

# The Advisory Guidelines 20 Months Later

by

Professors Carol Rogerson and Rollie Thompson

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*[Note: Case Law Summaries Found in Appendices to Paper]*

## A. Response to the Guidelines

It has been well over a year and a half since the *Draft Proposal* for Spousal Support Advisory Guidelines was released at the end of January 2005. There have been many developments since then. For starters, the Draft Proposal has already achieved one of its goals: the rekindling of serious debate about the law of spousal support as lawyers, judges and members of the public react to its contents.

Awareness of the Advisory Guidelines is steadily increasing. Over 50,000 copies of the *Draft Proposal* were downloaded from the federal Justice web site in the first year. Since the release of the *Draft Proposal* we have traveled across the country talking to groups of lawyers and judges to provide information about the contents of the *Draft Proposal*, to clear up misunderstandings and answer questions, and to solicit responses.

There are now approximately 170 judicial decisions from across the country in which the Advisory Guidelines have been cited and considered. Included in this collection are strong endorsements of the Advisory Guidelines by two appeal courts--the British Columbia and New Brunswick Courts of Appeal. In its ground-breaking decision in *Yemchuk v. Yemchuk*, [2005] B.C.J. No. 1748, 2005 BCCA 406, released in late August of 2005, the B.C. Court of Appeal approved of the Advisory Guidelines "as a useful tool to assist judges in assessing the quantum and duration of spousal support".

But decided cases are only the tip of the iceberg, as few spousal support cases go to trial. Even more significantly, we have learned in our travels across the country that the Advisory Guidelines are being widely used in discussions with clients, in negotiations with other lawyers, and in settlement conferences. The development of computer software to perform the calculations under the formulas has facilitated the use of the Advisory Guidelines by lawyers.

We have accomplished what we hoped for in the period since the release of the *Draft Proposal*. We are now at a point where there is sufficient familiarity and experience with the Advisory Guidelines that we can move into the next phase of the project—one of seeking informed feedback in a structured way with a view to making revisions to the *Draft Proposal*. We expect to release a "final" version of the Advisory Guidelines in the fall of 2007.

We have drafted a new document to structure that feedback process— "Issues for Discussion: Revising the Spousal Support Advisory Guidelines", what we call the "**Issues Paper**". A draft of the "Issues Paper" was released at the National Family Law Program in Kananaskis in July 2006 and the final version is being released in conjunction with this update. *The "Issues Paper" draws together many of our reflections on the experience with the Advisory Guidelines to date and should be read in conjunction with this update paper.*

On the basis of the responses we have had to date, we can say that, in general, the Advisory Guidelines have had a very warm reception from lawyers, mediators and judges, as people appreciate the benefit of greater consistency and predictability. Again and again, we hear that it is helpful to have a range to know that one's claim, offer, settlement or decision is "in the ballpark".

## **B. Criticisms of the Guidelines**

The Advisory Guidelines have been criticized. It is important to distinguish different kinds of criticisms..

Some criticisms are quickly dealt with: they are based on misunderstandings about the *Draft Proposal* and quickly disappear with a more accurate understanding of the scheme. Much of our time in presentations to lawyers and judges is still spent on correcting misunderstandings and pointing out misapplications of the Advisory Guidelines. Other criticisms do flag problems and concerns with specific parts of *Draft Proposal* that will be very helpful as we look to revisions and improvements to the Advisory Guidelines over the coming year.

These sorts of criticisms will not be dealt with here. The misunderstandings of the *Draft Proposal* and the issues that have emerged for possible revision are discussed in detail in the "Issues Paper" and we refer you there.

There have also been more fundamental criticisms leading some to reject the Advisory Guidelines outright. Some critics remain fundamentally opposed to the concept of any "guidelines" for spousal support, viewing the nature of the decision-making in spousal support cases as necessarily discretionary and individualized. Other critics are troubled by the informal, advisory status of the guidelines, seeing them as an illegitimate attempt to change the law outside of the legislative process. These criticisms have found judicial expression; see, for example, the decision of Justice Trussler in *V.S. v. A.K.*, [2005] A.J. No. 1357, 2005 ABQB 754 (Alta.Q.B) and that of Justice Julien in *D.S. c. M.S.*, [2006] J.Q. no. 506, 2006 QCCS 334 (C.S).<sup>1</sup> The criticisms voiced by Justice Julien were echoed at the appellate level by Quebec Court of Appeal in its recent (June 2006) decision in *G.V. v. C.G.*, [2006] J.Q. no. 5231.

These decisions do not, however, represent the dominant view of the Advisory Guidelines that has emerged as the proposed Guidelines have become better understood. Even the Quebec Court of Appeal judgment in *G.V. v. C.G.*, for example, can be read not as an outright rejection of the Advisory Guidelines but rather as a determination that they were misapplied by the trial judge on the facts of the case—that they were not used in the way the B.C. Court of Appeal used them in *Yemchuk*. The Quebec Court of Appeal did not disagree with *Yemchuk*, but merely distinguished it on the basis that *Yemchuk* did not endorse an "automatic" [translation] application of the Advisory Guidelines by a trial judge.

It is important, nonetheless, to briefly respond to the two main criticisms which have been leveled against the Advisory Guidelines: their rigidity and their illegitimacy.

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<sup>1</sup> Justice Julien's reasoning has been followed in Quebec by Justice Gendreau in *B.D. v. S.D.*, [2006] J.Q. no. 1670, 2006 QCCS 1033 (C.S.) and *M.G. c. J.C.*, [2006] J.Q. no. 1669, 2006 QCCS 1028 (C.S.)(Gendreau J.C.S.).

**(a) Too Rigid: The “Cookie-Cutter” Approach to Spousal Support**

In *V.S. v. A.K.* Justice Trussler chooses the image of the “cookie cutter” to convey her concern about the Advisory Guidelines being “too rigid”:

The Guidelines are a cause for concern. There is no doubt that they are useful for a judge who does not wish to make a thorough and careful analysis of each case and wants a quick answer. However, it is not the role of judges to opt out for an easy answer. Rather judges are bound by the *Divorce Act* and the case law which require judges to do individual justice in each case and not look for a “cookie cutter” answer.

She rejects the “cookie cutter” approach in favour of one based upon “individual justice”:

The stated purpose of the Guidelines is to bring more certainty and predictability to the determination of spousal support. As a result individual justice is sacrificed for consistency. Every case is different on its facts. There are often many variables. Flexibility and discretion are needed for individual circumstances.

In the same vein, in *G.V. v. C.G.*, the Quebec Court of Appeal describes Justice Julien’s concerns about the Advisory Guidelines as substituting “recipes” [translation] and “mathematical formulas” [translation] for the difficult analysis required by the *Divorce Act* and the Supreme Court of Canada. Reference is made to Justice L’Heureux-Dubé’s comments in *Moge* describing the “complex and ... difficult analysis” required in spousal support determinations and her insistence that “[t]here are no easy recipes, nor are there neat compartments on which to rely”.

Criticisms of the Advisory Guidelines as “too rigid” often assume a more rigid scheme than the one we have actually proposed. There is a tendency, on the part of some, to lump all schemes of spousal support guidelines together, without attention to the scheme of *advisory* guidelines set out in the *Draft Proposal*. As well, to the extent that the criticisms are directed to the specific scheme set out in the *Draft Proposal*, they focus upon the formulas to the exclusion of the rest of the Advisory Guidelines.

These criticisms fail to recognize that there are critical steps in applying the Advisory Guidelines *before* the formulas can be applied: application, entitlement, determination of income, ceilings and floors. And there are critical steps *after*: location within the ranges, restructuring, exceptions, variation and review. By these steps, there remains room for the exercise of judgment on the facts of an individual case, facts other than those built into the formulas.

Criticisms of the Advisory Guidelines as “too rigid” may also embody a fear that they will be applied in a rigid and inflexible fashion, whatever the intentions of the authors. Nothing in the case law or experience so far suggests that judges are applying the Advisory Guidelines in a rigid fashion. Lawyers who come to court armed only with the ranges generated by the formulas, expecting that the Advisory Guidelines will be used in this fashion, are at serious risk of having their arguments ignored.

Those who oppose any form of guidelines for spousal support and who stress the unique nature of every case ignore the fact that there are many typical cases with very similar facts. They also undervalue the importance of consistency. What comes to mind is Ralph Waldo Emerson’s famous quote: “a foolish consistency is the hobgoblin of small minds”. In the law of spousal support, a little consistency would not be “foolish”. But this is not consistency for its

own sake. It's about a fundamental principle of law: equal treatment, the similar treatment of similar cases. These formulas generate outcomes across a wide range of cases in a consistent, principled fashion, serving as a healthy check upon one's "gut feeling" or budget-based result.

**(b) An Illegitimate Change in the Law: Inconsistent with the *Divorce Act* and its Language**

Criticisms of the Advisory Guidelines as "too rigid" are often woven together with the argument that any guidelines are inconsistent with the discretionary approach mandated by the *Divorce Act* which requires consideration of numerous factors and objectives. And, so the argument goes, the *Divorce Act* is "the law", in contrast to the Advisory Guidelines which are not. As Justice Trussler put it in *V.S. v. A.K.*:

The provisions of the *Divorce Act* as interpreted by the Supreme Court of Canada are the law in this country with respect to spousal support. The Spousal Support Advisory Guidelines, January 2005, are the work of two university professors ... assisted by a small committee. Those with strong views to the contrary were not involved, nor was there widespread discussion of the guidelines prior to their publication. They have not been enacted by the Parliament of Canada or any Provincial Legislature nor are they the subject of any governmental regulation.

This criticism presents the Advisory Guidelines as a new scheme for determining spousal support that is inconsistent with the *Divorce Act* and its language. It is true that the formulas at the core of the Advisory Guidelines scheme can easily be taken, at first glance, as an entirely new scheme of income-sharing that has been superimposed on the *Divorce Act*. But an understanding of the intentions informing the project and the way in which the Advisory Guidelines were developed counters this first impression.

The Advisory Guidelines were intended to reflect current law, not to change it. The formulas were developed to embody, or act as "proxy measures" of, the principles and factors which structure the current law of spousal support. We have summarized each formula in a phrase, one that captures the current law on amount and duration in the relevant cases: "merger over time" for the *without child support* formula and "parental partnership" for the *with child support* formula. These phrases do not represent new theories of spousal support, just shorthand labels for the existing law. The *without child support* formula reflects the mix of compensatory and non-compensatory thinking found in *Moge* and *Bracklow*, which interpreted the objectives of s. 15.2(6) of the *Divorce Act*. The *with child support* formula is profoundly compensatory, reflecting the analysis of *Moge*, which in turn emphasized paragraphs (a) and (b) of s. 15.2(6).

The formula ranges are intended to capture the dominant ranges of support outcomes under the current law, those clusters you can find in the cases. They are not, contrary to what some believe, just "averages" of all the spousal support cases decided out there. Given the wild scatter of outcomes, that would not be helpful or instructive.

Judgment had to be exercised by us to identify the dominant patterns in the current law. Negotiated settlements don't always track the decided cases and here we had the benefit of the expert advice of the Advisory Working Group on Family Law. Some cases contain exceptional facts, that would take them out of any formula. We had to classify categories of cases, starting with the big divide in the case law between cases with and without dependent children. In some sub-sets of cases, we had to identify emerging trends in the law, e.g., short marriages with young

children. The formulas are the product of a comprehensive process of review and testing before the release of the *Draft Proposal* by the federal Department of Justice.

The British Columbia Court of Appeal in *Yemchuk* described the Advisory Guidelines in terms similar to a compilation of precedent:

It should also be stressed that the Advisory Guidelines are intended to reflect the current law, rather than to change it. They were drafted by the authors after extensive analyses of the authorities regarding spousal support across the country, particularly the *Moge* and *Bracklow* decisions and those following thereafter. ... While decisions can undoubtedly be found in which the result would not accord with the Advisory Guidelines, I am satisfied that their intention and general effect is to build upon the law as it exists, rather than to present an entirely new approach to the issue of spousal support... They do not operate to displace the courts' reliance on decided authorities (to the extent that relevant authorities are forthcoming) but to supplement them.

Finally, the formulas are not the Guidelines, a point which brings us again to the previous criticism. Using the exceptions, both those identified in the *Draft Proposal* and those which are driven by the facts of atypical cases, it is possible to depart from the outcome suggested by the formulas if it would be at odds with the objectives of the *Divorce Act*. Indeed, reasoned explanations of why the outcomes under the formulas are at odds with the *Divorce Act* will serve to stimulate a renewed focus on the legislation and its objectives.

We also need to recognize that some who criticize the Advisory Guidelines as being inconsistent with the current law simply don't like the current state of spousal support law. They may, for example prefer a stricter compensatory approach, as if *Bracklow* never happened, or a pre-*Moge* approach that placed heavy emphasis on achieving a clean break. The open-ended discretion under the current law allows every lawyer and every judge to insert his or her personal theory of spousal support into the amount and duration of that support. Guidelines, even Advisory Guidelines, serve to reveal and hence constrain these outcomes at odds with the principles and dominant patterns of the current law.

### **(c) Too Little Guidance**

Before we leave the criticisms of the Advisory Guidelines, we should briefly mention one that comes from the opposite end of the spectrum. While some are concerned that the Advisory Guidelines will convert the determination of spousal support into a mechanistic exercise leading to unfair results on the facts of particular cases, others have been disappointed that the Advisory Guidelines do not go far enough in providing guidance.

Some criticize the project for the amount of discretion that still remains. Others also criticize the Advisory Guidelines for not providing "principled" answers to many of the "hard questions" in spousal support law. Some of the "hard questions" identified are: entitlement, how to determine the appropriate level of self-sufficiency in a particular case, the impact of post-separation increases in the payor's income, and the impact of remarriage and second families. Again, this is not a reform exercise. The Advisory Guidelines identify these hard issues and often provide some assistance in their resolution, but there is no consensus in the current law and these hard issues have to be decided by the courts in the absence of specific legislation.

A related concern is that the ranges under the Advisory Guidelines are too wide, leaving too much room for discretion. But again, the ranges were built to reflect current practice and to accommodate provincial and regional variations in support outcomes.

Changes in practice over time—the development of more consensus on hard issues and more consistency in outcomes—may be reflected in revisions to the Advisory Guidelines over time.

### **C. The Courtroom Status of the Guidelines?**

Many judicial decisions have considered the Advisory Guidelines. What is their status in the courtroom? The Advisory Guidelines are not “law” and will not be legislated. But neither are they “evidence” or “expert evidence” and there is no need to “prove” the document.

The *Draft Proposal* is really part of legal argument and reasoning. The *Draft Proposal* can be cited like any other article, text or government document. This approach has been adopted by the B.C. Court of Appeal in the *Yemchuk* case and by Justice Martinson in *W. v. W.*, [2005] B.C.J. No. 1481, 2005 BCSC 1010 (B.C.S.C.). As Justice Prowse stated in *Yemchuk*:

They [the Advisory Guidelines] do not operate to displace the courts’ reliance on decided authorities (to the extent that relevant authorities are forthcoming) but to supplement them. In that regard, they do not constitute evidence, but are properly considered as part of counsels’ submissions.

For the advocate, the Advisory Guidelines build upon the existing use of software calculations of net income and support scenarios, already presented by lawyers and accepted by judges. The Guidelines’ ranges can best be presented as part of the brief or argument: first you argue the statute and broad principles, then a few similar cases, then the usual budget, expense and ability to pay arguments, capped off by a presentation of these ranges. The ranges can be argued to reflect the dominant ranges of the existing case law on amount and duration, as explained above. The facts of the individual case, analyzed in light of the *Divorce Act* objectives and factors, should be used to make arguments about placement with the range and exceptions.

The need for lawyers to do more than bring the Guideline numbers to court was brought home in *Morash v. Morash*, [2005] S.J. No. 618, 2005 SKQB 411 (Sask.Q.B.) in the colorful comments of Justice Wilkinson:

While [the Advisory Guidelines] have variously been referred to as a useful tool, a cross-check, a barometer, or measuring stick, what they are not is an encouragement to avoid the factual and legal analysis of each case within the framework of the *Divorce Act*’s spousal support objectives. ... If I were informed that fast-flowing rivers in Canada can range in depth from two to twelve feet, it would not tempt me to wade into unknown waters armed simply with that knowledge. Having a range of spousal support obligations advocated by the Advisory Guidelines, without in-depth information about the marriage, provides useful information but no inducement to act upon it.

For the judge, the Advisory Guidelines are part of legal reasoning and the *Draft Proposal* can be used as one more piece of useful information in the determination of the amount and duration of spousal support. The Advisory Guidelines have been variously described in the cases as a “cross-check”, a “check”, a “litmus test”, a “bench mark”, a “useful tool”, a “starting point”.

#### **D. A Review of the Case Law: The Highlights**

As of Oct. 5, 2006 there were 169 judicial decisions in which the Advisory Guidelines have been considered. These cases are summarized in the appendices to this paper. Cases continue to appear at the rate of 2 or 3 a week.

Appendix I is a comprehensive list organizing the cases according to level of court (trial or appellate), date of release and the applicable formula (*with* or *without* child support). Appendix II is a comprehensive list that organizes the cases by province.

Watch for new cases in our case law updates, which are typically revised on a monthly basis and posted on QuickLaw, WestlaweCARSWELL, the CBA National Family Law Section site, Judicom for judges and the University of Toronto Faculty of Law website (on Professor Rogerson's faculty page).

There are now decisions considering the Advisory Guidelines from every province. British Columbia has generated the highest number of decisions (53), with Ontario a close second (44). A significant number of cases have also come from Alberta (19), Newfoundland and Labrador (15) and Nova Scotia (15). The cases include not only trial decisions, but also 10 appellate level decisions: seven from the British Columbia Court of Appeal, and one from each of the New Brunswick, Nova Scotia and Quebec Courts of Appeal. Below we will discuss some of the more important decisions

Not all of 169 decisions we have listed are consistent with the Advisory Guidelines. The criteria for inclusion in our list is simply that the Advisory Guidelines have been referred to or considered. As we noted above, this list includes a small number of decisions which have been very critical of the Advisory Guidelines. The list also includes a number of cases where the Advisory Guidelines, and more specifically the ranges generated by the formulas, were considered, but the result in the case was not consistent with those ranges. Overall, the results in approximately 70% of the cases are consistent with the formula ranges for amount.

There are several reasons why the results in the cases do not always fall within the Guidelines ranges. First, in some cases that rejected the formula range, the order itself actually fell within the range, as the lawyers or the court had erred in stating the proper range. The erroneous numbers reflected inaccurate determinations of income or mistaken calculations. Second, the monthly amount of support may have been outside the formula range, but the combination of amount and duration actually fell comfortably within the global range permitted by "restructuring", had that concept been considered. Third, the case clearly fell within one of the "exceptions" that would explain a departure from the ranges, but neither counsel nor court appear to have considered the exceptions. Fourth, some of the litigated cases reflect weird and wonderful facts that make them truly "atypical". That's why these cases end up before the courts.

In general, what does a review of the case law show?

- Under the *without child support* formula, we see a very good fit between the formula ranges and the outcomes in cases of long marriages. For medium length marriages without children there is also a fairly good fit, once restructuring is taken into account (although often it is not).

- In cases with dependent children, the amounts of child support ordered are fairly consistently within the ranges for amount generated by the *with child support* barring exceptional circumstances such as debt or low incomes.
- Under both formulas we are seeing a few problems with short marriages: under the *without child support* formula in terms of both amount and duration, and under the *with child support* formula in terms of duration, although some of these cases fall into exceptions..
- Many judges (and we suspect lawyers as well) are willing to consider and apply the Advisory Guidelines ranges for amount, but ignore the *Draft Proposal* with respect to duration.
- The Advisory Guidelines tend to be understood as only the formulas, with little attention paid to the important issues that come *before* and *after* the formulas, such as entitlement, restructuring, and exceptions. Often missing as well is an analysis of the factors that determine where to set amount (and if relevant duration) within the range.

Now for the highlights of the case law, beginning with the appellate decisions.

#### **(a) British Columbia Court of Appeal**

The single most important decision to date remains that of the British Columbia Court of Appeal in *Yemchuk v. Yemchuk*, [2005] B.C.J. No. 1748, released in August of 2005, which, as noted above, endorsed the Advisory Guidelines as a “useful tool” in determining the amount and duration of spousal support. The case is also a good example of several important issues that arise under the Advisory Guidelines. In *Yemchuk* the B.C. Court of Appeal ended up deciding the quantum of support on a slightly unusual set of facts. The Yemchuks had been married for 35 years, had one grown child, the husband was 63 years old, and the wife 61. The retired husband received pension income of \$37,600 and sought spousal support from his employed wife, who earned \$75,000. The trial judge found no entitlement. The Court of Appeal reversed and found entitlement on both compensatory and non-compensatory grounds. The husband had taken early retirement from his job in order to accommodate his wife’s employment transfer to Winnipeg. *Yemchuk* nicely illustrates the need to engage in a thorough analysis of entitlement as a threshold issue before any consideration of the Advisory Guidelines. The analysis of entitlement is important not only as a threshold matter to determine if any spousal support will be paid, but also in shaping the exercise of discretion under the various steps of the Advisory Guidelines, such as determining placement within the range and exceptions. Mr. Yemchuk only asked for support until his wife retired and their pensions were divided.

Prowse J.A. used the *without child support* formula range of \$1,190 to \$1,580 per month, in deciding to order \$1,100 per month to Mr. Yemchuk. The Court explicitly discussed placement with the range: the lower end of the range was chosen to adjust for the wife’s employment expenses and deductions. The Court of Appeal stated that the Advisory Guidelines “are intended to reflect the current law rather than to change it”, “to build upon the law as it exists”. The Court described “the move away from a budget-laden analysis” as “appealing”.

In an October decision, the B.C. Court of Appeal again considered the Advisory Guidelines, in *Tedham v. Tedham*, [2005] B.C.J. No. 2186, overturning the trial judge’s

diminishing and terminating spousal support order (\$6,000 for a year, then \$4,000, then \$2,000, then zero). The Court of Appeal maintained the trial judge's initial amount of \$6,000 a month, after considering the *without child support* formula range. The Court removed the three-year time limit too, given the 16-year traditional marriage. The Court did not mention that Ms. Tedham's age and years of marriage came very close to the "rule of 65" that would generate an indefinite order under the Guidelines formula for duration. Nor did the Court consider the possible application of the "custodial payor" formula, which could have been applied as the father was supporting the children directly (but the parties had agreed to "deem" the children, 20 and 21, independent).

There have been five subsequent decisions in which the B.C. Court of Appeal considered the Advisory Guidelines. In *Kopelow v. Warkentin*, [2005] B.C.J. No. 2412 the Guidelines were considered in the context of a challenge to a marriage agreement which left the husband with most of the property. The case involved a 13 year relationship with two children; the wife, who was 55, was earning \$30,000 year, while the husband was earning \$177,000. The wife was found to be entitled to spousal support, and the range under the *with child support* formula (\$3,037-\$4,015) was considered by the Court of Appeal in determining that \$3,500 per month was the appropriate amount. With spousal support in this amount, the Court of Appeal found that the marriage agreement was not unfair.

In *Toth v. Kun*, [2006] B.C.J. No. 739 the Guidelines were considered in the context of an application by the husband to vary support because of his retirement and the drop in his income (from \$70,000 to \$42,000). The case involved a 10 year marriage with no children; the wife was over 20 years younger than the husband, but she had health problems. The trial judge reduced support from \$2,400 to \$1,500 per month on an indefinite basis. The Court of Appeal found that to be too onerous, and instead ordered time-limited step-down support: \$1,200/mo. to Sept. 2006, then \$1,000/mo. to Sept. 2009, with the result that support would be paid for a total duration of 6 ½ years. The amount of support was set higher than the range suggested by the Guidelines under the *without child support* formula (\$525-\$700 for 5 to 10 years) because of the wife's health and limited language skills. The Court did not, however, consider restructuring, which would have shown their award to be within the global range generated by the formula. In the end, *Toth* offers a nice example of a result consistent with the time limits suggested by the *without child support* formula in medium duration marriages.

The most important Court of Appeal decision after *Yemchuk* is the July 2006 decision in *Redpath v. Redpath*, [2006] B.C.J. No. 1550, 2006 BCCA 338. The Court incorporated the Guidelines ranges into the standard of appellate review and ruled that the trial judge had erred in ordering an amount of spousal support much lower than the Guidelines range under the *with child support* formula.

There were difficult property and income issues in *Redpath*, as the husband owned and operated a Granville Island bakery business. The couple had been married for 18 years and they had five children ranging in age from 8 to 18. The oldest lived with the father, the next oldest with the mother, and the other three children split their time equally between the two homes. The husband's income was fixed at \$260,000 per year, and the wife had no income, after having been home with the children during the marriage. In this split/shared custody arrangement, the trial judge ordered child support of \$4,000 monthly (the straight table amount would have been \$4,296 for four children). Spousal support was \$3,500 per month, to be reviewed in three years.

The trial judge erred, claimed the wife on appeal, by not referring to the Advisory Guidelines in his reasons. Justice Newbury clearly ruled that this was not an error: “I do not read *Yemchuk* as indicating that the Guidelines must as a matter of law be used by a judge in determining support.” Second, argued the wife, the trial judge had overemphasized self-sufficiency, after a long, affluent and traditional marriage, a point that seemed to be accepted on appeal. The Court was then faced with the deferential standard of appellate review in support cases set out by the Supreme Court of Canada in *Hickey v. Hickey*, [1999] 2 S.C.R. 518, a standard which would bar appeal courts from intervening simply because they would have “balanced the factors differently”. The next paragraph (para. 42), in which the court addresses the impact of the Guidelines on the standard of appellate review deserves quotation,:

Cases such as *Hickey*, however, were decided prior to the introduction of the Advisory Guidelines. Now that they are available to provide what is effectively a “range” within which the awards in most cases of this kind should fall, it may be that if a particular award is substantially lower or higher than the range and there are no exceptional circumstances to explain the anomaly, the standard of review should be reformulated to permit appellate intervention. In the case at bar, I find that although the trial judge obviously considered the appropriate factors and did not misapprehend the evidence, the figure of \$3,500 per month reached by him is simply too low in light of the Guidelines range of \$4,542 and \$5,510 per month.

Spousal support was increased to \$5,000 per month, to be reviewed in five years.

Some have argued that the ruling in *Redpath* has somehow made the Advisory Guidelines “more binding” or more strongly presumptive than in *Yemchuk*. It was argued in one subsequent case, successfully, that *Redpath* required trial judges to bring their spousal support awards within the formula ranges apart from “exceptional circumstances”: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (Master Taylor). Both of these interpretations of *Redpath* seriously overstate the decision’s effect, largely by misunderstanding the concept of “standard of appellate review”. The standard of appellate review is a method for defining the kinds of cases where an appeal court *may*, not *must*, intervene, to correct the trial result. If the determination of the amount and duration of spousal support is utterly discretionary, then it is very difficult for an appeal court to articulate the limits of the range of acceptable trial results and hence the deferential approach of *Hickey* (an approach which was also applied to child support appeals before 1997). In *Redpath* the Court of Appeal is simply recognizing that the Advisory Guidelines now offer some bench marks for the range of acceptable trial results, making it *possible* to justify appellate intervention when trial decisions fall substantially outside those benchmarks.

The subsequent appeal case of *Stein v. Stein*, [2006] B.C.J. No. 2020, 2006 BCCA 391, supports this less rigid use of the “standard of appellate review”. Another *with child support* case, where the trial judge ordered spousal support of \$2,500 per month for 3 ½ years duration. The Guidelines range was \$3,920 to \$4,883 per month. Once again, the trial judge had overemphasized self-sufficiency to the exclusion of other considerations. The support ordered left “a large gap” between the spouses and was “considerably less than is adequate to meet the objectives of s. 15.2 of the Divorce Act”. An amount of \$4,200 monthly was substituted. Further, the time limit was “too severe” and the support was to be reviewable before termination, depending upon the wife’s ability to find remunerative employment.

One other decision to be noted is *R.S.M. v. M.S.M.*, [2006] B.C.J No. 1756, 2006 BCCA 362, where the Court upheld a trial order within the Guidelines range after a 30-year marriage, where the support provisions in a separation agreement had failed the *Miglin* test.

### **(b) New Brunswick Court of Appeal**

In April of this year the New Brunswick Court of Appeal became the second appellate court to approve of the Advisory Guidelines with its decision in *S.C. v. J.C.*, [2006] N.B.J. No. 186. In this case the trial judge had actually considered the Advisory Guidelines in determining the amount of support in the context of a 25 year traditional marriage. The husband was an army officer earning \$100,000 a year. The factual wrinkle in the case was that the wife, who was 40 years old at the time of separation, had, in the 5 years since separation, retrained and found contract employment earning \$46,764 year, thus raising the “hard” issue of when a former spouse has become “self-sufficient”. After considering the Guidelines range of \$1,625 - \$2,208; a month, the trial judge ordered spousal support of \$1,625 a month for 5 years, rejecting the wife’s claim for an amount higher in the range (\$1,800) and for an indefinite duration.

Justice Larlee, writing for the Court of Appeal, dismissed the wife’s appeal. She approved of the Advisory Guidelines in the following terms:

The guidelines have been referred to in many ways: a check, a cross-check, a litmus test, a useful tool and a starting point. But it is my view that whichever term one likes to employ, their use, through the available software, will help in the long run to bring consistency and predictability to spousal support awards. Not only will they foster settlement, they will also allow spouses to anticipate their support responsibilities at the time of separation.

