

# Child-support guidelines and the welfare of children

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*THE CHILD-SUPPORT PAYMENT GUIDELINES THAT BECAME LAW IN 1997 HAVE PRODUCED CONSISTENCY ACROSS NON-CUSTODIAL PARENTS. FATHERS (MAINLY) WHO ARE IN SIMILAR ECONOMIC CIRCUMSTANCES PAY SIMILAR AMOUNTS. BUT THE GUIDELINES ARE NEITHER ADEQUATE (IN THAT THEY GENERALLY DON'T MEET THE NEEDS OF CHILDREN) NOR FAIR, SINCE THEY TYPICALLY RESULT IN DISPARITIES BETWEEN THE CUSTODIAL AND NON-CUSTODIAL HOUSEHOLDS' STANDARDS OF LIVING. A SYSTEM THAT CONSIDERED THE FAMILY'S WEALTH AS WELL AS ITS INCOME WOULD COME CLOSER TO MEETING THESE OBJECTIVES.*

*LE LÉGISLATEUR A ÉDICTÉ, EN 1997, DES RÈGLES DÉTERMINANT L'ALLOCATION À VERSER PAR LE PARENT QUI N'A PAS LA GARDE DE L'ENFANT. ON A AINSI STANDARDISÉ LE NIVEAU DE L'ALLOCATION, ENTRE LES PÈRES (CAR IL S'AGIT LE PLUS SOUVENT D'EUX) VIVANT LA MÊME SITUATION ÉCONOMIQUE. MAIS LES DIRECTIVES SONT À LA FOIS INADÉQUATES ET INJUSTES. INADÉQUATES, EN CE QU'ELLES NE RÉPONDENT PAS AUX BESOINS DES ENFANTS. INJUSTES, EN CE QU'ELLES ENTRAÎNENT GÉNÉRALEMENT DES DISPARITÉS ENTRE LE NIVEAU DE VIE DU PARENT QUI A LA GARDE DES ENFANTS ET LE NIVEAU DE VIE DU PARENT QUI N'EN A PAS LA GARDE. POUR MIEUX RÉPONDRE AUX OBJECTIFS DU SYSTÈME, IL FAUDRAIT PRENDRE EN COMPTE NON SEULEMENT LE REVENU DU MÉNAGE MAIS AUSSI SA FORTUNE.*

**F**orty-five percent of Canadian marriages end in divorce. For the children involved, the end of their parents' marriage not only uproots their emotional lives, it also often leads to economic hardship: Fully 60 per cent of children in single-parent households live in poverty. Child-support payments are therefore a key weapon in the struggle to reduce child poverty.

Public policy affects child-support payments either indirectly by providing the legislative backdrop against which payments are negotiated, or directly, as is currently the case in Canada, by providing guidelines for the levels of these payments. What should be the primary goal of such a policy? Should it be to apportion the costs of divorce "fairly" among the parents, or should it be to protect children from the economic impact of divorce? If children's welfare is the overriding concern, should their standard of living be upheld even when the cost is to render the non-custodial parent practically destitute? If public policy should mainly seek to apportion the costs of divorce "fairly," how do we define "fairly"? What are the rights of the parents post-divorce and what are their children's rights? We want to argue that taking the household's pre-divorce wealth into account would generally improve the post-

divorce circumstances of children and would also reduce the substantial work disincentives that current arrangements impose on non-custodial parents.

**W**hen a marriage dissolves, economic costs are imposed on all family members. Running two households costs more than running one. Unless their combined income rises, it simply is not possible to maintain the pre-divorce standard of living in both post-divorce households. At divorce, what is at stake is the extent to which the standard of living of the custodial and non-custodial households falls relative to the pre-divorce situation. As the principal means of monetary transfers between the two households, child-support payments play a crucial role in determining the relative share of the economic burden of divorce borne by each.

Different principles have been used to determine the level of child support. Before 1997, a cost-sharing model underlay the determination of child-support payments. The courts were ultimately responsible for assessing the costs of raising children and for apportioning these costs between the parents. Private agreements were negotiated against this legislative backdrop.

Awards generated by this system often did not meet the needs of children. Moreover, they could be inconsistent and inequitable: Families in similar financial circumstances were not necessarily treated the same. The court could exercise discretion both in the evaluation of child-related costs and in the manner in which parents shared financial responsibility. As a result, child-support payments varied greatly. Since January 1, 1997, however, child-support payments have been set according to published *Guidelines* that calculate awards as a function of both the non-custodial parent's income and the number of children for whom support must be provided. These amounts apply unless one of the parties undertakes legal action on grounds that the mandated payment would result in undue hardship.

Awards under the *Guidelines* are consistent in the sense that all non-custodial parents in similar financial positions and with a given number of children now pay the same amount. But the *Guidelines* do not achieve equity for Canadian families. Because awards are determined without regard to the financial position of the custodial parent, families in similar circumstances are not treated the same, even though non-custodial parents in similar circumstances are.

