

# **Unfair Guidelines**

## ***A Critical Analysis of the Federal Child Support Guidelines***

Child support guidelines and support tables were introduced in Canada in 1997 as part of a comprehensive strategy developed by the federal and provincial governments to address growing concerns about increasing numbers of children in poor, single parent families. Child support awards under the previous child support system varied widely from province to province, court to court; awards were also inadequate and in many cases went unpaid. The federal and provincial governmental response to these concerns was a legislative package, introduced May 1, 1997, that changed the way child support amounts were determined, taxed and enforced (Department of Justice, 2002). In April 2002, the Department of Justice tabled in the House of Commons *Children Come First: A Report to Parliament on the Provisions and Operation of the Federal Child Support Guidelines*, a report completed after the first five years of the new legislation, which purportedly established that the reformed child support system was “working well,” a “solid success” (Department of Justice, 2002: v-1). Research commissioned for this government evaluation of the Guidelines did not directly address the impact of the Guidelines on the lives of those persons most affected by the changes, namely parents and children; it focused instead on the opinions and experiences of legal actors (judges, lawyers, mediators). This paper, therefore, offers a gendered analysis of the Child Support Guidelines, which will argue that the benefits of the new legislation are likely to be gendered and class-based.

The objective of this paper is to challenge some of the claims made in *Children Come First* by showing that the new child support system is not such a “solid success.” In particular, the claim that the Guidelines have established a “fair standard of support for children” will be countered by providing evidence that the interpretation and application of the Guidelines is in fact “unfair” to

custodial mothers. A gendered analysis reveals how the principles of gender-neutrality and self-sufficiency featured in the emerging legal discourse serve to mask the subordinating effects of marriage and divorce on custodial parents, most of whom are women. If children's needs are truly "at the heart of" this new legislation (see Department of Justice, 1996), then there must be greater acknowledgement that women are typically the primary caregivers following divorce, and that women face economic barriers both during marriage and after its breakdown that make gender-neutral goals, like "economic self sufficiency" and parental "joint financial obligation," difficult to attain.

This paper advocates a gender-based evaluation of legal reforms that focuses on the language, concepts and arguments that are used in the application of legislation (Status of Women Canada, 1996). It explores whether, and how, the legislative "talk," or discourse, challenges or reinforces existing power structures based on gender. The research included in the government's evaluation of the Guidelines gives no consideration to the gendered experiences of marriage, child care, work or divorce—experiences that make it difficult in many cases to treat men and women, fathers and mothers as gender-neutral subjects. Therefore, after outlining the justifications for a gendered analysis of the Guidelines, I will highlight the major claims and evidence presented in the government's evaluation. This will be followed by my own claims and evidence derived from a gendered analysis.

Methodologically, this paper rests on analyses of two sources of data: the written reasons for judgment given by judges in a sample of child support cases, and interviews with custodial mothers and facilitators of support groups for single mothers. Fifty child support cases decided between May 1997 and December 1998<sup>1</sup> were analyzed, plus 12 qualitative, semi-structured interviews conducted with seven single mothers and five facilitators of support groups for single mothers.<sup>2</sup> An analysis of child support cases is the best means of observing the application of the Guidelines, both in terms of the patterns that are being developed in judicial decision-making and in terms of observing any judicial discussion of the effects of the new Guidelines on women as custodial parents. Interviews with single mothers and support group facilitators allow for the inclusion of the voice(s) of custodial mothers in an analysis of the impact of the Guidelines.

### **"Looking at child support in a new way"<sup>3</sup>**

Ensuring consistent, adequate and paid child support became an important policy objective of the Canadian government because of the recognized impact that child support awards have on the standard of living of children and their custodial parents. A child is more likely to be poor if he or she lives in a single-parent family headed by a woman (Canadian Council on Social Development, 1999). Single parent families are more likely to be headed by women (Boyd, 2003).<sup>4</sup> The implementation of the guidelines in Canada arose out of concern for the lower standard of living of children and their custodial parents

(Family Law Committee, 1991). Because the differential impact of divorce is characterized primarily by a decline in family income and standard of living for women, which further perpetuates the inequality between men and women (L'Heureux-Dube, 1992), the Guidelines, therefore, must be evaluated in light of their ability to promote the goals of substantive gender equality (Mossman & MacLean, 1997).

