There is no lack of models that would handle expenditure modeling more fairly than the arbitrary manner in this 40/30 model.

A 40/30 model may or may not be appropriate at one specific income level — and the LIM study is about a single income level. Repeated studies, including those commissioned by the Department of Justice, show that the proportionate needs of the child are different for higher and lower family income levels. Why a model, that has been shown to be incorrect by internal Department of Justice studies, is utilised illustrates the shifting of goals from fairness and equability to a simplistic transfer of more money from "higher" income support-paying parents as identified above.

The 40/30 model allocates all income for all reasons. Included in this allocation are all the normal costs of dealing with a family. Day care expenses, school tuition, and special needs are all allocated under this model. The model itself already provides for all "extraordinary expenses". If this model is used, the Guidelines should eliminate double counting resulting from awarding such expenses a second time. However, the Guidelines have not done that. In fact, the Guidelines have done much the opposite and require that a low income support-paying parent must pay for the lifestyle of a high-income support-receiving parent whether that would be something that the support-receiving parent would ever be able to afford.

Also included in this allocation are the margins that an adult would normally set aside as savings to deal with the unexpected issues that suddenly come up in life — unemployment, retirement, disability, retraining (voluntary or not), new children. These events are a normal part of life, and someone needs to have a "savings cushion" to tide the family over. This model siphons at least the part of those savings set aside to protect the children from a sudden shift in lifestyle when these events occur, and allocates those savings to the support-receiving parent. Under the 40/30 model as used, the support-receiving parent would receive all the margins for these types of unexpected occurrences and must be responsible for dealing with the decreased ability of the support-paying parent. The Guideline should clearly state that any such adjustment in amounts *must* be completely taken into account from the date of the event by the judiciary. Practices such as imputing income to keep support at high levels should be banned if the support-receiving parent receives the "savings cushion."

Finally, the new child support guidelines and the specific tax increases, imposed were supposed to be designed to take funds from the support-paying parent, and redirect them to the children through the Child Tax Benefit and the GST rebate. Therefore, this redirection of the taxed funds should be included in the calculations. However, they were not. The *Formula for the Table Amounts* (p. 5) specifically says:

> *Not included in the calculation of the receiving parent's taxes are the federal Child Tax Benefit and the GST rebate for children. These are deemed to be the government's contribution to children and not available as income to the receiving spouse.*

It should be noted that the Department of Justice ignores its own principles here. They acknowledge that child support is “available as income to the receiving spouse”, but ignore that these tax benefits and rebates are paid to the support-receiving parent, not the children.

The Time the Children are in the Care of the Support-Paying Parent

The Guidelines as they stand assume that a support-paying parent has no expenses in maintaining contact with the child, until access time is over 40%. At that point, the Guidelines supposedly are replaced by judicial discretion — which usually means that the Guidelines are used.

The 40% cut-off was totally arbitrary. The initial papers for the project talked of a 30% cut-off, and this level was discussed as being too high.

Proper housing costs in Canada are amongst the most expensive items that will be incurred by both parents. The Guidelines' model is based on the premise that if a child is with the support-paying parent 145 days or less a year then the child will not need a separate room or a separate bed for accommodation at the support-paying parent's home. The intrinsic problem with this can be easily seen: what Canadian in their right mind would think that it is appropriate for a 14 year old girl or boy to sleep in the same bed as her support-paying parent of the opposite sex 145 nights a year, but not for 146 nights? Apparently the Department of Justice does.

The model, and specifically the 40% care time, does not reflect the reality of maintenance of the child. The support-paying parents incur their own expenses related to the child. Some of those expenses are incurred irrespective of the amount of time the child is with the support-paying parent (e.g. shelter). Some of the expense (e.g. food, clothing, personal care) might be expected to be proportionate to the amount of time that the child is with the support-paying parent. The Guideline model assumes that the expenses that support-paying parents incur are paid to the support-receiving parent, but really the support-paying parent must pay a second time when the expenses are incurred. This is clearly “double-counting” and operates to increase the support calculations inappropriately.

