Are the New Child-Support Guidelines "Adequate" or "Reasonable"?

VICKY BARHAM
University of Ottawa
Ottawa, Ontario

ROSE ANNE DEVLIN
University of Ottawa
Ottawa, Ontario

CHANTALE LACASSE
University of Alberta
Edmonton, Alberta

Les revenus provenant des programmes d'aide aux enfants constituent une partie importante des revenus de plusieurs familles monoparentales. En janvier 1997, le gouvernement, puisque les programmes étaient jugés inadéquats, a établit un nouveau *Guide* pour ces programmes. Cet article évalue ce *Guide* en examinant comment il se compare avec six mesures de suffisance et avec des mesures évaluant si les programmes sont raisonables ou non. Nous sommes amenés a conclure que *n'importe lequel* des programmes d'aide aux enfants basés seulement sur le revenu des partenaires antérieurs va avoir une très faible chance de succès. Une façon de contourner ce dilemme serait d'utiliser une mesure de richesse plus large lors du calcul des paiements de soutien. Cela pourrait rendre possible une réduction des impacts économiques du divorce sur les enfants.

Child-support awards constitute an important source of revenue for many single-parent households. The inadequacy of these child-support awards is one of the factors cited to justify the government's recent implementation in January 1997 of a new child-support *Guidelines*. This paper evaluates these *Guidelines* by examining how they compare to six standards of adequacy and reasonableness. We are led to conclude that *any* child-support system based solely on the incomes of former spouses is unlikely to succeed. One way out of this dilemma is to use a broader measure of wealth when calculating child-support payments which may make it possible to reduce the economic impact of divorce on children.

INTRODUCTION

The issue of child poverty looms large in the political arena in Canada, as it does in other western countries. With the poverty rate for Canadian children living in single-parent households running at about 60 percent, it is clear that these households are particularly at risk (Canada. HRDC 1996, p. 2). Child-support awards constitute an important source of revenue for many single-parent households. The

government affects the level of child-support awards partly by setting the legislative stage for the negotiation of post-separation child-support agreements. Modifications to the legal system, if they result in an increase in the average level of awards, can thus be expected to reduce child poverty. As the Department of Justice (DOJ) notes in a recent report: "Although child-support formulas cannot solve the child poverty problem arising from divorce, they can ameliorate the situation to some degree" (Canada. DOJ 1995*a*, p. 38).

Increasing the average level of support obligations would also go some way toward distributing the burdens of family breakdown more evenly. After separation, the same resources go to supporting two households instead of one. The standard of living of all parties can be expected to decline, and indeed, this seems to be what happens in a vast majority of cases. However, available data also suggest that, even after taking into account child-support transfers, the typical custodial household's income is insufficient for it to aspire to a standard of living comparable to the one enjoyed by the noncustodial parent (see Rogerson 1990, p.59). This is further evidence that levels of support are often inadequate. Whereas children are the innocent parties in any family breakdown, they are the ones bearing, along with the custodial parent, the brunt of the cost for the move to a two-family life.

Inadequacy of current levels of child-support awards is one of the factors that the government cited to justify its review of the child-support system. The process recently culminated in the adoption of the child-support *Guidelines* in 1997. These *Guidelines* constitute a profound change to the legislative backdrop against which child-support agreements are negotiated. In the former system, the court's decision was informed by a list of principles embodied in the *Divorce Act*, and it took into account the parents' reported costs of raising their children, as well as each parent's ability to shoulder his or her share of the financial burden. In contrast, the new *Guidelines* establish set amounts of child support as a func-

tion of exactly two factors, namely: the non-custodial parent's income and the number of children.[1] To all intents and purposes, rules have replaced the discretion of the courts.

In this paper, we identify three criteria to assess whether child-support payments are "adequate," in the general sense of providing for the needs of the custodial household. We also develop three measures of whether support payments are "reasonable," in the broad sense of distributing the burdens associated with divorce equitably among the parents. The economic consequences to the custodial and non-custodial household of meeting these six criteria are also assessed, together with an evaluation of whether the new *Guidelines* for child-support awards meet these criteria. We are led to conclude that the *Guidelines*, like any child-support system based solely on the incomes of the former spouses, is unlikely to succeed in providing for the households post-divorce, and thus any such system is unlikely to alleviate the problem of child poverty. We close by suggesting a way out of the impasse.

THE CHILD-SUPPORT GUIDELINES

The Changes Introduced by the System in 1997

Prior to 1997, the courts were relied upon to assess the costs of raising children and to apportion these costs among the parents. In addition to the charge that awards were often inadequate, awards generated by the former system were often perceived to be inconsistent and inequitable. Families in similar financial circumstances could not be guaranteed to get the same awards, since the discretion of the court could be exercised both in its interpretation of the principles guiding the expenses allowed for child-related costs, and in the manner in which parents should share this financial responsibility. Further, the variability of court-determined awards was perceived to encourage parents to resort to litigation, at a high cost to both the parties involved and the legal system. These problems form the basis for the

Family Law Committee's recommendation that a child-support formula be developed and ensconced in the *Divorce Act*.

