



# Obtaining Reliable and Repeatable SSAG Calculations

November 2009





# **Obtaining Reliable and Repeatable SSAG Calculations**

**Prepared by:**

John-Paul Boyd

**Presented to:**

Family, Children and Youth Section  
Department of Justice Canada

*The views expressed in this report are those of the author  
and do not necessarily represent the views of  
the Department of Justice Canada.*

*Aussi disponible en français*

*This report may be reproduced, in part or in whole, and by any means, without charge or further permission from the Department of Justice Canada, provided that due diligence is exercised in ensuring the accuracy of the materials reproduced; that the Department of Justice Canada is identified as the source department; and that the reproduction is not represented as an official version of the original report.*

© Her Majesty the Queen in Right of Canada,  
represented by the Minister of Justice and Attorney General of Canada, 2009

# TABLE OF CONTENTS

1	INTRODUCTION.....	1
1.1	About This Paper .....	1
2	GATHERING INFORMATION.....	3
2.1	Calculation of Time .....	3
2.1.1	Length of Relationship.....	4
2.1.2	Age of Recipient .....	4
2.1.3	Age of Children.....	4
2.1.4	Youngest Child’s Entry into School .....	4
2.1.5	Youngest or Last Child’s Exit from School.....	5
2.2	Income.....	5
2.2.1	Gross Income .....	6
	Income Adjustments under the Child Support Guidelines .....	6
	Averaging Income.....	8
	Imputing Income.....	8
	Non-Taxable Income .....	9
2.2.2	Net Income.....	9
	Tax Deductions .....	11
	Non-Refundable Tax Credits, Income .....	11
	Non-Refundable Tax Credits, Special Expenses .....	12
	Refundable Tax Credits .....	13
	Government Benefits .....	13
	Other Benefits and Credits.....	15
	Other Source Deductions .....	15
2.3	Other Information .....	16
2.3.1	Provinces of Residence .....	16
2.3.2	Net Amount of Children’s Special Expenses.....	16
2.3.3	Children’s Residential Arrangements .....	17
2.3.4	Amount of Child Support.....	17
2.3.5	Support Paid for Prior Relationships .....	18
3	CHOOSING THE RIGHT FORMULA.....	19
4	THE WITHOUT CHILD SUPPORT FORMULA .....	21
4.1	Required Information.....	21
4.2	Formula Structure .....	21
4.2.1	Quantum.....	21
4.2.2	Duration .....	22
5	THE WITH CHILD SUPPORT FORMULAS .....	23
5.1	The Basic Formula.....	23
5.1.1	Required Information.....	23

5.1.2	Formula Structure .....	24
	Quantum.....	24
	Duration .....	24
5.2	The Shared Custody Formula .....	25
5.2.1	Required Information.....	25
5.2.2	Formula Structure .....	26
	Quantum.....	26
	Duration .....	27
5.3	The Split Custody Formula.....	27
5.3.1	Required Information.....	28
5.3.2	Formula Structure .....	28
	Quantum.....	29
	Duration .....	29
5.4	Step-Children .....	30
5.5	The Custodial Payor Formula .....	30
5.5.1	Required Information.....	30
5.5.2	Formula Structure .....	31
	Quantum.....	31
	Duration .....	31
5.6	The Adult Children Formula.....	32
5.6.1	Required Information.....	32
5.6.2	Formula Structure .....	32
	Quantum.....	32
	Duration .....	33
APPENDIX A: Glossary.....		35
APPENDIX B: Sources of Income.....		41
APPENDIX C: Excerpts from the Federal Child Support Guidelines .....		45

# 1 INTRODUCTION

Obtaining reliable and repeatable calculations under the *Spousal Support Advisory Guidelines*<sup>1</sup> demands a sound understanding of the Advisory Guidelines' formulas and the data each formula requires. Counsel commonly find themselves addressing spousal support claims with inconsistent Advisory Guidelines calculations even when they agree on the applicable formula. The source of these inconsistencies is usually found in the choice and accuracy of the data entered into the software used to calculate support amounts. Even slight differences in the data used by counsel can generate significant variation in the formula results for quantum and duration.

This paper will review the key data elements of the Advisory Guidelines' formulas including the calculation of time and age, the length of the parties' relationship, the age of the recipient of support and the youngest child's entry into school. It will review the determination of income under the Advisory Guidelines and the tax treatments applicable to different types of income, and canvass the tax deductions, credits and benefits applicable under the Advisory Guidelines.

This paper will also review the various Advisory Guidelines formulas and the circumstances in which each formula applies. Specifically, it will review the *without child support* formula, the basic *with child support* formula and the variations that apply when the parties have shared custody or split custody, when all of the children are dependent adults or step-children, and when the children live primarily with the spousal support payor .

## 1.1 About This Paper

This paper is written for lawyers, mediators and judges who work with spousal support issues on a frequent basis. It assumes that the professional has a working familiarity with the Advisory Guidelines and the calculation of income under the Child Support Guidelines.<sup>2</sup> It will not review the theoretical basis of the Advisory Guidelines or the general law on spousal support.

The Advisory Guidelines formulas only apply when it has been determined or agreed that a party is entitled to receive spousal support.<sup>3</sup> Once the Advisory Guidelines have been applied, the results may, in certain circumstances, be restructured to rebalance quantum against duration and vice versa. Results may be subject to certain exceptions requiring a departure from the Advisory Guidelines formulas altogether.<sup>4</sup> This paper will not discuss the issues arising before and after the application of the formulas.

This paper also assumes that software is available to the professional for the calculation of the Advisory Guidelines formulas, that this software is reasonably accurate and that the professional

---

<sup>1</sup> Carol Rogerson and Rollie Thompson, *Spousal Support Advisory Guidelines* (Ottawa: Department of Justice, 2008) ("SSAG"). Available on line at: <http://www.justice.gc.ca/eng/pi/pad-rpad/res/spag/index.html>.

<sup>2</sup> Federal Child Support Guidelines, SOR/97-175, as amended by SOR/2007-59 ("CSG").

<sup>3</sup> Issues about entitlement to support, the applicability of the Advisory Guidelines and the impact of prior agreements on the use of the Advisory Guidelines are discussed at SSAG §§3.2, 4, 5.

<sup>4</sup> Exceptions to the formulas and restructuring the formula results are discussed at SSAG §§3.4, 10, 12.

is familiar with its operation. At least three companies in the private sector have developed software for the Guidelines. This paper is not a guide to the use of the Advisory Guidelines software.<sup>5</sup>

---

<sup>5</sup> The author would like to thank Professors Carol Rogerson and Rollie Thompson for their comments on this paper.



## 2 GATHERING INFORMATION

The accuracy and repeatability of the results returned by Spousal Support Advisory Guidelines software depend on:

1. a sound understanding of the different information required by the Advisory Guidelines formulas;
2. making careful and defensible decisions about the data entered into the Advisory Guidelines software; and,
3. accurately interpreting and inputting that data into the software.

Negligible errors will generally have a correspondingly negligible impact on the formula calculations. More significant discrepancies will arise from the gross under- or overstatement of a party's income and, in more subtle ways, from the mischaracterization of a party's income or the attribution of inapplicable tax benefits or credits to a party.<sup>6</sup> Although careful use of the Advisory Guidelines software will go some way to addressing these concerns, a working knowledge of the various benefits, credits and deductions available to parents and the calculation of income under the Child Support Guidelines is essential.

This chapter will discuss the collection of information for the Advisory Guidelines formulas, including the calculation of income. As these data are essential to the results returned by the Advisory Guidelines software, counsel should consider canvassing problem areas with each other before contested court appearances and attempting to reach some consensus.<sup>7</sup>

### 2.1 Calculation of Time

Apart from information about the parties' incomes, the minimum data required by the Advisory Guidelines are the length of the parties' relationship and the age of the recipient at separation. The *with child support* formulas will additionally require information concerning: the ages of the children, to calculate the tax benefits, credits and deductions available to the parties; the length of time until the youngest child starts full-time school; and, the length of time until the youngest or last child leaves school.

---

<sup>6</sup> For example, entering untaxed income as taxable income or employment income as self-employment income will lead to significantly different results. While all qualify as "income" for the purposes of the Advisory Guidelines, each is subject to different deduction and income tax rules which will influence the calculation of individual net income.

<sup>7</sup> The court made this pointed observation in *Wetmore v. Wetmore*, 2007 BCSC 117 at para. 69: "Both counsel have provided a number of [spousal support] calculations, each using assumptions favouring their respective clients. Not all of the assumptions are valid and not all of the necessary data (e.g. child care costs and extraordinary expenses) have been inputted in each case, limiting the utility of the submitted calculations."

### **2.1.1 Length of Relationship**

The information required is the length of the parties' relationship *from the date of marriage to the date of separation* plus the length of *any period of cohabitation prior to marriage*. Prior periods of cohabitation should be included only if the cohabiting relationship was marriage-like or conjugal in nature. [SSAG §3.3.5](#)

Length of relationship may be expressed in whole years, in half-years or in smaller fractions. In most cases, the difference in calculations based on whole numbers versus fractions will be negligible. When calculating time in whole years, round down at fractions of six months or less and round up at fractions of seven months or more.

### **2.1.2 Age of Recipient**

The information required is the age of the recipient *at the date of separation*. [SSAG §7.1](#)

Age may be expressed in whole years, in half-years or in smaller fractions. In most cases, the difference in calculations based on whole numbers versus fractions will be negligible. When calculating time in whole years, round down at fractions of six months or less and round up at fractions of seven months or more.

### **2.1.3 Age of Children**

The information required is the ages of the children of the marriage,<sup>8</sup> expressed in whole years, as *of the date of the determination of spousal support*.

The age of each child is important for the determination of net income under the *with child support* formulas as entitlement to the various tax credits, benefits and deductions terminates at different ages.<sup>9</sup>

### **2.1.4 Youngest Child's Entry into School**

The information required is the number of years until *the youngest child enters full-time school*, expressed in whole years, as *of the date of the determination of spousal support* . [SSAG §8.5.3](#)

Depending on the particular regulations of the local school district, full-time school may begin in Kindergarten or Grade One. Entry into full-time school may be delayed for children born late in the year, usually in September or later months.

**NOTE** Any delays in the child's entry to full-time school known at the time spousal support is determined should be reflected in this datum.

---

<sup>8</sup> Usually as defined by ss. 2(1) and (2) of the *Divorce Act*, R.S.C. 1985, c. 2 (2nd Supp.) ("DA"), or otherwise by agreement.

<sup>9</sup> For example, the Universal Child Care Benefit is payable for all children under the age of six, while the child care expense deduction is only available for children under the age of sixteen, and the Canada Child Tax Benefit terminates when a child turns eighteen.

### 2.1.5 Youngest or Last Child's Exit from School

The information required is the number of years until *the youngest or last child finishes high school*, assuming the child follows the local school district's standard course of study and graduates with his or her present cohort. [SSAG §8.5.3](#)

Children who have skipped one or more grades or who drop out may finish school early; likewise the finish date may be delayed for children who have repeated one or more grades or taken extended absences from school.

