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RESEARCH REPORT

**THE SURVEY OF
CHILD SUPPORT AWARDS:
ANALYSIS OF PHASE 2 DATA
COLLECTED THROUGH
JANUARY 31, 2002**

2003-FCY-4E

**The Survey of
Child Support Awards:
Analysis of Phase 2 Data Collected
Through January 31, 2002**

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	v
EXECUTIVE SUMMARY	vii
1.0 INTRODUCTION	1
1.1 Background	1
1.2 Study Approach	2
2.0 METHODOLOGY	2
2.1 Research Design and Procedures	2
2.2 Data Quality Issues	4
2.3 Data Analysis Strategy	6
2.4 Limitations of the Study	8
3.0 DESCRIPTION OF CASES	8
3.1 Source of Child Support Order Information	8
3.2 Disposition of Order	8
3.3 Legal Representation	9
3.4 Issues Dealt with in Orders	9
3.5 Spousal Support Awards	11
3.6 Number and Age of Children	12
3.7 Type of Custody Arrangements	15
3.8 Access Terms	15
3.9 Child Support Award Amounts	18
3.10 Paying and Receiving Parent Incomes	18
3.11 Determination of Award Amount	22
3.12 Awards for Children at or Over the Age of Majority	26
3.13 Award of Special or Extraordinary Expenses	26
3.14 Undue Hardship Applications	27
3.15 Variation Applications	30
3.16 Adherence to Section 13 of the Child Support Guidelines	31

4.0	FACTORS RELATED TO CHILD SUPPORT AWARDS.....	33
4.1	Relationship between Child Support Award and Table Amount.....	35
4.2	Changes in Relationship between Award Amount and Table Amount over Time..	35
4.3	Relationship between Child Support Award Amount and Paying Parent’s Income	36
4.4	Relationship between Child Support Award Amount and Award of Spousal Support.....	37
4.5	Relationship between Child Support Award Amount and Disposition of Case	37
4.6	Relationship between Child Support Amount and Type of Custody.....	37
4.7	Relationship between Paying Parent’s Income and Special or Extraordinary Expenses	40
4.8	Relationship between Child Support Award Amount and Special or Extraordinary Expenses	44
5.0	COMPARISON OF PROVINCIAL/TERRITORIAL DATA	44
5.1	Type of Divorce Order.....	44
5.2	Disposition of Orders.....	46
5.3	Legal Representation	48
5.4	Issues Dealt with in Divorce Orders	49
5.5	Type of Custody Arrangements	51
5.6	Child Support Award Amounts	51
5.7	Award and Amount of Special or Extraordinary Expenses	51
	APPENDIX A: DIVORCE AND THE PROCESSING OF CHILD SUPPORT ORDERS	55

LIST OF FIGURES

Figure 2.1	Percentage of Cases from Each Participating Province or Territory	5
Figure 2.2	Source Documents Used to Complete Survey	7
Figure 3.1	Type of Order Under the <i>Divorce Act</i>	10
Figure 3.2	Issues Dealt with in Court Orders	13
Figure 3.3	Issues Dealt with in Divorce Orders and Variation Orders	14
Figure 3.4	Age Breakdown of Children Over the Age of Majority	16
Figure 3.5	Type of Custody Arrangements (as defined by the Guidelines).....	17
Figure 3.6	Paying and Receiving Parents' Annual Incomes	20
Figure 3.7	Percentage of Paying and Receiving Parents with Legal Representation by Annual Income.....	21
Figure 3.8	Percentage of Contested Cases by Paying and Receiving Parents' Annual Incomes.....	23
Figure 3.9	How Award Amount was Determined.....	24
Figure 3.10	How Award Amount was Determined for Cases Where All Children are Either Under or Over the Age of Majority	25
Figure 3.11	Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines	28
Figure 3.12	Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines for Cases with Children Under and Over the Age of Majority	29
Figure 3.13	Decision of Variation Application by Applicant	32
Figure 3.14	Percentage of Cases Containing Information Required by Section 13 of the Federal Child Support Guidelines	34
Figure 4.1	Median Child Support Amounts in Sole Custody Cases by Paying Parent Income and Number of Children.....	38
Figure 4.2	Relationship of Child Support Award Amount to Table Amount by Whether Monthly, Annual, or Lump Sum Spousal Support was Awarded.....	39
Figure 4.3	Median Monthly Child Support Award Amount by Type of Custody Arrangement and Year of Judgment	41
Figure 4.4	Percentage of Cases Having Special or Extraordinary Expenses Awarded, by Income of Paying Parent in Sole Custody Cases	42
Figure 4.5	Median Special or Extraordinary Expenses Awarded per Month by Paying Parent Income for Sole Custody Cases Where Dollar Value Stated for Special Expenses.....	43

Figure 4.6	Median Monthly Child Support Award Amount in Sole Custody Cases by Paying Parent Income and Whether Special or Extraordinary Expenses were Awarded	45
Figure A3.1	The Process of Divorce	61

LIST OF TABLES

Table 2.1	Combinations of Source Documents Used to Complete Instrument	6
Table 3.1	Number of Cases Reporting Most Frequent Combinations of Issues Dealt with in Divorce Orders and Variations	11
Table 3.2	Type of Access Terms	15
Table 3.3	Number of Cases Awarding Most Frequent Combinations of Special or Extraordinary Expenses.....	30
Table 4.1	Total Child Support Award Amount in Relation to Table Amount by Paying Parent Income in Sole Custody Cases	36
Table 4.2	Total Child Support Award Amount in Relation to Table Amount by Year of Judgement in Sole Custody Cases	36
Table 5.1	Type of Divorce Order by Province/Territory	47
Table 5.2	Disposition of All Orders by Province/Territory	48
Table 5.3	Legal Representation by Province/Territory.....	49
Table 5.4	Issues Dealt With in Divorce Orders by Province/Territory	50
Table 5.5	Type of Custody by Province/Territory.....	52
Table 5.6	Median Monthly Child Support Award Amount and Paying Parent Income by Province/Territory	53
Table 5.7	Number and Proportion of Cases Having Special or Extraordinary Expenses Awarded by Province/Territory	53
Table 5.8	Median Monthly Special or Extraordinary Expenses Awarded by Province/Territory.....	54
Table A2.1	Types of Courts and Court Titles by Study Site (as of December 2001)	57

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EXECUTIVE SUMMARY

On May 1, 1997, the Federal Child Support Guidelines came into effect with the amendments to the *Divorce Act*. (Amendments to the *Income Tax Act* concerning the tax treatment of child support payments took effect on the same date.) The amendments to the *Divorce Act* required the Minister of Justice to review the operation of the Guidelines and report to Parliament before May 1, 2002. This report has now been tabled in Parliament.¹

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms established a Research and Evaluation Subcommittee to help develop the comprehensive program of socio-legal research to support the review required by the 1997 *Divorce Act* amendments. Given the profound change in the way child support award amounts are calculated under the Guidelines, the Task Force and the Research Subcommittee members agreed that the first research priority was to collect information about support orders and variation orders made on or after May 1, 1997. This project is providing information about the implementation of the Guidelines, and provides for ongoing or periodic collection of information from the courts until the end of the initiative in March 2004.

This report summarizes the interim findings of Phase 2 of the project, which began in the fall of 1998. The report presents the results of the analysis of data collected from the fall of 1998 through January 31, 2002. Appendix A describes the processing of divorce cases involving child support orders, and documents issues related to that process at the different sites involved in the project. This report does not include any data from Quebec or Nunavut.²

Highlights of the current findings of Phase 2 data are as follows.

Case Characteristics

- A total of 33,240 cases of divorce or variations of previous orders in which children were present were analyzed for this report.
- The majority of orders (82 percent) were interim or final divorce orders and 15.9 percent were interim or final variation orders.
- The disposition of the majority of cases was by consent or uncontested (87.7 percent); 9.9 percent of cases were reported as contested.
- The majority of cases reported legal representation for at least one parent (85.3 percent); mothers had legal representation in 74.8 percent of cases, and fathers in 62.2 percent of cases. Both parents had legal representation in 51.2 percent of the total cases.

¹ Department of Justice Canada. (2002). *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines*. Ottawa: Department of Justice Canada.

² Quebec's data was collected separately. See Madame Linda Goupil, *Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants*, Québec, ministre de la Justice, procureure générale, ministre responsable de la Condition féminine et de l'application des lois professionnelles, mars 2000.

- In 10.1 percent of the cases, a spousal support amount was also made, usually payable monthly.
- The majority of cases involved either one child (40.2 percent) or two children (44.7 percent).
- In 4,766 cases, there were an estimated 5,813 children over the age of majority. In 1,841 cases (5.5 percent of the total), all children were over the age of majority.
- In the majority of cases (79.3 percent), the mother had sole custody; the father had sole custody in 8.7 percent of cases. Shared custody (a child spends at least 40 percent of the time with each parent) and split custody (one or more children have primary residence with the mother and one or more children have primary residence with the father) were relatively infrequent at 6.2 percent and 5 percent, respectively.
- The most frequent type of access reported was “reasonable/liberal” (51.3 percent), followed by “scheduled/specified” (22.3 percent).

Child Support Awards and Paying Parent Incomes

- Data were available on monthly child support award amounts for 26,239 cases, representing 78.9 percent of the total. For all cases, child support amounts ranged from \$1 through \$9,750 per month, with a median value of \$427.
- In 53.2 percent of cases, the file specifically indicated that the child support guidelines were followed in determining the child support amount awarded. The second most frequently reported method for determining child support was a prior order or agreement that had dealt with child support (11.3 percent). In 28.8 percent of the cases, it was not possible to determine if the Guidelines were used.
- When total child support award amounts were examined in relation to the recorded amount from the Guidelines tables as provided in the order in sole custody cases, the majority of awards were either the same as (67.6 percent) or greater than (27.1 percent) the table amount. Only 5.3 percent of cases reported award amounts that were less than the table amounts.
- Annual income for the paying parent was specified in 76.7 percent of cases and ranged from \$1 through \$6,000,000, with a median income of \$36,000. Annual income of receiving parents was specified in 44.3 percent of cases, and ranged from \$39 through \$2,675,940, with a median of \$25,140.
- When the amounts of child support awards were examined in relation to the income of the paying parents, the results indicated a steady increase in child support awards as paying parents’ income increased.

Special or Extraordinary Expenses: Section 7

- Of the 31.7 percent of cases that specified special expenses, the monthly amount of the paying parent’s share of special or extraordinary expenses ranged from \$2 to \$1,500, with a median amount of \$113.

- The most commonly awarded type of expense was child care and day-care (12 percent of total cases). This was followed by medical/dental insurance premiums at 10.6 percent, and extracurricular activities expenses at 10.1 percent.
- There was a strong tendency for the proportion of sole custody cases awarded special or extraordinary expenses to increase as income level increased. At the lowest income level, only 13.2 percent of cases included special expenses in the amount; this proportion increased to 46 percent in the middle income range (\$45,000–\$59,999) and to 56.9 percent at the highest income level.
- The dollar amount of special expenses stipulated consistently increased as payors' income levels increased.

Undue Hardship: Section 10

- Undue hardship applications were identified in only 0.6 percent of the total cases in the sample.
- Of the 174 cases in which undue hardship applications were brought by the paying parent, 114 resulted in a decrease of the Guidelines amount and 31 were denied. None of the cases with non-missing data resulted in an order amount higher than the Guidelines amount. The outcome of 29 applications was unknown or missing.
- Of the 12 undue hardship applications made by the receiving parent, one resulted in an increase of the Guidelines amount and four were denied. In two of these cases, an order was made for less than the Guidelines amount. The outcome was unknown in five cases.

Variations

- In 48.6 percent of variation cases, the applicant was the receiving parent. The paying parent was the applicant in 43 percent of variation cases, and in 8.4 percent of cases, parents were cross-applicants.
- Of variation applications brought by the receiving parent, 66.7 percent resulted in an increase of the amount, 29.3 percent resulted in a decrease, 3.3 percent resulted in a termination order, and 0.7 percent were denied.
- Of variation applications brought by the paying parent, 14.1 percent resulted in an increase of the face value amount, 69.6 percent resulted in a decrease of the face value amount, 14.2 percent resulted in a termination order and 2.1 percent were denied.

Factors Related to Child Support Awards

- There was a steady increase from 1998 (61.4 percent) through 2001 (72.3 percent) in the proportion of sole custody cases in which the child support award amount was equal to the table amount as stated in the order.

- Overall, the proportion of sole custody cases that had child support awards lower than, equal to, or higher than the Guidelines table amounts were very similar for cases including spousal support awards and those not including spousal support.
- Contested cases had slightly higher median child support awards (\$462) than did cases that proceeded by consent or were uncontested (\$435). Special expenses were awarded in 31.6 percent of cases resolved by consent that were uncontested. In contested cases, 37.7 percent of cases had special expenses awarded.
- The median child support award amount was highest in cases in which sole custody was awarded to the mother (\$450) and lowest in cases when the father had sole custody (\$269). Median support amounts for shared and split custody fell between the two sole custody extremes: \$400 for shared custody and \$300 for split custody.

Comparison of Provincial/Territorial Data

- The majority of orders in all jurisdictions were resolved by consent or were uncontested. Saskatchewan reported the highest percentage of contested cases (32.6 percent), followed by Newfoundland (23.4 percent) and the Northwest Territories (21.9 percent).
- The proportion of cases with legal representation for the mother was highest in Manitoba (92 percent) and Saskatchewan (88.6 percent), and was lowest in Ontario (56 percent) and Newfoundland (51.2 percent). Legal representation for the father was highest in the Northwest Territories (74.7 percent) and Manitoba (74.4 percent), and lowest in Prince Edward Island (40.4 percent) and Newfoundland (37.4 percent).
- The proportion of cases reporting sole custody to the mother ranged from 80.4 percent in Newfoundland to 70.3 percent in the Yukon. Sole custody awarded to the father varied from 10 percent in New Brunswick to 2.9 percent in Newfoundland. The proportion of cases reporting shared custody arrangements was highest in the Yukon (10.5 percent) and lowest in Manitoba (1.8 percent). Split custody was reported relatively infrequently, ranging from 6.7 percent of cases in New Brunswick to 3.4 percent of cases in British Columbia.
- The proportion of cases in which special or extraordinary expenses were awarded ranged from a high of 40 percent in Alberta and 30.4 percent in Ontario to 12.3 percent in the Northwest Territories and 11.4 percent in Newfoundland.
- Median monthly amounts for special or extraordinary expenses ranged from a high of \$184 in Ontario and \$143 in Nova Scotia to \$91 in Manitoba and \$85 in Prince Edward Island.

1.0 INTRODUCTION

1.1 Background

In 1990, the Federal-Provincial-Territorial Family Law Committee began a study to address widespread dissatisfaction about the determination of child support. On behalf of the committee, the Department of Justice Canada undertook a four-year program of research to help develop guidelines for determining child support amounts awarded in cases of family breakdown.

On March 6, 1996, the federal government announced its policy intentions regarding child support. The four initiatives announced were as follows:

- to implement the Federal Child Support Guidelines;
- to change the tax treatment of child support;
- to improve the enforcement of support orders; and
- to increase the allowance to working low-income families through the Working Income Supplement (WIS).

On May 1, 1997, the Federal Child Support Guidelines came into effect with the amendments to the *Divorce Act*.³ (Amendments to the *Income Tax Act* concerning the tax treatment of child support payments took effect on that same date.) The amendments to the *Divorce Act* required the Minister of Justice to review the operation of the Federal Child Support Guidelines and report to Parliament before May 1, 2002. This report has been tabled in Parliament and is publicly available.⁴ A program of research of the Department of Justice Canada has been undertaken to provide data to allow for a comprehensive review of the provisions and operations of the Guidelines.

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms established a Research and Evaluation Subcommittee to help develop the comprehensive program of socio-legal research to support the review required by the 1997 *Divorce Act* amendments. Given the profound change in the way award amounts are calculated under the Guidelines, the Task Force and the Research Subcommittee members agreed that the first research priority was to collect information about support orders and variation orders made on or after May 1, 1997. This project is providing data on the implementation of the Guidelines, and provides for ongoing or periodic collection of information from the courts until the end of the research initiative in March 2004.

Phase 1 of this project began in December 1997 and ended in October 1998. This pilot phase consisted of three tasks: managing the initial phase of the data collection process; managing and

³ *Divorce Act*, R.S.C. 1985 (2nd Supp.), c.3.

⁴ Department of Justice Canada. *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines*. Ottawa: Department of Justice Canada, 2002.

preparing data received from participating courts in a computerized database; and analyzing the collected data. The Canadian Research Institute for Law and the Family (CRILF) was contracted to complete tasks 1 and 3. Phase 2 of this project began in the fall of 1998.

1.2 Study Approach

This report presents the results of the analysis of data collected from Phase 2 of the child support award monitoring project, which began in the fall of 1998 and continued through January 31, 2002. Data were collected at each participating site about all divorce cases involving children. Section 2.0 discusses the methods used to collect the data for Phase 2. A description of the cases is presented in section 3.0 and factors related to child support awards are discussed in section 4.0. A comparison of provincial/territorial data on selected variables of interest is contained in section 5.0. Appendix A describes the processing of divorce cases involving child support orders, and documents issues related to that process at the different sites involved in the project.

2.0 METHODOLOGY

2.1 Research Design and Procedures

Following completion of the pilot phase of data collection, a revised survey instrument was implemented that addressed several problems and issues identified during the pilot. As with the pilot survey on child support orders, the instrument used in Phase 2 was designed to record at each participating site all court decisions under the *Divorce Act* involving children.⁵ Relevant data sources for completing the survey instrument included the following:

- all interim child support orders in divorce files;
- final divorce judgements that specifically incorporate separation agreements, minutes of settlement or previous court orders;
- final divorce judgements that are silent on child support even though children are involved;
- orders varying divorce judgements; and
- final divorce judgements that contain corollary relief orders.

In addition, it was discovered during the pilot phase that several other sources of relevant information for completing the survey instrument were available at certain court sites. The addition of an item on the revised instrument allows for identification of the documents used to collect the data.

⁵ Some sites have also collected data about cases proceeding under provincial legislation. For purposes of analysis, these cases have been omitted from this report.

The unit of analysis for this project is the individual court decision, not the individual case. In other words, a divorce judgement involving child support for which a variation order is later made is included as two separate cases in the database.

All provinces and territories except Quebec and Nunavut collected data included in this analysis from at least one site.⁶ The sites that collected data for this analysis are:

- St. John's, Newfoundland;
- Charlottetown and Summerside, Prince Edward Island;
- Halifax, New Glasgow, Sydney, Truro and Yarmouth, Nova Scotia;
- Fredericton, New Brunswick;
- Ottawa, Toronto and London, Ontario;
- Winnipeg, Manitoba;
- Saskatoon and Regina, Saskatchewan;
- Edmonton and Calgary, Alberta;
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

The Federal-Provincial-Territorial Research Subcommittee members selected the sites to be studied in their jurisdictions. The subcommittee was also heavily involved in the design of the survey, and facilitated site visits by the research team.

The contractor responsible for maintaining the database is Neurofinance Inc. of Montréal. Neurofinance developed a computerized data input program that mirrors the paper survey instrument. In 2001, the data input process was moved to a web-based application, and data capture clerks now enter data directly at an Internet site. The data analyzed in this report are from the version of the database received by the Canadian Research Institute for Law and the

⁶ As Quebec's system of determining child support awards is different from the Federal Child Support Guidelines, a separate study was designed to collect and analyze data in Quebec. See Madame Linda Goupil, *Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants*, Québec, ministre de la Justice, procureure générale, ministre responsable de la Condition féminine et de l'application des lois professionnelles, mars 2000. An English translation titled *Report of the Follow-up Committee on the Quebec Model for the Determination of Child Support Payments*, is in production at the Department of Justice Canada, Family, Children and Youth Section.

Family on February 2, 2002, and include all valid cases (n=36,104) entered in the database from the beginning of Phase 2 in the fall of 1998 through January 31, 2002.⁷

Figure 2.1 presents the number and percentage of cases included in this database by province or territory of origin. The majority of cases (37.3 percent) were from Alberta, followed by 31.1 percent from Ontario, 7.2 percent from Manitoba and 6.5 percent from Nova Scotia. The number of cases from Alberta was large because both major urban centres in the province, Edmonton and Calgary, are participating. The large number of Ontario cases reflects the fact that it is the most populous jurisdiction included in the project, with three court sites participating. The jurisdictions with the fewest number of cases in the study are the Northwest Territories (146), Yukon (209) and Newfoundland (342).

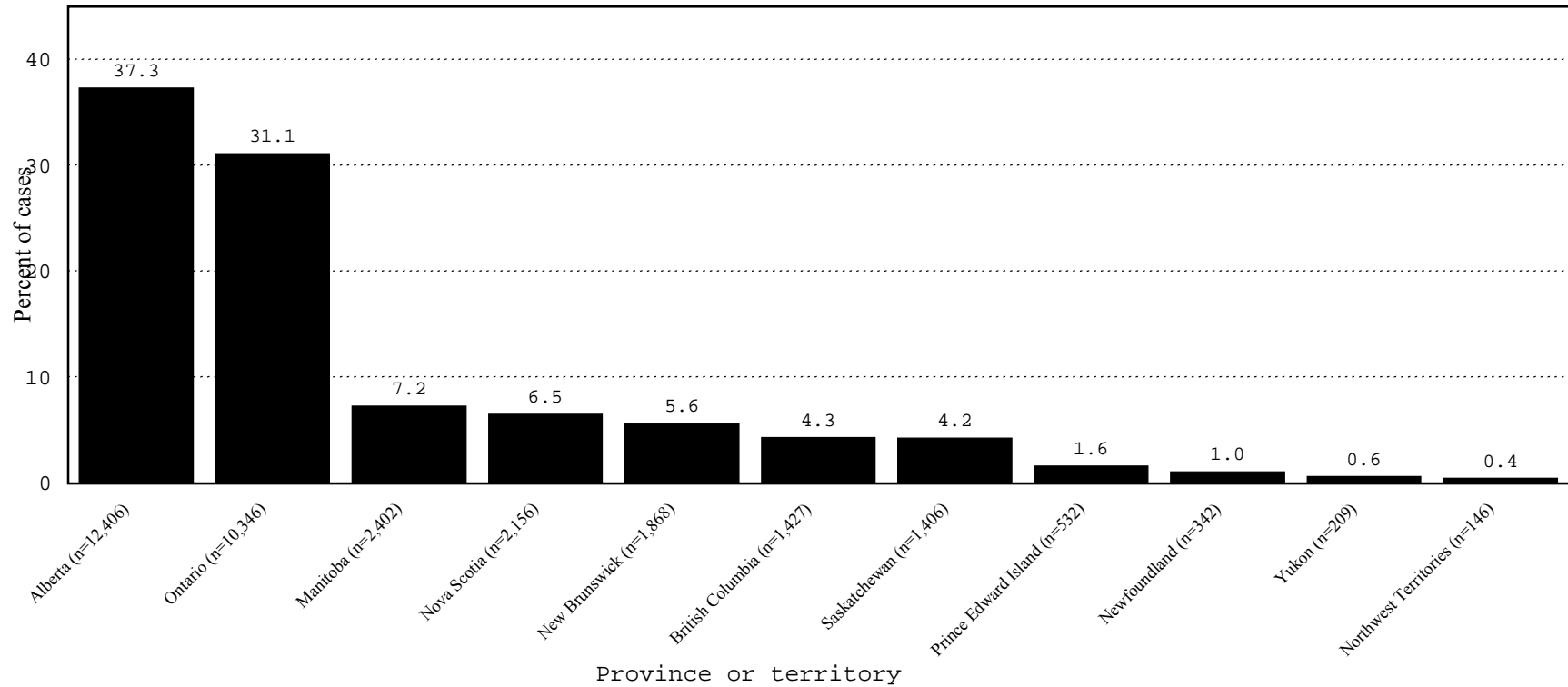
2.2 Data Quality Issues

One potential bias that should be acknowledged is the differing availability of information for completing the survey instrument across participating sites. At some sites, the file available to data-capture clerks contains all relevant documentation for a case, including any prior agreements or orders. At other sites, the available file contains only the final divorce judgement, which may be silent on child support because it was addressed in a previous agreement or order. While this could cause some variables to be under-reported in the survey, it should not compromise the quality of the data that were available.

Although there was an attempt to train all data-capture clerks and a standard coding manual is available, the fact that different persons across the country are collecting the information could affect data quality. Follow-up with coders has been ongoing throughout the project to minimize effects on data quality that this may cause. Following revision of the survey instrument after completion of the pilot phase, survey team representatives visited sites to meet with most of the data-capture clerks to conduct training sessions early in the fall of 1998. Further, a revised coding manual was developed for the revised questionnaire detailing the information to be coded for each item. A toll-free help line is maintained by CRILF for data-capture clerks who may have questions regarding the appropriate way to code particular cases. In addition, many items on the instrument provide for write-in responses in cases when the pre-coded alternatives are inappropriate. These open-ended responses were coded and included in the data analysis.

