



# **SPOUSAL SUPPORT ADVISORY GUIDELINES: REPORT ON REVISIONS**

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# **Spousal Support Advisory Guidelines: Report on Revisions**

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In January 2005, the federal Department of Justice released the “Spousal Support Advisory Guidelines: A Draft Proposal”. With the release of the Draft Proposal, the next stage of the Advisory Guidelines project began—one of discussion, experimentation, feedback and revision. Since then, the Advisory Guidelines have been widely used by spouses, lawyers, mediators and judges in thousands of spousal support cases. The Guidelines have been considered in over 350 reported decisions. As the project directors, we have toured the country twice since the release of the Draft Proposal, once to inform and educate various audiences, and then again to obtain detailed feedback in small group sessions. We have also received a steady stream of submissions, comments and suggestions from members of the public, lawyers and mediators. Finally, the federal Advisory Working Group on Family Law met a number of times over the past three years, to assist us in reflecting upon the feedback received and possible revisions.

The final revised version of the *Spousal Support Advisory Guidelines* has now been released, replacing the Draft Proposal as the basic reference document on the Advisory Guidelines. It is a completely-rewritten and reorganized version of the earlier Draft Proposal. This Report on Revisions is being released together with the final version. The purpose of this Report is to highlight the major changes between the Draft Proposal and the final revised version. In this Report, we will also explain some of the background to the changes.

We have organized this brief Report in four parts. First, we review what has not changed in the final version. Much of the basic structure of the Advisory Guidelines remains unchanged. Second, we rewrote or reorganized much of the material from the Draft Proposal, both to clarify meaning and to focus attention on aspects that are often ignored. We highlight the most important revisions to the Advisory Guidelines in Part III, and we give separate treatment in Part IV to the important changes to the “Exceptions”.

## **I. What Has NOT Changed in the Final Version**

Before detailing the revisions, it is first important to emphasize what has NOT changed.

### **1. The Guidelines are Still Advisory, and Not Legislated**

The Advisory Guidelines have been revised and refined, but they remain voluntary, informal and advisory. They are not legislated. The Advisory Guidelines do not deal with entitlement, but only the amount and duration of spousal support.

### **2. No Change to the Basic Formulas**

No change has been made to the basic structure of the formulas: the *without child support* formula and the *with child support* formula.

The ranges for amount have by and large proven to fit the decided and negotiated outcomes across Canada, based upon reported decisions and feedback from our sessions. In some parts of the country, amounts tend to fall in the lower end of the ranges, while in

other areas amounts end up at the higher end. Most lawyers, mediators and judges did tell us that the ranges were “right” or “about right” for their area or province or territory.

There were comments about particular fact situations and specific sub-categories of cases where the ranges seemed “high” or “low”, compared to expected outcomes, even after the use of restructuring and the proposed exceptions. As a result of this feedback, we did make some minor adjustments to the formulas and we did add some new exceptions. Two recent revisions deserve mention here and will be described in more detail later.

Under the *without child support* formula, there is sometimes a problem with the ranges for amount in shorter marriages of less than 6 or 7 years, where the recipient spouse has little or no income and the scope for restructuring is limited. We did not wish to change the structure of the formula itself for this one sub-set of cases. Instead, we added an exception, the basic needs/hardship exception for short marriages. This exception is also available under the *custodial payor* formula.

Under the *with child support* formula, the issue was not amount, but duration, mostly for shorter marriages with young children. We had already established a maximum duration under this formula in the Draft Proposal, and we have added a minimum duration in the final version.

No changes have been made to the ceilings or floors for the operation of the formulas. The ceiling continues as a gross payor income of \$350,000 per year, above which support is to be determined on an individual case-by-case basis. The floor continues as a gross payor income of \$20,000 per year, below which spousal support is only granted in exceptional cases. There is also greater flexibility to go below the range for gross payor incomes just above the floor, from \$20,000 to \$30,000 per year.