Law continues to be a site of struggle for feminists because legal regulation continues to play an active role in shaping social relations (Cossman & Fudge, 2002; Smart, 1989). In the area of family law, second wave feminists maintained an emphasis on law and legal reform as a “major vehicle” for women’s equality (Chunn, 1999: 246). Reforms since the 1960s, influenced by liberal egalitarianism, have been based on the assumption that if women were assured equality of treatment and opportunity in the public sphere, equality of condition would follow (Chunn, 1999). Beginning with the reforms to the *Divorce Act, 1967-68, c.24, s.3(d)*, federal and provincial legislation has incorporated principles based on gender neutrality and formal equality, such as the no-fault grounds for divorce, the “best interests of the child” doctrine, the equal division of marital property and the self-sufficiency principle. More recently, in the current climate of neo-liberal restructuring, feminist inspired reforms have been utilized to facilitate the reprivatization of the costs of social reproduction; for example, the definition of spouse has been expanded to include same-sex relationships, spousal and child support obligations have been enhanced through legislation, and enforcement of these private support obligations have been intensified (Cossman, 2002). Yet, as some legal feminists have argued, legal guarantees of equality are meaningless if substantive equality does not yet exist between men and women. Susan Boyd (1989) has drawn attention to the fact that “the perpetuation of patriarchal relations continues despite the removal of the legal barriers to women’s formal equality,” and legal reforms are “futile” if they are conducted without corresponding social and economic reforms (114). While there is potential for feminists to use the legal system or law reform as a strategy to improve the economic, political and social conditions of women (Snider, 1994), it must be done in such a way as to “contribute to the implementation of a ‘social responsibility’ model of family (Chunn, 1999: 257), one that focuses on “minimizing inequalities that are the result of being married or being a parent instead of on [formal] equality” (Eichler, 1997: 130).

The 1997 revisions to the child support system introduced guidelines and tables to be used for the calculation of basic child support amounts. The tables establish the basic amount of support that a paying parent should contribute toward his or her children, taking into account three main factors: level of income, number of children, and province or territory of residence (Department of Justice, 1997). Please see Table A for an example of the child support tables. To these basic amounts may be added “special or extraordinary” expenses, including childcare, medical and dental insurance premiums, medical and health-related services, primary or secondary school education, post-

secondary education and extracurricular activities. The assumption is that the table amounts will be ordered unless this amount would be inappropriate or inadequate; for instance, circumstances that would lead to a variation of the table amounts include undue hardship caused by applying the child support tables, a child over the age of majority, shared custody, split custody and payor with an income over \$150,000 (MacDonald and Wilton, 2003). New rules have also been established for the taxation of child support payments. Following revisions to the *Income Tax Act, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.)* in 1997, child support payments may now be deducted from the receiving parent's taxable income but must be declared by the paying parent. Lastly, amendments to enforcement mechanisms have strengthened the government's ability to collect support. For instance, to facilitate the garnishing of wages, Revenue Canada databases can now be searched not only for the addresses of delinquent payors but also for the names and addresses of their employers. Other amendments allow for federal licenses and official documents (passports, and aviation and marine licenses) to be suspended, revoked or denied when child support is unpaid. Similarly, many provinces' enforcement practices also include the suspension or cancellation of drivers' licenses when a payor is in arrears.<sup>5</sup>

### **Children come first**

The Guidelines have been designed to ensure that children will be as little affected by divorce as possible, or, in other words, "to put children first."<sup>6</sup> The need to establish fair levels of support for children from both parents upon marriage breakdown in a predictable and consistent manner is the stated objective of the Guidelines. One component of the federal government's monitoring of the implementation of the Guidelines—which was completed in 2002 with the release of *Children Come First: A Report to Parliament on the Provisions and Operation of the Federal Child Support Guidelines*—has been the measurement of the "fairness" of the new child support system (Department of Justice, 2002). This has involved asking three questions: one, do parents and professionals see the Guidelines as fair? Two, are the Guidelines being applied in most cases? And three, how do the child support amounts awarded under the Guidelines compare to pre-Guidelines amounts (Department of Justice, 2002)?

### **Are the Guidelines "fair"?**

The Guidelines were intended to establish "fair" child support payments by ensuring that orders are consistent and predictable. Uniform child support levels were thought to be the best means to generate a sense of fairness and satisfaction towards the system; if parents (payors) see the Guidelines amounts as fair, the hope is that they will be more likely to comply with court orders (Family Law Committee, 1991: 5). Survey data conducted during the government's evaluation suggests that while professionals (judges, lawyers and mediators) rate the Guidelines "highly in terms of fairness to children and parents," parents have not been as positive. For example, in one study of parents, 56

percent of receiving parents and 41 percent of paying parents felt that the child support amounts were fair<sup>7</sup> (Department of Justice, 2002: 6). No attempt was made in these surveys, however, to define what “fair” meant to each group of respondents.