**NOTE** Any advances or delays in the child's finish date known at the time spousal support is determined should be reflected in this datum.

## 2.2 Income

The Advisory Guidelines formulas use three calculations of income: *gross income*, largely income as determined using the Child Support Guidelines; *net income*, calculated taking into account income taxes and certain payroll deductions against gross income; and, *individual net disposable income*, net income calculated taking into account any available tax deductions, benefits and credits, the notional and actual amounts of child support paid, as well as the tax consequences of the payment and receipt of spousal support. The relevant time for the determination of income is *the date of the initial spousal support decision*, unless there has been a long period of separation before the initial order or agreement or there has been a significant post-separation increase in the payor's income.<sup>10</sup> [SSAG §6.7](#)

Counsel must enter each party's income (generally the income reported by the party in his her most recent T1 General Income Tax and Benefit Return,<sup>11</sup> subject to a number of exceptions to be discussed shortly) into the Advisory Guidelines software, making the adjustments permitted under the Child Support Guidelines, including the imputation of income where appropriate. The software may prompt for some or all of the adjustments allowed by the Child Support Guidelines and counsel must know which adjustments are appropriate in the circumstances of each case.

---

<sup>10</sup> In circumstances like these, it may be necessary to take into account post-separation increases in the payor's income and any post-separation decreases in the recipient's income. See the discussion at SSAG §§14.3, 14.4.

<sup>11</sup> Although use of the previous year's income as reflected on the last tax return is common practice, the case law on CSG s. 2(3) is clear that current income information should be used whenever possible. Where a party's present earnings are expected to generate an annual income significantly different than his or her income in the previous year, the party's projected current annual income should be used. See *Lee v. Lee* (1998), 43 R.F.L. (4th) 339 (Nfld. C.A.); *Lavergne v. Lavergne*, (2007), 40 R.F.L. (6th) 239 (Alta. C.A.); *Tauber v. Tauber* (2001), 18 R.F.L. (5th) 384 (Ont. S.C.J.). See also SSAG §6.7.

The Advisory Guidelines software will calculate *net income* and *individual net disposable income* based on the income information input by counsel, subject to any additional information the software may require about the tax deductions, credits and benefits available to the parties.<sup>12</sup>

### 2.2.1 Gross Income

Gross income is calculated using the sources of income and the adjustments to income prescribed by the Child Support Guidelines at ss. 15 to 20 and Schedule III. The Guidelines' starting point is the general rule that a party's income for child support purposes is the party's *aggregate income from all sources listed under the heading Total Income* in the T1 General Income Tax and Benefit Return, as reported at Line 150 and adjusted under Schedule III. [CSG s. 16](#)

Great care must be taken in entering a party's income into the Advisory Guidelines software as the Line 150 sources of income variously:

1. invoke different statutory deductions, such as *employment income* which is subject to the deduction of Employment Insurance premiums and Canada Pension Plan or Quebec Pension Plans contributions, *self-employment income* from which no EI premiums are paid but is subject to twice the standard rate of CPP/QPP contributions, and "*other*" *income* which is subject to no deductions at all;
2. require different tax treatments, such as income reported in *gross amounts* (employment income, most notably), income reported *net of expenses* (as is the case for rental income and partnership income), income which is *grossed up* for tax purposes (dividend income) and income of which *only the taxable portion is reported* (capital gain income); and,
3. demand differing degrees of scrutiny, especially where income is reported net of expenses and those expenses are wholly or partially discretionary, such as *self-employment income* and *rental income*.

### ***Income Adjustments under the Child Support Guidelines***

After each party's income from all Line 150 income sources has been entered into the Advisory Guidelines software, counsel should apply any relevant adjustments required by Schedule III of the Child Support Guidelines. The most common adjustments are these:

- s. 1 allows the deduction of certain employment expenses from a party's income, including (d) sales expenses, (f) travel expenses, (f.1) motor vehicle travel expenses, (g) dues and (h) motor vehicle costs;
- s. 3.1 requires that any Universal Child Care Benefits be excluded from a party's income;

**NOTE** UCCB is *excluded* from a party's income for the purposes of calculating child support, however the Advisory Guidelines

---

<sup>12</sup> The tax calculations produced by the Advisory Guidelines software have not been approved by the Canada Revenue Agency. Tax calculations may be checked by performing the calculations manually. A child and family benefits calculator is available on line at <http://www.cra-arc.gc.ca/bnfts/clcltr/menu-eng.html>.

require that any UCCB payments relating to children of the marriage be *included* in a party's income for the calculation of spousal support. The Advisory Guidelines software should make these distinctions. [SSAG §6.4](#)

**s. 4** requires that the portion of any social assistance benefits paid in respect of persons other than the party be excluded from the party's income;

**NOTE** Although the portion of any social assistance payments relating to a party are to be included in the party's income for the purposes of calculating child support, the Advisory Guidelines require that *all* social assistance benefits be *excluded* from a party's income for the purposes of the calculation of spousal support. [SSAG §6.2](#)

**s. 5** requires the actual amount of dividends received by a party to be included in a party's income, not the grossed up amount (the grossed up amount is reported as Line 150 income);<sup>13</sup>

**s. 6** requires the actual amount of capital gains received by a party, net of the actual amount of any capital losses, to be included in a party's income, not just the taxable portion (only the taxable portion is reported as Line 150 income);<sup>14</sup>

**s. 8** allows the deduction of carrying charges and interest expenses from a party's income;

**s. 9** allows sums paid to non-arm's-length parties or companies to be included in the income of self-employed persons;<sup>15</sup> and,

**s. 11** requires that capital cost allowance deductions for real property be included in a party's income.

Once any adjustments under Schedule III have been made, ss. 17 to 20 of the Child Support Guidelines allow for the further refinement of a party's income. Many of these additional adjustments are discretionary and will require the prior agreement of the parties or the direction of the court:

**s. 17(1)** allows a party's income to be calculated as the average of his or her income over the three most recent tax years, rather than be fixed as the party's current income, where the party's income fluctuates from year to year or includes non-recurring income;

**s. 17(2)** gives the court the discretion to discount non-recurring losses, or ignore them altogether, in determining a party's income;

---

<sup>13</sup> See also CSG s. 19(1)(h).

<sup>14</sup> See also CSG s. 19(1)(h).

<sup>15</sup> See also CSG s. 18(2).

s. 18(1) allows the court to adjust a party's income where his or her reported income does not reflect all of the income available from the corporation, and to include in the party's income the corporation's pre-tax income or an amount commensurate with the value of the party's services to the corporation;

s. 18(2) allows the court to include some or all payments made to non-arm's-length entities in a party's corporate income;

s. 19(1) allows the court to impute income to a party in a number of circumstances, including where (a) a party is intentionally underemployed or unemployed, (b) the party is exempt from paying federal or provincial income taxes or both, (c) the party lives in a country with lower effective tax rates than those prevailing in Canada, (e) the party's property is not reasonably used to general income, (g) the party unreasonably deducts expenses from his or her income,<sup>16</sup> or (h) a significant portion of the party's income derives from untaxed sources or sources taxed at a lower rate than employment income; and,

s. 20 requires the income of non-residents to be calculated as though the party were a resident of Canada.

### ***Averaging Income***

The income averaging provisions of the Child Support Guidelines apply to the determination of income under the Advisory Guidelines for both the payor and the recipient of spousal support. Under s. 17(1) of the Guidelines, the income of a party with a fluctuating income (such as a realtor, farmer or commissioned salesperson)<sup>17</sup> or a party who is in receipt of non-recurring income (such as from a severance payment or bonus, or the exercise of stock options)<sup>18</sup> may be determined in light of the party's income over the previous three years.<sup>19</sup>

### ***Imputing Income***

The income imputing provisions of the Child Support Guidelines also apply to the determination of income under the Advisory Guidelines, and are perhaps more important in spousal support cases than in child support cases as income can also be imputed to the recipient of spousal support to address self-sufficiency issues. **SSAG §§[6.1](#), [13.2](#)**

Section 19(1) provides a list of the circumstances in which income can be imputed to a party, including in circumstances in which a party chooses to earn less than he or she is capable of earning or refuses work when capable of working,<sup>20</sup> a party unreasonably deducts expenses from

---

<sup>16</sup> See also CSG s. 19(2).

<sup>17</sup> *Frerichs v. Frerichs*, 1998 ABQB 216.

<sup>18</sup> *Howe v. Tremblay* (2007), 44 R.F.L. (6th) 140 (Ont. S.C.).

<sup>19</sup> This section does not apply to parties with incomes that increase over the relevant period, in which case the party's most recent income should be used, see *S.(K.K.) v. S.(C.S.)*, 2004 BCSC 26.

<sup>20</sup> *Martel v. Martel*, 2007 SKQB 227; *Hanson v. Hanson*, [1999] B.C.J. No. 2532 (S.C.).

his or her income,<sup>21</sup> a party fails to reasonably use property to generate income<sup>22</sup> or a party has income which is taxed at a lower rate than employment income.<sup>23</sup> The factors itemized in s. 19(1) are not exhaustive, and income has been imputed based on other factors such as lifestyle or career choice, earning history and the availability of student loans.<sup>24</sup>

**NOTE** It is possible for a payor to have different incomes for the purposes of child support and spousal support. In the imputation of income, for example, income may be more readily imputed for child support than for spousal support. Further, in some cases, the division of property, such as stock options, may require an adjustment of income for spousal support that is not required for child support.

### ***Non-Taxable Income***

As one specific example of imputing income, non-taxable income (for example, the income of aboriginal persons earned on reserve and disability benefit income) may be *grossed-up* for the calculation of spousal support under the *without child support* formula as it is grossed up for the calculation of child support under the Child Support Guidelines. A party's grossed-up income is the amount of gross, taxable income the party would be required to earn in order to have an income net of taxes equivalent to the non-taxable income. [CSG s. 19\(1\)\(b\)](#); [SSAG §6.6](#)

**NOTE** The Advisory Guidelines provide an exception for payors whose income is wholly or mostly non-taxable and cannot deduct their spousal support payments. [SSAG §12.8](#)

**NOTE** It is not necessary to gross up non-taxable income for the *with child support* formulas which work with net income amounts. [SSAG §8](#)

### **2.2.2 Net Income**

The Advisory Guidelines use the parties' *individual net disposable incomes* to determine the maximum amount payable under the high end of the range of the *without child support* formula and to determine quantum under most of the *with child support* formulas. At its simplest, individual net disposable income is the total of a party's income from all sources less income taxes and mandatory payroll deductions but adjusted to include any benefits and tax credits available to the party, the payment of actual and notional child support, and the tax consequences of the payment and receipt of spousal support. [SSAG §8.3.1](#)

The Advisory Guidelines software will calculate net income based on the data provided by counsel for gross income, subject to a number of important adjustments at counsel's discretion.

