

A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES

Questionnaire for national informants

Focus of questionnaire

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

Scope

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump sum payments, transfers of property, assets and pension rights. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

Core terms

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

Organisation of questionnaire

The questionnaire is organised in the following way.

- *Part One seeks information about the history and general objectives of your child maintenance regime.*
- *Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.*
- *Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.*
- *The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.*
- *Part Five asks about the interactions of receipts and payments with other policies.*

Canada response

- *Administrative costs and quantitative data on outcomes are covered in Part Six.*
- *Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.*
- *Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance regime.*

There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.

We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.

When we ask for current information, this relates to the situation at 1 July 2006.

TERMS AND DEFINITIONS	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

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PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

This part of the questionnaire seeks a broad overview of your current system.

Please remember that we are interested in three groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

NOTE: IN CANADA 'CHILD MAINTENANCE' IS CALLED 'CHILD SUPPORT'. WE USE THE CANADIAN TERMINOLOGY IN OUR REPLIES.

1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.

With respect to determining the amount of child support, Federal Child Support Guidelines (see discussion below for relation of these guidelines to support levels in provinces) objectives as stated in law are:

- to establish a fair standard of support for children that ensures they continue to benefit from the financial means of both spouses after separation;
- to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and by encouraging settlement; and
- to ensure consistent treatment of spouses and children who are in similar circumstances.

With respect to enforcement, Ontario states that the goal of its Family Responsibility Office is:

- to help families in Ontario receive the financial support they are entitled to by enforcing court ordered support responsibilities.

1.2 Please explain briefly the history and development of the current regime.

Under the Canadian Constitution both the provinces and the federal government have sovereign rights to make laws and govern. The provinces are not 'creatures' of the federal government and their rule within their sphere of jurisdiction is not subject to the will of the federal government. 'Child support' is an area where provincial and federal responsibilities significantly overlap, making this a complex area to describe. Furthermore, the foundation of the law is not the same throughout the country. The province of Quebec has a civil law system. The rest of Canada applies the common law. **In completing this questionnaire, where answers must be about a specific province, answers will be for the province of Ontario only, unless otherwise indicated.** Ontario is the most populous province (about 38% of the Canadian population).

The provinces (and three territories – but this is a delegated power in the case of the territories) share responsibility with the federal government for matters relating to child support. In general, the federal Divorce Act establishes the rules for setting child support amounts for couples which are already divorced or planning to divorce, if the amount of support is in dispute. Provincial laws apply for couples which have never been married and are separated, children who are born outside of a two-parent relationship, and couples which are married and planning to separate but have decided not to seek a legal divorce.

Canada response

In 1997 the federal government implemented new child support guidelines to provide more consistent and reliable directions for court awards of child support, as well as meeting other objectives as listed above. Most provinces have adopted slightly amended versions of the federal guidelines for child support awarded outside of the Divorce Act. Quebec is the only exception in having developed a unique set of child support guidelines. In four provinces – Quebec, Prince Edward Island (PEI), New Brunswick, and Manitoba – provincial guidelines have been designated by the federal government so that they apply in all cases, even under the Divorce Act, where both parents reside in the province, but the support guidelines are substantially the same as the federal guidelines in PEI, New Brunswick and Manitoba.

The provinces are fully responsible for enforcing support awards that are registered with their maintenance enforcement agencies and all have enforcement agencies. The federal government is not directly involved with enforcement and support orders at the delivery level, but the federal government provides financial and other assistance to the provincial enforcement agencies. There are two federal laws – Family Orders and Agreements Enforcement Assistance Act and Garnishment, Attachment and Pension Diversion Act – that assist the provinces maintenance enforcement programs to locate debtors, intercept federal monies, deny passports and other federal licences and garnish the salaries and pensions of federal employees. The provinces are responsible for court administration except for higher level courts that deal only with exceptional family law.

The following history is from *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines* (2002) Minister of Justice and Attorney General of Canada <http://canada.justice.gc.ca/en/ps/sup/pub/rp/report2002.html>

In the late 1980s, many separating and divorcing parents, family law professionals, and others were looking for better ways to determine the amount of financial support parents pay for their children.

Critics said that the system in place at that time for determining child support was producing amounts that were too low, inconsistent, and unpredictable. The lack of predictability was a particular concern, since it tended to encourage parents to go to court over child support, which increased the costs of separation and divorce, and increased conflict and the demands on the family law system.

In 1990, the federal, provincial, and territorial ministers of justice and attorneys general directed the Federal-Provincial-Territorial Family Law Committee to examine these concerns and recommend improvements to the family law system.

In its Report and Recommendations on Child Support (January 1995), the Committee proposed that child support guidelines be established under the Divorce Act for parents, judges, and lawyers to use to determine child support. Such guidelines would set the amount of child support based on the number of children concerned and the income of the parent who would be paying the support.

At this time, Canadians were also criticizing the way the tax system dealt with support payments. Many said it was unfair that parents paying child support could deduct the payments from their taxable income, while parents receiving child support had to pay tax on what they received. The deduction-inclusion tax rules for child support provided a tax benefit when the support-paying parent was in a higher tax bracket than the custodial parent

because the tax savings from the deduction exceeded the tax paid due to inclusion. It was seen as unfair that whether or not there was a tax benefit available to a family depended solely on the income discrepancy of the two parents, and not at all on the needs of the children.

In addition, many parents disliked the cumbersome process of managing payments and deductions throughout the tax year. Moreover, judges, lawyers, and parents found that the tax calculations involved were so complex that they made determining child support amounts very difficult.

A third area of concern was enforcement. Many parents had found there was no way for them to ensure that they received their support payments in full and on time. The Government of Canada had already helped the provinces and territories with enforcement by putting a law into place that allowed federal employees' wages to be garnished if the employees were not making their support payments. Another law allowed the provinces and territories to use federal databases to trace parents who were not paying their support, and to garnish federal payments such as income tax refunds and employment insurance. Still, many people felt that governments could do more in the area of enforcement.

In March 1996, the Government of Canada announced its intention to address these concerns by improving the way child support amounts were determined, taxed, and enforced.

- It amended the Divorce Act to introduce child support guidelines to help parents, lawyers, and judges set fair, predictable, and consistent child support amounts in divorce cases.
- It changed the tax treatment of child support payments made under orders or agreements dated on or after May 1, 1997, so they would no longer be taxed as income for the parent who receives them nor be tax deductible for the parent who pays them.
- It introduced new federal measures and enhanced services to help provincial and territorial enforcement agencies ensure that support is paid in full and on time.

The Federal Child Support Guidelines came into effect on May 1, 1997.

Please see the discussion of the history of enforcement of support orders in reply 1.3 below.

1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)

There are two areas of administration in Canada. One is the determination of the amount of child support and the other is the system for enforcing support awards and making sure that they are paid. The following discusses each of these in turn.

The amount of child support:

As noted above, federal child support guidelines were amended in 1997. Ontario adopted these for its own jurisdiction in the same year. The policy context is described above. The changes were

controversial especially with respect to the non-taxation of the parent with care and the taxation of the non-resident parent.

The enforcement of child support:

In Ontario, the Support and Custody Orders Enforcement (SCOPE) Branch was established in July 1987 to permit government to take over responsibility from individual parents for collecting support payments. The Family Support Plan (FSP) superseded SCOPE in March 1992. A new government was elected in 1995. FSP was centralized in 1996 and became the Family Responsibility Office, in May 1997.

The Family Responsibility Office (FRO) receives every support order made by a court in Ontario and enforces the amounts owed under the order. It also enforces private written agreements that include child or spousal support terms, if these are filed with the court. In Ontario, support payments that are registered with the courts are automatically paid through the FRO unless the partners both agree to opt out. In four provinces, the onus is on separating partners to opt in, unlike Ontario where the onus is on parents to opt out.

In 1996 a new Conservative government took over with a commitment to reduce the size of government. As part of the fiscal reductions, the FSP was renamed as the FRO, centralized and approximately 300 of 350 staff were laid off. The FRO subsequently fell further and further behind in processing payments, even where the non resident parent was not in arrears, and many custodial parents were left in desperate straits. (Ombudsman of Ontario; Appendix to the 1996-97 Annual Report; *Ombudsman's Case Report: Own Motion Investigation of the Family Support Plan*; June 10, 1997) Since that time much of the effort and work at the FRO has been to restore its credibility and administrative capacity to deliver timely benefits. Much has been invested in IT to facilitate this. FRO reports that it now forwards almost all payments within 48 hours.

In 2005 the Ontario government introduced legislative amendments to improve the administration of the FRO. Following is a description of all the changes made and planned as of 1 July 2006. From: <http://www.mcsc.gov.on.ca/mcsc/english/pillars/familyResponsibility/>

Changes to increase enforcement capabilities

New Trace and Locate Tools

- Payor information that the FRO can request (e.g., current telephone numbers, fax number, email address) has been expanded.
- All organizations, including trade unions, professional organizations and trusts, are now required to give the FRO information about a payor within 10 days of the demand for information.

Committing Defaulting Payor to Jail (Default Hearings)

- At a default hearing, the maximum jail term that a court can order for failure to pay support has increased from 90 days to 180 days.
- The only way that the defaulting payor can be released from jail early is by paying the support the court has ordered.

Third Party Financial Disclosure (Default Hearings)

- At a default hearing, a court can order a third party who is financially connected to a defaulting payor to make financial disclosure. The FRO no longer has to prove that the third party is sheltering any of the payor's income or assets in order to obtain a third party's financial statement.

Changes related to driver's licence suspensions include:

- changes emphasizing the importance of including payment terms on a refraining order; and
- changes clarifying that deadlines for a payor to take steps to avoid a licence suspension cannot be extended.

Changes to improving fairness:

Ending Support Payments

The Director will have discretion to:

- stop enforcing ongoing support if the person who receives the support does not respond to an allegation that the support obligation has ended;
- enforce a lower support payment if both parties agree that the number of children entitled to that support decreases in certain cases, or if certain conditions are met.

Withdrawal from the FRO

- If the payor is not in compliance (as defined in the regulation) with the payment obligations, the recipient can withdraw from the FRO unilaterally (i.e., without the payor's consent).
- If the payor is in compliance, both the payor and recipient must agree to withdraw from the FRO.
- In all cases, if the ongoing support is assigned to a social service agency, that agency must also consent to the withdrawal from the FRO.

Paternity test costs

- The FRO will collect the paternity testing costs when a support order requires a payor to reimburse a recipient for these costs.

Changes to improve efficiency:

- Support recipients must now receive payments from the FRO by direct deposit (electronic payments). Employers and other regular income sources will be encouraged to make payments to the FRO electronically.
- The court now has a number of additional powers at a default hearing. Depending on the facts of the case and the evidence heard, a court may make an interim or final default order including any of the terms below:
 - Requiring a third party who is financially connected to the payor to file a financial statement
 - Start a motion to change the support order
 - Imprisonment up to 180 days unless arrears are paid
- Support recipients are now required to give the FRO their current telephone numbers in addition to their current address.

Canada response

- The new act provides the FRO with the authority to pass regulations creating recommended standard terms for support orders.
- The new act also updates the terminology so that it conforms with the language used in other provincial legislation and regulations (e.g., the Courts of Justice Act and the Family Law Rules).

Upcoming changes

Upcoming legislative amendments will enable the FRO to:

- calculate and collect interest at a standard rate for support arrears; (Currently, recipients perform these calculations.)
- report defaulting payors to specified professional and occupational bodies;
- suspend specified hunting and sport fishing licences; and
- locate defaulting payors by posting their names, pictures and other specified identifying information on the Internet.

1.4 Which of the following were explicit objectives of the change?

Response is for change in the federal guidelines on child support payments

- Limiting public expenditures
- Enforcing obligations to biological children
- Reducing child poverty
- Influencing relationship formation and dissolution behaviour
- Influencing employment of lone parents
- Increasing voluntary arrangements for maintenance
- Other (please describe briefly) As discussed above, the main reasons for the change were to ensure levels of support to children consistent with the means of both parents, greater consistency and fairness in child support awards, as well as increasing the efficiency of the system and decreasing its cost in money and conflict to separating parents.

PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.

2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED

2.1.1 In your country, who has primary responsibility for divorce proceedings?

Courts

Other (please list and describe)

2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

As noted previously, divorce in Canada is under the federal Divorce Act. In Quebec procedures are under the civil code, while in the rest of Canada they are under common law.

To get a divorce, the applicants have to show that the marriage has broken down. Marriage breakdown is defined as having occurred if:

- you and your spouse have lived separate and apart for one year with the idea that your marriage is over; or
- your spouse has committed adultery and you have not forgiven your spouse; or
- your spouse has been physically or mentally cruel to you, making it unbearable to continue living together. Cruelty may include acts of physical violence and those causing severe mental anguish.

Over 80 percent of divorces in Canada are based on one-year separations.

- To start a divorce application, you fill out the appropriate forms for your province or territory. If you have a lawyer, he or she will fill out the forms for you and will be responsible for processing the divorce. You may obtain forms at government bookstores, some private bookstores and, in some cases, from the Internet. In some jurisdictions, court offices and information centers provide forms.
- There are a few things in particular that you have to include in the forms. If there is a child of the marriage, you need to write down the parenting arrangements, including financial support. If these arrangements are in dispute, you will need to describe the arrangements that you are seeking.
- Once you have completed all the forms, you file them at the courthouse, pay the required court fees, and follow the court rules and procedures for your province or territory.

2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?

There are three ways in which the amount of child support may be decided in a divorce:

1. Agreement

Parents may make a written agreement stating the amount of child support to be paid. They may do this with or without the help of a lawyer. Parents may refer to the federal child support guidelines to see what is fair and what is in the best interests of the child. Parents can agree on child support without going to court, but it may be a good idea for each parent to consult a lawyer regarding his or her legal rights. Written (or even oral) agreements may be legally enforceable. (Note that the support arrangements that are part of a prior separation agreement that forms the basis of a divorce, do not have to be part of the court order granting the divorce, so that a voluntary support agreement will not automatically be registered with the FRO.)

