



Department of Justice  
Canada

Ministère de la Justice  
Canada

# Child Support Practices in Canada: Results from the 2022 National Family Law Surveys

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April 2024

**Aussi disponible en français**

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Child Support Practices in Canada: Results from the 2022 National Family Law Surveys

J4-157/2024E-PDF

978-0-660-71048-8

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## Executive Summary

In 2022, the Department of Justice Canada circulated the National Family Law Surveys to lawyers and judges across the country to collect current data on the characteristics of child support cases handled by family law practitioners in Canada. In total, 417 lawyers and 109 judges responded to the survey.

### Characteristics of child support cases

- Almost 9 in 10 judges reported that one or both parties were unrepresented in at least half of their child support cases.
- Most lawyers and judges reported that disputes over child support occurred in at least 50% of their cases. The most common disputes involved lack of compliance with income disclosure obligations and challenges with income determination.
- Two in three lawyers reported that, where available, less than a quarter of their clients sought a recalculation service.

### Characteristics of shared parenting time cases

- Over half of lawyers and judges reported that less than 50% of their cases resulted in shared parenting time.
- One in three lawyers and one in four judges reported that disputes related to the determination of child support usually or almost always occurred in shared parenting time cases.
- Most lawyers and judges reported that the most litigious issue in shared parenting time cases was getting parties to agree on the type of parenting time arrangements.
- About half of lawyers indicated that they most often used a set-off amount with their shared parenting time cases without special or extraordinary expenses.
- Lawyers used the set-off amount in most shared parenting time cases. The most common exception occurred when there was a large income disparity or different standards of living between two households.
- When asked which child-related expenses were most often paid for by one parent in shared parenting time cases, lawyers reported that these were expenses related to clothes and personal care items, while judges reported that these were expenses related to school, electronics and sports.
- In shared parenting time cases, child-related expenses were often not added to the monthly child support amount. Instead, these expenses were most often shared by both parents as they were incurred or paid for by one parent.

### Special or extraordinary expenses

- Most lawyers and judges reported that special or extraordinary expenses were often requested in their cases and that these were difficult to settle.
- According to both lawyers and judges, the most frequently requested special or extraordinary expenses were extraordinary expenses for extracurricular activities and medical and insurance premiums.

- According to both lawyers and judges, the types of special or extraordinary expenses that were the most difficult to settle were extraordinary expenses for extracurricular activities and post-secondary education expenses.

### Income disclosure

- Most lawyers and judges reported that challenges with initial income disclosure obligations arose frequently.
- Many lawyers and judges reported that parties being self-employed and getting access to parties' financial information were the two most common challenges with initial income disclosure obligations.
- More than three-quarters of lawyers and judges reported that a party's non-compliance with ongoing income disclosure obligations was an issue in their cases.
- The most common ways that parties did not comply with ongoing income disclosure obligations were by refusing to provide financial information (judges) or providing incomplete or improper disclosure (lawyers).
- Most judges indicated that a disclosure order was likely to be awarded when a party did not comply with income disclosure obligations. Once the order was made, over half of lawyers indicated that the obliged party was likely to comply.
- Many judges reported that when a party did not comply with income disclosure obligations, their income was likely to be imputed.

### Income determination

- Most lawyers and judges reported that disputes related to income determination occurred at least half of their cases.
- In child support cases, it was most challenging to determine income in cases where there was income from tax dividends or capital gains, irregular income patterns, and/or self-employment or cash income.

## 1.0 Introduction

Since 1998, the Department of Justice Canada has conducted biennial surveys<sup>1</sup> of lawyers' and judges' experiences of family law in Canada.<sup>2</sup> These surveys collect information on the characteristics of practitioners' family law cases, and their experiences with various family law issues. This information assists in the development of policy and programs related to family law in Canada.

This report presents key findings from the 2022 National Family Law Surveys of lawyers and judges in Canada. This iteration of surveys collected information on the experiences, practices, and issues with child support in the Canadian family justice system.

## 2.0 Methodology

Previous iterations of the surveys were designed to cover a wide range of topics (e.g., family violence, child support, Unified Family Courts) and as a result, the questions on each topic had to be limited. When developing the 2022 surveys, a different approach was taken so that more detailed and comprehensive data on one family law area could be collected. The 2022 surveys focused specifically on child support issues and the *Federal Child Support Guidelines*.<sup>3</sup>

The 2022 National Family Law Surveys included both closed and open-ended questions. Two versions of the survey, one for lawyers and one for judges, were distributed through an online survey platform. The topics in both surveys were the same, but the questions were worded slightly differently to reflect the different nature of the professions. A few specific questions for lawyers were also added to the survey of lawyers, and a few additional questions were added only to the survey of judges. The surveys were launched on May 24, 2022, with a planned closing date of June 30, 2022. Due to a low response rate from lawyers, the surveys remained open until December 23, 2022.

Historically, the National Family Law Surveys were only administered to participants at the National Family Law Program Conference.<sup>4</sup> However, starting in 2018, the surveys have been distributed to law societies across the country through the Federation of Law Societies of Canada. The 2022 National Family Law Surveys were also distributed to family law lawyers and judges through the Canadian Bar Association – Family Law Section, the Canadian Judicial Council, the Canadian Superior Courts Judges Association, and the Provincial Court Judicial Justices. The Coordinating Committee of Senior Officials – Family Justice, a Federal-Provincial-Territorial committee, shared contact suggestions for other family law organizations, who were subsequently contacted in November to increase participation from lawyers.

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<sup>1</sup> With the exception of 2014. As a result of the COVID-19 pandemic, the 2020 surveys were delayed until 2022.

<sup>2</sup> See, for instance, the report on the 2018 surveys: [https://www.justice.gc.ca/eng/rp-pr/jr/2018surveys-sondages2018/docs/research-in-brief\\_national-family-law-survey-2018-eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/2018surveys-sondages2018/docs/research-in-brief_national-family-law-survey-2018-eng.pdf)

<sup>3</sup> Since the 2022 surveys concentrated specifically on child support, it was not possible to draw comparisons with the 2016 and 2018 surveys.

<sup>4</sup> The National Family Law Program Conference is a high-profile conference, generally held every two years, that is attended by hundreds of lawyers and judges from across Canada.