---

<sup>21</sup> *Shaw v. Shaw*, (1997), 120 Man.R. (2d) 310 (Q.B.); *M.C. v. V.Z.*, 1998 ABCA 410.

<sup>22</sup> *Boston v. Boston*, 2001 SCC 43; *Lombardo v. Lombardo*, 2007 BCSC 284.

<sup>23</sup> *Orser v. Grant*, [2000] O.J. No. 1669 (Ont. S.C.); *Lavoie v. Wills*, 2000 ABQB 1014.

<sup>24</sup> See for example *Bak v. Dobell*, 2007 ONCA 304; *Strand v. Strand* (1999), 58 R.F.L. (4th) 174 (Alta. Q.B.); *Razavi v. Aavani*, [1998] B.C.J. No. 1885 (S.C.); and, *Braich v. Braich*, [1997] B.C.J. No. 1764 (S.C.).



As a result, it is critical that the data input to determine gross income are accurate as possible and that counsel are aware of the tax treatment of different kinds of income and the rules governing entitlement to the various tax deductions, benefits and credits.

The following are the general tax and source deduction rules applicable to the most common types of income:

**Employment Income:** Employment income is subject to federal and provincial income taxes. The employee's portion of EI premiums, CPP/QPP contributions and provincial health care premiums will be deducted at source by the employer.

**Self-Employment Income:** Self-employment income, net of expenses and other work-related deductions, will be subject to federal and provincial income taxes. EI premiums are not deducted, however the earner must remit both the employee's and employer's CPP/QPP contributions, effectively doubling the rate normally payable.

NOTE The expenses and other deductions which reduce self-employed persons' taxable incomes should be subject to scrutiny for reasonableness under CSG ss. 18(1), 18(2) and 19(1)(g).

**Dividend Income:** Dividend income received from Canadian and foreign companies is taxable. Income tax is payable on the grossed up amount of dividends received from Canadian companies. EI premiums, CPP/QPP contributions and provincial health care premiums are not deducted from dividend income.

NOTE The actual amount of dividends received by a party is included in a party's income for the purposes of the Advisory Guidelines, not the grossed up amount. [CSG Sch. III, s. 5](#)

**Pension Income:** Pension income is received from private pension plans, public pensions such as CPP/QPP and government benefits including Old Age Security payments. Income tax is payable on pension income and is deducted at source. EI premiums, CPP/QPP contributions and provincial health care premiums will not be deducted.

**“Other” Income:** Income qualifying as neither employment income nor self-employment income, such as scholarship or gratuity income, will be taxable at the party's marginal tax rate. EI premiums, CPP/QPP contributions and provincial health care premiums will not be deducted.

As the Advisory Guidelines software will automatically calculate and deduct source deductions from a party's income, it is important that the party's income be accurately entered by type of income to ensure that the correct deductions are made.



## ***Tax Deductions***

Certain tax deductions may be available to either or both parties which will lower a party's tax burden, affecting the party's net disposable income for spousal support purposes:<sup>25</sup>

**Annual Union, Professional or Like Dues (Line 212):** This deduction is provided for in the Child Support Guidelines and should be automatically taken into account by the Advisory Guidelines software. [CSG Sch. III, s. 1\(g\)](#)

NOTE The deduction of dues under the Child Support Guidelines and the Advisory Guidelines is frequently overlooked.

**Child Care Expenses (Line 214):** This deduction is available where a party requires child care for a child under the age of sixteen to earn employment or self-employment income, attend school or carry on grant-funded research. Only the portion of this deduction relating to any children of the marriage should be included in a party's net income. [SSAG §6.3](#)

**Support payments (Line 220):** This deduction is available for the purposes of the Advisory Guidelines where a party is under a spousal support obligation from a previous relationship, a situation dealt with as an exception. [SSAG §12.3](#)

**Carrying Charges and Interest Expenses (Line 221):** This deduction is provided for in the Child Support Guidelines and should be automatically taken into account by the Advisory Guidelines software. [CSG Sch. III, s. 8](#)

Certain other deductions should *not* be taken into account in the determination of income, including:

Registered pension plan contributions (Line 207)

NOTE The non-deductibility of pension plan contributions under the Advisory Guidelines is frequently overlooked. [SSAG §8.3.1.](#)

RRSP contributions (Line 208)

## ***Non-Refundable Tax Credits, Income***

Certain non-refundable tax credits may be available to either or both parties. The Advisory Guidelines require that all tax credits received *in relation to a child of the marriage* be reflected in the party's net income,<sup>26</sup> affecting the party's net disposable income for spousal support purposes. These are:<sup>27</sup>

---

<sup>25</sup> Line numbers refer to line numbers in the T1 General Income Tax and Benefit Return.

<sup>26</sup> See the discussion at [SSAG §6.3](#).

<sup>27</sup> Line numbers refer to line numbers in the T1 General Income Tax and Benefit Return. The amounts given are the amounts applicable for the 2008 tax year.

**Spouse Amount (Line 303):** A credit equal to the basic personal credit claimed for a party's *new* spouse or common-law partner.

**Eligible Dependent Amount (Line 305):** A credit equal to the basic personal credit which can be claimed for one child under the age of eighteen, or older if mentally or physically impaired and living with the party and the party does not have a spouse or does not claim the spouse amount.

**Canada Employment Amount (Line 363):** A credit of \$1,019 claimed by persons reporting employment income (Line 101) or other employment income (Line 104).

**Amount for Children (Line 367):** A credit of \$2,038 which can be claimed for each child under the age of eighteen except for any child claimed as an eligible dependent.

**Infirm Dependents Amount (Line 306):** A credit of \$4,095 which can be claimed for each child who is eighteen or older and mentally or physically impaired.

**Disability Amount (Line 316):** A credit of \$7,021 which can be claimed by persons who are mentally or physically impaired.

### ***Non-Refundable Tax Credits, Special Expenses***

Certain non-refundable tax credits may be available to either or both parties in relation to the children's expenses.<sup>28</sup> In the calculation of a party's individual net disposable income under the Advisory Guidelines, the credits received in relation to a child of the marriage will be applied *to reduce the cost of any expenses qualifying as special expenses*. (Any tax credits received in connection with expenses not qualifying as special and/or extraordinary expenses should be included in the calculation of a party's net disposable income in the same manner as the tax credits discussed above.<sup>29</sup>) These tax credits are:<sup>30</sup>

**Children's Fitness Amount (Line 365):** A credit of up to \$500 per child under the age of sixteen in relation to the registration of the child in an approved program of physical activity.

**Disability Amount Transferred from a Dependent (Line 318):** A credit equal to the portion of the \$7,021 personal disability amount unused by a disabled dependent.

**Tuition Amount Transferred from a Dependent (Line 318):** A credit equal to the portion of the \$5,000 personal tuition, education and textbook amount unused by a child.

---

<sup>28</sup> In general, the party with the higher marginal tax rate should apply for these tax credits in order to maximize the family's savings.

<sup>29</sup> Not all of the children's expenses will qualify as special expenses within the meaning of CSG s. 7. The cost of non-qualifying expenses is presumed to be covered by the payment of the table amount of child support, see for example *Raftus v. Raftus* (1998), 37 R.F.L. (4th) 59 (N.S. C.A.) and *Ostapchuk v. Ostapchuk* (2003), 38 R.F.L. (5th) 172 (Ont. C.A.).

<sup>30</sup> Line numbers refer to line numbers in the T1 General Income Tax and Benefit Return. The amounts given are the amounts applicable for the 2008 tax year.

**NOTE** The transfer of this credit is at the election of the child. The amount transferred is the amount remaining after the child's own tax burden has been reduced to zero and will not likely be calculable in advance of the end of a tax year.

**Medical Expenses of Children (Line 330):** A credit for qualifying medical expenses of children under the age of eighteen.

Certain other non-refundable tax credits should *not* be taken into account in the determination of the cost of a special expense, including the following:

Public transit amount (Line 364)

Interest paid on student loans (Line 319)

Personal tuition amount (Line 323)

Medical expenses (Lines 330 and 331), where the expenses do not relate to a child of the marriage.

Donations and gifts (Line 349), including donations made in relation to a child of the marriage.

### ***Refundable Tax Credits***

Certain refundable tax credits may be available to decrease a party's income tax obligation, affecting the party's net disposable income for spousal support purposes:<sup>31</sup>

**Working Income Tax Benefit (Line 453):** A credit of up to \$1,044 available to persons with a dependent spouse or child who earned less than \$22,105.<sup>32</sup> A supplement of \$261 is available to persons who also qualify for the personal disability non-refundable tax credit.

**Employee GST/HST Rebate (Line 457):** A rebate of GST/HST paid on expenses deducted from employment and self-employment income.

### ***Government Benefits***

Certain government benefits may be available to either or both parties. The Advisory Guidelines require that any benefits received *in relation to a child of the marriage* be included in a party's

---

<sup>31</sup> Line numbers refer to line numbers in the T1 General Income Tax and Benefit Return. The amounts given are the amounts applicable for the 2008 tax year.

<sup>32</sup> Slightly different amounts are payable for residents of British Columbia, Nunavut and Quebec.

net income,<sup>33</sup> affecting the party's net disposable income for spousal support purposes. These are:<sup>34</sup>

**Canada Child Tax Benefit:** A *non-taxable* benefit paid for all children under the age of eighteen in the amount of \$1,307 per child, with an additional \$91 paid for the third and each subsequent child. The benefit is phased out by 2% (one child) or 4% (two or more children) of family income above \$37,885.

**National Child Benefit Supplement:** A *non-taxable* benefit directed at low income families, with \$2,025 paid for the first child, \$1,792 for the second and \$1,704 for the third and each subsequent child. The benefit is rapidly phased out for family income above \$21,287.

**Universal Child Care Benefit:** A *taxable* benefit paid for all children under the age of six, regardless of family income. UCCB income is not included in the government's calculation of family income for the purposes of the other child-related benefits.

NOTE Although UCCB is *excluded* from a party's income for the purposes of calculating the table amount of child support, the Advisory Guidelines require that any UCCB payments relating to children of the marriage be *included* in a party's income for the calculation of spousal support. The Advisory Guidelines software should make these distinctions. [SSAG §6.4](#)

**Child Disability Benefit:** A *non-taxable* benefit paid for children with a severe mental or physical disability in the amount of \$2,395 per child. The benefit is phased out by 2% (one child) or 4% (two or more children in receipt of this benefit) of family income above \$37,885.

**GST/HST Credit:** A *non-taxable* GST/HST refund in the amount of \$242 plus \$127 per child under the age of eighteen paid on a quarterly basis. The refund is phased out by 5% of family income above \$31,524.

NOTE All of the GST/HST credit is to be included in party's income, not just the portion relating to the children of the marriage. [SSAG §6.3](#)

Where the parties share the children's time equally or near-equally and this circumstance comes to the attention of the Canada Revenue Agency, the CRA will rotate the CCTB, UCCB and the child-related portion of the GST/HST Credit between the parents on a six-month basis.<sup>35</sup>

---

<sup>33</sup> See the discussion at SSAG §6.3 about the attribution of these benefits, and the discussion at SSAG §6.5 regarding benefits received in relation to children other than children of the marriage.