Under the new system, the *Divorce Act* instructs judges to set child-support awards according to the *Guidelines*,[2] which includes tables specifying awards as a function of the non-custodial parent's income and the number of children for which support must be provided. These amounts serve as *a rebuttal presumption*, a legal status which has greater force than a simple set of recommendations, but which is not an invariable rule. The amounts set by the *Guidelines* are assumed to apply unless one of the parties undertakes legal action on grounds that payment of the mandated amount would result in undue hardship. The custodial parent can cite several factors to support a claim of undue hardship. These include the necessity to repay substantial family debts, the custody of other children or pre-existing child-support orders, or a particularly high cost of access.[3] A claim of undue hardship by a custodial parent can only be made if it establishes that a child has special needs requiring extraordinary expenses.

The *Guidelines* reduce the need for litigation by dictating what the non-custodial parent must pay under all but extraordinary circumstances. Further, the rigidity of the rules means that awards are consistent in the following sense: all non-custodial parents in similar financial positions and with a given number of children pay the same amounts. However, this does not imply that the *Guidelines* achieve equity for Canadian families. Indeed, *families* (as opposed to non-custodial parents) in similar circumstances will *not* be treated the same, because awards are determined without regard to the financial position of the custodial parent. Nevertheless, the consistency of the new system, as just defined, and the reduction in the incentives to resort to litigation, can only be counted as gains with respect to the former system. However, the Family Law Committee would still have to be judged to have failed in its task if the *Guidelines* cannot be shown to redress the per-

ceived inadequacy of child-support awards. This was the primary objective of the Family Law Committee in bringing forth its recommendations,[4] and it should remain an important criterion by which the *Guidelines* are ultimately judged. This objective, however, can be in tension with the non-custodial parent's ability to maintain his or her separate household. We take this into account by asking whether the *Guidelines* prescribe *reasonable* child-support payments under the relevant circumstances.

Equivalence Scales

The amounts of child-support awards in the *Guidelines* are based on imputed child-related expenditures as well as a formula that apportions these costs among the parents. Measures of child-related expenditures are of necessity crucial to the determination of child-support awards. Given the difficulties of relying, as the courts had done, on parents agreeing on the evaluation of child-related expenses, the DOJ, after considerable research, elected to use the 40/30 equivalence scale[5] to impute child-related expenditures. Because of the importance of these equivalence scales both to the construction of the amounts in the *Guidelines* and to our own calculations of adequate and reasonable awards, we devote this section to a description of how they are constructed. We also discuss briefly the assumptions implicit in the calculation of equivalence scales.

Equivalence scales allow one to compare the gross income requirements of Canadian families of various sizes. They answer the question: "How much income should a family with *n* members have to be as well off as a single individual who has an income of *$Y?*" The 40/30 scale is so named because the second member of a household is deemed to require 40 percent as much income as the first member, while the third and all subsequent members are considered to require an additional 30 percent of the first member's income in order to maintain the family's standard of living.[6] That is, with a weight of one being attached to a single individual, the next individual is assigned an income weight of 0.4, and all subsequent members are given weights of 0.3.

The procedure to estimate average child-related expenditures using the equivalence scales proceeds in two steps. The first step is to use the equivalence scale to impute to the child a share of gross family income. In a second step, this share of gross family income is converted to expenditures using a deflator to take savings and taxes into account.

Consider, for instance, a two-parent, one-child household with a total income of $85,000. Using the 40/30 scale, a three-member family requires 17.65 percent more income (0.3/1.7) than would a two-individual household to attain a comparable standard of living.[7] On that basis, the portion of the gross income that the parents direct toward the child is estimated to be 17.65 percent. In our example, the child's "gross income requirement" is $15,000 (0.3/1.7 x $85,000). Of course, this $15,000 represents more than the amount actually spent on the child, because it would include the amount needed for the tax payable on this additional income, plus the amount the household normally saves out of this income. Given that the average tax rate on $85,000 is about 23 percent and the savings rate is around 5.5 percent, a discount of 35 percent should adequately take care of taxes and savings. The $15,000 calculated above, deflated by 35 percent yields $9,750 or $812 per month as the estimated amount spent on the child.

The method outlined above implicitly assumes that all households of identical composition devote the same proportion of their total resources to their children. Given that households do vary on the basis of income, this is equivalent to assuming that the elasticity of child-related expenditures is constant.[8] Available data casts some doubt on the legitimacy of this assumption. Fedyk (1991) calculates child-related expenditures using data from Statistics Canada's Family Expenditure Survey which exclude babysitting expenses. She finds (1991, pp. 26, 27) that the proportion of household income spent on children declines as income rises. While a one-child household with a gross income of $20,000 spends about 15 percent of this income on a child

aged under 7 and 18 percent of its income on a child in the 13-17 years of age category, a one-child household with $60,000 gross income spends 9 percent of its income on children under 7 and 11 percent on children aged 13 to 17.[9] These results also indicate that variations in household spending patterns on children vary importantly with different age profiles of the children. These, and other systematic variations in spending patterns (based on the religious beliefs of parents, their age, etc.) are not taken into account by the equivalence scales.