2. Consent order

A consent order is like a written agreement, but a judge usually reviews it. Parents can use a consent order when they agree to change an existing court order or consent order. In these cases, the judge will refer to the guidelines to make sure that the amount of child support is reasonable and in the best interests of the children. A consent order is legally enforceable.

3. Court order

When parents cannot agree on the amount of child support, either parent may ask the court to decide this matter for them. If parents ask the court to decide, the judge must apply the guidelines, where relevant, in setting the amount of support.

2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED

2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.

In Ontario, separation, custody and enforcement of support orders is covered under Ontario statutes:

- The Family Law Act deals with separation, spousal and child support, division of property, and possession of the matrimonial home.
- The Children's Law Reform Act deals with such matters as custody of, and access to children, as well the rules to establish parentage of a child.

A separation agreement including parenting responsibilities may be agreed upon informally, either orally or in writing, or if an agreement is not possible, the parents can seek a court decision. The process is essentially similar to a divorce, except that the rules governing property are different.

2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?

Separating unmarried parents are subject to the Ontario (or whatever province is applicable) child support guidelines if a support order is made by the court. By choice of the government of Ontario, Ontario child support guidelines mirror the federal guidelines. However, the court does not necessarily have to become involved in setting the amount of child support payments when an unmarried couple separates. Parents are encouraged to enter into their own agreements voluntarily. If they do so, no one else gets involved. If both parents agree, a voluntary support agreement may not be in accord with the child support guidelines (except if the custodial parent is on social

assistance – in which case the family Law Act requires a voluntary agreement to at least equal the guidelines, as is discussed further below). In the absence of a voluntary agreement, the court process is available to the parents, and a court order will eventually result, which will be in accord with the support guidelines. In other words, where there is a dispute the courts decide on who and how much child support is paid when an unmarried couple separates, and the court is directed to set these amounts according to the federal guidelines. Where there is no dispute, a couple may agree among themselves to a different support level unless the custodial parent is on social assistance.

2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.

In Ontario there is a presumption of paternity for children of a common law or marital relationship. If a woman claims a man is the father of the child, and the man disputes the claim, he can ask the court to order a paternity test (or the test can be administered with the mutual consent of the mother and the alleged father if they both agree). However if a couple have lived together for several years and the man has acted as father to the children, even if they were children born before he entered into the relationship, a court might order him to continue to provide support for those children, regardless of paternity.

2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER

2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?

The father has the same legal obligation to pay support even if the couple had never lived together or had only a casual relationship. Paternity can be definitely established with a DNA test. If the couple cannot agree to a support arrangement, one can be imposed by the court following the Ontario child support guidelines (which mirror the federal guidelines).

2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father's name is on the birth certificate.)

Yes, paternity is presumed by the father's name on the birth certificate, if paternity is not disputed.

2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.

As with a couple who have lived together, the courts may order a paternity test if the couple cannot agree to have one and the paternity claim is disputed.

PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE

Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.

After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.

Please remember that we are interested in three groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabittees*
- *parents who have never lived together.*

3.1 OVERVIEW

3.1.1 Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabittees? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.

All couples, whether married or not married, are allowed to arrive at a voluntary support agreement. Parents who are married and seeking a legal divorce will usually file their support agreement as part of their divorce settlement. The judge may review the support agreement even if it is voluntarily agreed to by both parties. However the judge may be reluctant to intervene, especially when both parties are adequately represented. If the judge does review the support agreement it will be in light of the guidelines to determine whether the amount the parents have agreed upon is appropriate in that light. In other words, the judge may exercise some discretion to vary the agreement if it is not in line with the guidelines. Whether or not it is reviewed by the judge, a voluntary support agreement may not form part of the divorce order and so need not be filed with the court.

A couple who are not legally married or are married and not seeking a legal divorce may make an agreement without any court review or any other review. A voluntary support agreement that does not conform to the guidelines is allowed, although if they seek any advice they will probably be encouraged to use the Ontario (federal) guidelines. An exception is when the custodial parent is on social assistance, in which case a voluntary agreement must conform to the guidelines. In Ontario; a voluntary support agreement may be filed with the court under section 35 of the Ontario Family Law Act. This does not involve any judicial review of the agreement, only an administrative process to file the agreement along with an affidavit in support of that filing. FRO will not enforce an agreement unless it has been filed with the court.

3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabitees, and those who have never lived together.)

Parents' voluntary agreement does not have to be approved by someone else, except if the custodial parent is on social assistance. However, if it comes to the courts' attention it may be reviewed by the court. The criteria then used will be conformity to the guidelines. If a voluntary agreement is brought to the attention of the court in some fashion or other it may be varied by court order. In a legal divorce the court will always have access to the support agreement, but not so if the agreement is simply filed with the court in any other situation than a legal divorce.

Married parents seeking a legal divorce may have a voluntary agreement reviewed by the court, or the court may decide to undertake a review of on its own initiative, and the court may then apply federal guidelines if the court sees the support agreement as being seriously flawed. Either parent can seek a court ordered support arrangement to replace a voluntary agreement. The recent July 31 2006) Supreme Court decision would seem to imply that at least annual reviews of agreements may be required to determine whether a change in the income of the NRP should result in a variation of the amount of support.

In the absence of dissent there will be no external review necessary for couples who are not seeking a legal divorce. However, if the custodial parent is on social assistance the Ontario Works income maintenance worker will have to be informed of the support agreement, which must (for a recipient of social assistance) conform to the guidelines.

3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role, or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.

Yes, the various federal and provincial laws set out the amount of maintenance in child support guidelines and these laws are administered by the courts. The courts role is residual to the extent that it does not need to get involved in cases where there is no dispute, especially if a legal divorce is not being sought. The guidelines provide the courts with some leeway on the amount to be paid, for example, if there are special expenses or if the support order would create excessive hardship (or if there is a voluntary agreement among the parents). The court may also take account of prior voluntary arrangements such as the transfer of the family home. The court is involved in all disputed cases, whether married, cohabiting or casual, and in all cases of divorce, whether disputed or not. About half of all support agreements are filed with the courts or are court orders, while the remaining half is private just between the parties. However the recent Supreme Court decision essentially determined that any agreement (even a prior voluntary agreement) could be varied if the income of the NRP changes, but that the application of the guidelines in updating the agreement would be discretionary by the courts in view of the changed circumstances. This appears to open up once again a wide avenue for courts to become involved in many more support cases.

3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.

In Ontario, no agencies other than the courts determine maintenance, although a mediator may

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make recommendations to the court. However, this would be a private mediator paid by the parents. By prior agreement with the parents, the mediator's report can be closed and not available to the court or anyone else, or open and become one element in the court's decision making. Some provinces are beginning to consider alternative mechanisms for the administrative recalculation of support payment. Newfoundland and Manitoba have pilot programs for the administrative recalculation of child support. British Columbia has a pilot project just started in June, 2006. Since the recent Supreme Court decision will require many more cases to go to court to update the support agreements, most provinces will now likely be forced to set up some form of administrative mechanism to recalculate the amount of support to be paid on a regular basis.

3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabitantes or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?

The payment is always to the parental care-giver and not 'in the name of the child' regardless of the nature of the couple and regardless of whether the agreement is voluntary. There may be a handful of exceptions where an older child is living independently and both parents have agreed to pay the child directly, or the court may have ordered a direct payment.

We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.

3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE

3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?

Lawyers and mediation services are often involved in voluntary agreements, but this is not required. These mediation or lawyers' services are personal arrangements made for the payment of a fee by the parents. If a person is in financial need they may obtain assistance for legal services through 'Legal Aid.' There are also voluntary non-profit social service agencies that will provide mediation services for no or reduced fees. All lawyers and mediation services are encouraged to use the federal child support guidelines, but are not required to do so.

There are two types of voluntary arrangements:

Agreement

Parents may make a written or oral agreement stating the amount of child support to be paid. They may do this with or without the help of a lawyer. Parents may refer to the guidelines to see what is fair and what is in the best interests of the child, or they may not. Parents can agree on child support without going to court. Voluntary agreements may be legally enforceable. However if there is a divorce, the court may review the voluntary support agreement in light of the federal guidelines during the divorce proceedings, although the support agreement may not necessarily be part of the legal decision granting the divorce.

Consent order

A consent order is like a written voluntary agreement, but a judge reviews it. Parents can use a consent order when they agree to change an existing court order or consent order. In these cases, the judge may refer to the guidelines to make sure that the amount of child support is reasonable and in the best interests of the children. A consent order is legally enforceable.

In respect, of amount of child support, as noted previously social assistance recipients must conform to the guidelines even in a voluntary agreement.

3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?

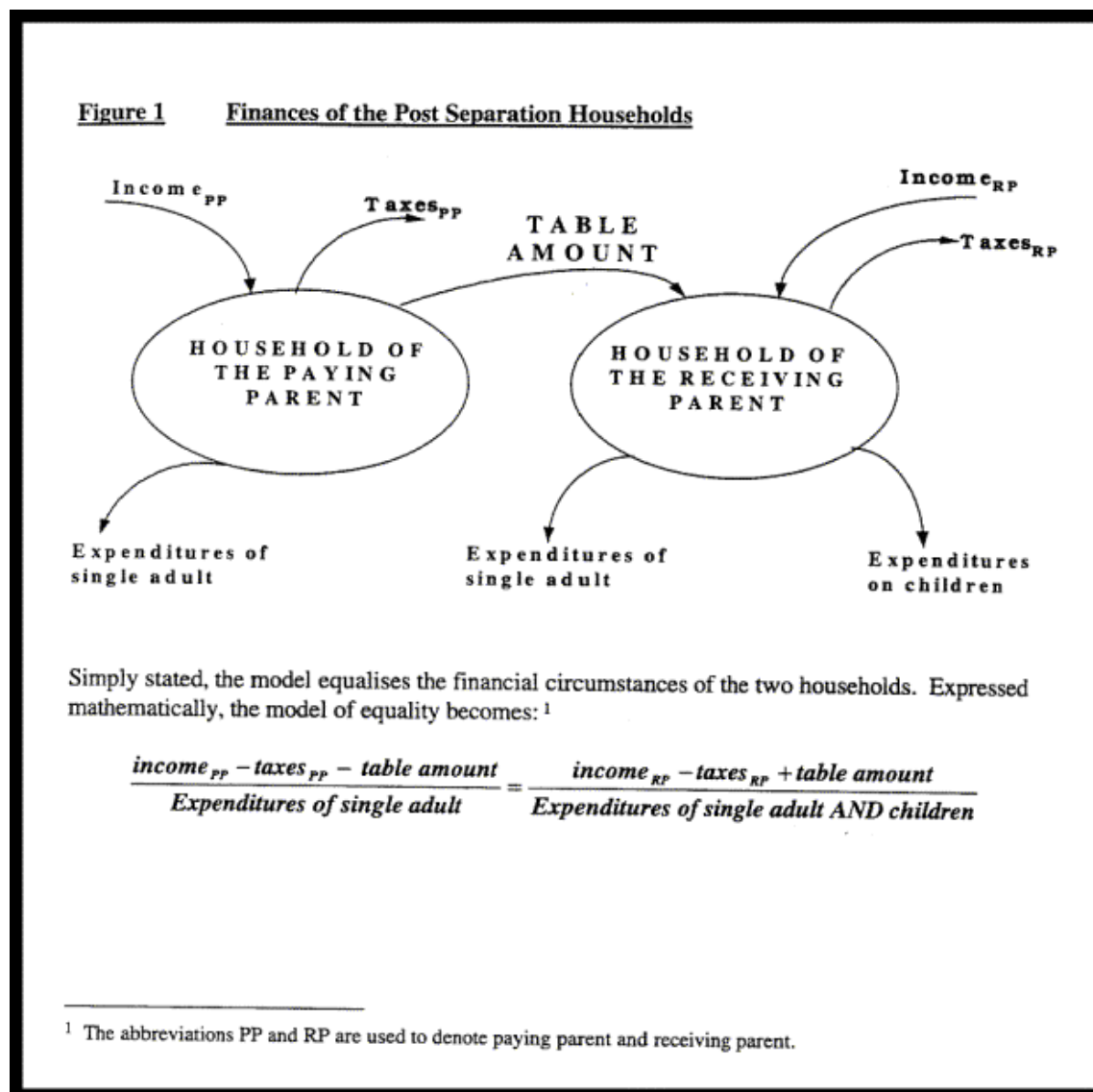
They can go to court. This applies no matter the relationship between the parents. On the other hand, non-married parents or married parents not seeking a legal divorce may just give up and never establish a support plan (as apparently often happens in real life).

3.3 COURT DETERMINATION OF CHILD MAINTENANCE

This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the Court uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitees, and parents who have never lived together).

The formula

The Canadian child support guidelines are calculated using a complicated formula, the basics of which are set out below. Calculations of support are done on the simplified tables provided for each table. The most recent tables (those in use now) were revised in May 2006. They are attached as separate PDF files. Below Figure 1 is said to describe the basic formula. This figure is from the document: -- *Formula for the Table of Amounts Contained in the Federal Child Support Guidelines: A Technical Report*. Research Report CSR-1997-1E. December 1997, Child Support Team, Department of Justice Canada.



The formula which is said to be derived from this basic expression is set out below. *However, despite the claims of the federal government, this formula is not actually consistent with the tables, as the formula contains an expression for the recipient's income, while the tables do not.*

$$\text{TABLE AMOUNT} = \frac{[(AEU_{RP})(\text{income}_{PP} - \text{taxes}_{PP})] - (\text{income}_{RP} - \text{taxes}_{RP})}{1.0 + AEU_{RP}}$$

The expression AEU_{RP} is equal to 'the equivalence for the size of the recipient family' (1 parent plus number of children). The Department of Justice uses the equivalence scales set out below:

Table 1 **The Statistics Canada 40/30 Equivalence Scale (After-Tax)**

	Adult Equivalence Units		Income required for equivalent standards of living	
	single adult household	two adult household	single adult household (\$)	two adult household (\$)
no children	1.0	1.4	10,000	14,000
one child	1.4	1.7	14,000	17,000
two children	1.7	2.0	17,000	20,000
three children	2.0	2.3	20,000	23,000
four children	2.3	2.6	23,000	26,000
five children	2.6	2.9	26,000	29,000
six children	2.9	3.2	29,000	32,000

Note: The AEU for a single parent with one child (1.4) is identical to the AEU for two adults (1.4). This means the second person in a household generates the same cost, regardless of age.