The Court adopted the reasoning in *Yemchuk* on the issue of the Guidelines’ consistency with current law.

On the issue of the time-limit imposed by the trial judge, Justice Larlee recognized that there is almost a presumption of indefinite support in a long traditional marriage and that a review was generally favoured over a time limit in such cases. However, she relied on deference to the trial judge’s determination that a time limit was warranted on the facts, noting that the wife was young, had no dependents, was capable and had been quickly able to reintegrate into the work force, had found steady employment, and that 5 years was a longer term than that imposed in some cases in which time limits had been upheld in long marriages. The appropriateness of the time limit on the facts of this case is obviously open to debate--touching on the “hard” issue in the current law of the meaning of “self-sufficiency”. However, the result in the case does bring home the point that even after a long traditional marriage there may be a finding at some point down the road that the recipient spouse has become self-sufficient and that entitlement to support has disappeared. Even an indefinite order does not mean permanent support without reduction or even termination at some point in the future.

### **(c) Quebec Court of Appeal**

In *G.V. v. C.G.*, [2006] J.Q. no. 5231, released in June of 2006, the Quebec Court of Appeal became the third appellate court to consider the Advisory Guidelines. As with *S.C. v. J.C.*, this case also involved an appeal of a decision in which the trial judge had used the Guidelines. The case involved a 32-year marriage with three children, two of whom were independent and the youngest of whom resided with the husband. The wife, who was 55, was

earning \$50,000 while the husband earned \$227,000. The wife paid child support of \$15,948 per year. The trial judge applied the Advisory Guidelines; using the range of \$4,500 to \$6,000 per month under the custodial payor formula, she ordered support of \$4,500 per month, at the low end of the range, on an indefinite basis.

The Court of Appeal allowed the husband's appeal and reduced spousal support to \$2,705 per month after engaging in a detailed analysis of the wife's budget. The trial judge was found to have erred in relying as she did upon the Advisory Guidelines rather than engaging in a detailed individual analysis.

The decision contains no ruling in principle rejecting the use of the Advisory Guidelines, with Justice Forget stating that [TRANSLATION] « the dossier as it is and the brief pleadings of counsel on this aspect do not permit us, in my opinion, to pronounce a judgment of principle upon the utilisation of the Advisory Guidelines. »The Court did refer to the criticisms of the Guidelines contained in the judgments of Justices Julien and Gendreau (discussed above.)<sup>2</sup> and the “important” concerns raised by Justice Julien about « recipes »and formulas being used to avoid the difficult individual analysis required by the *Divorce Act*. The Quebec Court did not disagree with *Yemchuk*, but emphasized that the B.C. appeal court had not endorsed an “automatic” application of the Guidelines without an individual analysis.

We are left with a judgment that echoes the standard criticisms of the Advisory Guidelines , but does not reject the Guidelines outright. Trial judges should not default to the Guidelines, suggests the Quebec appeal court, but must look at all the facts of the particular case.

#### **(d) Nova Scotia Court of Appeal**

More recently, the Nova Scotia Court of Appeal made reference to the Guidelines in *Pettigrew v. Pettigrew*, [2006] N.S.J. No. 321, 2006 NSCA 98, where Justice Stewart at trial had used the Advisory Guidelines as a “cross check” in a case involving a 29 year traditional marriage. The husband argued on appeal that the trial judge had erred by using the Guidelines. Hamilton J.A. rejected this argument, reasoning that the trial judge had thoroughly assessed the evidence and the applicable law and had referred to the Guidelines only as a “cross-check.” Justice Hamilton also added the statement that the amount ordered “was less than the amount indicated by the guidelines” (at para. 17). That statement is a bit confusing, as it appears that the amount ordered was in the low end of the range under the *without child support* formula, based on the income figures found by the trial judge. The husband's appeal on amount was dismissed.

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<sup>2</sup> The Court of Appeal erroneously states that these critical decisions were not listed in our paper “The Spousal Support Advisory Guidelines 14 Months Later” distributed at the National Judicial Institute Appellate Court seminar held in Montreal, April 11, 2006. The “14 Months Later” paper, which was dated March 20, 2006 and which, as one of regular updates had been widely distributed beyond the appellate court seminar, did list Justice Julien's decision in *S.(D.) v. Sc.(Ma.), No. 500-12-267344-038, 27 janvier 2006*. The decisions of Justice Gendreau were unknown to us at the time the “14 Months Later” paper was prepared and were added in the next update, “The Spousal Support Guidelines 16 Months Later”, dated May 31, 2006.

### (e) Trial Judgments

Here we will identify a few particularly helpful decisions under each of the two formulas.

#### (i) *The Without Child Support Formula*

One case under the *without child support* formula which should definitely be read as a general primer on the Guidelines is *McCulloch v. Bawtinheimer*, [2006] A.J. No. 361 (Q.B.) (Sullivan J.) The case provides an excellent overview of the Advisory Guidelines and a detailed explanation of the various steps in the scheme that need to be considered both before and after the formulas. The result in the case, which involved a six year relationship between “adult interdependent partners” as defined under provincial legislation, was consistent with the *without child support* formula after an explicit use of restructuring and findings that the compensatory and debt payment exceptions were inapplicable.

Four other decisions provide excellent discussions of different aspects of the *without child support* formula: *Carr v. Carr*, [2005] A.J. No. 391 (Q.B.) (Veit J.) (interim support, Guidelines used to divide resources after long marriage); *Modry v. Modry*, [2005] A.J. No. 442 (Q.B.) (Germain J.) (income of \$1.26 million above ceiling, discussion of Guidelines); and *Maitland v. Maitland*, [2005] O.J. No. 2252 (S.C.J.) (Pardu J.) (consideration of low income issues where husband makes \$28,000 and wife disabled); *A.M.R. v. B.E.R.*, [2005] P.E.I.J. No. 83 (S.C.T.D.) (Matheson C.J.T.D.) (wife earns less than floor, no ability to pay support to husband). Two cases of note in which the *without child support formula* is applied in the context of long marriages without children are *Foley v. Girard*, [2006] O.J. No. 2496 (Ont. S.C.J.) (Aiken J.) (gay couple together 20 years) and *Long-Beck v. Beck*, [2006] N.B.J. No. 398 (Athey J.) (22 year relationship; wife quits job with husband’s consent).

Several other recent cases of interest deserve mention: *Law v. Law*, [2005] A.J. No. 1315 (Q.B.) (Clackson J.) (support to continue after long marriage at 45 per cent of gross income difference until payor’s retirement); and *Hesketh v. Hesketh*, [2005] O.J. No. 4053 (S.C.J.) (Heeney J.) (amount slightly above range ordered where husband cohabiting); *Locke v. Ledrew*, [2006] A.J. No. 759 (Q.B.) (Veit J.) (consideration of effect of repartnering by both parties) and *R.S.R. v. S.M.R.*, [2006] B.C.J. No. 2109 (Martinson J.) (discussion of Guidelines in context of determination of entitlement)

#### (ii) *The With Child Support Formula*

Three leading cases should also be noted under the *with child support* formula. First would be *W. v. W.*, [2005] B.C.J. No. 1481 (S.C.), a decision of Justice Martinson which includes an extensive and illuminating discussion of the Guidelines. This decision was quoted and approved by the B.C. Court of Appeal in *Yemchuk*. Another careful decision is that of Justice Handrigan in *Fewer v. Fewer*, [2005] N.J. No. 303 (N.L.S.C.), who used the ChildView software to obtain the range in a Newfoundland case with lower incomes. In *Kerr v. Kerr*, [2005] O.J. No. 1966 (S.C.J.), Blishen J. of the Ontario Superior Court of Justice used this formula to decide temporary spousal support, in a case with 5 children and some s. 7 expenses.

Of the more recent decisions, two are of note. *Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (S.C.F.D.) (Gass J.) involved an application of the custodial payor formula in the context of a 12 year marriage where the wife, the non-custodial payor, suffered from mental illness and was in receipt of disability payments. The husband brought a variation

application 6 years after the separation. The result in the case--an order that support be paid for a further 3 years-- was consistent with the time limits generated by the custodial formula. The case also offers a good discussion of the disability exception. *Swallow v. De Lara*, [2006] B.C.J. No. 2060, 2006 BCSC 1366 (Master McCallum) is a nice example of the application of the shared custody formula.

## **Appendices**

**APPENDIX I: COMPREHENSIVE SUMMARY OF CASES**

**APPENDIX II: SUMMARY OF CASES BY PROVINCE**

## Appendix I CASE SUMMARIES [Updated to October 5, 2006]

### A. Appellate Decisions [in chronological order]

*Yemchuk v. Yemchuk*, [2005] B.C.J. No. 1748, 2005 BCCA 406 (Prowse J.A.)

Married 35 years, one grown child, husband 63 at trial, wife 61.

Family assets divided equally, trial judge found no entitlement to spousal support

Entitlement found on appeal, both compensatory and non-compensatory grounds

Engineer husband retired early in 1997, as wife transferred to Manitoba in federal government

No issue as to duration, as husband only claiming support until wife retired at 65

Husband 's income \$37,600, wife makes \$75,000

Guidelines range under *without child support* formula: \$1,190 to \$1,580

Guidelines "a useful tool to assist judges", "intended to reflect the current law" citing *W. v. W.*

Extensive discussion of Guidelines issues, not evidence but part of counsels' submissions

Support fixed at \$1,100, to reflect wife's "expenses relating to employment (including clothing, transportation expenses and significant compulsory employee deductions)"

*Tedham v. Tedham*, [2005] B.C.J. No. 2186, 2005 BCCA 502 (Prowse J.A.)

Married 16 years, wife now 52 (47 at separation), husband now 47, traditional marriage

Two children, 20 and 21, "deemed independent", direct support from husband

Wife earns \$25,000 part-time retail, income imputed of \$30,000

Husband estimated to earn \$343,000 in computer software sales

Payment by husband of \$95,850 to reapportion property

Was paying \$1,589 child support and \$4,000 spousal to wife

Chambers judge ordered diminishing time-limited support for 3 more years: \$6,000/mo. year 1, \$4,000 year 2, \$2,000 year 3, then zero, to encourage self-sufficiency

No time limit, only partial compensation, indefinite order substituted, subject to review if husband's medical condition (legal blindness) interferes with income

Amount fixed at \$6,000, Guidelines range stated as \$6,300 to \$8,500 for 8 to 16 years

Lower than range because of reapportionment order

(*Without child support* range: \$6,260-\$8,347, if incomes as stated)

[Custodial payor formula range (no child support from wife): \$4,712-\$6,283]

*Kopelow v. Warkentin*, [2005] B.C.J. No. 2412, 2005 BCCA 551 (Smith J.A.)

Married 12 years (plus one year cohab), 2 children 15 and 13, with wife

Wife earns \$30,000, now 55 (49 at separation), husband earns \$177,000

Wife challenging marriage agreement property division, 78 per cent to husband

Child support \$1,995, wife also entitled to spousal support

Range \$3,037-\$4,015, \$3,500/mo. ordered

With these support amounts, marriage agreement not unfair

*Toth v. Kun*, [2006] B.C.J. No. 739, 2006 BCCA 173 (Hall J.A.)

Married 10 years, no children, husband 64, wife 41

Interim support \$2,300/mo., varied to \$2,400 in April 2003

Wife health problems, but will recover, poor English

Husband earned \$70,000, but now retired, only \$42,000

At trial: support varied to \$1,500, indefinite

On appeal: too onerous, so time limited, step-down

\$1,200/mo. to Sept. 2006, then \$1,000/mo. to Sept. 2009, support paid 6 ½ years

Range \$525-\$700, 5 to 10 years [within global range on restructuring]

*S.C. v. J.C.*, [2006] N.B.J. No. 186, 2006 NBCA 46 (Larlee J.A.)

Married 25 years, two adult children, wife 42 (40 separation), husband 45, traditional marriage

Husband army officer, earns \$100,000

Wife working in Kingston, Ont., on contract with Health Ministry, earns \$46,764; interim support \$1,850

Trial judge ordered \$1,625/mo., using Advisory Guidelines, for 5 years [range was \$1,625 - \$2,208; wife wanted \$1,800]

Wife appealed amount at low end of range, sought indefinite duration, and questioned trial judge's determination of her income

Appeal dismissed, Guidelines approved, help to bring consistency and predictability

Almost a presumption of indefinite support in long traditional marriage; review generally favoured over time limit in such cases

But deference to trial judge: wife young, no dependents, capable, steady employment

Wife quickly able to reintegrate into work force, 5 years a longer term

*G.V. v. C.G.*, [2006] J.Q. no. 5231 (Que. C.A.) (Forget J.C.A.)

Married 32 years, 3 children, one (18) now with husband, custodial payor

Wife 55, earning \$50,000, husband earns \$227,000

Child support \$15,948, grossed-up to \$33,000

Trial judge applied Advisory Guidelines: range \$4,500 to \$6,000; low end of range ordered, \$4,500 indefinite

Appeal allowed; spousal support reduced to \$2,705 per month based upon budgetary analysis

Trial judge erred by not engaging in a detailed individual analysis

Court states that [TRANSLATION] « the dossier as it is and the brief pleadings of counsel on this aspect do not permit us, in my opinion, to pronounce a judgment of principle upon the utilisation of the Advisory Guidelines. »

Court refers to important criticisms of Advisory Guidelines found in judgments of Justices Julien and Gendreau [see cases below] and concerns about « recipes » and formulas being used to avoid the difficult individual analysis required.

*Redpath v. Redpath*, [2006] B.C.J. No. 1550, 2006 BCCA 338 (Newbury J.A.)

Married 18 years, wife 41, division of assets issues

5 children 8 to 18, oldest with husband, next with wife, 3 shared

Husband earns \$260,000, bakery business, income issues, wife no income

Trial: child support \$4,000/mo., spousal support \$3,500/mo., review in 3 years  
(4 child table amount \$4,296)

Advisory Guidelines may affect standard of appellate review

Guidelines range: \$4,542-\$5,510, not referred to by trial judge

Trial judge overemphasized self-sufficiency, amount "simply too low"

Spousal support of \$5,000/mo., review in 5 years as children young, wife needs training

*R.S.M. v. M.S.M.*, [2006] B.C.J. No. 1756, 2006 BCCA 362 (Saunders J.A.)

Married 30 years; 2 grown children

Separation agreement in 2001 providing for spousal support of \$700/mo and division of assets (at time of agreement husband unemployed, having lost job earning \$65,000; wife earning \$23,700)

Wife tries to avoid agreement and claim greater share of assets and increased spousal support

Husband now earning \$78,000 and wife \$36,000

Trial judge finds that agreement was not fairly negotiated (wife vulnerable and no proper legal advice) and that at time of formation it did not comply substantively with Divorce Act objectives; orders spousal support of \$1,600/mo after considering SSAG range (range not stated, estimated at \$1312-\$1750)

Order upheld on appeal.

Re *Miglin* stage one, wife vulnerable but no substantive unfairness; but agreement fails *Miglin* stage 2--agreement did not contemplate husband's future employment)

*Pettigrew v. Pettigrew*, [2006] N.S.J. No. 321, 2006 NSCA 98 (Hamilton J.A.)

Married 29 years, separated 2003, 2 children now grown

Husband retired from military in 1994; then worked in Saudi Arabia and now in Australia; income \$110,000

Wife worked at odd jobs during marriage; had not been employed since 1995; finds employment after separation; income \$20,141 (including her half of husband's divided military pension)

Trial judge orders spousal support of \$2,900 per month after considering relevant factors and using SSAG as a cross-check

(SSAG range not provided; estimated to be \$2808-\$3744)

Husband appeals arguing award too high and that trial judge erred in using the SSAG rather than assessing the evidence herself and applying the law

Appeal dismissed; trial judge thoroughly assessed the evidence and the applicable law; referred to guidelines only as a "cross-check. As well, amount ordered less than amount indicated by the guidelines (?)"

*Stein v. Stein*, [2006], B.C.J. No. 2020, 2006 BCCA 391 (Saunders J.A.)

Married 15 years, 2 children 13 and 9 with wife, husband 44, wife 39 (36 at separation)

Equal division of family assets

Trial: spousal support \$2,500/mo. for 3 ½ years

Guidelines range: \$3,920-\$4,883, interim support \$3,000 after-tax

Husband works in family business, earns \$207,433

Wife receives rent \$7,000/yr., educated as animator, looking for work, good prospects

Support ordered inadequate, increased to \$4,200/mo.

Duration: time limit unusual, too severe, review before termination

## **B. The Without Child Support Formula**

### **Leading Decisions**

*Carr v. Carr*, [2005] A.J. No. 391, 2005 ABQB 265 (Alta.Q.B.)(Veit J.)

Interim spousal support, 28 year marriage, 3 adult children, wife 51

Husband makes at least \$150,000, wife \$9,300 disability

Without child support formula explicitly used

Range \$4,397-\$5,863. \$5,000 ordered.

General reference to use of guidelines as "cross-check"

*Modry v. Modry*, [2005] A.J. No. 442, 2005 ABQB 262 (Alta.Q.B.)(Germain J.)

Guidelines argued by wife's lawyer, husband's income \$1,266,000

29 year marriage, 4 grown children, income imputed to wife

Discussion of guidelines, but this above \$350,000 ceiling, \$9,900 ordered

*Maitland v. Maitland*, [2005] O.J. No. 2252 (Ont.S.C.J.)(Pardu J.)

Married 29 years, 4 adult children, wife 45 at separation

Wife has health problems, can't work, no income

Husband works as truck driver, \$28,439

Interim support \$1,344, husband also pays \$135/mo. for wife's health insurance

Range \$889-\$1185 (or \$754-\$1050 deducting health ins.)

Exception for payor income \$20-\$30,000 noted, concerns re ability to pay

Support of \$700 ordered

*A.M.R. v. B.E.R.*, [2005] P.E.I.J. No. 83, 2005 PESCTD 62 (S.C.T.D.)(Matheson C.J.T.D.)

Together 11 years (married 4), no children, husband seeks interim spousal support

Husband receives WCB \$11,858 non-taxable, grossed up to \$13,525

Wife earns \$18,557, also paying family debts

Below "floor" of \$20,000, no ability to pay, no support

(Range by formula: \$69-\$92)

*McCulloch v. Bawtinheimer*, [2006] A.J. No. 361, 2006 ABQB 232 (Q.B.)(Sullivan J.)

Together 6 years, "adult interdependent partners"

Husband earns \$103,000, pays \$15,600/yr. in prior spousal support (exception)

Wife earns \$27,216, gross income difference \$60,184

Range \$451-\$602, for 3-6 years, global amount \$16,250-\$43,332

Detailed explanation of Guidelines and restructuring

No compensatory exception, no debt payment exception

Orders \$2,000/mo. for 9 mos., \$1,000/mo. for 9 mos., \$500 for 7 mos., total \$29,500

*Foley v. Girard*, [2006] O.J. No. 2496 (Ont.S.C.J.)(Aitken J.)  
Gay couple, together 20 years, both 50, no children  
Applicant earns \$51,899, respondent \$106,280  
Interdependent, applicant supported respondent's Ph.D. studies  
Guidelines range: \$1,351-\$1,801  
Interim support of \$1,500/mo., analysis of expenses, esp. shelter

*Locke v. Ledrew*, [2006] A.J. No. 759, 2006 ABQB 452 (Alta.Q.B.)(Veit J.)  
Married 28 years, 3 grown children, wife 55 (49 at separation), husband 51  
Spousal support of \$800/mo. ordered in 2004, reviewable in 2 years  
Wife in Cornerbrook, Nfld, earns \$5,887/yr., part-time  
Remarried, new husband receives CPP Disability/WCB \$21,350  
Husband receives disability pension plus CPP, \$38,572  
Also remarried, new wife applied for CPP Disability  
Equal split of gross income: support of \$1,450/mo.  
Full-time employment income imputed to wife, \$900/mo., reduce to \$550/mo.  
Adjust down to \$500/mo, for wife's remarriage  
Guidelines range stated as \$1,154-\$1,374, indefinite  
(really \$868-\$1,157 if \$10,800 imputed to wife)  
Suggestion of standard-of-living test for hardship claims

*R.S.R. v. S.M.R.*, [2006] B.C.J. No. 2109, 2006 BCSC 1404 (Martinson J.)  
Married 23 years, two grown children  
Both parties repartnered  
Wife part-time retail clerk during marriage; income \$21,400  
Husband's income \$67,074  
Husband paid \$900 per month spousal support for 9 months under interim separation agreement  
In divorce proceedings husband sought order dismissing wife's claim for spousal support on basis of no entitlement  
Wife not currently requesting spousal support because new partner has high income but wants to preserve entitlement to apply for support in future if new relationship ends  
Husband's claim dismissed; wife entitled to support on both compensatory and non-compensatory grounds; entitlement not lost because of new relationship;  
Court considers SSAG of some assistance even though they do not deal with entitlement noting that in absence of new relationship wife would have substantial claim to spousal support under SSAG(\$1,583.33 per month at mid-point of range)

*Long-Beck v. Beck*, [2006] N.B.J. No. 398, 2006 NBQB 317 (Athey J.)  
22 year relationship (19 year marriage plus 3 years cohabitation); no children  
Wife data entry operator; because of stress quit job in 1993 with husband's consent; thereafter homemaker and part-time driving instructor; income \$16,000  
Husband's income \$52,000  
Court relies on SSAG; range stated as \$1021-\$1362  
Order for \$1020/mo indefinite

### **Other Trial Decisions [beginning with most recent]**

*Eng v. Eng*, [2006] B.C.J. No. 2044, 2006 BCSC 1353 (Russell J.)  
Together 4 years (married 3 ½), husband 53, wife 45 (41 at separation)  
Family assets divided equally, except shareholder loan, reapportioned 100% to husband  
2 stepchildren 21 and 16, child support from biological father \$612/mo.  
Child support of \$1,000 paid for 5 years since separation, sufficient, no more  
Interim spousal support orders: \$7,000/mo. (2000), \$6,000 (2002), \$3,750 (2003)  
Husband earns \$165,000, wife \$10,800  
Guidelines range: \$784-\$1,045, 2-4 years  
Too low, wife's disability, husband's wealth, \$3,000/mo. plus private health insurance

Duration: indefinite based on need, promises by husband  
Review when health care coverage reaches maximum

*Barter v. Barter*, [2006] N.J. No. 237, 2006 NLUFC 39 (J.D. Cook J.)

Application for variation of 2003 consent order

Husband university professor; income \$111,798

Consent order provided for spousal support of \$3,750

Husband applies to vary because going on sabbatical and 10% decrease in salary; also argues inability to pay

Application dismissed; no material change in circumstances

In obiter court considers SSAG range and finds \$3750 falls within that range and meets spousal support objectives under Family Law Act

*Reitsma v. Reitsma*, [2006] B.C.J. No. 1743, 2006 BCSC 1135 (Maczko J.)

Married 18 years; two grown children

Wife homemaker and worked as book-keeper in husband's business during marriage; working 2 jobs post-separation earning \$30,000

Husband mechanic runs auto-repair business; income in dispute; set at \$62,160 based on 3 year average

SSAG range stated as \$723-\$964 for duration of 9 to 18 years

Court chooses middle of range and awards spousal support of \$843.mo

Duration: 13 years

*Wilson v. McDougald*, [2006] B.C.J. No. 1727, 2006 BCSC 1155 (Johnston J.)

Unmarried couple, 14 year cohabitation, second relationship for both

Wife on CPP disability when relationship began; homemaker during relationship; income \$7,600

Husband's income \$82,000; repartnered and supporting new partner and daughter

SSAG range: \$1302- \$1736

Wife argues for \$2,200/mo to meet expenses

Spousal support of \$1400/mo ordered; wife has option of supplementing disability pension by part-time earnings

*Fogal v. Fogal*, [2006] B.C.J. No. 1844, 2006 BCSC 1104 (Master Patterson)

9 year marriage; second marriage for both

Preuptial agreement waiving spousal support

Wife applies for interim support

Wife employed as hairdresser before and during marriage, earning \$34,500

Husband's income \$134,000

No order for interim support given pre-nup; no significant change since agreement, and no desperate need

SSAG referred to as important factor to consider on quantum but not binding especially on interim

*Cey v. Teske*, [2006] S.J. No. 490, 2006 SKQB 315 (Ryan-Froslic J.)

Married 26 years, 2 children now grown; wife 43 at separation in 2003 and husband 47

Husband plumber and started own business

Wife homemaker and also did bookkeeping for business

Interim spousal support \$6000

Wife receives property settlement of \$600,000; her net worth exceeds \$1 million

Husband's income \$174,786

Wife no income but found capable of eventually earning between \$30,000 - \$35,000

Wife asks that Guidelines be used in assessing spousal support

Support ordered at \$5000 per month after property settlement, review in 2009

Court rejects application of Guidelines because they do not take into account Divorce Act objectives and factors, the substantial property settlement, or evidence as to wife's ability to become gainfully employed.

Guideline range based on imputed income to wife of \$35,000: \$4368-\$5824

*Stening-Riding v. Riding*, [2006] N.S.J. No. 295, 2006 NSSC 221 (Dellapinna J.)

Married 30 years, 1 adult child, wife 59, husband 62

2003 agreement and order: spousal support of \$5,500 for 9 mos., then \$4,535 after

if husband's income reduced below \$200,000, then 20% for support

if his income below \$80,000, zero support

Wife's income then zero, husband's \$247,200  
Wife then applies to vary, using Guidelines (arguing amount under agreement significantly below Guidelines amount and hence unfair), husband's income risen to \$448,275  
Wife's income \$21,864 from investments, rental, Ph.D. but no employment  
*Miglin* analysis, no significant departure from Divorce Act objectives, Guidelines considered but not applied

*Boland v. Boland*, [2006] N.J. No. 206, 2006 NLUFC 37 (U.F.C.)(Dunn J.)  
Married 38 years, husband and wife 60, 1 dependent child 11 at university  
Parties agree to use Advisory Guidelines  
Husband operates fish sales business and rental properties, income issues  
Husband's income imputed \$45,000  
Wife babysitting etc. earns \$11,000  
Equal split of incomes, spousal support of \$1,417/mo.  
Retro spousal support \$15,000, first 2 years accelerated, lump sum \$34,000  
Periodic spousal support to commence in 2 years

*Duder v. Rowe*, [2006] A.J. No. 868, 2006 ABQB 518 (Q.B.)(Veit J.)  
Married 20 years, wife 38, 1 adult child  
Husband earns \$70,000, wife \$35,000  
Wife seeks compensatory support, interim \$1,000/mo.  
Issues of entitlement and effect of agreement, no "need" in interim, put over to trial  
Guidelines not applicable until threshold issues determined

*Wise v. Wise*, [2006] B.C.J. No. 1413, 2006 BCSC 945 (S.C.)(MacKenzie J.)  
Together 7.5 years (married 2.5), wife 51, husband 49, no children  
No assets other than pensions  
Wife developed MS in 1997, just before married, now receiving \$12,708 CPP  
Interim spousal support \$1,000/mo. since 2002 (44 months)  
Husband electrician, earns \$69,000  
Pays \$425/mo. child support, for 4 more years  
Cohabiting with unemployed social worker, earned \$50,000  
Husband argues Guidelines range \$420-\$559 for 3 to 7 years  
Guidelines rejected as too low, too short, \$489-\$562 stated as range  
Some discussion of restructuring, disability exception  
Spousal support of \$800/mo., for another 4 years  
(Range \$563-\$751; after child support, \$483-\$644)

*Davison v. Davison*, [2006] B.C.J. No. 1195, 2006 BCSC 111 (S.C.)(Maczko J.)  
Together 18 years (10 married), wife 61, husband 75, each 4 grown children  
Equal division of house  
Wife receives CPP \$3,780/yr., increased to \$12,780 for interest income  
Husband receives pension income \$37,575  
Range \$760-\$1,013, but spousal support of \$500/mo. ordered  
(Range \$552-\$736 if wife's income is \$12,780)  
Husband left with house expenses and mortgage to pay equalisation  
Spousal support lower to maintain comparable standards of living (?)

*Rushton v. Rushton*, [2006] N.S.J. No. 207, 2006 NSSC 149 (S.C.)(LeBlanc J.)  
Married 37 years, 3 grown children, husband 60, wife 59 (56 at separation)  
Husband owns service station, leasing it for \$30,000/yr.  
Wife working part-time for daughter, earns \$12-\$12,500/yr.  
Guidelines considered, spousal support of \$600/mo. ordered, "slightly less"  
(But range \$562-\$750, indefinite)

*A.G. v. C.G.*, [2006] B.C.J. No. 1157 (Prov. Ct.) (Baird Ellan Prof. Ct. J.)  
26 year marriage; parties married in Peru, 2 grown children  
Interim spousal support of \$1000/mo

Husband earns \$58,000; income imputed to be \$60,000; paying \$500 per month on mutual debt of \$50,000 and income tax debt of \$150 per month; willing to pay \$600 per month spousal  
Wife, with limited English language skills and poor health, on social assistance; had worked full-time as daycare worker ten years until injured in 2003; income \$6120 on social assistance but court imputes income of \$9,000 based on part-time work at \$9/hr  
SSAG range of \$1594 to \$2125 considered; spousal support set at \$1200/mo (i.e. below range) reflecting husband's debt payments and wife's potential to increase earning capacity  
Order gives wife 1/3 of husband's disposable income, husband 1/3, and 1/3 for debt.