Clearly, there is a trade-off between trying to measure accurately the child-related expenditures of particular households and putting in place a system for determining child-support awards that are "consistent," and where the discretion of the courts only plays a role in extraordinary cases. It is ultimately up to policymakers to weigh the costs and benefits of addressing the particularities of individual circumstances. A more telling objection to the application of household equivalence scales is that because the basis of comparison is total household income rather than *wealth*, households which should be judged to have very different standards of living will be found comparable under the equivalence scale. The most obvious example is that of a family owning its home outright, versus a family with the same income living in rental housing. Clearly, the mortgage-free family members derive a flow of services from their home that is not reflected in their annual income. Even if the application of equivalence scales deems both families to be equally well-off, common sense tells us that there is a real and significant difference in the standard of living of these families.[10] Thus, in the analysis below, although we follow general practice in using equivalence scales to make statements regarding the relative standards of living of different families, and we use these equivalence scales to construct estimates of child-related expenses, it should be stressed that we consider these comparisons useful only to the extent that the families considered also derive comparable services from non-income-generating assets.

STANDARDS FOR *ADEQUATE* AND *REASONABLE* AWARDS

Child-support payments apportion the economic costs of divorce between the custodial and non-custodial households. To illustrate this claim, consider a household of three persons with a joint income of $85,000: $51,000 is earned by the father, $34,000 by the mother, and there is one child. Post-divorce, if the mother becomes the custodial parent, there are now two households: the non-custodial parent, with an income of $51,000 less support payments, and the custodial household, with an income of $34,000, plus support. Using the 40/30 equivalence scale, we can easily calculate the level of income required by each of these households to have the same standard of living as they enjoyed pre-divorce. For the non-custodial household, this amount is $50,000 ($85,000/1.7). Given that the non-custodial parent's income is $51,000, this implies that any support payment exceeding $1,000 would make divorce economically costly since his standard of living would decrease. Turning to the custodial household, maintaining its standard of living at the pre-divorce level requires an income of $70,000 ($85,000 divided by the sum of income weights for a three-person household, 1.7, times the weights of a two-person household, 1.4). Since the income of the custodial parent is $34,000, support below $36,000 represents economic hardship for the custodial household.

The difference between the support required by the custodial household and the support that can be paid without hardship to the non-custodial parent — namely, $36,000 – $1,000 = $35,000 — is a measure of the economic costs of divorce. Different levels of child-support payments are associated with different divisions of the economic burden of divorce between the custodial and non-custodial households;[11] the greater is the share of this economic burden shouldered by one of the two households, the greater is the reduction in its standard of living compared to the pre-divorce situation.

The *Guidelines* provide no obvious standard with which to measure the adequacy or reasonableness of child-support awards. The Family Law Committee is of little help since although it states that adequacy of child-support awards is one of its goals, it does not provide a definition of the term. We have thus chosen to develop a number of different criteria to assess both the reasonableness and the adequacy of the awards mandated by the *Guidelines*. Although these criteria are not meant to be an exhaustive list of standards that could be used to judge the *Guidelines*, we believe that our criteria span a wide enough spectrum of concerns to allow for a balanced evaluation.

We consider three standards of adequacy, namely whether the awards (i) maintain the pre-divorce standard of living of the children, (ii) ensure that the financial resources available for the children do not decrease post-divorce, and (iii) equalize the standards of living of the custodial and non-custodial household post-divorce.[12] Three further standards describe the reasonableness of the child-support awards (i.e., whether the awards apportion the burden of divorce among the two households in a reasonable manner and thus, implicitly whether the need for the non-custodial parent to maintain his or her separate household is recognized) namely: (iv) that each parent contribute to the costs of raising children in proportion to their relative incomes; (v) that the child-support payment contain no implicit spousal support (i.e., all of the non-custodial parent's contribution goes only to child-related expenses); and (vi) that post-divorce standard of livings be equalized as long as all of the payment is used for the children. We examine and analyze each standard in turn.

Maintaining the Pre-Divorce Standard of Living
Paras is a key precedent in Canadian case law. It establishes the principle that child-support awards should seek to protect the children — as the innocent parties in the divorce — from any reduction in their standard of living.[13] *Paras* also recognizes that

the welfare of the children is inextricably linked to the welfare of the custodial parent. We cite:

> Since ordinarily no fault can be alleged against the children which would disentitle them to support, the objective of maintenance should be, as far as possible, to continue the availability to the children of the same standard of living as that which they would have enjoyed had the family break-up not occurred ...