Another issue that has been raised in the courts by judges who are unwilling to deal with the requirement of adjusting support equitably, is the definition of care time. We see court cases where the time a child is attending a jointly-paid school, or sleeping at the support-paying parent's home, being assessed as support-receiving parent's time. This is clearly contrary to the incidence of expenses of maintenance. The Guidelines should be clear on the computation of time and the fair and equitable allocation of that time.

A fair and equitable model would result in a consistent standard of living, at least initially, between households. Whatever model is utilised, when parents have the same after-tax net income, and 50% sharing of care time and expenses, then no child support should be payable. Certainly, once the child is supposed to be with one parent more or less time, the allocation of some portion of the expense would be reasonable. Access denial and alienation, more commonly thought of as forms of child abuse, should not be used to gain funds at the expense of the child, and the Guidelines should be clear on this.

Low Income Modifications

The *Formula for the Table Amounts* goes on to discuss the modification to the formula at low income levels (apparently a support-paying parent is only “low income” if making less than $10,000-$14,000). Some undisclosed “self-support reserve concept” is used — the lack of disclosure illustrating again how arbitrary that calculation was. The paper provides a table on page 6 of the “Marginal Capping Rates in the Transition Zone.” Recognising that child support is for housing, food and shelter of the children, these “caps” that are supposed to provide the support-paying parent the ability to survive, actually will put that parent well below the LICO line even before the expenditures for his or her own needs are considered. These Guidelines, as established, force support-paying parents into dire poverty on even a basic level. It is impossible to see whose best interests are being represented — certainly not the children’s while with the support-paying parent.

Supplementary poverty benefits are available to a support-receiving parent with children, but not to the support-paying parent (and if they were, the Support Guidelines would take them away from the support-paying parent). The model as implemented seems to be set up specifically to impoverish support-paying parents, and to maintain that poverty.

Reasonableness and Reasonable Issues

A test of reason should also be used in the analysis of expenditures and the determination of child support levels. This is not being done under the basic premises of the model implemented by the Department of Justice. Reason would say that where two parents who have divorced, both making the same after-tax income, and have access to the child 50% of the time each, there should be no support payable. Each parent would be able to maintain the equivalent lifestyle for the child in each home.

It is not reasonable to expect that the future children and families of a support-paying parent must have their interests discarded, while the interests of the future children and families of the support-receiving parent will benefit from the huge wealth transfer inherent in the current Guidelines. Clearly, the Guidelines inherently pick which children will have their interests represented, and which ones will not. Children who live with the support-paying parent in relative poverty, whether during access or as the result of a new family, are clearly disadvantaged. Leaving this type of discrimination within the Guidelines is clearly inappropriate and abusive.

It is not reasonable to have circumstances of multiple people paying child support for the same child, as decisions such as *Chartier v. Chartier* have made people aware. Clearly, child support needs to be identified as the responsibility of biological and adoptive parents only, and appropriate testing is required (at birth?). Child support is not supposed to be a profit centre for an enterprising custodial parent.

In looking at the "costs" of exercising access to the children, it is only reasonable that the courts recognise the massive expense of being forced to return to a court system that clearly has no willingness to enforce custody and access orders. Similarly, the costs of assessments, supervised access, international travel and the other expenses that are routinely incurred by non-custodial parents, should be recognised in setting support levels. Huge amounts of time and money are involved in looking after the best interests of the child when dealing with a custodial parent who has decided that the other parent shall not see the child. These costs are incurred because the courts generally ignore the "friendly parent" provisions of the *Divorce Act* which were introduced to prevent these situations. Such costs should be recognised in the Guidelines in computing support levels. Otherwise, the Guidelines create pressures to force non-custodial parents out of their children's lives -- to the child's long term detriment.

It is important that income be adjusted for spousal support and other wealth transfer payments before determining child support under this type of a model. There is already a huge intrinsic wealth transfer in the current Child Support Guidelines. To do otherwise is double-counting in the computation of the wealth transfer to the support-receiving parent. Net income (net of these payments and taxes) should be the basis of computation.