⁷ A total of 2,864 cases were excluded from the database for purposes of the analyses presented in this report. The majority of these cases (n=2,130) were excluded because the file indicated that they had proceeded under provincial legislation. A smaller number of cases (n=734) were excluded for one or more of the following reasons: they were cases in which the child support award amount was based on a previous order dated prior to the implementation of the Federal Child Support Guidelines on May 1, 1997; they represented variations that resulted only in termination orders and dealt with no other issues; they relied solely on affidavits for data capture and did not include information on whether the case represented a divorce or a variation; they were duplicate cases as determined by examination of whether the case was a divorce or a variation, the court file number, the date of judicial decision, and the date when the order was issued and entered; or they were test cases that were entered during beta testing of the data entry system.

Figure 2.1 Percentage of Cases from Each Participating Province or Territory



Total n=33,240.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 2.2 presents the source documents used to complete the instruments. The most frequent source of information was final orders, which were available in 88.6 percent of cases. Affidavits (42.7 percent) and previous orders (15.6 percent) were also used to capture data. Financial statements (2.3 percent) and minutes of settlements (4.5 percent) were the least frequently used. Final and previous orders, affidavits, and minutes of settlements were considered the most reliable sources. Data-capture clerks were instructed to use financial statements only when the information required was not available from any other source. Table 2.1 lists the most frequent combinations of source documents used to complete the instruments, the most common being “final order/other” (21 percent of cases with non-missing data), which represents a text comment. The most common write-in texts for the “other” category of documents were “data sheets” and “petition.”

Table 2.1 Combinations of Source Documents Used to Complete Instrument¹

Documents used	n	%
Final order/other	6,851	21.0
Final order only	6,341	19.5
Final order/affidavit	4,923	15.1
Final order/affidavit/other	2,485	7.6
Final order/separation agreement/affidavit	2,304	7.1
Final order/previous order/affidavit	1,587	4.9
Final order/previous order	1,218	3.7
Other only	1,217	3.7
Final order/previous order/other	1,105	3.4
Other combination	4,519	13.9

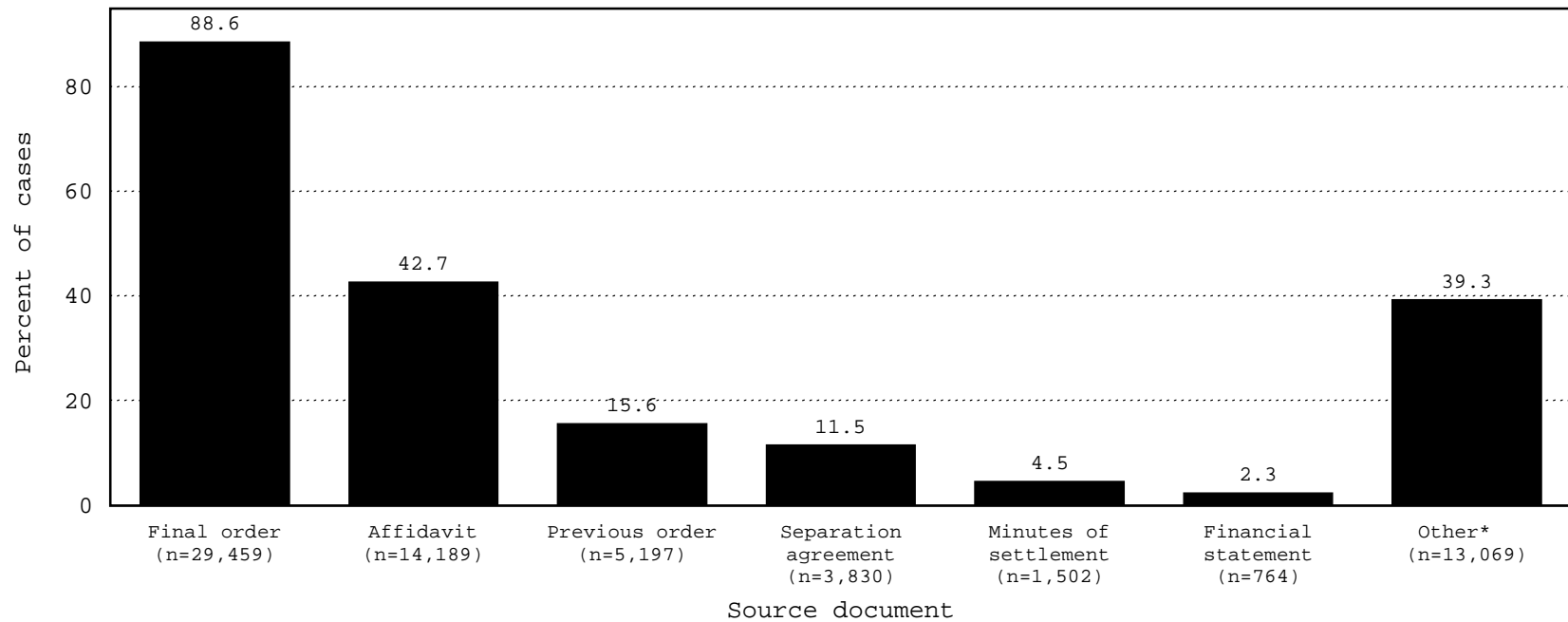
¹ Total n=33,240, missing cases=690.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

2.3 Data Analysis Strategy

This report presents interim analyses of the database generated from the fall of 1998 through January 31, 2002. In cases when measures of central tendency are presented, both the medians (the point above and below which 50 percent of the cases fall) and the means (or averages) are presented because the median is less sensitive to the effects of extreme scores. Medians only are presented in tables and figures.

Figure 2.2 Source Documents Used to Complete Survey



Total n=33,240.

Numbers do not add up to total since more than one source document may be used to complete the survey.

* Other includes such documents as data sheet, petition, variation application, clerk's notes and interim order.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

2.4 Limitations of the Study

A major limitation of the study is that the cases do not represent all child support cases in Canada. Therefore, results should not be generalized to encompass the country as a whole or individual provinces or territories, especially since, at the present time, some jurisdictions have relatively few cases in the database. A report completed by the Department of Justice Canada addressed the representativeness of participating court sites compared to the jurisdiction as a whole on a limited range of variables and found quite acceptable levels of representativeness.⁸ Thus, as the size of the database increases over the course of Phase 2, the ability to generate more detailed analysis for those courts reporting is enhanced. Additional years of data reporting allows examination of phenomena over time, giving some trend analysis to the implementation of and practice followed in the Guidelines.

It should be noted that an attempt was made to exclude all cases in which child support was determined prior to the implementation of the Federal Child Support Guidelines on May 1, 1997. A small number of these cases may remain in the database, but their presence would have a minimal effect on the results presented.

3.0 DESCRIPTION OF CASES

3.1 Source of Child Support Order Information

Data-capture clerks were required to determine whether a case represented an original divorce order or a variation order. They were also required to indicate the type of judgement or order used. Of the 33,240 cases, 82 percent were interim orders under federal legislation or divorce orders, and 15.9 percent were interim or final variation orders. No information was available on whether the remaining 2.1 percent of cases were original divorce orders or variations.

Figure 3.1 presents a breakdown of the types of divorce orders or judgements used to complete the survey instrument. The most common type used was a divorce order that included a child support order (52.1 percent), followed by a divorce order silent on child support (31.6 percent).⁹ Interim child support orders were reported in 10.9 percent of cases.

Of a total of 5,273 variations, a substantial majority (88.3 percent) were final variation orders, followed by 9.7 percent interim variation orders.

3.2 Disposition of Order

One item on the instrument asks for the final disposition of the order. Due to the potential for confusion regarding the distinction between “consent” and “uncontested” dispositions, these categories were collapsed. Only 3,262 cases (9.9 percent) with non-missing data (n=32,991) on

⁸ Department of Justice Canada, *A Comparison of Selected and Non-Selected Court Sites and an Analysis of Representativity of Courts in the Central Divorce Registry Data Base*. Background Paper BP05E, 1999.

⁹ The majority of the cases silent on child support are from Ontario, because at some court sites, child support orders are not included in divorce orders.

this variable were contested; 28,946 cases (87.7 percent) were coded as consent/uncontested, and in 783 cases (2.4 percent) the disposition was unknown.

Substantial differences were found in the disposition of divorce orders and variations. Of the total number of divorce orders (n=27,254), 6.2 percent were contested and 91.2 percent were coded as consent/uncontested. However, of the 5,273 variations, 26.4 percent were contested and only 69 percent were consent/uncontested.

3.3 Legal Representation

In the majority of cases with non-missing data (n=33,104), the mother was reported as having legal representation (24,776 or 74.8 percent). Of cases with non-missing data on legal representation for the father (n=33,052), the majority also had representation (20,570 or 62.2 percent), although the proportion was not as high as with mothers. A total of 28,340 cases (85.3 percent) reported legal representation for at least one parent, and 17,006 cases (51.2 percent of the total sample) reported representation for both parents. Only 325 cases (1.4 percent of non-missing data) reported legal representation for a government agency. Government agencies would include social assistance or enforcement agencies, but exclude Legal Aid clinics.

Legal representation was also analyzed separately for cases involving divorce orders and variations. Cases involving divorce orders were less likely to have legal representation for mothers (74.2 percent), fathers (59.9 percent) and government agencies (0.4 percent) than were cases involving variations (75.6 percent for mothers, 71.6 percent for fathers and 4 percent for government agencies).

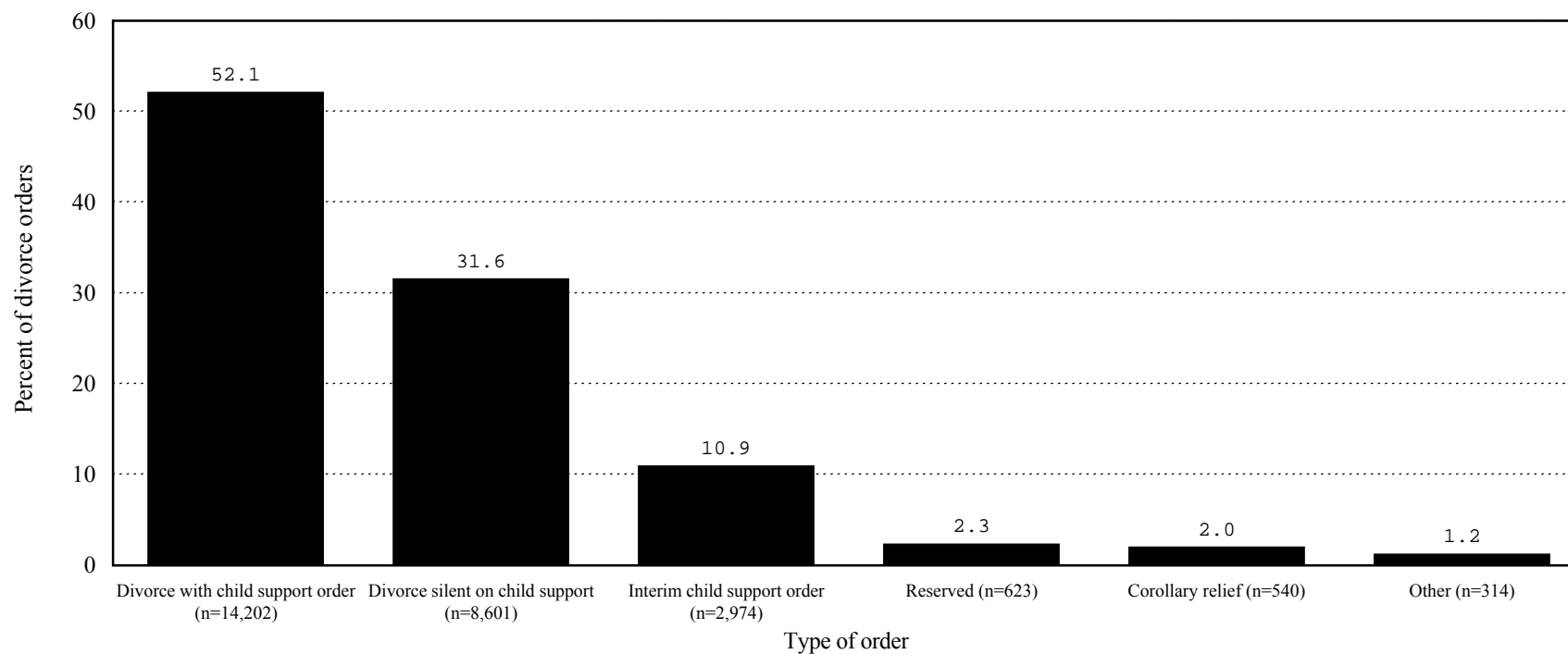
3.4 Issues Dealt with in Orders

Figure 3.2 presents the issues dealt with in the orders, including both divorce orders and variations.¹⁰ The most frequent issue was child support (72.5 percent of all cases), followed by custody (57.8 percent) and access (53.1 percent). Spousal support was an issue in one fifth of the orders (21.2 percent).

Issues dealt with in orders were also analyzed separately for divorce orders and variations, and the results are presented in Figure 3.3. Child support was more likely to be dealt with in variations (97.2 percent) than in divorce orders (67.4 percent). Most other issues were considerably less likely to be dealt with in variations than in divorce orders, with the exception of arrears, award termination provisions and review clauses.

¹⁰ This does not include issues dealt with in supporting documents available to the data-capture clerks.

Figure 3.1 Type of Order Under the *Divorce Act*



Total number of divorce orders = 27,254.

713 cases were missing data on both type of divorce order and type of variation order.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Additional analyses were conducted to determine the most common combinations of issues that were dealt with in divorce orders and variations. These are presented in Table 3.1. While the combination of child support/custody/access was the most common in divorce orders (24.6 percent), child support was the only issue dealt with in more than one third of variations (37.2 percent). Also, combinations of issues that included arrears were considerably more common in variations than in divorce orders.

3.5 Spousal Support Awards

A total of 3,352 cases (10.1 percent of the total sample) had a valid (non-zero) spousal support award amount that was payable monthly, annually, or in a lump sum. It should be noted that, due to the nature of the survey, these only represent cases in which children were involved. Of these cases, the majority (86.8 percent) had awards payable monthly. In 375 cases, or 11.2 percent of the cases involving spousal support, the award was a lump sum, and in 66 cases (2 percent) an annual spousal support amount was specified.

The monthly spousal award amount ranged from \$1 to \$15,000. Almost three quarters of the monthly awards (71.7 percent) were \$1,000 or less. The lump sum awards ranged from \$1 to \$2,500,000. Fifty-six of the 66 cases of annual spousal support had an amount of \$1. It should be noted that the *Divorce Act* stipulates that spousal awards are to be considered after child support and, for this reason, they are sometimes quite low. Even so, these amounts are often included in the order so that they can be reconsidered at a later time.

Table 3.1 Number of Cases Reporting Most Frequent Combinations of Issues Dealt with in Divorce Orders and Variations¹

Combinations of issues for Divorce Orders	n	%
Child support/custody/access	6,706	24.6
Child support/custody/access/spousal support	3,618	13.3
Child support only	1,105	4.1
Custody/access	870	3.2
Child support/custody	758	2.8
Child support/custody/access/spousal support/award termination provision	749	2.7
Child support/custody/access/award termination provision	727	2.7
Child support/custody/access/other issue	608	2.2
Child support/custody/access/review clause	416	1.5
Custody only	344	1.3
Child support/custody/spousal support	307	1.1
Child support/spousal support	284	1.0
Other combination	3,467	12.7
Missing	7,295	26.8

Table 3.1 Number of Cases Reporting Most Frequent Combinations of Issues Dealt with in Divorce Orders and Variations (cont'd)

Combinations of issues for Variations	n	%
Child support only	1,963	37.2
Child support/arrears	737	14.0
Child support/custody/access	536	10.2
Child support/custody	190	3.6
Child support/award termination provision	178	3.4
Child support/access	161	3.1
Child support/custody/access/arrears	120	2.3
Child support/spousal support	96	1.8
Child support/arrears/review clause	77	1.5
Child support/access/arrears	66	1.3
Child support/arrears/other issue	55	1.0
Child support/custody/arrears	54	1.0
Child support/custody/access/spousal support	51	1.0
Other combination	957	18.1
Missing	34	0.6

¹ n for divorce orders=27,254. n for variations=5,273.

A total of 3,233 of the spousal support cases specified the paying spouse. In 3,187 cases (98.6 percent) the husband was the paying spouse, while in only 46 cases (1.4 percent) the wife was the payor.

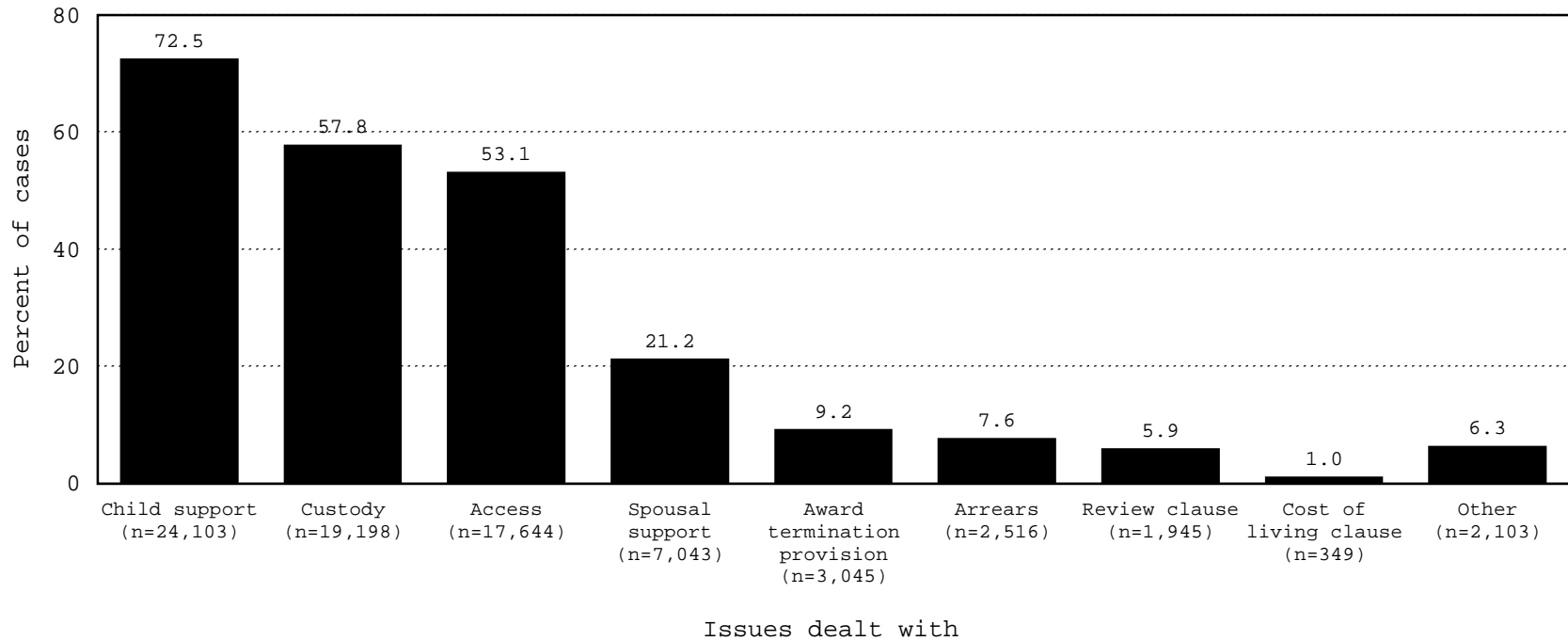
3.6 Number and Age of Children

Data were available on the number of children included in all but 233 cases. The majority of cases included either one child (n=13,259; 40.2 percent) or two children (n=14,740; 44.7 percent). Three children were reported in 12.4 percent (n=4,105) of cases. Because relatively few cases involved four or more children (n=903; 2.7 percent), they were collapsed into a single category for purposes of subsequent analyses.

It is not possible to determine exactly how many children over the age of majority are present in the database, since only year of birth is requested on the instrument for each child involved in the case. However, an estimate of this number was computed. It is probably an overestimate, since it assumes that a child who reached the age of majority at any point during the year of the judgement would have been regarded as over the age of majority at the time of the judgement. This estimate indicated that there was at least one child over the age of majority in 4,766 cases (14.3 percent of the total), which represents 5,813 children. Figure 3.4 presents the breakdown of cases of children determined to be the age of majority or older. The majority of children were 18 (32 percent) or 19 (27.3 percent) years of age.

Of the 5,813 children over the age of majority, 5,685 were in cases decided in 1998 through 2001. A total of 514 (9 percent) children over the age of majority were in 1998 cases; 1,969 children over the age of majority (34.6 percent) were in 1999 cases; 1,712 children over the age of majority (30.1 percent) were in cases decided in 2000; and 1490 children over the age of majority (26.2 percent) were in 2001 cases.

Figure 3.2 Issues Dealt with in Court Orders

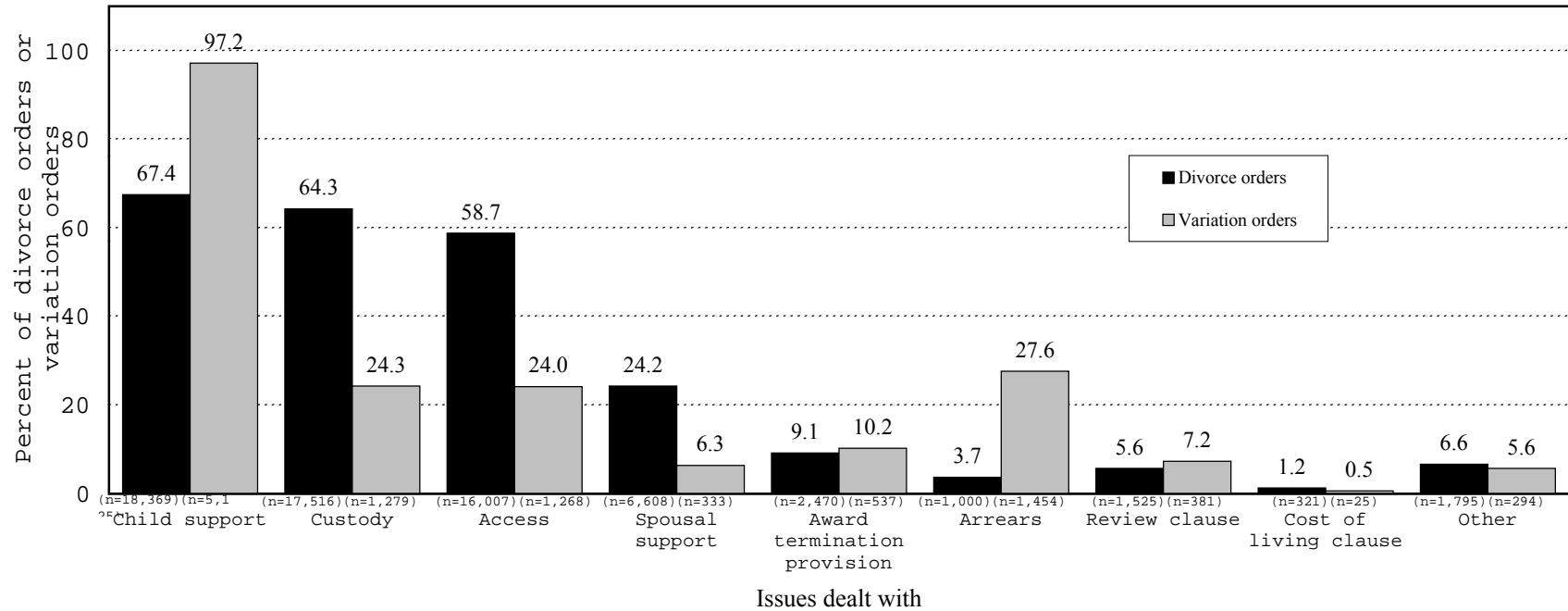


Total n=33,240.

Numbers do not add up to total since more than one issue may be dealt with in an order.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 3.3 Issues Dealt with in Divorce Orders and Variation Orders



Total n for divorce orders=27,254.

Total n for variation orders=5,273.

Cases missing data on whether they were divorce orders or variations=713.

Numbers do not add up to total since more than one issue may be dealt with in an order.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

The revised survey instrument for Phase 2 also asked for the number of children treated as under the age of majority and the number of children treated as over the age of majority when this information was available. There was at least one child treated as over the age of majority in 1,459 cases (4.4 percent of the total).

3.7 Type of Custody Arrangements

Figure 3.5 presents the type of custody arrangement in each case according to the definitions of custody provided in the Guidelines, which refers mainly to principal residence of the children. In the majority of cases (79.3 percent), the mother had sole custody; fathers had sole custody in 8.7 percent of cases. Shared custody (the child spends at least 40 percent of the time with each parent) was 6.2 percent. Split custody (one or more children have primary residence with the mother and one or more children have primary residence with the father) was 5 percent. This classification is based on terms used in the federal Guidelines. In some of the “sole custody” cases, there was a form of legal joint custody or joint guardianship, but the child did not spend at least 40 percent of the time with each parent, hence under section 9 of the Guidelines this did not qualify as “shared custody.”