## 2.1 Limitations

While efforts were made to distribute the survey across Canada, this is a non-representative sample and thus, the findings presented in this report cannot be generalized to all Canadian family law lawyers and judges. For instance, there was an overrepresentation of judges appointed to a provincial/territorial Superior Court or Queen’s Bench and an overrepresentation of experienced lawyers (i.e., with over 10 years of experience). However, the information collected from the surveys can help provide a better understanding of some of the practices and issues related to child support in family law.

## 3.0 Findings

In total, 417 lawyers and 109 judges responded to the surveys. This marks the highest response rate from judges to the National Family Law Survey since it started, up significantly from 39 in 2016 and 23 in 2018. In contrast, fewer lawyers responded to the 2022 survey when compared to the 2018 survey, which received responses from 612 lawyers.

### 3.1 Characteristics of respondents

Survey data show similar geographic representation among lawyers and judges. Most participants reported working in Central Canada (41% of lawyers and 39% of judges), followed by the Prairies (32% and 29%), the West Coast (14% and 15%), the Atlantic region (12% and 16%), and the Territories (1% and less than 1%).<sup>5</sup> More judges and lawyers reported working in urban areas (57% and 56%, respectively) than in both rural and urban areas (36% and 30%) or rural areas (7% and 13%).

When looking at their place of work, three-quarters (75%) of judges indicated they had been appointed to a provincial/territorial Superior Court or Court of Queen’s Bench. The remaining judges had been appointed to a Unified Family Court (19%), a provincial/territorial Court of Appeal (5%), or a provincial/territorial court (1%).

More lawyers reported working in private practice (85%) than in a legal aid clinic or office (10%), a government department or agency (2%), or a pro bono clinic (1%). About half (49%) of lawyers reported having taken some type of additional training, such as parenting coordination (31%), mediation (31%), collaborative family law (11%), arbitration (8%), and voice of the child reports (1%).

Just under 4 in 10 (37%) of lawyers had over 20 years of experience as a lawyer, 3 in 10 (29%) had 10 to 19 years of experience, and almost 2 in 10 had 5 to 9 years (18%) or less than 5 years of experience (17%). Most lawyers identified as a woman (69%), while 25% identified as a man and 1% identified as another gender.<sup>6</sup> Half (51%) of lawyers indicated that the average individual pre-tax income of most of their clients was between \$50,000 and \$99,999. One quarter reported that their clients’ average pre-tax income was under \$50,000 (24%) or over \$100,000 (25%).

Most lawyers (86%) reported that family law made up at least half of their caseload. Judges similarly reported that family law made up at least half (49%) or less than half (51%) of their caseload. Most lawyers (85%) and half of judges (50%) reported that more than 50% of their cases involved child

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<sup>5</sup> Lawyers and judges were specifically asked in which province or territory they work. The provinces and territories were subsequently grouped into the five regions during the analysis. See: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/discover-canada/read-online/canadas-regions.html>.

<sup>6</sup> Nineteen lawyers (or 5%) preferred not to respond to the question.

support. A small proportion of lawyers (4%) and judges (17%) reported that less than a quarter of their cases involved child support.

### 3.2 Characteristics of child support cases

Child support is calculated in Canada through regulations called child support guidelines. The [Federal Child Support Guidelines](#) (Federal Guidelines) are regulations under the *Divorce Act*. The Federal Guidelines are a set of rules and tables used to determine the amount of child support and apply to parents who are divorcing or are divorced. In addition to the Federal Guidelines, there are provincial and territorial child support guidelines that apply when married parents separate but do not divorce, or when parents who were never married separate. The provincial and territorial guidelines are similar to the Federal Guidelines, with the exception of Quebec, which has a different child support model.

#### **3.2.1 Almost 9 in 10 judges reported that one or both parties were unrepresented in at least half of their child support cases.**

Judges were asked how frequently one or both parties were self-represented in the child support cases they heard. Two in three judges (66%) indicated that one or both parties were self-represented in about 50% of their cases, with 23% reporting that one or both parties were usually or almost always self-represented and 11% reporting that one or both parties were rarely self-represented.

#### **3.2.2 Most lawyers and judges reported that disputes over child support occurred in at least 50% of their cases. The most common disputes involved lack of compliance with income disclosure obligations and challenges with income determination.**

Lawyers and judges were asked how frequently disputes over child support occurred in their cases. More than a quarter of lawyers (28%) and two in five judges (44%) reported that these disputes usually or almost always occurred. Half of lawyers (54%) and judges (51%) reported that there were disputes over child support in about 50% of their cases. A smaller proportion of lawyers (18%) and judges (5%) indicated that there were never or rarely any disputes.<sup>7</sup>

When asked which child support issues were the most litigious,<sup>8</sup> a lack of compliance with income disclosure obligations was reported by lawyers (39%) and judges (46%) as the most litigious. A similar proportion of lawyers (35%) and judges (40%) identified income determination for child support purposes as the most litigious issue. Fewer lawyers and judges reported determining child support in shared parenting time arrangements (11% and 5%, respectively) and determining amounts for special or extraordinary expenses (9% and 7%) as the most litigious issues. Other child support issues identified as being litigious included support for adult children (e.g., education and living expenses), parties seeking specific parenting time arrangements to reduce or increase the child support amount they owe or receive, and retroactive child support (e.g., calculation, cancellation, variation).

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<sup>7</sup> No judges reported that there were never any disputes over child support in the cases they heard.

<sup>8</sup> Respondents were provided a list, which identified the following child support issues: determining child support in shared parenting time arrangements, determining amounts for special or extraordinary expenses, lack of compliance with income disclosure obligations, and determining income for child support purposes.



### **3.2.3 Two in three lawyers reported that, where available, less than a quarter of their clients sought a recalculation service.**

A recalculation service is an administrative service that recalculates child support amounts without requiring parties to return to court. This administrative service determines the new child support amount by considering the applicable guidelines and any updated income information.

Just under 2 in 10 lawyers (18%) reported not having access to a recalculation service in their area. Where recalculation services were available, two in three lawyers (68%) reported that less than 25% of their clients sought this service. A small proportion of lawyers (19%) reported that more than half of their clients sought a recalculation.

