



Department of Justice
Canada

EVALUATION DOCUMENT

MID-TERM EVALUATION OF THE CHILD SUPPORT INITIATIVE

Summary Report

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**Evaluation Division
Policy Integration and Coordination Section**

Canada 

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SUMMARY AND CONCLUSIONS

This mid-term evaluation of the Child Support Initiative describes the implementation of the 1997 child support reforms in Bill C-41. The purpose of the evaluation is to provide a detailed examination of the implementation process in order to determine the "lessons learned" to date. The Initiative itself began in mid-1996, with the establishment of the Child Support Team in Justice Canada. This group has the primary responsibility for the development and implementation of, and revisions to, the Federal Child Support Guidelines and the federal enhancements to maintenance enforcement found in Bill C-41. The Child Support Team has been assisted in its work by a number of other bodies, including the FPT Task Force on Child Support and the Child Support Advisory Committee.

The federal Child Support Initiative has three main objectives:

1. to establish fair and consistent standards of child support;
2. to improve child support enforcement on a national level; and
3. to educate and inform the public and all stakeholders about the importance and standards of child support.

This chapter summarizes the major findings of the evaluation, with the emphasis on the following evaluation questions:

1. Has the Child Support Initiative been implemented in accordance with the federal government's expectations and initial plans?
2. What has happened to date as a result of the Initiative?
3. What obstacles, if any, have there been to the program's implementation?
4. Are the necessary elements in place such that it is likely that the objectives of the Initiative will be achieved?
5. What lessons have been learned to date?

1. The Guidelines: Policy Development and Implementation

In 1997, an internal policy document stated that the objectives of the Child Support Guidelines are to:

1. establish child support awards in relation to the means of the non-custodial parent;
2. ensure that children share in the standard of living of both parents;
3. reduce disputes and litigation between separating and divorced parents, leading to lower legal cost for them and the courts; and,
4. reduce administrative costs to governments.

The Guidelines were intended to remedy the current situation – child support awards were seen to be too low, unpredictable, and inconsistent in similar family circumstances.

The policy development process with regard to the Guidelines is of necessity iterative, for two reasons. First, the Guidelines legislation turned out to be quite complex. Second, the Guidelines will undoubtedly be affected by custody and access amendments to the *Act*, which are currently under consideration.

The Activities of the Child Support Team

From mid-1996 to the first six months of 1997, the Child Support Team had a very busy period finalizing the contents of the legislation and regulations, overseeing the regulatory process, liaising with the jurisdictions, training family law practitioners, and developing communications materials. The size of the Team was much smaller than it is in 1999, and the workload was heavy. It is to the Team's credit that the process went as smoothly as it did.

The federal government plans for the Guidelines were followed to a very large extent. It was hoped that most jurisdictions would adopt the federal Guidelines, and this indeed occurred. Eleven of the 13 jurisdictions have adopted the guidelines for matters that fall under provincial/territorial jurisdiction – that is, in cases of separation, for common-law relationships, and in paternity cases. Both Alberta and the Yukon have passed legislation to adopt the federal guidelines, but it has not been proclaimed. However, provincial courts are apparently applying the guidelines on an advisory basis. Québec has developed its own guidelines. Only Prince Edward Island made any adjustments to the table of awards and these were to increase amounts at the low end. Eight provinces, in addition to Québec, made minor adjustments to Guideline procedures. The Child Support Guidelines have also withstood *Charter* challenges. Finally, the

first amendments to the Guidelines, proclaimed in the fall of 1997, were minor and technical, suggesting that the drafting of the legislation and regulations was relatively error-free.

The FPT Task Force on Child Support

The FPT Task Force was intended to be, and in fact is, the main method of information sharing between the two levels of government, and among the jurisdictions. Without exception, respondents said that the Task Force is the most important vehicle for inter-jurisdictional communication and information sharing. The Task Force has been responsible for making recommendations on many important decisions, such as the funding formula to be used in the disbursement of the Implementation and Enforcement Funds and developing funding priorities.¹ The Task Force has also helped to ensure that there are a number of similarities among the jurisdictions in the way in which the Guidelines have been implemented. From the perspective of representatives of both the federal and provincial/territorial governments, the Guidelines could not have been implemented without the Task Force.

