

# The Advisory Guidelines 27 Months Later

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[Note: Case law summaries found in appendices to paper:  
Appendix I: Appellate Cases  
Appendix II: Case Law Update, Oct. 5, 2006 - April 18, 2007  
Appendix III: Case Law Update By Province]

We have now entered the final phase of the Spousal Support Advisory Guidelines project, where our focus is upon making revisions to the Draft Proposal. We expect the revised and final version of the Advisory Guidelines will be available next fall. In this latest update paper, we thought it was time to step back, to inform readers of what we have learned in our most recent cross-country travels, to set out some of the changes that we know will be made in the final version, to identify some of the hard issues of revision that remain, and to review the ever-burgeoning case law on the Guidelines. (Our last comprehensive update was “The Advisory Guidelines 20 Months Later”, issued on October 5, 2006.)

The *Draft Proposal* was released by the federal Department of Justice at the end of January 2005, over two years ago. From then until July 2006, we toured the country, talking to groups of lawyers and judges, groups both large and small. For the most part, we explained how the Advisory Guidelines were constructed and how the Guidelines could be used to improve the consistency and predictability of spousal support awards. At each of these sessions, we picked up comments and reactions from those who attended, but many of the early comments reflected lack of knowledge of the Guidelines, or misconceptions or lack of use.

After the National Family Law Program in Kananaskis, Alberta, in July 2006, we began another cross-Canada tour, this time seeking out feedback from lawyers, mediators and judges, in small groups. The foundation for these sessions has been the “Issues Paper”. The formal title of this paper is: “Issues for Discussion: Revising the Spousal Support Advisory Guidelines”. The paper identifies issues for revision and, on some issues, possible options for revision.

We have now been to British Columbia (Victoria, Vancouver, New Westminster), Alberta (Edmonton, Calgary), Saskatchewan (Saskatoon, Regina), Ontario (Kingston, London, Ottawa, Newmarket, Barrie, Toronto), Newfoundland and Labrador (St. John’s), Prince Edward Island (Charlottetown), Nova Scotia (Halifax) and Manitoba (Winnipeg). In the near future, we expect to visit further locations in Ontario, Quebec, British Columbia (Kelowna) and New Brunswick.

In November 2006, we met for two days with the federal Advisory Working Group on Family Law, a national group, to seek their views on a short list of “hard” issues for revision. The Advisory Working Group will meet again on June 15-16, 2007.

Thanks to the feedback we have obtained from these sessions, as well as our many formal and informal contacts with lawyers and judges, we have developed a detailed and practical sense of how the Advisory Guidelines are being used on the ground, and a more finely-tuned understanding of what revisions may be necessary. We have also continued to read a steady stream of reported spousal support decisions citing and using the Advisory Guidelines.

When the final version of the Spousal Support Advisory Guidelines is released, you can expect to see three documents:

- (i) a completely-revised final version of the 120-page complete document;
- (ii) a brief report of revisions, noting the changes from the *Draft Proposal*;
- (iii) a 20-page “operating manual” to the Advisory Guidelines.

The last of these three is intended to provide a summary step-by-step guide for the practitioner, something in between the executive summary and the full report. Once the “final version” has been released, there will be a continuing need to monitor for any major new developments in spousal support law.

## **A. What We’ve Learned So Far in the Feedback Sessions**

We have acquired a mass of information from all those who came out to our sessions and here we are painting with broad strokes, just the major themes rather than the many detailed comments and suggestions we have received.

### **(1) Use by Lawyers with Clients and Other Lawyers to Shape Expectations**

The most common use of the Advisory Guidelines by lawyers is with their own clients, to shape the clients’ expectations, of what they might pay or what they might receive. The Guidelines have been most valuable, we are told, in giving advice to payors, especially to those who are reluctant to pay much or anything at all. To a lesser degree, the Advisory Guidelines have also been used with recipients, some of whom maintain unrealistic notions of the support they are entitled to receive. Lawyers appreciate having some “objective” ranges for these client discussions. This use of the Guidelines now appears to be nearly universal.

Lawyers also use the Advisory Guidelines in negotiations, as a starting point. Again, this use of the Guidelines is very widespread, even in those areas where there is no consensus among the sitting judges about the Advisory Guidelines. Where the local judges regularly use the Guidelines, then the Advisory Guidelines achieve near-universal use in negotiations by lawyers. Mediators also said they use the Guidelines regularly in mediations, again to shape the expectations of the parties or to provide a framework for discussions.

**(2) The Ranges Are About Right**

Everywhere that we have been so far, no one has said that the ranges under either formula were off-base for their area. There were comments about particular fact situations and specific subsets of cases, where the ranges seemed “high” or “low”. Judges and lawyers in some areas inhabit the low end of the ranges, while other areas are located at the high end of the ranges. With that caveat, most lawyers and judges did feel that the ranges were “about right”. Some judges told us that they continued to use “their own method” for calculating support, and then cross-checked their numbers against the Guidelines ranges, only to find their amount and duration to fall within the ranges.

We have often been told that the range in this or that case was “too low” or “too high”, only to discover that the cases turned out to be high income cases or exceptions or restructuring situations or just weird facts. There are certain sub-categories of cases, in specific provinces or localities, where the decided or negotiated outcomes are inconsistent with the Advisory Guidelines, even after taking into account exceptions and restructuring. These are the cases which have required more exploration by us at the feedback sessions.

**(3) Unsophisticated Use of the Advisory Guidelines**

We heard from judges who complained that some lawyers just pitched up the formula ranges, without analysis or explanation. And we heard from lawyers, who complained that some judges just take the formula ranges for amounts and picked the mid-point. There was a general complaint that some lawyers, or some judges, seem to have forgotten about that threshold step called “entitlement”. From these discussions, and from our reading of the cases, it appears that the Advisory Guidelines are often used in an unsophisticated fashion. In particular, issues like entitlement, exceptions and restructuring have not been recognised or analysed. The choice of a particular amount or duration within the range is often left unexplained.

To some extent, this is to be expected in the first year or two of the Advisory Guidelines. Over time, as lawyers and judges become more experienced, we would expect to see more sophisticated uses of the Guidelines.

**(4) Software as Educator**

For many lawyers, busy with the demands of practice, their only education about the Advisory Guidelines comes from the software, from the last computer screen. Not surprisingly, the screens mostly state conclusions, not analysis or reasons. This approach contributes to the unsophisticated use of the Guidelines just mentioned. The Advisory Guidelines are a tool, to be used as part of a broader support analysis. The computer print-outs must be read with a background understanding of the law and the Guidelines. We will be working with the software suppliers to encourage the use of more prompts and reminders, to ensure that lawyers and judges remain alert to the full operation of the Advisory Guidelines, before and beyond the formulaic ranges.

### **(5) British Columbia’s Embrace of the Advisory Guidelines**

In August 2005, the B.C. Court of Appeal decided the *Yemchuk* case, approving the use of the Advisory Guidelines as “a useful tool” in determining spousal support. Since *Yemchuk*, the Court of Appeal has continued to endorse and apply the Guidelines, in another nine appeals. In its 2006 *Redpath* decision, the appeal court incorporated the Guidelines ranges into the standard of appellate review in spousal support cases, discussed below. The trial courts now cite and use the Advisory Guidelines in every spousal support case, over 90 decisions now. This means that the Guidelines have been applied in a wide range of fact situations, both with and without children, testing their flexibility and usefulness. We are now seeing more sophisticated arguments and decisions in British Columbia using the Advisory Guidelines.

### **(6) Lump Sum Settlements**

A number of lawyers have told us that the Advisory Guidelines have been particularly helpful in calculating an appropriate lump sum for the settlement of support cases. This is true, not just in *without child support* cases, but even in *with child support* cases where the recipient is prepared to negotiate a lump sum.

### **(7) A New Term for “Indefinite” Support?**

When we wrote the *Draft Proposal*, the term “indefinite” simply meant an order for support without a time limit at the time it was made. A perfectly respectable word, used regularly in Canadian spousal support law, we thought. Little did we know that the term “indefinite” would be misinterpreted by many as meaning “infinite” or “permanent”. To some extent, this flows from clients and lay persons misreading the term, either in our report or in software print-outs. But some lawyers made the same mistake. We will have to find a new term to express this concept, that such orders are subject to review and variation and, through that process, even to time limits and termination. We have even suggested, only half-jokingly, that “indefinite” orders should be renamed “variable, reviewable orders”.

### **(8) Duration Is Often Ignored**

Our feedback sessions and the case law demonstrate that the Guideline ranges for amount are often used and applied, but then their guidance on duration is often ignored or forgotten. Consistent with *Bracklow*, the ranges for amount and duration must be understood as related dimensions of spousal support. Under the *without child support* formula, for example, the amounts in medium-length marriages are reasonably generous, but we also propose time limits in such cases. If orders in such cases were to be made “indefinite”, we would have to suggest that the monthly amounts ought to be adjusted to lower ranges.

In a few jurisdictions, there are appellate authorities or strong trial court tendencies favouring “indefinite” orders in all but the shortest of marriages, even without children. What we don’t know is how such “indefinite” orders work out in practice over time, whether support is subsequently stepped down or terminated upon review or

variation. Duration has proven to be the most unpredictable aspect of spousal support, showing great variation from province to province and locality to locality.

### **(9) A Flexible Approach to the “Ceiling”**

We have heard very few suggestions for changes to the “ceiling” of \$350,000 of gross annual payor income. Above this “ceiling”, the formula ranges should not generally be used and a case-by-case approach is required. From our travels, we know that informal ceilings have developed in some parts of the country, mostly in rural areas and areas where incomes are lower. At some point along the income scale, at \$150,000 or \$200,000 or \$250,000, some judges and lawyers begin to feel uneasy with the higher-income ranges under the formulas and fall back to lower amounts. This pattern was not observed in higher-income urban areas. Instead, in some cities, we heard of lawyers and judges applying the Guidelines formulas to payor incomes above \$500,000 and even as high as \$1 million. Despite these regional differences, most seemed content to let these patterns continue for now, leaving the \$350,000 “ceiling” in place.