### **3.3 Characteristics of shared parenting time cases**

Shared parenting time refers to when children spend at least 40 percent of the time with each parent in a year. Under [section 9 of the Federal Child Support Guidelines](#), determining child support in shared parenting time is discretionary, meaning that it is up to the courts to make the decision based on their judgement. However, the following factors must be considered:

1. the amount in the tables that each parent would pay, based on each parent's income (sometimes called the "set-off amount")
2. the increased costs of shared parenting time
3. the condition, means, needs and other circumstances of each parent and child

#### **3.3.1 Over half of lawyers and judges reported that less than 50% of their cases resulted in shared parenting time.**

According to most judges (68%), less than 50% of the cases they heard resulted in shared parenting time. About one in three judges (31%) reported that over 50% of the cases they heard resulted in shared parenting time. For 54% of lawyers, shared parenting time was the result in less than half of their cases, and for the other 46%, shared parenting time was the result in over half of their cases. A small proportion of lawyers (6%) and judges (6%) indicated that 75% to 100% of their cases resulted in shared parenting time.

#### **3.3.2 One in three lawyers and one in four judges reported that disputes related to the determination of child support usually or almost always occurred in shared parenting time cases.**

In the cases resulting in shared parenting time, one in three lawyers (38%) and one in four judges (26%) reported that always disputes related to the determination of child support usually or almost always occurred. A smaller proportion of lawyers (21%) and one in three judges (33%) reported that disputes related to the determination of child support rarely or almost never occurred in these cases.

### **3.3.3 Most lawyers and judges reported that the most litigious issue in shared parenting time cases was getting parties to agree on the type of parenting time arrangements.**

When disputes occurred in shared parenting time cases, most lawyers (74%) and judges (81%) reported that the most litigious issue<sup>9</sup> involved getting the parties to agree on the type of parenting time arrangement and decide on whether a shared parenting time arrangement was the best approach for the family. A small proportion of lawyers and judges indicated that the following issues were the most difficult to settle: calculating the child support amount (12% of lawyers and 7% of judges), calculating the 40% time threshold (6% and 6%), and one parent not exercising the agreed-upon parenting time (4% and 3%).

### **3.3.4 About half of lawyers indicated that they most often used a set-off amount with their shared parenting time cases without special or extraordinary expenses.**

Approximately half (49%) of lawyers reported that the most common way from a given list<sup>10</sup> in which child support was calculated in shared parenting time cases was by using the set-off amounts<sup>11</sup> for both parties based on the total number of children, without special or extraordinary expenses. The next most common way that child support was calculated in these cases, as reported by 45% of lawyers, was by using all factors under section 9 of the Federal Guidelines.<sup>12</sup> The least common way to calculate child support in shared parenting time cases (5%) was by using the set-off of the table amounts for both parents based on the total number of children in addition to special or extraordinary expenses.

### **3.3.5 Lawyers used the set-off amount in most shared parenting time cases. The most common exception occurred when there was a large income disparity or different standards of living between two households.**

While the set-off amount was commonly used to calculate child support in shared parenting time cases, there were some circumstances where the set-off amount was not used. The most common reason for not using the set-off amount was when there was a large income disparity or different standards of living between the two households. Other reasons included when parties' incomes were too similar and the child support amount was too low, one party paid for most of the child-related expenses, parties agreed to another arrangement to account for unique circumstances not considered by the set-off amount,<sup>13</sup> and cases that involved high incomes over \$150k.

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<sup>9</sup> Respondents were given a list of child support issues in shared parenting time cases and were asked to rank the issues based on how difficult they were to settle. This list of issues included difficulty agreeing on the type of parenting time arrangement and whether a shared parenting time arrangement is the best approach for the family, challenges with one parent not exercising the agreed-upon parenting time, difficulty calculating the 40%-time threshold, and difficulty calculating the child support amount.

<sup>10</sup> Respondents were provided a list of ways that child support is calculated and were asked to rank the most common ways. This list included using all factors under section 9 of the Federal Guidelines, using the set-off amounts for both parents based on the total number of children without special or extraordinary expenses, and using the set-off amounts for both parents based on the total number of children plus special or extraordinary expenses.

<sup>11</sup> The set-off amount refers to the child support amount each parent would pay, based on their income, if they were not in a shared parenting time arrangement.

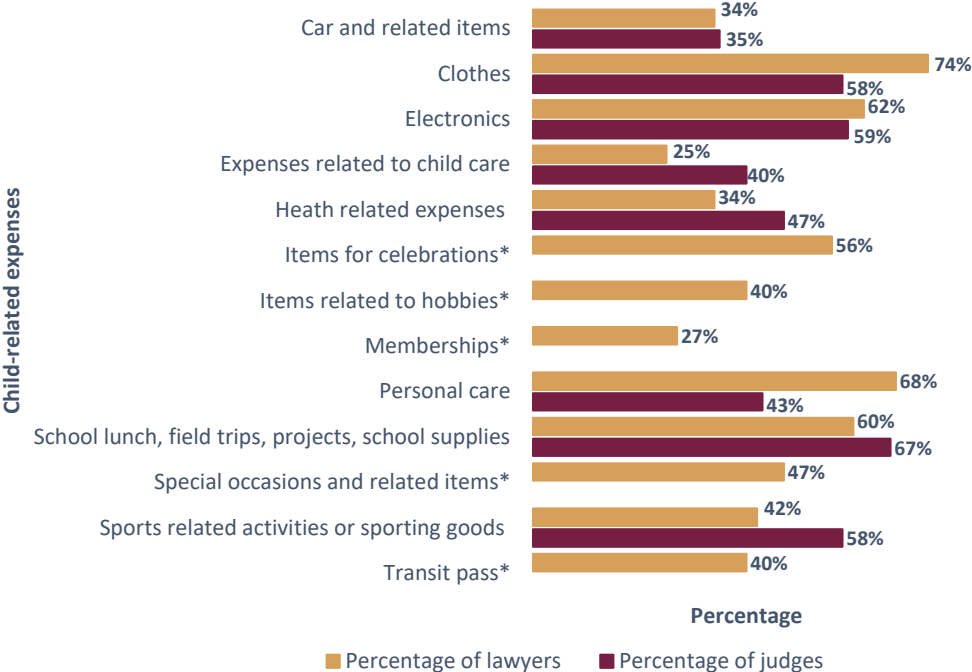
<sup>12</sup> This includes using the amounts in the tables for both parents based on the total number of children, with consideration of the increased costs of shared parenting time and the means, needs and other circumstances of each parent and child.