Discussions of fairness raised in my interview study offers a significantly more detailed understanding of what “fair” means to parents. While some of the women felt that the Guidelines appeared to offer a fair method of child support determination, they were quick to add that it was only a start towards a better system. Some women suggested that in order for children to benefit from the reforms, the Guidelines must be seen as fair by the non-custodial parent (the payor), and this is strongly linked to the amount of child support to be paid. If the non-custodial parent does not feel that the child support order is “fair,” they will often refuse to pay:

I hope that they [non-custodial parents] think it’s fair. They probably think what’s fair to them is what they want to pay and what they can afford to pay. (Carla, single mother)<sup>8</sup>

On the other hand, custodial parents’ perceptions of fairness was seen as related to the extent to which the child support award alleviated the disproportionate burdens they faced:

I think that it is still too lenient on one parent. I think that the burden is again falling on the woman, and it’s always the custodial parent and I really think that’s not fair ... It scares me to think this is the way it’s going and unfortunately the burden will fall on women. (Emily, single mother)

I think these are favoured more towards the non-custodial parent because there are a lot of things that aren’t monetary that are involved in bringing up a child and I don’t think that is taken into consideration ... There’s a lot more to raising children than the monetary value. Like being present for that child, staying up all night, all those things. Missing work because the child is sick. Only the custodial parent experiences those things. (Bridgit, single mother)

Fairness for the custodial mothers, therefore, centered around creating a system where the economic and non-economic costs of a family breakup were more evenly distributed between the two parents. The Guidelines will likely not establish absolute parity between the custodial and non-custodial households, however, the “fairness” objective is nevertheless one which custodial parents support—in other words, the mothers all strongly believed that children need and deserve whatever financial support *both* parents can give them. They see the heavy emphasis now placed on protecting the “interests of children by ensuring

parents live up to their responsibilities for child support payments” (Department of Justice, 1996) as a helpful development.

### **Are the child support tables a “ceiling” or a “floor”?**

With the implementation of the Guidelines, the child support system has shifted from a “needs” based to a “means” based approach to determining child support amounts. Child support amounts are now based on what is understood to be the amount that each payer can afford to contribute. This is meant to be a “fairer” method of determination in that the amounts assessed are within the capabilities of the payors to pay; the figures in the tables have been calculated by considering that portion of a person’s income that the average parent would normally contribute to the care of children in their household. Another test of the “fairness” of the Guidelines has been to determine the extent to which courts have adhered to the amounts in the support tables; in other words, have courts treated the support tables as a “floor” (minimum acceptable amount) or a “ceiling” (maximum acceptable amount)? In *Children Come First*, data indicated that, in the majority of cases, awards did correspond with the support tables. One study revealed that the awards were less than the tables in 4.5 percent to 5.5 percent<sup>9</sup> of cases, 65.6 percent of the awards were equal to the table amounts and 28.9 percent to 30 percent of the awards were greater than the table amounts (Department of Justice, 2002: 8). The government report concludes that “it is clear that parents, judges, and lawyers view the table amounts as the minimal acceptable amount in the vast majority of ... cases” (8)—in other words, the tables are treated as a “floor,” which means success in that the courts are not setting orders lower than the tables. I would strongly disagree, however, with the government’s claim that this evidence is “strong evidence that the table amounts have been viewed as a ‘floor’ in virtually all cases” (Department of Justice, 2002: 10). If only the table amounts were awarded in the 65 percent of the cases reviewed, then this means that in the majority of cases, only the “basic” table amounts are being awarded. If the table amounts were in fact a “floor,” then it would (should) be expected that a higher percentage of cases would involve orders that were higher than the table amounts.