### **3. No Changes on Variation, Review, Remarriage or Second Families**

The formulas are intended to apply to initial orders and agreements. Where there is an entitlement to spousal support, the formulas generate ranges for amount and duration, both at the interim stage and at the time of divorce or final hearing. Spousal support orders or agreements are usually subject to variation or review thereafter. In the Draft Proposal, we identified certain situations where the Advisory Guidelines would apply, including increases in the recipient’s income and decreases in the payor’s income. In other situations, more complex issues of entitlement make it harder to apply the formulas on variation and review, notably post-separation increases in the payor’s income, post-separation decreases in the recipient’s income, the recipient’s remarriage or repartnering, and subsequent children (second families).

Three years after the release of the Draft Proposal, it has not been possible to develop more formulaic solutions to guide resolution of these more complex issues. Sometimes the Advisory Guidelines can be of some assistance, as in assessing the ranges of support for different incomes on variation or review where the payor’s income has increased substantially. But, for the most part, we have left these issues to case-by-case negotiation and decision-making, until the law develops further.

## **II. Rewriting and Reorganization: Renewed Emphasis on Entitlement, Using the Ranges, Restructuring, Exceptions, Self-Sufficiency**

We have completely rewritten and reorganized the final version. There are many points in the text where we have expanded or clarified the analysis and presentation, based upon the comments, questions and feedback we received over the past three years. This Report does not focus on these sorts of changes. However, we would like to flag one change, a renewed emphasis in the final version on aspects of the Advisory Guidelines other than the formulas: entitlement, using the ranges, restructuring, exceptions and self-sufficiency.

One of the early problems with the Advisory Guidelines has been their unsophisticated use. Spouses, lawyers and judges often look only at the formula ranges, treating the Advisory Guidelines as if they were just the formulas. Important issues like entitlement, location of outcomes within the ranges, restructuring, exceptions and self-sufficiency were just ignored. Too often, the computer software screens were the beginning and the end of the analysis.

We have noticed that this problem is easing over time, especially in those jurisdictions and areas where the Advisory Guidelines are used in every spousal support case. Lawyers and judges become more sophisticated in their use and more accustomed to looking at these additional steps in the analysis.

In the final version of the Advisory Guidelines, we have emphasised these topics by reorganizing the material into distinct chapters for each of these topics. We have also encouraged the software suppliers to add prompts and lists to their programs, to highlight these additional steps.

## **III. Important Revisions to the Advisory Guidelines, Other Than Exceptions**

In this Part, we identify and explain the important revisions to the Advisory Guidelines. The revisions and additions to the exceptions are sufficiently significant that we have devoted a separate part, Part IV, to their treatment.

### **1. The Definition of Income: Social Assistance, UCCB, Non-Taxable Income**

The starting point for the determination of income under the *Spousal Support Advisory Guidelines* is the definition of income under the *Federal Child Support Guidelines*. Here we address some specific modifications, all made since the Draft Proposal.

First, social assistance is not income for spousal support purposes, for either the recipient or the payor. Under the *Federal Child Support Guidelines*, social assistance is treated as income, but only “the amount attributable to the spouse” and not any child-related amounts: Schedule III, s. 4. Traditionally, the law has treated a recipient on social

assistance as a person with zero income. A payor on social assistance is by definition unable to support himself or herself and thus has no ability to pay. We issued this clarification early on after the release of the Draft Proposal.

Second, the Universal Child Care Benefit (UCCB) came into effect in July 2006, after the release of the Draft Proposal. Under the UCCB, parents receive a taxable benefit of \$100 per month for each child under the age of 6, an additional source of taxable income for a custodial or primary parent. The UCCB required amendments to the *Federal Child Support Guidelines*, effective March 2007. Consistent with our treatment of the Child Tax Benefit under the *without child support* formula, the UCCB for a child who is a child of the marriage will also be included in the income of the custodial or primary parent in determining spousal support.