<sup>13</sup> This could include, for example, a higher settlement in the property division or the payor paying the mortgage for the matrimonial home.

**3.3.6 When asked which child-related expenses were most often paid for by one parent in shared parenting time cases, lawyers reported that these were expenses related to clothes and personal care items, while judges reported that these were expenses related to school, electronics and sports.**

In shared parenting time arrangements, at times, some child-related expenses may be paid for by one parent for both households. In these cases, lawyers and judges reported<sup>14</sup> that these child-related expenses most commonly included clothes like winter coats and boots, electronics and school-related expenses (see Figure 1). There were also some differences in the expenses reported by lawyers and judges. Over half of lawyers selected personal care (e.g., haircuts); in contrast, judges were more likely than lawyers to select sports-related activities, sporting goods, and hobbies.

**Figure 1: Child-related expenses most frequently paid for by one parent in shared parenting time cases, as reported by lawyers and judges**



\*Expenses listed only in the survey of lawyers.

Source: Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

Note: 404 lawyers and 106 judges answered this question.

<sup>14</sup> Respondents were provided a list of expenses that they could select. Judges were given a condensed list of the expenses listed in the survey of lawyers. See Figure 1 for the list.

### **3.3.7 In shared parenting time cases, child-related expenses were often not added to the monthly child support amount. Instead, these expenses were most often shared by both parents as they were incurred or paid for by one parent.**

Both lawyers and judges reported<sup>15</sup> that child-related expenses were most commonly shared by both parents as the expenses were incurred (41% and 70%, respectively) as opposed to adding the expenses to the ongoing monthly child support amount. A similar proportion of lawyers (41%) also reported that the costs were commonly paid for by one parent and not added to the child support amount. Less common ways for dealing with these expenses included increasing the ongoing monthly child support amount to account for these costs (6% of lawyers and 11% of judges), ordering one parent to pay most costs (9% of judges), and agreeing that one parent would cover the expenses for one child and the other would cover the expenses of another child (5% of lawyers).

### **3.4 Special or extraordinary expenses**

[Section 7 of the Federal Child Support Guidelines](#) defines special or extraordinary expenses as expenses that are necessary for the child's best interests and reasonable given the parents' means and the family's spending patterns pre-separation. The Federal Guidelines identify a closed list of special or extraordinary expenses which includes childcare expenses, medical and insurance premiums, health care expenses, extraordinary expenses for primary or secondary school education or any other educational programs, post-secondary education expenses, and extraordinary expenses for extracurricular activities.

#### **3.4.1 Most lawyers and judges reported that special or extraordinary expenses were often requested in their cases and that these were difficult to settle.**

Most lawyers (81%) and over half of judges (57%) reported that an amount for special or extraordinary expenses was usually or almost always requested in their cases. A small proportion of lawyers (6%) and one in six judges (15%) indicated special or extraordinary expenses were rarely or almost never involved in the cases they heard, while 13% of lawyers and 28% of judges indicated these expenses were involved in about half of the cases they heard.

Lawyers were specifically asked about the frequency of special or extraordinary expenses that were difficult to settle.<sup>16</sup> Approximately half (51%) reported that these expenses were difficult to settle about 50% of the time; one-third (32%) reported that these expenses were usually or almost always difficult to settle; and 17% reported that these expenses were rarely difficult to settle.

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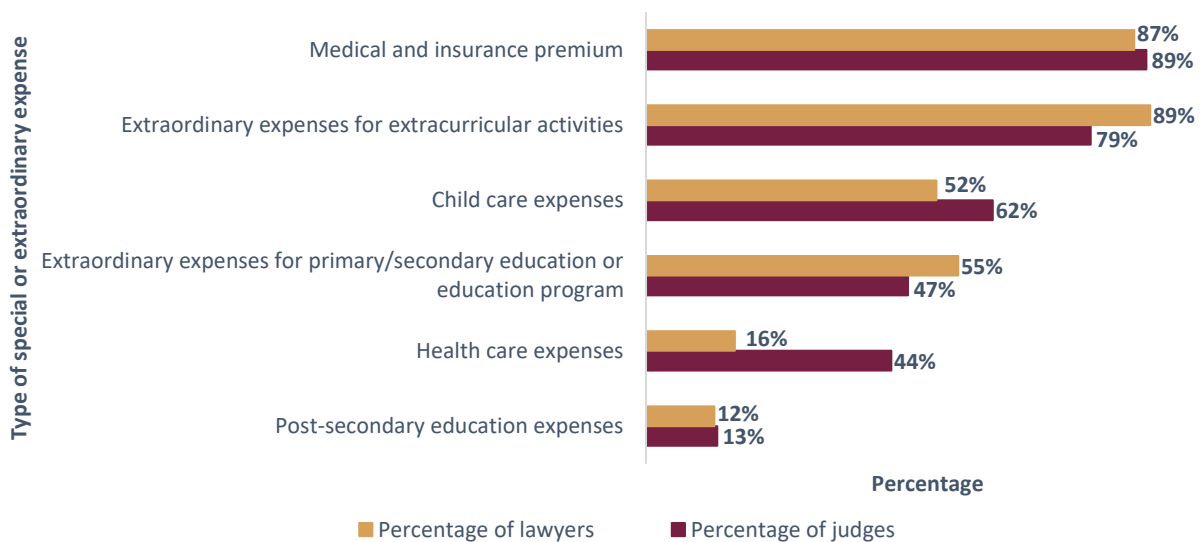
<sup>15</sup> A list was provided that included the ongoing monthly child support amount being increased to account for the costs, the costs being mostly paid for by one parent and not added to the child support amount, the costs being shared between the two parents as the expenses were incurred rather than being added to the ongoing monthly child support amount, and parents agreeing that one parent would pay for the expenses for one child and the other for another child (if there was more than one child).

<sup>16</sup> Judges were not asked this question. However, judges were asked how often they heard cases involving section 7 expenses and since these cases were appearing before a judge, they were litigious in nature.