Several persons interviewed for this study recommended that future federal initiatives that involve major adjustments to provincial policies and procedures strike a committee or task force with similar mandate and policy and operational representation.

The Child Support Advisory Committee

The Advisory Committee is made up of 15 representatives of the legal community as well as academics and related professionals who are appointed by the Deputy Minister of Justice Canada. The Committee is intended to assist in monitoring the Guidelines and to advise the federal government on possible amendments. Problems initially arose with regard to the expectations of Committee members (e.g., they expected that their suggestions would be incorporated into federal government policy immediately), in part because federal expectations as to the role of the Committee were not made completely clear. This situation is believed to have been improved.

Committees of this type, made up of practitioners from across the country, are valuable consultative mechanisms, but it would seem important to clearly establish their mandate so that

¹ The Deputy Ministers of Justice are responsible for the final decisions in these areas.

all Committee members have a uniform, unambiguous understanding of their expected role and contribution.

Monitoring and Evaluation

The federal government anticipated that after the Guidelines were implemented, the focus of activities of the Initiative would shift to monitoring their application through data collection and analysis and evaluation. These findings are intended to: (1) provide input into the evaluation of the Initiative that is to be submitted to Treasury Board at the conclusion of the Initiative; (2) ensure that the government can update the Guidelines so that they remain fair as well as in keeping with the original objectives; and (3) report back to Parliament on the Initiative one year after the conclusion of the Initiative.

The original plans for the Initiative specified that research on the impact of the reforms is to be undertaken. The research component has encountered a number of obstacles. First, it has not proved possible to obtain baseline data on the quantum of child support awards made before the Guidelines came into effect. Internal policy documents had anticipated that research would be able to assess the effects of the Guidelines on the amount of awards. Second, the Survey of Child Support Awards, undertaken in divorce courts throughout Canada, encountered methodological obstacles during its pilot phase that have thus far prevented the findings from being of utility to policy development. It is not yet known whether the second phase of the Survey will provide data to answer objectives-related questions, such as whether the Guidelines have resulted in consistency in award amounts.

Monitoring of case law, consultations with major stakeholders, and surveys of family law practitioners have identified problem areas in the Guidelines. In response, the Child Support Team has prepared a consultation paper that identifies additional technical amendments and the areas of major concern to practitioners (e.g., shared custody). Policy development has therefore been ongoing since the Guidelines were proclaimed. The next steps are presumably to modify the Guidelines in accordance with these developments, but no decision has been taken with regard to making major amendments to the Guidelines in the near future.

Coordination with Other Federal Agencies

The nature of the Child Support Initiative requires coordination with a number of federal government departments. The Child Support Team has attempted to coordinate the activities of

other government agencies: Finance, Revenue, and Human Resources Development Canada (HRDC) with respect to the Guidelines and tax changes; and Transport, the RCMP, HRDC, National Defense, Foreign Affairs, and other departments with regard to maintenance enforcement.

An internal policy document (1997) states that an Inter-departmental Committee on Child Support, created during the development of the reforms, would be an ongoing consultative mechanism. This Committee is either moribund or has not functioned as a coordinating mechanism.

Team staff have encountered problems in coordinating with other federal agencies. Turnover in liaison personnel in other departments affected the quality and timeliness of their response to queries and requests for assistance. In some cases, components of the Child Support Initiative have cost implications for other government agencies,² a situation that has the potential to lower their level of cooperation. In late 1998, it was reported that the cooperation received from other agencies has improved. It is, however, an area that requires constant monitoring.

Variations of Existing Child Support Orders

Documentation indicates that the expectation of both the federal and provincial/territorial governments was that a large proportion of persons with child support orders would return to court to seek variations as a result of the Guidelines and the associated tax change. Indeed, internal federal documents suggest that it is in the interest of both levels of government to encourage variation requests because "no deduction/no inclusion"³ translates into higher tax revenues in the majority of cases.

All jurisdictions report that the number of variation requests has not been what was initially expected. This is attributed to a variety of factors, including a reluctance to "re-open old wounds" and to incur the expense of legal fees for what may be a relatively small increase in child support. None of the respondents said that the lack of variations could be attributed to lack of knowledge of the Guidelines, although it was acknowledged that lack of awareness of the Guidelines may play a minor role. (This may be especially true of certain population sub-groups.)