While the outcomes of my sample of cases followed a different pattern to the data presented in *Children Come First*, I would still argue that the support tables are being treated more as a “ceiling” as opposed to a “floor.” Please refer to Table B for a comparison of my data with that of the Department of Justice.<sup>10</sup> For instance, awards were less than the tables in 12 percent of cases, 32 percent of the awards were equal to the table amounts and 48 percent of the awards were greater than the table amounts. While it is true that orders lower than the tables are rare, so too are orders that are higher than the tables, leaving “basic” child support amounts as established by the tables as the rule. The Guidelines are being applied in a conservative manner, despite the discretion to vary the table amounts and despite requests to do so from custodial parents. This is discon-

certing in light of concerns raised that the amounts stipulated in the tables are not adequate to meet the basic needs of children. Critics of the law reforms have noted that the data used to devise the child support tables did not include the non-monetary costs that are borne by the custodial parent (NAWL, 1996; Zweibel, 1994). Household tasks, child care tasks, need to be near schools, and constraints put on the custodial parent's employment availability, for example, may be non-monetary expenses when the family is intact, but they have significant monetary impact for a custodial parent following separation/divorce (NAWL, 1996). Similar concerns were raised by the women in the interview study. Many of the women suggested that the reason that child support awards are typically insufficient is because many of the costs that the custodial parents assume are not acknowledged in the Guidelines.

The other parent has to realize that everything that the child does incurs a cost. Everything.... They have to pay to get on a bus. If the mother has a vehicle, then that has to be taken into consideration because this is also transportation for the child. Gas, clothes, books, reading materials, games.... I just don't believe it should just be on the mother and that's the way it's been—everything is put on the mother. The mother has to be the sole provider, the sole care giver, and I don't like it. (Emily, single mother)

The failure to recognize the hidden costs of parenting is best demonstrated in the treatment of daycare expenses under the new law. One section in the Guidelines gives discretion to the court to provide for an amount to cover childcare expenses "incurred as a result of the custodial parent's employment, illness, disability or education or training."<sup>11</sup> Where parents would be sharing the actual cost for the daycare, the custodial parent, however, will likely be solely responsible for many indirect costs related to any daycare arrangement. For instance, transportation to and from the daycare is the responsibility of the primary caregiver. Also, if the children are unable to attend daycare due to sickness, the custodial parent (mother) is responsible for finding other arrangements or taking time off work to care for the children. In addition, daycare services tend to be restricted to "normal" working hours, which could compromise the custodial parent's paid employment. Finally, if daycare is needed for any other reason not stipulated in the Guidelines (e.g., attendance in family court, visits with lawyer, support groups, leisure activities, etc), the full cost must be assumed by the custodial parent.

Many women interviewed stressed this last "hidden cost" associated with raising a child as particularly frustrating. For instance, many mothers indicated that it is important to be able to take "time out" from their children.

The challenges are incredible. I never get a break from my son. Hardly ever. He's with me every hour, except for the day care. Thank god, I

get away every once in a while. I can't plant him at people's houses very often so it's exhausting.... I just wish there was a little more freedom to go out. (Georgina, single mother)

The daycare, that is what the women are struggling the most with—the high cost of daycare. And I really think that the fathers should definitely pay a high amount of money to also give the mother a break from the child. And that costs money.... [M]ost of these women are with the children seven days a week, and it's not only one [but] two, three, four, five children. So they're exhausted. So if they had money, for everything, more money for everything, that would really, really give them an incredible break. (Lana, support group facilitator)

This common experience means that there needs to be some form of child care cost to cover this “challenge,” as some of the women described it; this specific stress associated with single parenting existed for the mothers regardless of access exercised by non-custodial fathers, or assistance from others. These sorts of “hidden costs” associated with child care mean, therefore, that there still is not a “fair” or equal sharing of child care responsibilities as the Guidelines promise, and the greater burden remains with the custodial parent.

### **Are the child support amounts enough?**

One objective of the 1997 reforms was “to yield *adequate* and equitable levels of child support [emphasis added]” (Department of Justice, 1990: 7;), as research has consistently revealed that low levels of child support have a “direct and essential impact on the standards of living of children” (3).<sup>12</sup> Prior to the Guidelines, the discretion granted to judges to calculate child support amounts was blamed for the inadequacy of the orders. Consequently, with guidelines, (mandatory) minimum child support levels could be established. Monitoring pre- and post-Guidelines awards, therefore, became an important research objective. Evidence published in *Children Come First* suggests that “post-Guidelines amounts were generally higher than the pre-Guidelines amounts”<sup>13</sup> (Department of Justice, 2002: 9). For instance, the claim is made that for low-income families, “median and mean amounts were *considerably higher* in post-Guidelines cases [emphasis added]” (9), yet no pre- and post-Guidelines figures were provided. The assumption made, therefore, is that so long as the child support levels under the Guidelines are greater, this is evidence of a positive outcome. However, there are several problems with such a conclusion. To make this claim, the government has relied on two weak assumptions: first, that the amounts ordered in legal proceedings are actually paid or paid in full, and that the ordered amounts are actually sufficient to meet children's reasonable and basic needs.