### **(10) A Desire for Default Rules**

When the Advisory Guidelines were first released, we sought to develop more consistency and predictability in spousal support outcomes, but we also recognised the need for flexibility in spousal support. The use of formula “ranges” went a long way to alleviate concerns about “cookie-cutter” justice, and many of those early criticisms about rigidity have now gone by the boards. If anything, as we mentioned above, lawyers and judges have tended to forget the exceptions and restructuring, additional mechanisms to obtain more flexibility under the Guidelines.

There is obviously a great hunger out there in family law for even more consistency and uniformity in spousal support. Some of the trends we’ve identified reflect attempts by judges, lawyers and clients to use the Advisory Guidelines as “default rules”: to say that “indefinite” duration must mean the default answer of “permanent” support; or to argue that the formulas should continue to operate above \$350,000; or to treat the outside time limits on duration under the *with child support* formula as fixed entitlements. We have often been asked why we can’t narrow the ranges even more. And some lawyers think the Advisory Guidelines should just be legislated, to impose particular outcomes. In our travels, we have continued to emphasise that the Advisory Guidelines are not “default rules”, but only a tool to be used as part of the spousal support analysis.

## **B. Revisions Already Made or Now Proposed**

Ever since the Advisory Guidelines were released in January 2005, we have received helpful advice and suggestions from lawyers, mediators and judges. As the Guidelines are applied on a daily basis to a wide range of real cases, necessary refinements are identified and new issues emerge. Here we bring together, in one listing, the specific changes made so far.

**(1) Social Assistance Not “Income”**

This small issue surfaced right away. We proposed that the definition of “income” under the Spousal Support Advisory Guidelines generally be the same as that under the *Federal Child Support Guidelines*. Shortly after the release of the Advisory Guidelines, we clarified that *all* social assistance should be excluded from income for spousal support purposes, usually from the income of the recipient. This differs from the treatment of social assistance under s. 4 of Schedule III to the Child Support Guidelines, which requires the inclusion of the spouse’s portion of the social assistance income.

**(2) Adult Children, Section 3(2)(b) and Another *With Child Support* Formula**

The *with child support* formula is actually a collection of formulas based upon the custodial arrangements: the basic formula for sole custody or primary care, a shared custody formula, a split custody formula, and a formula where the custodial parent is the payor of spousal support. The first three have a similar basic structure, while the fourth custodial payor formula is a hybrid formula built around the *without child support* formula. The first three work best where there is a table amount of child support plus section 7 expenses under the *Child Support Guidelines*.

We were approached by a number of practitioners who found that these formulas did not work well in situations where child support was determined under section 3(2)(b) of the *Child Support Guidelines*, where the amounts did not reflect table amounts. These are usually cases where: (i) the “adult child” attends a post-secondary institution away from home; (ii) the child makes a sizeable contribution to his or her own education expenses; or (iii) there are other non-parental resources to defray education expenses, like scholarships or RESP’s or grandparent monies. In these cases, an individual budget is prepared for the child and, after the child and other contributions are deducted, the remaining deficit is then apportioned between the parents based upon their incomes.

We then recommended another formula, one which can be calculated with DIVORCEmate and ChildView. The formula only applies where there are no children for whom a table amount of child support is being paid. It should not be used where there is one older child away at university and another still at home in high school. It only works properly where both of the children went away to university, or where the only child was left attending university away from home.

In these s. 3(2)(b) cases, the additional formula uses the framework of the *without child support* formula, but adjusted for the child support amounts paid, another form of hybrid formula. Once each spouse’s contribution to the child’s budget has been allocated under s. 3(2)(b), those child support amounts are grossed up and deducted from each spouse’s gross income. Then the *without child support* formula is applied, using the gross income disparity and the length of marriage factor to determine amount and duration.

Another advantage of this formula is that it eases the transition between formulas. Most of these cases are longer marriages and, once the child ceases to be a “child of the marriage” and child support stops, the spouses will “cross over” to the unadjusted *without child support* formula.

### **(3) Capping the Maximum at 50 Per Cent of Net Income Under the *Without Child Support* Formula**

Early on after the release of the *Draft Proposal*, we suggested that lawyers and judges should look closely at the *net* incomes of the spouses in longer marriages under the *without child support* formula. This formula uses gross incomes and, where the marriage has lasted 25 years or longer, the maximum range will apply, with spousal support reaching 37.5 to 50 per cent of the gross income difference. At 50 per cent of the gross income difference, the recipient will often end up with more than 50 per cent of the spouses' net income, especially where the payor spouse is still employed and the recipient has little or no income. This result should never occur.

After discussing the issue at the November 2006 meeting of the Advisory Working Group, we decided to modify the *without child support* formula in such cases. *In our view, the recipient of spousal support should never receive more than 50 per cent of the couple's net disposable income or monthly cash flow.*

Once the software programs have incorporated this change, the formula range presented on the screen will reflect this limit at the upper end of the range. The software can calculate the "50 per cent of net income" limit with precision.

We also recognise that one of the advantages of the *without child support* formula is that you don't need a computer to do the calculations. For those without software, or more precise net income calculations, this "net income" cap can be calculated crudely by hand, at 48 per cent of the gross income difference. This "48 per cent" method is a second-best, but adequate, alternative.

### **(4) Adjusting the Limits of the Shared Custody Formula**

At the time that the *Draft Proposal* was released, the Supreme Court of Canada had not handed down its decision in the case of *Contino v. Leonelli-Contino*. In the *Draft Proposal*, we recognised that our shared custody formula might have to be revised after *Contino* was decided. The decision came out in November 2006. By and large, the shared custody version of the *with child support* formula anticipated most of the Court's child support holdings in *Contino*: the use of the simple set-off of table amounts as a starting point; the rejection of multipliers; and the concern for the child's standard of living within each household.

We have also received much feedback from mediators and lawyers working with shared custody parents in determining spousal support. Many shared custody parents opt for a 50/50 split of the couple's total net disposable income or monthly cash flow after the payment of child and spousal support, so that the child(ren) end up with roughly the same resources and standard of living in each household. We agree that this equal split of net income should be available – not mandated, just available – in every shared custody case.

The shared custody formula for spousal support usually includes this “50/50” outcome within the range. In some cases, however, this “50/50” split falls just outside the upper or lower end of the range. *We have decided to broaden the “shared custody” formula range to include the “50/50” net income split in every case.* Again, the software will be adjusted to accomplish this result.

After testing out many case scenarios, we can tell you which cases will be affected by this modification. In the one-child cases, where the parents’ incomes are not that far apart or the parental incomes are lower, the upper end of the spousal support range will have to be extended a bit to include the “50/50” split. In two-child cases, any extensions at the upper end are rare and small in amount. Where the recipient parent has little or no income, in two-child cases, this modification will require some lowering of the low end of the range to include the “50/50” split. In three-child cases, it will be necessary to extend the lower end of the spousal support range to include the “50/50” split, again where the recipient has little or no income and in some other cases where there is a huge disparity in parental incomes.

We may be proposing further revisions to the shared custody version of the *with child support* formula, after further consultations and analysis of the post-*Contino* case law.

### **C. Some of the Hard Issues Under Consideration**

The “Issues Paper” sets out a detailed list of the issues for discussion. Every one of those issues has produced comments at one or another of the feedback sessions. There are some recurring issues that are truly “hard issues”, issues which have elicited comments at almost every session and issues with which we continue to struggle in the revision process. Here we will just “flag” those issues, as the “Issues Paper” sets out the context and any options for revision.

- (1) Further Revisions to the Shared Custody Formula
- (2) Duration in Shorter Marriages With Young Children Under the *With Child Support* Formula
- (3) Step-Parent Cases, and What Formula Should Be Applied
- (4) Amount and Duration in Shorter Marriages Under the *Without Child Support* Formula, Especially Where the Recipient Has Little or No Income
- (5) Duration in Medium-Length Marriages Under the *Without Child Support* Formula

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

The case law under the Advisory Guidelines is burgeoning. Since our last comprehensive review of the case law in our “20 Months Later” paper of October 5, 2006, there have been 120 new cases discussing the Guidelines. This brings the total number of cases to 290 as of April 18, 2007. New cases are now appearing at a rate of 5

or 6 a week—not a surprise given that, as a result of strong endorsements by the Court of Appeal, the Guidelines are now referred to in virtually every spousal support decision in British Columbia.

Case summaries can be found in the appendices to this paper. Appendix I lists all appellate decisions since the release of the Draft Proposal in January 2005. Appendix II is a comprehensive list of the new decisions (since October 5, 2006) organized according to level of court (trial or appellate), date of release and the applicable formula (*with* or *without* child support). Summaries of the cases decided prior to Oct. 5, 2006 may be found in the appendices of our “20 Months Later” paper which can be found on the SSAG web site at:

English: <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>

French: [http://www.law.utoronto.ca/faculty/rogerson/ssag\\_fr.html](http://www.law.utoronto.ca/faculty/rogerson/ssag_fr.html)

Appendix III is a list of the new cases by province.

Watch for new cases in our case law updates, which are typically compiled on a monthly or bi-monthly basis and posted on QuickLaw, WestlaweCARSWELL, the CBA National Family Law Section site, Judicom for judges and the SSAG web site at the University of Toronto Faculty of Law.

The 290 Guidelines cases now include decisions from every province and territory. British Columbia has clearly generated the highest number of decisions (105), far surpassing the other provinces. Ontario comes in second (64). A significant number of cases have also come from Alberta (32) and Nova Scotia (27).<sup>1</sup> In their brief lifetime the Advisory Guidelines have been considered by four provincial courts of appeal. The 290 cases include 14 appellate level decisions: ten from the British Columbia Court of Appeal, two from the New Brunswick Court of Appeal, and one each from the Nova Scotia and Quebec Courts of Appeal. The Advisory Guidelines have received strong endorsement from the British Columbia and New Brunswick Courts of Appeal and have been referred to with approval by the Nova Scotia Court of Appeal. They have, however, received at best a lukewarm reception from the Quebec Court of Appeal. Below we will discuss some of the more significant appellate and trial level decisions

Not all of cases we have collected 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. Our list includes a small number of decisions which have been very critical of the Advisory Guidelines and their usefulness: see, for example, the decisions of Justice Trussler in *V.S. v. A.K.*, [2005] A.J. No. 1357, 2005 ABQB 754 (Alta.Q.B), Justice Julien in *D.S. c. M.S.*, [2006] J.Q. no. 506, 2006 QCCS 334 (C.S) and Justice Campbell in *Vanderlinden v. Vanderlinden*, [2007] N.S.J. No. 107, 2007 NSSC 80. [The criticisms of Justice Julien were subsequently echoed at the appellate level by the Quebec Court of Appeal in *G.V. v. C.G.*, [2006] J.Q. no. 5231, discussed in more detail below. See our “20 Months Later” update for an extended analysis of the concerns that have been raised about the legitimacy and usefulness of the Guidelines.] The list also

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<sup>1</sup> After this come Newfoundland and Labrador (17), New Brunswick (14) and Saskatchewan (13).