Third, where a payor spouse has an income entirely or mostly from legitimately non-taxable sources, then a new exception has been created, under both formulas. This exception recognizes that the payor's inability to deduct spousal support for income tax purposes may in some cases cause problems under the formulas. The exception is discussed in Part IV below.

## **2. Capping the Maximum at 50 per cent of Net Income under the *Without Child Support* Formula**

In long marriages of 25 years or more, the *without child support* formula generates the maximum range of 37.5 to 50 per cent of the gross income difference. In some cases, the maximum of 50 per cent can leave the recipient spouse with more than 50 per cent of the spouses' *net* income, notably where the payor is still employed and subject to tax and employment deductions and the recipient has little or no income. This result should never occur.

To avoid this result, we have modified this formula by introducing a net income "cap": the recipient should never receive an amount of spousal support that will leave him or her with more than 50 per cent of the spouses' net disposable income or monthly cash flow.<sup>1</sup>

The software programs can calculate this net income cap with precision and will present the cap as the upper limit of the range. For those without software, or without more precise net income calculations, the net income cap can be estimated crudely by hand, at 48 per cent of the gross income difference. This "48 per cent" method is a second-best, but adequate, alternative.

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<sup>1</sup> In computing "net income" for the purposes of the cap, the permitted deductions would be federal and provincial income taxes, employment insurance premiums, Canada Pension Plan contributions, and any deductions that benefit the recipient spouse (e.g. medical or dental insurance, group life insurance and other benefit plans), but not mandatory pension deductions. Union dues and professional fees are already deducted from the spouses' gross incomes.

### 3. Indefinite Means “Indefinite (Duration Not Specified)”

In using the term “indefinite” in the Draft Proposal, we simply adopted a word that had been used for years in spousal support law to mean “an order for support without a time limit at the time it is made”. Indefinite support does not necessarily mean permanent support or infinite support. And it certainly does not mean that support will continue indefinitely at the level set by the formula, as such orders are open to variation as circumstances change over time.

After the release of the Draft Proposal, we were very surprised to learn from our feedback sessions that the term “indefinite” was being misinterpreted by many as permanent support. We realized that we would have to develop a new term, to convey that such orders or agreements are subject to variation and review and, through that process, even to time limits and termination. Wherever the term “indefinite” is used in the formulas, we have added a parenthetical explanation to counter this misinterpretation: “**indefinite (duration not specified)**”.

### 4. The Creation of a Durational Range under the Basic *With Child Support* Formula

All orders under the *with child support* formula are indefinite in form, which now means “indefinite (duration not specified)”. In cases involving dependent children, there are often review terms attached to such orders or agreements and, of course, they are subject to variation. In the Draft Proposal, we set out a maximum duration or “outside time limit”, to maintain consistency with the *without child support* formula and to provide some structure for the process of review and variation. The maximum duration was the **longer** of either one year of support for each year of marriage or until the youngest or last child completed high school.

Absent any lower end of the range, however, the maximum duration was not treated as an outside time limit, but instead as a default time limit, as a period for which a recipient was entitled to receive spousal support. The problem was especially acute in shorter marriages with very young children. This outcome was never our intention and, throughout our feedback sessions, we canvassed lawyers, mediators and judges about how these shorter marriage cases worked out in practice. Lawyers in particular wanted to create a range for duration that would leave room for meaningful negotiation around duration. Over the past three years, we did develop a strong sense of what the lower end of the durational range for this formula could be.

As with the upper end of the durational range, there are two tests for the lower end of the durational range under the *with child support* formula. We have renamed these tests, to clarify their rationale and operation: the *length-of-marriage test* and the *age-of-children test*. **Under these tests, the lower end of the range is the longer of either one-half year of support for each year of marriage or until the date after the youngest child starts attending school full-time.**

The school date for the age-of-children test will vary from province to province and even from school district to school district, based upon the availability of junior kindergarten, the age rules governing school registration and the program the child takes.