*A.A.C. v. M.A.B.*, [2006] N.S.J. No. 169, 2006 NSSC 136 (S.C.F.D.)(B. MacDonald J.)  
Married 18 years, 2 children, last marrying July 2006, child support to end then, wife 48  
Spousal support paid for one year, 1998-99, \$600/mo.  
Wife agreed to no support in 1999, but reserved right to claim  
Wife now earns \$40,500, husband earns \$53,500  
No non-compensatory claim, so compensatory only  
Range stated as \$304 to \$405, for 9 to 18 years, but wife claiming 9 years after separation  
\$300/mo. ordered for one year

*Lust v. Lust*, [2006] B.C.J. No. 886, 2006 BCSC 623 (B.C.S.C.)(Meiklem J.)  
Married 27 years (plus some prior cohabitation), 4 adult children, wife 48 at separation  
Husband earns \$54,307, logging  
Wife returned to work, now employed on 1-year contract, \$21,575  
Spousal support of \$1,200/mo. ordered in 2005 when wife earning \$9296, now being reviewed  
Range \$1,029 to \$1,370, spousal support ordered at \$1,000/mo., indefinite, no review

*Dunnigan v. Park*, [2006] B.C.J. No. 987, 2006 BCSC 688 (B.C.S.C.)(Maczko J.)  
Married 25 years, 2 adult children, wife 52, husband 58, separated 2002  
Husband earns \$53,000, paying family debts  
Wife earns \$12,000, caring for her mother, receiving payment, husband says impute \$22,000  
Range: \$1,200 to \$1,600 (\$12,000), \$900 to \$1,200 (\$22,000)  
Spousal support of \$1,200 ordered, indefinite

*T.M. v. R.M.*, [2006] B.C.J. No. 868, 2006 BCPC 161 (Tweedale Prov.Ct.J.)  
Together 11 years (married 7 ½), husband adopted mother's one child, now 20  
2002 separation agreement: \$650 spousal support plus child support, wife then 43  
Husband remarried, he earns \$95,765, new wife earns \$40,000, her 2 children  
Wife trained as hair stylist, hand injury, now retail sales, earns \$21,027  
Range \$1,028-\$1,370, 5.5 to 11 years  
Spousal support increased to \$1,000/mo., for another 4 years (total 8)

*Banford v. Banford*, [2006] B.C.J. No. 721, 2006 BCSC 543 (S.C.)(Powers J.)  
Married 23 years, 3 adult children (2 living with wife), wife 53 (46 at separation)  
Variation application, 2003 order \$1,375/mo., plus \$200/mo./child in university  
2003: husband earning \$67,500, wife student income \$9,800  
Husband now earns \$72,500 for Ministry of Forests, remarried, U.S. wife no income  
Wife got B.A., but then part-time employment, earns \$28,000  
Order varied to \$1,200/mo. considering original order, Guidelines as "cross-check"  
(Range \$1,280-\$1,706 indefinite)

*Leger v. Schultz*, [2006] O.J. No. 1313, 2006 ONCJ 103 (C.J.)(Wolder J.)  
ISO enforcement case, 18-year-old German order made in 1987  
17-year marriage, reference to 17 year maximum duration under Guidelines  
Against public policy to enforce in Canada

*Lachambre v. Lachambre*, [2006] S.J. No. 165, 2006 SKQB 143 (Q.B.)(Wilson J.)  
Married 32 ½ years, 1 child now 30, wife homemaker for 20 years  
Wife working as part-time cashier, now cook in restaurant, earns \$16,000

Husband earns \$55,695 as bus driver  
Range \$1,219-\$1,625, husband claims debt exception as paying \$632/mo.  
Interim spousal support of \$1,400/mo., husband pays debt, wife pays mortgage  
Leaves wife with monthly cash flow of \$200 less than husband

*Smith v. Butler*, [2006] N.J. No. 96, 2006 NLUFC 13 (U.F.C.)(Cook J.)  
Married 26 years, 3 adult children, 2003 order for \$920 spousal support  
Wife disabled, CPP Disability, \$9,670/yr.  
Husband accountant in NWT, earns \$75,000, interim variation  
Budgets analyzed, support increased to \$2,300/mo., indefinite  
“Comforted” that within range, \$2,031 to \$2,708

*Vazzaz v. Vazzaz*, [2006] B.C.J. No. 625, 2006 BCSC 363 (S.C.)(Myers J.)  
Married 22 years, husband 44, wife 42, 2 children 22 and 18  
One child home with mother, retroactive child support only  
Reapportionment 60/40 to wife, so lower end of spousal support range  
Husband drafts person, earns \$54,000, wife no income, but \$15,000 imputed  
Range low to medium \$1,485-\$1,733, or \$1,073-\$1,251 if wife earns \$15,000  
Order for \$1,100, indefinite

*M.G. c. J.C.*, [2006] J.Q. no. 1669, 2006 QCCS 1028 (C.S.)(Gendreau J.C.S.)  
Length of marriage not stated  
Husband truck driver, earns \$43,293  
Wife earned \$12,900, but laid off and no income  
Guidelines rejected, \$806.58 ordered as spousal support

*B.D. v. S.D.*, [2006] J.Q. no. 1670, 2006 QCCS 1033 (C.S.)(Gendreau J.C.S.)  
2004 divorce, \$1,313/mo. spousal support  
Husband earned \$64,826 then, but reduced to \$44,000 for pension division  
Husband laid off, income now \$28,287, wife disabled receives \$1,484/yr.  
Guidelines range correctly stated by wife as \$837-\$1,116  
Guidelines rejected, spousal support of \$900/mo. ordered

*D.S. c. M.S.*, [2006] J.Q. no. 506, 2006 QCCS 334 (C.S.)(Julien J.C.S.)  
Married 22 months, cohabited 2 years, husband 77, wife 48 (45 at separation)  
Interim support \$3,000/mo., wife seeking \$4,000/mo.  
Husband got wife to quit job, paid her \$3,300/mo. from his company  
Wife earned \$30,000 before marriage  
Husband’s income not disclosed, but assets \$12.7 million, ability to pay  
Husband argues Advisory Guidelines, criticisms of Guidelines, rejected  
Support of \$3,000/mo. ordered, until Sept. 2006 (43 months paid)  
(Husband’s income above ceiling, but if \$600,000, range would be \$3,000-\$4,000)

*H.D. c. J.-Y.L.*, [2005] J.Q. no. 18347 (C.S.)(Jacques J.C.S.)  
Married 31 years, 2 children 26 and 24, younger (some disability) with father  
Husband earns \$78,000, wife earns \$5,000 part-time, traditional marriage  
Interim support \$1,000/mo.  
Interim spousal support of \$1,700/mo., rejects Guidelines amounts  
Wife sought \$2,800, states range as \$2,900-\$3,900  
[But range appears to be \$2,281-\$3,041, without adjustment for son in father’s care]

*Stewart v. Tudorachi*, [2006] O.J. No. 898 (S.C.J.)(Platana J.)  
Together 22 years, no children, wife 50 (47 at separation), husband 48  
No unjust enrichment, house in both names, sold and proceeds divided equally  
Wife not worked since 1996, fibromyalgia, separated 2003, now student  
Grade 12 equivalency, finished in 2008, then intention to do 3-year program  
Husband married, 2 step-children, wife earns \$47,000 as teacher

Husband earns \$75,209, interim support \$2,400/mo.  
Guidelines range \$2,004-\$2,673, husband offers \$1,800  
Order for \$2,250, review in 2008

*Santoro v. Santoro*, [2006] B.C.J. No. 453, 2006 BCSC 331 (S.C.)(Powers J.)  
Married 18 years, 3 children with wife, adults now (25, 24, 20)  
Wife 50 (39 at separation), husband 53  
Husband machinist, working in NWT, \$100,000  
Husband remarried, new wife not working, her 2 children (21/17)  
Wife disabled (back), agreed to lump sum support of \$20,000 and dismissal in 1994  
Now on CPP Disability \$8,600/year  
*Miglin* analysis, 2<sup>nd</sup> stage, variation  
Guidelines of "limited use", range \$2,057-\$2,742, but prior agreement  
\$1,200 per month ordered, review in 2 years

*Girouard v. Girouard*, [2006] O.J. No. 762, 2006 CarswellOnt 1089 (Sedgwick J.)  
Married 38 years, wife 57, husband 62, 2 adult children  
Wife on CPP Disability, \$6,960/yr., many medical problems, seeks \$1,000/mo.  
Husband retired from Armed Forces, \$26,846, lives with new partner in her house  
Recently resigned as rural mail carrier (\$18,711/yr.)  
\$625 ordered, indefinite (range \$621-\$828)

*Barter v. Barter*, [2006] N.J. No. 52, 2006 NLCA 13 (C.A.)(Welsh J.A.)  
Husband's notice of appeal struck  
Judge indicated would be guided by Advisory Guidelines, hearing adjourned  
Parties returned with settlement, husband now appealing consent order  
Trial judge could not have "misapplied" Guidelines

*Bourget v. Bourget*, [2006] O.J. No. 419 (S.C.J.)(Smith J.)  
Married 27 years, wife 51 (49 at separation), husband 52, no children  
Husband earns \$32,500 as janitor  
Wife receives \$8,124 on CPP Disability  
Range \$775-\$1,007, wife seeks \$1,000, but lower incomes involved  
Interim support of \$600 ordered, based upon Mackinnon paper, 40% NDI to wife

*Rzepa-Burke v. Burke*, [2006] M.J. No. 29, 2006 MBQB 16 (QBFD)(Clearwater J.)  
Married 4 years, no children, wife 45 (43 at separation), husband 56  
Husband disclosed, but then self-represented and no show at trial  
Husband earns \$45,000, wife \$1,000/yr. (?), wife seeks indefinite support  
Range \$300-\$325, for 52 months, \$16,900 maximum  
Husband paid \$7,800 already interim, plus \$600 arrears owing  
Order \$500/mo., review in one year, issues re wife's employment efforts

*Upshall v. Upshall*, 2006 CarswellNfld 21, 2006 NLUFC 5 (U.F.C.)(Dunn J.)  
Married 22 years, 7 children, separated 1983 when wife 47, husband 49  
1983 separation agreement: child support \$650, spousal support \$650  
1987 divorce order: support \$750, then \$650 spousal only after last child 19  
Spousal support varied down to \$225 in 1992, now husband applies to terminate  
Wife lived on social assistance and support, now OAS/FIS \$12,238  
Husband earning \$42,015, remarried 1987, wife earning \$11,648, 16-year-old son  
Change in circumstances, but no variation, \$225/mo. continued plus \$100 on arrears  
Amount less than ranges under formula  
(Range would be \$819 to \$1,092, indefinite)  
(Or range could be \$637 to \$850, if husband's income reduced for subsequent child)

*Elias v. Elias*, [2006] B.C.J. No. 146, 2006 BCSC 124 (S.C.)(Bennett J.)  
Married 24 years, wife 48 (47 separation), husband 50, 2 children out of home

Husband claims spousal support

Husband earns \$50,000 in construction, building own house, cash jobs, in-kind bonuses

Wife earns \$87,000 as lab tech, blip in overtime, \$60,000 without overtime

No entitlement to spousal support, no requirement of equalization under Guidelines

(Range \$312 to \$416, indefinite)

*Barrick v. Barrick*, [2006] O.J. No. 219 (S.C.J.)(Mazza J.)

Married 33 years, children ?, income issues

Husband receiving WSIB grossed up to \$40,000

No imputing income for failure to appeal unfavourable decision

No income imputed from alleged marijuana grow-op

Wife makes \$14,300 from CPP disability, part-time work, investment income

Range stated by husband's lawyer as \$555 to \$740, rejected as too low

Spousal support of \$1,000 per mo. ordered, to equalize incomes

(Range actually \$803 to \$1,070, indefinite)

*MacElwain v. MacElwain*, [2006] N.B.J. No. 13, 2006 NBQB 19 (Q.B.)(d'Entremont J.)

Married 32 years, 3 adult children, traditional marriage, wife 61 (59 separation)

Equal division of sizeable property

Interim spousal support since 2003 of \$4,500/mo.

Range stated as \$5,405 to \$7,207

\$5,500 ordered, indefinite, review at husband's retirement

*Ahn v. Ahn*, [2005] B.C.J. No. 2742, 2005 BCSC 1745 (S.C.)(Master Taylor)

Together 14 months, married 8 months, husband 57, wife 46

Husband earns \$154,885, wife nothing

Wife left job in Washington State, earning \$47,000 U.S., unable to work in Canada

Husband wanted executive assistant and wife

Interim spousal support of \$3,500/mo. plus rent-free in house (husband pays \$2,200/mo.)

Wife relies upon "compensatory exception" in Guidelines

*Toews v. Toews*, 2005 CarswellAlta 1885 (Q.B.)(Cairns J.)

Married 34 years, 2 adult children, wife 58 (55 separation), husband 58

Husband runs air charter business, earns \$100,000

Wife at home, did bookkeeping in business, now no income

Interim spousal support \$1,200 plus home expenses (2002), \$4,800/mo. (2004)

Equal division of property

Spousal support of \$3,500 indefinite, "well within the range"

(Range \$3,125 to \$4,166 indefinite)

*Simpson v. Simpson*, 2005 CarswellOnt 7025, [2005] O.J. No. 5119 (S.C.J.)(Cusinato J.)

Married 26 years, 2 children adults, wife 48 (46 separation), husband 50

Interim spousal support \$1,500/mo.

Wife earns \$18,050 driving school bus, etc.

Husband truck driver, income imputed, could work more, earn \$60,000

Adopts ChequeMate mid-point, \$1,531/mo., indefinite

(Range \$1,311 to \$1,748 indefinite)

*Galambos-Towers v. Towers*, 2005 CarswellOnt 6953 (S.C.J.)(Lofchik J.)

Together 16 years (married 12)

Wife receives \$46,190 from CPP and disability pension, cancer after separation

Husband earns \$38,554 plus \$20,500 imputed return on assets, for \$59,054

Top end of range stated as \$182, orders \$200 indefinite (range \$138 to \$171)

*Collin v. Collin*, 2005 CarswellOnt 7754 (S.C.J.)(Fragomeni J.)

Married 29 years, 2 adult children

1998 separation, spousal support \$2,600, then \$1,800 in 1999, then suspended

2002 order for \$1,000/mo., terminating review order for 24 months  
Wife earns \$32,850 at WeightWatchers and dog sitting  
Husband earns \$50,000, disabled wife receives \$6,000/year  
Wife states range as \$594 to \$792 indefinite (range seems to be \$536 to \$714)  
Spousal support continued, at \$500/mo. indefinite

*Chepil v. Chepil*, [2006] B.C.J. No. 15, 2006 BCSC 15 (S.C.)(Ehrcke J.)  
Married 24 ½ years, 3 grown children living with father, wife 46 (44 at separation), husband 52  
Husband earns \$63,000 as deputy sheriff, will retire at 57  
Wife retrained as radiographer, recently started job at \$55,000, student loans of \$16,000  
2003 do-it-yourself agreement valid, wife waives pension and spousal support claims  
Pension waiver not “unfair”, *Miglin* applied, wife seeks \$600/mo.  
Advisory Guidelines considered, \$250/mo. for 3 years, to assist wife to pay off loans  
(Range \$250-\$333, indefinite)

*Guzman v. Guzman*, [2005] A.J. No. 1840, 2005 ABQB 908 (Q.B.)(Lee J.)  
Married 35 years, traditional marriage, 3 grown children, both spouses 55  
Husband earns \$80,000 as heavy equipment operator, wife not employed outside home  
Husband paying debts \$1,820/mo., mostly matrimonial debts (about \$1,500/mo.)  
Indefinite order, range stated as \$2,331 to \$3,107  
Debt payments deducted from husband’s income  
Spousal support of \$1,600/mo. equalizes incomes after adjustment for debt payments

*Reitsma v. Reitsma-Leadsom*, [2005] O.J. No. 5577 (S.C.J.)(Mazza J.)  
Together 7 years, married 4, no children  
1998 separation, interim order for \$1,200, then 2001 order for \$840/mo.  
Husband brain injured, receives CPP and WSIB (not-taxable), gross income \$39,084  
Wife also brain injury (1982), other health problems, unemployable, no income  
Application by husband to terminate, by wife to increase, spousal support  
Support continued, not reduced from \$840/mo.  
Ordinarily would terminate after 7 years, following *Bracklow*  
But not here as wife totally disabled and incident of violence by husband  
Advisory Guidelines not sufficient reason to vary downwards  
(Range would be \$342 to \$456, for 3.5 to 7 years)

*Matthews v. Matthews*, [2005] B.C.J. No. 2666, 2005 BCSC 1692 (S.C.)(McCallum J.)  
Together 9 years (married 8), no children of marriage, wife 40 (39 at separation, husband 44)  
Wife earns \$17,000 in Victoria, one son of previous relationship  
Husband moved to Switzerland, earns \$141,000 to \$166,000  
Husband pays child support of \$1,450 for a previous child  
Wife claims \$4,500 interim spousal support, to equalize incomes  
Husband says \$1,400-\$1,800 based on Guidelines  
Entitlement, based on need and possibly compensation (left to trial)  
Quantum of interim support should bear some relationship to final order  
Interim support of \$2,000/mo. ordered  
(Range if husband’s prior child support deducted and \$166,000 income: \$1,328-\$1,770)  
(Range without deduction, \$166,000: \$1,676-\$2,235)

*McNamara v. Infantino*, [2005] O.J. No. 5148 (S.C.J.)(Henderson J.)  
Application to vary, 2004 order \$1,800 spousal support, no details of marriage  
Husband’s income reduced from \$80,000 to \$43,710 upon retirement  
Wife no income, applications to CPP and LTD plan for disability  
Guidelines considered to reduce support to \$1,275/mo.

*H.E.H. v. S.L.H.*, [2005] N.S.J. No. 472, 2005 NSFC 19 (F.C.)(Levy J.F.C.)  
Married 32 years, 2 adult children, wife 51  
Wife housecleaner part-time, earns \$5,400

Husband machine operator, earns \$30,636, new partner  
Support fixed at \$840/mo., 40% of gross income difference  
Based on husband's low income, his payment of medical/drugs for wife, new partner  
(Range: \$789-\$1,051)

*Larocque v. Larocque*, [2005] S.J. No. 695, 2005 SKQB 440 (Q.B.)(Sandomirsky J.)  
Together 19 years (married 6?), wife 36  
Husband earns \$58,000, wife earns \$13,000 maximum cleaning  
Wife entitled to non-compensatory support  
Low end of range would be \$1,067 (high end \$1,425)  
Wife seeks \$1,000, granted  
Wife's school program finished in 2-3 years, but no time limit, indefinite

*Gosling v. Gosling*, [2005] B.C.J. No. 2421, 2005 BCSC 1580 (S.C.)(Williams J.)  
Married 14 years, 2 children 24 and 22, with mother, not "children of marriage"  
Separation in June 1992, wife 39 then (52 now), relationship continued after separation  
Property reapportioned, home 72/28 to wife, husband's pension 30% to wife  
No retroactive spousal or child support, previous agreements  
Wife earns \$31,090, husband earned \$86,262 in 2003 (2004 unusually high)  
Guidelines mentioned, spousal support of \$1,000/mo., indefinite  
(Range by Divorcemate: \$966-\$1,287)

*Poirier v. Poirier*, [2005] O.J. No. 4471 (Ont.S.C.J.)(Charbonneau J.)  
Married 34 years, 2 children  
Husband earns \$420,000 from businesses, wife \$10,800 in interest income  
Husband's income fixed at "ceiling" of \$250,000, wife imputed income of \$50,000  
Support of \$7,000/mo., indefinite (40 per cent of gross income difference)

*Law v. Law*, [2005] A.J. No. 1315, 2005 ABQB 723 (Alta.Q.B.)(Clackson J.)  
Married 35 years, 2 adult children, husband 57, wife 55  
Husband earns \$131,000, wife \$51,000  
Range \$2,500-\$3,333 (37.5 to 50 per cent), indefinite  
Order for \$3,000, to cease when husband retires and pension divided  
To continue at 45 per cent of gross income difference

*Nasby v. Nasby*, [2005] S.J. No. 619, 2005 SKQB 422 (Sask.Q.B.)(Wilkinson J.)  
Married 24 years, 4 children, youngest unemployed and with mother  
Wife earns \$14,195 as bartender, husband earns \$72,779 (est.)  
2001 agreement: \$669 child support, \$1,331 spousal support, \$2,000 "cap"  
Range \$1,831 to \$2,491 if 2004 incomes used  
Or \$1,344 to \$1,792 if estimated lower incomes for 2005 used  
Order of \$2,000 maintained on interim basis until trial

*Cunningham v. Montgomery-Cunningham*, [2005] O.J. No. 4297 (Ont.S.C.J.)(Fragomeni J.)  
Married 22 years, 1 child 20 and independent  
Wife says husband's 2004 income \$347,000, income at least \$139,000  
Wife's income \$101,800, says husband, at least \$92,200  
Order of \$1,500 interim, "guided by" Guidelines  
[Range estimated as \$1,292 to \$1,733]

*Morash v. Morash*, [2005] S.J. No. 618, 2005 SKQB 411 (Sask.Q.B.)(Wilkinson J.)  
Married 31 years, 1 child now 27  
Wife homemaker, now educational assistant, earns \$20,674  
Husband earns \$73,263, made voluntary non-deductible payments of \$1,441/mo.  
Range stated as \$2,037 to \$2,717, order for \$2,250 interim

*Hesketh v. Hesketh*, [2005] O.J. No. 4053 (Ont.S.C.J.)(Heeney J.)

Married 17 years, wife 54 (49 at separation)  
Entitled on compensatory (many moves and lost job) and non-compensatory grounds  
Wife earns \$13,000, working 35 hours per week  
Husband earned \$85,667 in 2004  
Interim voluntary support of \$1,500  
Range \$1,544 to \$2,059, indefinite (rule of 65)  
Husband's new partner makes \$56,000, reason to go higher than range  
Order for \$2,200, indefinite, plus \$424/mo. for 10 years for equalization payment

*Rossi v. Rossi*, [2005] O.J. No. 4136 (Ont.S.C.J.)(Flynn J.)  
Married plus cohabited 23 months, husband and wife both 48  
Voluntary support of \$5,400 total over 4 months, then \$2,000 interim for 15 mos.  
Wife disabled, CPP plus business \$16,000  
Husband earns \$71,000 plus  
Maximum guidelines range \$224 for 23 months, or \$5,152, vs. \$35,400 paid  
Husband paid enough, support terminated

*Adams v. Adams*, [2005] O.J. No. 4117 (Ont.S.C.J.)(Platana J.)  
Together/married for 10 years  
Husband workers compensation \$28,295 tax-free  
Wife accident benefits and business \$11,830 tax-free  
Wife seeks \$299 mid-point of range \$256-\$341  
[Range \$295-\$393 if incomes properly grossed up]  
Guidelines rejected and lower amount of \$75/mo. ordered

*Zedi v. Ristic*, [2005] O.J. No. 3827, 2005 ONCJ 250 (Ont.C.J.)(Spence J.)  
Married 9 years, no children, wife 59 and husband 46 at separation, wife now 63  
Husband earns \$32,500 as machinist, but "self-employed", so taxed on \$10,000  
Wife makes \$10,000-\$13,000 at deli  
Guidelines range stated as \$208-\$278, "too low", \$500/mo. ordered, indefinite  
(If husband's income grossed up for tax position, range would be \$367-\$489)

*Woodall v. Woodall*, [2005] O.J. No. 3826, 2005 ONCJ 253 (Ont.C.J.)(McSorley J.)  
Married 11 ½ years, wife 42 and husband 33 at separation  
Wife disabled, husband paid \$1,200 every 2 weeks under 2002 separation agreement  
Now \$1,264 with COLA plus drug coverage  
Husband earned \$89,500 in 2002, then \$115,000 in 2004  
Changed to less stressful job paying \$90,700, application to vary to reduce  
Husband paying unconsolidated debts, new common-law wife not working  
Guideline ranges (\$1,565-\$2,086) no application because of agreement  
No variation clause, no *Miglin*, no change in circumstances

*Gerlitz v. Gerlitz*, [2005] A.J. No. 1132, 2005 ABQB 621 (Alta.Q.B.)(Veit J.)  
Interim support, adjourned to trial, Guidelines don't apply to entitlement  
Married 25 years, parented sister's children (now grown up)  
Wife teacher, earns \$80,000, assets of \$359,000 plus pension and RRSPs  
Husband engineer earns \$200,000 (closer to \$80,000 at separation), assets of \$251,000

*M.K.M. v. T.L.M.*, [2005] B.C.J. No. 1956, 2005 BCSC 1040 (S.C.)(McCallum J.)  
Interim support, married 8 years (plus cohabitation), no children  
Husband 47, some medical problems, no income  
Wife earns \$54,000, range stated to be \$888-\$1184  
*Carr* cited, \$1,200 ordered, "at higher end", encouraged to seek employment

*Bishop v. Bishop*, [2005] N.S.J. No. 324, 2005 NSSC 220 (N.S.S.C.)(LeBlanc J.)  
Together 13 years, 12 married, no children, wife 47 at separation  
Wife health problems, irritable bowel syndrome, depression, etc., unable to work

Husband corporal in Armed Forces, earns \$57,300, cohabiting with partner and her 2 children  
Range reported as \$1,188-\$1,584 (but actually \$931-\$1,241)  
\$1,000 per month, for 10 years (11 in total), ordered

*Pearce v. Pearce*, [2005] B.C.J. No. 1757, 2005 BCSC 1153 (B.C.S.C.)(Dohm J.)  
Married 30 years, 4 grown children, wife homemaker, 50 at separation  
Husband makes \$101,000, wife earns \$25,000 from own business  
Variation, \$500 ordered previously, on assumption husband paying \$405,000 debt  
Range \$2,375-\$3,166, used as “cross-check”  
\$2,000 ordered monthly, plus \$65,000 retroactive lump sum

*Proctor v. Proctor*, [2005] B.C.J. No. 1585, 2005 BCSC 1063 (B.C.S.C.)(Wilson J.)  
Married over 20 years (?), 1 child not “of marriage” in 4 mos., wife 49 at separation  
Equal division of family assets, husband doctor makes \$247,000  
Wife no income, and no efforts  
Range \$6,175-\$8,233 (stated to be \$7,103-\$9,470, higher than existing awards)  
Much discussion of “income equalization”  
\$5,000 ordered, indefinite, review in 3 years

*Crosman v. Crosman*, [2005] N.B.J. No. 272, 2005 NBQB 245 (N.B.Q.B.)(Clendening J.)  
[appealed; see above under appellate decisions : *S.C. v. J.C.*, [2006] N.B.J. No. 186]

*Garland v. Garland*, [2005] N.J. No. 139, 2005 NLUFC 13 (Nfld.U.F.C.)(Cook J.)  
Married 27 years, 2 grown children, husband \$31,500, wife \$12,000  
Range \$608-\$815. \$680, indefinite, ordered.

*Coolen v. Coolen*, [2005] N.S.J. No. 155, 2005 NSSC 78 (N.S.S.C.)(Warner J.)  
Married 25 years, review of \$900 order made in 2003  
Husband makes \$42,400, wife \$9,800 disability plus imputed employment  
Both new partners, wife’s deficit \$575 (sharing new home)  
Range \$1,018-\$1,358, support reduced to \$750

*Romaniuk v. Romaniuk*, [2005] O.J. No. 1818 (Ont.S.C.J.)(Maranger J.)  
Together 9 years (married 3), wife 38 at separation, husband \$72,400  
Wife in school til June 2006, husband went bankrupt, left with with debt  
\$2,000 ordered til June 2006, then \$400 til debt paid in full  
Guidelines “considered”, but no details (range would have been \$815-\$1,086)

*Kletzel v. Kletzel*, [2005] S.J. No. 323, 2005 SKQB 174 (Sask.Q.B.)(Sandomirsky J.)  
Married 26 years, wife 47 at separation  
2002 order of \$1,100, application to vary by husband  
Husband’s income reduced by early retirement and new job, to \$74,900  
Wife’s income reduced by health problems, to \$19,000  
No change in spousal support, amount in range of \$1,046 to \$1,395

*Vanderham v. Vanderham*, [2005] A.J. No. 655, 2005 ABQB 351 (Alta.Q.B.)(Verville J.)  
Married 30 years, 2 adult children, wife 49 at separation  
Interim order by consent for \$2,200 per month, then reduced to \$1,100  
Wife earns \$33,500 as clerk  
Husband’s income as heavy equipment operator fluctuates, \$80,000 estimated  
Guidelines “a useful tool”  
Range: \$1,453-\$1,937. \$1450 ordered, indefinite, review in 2 years

*Crisall v. Crisall*, [2005] A.J. No. 675, 2005 ABQB 411 (Alta.Q.B.)(Lee J.)  
Married 8 years, no children  
Husband union representative, earns \$93,000  
Wife previously earned \$36-\$60,000, temporarily unemployed

Order for \$1,500 per month, review in 6 months  
Range stated to be \$795-\$1,060, but doubts about “real merit” of guidelines  
Correct range \$930-\$1,240

*Denton v. Denton*, [2005] N.S.J. No. 245, 2005 NSSC 155 (N.S.S.C.)(Moir J.)  
Together 23 years, 19 married, wife 55 at separation  
Wife hairdresser, working part-time only \$8,000, imputed \$30,000 full-time  
Husband works overtime, income fixed at \$60,000  
Range \$863-\$1,150  
Support reduced to \$750, as husband larger debt load and equalization payment

### **C. The *With Child Support* Formula**

#### **Leading Decisions**

*W. v. W.*, [2005] B.C.J. No. 1481, 2005 BCSC 1010 (B.C.S.C.)(Martinson J.)  
Together 24 years (22 married), both in 40's, professionals, 2 children with mother  
Husband makes \$125,000, wife makes \$56,728  
Child support \$1,470  
Range \$745-\$1,585, spousal support of \$1,500 ordered, indefinite  
Extensive discussion of Guidelines, “consistent with the law in British Columbia”

*Fewer v. Fewer*, [2005] N.J. No. 303, 2005 NLTD 163 (N.L.S.C.)(Handrigan J.)  
Married 16 ½ years, wife 44 at separation, husband 38, 1 child (15) with wife  
Husband carpenter earns \$35,893, wife works part-time at Walmart, earns \$14,031  
Child support \$291  
Guidelines range calculated by ChildView, zero to \$224  
\$180 ordered, considering length of marriage, wife home for marriage, income difference  
Duration fixed at 16 ½ years from separation, subject to variation

*Kerr v. Kerr*, [2005] O.J. No. 1966 (Ont.S.C.J.)(Blisshen J.)  
Married 16 years, 5 children with mother, husband \$95,014, wife no income  
Child support \$2,085, plus some s. 7 expenses  
Formula range stated as \$794-\$1,189, temporary spousal support of \$1,000 ordered.

*Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (S.C.F.D.)(Gass J.)  
Married 12 years, 1 child 16 with husband, wife 42 (33 separation), husband 46  
Wife mental illness, CPP disability and investments, \$14,918, no child support  
Husband in Armed Forces, retired 2004, new partner nurse  
Husband receives \$37,823, but \$4,667 his share of divided pension, so \$33,156  
Husband applies to terminate \$600/mo. spousal support  
Reduced to \$300/mo., disability exception considered, support for 3 more years (total 12)  
(Range \$198 to \$264 under custodial payor, \$253 to \$337 if no pension deduction)

*Swallow v. De Lara*, [2006] B.C.J. No. 2060, 2006 BCSC 1366 (Master McCallum)  
Married 11 years, 1 child 15, shared equally  
Husband comedian/writer, income fluctuates, from \$686,000 to \$97,500 (2006)  
2002 separation agreement: 12% of company gross income for support  
Minimum \$5,000/mo. child and spousal support, maximum spousal \$5,000, child \$3,500  
Interim child support reduced to \$885/mo.  
Section 7 for independent school \$11,000/yr., all by husband  
Wife earns \$5,000/yr.  
Guidelines range: \$2,091-\$2,696, \$2,400 interim support ordered  
Roughly equalizes net disposable incomes, father higher net worth

### **Other Trial Decisions [beginning with most recent]**

*J.K.S. v. H.G.S.*, [2006] B.C.J. No. 2051, 2006 BCSC 1356 (Satanove J.)  
Married 10 years (plus 1 cohab), husband 62, wife 51 (44 at separation)  
1 child 16, primarily with wife, bulimia problems  
Family assets divided equally, except 70% orthodontic practice to husband  
Husband earns \$477,206, to retire at 70  
Child support, table amount \$3,854, reduced by wife's table \$326 (\$35,000 imputed)  
\$3,528 ordered, plus s. 7 expenses by husband of \$3,000/mo.  
Wife flight attendant, retired 2005  
Guidelines maximum \$6,500/mo.  
Stepdown order: \$13,750/mo. for 3 years, \$11,000 for 2 years, \$8,000 for 2 years, end

*Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (Master Taylor)  
Married 15 years, 2 children 14 and 10, shared custody  
Wife self-employed mortgage broker, messy financial records, no tax filed since 2001  
Her income \$182,234  
Husband self-employed carpenter, works 35 hrs/wk, personal choice, underemployed  
His income \$42,000  
Interim child support: set-off \$2,036 - \$592 = \$1,444, then \$1,814 (May 2006)  
Guidelines range: \$2,612-\$3,607  
Interim spousal support of \$2,616/mo. to husband, he pays mortgage \$1,100/mo.

*Purewal v. Purewal*, [2006] B.C.J. No. 1899, 2006 BCSC 1259 (Ralph J.)  
Married 10 years, 1 child 5 with wife, wife 39  
Wife works in bank \$19,430  
2003 order of \$460 child support and \$1000 spousal (based on imputed income to husband of \$54,000)  
Husband applies to vary  
Husband taxi driver, injuries, workers comp, no licence, attributed \$43,700  
Child support \$405, spousal support \$250/mo.  
Guidelines range presented by wife based on her income of \$18,000: 0-\$269 (court adjusts downward because her income slightly higher, actual range based on wife's income of \$19,430: 0 - \$234)

*Parker v. Vik*, [2006] B.C.J. No. 1794, 2006 BCSC 1193 (Satanove J.)  
Together 22 years (married 18), 4 boys: 10, 12, 14, 17, with wife  
Interim child support \$2,195, spousal \$2,500 (January 2005)  
Husband then earning \$147,000, now \$67,000  
Husband's income potential, imputed \$80,000  
Child support \$1,835  
Wife only \$3,600/yr.  
Guidelines range presented by wife : \$1,063-\$1,694  
(But range based on husband income of \$80,000: \$365-\$690)  
Husband willing to pay \$1000/mo  
Spousal support of \$1,000 ordered, "lower" than range  
Indefinite, no review, *Leskun*

*Dhala v. Dhala*, [2006] A.J. No. 985, 2006 ABQB 600 (Veit J.)  
Married 27 years, 2 children 30, 18 with husband  
Interim spousal support \$3,600/mo., exclusive possession of home (January 2003)  
Wife disability, CPP \$1,250 net/mo., court not bound by CPP finding  
Second interim order, child with husband: child support \$1,31 from mother  
Interim spousal support reduced to \$3,000/mo.  
Husband chartered accountant, Alberta government \$105,420  
But wife some ability to contribute, worked in government until 1999  
Uses husband's net income after deductions rather than gross income  
Splits "income stream" 60/40 to wife, not 50/50, as self-sufficiency issues  
Spousal support of \$1,500/mo., indefinite

(Custodial payor range if wife \$16,600: \$2,294-\$3,059)  
(Range if wife imputed \$28,300: \$1,941-\$2,588)

*Chalifoux v. Chalifoux*, [2006] A.J. No. 883, 2006 ABQB 535 (Read J.)  
Married 22 years (plus 3 cohab), 3 children, 1 left 16, shared custody or live with father  
Wife disabled, car accident, living with boyfriend, income \$24,835  
Husband electrician, repartnered, earned \$50,000, now in Yemen ½ time, \$171,432  
Child support: s. 9, \$1,492 - \$213 = \$1,279; if father custody, \$213  
Wife seeks spousal support \$4,200-\$6,300, husband says \$1,500  
Spousal support \$2,000/mo. indefinite  
Wife not to share significantly in post-separation income increase  
(Shared custody, Guidelines range: \$3,312-\$4,259)  
(Custodial payor range: \$3,778-\$5,037; if husband at \$90,000, range \$1,686-\$2,249)

*Stacey v. Stacey*, [2006] N.J. No. 205, 2006 NLUFC 36 (Dunn J.)  
Married 17 years, 1 child 19 in university, wife 47  
Child support: \$400/mo. to wife, \$100/mo. to child  
No spousal support paid since 2000 separation  
Traditional marriage, entitled to support  
Husband earns \$56,634, wife \$7,540  
Husband paid off \$15,000 in debts, but no claim for retro spousal support  
Guidelines range agreed: \$1,058-\$1,403  
Spousal support of \$1,300 ordered, plus \$2,600 lump sum  
Duration: wife a teacher, 3-year upgrade, indefinite, review in 5 years

*Nemi v. Maier*, [2006] O.J. No. 2676 (S.C.J.)(Timms J.)  
Cohabited 12 years, 2 children with mother  
Husband earns \$235,000, child support \$2,998, no s. 7 expenses  
Wife seeks \$100,000 lump sum spousal support, husband's interest in home (based on support of \$5,500/mo for 12 years discounted.)  
Wife earns \$60,000 in contract job  
Guidelines range: \$3,039-\$4,339,  
Appropriate level of periodic support would be \$4,000/mo.; converts to lump sum of \$100,000 (no calculations provided)

*Galbraith v. Lavoie*, [2006] N.S.J. No. 254, 2006 NSSC 202 (Ferguson A.C.J.S.C.F.D.)  
Married 12 years, 2 children 14 and 11, with wife, husband 47, wife 41 (37 at separation)  
2004 order: child support \$1,079, spousal support \$1,700/mo., wife then no income, home during marriage  
Husband applies to vary or terminate, based on self-sufficiency issues  
Husband still earning \$83,000, wife obtains job before trial earning \$26,000  
Guidelines considered, no range stated (range estimated as \$485-\$1,146)  
Spousal support varied to \$750/mo., 3 1/2 more years (7 1/2 years total)

*Gartshore v. Gartshore*, 2006 CarswellAlta 821, 2006 ABQB 475 (Coutu J.)  
Married 18 years, 2 children (12+), shared custody, week about  
Husband's base income \$162,070, to be adjusted later for bonus  
Wife's income imputed at \$24,000 (to increase to \$30,000 possibly)  
Equal division of assets  
Child support: not straight set-off, wife buys all clothes, 25% off table amount, \$1,691  
Interim spousal support \$1,000/mo., wife lives every 2<sup>nd</sup> week with boyfriend  
Wife's statement of Guidelines range: \$1,500- \$1,900  
(Shared custody range: \$2,654-\$3,474 if \$24,000; \$2,441-\$3,282 if \$30,000)  
Support of \$1,000/mo. ordered based on budgets, review in 2 years

*Neilson-Sewell v. Neilson-Sewell*, [2006] O.J. No. 2580 (Ont.S.C.J.)(Smith J.)  
Together 23 years (married 21), 2 children with father in Vienna  
Wife at last minute decided to stay in Ottawa house, had left job, unemployed

Income imputed to wife of \$14,000 (but no child support paid)  
Husband working for UN, income tax-free, increased for living costs, boarding school  
Wife claims his income \$158,241, so Guidelines range \$5,409-\$7,212  
Boarding school excluded, income is \$143,652 Cdn.  
Guidelines not apply, as support not deductible for husband  
Spousal support: mortgage of \$1,606 plus \$1,200, total \$2,806  
(custodial payor range: \$5,100-\$6,800, indefinite)  
(if pay for living costs excluded from income, range \$3,395-\$4,527)

*K.C.S. v. R.W.Q.*, [2006] B.C.J. No. 1469, 2006 BCPC 301 (Brecknell Prov.Ct.J.)  
Together 4 years, wife 3 children (18, 16, 14) from previous marriage  
10-year-old order, not paid: child support \$785, spousal support \$1,000/mo.  
Wife 41, husband 45, husband not present at hearing  
Wife earns \$18,000 in clerical job, homemaker before  
Husband's income \$150,000 (\$110,000 plus perks)  
Two children left, s. 5, full table amount on \$110,000, \$2,061/mo.  
Guidelines range: \$2,500-\$3,300, but reduced for outstanding order  
Interim spousal support \$2,000/mo.

*M.P. v. S.F.*, [2006] B.C.J. No. 1434, 2006 BCPC 289 (Tweedale Prov.Ct.J.)  
Together 14 years, 2 children 13 and 8 with mother, wife 44, husband 48  
Interim child support \$710/mo., increased to \$904/mo. in May  
Husband truck driver earns \$59,789  
Wife unemployed, worked as nanny/homemaker, half-time income imputed \$8,320  
Spousal support \$300/mo., review in September 2007, suspended for 6 months  
Husband assumed debts, paying \$400/mo. to bankruptcy trustee for 6 months  
(Chequemate used, range estimated \$366-\$658)

*Borger v. Jan*, [2006] O.J. No. 2075 (Ont. S.C.J.) (A.L. Harvison Young J.)  
Interim order  
Married 9 or 10 years (date of separation in dispute); 2 children with wife  
Wife has exclusive possession of matrimonial home  
Husband income set at \$1,296,430/yr (average of past 3 yrs)  
Order for interim child support under guidelines of \$15,291/mo  
Wife submits advisory guideline range is \$10,000 - \$20,000/ mo (no details on calculation) and seeks lower end of range at \$10,000/mo; no discussion of "ceiling" of \$350,000.  
Order for interim spousal support of \$9,000/mo  
[range if husband's income at ceiling of \$350,000: \$7,667 - \$9,219/mo]

*D.P.O v. P.E.O.*, [2006] N.S.J. No. 205 (N.S.S.C.F.D.) (B.A. MacDonald J.)  
Together 6 years (married 4); 1 child with wife; separation 2001  
Interim order in 2003: child support \$417/mo; spousal \$1000/mo  
Husband's income \$69,708/yr; child support \$605/mo  
Wife health issues and unable to work  
Range under guidelines \$1,377 - \$1754/mo indefinite and subject to review when child is 12; but spousal support of \$900/mo ordered subject to review when child turns 13  
Order to leave husband with NDI of \$2,852/mo and wife with \$1857/mo; wife's needs based on budget found to be at least \$1830/mo; wife has obligation to become self-sufficient

*McCarthy v. McCarthy*, [2006] O.J. No. 2308 (Ont. S.C.J.) (D.S. Crane J.)  
Married 12 years; 2 children  
Husband's income between \$54,000 and \$55,000/yr; child support \$750/mo  
Wife earning \$27,000/yr (in home daycare), some health issues  
Seeking \$300/mo spousal (giving her 58.2% NDI)  
No spousal support awarded; reference to consistency with Spousal Support Guidelines [range zero to zero] With no spousal support wife stated to be at 54.8% NDI and husband 45.2% NDI [DivorceMate actually shows wife at 57% with no spousal]

*Brisebois v. Brisebois*, [2006] O.J. No. 906 (Ont. S.C.J.) (S. Rogin J.)

Divorced 2002; one child now 11; 2002 spousal support order of \$500/mo based on imputed income of \$30,000 to wife and husband's income of \$56,000/yr

Variation application; husband's income increased to \$83,187/yr; wife now earning \$24,351/yr

Child support increased to \$660/mo

Spousal support increased to \$750/mo; court declines to increase support as per "Check Mate" and Divorcemate calculations provided by counsel (no details given); concern's wife's income understated

[Ranges: using husband's 2002 income (\$56,000) and \$30,000 (imputed) for wife: zero to \$334;

using husband's 2006 income (\$83,187) and \$30,000 (imputed) for wife: \$740 - \$1,337

using actual 2006 incomes for both ( husband \$83,187, wife \$24,351): \$916 - \$1540]

*Philip v. Philip*, 2006 CarswellOnt 1591 (Ont. S.C.J.) (Henderson J.)

Together 10 years (married 8); wife 2 children from previous marriage (only 1 remaining child of marriage) and 1 child of their own

Husband's income \$58,000/yr; child support for 2 children \$799/mo, but deducts \$200 CPP benefits older child receives as a result of death of her father

Wife's income \$20,200/yr (\$15,100 employment and \$5,100 CPP survivor benefits)

Spousal support of \$650/mo; court "considered" many factors, including Advisory Guidelines and Check Mate calculations

[range assuming child support of \$599: \$227 - \$646]

*Walsh v. Walsh*, [2006] N.J. No. 33 (N.L.U.F.C.) (J.D. Cook J.)

Married 21 years, separated in 1994; wife homemaker

4 children, with wife; 2 now grown

Husband earns \$56,289/yr; wife retrained and earns \$18,975/yr; wife in common law relationship

1996 order combined child and spousal support \$3000/mo; 2002 order for \$341/mo spousal support and \$569/mo child support

Husband seeks variation of child support on basis of shared custody because children spending more time with him; does not meet s. 9 threshold of 40%;

Child support: table amount of \$731/mo plus proportionate sharing of s.7 expenses in unspecified amount

No termination of spousal support; continued at \$341/mo; fits within Advisory Guideline range stated as \$202 - \$591.

*Crewe v. Crewe*, 2006 CarswellOnt 772 (Ont.S.C.J.)(Sills J.)

Interim order, 1 child (3) with mother

Husband earns \$67,185, child support \$554/mo.

Wife student loans and bursaries, issue re inclusion in income

Wife seeks \$1,564/mo. based on Guidelines

(Range estimated \$1,220-\$1,564, if her income \$2,000/yr.)

Interim spousal support of \$1,000/mo.

*Snowden v. Snowden*, [2006] B.C.J. No. 1187 (B.C.S.C.) (Scarth J.)

Married 6 years, together 7; 2 children (4 and 1 ½) with wife

Equal division of assets

Husband's income \$24,000; child support \$378 as of May 1

Wife not employed

Advisory Guidelines range stated as \$209-\$349 [actually \$147 to \$284 based on May 1 changes to CSG]; wife seeks \$600 per month

Court orders \$100 per month given husband's limited income and inability to pay even limited amount suggested by Guidelines

No reference to "floor" and discretion between payor incomes of \$20,000 to \$30,000

*Dunning v. Dunning*, [2006] O.J. No. 1927 (S.C.J.) (T.M. Wood J.)

Together 6 years (married 5), 2 children (ages 3 and 1) with wife

Application to vary 2005 consent order for child and spousal support

Father employed in U.S., income in \$Can set at \$160,893 resulting in child support of \$2,118

Mother registered nurse, moved back from U.S. after separation; presently earning \$20,000 from 2 part-time jobs  
Uses SSAG range of \$2,568 to \$3,411 spousal support (giving wife 53.7% to 58.2% NDI); duration indefinite but ceases when youngest child turns 18

Spousal support set at lower end of range (\$2,568) because wife's income will increase as children get older and should be allowed to do so within reason without support being affected.

Review after 5 years at instance of either party

*McCorrison v. McCorrison*, [2006] S.J. No. 277, 2006 SKQB 217 (Q.B.F.L.D.) (Ryan-Froslic J.)

Together 11 years (married 10 ½), 3 children 6, 5 and 5 with wife, husband 42, wife 44

Husband earns \$47,838 at CN Rail in Ontario

Child support \$899 plus s. 7(1)(f) expense contribution of \$41

Interim spousal support paid for 2 years of \$800, then \$453/mo.

Wife at home during marriage, now earns \$5,592 in retail part-time

Increasing to \$10,296 in fall 2006 and \$15,440 in fall 2007

Spousal support \$600/mo. to Sept. 2006, \$300 to Sept. 2007, then terminates

Wife argued for indefinite support until children finish high school

SSAG ranges (not taking into account s. 7 expenses, using Childview) if wife's income \$5,592: \$23 to \$260; if wife's income \$10,296: 0 to \$71

Guidelines a useful cross-check but not law and don't take into account Divorce Act factors and objectives

*Christensen v. Christensen*, [2006] B.C.J. No. 930, 2006 BCSC 647 (S.C.) (Master Keighley)

Married 25 years, daughter 19 in college living with husband, no child support by wife

Daughter 26 employed, 21-month-old child, living with wife

Wife earns \$37,389 in Costco photo lab, husband earns \$87,860 in sales

No interim spousal support, submissions under Advisory Guidelines "considered"

[Range under custodial payor formula: \$1,055-\$1,406 assuming zero child support]

Successful appeal of interim decision, unreported, Leask J., June 15, 2006, interim support of \$700/mo ordered; less than SSAG because husband paying joint line of credit of \$250/mo

*Frass v. Frass*, [2006] S.J. No. 287, 2006 SKQB 189 (Q.B.F.L.D.) (Sandomirsky J.)

Child 9 with wife, interim child support \$625 plus \$58 for child care

Husband earns \$73,262, wife earns \$29,289

Interim spousal support: wife seeks \$750, husband offers \$200/mo.

Guidelines range stated as \$900 to \$1,100 by court, but husband paying debts

Interim spousal support reduced to \$700/mo.

*Palmer v. Arena*, [2006] O.J. No. 1811 (S.C.J.) (Gauthier J.)

Together 8 years (married 3 plus), child 5 with wife, husband 47, wife 48

Husband bipolar disorder, CPP disability, \$11,520, no child support (table \$111)

Wife earns \$75,000, child care \$200-\$250/mo.

Interim spousal support of \$750 paid for past 2 years

Custodial payor range rejected as "insufficient", support ordered at \$1,000 for 3 years

[Range estimated \$473 to \$630, for 4 to 8 years, order within global range by restructuring]

*M.R.M. v. I.M.M.*, [2006] B.C.J. No. 1034, 2006 BCSC 568 (S.C.) (Joyce J.)

Married 28 years, 1 child 16 with husband

Wife earns \$39,819, child support \$342 plus \$68 for Catholic school fees

Husband earns \$63,000

Range \$600 to \$800, equalize standards of living, \$700/mo., indefinite

*McGuckin v. McGuckin*, [2006] B.C.J. No. 859, 2006 BCSC 582 (S.C.)

(Master Keighley)

Married 22 years, wife 55 (53 at separation), husband 49, 1 child 16 with wife

Husband Canada Post supervisor, earns \$54,000

Wife accountant/business, motor vehicle accident, income reduced, \$16,250

Child support \$469, interim spousal support \$700/mo, within Guidelines range

(Range estimated at \$316-\$779)

*Smith v. Smith*, [2006] N.J. No. 110, 2006 NLTD 65, 2006 CarswellNfld 117 (S.C.T.D.) (LeBlanc J.)  
Married 26 years (plus 1 cohab, traditional marriage, wife 52 (49 at separation))  
4 children (22, 19, 18, 15), 3 in university, all 4 with mother  
Husband RCMP sergeant, earns \$98,800  
Wife no income, former teacher, many moves with husband, no career  
Child support \$1,804, spousal support \$1,700, indefinite, review in 3 years  
Guidelines range \$1,574-\$2,021, order here also leaves 57% family NDI to wife

*Boucher v. Boucher*, [2006] N.S.J. No. 129, 2006 NSSC 88 (S.C.F.D.)  
(Legere-Sers J.)  
Married 13 years, 4 children (24, 22, 20, 18), separated 1993, wife 53 now (43 then)  
Husband doctor, earns \$294,735, remarried  
Wife no income  
Husband supported all four children, paying child and spousal totalling \$52,000/yr.  
Advisory Guidelines suggest 13 year maximum duration, hybrid formula  
(Range \$4,000 to \$5,330, but self-sufficiency issues)  
Support for 3 more years: \$3,000/mo. 2006; \$2,500/mo. 2007; \$2,000/mo. 2008

*S.R. v. N.R.*, [2006] B.C.J. No. 627, 2006 BCSC 412 (S.C.)(Metzger J.)  
Married 11 years, both 40, 1 child 11  
Reapportionment of condominium 100% to wife  
Husband engineering business, income \$95,000  
Child support \$729, interim spousal support was \$1,500/mo.  
Wife doing Ph.D., one more year, 18 months time limited spousal support  
\$2,500 per month, considered Advisory Guidelines, leaves each with 50% NDI  
Wife working in 2006, likely earning \$32,400, seeks \$1,000/mo. spousal support  
Wife says range \$562-\$1,311, husband says \$399-\$857, \$750 ordered

*Yetman v. Yetman*, [2006] O.J. No. 926, 2006 CarswellOnt 1374 (S.C.J.) (Henderson J.)  
Variation of interim order, 3 children, now only 2 dependent, incomes increased  
Husband now earns \$89,388, wife earns \$21,300  
Child support \$1,128 plus \$2,000/yr. for s. 7 education expenses  
Advisory Guidelines considered, for order of \$1,400/mo.  
(Range estimated: \$1,061-\$1,645)

*Harding v. Harding*, [2006] N.J. No. 64, 2006 NLTD 38 (S.C.T.D.)(Fowler J.)  
Married 26 years, 2 children 18 (university) and 14 (high school), traditional marriage  
Wife earns \$23,300 as cashier, husband earns \$99,500 CGA with Health Corp.  
Child support: \$728 table for younger  
Husband pays \$464 for older, based on budget after deduction of RESP  
Guidelines range stated as \$1,570-\$2,256, "not totally realistic"  
(Range actually \$1,297-\$1,890)  
Husband offers \$1,000/mo., informal interim amount \$900  
Order for \$1,200 indefinite (\$1,000 adjusted up for tax)

*R.L.G. v. R.G.G.*, [2006] B.C.J. No. 466, 2006 BCSC 348 (S.C.)(Silverman J.)  
Married 21 years (25 years together), 3 children 20, 18 and 14  
Youngest child with wife, other 2 in college/university  
Child support \$1,314 (3) plus 70% of \$8,000 university expenses  
Husband federal civil servant \$78,236  
Property divided, house reapportioned 60/40 to wife  
Wife earned \$34,500 in 2004, 2005 health problems, surgery  
Wife working in 2006, likely earning \$32,400, seeks \$1,000/mo. spousal support  
Wife says range \$562-\$1,311, husband says \$399-\$857, \$750 ordered

*DeCamillis v. DeCamillis*, [2006] B.C.J. No. 2959, 2005 BCSC 1826 (S.C.)(Master Donaldson)

Married 23 years, 3 children 10, 19 and 13, with wife, child support \$2,507/mo.  
Husband earns \$172,000, wife no income, \$30,000 imputed  
Range \$2,627-\$3,441, interim spousal support \$3,250

*McGahey v. McGahey*, [2006] O.J. No. 738, 2006 CarswellOnt 1081 (S.C.J.)(MacKenzie J.)

One child, 7, with wife, child support \$648  
Husband \$81,000, wife \$25,000 imputed, range \$1,078-\$1,684  
Interim spousal support \$1,200

*Verscheure v. Verscheure*, 2006 CarswellOnt 832 (S.C.J.)(Marshman J.)

Together 11 years (10 married), 2 children  
Wife little employment effort in 5 years, no income  
Husband earns \$240,060  
Child support \$2,698 til Sept./05, then children with husband  
Spousal support paid for 5 years already  
Custodial payor range \$2,469-\$3,292  
Interim order \$3,750 for 6 months, \$3,000 for 6 mos., then \$2,500 til trial

*Marr v. Marr*, [2006] B.C.J. No. 339, 2006 BCSC 254 (S.C.)(Kelleher J.)

Married 8 years, 2 children 8 and 4, shared custody  
Husband earns \$197,500  
Child support agreed, 2/3 of table amount \$1,466  
Wife living with new partner, no income  
Interim spousal \$6,650/mo., husband's income reduced by 47% since  
Husband proposes \$3,525, range \$4,541-\$5,458, order for low end, \$4,700

*A.T. v. C.T.*, [2006] B.C.J. No. 309, 2006 BCSC 240 (S.C.)(Sinclair Prowse J.)

Married 22 years (plus one year cohabitation), husband and wife 43 (41 at separation)  
3 children: 22, 20, 14, 2 youngest with wife  
Husband Armed Forces, earns \$63,948  
Child support \$846 (2) for 7 mos., then \$527 (1)  
Wife taking residential care course for 7 mos. at community college  
Spousal support indefinite, review in 4 years when last child finishes high school  
Wife earns \$12,480 part-time, then \$27,967 full-time after course finished  
Range calculated by "arithmetic", uses "difference" in net incomes  
Order for \$604, then \$378/mo.  
(Range for full-time: \$624-\$1,030 (2 children, part-time); \$321-\$813 (1, full-time))

*Cornish v. Bacic*, [2006] O.J. No. 397 (S.C.J.)(Pepall J.)

Married 10 years, 2 children 10 and 7 with husband  
Husband earns \$95,626  
Wife no income, previously earned \$22,620, that amount imputed  
Range \$660-\$880, "too low", orders interim support of \$1,000/mo.  
(But wife not paying child support, table amount on imputed income would have been \$318)  
(Custodial payor range if wife's income taken as zero: \$874-\$1,165)

*Pollock v. Pollock*, [2006] O.J. No. 504 (S.C.J.)(Shaw J.)

Married 22 years, wife 43, husband 49  
3 children, one with wife (age 14), 2 with husband (21/18)  
Husband receives \$50,700 workers' compensation and CPP Disability  
CPP payments to children too, husband paying debts  
Wife no income, in mortgage-free family home  
Counsel agree Advisory Guidelines "not of assistance"  
Spousal support \$850/mo. (Range: \$776-\$966)

*Lawrence v. Lawrence*, [2006] B.C.J. No. 210, 2006 BCSC 167 (S.C.)(Ross J.)

Married 19 years, husband 42, wife 41 (40 separation)

4 children, 19, 19, 17, 15, with husband  
Wife in Winnipeg with her parents, receiving \$8,890/yr. social assistance  
Husband earns \$57,876 as manager of early childhood centre  
Property divided, but home and substantial debts to husband  
Custodial payor range, \$836-\$1,115, 9.5 to 19 years  
Wife's social assistance not to be included in her income  
Compensatory claim after traditional marriage, wife with health problems, unemployed  
Mid-point of range, \$975/mo., review in 2 years as to wife's self-sufficiency efforts  
No reduction for debts, as considered in property division

*Morgan v. Morgan*, [2006] N.J. No. 9, 2006 NLTD 6 (S.C.T.D.)(LeBlanc J.)  
Together 5 years (4 married), 2 children 8 and 6 (special needs), wife 32 (27 separation)  
Husband earns \$43,500 seasonal  
Child support \$579/mo.  
No undue hardship for access costs to St. John's, \$2,650/yr. or \$220/mo.  
Wife student, on social assistance, seeks spousal support 4 years after separation  
Range stated as \$329 to \$546, but no spousal support ordered because of access costs  
Duration not an issue, but likely time limit attached

*Gibb v. Gibb*, [2005] B.C.J. No. 2730, 2005 BCSC 1738 (S.C.)(Scarth J.)  
Together 18 years (married 13), 4 children age 7 to 18, with wife, wife 37  
Husband works in family company, minority shareholder, earns \$152,542  
Farm losses deducted at interim stage, bonuses to be issue at trial  
Child support \$2,683/mo., no undue hardship from debt  
Range \$2,124 to \$2,943, interim support of \$2,000 ordered  
Husband paying \$5,100 per month to purchase shares (debt exception?)