Note: \$10,000 is used as the base for a single person for illustrative purposes only.

There are a number of possible criticisms of the federal guidelines, although these have not been well-articulated in Canada and the guidelines have been generally accepted.

1. These 'equivalence scales' are not in fact an empirically derived product of Statistics Canada. Statistics Canada uses these equivalence scales in its 'medium income' Low Income Measure, but Statistics Canada says that the equivalence scales are essentially arbitrary and a matter of convenience.
2. The formula assumes that the 'paying parent' has no child related costs.
3. The formula is income based and does not take account of assets or debts.
4. Although the formula theoretically includes the recipient parent's income, this is not in fact included in the tables (where the recipient's income is disregarded). So it is difficult to see how the formula actually has been used to derive the tables, notwithstanding the federal claims to the contrary. In other words, what is the theoretical justification for the amounts in the tables?
5. The formula putatively attempts to equalize the living standards of both parents, not the living standards of the child (although it is difficult to see how these could be separated).

Finally it should be noted that there are five distinct areas in the Guidelines where the court may deviate from the standard table amount:

- (a) When the child is over age of majority;
- (b) When the payor's income is over \$150,000;
- (c) When the payor stands in place of a parent;
- (d) When there is shared (minimum 40/60) custody;
- (e) When payment of the scheduled amount would cause undue hardship.

The statute sets out various ways that these deviations from the guidelines should be considered, each one being unique.

The guidelines were also vague on how exactly support agreements were to be up-dated in light of changes in income of the NRP. Apparently the governments had planned to set up some administrative mechanism but this never came to be. Consequently this has been a difficult part of the law. The recent Supreme Court decision clarified rulings made on this subject in lower courts, so that it is now clear that the payee is responsible to inquire about the payor's income, the payor is

responsible to reveal fully his or her income, the date of the up-dating of support payments is to refer back to the date of the payee's inquiry, and the amount of the support to be paid should retroactively reflect the guidelines for up to three years, unless there are circumstances where this would be unfair.

3.3.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Court decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitees, and parents who have never lived together?

Lawyers may be involved in disputed child support cases, regardless of the form of the relationship between the parents. They are involved as advocates on behalf of their clients, in the normal way. Mediation and support of any other kind is voluntary. The objective of the federal guidelines was to remove discretion sufficiently to reduce conflict over child support.

3.3.2 How would you describe the main method of Court determination of the amount of maintenance on the following continuum:

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

As discussed above the court must award child support based upon the federal guidelines (or the provincially adapted version of the federal guidelines) unless one or more of five conditions applies:

- (a) When the child is over age of majority (18 years of age in Canada);
- (b) When the payor's income over \$150,000;
- (c) When the payor stands in place of a parent;
- (d) When there is shared (minimum 40/60) custody;
- (e) When payment of the scheduled amount would cause undue hardship.

In these cases the court has added discretion, although it is meant to be guided in each case by the governing section of the statute.

The recent Supreme Court decision seems to have added back more discretion in respect of updating of support agreements.

Please report any differences between separated married parents, separated cohabitees, and parents who have not lived together.

There are no differences with respect to child support, although there are differences with respect to the division of property and spousal support.

3.3.3 Is there a minimum amount of maintenance required?

- No

___ **Yes. How much? What are the circumstances in which it is used?**

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

There is no maximum per se, but for income over \$150,000 the guidelines are less clear. The court is allowed to make a discretionary adjustment on the amount over \$150,000 although the tables prescribe the following:

Income/ Revenu (\$)	Monthly Award/Paiement mensuel (\$)			
	One Child/ Un enfant	Two Children/ Deux enfants	Three Children/ Trois enfants	Four Children/ Quatre enfants
For income over \$150,000	1254 plus 0.74% of income over \$150,000	1992 plus 1.16% of income over \$150,000	2581 plus 1.49% of income over \$150,000	3064 plus 1.76% of income over \$150,000
Pour revenu dépassant 150 000\$	1254 plus 0,74% du revenu dépassant 150 000\$	1992 plus 1,16% du revenu dépassant 150 000\$	2581 plus 1,49% du revenu dépassant 150 000\$	3064 plus 1,76% du revenu dépassant 150 000\$

3.3.4 These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

A. How much of the non-resident parent's earnings are considered?

- All** (depends upon what you mean by 'considered')
- Some** (explain)
- None** (go to 3.3.4 C)

The income of the non-resident parent (NRP) is adjusted as follows:

Total annual income before adjustments

Less:

- Child support received and included in total income
- Spousal support received from the other parent and included in total income
- Employment expenses
- Social assistance received for other members of the household
- Dividends from taxable Canadian corporations
- Actual business investment losses
- Carrying charges and interest expenses
- Prior-period earnings
- Sole proprietorship and partnership

Additions to total income

- Net capital gains
- Payments by a self-employed person to a family member or someone else not at arm's length
- Capital cost allowance for real property
- Employee stock options

Income for purposes of the child support guidelines is total income less deductions plus additions.

B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?

Gross

Net (What is deducted?) deductions listed above.

C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?

All ignored

All considered

Some ignored, some considered. Which ones?

All sources of income are considered except those listed as deductions.

D. Are the non-resident parent's basic living expenses taken into account?

No

Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.

Yes. Please describe the way it which it affects the obligation.

The basic living costs of the NRP are reflected by not requiring any child support on incomes less than \$8,000.

E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

The specific deductions are listed above. As well, a provision of the guidelines allows the court discretion in a case of 'undue hardship.' Circumstances that may cause undue hardship are defined in the statute as follows:

(2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:

- (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
- (b) the spouse has unusually high expenses in relation to exercising access to a child;
- (c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;
- (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is
 - (i) under the age of majority, or
 - (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and

(e) the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.

How?

This is an area of court discretion so they can decide what is appropriate.

F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

No there are no allowances made for the expenses of the NRP in maintaining a relationship with the child, except in cases of joint custody and if there is undue hardship due to 'unusually high expenses in relation to exercising access to a child' as defined above.

3.3.5 The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?

Under the law, parents have an ongoing obligation to support their children even if they have new family responsibilities. The exception is the undue hardship clause cited above, particularly the sub-clause that "the spouse has a legal duty to support a child, other than a child of the marriage." However, parents cannot reduce their obligations to their first families unless a comparison of both households shows that the second family would have a lower standard of living if the support payments were not reduced. In comparing household standards of living, the court can consider the income of all household members as well as the number of people in each household. If undue hardship has been proved, the court can adjust the child support amount. The statute prescribes a methodology to measure standard of living.

B. Is the obligation affected by whether the non-resident parent had prior children? In what way?

Yes if the NRP has a legal obligation to support another child, and doing so in combination with the amount of support in the guidelines would cause 'undue hardship' the court may exercise discretion and reduce the amount of child support, essentially to equalize the living standards of the children being supported.

C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?

Only as noted above if there is undue hardship.

D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

Only as noted above if there is undue hardship.

3.3.6 These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?
- All
 Some (explain)
 None (go to 3.3.6 C)
- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?
- Gross
 Net (What is deducted?)
- C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?
- All ignored
 All considered
 Some ignored, some considered. Which ones?
- D. Are the parent with care's basic living expenses taken into account?
- No
 Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
 Yes. Please describe the way in which it affects the obligation.
- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?

No, the only special needs circumstances that are taken into account are special needs of the child.

3.3.7 These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?

No, the obligation of the NRP is not affected by the relationships of the parent with care.

- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?

No the obligation of the NRP to pay child support is not affected by prior children,

unless the NRP had established a parental relationship with those children.

B. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?

No the obligation of the NRP to pay child support is not affected by new children.

3.3.8 These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?

The guidelines are applied differently in the case of shared custody. Essentially the guidelines are applied to both parents and the parent with larger income pays the one with less income the difference between the two support levels. 'Equal time' is defined as 40% or more.

B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

If the amount of time with a parent is less than 40% he or she is defined as a non-custodial parent and must pay the full child support amount in the guidelines.

3.3.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?

Age is not a factor except with respect to the age of majority. The age of majority is 18 in most provinces in Canada, but it is 19 in British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Yukon. Parents have a legal obligation to support their children only up to the age of majority except in circumstances of continued dependency as discussed below; however that does not mean that child support payments will necessarily or even usually end at that time. Many agreements may voluntarily provide for continuing child support payments. Nevertheless, the guidelines are designed to apply only up to the age of majority or where there is a continuing legal obligation to support. There is a continuing legal obligation to provide support if the child remains dependent due to special needs (such as severe disability) or is attending post secondary education. The majority of children do continue to some form of post secondary education in Ontario.

In addition, for parents who are separated but not seeking a legal divorce, Ontario's Family Law Act automatically requires support for a child over the age of majority who is enrolled in full time studies

B. Does the number of children affect the amount of the obligation? How?

Yes as set out in the tables, according to the equivalence scales described above, but only children for whom the NRP is responsible.

C. Is there a minimum desirable amount set per child?

Just as set out in the guidelines. There is not a minimum set per child. If the NRP's income is too low, the amount is zero.

D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).

The following added expenses may be taken into account in establishing the amount of child support:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities.

Extraordinary expenses are defined according to:

- (ii) the nature and number of the educational programs and extracurricular activities,
- (iii) any special needs and talents of the child or children,
- (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant

E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

See above

3.3.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.

These are not taken into account, unless there was a transfer of assets as part of the parents' voluntary agreement.

B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:

- lump sum payments
- previous voluntary child maintenance payments

- **spouse maintenance (alimony) or other financial transfers to ex-partners**
- **transfer of pension rights**

The Court can take into account lump sum or previous transfers of property and make discretionary adjustments to the guidelines as a consequence, if these have not been previously agreed to by the parties.

3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS

3.4.1 Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.

If a parent does not supply the documents needed to prove income, the court may order that he or she do so or face serious penalties. The penalties could include being found in contempt of court (and then going to jail) or having to pay the other parent's legal costs.

3.4.2 Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?

Data not available.

3.4.3 When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- **child's age/education level**
- **marriage/cohabitation of child**
- **any other characteristics of child**
- **cohabitation/remarriage of parent with care**
- **cohabitation/remarriage of non-resident parent**
- **any other characteristics of either parent.**

The obligation ends at the age of majority or, if the child continues to be dependent by reasons of disability or other causes, including postsecondary education, the obligation may continue upon agreement of the parties or, if there is no agreement, a ruling by the court. The obligation is not affected by any other characteristics.

3.4.4 These questions deal with revisions to the amount due.

A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)

This has been an area of some confusion in Canada, and a recent Supreme Court decision clarified the law, but in such a way that there will likely be more confusion over the next several years. In Ontario there is no automatic revision or updating of support agreements. In the federal guidelines, the concept appears to be that the amount of child support will be varied as the NRP's income changes, so that if the NRP's income goes up then the amount of child support goes up – which supposedly is the means of responding to inflation. How exactly this was supposed to have occurred is not clear, and in fact officials have said that the intention had been to set up an administrative mechanism, but this was never done.

In the absence of an administrative mechanism, the custodial parent may seek a change to a voluntary agreement or a court order if she suspects that the NRP's income has changed, and the recent Supreme Court decision back-dated the retroactive adjustment of support

payments to the date of the inquiry by the payee. The NRP is then required to provide documents showing his income. If the NRP does not provide documents, he may be guilty of contempt. The court can then vary the amount to reflect the new support requirements according to the guidelines, but the recent Supreme Court decision seemed to give lower courts more flexibility in deviating from the guidelines.

In Quebec, child support payments are automatically indexed to the cost of living. Under Section 25.1 of the Divorce Act, provinces may develop and implement 'recalculation services' automatically to review child support amounts. Ontario does not currently have such a service; however, Newfoundland, Manitoba, and PEI have started implementing pilot projects of such a service. This whole area will doubtless be clarified over the next decade in Canada.

B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?

There is no automatic review but the NRP is required to report changes in income, upon the request of the parent with care. However, there is competing case law in Canada on the circumstances in which the NRP is required to report changes in income (and retroactivity), and a Supreme Court decision clarifying this issue is anticipated on July 31, 2006. The Supreme Court has now ruled and it turns out that date of the new support requirement seems to be the date that the custodial parent enquires of the NRP's income. Some of the interpretations are suggesting that this will now be done in an annual letter requesting a copy of the NRP's annual tax return, which he is required to provide. The core criterion is change in the NRP's income.

C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?

Any parent can request a revision. The factors considered when a revision is made include changed income of the NRP, new special needs of the child, undue hardship or other exceptional circumstances. The onus is on the custodial parent to request income information and the NRP to provide it, in the case of income change.

3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE

This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitees, and parents who have never lived together).

3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitees, and parents who have never lived together?

Agencies are not involved in determination, except voluntarily to try and come to an agreement before approaching the courts. Therefore this section is not completed for Ontario. As noted, Quebec provides for administrative indexing consumer prices, and three provinces have pilot projects allowing for administrative price indexing.

3.5.2 How would you describe the main method of Agency determination of the amount of maintenance on the following continuum:

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

Please report any differences between separated married parents, separated cohabitees, and parents who have not lived together.

3.5.3 Is there a minimum amount of maintenance required?

- No
- Yes. How much? What are the circumstances in which it is used?

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

3.5.4 These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

A. How much of the non-resident parent's earnings are considered?

- All
- Some (explain)
- None (go to 3.5.4 C)

B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?

- Gross
- Net (What is deducted?)

C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?

- All ignored
- All considered
- Some ignored, some considered. Which ones?

D. Are the non-resident parent's basic living expenses taken into account?

- No
- Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
- Yes. Please describe the way in which it affects the obligation.

E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

How?