Without specific numbers, it is difficult to argue with the claim that child

support levels are now “adequate” to meet the basic costs of raising children. While child support awards for middle and higher income payors may well provide adequate amounts of support, there is reason to believe that child support paid by low-income payors are insufficient. The reaction of the mothers I spoke with in the interview study provide evidence to suggest that the table amounts alone may not provide adequate support for single parents and their children. After calculating what they were or should have been receiving using the tables, three of the twelve women quite adamantly stated that the amounts were too low. In their experiences, the child support amounts in the tables would barely cover basic costs (rent, food, utilities), let alone “extras” like clothing, activities, and day care. One mother in particular called the amount that she would receive according to the Guidelines “ridiculous,” “horrible,” “it’s nothing” she said (Diane, single mother).

Finally, the government’s claim that child support awards have increased does not necessarily lead to the conclusion that the system is now “fair” for children. Built into the child support table amounts is “the expectation that the custodial parent will contribute an appropriate share of his or her own income to meet the costs of raising the child” (Epstein, 1997:3). This expectation, however, is based on the assumption that both parents are or can become economically independent following divorce or separation (Rogerson, 1990; Sheppard, 1995; Zweibel, 1993 ). Women often face economic disadvantage from having assumed unpaid family responsibilities during the marriage/relationship, and from the economic implications of continued post-divorce/separation care for children (Rogerson, 1990), which create barriers to women contributing “equally” or sufficiently for their children. Assuming, as the Guidelines do, that “the custodial mother is already solidly self-sufficient so that an appropriate standard of living for the child can be achieved simply by adding a proportionate child support contribution from the father” fails to account for the economic opportunity costs of the custodial parent (Zweibel, 1993: 379).

While there is discretion for judges to acknowledge some of the consequences of the gendered nature of parenting assumed by many women, the manner in which the Guidelines were applied in the sample cases, however, showed little sensitivity to the unique realities of custodial parents. Analysis of the sample cases demonstrated that judges seldom recognized how the realities of women’s paid work often seriously compromise a custodial mother’s ability to support her children. Under the Guidelines, as the focus is primarily on the non-custodial parent’s income and not the needs of the custodial household, there is little room for the courts to engage in decision-making that could involve consideration of differences between each household’s standard of living. The only attention given to the economic situations of custodial households is typically when “special expenses” are requested.<sup>14</sup> The manner in which judges deal with these expenses involves calculating the proportion of each parent’s income of the total available income. Using that figure, the costs

for any “special expenses” are apportioned between the two parents. The following quote from one case illustrates the typical amount of attention given to the comparison of parents’ incomes in the written reasons for judgment:

There will be an order that the petitioner contribute to the annual cost of the testing in the same proportion as his respective income in accordance with s. 7(2) of the Guidelines ( $\$158,000/\$197,000 = 80\%$ ) upon presentation to him of documentation confirming the actual cost (*Nataros v. Nataros* [1998] B.C.J. No. 1417).

Even though judges in these instances cannot help but note the differences between the custodial and non-custodial parent’s incomes, evidence indicates this process remains strictly a mathematical comparison in the overwhelming majority of cases, rather than a substantive comparison of the standards of living of both households.

The interviews with custodial mothers, highlighted that poverty continues to be the reality for many single mothers. As the primary parent responsible for the well-being of a child or children, obtaining a well-paying job is crucial to establish a “decent” standard of living. Yet these women experience many barriers to securing good paid employment. Many women cannot secure anything but unstable, temporary work; in other words, work that makes economic self-sufficiency difficult and often elusive (Armstrong & Armstrong, 1984; Luxton & Reiter, 1997). One mother’s frustration with the challenges of trying to make ends meet with this type of work was quite evident when she said,

I want to get out of the circular thing that happens where I get work, then I don’t have work, and I try to find work, and I run out of UI, and I go on assistance, and I go back to my seasonal job. I’m not increasing my wages. It never goes up (Georgina, single mother).