² For example, costs would be incurred by the RCM Police, if officers are responsible for seizing revoked passports.

³ That is, after 30 April 1997, paying parents are no longer able to deduct child support payments from taxable income, and receiving parents no longer include the payments in their income.

In conclusion, the provinces and territories have not experienced as large an increase in the demand for court services as a result of the Guidelines as had been anticipated at the outset of the Initiative. Parenthetically, the lower than expected volume of variation orders also suggests that there have been limited impacts on both levels of government as a result of the new tax rules.

Mechanisms for the Calculation of Child Support Awards

The expectation of the FPT Family Law Committee and the federal government was that, once the Guidelines came into effect, the attention of the provinces and territories would turn to administrative mechanisms to update the awards and, perhaps too, to establish awards in the first place. Section 25.1 of the *Divorce Act* encouraged the development of a provincial child support service. Federal government expectations are that an automatic mechanism to update awards upon changes in the income of the paying parent or changes in the tax structure would reduce legal costs for the parents and reduce the costs to the provinces and territories of administering family law. In 1998, the contribution fund unit of the Child Support Team began to encourage the provinces and territories to develop pilot projects in this area; several provincial respondents expressed concern about this emphasis. The point was made that even a pilot project would require a good deal of planning by the provinces/territories. In late 1998, a sub-committee of the Task Force was established to discuss the possible "ways and means" of updating/calculating awards and implementing a child support service. It is premature to make any assessment of the extent to which this policy of the federal government will be achieved. One of the main obstacles to be resolved is to determine how access to the payor's income can be obtained. For this reason, negotiations with Revenue Canada are required; it appears that this department has been thus far very reluctant to change legislation governing the release of income information.

2. Federal Enhancements to Support Enforcement

Bill C-41 contained a number of changes to federal legislation to assist the provincial/territorial maintenance enforcement programs in tracing defaulting payors, in intercepting federal funds, and in encouraging defaulters to make regular child support payments (by means of license and passport denials). The plan was that the Initiative would implement the information systems and other processes required for the denial of federal licenses and passports, and for increased access to federal data banks for the tracing of persons with outstanding child support payments and in breach of a custody order. Coordination with federal agencies – notably Transport Canada, Foreign Affairs, and Revenue Canada – is required. The Initiative has been relatively successful

in undertaking these tasks. Negotiations with other federal agencies are of necessity ongoing in nature.

The amendments to the *Family Orders and Agreements Enforcement Assistance Act* and the *Garnishment, Attachment and Pension Diversion Act* in Bill C-41 have been implemented or are in the course of implementation. With the assistance of the Family Law Assistance Section in Justice Canada, there is ongoing monitoring of the policy and operational issues arising from the changes.

Another aspect of the federal role in maintenance enforcement is the provision of assistance to the MEPs in the development of international reciprocal enforcement arrangements. The role taken by the Child Support Team is welcomed by the jurisdictions and is viewed as of considerable assistance to them.

Several respondents, from both levels of government, commented that in the Initiative maintenance enforcement has taken a "back seat" to the Child Support Guidelines. This may be inevitable because federal responsibility in the area of maintenance enforcement is limited: by far the most activity in support enforcement occurs at the provincial/territorial level. However, there are a number of benefits to the MEPs if the federal government assumes a collaborative role in the enforcement area, including financial assistance, national media campaigns on the importance of paying child support, enhanced information sharing among MEPs, access to federal sources for tracing defaulters, and so on.

This study found that the visibility of the enforcement component of the Child Support Initiative in the jurisdictions is low. Both federal and provincial/territorial officials said that there is not a great deal of communication between the Team and MEPs.

3. Public Communications and Education

The advertising campaigns undertaken to date appear to have been successful in informing members of the public of the introduction of child support guidelines and in encouraging them to seek further information. Public opinion polling conducted during the winter of 1997-8 found that more than three-quarters (85%) of the public who are currently divorced or separated are aware that there have been recent changes to the law with regard to child support. Seven in every ten respondents were aware that recent changes included tax implications for child support payments and about 40 per cent of the respondents were aware that the recent reforms included mandatory guidelines that outline rules and table amounts for calculating child support. The

lower level of awareness of the mandatory guidelines may stem from confusion surrounding the use of the term “guideline” to refer to something that is mandatory. The plain language review suggested that this terminology was problematic.