F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

3.5.5 The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?**
- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?**
- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?**
- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?**

3.5.6 These questions deal with how the Agency takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?**
- All
 - Some (explain)
 - None (go to 3.5.6 C)
- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**
- Gross
 - Net (What is deducted?)
- C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**
- All ignored
 - All considered
 - Some ignored, some considered. Which ones?
- D. Are the parent with care's basic living expenses taken into account?**
- No
 - Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
 - Yes. Please describe the way in which it affects the obligation.
- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

3.5.7 These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**
- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**
- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

3.5.8 These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?

- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

3.5.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?

- B. Does the number of children affect the amount of obligation? How?

- C. Is there a minimum desirable amount set per child?

- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).

- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

3.5.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.

- B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**
- lump sum payments
 - previous voluntary child maintenance payments
 - spouse maintenance (alimony) or other financial transfers to ex-partners
 - transfer of pension rights.

3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS

3.6.1 Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.

3.6.2 Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?

3.6.3 Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.

3.6.4 When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- child's age/education level
- marriage/cohabitation of child
- any other characteristics of child
- cohabitation/remarriage of parent with care
- cohabitation/remarriage of non-resident parent
- any other characteristics of either parent.

3.6.5 These questions deal with revisions to the amount due.

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**
- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.

3.7 REVIEW AND SUMMARY

- 3.7.1 Please review all your answers in Part Three, “The Determination of Child Maintenance Due.” Please summarize the key differences in the ways in which separated married parents, separated cohabitees, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?**

The prior status of the parents is not a factor in deciding on child support in Canada. The main difference is that a legal divorce requires an action in court, while a separation does not. Therefore, many parenting and child support agreements in divorce cases will be reviewed by the courts but not necessarily consensual agreements in separations. I am informed by lawyers with experience in family court that the court usually does not intervene in case of legal divorce if there is a prior separation agreement that is working for both parties, where there has been legal representation and to which both parties are still agreeable, so perhaps there is in practice even not much difference here. In any case, in theory, there is no difference in the amount of the child support to be paid based on the prior status of the parents.

- 3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?**

No data available.

- 3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

No data available.

- 3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

We do not have Agency-based agreements in Ontario. Quebec has price indexing and three provinces are experimenting with administrative agencies imposing price indexing.

- 3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?**

A parent may seek a court order varying a voluntary agreement but would need grounds for doing so. Under the Divorce Act or under Ontario's Family Law Act, the amount of child support agreed upon would have to be "unreasonable" for the court to 'go behind' the agreement of the parties. The amount of child support agreed upon being *insufficient* is not in itself a cause for adjustment by the court should a dispute arise. This review for "unreasonableness" is different from future variations of the support obligations due to changes in the circumstances of the parties (for example, an increase in support because the NRP's income has substantially increased as well). If the court for whatever reason did decide to vary the voluntary agreement it would use the guidelines as the basis of recalculation (although the recent Supreme Court decision seems to give a little more discretion in that regard).

A voluntary agreement is binding if it is oral or written. Obviously it is harder to enforce an oral agreement, or resolve a dispute if one arises, although it is in theory binding. Couples are always encouraged to have a written agreement. A written agreement is binding if it is signed by both parents, unless it can be shown that there are legal reasons for discarding the agreement (e.g.; coercion).

If there is no dispute, the court does not review support agreements that are simply registered with the court as part of a voluntary support agreement. The court does review the child support provisions contained in pre-existing separation agreements in the context of divorce proceedings, although these do not necessarily form part of the legal divorce ruling and the court would be reluctant to vary this agreement in most circumstances.

PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE

This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.

4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE

4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.

In Ontario, if there is no court order for child support or child support agreement filed with the court, child support will be paid directly between the parents. There must be a consent order or other court order for child support to be paid through the government's 'Family Responsibility Office' (FRO). However, once there is a court order, child support will automatically be paid through the FRO, unless the parents opt out. 'Opting out' is a formal procedure in which various forms have to be signed and processed. In other words, the onus is on the parents to withdraw if there is a court processed support order. See fuller discussion below. (Ontario is an 'opt out' province; several of the provinces are 'opt-in' provinces. This would seem to create an ideal opportunity for research, but an improved Maintenance Enforcement Survey is just now being established to collect consistent micro data from all provinces.)

From Ontario Ministry of Community and Social Services web site
(<http://www.mcsc.gov.on.ca/mcsc/english/pillars/familyResponsibility/>):

In Ontario the Family Responsibility Office (FRO) receives every support order made by a court in Ontario and enforces the amounts owed under the order. It also enforces private written agreements that include child or spousal support terms. Private written agreements can include separation agreements, other domestic contracts and paternity agreements. These types of agreements must first be filed with the Ontario Court of Justice, the Superior Court of Justice (Family Court) before they can be enforced by the FRO.

Payors and recipients may opt out of the Family Responsibility Office (FRO) in writing. This means that they withdraw their court order or agreement and any related support deduction order from enforcement by the FRO. Both the payor and recipient must complete the Notice of Withdrawal form. If the payor is not in compliance with the payment obligations the recipient may withdraw from the program unilaterally (without the payors consent). To withdraw without the payors consent complete the Notice by Support Recipient of Unilateral Withdrawal. Please note that if the case is currently on assignment [meaning that the support is being used to offset social assistance the recipient is getting], consent to withdraw must also be obtained from the Ministry of Community and Social Services or the municipality to which the case is assigned. If the case was previously assigned then any arrears owing to the assignee will continue to be enforceable

by the FRO.

If a case has been registered with the Family Responsibility Office (FRO), the payor must make ALL support payments through the FRO. Otherwise the FRO's records will not be accurate and it may show the case as being in arrears when it is not. The FRO charges a \$100 administrative fee to make adjustments due to a direct payment, and it collects this fee from the payor. If the recipient regularly accepts direct payment from the support payor, the FRO may refuse to enforce the support order or agreement.

Further information on Canada's system of enforcement of maintenance orders may be found at: <http://www.justice.gc.ca/en/ps/sup/enforcement/index.html>

4.1.2 Are these direct payments monitored, and if so, how?

No, they are not.

4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?

A parent can always go to court to register a child support agreement. If there is a voluntary agreement that is not disputed then it should be relatively simple to file this with the court. If the agreement is disputed or if there is no agreement, then the legal process will take more time and be more costly but it will eventually be able to sort out the issues and register a child support order. Once a child support order/agreement is filed with the court, in Ontario the FRO automatically takes over responsibility for enforcement. Parents may have previously withdrawn voluntarily from the FRO, but if the custodial parent is not getting regular support, she might wish to reconsider. If clients who withdrew from the Family Responsibility Office wish to have their case re-opened, either party can complete a Notice of Re-Registration and the Director will re-open the case and resume enforcement. The Director will require a new Registration Package and Statement of Arrears in order to open the file. The parties will be required to pay a re-registration fee of \$50 each.

4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.

There are no data available. My perception is that the advantage of direct payment is the more flexible arrangements that can be made between parents, and the lack of an expensive bureaucracy. As well, there *may* be reduced delays in payments if the NRP is highly cooperative. Against this, however, is the problem that payments may be unenforceable by the custodial parent and may never be forthcoming, which is the reason that the government system was established in the first place. Moreover the FRO has a number of mechanisms available for enforcement at its fingertips, which would be difficult and expensive for an individual. However, these are just subjective impressions.

4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE

4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.

Yes, the organization that has responsibility for collecting and forwarding child support in Ontario is the Family Responsibility Office (FRO). Similar organizations exist in all provinces and territories. The FRO does not assess child support awards; this function is reserved for the courts. A fuller description of the purpose and role of the FRO is below from the FRO web site: <http://www.mcass.gov.on.ca/mcass/english/pillars/familyResponsibility/programs/>

Ontario's Family Responsibility Office (FRO) is a division of the Ministry of Community and Social Services and operates under the authority of the Family Responsibility and Support Arrears Enforcement Act, 1996. The FRO receives every support order made by the Ontario courts and enforces the amounts owed under the support order.

The FRO also works with enforcement programs in other jurisdictions that have a reciprocating agreement with Ontario to collect and distribute support payments in situations where one parent lives outside of Ontario.

Our Role

Our role is to enforce court orders for child and spousal support by ensuring that support payments flow properly from payors (people who make support payments) to recipients (people who receive them). The FRO has the legal authority to take enforcement action against those who do not meet their family responsibilities. The FRO also enforces private written agreements such as separation agreements, domestic contracts and paternity agreements.

It's important to note that the FRO only enforces those provisions of an order or agreement dealing with support. **The FRO does not become involved in child custody or access issues.**

Our Vision

Our Vision is to work together with our clients and partners to ensure support responsibilities are met. We do this by developing constructive relationships, addressing challenges and treating everyone with fairness and respect.

Our Mission

Our mission is to help families meet their support obligations.

4.2.2 Please provide information about the administrative and procedural arrangements for collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabitants and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.

There are no differences for parents based on the nature of their relationship. There is only one scheme for enforcement of child support. Voluntary arrangements are left to the individual parties, but all court ordered or court processed support orders are enforced through the FRO (or similar agencies in other provinces). So long as the support order has been processed through the court (even if it is a voluntary agreement filed with the court), it is treated the same and there is no difference in enforcement based on how the support

order was determined. The one exception is for recipients of social assistance, who are required to agree only to a voluntary support order that at least meets the child support guidelines.

Following is detail on the administrative arrangements, from the FRO web site.

Administrative arrangements for the recipient

Step 1: Obtain court order and support deduction order

If you were represented by a lawyer in court, your lawyer should have prepared the court order and the court will prepare the support deduction order.

If a lawyer did not represent you, you should speak to the court staff.

The court order and support deduction order are sent to the Family Responsibility Office (FRO).

Step 2: Obtain FRO case number and registration package

When the FRO receives your support deduction order, you are assigned a FRO case number. You will receive a letter from the FRO with your case number and a registration package. Please complete the registration package and return it to the FRO as soon as possible.

Step 3: Support deduction notice is sent to employer

If the name of the payor's (person who owes support) employer or income source was provided on the support deduction order or your filing package, the FRO will send a support deduction order to the employer to notify them they are obligated to deduct your support payments from the payor's wages or salary and forward these deductions to the FRO. A support deduction notice is automatically sent when there is a known employer.

Step 4: Payment

The FRO will send you the payment when it is received. Whenever possible direct deposit is the preferred method of payment. It is more efficient and secure. To arrange for Direct Deposit, fill out the Registration for Direct Deposit for Recipients form in your registration package, or print it off of the [website](#) and return to the FRO.

Administrative arrangements for the payor

When the court makes a support order, it also makes a support deduction order that gives the Family Responsibility Office (FRO) the right to send a support deduction notice to your employer or other regular income source who will then deduct the amount of support that you owe from your wages or other income.

It can take time before the FRO receives the information it needs to process the support payments. During that period, you are still responsible for making any support payments owing.

Until deductions by your employer or income source begin, you must make support payment through the FRO and not directly to the recipient. There are a variety of

payment options available for your convenience. These methods can also be used for support payors who are not on a regular payroll.

If your employment or regular income ends, you are still required to make your support payments. You can do this by sending your payments directly to the FRO. Keep records of the support payments that you make. The FRO does not issue year-end statements.

You must let the FRO know immediately if: you move or change your telephone number(s); you change employers or there is any change in your income source; and there are any changes to your court order, or your support obligation ends or changes.

If you fall behind in your support payments it is important to contact us as soon as possible. We will try to work with you to enter into an agreement to pay the arrears by installments in addition to paying your ongoing support payments. This is known as a Voluntary Arrears Payment Schedule (VAPS). If necessary, the FRO is authorized under the Family Support Arrears Enforcement Act, 1996 to proceed with enforcement action.

Administrative arrangements for the employer

Employers and payroll professionals who deduct support payments can send the payments to the Family Responsibility Office (FRO) using one of several options. You can request more information on any of these payment methods, by using the online information request form.

Electronic payment methods

Five e-commerce/electronic options are available. Using one of these payment methods can save your organization time, money and effort.

Corporate Pre-Authorized Payment Plan

Use this method if the same amount is deducted on a regular basis and you only have one or two employees making support payments. Deductions are automatically made at a time/frequency that you select.

To set up this option, contact the FRO's electronic commerce coordinator. Contact details are on the back of the support deduction notice.

Online Banking

The FRO is a registered payee with most major financial institutions. Payments can be made by telephone or via online banking arrangements.

Here's what to do.

Set up this method online with your bank.

Select the "Family Responsibility Office" as the payee. It is often listed under the category "Ontario" and sub-heading of "government" or "other".

When asked for the "account number", please enter the employee's Family Responsibility Office case number. This case number is on the first page of the

support deduction notice sent to your organization. This is a seven-digit number starting with zero (0).

To set up this option, contact the FRO's electronic commerce coordinator. Contact details are on the back of the support deduction notice.

Electronic Corporate Link to Internet Payment Services (ECLIPS)

The Electronic Corporate Link to Internet Payment Services (ECLIPS), sometimes called Internet payment or electronic payment, can be used for 1 to 1,000 employees. It is a fast and easy-to-use payment method that protects confidential information.

You enter information for each employee into a secure website and authorize payment. This information is sent to the bank for processing. If you do not authorize payment, nothing is paid to the FRO.

Using this method, you can produce reports that show the number of payments made for each employee or all employees, and obtain a payment confirmation number for each payment. You can even notify the FRO electronically when an employee has been terminated, laid-off, or if there is an interruption of support payments. This saves you from having to send a letter to the FRO.

ECLIPS offers the following benefits:

- security when sending information on the Internet; 3 levels of user access (service administrator, authorized user and clerical user); saves time by allowing user to upload payment information from computer and reduces processing time to a few minutes; direct control since payments are processed only when you authorize and approve payment; payment records are stored for 13 months online, and then archived for an additional 6 years; payments are processed within 36 hours; changes to employment can be communicated online, eliminating the need to send a letter; no charge for this service; eliminates need to issue manual cheques; sends all payments in one transaction; fewer calls to your payroll department about support deduction payments; can issue post-dated payments (up to 90 days in advance); and can recall and delete unprocessed payments online.

To use ECLIPS, you will need Internet access using a browser with 128 bit encryption (we can assist with a free upgrade if you don't have this level of security).