<sup>34</sup> The amounts given are the amounts applicable for the 2008 tax year.

<sup>35</sup> The CRA's policy on the rotation of benefits is available at [http://www.cra-arc.gc.ca/bnfts/fq\\_lgblty-eng.html](http://www.cra-arc.gc.ca/bnfts/fq_lgblty-eng.html).

NOTE Counsel must be aware how the Advisory Guidelines software treats these benefits when the parties have shared custody and ensure that the software is set to reflect the circumstances of the parties. [SSAG §8.6.1](#)

### ***Other Benefits and Credits***

The following general rules can be used to determine how other deductions, benefits and credits, including future federal benefits and current provincial and territorial benefits should be treated for the purpose of calculating a party's net income under the Advisory Guidelines. [SSAG §§6.3, 8.3.1](#)

1. Credits relating to the special and/or extraordinary expenses of the children of the marriage, such as enrolment in sports, arts or music programs, will be applied to reduce the cost of those special expenses in the calculation of a party's individual net disposable income.<sup>36</sup>
2. Credits relating to the expenses of the children of the marriage not qualifying as special and/or extraordinary expenses, will be included in the calculation of a party's individual net disposable income as any other credit.
3. Benefits and credits which result in a party receiving actual income rather than a tax reduction, such as the federal GST/HST credit or British Columbia's climate action dividend, will be reflected in the party's income.
4. Only the portion of children's benefits and credits relating to children of the marriage should be taken into account.

### ***Other Source Deductions***

Source deductions in addition to the statutory deductions for income tax, EI premiums, CPP/QPP contributions and provincial health care premiums may be deductible for the purposes of the Advisory Guidelines if the deduction provides a direct benefit to any children of the marriage. Deductions apart from these, even those deductions an employer deems mandatory, will not be deductible under the Advisory Guidelines. [SSAG §8.3.1](#)

The following additional deductions will be applicable to the determination of net income under the Advisory Guidelines in the circumstances specified:

**Extended health and dental insurance premiums:** Deductible only if the insurance covers the other party and/or a child of the marriage.

---

<sup>36</sup> Not all of the children's expenses will qualify as special expenses within the meaning of CSG s. 7. The cost of non-qualifying expenses is presumed to be covered by the payment of the table amount of child support, see for example *Raftus v. Raftus* (1998), 37 R.F.L. (4th) 59 (N.S. C.A.) and *Ostapchuk v. Ostapchuk* (2003), 38 R.F.L. (5th) 172 (Ont. C.A.).

**Life insurance premiums:** Deductible only if the beneficiary is the other party or a child of the marriage.

The following deductions will *not* be applicable to the determination of net income under the Advisory Guidelines:

RESP, RDSP and RRSP contributions

Pension plan and savings plan contributions

Employee stock purchase plans

Garnishments, repayment of loans and advances

Gym, health club and social club memberships

## **2.3 Other Information**

The Advisory Guidelines software will require additional information about child support and the children's special expenses for the purposes of the *with child support* formulas. Information about the amount of the payor's support obligations from previous relationships, if any, is required for the prior support obligations exception to both the *with child support* and the *without child support* formulas.

### **2.3.1 Provinces of Residence**

The information required is the province of residence of each party, *determined in the same manner as the applicable table is determined under the Child Support Guidelines*. [CSG s. 3\(3\)](#)

This information is required to determine the provincial tax rates, benefits and credits available to each party and set the child support tables applicable to each party.

### **2.3.2 Net Amount of Children's Special Expenses**

The information required is the net cost of those of the children's expenses which qualify as "special and/or extraordinary expenses" within the meaning of ss. 7(1) and (1.1) of the Child Support Guidelines,<sup>37</sup> after any subsidies and third party contributions have been applied to reduce the out-of-pocket cost of the expenses to the parties. [CSG s. 7\(3\)](#)

Although parents are presumptively required to contribute to the net cost of qualifying special expenses in proportion to their incomes, they can share the expense in another manner, usually by agreement. The parents' actual contributions to the special expenses of the children of the marriage are deducted from their incomes in the calculation of *individual net disposable income* under the Advisory Guidelines *with child support* formula. [CSG s. 7\(2\)](#); [SSAG §8.3.1](#)

---

<sup>37</sup> See *Gaspers v. Gaspers*, 2008 SKCA 94 for a recent appellate discussion of the test to determine whether an expense qualifies as a special expense.

**NOTE** Counsel must be aware how the Advisory Guidelines software apportions the cost of children's special expenses and ensure that the software is set to reflect the parents' actual contribution to those expenses.

**NOTE** The proper accounting of the parties' contributions to any special expenses is critical to the calculation of quantum under the Advisory Guidelines and is often overlooked.

### **2.3.3 Children's Residential Arrangements**

The information required is the primary residence of each of the children of the marriage as between the parties.

The children's individual residential arrangements are relevant to determine:

1. which party pays child support to whom and in what amount;
2. the child-related tax deductions, benefits and credits each party may be eligible to receive; and,
3. whether the parties have shared custody of the children, within the meaning of s. 9 of the Child Support Guidelines, or split custody, within in the meaning of s. 8 of the Guidelines.

### **2.3.4 Amount of Child Support**

The information required is the actual amount of child support paid where the amount departs from the amount specified in the Child Support Guidelines tables. The Advisory Guidelines software will deduct the table amount of child support from both parties' incomes in determining *individual net disposable income*. [SSAG §8.3](#)

**NOTE** In cases involving step-parents, the table amount of child support will be deducted in the determination of individual net disposable income, even where the amount actually paid is less than the table amount. [SSAG §6.3](#)

The amount of child support payable under the Child Support Guidelines is presumed to be the amount set out in the child support tables for the number of eligible children at the payor's income, subject to a small number of exceptions: where a child is over the age of majority; the payor earns more than \$150,000 per year; the payor is a step-parent to a child of the marriage; or, the payment of the table amount would cause undue hardship for either the payor or recipient. [CSG ss. 3, 4, 5, 10; DA s. 15.1\(3\)](#)

Where the parties have split custody, the Child Support Guidelines require a departure from the tables, calculated as a set-off between the parties' respective table amounts. Where the parties have shared custody, the Guidelines allow a departure from the table amounts with proof that the

payor is incurring increased costs as a result of the custodial arrangement.<sup>38</sup> Child support may also be payable in a different amount if an order or agreement makes special provisions that directly or indirectly benefit the children such that payment of the table amount would be inequitable. CSG ss. [8, 9](#); [DA s. 15.1\(5\)](#)

### **2.3.5 Support Paid for Prior Relationships**

The information required is:

1. the total amount of *child support* paid by the payor in relation to previous relationships; and,
2. the total amount of *spousal support* paid by the payor in relation to previous relationships

This information is required to adjust the payor's income for the purposes of the Advisory Guidelines prior support obligations exception. [SSAG §12.3](#)

**NOTE** It is important to distinguish between prior child support and prior spousal support obligations in order to capture the different tax treatment of each for the purposes of the *without child support* formula.

**NOTE** The prior support obligations exception also applies where the payor has a child of a prior relationship not qualifying as a "child of the marriage" in his or her care following separation. In such situations, the information required is the payor's *notional child support* obligation in respect of that child, namely the table amount of child support plus the amount of any special expenses, which will be applied to reduce the payor's income. [SSAG §12.3.3](#)

---

<sup>38</sup> *Contino v. Leonelli-Contino*, 2005 SCC 63.



### 3 CHOOSING THE RIGHT FORMULA

The Spousal Support Advisory Guidelines describe a variety of formulas, each of which apply in certain, specific circumstances. Use of an inappropriate formula will generate inaccurate results.

The *without child support* formula applies when there are *no dependent children* and calculates quantum and duration based on the length of the parties' relationship. This formula will be used where there are no "children of the marriage" within the meaning of the *Divorce Act*<sup>39</sup> or where all children of the marriage are all adults and independent. [SSAG §7](#)

The *with child support* formula, really a family of formulas, applies when there are dependent children of the marriage and there is a child support obligation concurrent with the spousal support obligation, whether or not child support is actually being paid. [SSAG §8](#)

The basic *with child support* formula applies whenever *the higher income spouse pays both child support and spousal support to the lower income spouse*. The amount of spousal support is based on the sharing of the parties' combined individual net disposable incomes while duration, initially determined as *indefinite, duration not specified*, is based on a combination of tests relating to the length of the parties' relationship and the school status of the youngest child. [SSAG §8.3](#)

There are three variants of the basic *with child support* formula.

1. The *shared custody formula*, which applies when the parties have shared custody of the children as defined by s. 9 of the Children Support Guidelines. [SSAG §8.6](#)
2. The *split custody formula*, which applies when each of the parties has the primary residence of one or more of the children, whether or not child support is being paid in an amount calculated under s. 8 of the Child Support Guidelines. [SSAG §8.7](#)
3. The *step-children formula*, which is not so much a separate formula as a slight modification of the other formulas, and which applies when the payor is a step-parent to all of the children of the marriage and the parties' relationship was short, whether or not child support is being paid in an amount different than the table amount under s. 5 of the Child Support Guidelines. [SSAG §8.8](#)

Two hybrid formulas based on the *with child support* formula calculate quantum and duration based on the length of the parties' relationship.

4. The *custodial payor formula*, which applies where the payor of spousal support has the primary residence of the children, whether the recipient of spousal support is paying child support or not. [SSAG §8.9](#)

---

<sup>39</sup> DA, ss. 2(1), (2).

5. The *adult children formula*, which applies when all of the children are dependent adults and the child support is determined under s. 3(2)(b) of the Child Support Guidelines.  
[SSAG §8.10](#)

## 4 THE WITHOUT CHILD SUPPORT FORMULA

The *without child support* formula applies to determine spousal support where the parties' relationship has not produced children or where all children are all adult and independent. It applies whenever there is no child support obligation concurrent with the spousal support obligation. [SSAG §7](#)

NOTE Both aspects of this formula, the calculations for both quantum and duration, must be applied when spousal support is determined under this formula. Quantum and duration are interrelated in the *without child support* formula and one cannot be used without the other or without the adjustment of the formula results beyond the ranges. [SSAG §7.5.1](#)

### 4.1 Required Information

The information required to perform this calculation is:

- **Payor's Gross Income**, determined in accordance with the Child Support Guidelines
- **Recipient's Gross Income**, determined in accordance with the Child Support Guidelines
- **Age of Recipient**
- **Length of Cohabitation**, calculated from date of marriage to date of separation, plus any period of cohabitation before marriage

### 4.2 Formula Structure

The *without child support* formula for *duration* is based on the length of the time the parties lived together, including any periods of cohabitation prior to the marriage. [SSAG §7.1](#)

The formula for *quantum* is based on the parties' gross incomes, as determined using the Child Support Guidelines. [SSAG §7.1](#)

#### 4.2.1 Quantum

Payments range from 1.5 percent (low end of the range) to 2.0 percent (high end of the range) of the difference between the parties' *gross incomes* per year of cohabitation. [SSAG §7.4](#)

The maximum amount payable is reached when *length of cohabitation* reaches 25 years, 37.5 percent (low end of the range) of the gross income difference to 50 percent (high end of the range). The high end of the range for amount may be limited at a lower amount as a result of the "equalization of net income cap" which will ensure that the recipient will not receive an amount of support that would leave him or her with more than *50 percent of the parties' net disposable income*. [SSAG §§7.4, 7.4.1](#)

**NOTE** The Advisory Guidelines software will calculate the equalization of net income cap. If the software is not available, a rough equivalent limit can be fixed by limiting the high range to 48 percent of the gross income difference. [SSAG §7.4.1](#)

The Advisory Guidelines software will calculate the parties' net incomes to screen for and apply the equalization of net income cap. If counsel has any suspicion that this limit may be reached, counsel should ensure that all data relevant to determination of net income has been entered into the software.