**3.4.2 According to lawyers and judges, the most frequently requested special or extraordinary expenses were extraordinary expenses for extracurricular activities and medical and insurance premiums.**

When asked to rank the **top three** most requested special or extraordinary expenses,<sup>17</sup> lawyers and judges both selected extraordinary expenses for extracurricular activities (89% and 79%, respectively), and medical and insurance premiums (87% and 89%). The third most requested special or extraordinary expenses varied; lawyers selected extraordinary expenses for primary and secondary education (55%), while judges selected childcare expenses (62%). See Figure 2 for more information.

**Figure 2: Top three most requested special or extraordinary expenses, as ranked by lawyers and judges**



**Source:** Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

**Note:** 416 lawyers and 104 judges answered this question.

Lawyers and judges were also asked which types of expenses<sup>18</sup> parents often requested as special or extraordinary expenses, regardless of whether these fall within the section 7 expenses in the Federal Guidelines. Similar to what was reported above, most lawyers (86%) and judges (92%) identified that extracurricular activities or hobbies were the most frequently requested by parents as special or extraordinary expenses (see Figure 3).<sup>19</sup> Lawyers were more likely to report that parents often requested costs for school-related items<sup>20</sup> (78%) and counselling or assessments (71%), while judges

<sup>17</sup> Respondents were given a list of special or extraordinary expenses and asked to rank the expenses based on how frequently they were requested. See Figure 2 for the list.

<sup>18</sup> Respondents were provided a list of expenses that they could select. Judges were given a condensed list of the expenses listed in the survey of lawyers. Some of these expenses fall under the section 7 expenses, while others do not. See Figure 3 for the list.

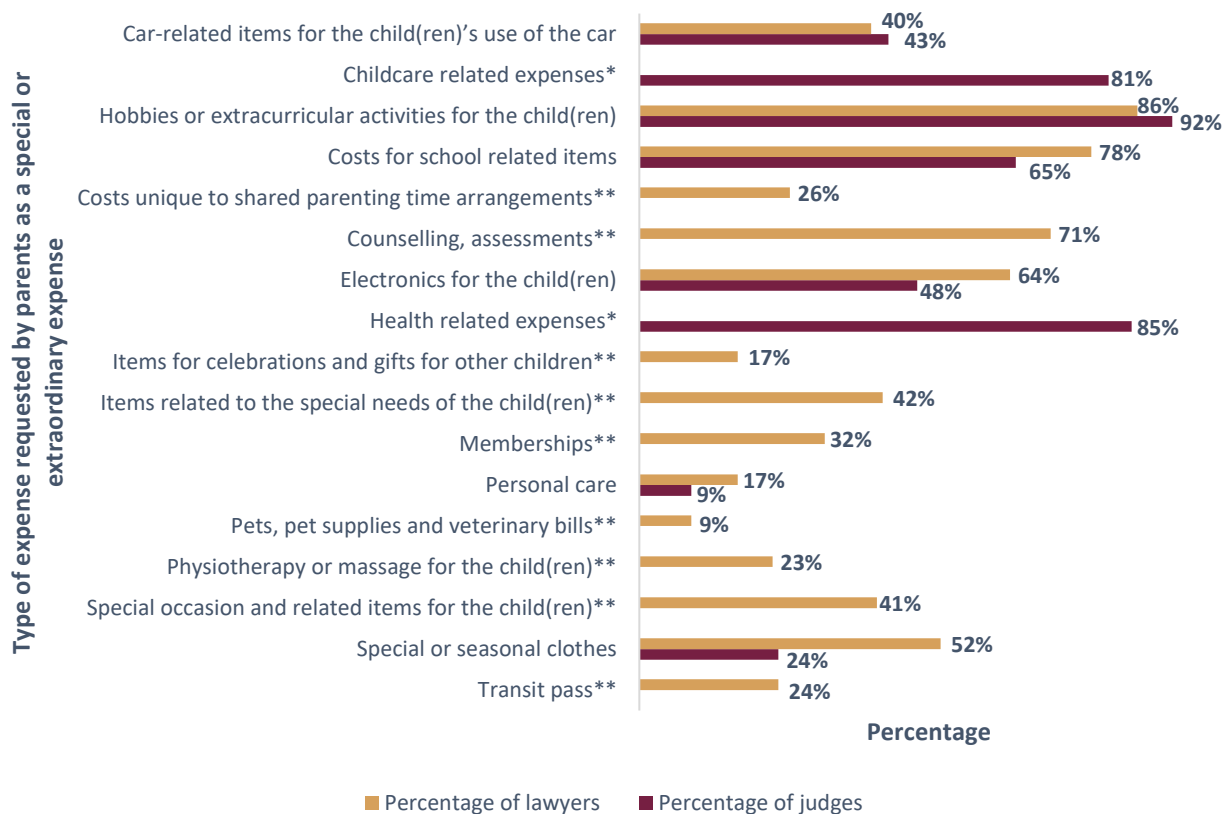
<sup>19</sup> Such as tournaments, sports equipment, and bicycles.

<sup>20</sup> Such as costs related to computers, school supplies, school lunches or school trips.

were more likely to report that parents often requested costs for school-related items (65%), health-related expenses<sup>21</sup> (85%) and childcare expenses (81%). Lawyers were also more likely than judges to report that parents requested electronics for the children<sup>22</sup> (64% compared to 48% of judges) and costs for special or seasonal clothes<sup>23</sup> (52% versus 24%, respectively).

Less frequently requested expenses according to lawyers included transport-related items, items related to the special needs of the children, special occasions, the children’s use of the car, memberships, unique costs associated with shared parenting time,<sup>24</sup> physiotherapy or massage for the children, celebrations or gifts for other children, personal care such as haircuts, and pet-related expenses.

**Figure 3: Type of expenses requested by parents as special or extraordinary expenses, as reported by lawyers and judges**



\*Expenses listed only in the survey of judges.

\*\*Expenses listed only in the survey of lawyers.

Source: Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

Note: 411 lawyers and 107 judges answered this question.

<sup>21</sup> Such as glasses, braces and medication.

<sup>22</sup> Such as cell phones, tablets, computers or video game consoles.