3.8 Access Terms

The survey instrument requested information on the terms of access arrangements for those cases in which access was mentioned. Table 3.2 presents the types of access terms reported. The most frequent type of access was “reasonable/liberal” (51.3 percent), followed by “scheduled/specified” (22.3 percent). Other types of access arrangements were considerably less frequent, and in 15.6 percent of cases the type of access terms was unknown.

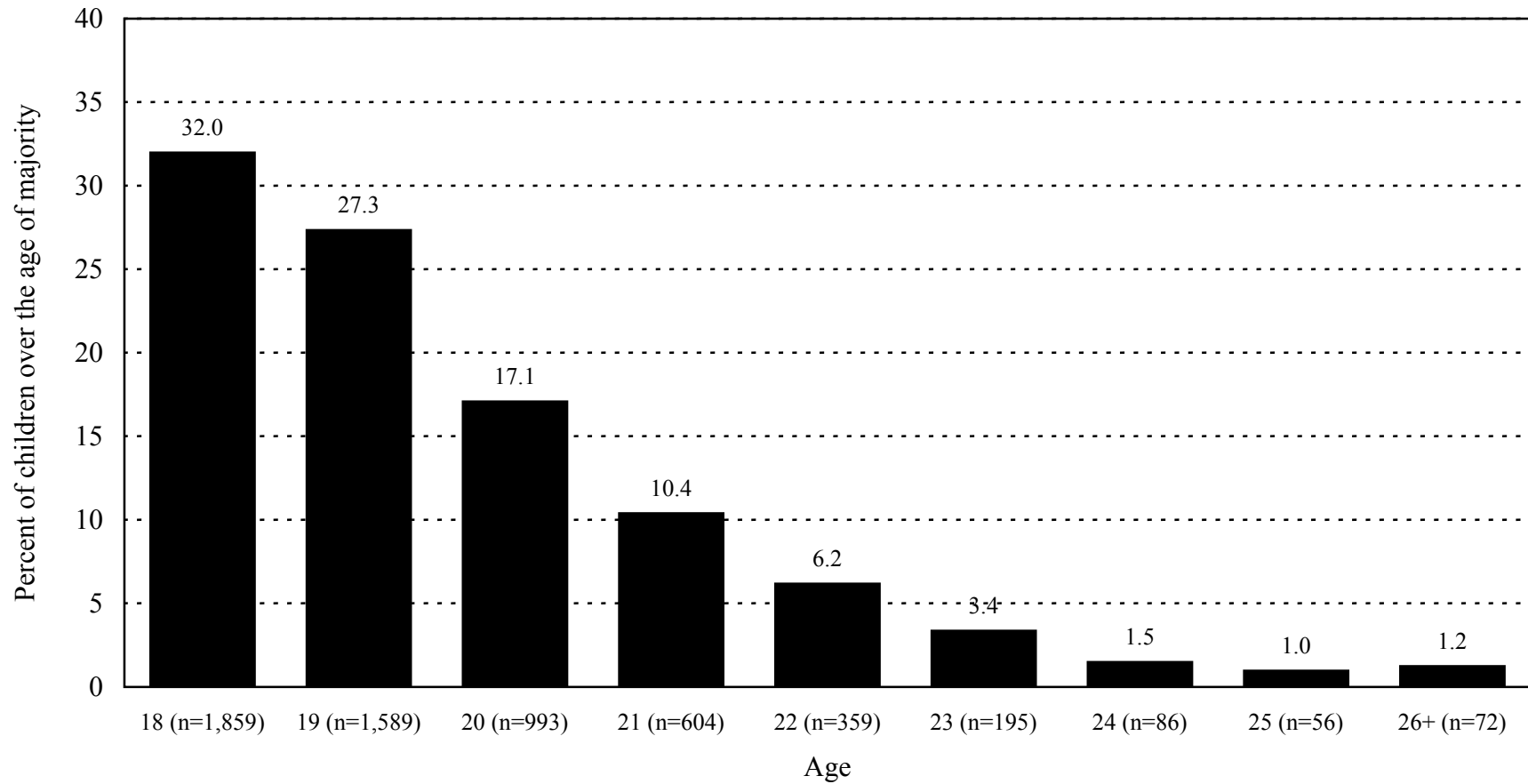
Table 3.2 Type of Access Terms¹

Access terms	n	%
Reasonable/liberal	16,441	51.3
Scheduled/specified	7,145	22.3
Other	2,189	6.8
Not applicable	1,265	3.9
Unknown	5,009	15.6

¹ Total n=33,240, missing cases=1,191.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

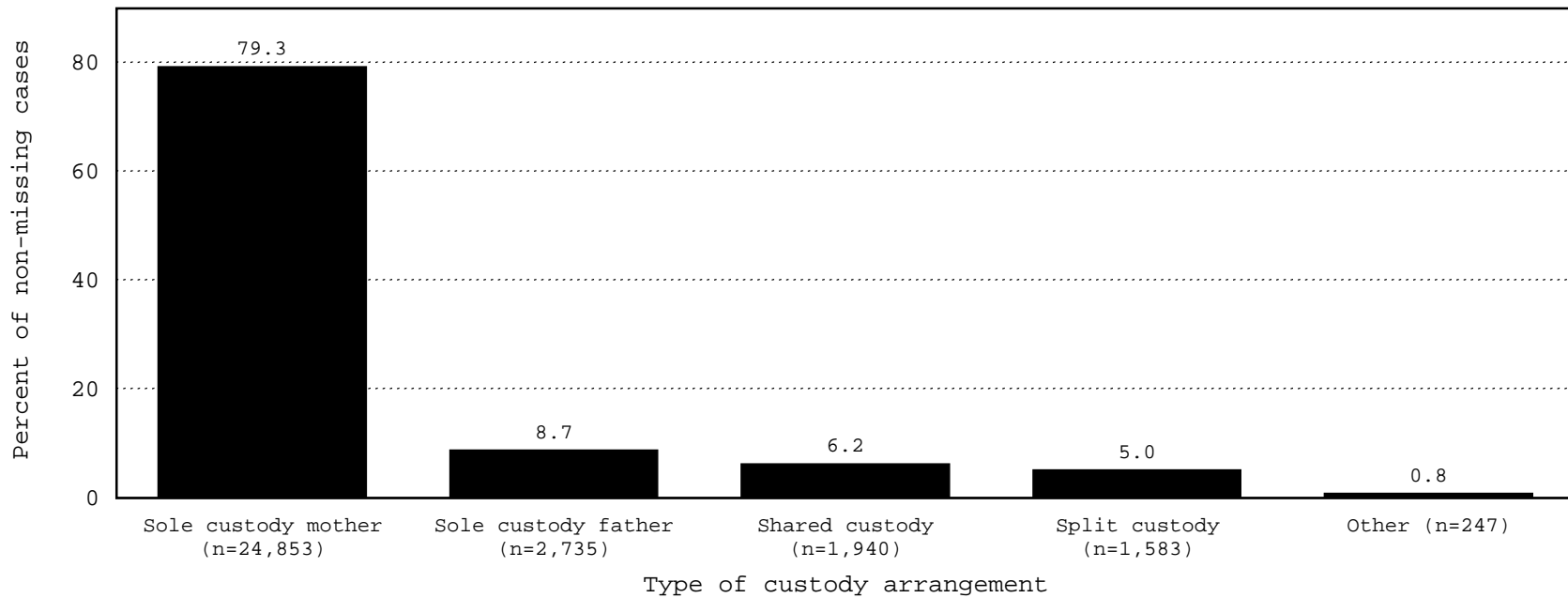
Figure 3.4 Age Breakdown of Children Over the Age of Majority



Total n=33,240. Number of children over the age of majority=5,813.

As the age of majority is 18 in some Canadian provinces/territories and 19 in others, 18-year-old children are only included in this figure for jurisdictions where the age of majority is 18.

**Figure 3.5 Type of Custody Arrangements
(as defined by the Guidelines)**



Total n=33,240. Missing cases = 1,882.
Source of data: Survey of Child Support Awards; January 31, 2002 version.

3.9 Child Support Award Amounts

Data were available on monthly child support award amounts for a total of 26,239 cases, representing 78.9 percent of the total.¹¹ Across all cases, monthly child support amounts ranged from \$1 through \$9,750, with a median value of \$427 (mean=\$544).¹²

It was indicated in 54 cases (0.2 percent of total cases) that an annual amount was awarded for child support. The range of annual awards was \$1 to \$40,800. Lump sum child support awards were reported in 215 cases (0.7 percent of total cases) and ranged from \$102 to \$406,667.

Further analysis of annual and lump sum child support awards suggested that many of these were for special or extraordinary expenses awarded for post-secondary education for children over the age of majority. A total of 34 percent of the cases reporting lump sum support awards and 24.1 percent of cases with annual awards also included at least one child over the age of majority, compared to 13.2 percent of cases including only monthly payments. Further, 38.9 percent of cases with annual support payments included special or extraordinary expenses, compared to 23.7 percent of cases with lump sum awards and 36.4 percent of cases with only monthly awards. Finally, 22.2 percent of cases with annual awards reported special or extraordinary expenses awarded for post-secondary education, compared to 9.8 percent of cases with lump sum awards and 6.4 percent of cases with only monthly awards.

In the cases with a non-missing child support award amount and the paying parent specified, the father was the payor in 93.5 percent of the cases (n=24,766) while the mother was the payor in 6 percent of cases (n=1,590). The payor of child support was coded as some other person in 29 cases (0.1 percent). Information on the paying parent was not available or not applicable in 94 cases (0.4 percent) with valid child support award amounts.

3.10 Paying and Receiving Parent Incomes

A non-zero income for the paying parent was provided in 25,489 cases (76.7 percent of the total sample) and was “not stated” in 6,608 cases. As would be expected, since the receiving parent’s income is not required in straightforward applications of the Guidelines, a non-zero receiving parent’s income was specified in fewer cases (14,710 or 44.3 percent of the total). In cases where it would be expected that the recipient parent’s income would be specified (i.e. shared or split custody), 63.3 percent of the cases had a recipient parent income included.

The median annual income for paying parents was \$36,000 (mean=\$43,532) and ranged from \$1 to \$6,000,000. The median income for receiving parents was \$25,140 (mean=\$30,374), and ranged from \$39 through \$2,675,940.

¹¹ Cases with monthly child support award amounts in excess of \$6,000 were examined manually in order to determine whether these awards were accurate, given the other information available about the case. As a result, monthly award amounts in excess of \$10,000 for 24 cases were excluded from these analyses, as they were determined to be anomalies or outliers.

¹² This represents the total child support award amount, which includes any “add-ons” for special or extraordinary expenses.

For purposes of additional analysis of income information, income of paying and receiving parents was collapsed into seven categories:

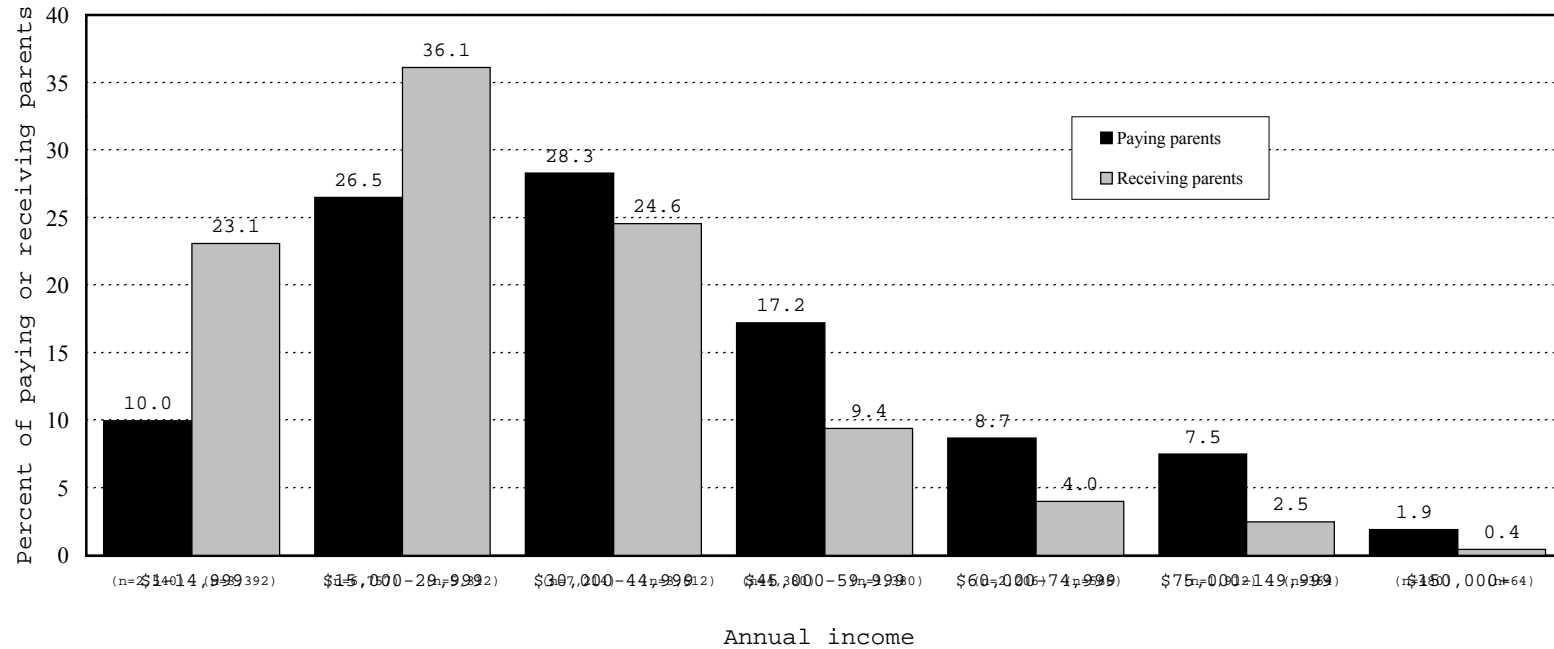
- \$1–\$14,999
- \$15,000–\$29,999
- \$30,000–\$44,999
- \$45,000–\$59,999
- \$60,000–\$74,999
- \$75,000–\$149,999
- \$150,000 and greater

Figure 3.6 presents the categorized income levels for the paying and receiving parents. The most frequent income category for paying parents was \$30,000 to \$44,999, with 28.3 percent of non-missing responses falling into this category. A total of 10 percent of paying parents fell into the lowest income category, and 1.9 percent had incomes in excess of \$150,000.

The pattern of income for receiving parents is somewhat different from paying parents, in that the most common income category for receiving parents is \$15,000–\$29,999 (36.1 percent of non-missing responses), followed by 24.6 percent in the \$30,000–\$44,999 range. The proportion of cases in the higher income ranges was considerably lower for receiving parents than for paying parents.

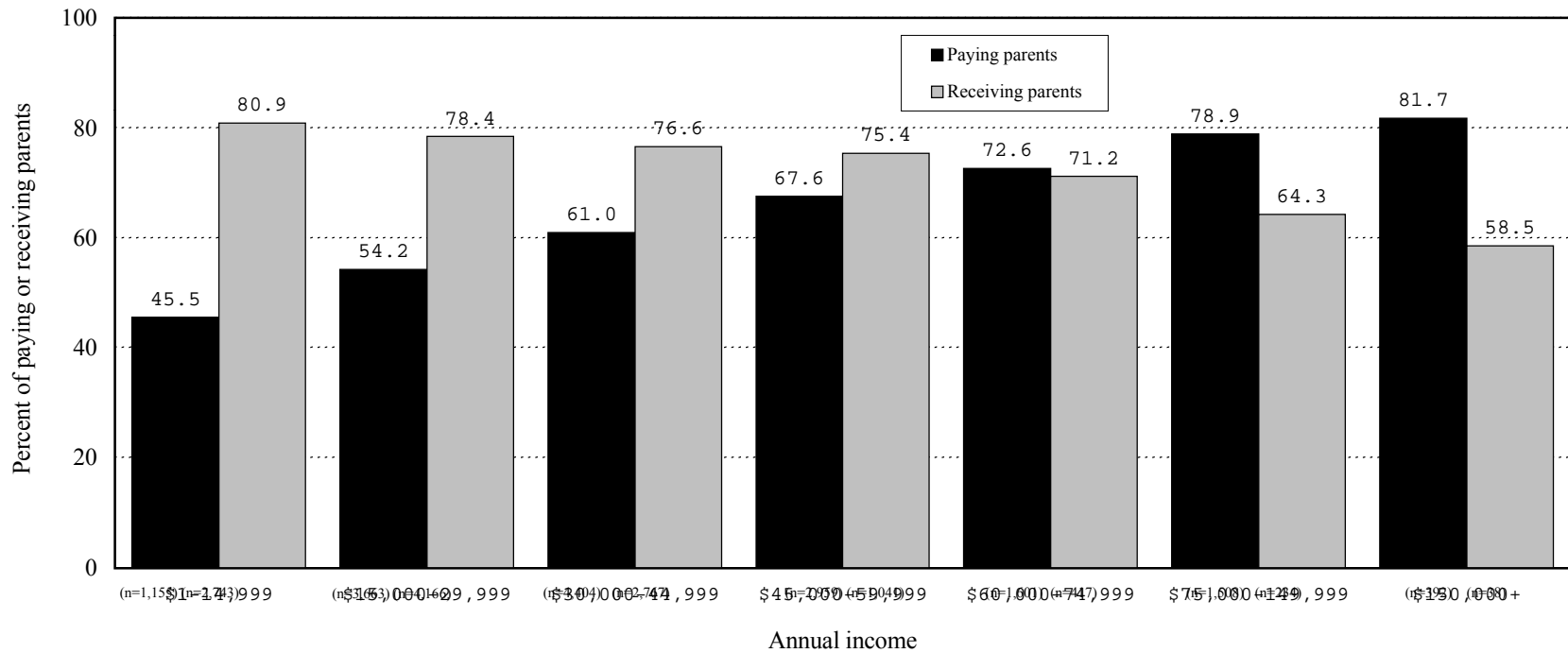
Figure 3.7 presents the proportion of paying and receiving parents with legal representation by categorized annual incomes. The proportion of paying parents with legal representation increased as income levels increased. Across the lower income levels, receiving parents more frequently had legal representation than paying parents; however, the proportion of receiving parents with legal representation tended to decrease as income levels increased. It should be noted that the most straightforward cases that would be least likely to involve legal representation for the receiving parents may not be included in this figure. The Guidelines only require the income of receiving parents to be provided in cases when there are special or extraordinary expenses, undue hardship, shared or split custody, or high incomes (over \$150,000). When cases falling into one or more of these categories are examined separately, a higher proportion of cases in each recipient parent income level reported legal representation for the recipient parent. For example, among those cases, 85.1 percent of recipient parents in the \$1–\$14,999 income range reported legal representation; 80.2 percent of recipient parents in the \$45,000–\$59,000 income range reported legal representation; and 70.5 percent of recipient parents in the \$75,000–\$149,999 income range reported legal representation.

Figure 3.6 Paying and Receiving Parents' Annual Incomes



Total n=33,240. Missing cases on paying parent income=7,751. Missing cases on receiving parent income=18,530.
 Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 3.7 Percentage of Paying and Receiving Parents with Legal Representation by Annual Income



Total n=33,240. Missing cases on paying parent income=7,751. Missing cases on receiving parent income=18,530. Missing data on legal representation for paying parent=4,625. Missing data on legal representation for receiving parent=4,588.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Parents' income was also analyzed with respect to the disposition of the case (i.e. whether it proceeded by consent/uncontested or was contested). The median income of paying parents in cases resolved by consent/uncontested (n=22,076) was \$36,000 (mean=\$44,833); in contested cases (n=2,759) the comparable figures were quite similar (median=\$37,608; mean=\$45,127). The median income for receiving parents in consent/uncontested cases (n=12,915) was \$25,586 (mean=\$30,639); in contested cases (n=1,596) the median receiving parent income was \$23,631 (mean=\$26,636).

Figure 3.8 presents the proportion of cases that were contested by paying and receiving parents' annual income. The pattern for paying parents was not consistent across income levels; however, for receiving parents the proportion of contested cases tended to decrease as income increased. However, due to the large number of cases missing data about recipient parent income, this finding should be treated with caution.

3.11 Determination of Award Amount

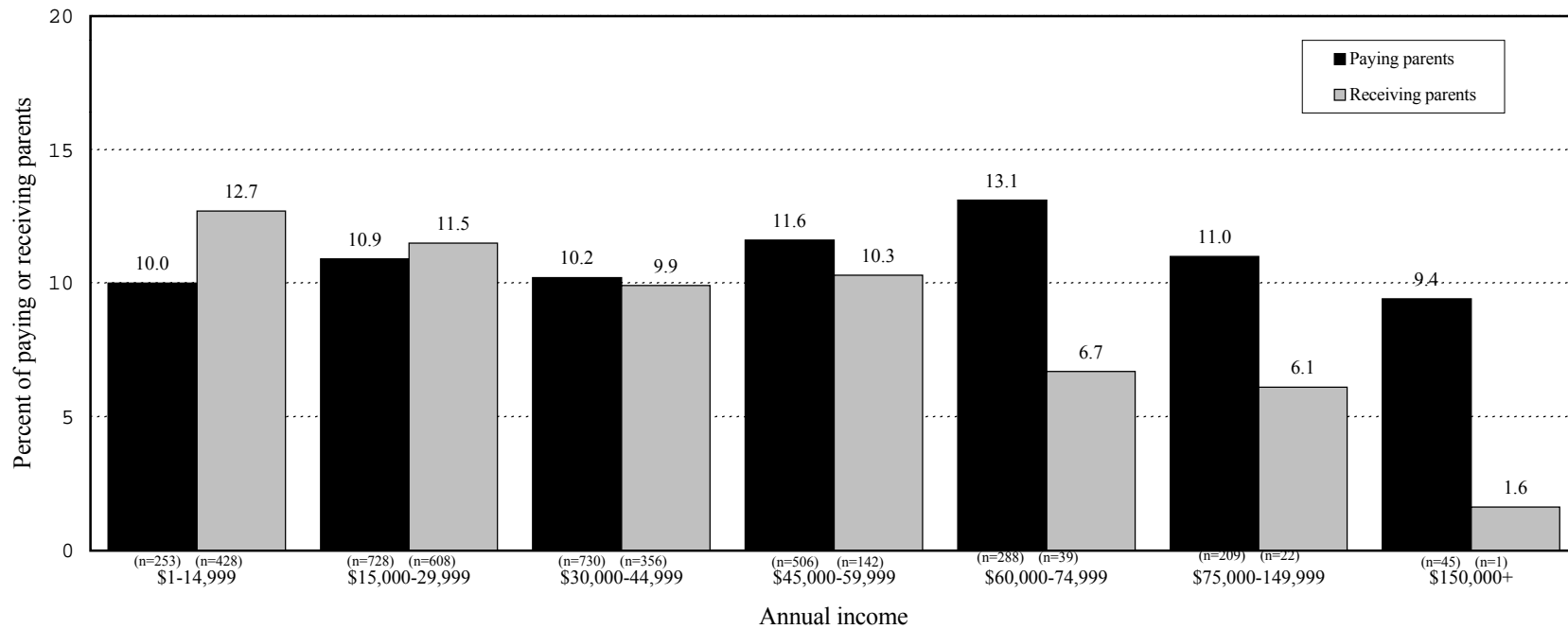
Figure 3.9 indicates the method used to determine the amount of the child support award according to the information available to the data-capture clerks. In 17,185 cases (53.2 percent of non-missing responses to this item), the file indicated that the Guidelines were followed.¹³ The second most frequently reported method was a prior order or agreement that dealt with child support (3,639 cases; 11.3 percent). In 28.8 percent of the cases, the method used for determining the support amount was coded as "unknown/not stated" or no indication was given of how the support amount was calculated. It is very likely that some portion of the cases marked as "not stated", as relying on a previous order or agreement or as having no indication of how support was calculated, did in fact use the Guidelines. Therefore, analyses using this variable should be interpreted with caution.

To find out whether there were any differences in the method used to determine the award amount for children over the age of majority, cases in which all children were under the age of majority and cases in which all children were over the age of majority¹⁴ were identified. Figure 3.10 presents the method used to determine the child support award amounts separately for these two groups. Cases in which all children were above the age of majority were less likely to report that the Guidelines had been used than were cases in which all children were under the age of majority (42.4 percent compared to 54.2 percent, respectively).

¹³ Four provinces, Québec, Prince Edward Island, New Brunswick and Manitoba have received a designation for their provincial guidelines. This means that the provincial child support guidelines have provisions that differ from the Federal guidelines. The designation allows those provisions to apply to all child support cases, even those that would otherwise be dealt with under the *Divorce Act*. Quebec and Prince Edward Island have each prepared their own tables and other provisions that differ from the Federal Guidelines. New Brunswick and Manitoba use the federal tables for all cases but have incorporated minor modifications to other provisions of the Federal Guidelines. Alberta has not adopted guidelines. However, in practice, Alberta courts are using the Federal Child Support Guidelines for all cases. The remaining provinces and territories have adopted the Federal Child Support Guidelines for use in their jurisdictions.