The academic and policy discussion surrounding the release of the *Guidelines* failed to identify specific standards by which to measure whether payments were sufficient to meet the needs of the custodial household (and were therefore "adequate") or succeeded in sharing the economic burden among the two households fairly (and were thus "reasonable"). We suggest different criteria for assessing the reasonableness and the adequacy of awards. We consider three standards of adequacy, namely, whether the payments:

1. maintain the pre-divorce standard of living of the children
2. ensure that the financial resources available for the children do not decrease post-divorce, and
3. equalize the standards of living of the custodial and non-custodial households post-divorce.

And we use three further standards to evaluate the reasonableness of child-support payments. We consider payments reasonable if:

4. each parent contributes his/her share of the costs of raising children, given his/her relative income
5. the child-support payment involves no implicit spousal support — i.e., all of the non-custodial parent's contribution go to child-related expenses; and
6. with all of the payment being used for the children, post-divorce standards of living are equalized,

which is actually a combination of 4 and 5.

In practice, applying these criteria to situations involving particular families requires estimating child-related expenses. Following the methodology adopted by the Department of Justice (DOJ), child-related expenses are imputed by means of equivalence scales of the sort used to determine poverty lines. Although the details of these calculations need not concern us here, two problems associated with using equivalence scales to impute child-related expenses should be noted. First, this approach assumes that all households of identical composition devote the same proportion of their total resources to their children — even though available data suggest they do not. Second, households with very different standards of living can be judged comparable under the equivalence scales because the scales are based on household income rather than household wealth. For instance, equivalence scales will deem a family that owns its home outright to be as well-off as a family with the same income living in rental housing, even though common sense tells us there is a real and significant difference in these two families' standard of living.

Using the DOJ's approach nevertheless gives us a consistent method for calculating the amount of money that a custodial parent would have to pay per month in order to meet each of the criteria proposed above. Table 1 provides these dollar amounts, as well as the award mandated by the *Guidelines*, for three hypothetical families. Family 1 represents the "average" two-earner, two-child household in Canada. It has a total household income of \$65,000, \$40,000 of which is contributed by the male. Family 2 has the same composition and total income as Family 1, but this time both parents earn the same amount (\$32,500). This scenario was chosen because the methodology behind the *Guidelines* is predicated on both parents earning the same income. The third and last family earns a total income of \$100,000, of which \$65,000 is earned by the male, a split that is typical of the male-female earnings gap. We assume that the male is the non-custodial parent.

The numbers in Table 1 are quite telling. Maintaining the pre-divorce living standard of the custodial parent, and hence insulating the children from the economic cost of the divorce, yields by far the largest child-support payment. However, the resulting situation is completely untenable from the point of view of the non-custodial parent.

The criterion that comes next in terms of its generosity to the children is not clear-cut since it depends crucially on the custodial parent's income, which the *Guidelines* do not take into

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account. In particular, as the income of the custodial parent increases, so does the award stemming from Criterion 5 — no implicit spousal support. It is also worth noting that awards are very sensitive to the distribution of income within a household. Families 1 and 2 have identical pre-divorce income and yet their awards vary dramatically. The starkest difference arises with Criterion 3 — equalizing post-divorce standards of living — where the child-support payment drops by 47 per cent when the non-custodial parent’s income falls from \$40 000 to \$32 500.

The *Guidelines* never provide awards that are adequate according to our definitions. Criterion 3,

awards mandated by the *Guidelines* seem more successful at protecting the standard of living of the non-custodial parent than at shielding children from the consequences of divorce.

What the analysis of Table 1 renders tragically clear is that there is an inescapable conflict between protecting children from the economic consequences of divorce and allowing the non-custodial parent to have the means to make a fresh start. Providing protection for children sometimes requires that a dramatic proportion of the non-custodial parent’s income be paid as child support. Especially when the non-custodial parent is the main wage earner and there is more than one child, the amount required can be so high that that parent’s standard of living falls below the poverty line. Even if one were to take the position that such a situation is preferable to the status quo, in which an important proportion of custodial households live below the poverty line, support awards of this magnitude could lead to widespread default, thus defeating their purpose.

Does this then mean that little can be done to improve the welfare of children after divorce? If the contribution of non-custodial parents to the welfare of their children must be financed solely out of their current income, as is the case under both the former and new systems of child support in Canada, then there is indeed reason for pessimism. Total family income is simply insufficient to both shield children from the economic consequences of divorce and meet the needs of the non-custodial parent. Any attempt to further mitigate the economic burden of divorce on children must necessarily identify financial resources other than current income that can be directed to the support of the children.

If provisions for support were not based solely on income, but instead were a function of wealth, then it would be possible to distribute the economic costs of family breakdown more equitably, so that children and custodial parents would not bear a disproportionate share of the burden, and non-custodial parents’ needs could also be adequately met. This would require that child-support policies be redesigned to take account of the disposition of family assets. It is worth noting that this is already the practice elsewhere: French family law currently provides for a variety of different mechanisms by which support may be paid, including both the granting of *usufruct* of certain goods — that is, use of assets that remain someone else’s — and the attribution to the child of income generated by specified assets.