> Ideally the problem could be solved by arriving at a sum which would be adequate to care for, support and educate the children, dividing this sum in proportion to the respective incomes and resources of the parents and directing the payment of the appropriate proportion by the parent not having physical custody. Generally speaking, such a formula would tend to preserve a higher standard of living in the home in which the children are supported at the expense of some lessening of the standard of living of the other parent, thus creating indirectly a benefit to the parent who continues to support the children.[14]

Thus, *Paras* recognizes that it cannot be expected that the standards of living of the post-divorce households can both be maintained at the pre-divorce level, and it views as acceptable that the custodial household should enjoy a higher standard of living.

Finding the level of support necessary to uphold the *Paras* standard is exactly equivalent to identifying the level of income that the custodial household would require were it to be protected from the economic consequences of divorce. In a family with one child, the *Paras* standard is met when the custodial family's income is reduced by no more than $Y(0.3/1.7)$, i.e., 17.5 percent relative to the pre-divorce level. In general, denoting the incomes of the custodial and non-custodial parents by Y^c and Y^{nc} respectively, the amount of support required is:

$$S^1 = Y^{nc} - (Y^{nc} + Y^c)\left[\frac{0.3}{1.4 + (n-2)(0.3)}\right] \quad (1)$$

where S refers to the child-support payment, the superscript *1* refers to the first criterion, and *n* is the number of members in the custodial household. Using this formula with $n = 3$, we can see that if the custodial parent earned no income, the amount of support required for one child would represent 82.4 percent of the non-custodial parent's revenues. As the custodial parent's share of total income increases, the level of support decreases. However, even were both spouses to have identical incomes, the support award would still constitute 64.7 percent of the non-custodial parent's personal revenues. Further, since the relative income share of the last family member declines as family size grows, the support award needed to meet the *Paras* standard constitutes an even larger proportion of the non-custodial parent's income when there is more than one child. It is clear that, as laudable as the principle in *Paras* may be, it would impose an unacceptable burden on the non-custodial parent in a large number of circumstances.

Maintaining Pre-Divorce Expenditures on Children

We now consider the support award that would be required to maintain pre-divorce spending on the children. Before divorce, based on the equivalence scales, the total amount spent on children is estimated by:

$$(Y^c + Y^{nc}) * \frac{0.3(n-2)}{1.4 + 0.3(n-2)} \quad (2)$$

To ensure that the total expenditures devoted to children post-divorce equals the total expenditures devoted pre-divorce, the following equality must hold:

$$(Y^c + S^2) * \frac{0.4 + 0.3(n-3)}{1.4 + 0.3(n-3)} =$$
$$(Y^c + Y^{nc}) * \frac{0.3(n-2)}{1.4 + 0.3(n-2)} \quad (3)$$

which implies that

$$S^2 = (Y^c + Y^{nc}) * \frac{B}{A} - Y^c \quad (4)$$

where *A* and *B* are defined as the left-hand and right-hand quotients respectively, from expression (3).

The notion that the amount spent on children should not be reduced post-divorce is an appealing criterion that attempts to insulate the children from the economic consequences of divorce. It does not imply that the standard of living of the children is protected post-divorce because the composition of the household in which such expenditures are made has changed. Indeed, when analytically comparing the support that would be required to equalize living standards, S^1, with the awards required to maintain pre-divorce spending on children, S^2, we find that the former always exceeds the latter. In other words, maintaining the pre-divorce standard of living for the children yields, not surprisingly, the largest child-support award.

Equalizing Post-Divorce Standards of Living
One factor frequently cited to support the claim that child-support payments are inadequate is that the non-custodial parent enjoys a standard of living superior to the one that the custodial household can attain. Children should be able to benefit from the income of the non-custodial parent after divorce, just as they did when the family was intact. Thus, although it is unrealistic (as we have seen) to aspire to maintain the standard of living of children at the pre-divorce standard after separation, it may be feasible to require that children enjoy the same standard of living as the non-custodial parent after divorce. We take this as our final criterion by which to judge the adequacy of child-support awards.

To calculate the support payments necessary to equalize living standards, the income net of support of the non-custodial parent is compared to the income inclusive of support of the custodial parent, where the latter is adjusted to take account of the difference in household composition. In a family with one child, support is determined so that the income net of support of the non-custodial parent, divided by a household composition weight of one, is equal to the income inclusive of support of the custodial par-

ent, divided by a household composition weight of 1.4 corresponding to two persons. In general, for a family with *n*-1 children, the process is identical, except that the sum of the income weights for the custodial household is $1.4 + (n - 2)(0.3)$. Thus, we have:

$$\frac{Y^{nc} - S^3}{1.0} = \frac{Y^c + S^3}{1.4 + (n-2)(0.3)} \tag{5}$$

Using (5), it is straightforward to solve for the appropriate support award as a function of the relative incomes of the spouses:

$$S^3 = \frac{(1.4 + (n-2)0.3)Y^{nc} - Y^c}{2.4 + (n-2)(0.3)} \tag{6}$$

In the case of a household with one child ($n = 2$), from (6) we can see that if the custodial parent earned no income, then the support award would constitute 58.3 percent of the non-custodial parent's income. As the proportion of income held by the custodial parent increases, the support which must be paid to equalize the standards of living falls. When this proportion reaches 58 percent, that is, when the custodial parent's income is 1.4 times that of the non-custodial parent, then the support award required is zero. Although the non-custodial parent might be *able* to pay support, and although the children would still be worse off post-divorce than when their parents were married, no payments would be required of the non-custodial parent if the only goal were the equalization of the post-divorce standards of living. The point can be made more vividly still: were the custodial parent to earn, say, 75 percent of the pre-divorce household income, then a transfer to equalize the standards of living goes *from the custodial household to the non-custodial parent*. Clearly, there is no longer any sense in which this transfer is for the support of the children of the marriage. This strongly suggests that extreme caution should be applied in adopting "equalization of living standards" as a standard for the adequacy of support.