The jurisdictions generally perceive that the federal government has provided a broad framework within which provincial/territorial communications programs can structure their activities and products to meet the day-to-day operational needs of the public. Most respondents interviewed over the course of this evaluation said that the publications intended for the general public do not meet everyone’s needs because the language level was too high. In particular, certain segments of the population, such as members of low literacy groups, recent immigrants and aboriginal communities may find them inaccessible. The needs of secondary target groups are now being addressed. Given the complexity of the subject, some questions have been raised as to the extent to which information materials will be able to effectively address the information needs of the less literate members of the public.

4. Financial Assistance to the Provinces and Territories

Two funding components were established to assist the jurisdictions in their implementation of Bill C-41. The Implementation Fund totals \$50 million, which is to be disbursed from FY 1996-7 to FY 2000-1. The amount in the Enforcement Fund is \$13.6 and it is to be allocated for four years from FY 1997-8 to FY 2000-1. With the assistance of the FPT Task Force, funding priorities were established for each Fund. Priorities appear to be a workable model for federal financial contributions to the jurisdictions, so long as there is federal/provincial/territorial consultation or, if this is not feasible, at a minimum, a clear explanation of the reasons for the priorities and how they relate to broader federal objectives. However, provincial officials have regarded the interpretation of the priorities by federal officials as problematic at times. Some officials mentioned that the federal government appeared to have moved from a "partnership" role to a paternalistic one. There was also some suggestion that the federal government was close to interfering in areas of provincial/territorial jurisdiction in the negotiations around the projects eligible for federal funds. From the federal perspective, however, the funds must be directed to the achievement of Initiative objectives and this means that only certain types of projects can be funded.

Guidelines Implementation Fund

In 1995, a federal government document stated that the intent of federal financial assistance was to assist in the costs of implementation of the Guidelines, to encourage the provinces and territories to adopt the federal Guidelines, and to assist in offsetting the financial effects of the workload effects that were anticipated. To provincial authorities, the need for consistency in the areas of provincial and federal jurisdiction was the paramount factor in their adoption of the Guidelines. Since the workload effects of the Guidelines that were anticipated did not occur, the last objective has turned out to be less important than originally expected. Nonetheless, the funding has assisted in covering the costs of implementing the Guidelines, particularly those associated with changes to court services and systems. The assistance has also supported activities aimed at reducing conflict, increasing access to the courts and increasing efficiency in the handling of child support applications.

There is, however, another objective of federal financial assistance – namely, to encourage the provinces and territories to develop, implement, and evaluate timely and cost-effective mechanisms for parents to obtain, vary, and update child support orders. This objective has not yet been achieved.

Until about a year after the proclamation of the federal Guidelines (i.e., May 1998), officials in many jurisdictions still anticipated that the primary focus of service provision would be to assist persons with variation requests. Only by mid-1998, in the third year of the contribution agreements (but after only 12 months of experience with the Guidelines), did it become apparent in most provinces and territories that the anticipated increase would not occur.⁴ Obviously it was too late to make adjustments to planning for FY 1998-9. In practical terms, to employ federal funding for purposes other than variations is only possible for the final two years of the Initiative.

In this context, it is important to note that the jurisdictions have had problems in spending the federal financial contributions. Over 25 percent of the allocated amount for FY 1998-9 has been reprofiled to the next fiscal year. It is uncertain whether the available funds will be disbursed by the planned end of the Initiative, March 2001.

