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Margaret Young October 1998

## Federal Child Support Guidelines

The way in which child support following family breakdown is calculated in Canada changed significantly on 1 May 1997. On that date, the Federal Child Support Guidelines<sup>(1)</sup> came into force, following amendments to the *Divorce Act* enacted earlier that year.<sup>(2)</sup> Those amendments enabled the federal government to establish the new system by regulation. The reach of the federal Guidelines is broader than child support under the *Divorce Act*,<sup>(3)</sup> however; most provinces (the exception is Quebec, which has developed its own Guidelines) have adopted the federal Guidelines as they stand, or slightly modified. Thus, the Guidelines now apply in situations of family breakdown, everywhere in Canada but Quebec, whether or not a divorce is at issue.

The Guidelines espouse four objectives:

- To ensure children a fair level of support so that they will continue to benefit from the financial means of both parents;
- To reduce conflict between separated parents by replacing the previous case-by-case litigation with a more objective method of calculating child support;
- To improve the efficiency of the legal process by providing guidance to courts and parents regarding appropriate support levels and encouraging settlement; and
- To ensure consistent treatment of parents and children who are in similar circumstances.<sup>(4)</sup>

The Federal Guidelines are based on a concept new to Canadian law: in general, only the income of the paying parent is relevant to the amount payable. It is assumed that the recipient parent will, as a matter of course, make a contribution to the support of the children that is typical of a person in his or her circumstances. Except in rare cases of undue hardship, the household income of each of the parents is not taken into account.<sup>(5)</sup> Thus, tables in the Guidelines set out the basic amount that a paying

parent should contribute in view of his or her income and the number of children. There are tables for each province, adjusted for the differing levels of provincial and federal income tax.

The basic amount of support as established by the tables may be adjusted for specified extraordinary or special expenses, provided they are reasonable and necessary in light of the needs of the children and the means of the parents and the child. In making such adjustment, the income of the recipient parent and the family's spending pattern before separation will both be taken into account.

The most important specified expenses are:

- Child care expenses (net of the tax benefit);
- Medical and health-related expenses not covered by insurance plans;
- Extraordinary expenses for primary or secondary school education, or for special programs;
- Expenses for post-secondary education; and
- Extraordinary expenses for extracurricular activities.<sup>(6)</sup>

The Guideline's provision for extraordinary or special expenses has caused considerable difficulty in interpretation and has led to conflicting caselaw.

Shared custody is another issue that has caused difficulty in interpretation and has led to conflict between parents. Recognizing that both parents are often significantly involved in their children's lives, the guidelines provide that where one parent has access to, or physical custody of a child for 40% or more of the time, this should be reflected in the amount of the child support. To make the necessary calculation, three factors are relevant: the table amounts for each parent, the increased costs of the shared custody arrangements, and the general circumstances of each parent and child. Questions have arisen as to how the time spent should be

measured in assessing whether the 40% threshold has been met. There is also considerable anecdotal evidence suggesting that conflict results as some parents strive to meet the 40% parenting time level as a means of lowering the amount of child support payable.

The Federal Guidelines have already received parliamentary scrutiny. In 1997, to speed passage of Bill C-41 through the Senate committee studying it, the government agreed to support an order of reference for the Standing Senate Committee on Social Affairs, Science and Technology to study the Guidelines at an early date. The Committee undertook this study in the winter and spring of 1998, reporting to the Senate in June of that year.<sup>(7)</sup> It envisages its role as overseer of the Guidelines to be ongoing and pledged to return to the issue within 18 months of the completion of that report.

The Senate Committee concentrated its attention on the two problematic issues noted above: extraordinary or special expenses and shared parenting. It recommended that there be a new definition of extraordinary expenses to clarify the intent of the Guidelines, proposing that they be confined to “expenditures that exceed what would be considered typical amounts for parents at comparable income levels to spend for those purposes.”<sup>(8)</sup>

In canvassing the issues related to shared parenting, the Committee recognized the financial needs of both parents: the costs of the primary custodial parent are fixed and do not decrease when the access parent exceeds the 40% time threshold; however, the costs of the latter parent do rise along with his or her parenting time. This is a problem particularly for low and middle-income parents. The Committee recommended that the government examine other methods whereby parenting costs could be more objectively apportioned and the position of lower-income primary caregivers could be protected.<sup>(9)</sup>

The Committee also made recommendations concerning the treatment of support for adult children attending post-secondary institutions, the undue hardship provision, recognition of access costs, and various aspects of the enforcement of child support awards.

The *Divorce Act* requires the Minister of Justice to undertake a comprehensive review of the Guidelines and to table a report thereon within five years of their coming into force (i.e. by 1 May 2002).<sup>(10)</sup> The

Department is therefore monitoring their implementation closely and has devised a comprehensive research framework to measure their impact.<sup>(11)</sup> The Senate Committee, however, has urged the government to introduce amendments to the Guidelines when the need becomes evident, rather than waiting for the results of the comprehensive review; however, it has also urged the government to consult with the Committee before making any substantive changes.<sup>(12)</sup>

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- (1) SOR/97-175.
  - (2) Bill C-41, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act. S.C. 1997, c. 1. Assented to 19 February 1997; in force 1 May 1997.
  - (3) *Divorce Act*, R.S., 1985, c. 3 (2nd Supp.) (D-3.4, as amended).
  - (4) Guidelines, section 1.
  - (5) To succeed in reducing the amount of child support on the ground of undue hardship, a paying parent must establish that his or her household will have a lower standard of living than the household of the recipient parent. See Guidelines, section 10.
  - (6) *Ibid.*, section 9.
  - (7) The Standing Senate Committee on Social Affairs, Science and Technology, *The Federal Child Support Guidelines: Interim Report*, June 1998.
  - (8) *Ibid.*, Recommendation 4, page 8.
  - (9) *Ibid.*, Recommendation 6, page 12.
  - (10) *Divorce Act*, section 28.
  - (11) The address of the Department of Justice home page for child support is:  
[http://canada.justice.gc.ca/Orientations/Pensions/Child/index\\_en.html](http://canada.justice.gc.ca/Orientations/Pensions/Child/index_en.html). The site contains useful information as well as a copy of the Guidelines and an outline of the Department's research requirements and strategy.
  - (12) *Supra*, note 7, Recommendations 1 and 2, page 5.