#### **4.2.2 Duration**

Spousal support will be payable for a length of time equal to 0.5 years (low end of the range) to 1.0 years (high end of the range) per year of cohabitation. [SSAG §7.5](#)

The maximum duration spousal support will be payable for is *indefinite, duration not specified* when:

1. the length of cohabitation is greater than five years *and* the length of cohabitation plus the age of the recipient is greater than or equal to 65; or,
2. the length of cohabitation is twenty or more years.

**NOTE** Duration is to include any period in which support or its equivalent was paid on an interim basis pending a final determination of the issue. In other words, the number of months during which interim support or its equivalent was paid should be deducted from the results produced by the formula for duration. [SSAG §5.3](#)

## 5 THE WITH CHILD SUPPORT FORMULAS

The *with child support* formulas apply when one or both parties have children qualifying as “children of the marriage” within the meaning of the *Divorce Act*,<sup>40</sup> whether or not child support is being paid or is being paid in the amount prescribed by the Child Support Guidelines.

The basic *with child support* formula is designed to leave the recipient with 40 percent to 46 percent of the parties’ *combined individual net disposable incomes*, payable for a period of time based on the length of cohabitation or the school status of the last or youngest child. Two variants of the basic formula apply in situations or where the parties have split custody or shared custody, and a slight modification of the basic *with child support* formula applies where the payor is a step-parent to the children.

Two other versions of the *with child support* formula apply where the payor has the children’s primary residence or all children are dependent adults receiving child support in an amount determined under s. 3(2)(b) of the Child Support Guidelines. Unlike the shared custody and split custody variants of the basic *with child support* formula, these hybrid formulas rely on a length-of-relationship test to determine quantum rather than on dividing the parties’ individual net disposable incomes.

### 5.1 The Basic Formula

The basic *with child support* formula will be used in most circumstances where the parties have children. It is designed to calculate the amount of spousal support payable where the payor pays both spousal support and child support to the recipient. [SSAG §8.3](#)

#### 5.1.1 Required Information

The information required to perform this calculation is:

- **Payor’s Gross Income**, determined in accordance with the Child Support Guidelines
- **Amount of Payor’s Child Support Payments**, where the amount paid differs from the Guidelines table amount
- **Recipient’s Gross Income**, determined in accordance with the Child Support Guidelines
- **Available Credits, Benefits and Deductions**
- **Amount of Parties’ Contributions to Special Expenses**
- **Age of Recipient**

---

<sup>40</sup> DA, ss. 2(1), (2).

- **Length of Cohabitation**, calculated from date of marriage to date of separation, plus any period of cohabitation before marriage
- **Age and Place of Residence of all Children**
- **Time until Youngest Child Enters School or Time until Last or Youngest Child Leaves School**, calculated bearing in mind any known delays or advances in these dates

### 5.1.2 Formula Structure

In this formula, the calculation for quantum is designed to leave the recipient with 40 to 46 percent of the parties' *combined individual net disposable incomes*, net of all taxes, deductions, benefits and credits, including those relating to the payment and receipt of spousal support. [SSAG §8.3.2](#)

Duration is initially *indefinite, duration not specified* however the formula generates a range for duration which can be used to shape the issue through subsequent processes of review and variation. The range for duration is determined by selecting the longest results from two tests for the low end and two tests for the high end; the longest result from each becomes the low end of the range and the high end of the range for the duration of spousal support. [SSAG §§8.5, 8.5.4](#)

#### ***Quantum***

Payments range from the amount that would leave the recipient with 40 percent (low end of the range) to 46 percent (high end of the range) of the parties' combined individual net disposable incomes. [SSAG §8.3.2](#)

**NOTE** The proper accounting of the parties' contributions to any special expenses is critical to the calculation of quantum under the Advisory Guidelines and is often overlooked.

#### ***Duration***

The range for duration is the range between the longest of the results produced by the low range tests and the longest of the results produced by the high range tests. [SSAG §8.5.4](#)

The low end of the range tests are:

- A. 0.5 years per year of cohabitation
- B. the length of time until the youngest child enters full-time school

**NOTE** Where the youngest child is in school at the date of separation, the applicable test will be 0.5 years per year of cohabitation.

The high end of the range tests are:

- A. 1.0 years per year of cohabitation
- B. the length of time until the last or youngest child finishes school

The maximum duration spousal support will be payable for is *indefinite, duration not specified* when:

1. the length of cohabitation is greater than five years *and* the length of cohabitation plus the age of the recipient is greater than or equal to 65; or,
2. the length of cohabitation is twenty or more years.

NOTE Duration is to include any period in which support or its equivalent was paid on an interim basis pending a final determination of the issue. In other words, the number of months during which interim support or its equivalent was paid should be deducted from the results produced by the formula for duration.  
SSAG §5.3

## 5.2 The Shared Custody Formula

The shared custody *with child support* formula should be used where the parties have shared custody within the meaning of s. 9 of the Child Support Guidelines. This formula should be used whenever the parties have shared custody, whether the payor is paying child support calculated using the customary set-off or another method. [CSG s. 9](#); [SSAG §8.6](#)

This formula is identical to the basic *with child support* formula, save that the full table amount of child support is deducted from the incomes of both parties in determining their *individual net disposable incomes*.<sup>41</sup>

### 5.2.1 Required Information

The information required to perform this calculation is:

- **Payor's Gross Income**, determined in accordance with the Child Support Guidelines
- **Amount of Payor's Child Support Payments**, where the amount paid is different than the unadjusted Guidelines table amount
- **Recipient's Gross Income**, determined in accordance with the Child Support Guidelines

---

<sup>41</sup> Under the basic *with child support* formula, the full table amount of child support is deducted from the payor's income while a notional table amount of child support is deducted from the recipient's income. In circumstances of shared custody, each parent technically pays the full amount of child support to each other, with the higher income party usually paying a set-off amount, subject to the considerations described in *Contino v. Leonelli-Contino, supra*.

- **Available Credits, Benefits and Deductions**, and whether these benefits are being rotated between the parties
- **Amount of Parties' Contributions to Special Expenses**
- **Age of Recipient**
- **Length of Cohabitation**, calculated from date of marriage to date of separation, plus any period of cohabitation before marriage
- **Age of all Children**
- **Time until Youngest Child Enters School or Time until Last or Youngest Child Leaves School**, calculated bearing in mind any known delays or advances in these dates

### 5.2.2 Formula Structure

In this formula, the calculation for quantum is designed to leave the recipient with 40 to 46 percent of the parties' *combined individual net disposable incomes*, net of all taxes, deductions, benefits and credits, including those relating to the payment and receipt of spousal support, and the full table amount of child support. [SSAG §8.6](#)

Duration is initially *indefinite, duration not specified*, however the formula generates a range for duration which can be used to shape the issue through subsequent processes of review and variation. The range for duration is determined by selecting the longest results from two tests for the low end of the range and two tests for the high end of the range; the longest result from each becomes the low end of the range and the high end of the range for the duration of spousal support. [SSAG §8.6](#)

#### ***Quantum***

Payments range from the amount that would leave the recipient with 40 percent (low range) to 46 percent (high range) of the parties' *combined individual net disposable incomes*. The full table amount of child support must be deducted from each party's income in calculating individual net disposable income, and the formula has been adjusted to include within the range an award of spousal support that would equalize the parties' net disposable incomes after the payment of child and spousal support [SSAG §§8.6, 8.6.3](#)

**NOTE** The Advisory Guidelines software must be adjusted where the parties or the CRA have decided to rotate the CCTB, UCCB and the child-related portion of the GST/HST Credit between the parties. [SSAG §8.6.1](#)

**NOTE** The payment of child support in an amount higher than the set-off approach is a factor which should be considered in determining the appropriate amount of spousal support payable within the ranges. [SSAG §8.6.2](#)



## ***Duration***

The range for duration is the range between the longest of the results produced by the low end of the range tests and the longest of the results produced by the high end of the range tests. **SSAG §§[8.5.4](#), [8.6](#)**

The low end of the range tests are:

- A. 0.5 years per year of cohabitation
- B. the length of time until the youngest child enters full-time school

**NOTE** Where the youngest child is in school at the date of separation, the applicable test will be 0.5 years per year of cohabitation.

The high end of the range tests are:

- A. 1.0 years per year of cohabitation
- B. the length of time until the last or youngest child finishes school

The maximum duration spousal support will be payable for is *indefinite, duration not specified* when:

1. the length of cohabitation is greater than five years *and* the length of cohabitation plus the age of the recipient is greater than or equal to 65; or,
2. the length of cohabitation is twenty or more years.

**NOTE** Duration is to include any period in which support or its equivalent was paid on an interim basis pending a final determination of the issue. In other words, the number of months during which interim support or its equivalent was paid should be deducted from the results produced by the formula for duration.

**[SSAG §5.3](#)**

## **5.3 The Split Custody Formula**

The split custody *with child support* formula should be used where each of the parties has the primary residence of one or more children of the marriage as defined by s. 8 of the Child Support Guidelines. This formula should be used whenever the parties have split custody, whether the payor is paying child support in the set-off amount prescribed by the Guidelines or another amount. **[CSG s. 8](#); [SSAG §8.7](#)**

This formula is similar to the basic *with child support* formula, save that from each party's *individual net disposable income* is deducted:

1. a *notional table amount* of child support for the children in the care of the party; *plus*,
2. the *actual table amount* of child support technically payable in respect of the children in the care of the other party.