An adult should have in place the financial buffers to deal with short-term financial crises in life. The person holding those buffers, i.e. savings, must be prepared to deal with the consequences of the crises. If a support-paying parent keeps the money to maintain these buffers, then they should be able to weather any short-term problems while maintaining a specific dollar support level. If the monies for these buffers are transferred to the support-receiving parent, as they are under the current Guideline model, the support-receiving parent must be the one to use their own resources to deal with problems of the support-paying parent. To that end, a mechanism of very quick changes in support must be in place. Judges must be required to react immediately to short term fluctuations in support (not just dealing with "material changes in circumstances" — and many ignored the materiality of the new Guidelines when legislated). The costs of making these changes should not have to be borne by a support-paying parent who has financial difficulties.

With the changing employment environment, and those instances where personally-funded retraining is required, if the personal buffers that would normally be accrued to fund such retraining are paid to the other parent, then some mechanism is required to refund these monies to the support-paying parent when required.

The simplicity of a model that is not reasonable leads to huge complexities when trying to reverse the inequities generated.

What Design Principles are Necessary to Support Fairness

There are, in our opinion, a number of basic design flaws in the current Child Support Guidelines that have resulted in the unfair and economically inappropriate levels contained therein.

First, the principle of equality must be considered. If two separated parents are making identical net incomes, and the children spend identical amounts of time at each house, and all expenses are equally shared, then the child will have the same standard of living at each house and no support payments should be made. Only when income levels are not identical, or where for some reason non-equal access to each parent is agreed upon without duress that some variation from $0 is required. It is inappropriate to ignore the salary of the support-receiving parent's family unit, the sources of other parental support for step-children, and the family situation in the home of the payer.

1. The Guidelines should use a cost-sharing approach based on the parents' relative ability to pay.

2. The Guidelines should be based on the marginal cost of children to single parents on a net after-tax basis.

3. The Guidelines should distinguish between the fixed costs of the children (e.g. shelter) and the costs that change as a function of the time of care with each child. "Time" should be clearly defined to ensure that the costs are properly allocated. Fixed costs and time-related expenses paid by the support-paying parent shall be considered as part of the total cost of the children and credited against the support-paying parent's share of the total costs of the child.

4. The Guidelines should handle the cost of work-related child care as a fixed cost to the parent paying for such child care and incorporate it on a net cost basis, after accounting for the appropriate offset of some of the "time of care" expenses for each parent utilising child care.

5. All tax implications, including the ability of a support-paying parent to the claim child deductions, "equivalent to spouse" deductions, child care expense deductions, education deductions, and all tax credits and refunds should be considered to allow calculation of amounts on an after-tax basis.

Federal Child Support Amounts Analysis
One Child

Support-Paying Parent	**All Classes**	**Lowest Quintile**	**Second Quintile**	**Third Quintile**	**Fourth Quintile**	**Fifth Quintile**
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	(5,244)	(1,272)	(2,892)	(4,404)	(6,264)	(10,056)
Extraordinary Child Care Expenses	(2,092)	(545)	(1,114)	(1,751)	(2,548)	(4,505)
Tax Credits	-	304	244	-	-	-
Total Cash Inflow	**46,379**	**9,739**	**22,102**	**36,788**	**56,064**	**109,076**
Expenditures						
Food	5,227	2,831	4,156	5,126	6,170	7,853
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	1,905	595	1,088	1,743	2,288	3,812
Other	21,259	7,094	13,818	19,814	26,298	39,276
Income Taxes	13,737	1,370	5,037	10,564	18,444	42,415
Total Expenditures	**51,997**	**17,169**	**31,179**	**46,409**	**64,966**	**109,412**
Net Cash Flow	**(5,618)**	**(7,430)**	**(9,076)**	**(9,621)**	**(8,901)**	**(336)**
After Tax Expenditure Ratio	**59%**	**103%**	**76%**	**67%**	**60%**	**49%**