*de Gobeo v. de Gobeo*, [2005] M.J. No. 441, 2005 MBQB 261 (Q.B.F.D.)(Scurfield J.)  
Married 7 years (together 9), 1 child 16, separated 1996  
Child moved from mother to father in 2002  
Husband owns fast food franchises, now remarried, earns \$235,000  
Wife worked as chef, earned \$18-\$20,000, could earn \$30,000, no child support  
Husband paid spousal support \$3,500/mo for 9 years  
Time limits in Guidelines considered, 6 more months of \$3,500/mo.  
(Range \$2,306 to \$3,075, 4.5 to 9 years)

*Wegner v. Wegner*, [2005] B.C.J. No. 2290, 2005 CarswellBC 2488, 2005 BCSC 1497 and [2005] B.C. J. No. 2020, 2005 CarswellBC 2195, 2005 BCSC 1294 (Metzger J.)  
Married 20 years, 2 children 18 and 16 (plus 1 independent), wife 47 (45 separation)  
Husband 49, earns \$111,502 as business executive  
Wife self-employed writer, earns \$7,500, could earn \$12,000  
Child support \$1,336  
Spousal support range \$2,103 to \$2,627, \$2,300 ordered, indefinite

*Barry v. Barry*, 2005 CarswellNfld 248, 2005 NLUFC 31 (U.F.C.)(LeBlanc J.)  
Married 22 years, twin girls 18, with husband in home, traditional marriage  
Husband earns \$54,303 for Nfld. Broadcasting  
Wife moved back with mother, earns \$6,883, no child support  
Range \$914 to \$1,218, husband paying debts and expenses on home til sold  
Interim spousal support \$900/mo.

*B.(S.J.) v. L.(A.M.)*, 2005 CarswellQue 8410, [2005] Q.J. No. 13350 (C.S.)(Courteau J.)  
1 young child with mother, but liberal access  
Wife earns \$20,650, husband earns \$104,340  
Child support \$387, Advisory Guidelines argued  
Interim spousal support of \$1,500/mo.

*Ignacy v. Ignacy*, [2005] O.J. No. 5264 (S.C.J.)(Gordon J.)

Interim interim decision, 2 teenagers

Husband earns \$127,286, wife \$66,640

Guidelines used, spousal support of \$1,000 ordered

No child support stated, but table \$1,524/mo.

(Range \$214 to \$1,177)

*Hopper v. Hopper*, [2005] A.J. No. 1825, 2005 ABQB 985 (Q.B.)(McMahon J.)

Married 25 years, 2 children 22 and 18, students, wife 53 (48 at separation), husband 56

Husband earns \$310,000 as anaesthetist, pays \$60,000 for all children's expenses

Wife trained as podiatrist, once earned \$43,000, but little now

Separated 2000, wife cashed in RRSPs of \$108,000, received \$20,000 interim lump sum

Then interim spousal support of \$2,500 for 19 months

Advisory Guidelines "not helpful" "in complex circumstances of this case"

Spousal support of \$6,000/mo. ordered, for 5 years (i.e. 10 years total) while rebuild practice

(Custodial payor formula range, if \$40,000 imputed to wife: \$5,363 to \$7,150)

*Hennesey v. Hennesey*, [2005] A.J. No. 1703, 2005 ABQB 883 (Q.B.)(Foster J.)

Together 17 years (15 married), 2 children 18 and 15, equal shared custody

Husband's income \$244,000

Interim child support \$2,170, spousal support \$2,500

Child support \$1,500, plus 100% s. 7 expenses (vs. table amount for 1, \$1,891; for 2, \$2,978)

Older child in university, summer employment with father, part-time job

Entitlement to spousal support, wife at home later in marriage, health issues

Wife previously loan officer and assistant bank manager, failed businesses after separation

Claim for \$5,000 to \$6,000 based upon Guidelines

Budget of \$7,835, cut down to \$3,200 and spousal support of \$3,200 awarded

(Range, at full table amount for 2: \$5,695-\$6,773)

*Phillips v. Phillips*, [2005] B.C.J. No. 2495, 2005 BCSC 1614 (S.C.)(Scarth J.)

Together 24 years (married 7), 2 children 16 and 13, with wife

Master ordered interim child support \$750, spousal support \$500, spousal appealed

Wife earns \$25,000, claims husband earns \$68,589

Husband claims on appeal that earns only \$50,000

Husband's income fixed at \$60,000, Advisory Guidelines range stated as \$213-\$721

Interim spousal support reduced to \$300

(Range at \$60,000: \$29-\$543)

*Moggy v. Spry*, [2005] O.J. No. 4939 (S.C.J.)(Del Frate J.)

Together 6 years (married 3), 1 child 8 months, with wife

Husband earns \$70,000, child support \$572, plus \$75/week child care

Wife 25 years old, student, only income Ontario Student Assistance Program (\$9,800?)

Range stated as \$975-\$1500, \$1,200 ordered on interim basis

*Warren v. Warren*, [2005] N.J. No. 335, 2005 NLUFC 38 (U.F.C.)(Noonan J.)

Together 7 years, married 4, 2 children 9 and 6 (mild cerebral palsy), with wife

Husband lives with partner and her two children (she earns \$29,200)

Husband construction worker, income issues, income \$41,243

Wife finished business course, thinks job possible at \$26,000

Child support \$551, plus 50% s. 7 expenses

Interim spousal support \$700 when no income

Entitlement, but no ability to pay using Guidelines and ChildView

(If wife earns \$26,000, zero support, wife has 50% INDI)

*J.S.G. v. A.G.G.*, [2005] B.C.J. No. 2228, 2005 BCSC 1457 (B.C.S.C.)(Gray J.)

Together 16 years (married 13), wife 49 at separation, 2 children

Husband earns \$106,000, cohabiting, wife earns \$29,000 as care aide (casual)

Reapportionment of equity in matrimonial home to wife, \$49,000  
Child support \$1,282  
Range \$1,400-\$2,050 indefinite  
Compensatory claim, but reduced for reapportionment  
Support of \$1,700 mid-range, indefinite

*V.S. v. A.K.*, [2005] A.J. No. 1357, 2005 ABQB 754 (Alta.Q.B.)(Trussler J.)  
Married 12 years, one child age 9  
Husband earns \$39,012, child support \$339/mo.  
Wife has no income, but could earn \$12,000 annually starting January 2006  
Guidelines extensively criticized at paras. 17 to 25, not used  
Hearing adjourned for detailed evidence of needs, ability to pay, other factors  
[Range: \$706-\$885 if zero income for wife, \$122-\$370 if \$12,000]

*Wittich v. Wittich*, [2005] N.S.J. No. 377, 2005 NSSC 265 (S.C.F.D.)(B. MacDonald J.)  
Married 10 years, wife 54 (52 at separation), one child 16 with father  
Romantic relationship for 6 years before marriage, lived in same house  
while wife still married to first husband  
But not count as cohabitation for pension division  
Wife homemaker, pension income from divided pensions of \$6,540/yr.]  
Husband earns \$80,762 from job and pensions, promised to take care of wife  
Guidelines rejected, no time limits, "significant dependency", larger amount  
Indefinite order, \$2,100 per month  
[Custodial payor range: for 10 years, \$755-\$1,007, 5 to 10 years  
for 16 years, \$1,208-\$1,611, indefinite as rule of 65 applies, disability exception?]

*Megyesi v. Megyesi*, [2005] A.J. No. 1261, 2005 ABQB 706 (Alta.Q.B.)(Watson J.)  
Married 13 years, wife 45 at separation, 1 child of marriage, 16, with wife  
Husband's 2 children of previous marriage now 25 and 20, wife as stepmother  
Interim orders: child support \$703, spousal \$1,000  
Wife teacher's assistant, earns \$24,000  
Husband crane operator, earned \$103,882 in 2004, says \$92,300 in 2005  
Wife sought \$2,000/mo., indefinite  
Time limit preferred and Guidelines considered, 8 more years to be paid (11 years in all)  
At higher income, range would be \$1,365 - \$2,025  
Order for \$1,000 as income used for range too high and "other discrepancies"  
Income sharing at those ranges also beyond reasonable expectations of parties  
(Range at \$92,300, adjusted down for his prior child support obligation, \$494-\$1085)

*E.C. v. N.B.*, unreported decision (Que.S.C.)(Marcelin J.)  
Husband in Connecticut, did not appear, earns \$131,900 Cdn.  
Wife on social assistance with 3 children, 2 in school, 1 pre-school, 1 with special needs  
Wife also cared for husband's 2 children of first marriage  
Child support \$1,772/mo.  
Advisory Guidelines considered, along with needs and means, spousal support of \$1,050

*C.G. c. G.V.*, [2005] J.Q. no. 14420 (Que.S.C.)(Borenstein J.)  
[appealed; see *G.V. v. C.G.*, [2006] J.Q. no. 5231 (Que. C.A.) under appellate decisions, above]

*Socan v. Socan*, [2005] O.J. No. 3992 (Ont.S.C.J.)(Blisshen J.)  
Together 16 years (married 13), 2 children 19 and 13, oldest not "child of marriage"  
Child with wife, wife 45 at trial (39 at separation)  
Wife cashier at Walmart, health problems, earns \$20,401  
Husband Canada Post, health problems, earns \$44,904  
Child support \$387 (1), husband paid all matrimonial debts  
Range \$111 - \$293, request for \$200 by wife  
\$150 ordered, due to husband's payment of debts, expenses, equalization payment

*M.A.C. c. S.H.*, No. 700-12-034289-041, August 26, 2005 (Que.S.C.)(Wery J.)

Married 19 years, 4 children, now 2 with mother

Husband works construction, income attributed at \$60,000

Wife cohabited for past year, husband cohabiting more recently

Child support \$975, spousal support at \$830 mid-point of range, indefinite

*A.A. v. B.B.*, [2005] N.B.J. No. 340, 2005 NBQB 286 (N.B.Q.B.F.D.)(Tuck J.)

Married 23 years, 2 children 25 and 22, wife 43 at separation (50 now)

1998 separation agreement: \$210 spousal, \$390 child (1)

Wife disabled since 1984, arthritis, CPP disability

Child support from Sept. 2003 to Dec. 2005 graduation, table plus s. 7 expenses

Husband's 2005 income \$65,209 (3 year average), construction, \$62,132 in 2004

With child support range presented as \$997 - \$1,357 at \$62,132

(Without child support range \$1,292 - \$1,723 at \$62,132, \$1,381 - \$1,841 at \$65,209)

\$1,200 ordered

*Fancett v. Deprato*, [2005] O.J. No. 3860 (Ont.S.C.J.)(MacKenzie J.)

Together 4 ½ years, 1 child 6 with wife, wife 36 at separation

Husband now disabled, off job, but no evidence, 2004 income \$65,318

Child support \$545, plus \$332 for s. 7 expenses

Wife clerical job \$12,486, now cohabiting, seeks spousal for past 18 months

Unable to use Guidelines because of changing incomes (?), \$600/mo. ordered

Child and spousal support used to offset husband's equity in home

*L.A.K. v. A.A.W.*, [2005] A.J. No. 1140, 2005 ABQB 657 (Alta.Q.B.)(Johnstone J.)

Interim support, together 30 years, married 28 years, 2 children 18 and 15 with wife

Husband earns \$92,495, no deduction for loss on hobby business

Child support \$1,208 plus s. 7 expenses for tuition and books at community college

Wife earns \$39,500 as clerk, works 87% due to medical problems

\$1,000/mo. at "upper end" of Guidelines range (estimated at \$580-\$1163)

*Stieda-Everitt v. Everitt*, [2005] B.C.J. No. 1556, 2005 BCSC 1034 (B.C.S.C.)(Ehrcke J.)

Married 19 years, 3 children with wife

Proceeds of sale of matrimonial home reapportioned 55/45 to wife

Husband earned \$68,590, now working part-time for \$37,700 and pursuing pilot's licence

Wife earns \$6,000 as substitute teacher

Full income imputed to husband, child support \$1,182

Range: \$606-\$919, \$650 ordered, indefinite, review in 24 months (wife sought lower end)

*Hewko v. Hewko*, [2005] B.C.J. No. 1416, 2005 BCSC 904 (B.C.S.C.)(Curtis J.)

Married 21 years, children 21 and 15, with wife, wife 43 at separation

1999 settlement: child support \$1,300, spousal \$3,000 and \$24,000 lump sum

Husband health problems, working part-time, earns \$58,164 (\$108,000 before)

Wife many health problems, university and teacher's degree not reasonable plan, no income

Child support reduced to \$795

Guidelines "in the range of \$1,400/month" (Range by Divorcemate: \$1,049-\$1,287)

Spousal support of \$2,000 ordered, reviewed in 18 months and \$25,000 then imputed to wife

*M.S. v. W.S.*, [2005] B.C.J. No. 1447, 2005 BCSC 939 (B.C.S.C.)(Romilly J.)

Together 15 years (married 12), wife 36 at separation

2 children, 12 and 8, younger with learning disability and in private school

Equal division of family assets

Child support \$2,286 plus 80/20 split of s. 7 expenses (\$25,694/year)

Husband makes \$207,432 in family business

Wife returned to film school, paid by husband, could earn \$30-\$40,000 as animator

Guidelines "not law", spousal support of \$2,500 ordered

(Range by Divorcemate: \$3,941-\$4,897 if wife no income, \$3,432-\$4,539 if \$30,000)

*Pelletier v. Pelletier*, [2005] N.S.J. No. 273, 2005 NSSC 178 (N.S.S.C.)(Nathanson J.)  
Together 21 years (married 19), wife 41 at separation  
Split custody: 19 year old with wife, 17 year old with husband  
Husband in Armed Forces, makes \$56,000, cohabiting with partner and her 4 children  
Wife personal care worker, makes \$22,200  
Child support: \$455 - \$160 = \$295, plus \$2000/year for university expenses  
Spousal support \$300/mo., for 5 years, “generally in accord with Advisory Guidelines”  
(Range by Divorcemate: \$488-\$834)

*Dench v. Dench*, [2005] O.J. No. 2646 (Ont.S.C.J.)(Heeney J.)  
Married 16 years, 4 children, 1 still dependent, with wife, wife 47 at separation  
Husband owns car dealership, makes \$150,000  
Child support \$1,108  
Wife’s income \$51,000 (\$36,000 on investments, plus \$15,000 imputed minimum wage)  
Range \$1,597-\$2,680, spousal support of \$2,000 ordered  
Roughly equal standards of living, wife’s lower housing costs

*Anderson v. Anderson*, [2005] M.J. No. 243, 2005 MBQB 133 (Man.Q.B.)(MacInnes J.)  
Together 5 years (married 4), 1 child 5 years old with cerebral palsy  
Husband earns \$153,000 Cdn equivalent, in U.S. computer business  
Child support \$1,122, plus \$843/year for s. 7 expenses  
Range \$3,732-\$4,507, “simply not realistic”, uses budget analysis  
Spousal support of \$2,000/mo. plus taxes ordered (approx. \$2,416)

*Bielanski v. Bielanski*, [2005] O.J. No. 2171 (Ont.S.C.J.)(Gauthier J.)  
Married 14 years, 2 children, 16 and 14, with mother  
Interim order: child support \$1,049; spousal support \$850  
Husband’s income \$90,900 at Inco, wife \$34,500 in retail  
Order for child support \$1,146 and spousal support \$1,000  
Range \$611-\$1,237

*Large v. Large*, [2005] P.E.I.J. No. 43, 2005 PESCTD 34 (S.C.T.D.)(Mitchell C.J.P.E.I.)  
Long traditional marriage, wife 55, one child in university and living at home  
Income imputed to lawyer husband in Saskatchewan, \$80,000  
Child support \$609, no s. 7 expenses, as student earned \$15,000  
Formula calculated by arithmetic, 43% INDI as \$1,685, indefinite  
Restructured to lump sum, 10 years support, discount rate, tax, to \$102,100  
(Range by Divorcemate: \$1,891-\$2,290, hybrid university formula: \$1,650-\$2,200)

*Friess v. Friess*, [2005] S.J. No. 360, 2005 SKQB 248 (Sask.Q.B.)(Sandomirsky J.)  
Married 22 years, 2 children with wife 17 and 16  
Husband earns \$49,239 as farmer, wife earns \$15,300  
Child support \$650  
Formula calculated by arithmetic, range zero to \$228, \$350 ordered  
(Range by Divorcemate: zero to \$295)

*Simmonds v. Simmonds*, [2005] N.J. No. 144, 2005 NLUFC 10 (Nfld.U.F.C.)(Handrigan J.)  
Married 4 years, 2 children 10 and 3, with wife  
Husband makes \$83,945, wife \$10,210 part-time  
Child support \$1,013 plus \$163 for day care  
Formula calculated by arithmetic, range reported as \$650-\$925  
Spousal of \$400 ordered, as requested by wife, review in October 2007  
(Range by Divorcemate: \$839-\$1,416)

*Skipton v. Skipton*, [2005] N.S.J. No. 83, 2005 NSSC 43 (N.S.S.C.)(Warner J.)

Together 9 years (married 7), one child age 8, wife 32 at separation

Husband \$57,000 in military, wife \$5,700 employment insurance

Both formulas applied, with and without child support, as "check"

Formula calculated by arithmetic, low end of range reported as \$616. \$616 ordered.

(Range by Divorcemate: \$793-\$1,133)

*Anderson v. Anderson*, [2005] N.S.J. No. 176, 2005 NSSC 94 (N.S.S.C.)(Warner J.)

Together 12 years (married 11), custody in dispute, 2 children placed in husband's custody

Husband makes \$50,000, wife now cohabiting and no income

Wife seeks \$500 per month for 14 months as spousal support

Wife's request less than guidelines, so support ordered as requested.

(Hybrid formula: \$554-\$738, for 6-12 years)

*Zelko v. Zelko*, [2005] O.J. No. 653 (Ont.S.C.J.)(Cusinato J.)

Married 15 years, 2 children 14 and 12, wife 36 at separation

2001 order: \$1,031 child support, \$1,500 spousal support

2 children now with father

Wife makes \$14,000, i.e. child support of \$211

Wife still to receive \$1,500 spousal, indefinite

Discussion of guidelines, but unable to do calculations without software

(Hybrid formula: \$894-\$1,193 for 7.5 to 15 years)

*Araya v. Gaete*, [2005] O.J. No. 704 (Ont.S.C.J.)(Young J.)

Married 23-plus years, 3 children, 1 left with wife

Husband makes \$50,000, wife laid off, \$10,000 imputed

No child support, shared custody agreement

Guidelines cited in discussion on entitlement

\$800 interim spousal support ordered

(Range by Divorcemate: \$1,150-\$1,533 indefinite)

*McPhee v. McPhee*, 2005 CarswellOnt 683 (Ont.S.C.J.)(Gordon J.)

Application to vary, husband's income reduced, wife's increased

Child support adjusted, but spousal left unchanged at \$1,500 per mo.

Support still within range computed using guidelines (no details given)

## THE ADVISORY GUIDELINES 17 MONTHS LATER

### Appendix II CASE SUMMARIES BY PROVINCE [Updated to October 5, 2006]

#### Alberta

##### (i) The *Without Child Support* Formula

*Duder v. Rowe*, [2006] A.J. No. 868, 2006 ABQB 518 (Q.B.)(Veit J.)

Married 20 years, wife 38, 1 adult child

Husband earns \$70,000, wife \$35,000

Wife seeks compensatory support, interim \$1,000/mo.

Issues of entitlement and effect of agreement, no “need” in interim, put over to trial

Guidelines not applicable until threshold issues determined

*Locke v. Ledrew*, [2006] A.J. No. 759, 2006 ABQB 452 (Alta.Q.B.)(Veit J.)

Married 28 years, 3 grown children, wife 55 (49 at separation), husband 51

Spousal support of \$800/mo. ordered in 2004, reviewable in 2 years

Wife in Cornerbrook, Nfld, earns \$5,887/yr., part-time

Remarried, new husband receives CPP Disability/WCB \$21,350

Husband receives disability pension plus CPP, \$38,572

Also remarried, new wife applied for CPP Disability

Equal split of gross income: support of \$1,450/mo.

Full-time employment income imputed to wife, \$900/mo., reduce to \$550/mo.

Adjust down to \$500/mo, for wife’s remarriage

Guidelines range stated as \$1,154-\$1,374, indefinite

(really \$868-\$1,157 if \$10,800 imputed to wife)

Suggestion of standard-of-living test for hardship claims

*McCulloch v. Bawtinheimer*, [2006] A.J. No. 361, 2006 ABQB 232 (Q.B.) (Sullivan J.)

Together 6 years, “adult interdependent partners”

Husband earns \$103,000, pays \$15,600/yr. in prior spousal support (exception)

Wife earns \$27,216, gross income difference \$60,184

Range \$451-\$602, for 3-6 years, global amount \$16,250-\$43,332

Detailed explanation of Guidelines and restructuring

No compensatory exception, no debt payment exception

Orders \$2,000/mo. for 9 mos., \$1,000/mo. for 9 mos., \$500 for 7 mos., total \$29,500

*Toews v. Toews*, 2005 CarswellAlta 1885 (Q.B.)(Cairns J.)

Married 34 years, 2 adult children, wife 58 (55 separation), husband 58

Husband runs air charter business, earns \$100,000

Wife at home, did bookkeeping in business, now no income

Interim spousal support \$1,200 plus home expenses (2002), \$4,800/mo. (2004)

Equal division of property

Spousal support of \$3,500 indefinite, “well within the range”

(Range \$3,125 to \$4,166 indefinite)

*Guzman v. Guzman*, [2005] A.J. No. 1840, 2005 ABQB 908 (Q.B.)(Lee J.)

Married 35 years, traditional marriage, 3 grown children, both spouses 55

Husband earns \$80,000 as heavy equipment operator, wife not employed outside home

Husband paying debts \$1,820/mo., mostly matrimonial debts (about \$1,500/mo.)

Indefinite order, range stated as \$2,331 to \$3,107

Debt payments deducted from husband's income  
Spousal support of \$1,600/mo. equalizes incomes after adjustment for debt payments

*Law v. Law*, [2005] A.J. No. 1315, 2005 ABQB 723 (Alta.Q.B.)(Clackson J.)  
Married 35 years, 2 adult children, husband 57, wife 55  
Husband earns \$131,000, wife \$51,000  
Range \$2,500-\$3,333 (37.5 to 50 per cent), indefinite  
Order for \$3,000, to cease when husband retires and pension divided  
To continue at 45 per cent of gross income difference

*Gerlitz v. Gerlitz*, [2005] A.J. No. 1132, 2005 ABQB 621 (Alta.Q.B.)(Veit J.)  
Interim support, adjourned to trial, Guidelines don't apply to entitlement  
Married 25 years, parented sister's children (now grown up)  
Wife teacher, earns \$80,000, assets of \$359,000 plus pension and RRSPs  
Husband engineer earns \$200,000 (closer to \$80,000 at separation), assets of \$251,000

*Crisall v. Crisall*, [2005] A.J. No. 675, 2005 ABQB 411 (Alta.Q.B.)(Lee J.)  
Married 8 years, no children  
Husband union representative, earns \$93,000  
Wife previously earned \$36-\$60,000, temporarily unemployed  
Order for \$1,500 per month, review in 6 months  
Range stated to be \$795-\$1,060, but doubts about "real merit" of guidelines  
Correct range \$930-\$1,240

*Vanderham v. Vanderham*, [2005] A.J. No. 655, 2005 ABQB 351 (Alta.Q.B.)(Verville J.)  
Married 30 years, 2 adult children, wife 49 at separation  
Interim order by consent for \$2,200 per month, then reduced to \$1,100  
Wife earns \$33,500 as clerk  
Husband's income as heavy equipment operator fluctuates, \$80,000 estimated  
Guidelines "a useful tool"  
Range: \$1,453-\$1,937. \$1450 ordered, indefinite, review in 2 years

*Modry v. Modry*, [2005] A.J. No. 442, 2005 ABQB 262 (Alta.Q.B.)(Germain J.)  
Guidelines argued by wife's lawyer, husband's income \$1,266,000  
29 year marriage, 4 grown children, income imputed to wife  
Discussion of guidelines, but this above \$350,000 ceiling, \$9,900 ordered

*Carr v. Carr*, [2005] A.J. No. 391, 2005 ABQB 265 (Alta.Q.B.)(Veit J.)  
Interim spousal support, 28 year marriage, 3 adult children, wife 51  
Husband makes at least \$150,000, wife \$9,300 disability  
Without child support formula explicitly used  
Range \$4,397-\$5,863. \$5,000 ordered.  
General reference to use of guidelines as "cross-check"

## **(ii) The *With Child Support* Formula**

*Dhala v. Dhala*, [2006] A.J. No. 985, 2006 ABQB 600 (Veit J.)  
Married 27 years, 2 children 30, 18 with husband  
Interim spousal support \$3,600/mo., exclusive possession of home (January 2003)  
Wife disability, CPP \$1,250 net/mo., court not bound by CPP finding  
Second interim order, child with husband: child support \$1,31 from mother  
Interim spousal support reduced to \$3,000/mo.  
Husband chartered accountant, Alberta government \$105,420  
But wife some ability to contribute, worked in government until 1999  
Uses husband's net income after deductions rather than gross income  
Splits "income stream" 60/40 to wife, not 50/50, as self-sufficiency issues  
Spousal support of \$1,500/mo., indefinite  
(Custodial payor range if wife \$16,600: \$2,294-\$3,059)

(Range if wife imputed \$28,300: \$1,941-\$2,588)

*Chalifoux v. Chalifoux*, [2006] A.J. No. 883, 2006 ABQB 535 (Read J.)

Married 22 years (plus 3 cohab), 3 children, 1 left 16, shared custody or live with father

Wife disabled, car accident, living with boyfriend, income \$24,835

Husband electrician, repartnered, earned \$50,000, now in Yemen ½ time, \$171,432

Child support: s. 9, \$1,492 - \$213 = \$1,279; if father custody, \$213

Wife seeks spousal support \$4,200-\$6,300, husband says \$1,500

Spousal support \$2,000/mo. indefinite

Wife not to share significantly in post-separation income increase

(Shared custody, Guidelines range: \$3,312-\$4,259)

(Custodial payor range: \$3,778-\$5,037; if husband at \$90,000, range \$1,686-\$2,249)

*Gartshore v. Gartshore*, 2006 CarswellAlta 821, 2006 ABQB 475 (Coutu J.)

Married 18 years, 2 children (12+), shared custody, week about

Husband's base income \$162,070, to be adjusted later for bonus

Wife's income imputed at \$24,000 (to increase to \$30,000 possibly)

Equal division of assets

Child support: not straight set-off, wife buys all clothes, 25% off table amount, \$1,691

Interim spousal support \$1,000/mo., wife lives every 2<sup>nd</sup> week with boyfriend

Wife's statement of Guidelines range: \$1,500- \$1,900

(Shared custody range: \$2,654-\$3,474 if \$24,000; \$2,441-\$3,282 if \$30,000)

Support of \$1,000/mo. ordered based on budgets, review in 2 years

*Hopper v. Hopper*, [2005] A.J. No. 1825, 2005 ABQB 985 (Q.B.)(McMahon J.)

Married 25 years, 2 children 22 and 18, students, wife 53 (48 at separation), husband 56

Husband earns \$310,000 as anaesthetist, pays \$60,000 for all children's expenses

Wife trained as podiatrist, once earned \$43,000, but little now

Separated 2000, wife cashed in RRSPs of \$108,000, received \$20,000 interim lump sum

Then interim spousal support of \$2,500 for 19 months

Advisory Guidelines "not helpful" "in complex circumstances of this case"

Spousal support of \$6,000/mo. ordered, for 5 years (i.e. 10 years total) while rebuild practice

(Custodial payor formula range, if \$40,000 imputed to wife: \$5,363 to \$7,150)

*Hennesey v. Hennesey*, [2005] A.J. No. 1703, 2005 ABQB 883 (Q.B.)(Foster J.)

Together 17 years (15 married), 2 children 18 and 15, equal shared custody

Husband's income \$244,000

Interim child support \$2,170, spousal support \$2,500

Child support \$1,500, plus 100% s. 7 expenses (vs. table amount for 1, \$1,891; for 2, \$2,978)

Older child in university, summer employment with father, part-time job

Entitlement to spousal support, wife at home later in marriage, health issues

Wife previously loan officer and assistant bank manager, failed businesses after separation

Claim for \$5,000 to \$6,000 based upon Guidelines

Budget of \$7,835, cut down to \$3,200 and spousal support of \$3,200 awarded

(Range, at full table amount for 2: \$5,695-\$6,773)

*V.S. v. A.K.*, [2005] A.J. No. 1357, 2005 ABQB 754 (Alta.Q.B.)(Trussler J.)