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 68% of the cases are consistent with the formula ranges for amount. (This percentage includes not only cases where courts explicitly relied upon the Guidelines but also those where the court may have discounted the usefulness of the Guidelines or declined to follow them, but where the result nonetheless falls within the Guideline ranges. Some of these are cases where lawyers or the court had erred in stating the proper range, with the erroneous numbers reflecting inaccurate determinations of income or mistaken calculations.)

There are several reasons why the results in the cases do not always fall within the Guidelines ranges. First, some of these are cases where the Advisory Guidelines are found not applicable, either because there is a finding of no entitlement or because there is a binding spousal support agreement. 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 may have clearly fallen within one of the “exceptions” that would explain a departure from the ranges, which counsel and the court may or may not have considered. Fourth, some of the litigated cases reflect weird and wonderful facts that make them truly “atypical”.

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

- The highest level of fit with the formula ranges is found in cases with dependent children. The amounts of support ordered in these cases are fairly consistently within the ranges for amount generated by the *with child support* formula barring exceptional circumstances such as debt or low incomes.
- Under the *with child support formula* there is a subset of cases where the range includes zero, revealing limited ability to pay after child support. Courts are using these ranges to support a finding of no entitlement to spousal support.
- Under the *without child support* formula (*i.e.*, in cases without dependent children) there is 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). The cases without dependent children where the results depart from the formula ranges typically fall into clearly recognized exceptions, such as disability, significant “compensatory” claims in a short marriage, or unequal property division.
- 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 are often 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. But this will change with time and increased experience with the Guidelines, as shown by the increasingly sophisticated understanding and application of the Guidelines in B.C.
- In those provinces where there is strong appellate endorsement of the Advisory Guidelines—British Columbia and New Brunswick—and hence frequent use of the Guidelines as a benchmark in spousal support decisions at the trial level, there has been a noticeable impact on the quality of the judicial reasons. Contrary to some initial concerns, the reasons are generally more extensive. There is much more discussion of the basis of entitlement and, particularly if a decision is made to depart from the formula ranges, much more extensive discussion of the application of the *Divorce Act* factors and objectives to the facts of the particular case than in decisions that do not rely upon the Guidelines.

Now for the highlights of the case law, beginning with the appellate decisions [which are also summarized in Appendix I].

### **(1) 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 endorsed the Advisory Guidelines as a “useful tool” in determining the amount and duration of spousal support. *Yemchuk* also clarified the courtroom status of the Advisory Guidelines as neither law nor evidence, but as part of legal argument and reasoning—something like a compilation of precedent. As Prowse J.A. stated:

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.

The *Yemchuk* case is also a good example of several important issues that arise under the Advisory Guidelines. The case involved the determination of 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".

Since *Yemchuk*, the B.C. Court of Appeal has considered the Advisory Guidelines in nine other decisions. The most important of these 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 “standard of appellate review”. This is 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.

A recent decision of significance is *MacEachern v. MacEachern*, [2006] B.C.J. No. 2917, 2006BCCA 508, where the Court affirmed *Redpath* in over-turning another trial order for a low amount and short duration after a long marriage. To address the wife’s failure to make sufficient efforts towards self-sufficiency, Justice Prowse imputed a full-time income to the wife and then used the low end of the *without* child support formula range. Given the length of the marriage, the order was made indefinite rather than time-limited.

Of the other six decisions of the B. C. Court of Appeal, three involved a relatively straightforward application of the Guidelines and will simply be noted briefly:

- In *Tedham v. Tedham*, [2005] B.C.J. No. 2186, which followed shortly after *Yemchuk*, the Court of Appeal relied upon the Guidelines to overturn the three year time limit that the trial judge had imposed on a support order following a 16-year traditional marriage and also to adjust the quantum of the award. The amount of the award was set slightly lower than the range because of the reapportionment of matrimonial property in the wife’s favour.

- In *Kopelow v. Warkentin*, [2005] B.C.J. No. 2412 the range under the *with child support* formula was considered by the Court of Appeal in determining the appropriate support award in the context of a 13 year relationship with two children. In light of that award, the Court went on to assess the fairness of a marriage agreement leaving most of the property with the husband.
- In *R.S.M. v. M.S.M.*, [2006] B.C.J. No. 1756, 2006 BCCA 362 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.

Two of the remaining decisions, *Toth v. Khun* [2006] B.C.J. No. 739, 2006 BCCA 173 and *Foster v. Foster* [2007] B.C.J. No. 244, 2007 BCCA 83 illustrate the use of the Guidelines to structure time-limited awards in short and medium-length marriages. These decisions are particularly worthy of note because both involved findings by the Court of Appeal that awards higher than the formula ranges for amount would be justified. However in both cases further consideration of restructuring might have revealed consistency with the formulas.

In *Toth v. Kun* the Guidelines were considered in the context of an application by a husband to vary support because of his retirement and the drop in his income. 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, but continued the support obligation on an indefinite basis. The Court of Appeal found that to be too onerous on the husband, and instead ordered time-limited step-down support, with the result that support would be paid for a total duration of 6 ½ years. *Toth* offers a nice example of a result consistent with the time limits suggested by the *without child support* formula (in this case 5 to 10 years) in medium duration marriages without children. The Court of Appeal did set the amount of support higher than the range suggested by the Guidelines under the *without child support* formula because of the wife's health and limited language skills. If the Court had considered restructuring, they could found their award to be within the global range generated by the formula rather than seeing it as a departure from the Guidelines.

In *Foster v. Foster* the Court of Appeal used its determination of the periodic support to which the wife would have been entitled after a short marriage (5 years) with one child to quantify a lump sum order. Assuming a duration of three years (based upon the length of the marriage and the time required for the wife to complete a training program), the Court of Appeal found that an amount higher than the range under the *with child support* formula would have been justified given that the husband, who had sponsored the wife from Peru, had significantly greater income-earning capacity than the wife and left the marriage with a substantially greater proportion of assets. This very sensible "front-end" loading of the award to provide the wife with support for retraining need not have been viewed as a justified departure from the Guidelines but rather could easily have been encompassed by the concept of restructuring.

The last decision, *Narayan v. Narayan*, [2006] B.C.J. No. 2917, 2006 BCCA 508 is an unusual case in which the Court was required to grapple with the thorny and very B.C.-specific issue of the relationship between reapportionment of assets under the *Family Relations Act* and spousal support in a context where the *with child support formula* generated a range of zero to zero because of limited ability to pay after payment of child support for 4 children.

## (2) New Brunswick Court of Appeal

In April of 2006 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.

Leave to appeal the decision in *S.C. v. J.C.* to the Supreme Court of Canada was sought but denied: [2006] S.C.C.A. No. 246 (Oct. 19, 2006).

The New Brunswick Court of Appeal's second consideration of the Advisory Guidelines was in its recent decision of March 29, 2007 in *Carrier v. Carrier*, 2007 CarswellNB 23, 2007 NBCA 23. The Court upheld a trial decision setting aside a separation agreement on the basis of Miglin. The trial judge's spousal support order, which was for an amount less than the Guidelines would suggest, was sustained as the wife had not addressed the issue of quantum on appeal. However, the Court of Appeal did expressly note that it would have been "preferable" if the Advisory Guidelines had been used.

### (3) 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.

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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.

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.

#### (4) Nova Scotia Court of Appeal

The Nova Scotia Court of Appeal became the fourth Court of Appeal to consider 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 confusion is explained if one goes back to the trial judgment and discovers that the trial judge calculated the lower end of the range for a 29 year marriage as 43% of the gross income difference rather than 37.5%.) The husband’s appeal on amount was dismissed.

#### (4) 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. For another careful example of restructuring to fix a lump sum, see *Smith v. Smith*, [2006] B.C.J. No. 2920, 2006 BCSC 1655 (Pitfield J.) (present value of monthly support if paid until payor 65, discounted for tax and adjusted for reapportionment, \$25,0000).

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); *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);

and *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). Interesting entitlement issues were raised in *R.S.R. v. S.M.R.*, [2006] B.C.J. No. 2109 (Martinson J.) (discussion of Guidelines in context of determination of entitlement); *Eastwood v. Eastwood*, 2006 Carswell NB 655, 2006 NBQB (Clendening J.) (25 year marriage with no children, parties having similar incomes during marriage but husband moves to Toronto and income increases; no entitlement to support; similar standards of living) and *Kelly v. Kelly*, [2007] B.C.J. No. 324, 2007 BCSC 227 (Barrow J.) (17 year second marriage; wife on CPP disability and remarried; support terminated after ten years; good discussion of loss of entitlement to non-compensatory support; discussion of limited use of Guidelines in cases of remarriage and post-separation increases in payor's income). For a good discussion of the Guidelines in the context of shorter second marriages later in life, including non-compensatory entitlement, see *Rezansoff v. Rezansoff*, [2007] S.J. No. 27, 2007 SKQB 32 (Sandomirsky J.).

With respect to exceptions see *Williston v. Williston*, [2006] B.C.J. No. 3248, 2006 BCSC 1869 (Rogers J.) (use of disability exception, larger amount, but duration of 8 years after 7 year marriage), *Dick v. Bramhill*, [2007] B.C.J. No. 387, 2007 BCSC 262 (Chamberlist J.) (discussion of disability exception, 14 year marriage with no children); *Kirk v. Hackl*, [2007] S.J. No. 87, 2007 SKQB 82 (Wilkinson J.) (good review of disability exception cases in context of setting interim support after 4 year cohabitation); and *Fuller v. Matthews*, [2007] B.C.J. No. 656, 2007 BCSC 444 (Arnold-Bailey J.) (2.5 year cohabitation; compensatory exception based on actual evidence of loss of pay and pension credits by recipient teacher who moved and gave up job because of relationship).