### 5.3.1 Required Information

The information required to perform this calculation is:

- **Payor's Gross Income**, determined in accordance with the Child Support Guidelines
- **Recipient's Gross Income**, determined in accordance with the Child Support Guidelines
- **Available Credits, Benefits and Deductions**
- **Amount of Parties' Contributions to Special Expenses**
- **Age of Recipient**
- **Length of Cohabitation**, calculated from date of marriage to date of separation, plus any period of cohabitation before marriage
- **Age of all Children**
- **Time until Youngest Child Enters School or Time until Last or Youngest Child Leaves School**, calculated bearing in mind any known delays or advances in these dates

### 5.3.2 Formula Structure

In this formula, the calculation for quantum is designed to leave the recipient with 40 to 46 percent of the parties' *combined individual net disposable incomes*, net of all taxes, deductions, benefits and credits, including those relating to the payment and receipt of spousal support, and double the full table amount of child support. [SSAG §8.7](#)

Duration is initially *indefinite, duration not specified*, however the formula generates a range for duration which can be used to shape duration through subsequent processes of review and variation. The range for duration is determined by selecting the longest results from two tests for the low end of the range and two tests for the high end of the range. The longest test from each becomes the low end of the range and the high end of the range for the duration of spousal support. [SSAG §8.7](#)

## ***Quantum***

Payments range from the amount that would leave the recipient with 40 percent (low end of the range) to 46 percent (high end of the range) of the parties' combined individual net disposable incomes. A notional amount of child support for the children in the care of the party plus the actual table amount of child support for the children in the care of the other party must be deducted from each party's income in calculating *individual net disposable income*. [SSAG §8.7](#)

## ***Duration***

The range for duration is the range between the longest of the results produced by the low end of the range tests and the longest of the results produced by the high end of the range tests. [SSAG §§8.5.4, 8.7](#)

The low end of the range tests are:

- A. 0.5 years per year of cohabitation
- B. the length of time until the youngest child enters full-time school

**NOTE** Where the youngest child is in school at the date of separation, the applicable test will be 0.5 years per year of cohabitation.

The high end of the range tests are:

- A. 1.0 years per year of cohabitation
- B. the length of time until the last or youngest child finishes school

The maximum duration spousal support will be payable for is *indefinite, duration not specified* when:

1. the length of cohabitation is greater than five years *and* the length of cohabitation plus the age of the recipient is greater than or equal to 65; or,
2. the length of cohabitation is twenty or more years.

**NOTE** Duration is to include any period in which support or its equivalent was paid on an interim basis pending a final determination of the issue. In other words, the number of months during which interim support or its equivalent was paid should be deducted from the results produced by the formula for duration. [SSAG §5.3](#)

## 5.4 Step-Children

In cases where the payor is a step-parent to some or all children of the marriage, the basic, shared custody or split custody *with child support* formulas will apply to determine the amount and duration of spousal support as usual, subject to two modifications. [SSAG §8.8](#)

1. The full Guidelines table amount of child support is deducted from the payor's income, whether or not the actual amount paid is a lower amount determined under CSG s. 5.
2. Where the parties' relationship was short and the payor is a step-parent to all of the children, the low end of the range for duration should generally be used.

## 5.5 The Custodial Payor Formula

The *custodial payor* formula should be used where spousal support is to be paid by the party with the children's primary residence, whether or not the party receiving spousal support is actually paying child support. [SSAG §8.9](#)

This hybrid formula, based on the *with child support* formula, requires the deduction of the grossed up table amount of notional child support, plus the grossed up amount of any contributions to the children's special expenses, from the payor's gross income and the deduction of the grossed-up table amount of child support, plus any contributions to the children's expenses, from the recipient's gross income. [SSAG §8.9](#)

### 5.5.1 Required Information

The information required to perform this calculation is:

- **Payor's Gross Income**, determined in accordance with the Child Support Guidelines
- **Recipient's Gross Income**, determined in accordance with the Child Support Guidelines
- **Amount of Recipient's Child Support Payments**, where the amount paid is different from the Guidelines tables amount
- **Available Credits, Benefits and Deductions** relating to the children's special expenses
- **Amount of Parties' Contributions to Special Expenses**
- **Age of Recipient**
- **Length of Cohabitation**, calculated from date of marriage to date of separation, plus any period of cohabitation before marriage

## 5.5.2 Formula Structure

The formula for *quantum* is based on the parties' gross incomes, less a grossed up amount of child support attributed to each party. [SSAG §8.9](#)

*Duration* in this formula is based on the length of the time the parties lived together, including any periods of cohabitation prior to the marriage. [SSAG §8.9](#)

### ***Quantum***

Payments range from 1.5 percent (low end of the range) to 2.0 percent (high end of the range) of the difference between the parties' *adjusted gross incomes* per year of cohabitation. [SSAG §8.9](#)

The maximum amount payable is reached when *length of cohabitation* reaches 25 years, 37.5 percent (low end of the range) of the adjusted gross income difference to 50 percent (high end of the range). The high end of the range for amount may be limited at a lower amount as a result of the "equalization of net income cap" which will ensure that the recipient will not receive an amount of support that would leave him or her with more than *50 percent of the parties' net disposable income*. [SSAG §§8.9](#)

### ***Duration***

Spousal support will be payable for a length of time equal to 0.5 years (low end of the range) to 1.0 years (high end of the range) per year of cohabitation. [SSAG §8.9](#)

The maximum duration spousal support will be payable for is *indefinite, duration not specified* when:

1. the length of cohabitation is greater than five years *and* the length of cohabitation plus the age of the recipient is greater than or equal to 65; or,
2. the length of cohabitation is twenty or more years.

**NOTE** Duration is to include any period in which support or its equivalent was paid on an interim basis pending a final determination of the issue. In other words, the number of months during which interim support or its equivalent was paid should be deducted from the results produced by the formula for duration. [SSAG §5.3](#)

**NOTE** The Advisory Guidelines allow an exception to extend the calculation of duration, and possibly the calculation of quantum, under the *custodial payor* formula where the parties' relationship was shorter and the children are younger where the exception is necessary to assist the recipient of spousal support in fulfilling his or her parenting role. [SSAG §12.9](#)

## 5.6 The Adult Children Formula

The *adult children* formula applies only where *all* children of the marriage are at or above the age of majority and child support is wholly determined under s. 3(2)(b) of the Child Support Guidelines. This formula should *not* be used if there are any children for whom support is being paid under ss. 3(1) or (2)(a) of the Guidelines. [SSAG §8.10](#)

This hybrid formula, based on the *with child support* formula, requires the deduction of the grossed up amounts each party actually contributes to the support of the children, however the amount of support is determined, from the gross incomes of each party.

### 5.6.1 Required Information

The information required to perform this calculation is:

**Payor's Gross Income**, determined in accordance with the Child Support Guidelines

**Amount of Payor's Contributions to the Children's Support**

**Recipient's Gross Income**, determined in accordance with the Child Support Guidelines

**Amount of Recipient's Contributions to the Children's Support**

**Available Credits, Benefits and Deductions** relating to the children's special expenses

**Age of Recipient**

**Length of Cohabitation**, calculated from date of marriage to date of separation, plus any period of cohabitation before marriage

### 5.6.2 Formula Structure

In this formula, *quantum* is based on the parties' gross incomes less the amount of each party's *actual contributions* to the children's support. [SSAG §8.10](#)

*Duration* is based on the length of the time the parties lived together, including any periods of cohabitation prior to the marriage. [SSAG §8.10](#)

#### ***Quantum***

This formula requires the adjustment of the parties' gross incomes to subtract the grossed up amount of each party's actual contributions to the children's support.

Payments range from 1.5 percent (low end of the range) to 2.0 percent (high end of the range) of the difference between the parties' *adjusted gross incomes* per year of cohabitation. [SSAG §8.10](#)

The maximum amount payable is reached when *length of cohabitation* reaches 25 years, 37.5 percent (low end of the range) of the adjusted gross income difference to 50 percent (high end of

the range). The high end of the range for amount may be limited at a lower amount as a result of the “equalization of net income cap” which will ensure that the recipient will not receive an amount of support that would leave him or her with more than *50 percent of the parties’ net disposable income*. [SSAG §8.10](#)

### ***Duration***

Spousal support will be payable for a length of time equal to 0.5 years (low end of the range) to 1.0 years (high end of the range) per year of cohabitation. [SSAG §8.10](#)

The maximum duration spousal support will be payable for is *indefinite, duration not specified* when:

1. the length of cohabitation is greater than five years *and* the length of cohabitation plus the age of the recipient is greater than or equal to 65; or,
2. the length of cohabitation is twenty or more years.

**NOTE** Duration is to include any period in which support or its equivalent was paid on an interim basis pending a final determination of the issue. In other words, the number of months during which interim support or its equivalent was paid should be deducted from the results produced by the formula for duration. [SSAG §5.3](#)





## APPENDIX A: GLOSSARY

**Advisory Guidelines:** Guidelines for the determination of spousal support, which are not legislated or mandatory but informal and voluntary in nature.

**Agreement:** An agreement or contract between the spouses, usually in writing, setting out their respective rights and obligations during their marriage or upon marriage breakdown. The agreement may be negotiated by the spouses on their own, with their counsel, or through mediation. For the purposes of the Advisory Guidelines, the agreement would include terms affecting spousal support or child support or both, as well as terms concerning custody, access, parenting and division of family property. Usually the agreement will be in the form of a separation agreement. The agreement may or may not be incorporated into a consent order. (*See also consent order.*)

**Ceiling:** Under the Advisory Guidelines, the income level for the payor spouse above which the income-sharing formula no longer applies and any additional level of support is determined on a discretionary basis.

**Child of the marriage:** A term defined by ss. 2(1) and (2) of the *Divorce Act* to describe children eligible to benefit from the payment of child support.

**Child support:** An amount of money paid by one parent to the other for the support of a child. Under the Child Support Guidelines, there is a presumption that this amount consists of the table amount of support, determined by the child support tables, plus any contribution to special and/or extraordinary expenses such as child care, some education and medical expenses, and certain extracurricular expenses. (*See also table amount of child support and special or extraordinary expenses.*)

**Child Support Guidelines:** Regulations under the *Divorce Act* setting out the rules and tables that determine how much child support a spouse or parent must pay. Most provinces and territories have similar child support guidelines under their family laws, except for Alberta. Quebec has a different scheme of child support guidelines, which applies to determine child support for residents of Quebec.

**Consent order:** An order made by the court based upon the agreement of the spouses. The agreement may take the form of a separation agreement, minutes of settlement, or an agreement stated on the record in court.

**Corollary relief:** The technical term used by the *Divorce Act* to describe orders for custody and access, child support and spousal support.

**Duration:** When spousal support is paid on a monthly basis, the length of time for which spousal support is to be paid. Duration may be indefinite or time-limited. Duration may be changed upon subsequent review or variation. (*See also indefinite and time-limited.*)

**Employment income:** Income from a third-party employer, usually as reported in T4 slips.

**Entitlement:** This is the threshold question in spousal support of whether a spouse has any claim to spousal support at all. After entitlement has been established, issues of amount and duration can be addressed. The issue of entitlement can arise in any context where spousal support is in issue—interim support, initial orders or agreements for support, or reviews or variations of existing support orders.

**Exception:** Under the Advisory Guidelines, a recognized category of commonly recurring facts or circumstances that may justify a departure from the amount or duration of spousal support that would otherwise be determined under the formulas.