The federal government believes that if jurisdictions accede to the federal suggestion to attempt to operationalize section 25.1 on a trial basis, the Fund would be well utilized. It is not at all

⁴ Representatives of a few jurisdictions interviewed in the latter half of 1998 predicted that there still could be a large "uptake" in variations, as lawyers become confident with the Guidelines and as more affected persons realize that the tax changes do not come into effect automatically.

clear, however, whether the jurisdictions are able to develop and implement pilot projects in the current time frame. Furthermore, several jurisdictions are reluctant to develop such a service, even on a trial basis, because of the uncertainties involved, such as:

- the constitutionality of the child support service and
- the cost-effectiveness of such a service, especially since it seems clear that administrative decision-making is only suitable for "straightforward" cases where there are few or no areas of dispute between the parties and where the income of the paying parent is readily available.

Enforcement Fund

The \$13.6 million Enforcement Fund is intended to assist the jurisdictions in enhancing their ability to collect child support and to improve the federal support enforcement program. Few problems in lapsed and refiled funds have arisen with the Enforcement Fund, perhaps because provincial/territorial enforcement programs tend to be "cash-strapped", and the amounts available annually to each jurisdiction are relatively small. The federal financial assistance is regarded as important to some MEPs because the monies are often used for activities that would not otherwise be feasible. In FY 1997-8, many jurisdictions used the monies to make system changes necessary to because of the changes to *FOAEA*. Few respondents in the jurisdictions were able to comment reliably on the effects of the *FOAEA* changes on their ability to trace, and to collect money from, delinquent payors. At the time of interviews, system changes were incomplete and/or encountering transmission difficulties. Perhaps as importantly, the access to Revenue Canada databases and the new federal license denial schemes are only two of a number of methods that MEPs use to fulfil their enforcement functions. For this reason, programs find it difficult to isolate the effects of these mechanisms from other steps that they take to enforce child support orders.

5. Management Issues

The findings of this evaluation suggest that the organizational structure of the Child Support Initiative is contributing to the successful implementation of the Initiative. The creation of the Team has resulted in substantially enhanced team work and a multidisciplinary approach to policy development and implementation. While it is too early at this stage of the Initiative to confirm the net benefits of this approach, the general consensus of persons interviewed seems to

be that it is a relatively more effective way of undertaking program implementation than the more usual approach.

Coordination within the Child Support Team has been good, primarily as a result of joint projects between involving different units and consultation and joint decision-making at the Team Leader and Coordinator levels.

Having one person accountable for the results of the Initiative as well as its resources has also been beneficial. It is our conclusion that many of the successes of this Initiative to date are partly attributable to the fact that one person has been made accountable and that all (or virtually all) those responsible for Initiative activities report to that person.

There have been a few problems in relation to departmental coordination. It is possible that these could have been attenuated if the management structure set out in the MOU had been put in place, particularly the provision that staff within the CST would also report to certain managers outside the Team. It is not clear why this management structure has not been implemented, nor why the MOU has not been revised, given that an MOU is a very effective means of clarifying relationships and responsibilities. In addition, some of the problems were exacerbated by the fact that not all units involved in the implementation of the Initiative are part of the CST.

A problem that has recently emerged is that, with the Initiative ending in less than two years, uncertainty about whether the Department will be able to absorb the CST staff at the end of the initiative and in what capacity is prompting some CST staff to leave for permanent positions elsewhere in the Department of Justice or in other government departments. This means that, as the end of the initiative approaches and deadlines loom, the Team is having to devote time to hiring and training new staff. One federal official suggested that guaranteeing the salaries of team members for one year following the conclusion of the initiative would help alleviate the problem.

We were told that the original Team accomplished a large amount of work in a short period of time. Members logged many hours of overtime and “everyone worked on everything” to get things done. In contrast, the current CST is comparable to most other organizational units, in terms of its productivity. This suggests that a team with a specific goal and a limited time frame may have a higher level of productivity than a team charged with a broader, longer term task of supporting policy implementation. As the creation of a separate team may cause problems of departmental coordination in the long term, it may be more effective to establish a team with a specific goal and a limited time frame, rather than maintain a separate organizational structure over the long term. This would also minimize the impact on home units, which would lose their

staff for only a short period of time. Future evaluations of this and similar special initiatives will explore further the advantages and disadvantages of various approaches that are used to develop and implement special initiatives.

The FPT Task Force appears to have contributed to federal/provincial/territorial coordination. It facilitated information sharing on implementation issues and may have been a factor in the adoption of the federal guidelines by eleven jurisdictions with no or relatively minor modifications.