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); *Hesketh v. Hesketh*, [2005] O.J. No. 4053 (S.C.J.)(Heeney J.)(amount slightly above range ordered where husband cohabiting); and *Locke v. Ledrew*, [2006] A.J. No. 759 (Q.B.) (Veit J.) (consideration of effect of repartnering by both parties).

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

Three leading cases should 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.

Two more recent decisions of note include *Saunders v. Saunders*, [2007] N.B.J. No. 120, 2007 NBQB 133 (d'Entremont J.) (8 year marriage with two children; husband in armed forces and many moves; husband seeking termination of support after 3 years; support continued to allow wife to further her education) and *J.W.J.McC. v. T.E.R.*, [2007] B.C.J. No. 358, 2007 BCSC 252 (Sinclair Prowse J.) (19 year traditional marriage; wife remarried; income imputed to deal with lack of efforts re self-sufficiency; good discussion of continuing entitlement on compensatory grounds; range calculated using ceiling of \$350,00 for husband; support ordered at high end of range because husband earns more than ceiling; indefinite but review 14 years after separation when wife turns 60 and likely termination).

For nice applications of the shared custody formula see *Swallow v. De Lara*, [2006] B.C.J. No. 2060, 2006 BCSC 1366 (Master McCallum) and *Fell v. Fell*, [2007] O.J. No. 1011 (Linhares de Sousa J.) (midpoint of Guidelines range provides consistent standards of living in both households).

There are two interesting cases under the custodial payor formula. *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 payor formula. The case also offers a good discussion of the disability exception. *Martin v. Martin*, [2007] O.J. No. 467 (Linhares de Sousa J.) involved a 9 year marriage with two children in which the husband was the support claimant. Linhares de Sousa J. awarded lump sum support at the low end of the global range under the custodial payor formula adjusted for tax.

Finally, in *D.R.M. v. R.B.M.*, [2006] B.C.J. No. 3299, 2006 Carswell BC 3177 (S.C.), Justice Martinson set out in detail the rationale for the application of the Advisory Guidelines to interim spousal support orders. The case arose under the with *child support formula* but the issue is a general one and the applicable to cases under either formula.

## 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.

## Appendix II

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

**[This update covers new cases decided since our last update, Carol Rogerson and Rollie Thompson, "The Advisory Guidelines 20 Months Later", October 5, 2006" that is found on the SSAG website at <http://www.law.utoronto.ca/faculty/rogerson/ssag.html> ]**

#### A. Appellate Decisions

*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)

*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

*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

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

*Rezel v. Rezel*, [2007] O.J. No. 1460 (S.C.J.)(Harvison Young J.)  
 Married 5 years, second marriage, wife 61, husband early 60's  
 Both computer analysts, earning \$100,000 at separation in 1998  
 Wife loses job in 2004, seeks spousal support  
 Husband uses Guidelines to argue that duration ended, delay  
 Short marriage, no merger of economic lives, wife not serious about return to work  
 No entitlement

*Kauwell v. Melnyk*, [2007] B.C.J. No. 712, 2007 BCSC 485 (Shabbits J.)  
 Lived together 3 ¾ years, wife 50, husband 54, wife 3 children by previous marriage  
 Wife barber, reflexologist, on social assistance when met, now earns \$12,000 helping seniors  
 Husband welding inspection business and property investments, wife paid \$15,900 through company  
 Husband's draw \$68,000, plus retained earnings  
 Entitlement to spousal support based on need  
 Range \$262-\$350, 22 to 45 months  
 Support of \$350 for 42 months, maximum still modest amount  
 No unjust enrichment re property

*W.(C.L.) v. R.(S.U.)*, 2007 CarswellBC 666, 2007 BCSC 453 (Shabbits J.)  
 Lived together 6 ½ years, wife 45, husband 56, wife 2 children from previous marriage  
 2004 separation agreement: lump sum spousal support of \$31,000, release  
 Wife's workers compensation income \$15,000, husband \$67,000 retired engineer  
 Wife now working at animal hospital, earns \$18,800  
 Agreement valid and enforceable, no unjust enrichment  
 Wife missed 1-year limitation from end of relationship, so no spousal claims  
 Even if not missed, lump sum within Guidelines global range  
 Range \$5,070/yr. to \$6,760/yr., 3 years 3 mos. to 6 ½ years  
 Global range \$16,477 to \$43,940, mid-point \$30,208

*Shurson v. Shurson*, 2007 CarswellNS 142, [2007] N.S.J. No. 129, 2007 NSSC 101 (Legere-Sers J.)  
 Married 28 years, 3 children, youngest (22) in university, father pays her \$925/mo.  
 Husband 53, wife 50 (47 at separation), husband armed forces  
 Spousal support of \$2,500/mo. paid 2004-2006  
 Guidelines support indefinite support, but subject to review when pension divided  
 Wife earns \$22,747 working 80% part-time, income imputed of \$25,000, even \$30,000  
 Husband earned \$160,000 in 2006 (\$140,000 other years), work and pension, repartnered  
 Spousal support of \$3,500/mo. ordered  
 (Range estimated: \$3,391-\$4,521 if \$160,000 and child support considered)

*Fuller v. Matthews*, [2007] B.C.J. No. 656, 2007 BCSC 444 (Arnold-Bailey J.)  
 Lived together 30 months, wife 48, husband 50, wife 2 older children  
 Husband mining engineer in Delta, earns \$340,000 in Peru and Canada  
 Wife teacher in Courtenay, involved with husband in 2001, commuted  
 Wife sells house in 2003, quits job in 2004, to live in Delta with husband

Wife back teaching, earns \$93,704  
 No unjust enrichment in short relationship  
 Spousal support ranges: if 2 years, \$616-\$821; if 3 years, \$924-\$1,232, mid-point \$1,078  
 Order for \$1,000/mo., for 27 months  
 But also compensatory exception, based on actuarial evidence  
 Loss of pay, Oct. 2005 to Feb. 2006: \$3,337 (but not lost salary when cohabiting)  
 Loss of pension credits from employment interruption: \$12,700  
 Total lump sum support of \$43,037

*Oyama v. Oyama*, 2007 CarswellBC 632, 2007 BCSC 428 (Neilson J.)  
 Married 25 years, 3 adult children, husband 63, wife 57, separated 1996  
 Equal division of assets, except 2/3 house reapportioned to wife (\$467,000)  
 No retroactive spousal support because of reapportionment  
 Husband has pension income \$55,000  
 Wife earns \$20,000 in insurance business, could increase to \$30,000 in 2 years  
 Range: \$1,094-\$1,458 indefinite  
 Spousal support of \$300/mo., some concern for overlap with pension division  
 For duration of 16 years, then discounted, contingencies, lump sum support of \$50,000

*Vanderlans v. Vanderlans*, 2007 CarswellNfld 119, [2007] N.J. No. 121, 2007 NLUFC 8 (Dunn J.)  
 Married 25 years, adult children now 30 and 25  
 2001 consent order: \$2,000/mo. combined child and spousal support deductible  
 plus \$200 "additional" spousal support to December 2005  
 2002 consent order: \$2,000 plus now \$400  
 Provisional order 2005 from N.S.: extended support another 5 years, at \$1,600/mo.  
 Guidelines range: \$1,533-\$2,044  
 Husband RCMP officer, retired at 55 in 2005, pension \$31,000  
 N.S. court imputed \$60,000  
 Wife health problems, now 55, paid board by husband's mother  
*Miglin* analysis: stage 1 okay, no change at stage 2  
 No evidence on *Boston* double dipping issues  
 Provisional order not confirmed

*Lloyd v. Lloyd*, [2007] B.C.J. No. 493, 2007 BCSC 349 (Groppe J.)  
 Together 12 years (married 8), husband 61, wife 47, each two adult children  
 Husband lawyer \$89,040  
 Wife was legal assistant, then MLA assistant, now provincial political job, \$56,815  
 Assets divided equally, including husband's law practice  
 Wife's girls 17 and 19 in university, support from biological father  
 No info on their finances, no entitlement  
 Guidelines ranges: *with child support* formula \$292-\$1,024, 12 years  
*without child support* formula \$663-\$884, 6 to 12 years  
 Wife argues loss of political job would return her to lower salary  
 No disadvantage, no hardship after division of law practice  
 No entitlement

*Lewis v. Lewis*, [2007] B.C.J. No. 561, 2007 BCSC 374 (Powers J.)  
 Married 29 years, husband 68, wife 64, 65 in August 2007  
 Separation agreement 1995: spousal support \$2,700/mo.  
 New agreement 2000: reduced to \$2,500/mo. when husband made \$80,000  
 Husband professional engineer, now retired, sold own company  
 Husband's retirement income, including RRSP \$60-\$65,000  
 Wife homemaker, now CPP \$14,400, new partner on disability pension \$10,460  
 Guidelines range: at \$60,000, \$1,425-\$1,900; at \$65,000, \$1,581-\$2,108  
 Spousal support ordered \$1,750, indefinite

*Adams v. French*, 2007 CarswellNS 97, [2007] N.S.J. No. 91, 2007 NSSC 57 (S.C.)(Wilson J.)

Married 4 years (cohabited 4 ½), 2<sup>nd</sup> marriage, each adult children  
 Unequal division of matrimonial assets, husband keeps premarital RRSPs, 66% of house  
 Husband chartered accountant, earned \$68,600 in 2005  
 Wife in photography business, then real estate broker, earned \$23,900 in 2005  
 No compensatory support, as wife established career during marriage  
 Range: \$250-\$330/mo., 2 to 4 years (global range: \$6,000-\$17,820)  
 Lump sum spousal support of \$7,500 ordered

*Jones v. Wilson*, [2007] O.J. No. 896, 2007 ONCJ 93 (Thibideau J.)

Together 6 ½ years, wife 55  
 Cohabited more than 3 years in marital relationship, despite husband's arguments  
 Husband earns \$50,000 as long-haul truck driver  
 Wife earns \$15,000 as cleaner, teenage son  
 Guidelines ranges provided for different periods of cohabitation  
 Range: \$306-\$408 for 3 to 6 years, spousal support ordered \$350/mo. for 3 years

*Lewis v. Lewis*, [2007] O.J. No. 742 (S.C.J.)(Aitken J.)