**Family net disposable income:** A measure of the net disposable income of the recipient spouse, which includes both spousal and child support received by that spouse. It measures the net disposable income of the whole family, including that of the spouse and the children, available to meet their needs. For the payor spouse, his or her net disposable income is the same whether described as family net disposable income or individual net disposable income, as both child and spousal support paid are always deducted. (*See also net disposable income and individual net disposable income.*)

**Formula:** Under the Advisory Guidelines, the specific method of calculating the amount and duration of spousal support for a category of cases, including the percentages of income to be shared. (*See also with child support formula and without child support formula.*)

**Government benefits and refundable credits:** A category of income that includes the federal Child Tax Benefit, the National Child Benefit, the GST/HST credit, the refundable medical credit and various provincial benefit and credit schemes.

**Gross Income:** The total income earned by a party before the deduction of expenses and mandatory source deductions. Common source deductions include income taxes, EI premiums, CPP premiums and other payments are deducted.

**Gross income difference:** Under the Advisory Guidelines, the difference between the gross or Guidelines incomes of the spouses, which forms the basis for the percentage division under the *without child support* formula. (*See also Guidelines income.*)

**Grossed-up amount of child support:** Child support is not tax deductible for the payor parent, which means that child support is a net amount, paid out of the parent's after-tax income. In certain cases where gross income is used in the advisory guidelines, it is necessary to gross up the amount of child support, e.g. under the custodial payor formula or the exception for prior support obligations. To gross up child support, the parent's marginal tax rate is used to calculate a before-tax or gross amount. Software programs can be used to assist in this calculation.

**Grossing-up:** A means of calculating the income to be imputed to a party who receives untaxed income or income taxed at a lower marginal rate than that generally prevailing in Canada. The party's grossed-up income is the amount of taxed income he or she should be required to earn to have an income net of taxes equivalent to the party's present income.

**Guidelines income:** A measure of gross income, as defined in the Child Support Guidelines, including the adjustments found in Schedule III to those Guidelines.

**Indefinite, duration not specified:** A description of a spousal support obligation with no specific duration. Such a support obligation will be payable indefinitely but be subject to the processes of review and variation. One or more review dates may be set to address anticipated changes in employment status, such as the completion of a training program or retirement; support orders will typically be varied when there has been a change in either party's economic circumstances. *Indefinite does not mean permanent.*

**Individual net disposable income:** A term used in the Advisory Guidelines to describe the income available to a party after child support, taxes, deductions, credits and benefits have been taken into account, including the tax deduction available to the payor as a result of the payment of spousal support and the recipient's taxes owing as a result of the receipt of spousal support.

**Initial order:** The order for custody, child support or spousal support made at the time of the divorce or, in some cases, the first order made thereafter. Sometimes referred to as an "original order," to be contrasted with subsequent orders made on variation or review. Not to be confused with interim orders. (*See also interim support, variation and review.*)

**Interim support:** An order for child support or spousal support or both, made after a divorce proceeding has been commenced, based upon limited evidence and intended to operate on a temporary basis until the divorce and initial order for corollary relief. An interim support order can be revisited and revised at any time, up to and including the divorce and initial order for corollary relief. (*See also corollary relief, divorce and initial order.*)

**Joint custody:** A parenting arrangement in which both parents have custody of a child, as opposed to sole custody. The equal or near-equal sharing of the children's time is not a necessary prerequisite of joint custody. (*See also shared custody and split custody.*)

**Length of the marriage:** Under the Advisory Guidelines, the total period of time the spouses have cohabited, including any periods of pre-marital cohabitation and ending at the time of separation.

**Lump sum spousal support:** Spousal support can be paid on a periodic basis, e.g., monthly amounts, or it can be paid in a lump sum, usually just one or a few payments. Lump sum payments are not tax deductible for the payor and are not treated as taxable income for the recipient.

**Merger over time:** A theory of the calculation of spousal support based on the increasing enmeshment of spouses' finances as a marriage endures rather than a budgetary assessment of the parties' needs and means.

**Net income:** The income available to a party after the costs of any expenses incurred to generate that income, including any withholdings required by statute, have been paid.

**Net disposable income:** An after-tax measure of income, after the inclusion and deduction of government benefits and tax credits. (*See also family net disposable income, government benefits and refundable credits, Guidelines income, and individual net disposable income.*)

**Non-refundable tax credit:** A tax deduction which reduces the amount of income tax payable. The deduction is “non-refundable” in the sense that if the total deductions exceed the tax payable, the tax payor will not receive a refund for the difference. Common non-refundable tax credits include the basic personal credit, CPP/QPP contributions and the children’s fitness credit.

**Notional table amount of child support:** The table amount of child support that a spouse would pay under the Child Support Guidelines, based upon the spouse’s income, even though that amount is not actually being paid to the other spouse. The notional table amount is used as a proxy or adjustment in the *with child support* formula to reflect the spouse’s direct spending upon a child as a custodial parent. (*See also table amount of child support.*)

**Objectives of spousal support:** The statutory objectives an order for spousal support is required to meet as set out in s. 15.2(6) of the *Divorce Act*.

**Period of Cohabitation:** The total length of the marriage to the date of separation plus any pre-marriage periods of cohabitation in a conjugal or marriage-like relationship.

**Primary residence:** The home of the parent with whom the children live most of the time, most commonly used in relation to situations of joint custody or split custody.

**Prior support obligation:** An obligation to pay child or spousal support for a child or spouse from a prior relationship, when determining child or spousal support to be paid upon the breakdown of a subsequent marriage. Prior support obligations are an exception under the formulas.

**Property division:** Each province and territory has its own statute that provides for the division of family or marital or matrimonial property between spouses upon separation or divorce. Court orders and agreements thus often deal with property division, as well as custody and access, child support and spousal support. Provincial/territorial laws vary in their details. Property to be divided will typically include the family home, its contents, pensions, motor vehicles, investments, bank accounts, etc. Typically, debts will also be considered as part of the property division.

**Quantum:** The amount of support to be paid, as opposed to the duration of that support, usually referring to the monthly amount of spousal support.

**Ranges:** Under the Advisory Guidelines, the upper and lower limits for the amount of spousal support, or the duration of spousal support, as determined by the appropriate formula. The formulas generate ranges for amount and duration, rather than precise numbers as under the Child Support Guidelines.

**Refundable tax credit:** A tax deduction which reduces the amount of income tax payable which will result in a refund being paid to the tax payor where the amount of the deduction exceeds the amount of income tax payable. Refundable tax credits are listed at Lines 437 to 479 of the T1 General Income Tax and Benefit Return; the most common refundable tax credits are income tax deducted at source and the working income tax benefit.

**Restructuring:** Under the Advisory Guidelines, the trading-off of amount against duration to restructure the outcomes generated by the formulas. Restructuring may be used in one of three ways: (1) to increase the amount of spousal support and shorten duration; (2) to extend duration and reduce the monthly amount; or (3) to formulate a lump sum by multiplying amount by duration. In restructuring, the global amount of support remains the same. (*See also global amount and lump sum spousal support.*)

**Review:** A proceeding, provided for by the terms of an order for support that involves the return of a support issue to the court for review, without the need for either spouse to prove a material change of circumstances. A review is thus different from a variation. A review term in a support order will usually direct the timing of the future review. It may attach conditions to be satisfied by one or both of the spouses prior to the scheduled review. It may also direct the issues to be determined and the evidence to be provided at the review. (*See also variation.*)

**Rotated benefits:** The rotation of the Canada Child Tax Benefit, Universal Child Care Benefit and child-related portion of the GST/HST Credit between parents who share the children's time equally or near-equally.

**Set off:** In relation to child support, a means of calculating the net amount of child support payable where the parties have split custody or shared custody under which the parent with the higher child support obligation pays an amount equal to that obligation less the amount of the other parent's child support obligation.

**Shared custody:** A term defined by s. 9 of the Child Support Guidelines to describe the parenting situation where both parents have the children for more than 40% of the children's time.

**Special and/or extraordinary expenses:** Expenses for children listed in s. 7 of the Child Support Guidelines, to which both parents will generally contribute based upon their respective incomes. Included in these expenses are: child care expenses; child-related medical and dental insurance premiums; certain health-related expenses; extraordinary expenses for primary or secondary education or specific educational programs; expenses for post-secondary education; or extraordinary expenses for extracurricular activities. The presumptive amount of child support to be paid under the Child Support Guidelines consists of the table amount of child support plus the payor's contribution to any s. 7 expenses.

**Split custody:** A term defined by s. 8 of the Child Support Guidelines to describe the parenting situation where both parents have the primary residence of one or more children of the marriage.

**Table amount of child support:** The basic amount of child support that a payor parent is required to pay under the Child Support Guidelines, based upon the child support tables. The table amount is determined by the payor's Guidelines income, the number of children and the appropriate province/territory, usually the province/territory in which the payor spouse resides.

**Tax deduction:** An amount by which a party's taxable income is reduced thereby reducing the party's total income tax liability. Common tax deductions include RRSP contributions and spousal support payments for the payor.

**Time limit:** Sets a specified or limited period of time during which the monthly amount of support is to be paid. (*See also duration.*)

**Total income** or “**Line 150**” **income:** A party’s aggregate income from all sources, as calculated at Line 150 of the T1 General Income Tax and Benefit Return.

**Variation:** An application by a spouse, after an initial order has been made, to vary or change the terms of a previous order, including the terms relating to child or spousal support. Variation applications are governed by section 17 of the *Divorce Act*. There may be a number of variation orders granted over time between spouses or former spouses. In order to obtain a variation, the spouse will have to establish a material change in circumstances since the making of the most recent previous order.

**With child support formula:** The formula under the Advisory Guidelines for calculating amount and duration of spousal support that applies in cases where there are dependent children and hence where there is a concurrent child support obligation to a child or children of the marriage. (*See also formula, child of the marriage and without child support formula.*)

**Without child support formula:** The formula under the Advisory Guidelines that applies in cases where there are no dependent children and hence where there is no concurrent child support obligation to a child or children of the marriage. This formula applies not only to marriages where there were no children of the marriage, but also to marriages where there were children, but the children are no longer dependent. (*See also formula, child of the marriage, and with child support formula.*)

## APPENDIX B: SOURCES OF INCOME

The Child Support Guidelines uses the sources of income reported in the T1 General Income Tax and Benefit Return as the foundation of income assessment for child support purposes. The Spousal Support Advisory Guidelines largely use the Child Support Guidelines methodology to determine gross income. While the T1 personal income tax return is a convenient initial measure of income, two points must be kept firmly in mind:

1. the deductions permitted by the Canada Revenue Agency for tax purposes are not necessarily permitted for the determination of income for the purposes of child support and spousal support; and,
2. the income generally used for the calculation of support is the individual's actual income not his or her taxable income for tax purposes.

The following is a summary of the sources of taxable income identified in the T1 personal income tax return.<sup>42</sup>

### LINE 101: Employment Income

- The tax payor's income from all third party employers, usually as reported on T4 slips.
- Subject to the deduction of CPP/QPP contributions and EI premiums at source.
- Subject to the deduction of provincial and federal taxes at source.