Changing the basis for child-support from income to wealth would explicitly recognize that the

**Table 1**  
**Monthly child-support awards:**  
**Two children under three different household scenarios**

Criterion	Scenario 1 \$40K/\$25K	Scenario 2 \$32.5K	Scenario 3 \$65K/35K
Pre-Divorce SOL	\$1,765	\$1,327	\$2,708
Pre-Divorce Expenditures (2)	\$1,304	\$867	\$2,051
Equal Post-Divorce SOL (3)	\$929	\$492	\$1,515
Cost-Sharing (4)	\$495	\$492	\$693
No Spousal Support (5)	\$1,021	\$1,327	\$1,327
Min { (3), (5) }	\$929	\$492	\$1,327
Current Guidelines	\$579	\$481	\$858

Note: “SOL” is “Standard of Living.”

which sets the child-support payment to equalize post-divorce standards of living, is almost met when both parents have equal income. This criterion also provides the benchmark payment below which the custodial household bears the brunt of the economic cost of divorce: Whenever the custodial parent’s income is lower, child-support payments under the *Guidelines* result in the custodial household bearing a larger share of the economic cost of divorce.

In some circumstances, the *Guidelines* do provide “reasonable” child-support awards. They are more generous to the custodial household and harsher on the non-custodial parent than the cost-sharing criterion. The amounts provided in the *Guidelines* also meet the criterion of not providing implicit spousal support — that is, they are always lower than those calculated using Criterion 5. However, at least for the cases analyzed here, the

standard of living of any household is a function not only of its current income, but also of the flow of services from the assets that it has accumulated. It also recognizes that assets acquired by the household before divorce reflect the needs of children. Families with children buy minivans and three-bedroom homes; childless couples buy sub-compacts and condominiums. The fact that their parents have separated should not deprive children of the services of most of these assets.

Taking a wealth-based approach can also help improve the non-custodial parent's incentive to work. Under the *Guidelines*, a non-trivial proportion of an extra dollar earned by non-custodial parents is transferred to custodial households. This implicit addition to non-custodial parents' marginal tax rates is apt to discourage them from engaging in activities that could raise income. But if a portion of ongoing child-support obligations can be waived by consenting to a less than 50/50 asset split, this "divorce tax" would be reduced. Further, a wealth-based approach that uses an adjustment of the asset split to collect child-support payments up front is an effective strategy against default.

To see how taking a wealth-based approach can make a difference, consider a three-member family with an income of \$50,000: The father earns \$30,000, the mother \$20,000, and there is one child. The only family asset is a house, in which the family has \$50,000 of equity. Suppose the mother has custody of the child and wishes to keep the family home after separation. Given that assets are divided equally between the former spouses upon divorce, she must compensate her former husband for his share in the equity by making an equalization payment of \$25,000. Under the *Guidelines*, the child-support award is based solely on the husband's income of \$30,000. The payment of \$25,000 is not taken into account in determining his ability to pay support. The award would be \$232.71 per month for a single child. In this situation, especially if the mother borrows the \$25,000, she probably won't be able to afford to stay in the family home.

Now suppose instead that the non-custodial parent is directed to leave his \$25,000 share invested in the family home until the child is independent. The custodial family no longer needs to make an equalization payment and thus saves the costs of borrowing \$25,000. Using a conservative interest rate, this amounts to some \$2,500 annually or \$208.33 per month. Effectively, the child-support award is now \$208.33 plus a monthly payment out of the husband's current income. If this payment were roughly half the magnitude suggested by the *Guidelines*, the custodial family would still enjoy an

increase in its award of 40 per cent using the wealth-based approach, while the non-custodial parent would be paying 50 per cent less each month out of current income.

Our claim that custodial families could bear a lesser part of the economic burden of divorce if support were a function of wealth instead of income ultimately relies on three reasonable assumptions. First, non-custodial parents' ability to pay support doesn't just depend on their income; it depends on the combination of their assets and their income. Second, children's welfare loss can be attenuated if they continue to benefit from the services of the assets to which they had access when the family was intact. Giving children a claim to some part of the family's assets is a way to keep their standard of living nearer the pre-divorce level. Third, any system in which support is based on current income distorts the incentives for non-custodial parents to work and to invest in income-generating assets. Because non-custodial parents cannot lay claim to the entire benefit from such an investment, they may choose non-income bearing assets instead, leading to a future income lower than would otherwise be the case. In sum, recognition of the crucial role that assets can play makes it possible to reduce the economic impact of divorce on children.

In the end, determining exactly how wealth should enter into the calculation is not an easy task. One obvious complication is: Which assets are acquired at least partly for the benefit of children? Take the family home, for instance. Arguably, children would have the right to the services from this home while they are children, but what happens after they reach the age of majority? Similarly, should children have access to pension plan savings? If the income would be saved in the same manner irrespective of the presence of children, then perhaps they should be not be entitled to this asset.

These and other issues must be addressed before wealth can be used as a basis for child-support payments. Much work needs to be done in this area — but it is work that must be done if we are to improve the lot of society's most vulnerable members, our children.

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