Married 29 years, husband 50, wife 47, 3 children 30, 29 and 22  
 Net family property calculated and split  
 Wife worked part-time and full-time at nursing home, now full-time clerk/receptionist  
 Wife earns \$35,188, new partner  
 Husband worked at AECL as fireman, wrongfully dismissed, settlement, \$60,600 (2 yrs. salary)  
 Husband operates fencing business, earns \$32,000/yr., i.e. \$92,600 to Dec. 2006  
 Range: \$1,811-\$2,415  
 Equal partnership, long marriage, equal incomes  
 Wife only requested \$2,000/mo., less than equalization  
 Interim spousal support: \$2,000/mo. to Dec. 2006  
 Nothing from Jan. 2007 when husband's income just from fencing, revisit at trial

*Horne v. Horne*, [2007] N.S.J. No. 78, 2007 NSSC 61 (Legere-Sers J.)

Married 25 years, husband 48, wife 49, 2 adult children, traditional marriage  
 Husband CN Rail, earns \$78,800, but on disability for part of 2006  
 Wife part-time with Liquor Commission, part-time grocery store, \$22,000  
 Interim spousal support of \$1,500, Guidelines considered, "under" Guidelines  
 (Guidelines range estimated: \$1,775-\$2,366)

*C.E.H. v. D.W.S.*, [2007] N.S.J. No. 7, 2007 NSFC 1 (Comeau C.J.F.C.)

Together 15 years (3 married), no children  
 Husband earns \$59,061 for municipality, wife employment insurance \$4,785  
 Both involved in losing property rental business, wife as manager  
 2004 consent order: \$1,200/mo. indefinite, review 2 years later  
 Agreement so Advisory Guidelines not used, \$1,200 continued  
 Guidelines would reduce amount (?) [but range \$1,018-\$1,357 estimated]

*Bramhill v. Dick*, [2007] B.C.J. No. 387, 2007 BCSC 262 (Chamberlist J.)

Together 14 years, second relationship, no children  
 Wife multiple sclerosis before cohabitation began, on social assistance in B.C.  
 Wife moving to facility in Alta., income to be \$4,800  
 Husband did not appear, self-employed mechanic, incorporated  
 Tax returns and financial statements provided, underemployed, income imputed \$33,095  
 Guidelines range: \$495-\$660; if wife zero income, \$579-\$772  
 Disability exception noted, interim spousal support \$772/mo. until house sold  
 Duration: disability, long relationship, indefinite

*Kirk v. Hackl*, [2007] S.J. No. 87, 2007 SKQB 82 (Wilkinson J.)

Cohabited 44 months, both husband and wife have alcohol and health issues

Wife functionally blind, non-compensatory basis for support, disability exception

Husband earns \$69,384 in family business

Wife imputed rental income \$5,040, few details of her past income or disability income

Interim spousal support \$1,000/mo., economic dependency

(Guidelines range estimated: \$322-\$429)

*Sawatzky v. Sawatzky*, [2007] A.J. No. 182, 2007 ABQB 103 (Graesser J.)

Married over 25 years, interim order

Wife teller, earns \$27,000

Husband heavy equipment operator, incorporated, income issues, "safe" estimate \$71,000

Guidelines range: \$1,375-\$1,833

Interim order for \$1,833, high end of range since low end estimate of husband's income

Retroactive spousal support from separation, April 2006, pay extra \$833/mo. for 18 mos.

*Moss v. Moss*, [2007] A.J. No. 181, 2007 ABQB 102 (Graesser J.)

Married 18 years, 3 children, 1996 order combined child and spousal support \$1,750/mo.

2005: child support ended, \$1,750 spousal support ordered

Husband then at Labatt's earning \$99,000, wife earning \$14,000 at seasonal H & R Block

Husband's income reduced, little overtime, health problems, now \$64,000

Guidelines range: \$1,156-\$1,542, mid-point \$1,325 ordered

Wife encouraged to seek full-time work, can earn up to \$40,000/yr., no loss of support

*Kelly v. Kelly*, [2007] B.C.J. No. 324, 2007 BCSC 227 (Barrow J.)

Together 17 years (married 12), wife 2 children of 1<sup>st</sup> marriage, now adults

Separated 1997, divorced 2001: interim spousal support \$2,000/mo.

2001 order: \$2,000/mo. spousal support July 2001 to March 2003

\$1,500 April 2003 to March 2004, \$1,000/mo. thereafter, no review

Husband 47, remarried, earned \$70,000 in 2001, but \$182,152 in 2005

Wife 56, CPP disability \$12,000, now remarried, earns \$6,000, total \$18,000

Wife's remarriage a change in circumstances

Order no longer compensatory after 9 years, now non-compensatory

Wife's new husband retired, investment income \$32,000/yr., assets \$1.5 million

Support to terminate November 2008, 19 more mos., over 10 years total

Step-down order: \$750/mo. to December 2007, \$500 to Nov. 2008

*Scott v. Scott*, [2007] B.C.J. No. 336, 2007 BCSC 234 (Bruce J.)

Together 23 years (married 20), husband 48, wife 53

1 child of wife (28), 1 child of marriage (20), working, night courses, with husband

Wife administrator at credit union, earns \$36,200

Husband electrician supervisory, earns \$84,500

Guidelines range: \$1,389-\$1,852

Non-compensatory support, significant income disparity, \$1,600/mo. ordered

Until wife reaches 65 (12 years), similar standard of living

*Owen v. Owen*, [2007] B.C.J. No. 326, 2007 BCSC 230 (Chamberlist J.)

Married 37 years, husband 61, wife 57, 4 children, traditional marriage

Wife labourer at stockyards and EI, \$24,650/yr.

Husband truck driver, income reduced, \$50,000

Support on compensatory and non-compensatory basis

Guidelines range: \$781-\$1,041

Husband claimed business expenses on road, \$1,250/mo., some recognition of expenses

Spousal support \$750/mo., indefinite, no review

*Peterson v. Ardiel*, [2007] A.J. No. 151, 2007 ABQB 90 (Lee J.)

Together 15 years, wife daughter (18), natural father pays \$400/mo. child support  
 Husband oilfield consultant, pays child support of \$375/mo. for another child  
 Husband claims drop in oil business, but income imputed of \$200,000  
 Husband remarried to nurse (earns \$30,000)  
 Wife operates dog grooming business, earns \$21,500  
 Original order in husband's absence \$3,500/mo., reduced to \$1,250 pending hearing  
 Husband argued Guidelines for \$500/mo. (?)  
 Spousal support of \$2,500/mo., indefinite  
 (Guidelines range estimated: \$3,347-\$4,462)

*Wang v. Poon*, [2007] B.C.J. No. 271, 2007 BCSC 194 (Humphries J.)

Married 7 years (cohabited 6 years), still cohabiting at trial, husband 76, wife 47  
 Husband retired professor, income \$50,000  
 Met wife in China, sponsored to Canada, trained as hairdresser, income \$8,000  
 Most not family assets, condo reapportioned 90% to husband  
 No interim support order, 2 lump-sum payment \$2,500 and \$4,000  
 Sponsorship agreement to October 2010, used to fix duration  
 Amount \$850/mo. 2007-Feb. 2009; then \$600/mo. to Oct. 2010 (3 years, 8 mos.)  
 "More generous and of longer duration" than Guidelines  
 (Guidelines range estimated: \$368-\$490, for 3.5 to 7 years, global amount within range)

*Serra v. Serra*, [2007] O.J. No. 446 (S.C.J.)(Herman J.)

Together 26 years (married 24), husband 62, wife 56 (50 separation)  
 1 child of wife's 1<sup>st</sup> marriage, plus 1 of this marriage, both adults  
 Wife worked early years, then home since 1983, no income  
 Interim support \$12,500/mo., December 2002 on  
 Husband owns marine and textile businesses, decline since separation  
 Net family property \$10 million, equal division means \$3.3 million payment plus condo  
 Husband salary imputed at \$250,000  
 Wife limited skills, but self-sufficiency includes generating income from assets  
 Her income imputed at \$43,000/yr.  
 Spousal support \$10,000/mo., until transfer of husband's condo interest, then \$7,500/mo.  
 Indefinite, but no support while husband pays equalization instalments Sept/07 to Sept/11  
 (Guidelines range estimated: \$7,812-\$10,416, wife no income; \$6,469-\$8,625 if \$43,000)

*Colquhoun v. Colquhoun*, [2007] O.J. No. 9, 2007 CarswellOnt 18 (Whalen J.)

Married 20 years, husband 54, wife 49 (41 separation), no children  
 Husband's job ended 2004, running common law wife's Molly Maid business and rentals  
 Income imputed of \$50,000  
 Wife personal care worker and rentals, imputed income \$20,800  
 Interim support \$1,000/mo., 2 years paid  
 Guidelines range: \$730-\$973, indefinite  
 Final order \$1,000/mo., leaves husband 52.6% net income, wife 47.4%

*Coady v. Coady*, [2006] N.S.J No. 530, 2007 NSSC 394 (Williams J.)

Married 21 ½ years, husband 61, wife 57, 2 adult children, separated 1993  
 Husband mayor in 1993, earning \$92,000, part tax-free  
 Wife no income, depression, stayed in matrimonial home, delayed payment to husband  
 Spousal support \$3,500/mo. agreed in 1993, reduced in two stages to \$3,158 in 1997  
 Husband unilaterally reduced to \$1,083/mo. later in 1997  
 Interim without prejudice variations, to \$2,000/mo. in 2003, to \$1,000/mo. in 2005  
 Husband now receiving only pension, \$28,236, remarried, new wife \$27,600  
 Wife receives pension and rent, \$13,158/yr., daughter lives with her rent-free  
 Guidelines "of limited utility here", retroactive spousal support  
 1998: \$1,900/mo. (estimated range: \$1,586-\$2,114)

1999: \$1,900 (range: \$1,662-\$2,216)  
 2000: \$1,900 (range: \$1,701-\$2,268)  
 2001: \$2,000 (range: \$1,886-\$2,515)  
 2002: \$2,000 (range: \$1,833-\$2,444)  
 2003: \$1,900 (range: \$2,021-\$2,695)  
 2004: \$1,600 (range: \$2,135-\$2,847)  
 2005: \$1,200 (range: \$989-\$1,305)  
 2006: \$650 (range: \$405-\$540), indefinite

Equalization payment from wife offset against retroactive support

*Pentz v. Cutcliffe*, [2006] N.S.J. No. 544, 2006 NSFC 49 (J. Campbell J.)