Low wage, “bad” jobs have few benefits and no security. When the custodial parent is the sole income earner, even a temporary loss of job has significant implications. For example, one of the mothers I spoke with had been injured at work a few days prior to the interview. While she was receiving some compensation from work, she was not receiving child support regularly and she admitted that she would therefore not be able to pay her rent that month. Time spent outside the paid labour market for childcare responsibilities also makes it difficult to secure reliable employment. Some women spoke of what they called “sacrifices” to their own careers that they made as a result of becoming mothers. One mother described how caring for her young son combined with being compelled to shift provinces and jobs to comply with court imposed requirements to give an ex-husband access to their child all had a profound impact on her standard of living:

I've sacrificed a lot just to be here, so he could have his son. I could be back in [Alberta] with a job, with several jobs that would open up to me there. Support, you know... I wouldn't have to pay for child care because I've got my parents there and just the standard of living. I could live a lot better life there financially than I'll be able to do here (Fiona, single mother).

When evaluating the adequacy of child support levels, the connection between the custodial parent's standard of living and that of the child(ren)'s necessitates that there also be some acknowledgment of the implications of the ongoing care performed by the custodial parent, i.e., its impact on the custodial parent's ability to engage in paid labour (Rogerson, 1988). My study reveals that the Guidelines have been applied in a formally equal, gender neutral and conservative manner, which served only to obscure the link between the standard of living of custodial mothers and the well-being of children. The Guidelines do nothing unfortunately to encourage a more contextual, gendered approach to the examination of the differential impact divorce has on women. For instance, the Guidelines do little to credit the custodial mother for her increased contribution to childrearing costs at any income level, let alone acknowledge the economic strain on the low-income custodial household particularly when it is dependent upon a female wage earner.

### **Conclusion: unfair guidelines?**

Gendered assumptions about child care and gender-neutral assumptions about work serve to mask the subordinating effects of marriage and divorce particularly for women. There seems to be a gap, therefore, between the rhetoric of a "fair standard of support" entrenched in the Guidelines and the reality that, for many custodial mothers and their children, the child support amounts mandated under the Guidelines may not be adequate. In the end, however, the government's final word on the 'fairness' of the Guidelines, as presented in *Children Come First*, was positive: "There seems little doubt that in the vast majority of cases the child support tables have gone a long way toward ensuring that children receive a fair amount of support" (Department of Justice, 2002).

The lived experiences of a group of single mothers was used to demonstrate how the reality of poverty or low-income status negates the intended outcomes of reforms, and in particular, the creation of a "fair standard of support" for children following divorce. In the interview study, those mothers who received child support reported that the awards did little to improve their economic situations. The majority of women interviewed were not economically independent or self-sufficient; they depended on social assistance, child support, family assistance and/or their own poorly paid labour. All of the women wanted to be able to better support themselves and their children and they all recognized the need for improved and alternative assistance in order to do so.

For some custodial parents, the Guidelines will help. The Guidelines legislate basic levels of child support and emphasize the non-custodial parent's responsibility for his/her children. The Guidelines strengthen the principle that parents should not be allowed to walk away from their responsibilities towards their children. On the other hand, the ability of child support orders under the Guidelines to reduce the number of poor and financially insecure custodial households is limited. For families with low incomes, even if child support is paid, child support orders will likely not be enough to maintain a reasonable standard of living for the custodial household.

The child support law reforms have been constructed to encourage the efficient use of private resources to ensure the economic well-being of children following divorce/separation. The reliance on this type of public policy strategy, however, serves to reinforce women's economic dependence on a male income-earner as primary importance is put on maintaining the private responsibilities of family members (Boyd, 1994; Sheppard, 1995; Zweibel, 1993). A privatized system of support cannot adequately address or challenge the underlying causes of women's ghettoized status in the paid labour force nor the unpaid and undervalued nature of domestic labour (Boyd, 1994). Without greater acknowledgement within the current legal discourse that children share the same standard of living as their custodial mothers, the poverty that many children face or could face is not going to be targeted. It was the goal of this paper to counteract the government's positive evaluation of the Guidelines by suggesting that it is questionable whether child support awards under the Guidelines are actually producing "fair" levels of support—in other words, levels of support that will bring custodial households out of or protect them from poverty. It should be a priority to create a system that is fair to all children. To do so, however, would necessitate a more thorough recognition of the feminization of poverty than what is possible or likely within the current era of guidelines in Canada.