To set up this option or to access the demonstration site, contact the FRO's electronic commerce coordinator. Contact details are on the back of the support deduction notice.

Family Responsibility Office Flat File

The Family Responsibility Office Flat File is used by organizations that send support deduction payments for hundreds of employees. It is a special file format that you program into your payroll system. Each pay day, you send a file and electronically transfer funds to the Family Responsibility Office account.

For details on this option or to get a copy of the Flat File specifications, contact the FRO's electronic commerce coordinator. Contact details are on the back of the support deduction notice.

Electronic Data Interchange (EDI)

The Family Responsibility Office also accepts a specialized file called the Electronic Data Interchange. (Only versions 3020 and 3050 can be used.) This payment method is generally only used by very large organizations.

For details on this option or to get a copy of the Electronic Data Interchange file specifications, contact the FRO's electronic commerce coordinator. Contact details are on the back of the Support Deduction Notice.

Payments by manual cheque or money order

If you are making payment by manual cheque or money order, please follow these instructions.

Make the cheque or money order payable to: Director, Family Responsibility Office.

On the front of each cheque or money order, record the employee's seven-digit Family Responsibility Office case number and the employee's last name. (You will find the case number on the first page of the support deduction notice that is sent to your organization. It's a seven digit number beginning with zero(0).) Both the case number and the employee's last name are required by the FRO's payment processing centre.

4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).

In Ontario, payments are normally automatically withheld from wages and sent directly to the FRO from employers. Only where there is no regular employer or self-employment is there direct payment to FRO from the NRP.

4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?

As discussed above this was a major issue of contention with respect to the FRO. After the cuts in the FRO made in 1996, there were very long delays in payments to custodial parents, even though the NRP had already paid. This problem has been resolved and the government claims that when the Family Responsibility Office receives the payment from the NRP, it is now processed and sent out within 24 to 48 hours.

4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?

The advantage is that the government takes full responsibility for following up on non-payment by NRP's and ensuring compliance. The government can also, in theory, take advantage of superior technology to make the system as efficient as possible. The disadvantages are that the system is expensive and subject to political whim (as in the sudden cuts in staffing in 1996) and that parents may be left without recourse if the Maintenance Enforcement Office is itself to blame for delays (as it was in Ontario in 1996). Another possible disadvantage is that the government enforcement mechanism may be inflexible and does not readily allow parents to make adjustments themselves on a mutually consenting basis. All of these are only my perceptions of course.

4.3 NON-COMPLIANCE

4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen? *This question is kind of odd in the Canadian context because it seems only to be about 'mediated arrangements.' There are no enforcement distinctions in Canada between mediated and non-mediated arrangements. The following answers apply for both mediated and non-mediated agreements.*

- Attachment of earnings
- Deductions from bank accounts/savings/pensions
- Deductions from benefits
- Recovery through tax
- Seizing and selling assets
- Driving licenses revoked
- Passport confiscation
- Criminal prosecution
- Imprisonment
- Interest charged on debt
- Other

See below for a description on enforcement tools available to the FRO.

The FRO may take the following actions to recover money that is owed to families and children:

Driver's Licence Suspension

FRO will begin the driver's licence suspension process if a payor continues to default on support payments after the FRO has mailed a notice to the payor's address or contacted the payor about the arrears. To avoid having the licence suspended, the payor must take action within 30 days of receiving the first notice in the mail.

A payor has three options once a first notice of a Driver's Licence Suspension is received:

1. pay all of the arrears owing;
2. contact FRO to work out a repayment agreement. This is called a Voluntary Arrears Payment Schedule (VAPS).
3. obtain a refraining order from the court directing the FRO not to suspend the licence while the payor applies for a variation to the existing support order.

Credit Bureau Reporting

Support payors who are in arrears may be reported to credit bureau, making it more difficult for them to obtain loans or other credit while they owe money to families. The FRO will send a notice of its intent to report a defaulting payor to the credit bureau. The

payor must contact the FRO within 15 days to pay the arrears in full or make a payment arrangement. If the payor does not contact the FRO, further enforcement actions can be taken in addition to credit bureau reporting. The report will stay on the payor's credit rating for six years from the date it was reported.

Garnishment of Bank Accounts Including Joint Bank Accounts

A garnishment is used to seize money in a bank account or other money owed to the support recipient. Bank garnishments apply to bank accounts held either solely or jointly by the support payor in the province of Ontario. 50% of funds held in a joint bank account with a defaulting payor may be seized for the payment of support arrears.

Writ of Seizure and Sale

The FRO can issue a writ of seizure and sale against a payor's property or assets. This enforcement action prevents the payor from making certain financial transactions until the support arrears are paid. For example, the support payor will have to pay any arrears owing before closing a house sale or renewing a mortgage.

Registering Support Orders as Security under the Personal Property Security Act

The FRO can register support debts under the Personal Property Security Act. This registers the arrears as a lien or charge on any interest in all the personal property in Ontario that the payor owns or holds at the time of registration, or acquires afterwards. If and when the support payor attempts to sell such property, a search will indicate that there is a registration against the support payor. The support payor will have to pay any support arrears owing before certain financial transactions involving personal property can be made. For example the support payor would have to pay arrears owing before selling a boat.

Federal Licence Suspension

FRO will begin the federal licence suspension process if a payor continues to default on support payments. Federal licences affected include passports, pilots licence, and maritime and navigational licences and certificates. In order to avoid federal licence suspension the payor must contact the FRO to make payment arrangements or pay the arrears in full.

Interception of Lottery Winnings

Support payors who are in arrears may be reported to the Ontario Lottery and Gaming Corporation. This means that the FRO has the authority to seize a payor's lottery winnings of \$1000 or more, if there are family support arrears.

Default Hearings

The FRO may bring a payor to court on a Default Hearing if the payor is not making support payments. A Default Hearing provides the support payor the opportunity to explain to the court the reasons for non-compliance of their support order.

The court has a number of powers at the Default Hearing. For example, the court may order the payor to make payment(s) toward the support owed, or else be jailed for up to 180 days.

During a Default Hearing, if a court finds that a third party is involved in sheltering a payor's assets or income from the enforcement of the support order, the court can make an order against the third party.

Division of Federal Funds

The FRO may also collect funds owed to the payor from federal sources (e.g., from an income tax refund, GST rebates, CPP or Employment Insurance Benefits).

Administrative Fee for Enforcement

The FRO may charge an administrative fee of \$400 if a payor's account is not being paid regularly and on time thereby requiring the FRO to take actions such as suspending a payor's driver's licence or bringing the payor to court.

It is important that payors contact the FRO if they are having problems making their support payments. Payors may be able to negotiate a plan for repayment of arrears with the FRO.

4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)

No information available on Ontario. However below is information on Saskatchewan, which like Ontario has an 'opt-out' system and BC, which unlike Ontario has an 'opt-in' system. BC's population is about 4.3 times that of Saskatchewan.

Table 19
Number and type of enforcement actions for maintenance enforcement cases administered, 2004/2005¹

	Saskatchewan		British Columbia	
	No.	%	No.	%
Administrative enforcement action:				
Demand for payment	93	1	30,675	20
Demand for information	4,023	35	1,431	1
Maintenance enforcement plan trace	2,745	24	49,248	31
Jurisdictional garnishment and attachment	2,271	20	30,975	20
Voluntary payment arrangement	0	0	597	0
Credit Bureau reporting	0	0	7,290	5
Land registration	543	5	2,826	2
Personal property lien	0	0	2,808	2
Motor vehicle licence intervention	384	3	3,132	2
Writ of execution	57	0	0	0
Collection calls	0	0	0	0
Examination of payor	0	0	0	0
Interception of provincial funds	0	0	0	0
Order forfeiture of security	0	0	3	0
Other administrative enforcement actions	0	0	16,785	11
Subtotal	10,116	87	145,770	93
Administrative action under federal legislation:				
Federal trace (FOAEAA-Part I)	0	0	3	0
Interception of federal funds (FOAEAA-Part II)	1,464	13	8,604	5
Federal licence suspension (FOAEAA-Part III)	0	0	2,508	2
Federal garnishment (GAPDA)	6	0	27	0
Subtotal	1,470	13	11,142	7
Total administrative actions	11,586	100	156,912	100
Court enforcement:				
Default hearing	210	99	633	21
Committal hearing	3	1	165	5
Execution order	0	0	18	1
Register order against personal property	0	0	9	0
Appointment of receiver	0	0	3	0
Order to provide information	0	0	0	0
Other court enforcement activities ²	0	0	2,235	73
Total court enforcement actions	213	100	3,063	100

Source: Statistics Canada (2006) *Child and Spousal Support: Maintenance Enforcement Survey Statistics, 2003/2004*.

4.3.3 When parents with care and their children do not receive the child maintenance due to them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)

In the case of non-payment, the parent with care has two choices. They can remain with the FRO and the FRO will attempt to enforce the support order, using its enforcement mechanisms outlined above. Unless there are arrears owing from before registration with the FRO the follow up on non-payment should happen automatically. This is the main advantage of the FRO route. If there are arrears owing from before the FRO was involved, the claimant can fill out a 'statement of arrears' form and the FRO will pursue the arrears collection.

Alternatively, the custodial parent can opt out of the FRO and try and collect the support payments herself. She can do this through the courts, with the usual instruments such as garnishing of wages. However, she will have to pay all the expenses.

4.4 GUARANTEED MAINTENANCE PROGRAMS

4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?

Yes (continue)

No (go to Part Five)

4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an income test? Is this available only for those with certain court or agency agreements, or can those with voluntary agreements also participate?

4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?

4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?

4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?

4.4.6 What are the perceived advantage and disadvantages of the scheme?

PART FIVE: FINANCIAL INTERACTIONS

This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.

5.1 TREATMENT OF MAINTENANCE RECEIVED

5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).

Child support payments are not counted as income of the recipient parent for income tax purposes, regardless of the recipient parent's current marital status.

5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.

Social assistance is reduced dollar for dollar in most provinces. If the custodial parent is on social assistance the child support will be assigned to the social assistance agency (which may be a municipality) and the support payment will then be paid by the FRO to the social assistance agency, rather than to the custodial parent.

5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?

Social benefits that are provided according to the taxable income of the recipient are *not* affected by the receipt of support payments; for example, child tax credits are not affected by the receipt of support payments.

5.2 TREATMENT OF MAINTENANCE PAID

5.2.1 How does child maintenance paid interact with the tax system, in both central and local tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).

The child support is not a tax deduction for the NRP and does not affect tax obligations, either provincial or federal. There is no difference between voluntary and non-voluntary agreements or marital status in this respect.

5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?

The Ontario laws make limited provision for the deduction of support payments from a NRP's social assistance benefits; however such deductions are very rarely made in practice and only in the context of a full review of all the circumstances of the case. In practice, social benefits of the NRP are almost always unaffected by making child support payments. Social assistance recipients' income is usually too low to pay benefits and social assistance cannot be garnished. Other social benefits are unaffected as well.

5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?

No. In general, as well, child support debts are not extinguished through personal bankruptcy of the support NRP.

PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.

6.1 COSTS OF THE CHILD MAINTENANCE REGIME

6.1.1 If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.

Ontario has a population of about 12,630,547 people as of 1 April 2006. This is 38.9% of Canada's population of 32,501,147 people as of 1 April 2006. Multiply by 2.57 to approximate costs for Canada as a whole. According to Statistics Canada, Ontario processed about 178,000 child support and alimony cases (about 90% child support) through its Family Responsibility Office in 2005. According to private correspondence with the FRO the number of active cases was 185,000 in March of 2006. The higher FRO case estimate may be due to the inclusion of reciprocal enforcement orders with other provinces that are not included in the Statistics Canada data.

The administrative costs (operating only – not including capital) of the Ontario Family Responsibility Office are estimated to be \$34,166,000 for the fiscal year 1 April 2006 to March 31 2007; as set out below.

Family Responsibility Office

Salaries and wages	18,412,300
Employee benefits	2,747,300
Transportation and communication	2,092,100
Services	9,969,000
Supplies and equipment	945,300
Total Operating Expense	34,166,000

Unfortunately that is all the data available. The courts do not keep any financial data broken down by function. There are no data on costs per case reported but a simplistic division would give an administrative cost per case of \$185 to \$192 per case in 2006 assuming that the number of cases remained roughly the same as in 2005, with the Ontario FRO figures or the Statistics Canada figures respectively

6.1.2 If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.

No estimate is possible. It appears that the courts do not keep cost records broken down by this

Canada response

detailed of a function.

6.1.3 If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.

Not applicable.

6.1.4 If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.

Not applicable.

6.1.5 Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)

The Family Responsibility Office (FRO) charges the following administrative fees.

Fees for payors

\$100 for each adjustment that the FRO makes to the payor's account when the payor provides direct payments to the recipient or children, instead of to the FRO.

\$400 if the payor's account is not being paid regularly and on time, thereby requiring the FRO to take actions such as suspending the payor's driver's licence or bringing the payor to court.

Fees for payors or recipients

\$25 for a statement of your account with the FRO, which you may need for court or your own accounting purposes. (The first statement will be provided at no charge.) Download the form by clicking Request for Director's Statement of Arrears (Statement of Account) .

To re-open a closed case, a fee of \$50 each will be charged to the support recipient and the support payor to re-register with the FRO at a later date.

Fees for the general public

\$150 is payable when the FRO provides a letter, usually on the request of a lawyer involved in a real estate transaction, confirming that an individual does not have a case with the Family Responsibility Office. Download the form by clicking Confirmation of Identity Letter Request.

There are also various legal costs but these are charged by individual lawyers. There are also various court fees. If a case is enforced by courts rather than the FRO there will also be fees incurred of various kinds, but these will depend upon the individual case.

6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.

Legal aid may be available on an income tested basis, but the legal aid program does not break down its costs by function. If the custodial parent is on social assistance, the Ontario Works delivery agency will assist her in applying for a court order and, presumably, pay some of her costs.

6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE

In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.

6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabiters, and parents who have never lived together, please do so.