In practice, the *age-of-children* test will determine the lower end of the durational range for shorter marriages and very young children, while the *length-of-marriage* test will typically apply to marriages of ten years or more or cases where children are already in school or close to starting full-time school.

It should be kept in mind that this change adds a lower end to the durational range for support and it says nothing about the proper *amount* of spousal support for this period, nor about continuing entitlement. It does not create a minimum entitlement. Further, the initial order will still be indefinite (duration not specified). Any time limit will only appear after a review or variation hearing, especially in cases involving young children. Finally, under the *with child support* formula, the rationale for support is compensatory and this should push most cases towards the longer end of the durational range, and away from the lower end of that range.

## **5. Adjusting the Limits of the Range for Amount in Shared Custody Cases**

At the time the Draft Proposal was released, the Supreme Court of Canada had not yet handed down its decision in *Contino v. Leonelli-Contino*, [2005] 3 S.C.R. 217, a decision that set out the proper approach to the determination of child support in shared custody cases under section 9 of the *Federal Child Support Guidelines*. Much of what was found in the shared custody version of the *with child support* formula anticipated the Court's reasoning in *Contino* and thus little revision was necessary.

In the final version, we have made three adjustments to the formula for spousal support in shared custody cases, none major.

First, since the release of the Draft Proposal, the Canada Revenue Agency decided that parents in shared custody cases will have their Child Tax Benefit, the child portion of the GST/HST Credit and the Universal Child Care Benefit rotated between them on a six-month on, six-month off basis, subject to some exceptions where parents agree otherwise. As these benefits are income under the formula, it is therefore critical to the calculation of spousal support in shared custody cases to ascertain which parent is receiving what benefits.

Second, as is explained in the final version, *Contino* emphasized that the straight set-off of table amounts was just the starting point for child support, with a wide discretion to go below or above the set-off amount. In determining spousal support in these non-set-off cases, it may be appropriate in some cases to make adjustments in calculating the formula range and, eventually, in choosing the appropriate amount within the ranges.

Third, the most important of these minor adjustments in shared custody cases is the one identified in the heading: an adjustment of the limits of the range for amount, to ensure

that the 50/50 split of the spouses' net disposable income or monthly cash flow is always included in the formula range.

We consistently heard from lawyers and mediators that many shared custody parents wanted to opt for a 50/50 split of the couple's total net income by a combination of child and spousal support, so that the children experience roughly the same resources and standard of living in each household. In *Contino*, the Supreme Court identified the child's standard of living in each household as a central concern in the determination of child support in such cases. We agree that this equal split of net income should be available as one of the normal range of outcomes—not mandated, just available—in every shared custody cases.

In the vast majority of shared custody cases, the formula for spousal support will include this 50/50 overall split within the range, but there are some cases where the 50/50 split falls just outside the upper or lower end of the range. In these cases, we have revised the range, to extend the range to include the 50/50 split.

In what cases has the formula range been extended? In cases where parental incomes are lower or not that far apart, the upper end of the range has been adjusted upwards a bit. In cases where the recipient parent has little or no income and there are two or more children subject to shared custody, then the lower end of the range has been adjusted downwards. These adjustments are made automatically by the software programs.

## **6. Step-children under the *With Child Support* Formula**

In the Draft Proposal, we did not address spousal support in cases involving step-children, i.e. children of the marriage who are not the biological or adoptive child of both spouses. In most cases, if a spouse is found to stand in the place of a parent towards a child for child support purposes, then the *with child support* formula for spousal support is appropriate, as a fairly high threshold test is applied. But some courts have lowered the threshold for finding step-parent status after the 1999 Supreme Court decision in *Chartier*.<sup>2</sup> Further, in British Columbia, the *Family Relations Act* imposes a step-parent child support obligation if “the step-parent contributed to the support and maintenance of the child for at least one year”.<sup>3</sup>

These shorter-marriage step-parent cases were raised during the feedback sessions, especially in British Columbia, as we were asked which formula would be appropriate in these cases or whether there should be an exception under the *with child support* formula. There were concerns that this formula generate spousal support obligations that were too substantial in such cases, either too much or too long.