Married 12 years, one child age 9

Husband earns \$39,012, child support \$339/mo.

Wife has no income, but could earn \$12,000 annually starting January 2006

Guidelines extensively criticized at paras. 17 to 25, not used

Hearing adjourned for detailed evidence of needs, ability to pay, other factors

[Range: \$706-\$885 if zero income for wife, \$122-\$370 if \$12,000]

*Megyesi v. Megyesi*, [2005] A.J. No. 1261, 2005 ABQB 706 (Alta.Q.B.)(Watson J.)

Married 13 years, wife 45 at separation, 1 child of marriage, 16, with wife

Husband's 2 children of previous marriage now 25 and 20, wife as stepmother

Interim orders: child support \$703, spousal \$1,000

Wife teacher's assistant, earns \$24,000

Husband crane operator, earned \$103,882 in 2004, says \$92,300 in 2005

Wife sought \$2,000/mo., indefinite

Time limit preferred and Guidelines considered, 8 more years to be paid (11 years in all)

At higher income, range would be \$1,365 - \$2,025

Order for \$1,000 as income used for range too high and "other discrepancies"

Income sharing at those ranges also beyond reasonable expectations of parties

(Range at \$92,300, adjusted down for his prior child support obligation, \$494-\$1085)

*L.A.K. v. A.A.W.*, [2005] A.J. No. 1140, 2005 ABQB 657 (Alta.Q.B.)(Johnstone J.)

Interim support, together 30 years, married 28 years, 2 children 18 and 15 with wife

Husband earns \$92,495, no deduction for loss on hobby business

Child support \$1,208 plus s. 7 expenses for tuition and books at community college

Wife earns \$39,500 as clerk, works 87% due to medical problems

\$1,000/mo. at "upper end" of Guidelines range (estimated at \$580-\$1163)

## British Columbia

### (i) Appellate Decisions

*Yemchuk v. Yemchuk*, [2005] B.C.J. No. 1748, 2005 BCCA 406 (Prowse J.A.)

Married 35 years, one grown child, husband 63 at trial, wife 61.

Family assets divided equally, trial judge found no entitlement to spousal support

Entitlement found on appeal, both compensatory and non-compensatory grounds

Engineer husband retired early in 1997, as wife transferred to Manitoba in federal government

No issue as to duration, as husband only claiming support until wife retired at 65

Husband 's income \$37,600, wife makes \$75,000

Guidelines range under *without child support* formula: \$1,190 to \$1,580

Guidelines "a useful tool to assist judges", "intended to reflect the current law" citing *W. v. W.*

Extensive discussion of Guidelines issues, not evidence but part of counsels' submissions

Support fixed at \$1,100, to reflect wife's "expenses relating to employment (including clothing, transportation expenses and significant compulsory employee deductions)"

*Tedham v. Tedham*, [2005] B.C.J. No. 2186, 2005 BCCA 502 (Prowse J.A.)

Married 16 years, wife now 52 (47 at separation), husband now 47, traditional marriage

Two children, 20 and 21, "deemed independent", direct support from husband

Wife earns \$25,000 part-time retail, income imputed of \$30,000

Husband estimated to earn \$343,000 in computer software sales

Payment by husband of \$95,850 to reapportion property

Was paying \$1,589 child support and \$4,000 spousal to wife

Chambers judge ordered diminishing time-limited support for 3 more years: \$6,000/mo. year 1, \$4,000 year 2, \$2,000 year 3, then zero, to encourage self-sufficiency

No time limit, only partial compensation, indefinite order substituted, subject to review if husband's medical condition (legal blindness) interferes with income

Amount fixed at \$6,000, Guidelines range stated as \$6,300 to \$8,500 for 8 to 16 years

Lower than range because of reapportionment order

(*Without child support* range: \$6,260-\$8,347, if incomes as stated)

[Custodial payor formula range (no child support from wife): \$4,712-\$6,283]

*Kopelow v. Warkentin*, [2005] B.C.J. No. 2412, 2005 BCCA 551 (Smith J.A.)

Married 12 years (plus one year cohab), 2 children 15 and 13, with wife

Wife earns \$30,000, now 55 (49 at separation), husband earns \$177,000

Wife challenging marriage agreement property division, 78 per cent to husband

Child support \$1,995, wife also entitled to spousal support

Range \$3,037-\$4,015, \$3,500/mo. ordered

With these support amounts, marriage agreement not unfair

*Toth v. Kun*, [2006] B.C.J. No. 739, 2006 BCCA 173 (Hall J.A.)

Married 10 years, no children, husband 64, wife 41

Interim support \$2,300/mo., varied to \$2,400 in April 2003

Wife health problems, but will recover, poor English

Husband earned \$70,000, but now retired, only \$42,000

At trial: support varied to \$1,500, indefinite

On appeal: too onerous, so time limited, step-down

\$1,200/mo. to Sept. 2006, then \$1,000/mo. to Sept. 2009, support paid 6 ½ years

Range \$525-\$700, 5 to 10 years [within global range on restructuring]

*Redpath v. Redpath*, [2006] B.C.J. No. 1550, 2006 BCCA 338 (Newbury J.A.)

Married 18 years, wife 41, division of assets issues

5 children 8 to 18, oldest with husband, next with wife, 3 shared

Husband earns \$260,000, bakery business, income issues, wife no income

Trial: child support \$4,000/mo., spousal support \$3,500/mo., review in 3 years

(4 child table amount \$4,296)

Advisory Guidelines may affect standard of appellate review  
Guidelines range: \$4,542-\$5,510, not referred to by trial judge  
Trial judge overemphasized self-sufficiency, amount "simply too low"  
Spousal support of \$5,000/mo., review in 5 years as children young, wife needs training

*R.S.M. v. M.S.M.*, [2006] B.C.J. No. 1756 (Saunders J.A.)

Married 30 years; 2 grown children

Separation agreement in 2001 providing for spousal support of \$700/mo and division of assets (at time of agreement husband unemployed, having lost job earning \$65,000; wife earning \$23,700)

Wife tries to avoid agreement and claim greater share of assets and increased spousal support

Husband now earning \$78,000 and wife \$36,000

Trial judge finds that agreement was not fairly negotiated (wife vulnerable and no proper legal advice) and that at time of formation it did not comply substantively with Divorce Act objectives; orders spousal support of \$1,600/mo after considering SSAG range (range not stated, estimated at \$1312-\$1750)

Order upheld on appeal.

Re *Miglin* stage one, wife vulnerable but no substantive unfairness; but agreement fails *Miglin* stage 2--agreement did not contemplate husband's future employment)

*Stein v. Stein*, [2006] B.C.J. No. 2020, 2006 BCCA 391 (Saunders J.A.)

Married 15 years, 2 children 13 and 9 with wife, husband 44, wife 39 (36 at separation)

Equal division of family assets

Trial: spousal support \$2,500/mo. for 3 ½ years

Guidelines range: \$3,920-\$4,883, interim support \$3,000 after-tax

Husband works in family business, earns \$207,433

Wife receives rent \$7,000/yr., educated as animator, looking for work, good prospects

Support ordered inadequate, increased to \$4,200/mo.

Duration: time limit unusual, too severe, review before termination

## **(ii) The *Without Child Support* Formula**

*R.S.R. v. S.M.R.*, [2006] B.C.J. No. 2109, 2006 BCSC 1404 (Martinson J.)

Married 23 years, two grown children

Both parties repartnered

Wife part-time retail clerk during marriage; income \$21,400

Husband's income \$67,074

Husband paid \$900 per month spousal support for 9 months under interim separation agreement

In divorce proceedings husband sought order dismissing wife's claim for spousal support on basis of no entitlement; wife not currently requesting spousal support because new partner has high income but wants to preserve entitlement to apply for support in future if new relationship ends

Husband's claim dismissed; wife entitled to support on both compensatory and non-compensatory grounds; entitlement not lost because of new relationship;

Court considers SSAG of some assistance even though they do not deal with entitlement: in absence of new relationship wife would have substantial claim to spousal support under SSAG(\$1,583.33 per month at mid-point of range)

*Eng v. Eng*, [2006] B.C.J. No. 2044, 2006 BCSC 1353 (Russell J.)

Together 4 years (married 3 ½), husband 53, wife 45 (41 at separation)

Family assets divided equally, except shareholder loan, reapportioned 100% to husband

2 stepchildren 21 and 16, child support from biological father \$612/mo.

Child support of \$1,000 paid for 5 years since separation, sufficient, no more

Interim spousal support orders: \$7,000/mo. (2000), \$6,000 (2002), \$3,750 (2003)

Husband earns \$165,000, wife \$10,800

Guidelines range: \$784-\$1,045, 2-4 years

Too low, wife's disability, husband's wealth, \$3,000/mo. plus private health insurance

Duration: indefinite based on need, promises by husband

Review when health care coverage reaches maximum

*Reitsma v. Reitsma*, [2006] B.C.J. No. 1743, 2006 BCSC 1135 (Maczko J.)

Married 18 years; two grown children

Wife homemaker and worked as book-keeper in husband's business during marriage; working 2 jobs post-separation earning \$30,000

Husband mechanic runs auto-repair business; income in dispute; set at \$62,160 based on 3 year average

SSAG range stated as \$723-\$964 for duration of 9 to 18 years

Court chooses middle of range and awards spousal support of \$843.mo

Duration:13 years

*Wilson v. McDougald*, [2006] B.C.J. No. 1727, 2006 BCSC 1155 (Johnston J.)

Unmarried couple, 14 year cohabitation, second relationship for both

Wife on CPP disability when relationship began; homemaker during relationship; income \$7,600

Husband's income \$82,000; repartnered and supporting new partner and daughter

SSAG range: \$1302- \$1736

Wife argues for \$2,200/mo to meet expenses

Spousal support of \$1400/mo ordered; wife has option of supplementing disability pension by part-time earnings

*Fogal v. Fogal*, [2006] B.C.J. No. 1844, 2006 BCSC 1104 (Master Patterson)

9 year marriage; second marriage for both

Prenuptial agreement waiving spousal support

Wife applies for interim support

Wife employed as hairdresser before and during marriage, earning \$34,500

Husband's income \$134,000

No order for interim support given pre-nup; no significant change since agreement, and no desperate need

SSAG referred to as important factor to consider on quantum but not binding especially on interim

*Wise v. Wise*, [2006] B.C.J. No. 1413, 2006 BCSC 945 (S.C.)(MacKenzie J.)

Together 7.5 years (married 2.5), wife 51, husband 49, no children

No assets other than pensions

Wife developed MS in 1997, just before married, now receiving \$12,708 CPP

Interim spousal support \$1,000/mo. since 2002 (44 months)

Husband electrician, earns \$69,000

Pays \$425/mo. child support, for 4 more years

Cohabiting with unemployed social worker, earned \$50,000

Husband argues Guidelines range \$420-\$559 for 3 to 7 years

Guidelines rejected as too low, too short, \$489-\$562 stated as range

Some discussion of restructuring, disability exception

Spousal support of \$800/mo., for another 4 years

(Range \$563-\$751; after child support, \$483-\$644)

*Davison v. Davison*, [2006] B.C.J. No. 1195, 2006 BCSC 111 (S.C.)(Maczko J.)

Together 18 years (10 married), wife 61, husband 75, each 4 grown children

Equal division of house

Wife receives CPP \$3,780/yr., increased to \$12,780 for interest income

Husband receives pension income \$37,575

Range \$760-\$1,013, but spousal support of \$500/mo. ordered

(Range \$552-\$736 if wife's income is \$12,780)

Husband left with house expenses and mortgage to pay equalisation

Spousal support lower to maintain comparable standards of living (?)

*A.G. v. C.G.*, [2006] B.C.J. No. 1157 (Prov. Ct.) (Baird Ellan Prof. Ct. J.)

26 year marriage; parties married in Peru, 2 grown children

Interim spousal support of \$1000/mo

Husband earns \$58,000; income imputed to be \$60,000; paying \$500 per month on mutual debt of \$50,000 and

income tax debt of \$150 per month; willing to pay \$600 per month spousal

Wife, with limited English language skills and poor health, on social assistance; had worked full-time as daycare worker ten years until injured in 2003; income \$6120 on social assistance but court imputes income of \$9,000 based on part-time work at \$9/hr

SSAG range of \$1594 to \$2125 considered; spousal support set at \$1200/mo (i.e. below range) reflecting husband's debt payments and wife's potential to increase earning capacity

Order gives wife 1/3 of husband's disposable income, husband 1/3, and 1/3 for debt.

*Lust v. Lust*, [2006] B.C.J. No. 886, 2006 BCSC 623 (B.C.S.C.)(Meiklem J.)

Married 27 years (plus some prior cohabitation), 4 adult children, wife 48 at separation

Husband earns \$54,307, logging

Wife returned to work, now employed on 1-year contract, \$21,575

Spousal support of \$1,200/mo. ordered in 2005, now being reviewed

Range \$1,029 to \$1,370, spousal support ordered at \$1,000/mo., indefinite, no review

*Dunnigan v. Park*, [2006] B.C.J. No. 987, 2006 BCSC 688 (B.C.S.C.)(Maczko J.)

Married 25 years, 2 adult children, wife 52, husband 58, separated 2002

Husband earns \$53,000, paying family debts

Wife earns \$12,000, caring for her mother, receiving payment, husband says impute \$22,000

Range: \$1,200 to \$1,600 (\$12,000), \$900 to \$1,200 (\$22,000)

Spousal support of \$1,200 ordered, indefinite

*T.M. v. R.M.*, [2006] B.C.J. No. 868, 2006 BCPC 161 (Tweedale Prov.Ct.J.)

Together 11 years (married 7 ½), husband adopted mother's one child, now 20

2002 separation agreement: \$650 spousal support plus child support, wife then 43

Husband remarried, he earns \$95,765, new wife earns \$40,000, her 2 children

Wife trained as hair stylist, hand injury, now retail sales, earns \$21,027

Range \$1,028-\$1,370, 5.5 to 11 years

Spousal support increased to \$1,000/mo., for another 4 years (total 8)

*Banford v. Banford*, [2006] B.C.J. No. 721, 2006 BCSC 543 (S.C.)(Powers J.)

Married 23 years, 3 adult children (2 living with wife), wife 53 (46 at separation)

Variation application, 2003 order \$1,375/mo., plus \$200/mo./child in university

2003: husband earning \$67,500, wife student income \$9,800

Husband now earns \$72,500 for Ministry of Forests, remarried, U.S. wife no income

Wife got B.A., but then part-time employment, earns \$28,000

Order varied to \$1,200/mo. considering original order, Guidelines as "cross-check"

(Range \$1,280-\$1,706 indefinite)

*Vazzaz v. Vazzaz*, [2006] B.C.J. No. 625, 2006 BCSC 363 (S.C.)(Myers J.)

Married 22 years, husband 44, wife 42, 2 children 22 and 18

One child home with mother, retroactive child support only

Reapportionment 60/40 to wife, so lower end of spousal support range

Husband drafts person, earns \$54,000, wife no income, but \$15,000 imputed

Range low to medium \$1,485-\$1,733, or \$1,073-\$1,251 if wife earns \$15,000

Order for \$1,100, indefinite

*Santoro v. Santoro*, [2006] B.C.J. No. 453, 2006 BCSC 331 (S.C.)(Powers J.)

Married 18 years, 3 children with wife, adults now (25, 24, 20)

Wife 50 (39 at separation), husband 53

Husband machinist, working in NWT, \$100,000

Husband remarried, new wife not working, her 2 children (21/17)

Wife disabled (back), agreed to lump sum support of \$20,000 and dismissal in 1994

Now on CPP Disability \$8,600/year

*Miglin* analysis, 2<sup>nd</sup> stage, variation

Guidelines of "limited use", range \$2,057-\$2,742, but prior agreement

\$1,200 per month ordered, review in 2 years

*Elias v. Elias*, [2006] B.C.J. No. 146, 2006 BCSC 124 (S.C.)(Bennett J.)

Married 24 years, wife 48 (47 separation), husband 50, 2 children out of home

Husband claims spousal support

Husband earns \$50,000 in construction, building own house, cash jobs, in-kind bonuses  
Wife earns \$87,000 as lab tech, blip in overtime, \$60,000 without overtime  
No entitlement to spousal support, no requirement of equalization under Guidelines  
(Range \$312 to \$416, indefinite)

*Chepil v. Chepil*, [2006] B.C.J. No. 15, 2006 BCSC 15 (S.C.)(Ehrcke J.)  
Married 24 ½ years, 3 grown children living with father, wife 46 (44 at separation), husband 52  
Husband earns \$63,000 as deputy sheriff, will retire at 57  
Wife retrained as radiographer, recently started job at \$55,000, student loans of \$16,000  
2003 do-it-yourself agreement valid, wife waives pension and spousal support claims  
Pension waiver not “unfair”, *Miglin* applied, wife seeks \$600/mo.  
Advisory Guidelines considered, \$250/mo. for 3 years, to assist wife to pay off loans  
(Range \$250-\$333, indefinite)

*Ahn v. Ahn*, [2005] B.C.J. No. 2742, 2005 BCSC 1745 (S.C.)(Master Taylor)  
Together 14 months, married 8 months, husband 57, wife 46  
Husband earns \$154,885, wife nothing  
Wife left job in Washington State, earning \$47,000 U.S., unable to work in Canada  
Husband wanted executive assistant and wife  
Interim spousal support of \$3,500/mo. plus rent-free in house (husband pays \$2,200/mo.)  
Wife relies upon “compensatory exception” in Guidelines

*Matthews v. Matthews*, [2005] B.C.J. No. 2666, 2005 BCSC 1692 (S.C.)(McCallum J.)  
Together 9 years (married 8), no children of marriage, wife 40 (39 at separation, husband 44)  
Wife earns \$17,000 in Victoria, one son of previous relationship  
Husband moved to Switzerland, earns \$141,000 to \$166,000  
Husband pays child support of \$1,450 for a previous child  
Wife claims \$4,500 interim spousal support, to equalize incomes  
Husband says \$1,400-\$1,800 based on Guidelines  
Entitlement, based on need and possibly compensation (left to trial)  
Quantum of interim support should bear some relationship to final order  
Interim support of \$2,000/mo. ordered  
(Range if husband’s prior child support deducted and \$166,000 income: \$1,328-\$1,770)  
(Range without deduction, \$166,000: \$1,676-\$2,235)

*Gosling v. Gosling*, [2005] B.C.J. No. 2421, 2005 BCSC 1580 (S.C.)(Williams J.)  
Married 14 years, 2 children 24 and 22, with mother, not “children of marriage”  
Separation in June 1992, wife 39 then (52 now), relationship continued after separation  
Property reapportioned, home 72/28 to wife, husband’s pension 30% to wife  
No retroactive spousal or child support, previous agreements  
Wife earns \$31,090, husband earned \$86,262 in 2003 (2004 unusually high)  
Guidelines mentioned, spousal support of \$1,000/mo., indefinite  
(Range by Divorcemate: \$966-\$1,287)

*M.K.M. v. T.L.M.*, [2005] B.C.J. No. 1956, 2005 BCSC 1040 (S.C.)(McCallum J.)  
Interim support, married 8 years (plus cohabitation), no children  
Husband 47, some medical problems, no income  
Wife earns \$54,000, range stated to be \$888-\$1184  
*Carr* cited, \$1,200 ordered, “at higher end”, encouraged to seek employment

*Pearce v. Pearce*, [2005] B.C.J. No. 1757, 2005 BCSC 1153 (B.C.S.C.)(Dohm J.)  
Married 30 years, 4 grown children, wife homemaker, 50 at separation  
Husband makes \$101,000, wife earns \$25,000 from own business  
Variation, \$500 ordered previously, on assumption husband paying \$405,000 debt  
Range \$2,375-\$3,166, used as “cross-check”  
\$2,000 ordered monthly, plus \$65,000 retroactive lump sum

*Proctor v. Proctor*, [2005] B.C.J. No. 1585, 2005 BCSC 1063 (B.C.S.C.)(Wilson J.)  
Married over 20 years (?), 1 child not “of marriage” in 4 mos., wife 49 at separation  
Equal division of family assets, husband doctor makes \$247,000

Wife no income, and no efforts  
Range \$6,175-\$8,233 (stated to be \$7,103-\$9,470, higher than existing awards)  
Much discussion of "income equalization"  
\$5,000 ordered, indefinite, review in 3 years

### **(ii) The *With Child Support* Formula**

*Swallow v. De Lara*, [2006] B.C.J. No. 2060, 2006 BCSC 1366 (Master McCallum)

Married 11 years, 1 child 15, shared equally  
Husband comedian/writer, income fluctuates, from \$686,000 to \$97,500 (2006)  
2002 separation agreement: 12% of company gross income for support  
Minimum \$5,000/mo. child and spousal support, maximum spousal \$5,000, child \$3,500  
Interim child support reduced to \$885/mo.  
Section 7 for independent school \$11,000/yr., all by husband  
Wife earns \$5,000/yr.  
Guidelines range: \$2,091-\$2,696, \$2,400 interim support ordered  
Roughly equalizes net disposable incomes, father higher net worth

*J.K.S. v. H.G.S.*, [2006] B.C.J. No. 2051, 2006 BCSC 1356 (Satanove J.)

Married 10 years (plus 1 cohab), husband 62, wife 51 (44 at separation)  
1 child 16, primarily with wife, bulimia problems  
Family assets divided equally, except 70% orthodontic practice to husband  
Husband earns \$477,206, to retire at 70  
Child support, table amount \$3,854, reduced by wife's table \$326 (\$35,000 imputed)  
\$3,528 ordered, plus s. 7 expenses by husband of \$3,000/mo.  
Wife flight attendant, retired 2005  
Guidelines maximum \$6,500/mo.  
Stepdown order: \$13,750/mo. for 3 years, \$11,000 for 2 years, \$8,000 for 2 years, end

*Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (Master Taylor)

Married 15 years, 2 children 14 and 10, shared custody  
Wife self-employed mortgage broker, messy financial records, no tax filed since 2001  
Her income \$182,234  
Husband self-employed carpenter, works 35 hrs/wk, personal choice, underemployed  
His income \$42,000  
Interim child support: set-off \$2,036 - \$592 = \$1,444, then \$1,814 (May 2006)  
Guidelines range: \$2,612-\$3,607  
Interim spousal support of \$2,616/mo. to husband, he pays mortgage \$1,100/mo.

*Purewal v. Purewal*, [2006] B.C.J. No. 1899, 2006 BCSC 1259 (Ralph J.)

Married 10 years, 1 child 5 with wife, wife 39  
Wife works in bank \$19,430  
2003 order of \$460 child support and \$1000 spousal (based on imputed income to husband of \$54,000)  
Husband applies to vary  
Husband taxi driver, injuries, workers comp, no licence, attributed \$43,700  
Child support \$405, spousal support \$250/mo.  
Guidelines range presented by wife based on her income of \$18,000: 0-\$269 (court adjusts downward because her income slightly higher, actual range based on wife's income of \$19,430: 0 - \$234)

*Parker v. Vik*, [2006] B.C.J. No. 1794, 2006 BCSC 1193 (Satanove J.)

Together 22 years (married 18), 4 boys: 10, 12, 14, 17, with wife  
Interim child support \$2,195, spousal \$2,500 (January 2005)  
Husband then earning \$147,000, now \$67,000  
Husband's income potential, imputed \$80,000  
Child support \$1,835  
Wife only \$3,600/yr.  
Guidelines range presented by wife : \$1,063-\$1,694

(range based on husband income of \$80,000: \$365-\$690)  
Husband willing to pay \$1000/mo  
Spousal support of \$1,000 ordered, "lower" than range  
Indefinite, no review, *Leskun*  
Spousal support of \$1,000 ordered, "lower" than range  
Indefinite, no review, *Leskun*

*M.P. v. S.F.*, [2006] B.C.J. No. 1434, 2006 BCPC 289 (Tweeddale Prov.Ct.J.)  
Together 14 years, 2 children 13 and 8 with mother, wife 44, husband 48  
Interim child support \$710/mo., increased to \$904/mo. in May  
Husband truck driver earns \$59,789  
Wife unemployed, worked as nanny/homemaker, half-time income imputed \$8,320  
Spousal support \$300/mo., review in September 2007, suspended for 6 months  
Husband assumed debts, paying \$400/mo. to bankruptcy trustee for 6 months  
(Chequemate used, range estimated \$366-\$658)

*Snowden v. Snowden*, [2006] B.C.J. No. 1187 (B.C.S.C.) (Scarth J.)  
Married 6 years, together 7; 2 children (4 and 1 ½) with wife  
Equal division of assets  
Husband's income \$24,000; child support \$378 as of May 1  
Wife not employed  
Advisory Guidelines range stated as \$209-\$349 [actually \$147 to \$284 based on May 1 changes to CSG]; wife seeks \$600 per month  
Court orders \$100 per month given husband's limited income and inability to pay even limited amount suggested by Guidelines  
No reference to "floor" and discretion between payor incomes of \$20,000 to \$30,000

*Christensen v. Christensen*, [2006] B.C.J. No. 930, 2006 BCSC 647 (S.C.)(Master Keighley)  
Married 25 years, daughter 19 in college living with husband, no child support by wife  
Daughter 26 employed, 21-month-old child, living with wife  
Wife earns \$37,389 in Costco photo lab, husband earns \$87,860 in sales  
No interim spousal support, submissions under Advisory Guidelines "considered"  
[Range under custodial payor formula: \$1,055-\$1,406 assuming zero child support]  
Successful appeal of interim decision, unreported, *Leask J.*, June 15, 2006, interim support of \$700/mo ordered; less than SSAG because husband paying joint line of credit of \$250/mo

*M.R.M. v. I.M.M.*, [2006] B.C.J. No. 1034, 2006 BCSC 568 (S.C.)(Joyce J.)  
Married 28 years, 1 child 16 with husband  
Wife earns \$39,819, child support \$342 plus \$68 for Catholic school fees  
Husband earns \$63,000  
Range \$600 to \$800, equalize standards of living, \$700/mo., indefinite

*McGuckin v. McGuckin*, [2006] B.C.J. No. 859, 2006 BCSC 582 (S.C.)  
(Master Keighley)  
Married 22 years, wife 55 (53 at separation), husband 49, 1 child 16 with wife  
Husband Canada Post supervisor, earns \$54,000  
Wife accountant/business, motor vehicle accident, income reduced, \$16,250  
Child support \$469, interim spousal support \$700/mo, within Guidelines range  
(Range estimated at \$316-\$779)

*S.R. v. N.R.*, [2006] B.C.J. No. 627, 2006 BCSC 412 (S.C.)(Metzger J.)  
Married 11 years, both 40, 1 child 11  
Reapportionment of condominium 100% to wife  
Husband engineering business, income \$95,000  
Child support \$729, interim spousal support was \$1,500/mo.  
Wife doing Ph.D., one more year, 18 months time limited spousal support  
\$2,500 per month, considered Advisory Guidelines, leaves each with 50% NDI  
Wife working in 2006, likely earning \$32,400, seeks \$1,000/mo. spousal support  
Wife says range \$562-\$1,311, husband says \$399-\$857, \$750 ordered

*R.L.G. v. R.G.G.*, [2006] B.C.J. No. 466, 2006 BCSC 348 (S.C.)(Silverman J.)

Married 21 years (25 years together), 3 children 20, 18 and 14

Youngest child with wife, other 2 in college/university

Child support \$1,314 (3) plus 70% of \$8,000 university expenses

Husband federal civil servant \$78,236

Property divided, house reapportioned 60/40 to wife

Wife earned \$34,500 in 2004, 2005 health problems, surgery

Wife working in 2006, likely earning \$32,400, seeks \$1,000/mo. spousal support

Wife says range \$562-\$1,311, husband says \$399-\$857, \$750 ordered

*DeCamillis v. DeCamillis*, [2006] B.C.J. No. 2959, 2005 BCSC 1826 (S.C.)(Master Donaldson)

Married 23 years, 3 children 10, 19 and 13, with wife, child support \$2,507/mo.

Husband earns \$172,000, wife no income, \$30,000 imputed

Range \$2,627-\$3,441, interim spousal support \$3,250

*Marr v. Marr*, [2006] B.C.J. No. 339, 2006 BCSC 254 (S.C.)(Kelleher J.)

Married 8 years, 2 children 8 and 4, shared custody

Husband earns \$197,500

Child support agreed, 2/3 of table amount \$1,466

Wife living with new partner, no income

Interim spousal \$6,650/mo., husband's income reduced by 47% since

Husband proposes \$3,525, range \$4,541-\$5,458, order for low end, \$4,700

*A.T. v. C.T.*, [2006] B.C.J. No. 309, 2006 BCSC 240 (S.C.)(Sinclair Prowse J.)

Married 22 years (plus one year cohabitation), husband and wife 43 (41 at separation)

3 children: 22, 20, 14, 2 youngest with wife

Husband Armed Forces, earns \$63,948

Child support \$846 (2) for 7 mos., then \$527 (1)

Wife taking residential care course for 7 mos. at community college

Spousal support indefinite, review in 4 years when last child finishes high school

Wife earns \$12,480 part-time, then \$27,967 full-time after course finished

Range calculated by "arithmetic", uses "difference" in net incomes

Order for \$604, then \$378/mo.

(Range for full-time: \$624-\$1,030 (2 children, part-time); \$321-\$813 (1, full-time))

*Lawrence v. Lawrence*, [2006] B.C.J. No. 210, 2006 BCSC 167 (S.C.)(Ross J.)