¹⁴ See page 15 for a discussion of the limitations of this estimate.

**Figure 3.8 Percentage of Contested Cases
by Paying and Receiving Parents' Annual Incomes**

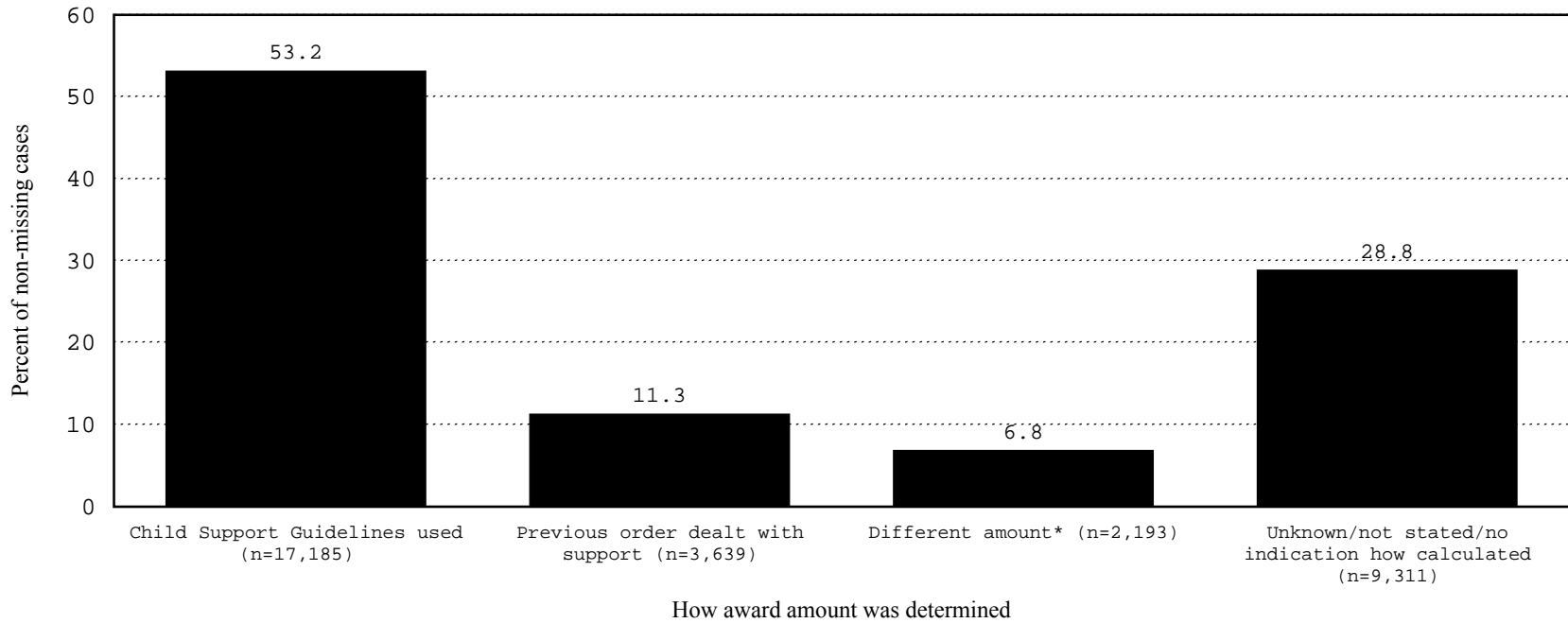


Total n=33,240. Missing cases on paying parent income=7,751. Missing cases on receiving parent income=18,530.

Missing data on disposition of case=249.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 3.9 How Award Amount was Determined

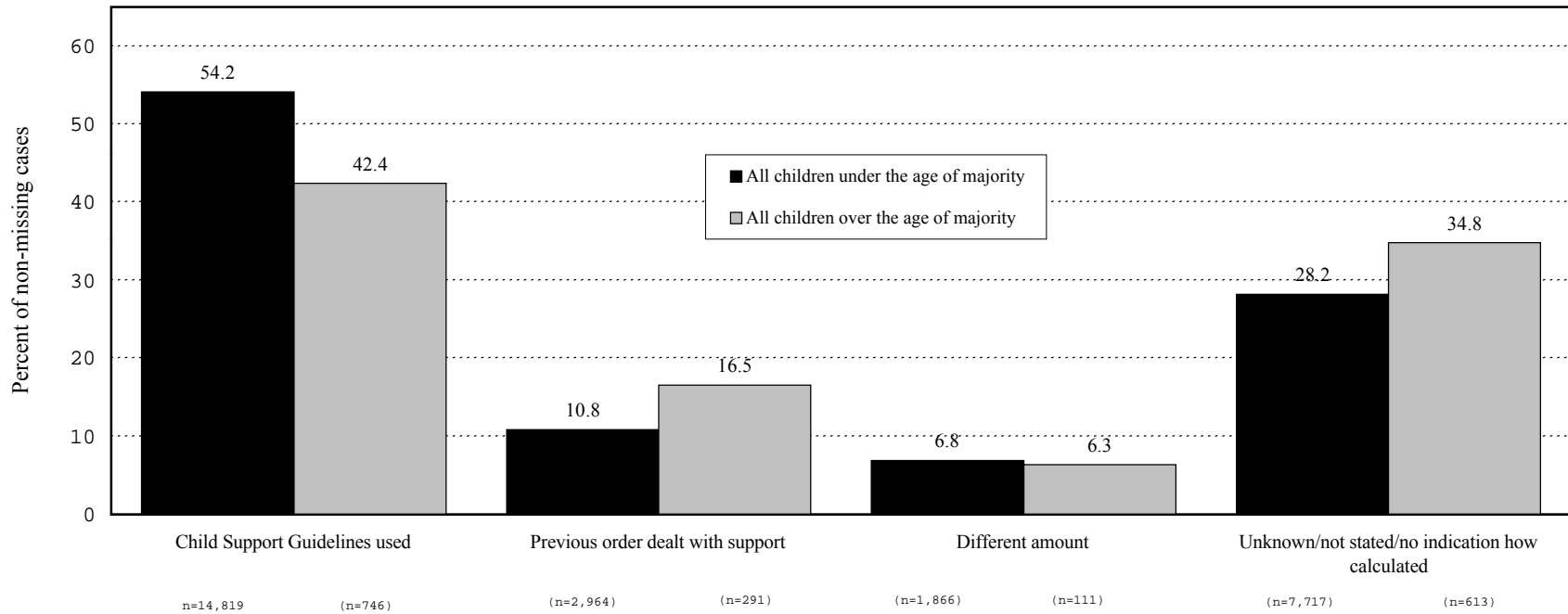


Total n=33,240. Missing cases=912.

* "Different amount" determined as per section 15.1(5), 15.1(7), 17(6.4), 17(6.5) of the *Divorce Act*.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 3.10 How Award Amount was Determined for Cases Where All Children are Either Under or Over the Age of Majority



How award amount was determined

Total n=33,240. Cases where all children under the age of majority are missing data on how award was determined=612. Cases where all children over the age of majority are missing data on how award was determined=80.

n for all children under the age of majority=27,978. n for all children over the age of majority=1,841.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

In order to determine whether the proportion of cases reporting that the Federal Child Support Guidelines were followed (according to information in the file) has changed since the implementation of Phase 2 of this study, cases were rank-ordered according to the year of judgement from 1998 through 2001. Results indicated an increase in the proportion of cases reporting that the Guidelines were used from 1998 (53.4 percent) to 1999 (56.6 percent), followed by decreases in 2000 (51.4 percent) and 2001 (51.1 percent). As noted above, however, these percentages are likely to be lower than the actual proportions, due to the number of cases in which the method of calculating the child support award amount was unknown.

3.12 Awards for Children at or Over the Age of Majority

The item on the survey asking about discretionary awards for children at or over the age of majority was only completed for 211 children, which suggests that such awards are rarely used or that information regarding these awards was not readily available to the data-capture clerks.

Further, since the question asked for the discretionary amount for children over the age of majority only if they were not included in the table amount for all children, it is likely that child support awards for some children over the age of majority are included in the total child support amount and/or are reflected in special expenses for post-secondary education. The amounts of these awards for cases in which this item was completed ranged from \$50 to \$9,200.

3.13 Award of Special or Extraordinary Expenses

In a child support order the court may, on either spouses' request, provide an amount to cover special or extraordinary expenses, including child care, medical/dental insurance premiums, health-related expenses, primary/secondary school, post-secondary education, or extracurricular activities. The survey requests information on whether special or extraordinary expenses were awarded in each case and, for those cases in which they were, whether an amount and/or proportion of the paying parent's share of these expenses was specified. The instrument also asks which specific expenses were awarded according to those contained in section 7 of the Guidelines.

A total of 10,553 cases (31.7 percent of the total sample) indicated that special or extraordinary expenses were awarded. In 5,246 of these cases (15.8 percent of the total sample or 49.7 percent of the cases in which special or extraordinary expenses were awarded), a proportion of these expenses to be paid by the paying parent was specified. In 1,805 cases (17.1 percent of the cases in which special expenses were awarded), neither an amount nor proportion were specified.¹⁵

Of the 4,963 cases that specified the monthly amount of the paying parent's share of special or extraordinary expenses, they ranged from \$2 to \$1,500, with a median amount of \$113 (mean=\$151).¹⁶ Of the 5,246 cases in which the paying parent's proportion of special expenses

¹⁵ It should be noted that if an amount for special or extraordinary expenses is not specified in an order, then the expenses are not enforceable by the provincial/territorial Maintenance Enforcement Program agencies.

¹⁶ Monthly special or extraordinary expenses amounts in excess of \$1,000 were examined manually to determine whether these amounts were accurate according to other information in the case. On this basis, eight cases with monthly amounts greater than \$1,500 were excluded from analysis of this variable. In addition, 33 cases with a monthly amount of \$0 were also excluded.

was specified, the proportion varied from 10 percent to 100 percent (median proportion was 58 percent). The most common proportion specified was 50 percent, in 1,461 cases, followed by a proportion of 100 percent in 665 cases. An annual payment amount for special expenses was provided in 132 cases and ranged from \$3 to \$30,000 (median=\$1,450; mean=\$3,134). An amount for lump sum special expenses was indicated in 148 cases and ranged from \$1 to \$125,000 (median=\$1,000; mean=\$3,619).

Section 7 of the Guidelines allows the court to award special or extraordinary expenses in one or more of six categories. Figure 3.11 presents the number and proportion of cases out of the total sample in which each specific type of expense was awarded. The most commonly awarded type of expense was child care or day-care expenses (12 percent of total cases). This was followed by medical/dental insurance premiums at 10.6 percent, and extracurricular activities expenses at 10.1 percent. The least frequently awarded expenses were primary/secondary education (5.9 percent) and post-secondary education (6.3 percent).

Figure 3.12 presents the proportion of cases in which all children were either under or over the age of majority¹⁷ and in which the type of special or extraordinary expense was specified. Approximately equal proportions of cases in each group awarded health-related expenses. However, as expected, child care or day-care expenses were much more likely to be awarded in cases in which all children were under rather than over the age of majority (13.9 percent compared to 0.4 percent, respectively). Similarly, expenses for post-secondary education were considerably more likely to be awarded in cases in which all children were over the age of majority (18.6 percent) rather than under the age of majority (5 percent).

Of the 8,933 cases that specified which of the special or extraordinary expenses were awarded, the majority of cases (51.3 percent) had one expense awarded. Considerably fewer cases had two (22.5 percent), three (12.1 percent), four (5.7 percent), five (4.4 percent) or six (4 percent) special or extraordinary expenses awarded. Table 3.3 presents the most common combinations of special or extraordinary expenses awarded.

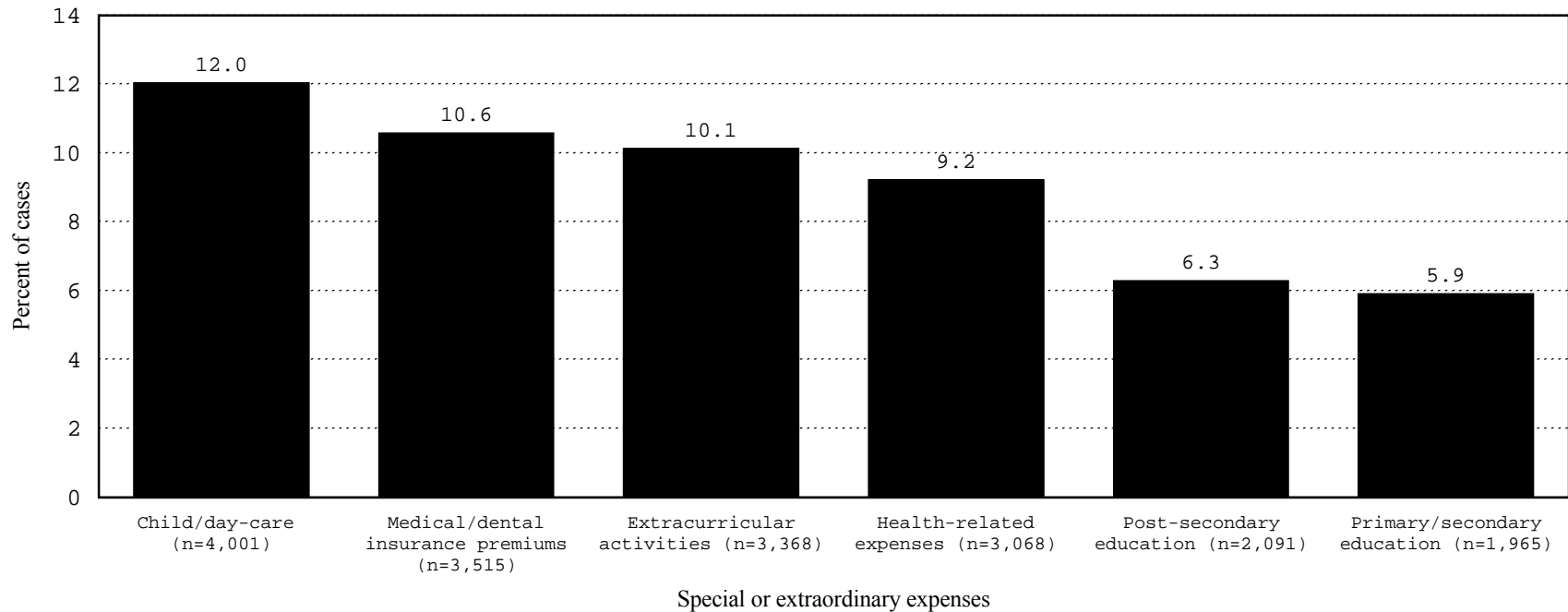
3.14 Undue Hardship Applications

Undue hardship applications were identified in only 188 (0.6 percent) of the total cases in the sample.¹⁸ Of these applications, 174 (92.6 percent) were brought by the paying parent, and 12 (6.4 percent) by the receiving parent; there were two cases involving cross-applications. In 48 cases (25.5 percent), the incomes of other household members were used in the standard of living test; they were not used in 52 cases (27.7 percent), and were unknown in 88 cases (46.8 percent).

¹⁷ See page 15 for a discussion of the limitations of this estimate.

¹⁸ It should be noted that the data probably do not accurately reflect the number of cases in which undue hardship is raised. If a claim for undue hardship is raised in an application and subsequently fails, there may be no record of the application in the case file.

Figure 3.11 Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines

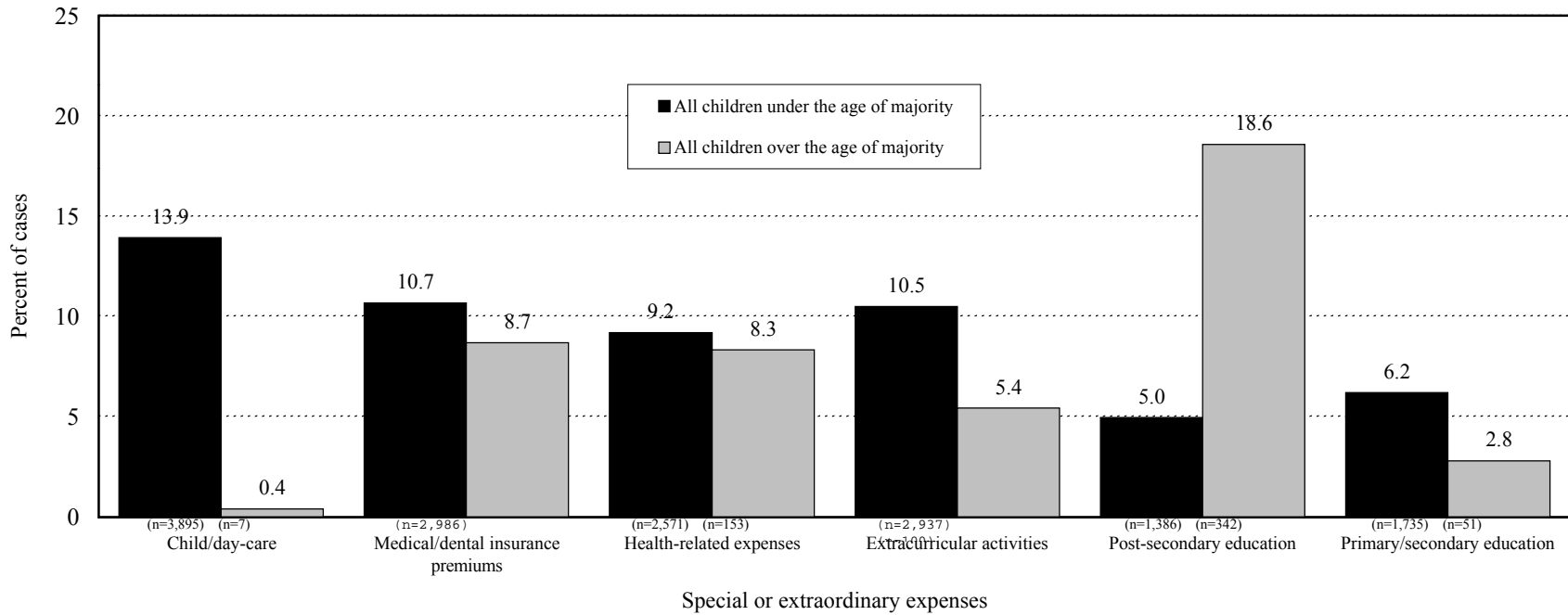


Total n=33,240.

These categories are not mutually exclusive and more than one expense can be specified in a case. A total of 10,553 cases (31.7 percent) had one or more section 7 expenses added.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 3.12 Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines for Cases with Children Under and Over the Age of Majority



Total n=33,240.

n for All children under the age of majority=27,978. n for All children over the age of majority=1,841.

These categories are not mutually exclusive and more than one expense can be specified in a case.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Table 3.3 Number of Cases Awarding Most Frequent Combinations of Special or Extraordinary Expenses¹

Combination of expenses	n	%²
Child care/day-care only	2,082	23.3
Medical/dental insurance premiums only	727	8.1
Extracurricular activities only	679	7.6
Post-secondary education only	463	5.2
Health-related expenses only	424	4.7
Child/day-care/medical/dental insurance premiums, Health-related expenses, primary–secondary school expenses, Post-secondary education/extracurricular activities	358	4.0
Medical/dental insurance premiums, health-related expenses	342	3.8
Child/day-care, extracurricular expenses	292	3.3
Child/day-care, medical, dental insurance premiums	275	3.1
Medical/dental insurance premiums, health-related expenses, Primary–secondary school expenses, post-secondary education, Extracurricular activities	247	2.8
Primary–secondary school expenses only	204	2.3
Medical–dental insurance premiums, health-related expenses, Post-secondary education	195	2.2
Health-related expenses, extracurricular activities	169	1.9
Primary–secondary school expenses, extracurricular activities	163	1.8
Medical, dental insurance premiums, health-related expenses, Extracurricular activities	152	1.7
Medical/dental insurance premiums, health-related expenses, Post-secondary education, extracurricular activities	143	1.6
Other combinations	2,018	22.6

¹ Total n=33,240

² Percentages are based on the total number of cases in which the individual special or extraordinary expenses awarded were specified (n=8,933).

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Of the 174 cases in which applications for undue hardship were brought by the paying parent, 114 (65.5 percent) resulted in a decrease of the Guidelines amount, 31 (17.8 percent) were denied, none resulted in an order amount higher than the Guidelines amount, and the outcomes of 29 (16.7 percent) applications were unknown or missing. Of the 12 cases in which applications were brought by the receiving parent, only one resulted in an increase of the Guidelines amount and four were denied. Two of the cases resulted in an order that was less than the Guidelines amount. The outcome was unknown in five cases. Of the two cross-applications, one resulted in a decrease of the Guidelines amount, and the outcome was unknown in one case.

3.15 Variation Applications

As noted above, the database included 5,273 cases coded by data-capture clerks as involving variations to child support orders. In 48.6 percent (n=2,399) of cases for which data were available, the applicant was the receiving parent. The paying parent was the applicant in 43 percent (n=2,121) of cases, and in 8.4 percent (n=416) of cases, parents were cross-applicants.

Of 3,495 variation applications with non-missing data, 1,714 (49 percent) resulted in a decrease of the face value amount, while 40.2 percent (n=1,404) resulted in an increase of the face value

amount. The application was denied in 1.5 percent of cases and resulted in a termination order in 9.3 percent of cases. The outcome of the application was not stated in 33.7 percent of cases. While almost 50 percent of variation applications resulted in a decrease, changes in the tax treatment mean that a decrease in the face value amount does not necessarily mean a decrease in the amount of child support that a recipient parent will get to keep after tax, depending on the receiving parent's income. Before the tax changes, receiving parents paid tax on child support awards, meaning that the net amount was less than the award amount if the recipient's total income was high enough to be taxable. Since child support awards are no longer taxable, a decrease in the award could result in an actual increase in the net amount for the receiving parent. However, since paying parents can no longer claim child support as a tax deduction, an increase in the face value amount always means that the paying parent pays more child support and that the receiving parent receives more support.

Of the cases in which a reason for the variation application was coded, one common reason was the implementation of the Guidelines. As would be expected, this reason was given more often shortly after implementation of the Guidelines. Other reasons given for the variation application included "change in income," "change of custody" and "child independent."

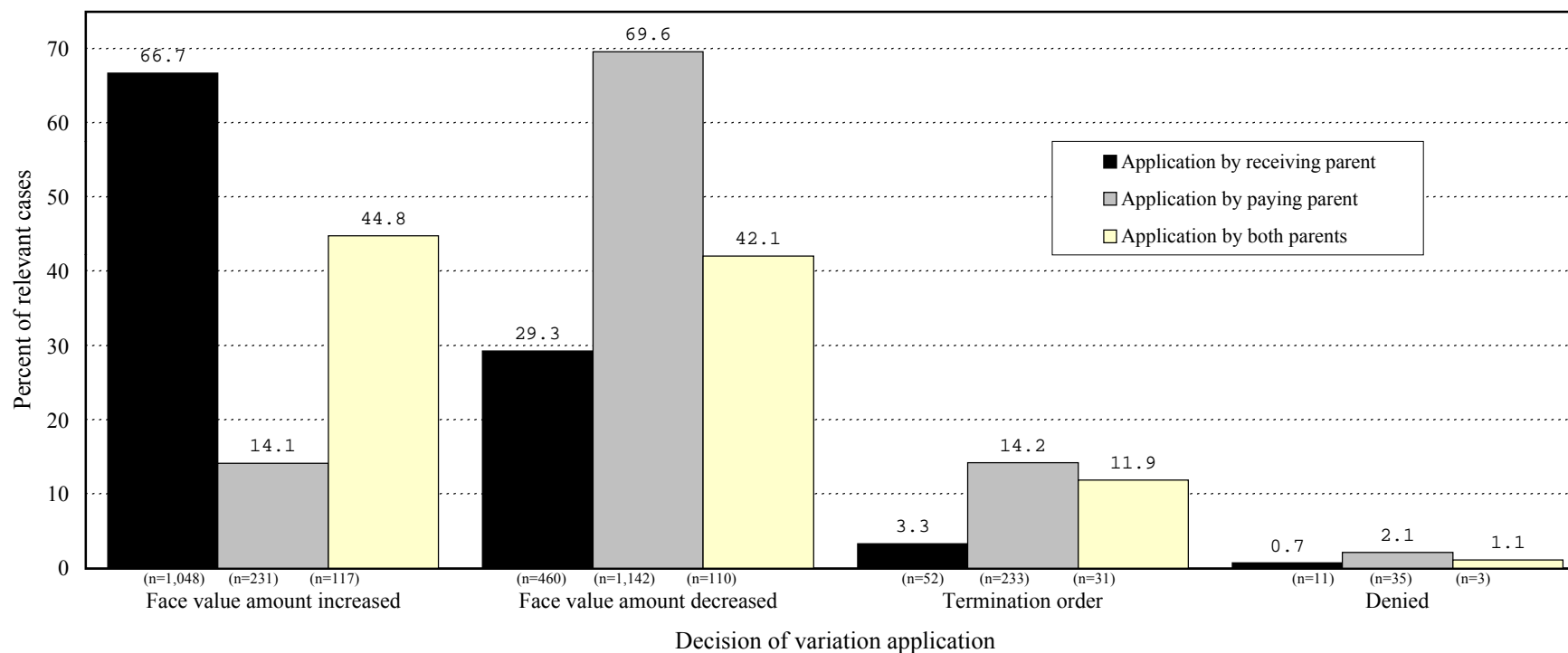
Figure 3.13 presents the outcome of variation applications by applicant. Of applications brought by the receiving parent, 66.7 percent resulted in an increase of the face value amount, 29.3 percent resulted in a decrease, 3.3 percent resulted in a termination order, and 0.7 percent were denied. Of applications brought by the paying parent, 14.1 percent resulted in an increase of the face value amount, 69.6 percent resulted in a decrease of the face value amount, 14.2 percent resulted in a termination order, and 2.1 percent were denied. Of the cross-applications, the majority resulted in an increase of the face value amount (44.8 percent). Fewer cases of cross-applications resulted in a decrease (42.1 percent), termination order (11.9 percent) or denial of the application (1.1 percent).