### LINE 104: Other Employment Income

- Income earned as a consequence of the tax payor's employment, not reported on T4 slips.
- Includes:
  - tip income;
  - occasional earnings from short-term, impermanent employment;
  - clergy housing allowance;
  - foreign employment income;
  - income-maintenance insurance plan income;
  - veteran's benefits;
  - royalties; and,
  - employee profit-sharing income.

### LINE 113: Old Age Security Benefits

- Income received as regular OAS pension benefits only.

---

<sup>42</sup> This information is available from the CRA at <http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/menu-eng.html>. Line numbers refer to line numbers in the T1 General Income Tax and Benefit Return.

- **NOTE** Do not include OAS spouse's allowance payments or Guaranteed Income Supplement payments in this sum; these amounts are reported elsewhere and have a different tax status.

LINE 114: CPP/QPP Benefits

- Income received as regular CPP/QPP benefits or CPP/QPP disability benefits, including any lump-sum benefit payments received in the tax year.

LINE 115: Other Pension Income

- Includes:
  - private pension and superannuation income;
  - LIF and RRIF income; and,
  - income from foreign pensions.

LINES 117: Universal Child Care Benefits

- Federal benefit payable in respect of all children under the age of six.
- **NOTE** For Advisory Guidelines purposes, include only UCCB received for children of the marriage.
- **NOTE** Do not adjust for any UCCB repayment, this amount is reported elsewhere.

LINE 120: Dividend Income

- The tax payor's dividend income from Canadian and foreign companies.
- **NOTE** The amount of dividends reported at this line is the grossed up amount of the dividend not the actual amount of the dividend received by the tax payor. Count the actual amount of dividends received for the purpose of the Advisory Guidelines, not the grossed up amount.

LINE 126: Rental Income

- Rental income net of expenses.
- **NOTE** The deducted expenses are subject to adjustment for reasonableness under the Advisory Guidelines pursuant to CSG s. 19(1)(g).

LINE 128: Support Payments

- Periodic spousal support payments are taxable income in the hands of the recipient.
- Does not include lump-sum payments.
- **NOTE** For the purposes of the Advisory Guidelines, count only support payments to non-parties.



#### LINE 130: Other Income

- All of the tax payor's income not reportable elsewhere in the personal income tax return.
- Includes:
  - scholarships, bursaries and fellowships received in connection with the tax payor's post-secondary education;
  - artist's project grants;
  - apprenticeship incentive grants;
  - lump-sum payments from pension plans and deferred profit-sharing plans;
  - severance payments;
  - death benefits received from sources other than CPP/QPP;
  - training allowances;
  - trust payments, including annuity payments not reported elsewhere; and,
  - distributions from a RESP or RDSP account.

#### LINES 135 to 143: Self-Employment Income

- Includes income earned in specific self-employment activities (fishing, farming, and commission sales) and catch-all activities (business income and professional income), net of expenses.
- **NOTE** The deducted expenses are subject to adjustment for reasonableness under the Advisory Guidelines pursuant to CSG s. 19(1)(g).

#### LINES 144 to 146: Social benefits

- Includes:
  - workers' compensation program benefits;
  - social assistance benefits; and,
  - Old Age Security spouse's allowance and guaranteed income supplement benefits.
- **NOTE** Although this income is included in a party's total income reported at Line 150, all or some of the income is deducted in the calculation of taxable income at Line 250.
- **NOTE** Only social assistance benefits relating to the party are included as income for the purposes of the Advisory Guidelines.



# APPENDIX C: EXCERPTS FROM THE FEDERAL CHILD SUPPORT GUIDELINES

SOR/97-175 as amended by SOR/2007-59

## AMOUNT OF CHILD SUPPORT

### Presumptive rule

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

### Child the age of majority or over

(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

### Applicable table

(3) The applicable table is

- (a) if the spouse against whom an order is sought resides in Canada,
  - (i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a variation order in respect of a child support order, is made or the amount is to be recalculated under section 25.1 of the Act,
  - (ii) where the court is satisfied that the province in which that spouse ordinarily resides has changed since the time described in subparagraph (i), the table for the province in which the spouse ordinarily resides at the time of determining the amount of support, or
  - (iii) where the court is satisfied that, in the near future after determination of the amount of support, that spouse will ordinarily reside in a given province other than the province in which the spouse ordinarily resides at the time of that determination, the table for the given province; and

- (b) if the spouse against whom an order is sought resides outside of Canada, or if the residence of that spouse is unknown, the table for the province where the other spouse ordinarily resides at the time the application for the child support order or for a variation order in respect of a child support order is made or the amount is to be recalculated under section 25.1 of the Act.

Incomes over \$150,000

4. Where the income of the spouse against whom a child support order is sought is over \$150,000, the amount of a child support order is

- (a) the amount determined under section 3; or

- (b) if the court considers that amount to be inappropriate,

- (i) in respect of the first \$150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;

- (ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and

- (iii) the amount, if any, determined under section 7.

Spouse in place of a parent

5. Where the spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of a child support order is, in respect of that spouse, such amount as the court considers appropriate, having regard to these Guidelines and any other parent's legal duty to support the child.

## INCOME

### Determination of annual income

15. (1) Subject to subsection (2), a spouse's annual income is determined by the court in accordance with sections 16 to 20.

### Agreement

(2) Where both spouses agree in writing on the annual income of a spouse, the court may consider that amount to be the spouse's income for the purposes of these Guidelines if the court thinks that the amount is reasonable having regard to the income information provided under section 21.

### Calculation of annual income

16. Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III. SOR/2000-337, s. 3.

### Pattern of income

17. (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

### Non-recurring losses

(2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

### Shareholder, director or officer

18. (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

(a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or

(b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

#### Adjustment to corporation's pre-tax income

(2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

#### Imputing income

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

#### Reasonableness of expenses

(2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the *Income Tax Act*.

#### Non-resident

20. (1) Subject to subsection (2), where a spouse is a non-resident of Canada, the spouse's annual income is determined as though the spouse were a resident of Canada.

#### Non-resident taxed at higher rates

(2) Where a spouse is a non-resident of Canada and resides in a country that has effective rates of income tax that are significantly higher than those applicable in the province in which the other spouse ordinarily resides, the spouse's annual income is the amount that the court determines to be appropriate taking those rates into consideration.

## SCHEDULE III

(Section 16)

### ADJUSTMENTS TO INCOME

#### Employment expenses

1. Where the spouse is an employee, the spouse's applicable employment expenses described in the following provisions of the *Income Tax Act* are deducted:
  - (a) [Repealed, SOR/2000-337, s. 8]
  - (b) paragraph 8(1)(d) concerning expenses of teacher's exchange fund contribution;
  - (c) paragraph 8(1)(e) concerning expenses of railway employees;
  - (d) paragraph 8(1)(f) concerning sales expenses;
  - (e) paragraph 8(1)(g) concerning transport employee's expenses;
  - (f) paragraph 8(1)(h) concerning travel expenses;
  - (g) paragraph 8(1)(h.1) concerning motor vehicle travel expenses;
  - (h) paragraph 8(1)(i) concerning dues and other expenses of performing duties;
  - (i) paragraph 8(1)(j) concerning motor vehicle and aircraft costs;
  - (j) paragraph 8(1)(l.1) concerning *Canada Pension Plan* contributions and *Employment Insurance Act* premiums paid in respect of another employee who acts as an assistant or substitute for the spouse;
  - (k) paragraph 8(1)(n) concerning salary reimbursement;
  - (l) paragraph 8(1)(o) concerning forfeited amounts;
  - (m) paragraph 8(1)(p) concerning musical instrument costs; and
  - (n) paragraph 8(1)(q) concerning artists' employment expenses.

#### Child support

2. Deduct any child support received that is included to determine total income in the T1 General form issued by the Canada Revenue Agency.

#### Spousal support and universal child care benefit

3. To calculate income for the purpose of determining an amount under an applicable table, deduct
  - (a) the spousal support received from the other spouse; and
  - (b) any universal child care benefit that is included to determine the spouse's total income in the T1 General form issued by the Canada Revenue Agency.

#### Special or extraordinary expenses

- 3.1 To calculate income for the purpose of determining an amount under section 7 of these Guidelines, deduct the spousal support paid to the other spouse and, as applicable, make the following adjustment in respect of universal child care benefits:
  - (a) deduct benefits that are included to determine the spouse's total income in the T1 General form issued by the Canada Revenue Agency and that are for a child for whom special or extraordinary expenses are not being requested; or
  - (b) include benefits that are not included to determine the spouse's total income in the

T1 General form issued by the Canada Revenue Agency and that are received by the spouse for a child for whom special or extraordinary expenses are being requested.

Social assistance

4. Deduct any amount of social assistance income that is not attributable to the spouse.

Dividends from taxable Canadian corporations

5. Replace the taxable amount of dividends from taxable Canadian corporations received by the spouse by the actual amount of those dividends received by the spouse.

Capital gains and capital losses

6. Replace the taxable capital gains realized in a year by the spouse by the actual amount of capital gains realized by the spouse in excess of the spouse's actual capital losses in that year.

Business investment losses

7. Deduct the actual amount of business investment losses suffered by the spouse during the year.

Carrying charges

8. Deduct the spouse's carrying charges and interest expenses that are paid by the spouse and that would be deductible under the *Income Tax Act*.

Net self-employment income

9. Where the spouse's net self-employment income is determined by deducting an amount for salaries, benefits, wages or management fees, or other payments, paid to or on behalf of persons with whom the spouse does not deal at arm's length, include that amount, unless the spouse establishes that the payments were necessary to earn the self-employment income and were reasonable in the circumstances.

Additional amount

10. Where the spouse reports income from self-employment that, in accordance with sections 34.1 and 34.2 of the *Income Tax Act*, includes an additional amount earned in a prior period, deduct the amount earned in the prior period, net of reserves.

Capital cost allowance for property

11. Include the spouse's deduction for an allowable capital cost allowance with respect to real property.

Partnership or sole proprietorship income

12. Where the spouse earns income through a partnership or sole proprietorship, deduct any amount included in income that is properly required by the partnership or sole proprietorship for purposes of capitalization.

Employee stock options with a Canadian-controlled private corporation

13. (1) Where the spouse has received, as an employee benefit, options to purchase shares of a Canadian-controlled private corporation, or a publicly traded corporation that is subject to the same tax treatment with reference to stock options as a Canadian-controlled



private corporation, and has exercised those options during the year, add the difference between the value of the shares at the time the options are exercised and the amount paid by the spouse for the shares, and any amount paid by the spouse to acquire the options to purchase the shares, to the income for the year in which the options are exercised.

Disposal of shares

(2) If the spouse has disposed of the shares during a year, deduct from the income for that year the difference determined under subsection (1).

Split amount

14. If a spouse is deemed to have received a split amount under paragraph 60.(2)(b) of the *Income Tax Act* that is included in that spouse's total income in the T1 General form issued by the Canada Revenue Agency, deduct that amount.