Cost-Sharing Standard
One way in which the "reasonableness" of child-support payments can be ensured is by ensuring that

the non-custodial parent's share of child-rearing costs is a function of his or her relative income. In formal terms:

$$S^4 = \frac{Y^{nc}}{Y^{nc} + Y^c} * \; cost \; of \; children \qquad (7)$$

The "cost of children" is here again calculated with reference to the 40/30 equivalence scale. Notice one important point. In these calculations the cost of children, unless otherwise stated, refers to the costs post-separation. For a two-person household, the cost of the child (second person) would be $0.4/1.4*(Y^c + S)$ where $Y^c + S$ represents the total income of the custodial parent. For an n-person household, these costs may be expressed as $(0.4 + 0.3(n\text{-}2))/(1.4 + 0.3(n\text{-}2))*(Y^c + S)$. Thus, the child-support payment arising from the cost-sharing criterion with *n-1* children is:

$$S^4 = \frac{(0.4 + 0.3(n-2))Y^{nc}Y^c}{Y^{nc} + (1.4 + 0.3(n-2))Y^c} \qquad (8)$$

Using the cost-sharing rule, we can show that the standard of living of the custodial household (and thus the standard of living of the children) is lower than that of the non-custodial parent *whenever the custodial parent's income (before support) is lower than the non-custodial parent's income*. This is typically the case.

No Implicit Spousal Support

A criterion of no implicit spousal support means that all of the support payment must be spent on the children.[15] This imposes a *constraint* on the size of the award. To ensure no spousal support, the standard of living of the custodial parent as a single person cannot exceed his or her standard of living with children and child-support payments. Thus, the maximum amount of child support possible is such that $Y^c = (Y^c + S)/(1.4 + .3(n\text{-}2))$, which results in:

$$S^5 \leq (0.4 + (n-2)0.3)Y^c \qquad (9)$$

It is interesting to note here that the support payment depends *solely* upon the income of the custodial parent (and the number of children), while the income of the non-custodial parent is irrelevant. The *Francis-Baker* case just recently decided by the Supreme Court of Canada was partially argued on the grounds that a $10,000 monthly award would constitute, in fact, a spousal award as well as a child-support award. Given that the income of Ms. Francis is known to be modest, this argument is entirely correct.

Equalizing Post-Divorce Standards of Living with no Implicit Spousal Support

The final "reasonableness" criterion examined is the same as the third standard described above except that the amount of the child-support payment is constrained to prevent it from being used to enhance the lifestyle of the custodial parent. In other words, the payment is constrained to be no greater than *(0.4 + (n-2)0.3)Y^c* as defined in expression (9). For one child, this constraint becomes binding as soon as the income of the non-custodial parent exceeds 1.4 times the income of the custodial parent. Not surprisingly, the greater the non-custodial parent's income in comparison to the custodial parent's income, the more likely that some of the child-support payment would be used to enhance the living standard of the custodial parent.

COMPARING CHILD-SUPPORT STANDARDS

We can examine the various child-support schemes analytically to determine their effectiveness in protecting children from the economic consequences of divorce and their consequences for the non-custodial parent. One simple way to do this is to look at how the standards of living in the custodial and non-custodial households compare under each scheme. Table 1 provides this information. Column 1 presents the six criteria previously described. Column 2 indicates when the custodial household's standard of living exceeds that of the non-custodial parent's. Whenever the number of children affects the outcome, it is noted in the last column.

Looking at column 2, the custodial household is always better off when support is designed to

TABLE 1

Comparing the Standards of Living (SOL) of Custodial and Non-Custodial Parents under Different Support-Payment Criteria and Two Children