To look at this issue from a different perspective, of the 1,396 variation applications in which the applicant was known and that resulted in an increase of the face value support amount, 75.1 percent were brought by the receiving parent and 16.5 percent by the paying parent; 8.4 percent were cross-applications. Of the 1,712 variation applications that resulted in a decrease of the face value support amount, 26.9 percent were brought by the receiving parent and 66.7 percent by the paying parent; 6.4 percent were cross-applications.

3.16 Adherence to Section 13 of the Child Support Guidelines

Section 13 of the Guidelines specifies information that should be included in a child support order. In the revised survey instrument used in Phase 2, data-capture clerks were explicitly asked to indicate, by means of a checklist, which of the individual components contained in section 13 were included in each order. Since section 13 applies only to cases in which there was a child support order, only cases in which child support was dealt with in the order were included as the base sample (n=24,103). Figure 3.14 indicates the proportion of cases reporting the inclusion of each piece of information specified in section 13.

Figure 3.13 Decision of Variation Application by Applicant



Total Number of Variation Orders=5,273. Cases in which the decision of the variation application was not stated are excluded from this analysis (n=1,196).
 Source of data: Survey of Child Support Awards; January 31, 2002 version.

A substantial proportion of cases had information on both the name¹⁹ and the date of birth of each child to whom the order relates (89.1 percent and 86.9 percent, respectively).

Approximately three quarters of the cases had information on the income of any spouse whose income was used to determine the child support amount (77 percent) as well as the dates on which payments are due (74.2 percent). A total of 54.2 percent of cases had the amount of child support as determined from the appropriate table.

With respect to the information required when special or extraordinary expenses are awarded, only cases with child support awards and special or extraordinary expenses were included (n=8,313). Of these cases, 73.1 percent were coded as having the amount or proportion of any extraordinary expense awarded specified. A total of 58.7 percent of the cases reported having the particulars of all special or extraordinary expenses awarded. Nearly one half (48.2 percent) reported the identity of the child to whom any special or extraordinary expense related. It should be noted, however, that 36.5 percent of cases with child support awards and special expenses awarded had only one child, and therefore it could be argued that it was not necessary to specify the child by name.

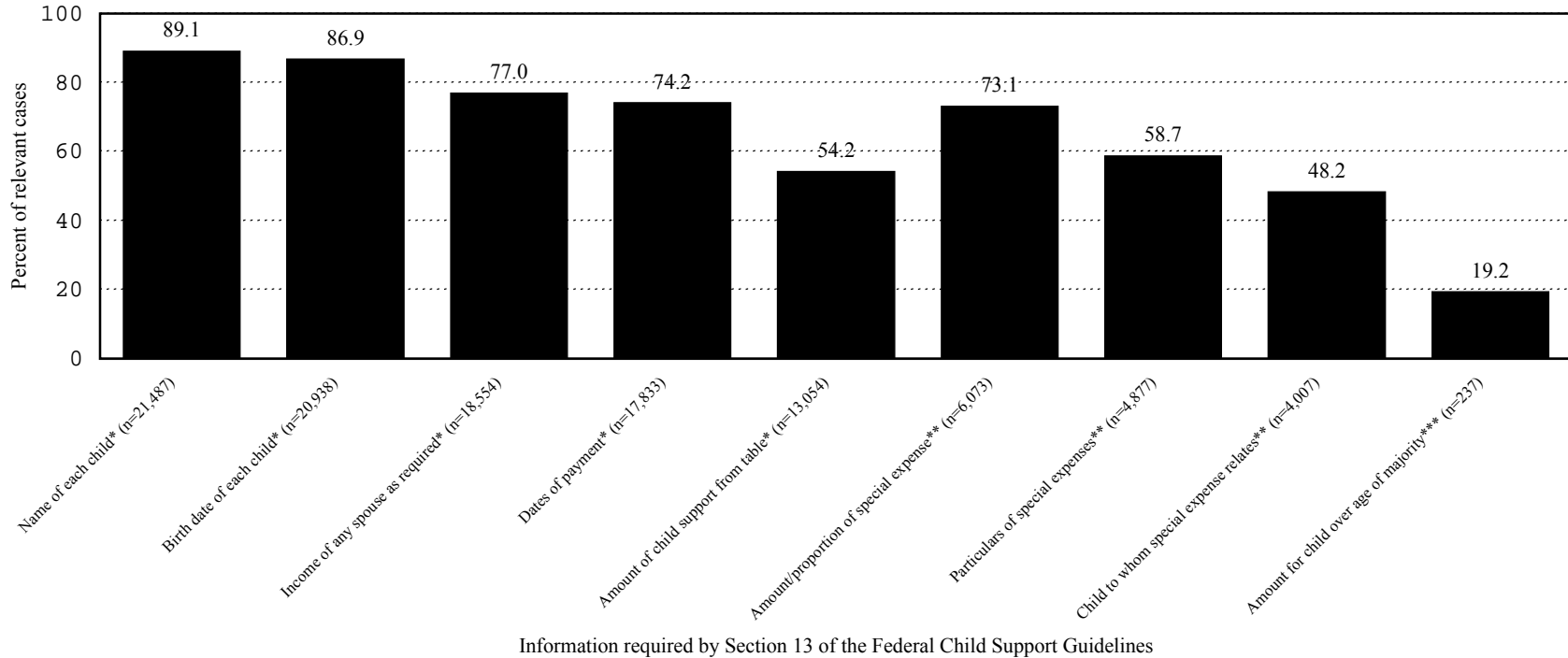
Section 13 also requires that the amount considered appropriate for any child over the age of majority be listed in a child support order. Determining compliance with this component of section 13 is problematic. Although 1,235 cases in the database included a child support order which indicated that there were children treated as over the age of majority, it is probable that some unknown proportion of these children were not considered as eligible for child support when the child support amount was determined, and thus would not have an amount reported under section 13. However, this is the best base figure available for determining adherence to this component of section 13. Using this figure, a total of 19.2 percent of the cases were coded as having the amount for a child over the age of majority. For the reason noted, however, this figure should be treated with caution.

4.0 FACTORS RELATED TO CHILD SUPPORT AWARDS

To more fully explore child support award amounts and their relationship to other factors, a series of secondary analyses was undertaken. Given that sole custody cases represent those in which the most straightforward application of the Guidelines would be expected, only sole custody cases (n=27,588) are analyzed in this section unless otherwise noted.

¹⁹ It is possible that the child's name would be missing in some cases with only one child, since in these cases the child to whom the order relates would be clear.

Figure 3.14 Percentage of Cases Containing Information Required by Section 13 of the Federal Child Support Guidelines



* These percentages are based on the number of cases indicating that child support was dealt with in the order (n=24,103).

** These percentages are based on the number of cases indicating child support was dealt with in the order and in which it was indicated that special or extraordinary expenses were awarded (n=8,313).

*** This percentage is based on the number of cases indicating child support was dealt with in the order and in which it was indicated that one or more children were treated as over the age of majority (n=1,235).

Source of data: Survey of Child Support Awards; January 31, 2002 version.

4.1 Relationship between Child Support Award and Table Amount

One survey item asks for the Guidelines table amount for the paying parent. Data-capture clerks were instructed to include these amounts only if they were specified in the order or supporting documentation. A total of 16,358 sole custody cases had a response coded for both the child support award amount and the table amount for the paying parent. It should be emphasized that the table amounts used for these analyses are those entered by the data-capture clerks based on information contained in the file and not on the actual published table values. Table 4.1 presents the proportion of cases reporting actual award amounts less than the table amount,²⁰ equal to the table amount, and greater than the table amount for all cases and also separately by income level of the paying parent. Across all cases, the actual child support award amount was most likely to be either equal to the table amount as coded by the data-capture clerks (67.6 percent) or greater than the table amount (27.1 percent). Only 5.3 percent of all cases reported an award amount that was lower than the table amount. For the most part, the analysis comparing award amounts with coded table amounts by paying parent income was consistent with the pattern observed with all cases. However, as paying parent income increased, the percentage of cases in which the award amount was greater than the table amount also tended to increase. There was also a tendency for the proportion of awards less than the table amount to increase as income increased.

4.2 Changes in Relationship between Award Amount and Table Amount over Time

In order to examine whether changes in the relationship between child support award amounts and table amounts as reported in the order changed over the course of the initiative, cases were divided by year from 1998 through 2001 according to the date of judgement. Table 4.2 presents the relationship between award amounts and table amounts by year. There was a steady increase across the four years in the proportion of cases in which the award amount was equal to the table amount as stated in the order. This proportion ranged from a low of 61.4 percent in 1998 to a high of 72.3 percent in 2001. There was also a slight increase in the proportion of cases reporting child support awards that were less than the table amounts from 1998 through 2000, followed by a slight decrease in 2001. The proportion of cases reporting award amounts in excess of table amounts decreased steadily across time from a high of 33.7 percent in 1998 to a low of 22.4 percent in 2001.

²⁰ In order to allow for minor variations from the table amounts as coded, the child support award amount was considered to be equal to the table amount if it was within five percent (either higher or lower) of the table amount. Thus, an award was considered less than the table amount if it was more than five percent less; similarly, amounts greater than five percent above the award amount were considered higher than the table amount.

Table 4.1 Total Child Support Award Amount in Relation to Table A amount¹ by Paying Parent Income in Sole Custody Cases²

Income ³	Relationship of award to table amount ⁴					
	Less		Equal		Greater	
	n	%	n	%	n	%
\$1–\$14,999 (n=1,353)	45	3.3	957	70.7	351	25.9
\$15,000–\$29,999 (n=4,534)	197	4.3	3,122	68.9	1,215	26.8
\$30,000–\$44,999 (n=4,683)	268	5.7	3,073	65.6	1,342	28.7
\$45,000–\$59,999 (n=2,630)	160	6.1	1,746	66.4	724	27.5
\$60,000–\$74,999 (n=1,269)	87	6.9	811	63.9	371	29.2
\$75,000–\$149,999 (n=1,041)	68	6.5	663	63.7	310	29.8
\$150,000 + (n=228)	23	10.1	144	63.2	61	26.8
All cases (n=16,358) ⁵	868	5.3	11,062	67.6	4,428	27.1

¹ This is the stated table value recorded in the order. These amounts have not been validated against the published Guidelines table amounts.

² In order to allow for minor variations from the table amounts as coded, the child support award amount was considered to be equal to the table amount if it was within 5 percent (either higher or lower) of the table amount. Thus, an award was considered less than the table amount if it was more than 5 percent less; similarly, amounts greater than 5 percent above the award amount were considered higher than the table amount.

³ Missing cases on income=7,751.

⁴ Missing cases on award amount and/or recorded table amount=11,230.

⁵ Includes cases missing data on income that had valid data on award amount and recorded table amount.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Table 4.2 Total Child Support Award Amount in Relation to Table A amount¹ by Year of Judgement in Sole Custody Cases²

Year	Relationship of award to table amount ³					
	Less		Equal		Greater	
	n	%	n	%	n	%
1998 (n = 1,571)	77	4.9	964	61.4	530	33.7
1999 (n = 5,592)	299	5.3	3,557	63.6	1,736	31.0
2000 (n = 4,535)	250	5.5	3,164	69.8	1,121	24.7
2001 (n = 4,303)	225	5.2	3,112	72.3	966	22.4

¹ This is the stated table value recorded in the order. These amounts have not been validated against the published Guidelines table amounts.

² In order to allow for minor variations from the table amounts as coded, the child support award amount was considered to be equal to the table amount if it was within 5 percent (either higher or lower) of the table amount. Thus, an award was considered less than the table amount if it was more than 5 percent less; similarly, amounts greater than 5 percent above the award amount were considered higher than the table amount.

³ Missing cases on award amount and/or recorded table amount for years 1998 through 2001=11,005.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

4.3 Relationship between Child Support Award Amount and Paying Parent's Income

To investigate the relationship between the paying parent's income and monthly child support award amounts, median support awards were examined by income category and number of children. Figure 4.1 presents the results of this analysis for sole custody cases including one, two or three children. The pattern of findings was quite consistent across number of children, and indicated a steady increase in the amount of child support awards as income of the paying parent

increased and the number of children increased. This pattern would be expected, given that the table values increase incrementally with payor income and number of children in the case.

4.4 Relationship between Child Support Award Amount and Award of Spousal Support

Figure 4.2 compares child support award amounts by whether spousal support was also awarded for sole custody cases. Overall, the proportion of cases that had child support awards lower than, equal to, or higher than the table amounts were very similar for cases including spousal support awards and those that did not include spousal support. For cases including a spousal support award, 71.3 percent had a child support award amount equal to the table amount as reported in the order, compared to 67.2 percent of cases that did not have a spousal support award. In cases that included a spousal support award, 3.8 percent had child support awards that were lower than the table amount, while 5.5 percent of cases with no spousal support award had child support awards that were less than the table amounts. Similarly, 24.9 percent of cases with spousal awards reported child support amounts that were higher than the table amounts, compared to 27.3 percent of cases without spousal support awards. This pattern of findings clearly indicates that the amount awarded for child support is not dependent on whether spousal support is also awarded. It also suggests that parties are not choosing to characterize what could be child support as spousal support.

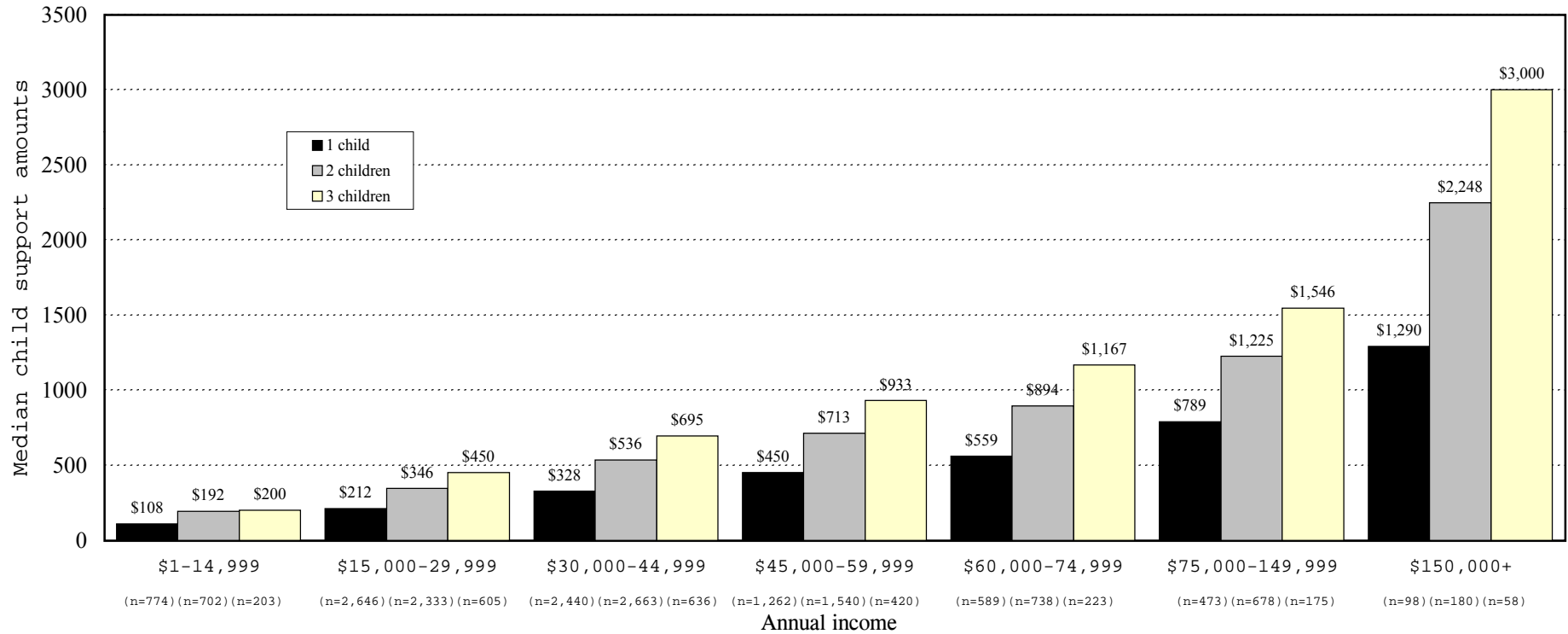
4.5 Relationship between Child Support Award Amount and Disposition of Case

In order to examine whether the amount of child support awarded varied by the type of disposition of the case, total child support award amounts in sole custody cases were compared for cases that were dealt with by consent/uncontested and cases that were contested. Contested cases resulted in slightly higher child support awards (median=\$462; mean=\$569; n=2,393) than did cases that proceeded by consent/uncontested (median=\$435; mean=\$549; n=19,781). Similar findings were obtained when the award of special or extraordinary expenses was analyzed by disposition of case. Special expenses were awarded in 31.6 percent of cases that were resolved by consent/uncontested (n=24,205). In contested cases, 37.7 percent of cases also had special expenses awarded (n=2,610).

4.6 Relationship between Child Support Amount and Type of Custody

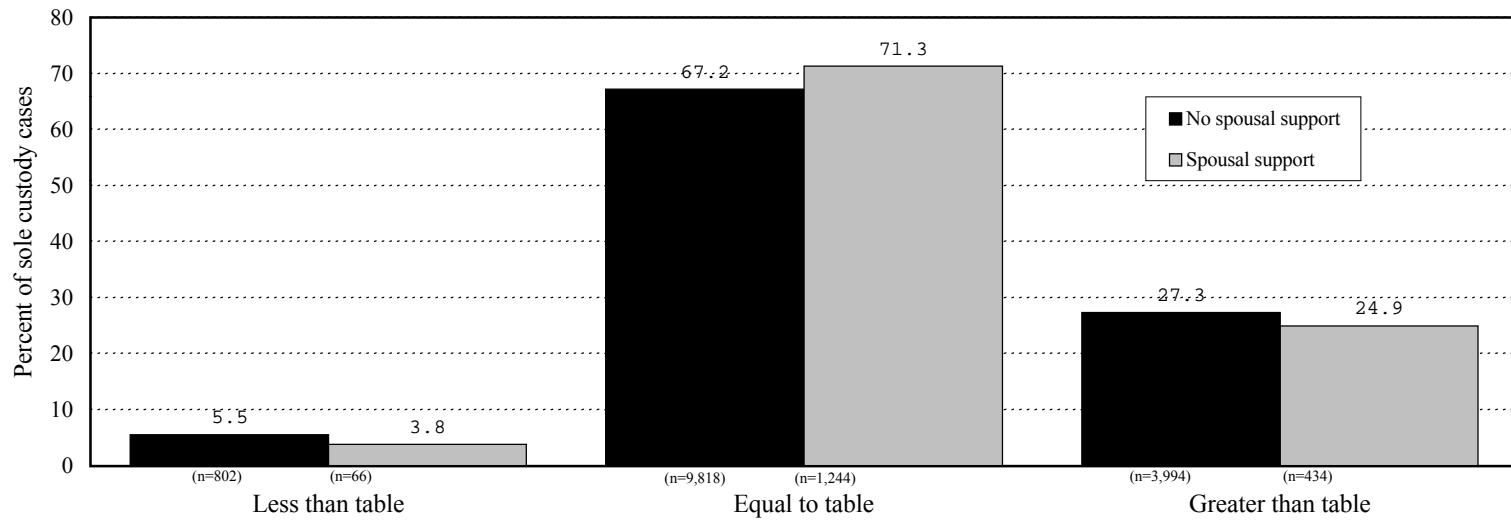
Figure 4.3 presents the relationship between monthly child support award amount and type of custody arrangement for all cases and separately by year of judgement from 1998 through 2001. Across all years, the pattern of findings indicated that the median support award amount was highest in cases in which sole custody was awarded to the mother (\$450) and lowest in cases when the father had sole custody (\$269). Since mothers tend to have lower incomes than fathers, this pattern is to be expected. The median monthly child support amounts for cases of shared and split custody fell between the two sole custody extremes, and were \$400 for shared custody and \$300 for split custody.

Figure 4.1 Median Child Support Amounts in Sole Custody Cases by Paying Parent Income and Number of Children



Total n=33,240. Cases analyzed=19,436.
 Sole custody cases=27,588. Sole custody cases with one, two, or three children=26,923.
 Sole custody cases with up to three children missing data on paying parent income=5,937.
 Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 4.2 Relationship of Child Support Award Amount to Table Amount by Whether Monthly, Annual, or Lump Sum Spousal Support was Awarded



Total n=33,240. Cases analyzed=16,358.

Sole custody cases with spousal support=3,352. Sole custody cases without spousal support=29,888.

Sole custody cases missing data on relationship between table amount and child support award amount=11,230.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

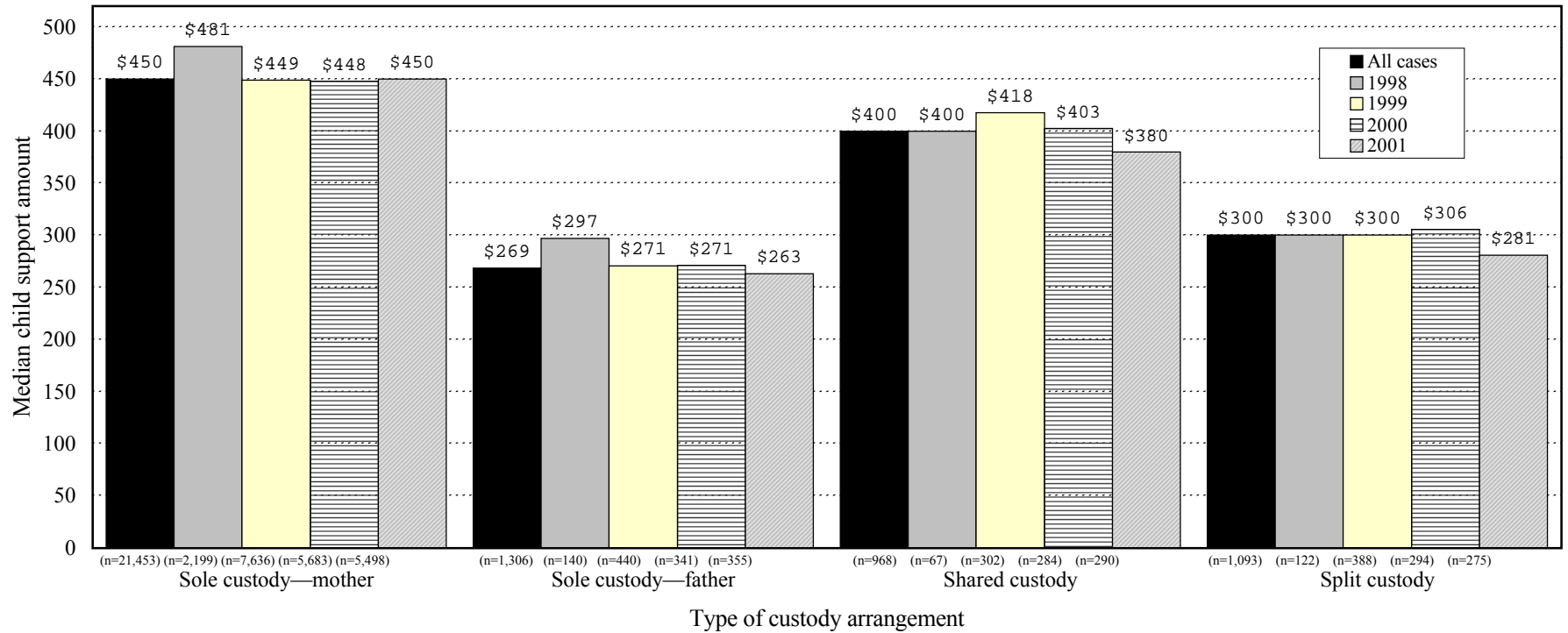
When the relationship between child support award amounts and type of custody is examined separately by year of judgement, the general pattern is the same as that for all cases, and indicates that cases in which the mother has sole custody have the highest median support amounts, while cases in which the father has sole custody have the lowest support amounts. Support amounts in cases of shared and split custody fall between these two extremes. Across time, the pattern of findings indicates that for sole custody cases, the median support awards declined from 1998 to 1999, and then remained relatively stable over the next two years. The pattern for shared and split custody cases was not as clear, but for both the median monthly support award was lower in 2001 than in 1998. These findings are consistent with those presented in Table 4.2 above, which indicate that the proportion of awards that are greater than the table amounts have declined from 1998 through 2001, while the proportion of awards that are equal to the table amounts have increased over the same period. It should be noted that the data presented in Table 4.2 only include sole custody cases, and thus these findings cannot be applied to cases of shared and split custody.