Together 18 years, wife 58, husband 46, no children  
 Husband letter carrier, earns \$48,000  
 Wife earns \$8,000 as personal care worker  
 Wife seeks indefinite support, husband says maximum 6 years  
 Range: \$900-\$1,200, 9 to 18 years  
 Non-compensatory support, for 4 years at \$990/mo.

*Lopez v. Tarnocai*, [2006] O.J. No. 5318 (S.C.J.)(Herman J.)

Together 5 years, both from Mexico  
 Wife medical doctor, but visitor, working as exotic dancer, \$14,400/yr.  
 Husband geologists, earning \$100,000 (\$208,751 in 2005)  
 Interim spousal support of \$1,000/mo. ordered  
 Considered Guidelines, NDIs, different results  
 (Guidelines range \$537-\$716/mo., 2.5-5 years, restructured \$1,084-\$1,432, 1-2.5 years)

*Friend v. Paul*, [2006] O.J. No. 5315 (S.C.J.)(Herman J.)

Married 17 years, 4 children, one now at university  
 1994 order for \$1,500/mo. interim interim child and spousal support, never varied  
 Last child finishing university in April 2007  
 Husband earns \$64,604, wife earns \$41,000  
 Child support, budget, \$244 rent plus \$250 expenses, total \$496/mo.  
 Wife seeks \$500/mo. spousal support, 13 years since separation, still entitled  
 Spousal support of \$300/mo. to April 2007, over 50% NDI  
 After April 2007, \$500/mo. (Guidelines range: \$502-\$669)

*Rezansoff v. Rezansoff*, [2007] S.J. No. 37, 2007 SKQB 32 (Sandomirsky J.)

Married 6 years, second marriage, no children, wife 60, husband 67  
 Interim spousal support: \$1,200/mo. for 16 mos.  
 2004 trial: \$1,100/mo., review in 2 years  
 Husband seeks termination on review, husband now receives \$47,708 in pensions  
 Wife receives \$6,024 pension, unemployable, health problems  
 Guidelines range: \$625-\$833, 3 to 6 years, husband paid \$13,014 more than maximum  
 Non-compensatory support, 6 more months, \$625/mo., 4 years total duration

*Mitrovic v. Mitrovic*, [2007] A.J. No. 69, 2007 ABQB 44 (Veit J.)

Married 30 years, 1 adult child 22, special needs, receives AISH \$1,000/mo.  
 Wife 55 (53 separation), could earn \$25,000, employed during marriage  
 Husband's business income \$125,000, no child support  
 Guidelines range: \$3,125-\$4,166, \$3,125/mo. ordered, indefinite  
 Low end as husband's employment expenses, equal division not fair

*Kirk v. Kirk*, [2007] B.C.J. No. 126, 2007 BCSC 67 (Arnold-Bailey J.)

Married 30 years, 2 adult children, wife 63, husband 66, separated Dec. 1998  
 Wife worked during marriage, now disabled, \$24,250  
 Interim spousal support (Jan. 2005): \$7,000/mo., variation refused Sept. 2005

Husband earned \$1,344,669 in 2005 (predicted earlier by him as \$237,000)  
 Predicts \$215,518 in 2006  
 Guidelines "range" for 2005 income: \$41,263-\$55,017/mo. (!)  
 \$5,977-\$7,969/mo. if 2006 estimate, \$7,000/mo. within range, no interim variation

*Fandrich v. Fandrich*, [2007] B.C.J. No. 40, 2007 BCSC 20 (Masuhara J.)  
 Together 6 ½ years (5 ½ married), husband 67, wife 55 (52 separation)  
 Husband owner and operator of helicopter co., earns \$200,000  
 Wife Irish doctor, not qualified in Canada, now realtor, \$30,000 imputed  
 Guidelines range: \$1,488-\$1,983, 3.5 to 7 years (\$62,500-\$166,500 taxable)  
 Reapportionment of assets: 25% of Co. to wife, worth \$627,500  
 Lump sum spousal support \$40,000

*Main v. Main*, [2006] B.C.J. No. 3256, 2006 BCSC 1876 (Master Keighley)  
 Married 36 years, 2 adult children, husband 59, wife 58  
 Wife unemployed, ischemic disease, \$28,990 disability/CPP  
 Husband millwright, earns \$89,000, wishes to retire (pension \$26,238)  
 Interim support, Guidelines range: \$1,250-\$1,667/mo.  
 Mid-point \$1,458 leaves husband with \$230 net more per month

*Williston v. Williston*, [2006] B.C.J. No. 3248, 2006 BCSC 1869 (Rogers J.)  
 Together 7 years (married 6), 2<sup>nd</sup> marriage, husband 48, wife 47  
 Husband pays child support of \$300/mo. for 2 17-year-olds from 1<sup>st</sup> marriage  
 Wife permanently disabled throughout marriage, social assistance now \$856/mo.  
 Husband earns \$66,000 as travelling salesman  
 Interim support \$1,500/mo. since Dec. 2005, entitlement admitted  
 Family property divided equally  
 Guidelines range: \$578-\$770, 3 ½ to 7 years  
 Disability exception recognized, upper end ordered \$800/mo.  
 Duration: not permanent, given short relationship, 8 years (i.e. 7 more)

*Saugestad v. Saugestad*, [2006] B.C.J. No. 3206, 2006 BCSC 1839 (Russell J.)  
 Wills variation case, together 12 years (married 11)  
 2 children of 1<sup>st</sup> marriage 30 and 29, 1<sup>st</sup> wife deceased  
 Husband shipbroker, wife realtor when met, assets of her own, 59 now  
 Retirement incomes: husband \$107,000, wife \$63,500  
 Entitled to support, Guidelines range: \$700-\$900/mo.  
 Husband left \$900,000 to wife, \$50,000 more than notional division of assets  
 Wife awarded life interest in condo, generates rental income, no amount specified  
 Not required to pay back \$29,000 owing to estate

*Eastwood v. Eastwood*, 2006 CarswellNB 655, 2006 NBQB 413 (Clendening J.)  
 Married 25 years, wife 51, husband 48, no children  
 Interim interim support \$500/mo., then interim support \$775 (June 2006)  
 Husband insurance appraiser, moved to Toronto, earns \$60,000  
 Wife earns \$30,773, incomes similar until 2002 then his increased  
 Wife requesting \$900/mo. based on Guidelines [range \$911-\$1,216]  
 But both worked, no hardship, equal assets, wife self-sufficient  
 No entitlement and hence Guidelines no application, arrears to be paid

*Gross v. Gross*, 2006 CarswellNWT 80, 2006 NWTSC 66 (Charbonneau J.)  
 Married 6 years, separated 2000  
 Husband's child of previous relationship, 9 when married, now 21  
 Wife immigrant from Moldova, pianist and music teacher, moved to NWT  
 Now suffering from schizophrenia, treatment, at best part-time employment  
 Wife on social assistance, property divided equally, seeks \$2,500/mo. support

Husband earns \$83,758; argues SSAG and says range \$400-\$500/mo  
 Non-compensatory support, indefinite given illness  
 Guidelines not helpful, "unique" case, \$900/mo. ordered  
 [Range \$628-\$837, no reference to disability exception]

*Y.L. v. G.Q.*, [2006] B.C.J. No. 3087, 2006 BCSC 1774 (Shabbits J.)  
 Married 9 years, 1 child 8 with husband  
 Wife returned to China, mental illness, unable to work, no income  
 Husband earns \$70,000 in business  
 Fall 2004 interim lump sum \$9,000 (6 x \$1,500)  
 Guidelines used, 1.75% x 8 years 9 1/2 mos., \$900/mo., again interim  
 [Custodial payor should have been used, range \$646-\$861]

*Munro v. Munro*, [2006] B.C.J. No. 3069, 2006 BCSC 1758 (Brine J.)  
 Married 18 years, 2 adult children, husband 43, wife 54 (49 separation)  
 Husband earns \$149,600 as criminal lawyer  
 Wife bookkeeper for husband, earned \$36,000  
 Now reflexologist/electrolysis, \$24,000 imputed, vs. \$7,800 earned, insufficient effort  
 Interim: 2001-02, \$1,700/mo. for 21 mos., 2003 \$4,000 for 12 mos., 2004-06 \$2,500/mo.  
 Guidelines range: \$2,826-\$3,768, but \$1,200/mo. ordered, indefinite  
 Reapportionment: husband debt of \$50,000, wife assets of \$120,000  
 Husband had custody of children after separation, no support from wife  
 Husband now remarried and 2 young children

*Tsurugida v. Romero*, [2006] B.C.J. No. 3067, 2006 BCSC 1754 (Kelleher J.)  
 Married 21 years, 3 children 22, 20 and 18, husband 44, wife 47 (45 separation)  
 Husband mining co. CEO/shareholder, earns \$283,000  
 Wife earns \$48,000 investments, \$12,000 imputed minimum wage employment, \$60,000  
 Property divided equally, shares in trust to fund children's education  
 Interim spousal support \$8,800, then \$8,000/mo.  
 Range stated as \$5,700 to \$7,600, \$6,800/mo. ordered, indefinite, no review

*Soper v. Soper*, 2006 CarswellOnt 7496 (Matheson J.)  
 Together 24 years (married 20), 1 adult child 23  
 Husband at Inco, earns \$83,862, wife day care worker \$15,205  
 Interim support \$1,000/mo. (Sept. 2003), \$1,500/mo. (June 2006)  
 Guidelines considered, support \$1,800/mo., indefinite  
 [Range \$2,060-\$2,746, but if only 20 years used, \$1,716-\$2,288]

*E.K.G.D. v. L.W.P.*, [2006] B.C.J. No. 3002, 2006 BCSC 1721 (Dillon J.)  
 Lived together 21 years, since wife was 18, wife 42, husband 51  
 Wife reeducated, nurse (1991), earns \$63,000 gross, \$52,928 net  
 Husband cargo surveyor, returned to university for B.Sc.  
 Now disabled, receives \$36,000/yr. tax-free, depression  
 Constructive trust, half of assets to wife  
 Spousal support for husband, \$500/mo. for 2 years  
 Range \$533-\$711, "netted down" as tax-free to husband