Criterion	Custodial SOL ≥ Non-Custodial SOL	Comments
Pre-divorce SOL (i)	Always holds true	holds irrespective of the number of children
Pre-divorce expenditures (ii)	Always holds true	holds irrespective of the number of children
Equal post-divorce SOL (iii)	SOL are identical by definition	holds irrespective of the number of children
Cost-sharing (iv)	$Y^c \geq Y^{nc}$	holds irrespective of the number of children
No implicit spousal support (v)	$Y^c \geq (.4+(n-2).3)/(2.4+(n-2).3)Y^{nc}$	as the number of children rises so too can Y^c while still respecting criterion (v)
Min { (iii), (v) } (vi)	SOL identical except if $Y^c \leq (.4+(n-2).3)/(2.4+(n-2).3)Y^{nc}$ then $SOL^c \leq SOL^{nc}$	if Y^c exceeds the indicated expression then see the comment for criterion (v)

maintain the pre-divorce standard of living of the children or to maintain the pre-divorce level of expenditures. Under the cost-sharing rule, the custodial household is better off whenever the custodial parent's income exceeds that of the non-custodial parent's — irrespective of the number of children. An important corollary of this statement is, however, that whenever the custodial parent earns less than the non-custodial parent (the norm in Canada), the custodial household is worse off under the cost-sharing rule. Finally, as far as the no-spousal support rule is concerned, as the number of children increases, the custodial parent may earn an increasingly higher salary while still respecting this constraint.

Another way to compare the different standards is to look at what they imply for households with specific characteristics. According to Statistics Canada, in 1996, the year in which the *Guidelines*

were established, the average two-earner household with two children earned about $65,000 per year, of which $40,000 was contributed by the male. This profile constitutes the first of the three scenarios that we examine. Scenario two takes the same total household income but has each parent earning an equal share. This scenario was chosen because a 50/50 income split is the assumption upon which the *Guidelines* is based. Finally, scenario three looks at a two-children household in which the income is higher, $100,000, with the male earning $65,000. We chose this last scenario for two reasons: first, in a household with children, males typically earn more than females; and, second, as argued below, one way to lessen the economic hardship of divorce on children is to change asset-division rules — which, of course, presupposes the existence of assets. Since asset accumulation increases with household income, it seems sensible to look at the impact of

divorce and child-support payments on households likely to have important assets.[16]

In Table 2, we assume that the non-custodial parent is the male, and we present the various child-support payments that would be transferred from the non-custodial parent to the custodial parent for each of the three household scenarios. Column (1) lists the six criteria previously enumerated. The table also provides the amount of support that would be dictated by the *Guidelines*. It is important to note that when calculating the support payment we have to *discount* the resulting dollar figures to take account of the fact that the equivalence scales give "gross income" requirements and hence generate payments gross of taxes and savings. For a household earning $65,000, we deflate the resulting figures by 30 percent to take account of taxes and savings (Statistics Canada 1997, p. 5, Table 2). For the household earning $100,000, we increase the deflator to 35 percent.

We begin by examining how each of the criteria compare to each other, and then we look at how the *Guidelines* fare in the analysis. First, as noted earlier, maintaining the pre-divorce living standard of the custodial parent — and hence insulating the children from the economic cost of divorce — yields by far the largest child-support payment. Second, the criterion next for its generosity to the custodial household is not clear-cut, depending critically upon the income of the custodial parent. As the income of the custodial parent increases, so too does the award stemming from criterion (iv) — no implicit spousal support. Finally, it is interesting to note how child-support awards are sensitive to the distribution of income within a household. In scenarios 1 and 2, the household income is the same but the awards vary dramatically with *who* earns the income. The starkest difference arises with criterion (iii) — equalizing post-divorce standards of living. The non-custodial parent's child-support payment drops 47

TABLE 2

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 (i)	$1,765	$1,327	$2,708
Pre-divorce expenditures (ii)	$1,304	$ 867	$2,051
Equal post-divorce SOL (iii)	$ 929	$ 492	$1,515
Cost-sharing (iv)	$ 495	$ 492	$ 693
No spousal support (v)	≤$1,021	≤$1,327	≤$1,327
Min { (iii), (v) } (vi)	$ 929	$ 492	$1,327
Guidelines	$ 579	$ 481	$ 858

percent when his income falls from $40,000 to $32,500 because the income share falls from 60 percent to 50 percent.

Perhaps the most interesting observation — but not the most surprising — arises when we compare the *Guidelines'* awards with the other awards. The *Guidelines* are never "adequate" according to the criteria that we have presented. This result is especially apparent when judged against the first two criteria. Criterion (iii), which sets the child-support payment to equalize *post*-divorce standards of living, is almost met when both parents have equal income. Given that this criterion also provides the benchmark payment below which the custodial household bears the brunt of the economic cost of divorce, it is interesting to note that whenever the parents' income share is not equal, the *Guidelines* result in the custodial household bearing the lion's share of the economic cost of divorce.

The *Guidelines* provide "reasonable" child-support awards in some circumstances. The cost-sharing criterion yields the lowest awards across all of the standards presented in Table 2, lower than those provided by the *Guidelines* in two of the three scenarios. This implies that the amounts in the *Guidelines* are more generous to the custodial household and harsher on the non-custodial parent than this criterion would dictate. Further, the *Guidelines'* amounts meet the criterion of not providing implicit spousal support since the amounts given are always lower than those calculated using criterion (v). However, they fail to equalize post-divorce standards of living under the constraint of not providing implicit spousal support.