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Support-Receiving Parent	**All Classes**	**Lowest Quintile**	**Second Quintile**	**Third Quintile**	**Fourth Quintile**	**Fifth Quintile**
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	5,244	1,272	2,892	4,404	6,264	10,056
Extraordinary Child Care Expenses	2,092	545	1,114	1,751	2,548	4,505
Tax Credits	499	2,127	1,648	690	244	-
Total Cash Inflow	**61,550**	**15,196**	**31,518**	**49,788**	**73,932**	**138,198**
Expenditures						
Food	5,703	3,089	4,535	5,593	6,732	8,569
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	2,182	745	1,308	2,015	2,615	4,228
Other	21,558	7,136	13,926	20,023	26,724	39,986
Income Taxes	10,797	(342)	2,959	7,932	14,747	37,309
Total Expenditures	**50,109**	**15,907**	**29,808**	**44,725**	**62,584**	**106,148**
Net Cash Flow	**11,441**	**(711)**	**1,710**	**5,063**	**11,348**	**32,050**
After Tax Expenditure Ratio	**25%**	**50%**	**35%**	**30%**	**25%**	**19%**

Federal Child Support Amounts Analysis
Two Children

Support-Paying Parent	All Classes	Lowest Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	(8,544)	(2,412)	(4,800)	(7,248)	(10,152)	(16,092)
Extraordinary Child Care Expenses	(2,285)	(595)	(1,216)	(1,912)	(2,782)	(4,919)
Tax Credits	-	304	244	-	-	-
Total Cash Inflow	**42,886**	**8,549**	**20,092**	**33,783**	**51,942**	**102,626**
Expenditures						
Food	4,598	2,490	3,656	4,509	5,427	6,908
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	1,618	440	860	1,462	1,949	3,381
Other	21,259	7,094	13,818	19,814	26,298	39,276
Income Taxes	13,737	1,370	5,037	10,564	18,444	42,415
Total Expenditures	**51,081**	**16,673**	**30,450**	**45,511**	**63,884**	**108,036**
Net Cash Flow	**(8,194)**	**(8,124)**	**(10,358)**	**(11,727)**	**(11,942)**	**(5,410)**
After Tax Expenditure Ratio	**65%**	**111%**	**83%**	**73%**	**67%**	**56%**

Support-Receiving Parent	All Classes	Lowest Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	8,544	2,412	4,800	7,248	10,152	16,092
Extraordinary Child Care Expenses	2,285	595	1,216	1,912	2,782	4,919
Tax Credits	1,017	3,655	2,898	1,396	512	-
Total Cash Inflow	**65,561**	**17,914**	**34,778**	**53,499**	**78,322**	**144,648**
Expenditures						
Food	5,703	3,089	4,535	5,593	6,732	8,569
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	2,182	745	1,308	2,015	2,615	4,228
Other	21,558	7,136	13,926	20,023	26,724	39,986
Income Taxes	10,652	(364)	2,183	7,810	14,556	35,882
Total Expenditures	**49,964**	**15,885**	**29,032**	**44,603**	**62,393**	**104,721**
Net Cash Flow	**15,597**	**2,029**	**5,746**	**8,896**	**15,929**	**39,927**
After Tax Expenditure Ratio	**17%**	**37%**	**25%**	**21%**	**17%**	**12%**

Federal Child Support Amounts Analysis
Three Children

Support-Paying Parent	**All Classes**	**Lowest Quintile**	**Second Quintile**	**Third Quintile**	**Fourth Quintile**	**Fifth Quintile**
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	(11,184)	(2,844)	(6,096)	(9,504)	(13,260)	(20,916)
Extraordinary Child Care Expenses	(2,248)	(585)	(1,196)	(1,881)	(2,737)	(4,841)
Tax Credits	-	304	244	-	-	-
Total Cash Inflow	**40,283**	**8,127**	**18,816**	**31,558**	**48,879**	**97,880**
Expenditures						
Food	4,197	2,273	3,337	4,116	4,954	6,306
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	1,475	362	745	1,321	1,780	3,165
Other	21,259	7,094	13,818	19,814	26,298	39,276
Income Taxes	13,737	1,370	5,037	10,564	18,444	42,415
Total Expenditures	**50,537**	**16,378**	**30,018**	**44,977**	**63,242**	**107,218**
Net Cash Flow	**(10,254)**	**(8,251)**	**(11,202)**	**(13,419)**	**(14,363)**	**(9,338)**
After Tax Expenditure Ratio	**71%**	**112%**	**87%**	**79%**	**73%**	**61%**