Unfortunately there is no data source in Canada that distinguishes between spousal support and child support. All the household spending surveys and the administrative data lump together spousal and child support into a single field, so it is not possible to separate the two. The detailed census forms (20% sample) do not contain specific information about child support or spousal support, but include them only in a single field for all income. Therefore it is not possible to report on the percent of parents with child maintenance agreements only. However, I derived a table from the Survey of Household Spending that shows the percent of households spending on *either or both* spousal and child support, as can be seen below.

Table 6.2.1 - Survey of household spending (SHS), household's reporting spending on alimony and child support, annual					
Year	Average expenditure	Percent of households reporting	Estimated number of households reporting	Estimated percent of households with children ¹	Median expenditure per household reporting
1998	\$ 221	3.8%	416,890	9.4%	
1999	\$ 226	4.1%	461,430	10.1%	
2000	\$ 314	3.8%	433,490	9.4%	
2001	\$ 251	4.3%	496,540	10.6%	
2002	\$ 251	4.3%	497,410	10.6%	

2003	\$ 264	3.8%	442,470	9.4%	\$ 4,200
2004	\$ 276	3.8%	455,650	9.4%	\$ 4,500

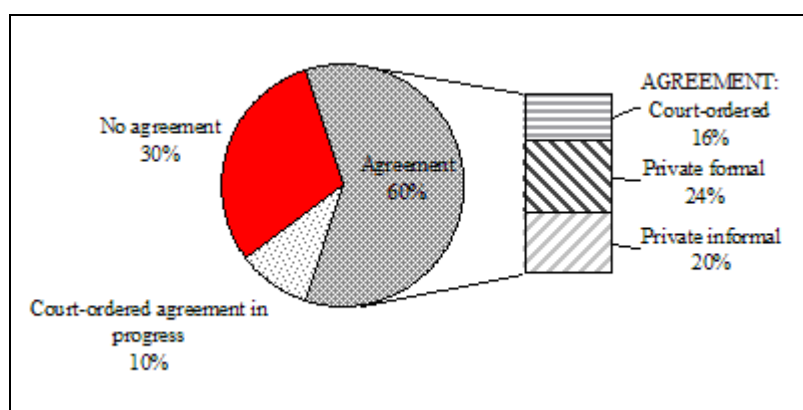
1. About 40.5% of households have children.
 Source: Statistics Canada; author's table derived from CANSIM data set of survey of household expenditures.

The longitudinal survey of children and youth aged 4-15 years of age noted below does give a breakdown of types of support agreements by types of separation. This survey was done just after the new federal guidelines had been implemented.

Unless other wise indicated, the following figures in section 6 are from: *When Parents Separate: Further Findings from the National Longitudinal Survey of Children and Youth*; 2005; Phase 2 of a three part project commissioned by the Child Support Team of the Department of Justice Canada on: *The Impact of Parents' Family Transitions on Children's Family Environment and Economic Well-Being: A Longitudinal Assessment*; by Heather Juby, Nicole Marciel-Gratton and Céline Le Bourdais Centre interuniversitaire d'études démographiques Institut national de la recherche scientifique / Université de Montréal (Minister of Justice and Attorney General of Canada).

As the figure (Figure 6.2.1) below indicates, a child support agreement had been reached for 60% of children aged 4-15 years in 1998-99, whose parents had separated within the two preceding years. Almost three quarters of support agreements were reached privately, although the majority of these had been drawn up with legal assistance. Altogether, only 16% of children had support agreements contained in a court order, although there was one in progress for another 10%. Not all separating couples reach an agreement on child support; among the children in this sample there was no child support agreement and none in view, for three children in ten.

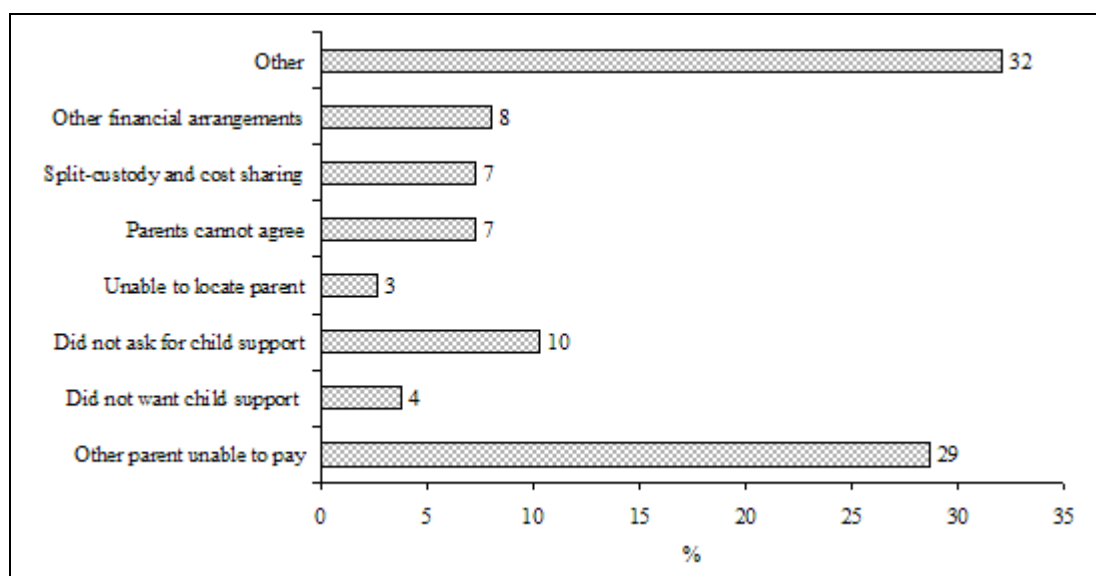
Figure 6.2.1 Distribution of children aged 4-15 years in 1998-99, whose parents separated in the previous two years, according to the existence and type of child support agreement, NLSCY, Cycle 3 (N=864)



6.2.2 What is known about the main reasons a parent with care would not have an agreement?

The Figure below (6.2.2.1) shows the distribution of reasons for there not being an agreement on child support (from *When Parents Separate: Further Findings from the National Longitudinal Survey of Children and Youth*; 2005 cited above). As may be seen, the ‘other’ category is relatively large, accounting for about one-third of non-agreements. However, among the reasons given the largest single reason is that the NRP could not afford to pay (29%) followed by ‘did not ask for an agreement’ (10%). One would imagine that at least some of the 10% in the latter category did not seek an agreement because they thought they would not get any payments in any case, so these two categories likely overlap to some extent.

Figure 6.2.2.1 Distribution of children aged 4-15 years in 1998-99, whose parents separated in the previous two years, according to the reason why no agreement was made on child support payments, NLSCY, Cycle 3 (N=270)



The likelihood of there being a support agreement is also partly dependent upon the type of custody arrangements. The following are summary observations from *When Parents Separate: Further Findings from the National Longitudinal Survey of Children and Youth*; 2005 (p. 44), with the data displayed in table 6.2.2.1 below:

Payments were expected for four-fifths (81%) of children whose child support agreement was contained in a court order. This was so for under two-thirds (64%) of formal private agreements, and under half (47%) of informal private agreements.

- Whether or not support payments are anticipated depends largely on the child’s living arrangements after separation:
- *With the mother:* child support payments are most common when children are living all or most of the time with their mother after separation; child support was supposed to be received for almost three-quarters of those with a support agreement. On the other hand, support payments were *not* expected for a quarter of children in their mother’s custody— a proportion that reaches almost 40% when the agreement is a private informal one.
- *With the father:* payments are less common for children in their father’s custody; approximately one-third of those with an agreement expected child support payments to be made. This supports other studies showing that non-custodial mothers are rarely required to contribute to their children’s financial support.

- *Shared living arrangements*: money rarely moves between households when children are in shared custody. Parents who share custody are often both in paid employment, and are more likely to each assume the costs of their child's financial support when living in their household. It is also possible that the cooperative parenting required to manage shared custody arrangements may also lead to more flexible arrangements over children's financial support.
- When child support agreements concern children of primary school age rather than younger or older children, child support payments are less frequently expected.

Table 6.2.2.2 Proportion of child support agreements that include child support payments, among children aged 4-15 years in 1998-99, whose parents separated in the two previous years, according to various characteristics, NLSCY, Cycle 3 N 513

Proportion of child support agreements that include child support payments 63%

Type of support agreement

- Court order 81%
- Private formal 64%
- Private informal 47%

Living arrangements

- With mother, full-time: 74%
- Court order 84%
- Private formal agreement 77%
- Private informal agreement 62%
- With father, full-time 35%
- Shared 14%

Child's age at separation (with mother)

- 2-5 years 82%
- 6-11 years 65%
- 12-15 years 77%

6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.

Table 6.2.3.1 Distribution of children aged 4-15 years in 1998-99, whose parents separated in the previous two years, according to the method and regularity of child support payments, and the proportion of payment received, NLSCY, Cycle 3

Characteristic	%
<i>N</i>	323
Regularity of payments	
· Regular and on time	73
· Regular but late sometimes	11
· Irregular	11
· No payments for at least 6 months	5
Total	100

Proportion of payment received

· The whole amount	80
· Half the amount or more	6
· Under half	12
· None	2
Total	100

Figure 6.2.3.2 Distribution of children aged 4-15 years in 1998-99, whose parents separated in the previous two years, according to the regularity of support payments and the type of support agreement, NLSCY, Cycle 3 (N=348)

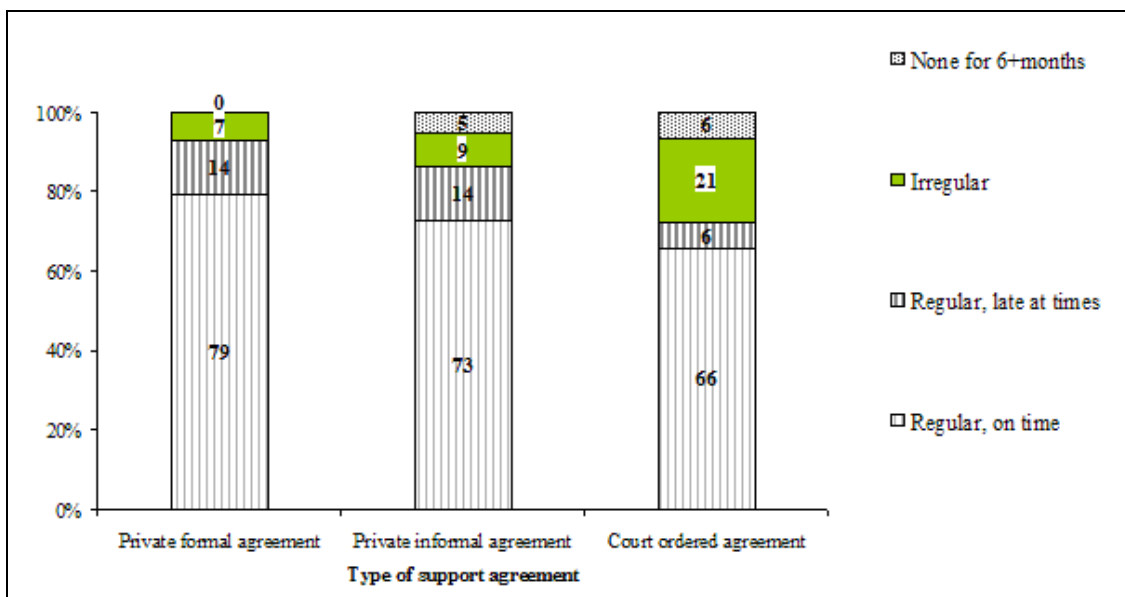
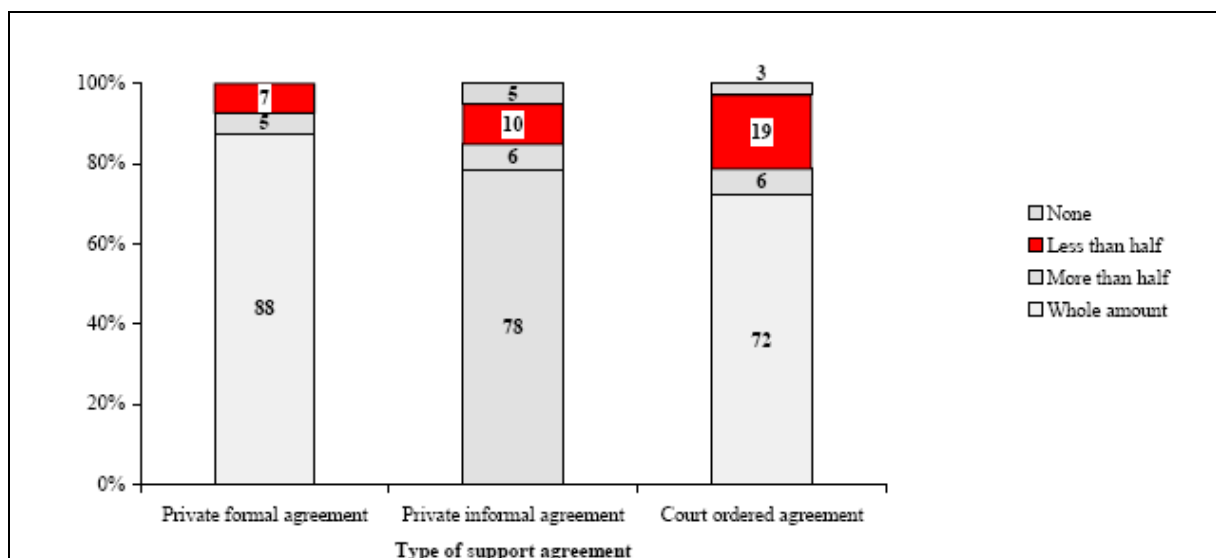


Figure 6.2.3.3 Distribution of children aged 4-15 years in 1998-99, whose parents separated in the previous two years, according to the proportion of child support payments made and the type of support agreement, NLSCY, Cycle 3 (N=349)



6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?

There is no data on the characteristics of non-paying NPRs. Some correlations of under-payment are provided in the table and figures in the previous question.