Our criteria of reasonableness and adequacy reflect the competing goals of caring for the children of divorce and for ensuring that the non-custodial parent is able to maintain his or her household. The awards mandated by the *Guidelines*, on balance, seem closer to meeting our criteria for reasonableness than our criteria of adequacy. In this sense, the *Guidelines'* amounts seem to be more successful at ensuring the continuing standard of living of the non-custodial parent than they are at shielding the children from the consequences of divorce, at least for the cases analyzed here.

Toward Minimizing Welfare Loss of Children Post-Separation

Our previous analysis shows that there is often a significant gap between the support awards specified by the *Guidelines*, and the amounts of child support that would be required to meet *any one* of the standards of adequacy that we have examined. The tension between the primary goal of ensuring that children be awarded protection from the economic consequences of divorce and the goal of caring for the non-custodial parent is clear. Providing protection for children 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 the standard of living of the non-custodial parent falls below the poverty line. Even if one were to make the extreme argument that such a situation is preferable to the current one in which an important proportion of custodial households live below the poverty line, support awards of this magnitude would 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. Post-divorce, parental income is simply insufficient to meet the needs of the children plus the needs of the non-custodial parent as well; any attempt to mitigate further the economic burden of divorce on children must necessarily identify financial resources *other than current income* which can be directed to the support of the children.

If provisions for support were not merely a function of income, but of *wealth* instead, then we suggest that 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 so that the non-custodial parent's need to maintain a household would also be recognized. Child-support policies could be re-designed to take account of the disposition of family assets.[17] Changing the basis for child support from income to wealth would explicitly recognize that 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. Another benefit to this approach comes from expanding the set of policy instruments used to minimize the welfare loss of children while considering the non-custodial parent's needs. Under a system like the *Guidelines* where child support is determined strictly on the basis of current income, a non-trivial proportion of an extra dollar earned by non-custodial parents is transferred to custodial households. This implicit premium added to non-custodial parents' marginal tax rates is apt to discourage non-custodial parents from activities that could raise their income. By adding assets as a policy instrument, this possibly negative effect on non-custodial parents' incentives to work could be mitigated.

We use an example to illustrate that the welfare loss of the children could be significantly attenuated if child-support awards were based on the broader concept of wealth rather than income. Consider a three-member family with an income of $50,000: the father earns $30,000, the mother earns $20,000, and there is one child. The only family asset is a house,[18] in which the family has $50,000 of equity. Suppose that the mother has custody of the child and wishes to keep the family home after separation. Given that assets are divided equally among the former spouses upon divorce, the custodial parent must compensate the non-custodial parent for his or her share in the equity, by making an equalization payment of $25,000. Under the new

Guidelines, the child-support award is based solely on the non-custodial parent's income of $30,000. The payment of $25,000 is not taken into account in determining the ability to pay support. The award would be $232.71 per month for a single child. In this situation, especially if the custodial parent needs to borrow to make the payment equalizing the value of the assets, the custodial parent is unlikely to be able to afford to keep the family home.

Family assets could be used to improve the situation of the custodial household in the following way. Suppose that child-support payments are maintained at the amount in the *Guidelines*; however, also suppose that the non-custodial parent were directed to leave his $25,000 share invested in the family home until the child was independent. By avoiding the necessity of a loan for the equalization payment from the custodial to the non-custodial household, this may well make the difference between the custodial household being able to afford staying in the family home and not. The portion of this benefit which can be attributed to the non-custodial parent's $25,000 investment in the house can be conservatively estimated at $2,500 annually, or $208.33 per month. This is, broadly speaking, equivalent to providing the custodial household with an extra $208.33 in child support per month, effectively doubling the amount of child support.

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 factors. First, the non-custodial parents' ability to pay support does not only depend on their income; rather, it depends on the combination of their assets and their income. Second, the welfare loss of children can be attenuated if children still 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 give them a standard of living that approaches the pre-divorce level. Third, any system where support is based on current income distorts the incentives for non-custodial parents to

choose 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.

Having said all this, determining how wealth should enter into the calculation is not an easy task. 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? Should children have access to pension plan savings? To the extent that this income would be saved in the same manner irrespective of the presence of children, then perhaps they should not be entitled to this asset. These and other issues must be addressed before wealth can be implemented as a basis for child-support payments. Much work needs to be done in this area — which is well beyond the mandate of this current paper.

CONCLUDING REMARKS

The federal government has reformed the current system of determination of child-support awards. Whereas the basis of the former legal system is the notion that both parents should continue to contribute to the costs of raising their children in proportion to their relative incomes, the new system assesses support solely as a function of the non-custodial parent's income and the number of children requiring support. One of the reasons for introducing these reforms is the widespread perception that custodial households, and thus children, typically bear a disproportionate share of the economic burden of divorce because support awards generated by the former legal system were often too low. One of the central objectives of the reform has been to ensure that the level of child support paid is rendered "adequate." The principal focus of this study has been to evaluate whether or not the amounts of support prescribed under the new *Guidelines* in fact ensure that the non-custodial parent's contribution to the ongoing costs of raising children is adequate.