Married 19 years, husband 42, wife 41 (40 separation)

4 children, 19, 19, 17, 15, with husband

Wife in Winnipeg with her parents, receiving \$8,890/yr. social assistance

Husband earns \$57,876 as manager of early childhood centre

Property divided, but home and substantial debts to husband

Custodial payor range, \$836-\$1,115, 9.5 to 19 years

Wife's social assistance not to be included in her income

Compensatory claim after traditional marriage, wife with health problems, unemployed

Mid-point of range, \$975/mo., review in 2 years as to wife's self-sufficiency efforts

No reduction for debts, as considered in property division

*Gibb v. Gibb*, [2005] B.C.J. No. 2730, 2005 BCSC 1738 (S.C.)(Scarth J.)

Together 18 years (married 13), 4 children age 7 to 18, with wife, wife 37

Husband works in family company, minority shareholder, earns \$152,542

Farm losses deducted at interim stage, bonuses to be issue at trial

Child support \$2,683/mo., no undue hardship from debt

Range \$2,124 to \$2,943, interim support of \$2,000 ordered

Husband paying \$5,100 per month to purchase shares (debt exception?)

*Phillips v. Phillips*, [2005] B.C.J. No. 2495, 2005 BCSC 1614 (S.C.)(Scarth J.)

Together 24 years (married 7), 2 children 16 and 13, with wife

Master ordered interim child support \$750, spousal support \$500, spousal appealed

Wife earns \$25,000, claims husband earns \$68,589

Husband claims on appeal that earns only \$50,000

Husband's income fixed at \$60,000, Advisory Guidelines range stated as \$213-\$721  
Interim spousal support reduced to \$300  
(Range at \$60,000: \$29-\$543)

*Wegner v. Wegner*, [2005] B.C.J. No. 2290, 2005 CarswellBC 2488, 2005 BCSC 1497 and [2005] B.C. J. No. 2020, 2005 CarswellBC 2195, 2005 BCSC 1294 (Metzger J.)

Married 20 years, 2 children 18 and 16 (plus 1 independent), wife 47 (45 separation)

Husband 49, earns \$111,502 as business executive

Wife self-employed writer, earns \$7,500, could earn \$12,000

Child support \$1,336

Spousal support range \$2,103 to \$2,627, \$2,300 ordered, indefinite

*J.S.G. v. A.G.G.*, [2005] B.C.J. No. 2228, 2005 BCSC 1457 (B.C.S.C.)(Gray J.)

Together 16 years (married 13), wife 49 at separation, 2 children

Husband earns \$106,000, cohabiting, wife earns \$29,000 as care aide (casual)

Reapportionment of equity in matrimonial home to wife, \$49,000

Child support \$1,282

Range \$1,400-\$2,050 indefinite

Compensatory claim, but reduced for reapportionment

Support of \$1,700 mid-range, indefinite

*Stieda-Everitt v. Everitt*, [2005] B.C.J. No. 1556, 2005 BCSC 1034 (B.C.S.C.)(Ehrcke J.)

Married 19 years, 3 children with wife

Proceeds of sale of matrimonial home reapportioned 55/45 to wife

Husband earned \$68,590, now working part-time for \$37,700 and pursuing pilot's licence

Wife earns \$6,000 as substitute teacher

Full income imputed to husband, child support \$1,182

Range: \$606-\$919, \$650 ordered, indefinite, review in 24 months (wife sought lower end)

*Hewko v. Hewko*, [2005] B.C.J. No. 1416, 2005 BCSC 904 (B.C.S.C.)(Curtis J.)

Married 21 years, children 21 and 15, with wife, wife 43 at separation

1999 settlement: child support \$1,300, spousal \$3,000 and \$24,000 lump sum

Husband health problems, working part-time, earns \$58,164 (\$108,000 before)

Wife many health problems, university and teacher's degree not reasonable plan, no income

Child support reduced to \$795

Guidelines "in the range of \$1,400/month" (Range by Divorcemate: \$1,049-\$1,287)

Spousal support of \$2,000 ordered, reviewed in 18 months and \$25,000 then imputed to wife

*W. v. W.*, [2005] B.C.J. No. 1481, 2005 BCSC 1010 (B.C.S.C.)(Martinson J.)

Together 24 years (22 married), both in 40's, professionals, 2 children with mother

Husband makes \$125,000, wife makes \$56,728

Child support \$1,470

Range \$745-\$1,585, spousal support of \$1,500 ordered, indefinite

Extensive discussion of Guidelines, "consistent with the law in British Columbia"

*M.S. v. W.S.*, [2005] B.C.J. No. 1447, 2005 BCSC 939 (B.C.S.C.)(Romilly J.)

Together 15 years (married 12), wife 36 at separation

2 children, 12 and 8, younger with learning disability and in private school

Equal division of family assets

Child support \$2,286 plus 80/20 split of s. 7 expenses (\$25,694/year)

Husband makes \$207,432 in family business

Wife returned to film school, paid by husband, could earn \$30-\$40,000 as animator

Guidelines "not law", spousal support of \$2,500 ordered

(Range by Divorcemate: \$3,941-\$4,897 if wife no income, \$3,432-\$4,539 if \$30,000)

## Manitoba

### (i) The *Without Child Support* Formula

*Rzepa-Burke v. Burke*, [2006] M.J. No. 29, 2006 MBQB 16 (QBFD)(Clearwater J.)  
Married 4 years, no children, wife 45 (43 at separation), husband 56  
Husband disclosed, but then self-represented and no show at trial  
Husband earns \$45,000, wife \$1,000/yr. (?), wife seeks indefinite support  
Range \$300-\$325, for 52 months, \$16,900 maximum  
Husband paid \$7,800 already interim, plus \$600 arrears owing  
Order \$500/mo., review in one year, issues re wife's employment efforts

### (ii) The *With Child Support* Formula

*de Gobeo v. de Gobeo*, [2005] M.J. No. 441, 2005 MBQB 261 (Q.B.F.D.)(Scurfield J.)  
Married 7 years (together 9), 1 child 16, separated 1996  
Child moved from mother to father in 2002  
Husband owns fast food franchises, now remarried, earns \$235,000  
Wife worked as chef, earned \$18-\$20,000, could earn \$30,000, no child support  
Husband paid spousal support \$3,500/mo for 9 years  
Time limits in Guidelines considered, 6 more months of \$3,500/mo.  
(Range \$2,306 to \$3,075, 4.5 to 9 years)

*Anderson v. Anderson*, [2005] M.J. No. 243, 2005 MBQB 133 (Man.Q.B.)(MacInnes J.)  
Together 5 years (married 4), 1 child 5 years old with cerebral palsy  
Husband earns \$153,000 Cdn equivalent, in U.S. computer business  
Child support \$1,122, plus \$843/year for s. 7 expenses  
Range \$3,732-\$4,507, "simply not realistic", uses budget analysis  
Spousal support of \$2,000/mo. plus taxes ordered (approx. \$2,416)

## **New Brunswick**

### **(i) Appellate decisions**

*S.C. v. J.C.*, [2006] N.B.J. No. 186, 2006 NBCA 46 (Larlee J.A.)

Married 25 years, two adult children, wife 42 (40 separation), husband 45, traditional marriage

Husband army officer, earns \$100,000

Wife working in Kingston, Ont., on contract with Health Ministry, earns \$46,764; interim support \$1,850

Trial judge ordered \$1,625/mo., using Advisory Guidelines, for 5 years [range was \$1,625 - \$2,208; wife wanted \$2,800]

Appeal dismissed, Guidelines approved, help to bring consistency and predictability

Trial judge used low end of range, income issues raised by wife

Almost a presumption of indefinite support in long traditional marriage; review generally favoured over time limit in such cases

But deference to trial judge: wife young, no dependents, capable, steady employment

Wife quickly able to reintegrate into work force, 5 years a longer term

### **(ii) The *Without Child Support* Formula**

*Long-Beck v. Beck*, [2006] N.B.J. No. 398, 2006 NBQB 317 (Athey J.)

22 year relationship (19 year marriage plus 3 years cohabitation); no children

Wife data entry operator; because of stress quit job in 1993 with husband's consent; thereafter homemaker and part-time driving instructor; income \$16,000

Husband's income \$52,000

Court relies on SSAG; range stated as \$1021-\$1362

Order for \$1020/mo indefinite

*MacElwain v. MacElwain*, [2006] N.B.J. No. 13, 2006 NBQB 19 (Q.B.)(d'Entremont J.)

Married 32 years, 3 adult children, traditional marriage, wife 61 (59 separation)

Equal division of sizeable property

Interim spousal support since 2003 of \$4,500/mo.

Range stated as \$5,405 to \$7,207

\$5,500 ordered, indefinite, review at husband's retirement

*Crosman v. Crosman*, [2005] N.B.J. No. 272, 2005 NBQB 245 (N.B.Q.B.)(Clendening J.)

[upheld on appeal; see above: *S.C. v. J.C.*, [2006] N.B.J. No. 186]

### **(iii) The *With Child Support* Formula**

*A.A. v. B.B.*, [2005] N.B.J. No. 340, 2005 NBQB 286 (N.B.Q.B.F.D.)(Tuck J.)

Married 23 years, 2 children 25 and 22, wife 43 at separation (50 now)

1998 separation agreement: \$210 spousal, \$390 child (1)

Wife disabled since 1984, arthritis, CPP disability

Child support from Sept. 2003 to Dec. 2005 graduation, table plus s. 7 expenses

Husband's 2005 income \$65,209 (3 year average), construction, \$62,132 in 2004

*With child support* range presented as \$997 - \$1,357 at \$62,132

(*Without child support* range \$1,292 - \$1,723 at \$62,132, \$1,381 - \$1,841 at \$65,209)

\$1,200 ordered

## Newfoundland and Labrador

### (i) The *Without Child Support* Formula

*Barter v. Barter*, [2006] N.J. No. 237, 2006 NLUFC 39 (J.D. Cook J.)

Application for variation of 2003 consent order

Husband university professor; income \$111,798

Consent order provided for spousal support of \$3,750

Husband applies to vary because going on sabbatical and 10% decrease in salary; also argues inability to pay

Application dismissed; no material change in circumstances

In obiter court considers SSAG range and finds \$3750 falls within that range and meets spousal support objectives under Family Law Act

*Boland v. Boland*, [2006] N.J. No. 206, 2006 NLUFC 37 (U.F.C.)(Dunn J.)

Married 38 years, husband and wife 60, 1 dependent child 11 at university

Parties agree to use Advisory Guidelines

Husband operates fish sales business and rental properties, income issues

Husband's income imputed \$45,000

Wife babysitting etc. earns \$11,000

Equal split of incomes, spousal support of \$1,417/mo.

Retro spousal support \$15,000, first 2 years accelerated, lump sum \$34,000

Periodic spousal support to commence in 2 years

*Smith v. Butler*, [2006] N.J. No. 96, 2006 NLUFC 13 (U.F.C.)(Cook J.)

Married 26 years, 3 adult children, 2003 order for \$920 spousal support

Wife disabled, CPP Disability, \$9,670/yr.

Husband accountant in NWT, earns \$75,000, interim variation

Budgets analyzed, support increased to \$2,300/mo., indefinite

"Comforted" that within range, \$2,031 to \$2,708

*Barter v. Barter*, [2006] N.J. No. 52, 2006 NLCA 13 (C.A.)(Welsh J.A.)

Husband's notice of appeal struck

Judge indicated would be guided by Advisory Guidelines, hearing adjourned

Parties returned with settlement, husband now appealing consent order

Trial judge could not have "misapplied" Guidelines

*Upshall v. Upshall*, 2006 CarswellNfld 21, 2006 NLUFC 5 (U.F.C.)(Dunn J.)

Married 22 years, 7 children, separated 1983 when wife 47, husband 49

1983 separation agreement: child support \$650, spousal support \$650

1987 divorce order: support \$750, then \$650 spousal only after last child 19

Spousal support varied down to \$225 in 1992, now husband applies to terminate

Wife lived on social assistance and support, now OAS/FIS \$12,238

Husband earning \$42,015, remarried 1987, wife earning \$11,648, 16-year-old son

Change in circumstances, but no variation, \$225/mo. continued plus \$100 on arrears

Amount less than ranges under formula

(Range would be \$819 to \$1,092, indefinite)

(Or range could be \$637 to \$850, if husband's income reduced for subsequent child)

*Garland v. Garland*, [2005] N.J. No. 139, 2005 NLUFC 13 (Nfld.U.F.C.)(Cook J.)

Married 27 years, 2 grown children, husband \$31,500, wife \$12,000

Range \$608-\$815. \$680, indefinite, ordered.

### (ii) The *With Child Support* Formula

*Stacey v. Stacey*, [2006] N.J. No. 205, 2006 NLUFC 36 (Dunn J.)

Married 17 years, 1 child 19 in university, wife 47

Child support: \$400/mo. to wife, \$100/mo. to child

No spousal support paid since 2000 separation  
Traditional marriage, entitled to support  
Husband earns \$56,634, wife \$7,540  
Husband paid off \$15,000 in debts, but no claim for retro spousal support  
Guidelines range agreed: \$1,058-\$1,403  
Spousal support of \$1,300 ordered, plus \$2,600 lump sum  
Duration: wife a teacher, 3-year upgrade, indefinite, review in 5 years

*Walsh v. Walsh*, [2006] N.J. No. 33 (N.L.U.F.C.) (J.D. Cook J.)  
Married 21 years, separated in 1994; wife homemaker  
4 children, with wife; 2 now grown  
Husband earns \$56,289/yr; wife retrained and earns \$18,975/yr; wife in common law relationship  
1996 order combined child and spousal support \$3000/mo; 2002 order for \$341/mo spousal support and \$569/mo child support  
Husband seeks variation of child support on basis of shared custody because children spending more time with him; does not meet s. 9 threshold of 40%;  
Child support: table amount of \$731/mo plus proportionate sharing of s.7 expenses in unspecified amount  
No termination of spousal support; continued at \$341/mo; fits within Advisory Guideline range stated as \$202 - \$591.

*Smith v. Smith*, [2006] N.J. No. 110, 2006 NLTD 65, 2006 CarswellNfld 117 (S.C.T.D.) (LeBlanc J.)  
Married 26 years (plus 1 cohab, traditional marriage, wife 52 (49 at separation))  
4 children (22, 19, 18, 15), 3 in university, all 4 with mother  
Husband RCMP sergeant, earns \$98,800  
Wife no income, former teacher, many moves with husband, no career  
Child support \$1,804, spousal support \$1,700, indefinite, review in 3 years  
Guidelines range \$1,574-\$2,021, order here also leaves 57% family NDI to wife

*Harding v. Harding*, [2006] N.J. No. 64, 2006 NLTD 38 (S.C.T.D.) (Fowler J.)  
Married 26 years, 2 children 18 (university) and 14 (high school), traditional marriage  
Wife earns \$23,300 as cashier, husband earns \$99,500 CGA with Health Corp.  
Child support: \$728 table for younger  
Husband pays \$464 for older, based on budget after deduction of RESP  
Guidelines range stated as \$1,570-\$2,256, "not totally realistic"  
(Range actually \$1,297-\$1,890)  
Husband offers \$1,000/mo., informal interim amount \$900  
Order for \$1,200 indefinite (\$1,000 adjusted up for tax)

*Morgan v. Morgan*, [2006] N.J. No. 9, 2006 NLTD 6 (S.C.T.D.) (LeBlanc J.)  
Together 5 years (4 married), 2 children 8 and 6 (special needs), wife 32 (27 separation)  
Husband earns \$43,500 seasonal  
Child support \$579/mo.  
No undue hardship for access costs to St. John's, \$2,650/yr. or \$220/mo.  
Wife student, on social assistance, seeks spousal support 4 years after separation  
Range stated as \$329 to \$546, but no spousal support ordered because of access costs  
Duration not an issue, but likely time limit attached

*Barry v. Barry*, 2005 CarswellNfld 248, 2005 NLUFC 31 (U.F.C.) (LeBlanc J.)  
Married 22 years, twin girls 18, with husband in home, traditional marriage  
Husband earns \$54,303 for Nfld. Broadcasting  
Wife moved back with mother, earns \$6,883, no child support  
Range \$914 to \$1,218, husband paying debts and expenses on home til sold  
Interim spousal support \$900/mo.

*Warren v. Warren*, [2005] N.J. No. 335, 2005 NLUFC 38 (U.F.C.) (Noonan J.)  
Together 7 years, married 4, 2 children 9 and 6 (mild cerebral palsy), with wife  
Husband lives with partner and her two children (she earns \$29,200)  
Husband construction worker, income issues, income \$41,243  
Wife finished business course, thinks job possible at \$26,000

Child support \$551, plus 50% s. 7 expenses  
Interim spousal support \$700 when no income  
Entitlement, but no ability to pay using Guidelines and ChildView  
(If wife earns \$26,000, zero support, wife has 50% INDI)

*Fewer v. Fewer*, [2005] N.J. No. 303, 2005 NLTD 163 (N.L.S.C.)(Handrigan J.)  
Married 16 ½ years, wife 44 at separation, husband 38, 1 child (15) with wife  
Husband carpenter earns \$35,893, wife works part-time at Walmart, earns \$14,031  
Child support \$291  
Guidelines range calculated by ChildView, zero to \$224  
\$180 ordered, considering length of marriage, wife home for marriage, income difference  
Duration fixed at 16 ½ years from separation, subject to variation

*Simmonds v. Simmonds*, [2005] N.J. No. 144, 2005 NLUFC 10 (Nfld.U.F.C.)(Handrigan J.)  
Married 4 years, 2 children 10 and 3, with wife  
Husband makes \$83,945, wife \$10,210 part-time  
Child support \$1,013 plus \$163 for day care  
Formula calculated by arithmetic, range reported as \$650-\$925  
Spousal of \$400 ordered, as requested by wife, review in October 2007  
(Range by Divorcemate: \$839-\$1,416)

## Nova Scotia

### (i) Appellate Decisions

*Pettigrew v. Pettigrew*, [2006] N.S.J. No. 321, 2006 NSCA (Hamilton J.A.)

Married 29 years, separated 2003, 2 children now grown

Husband retired from military in 1994; then worked in Saudi Arabia and now in Australia; income \$110,000

Wife worked at odd jobs during marriage; had not been employed since 1995; finds employment after separation; income \$20,141 (including her half of husband's divided military pension)

Trial judge orders spousal support of \$2,900 per month after considering relevant factors and using SSAG as a cross-check

(SSAG range not provided; estimated to be \$2808-\$3744)

Husband appeals arguing award too high and that trial judge erred in using the SSAG rather than assessing the evidence herself and applying the law

Appeal dismissed; trial judge thoroughly assessed the evidence and the applicable law; referred to guidelines only as a "cross-check. As well, amount ordered less than amount indicated by the guidelines (?)"

### (ii) The *Without Child Support* Formula

*Stening-Riding v. Riding*, [2006] N.S.J. No. 295, 2006 NSSC 221 (Dellapinna J.)

Married 30 years, 1 adult child, wife 59, husband 62

2003 agreement and order: spousal support of \$5,500 for 9 mos., then \$4,535 after

if husband's income reduced below \$200,000, then 20% for support

if his income below \$80,000, zero support

Wife's income then zero, husband's \$247,200

Wife then applies to vary, using Guidelines (arguing amount under agreement significantly below Guidelines amount and hence unfair), husband's income risen to \$448,275

Wife's income \$21,864 from investments, rental, Ph.D. but no employment

*Miglin* analysis, no significant departure from Divorce Act objectives, Guidelines considered but not applied

*Rushton v. Rushton*, [2006] N.S.J. No. 207, 2006 NSSC 149 (S.C.)(LeBlanc J.)

Married 37 years, 3 grown children, husband 60, wife 59 (56 at separation)

Husband owns service station, leasing it for \$30,000/yr.

Wife working part-time for daughter, earns \$12-\$12,500/yr.

Guidelines considered, spousal support of \$600/mo. ordered, "slightly less"

(But range \$562-\$750, indefinite)

*A.A.C. v. M.A.B.*, [2006] N.S.J. No. 169, 2006 NSSC 136 (S.C.F.D.)(B. MacDonald J.)

Married 18 years, 2 children, last marrying July 2006, child support to end then, wife 48

Spousal support paid for one year, 1998-99, \$600/mo.

Wife agreed to no support in 1999, but reserved right to claim

Wife now earns \$40,500, husband earns \$53,500

No non-compensatory claim, so compensatory only

Range stated as \$304 to \$405, for 9 to 18 years, but wife claiming 9 years after separation

\$300/mo. ordered for one year

*H.E.H. v. S.L.H.*, [2005] N.S.J. No. 472, 2005 NSFC 19 (F.C.)(Levy J.F.C.)

Married 32 years, 2 adult children, wife 51

Wife housecleaner part-time, earns \$5,400

Husband machine operator, earns \$30,636, new partner

Support fixed at \$840/mo., 40% of gross income difference

Based on husband's low income, his payment of medical/drugs for wife, new partner

(Range: \$789-\$1,051)

*Bishop v. Bishop*, [2005] N.S.J. No. 324, 2005 NSSC 220 (N.S.S.C.)(LeBlanc J.)

Together 13 years, 12 married, no children, wife 47 at separation

Wife health problems, irritable bowel syndrome, depression, etc., unable to work  
Husband corporal in Armed Forces, earns \$57,300, cohabiting with partner and her 2 children  
Range reported as \$1,188-\$1,584 (but actually \$931-\$1,241)  
\$1,000 per month, for 10 years (11 in total), ordered

*Coolen v. Coolen*, [2005] N.S.J. No. 155, 2005 NSSC 78 (N.S.S.C.)(Warner J.)  
Married 25 years, review of \$900 order made in 2003  
Husband makes \$42,400, wife \$9,800 disability plus imputed employment  
Both new partners, wife's deficit \$575 (sharing new home)  
Range \$1,018-\$1,358, support reduced to \$750

*Denton v. Denton*, [2005] N.S.J. No. 245, 2005 NSSC 155 (N.S.S.C.)(Moir J.)  
Together 23 years, 19 married, wife 55 at separation  
Wife hairdresser, working part-time only \$8,000, imputed \$30,000 full-time  
Husband works overtime, income fixed at \$60,000  
Range \$863-\$1,150  
Support reduced to \$750, as husband larger debt load and equalization payment

### **(iii) The With Child Support Formula**

*Galbraith v. Lavoie*, [2006] N.S.J. No. 254, 2006 NSSC 202 (Ferguson A.C.J.S.C.F.D.)  
Married 12 years, 2 children 14 and 11, with wife, husband 47, wife 41 (37 at separation)  
2004 order: child support \$1,079, spousal support \$1,700/mo., wife then no income, home during marriage  
Husband applies to vary or terminate, based on self-sufficiency issues  
Husband still earning \$83,000, wife obtains job before trial earning \$26,000  
Guidelines considered, no range stated (range estimated as \$485-\$1,146)  
Spousal support varied to \$750/mo., 3 1/2 more years (7 1/2 years total)

*D.P.O v. P.E.O*, [2006] N.S.J. No. 205 (N.S.S.C.F.D.) (B.A. MacDonald J.)  
Together 6 years (married 4); 1 child with wife; separation 2001  
Interim order in 2003: child support \$417/mo; spousal \$1000/mo  
Husband's income \$69,708/yr; child support \$605/mo  
Wife health issues and unable to work  
Range under guidelines \$1,377 - \$1754/mo indefinite and subject to review when child is 12; but spousal support of \$900/mo ordered subject to review when child turns 13  
Order to leave husband with NDI of \$2,852/mo and wife with \$1857/mo; wife's needs based on budget found to be at least \$1830/mo; wife has obligation to become self-sufficient

*Boucher v. Boucher*, [2006] N.S.J. No. 129, 2006 NSSC 88 (S.C.F.D.)  
(Legere-Sers J.)  
Married 13 years, 4 children (24, 22, 20, 18), separated 1993, wife 53 now (43 then)  
Husband doctor, earns \$294,735, remarried  
Wife no income  
Husband supported all four children, paying child and spousal totalling \$52,000/yr.  
Advisory Guidelines suggest 13 year maximum duration, hybrid formula  
(Range \$4,000 to \$5,330, but self-sufficiency issues)  
Support for 3 more years: \$3,000/mo. 2006; \$2,500/mo. 2007; \$2,000/mo. 2008

*Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (S.C.F.D.)(Gass J.)  
Married 12 years, 1 child 16 with husband, wife 42 (33 separation), husband 46  
Wife mental illness, CPP disability and investments, \$14,918, no child support  
Husband in Armed Forces, retired 2004, new partner nurse  
Husband receives \$37,823, but \$4,667 his share of divided pension, so \$33,156  
Husband applies to terminate \$600/mo. spousal support  
Reduced to \$300/mo., disability exception considered, support for 3 more years (total 12)  
(Range \$198 to \$264 under custodial payor, \$253 to \$337 if no pension deduction)

*Wittich v. Wittich*, [2005] N.S.J. No. 377, 2005 NSSC 265 (S.C.F.D.)(B. MacDonald J.)  
Married 10 years, wife 54 (52 at separation), one child 16 with father

Romantic relationship for 6 years before marriage, lived in same house while wife still married to first husband  
But not count as cohabitation for pension division

Wife homemaker, pension income from divided pensions of \$6,540/yr.]

Husband earns \$80,762 from job and pensions, promised to take care of wife

Guidelines rejected, no time limits, "significant dependency", larger amount

Indefinite order, \$2,100 per month

[Custodial payor range: for 10 years, \$755-\$1,007, 5 to 10 years

for 16 years, \$1,208-\$1,611, indefinite as rule of 65 applies, disability exception?]

*Skipton v. Skipton*, [2005] N.S.J. No. 83, 2005 NSSC 43 (N.S.S.C.)(Warner J.)

Together 9 years (married 7), one child age 8, wife 32 at separation

Husband \$57,000 in military, wife \$5,700 employment insurance

Both formulas applied, with and without child support, as "check"

Formula calculated by arithmetic, low end of range reported as \$616. \$616 ordered.

(Range by Divorcemate: \$793-\$1,133)

*Anderson v. Anderson*, [2005] N.S.J. No. 176, 2005 NSSC 94 (N.S.S.C.)(Warner J.)

Together 12 years (married 11), custody in dispute, 2 children placed in husband's custody

Husband makes \$50,000, wife now cohabiting and no income

Wife seeks \$500 per month for 14 months as spousal support

Wife's request less than guidelines, so support ordered as requested.

(Hybrid formula: \$554-\$738, for 6-12 years)

## Ontario

### (i) The *Without Child Support* Formula

*Foley v. Girard*, [2006] O.J. No. 2496 (Ont.S.C.J.)(Aitken J.)

Gay couple, together 20 years, both 50, no children

Applicant earns \$51,899, respondent \$106,280

Interdependent, applicant supported respondent's Ph.D. studies

Guidelines range: \$1,351-\$1,801

Interim support of \$1,500/mo., analysis of expenses, esp. shelter

*Leger v. Schultz*, [2006] O.J. No. 1313, 2006 ONCJ 103 (C.J.)(Wolder J.)

ISO enforcement case, 18-year-old German order made in 1987

17-year marriage, reference to 17 year maximum duration under Guidelines

Against public policy to enforce in Canada

*Stewart v. Tudorachi*, [2006] O.J. No. 898 (S.C.J.)(Platana J.)

Together 22 years, no children, wife 50 (47 at separation), husband 48

No unjust enrichment, house in both names, sold and proceeds divided equally

Wife not worked since 1996, fibromyalgia, separated 2003, now student

Grade 12 equivalency, finished in 2008, then intention to do 3-year program

Husband married, 2 step-children, wife earns \$47,000 as teacher

Husband earns \$75,209, interim support \$2,400/mo.

Guidelines range \$2,004-\$2,673, husband offers \$1,800

Order for \$2,250, review in 2008

*Girouard v. Girouard*, [2006] O.J. No. 762, 2006 CarswellOnt 1089 (Sedgwick J.)

Married 38 years, wife 57, husband 62, 2 adult children

Wife on CPP Disability, \$6,960/yr., many medical problems, seeks \$1,000/mo.

Husband retired from Armed Forces, \$26,846, lives with new partner in her house

Recently resigned as rural mail carrier (\$18,711/yr.)

\$625 ordered, indefinite (range \$621-\$828)

*Bourget v. Bourget*, [2006] O.J. No. 419 (S.C.J.)(Smith J.)

Married 27 years, wife 51 (49 at separation), husband 52, no children

Husband earns \$32,500 as janitor

Wife receives \$8,124 on CPP Disability

Range \$775-\$1,007, wife seeks \$1,000, but lower incomes involved

Interim support of \$600 ordered, based upon Mackinnon paper, 40% NDI to wife

*Barrick v. Barrick*, [2006] O.J. No. 219 (S.C.J.)(Mazza J.)

Married 33 years, children ?, income issues

Husband receiving WSIB grossed up to \$40,000

No imputing income for failure to appeal unfavourable decision

No income imputed from alleged marijuana grow-op

Wife makes \$14,300 from CPP disability, part-time work, investment income

Range stated by husband's lawyer as \$555 to \$740, rejected as too low

Spousal support of \$1,000 per mo. ordered, to equalize incomes

(Range actually \$803 to \$1,070, indefinite)

*Simpson v. Simpson*, 2005 CarswellOnt 7025, [2005] O.J. No. 5119 (S.C.J.)(Cusinato J.)