4.7 Relationship between Paying Parent's Income and Special or Extraordinary Expenses

A series of analyses was conducted to examine the relationship between the paying parent's income and the award of special or extraordinary expenses in sole custody cases. Figure 4.4 presents the number and percentage of cases for each income level that had special or extraordinary expenses awarded. There was a strong tendency for the proportion of cases with special or extraordinary expenses awarded to increase as income level increased. At the lowest income level, only 13.2 percent of cases had special expenses awarded; this increased to 46 percent in the middle income range (\$45,000–\$59,999) and to 56.9 percent at the highest income level.

Figure 4.5 presents the median amount per month of special or extraordinary expenses (for those cases with a non-zero amount specified) at each income level. There was a consistent increase in the amount of special expenses awarded with increasing income levels. The median special expense awarded at the lowest income level was \$59 (mean=\$75); this amount increased to \$135 (mean=\$164) at the middle income level (\$45,000–\$59,999) and to \$318 (mean=\$459) at the highest income level.

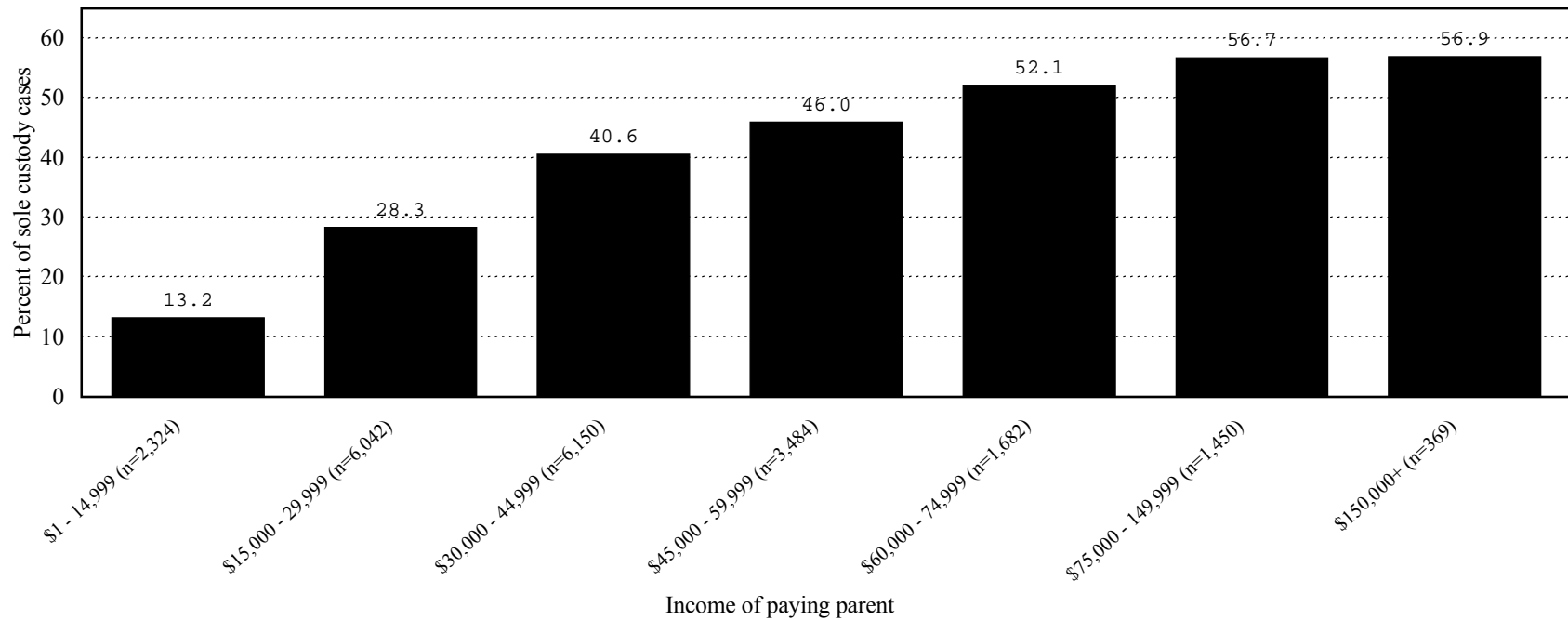
Figure 4.3 Median Monthly Child Support Award Amount by Type of Custody Arrangement and Year of Judgment



Total n=33,240.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 4.4 Percentage of Cases Having Special or Extraordinary Expenses Awarded, by Income of Paying Parent in Sole Custody Cases



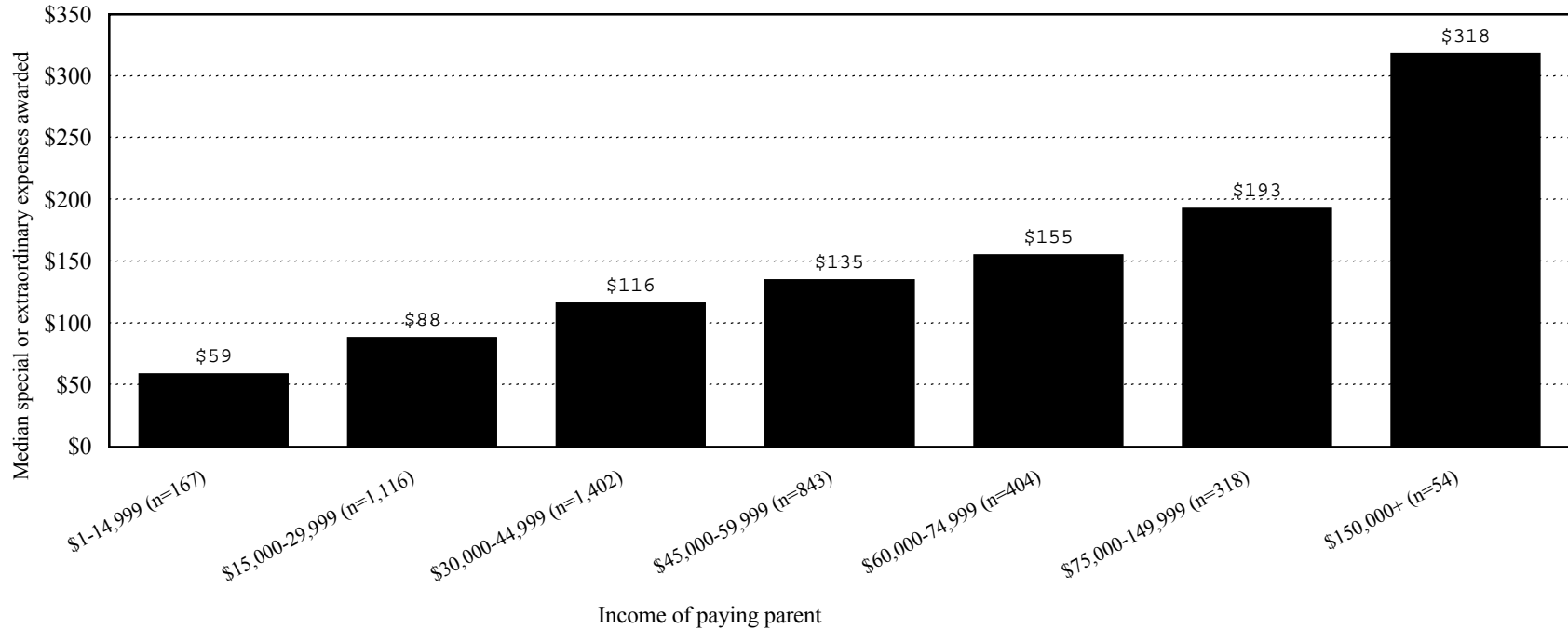
Total n=33,240. Cases analyzed=21,501.

n's refer to the total number of cases within each income level, while the percentages refer to the proportion of those cases having special or extraordinary expenses awarded.

Sole custody cases with missing data on paying parent income (n=6,087) are excluded from the analysis.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Figure 4.5 Median Special or Extraordinary Expenses Awarded per Month by Paying Parent Income for Sole Custody Cases Where Dollar Value Stated for Special Expenses



Total n=33,240. Cases analyzed=4,304.

Sole custody cases with missing data on paying parent income (n=6,087) and/or monthly amount of special or extraordinary expenses (n=23,140) are excluded from this analysis.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

4.8 Relationship between Child Support Award Amount and Special or Extraordinary Expenses

An analysis was conducted to examine the relationship between the paying parent's income and the monthly child support award amount according to whether special or extraordinary expenses were awarded. It should be noted that the total child support amount should represent the base table amount plus any adjustments for the award of special or extraordinary expenses. In cases when special or extraordinary expenses were awarded but only a proportion was to be paid by the paying parent (and with no amount listed or only a lump sum or annual award for special expenses noted), the child support award amount likely does not include the special or extraordinary expenses. This means that the difference in award amounts observed between cases with special or extraordinary expenses and those not having these expenses will appear artificially lowered.

Figure 4.6 presents the results of this analysis. The findings indicated a steady increase of award amounts both with and without special or extraordinary expenses as income levels increased. Further, at all income levels, total monthly child support amounts awarded were higher for sole custody cases in which special or extraordinary expenses were awarded than for cases not having these expenses.

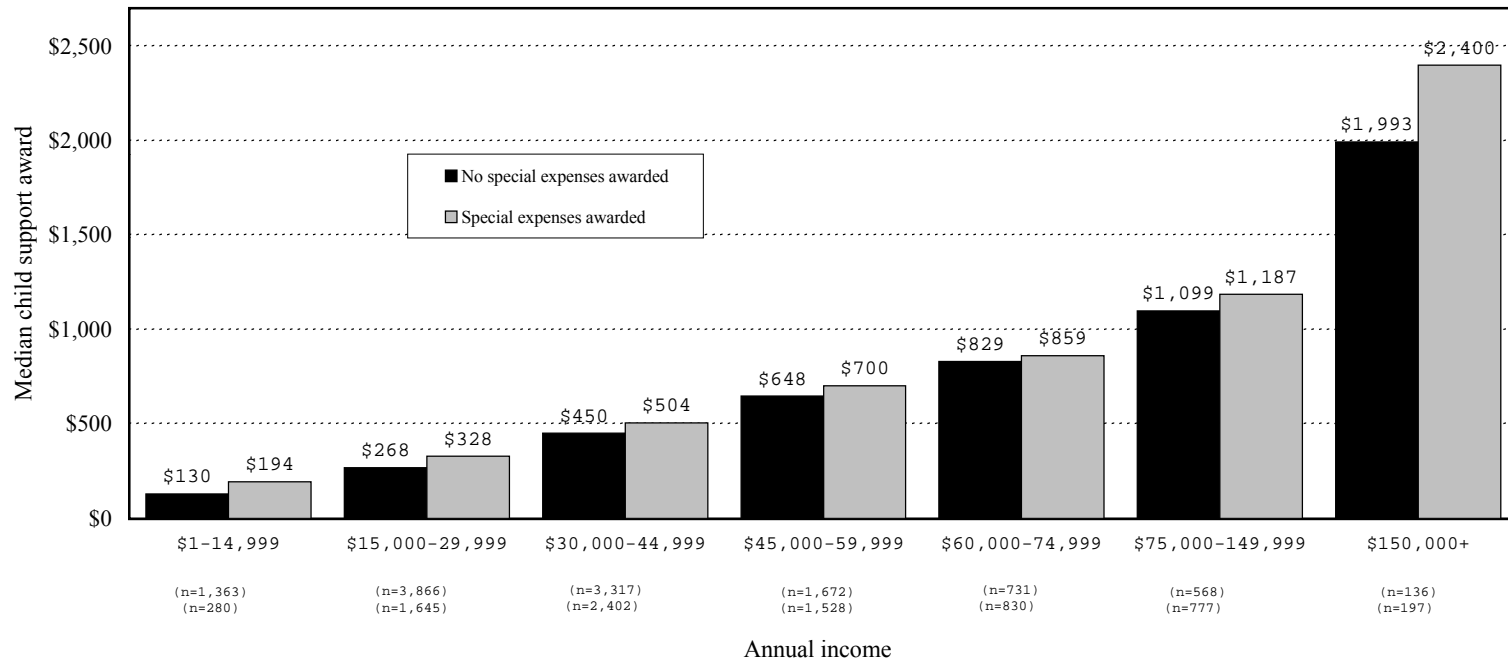
5.0 COMPARISON OF PROVINCIAL/TERRITORIAL DATA

Several analyses were conducted on selected variables in order to examine differences in child support awards and related issues among the provinces and territories participating in this project. As discussed in Appendix A, the procedures used in the processing of divorce cases and child support awards differ considerably across jurisdictions, and these differences no doubt contribute to the patterns of findings observed and limit the extent to which they should be directly compared. In addition, it should be noted that the number of cases in the database from the various jurisdictions varies widely, which also limits direct comparisons between them.

5.1 Type of Divorce Order

Table 5.1 presents the types of divorce orders that were captured from each participating jurisdiction. In the majority of jurisdictions, the most common type of divorce order included a child support order. This ranged from a high of 95.5 percent of all divorce orders in New Brunswick and 88.2 percent in Manitoba to 38.5 percent of all divorce orders in British Columbia and 31.3 percent in the Northwest Territories. Ontario was the most striking exception to this pattern, where 78 percent of all divorce orders were silent on child support. This is due to the procedures followed in Ontario whereby child support orders are contained in a document other than the divorce order, meaning the divorce order itself does not include a child support order. However, for many Ontario cases, information on child support was contained in supporting documents such as separation agreements and affidavits that were available to data-capture clerks and thus are included in the database.

Figure 4.6 Median Monthly Child Support Award Amount in Sole Custody Cases by Paying Parent Income and Whether Special or Extraordinary Expenses were Awarded



Total n=33,240. Cases analyzed=19,312.
 Source of data: Survey of Child Support Awards; January 31, 2002 version.

In most jurisdictions, interim child support orders were fairly uncommon with the exception of the Northwest Territories (43.5 percent of the total divorce orders), Saskatchewan (41.7 percent), British Columbia (30.8 percent), and the Yukon (30.3 percent). In all other jurisdictions the proportion of interim child support orders contained in the total divorce orders was less than 17 percent.

5.2 Disposition of Orders

Table 5.2 presents the disposition all orders by province/territory. In all jurisdictions, the majority of orders were resolved by consent or were uncontested. This ranged from a high of 96.3 percent in Ontario and 93 percent in Manitoba to 63.4 percent in British Columbia and 61.7 percent in Saskatchewan. Saskatchewan reported the highest percentage of contested cases (32.6 percent), followed by Newfoundland (23.4 percent) and the Northwest Territories (21.9 percent). The proportion of contested cases was less than 20 percent in all other jurisdictions. British Columbia (18.1 percent) and New Brunswick (11.6 percent) had the highest proportion of cases in which whether they were contested or proceeded by consent/uncontested was unknown. In all jurisdictions except New Brunswick and the Northwest Territories, variations were more likely to be contested than were divorces.

Table 5.1 Type of Divorce Order by Province/Territory¹

Province/ Territory	Type of order											
	Interim child support order		Divorce with child support order		Divorce silent on child support		Corollary relief		Reserved		Other	
	n	%	n	%	n	%	n	%	n	%	n	%
Newfoundland (n=59)	7	11.9	44	74.6	3	5.1	0	0.0	0	0.0	5	8.5
Prince Edward Island (n=467)	9	1.9	396	84.8	53	11.3	0	0.0	0	0.0	9	1.9
Nova Scotia (n=1,545)	66	4.3	1,245	80.6	32	2.1	186	12.0	0	0.0	16	1.0
New Brunswick (n=1,322)	11	0.8	1,262	95.5	47	3.6	1	0.1	0	0.0	1	0.1
Ontario (n=9,887)	249	2.5	1,709	17.3	7,707	78.0	140	1.4	0	0.0	82	0.8
Manitoba (n=1,832)	194	10.6	1,615	88.2	7	0.4	3	0.2	0	0.0	13	0.7
Saskatchewan (n=716)	300	41.7	339	47.3	45	6.3	4	0.6	0	0.0	28	3.9
Alberta (n=10,045)	1,699	16.9	7,113	70.8	454	4.5	74	0.7	623	6.2	82	0.8
British Columbia (n=1,147)	353	30.8	442	38.5	248	21.6	41	3.6	0	0.0	63	5.5
Yukon (n=119)	36	30.3	1	0.8	2	1.7	73	61.3	0	0.0	7	5.9
Northwest Territories (n=115)	50	43.5	36	31.3	3	2.6	18	15.7	0	0.0	8	7.0
All sites (n=27,254)	2,974	10.9	14,202	52.1	8,601	31.6	540	2.0	623	2.3	314	1.2

¹ 713 cases were missing data on both type of divorce order and type of variation order.
Source of data: Survey of Child Support Awards; January 31, 2002 version.

Table 5.2 Disposition of All Orders by Province/Territory

Province/Territory	Disposition							
	Consent/ uncontested		Contested		Unknown		Missing	
	n	%	n	%	n	%	n	%
Newfoundland (n=342)	250	73.1	80	23.4	2	0.6	10	2.9
Prince Edward Island (n=532)	437	82.1	73	13.7	12	2.3	10	1.9
Nova Scotia (n=2,156)	1,779	82.5	275	12.8	77	3.6	25	1.2
New Brunswick (n=1,868)	1,420	76.0	215	11.5	217	11.6	16	0.9
Ontario (n=10,346)	9,964	96.3	292	2.8	76	0.7	14	0.1
Manitoba (n=2,402)	2,234	93.0	84	3.5	56	2.3	28	1.2
Saskatchewan (n=1,406)	868	61.7	458	32.6	33	2.3	47	3.3
Alberta (n=12,406)	10,827	87.3	1,466	11.8	39	0.3	74	0.6
British Columbia (n=1,427)	905	63.4	247	17.3	259	18.1	16	1.1
Yukon (n=209)	162	77.5	40	19.1	6	2.9	1	0.5
Northwest Territories (n=146)	100	68.5	32	21.9	6	4.1	8	5.5
All sites (n=33,240)	28,946	87.1	3,262	9.8	783	2.4	249	0.7

Source of data: Survey of Child Support Awards; January 31, 2002 version.

5.3 Legal Representation

Legal representation for the mother, father or a government agency was analyzed by province/territory, and the results are presented in Table 5.3. The proportion of cases with legal representation for the mother was highest in Manitoba (92 percent) and Saskatchewan (88.6 percent), and was lowest in Ontario (56 percent) and Newfoundland (51.2 percent). Overall, the proportion of cases with legal representation for the father was lower than for the mother. Legal representation for the father was highest in the Northwest Territories (74.7 percent) and Manitoba (74.4 percent), and lowest in Prince Edward Island (40.4 percent) and Newfoundland (37.4 percent). Legal representation for a government agency, which excludes legal aid services, was infrequent in all jurisdictions, ranging from 7.6 percent of cases in British Columbia to 0.1 percent of cases in Nova Scotia and Saskatchewan.

Table 5.3 Legal Representation by Province/Territory

Province/Territory	Legal representation for:					
	Mother		Father		Government agency	
	n	%	n	%	n	%
Newfoundland (n=342)	175	51.2	128	37.4	3	0.9
Prince Edward Island (n=532)	334	62.8	215	40.4	20	3.8
Nova Scotia (n=2,156)	1,525	70.7	1,279	59.3	2	0.1
New Brunswick (n=1,868)	1,304	69.8	1,136	60.8	8	0.4
Ontario (n=10,346)	5,794	56.0	4,938	47.7	26	0.3
Manitoba (n=2,402)	2,211	92.0	1,788	74.4	39	1.6
Saskatchewan (n=1,406)	1,246	88.6	1,029	73.2	1	0.1
Alberta (n=12,406)	10,741	86.6	8,910	71.8	107	0.9
British Columbia (n=1,427)	1,165	81.6	933	65.4	108	7.6
Yukon (n=209)	155	74.2	105	50.2	5	2.4
Northwest Territories (n=146)	126	86.3	109	74.7	6	4.1
All sites (n=33,240)	24,776	74.5	20,570	61.9	325	1.0

Source of data: Survey of Child Support Awards; January 31, 2002 version.

5.4 Issues Dealt with in Divorce Orders

Table 5.4 presents a breakdown of the issues dealt with in divorce orders by jurisdiction. Due to the fact that most issues in Ontario divorces are dealt with in separate documents, the proportion of divorce orders in Ontario that deal with each issue is considerably lower than in other provinces/territories. Thus, Ontario is not included in the following discussion.

A substantial majority of divorce orders in most locations deal with child support. This ranges from a high of 99.7 percent in Manitoba and 97.1 percent in Nova Scotia to a low of 88.2 percent in Prince Edward Island and 68.1 percent in British Columbia. The majority of orders in most jurisdictions also deal with custody and access issues. Custody issues were dealt with in 97.8 percent of divorce issues in New Brunswick and 94.3 percent of orders in Nova Scotia. New Brunswick and Nova Scotia also had the highest proportions of orders dealing with access (93.3 percent and 92.9 percent, respectively). Only 50.8 percent of cases in Newfoundland dealt with custody, and only 5.1 percent with access.

Table 5.4 Issues Dealt With in Divorce Orders by Province/Territory

Province/ Territory	Issue																	
	Child support		Custody		Access		Spousal support		Child Support award termination provision		Arrears		Review clause		Cost of living clause		Other	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Nfld. (n=59)	56	94.9	30	50.8	3	5.1	2	3.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
P.E.I. (n=467)	412	88.2	403	86.3	381	81.6	40	8.6	124	26.6	5	1.1	18	3.9	29	6.2	9	1.9
N.S. (n=1,545)	1,500	97.1	1,457	94.3	1,435	92.9	597	38.6	19	1.2	80	5.2	295	19.1	2	0.1	118	7.6
N.B. (n=1,322)	1,262	95.5	1,293	97.8	1,234	93.3	435	32.9	3	0.2	70	5.3	63	4.8	0	0.0	15	1.1
Ont. (n=9,887)	2,127	21.5	2,616	26.5	2,178	22.0	614	6.2	695	7.0	177	1.8	556	5.6	261	2.6	514	5.2
Man. (n=1,832)	1,826	99.7	1,681	91.8	1,516	82.8	259	14.1	43	2.3	147	8.0	70	3.8	0	0.0	247	13.5
Sask. (n=716)	656	91.6	518	72.3	469	65.5	168	23.5	54	7.5	41	5.7	42	5.9	7	1.0	26	3.6
Alta. (n=10,045)	9,530	94.9	8,580	85.4	8,066	80.3	4,234	42.2	1,495	14.9	402	4.0	404	4.0	20	0.2	810	8.1
B.C. (n=1,147)	781	68.1	739	64.4	564	49.2	211	18.4	29	2.5	64	5.6	55	4.8	1	0.1	41	3.6
Y.T. (n=119)	111	93.3	107	89.9	88	73.9	42	35.3	4	3.4	10	8.4	9	7.6	1	0.8	0	0.0
N.W.T. (n=115)	108	93.9	92	80.0	73	63.5	6	5.2	4	3.5	4	3.5	13	11.3	0	0.0	15	13.0
All sites (n=27,254)	18,369	67.4	17,516	64.3	16,007	58.7	6,608	24.2 ¹	2,470	9.1	1,000	3.7	1,525	5.6	321	1.2	1,795	6.6

Numbers do not add up to totals, since more than one issue may be dealt with in an order.

¹ This includes cases in which spousal support was considered, but no subsequent spousal support order was made.

Source of data: Survey of Child Support Awards; January 31, 2002 version.

The proportion of cases that dealt with spousal support varied considerably across jurisdictions, ranging from 42.2 percent in Alberta and 38.6 percent in Nova Scotia to 5.2 percent in the Northwest Territories and 3.4 percent in Newfoundland. Child support award termination provisions were most frequently included in divorce orders in Prince Edward Island (26.6 percent) and Alberta (14.9 percent). Other issues, such as arrears, review clauses, and cost of living clauses, were relatively infrequently dealt with in divorce orders across most jurisdictions.