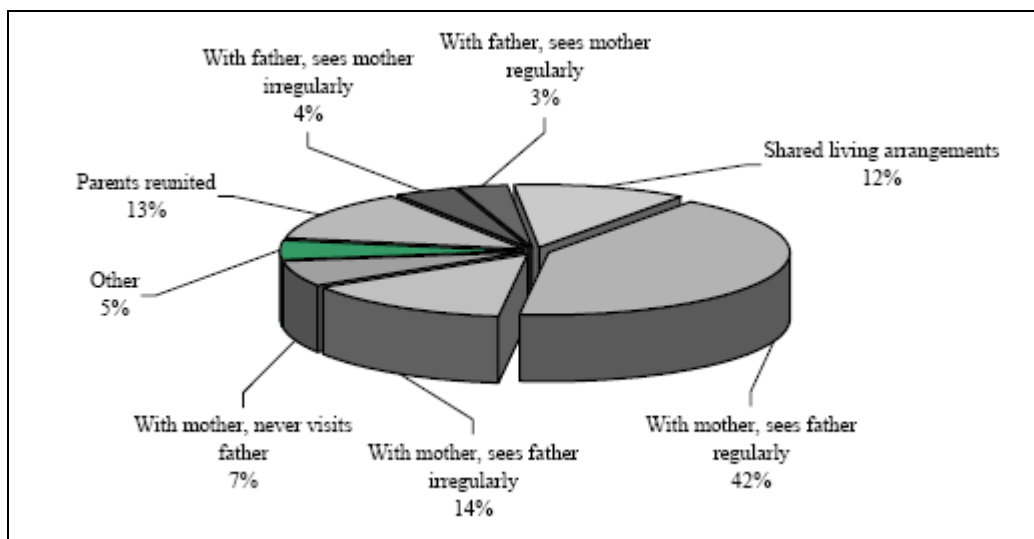
6.2.5 Is there data available on the proportion of cases in which children spend roughly equal time with both parents? What is known about the types of cases that have this type of arrangement?

The following table is from the report *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines* (2002) Minister of Justice and Attorney General of Canada <http://canada.justice.gc.ca/en/ps/sup/pub/rp/report2002.html> p.49 Appendix 4. It is a report *only on divorce cases* and does not include cases where a divorce was not sought, or where the parents were not married. ‘Shared custody’ is defined as at least 40% of time with each parent. ‘Split custody’ is defined as each parent being the custodial parent to at least one child, likely with access to the other parent and/or sibling. ‘Other’ might include arrangements such as supervised visits, or split custody with grandparents.

			Year of judgment			Total
			1998	1999	2000	
Type of physical custody arrangement	Sole-mother	Count	2,579	8,955	6,355	17,889
		% within year of judgment	80.5%	80.3%	78.1%	79.5%
	Sole-father	Count	282	928	770	1,980
		% within year of judgment	8.8%	8.3%	9.5%	8.8%
	Shared	Count	151	604	541	1,296
% within year of judgment		4.7%	5.4%	6.6%	5.8%	
Split	Count	169	577	421	1,167	
	% within year of judgment	5.3%	5.2%	5.2%	5.2%	
Other	Count	22	84	53	159	
	% within year of judgment	0.7%	0.8%	0.7%	0.7%	
Total		Count	3,203	11,148	8,140	22,491
		% within year of judgment	100.0%	100.0%	100.0%	100.0%

Figure 6.2.5 below is from the previously cited longitudinal study of children aged 4-15 and includes all forms of prior parental arrangement. As can be seen 12% of parents report having shared living arrangements; however when the 13% of parents who report having reunited are eliminated, 14% of separated parents have shared custody.

Figure 6.2.5 Living arrangements and contact with other parent in 1998-99 for children, aged 4-15 years at Cycle 3, whose parents separated in the previous two years, NLSCY, Cycle 3 (N=867)



6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?

It is informally estimated by knowledgeable officials that about 50% of child support is paid directly, rather than through an enforcement agency.

Please provide references to any sources you consulted for this part of the questionnaire.

Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines (2002) Minister of Justice and Attorney General of Canada

When Parents Separate: Further Findings from the National Longitudinal Survey of Children and Youth; 2005; Phase 2 of a three part project commissioned by the Child Support Team of the Department of Justice Canada on: *The Impact of Parents' Family Transitions on Children's Family Environment and Economic Well-Being: A Longitudinal Assessment*; by Heather Juby, Nicole Marcil-Gratton and Céline Le Bourdais Centre interuniversitaire d'études démographiques Institut national de la recherche scientifique / Université de Montréal (Minister of Justice and Attorney General of Canada).

Statistics Canada (2004) *Survey of Household Spending*. [Author's table derived from CANSIM data base.]

Source: Statistics Canada (2006) *Child and Spousal Support: Maintenance Enforcement Survey Statistics*, 2003/2004.

PART SEVEN: THE OVERALL CONTEXT

In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.

7.1 TOPICS OF DEBATE AND RESEARCH

7.1.1 Consider the following potential topics of research:

- **the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children**
- **the impact of your child maintenance regime on ‘new’ relationships or marriages, or stepchildren**
- **the impact of child maintenance on the labour market behaviour of parents with care**
- **the impact of child maintenance on the labour market behaviour of non-resident parents**
- **(if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance**
- **(if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?**

On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.

The ‘child maintenance regime’ consists of two elements: the setting of child support amounts and the enforcement of support agreements. There has been little or no research on the enforcement of support agreements – indeed this is one of my surprises in attempting to complete this questionnaire. This might be because of the split jurisdiction between federal and provincial governments. Provinces tend to be much less research oriented than the federal government, and the provinces are fully responsible for enforcement. There has been some research on the setting of child support amounts, as can be seen in the research cited to complete this paper. In my view, however there has been no research in Canada on any of the topics noted above and very little research at all in the last several years. See these two federal Department of Justice sites for recent research on child support:

<http://www.justice.gc.ca/en/ps/sup/pub/lstrsrchr.html> and
<http://www.justice.gc.ca/en/ps/pad/reports/index.html#res>

Studies

When Parents Separate: Further Findings from the National Longitudinal Survey of Children and Youth; 2005; Phase 2 of a three part project commissioned by the Child Support Team of the Department of Justice Canada on: The Impact of Parents’ Family Transitions on Children’s Family Environment and Economic Well-Being: A Longitudinal Assessment; by Heather Juby, Nicole Marcil-Gratton and Céline Le Bourdais Centre interuniversitaire d’études démographiques Institut national de la recherche scientifique / Université de Montréal (Minister of Justice and Attorney General of Canada).

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The Survey of Child Support Awards: Analysis of Phase 2 Data Collected Through January 31, 2002 Prepared by Lorne D. Bertrand, PhD, Joseph P. Hornick, PhD, Joanne J. Paetsch, BA., Canadian Research Institute for Law and the Family and Nicholas Bala, LLM, Faculty of Law, Queen's University

Child Support Team

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Statistics Canada (2006) *Child and Spousal Support: Maintenance Enforcement Survey Statistics, 2003/2004.*

7.1.2 What are the current main topics of interest and debate about your child maintenance regime?

1. Are the guidelines fair, especially to fathers? Is the tax treatment fair?
2. Are the guidelines being interpreted sensibly by the courts?
3. Is there a way to ensure greater efficiency and predictability in the enforcement of maintenance orders?
4. How should child maintenance interact with social assistance so as to ensure the fairest deal for tax payers, while also providing reasonable support for children and not causing undue hardship for fathers?
5. How should support agreements be up-dated to reflect change in income or other circumstances?

7.1.3 Please describe any impending changes in legislation, or policy developments that are likely to affect your child maintenance regime in the coming five years.

The new federal guidelines passed their required five year review, and so far as I am aware there are no further changes planned or likely at this time. The federal child support guidelines are up-dated from time to time, and were last up-dated in May of 2006. Ontario revised its guidelines to be consistent with the federal guidelines at the same time.

As noted above, it is my view that the Supreme Court decision will set in train a series of reactions that will eventually require all provinces to set up administrative mechanisms to revise support agreements on a regular basis.

7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.

It is hard to ascertain any general attitude towards 'child maintenance' as it is a subject which usually engages only those involved in a separation, and those who work with them. In respect of the 'enforcement of maintenance' orders, there can be little doubt that the failure of the Family Responsibility Office to forward money paid by NRPs and owing to custodial parents brought disrepute on the FRO, at least as could be judged by media stories and opposition comments at that time. Since then, however, the FRO has

recovered and there is little or no media about the FRO any longer. Outside of Ontario, other province's maintenance enforcement programs have not gone through similar problematic periods. There does not seem to be any opinion surveys on maintenance enforcement.

Following is the discussion of the public and other attitudes towards the new federal guidelines as derived from surveys and focus groups. This is from: *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines*, Volume 1 ((2002) Minister of Justice and Attorney General of Canada. P6.

In a November 1998 survey of clients registered with the Family Maintenance Enforcement Program in British Columbia, parents who had child support orders made under the Guidelines were asked whether they thought the amount was fair.

Among the 280 parents receiving child support who responded, 56 percent agreed that the amounts were fair, compared to 41 percent of the 279 paying parents in the sample. When those who felt the child support amounts were unfair were asked why, the most common responses among receiving parents were that the "amount does not cover costs" (69 percent) and that the paying parent "could afford more" (23 percent). Paying parents who found the amounts unfair often said that they could not afford them (34 percent), that they have obligations to another family (11 percent), and that the amount is simply too high (11 percent).

In 1999, Alberta parents who had attended Parenting After Separation seminars were asked to assess the fairness of the Guidelines, based on their experience in arriving at an arrangement for payment of child support. Seventy percent of the 547 respondents who had used the Guidelines agreed or strongly agreed that the Guidelines "set a fair standard of support for children that makes sure they benefit from the financial means of both parents." Although women were more likely to give a high rating for fairness (74 percent) than were men (65 percent), there was a high level of satisfaction overall.

In a later general population telephone survey, parents who had experience in using the Guidelines were asked to rate them in terms of fairness. For this survey, respondents were specifically asked to rate the Guidelines on a scale of 0 to 10 in terms of fairness to the paying parent, fairness to the recipient, and fairness to the children.

Paying parents gave the Guidelines a rating of 5 out of 10 in terms of fairness to themselves. In contrast, receiving parents gave a score of 8 out of 10 in terms of fairness to paying parents. On the other hand, when parents were asked to rate the Guidelines in terms of their fairness to children, both paying and receiving parents rated the Guidelines at about 7 out of 10.

Lawyers and mediators who have completed questionnaires at conferences and continuing legal education session rate the Guidelines highly in terms of fairness to children and parents, and in terms of the predictability they have brought to child support amounts.

7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.

It appears that the only organized opposition is from father's groups who see the guidelines as unfair, as well as objecting to custody provisions. The biggest issue for the father's group seem to be that the guidelines do not take account of the income of the recipient parent, and do not take account of the needs of the NRP, including the continuing expense of parenting, albeit at a lesser percent of time than 40%. Many fathers also object to child support not being deductible for tax purposes, and not being taxable as income in the hands of the ex-partner.

7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME

This section provides several criteria that one might use to evaluate the child maintenance regime as a whole. We ask for your expert assessment of areas that your regime is working well and not working well.

7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.

- a. Maintenance is regularly provided to children and/or parents with care
- b. Children who need (or desire) maintenance have a formal entitlement
- c. Maintenance policies do not negatively influence relationships between children and their non-resident parents
- d. Those in similar circumstances are treated similarly
- e. Those who need more child maintenance, receive more
- f. Parents easily understand how amounts of maintenance are calculated
- g. Child maintenance obligations are determined promptly
- h. Parents with care feel the amount of maintenance is adequate
- i. Nonresident parents feel the amount of obligation is affordable given their costs of living
- j. The child maintenance regime is administered efficiently and effectively
- k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs

Select one or two of these in which your assessment is that your regime is performing well. (If your assessment is that your regime works well on multiple criteria, please select the most important one or two.) In one paragraph, explain.

My subjective judgement is that Canada's regime works best with respect to 'h' – parents with care feel the amount of maintenance is adequate – although the word 'fair' might be more suitable than 'adequate,' since the amount of support only reflects the income of the NRP and if that is inadequate so will be the support. In other words, poor children will not become non-poor children after their parents separate. In any case, the amounts of child support paid seemed to increase after the new federal guidelines were put in place, and especially after the benefits were made non-taxable in the hands of the custodial parent.

The guidelines also seem to have improved the consistency of treatment of parents across

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Canada (excepting Quebec), although this may be eroding as judicial cases providing for 'exceptions' build up.

7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.

The regime fails to provide regular maintenance payments to children and parents. In every province the majority of maintenance payments are in arrears, with the exception of Quebec. In Ontario 77% of cases were in arrears in 2005. Nor, with the exception of Quebec and Alberta, does the arrears situation appear to be improving over time. The table below shows arrears as reported in the Statistics Canada (2006) *Child and Spousal Support: Maintenance Enforcement Survey Statistics, 2003/2004*.