*Vanden Bos v. Vanden Bos*, [2006] B.C.J. No. 3003, 2006 BCSC 1722 (Master Baker)  
 Married 28 years, 3 adult children, traditional marriage, wife 50 (48 separation)  
 Husband truck driver, earns \$101,300, CCA issues  
 Wife \$650/yr., bookkeeping for husband, at home, CPP disability appeal refused  
 Range \$3,145-\$4,194, budgets considered  
 Interim support \$4,300/mo., leaves each with \$3,300/mo. net  
 Slightly out of Guidelines range, but no seriously in conflict

*Corney v. Corney*, [2006] N.B.J. No. 484, 2006 NBQB 384 (d'Entremont J.)  
 Married 21 years, second marriage, no children, children of previous relationships  
 Husband 55, wife 60 (58 separation)  
 Wife custodian, earns minimum wage \$18,000, worked throughout marriage  
 Husband truck driver, earns \$40,000, new partner (\$18-\$20,000)  
 Range \$578-\$770, support of \$600/mo., indefinite

*Steenberg v. Steenberg Estate*, 2006 CarswellBC 2751, 2006 BCSC 1672  
 (Martinson J.)  
 Wills variation case, husband 74 at death, wife 52, together 7 years, married 5 1/2  
 Under prenuptial agreement and will, wife gets 10% of estate, 5 children 18% each  
 Entitlement to spousal support: wife quit job, moved to husband, caregiver in last years  
 Entitled to some support, quantum would be determined under Guidelines  
 Prenuptial agreement fair re property, but not for support  
 Wife's share varied to 15%, 5 children 17% each

*Smith v. Smith*, [2006] B.C.J. No. 2920, 2006 BCSC 1655 (Pitfield J.)  
 Married 26 years (28 total), 3 adult children, wife 54, husband 67 (64 separation)  
 Wife teacher, home and part-time when children young, now near full-time, \$55,000  
 Husband mechanic, ferry worker, health problems now, \$23,000 OAS/PPP/pension  
 House on Salt Spring Island reapportioned 2/3 to husband, \$200,000 vs. \$100,000  
 Guidelines range: \$1,000-\$1,333  
 Lump sum of \$25,000 ordered, consistent with Guidelines  
 Present value of support if paid until wife 65: \$105,000-\$140,000  
 Deduct 30 per cent for tax: \$70,000-\$93,000  
 Less \$50,000 for reapportionment: \$20,000-\$43,000

*Crawford v. Crawford*, [2006] B.C.J. No. 2921, 2006 BCSC 1664 (Garson J.)  
 Together 20 years (married 15), 2 adult children 24 and 21, employed, with mother  
 Husband 56, wife 57 (48 separation), wife home until 1997  
 1997 separation agreement: spousal support of \$1,100/mo. for 18 mos., then \$950  
 To be reviewed when wife employed, wife employed Dec. 1997, but no application  
 Wife in motor vehicle accident in 2000, not worked since  
 Wife now CPP disability, rent and investment income: \$21,120  
 Husband steel fabricator, laid off, work injury, can return to work, \$40,000 imputed  
 Compensatory support, some reduction expected, income now close to when employed  
 Property reapportionment 62/38 to wife  
 Guidelines range: \$472-\$629, order for \$400/mo.

*Beese v. Beese*, [2006] B.C.J. No. 2903, 2006 BCSC 1662 (Goepel J.)  
 Together 7 years (3 married), no children, husband 48, wife 41 (35 separation)  
 Husband earns \$52,495 as truckdriver, wife earns \$35,000 as clerk  
 Compensation order \$175,000 for wife's use of personal injury settlement to pay  
 off husband's business loans  
 Guidelines range: \$175-\$233, 3 to 7 years  
 Fully addressed by compensation order, no periodic support

*McAuley v. McAuley*, [2006] B.C.J. No. 2882, 2006 BCSC 1643 (Bruce J.)  
 Married 20 years (plus 2 cohabitation), husband 44, wife 50 (48 separation)  
 Children 19 and 22 (part-time student, working), not children of marriage  
 Husband earns \$76,036 at Toyota, wife earns \$28,000 at career college  
 Range \$1,320-\$1,760, support of \$1,600 compensatory, indefinite

*Evans v. Evans*, [2006] A.J. No. 1391, 2006 ABQB 800 (Thomas J.)  
 Married 28 years, 1 adult child, husband 55, wife 50 (48 separation)  
 Husband Armed Forces firefighter until 1992, many relocations

Husband retrained as licensed practical nurse 1992-93, while wife worked  
 Husband can earn \$65-75,000, near high end  
 Wife minimum wage employment, back problems, retraining in business course  
 Wife thinks she might earn \$30,000, but court says \$18,000 in 2006-07  
 Interim spousal support \$1,250/mo., final order \$1,250, review in 1 year  
 Used Guidelines as “check” [but range \$1,725-\$2,166, if \$70,000 and \$18,000]

*Fournier v. Burton*, [2006] O.J. No. 4084, 2006 CarswellOnt 6201 (S.C.J.)(Smith J.)  
 Married 20 years, wife 44 (39 separation), 2001 consent order: \$1,200/mo., indefinite  
 Husband applies to vary to terminate or time limit  
 Wife took courses for Grade 12, community college, but ill with cancer/depression  
 Change in circumstances, not making \$20,000 5 years later, unlike expected  
 Husband’s income unchanged, \$53,100 (estimated as not stated)  
 Guidelines range: \$1,488 - \$1,770, higher than order  
 Order continued, review in 4 years

*Fournier v. Fournier*, [2006] N.B.J. No. 443, 2006 NBQB 357 (Wooder J.)  
 Together 10.5 years (8 married), second marriage, wife 48 (45 separation), husband 49  
 Wife CPP disability, workers comp (\$13,680 not taxed, grossed up) \$27,792  
 Marital property divided, both spouses repartnered, no details re partners  
 Husband earns \$81,095 as mechanical engineer  
 Guidelines range: \$700 - \$933, 5.25 to 10.5 years  
 Interim spousal support \$1,200, paid for 2 ½ years (above range, reflected in duration)  
 Non-compensatory support, \$815/mo., for 5 more years

*Walsh v. Walsh*, [2006] N.B.J. No. 441, 2006 NBQB 338 (Wooder J.)  
 Married 29 years, 3 children (28, 25, 23), wife 50 (48 separation), husband 52  
 Youngest child (23) with husband, kidney transplant in 1997, finished school  
 Husband at Canada Post, \$48,026, wife convenience store clerk, \$13,817  
 No request for child support, no obligation as no evidence re disability and abilities  
*Without child support* formula used, range: \$1,069 - \$1,425  
 Lower end, \$1,070/mo., indefinite

*Lehtomaa v. Lehtomaa*, [2006] O.J. No. 4130 (S.C.J.)(Shaw J.)  
 Married 40 years, husband 73, wife 65 (63 separation)  
 Guidelines range: \$442 - \$590, wife seeks income equalization, \$500 spousal support  
 Equal lifestyles, not incomes, use means and needs  
 Husband significant medical issues: loss of arm, hip replacement, cancer, cataracts  
 Uses scooter, his needs greater  
 Husband’s income \$2,828/mo. (OAS, CPP, pension, workers comp)  
 Wife’s income \$1,648 (OAS, CPP, pension)  
 Interim spousal support: \$100/mo. to equalize [disability exception?]

*Trewin v. Trewin*, [2006] N.B.J. No. 421, 2006 NBQB 341 (Bell J.)  
 Married 28 years, wife 52, husband 53, 1 child (30), special needs  
 Husband RCMP officer, 25 years, retired, then N.B. government, now on disability  
 Wife health problems too, 7 relocations in RCMP, interim support \$1,700/mo.  
 Marital debts exceed assets, wife pays husband \$7,218, pensions divided  
 Wife imputed income of \$6,000, husband receives \$45,800 (incl. grossed-up benefits)  
 Range: \$1,244 - \$1,658  
 Maximum \$1,650 ordered, indefinite, to equalize living standards

*Boudreau v. Scaduto*, [2006] B.C.J. No. 2187, 2006 BCSC 1348 (Gill J.)  
 Together 12 ½ months (11 married),  
 Wife 2 children 12 and 15, \$2,400 U.S. child support from father  
 Wife no income, moved from Maryland to B.C.

Husband teacher, \$65,300, debts  
 Interim spousal support, \$1,750/mo., then \$2,300 (Dec. 2005)  
 Spousal support \$1,000/mo., 10 more months (23 total)  
 Guidelines not argued, reference made to compensatory exception

*Kerr v. Magnan*, [2006] O.J. No. 4127 (S.C.J.)(Platana J.)  
 Married 39 years, wife retired (June/06), husband already retired  
 No spousal support in 2004 divorce  
 Guidelines not of assistance where low incomes, needs and means used  
 Husband's "net": \$2,450/mo., wife's "net": \$1,329/mo.  
 [Grossed up \$38,500 vs. \$19,000, range \$409-\$812]  
 Interim spousal support \$300/mo.