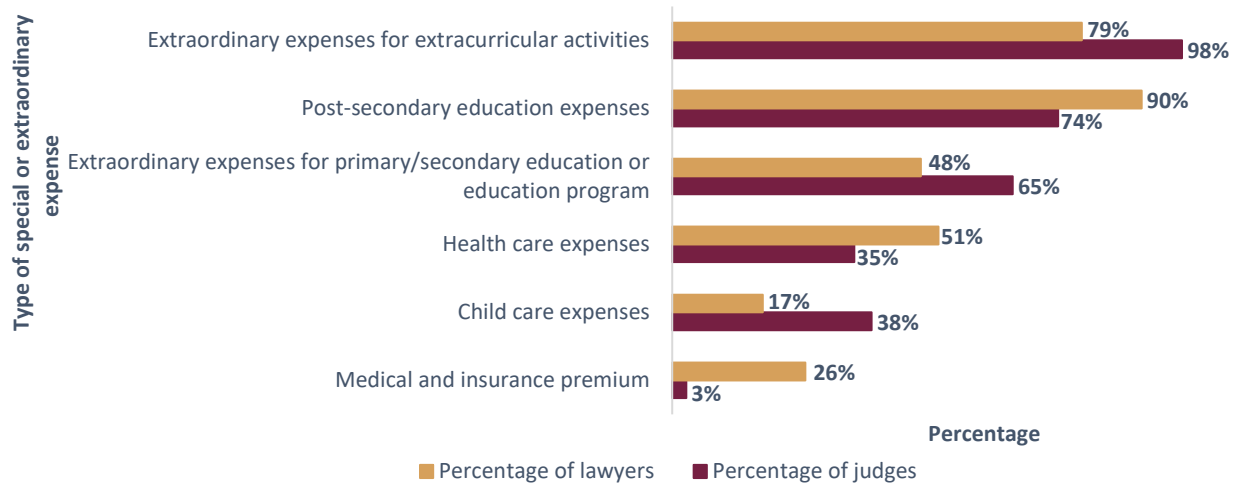
<sup>23</sup> Includes seasonal outerwear like winter coats and boots.

<sup>24</sup> Such as extra sets of clothing or duplicates of child-related items.

**3.4.3 According to both lawyers and judges, the types of special or extraordinary expenses that were the most difficult to settle were extraordinary expenses for extracurricular activities and post-secondary education expenses.**

Along with being one of the most requested special or extraordinary expenses, extraordinary expenses for extracurricular activities were also identified by lawyers (79%) and judges (98%) as being one of the **top three** expenses<sup>25</sup> that were the most difficult to settle. One of the other top three expenses that were the most difficult to settle was post-secondary education expenses (90% of lawyers and 74% of judges); however, this type of expense was not frequently requested by parties according to lawyers (12%) and judges (13%). The last most difficult-to-settle special or extraordinary expense was health care expenses according to lawyers (51%) and extraordinary expenses for primary or secondary education according to judges (65%). See Figure 4 for more information.

**Figure 4: Top three special or extraordinary expenses, as ranked by lawyers and judges**



Source: Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

Note: 409 lawyers and 104 judges answered this question.

**3.5 Income disclosure**

The Federal Guidelines require initial disclosure of complete and updated income information to establish child support amounts.

**3.5.1 Most lawyers and judges reported that challenges with initial income disclosure obligations arose frequently.**

Similar proportions of lawyers (44%) and judges (46%) reported that there were usually or almost always challenges with initial income disclosure obligations. Over one-third of lawyers (40%) and judges (37%)

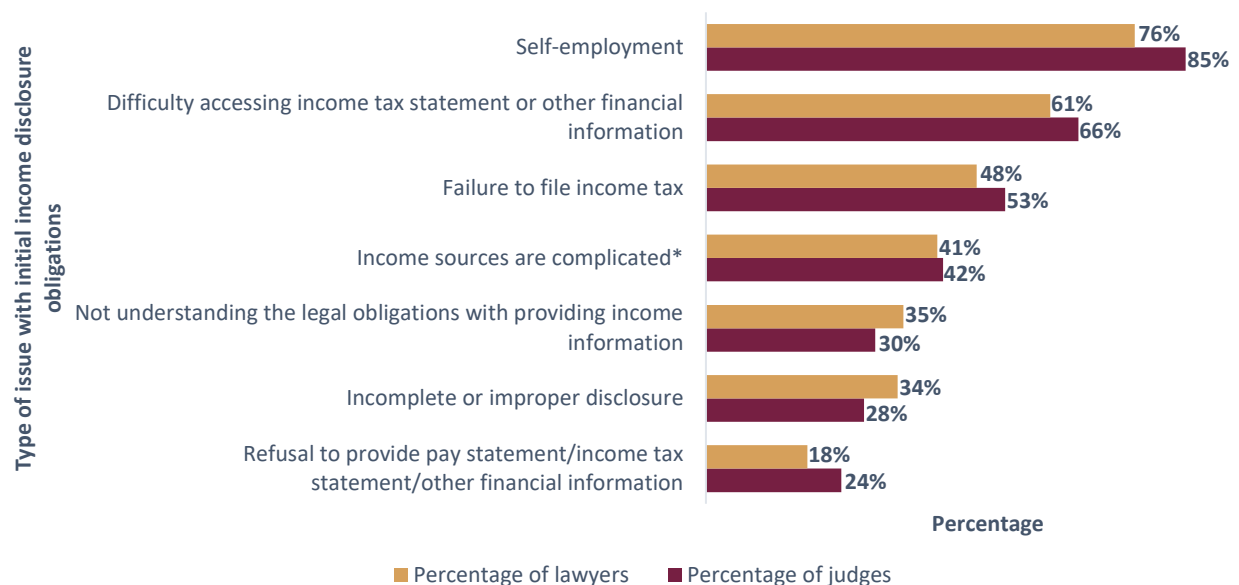
<sup>25</sup> Respondents were given a list of special or extraordinary expenses and asked to rank the expenses based on how challenging they were. See Figure 4 for the list.

indicated there were challenges with initial income disclosure obligations about half of the time. The remaining lawyers (15%) and judges (17%) reported that there were rarely or almost never any challenges with initial income disclosure obligations.

### 3.5.2 Many lawyers and judges reported that parties being self-employed and getting access to parties' financial information were the two most common challenges with initial income disclosure obligations.