In the vast majority of step-parent cases, the *with child support* formula will apply with no difficulty. In our view, the short marriage concerns are now resolved by the addition

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<sup>2</sup> *Chartier v. Chartier*, [1999] 1 S.C.R. 242.

<sup>3</sup> R.S.B.C. 1996, c. 128, s. 1 “parent”. Section 1(2) requires that the step-parent be married to the parent or that they lived together in a marriage-like relationship for at least two years.

of a durational range for spousal support under this formula. The difficulty in these short marriage cases was not the range for amount, but the potentially long duration under the *age-of-children* test for maximum duration and its use as a “default rule”. The addition of a lower end will now provide a range for negotiations in these step-parent cases and, in the event that a case does go to court, there is now a meaningful range for duration under the *with child support* formula to adjust for such cases.

Under section 5 of the *Child Support Guidelines*, it is possible for a step-parent to pay less than the table amount of child support, if appropriate. Where the amount of child support is reduced under s. 5, the *with child support* formula range should be calculated using the full table amount rather than the reduced amount.<sup>4</sup>

## **7. A Hybrid Formula for Adult Children and Section 3(2)(b)**

After the Draft Proposal was released, thanks again to feedback from individual lawyers, we discovered that the basic *with child support* formula did not provide reasonable outcomes in cases where child support is determined for adult children under section 3(2)(b) of the *Child Support Guidelines*. We added another hybrid formula, based upon the framework of the *without child support* formula, but adjusted for the child support amounts paid for the adult children.

Under s. 3(2)(b), the table-amount-plus-section-7-expenses approach is considered “inappropriate”, usually because the adult child attends a post-secondary institution away from home or the child makes a sizeable contribution to his or her own education expenses or there are other non-parental resources to defray education expenses. In these cases, child support is calculated by preparing an individual budget for the adult child and, after the child and other contributions are deducted, the remaining deficit is then apportioned between the parents, based upon their incomes or some other arrangement. These child support amounts will differ significantly from any amounts using the table method, almost invariably lower.

This *adult children* formula will *only* apply where the child support for *all* the remaining children of the marriage is determined under section 3(2)(b) of the *Child Support Guidelines*. Once the parent’s contribution to the child’s budget has been allocated, these actual child support amounts are grossed up and deducted from each spouse’s gross income. Then the *without child support* formula is applied, using the adjusted gross income difference and the length of marriage factor to determine amount and duration. Another practical advantage of this formula is that it eases the cross-over to the unadjusted *without child support* formula once the last child ceases to be a “child of the marriage”.

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<sup>4</sup> A reduced amount is usually ordered or agreed upon where the biological parent is already paying child support. Given the way the formula works, any reduction in the step-parent’s child support would otherwise lead to an increase in the range for spousal support, an inappropriate result.

## IV. Exceptions

In the Draft Proposal, we set out exceptions, or categories of departures, from the formula ranges for amount and duration. Exceptions are the last step in a Guidelines analysis, after adjustment within the ranges or restructuring. Only if neither of these steps can accommodate the facts of a specific case should it become necessary to resort to these exceptions.

If there was any surprise in the first three years of the Advisory Guidelines, it was the failure by lawyers, mediators and judges to consider or apply the exceptions. In the final version, we assembled all the exceptions in one chapter. For those exceptions already identified, we have provided more refinements and specifics about their potential use. We have also added some new exceptions, reflecting the feedback received since the Draft Proposal. As stated earlier, we have generally not changed the structure of the formulas, as we prefer to create carefully-tailored new exceptions to address problems in specific sub-sets of cases.