Maintenance enforcement cases with arrears, by amount owing, at March 31¹

	Cases enrolled		Cases with arrears		Arrears due
	No.	No.	%		millions \$
Prince Edward Island					
2001	..	..	..		..
2002	2,103	1,479	70		9.2
2003	2,295	1,635	71		10.8
2004	2,469	1,755	71		12.5
2005	2,457	1,716	70		11.6
Nova Scotia²					
2001	..	..	..		..
2002	..	..	..		..
2003	..	..	..		..
2004	..	..	..		..
2005	18,189	11,997	66		82.3
New Brunswick					
2001	..	..	..		..
2002	..	..	..		..
2003	..	..	..		..
2004	13,542	9,924	73		39.2
2005	12,987	10,539	81		39.0
Quebec					
2001	88,161	46,272	52		300.9
2002	94,131	45,963	49		294.0
2003	98,667	46,695	47		278.5
2004	102,336	48,723	48		283.7
2005	104,385	45,387	43		285.3
Ontario					
2001	171,567	123,744	72		1,047.6
2002	172,131	129,693	75		1,129.9
2003	173,118	131,931	76		1,182.2
2004	176,727	132,654	75		1,192.0
2005	178,251	136,623	77		1,198.8
Saskatchewan					
2001	8,121	5,106	63		32.6
2002	7,857	4,725	60		31.3
2003	7,701	4,524	59		32.0
2004	7,836	4,674	60		34.4
2005	7,791	4,674	60		37.3
Alberta					
2001	42,312	26,064	62		226.9
2002	45,504	26,964	59		237.9
2003	48,252	27,015	56		248.0
2004	46,977	25,788	55		256.0
2005	..	..	..		..
British Columbia^{2,4}					
2001	39,159	25,680	66		241.7
2002	40,065	26,187	65		252.5
2003	39,942	26,433	66		261.0
2004	39,774	26,421	66		269.9
2005	38,814	25,410	65		277.5
Northwest Territories					
2001	..	..	..		..
2002	..	..	..		..
2003	..	..	..		..
2004	..	..	..		..
2005	654	525	80		6.5

It also seems highly doubtful that the maintenance regime is administered efficiently. The ‘method’ for up-dating support benefits seems designed to maximize bureaucracy and paper work (and of course costs). Of course, it is difficult to judge because of the lack of data, which is itself a sign of poor administration. Governments are taking steps to improve the collection of data on the maintenance enforcement programs in the provinces, which will be an important step forward, but there will still be little or no data on the courts, and little or no data on child support paid outside of the court. As well, there is much too little independent research.

7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.

As noted above, Canada does poorly in research to support evidence based policy making in this field. Also, this area of child policy is only very minimally integrated or coordinated with the larger world of social policy. For example, should an increase in child tax benefits reduce child support payments? Why not? Finally, the 'system' for up-dating support orders appears seriously flawed.

This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:

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PART EIGHT: VIGNETTES

In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.

8.1 BASE CASE 'A': MISS FIELD AND MR HILL

Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.

Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.

He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.

Miss Field knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, she thinks it might be sensible to make a formal arrangement regarding child maintenance.

8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.

- A. If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?**

I assume that Miss Field is on Ontario social assistance, known as Ontario Works. Ontario Works requires that recipients attempt to pursue all forms of support including a child support agreement. If she fails to do so the amount of her social assistance can, under Ontario law, be reduced by an estimation of the support she might have received. The relevant section of the Ontario Works policy manual (Directive 23.0-5) is cited below:

“As a condition of eligibility, the participant must be making reasonable efforts to obtain compensation or realize any financial resource to which he/she or a dependant may be entitled. The delivery agent should be satisfied that an applicant or participant is taking action, where appropriate, to obtain support payments. Eligibility does not depend on the actual receipt of support payments, but on the efforts being made to obtain support. Assistance may be denied or reduced if the participant is not making reasonable efforts to obtain support. Assistance may be cancelled or reduced by the amount of the support that would have been available, had reasonable efforts been made to pursue it. Assistance is not reduced if the

requirement to pursue support is waived, or if the failure to make reasonable efforts is the result of factors outside the participant's control.”

However Ontario Works allows the pursuit of support to be temporarily waived, subject to a review of circumstances every 3 months, where the absent parent has no ability to provide support. Assuming that Mr. Hill's income is less than \$8,000 he would not be required to pay any support, and Ontario Works directives require that the recipient of social assistance be referred to the courts only if “there is some indication that he/she [the NRP] is able to provide support.” (Ontario Works Directive 23,0-7) Therefore, the requirement to pursue a support agreement would be temporarily waived.

At some future time, if Mr Hill earns sufficient income, Ontario Works would require Miss Field to get a support agreement. At that time, she and Mr Hill would be encouraged to work out a voluntary agreement, and given that Miss Field is on social assistance she would be required under the Ontario Family Law Act to seek a child support agreement that at least met the guidelines. Miss Field and Mr. Hill would be encouraged to register the agreement with the courts, so that it could be enforced by the FRO.

C. If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.

See above. Social assistance recipients are required to seek child support, but in this case Miss Field would not be compelled to pursue a support agreement, because the father has too little money.

However, where “there is potential for support, the target for having support provisions in place is within 120 days from the date of application for assistance. In cases where entering into an agreement for support is not possible or appropriate, court proceedings are initiated in a timely fashion.”(Ontario Works directive 23.0-3) There is no information available regarding the time required by the courts.

Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

Social assistance recipients in all provinces are required to pursue support with differing specific regulations in each province. Support agreements made by social assistance recipients are generally required to meet the levels of the guidelines in the province (which are the federal guidelines in most provinces). In Ontario, the Family Law Act requires assistance recipients to seek support equal to the guidelines. The exceptions in Ontario are where separation has been due to family violence, where the other parent is in prison, deported, or, in essence, otherwise unable to pay. The exception may be temporary or permanent depending upon the circumstances. In this case, there is likely to be a repeated temporary waiver since Mr. Hill does not have enough money to make a support agreement worth obtaining. The criterion is the likelihood of collecting any child support payments. The ‘cut-off’ definition of what is worthwhile in the Ontario Works policy manual seems to be \$50 a month.

In your account please explain what further information might be needed to determine the obligation level, and how this would be collected. Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.

I am assuming that Mr. Hill's income is less than \$8,000 a year and therefore his monthly support obligation in Ontario would be nil (see attached tables). No further information is needed.

8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.

There would not likely be a formal maintenance obligation. In this case, there would most likely be temporary waivers on Miss Field's requirement to seek support until Mr. Hill was earning an adequate income – in the order of at least \$11,200 per year or more – the level at which his support payments would be about \$51 per month.

8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?

There would be no money paid, but if Mr Hill gets a job and starts earning some money and they obtain a child support court order or register a support agreement, the money would be collected by the FRO. The FRO would then pay Miss Field and her social assistance would be commensurately reduced.

8.1.4 If Mr Hill does not pay, what would happen?

In this case Mr Hill does not have to pay because we are assuming his income is below \$8,000. Assuming Mr Hill got a job and had to pay some child support but failed to do so, Miss Field's social assistance would not be reduced by the amount that Mr Hill is in arrears. Mr Hill would be pursued by the FRO through the means outlined above if he is paying through FRO. (see 8.2.2 below)

8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT

We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).

The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.

8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.

Yes, the maintenance obligation would now be set according to Mr Hill's higher income¹. The guidelines for Ontario specify support payments of \$343 a month, or \$4,116 a year.

1. Based on Census data, males working full time in Ontario had median incomes of \$44,154 in 2000. Up-dating this by the consumer price index in Ontario, median income for males working full time, full year would be approximately \$49,644 in 2005. At 75% of median income Hill's income would be about \$37,200.

8.2.2 Would any other outcomes likely differ? Please explain.

Ms Field would now be required to seek child support at least equal to the guidelines, and she would be assisted to do so if necessary by a social assistance worker. If Mr. Hill paid regular support payments, Ms Field would not necessarily be required to have the support payments made through the FRO (for example, if there were a voluntary agreement that resulted in child support equal or exceeding the guidelines, and no problems of arrears), but the amount of the support payments would be deducted from her assistance. If problems with arrears started occurring, Ms Field would be required to obtain a court order or register her prior agreement with the court, so that the support would be paid through the FRO. The child support would be paid by the FRO to Miss Field, and Mr Hill would pay the FRO. In that case, her *social assistance* would automatically be adjusted to the level of support actually forwarded to her through the FRO, so that her income level would be unaffected by the arrears.

8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER

We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.

Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.

8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.

The maintenance obligation would change, as Ms. Field would be required by her social assistance agency to pursue a child support agreement. In any case, Ontario Works requires an assistance recipient who may be entitled to child support to initiate a review of the NRP's income and circumstances at least every 24 months, to ensure that any additional child support is paid according to the guidelines. If she did not do so, her social assistance could be deducted by the \$4,116 that Mr. Hill should be paying. (The new Supreme Court decision is being interpreted as suggesting a one year review of the NPR's income so this 24 month provision will likely be changed within the next few years.)

Ms. Field is required by the Ontario Family Law Act not to agree to a support agreement that is less than the child support guidelines. Ms. Field would be encouraged to go to Mr. Hill and try and get a voluntary agreement that at least corresponded to the amount he is required to pay under the guidelines. If he did voluntarily agree they either could or could not register their child support agreement or the change in their agreement. The amount of child support would be deducted from Ms Field's social assistance. As long as Mr Hill pays his child support regularly, this arrangement will be permitted to continue. However, if Mr. Hill begins to fall into arrears, Ms Field can apply to not have her social assistance reduced by the amount of the arrears (and assign the arrears to the Ontario Works delivery agency) but then she would be required to go to court and register their voluntary agreement. At the time, the FRO would automatically take over responsibility for collecting the child support, but the support payment would still go to Ms Field with her social assistance being reduced (unless it were assigned under special arrangements).

If Mr. Hill does not agree to a voluntary child support plan at least equal to the guidelines, then Ms. Field would be required to obtain a court order for support of the amount required to be paid under the guidelines given his new income. At that point the FRO would collect the amounts owing from Mr Hill, as noted above. Mr. Hill's new amount of support would date back to the inquiry by Ms. Field.

8.3.2 Would any other outcomes likely differ? Please explain.

The government would save \$4,116 a year in Ms Field's social assistance.

8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER

We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.

Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.

8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.

There is no adjustment in the support obligations under the current guidelines in Ontario. The custodial parent's income is not relevant.

8.4.2 Would any other circumstances likely differ? Please explain

Not in respect of her child support. Her social assistance would be reduced or eliminated to reflect her new earnings.

8.5 BASE CASE 'B': MR AND MRS COAST

Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both children attend school.

Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.

Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.

Mr Coast collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car (100km each way). While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.

Mrs Coast believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.

Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He does not want to be divorced, anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties.

8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.

The couple would likely be encouraged by their lawyers to arrive at an amicable agreement including child support reflecting the child support guidelines as adapted in their province (which we are assuming is Ontario). If they do so, when the divorce goes to court the judge will review the parenting agreement and the child support agreement and if he sees it as reasonable in light of the guidelines, he will not change it. If there is no agreement (because Mrs. Coast thinks it is too low, and Mr Coast thinks it is too high) the judge will order child support payments reflecting the guidelines (assuming there are no exceptional circumstances in this case). Essentially, an agreement for child support will be imposed by the courts consistent with the guidelines. (No information is currently available on the length of time usually required to reach a decision.)

The one proviso in this scenario is that a voluntary agreement on child support does not necessarily have to be included as part of the final divorce settlement, so it is possible to obtain a legal divorce without actually having a child support agreement registered with the court. This would only happen if the support agreement were acceptable to both parties.

Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

The only criterion here is Mr. Coast's income. Mrs. Coast's income is not relevant.

In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

No further information is needed.

Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.

There would be no problem in setting the obligation. There is nothing in this case that would warrant a discretionary change from the guidelines.

8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.

There would be a formal child support agreement assuming that they obtained a divorce. However, as noted in 8.5.1 this agreement might not be registered with the courts (nevertheless it is still legally binding). Mr. Coast's estimated income in 2005 would be about \$74,500. He would pay child support of \$1,092 a month or \$13,104 a year. None of the other 'facts' are required to make this determination.

8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr Coast? How would the money be transferred to Mrs Coast or the children?

Assuming that the child support agreement is registered with the court, this would be filed with the FRO automatically. Assuming there is no voluntary agreement between both parents to withdraw from the FRO, the money would be deducted from Mr. Coast's pay cheque by his employer, and the FRO would pay Mrs. Coast. However, as noted support agreements do not have to be incorporated into the terms of a divorce order. In this scenario, the child support obligation would not automatically be registered with FRO and the payments would be made directly from Mr. Coast to Mrs. Coast.

The money would be paid a variety of ways, most likely be electronic funds transfer to Mrs. Coast's bank account if the payments are made from the FRO.

8.5.4 If Mr Coast does not pay, what would happen?

Assuming the agreement had been registered with the courts, Mr Coast would not have much choice as it would be deducted from his pay cheque by his employer. However, if he was self-employed or otherwise managed to avoid his obligations, the FRO would go through its array of measures to obtain payment, including measures such as not renewing his driving license or even jail. If there were no agreement registered with the court, Mrs. Coast would have to go through the process of obtaining a court order, after which she presumably would allow the FRO to collect the support payment on her behalf.

8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY

We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).

The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each parent, alternating one week with Mrs Coast and one week with Mr Coast.

8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.

Yes, the maintenance obligation would be completely different. The obligation would be calculated by taking Mrs. Coasts' obligation to Mr Coast and vice versa and then calculating the difference. Mrs Coast's 'child support' obligation would be \$202 a month or \$2,424 a year¹. The net payment from Mr Coast to Mrs Coast would then be \$13,104 - \$2,424 = \$10,680 a year.

1. From 200 Census data, median income for part time full year work for a female in Ontario was \$12,001 in 2000. Up-dated by the consumer price index we estimate this as \$13,500 in 2005.

8.6.2 Would any other outcomes likely differ? Please explain.

No

8.7 BASE CASE 'B', CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER

We now explore how your system would deal with a change in Mrs Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.

Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.

8.7.1 How would Mr Coast go about trying to change the obligation?

There would be no change in Mr. Coasts' obligation, although he could ask Mrs. Coast and if she voluntarily agreed to reduce the payments that would be possible – somewhat unlikely though!

8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.

It is not likely that the obligation would change.

8.7.3 Would any other outcomes likely differ? Please explain.

No other changes.

8.8. BASE CASE 'C', CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER AND NEW CHILD THREE YEARS LATER

We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.

Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself.

8.8.1 How would Mr Coast go about trying to change the obligation?

Mr. Coast's obligation would not change, unless he could show that the living standards of his new family would be lower than that of his wife and two children. However, given that his income is so much higher than his wife's, he could not show this.

8.8.2 What would result – is it likely the obligation would change? To what? Please explain.

It is not likely that the obligation would change as indicated above.

8.8.3 Would any other outcomes likely differ? Please explain.

No.

This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here:

Canada response

APPENDIX A – Canadian child support guidelines for the province of Ontario.

Attached as separate PDF files.