In the cases where there were challenges with initial income disclosure obligations, the **top three** most common challenges<sup>26</sup> involved self-employment,<sup>27</sup> access to income tax statements or other financial information, and parties' failure to file income tax (see Figure 5). The least challenging issue with initial income disclosure obligations involved parties' refusal to provide financial information.

**Figure 5: Top three most challenging issues with initial income disclosure obligations, as ranked by lawyers and judges**



\*Includes, for example, cases involving income from tax shelters, income from foreign sources, a party who is a shareholder, director or officer of a company or who has trust income.

Source: Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

Note: 414 lawyers and 107 judges answered this question.

<sup>26</sup> Respondents were given a list of issues with initial income disclosure obligations and asked to rank the issues based on how challenging they were. See Figure 5 for the list of issues.

<sup>27</sup> Self-employed parties can usually deduct business expenses from their income. Calculating the income of a self-employed party can be contentious, as these deducted business expenses are examined to determine whether they are reasonable, and some may be contested and added to the income.



### **3.5.3 More than three-quarters of lawyers and judges reported that a party's non-compliance with ongoing income disclosure obligations was an issue in their cases.**

After an initial income disclosure is made, ongoing income disclosure is also required when requested. Over a third (37%) of lawyers indicated their clients rarely or almost never complied with ongoing income disclosure obligations, with 35% reporting their clients complied about half of the time and 28% reporting their clients usually or almost always complied with these ongoing obligations. Two in five lawyers (43%) reported that non-compliance with ongoing income disclosure became an issue about half of the time, over one in three (38%) reported that this was usually or almost always an issue, and 20% reported that it was rarely or almost never an issue. As for judges, over one in three (38%) reported that they usually or almost always heard cases about non-compliance with ongoing income disclosure obligations, while 39% heard these types of cases about half of the time and 24% rarely or almost never heard these types of cases.

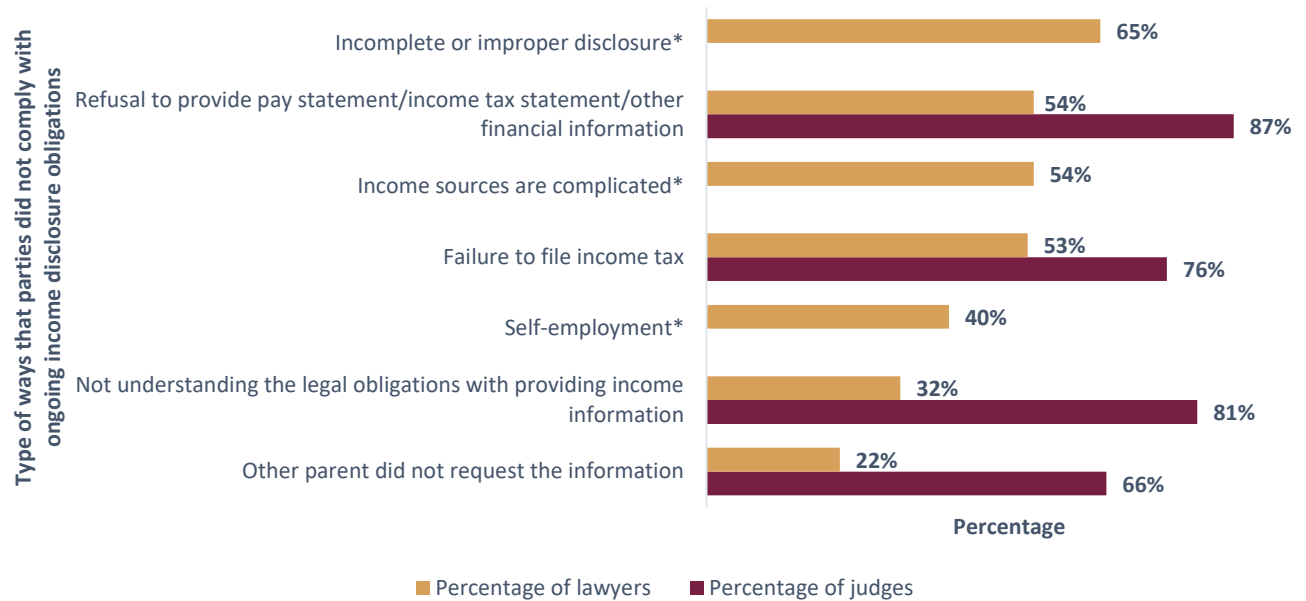
### **3.5.4 The most common ways that parties did not comply with ongoing income disclosure obligations were by refusing to provide financial information (judges) or providing incomplete or improper disclosure (lawyers).**

Lawyers and judges were asked to select the **top three** most common ways that parties did not comply with ongoing income disclosure obligations.<sup>28</sup> They had only one of the top three way in common, a party's refusal to provide financial information, which was reported by 54% of lawyers and 87% of judges. Lawyers also selected incomplete or improper disclosure (65%) and a party with complicated income sources (54%) as the other most common way that parties did not comply. Judges reported that a party not understanding the legal obligations in providing income information (81%) and a party's failure to file income tax (76%) were the other top ways they did not comply with ongoing income disclosure obligations (see Figure 6). Lawyers and judges shared additional ways that parties were non-compliant with ongoing income disclosure obligations; these included parties forgetting to provide information (e.g., being too busy), parties hiding increases in income to avoid having to pay more child support, and parties employed by a closely held corporation.

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<sup>28</sup> Respondents were given a list of ways that parties do not comply with ongoing income disclosure obligations and asked to rank the ways based on how frequent they were. See Figure 6 for the list of issues.

**Figure 6: Top three most common reasons for non-compliance with ongoing income disclosure obligations, as ranked by lawyers and judges**



\*Reasons listed only in the survey of lawyers.

Source: Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

Note: 410 lawyers and 103 judges answered this question.

**3.5.5 Most judges indicated that a disclosure order was likely to be awarded when a party did not comply with income disclosure obligations. Once the order was made, over half of lawyers indicated that the obliged party was likely to comply.**

When a party did not comply with income disclosure obligations, almost all judges (91%) indicated a disclosure order was usually or almost always awarded. Lawyers were then asked how often the obliged party complied with a court-ordered application for disclosure. Over half (57%) reported that the obliged party usually or almost always complied with the order, with some lawyers reporting that the obliged party complied about half of the time (35%), rarely (6%) or never (1%).