### 1. The Six Exceptions in the Draft Proposal

We have retained the five exceptions listed in the Draft Proposal: (1) compelling financial circumstances in the interim period; (2) debt payment; (3) prior support obligations; (4) illness and disability; and (5) the compensatory exception in shorter marriages without children. There was also a sixth exception in the Draft Proposal, identified under the *custodial payor* formula, for a non-primary parent to fulfil his or her parenting role.

We have refined the debt payment exception: (a) the total family debts must exceed the total family assets, or the payor's debts must exceed his or her assets; (b) the qualifying debts must be "family debts"; and (c) the debt payments must be "excessive or unusually high".

We have also extended the prior support obligations exception to include those less common situations where the payor spouse has a child in his or her care, which does not involve a payment of support. A notional table amount should be deducted in this case, plus any section 7 expenses paid.

We have clarified the illness and disability exception, and the alternatives available under this exception. While in principle we favour a "no exception" approach, a slight majority of the reported cases do see these cases as exceptions, usually opting for a "lower amount, extended duration" approach. The law here remains in a state of flux.

### 2. Property Division: Reapportionment (B.C.), High Property Awards, Boston

Spousal support is only determined after the division of family or matrimonial property. In Canada, there is a different regime for property division (including pensions) in every province and territory. The remedies of property division and spousal support perform

distinct functions and have different rationales. In the Draft Proposal, we therefore did not propose a general exception for unequal property division. We were less categorical about any exception for high property awards.

British Columbia's property statute is unique in Canada, in allowing reapportionment of property (unequal division) on spousal support grounds, i.e. to recognize and adjust for economic disadvantage and lack of self-sufficiency at the end of a marriage. Where a sufficiently large reapportionment order has been made, an exception is recognized in B.C., allowing the amount of spousal support to be reduced below the ranges for amount and duration. The B.C. Court of Appeal has recognized this exception, as part of its Advisory Guidelines case law. We have added it as a new exception in the final version.

We did not recognize high property awards as an explicit exception in the Draft Proposal. The Advisory Guidelines can already accommodate many of the "high property" concerns: by imputing income, by choosing an amount and duration within the ranges, by individualizing support determinations for payors who also have incomes above the ceiling, and, in extreme cases, by finding no entitlement. While a general exception is still not provided, we also recognize that the law in these high-property, high-income cases remains disputed and we have left it open to lawyers to argue for exceptional treatment in such cases.

### **3. Basic Needs/Hardship: *Without Child Support, Custodial Payor Formulas***

The *without child support* formula works well across a wide range of cases from short to long marriages with varying incomes. In some parts of the country and in some cases, there is a specific problem for shorter marriages where the recipient has little or no income. In these cases, the formula is seen as generating too little support for the low income recipient to meet her or his basic needs for a transitional period that goes beyond any interim exception. This problem also arises in shorter marriages under the *custodial payor* formula.

Restructuring can resolve some of these short marriage cases. Some will qualify for the compensatory exception in shorter marriages. In some cases, the interim exception for compelling financial circumstances will be sufficient. But if none of these suffice, we have added another exception, the basic needs/hardship exception, to provide sufficient income to a recipient with little or no income in shorter marriages, i.e. of 1 to 10 years in length. One area where this exception can be applied is immigration sponsorship cases.

The exception is only intended to ease the transition from the marital standard of living and it is only intended to provide for basic needs and avoid hardship during that period. It is not intended to provide the marital standard of living nor is it intended to provide long-term support. The amount required to meet "basic needs" will vary from big city to small city to town to rural area. Those who pressed for this exception in the feedback process were mostly found in big cities and this exception may prove to be most useful in those cities.

#### **4. Non-Taxable Payor Income**

Both formulas produce a “gross” amount of spousal support, i.e. an amount that is deductible from taxable income for the payor and included in taxable income for the recipient. But some payors have incomes based entirely on legitimately non-taxable sources, usually workers’ compensation or disability payments or income earned by an aboriginal person on reserve. In these cases, the payor is unable to deduct the support paid, contrary to the assumption built into the formulas for amount.