5.5 Type of Custody Arrangements

A breakdown of type of custody arrangement by province/territory is presented in Table 5.5. The most common type of custody awarded across all jurisdictions was sole custody to the mother. The proportion of cases reporting this type of custody ranged from 80.4 percent in Newfoundland and 77.9 percent in Manitoba to 71.2 percent in New Brunswick and the Northwest Territories and 70.3 percent in the Yukon. Sole custody awarded to the father varied from 10 percent in New Brunswick and 9.6 percent in the Yukon to 5.7 percent in Saskatchewan and 2.9 percent in Newfoundland. The proportion of cases reporting shared custody arrangements was highest in the Yukon (10.5 percent) and Prince Edward Island (8.6 percent), and lowest in Nova Scotia (3.1 percent) and Manitoba (1.8 percent). Split custody was reported relatively infrequently, and ranged from 6.7 percent of cases in New Brunswick to 3.4 percent of cases in British Columbia.

5.6 Child Support Award Amounts

The median monthly child support award amount and median annual paying parent income for each jurisdiction are presented in Table 5.6. As would be expected under the Guidelines, there was a clear pattern of increasing median child support awards as median paying parent incomes increased. The highest reported incomes are in the Northwest Territories (\$41,536) and Alberta (\$39,000), while the lowest incomes were found in Newfoundland (\$28,200) and Prince Edward Island (\$27,012). Median monthly child support amounts ranged from \$500 in Alberta and \$495 in the Yukon to \$301 in Prince Edward Island and \$300 in Newfoundland.

5.7 Award and Amount of Special or Extraordinary Expenses

Table 5.7 presents the number and proportion of cases reported in which special or extraordinary expenses were awarded by jurisdiction. The proportion varied quite widely across sites, and ranged from a high of 40 percent in Alberta and 30.4 percent in Ontario to 12.3 percent in the Northwest Territories and 11.4 percent in Newfoundland.

Table 5.8 presents the median monthly special expense amount awarded in each province/territory. These amounts ranged from a high of \$184 in Ontario and \$143 in Nova Scotia to \$91 in Manitoba and \$85 in Prince Edward Island.

Table 5.5 Type of Custody by Province/Territory

Province/ Territory	Type of custody											
	Sole-Mother		Sole-Father		Shared		Split		Other		Missing	
	n	%	n	%	n	%	n	%	n	%	n	%
Newfoundland (n=342)	275	80.4	10	2.9	21	6.1	13	3.8	3	0.9	20	5.8
Prince Edward Island (n=532)	389	73.1	39	7.3	46	8.6	28	5.3	5	0.9	25	4.7
Nova Scotia (n=2,156)	1,657	76.9	144	6.7	67	3.1	126	5.8	21	1.0	141	6.5
New Brunswick (n=1,868)	1,330	71.2	187	10.0	100	5.4	125	6.7	9	0.5	117	6.3
Ontario (n=10,346)	7,977	77.1	898	8.7	708	6.8	377	3.6	152	1.5	234	2.3
Manitoba (n=2,402)	1,871	77.9	147	6.1	44	1.8	85	3.5	2	0.1	253	10.5
Saskatchewan (n=1,406)	1,053	74.9	80	5.7	53	3.8	66	4.7	5	0.4	149	10.6
Alberta (n=12,406)	8,993	72.5	1,097	8.8	801	6.5	700	5.6	36	0.3	779	6.3
British Columbia (n=1,427)	1,057	74.1	103	7.2	70	4.9	48	3.4	13	0.9	136	9.5
Yukon (n=209)	147	70.3	20	9.6	22	10.5	9	4.3	1	0.5	10	4.8
Northwest Territories (n=146)	104	71.2	10	6.8	8	5.5	6	4.1	0	0.0	18	12.3
All sites (n=33,240)	24,853	74.8	2,735	8.2	1,940	5.8	1,583	4.8	247	0.7	1,882	5.7

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Table 5.6 Median Monthly Child Support Award Amount and Paying Parent Income by Province/Territory

Province/Territory	Median child support amount		Median paying parent income¹	
Newfoundland	\$300	(n=302)	\$28,200	(n=205)
Prince Edward Island	\$301	(n=392)	\$27,012	(n=272)
Nova Scotia	\$361	(n=1,773)	\$33,400	(n=1,804)
New Brunswick	\$330	(n=1,400)	\$31,176	(n=1,157)
Ontario	\$413	(n=6,992)	\$35,332	(n=6,219)
Manitoba	\$350	(n=2,317)	\$32,000	(n=2,244)
Saskatchewan	\$400	(n=1,189)	\$35,043	(n=1,097)
Alberta	\$500	(n=10,560)	\$39,000	(n=11,229)
British Columbia	\$439	(n=1,049)	\$38,600	(n=996)
Yukon	\$495	(n=156)	\$38,040	(n=169)
Northwest Territories	\$469	(n=109)	\$41,536	(n=97)
All sites	\$427	(n=26,239)	\$36,000	(n=25,489)

¹ Includes all cases with paying parent income regardless of whether the case reported a monthly child support award amount.
Source of data: Survey of Child Support Awards; January 31, 2002 version.

Table 5.7 Number and Proportion of Cases Having Special or Extraordinary Expenses Awarded by Province/Territory

Province/Territory	n	%
Newfoundland (n=342)	39	11.4
Prince Edward Island (n=532)	125	23.5
Nova Scotia (n=2,156)	434	20.1
New Brunswick (n=1,868)	438	23.4
Ontario (n=10,346)	3,144	30.4
Manitoba (n=2,402)	646	26.9
Saskatchewan (n=1,406)	387	27.5
Alberta (n=12,406)	4,962	40.0
British Columbia (n=1,427)	310	21.7
Yukon (n=209)	50	24.6
Northwest Territories (n=146)	18	12.3
All sites (n=33,240)	10,553	31.7

Source of data: Survey of Child Support Awards; January 31, 2002 version.

Table 5.8 Median Monthly Special or Extraordinary Expenses Awarded by Province/Territory

Province/Territory	Median special expenses amount	
Newfoundland	\$108	(n=13)
Prince Edward Island	\$85	(n=44)
Nova Scotia	\$143	(n=216)
New Brunswick	\$111	(n=183)
Ontario	\$184	(n=598)
Manitoba	\$91	(n=402)
Saskatchewan	\$105	(n=209)
Alberta	\$104	(n=3,106)
British Columbia	\$126	(n=173)
Yukon	\$125	(n=8)
Northwest Territories	\$100	(n=11)
All sites	\$113	(n=4,963)

Includes all cases with paying parent income regardless of whether the case reported a monthly child support award amount.
Source of data: Survey of Child Support Awards; January 31, 2002 version.

APPENDIX A: DIVORCE AND THE PROCESSING OF CHILD SUPPORT ORDERS

A1.0 INTRODUCTION

A1.1 Study Approach

The information in this Appendix was obtained from a variety of sources. These sources include site visits, telephone interviews and written materials provided by the various jurisdictions. The following court sites were involved in the study:

- St. John's, Newfoundland;
- Charlottetown and Summerside, Prince Edward Island;
- Halifax, New Glasgow, Sydney, Truro and Yarmouth, Nova Scotia;
- Fredericton, New Brunswick;
- Ottawa, Toronto and London, Ontario;
- Winnipeg, Manitoba;
- Saskatoon and Regina, Saskatchewan;
- Edmonton and Calgary, Alberta;
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

As Quebec's system of determining child support awards differs from that of other Canadian jurisdictions, a separate study was designed to collect and analyze its data. Therefore, there are no Quebec data in this report.

This Appendix presents a brief overview of the study sites as of December 2001. Section A2.0 discusses the type of court structure and the provincial or territorial legislation related to divorce and child support. Section A3.0 provides a detailed description of the process of granting a divorce and related matters such as child support. Section A4.0 presents issues related to the administration of divorce and child support orders, and discusses the similarities and differences of the sites. Section A5.0 contains some general observation derived from the information in this Appendix.

A1.2 Limitations of the Study

The findings presented in this part of the report are subject to limitations. A major limitation is the variation in the sources and amounts of information available in different localities. Another is caused by constantly changing policies, regulations and services with regard to child support and divorce.

All of the sites involved in this study have taken some steps towards formally implementing the Federal Child Support Guidelines. However, some procedures, policies and practices are still evolving. Different sites are at different stages in implementing the Guidelines, and the approach at any given site is often unique. This limits our ability to directly compare the sites and suggests that the picture we have of any one site may not be valid for very long. The information contained in this Appendix represents the situation at most sites as of December 2001.

A2.0 LEGAL CONTEXT OF DIVORCE AND IMPLEMENTATION OF THE FEDERAL CHILD SUPPORT GUIDELINES

Court systems that handle legal proceedings regarding divorce and child support vary depending on the jurisdiction. These systems can be broadly identified as either a two-tiered system or a Unified Family Court system.

In the traditional two-tiered system, matters under the federal *Divorce Act* are addressed in Superior Court by a federally appointed judge (*Constitution Act*, section 96). The Superior Court judge hears divorce actions and related corollary relief matters (including child support, spousal support, and custody or access) and may also address property issues under provincial or territorial legislation. In a two-tiered system, a provincial or territorial court judge has a concurrent jurisdiction to deal with child support, spousal support, and custody or access, if they are not part of the divorce proceedings. However, the provincial or territorial court judge may not deal with property issues.

In a Unified Family Court, the judge hears all family-related matters, whether under provincial, territorial or federal legislation.

A2.1 Types of Courts

As Table A2.1 shows, as of December 2001, New Glasgow, Truro, Yarmouth, Toronto, Edmonton, Calgary, Victoria, Yellowknife and Whitehorse had a two-tiered court system. In contrast, St. John's, Halifax, Sydney, Summerside, Charlottetown, Fredericton, Ottawa, London, Winnipeg, Regina and Saskatoon had a Unified Family Court system.

Table A2.1 Types of Courts and Court Titles by Study Site (as of December 2001)

Study Site	Two-tier system	Unified Family Court	Courts dealing with matters under the <i>Divorce Act</i>
St. John's, Nfld.		X	Supreme Court Trial Division
Halifax and Sydney, N.S.		X	Family Division, Supreme Court of Nova Scotia
Other sites, N.S.	X		Supreme Court of Nova Scotia
All Sites, P.E.I.		X	Supreme Court of Prince Edward Island
Fredericton, N.B.		X	Court of Queen's Bench, Family Division
Ottawa, Ont.		X	Superior Court of Justice, Family Court
Toronto, Ont.	X		Superior Court of Justice
London, Ont.		X	Superior Court of Justice, Family Court
Winnipeg, Man.		X	Court of Queen's Bench, Family Division
Regina and Saskatoon, Sask.		X	Court of Queen's Bench, Family Law Division
Edmonton and Calgary, Alta.	X		Court of Queen's Bench
Victoria, B.C.	X		Supreme Court, Province of British Columbia
Yellowknife, N.W.T.	X		Supreme Court of Northwest Territories
Whitehorse, Yukon	X		Supreme Court of Yukon

A2.2 Provincial and Territorial Legislation and Practice

In addition to the type of court, provincial and territorial legislation and judicial practice affect the process of divorce and use of the Guidelines. As of December 2001, most provinces and the Yukon had enacted legislation or regulations adopting the federal Guidelines for use in proceedings under provincial or territorial legislation. Quebec has enacted legislation adopting its own guidelines, which use a different model and apply to proceedings under both the federal *Divorce Act* and provincial legislation. Only Alberta has not yet given a clear indication of whether it will adopt the Federal Child Support Guidelines for use in proceedings under provincial legislation. If a province has drafted its own guidelines, these apply to proceedings under both the *Divorce Act* and provincial legislation, except in cases of divorce when the parents live in different jurisdictions.

The importance of judicial practice in encouraging the use of the Federal Child Support Guidelines should not be overlooked. Although Alberta has not formally enacted legislation to adopt the Guidelines for child support cases that do not involve divorce, most provincial Family Court and Queen's Bench judges in Alberta appear to be using the Guidelines to deal with child support applications under provincial law. In the Alberta Court of Queen's Bench, this can be attributed to a practice directive from the Chief Justice requiring that the Child Support Information and Data Sheets (required Guideline forms) be submitted with all child support applications.

Paragraph 11(1)(b) of the *Divorce Act* requires that the court, before granting a divorce, must "satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines." However, it is difficult to determine how actively judges or their staff scrutinize child support arrangements in situations involving consent agreements or uncontested applications. In Edmonton and Calgary, Family Law Information Centre staff must review all orders involving child support in all uncontested cases of divorce

(“desk divorces”), as well as all applications (consent or contested) brought by unrepresented parties. In Edmonton, staff also review consent orders filed by lawyers.

Most jurisdictions require financial statements in contested divorce cases involving children. The legal requirement is usually established by the Rules of Court or Practice Rule.²¹ Only Prince Edward Island and Newfoundland require filing of financial statements for child support applications pursuant to the *Family Law Act* in their province, and the Northwest Territories is considering this. In the Northwest Territories, practice directives require the use of financial statements. Under the Yukon divorce rules, financial statements must be filed if there are children of the marriage. In Manitoba, financial statements must be filed when a petition is filed if support is requested. Only in Alberta must the Child Support Information and Data Sheets (which include forms for determining income for the purposes of the Guidelines and the calculation of child support under the Guidelines) be filed in all cases to allow scrutiny of consent orders and uncontested desk divorce applications. In Saskatchewan, new rules in 2001 (rule 640(5)) require a child support calculation form (640D) to be filed; previously a practice directive required similar forms. In Ontario, financial statements are required with the application in all cases requesting support or equalization of net family property (under the court rules). At many sites across the country, it does not appear that financial statements are always required in cases involving consent agreements or orders, or uncontested applications.

A3.0 PROCESS OF DIVORCE AND ANCILLARY MATTERS

The process of divorce can be divided into three general stages:

- marriage breakdown;
- a pre-petition stage; and
- the divorce proceeding.

Each of these stages involves a series of decisions on the part of one or both spouses. The divorce can be completed rapidly, or can take years if the parties separate and take no further action until one party wants to remarry.

Figure A3.1 provides a model of the divorce process. This model is general enough to accommodate most variations in how divorce cases are handled across Canada. In Section A4.0 we will see how various factors, which differ in the jurisdictions involved in this study, affect the general process.

²¹ In Alberta, the Rules of Court and Practice Notes provide for the filing and serving of a Notice to Disclose. The practice of the Court is to strictly enforce the remedies, including costs, in the event of non-compliance.

A3.1 Marriage Breakdown

The *Divorce Act*, which governs the process of divorce in Canada, provides that the basis for divorce is a “breakdown of the marriage.” Breakdown is established when one or more of the following occurs:

- the spouses have separated and lived apart for at least one year;
- the respondent spouse committed adultery; or
- the respondent spouse has inflicted physical or mental cruelty on the other spouse.

As Figure A3.1 indicates, the divorce process begins with marriage breakdown occurring for any number of reasons. However, at the petition stage, one of the three indications of breakdown of marriage must be used as the grounds for divorce.

A3.2 Pre-petition Stage

The pre-petition process may involve several stages and decisions. Actions taken at this early stage set the framework for subsequent decisions. After the separation, couples often resolve many of the legal issues related to their marriage breakdown by separation agreements or interim court orders that are later incorporated into the final divorce order.

When marital problems arise, the couple may try some form of marriage counselling to resolve their problems, or may work on their problems on their own. If either approach is successful, the marriage may continue. Alternatively, the couple may find that the issues cannot be resolved, or that one or both no longer wish to try to resolve them. At this point, there is likely to be a physical separation.

Once a couple decides to separate, they must then decide whether to take further action.²² If the couple is childless and has no significant property issues, the husband and wife may simply go their own ways. Often no formal action needs to be taken unless a separated spouse wishes to remarry, which may occur years later.

Even when the separation is relatively amicable, the parties may wish to formalize the details of the separation. This is especially true when children, substantial assets or significant debts are involved, or when one spouse requires financial support from the other for him or herself or the children of the marriage. At this point, one or both may consult a lawyer. A Family Court counsellor, a court conciliator or a mediator may also be consulted. Occasionally, information or advice obtained at this stage results in an attempt at reconciliation. In fact, section 9 of the *Divorce Act* requires legal advisors to discuss the possibility of reconciliation with their clients and advise them about reconciliation support services.

If reconciliation is not possible but the couple can agree on the resolution of all issues, a separation agreement will usually be prepared. Each spouse is advised to obtain independent

²² In Canada, a couple may live “separate and apart” in the same residence if they cease to live as a “family unit,” suspending sexual, economic and social ties. However, this is very rare.

legal advice before signing such an agreement. Agreements are often negotiated between the two lawyers. If an agreement is not reached, the lawyers may refer the couple to a mediator, who tries to help the spouses reach an agreement regarding one or more issues. Sometimes mediation will deal with only one issue, such as access, while in other cases mediation may be “comprehensive” and deal with all the issues. Some separated spouses consult a mediator before seeing lawyers. If mediation results in an agreement, the parties should be referred to lawyers for independent legal advice before signing the agreement. If the agreement has been signed, the parties may begin divorce proceedings at any point or they may do nothing further until one or the other wishes to divorce to allow, for example, remarriage.

If the parties cannot agree, applications can be made to the court to resolve the various issues between them. Each province and territory has legislation permitting the courts to deal with issues of custody, child support, spousal support, possession of the matrimonial home and division of property. Occasionally a court order under provincial or territorial legislation resolves all the issues between the parties, and the terms of the order can be incorporated into a separation agreement. The separated parties may then choose to do nothing further unless one of them wishes to remarry. Alternatively, if the issues are not resolved at this stage, one or both parties may wish to file a petition for divorce.

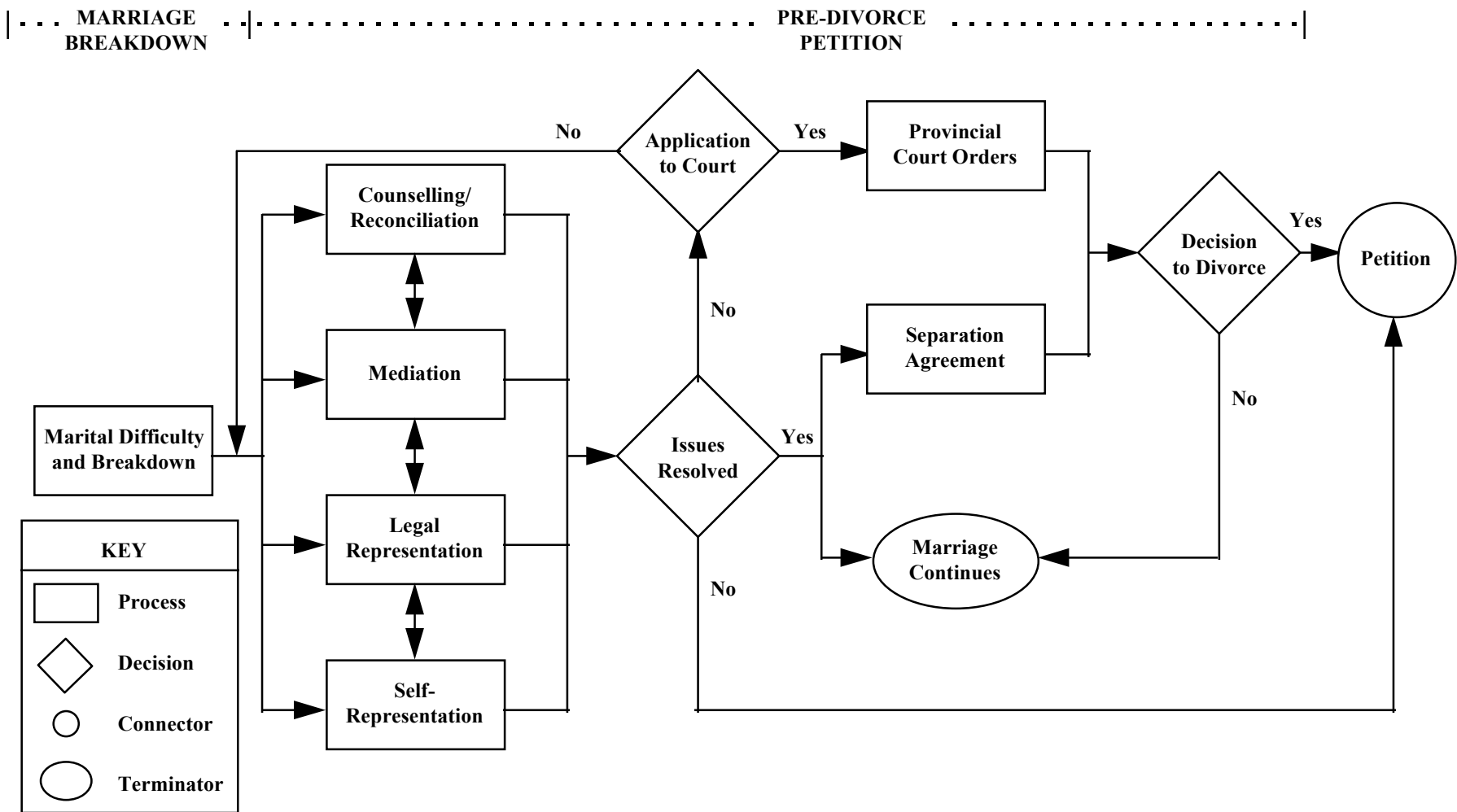
If the separation took place unilaterally, one or both spouses often seek legal advice immediately. An application may be made to the court for an interim order dealing with custody, support and possession of the home even before negotiations begin. Sometimes, a spouse may have sought legal advice prior to separation and may initiate interim court proceedings immediately upon separation.

In the majority of cases, the parties proceed with a legal divorce. There may be one or more court orders or consent orders, a separation agreement, or only a verbal understanding between the parties prior to the filing of a divorce petition.

A3.3 Divorce Proceeding

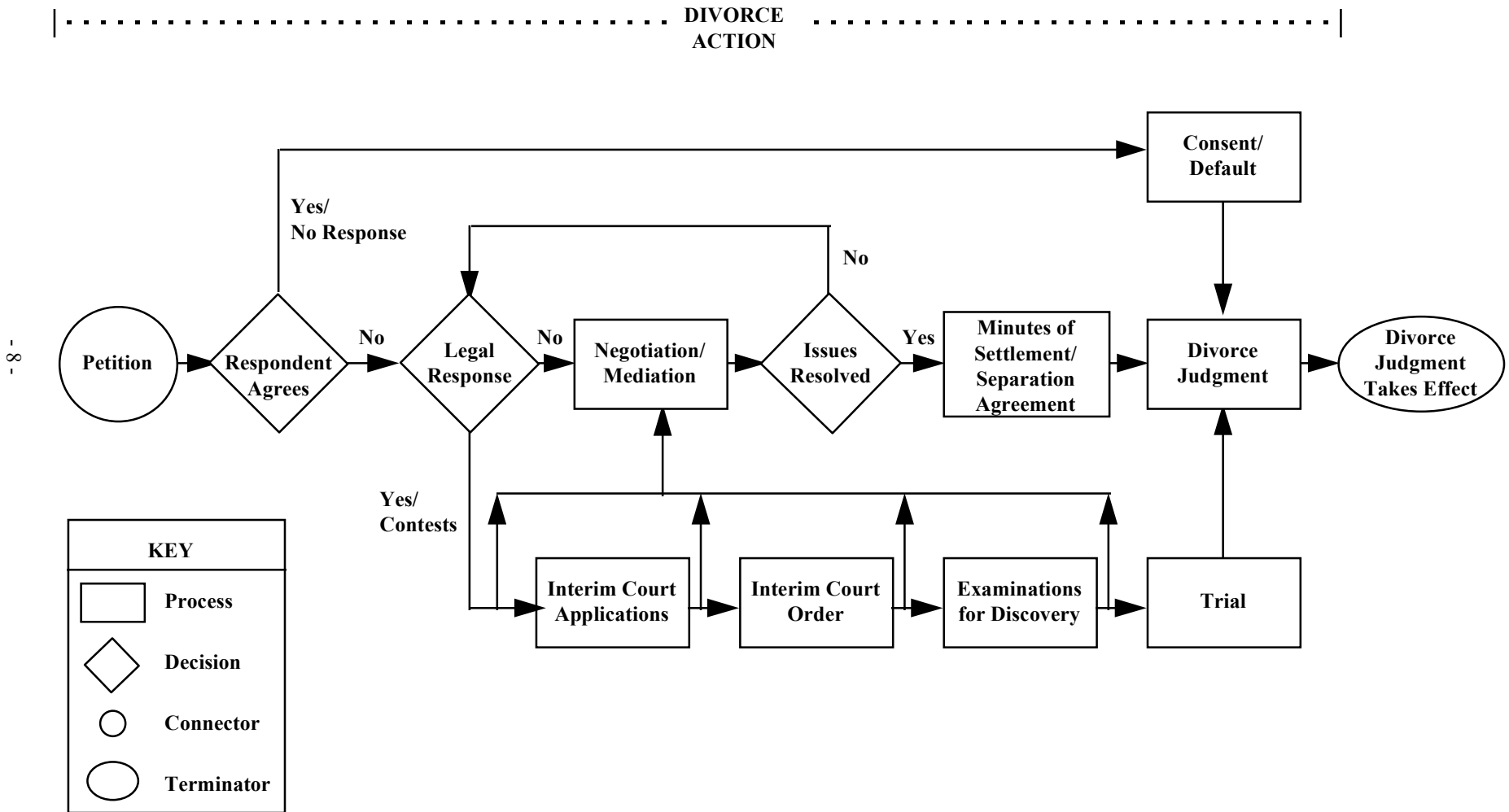
Divorce proceedings technically commence when one or both spouses (joint petition) file a petition (or application) with the court. The petition usually sets out the length of the marriage, the legal grounds for seeking the divorce, the income and assets of the applicant spouse, and the names and birth dates of the children of the marriage. Orders for custody and support of the children and spousal support are also requested. Applications for property division, which are governed by provincial or territorial statutes, are often joined with the divorce petition. Some provincial or territorial rules require an application for property division to be made in separate

Figure A3.1 The Process of Divorce



- 7 -

Figure A3.1 The Process of Divorce (continued)



documents, but permit it to be resolved at the same time as the divorce petition. The rules in other jurisdictions permit property claims to be included directly in the divorce petition. Occasionally, an application for property division has already been made and decided before the divorce proceedings begin.