The good news from our analysis is that the *Guidelines* typically provide reasonable child support. The bad news, however, is that the amounts of support prescribed by the *Guidelines* are not sufficient to meet a number of standards of what constitutes an adequate level of support from the custodial household's point of view. In particular, under the *Guidelines*, the proportion of the non-custodial parent's income directed to child-related expenses typically falls subsequent to divorce. Furthermore, the standard of living of the custodial household is still significantly below that of the non-custodial one in most circumstances. Although, as we demonstrate in this paper, striving to shield the children from the economic consequences of divorce completely is but a dream, the economic burden of divorce on the children could still be significantly attenuated — while taking non-custodial parents' needs firmly into account — were the determination of support payments to take account of family assets as well as parental incomes. By using wealth as a basis for the support of children, the government would have one more instrument at its disposal in its fight to reduce child poverty. Such an approach is well worth investigating fully.

NOTES

[1]In this paper, we are evaluating the *Guidelines* as they now stand. It is thus beyond the mandate of the paper to discuss the various options that were available to the Department of Justice and why it chose the approach that it did. For a more detailed discussion along those lines, see Finnie (1994).

[2]The guidelines that apply are the ones in the Act, except when a province has adopted other similar guidelines as provincial or territorial legislation.

[3]The definition of "hardship" is clearly subject to some interpretation, as evidenced by the well-publicized case just decided by the Supreme Court of Canada (16 September 1999) between *Francis*, the custodial mother of modest means, and *Baker*, the multi-millionaire non-custodial father. After the divorce, Baker's income increased dramatically. Following a lengthy legal battle, Baker was ordered to pay $10,000 a month in child support, the amount dictated by the *Guidelines* for his income level. This order was recently upheld by the Supreme Court of Canada.

[4]The primary goal of the Family Law Committee was the necessity for "adequate and equitable" awards; see Canada. DOJ 1995*b*, p. 3.

[5]The 40/30 scale was originally developed by Statistics Canada to establish statistical low-income lines for households of different sizes. When estimated at different income levels, the ratios seem to be relatively stable. See Canada. DOJ (1995*b).*

[6]In general, a household of *n* individuals requires 1.4 + 0.3(*n*-2) times the income of a single person.

[7]The weight of 0.3 means that the third individual requires an additional 30 percent of the *first member's income*, or 17.65 percent of the *family's income*, for the three-member family to be as well-off as a two-member household.

[8]Strictly speaking, it is the gross-income requirement of each additional household member that is inelastic, rather than after-tax, after-savings expenditures.

[9]It is important to note that the child expenses calculated using the Family Expenditure Surveys are not immediately comparable to those estimated using the equivalence scales not only because they ignore day-care expenses but because they represent *after-tax* expendi-

tures whereas the equivalent scales gross up expenses to take account of taxes.

[10]In the context of divorce, family assets are split equally between the spouses. Therefore, when comparing the welfare of the custodial and non-custodial households, the reliance on income and the corresponding neglect of non-income-generating assets are less important than they might otherwise be.

[11]The reduction in living standards could, of course, be attenuated by increasing earned income. However, it cannot generally be expected that the parents will be able to increase their incomes significantly upon divorce. Further, an increase in hours of paid employment imposes an economic cost in terms of reduced time for household production or leisure.

[12]Arguably, equalizing post-divorce standards of living is more a standard of "reasonableness" than "adequacy." Each of these standards is ambiguous regarding the extent to which child-support awards should be adjusted as the circumstances of their parents change. For example, if the goal of child-support awards is to maintain the pre-divorce living standard of children, and the non-custodial parent is, say, a law student with extremely low annual income, should the award be permanently based on the relative income shares of both parents at the time of divorce? Had the couple remained married, the standard of living of the children would have improved over time; it could then be argued that if children are to be protected from the economic consequences of divorce, then awards should be adjusted over time in the same manner.

[13]The well-documented fact that custodial families are almost invariably faced with more straightened financial circumstances than are non-custodial parents is ample evidence that this goal has been more often honoured in the breach than in actual practice.

[14][1971] 1 O.R. 130, 2 R.F.L. 328 (C.A.) at O.R. 134 per Kelley J. As cited in Rogerson (1990, p. 58).

[15]Of course, there exist several "joint" goods — like housing and cars — which benefit all members of the household, not just the children.

[16]The average tax rate of households with two children earning $66,000 in 1995 was 22 percent, and the average savings rate was 5.5 percent. See CANSIM series

D758018, D788094, D758170, D758246, D758322, and D758398.

[17]Under the former and new systems, child-support calculations are largely made independently of the division of family assets. If the non-custodial parent is destitute, and therefore incapable of paying any support, or if the non-custodial parent has not paid child support regularly during the separation period, then the court may award a share greater than 50 percent of the family assets to the custodial parent. Otherwise, the non-custodial parent's claim on 50 percent of the family assets is inviolable.

[18]The argument relies on the family home being the main (but not necessarily the only) asset.

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