**3.5.6 Many judges reported that when a party did not comply with income disclosure obligations, their income was likely to be imputed.**

If a party fails to provide income information, the court can impute their income. Income imputation refers to when a judge assigns or imposes an income on a party, regardless of whether they are actually earning that amount of money.

More than two in three judges (68%) reported that income was usually or almost always imputed when a party was non-compliant with income disclosure obligations. Almost one-quarter (23%) indicated that income was imputed about half of the time, and 8% of judges indicated that income was rarely imputed when non-compliance was found.

### 3.6 Income determination

For child support purposes, income is calculated using a party's gross income. Income determination starts with line 15000 of the Income Tax Return and is adjusted with [Schedule III of the Federal Child Support Guidelines](#).

#### **3.6.1 Most lawyers and judges reported that disputes related to income determination occurred in at least half of their cases.**

Aside from the issue of income disclosure, approximately half of lawyers (54%) and judges (49%) reported that disputes related to the determination of the amount of income for child support purposes occurred in about 50% of their cases. Around one in four lawyers (22%) and judges (27%) indicated that disputes related to income determination usually or almost always occurred. The remaining lawyers (24%) and judges (25%) indicated disputes related to income determination rarely or almost never occurred.

#### **3.6.2 In child support cases, it was most challenging to determine income in cases where there was income from tax dividends or capital gains, irregular income patterns, and/or self-employment or cash income.**

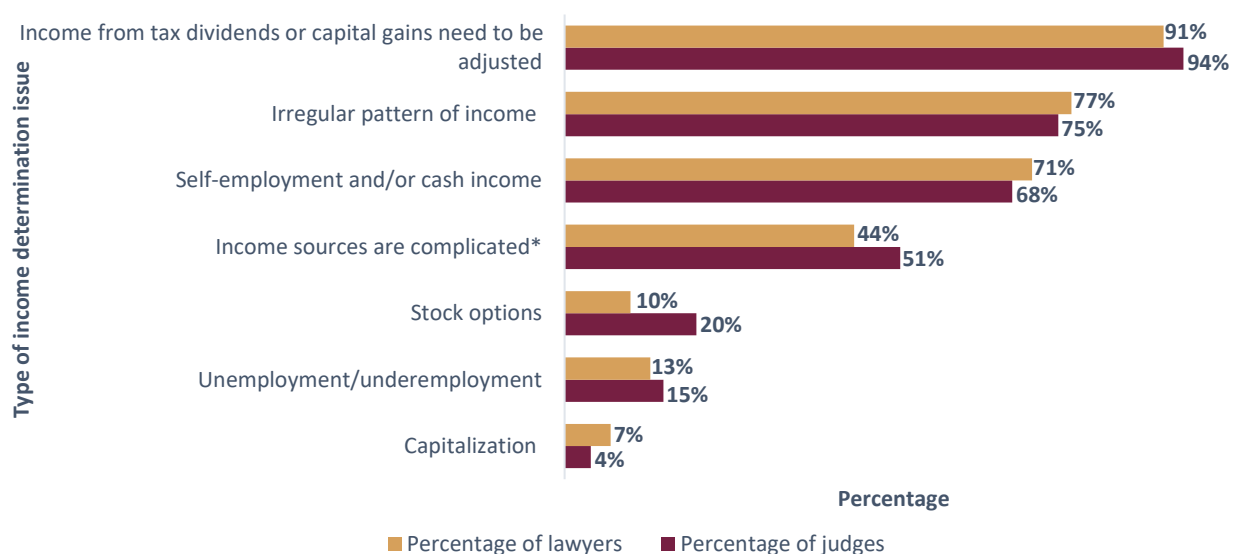
Lawyers and judges reported that the **top three**<sup>29</sup> most challenging issues with income determination for child support purposes, aside from income non-disclosure, were cases involving income from tax dividends<sup>30</sup> or capital gains that needed to be adjusted, irregular income patterns, and self-employment or cash income. The least challenging issue with income determination reported by lawyers and judges was capitalization. See Figure 7 for more information.

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<sup>29</sup> Respondents were given a list of issues with income determination and asked to rank the issues based on how challenging they were. See Figure 7 for the list of issues.

<sup>30</sup> Dividends refer to profits that shareholders receive from a corporation, generally taxed at a different rate.

**Figure 7: Top three challenging issues encountered when determining income for child support purposes aside from income non-disclosure, as ranked by lawyers and judges**



\*Includes, for example, cases involving income from tax shelters, income from foreign sources, and a party who is a shareholder, director or officer of a company or who has trust income.

Source: Justice Canada, 2022 National Family Law Survey of Lawyers; 2022 National Family Law Survey of Judges.

Note: 412 lawyers and 108 judges answered this question.

## 4.0 Conclusion

The findings in this report help provide insight into the characteristics of current child support cases in Canada. According to most lawyer and judge respondents, child support disputes occurred in at least half of their cases. This is equally true when looking at shared parenting time cases and cases involving income determination, where most respondents reported seeing disputes at least half of the time.

The most difficult-to-settle child support issue, as reported by lawyers and judges, was a party's lack of compliance with income disclosure obligations. Depending on the type of case, specific issues were identified as being more difficult to settle. In shared parenting time cases, the most litigious issue involved getting both parties to agree on the type of parenting arrangement and on whether a shared parenting time arrangement is the best approach for the family. When looking at special or extraordinary expenses, lawyers and judges reported that post-secondary education expenses and extraordinary expenses for extracurricular activities were the most difficult to settle. In cases involving income determination, the most challenging issues involved tax dividends or capital gains, irregular income patterns, and self-employment or cash income.

Most lawyers and judges also reported that challenges with initial and ongoing income disclosure obligations occurred in at least half of their cases. The top issues varied between initial and ongoing income disclosure obligations. With initial income disclosure obligations, self-employment, access to income information and parties' failure to file income tax were the most challenging issues. In cases

involving ongoing income disclosure obligations, a party's refusal to provide financial information was the most challenging issue.

These survey results are not intended to be representative of all family law cases in Canada, as the 417 lawyer and 109 judge respondents represent only a fraction of those working in the family justice system in Canada. However, the findings do provide a better understanding of some of the child support practices and issues in 2022. The next iteration of the National Family Law Survey is expected to launch in Fall 2024.