Married 26 years, 2 children adults, wife 48 (46 separation), husband 50

Interim spousal support \$1,500/mo.

Wife earns \$18,050 driving school bus, etc.

Husband truck driver, income imputed, could work more, earn \$60,000

Adopts ChequeMate mid-point, \$1,531/mo., indefinite

(Range \$1,311 to \$1,748 indefinite)

*Galambos-Towers v. Towers*, 2005 CarswellOnt 6953 (S.C.J.)(Lofchik J.)

Together 16 years (married 12)

Wife receives \$46,190 from CPP and disability pension, cancer after separation  
Husband earns \$38,554 plus \$20,500 imputed return on assets, for \$59,054  
Top end of range stated as \$182, orders \$200 indefinite (range \$138 to \$171)

*Collin v. Collin*, 2005 CarswellOnt 7754 (S.C.J.)(Fragomeni J.)

Married 29 years, 2 adult children

1998 separation, spousal support \$2,600, then \$1,800 in 1999, then suspended

2002 order for \$1,000/mo., terminating review order for 24 months

Wife earns \$32,850 at WeightWatchers and dog sitting

Husband earns \$50,000, disabled wife receives \$6,000/year

Wife states range as \$594 to \$792 indefinite (range seems to be \$536 to \$714)

Spousal support continued, at \$500/mo. indefinite

*Reitsma v. Reitsma-Leadsom*, [2005] O.J. No. 5577 (S.C.J.)(Mazza J.)

Together 7 years, married 4, no children

1998 separation, interim order for \$1,200, then 2001 order for \$840/mo.

Husband brain injured, receives CPP and WSIB (not-taxable), gross income \$39,084

Wife also brain injury (1982), other health problems, unemployable, no income

Application by husband to terminate, by wife to increase, spousal support

Support continued, not reduced from \$840/mo.

Ordinarily would terminate after 7 years, following *Bracklow*

But not here as wife totally disabled and incident of violence by husband

Advisory Guidelines not sufficient reason to vary downwards

(Range would be \$342 to \$456, for 3.5 to 7 years)

*McNamara v. Infantino*, [2005] O.J. No. 5148 (S.C.J.)(Henderson J.)

Application to vary, 2004 order \$1,800 spousal support, no details of marriage

Husband's income reduced from \$80,000 to \$43,710 upon retirement

Wife no income, applications to CPP and LTD plan for disability

Guidelines considered to reduce support to \$1,275/mo.

*Poirier v. Poirier*, [2005] O.J. No. 4471 (Ont.S.C.J.)(Charbonneau J.)

Married 34 years, 2 children

Husband earns \$420,000 from businesses, wife \$10,800 in interest income

Husband's income fixed at "ceiling" of \$250,000, wife imputed income of \$50,000

Support of \$7,000/mo., indefinite (40 per cent of gross income difference)

*Cunningham v. Montgomery-Cunningham*, [2005] O.J. No. 4297 (Ont.S.C.J.)(Fragomeni J.)

Married 22 years, 1 child 20 and independent

Wife says husband's 2004 income \$347,000, income at least \$139,000

Wife's income \$101,800, says husband, at least \$92,200

Order of \$1,500 interim, "guided by" Guidelines

[Range estimated as \$1,292 to \$1,733]

*Hesketh v. Hesketh*, [2005] O.J. No. 4053 (Ont.S.C.J.)(Heeney J.)

Married 17 years, wife 54 (49 at separation)

Entitled on compensatory (many moves and lost job) and non-compensatory grounds

Wife earns \$13,000, working 35 hours per week

Husband earned \$85,667 in 2004

Interim voluntary support of \$1,500

Range \$1,544 to \$2,059, indefinite (rule of 65)

Husband's new partner makes \$56,000, reason to go higher than range

Order for \$2,200, indefinite, plus \$424/mo. for 10 years for equalization payment

*Rossi v. Rossi*, [2005] O.J. No. 4136 (Ont.S.C.J.)(Flynn J.)

Married plus cohabited 23 months, husband and wife both 48

Voluntary support of \$5,400 total over 4 months, then \$2,000 interim for 15 mos.

Wife disabled, CPP plus business \$16,000

Husband earns \$71,000 plus

Maximum guidelines range \$224 for 23 months, or \$5,152, vs. \$35,400 paid

Husband paid enough, support terminated

*Adams v. Adams*, [2005] O.J. No. 4117 (Ont.S.C.J.)(Platana J.)

Together/married for 10 years

Husband workers compensation \$28,295 tax-free

Wife accident benefits and business \$11,830 tax-free

Wife seeks \$299 mid-point of range \$256-\$341

[Range \$295-\$393 if incomes properly grossed up]

Guidelines rejected and lower amount of \$75/mo. ordered

*Zedi v. Ristic*, [2005] O.J. No. 3827, 2005 ONCJ 250 (Ont.C.J.)(Spence J.)

Married 9 years, no children, wife 59 and husband 46 at separation, wife now 63

Husband earns \$32,500 as machinist, but "self-employed", so taxed on \$10,000

Wife makes \$10,000-\$13,000 at deli

Guidelines range stated as \$208-\$278, "too low", \$500/mo. ordered, indefinite

(If husband's income grossed up for tax position, range would be \$367-\$489)

*Woodall v. Woodall*, [2005] O.J. No. 3826, 2005 ONCJ 253 (Ont.C.J.)(McSorley J.)

Married 11 ½ years, wife 42 and husband 33 at separation

Wife disabled, husband paid \$1,200 every 2 weeks under 2002 separation agreement

Now \$1,264 with COLA plus drug coverage

Husband earned \$89,500 in 2002, then \$115,000 in 2004

Changed to less stressful job paying \$90,700, application to vary to reduce

Husband paying unconsolidated debts, new common-law wife not working

Guideline ranges (\$1,565-\$2,086) no application because of agreement

No variation clause, no *Miglin*, no change in circumstances

*Maitland v. Maitland*, [2005] O.J. No. 2252 (Ont.S.C.J.)(Pardu J.)

Married 29 years, 4 adult children, wife 45 at separation

Wife has health problems, can't work, no income

Husband works as truck driver, \$28,439

Interim support \$1,344, husband also pays \$135/mo. for wife's health insurance

Range \$889-\$1185 (or \$754-\$1050 deducting health ins.)

Exception for payor income \$20-\$30,000 noted, concerns re ability to pay

Support of \$700 ordered

*Romaniuk v. Romaniuk*, [2005] O.J. No. 1818 (Ont.S.C.J.)(Maranger J.)

Together 9 years (married 3), wife 38 at separation, husband \$72,400

Wife in school til June 2006, husband went bankrupt, left with with debt

\$2,000 ordered til June 2006, then \$400 til debt paid in full

Guidelines "considered", but no details (range would have been \$815-\$1,086)

## **(ii) The *With Child Support* Formula**

*Nemi v. Maier*, [2006] O.J. No. 2676 (S.C.J.)(Timms J.)

Cohabited 12 years, 2 children with mother

Husband earns \$235,000, child support \$2,998, no s. 7 expenses

Wife seeks \$100,000 lump sum spousal support, husband's interest in home (based on support of \$5,500/mo for 12 years discounted.)

Wife earns \$60,000 in contract job

Guidelines range: \$3,039-\$4,339,

Appropriate level of periodic support would be \$4,000/mo.; converts to lump sum of \$100,000 (no calculations provided)

*Neilson-Sewell v. Neilson-Sewell*, [2006] O.J. No. 2580 (Ont.S.C.J.)(Smith J.)

Together 23 years (married 21), 2 children with father in Vienna

Wife at last minute decided to stay in Ottawa house, had left job, unemployed

Income imputed to wife of \$14,000 (but no child support paid)

Husband working for UN, income tax-free, increased for living costs, boarding school

Wife claims his income \$158,241, so Guidelines range \$5,409-\$7,212  
Boarding school excluded, income is \$143,652 Cdn.  
Guidelines not apply, as support not deductible for husband  
Spousal support: mortgage of \$1,606 plus \$1,200, total \$2,806  
(custodial payor range: \$5,100-\$6,800, indefinite)  
(if pay for living costs excluded from income, range \$3,395-\$4,527)

*Borger v. Jan*, [2006] O.J. No. 2075 (Ont. S.C.J.) (A.L. Harvison Young J.)  
Interim order

Married 9 or 10 years (date of separation in dispute); 2 children with wife  
Wife has exclusive possession of matrimonial home  
Husband income set at \$1,296,430/yr (average of past 3 yrs)  
Order for interim child support under guidelines of \$15,291/mo  
Wife submits advisory guideline range is \$10,000 - \$20,000/ mo (no details on calculation) and seeks lower end of range at \$10,000/mo; no discussion of "ceiling" of \$350,000.  
Order for interim spousal support of \$9,000/mo  
[range if husband's income at ceiling of \$350,000: \$7,667 - \$9,219/mo]

*McCarthy v. McCarthy*, [2006] O.J. No. 2308 (Ont. S.C.J.) (D.S. Crane J.)

Married 12 years; 2 children  
Husband's income between \$54,000 and \$55,000/yr; child support \$750/mo  
Wife earning \$27,000/yr (in home daycare), some health issues  
Seeking \$300/mo spousal (giving her 58.2% NDI)  
No spousal support awarded; reference to consistency with Spousal Support Guidelines [range zero to zero] With no spousal support wife stated to be at 54.8% NDI and husband 45.2% NDI [DivorceMate actually shows wife at 57% with no spousal]

*Brisebois v. Brisebois*, [2006] O.J. No. 906 (Ont. S.C.J.) (S. Rogin J.)

Divorced 2002; one child now 11; 2002 spousal support order of \$500/mo based on imputed income of \$30,000 to wife and husband's income of \$56,000/yr  
Variation application; husband's income increased to \$83,187/yr; wife now earning \$24,351/yr  
Child support increased to \$660/mo  
Spousal support increased to \$750/mo; court declines to increase support as per "Check Mate" and Divorcemate calculations provided by counsel (no details given); concern's wife's income understated  
[Ranges: using husband's 2002 income (\$56,000) and \$30,000 (imputed) for wife: zero to \$334;  
using husband's 2006 income (\$83,187) and \$30,000 (imputed) for wife: \$740 - \$1,337  
using actual 2006 incomes for both ( husband \$83,187, wife \$24,351): \$916 - \$1540]

*Philip v. Philip*, 2006 CarswellOnt 1591 (Ont. S.C.J.) (Henderson J.)

Together 10 years (married 8); wife 2 children from previous marriage (only 1 remaining child of marriage) and 1 child of their own  
Husband's income \$58,000/yr; child support for 2 children \$799/mo, but deducts \$200 CPP benefits older child receives as a result of death of her father  
Wife's income \$20,200/yr (\$15,100 employment and \$5,100 CPP survivor benefits)  
Spousal support of \$650/mo; court "considered" many factors, including Advisory Guidelines and Check Mate calculations  
[range assuming child support of \$599: \$227 - \$646]

*Crewe v. Crewe*, 2006 CarswellOnt 772 (Ont.S.C.J.)(Sills J.)

Interim order, 1 child (3) with mother  
Husband earns \$67,185, child support \$554/mo.  
Wife student loans and bursaries, issue re inclusion in income  
Wife seeks \$1,564/mo. based on Guidelines  
(Range estimated \$1,220-\$1,564, if her income \$2,000/yr.)  
Interim spousal support of \$1,000/mo.

*Dunning v. Dunning*, [2006] O.J. No. 1927 (S.C.J.) (T.M. Wood J.)

Together 6 years (married 5), 2 children (ages 3 and 1) with wife  
Application to vary 2005 consent order for child and spousal support

Father employed in U.S., income in \$Can set at \$160,893 resulting in child support of \$2,118  
Mother registered nurse, moved back from U.S. after separation; presently earning \$20,000 from 2 part-time jobs  
Uses SSAG range of \$2,568 to \$3,411 spousal support (giving wife 53.7% to 58.2% NDI); duration indefinite but ceases when youngest child turns 18  
Spousal support set at lower end of range (\$2,568) because wife's income will increase as children get older and should be allowed to do so within reason without support being affected.  
Review after 5 years at instance of either party

*Palmer v. Arena*, [2006] O.J. No. 1811 (S.C.J.)(Gauthier J.)  
Together 8 years (married 3 plus), child 5 with wife, husband 47, wife 48  
Husband bipolar disorder, CPP disability, \$11,520, no child support (table \$111)  
Wife earns \$75,000, child care \$200-\$250/mo.  
Interim spousal support of \$750 paid for past 2 years  
Custodial payor range rejected as "insufficient", support ordered at \$1,000 for 3 years  
[Range estimated \$473 to \$630, for 4 to 8 years, order within global range by restructuring]

*Yetman v. Yetman*, [2006] O.J. No. 926, 2006 CarswellOnt 1374 (S.C.J.) (Henderson J.)  
Variation of interim order, 3 children, now only 2 dependent, incomes increased  
Husband now earns \$89,388, wife earns \$21,300  
Child support \$1,128 plus \$2,000/yr. for s. 7 education expenses  
Advisory Guidelines considered, for order of \$1,400/mo.  
(Range estimated: \$1,061-\$1,645)

*McGahey v. McGahey*, [2006] O.J. No. 738, 2006 CarswellOnt 1081 (S.C.J.) (MacKenzie J.)  
One child, 7, with wife, child support \$648  
Husband \$81,000, wife \$25,000 imputed, range \$1,078-\$1,684  
Interim spousal support \$1,200

*Verscheure v. Verscheure*, 2006 CarswellOnt 832 (S.C.J.) (Marshman J.)  
Together 11 years (10 married), 2 children  
Wife little employment effort in 5 years, no income  
Husband earns \$240,060  
Child support \$2,698 til Sept./05, then children with husband  
Spousal support paid for 5 years already  
Custodial payor range \$2,469-\$3,292  
Interim order \$3,750 for 6 months, \$3,000 for 6 mos., then \$2,500 til trial

*Cornish v. Bacic*, [2006] O.J. No. 397 (S.C.J.)(Pepall J.)  
Married 10 years, 2 children 10 and 7 with husband  
Husband earns \$95,626  
Wife no income, previously earned \$22,620, that amount imputed  
Range \$660-\$880, "too low", orders interim support of \$1,000/mo.  
(But wife not paying child support, table amount on imputed income would have been \$318)  
(Custodial payor range if wife's income taken as zero: \$874-\$1,165)

*Pollock v. Pollock*, [2006] O.J. No. 504 (S.C.J.)(Shaw J.)  
Married 22 years, wife 43, husband 49  
3 children, one with wife (age 14), 2 with husband (21/18)  
Husband receives \$50,700 workers' compensation and CPP Disability  
CPP payments to children too, husband paying debts  
Wife no income, in mortgage-free family home  
Counsel agree Advisory Guidelines "not of assistance"  
Spousal support \$850/mo. (Range: \$776-\$966)

*Ignacy v. Ignacy*, [2005] O.J. No. 5264 (S.C.J.)(Gordon J.)  
Interim interim decision, 2 teenagers  
Husband earns \$127,286, wife \$66,640  
Guidelines used, spousal support of \$1,000 ordered  
No child support stated, but table \$1,524/mo.

(Range \$214 to \$1,177)

*Moggy v. Spry*, [2005] O.J. No. 4939 (S.C.J.)(Del Frate J.)  
Together 6 years (married 3), 1 child 8 months, with wife  
Husband earns \$70,000, child support \$572, plus \$75/week child care  
Wife 25 years old, student, only income Ontario Student Assistance Program (\$9,800?)  
Range stated as \$975-\$1500, \$1,200 ordered on interim basis

*Socan v. Socan*, [2005] O.J. No. 3992 (Ont.S.C.J.)(Blisshen J.)  
Together 16 years (married 13), 2 children 19 and 13, oldest not “child of marriage”  
Child with wife, wife 45 at trial (39 at separation)  
Wife cashier at Walmart, health problems, earns \$20,401  
Husband Canada Post, health problems, earns \$44,904  
Child support \$387 (1), husband paid all matrimonial debts  
Range \$111 - \$293, request for \$200 by wife  
\$150 ordered, due to husband’s payment of debts, expenses, equalization payment

*Fancett v. Deprato*, [2005] O.J. No. 3860 (Ont.S.C.J.)(MacKenzie J.)  
Together 4 ½ years, 1 child 6 with wife, wife 36 at separation  
Husband now disabled, off job, but no evidence, 2004 income \$65,318  
Child support \$545, plus \$332 for s. 7 expenses  
Wife clerical job \$12,486, now cohabiting, seeks spousal for past 18 months  
Unable to use Guidelines because of changing incomes (?), \$600/mo. ordered  
Child and spousal support used to offset husband’s equity in home

*Dench v. Dench*, [2005] O.J. No. 2646 (Ont.S.C.J.)(Heeney J.)  
Married 16 years, 4 children, 1 still dependent, with wife, wife 47 at separation  
Husband owns car dealership, makes \$150,000  
Child support \$1,108  
Wife’s income \$51,000 (\$36,000 on investments, plus \$15,000 imputed minimum wage)  
Range \$1,597-\$2,680, spousal support of \$2,000 ordered  
Roughly equal standards of living, wife’s lower housing costs

*Bielanski v. Bielanski*, [2005] O.J. No. 2171 (Ont.S.C.J.)(Gauthier J.)  
Married 14 years, 2 children, 16 and 14, with mother  
Interim order: child support \$1,049; spousal support \$850  
Husband’s income \$90,900 at Inco, wife \$34,500 in retail  
Order for child support \$1,146 and spousal support \$1,000  
Range \$611-\$1,237

*Kerr v. Kerr*, [2005] O.J. No. 1966 (Ont.S.C.J.)(Blisshen J.)  
Married 16 years, 5 children with mother, husband \$95,014, wife no income  
Child support \$2,085, plus some s. 7 expenses  
Formula range stated as \$794-\$1,189, temporary spousal support of \$1,000 ordered.

*Zelko v. Zelko*, [2005] O.J. No. 653 (Ont.S.C.J.)(Cusinato J.)  
Married 15 years, 2 children 14 and 12, wife 36 at separation  
2001 order: \$1,031 child support, \$1,500 spousal support  
2 children now with father  
Wife makes \$14,000, i.e. child support of \$211  
Wife still to receive \$1,500 spousal, indefinite  
Discussion of guidelines, but unable to do calculations without software  
(Hybrid formula: \$894-\$1,193 for 7.5 to 15 years)

*Araya v. Gaete*, [2005] O.J. No. 704 (Ont.S.C.J.)(Young J.)  
Married 23-plus years, 3 children, 1 left with wife  
Husband makes \$50,000, wife laid off, \$10,000 imputed  
No child support, shared custody agreement  
Guidelines cited in discussion on entitlement  
\$800 interim spousal support ordered  
(Range by Divorcemate: \$1,150-\$1,533 indefinite)

*McPhee v. McPhee*, 2005 CarswellOnt 683 (Ont.S.C.J.)(Gordon J.)  
Application to vary, husband's income reduced, wife's increased  
Child support adjusted, but spousal left unchanged at \$1,500 per mo.  
Support still within range computed using guidelines (no details given)

## **P.E.I.**

### **(i) The *Without Child Support* Formula**

*A.M.R. v. B.E.R.*, [2005] P.E.I.J. No. 83, 2005 PESCTD 62 (S.C.T.D.)(Matheson C.J.T.D.)  
Together 11 years (married 4), no children, husband seeks interim spousal support  
Husband receives WCB \$11,858 non-taxable, grossed up to \$13,525  
Wife earns \$18,557, also paying family debts  
Below “floor” of \$20,000, no ability to pay, no support  
(Range by formula: \$69-\$92)

### **(ii) The *With Child Support* Formula**

*Large v. Large*, [2005] P.E.I.J. No. 43, 2005 PESCTD 34 (S.C.T.D.)(Mitchell C.J.P.E.I.)  
Long traditional marriage, wife 55, one child in university and living at home  
Income imputed to lawyer husband in Saskatchewan, \$80,000  
Child support \$609, no s. 7 expenses, as student earned \$15,000  
Formula calculated by arithmetic, 43% INDI as \$1,685, indefinite  
Restructured to lump sum, 10 years support, discount rate, tax, to \$102,100  
(Range by Divorcemate: \$1,891-\$2,290, hybrid university formula: \$1,650-\$2,200)

## Quebec

### (i) Appellate Decisions

*G.V. v. C.G.*, [2006] J.Q. no. 5231 (Que. C.A.) (Forget J.C.A.)  
Married 32 years, 3 children, one (18) now with husband, custodial payor  
Wife 55, earning \$50,000, husband earns \$227,000  
Child support \$15,948, grossed-up to \$33,000  
Trial judge applied Advisory Guidelines: range \$4,500 to \$6,000; low end of range ordered, \$4,500 indefinite  
Appeal allowed; spousal support reduced to \$2,705 per month based upon budgetary analysis  
Trial judge erred by not engaging in a detailed individual analysis  
Court states that [TRANSLATION] « the dossier as it is and the brief pleadings of counsel on this aspect do not permit us, in my opinion, to pronounce a judgment of principle upon the utilisation of the Advisory Guidelines. »  
Court refers to important criticisms of Advisory Guidelines found in judgments of Justices Julien and Gendreau [see cases below] and concerns of « recipes » and formulas being used to avoid the difficult individual analysis required.

### (ii) The *Without Child Support* Formula

*B.D. v. S.D.*, [2006] J.Q. no. 1670, 2006 QCCS 1033 (C.S.)(Gendreau J.C.S.)  
2004 divorce, \$1,313/mo. spousal support  
Husband earned \$64,826 then, but reduced to \$44,000 for pension division  
Husband laid off, income now \$28,287, wife disabled receives \$1,484/yr.  
Guidelines range correctly stated by wife as \$837-\$1,116  
Guidelines rejected, spousal support of \$900/mo. ordered

*M.G. c. J.C.*, [2006] J.Q. no. 1669, 2006 QCCS 1028 (C.S.)(Gendreau J.C.S.)  
Length of marriage not stated  
Husband truck driver, earns \$43,293  
Wife earned \$12,900, but laid off and no income  
Guidelines rejected, \$806.58 ordered as spousal support

*D.S. c. M.S.*, [2006] J.Q. no. 506, 2006 QCCS 334 (C.S.)(Julien J.C.S.)  
Married 22 months, cohabited 2 years, husband 77, wife 48 (45 at separation)  
Interim support \$3,000/mo., wife seeking \$4,000/mo.  
Husband got wife to quit job, paid her \$3,300/mo. from his company  
Wife earned \$30,000 before marriage  
Husband's income not disclosed, but assets \$12.7 million, ability to pay  
Husband argues Advisory Guidelines, criticisms of Guidelines, rejected  
Support of \$3,000/mo. ordered, until Sept. 2006 (43 months paid)  
(Husband's income above ceiling, but if \$600,000, range would be \$3,000-\$4,000)

*H.D. c. J.-Y.L.*, [2005] J.Q. no. 18347 (C.S.)(Jacques J.C.S.)  
Married 31 years, 2 children 26 and 24, younger (some disability) with father  
Husband earns \$78,000, wife earns \$5,000 part-time, traditional marriage  
Interim interim support \$1,000/mo.  
Interim spousal support of \$1,700/mo., rejects Guidelines amounts  
Wife sought \$2,800, states range as \$2,900-\$3,900  
[But range appears to be \$2,281-\$3,041, without adjustment for son in father's care]

### (iii) The *With Child Support* Formula

*B.(S.J.) v. L.(A.M.)*, 2005 CarswellQue 8410, [2005] Q.J. No. 13350 (C.S.)(Courteau J.)  
1 young child with mother, but liberal access  
Wife earns \$20,650, husband earns \$104,340  
Child support \$387, Advisory Guidelines argued  
Interim spousal support of \$1,500/mo.

*E.C. v. N.B.*, unreported decision (Que.S.C.)(Marcelin J.)

Husband in Connecticut, did not appear, earns \$131,900 Cdn.

Wife on social assistance with 3 children, 2 in school, 1 pre-school, 1 with special needs

Wife also cared for husband's 2 children of first marriage

Child support \$1,772/mo.

Advisory Guidelines considered, along with needs and means, spousal support of \$1,050

*C.G. c. G.V.*, [2005] J.Q. no. 14420 (Que.S.C.)(Borenstein J.)

[decision appealed; see *G.V. v. C.G.*, [2006] J.Q. no. 5231, above under appellate decisions

## Saskatchewan

### (i) The *Without Child Support* Formula

*Cey v. Teske*, [2006] S.J. No. 490, 2006 SKQB 315 (Ryan-Froslic J.)

Married 26 years, 2 children now grown; wife 43 at separation in 2003 and husband 47

Husband plumber and started own business

Wife homemaker and also did bookkeeping for business

Interim spousal support \$6000

Wife receives property settlement of \$600,000; her net worth exceeds \$1 million

Husband's income \$174,786

Wife no income but found capable of eventually earning between \$30,000 - \$35,000

Wife asks that Guidelines be used in assessing spousal support

Support ordered at \$5000 per month after property settlement, review in 2009

Court rejects application of Guidelines because they do not take into account Divorce Act objectives and factors, the substantial property settlement, or evidence as to wife's ability to become gainfully employed.

Guideline range based on imputed income to wife of \$35,000: \$4368-\$5824

*Lachambre v. Lachambre*, [2006] S.J. No. 165, 2006 SKQB 143 (Q.B.)(Wilson J.)

Married 32 ½ years, 1 child now 30, wife homemaker for 20 years

Wife working as part-time cashier, now cook in restaurant, earns \$16,000

Husband earns \$55,695 as bus driver

Range \$1,219-\$1,625, husband claims debt exception as paying \$632/mo.

Interim spousal support of \$1,400/mo., husband pays debt, wife pays mortgage

Leaves wife with monthly cash flow of \$200 less than husband

*Larocque v. Larocque*, [2005] S.J. No. 695, 2005 SKQB 440 (Q.B.)(Sandomirsky J.)

Together 19 years (married 6?), wife 36

Husband earns \$58,000, wife earns \$13,000 maximum cleaning

Wife entitled to non-compensatory support

Low end of range would be \$1,067 (high end \$1,425)

Wife seeks \$1,000, granted

Wife's school program finished in 2-3 years, but no time limit, indefinite

*Nasby v. Nasby*, [2005] S.J. No. 619, 2005 SKQB 422 (Sask.Q.B.)(Wilkinson J.)

Married 24 years, 4 children, youngest unemployed and with mother

Wife earns \$14,195 as bartender, husband earns \$72,779 (est.)

2001 agreement: \$669 child support, \$1,331 spousal support, \$2,000 "cap"

Range \$1,831 to \$2,491 if 2004 incomes used

Or \$1,344 to \$1,792 if estimated lower incomes for 2005 used

Order of \$2,000 maintained on interim basis until trial

*Morash v. Morash*, [2005] S.J. No. 618, 2005 SKQB 411 (Sask.Q.B.)(Wilkinson J.)

Married 31 years, 1 child now 27

Wife homemaker, now educational assistant, earns \$20,674

Husband earns \$73,263, made voluntary non-deductible payments of \$1,441/mo.

Range stated as \$2,037 to \$2,717, order for \$2,250 interim

*Kletzel v. Kletzel*, [2005] S.J. No. 323, 2005 SKQB 174 (Sask.Q.B.)(Sandomirsky J.)

Married 26 years, wife 47 at separation

2002 order of \$1,100, application to vary by husband

Husband's income reduced by early retirement and new job, to \$74,900

Wife's income reduced by health problems, to \$19,000

No change in spousal support, amount in range of \$1,046 to \$1,395

### (ii) The *With Child Support* Formula

*McCorrison v. McCorrison*, [2006] S.J. No. 277, 2006 SKQB 217 (Q.B.F.L.D.)

(Ryan-Froslic J.)

Together 11 years (married 10 ½), 3 children 6, 5 and 5 with wife, husband 42, wife 44

Husband earns \$47,838 at CN Rail in Ontario

Child support \$899 plus s. 7(1)(f) expense contribution of \$41

Interim spousal support paid for 2 years of \$800, then \$453/mo.

Wife at home during marriage, now earns \$5,592 in retail part-time

Increasing to \$10,296 in fall 2006 and \$15,440 in fall 2007

Spousal support \$600/mo. to Sept. 2006, \$300 to Sept. 2007, then terminates

Wife argued for indefinite support until children finish high school

SSAG ranges (not taking into account s. 7 expenses, using Childview) if wife's income \$5,592: \$23 to \$260; if wife's income \$10,296: 0 to \$71

Guidelines a useful cross-check but not law and don't take into account Divorce Act factors and objectives

*Frass v. Frass*, [2006] S.J. No. 287, 2006 SKQB 189 (Q.B.F.L.D.)(Sandomirsky J.)

Child 9 with wife, interim child support \$625 plus \$58 for child care

Husband earns \$73,262, wife earns \$29,289

Interim spousal support: wife seeks \$750, husband offers \$200/mo.

Guidelines range stated as \$900 to \$1,100 by court, but husband paying debts

Interim spousal support reduced to \$700/mo.

*Friess v. Friess*, [2005] S.J. No. 360, 2005 SKQB 248 (Sask.Q.B.)(Sandomirsky J.)

Married 22 years, 2 children with wife 17 and 16

Husband earns \$49,239 as farmer, wife earns \$15,300

Child support \$650

Formula calculated by arithmetic, range zero to \$228, \$350 ordered

(Range by Divorcemate: zero to \$295)