<sup>1</sup>The sample of cases was derived from a search of all available child support cases in the QuickLaw data base. A key word search was used to derive the total number of cases that involved sections where judges have discretion to override the table amounts: support for children the age of majority or older (Section 3(2)); extraordinary expenses for childcare (Section 7(1)(a)); extraordinary expenses for extracurricular activities (Section 7 (1)(e)); shared custody (Section 9); and undue hardship (Section 10). A stratified sample was used to generate a sample representative of the nature of child support cases brought to the court.

<sup>2</sup>Letters were sent to various support groups and services for single parents to solicit participants from Vancouver (and surrounding area), B.C. All participants self-selected to participate in the interview study. Two respondents were referred to the researcher by other respondents. Five of the seven mothers were

**Table A**  
**Simplified Tables of Federal Child Support Amounts**  
**British Columbia**

**Monthly Award (\$)**

Income (\$)	Number of Children			
	1	2	3	4
7,000	5	6	7	8
10,000	83	97	111	124
20,000	171	297	399	483
50,000	426	696	911	1,088
70,000	568	920	1,202	1,432
100,000	761	1,222	1,592	1,894
120,000	888	1,420	1,846	2,195
150,000	1,079	1,717	2,228	2,646

Source: Federal Child Support Guidelines, As established May 1, 1997 (SOR/97-175), As amended, effective November 1, 2000 (SOR/00-337). Complete tables for all provinces are available through the Department of Justice - <http://canada.justice.gc.ca/en/ps/sup/index.html>.

**Table B**  
**Correspondence of Child Support Orders to the Child Support Guidelines Support Tables**

	Less than Support Tables	Equal to Support Tables	Greater than Support Tables
Department of Justice (2002) Consent / Uncontested Orders (n= 10,574)	5.5 %	65.6 %	28.9 %
Judicial Orders (n=1,438) Robson (1999)	4.5 %	65.6 %	30.0 %
Judicial Orders (n=60)	12.0 %	32.0 %	48.0 %

divorced, four of them shortly after the birth of their children. Their children ranged in age from eight months to 13 years. The other two women were in short term relationships when they became pregnant. The mothers are all of white, European ancestry. The two women with the youngest children were on social assistance at the time of the interview; one other mother would be on assistance when she was unemployed from her seasonal job. Two of the mothers were attending university or college. Four mothers were employed; three full time, one seasonally.

<sup>3</sup>See Department of Justice (1998) *The Federal Child Support Guidelines: A Workbook for Parents*.

<sup>4</sup>Until the 1990s, women received sole custody between 70 to 80 percent of the time. While maternal sole custody orders are now decreasing (for example, 60 percent of contested cases in 1998), they are being replaced by joint custodial arrangements. In many joint custody arrangements, however, children reside primarily with their mother (Boyd, 2003: 7).

<sup>5</sup>This includes Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan as of December 2002.

<sup>6</sup>Justice Bastarache in *Francis v. Baker* (1999) 3. S.C.R. at 39.

<sup>7</sup>It is not clear whether this meant they saw the Guidelines as fair to children, to the payors and/or the recipients. The surveys used to generate these statistics merely asked respondents to rate on a typical Likert scale their agreement with the statement “The Guidelines establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation” (i.e, a simple re-wording of stated objectives of the Guidelines). Thus, there was no opportunity for respondents to articulate why they found the Guidelines “fair” or “not fair.”

<sup>8</sup>All participants have been given pseudonyms.

<sup>9</sup>This range is due to the comparison of consent/uncontested cases to contested cases in the study.

<sup>10</sup>The Child Support Tables provide the starting point in the determination of support for the majority of separated families. It is generally accepted that the courts will adhere to the table amounts except in clear cases where to do so would provide too much or too little money to meet the child’s reasonable needs. If courts were routinely adding to the table amounts, the tables would be treated as a “floor.” Conversely, if the courts rarely ordered additional support on top of the amounts mandated, the tables would be treated as a “ceiling.” There are no rules governing the discretion the courts have to override the table amounts in these ways. Consequently, there is no standard for what would be the absolute maximum or minimum amount of child support that could be ordered in any case given the income of the paying parent.

<sup>11</sup>Section 7(1)(a).

<sup>12</sup>Citing 1988 figures, approximately two-thirds of custodial mothers and their children had total incomes below poverty lines with child support included (Department of Justice, 1990).

<sup>13</sup>After controlling for tax treatment, inflation, payor and number of children (Department of Justice, 2002: 9).

<sup>14</sup>Section 7(1)(a-e)

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