The non-deductibility may create ability to pay problems for the payor spouse, and in these cases an exception has to be made. Despite this non-deductibility for the payor, the recipient spouse will usually have to include the spousal support as income and will pay tax on the support income. Under this exception, it is thus necessary to balance the tax positions and the interests of the spouses—the payor who can’t deduct and the recipient who still only receives after-tax support.

Under each formula, there are already self-adjusting mechanisms to limit the need for the exception. Under the *without child support* formula, which would “gross up” the non-taxable income of the payor, ability to pay will usually only become an issue in longer marriage cases, marriages of 15 years or more. In these longer marriage cases, with non-deductibility, the upper end of the range will hit the net income “cap” earlier, i.e. the point at which the net incomes of the spouses are equalized. It may, however, be necessary under this exception to go below the low end of the range in some cases.

The *with child support* formula already uses net incomes for its calculations and thus the formula automatically adjusts for non-deductibility. The result is that the whole range is reduced downward, and it is important to be aware of the reduction and the amounts involved. It may be necessary to use this exception to go above the upper end of this automatically-adjusted range.

#### **5. Special Needs of Child**

There was near-universal agreement during our feedback sessions that there should be an exception under the *with child support* formula for cases of children with special needs, available to increase both the duration and amount of spousal support in some cases. The duration of spousal support may have to be extended beyond the length of the marriage or beyond the last child finishing high school, as a child with special needs can dramatically affect the primary parent’s ability to obtain employment, whether part-time or full-time. The formula for amount will increase spousal support where the primary parent has a lower income, but it may even be necessary to go beyond the upper end of the range, to supplement the children’s household standard of living in appropriate cases.

#### **6. Section 15.3: Small Amounts, Inadequate Compensation under the *With Child Support* Formula**

The *with child support* formula gives priority to child support, as required by section 15.3(1) of the *Divorce Act* and by similar provisions found in provincial statutes. In cases

where the spouses have three or more children or where there are large section 7 expenses, there may be little or no room left for spousal support, despite the substantial economic disadvantage to the custodial or primary parent. Or the maximum time limits may end spousal support, despite the potential inadequacy of the compensation in such cases. To be consistent with section 15.3(2) and (3) of the *Divorce Act*, there must be an exception for duration, to recognize that spousal support may have to continue beyond the maximum time limits under the *with child support* formula. And, further, in some of these cases, the amount of spousal support may even have to increase upon variation or review as the children cease to be “children of the marriage”, but any of these increases in amount should remain within the formula ranges.

## **V. Conclusion: Going Forward**

In the three years since the release of the Draft Proposal, the Advisory Guidelines have been widely used by spouses, lawyers, mediators and judges to assist in the resolution of spousal support cases across Canada. The Advisory Guidelines have already served to refocus and revitalize discussions about the law and practice of spousal support in Canada. Over that three-year period, revisions and adjustments have been made to the Advisory Guidelines in response to comments, criticisms and suggestions. The final version of the *Spousal Support Advisory Guidelines* brings to an end the most intensive part of the process. The obvious question that follows is “what happens next?”

In the months to come, we will be releasing an “operating manual”, a short-form user guide to the Advisory Guidelines, as part of the educational materials about the final version, in the hope that this will promote a more sophisticated understanding of the Guidelines.

From this point forward, the Department of Justice will continue to monitor developments in the law of spousal support, including developments that might affect the Advisory Guidelines. As these informal Guidelines are used more and more, we expect there will be continuing suggestions for changes and improvements in future from those who are actively engaged in the field of family law. If there is a major appellate decision, that may spark a need for review too. The software suppliers will make regular adjustments to their programs for changes in tax rates and structures or changes in government benefits. As informal guidelines intended to reflect current practice, the Advisory Guidelines will continue to evolve and develop.