

Appendix I

SPOUSAL SUPPORT ADVISORY GUIDELINES APPELLATE CASE SUMMARIES [Updated to April 18, 2007]

[Note: this is a complete list of all appellate decisions since the release of the Draft Proposal in January 2005]

British Columbia

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, 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, claims greater share of assets and increased 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

(Guidelines 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

Narayan v. Narayan, [2006] B.C.J. No. 3178, 2006 BCCA 561 (Prowse J.A.)

Married 18 years, husband 45, wife 37, 4 children with wife: 18, 16, 15, 5

Husband earns \$58,000 at Shaw Cable, wife earns \$28,000 part-time at drugstore

Child support \$1,240/mo., but problems of non-payment

Trial judge reapportioned home 100% to wife (\$300,000)

Husband got RRSPs (balance after dissipation) and vehicle, 75/25 split over-all

Reapportionment upheld, no spousal support

(Guidelines range: zero to zero)

MacEachern v. MacEachern, [2006] B.C.J. No. 2917, 2006 BCCA 508 (Prowse J.A.)

Married 24 years (26 years total), 1 adult child, husband 58, wife 55 (51 separation)
Separation agreement 2002: \$3,500 net of tax spousal support, review clause
Reapportionment of property, 56% to wife
Trial judge ordered spousal support: \$1,000/mo. for 2 years, \$500/mo. 2 more years, end
Husband earns \$114,600 with auctioneer
Wife home, then interior design business, lost husband's contacts after separation
Wife working retail sales, part-time \$9,100, full-time income imputed to \$14,700
Guidelines range: \$3,123-\$4,164, \$3,100 ordered, indefinite, no review
Redpath restated

Narayan v. Narayan, [2006] B.C.J. No. 3178, 2006 BCCA 561 (Prowse J.A.)
Married 18 years, husband 45, wife 37, 4 children with wife: 18, 16, 15, 5
Husband earns \$58,000 at Shaw Cable, wife earns \$28,000 part-time at drugstore
Child support \$1,240/mo., but problems of non-payment
Trial judge reapportioned home 100% to wife (\$300,000)
Husband got RRSPs (balance after dissipation) and vehicle, 75/25 split over-all
Reapportionment upheld, no spousal support
(Guidelines range: zero to zero)

Foster v. Foster, [2007] B.C.J. No. 244, 2007 BCCA 83 (Prowse J.A.)
Together 5 years, married 4, 1 child 5, wife 35, husband 49
Wife from Peru, sponsored by husband, home during marriage
Now working as chambermaid, income \$9,400 (incl. income assistance)
Husband unemployed lawyer, buys and sells real estate, income imputed \$35,000
Interim orders, recently \$219 child support, \$200/mo. spousal, not paid
Trial: \$100,000 in property to wife (1/3 of assets), \$30,000 lump sum spousal support
Child support \$326/mo.
Appeal: assets reapportioned, wife's share reduced to \$40,400 (20%)
Spousal support: wife's 3-year plan re college
Guidelines range: \$141-\$352, maximum 15 years
Appeal decision: \$400/mo, would leave wife with 52% of family NDI
Converted to lump sum support of \$14,400
Duration: 3 more years from trial to July 2009 (5 years total)
10-year immigration sponsorship agreement runs to 2008

New Brunswick

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
(Leave to SCC denied: [2006] S.C.C.A. No. 246 (Oct. 19, 2006))

Carrier v. Carrier, 2007 CarswellNB 155, 2007 NBCA 23 (Larlee J.A.)

Married 21 years, 1 adult child
1996 separation agreement: wife waived spousal support
Equalization payment \$500/mo. for 3 years
Husband then earned \$50,000, wife earned \$15,910
Now husband earns \$30,680 non-taxable workers compensation [\$41,400 grossed up]
Wife on social assistance, earns \$1,800
Trial judge set aside separation agreement, ordered \$700/mo. spousal support
Miglin analysis: wife vulnerable in 1996, terms “appalling”
Order for \$700/mo. upheld, “preferable” if Guidelines had been used
Wife accepted amount, husband did not address quantum on appeal
(Range estimated: \$1,040-\$1,386, indefinite)

Nova Scotia

Pettigrew v. Pettigrew, [2006] N.S.J. No. 321, 2006 NSCA (Hamilton J.A.), affirming [2005] N.S.J. No. 616, 2005 NSSC 219 (Stewart J.)

Married 29 years, separated 2003, 2 children now grown
Husband retired from military in 1994; worked in Saudi Arabia and now Australia; income \$110,000
Wife worked at odd jobs during marriage; not employed since 1995; employment after separation;
Income \$20,141 (including her half of husband’s divided military pension)
Trial judge ordered spousal support of \$2,900/mo. after considering relevant factors and SSAG
(Range: \$2,808-\$3,744, mis-stated to be \$3,257-\$3,744 by trial judge)
Husband argues award too high and 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 and amount ordered less than amount indicated by the
Guidelines

Quebec

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 and concerns about « recipes » and formulas being used to avoid the difficult individual
analysis required.