Support-Receiving Parent	**All Classes**	**Lowest Quintile**	**Second Quintile**	**Third Quintile**	**Fourth Quintile**	**Fifth Quintile**
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	11,184	2,844	6,096	9,504	13,260	20,916
Extraordinary Child Care Expenses	2,248	585	1,196	1,881	2,737	4,841
Tax Credits	2,108	5,186	4,169	2,553	1,603	-
Total Cash Inflow	**69,255**	**19,867**	**37,325**	**56,881**	**82,476**	**149,394**
Expenditures						
Food	5,703	3,089	4,535	5,593	6,732	8,569
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	2,182	745	1,308	2,015	2,615	4,228
Other	21,558	7,136	13,926	20,023	26,724	39,986
Income Taxes	10,680	(444)	1,948	7,834	14,592	35,960
Total Expenditures	**49,992**	**15,805**	**28,797**	**44,627**	**62,429**	**104,799**
Net Cash Flow	**19,263**	**4,062**	**8,528**	**12,254**	**20,047**	**44,595**
After Tax Expenditure Ratio	**11%**	**31%**	**19%**	**15%**	**12%**	**7%**

Federal Child Support Amounts Analysis
Four Children

Support-Paying Parent	All Classes	Lowest Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	(13,344)	(3,168)	(7,428)	(11,352)	(15,804)	(24,876)
Extraordinary Child Care Expenses	(2,248)	(585)	(1,196)	(1,881)	(2,737)	(4,841)
Tax Credits	-	304	244	-	-	-
Total Cash Inflow	**38,123**	**7,803**	**17,484**	**29,710**	**46,335**	**93,920**
Expenditures						
Food	4,197	2,273	3,337	4,116	4,954	6,306
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	1,475	362	745	1,321	1,780	3,165
Other	21,259	7,094	13,818	19,814	26,298	39,276
Income Taxes	13,737	1,370	5,037	10,564	18,444	42,415
Total Expenditures	**50,537**	**16,378**	**30,018**	**44,977**	**63,242**	**107,218**
Net Cash Flow	**(12,414)**	**(8,575)**	**(12,534)**	**(15,267)**	**(16,907)**	**(13,298)**
After Tax Expenditure Ratio	**77%**	**115%**	**94%**	**85%**	**79%**	**66%**

Support-Receiving Parent	All Classes	Lowest Quintile	Second Quintile	Third Quintile	Fourth Quintile	Fifth Quintile
Cash Inflow						
Income Before Taxes	50,954	13,268	27,116	42,633	62,038	109,713
Non Taxable Money Flow	2,761	(2,016)	(1,252)	310	2,838	13,924
Basic Child Support	13,344	3,168	7,428	11,352	15,804	24,876
Extraordinary Child Care Expenses	2,248	585	1,196	1,881	2,737	4,841
Tax Credits	3,186	6,104	5,085	3,752	2,698	525
Total Cash Inflow	**72,493**	**21,109**	**39,573**	**59,928**	**86,115**	**153,879**
Expenditures						
Food	5,703	3,089	4,535	5,593	6,732	8,569
Shelter	9,869	5,279	7,080	9,162	11,766	16,056
Clothing	2,182	745	1,308	2,015	2,615	4,228
Other	21,558	7,136	13,926	20,023	26,724	39,986
Income Taxes	10,811	(494)	1,898	7,175	14,592	35,960
Total Expenditures	**50,123**	**15,755**	**28,747**	**43,968**	**62,429**	**104,799**
Net Cash Flow	**22,370**	**5,354**	**10,826**	**15,960**	**23,686**	**49,080**
After Tax Expenditure Ratio	**7%**	**28%**	**15%**	**10%**	**7%**	**3%**