In all jurisdictions, spouses may file a petition before a one-year separation is completed, although the divorce may not be granted until after one year of separation, if the separation is the grounds for divorce. Once the petition has been filed in court, it must be served on the respondent. The respondent then has a specified time in which to answer the petition.²³ If the parties have already entered into a separation agreement and the order requested in the petition incorporates the terms of the agreement, a response is usually not filed. Similarly, when the respondent agrees with the petition (or does not wish to actively contest it), a response is not filed, even if there are no previous orders or agreements. This type of divorce is referred to as “uncontested.”²⁴ In most jurisdictions, the petition may then proceed without an oral hearing. A judge reviews the documents and makes a divorce judgement. If neither party files an appeal of the divorce judgement, it takes effect in 31 days. If there is an order regarding matters such as child support, custody and access as part of the judgement, this part of the judgement may take effect immediately.

If the respondent files a legal response to the petition, then the petitioner is in turn given an opportunity to respond to that. Negotiations often take place at this point and mediation or other forms of alternative dispute resolution may also occur.²⁵ If the issues in dispute can be resolved, “minutes of settlement” or a separation agreement may be drawn up or the parties may agree to the terms of the orders to be included in the divorce judgement, and the divorce will proceed as if it were uncontested. A respondent may wish to attempt negotiations before filing a response. If negotiations are successful, the resulting written document setting out the terms of the agreement is usually called a separation agreement (or minutes of settlement). If issues are not resolved, an answer is filed and the divorce is then contested.

²³ There are provisions for a “substituted service” (e.g. publication of a newspaper notice) in cases when a respondent cannot be located. The petitioner has six months to serve the petition, and the court may extend this time.

²⁴ In Alberta, the respondent will often file a Demand of Notice when the divorce is not contested. This is not a defence, but a response that ensures that he or she is notified of every application. While not frequently done in Saskatchewan, the rules also allow the respondent to file a Demand for Notice.

²⁵ In Saskatchewan, after the parties have indicated that they are ready to proceed to trial, a pre-trial hearing conducted by a judge of the Court of Queen’s Bench (who will not be the trial judge) must be held. This conference is attended by the parties and their counsel. Its purpose is to attempt to mediate a settlement or, if this cannot be done, to obtain agreement on as many issues as possible in order to reduce the length of the trial. Pre-trial conferences are also held in St. John’s, Nova Scotia, Manitoba, Alberta, and at some locations in Ontario. In Ontario, a new set of Family Court rules came into force in all Unified Family Court jurisdictions (also in all provincial courts) in the fall of 1999. The new rules introduced a system of judicial case management for all family cases. Under the new rules, there are three types of pre-trial conferences for contested cases: (1) a case conference; (2) a settlement conference; and (3) a trial conference. The rules require that a case conference be held in every contested case; a settlement conference must be held before the case can be placed on the trial list; and a trial management conference is required only when requested by a party or ordered by the judge (intended for long, complex trials). The parties must attend all conferences in person. In Yukon, a pre-trial conference or settlement conference is available and usually is used if the parties are represented by counsel.

If issues cannot be quickly resolved or there are urgent issues, it may be necessary to apply for interim orders for matters such as custody, child and spousal support, or possession of the matrimonial home, especially if the divorce proceedings are likely to be lengthy or if there is a need for financial support (which is usually the case if there are children). In urgent cases, for example when there are spousal abuse issues, there may be an urgent (*ex parte*) interim hearing scheduled without notice to the other party; such an order may later be reviewed with both parties present.

Examinations for discovery will be held to provide each side with an opportunity to examine the other party under oath in preparation for trial;²⁶ each spouse is questioned by the other's lawyer for this purpose. If there is a dispute regarding custody or access to the children, an assessment by a psychiatrist, psychologist or social worker may also be done. As an assessment and examinations for discovery proceed, or more typically after they are completed, negotiations may begin or continue and minutes of settlement or a separation agreement may result and the divorce may proceed as if it were uncontested. If the parties enter into a separation agreement at any point, they may file a document with the court indicating that it will proceed by consent, which in most jurisdictions does not require an oral hearing for a divorce to be granted.

Failure of negotiations after examination for discovery usually results in a trial, where each party presents evidence on each of the issues in dispute. The final decision is made by the judge. The judge's rulings on child support and other issues are included in the divorce order and, if no appeal of the granting of the divorce is filed, the divorce takes effect 31 days later.

A4.0 FACTORS AFFECTING CASE PROCESSING

A number of factors may affect the process of divorce and the determining of child support in Canada. These factors, related to the broader issues of information, advice and administration of proceedings, vary considerably from area to area in this study, and they are analyzed here.

A4.1 Information on Separation and Divorce

The amount, source and accessibility of basic information for the public regarding divorce and child support varies across the study sites.

A4.1.1 Public Information Services

In addition to the information packages on the Federal Child Support Guidelines and other materials provided by the federal government for distribution by the provincial and territorial governments, information has been provided directly at most sites to the public by the specialized child support units or indirectly through local public legal education groups. Public information meetings about the divorce process have been held in Winnipeg, Edmonton, Yellowknife and Whitehorse, and throughout New Brunswick, Saskatchewan and Ontario. These information services, for the most part, are provided by public legal education programs or designated professionals; however, in Saskatchewan public education is provided by

²⁶ In the unified family courts and provincial courts in Ontario, examinations for discovery can only be conducted with leave of the court. In Saskatchewan, this only occurs for property issues. The court's permission is required to examine with respect to custody, access or support issues, and this is rarely requested.

Saskatchewan Justice (see sections A4.2 and A4.4 below). The Public Legal Education Association (PLEA) also provides some public education in Saskatchewan and distributes written material.

Divorce kits with standard forms, which include child support information, are almost universally available. In many jurisdictions they are provided by the public legal education groups; in others they are developed and sold by private bodies. For example, in St. John's, Newfoundland, they are sold by the Women's Centre, whereas in Ontario, Alberta and British Columbia they are sold by private companies and are available at stationery stores. In Nova Scotia, these kits are being updated by the Public Legal Education Association of Nova Scotia with court services funding, and in New Brunswick the Public Legal and Information Service has developed both a *Guide to Doing Your Own Divorce* and a Child Support Variation Kit. Many of the kits prepared by private companies have been updated to include information on the Guidelines. Most of those prepared by court services or non-governmental agencies also have been updated. The divorce self-help kit in Saskatchewan has been updated to include the Guidelines and is available for \$25 at Court of Queen's Bench locations. As part of the Child Support Guidelines initiative, Saskatchewan Justice and British Columbia developed a free variation kit to help parents vary their child support orders without counsel. In Ontario, the Ministry of the Attorney General developed and distributes divorce guides to procedure for the Unified Family Court. Alberta has developed packages of information and forms to be used by unrepresented parties to vary child support orders. There are packages that deal with various combinations of applications that include child support (\$8 each) and one general information package that is free of charge.

A number of the sites have information telephone lines. However, these differ in various ways. In Prince Edward Island, a nominal fee is charged for use of a law information line, and the clients can be given both information and a referral to a lawyer. In Alberta, there is a toll-free Dial-a-Law and Lawyer Referral line that provides the public with both information and a referral to three lawyers specializing in particular matters. These lawyers give up to 30 minutes of free consultation through this referral service before requiring a private retainer. The Faculty of Law at the University of Alberta offers divorce clinics through their Student Legal Services. These services are available only to those who have settled all of the corollary relief issues. There are also income guidelines similar to legal aid. In Calgary, divorce clinics are offered by lawyers on a *pro bono* basis through Calgary Legal Guidance; however, there is a small fee for attending. Ontario's Law Society of Upper Canada operates a lawyer referral service that the public can call to obtain referral to a lawyer. There is a \$6 charge for each call to the service, unless the person is in a "crisis" situation (e.g. domestic violence, incarceration), in which case the call is free. The referred lawyer will provide up to 30 minutes of legal advice without charge to the client.

In Manitoba, the Community Legal Education Association operates lawyer referral lines and legal information lines staffed by paid lawyers. In Yellowknife, the law lines are free, but they operate mainly as a referral system and are staffed by volunteer lawyers. Saskatchewan and New Brunswick have telephone lines that provide information to the public about the Guidelines. In addition, the lawyer referral service in Saskatchewan will refer callers to private counsel who will provide initial advice for a nominal fee on family law issues, including those related to child support. The Saskatchewan Law Society operates the lawyer referral service and invoices Saskatchewan Justice for any child support inquiries. In Whitehorse, the law line is accessible to

all Yukon communities and is staffed by one full-time lawyer. In British Columbia, a toll-free line of taped information on the Guidelines is available, and the British Columbia Branch of the Canadian Bar Association operates a lawyer referral service (with half an hour of a lawyer's services for \$10).

A4.2 Guidelines Resources

All of the study sites have designated staff to provide services relating to the Guidelines. Most of these positions are jointly funded by the province or territory and the Department of Justice Canada. However, the services provided and how they are delivered vary. Three types of service provision models can be identified as follows:

- services provided as part of court services offices;
- services provided through partnerships with other agencies; and
- services provided by distinct units or programs.

A4.2.1 Services Provided Through Court Services Offices

In most sites, court services staff provide information on child support. Ten study sites have implemented this type of model (Halifax, Charlottetown, Fredericton, Toronto, Ottawa, London, Regina, Saskatoon, Whitehorse and Yellowknife). In this model, one to five staff members are dedicated to this type of work at the court services office. While they vary across jurisdictions, staff functions include providing information to the public through general advertising, mail-outs, information sessions and telephone information lines, as well as providing information to individuals on request. In some jurisdictions, such as Nova Scotia and Prince Edward Island, the staff may also provide information directly to the court, legal aid and duty counsel. In Charlottetown, the child support officer prepares the final draft of the court order when the parties are not represented. In Saskatchewan, a toll-free telephone line provides access to staff who offer information and mail-outs, and also take registrations for parent education sessions for the public. These staff are part of Family Law Support Services, a branch of Court Services. In New Brunswick, Family Court social workers provide counselling and information to individuals going through separation and divorce, including providing information on the Guidelines.

In Ontario in 1999, Family Law Information Centres were established in 17 Unified Family Court sites and in Toronto. They have now been expanded to most non-Unified Family Court districts in the rest of the province. The centres contain brochures, videos and other information and resource material on family law. Court staff assist clients in the centre by providing information, particularly on court procedure. An advice lawyer from Legal Aid Ontario is available to provide summary legal advice or case-specific advice to clients who pass a financial eligibility test. In the Family Law Information Centres in the Unified Family Court, an information and referral coordinator employed by the court-connected mediation service provides detailed information about alternative dispute resolution options and community resources.

At two sites, government staff outside the court also deal with child support. In Prince Edward Island, two family support order program workers at the social assistance office are mandated to help clients on social assistance deal with issues regarding the Guidelines. In Yellowknife, a

worker at the Maintenance Enforcement Office provides information and variation packages to the public.

A4.2.2 Services Provided Through Other Agencies

In Newfoundland and New Brunswick, information regarding the Guidelines is provided through partnership with other agencies. In Newfoundland, the departments of Justice and Human Resources and Employment jointly fund 11 support application workers across the province. The workers provide assistance to clients of Social Services who are involved in child support issues, and help the general public obtain or vary child support orders.

In New Brunswick, no offices specifically handle issues related to the Guidelines. However, in addition to the court-based services discussed above, a toll-free line available to the public for child support information is provided in partnership with the Public Legal Education and Information Service of New Brunswick.

In British Columbia, Family Justice counsellors who work in Family Justice Centres not located in the court house provide mediation services for parents, with preference given to low-income families. Also, the Ministry of Social Development and Economic Security operates the Family Maintenance Program, which obtains child support orders on behalf of custodial parents who have assigned their rights to child support to the Crown.

A4.2.3 Specialized Child Support Units

Winnipeg, Edmonton, Calgary and three Family Justice Centres in British Columbia have specialized child support units. These units vary considerably in their structure and functions.

In Winnipeg, the Child Support Guidelines Centre provides parent education services for separating and divorcing parents, as well as a Comprehensive Co-mediation and Mediation Internship Program, which provides an alternative to court action and an opportunity for professionals with appropriate mediation education to obtain practical mediation experience under the supervision of program specialists.

Edmonton and Calgary have Family Law Information Centres (FLIC) (name changed July 1, 2000 from Child Support Centres) located at the Court of Queen's Bench. The centres have two primary roles. The first is to assist the public, the legal community and affiliated service agencies by providing information and material about the Guidelines and the court process. The centres have developed various booklets on court procedures and legal rights to assist unrepresented parties with their Queen's Bench child support applications. The centres have also developed court procedure booklets for Queen's Bench family law applications dealing with such issues as custody and access, spousal support, arrears or stay of enforcement and restraining orders. The second role is to assist the courts. The centres assist the judges by providing legal research and consultation on specific issues pertaining to the Guidelines and family matters. They provide computer training on child support programs, and make staff available during Family Chambers. They also review all applications for consent orders for child support and desk divorces involving children prior to their submission to the judiciary (whether submitted by lawyers or by unrepresented parties), with respect to calculations under the Guidelines, compliance with the information requirements in section 13 of the Guidelines and the Alberta Rules of Court, and the consistency and completeness of supporting materials and financial disclosure. The Edmonton and Calgary FLICs also provide training and information sessions on

the Guidelines, provide training and information sessions on the review procedures for child support applications, and act as “friend of the court” (*amicus curiae*) for Queen’s Bench confirmation hearings, which confirm child support orders made in another jurisdiction in cases when one of the parents does not live in Alberta.

In British Columbia, child support clerks are located in Family Justice Centres in three centres. These clerks provide information to parents about the Guidelines, as well as dispute resolution options, and can help unrepresented parents prepare court documents for child support applications. Preference is given to low-income parents appearing in Provincial Court.

A4.3 Advice

There is an important theoretical distinction between providing legal information and giving legal advice, although in practice this distinction may be hard to make. Only lawyers should give legal advice about a specific situation, and it should be directed to a particular client in the context of a professional relationship. It appears that most parties involved in divorces obtain legal advice at some point in the process. This includes privately retained counsel as well as lawyers paid by legal aid. Others may obtain some legal advice through telephone consultations, usually referred to as “law lines.”

Legal aid has changed considerably in the last several years, and in some jurisdictions Legal Aid resources are not available to those involved in family law disputes. While legal aid is still available for restricted purposes in many areas, it is usually not available for divorce proceedings. Legal aid is often available only for family law cases involving violence, abuse or other criminal matters.

The site interviews indicated that legal aid in divorce or support cases is currently available in all cases for low-income persons in only three jurisdictions: Manitoba, Saskatchewan and the Northwest Territories. All of these locations perform “needs” testing to determine the financial means of their clients. In some areas in Newfoundland, Ontario, Alberta and British Columbia, legal aid is available for low-income persons in critical or urgent situations, such as those involving domestic violence. In Ontario, legal aid advice lawyers also provide summary legal advice (up to 20 minutes of general advice) to litigants through the Family Law Information Centres. In 1999, British Columbia legal aid coverage was extended to the variation of child support orders when the change in child support amount is expected to be at least \$100 per month. (Recent funding cuts to the British Columbia Legal Services Society will likely change legal aid coverage for family law matters in British Columbia. However, at this time the Legal Services Society has not announced how it will manage the cuts). In Nova Scotia and the Yukon, needs-tested legal aid is available to the point when the client files the divorce petition. Only in New Brunswick are legal aid services available to all recipients of child support without needs testing. Free mediation services are available, and for those for whom mediation is inappropriate, not possible or unsuccessful, legal representation services are provided. However, these services are available in family cases only until the client files a petition for divorce.

A4.4 Education Programs for Separating Parents

While education programs for separating and divorcing parents are not formally linked to the Guidelines initiatives, most of these programs were established about the time that the Guidelines were being introduced. These programs provide information regarding the Guidelines and other issues to separating and divorcing parents. There is great interest across

Canada in programs that provide parents with information about the effects of separation and divorce on their children, as well as information about legal issues such as child support. Currently, programs are operating in St. John's, Halifax, London, Ottawa,²⁷ Toronto and Whitehorse, and throughout Manitoba, Saskatchewan, Alberta and British Columbia. Programs are under development in several other sites.

Alberta and the Family Division of Nova Scotia are the only locations where the parenting education program is mandatory for all separating and divorcing parents prior to receiving a court order. In British Columbia, a pilot project for mandatory parent education was implemented in 1998 and sessions are now mandatory in several urban locations and voluntary in some smaller centres. In Saskatchewan, a pilot project for mandatory parent education was introduced in Saskatoon and Yorkton in October 2001. Parenting programs in other jurisdictions are optional. However, in all locations judges may require parents to take part in a parenting program as a condition of custody and access.

The content of the programs generally covers such topics as the following:

- stages of separation and divorce;
- effects of divorce on children;
- effects of divorce on parents;
- communication and relationship skills;
- information about other services, such as mediation and counselling; and
- legal issues, including child support.

Some programs, such as Alberta's "Parenting after Separation Seminars" and Manitoba's "For the Sake of the Children," have special sessions for parents involved in high-conflict cases and cases when domestic violence is an issue.

Most courses take between three and six hours in two or three sessions and are conducted as group presentations varying from 10 participants to 75. In Nova Scotia the presenters are trained volunteers with professional backgrounds. In Saskatchewan, the facilitators for these sessions are from the Family Law Support Service Branch (Court Services) and Mediation Services of Saskatchewan Justice. In other provinces, the presenters are either salaried or paid on a fee-for-service basis.

Saskatchewan has also recognized that children experiencing separation and divorce could also be left confused, worried and unsure of their new family situation. To help children of separated and divorced families understand their situation, Saskatchewan Justice has worked with community agencies to make children's educational programs available. A curriculum writer was hired to develop an education curriculum for children experiencing separation and divorce.

²⁷ Programs in the Ottawa and London unified family courts, along with the other Unified Family Courts in Ontario, focus on parenting issues rather than legal issues. Toronto's program covers both aspects.

A facilitator's guide was produced for three age groups (6 to 9, 9 to 12 and 12 to 16). The program addresses the legal process of divorce and separation as well as the emotional experiences and changes in the family relationships. To be used with the education curriculum, or to be viewed on their own, Saskatchewan Justice also produced videos for children in the same age categories. The facilitator's manual and videos for children have been distributed to all provincial health boards, all young offender institutions in the province, all education districts, as well as libraries and community agencies.

In Ontario, all 17 Unified Family Court sites offer voluntary parenting information sessions, which focus on the effects of separation and divorce on children. General information on family law is provided through the Family Law Information Centres at these sites. Toronto Superior Court has a mandatory information pilot program under way. The content of this program is more general, since it provides a general overview of family law information and includes a component that focuses on parenting issues.

A4.5 Types of Divorce

Most divorces in Canada are uncontested and are granted without a personal appearance in court by either party. Uncontested divorces without a hearing are referred to as "paper divorces" in Nova Scotia and Saskatchewan, as "affidavit divorces" in New Brunswick, Prince Edward Island, Ontario and Manitoba, and as "desk divorces" in Alberta, British Columbia, Yukon and the Northwest Territories. Only in St. John's must the petitioner appear before a judge for an uncontested divorce, in what is known as a "forthwith divorce."

The other type of divorce found in all jurisdictions is a "trial divorce," which occurs when the granting of a divorce, or more typically a corollary issue like child support, is contested. In Newfoundland, Manitoba and in a number of sites in Ontario, pre-trial settlement conferences are conducted by a judge (other than the one who will conduct the trial) using a number of different dispute resolution techniques to attempt to settle a case. In Alberta, pre-trial settlement conferences and mediation are also offered by judges.

A number of sites also identify a third type of divorce. These are called "oral hearings" in Ontario and Manitoba, and "chambers divorces" in Prince Edward Island, Saskatchewan, British Columbia, Yukon and the Northwest Territories. These hearings are conducted in the judge's chambers, rather than in open court.

A4.6 Preparation of the Order

Once the judge makes a decision regarding the divorce and child support (called a Divorce Judgement in Figure A3.1), a written order must be prepared. In almost all the study locations, the legal counsel for the petitioner or respondent is responsible for drafting the interim or final order, which is then usually checked by a clerk. At some sites (for example, St. John's, Halifax and Charlottetown), the clerk or child support officer prepares the interim or final order in cases where parties are not represented. In Whitehorse, the filing clerk ensures that specific pieces of information are included in the order.

Alberta appears to be the only jurisdiction where all forms of order for consent and uncontested desk applications (whether submitted by lawyers or unrepresented) are checked by FLIC staff or clerks of the court against the Guidelines in general and to ensure compliance with section 13 of

the Guidelines. A summary of the review, or a review memo, is provided to the judge. This review memo includes advising the judge of any agreements to depart.

In more than half of the jurisdictions where legal counsel prepares the draft order, the time lag between granting of the divorce judgement and the filing of the order (issued and entered) can often be lengthy, taking up to eight or nine months. However, regardless of how long it takes to get the order, the divorce judgement takes legal effect 31 days after the judge makes the order (unless an appeal is filed).

Some of the language of the orders can be problematic. While some of the language of the Guidelines seems to have been readily adopted (such as sole and split custody), terms like *joint guardianship*, *joint custody* and *joint legal custody* simultaneously appear in orders. While these terms usually mean “joint decision making,” their meaning is ambiguous.

Many sites have standard court order forms that have incorporated the requirements and language of the Guidelines (for example, St. John’s, Alberta, Halifax and Saskatchewan). In Saskatchewan, rule 626 for judgement and rule 630(10) set out what is to be included in a child support order, which is to be separate from a divorce judgement, per rule 626(2). However, in the Family Law Division in Saskatchewan there is not a specific form, but practice directives are issued. Other jurisdictions, such as Prince Edward Island and Manitoba, are revising order forms to incorporate the Guidelines. Manitoba has developed computerized court orders to standardize and speed up the production of final orders. A number of other jurisdictions have expressed an interest in Manitoba’s model.

A5.0 CONCLUSIONS

Given the qualitative nature of the information used to produce this part of the report and the limitations of the study (identified in section A1.2 above), it is difficult to draw firm conclusions. However, descriptions of the processes of divorce and child support orders across Canada lead us to some broad conclusions and some insight into what might be important for the successful implementation of the Federal Child Support Guidelines. Five general observations derived from the information in this report are briefly discussed below.

A5.1 Progress Towards Full Implementation

Based on site visits and follow-up telephone interviews, it is clear that staff at the study sites are strongly committed to full implementation of the Guidelines. While the rapid change and the variation in the rate of change from jurisdiction to jurisdiction make it difficult to study the implementation of the Guidelines, such variation itself permits us to draw valuable information.

A5.2 Jurisdictional Differences in the Process

All divorces in Canada are governed by the *Divorce Act*, and there is basically one general divorce process as described in Figure A3.1. However, the report highlights a number of issues related to the varying availability of information and legal services and the varying procedures that can affect how a couple may experience the divorce process. Further, the report highlights the importance of administrative supports (such as FLIC staff checking applications in Edmonton) to ensure consistent treatment of spouses and children. These factors vary among

study locations and even within some jurisdictions. Therefore, the processing of divorce cases varies widely in different parts of the country.

More consistency in the treatment of cases involving children is one of the objectives of the Guidelines. How various aspects of the divorce process increase or decrease consistency should be an important component in any review of the Guidelines.

A5.3 Importance of Administrative Procedures

This report documents the importance of using standardized administrative procedures in implementing the Guidelines. Particularly important is the use of standardized court order forms to collect and list Guidelines information. In locations where standard procedures and forms have been implemented, use of the Guidelines is virtually universal.

A5.4 Importance of Having Judges Committed to the Process

At sites where key judges actively support the Guidelines, implementation seems to be occurring faster. Practice directives from Chief Judges seem to be very effective in supporting use of the Guidelines. The trend toward the implementation of Unified Family Courts also seems to contribute to adoption of the Guidelines.

A5.5 Progress Towards Provision of Public Legal Information

At all sites, efforts are being made to improve access to the public of information about child support and divorce in general.