*Elezam v. Ireland*, [2006] A.J. No. 1374, 2006 ABPC 230 (Norheim Prov.Ct.J.)  
 Together 6 years, ISO case, B.C. government initiated  
 Wife in B.C., on social assistance \$920/mo., health problems  
 Husband truck driver in Alta., earns \$37,400  
 Range \$262-\$349, 3 to 6 years, \$262/mo. ordered for 3 years

### C. The With Child Support Formula

*E.(Y.J.) v. R.(Y.N.)*, 2007 CarswellBC 782, 2007 BCSC 509 (Boyd J.)  
 Married 20 years (plus 2 years' cohabitation), both spouses 52, 2 children 19 and 16  
 Wife home, husband chartered accountant in firm, earns \$602,400  
 Wife needs time to requalify, no income until Jan. 2008, then \$35,000 part-time imputed  
 Child support \$7,580 table amount, including private school and university tuition  
 Older child's travel, living expenses at university to be paid by husband  
 Spousal support range: \$14,055-\$16,511/mo. if wife no income, \$12,849-\$15,447 if \$35,000  
 Mid-point ordered, \$15,128/mo., then \$14,148 from Jan. 2008

*Saunders v. Saunders*, 2007 CarswellNB 163, [2007] N.B.J. No. 120, 2007 NBQB 133 (d'Entremont J.)  
 Married 8 years, 2 children 6 and 4, wife at home, 4 moves in 8 years  
 Husband engineer in Armed Forces, earns \$90,971, new partner (\$10,000) and 1 child, to Ottawa  
 Wife to B.C., working on college and education degree, 5 year plan, 3 more years, no income  
 Interim support: \$600 child, \$500 spousal, wife seeks 5 years of spousal support  
 Child support \$1,292 (Ont.), plus child care expenses of \$324/mo, husband pays \$259/mo.  
 No undue hardship for debts or access expenses  
 Economic disadvantage, spousal range \$1,058-\$1,545  
 Order for \$1,058, indefinite, review in April 2009

*Yeates v. Yeates*, 2007 CarswellOnt 2107 (S.C.J.)(Greer J.)  
 Married 15 years, husband and wife 48, 3 children 17, 14 and 11, with wife  
 Child 17 has cerebral palsy/epilepsy and child 14 autism  
 Wife home with little respite, access issues  
 Husband accountant with CRA, earns \$108,872  
 Child support \$1,964  
 Section 7 expenses: wife gets \$16,500/yr. subsidies for special needs, list "unattainable"  
 Husband to pay \$1,300/mo. for expenses  
 Interim spousal support \$2,500/mo., wife seeks permanent spousal support of \$3,500, can't work  
 Husband argues Guidelines, *Andrews*, maximum 60/40 NDI split  
 Order for \$2,500 indefinite, well above Guidelines range (estimated \$848-\$1,233)  
 (Special needs exception?)

*Holmes v. Matkovich*, 2007 CarswellYukon 11, 2007 YKSC 11 (Veale J.)  
 Together 18 years (married 6), 1 child 16, with wife, wife 48, husband 45

Husband failed to disclose, pleadings struck, uncontested hearing  
 Spouses built up hay farm since 1994  
 Wife many health problems, receives income from trust fund, \$44,000 in 2006  
 Husband operates farm, prospecting, gold mining, heavy equipment rental, incorporated co.  
 Income issues, estimated at \$211,000  
 Child support \$1,555, farm 100% to wife on property division  
 Range: \$3,753-\$5,013  
 Self-sufficiency not practicable, not high end as farm to wife, some equality in living standards  
 Order for \$4,000/mo., indefinite

*Gagne v. Gagne*, 2007 CarswellBC 671, 2007 BCSC 438 (Boyd J.)

Married 11 years, 1 child 14  
 Husband in restaurant business, income issues, earns \$109,300  
 Child support \$982/mo.  
 Wife earns \$28,893 as special education assistant, seeks \$2,500/mo. spousal, indefinite  
 Entitlement not compensatory, no disadvantage, employed throughout, secure job  
 Assets reapportioned "very heavily weighted in her favour"  
 Range \$1,321-\$1,930, mid-point \$1,625/mo., that amount ordered  
 Spousal support to be paid until December 2007 (5 years total)

*Fell v. Fell*, [2007] O.J. No. 1011, 2007 CarswellOnt 1604 (S.C.J.)(Linhares de Sousa J.)

Married 12 years, 3 children 12, 9 and 4  
 Shared custody, equal time, interim for 18 mos., continued  
 Wife part-time nurse, \$43-44,000, secondary earner in marriage  
 Would earn \$70-80,000 if full-time  
 Husband pilot in Armed Forces, earns \$95-96,000  
 Child support set-off: \$1,762 - \$816 = \$946/mo.  
 Interim spousal support \$400/mo.  
 Wife can keep working part-time until youngest in full-time school, given history  
 Mid-point of Guidelines range leaves consistent standard of living, \$450/mo.  
 (Guidelines range estimated: \$99-\$784, mid-point \$444)  
 Review when full-time school, wife's income expected to be \$70,000 then

*Upton v. Fasoli*, 2007 CarswellBC 765, 2007 BCSC 414 (Shabbits J.)

Married 11 years, 2 children, 18 with husband, 16 shared 50/50  
 Separated 1999, 2000 agreement, then 2003 order:  
 Husband chiropractor, then earning \$90,000, wife \$18,000, child support \$923  
 Spousal support \$1,500/mo. 2001-02, \$1,000 2002-04, \$500/mo. 2004-05, end June 2005  
 Husband applies to vary child support, wife applies on review to continue spousal  
 Registrar's report recommends increased child support, \$500 spousal for 2 more years to 2007  
 Husband then cancer, disability income not taxable, \$82,500 grossed-up  
 Wife's imputed income \$28,000  
 Child support: \$760(1)-\$441(2)=\$319 by husband  
 Spousal support continued at \$500/mo. for 2 more years (8 years plus total)  
 Amount affected by original order, so Guidelines not affect, but not deductible for husband now  
 Trial judge states spousal support not to continue past child 18 under Guidelines  
 (But error, here length of marriage, so could be another 3 years to maximum)

*Franciosi v. Franciosi*, [2007] B.C.J. No. 544, 2007 BCSC 368 (Goepel J.)

Married 15 years, 3 children 15, 12 and 9 with wife  
 Husband bricklayer, own co., income issues, \$100,000  
 Husband's new partner nurse  
 Wife home, then part-time bus driver, \$22,500, new partner \$30,000  
 Child support \$1,650/mo.  
 Entitled to spousal support, compensatory and non-compensatory  
 Guidelines range: \$864-\$1,683, interim support \$1,250/mo.

Spousal support \$1,500/mo. to end of 2017 (15 years)

*Vanderlinden v. Vanderlinden*, [2007] N.S.J. No. 107, 2007 NSSC 80 (Campbell J.)

Together 7 years (married 5), 1 child 6

Husband ex-military, pension, \$60,000

Wife student loan debt \$16,000, going to CompuCollege, tuition \$15,850

Wife no income

Child support \$523 (\$450 before)

As self-reps, negotiate agreement August 2005 using Guidelines:

Spousal support at \$1,100/mo. for 65 months, \$71,400

Wife accepted \$600/mo. for 3 years, husband assumed all debts

Then \$13,800 left to pay, at \$115/mo. afterwards

Miglin/property: not substantial compliance, unfair re debts

Husband relieved of wife's student loan payments and \$13,800 support

Continue \$600/mo. to August 2008, wife graduates April 2007

Criticisms of *without child support* formula, but this *with child support* formula

(Guidelines range estimated: *with child support* formula, \$1,153-\$1,460 after May 2006)

(Range before May 2006, child support \$450, spousal \$1,049-\$1,313, mid-point \$1,176)

*Horvath v. Horvath*, [2007] N.S.J. No. 90, 2007 NSSC 70 (Wilson J.)

Married 8 years, 2 children 11 and 8, with wife, husband 35, wife 40

Wife unemployed, limited income as casual teacher's aide

Husband electrician earns \$53,540, in bankruptcy

Child support \$763

Spousal support entitlement, Guidelines range \$664-\$903/mo.

Support of \$650/mo., indefinite, as wife some ability to earn

*Ansara v. Ansara*, [2007] O.J. No. 783 (S.C.J.)(Del Frate J.)

Married 17 years, 1 child 8, with wife

Husband lawyer and director, community legal clinic, \$106,000

Wife deputy town clerk, earns \$49,143

Child support \$924 interim

Guidelines range: \$642-\$1,435, \$1,000/mo. interim spousal support ordered

*Skirten v. Lengyel*, [2007] O.J. No. 679 (S.C.J.)(Platana J.)

Unmarried couple, together 5 years, 1 child 3, with wife

Husband labourer, earns \$24,960, wife earns \$16,682

Child support \$224/mo.

Guidelines range: zero to zero

Husband not appearing, owns house and motorcycle, wife seeks \$112/mo.

Court looks at household standard of living comparison

"Notwithstanding Guidelines", husband should pay something, \$50/mo.

*Martin v. Martin*, [2007] O.J. No. 467 (S.C.J.)(Linhares de Sousa J.)

Married 9 years, children 13 and 8

Property divided 75/25 to wife, husband's debts to wife reduces payment to zero

Husband alcohol and cocaine problems, now working for Dell, \$36,000

Child support \$518, 27% of s. 7 expenses (\$165/mo.)

Husband seeks spousal support, wife earns \$90,000

Husband claims \$300-\$400/mo for 3 years, based on Guidelines

Entitlement, lump sum of \$15,000 for disadvantage from marriage breakdown

(Guidelines range estimated, custodial payor: \$414-\$552, 4.5 to 9 years)

(Lump sum awarded, after tax adjustment, at low end of global range)

*Davies v. Davies*, [2007] O.J. No. 388 (S.C.J.)(Herman J.)

Married 11 years, 2 children 9 and 6, with wife

Husband Environment Canada scientist, earns \$66,388  
 Wife earns \$32,000  
 Child support \$992/mo. plus child care  
 Wife home 7 years, til last in school (2004)  
 Mid-point of Guidelines range is zero, leaves wife with 56% NDI (range: zero to \$247)  
 No interim spousal support

*Salmond v. Salmond*, [2007] B.C.J. No. 388, 2007 BCSC 264 (Sigurdson J.)  
 Together 7 years (married 4), 1 child 4, husband and wife in 30's  
 Wife bookkeeper, earns \$38,000  
 Husband contractor, gas fields, income issues, earns \$106,250  
 Property divided equally, child support \$957/mo.  
 Entitlement compensatory, indefinite, review 6 mos. after child in Gr. 1 (Sept/09)  
 Husband offers \$800, wife seeks \$1,250, court orders \$1,000/mo  
 Short marriage, wife young  
 (Guidelines range estimated: \$1,070-\$1,774)

*Landrigan v. Bloomer*, [2007] B.C.J. No. 367, 2007 BCSC 254 (Boyd J.)  
 Married 19 years, 2 children 7 and 12, with wife, husband 51, wife 50  
 2006 order: spousal support \$1,200/mo., review 8 mos. later, wife disability  
 Wife's condition deteriorated, cause still unknown, could be temporary  
 Entitlement continues, not indefinite support, review Oct. 2007  
 House reapportioned 65/35 to wife, she buys out his share  
 Husband earns \$67,000, wife no income  
 Wife says range \$992-\$1,270, continue \$1,200/mo.  
 Husband says house sold, reduce support  
 Child support \$1,010/mo., plus \$200/mo. s. 7 expenses  
 Spousal support reduced to \$1,000/mo., due to reapportionment, capital gain on house

*J.W.J.McC. v. T.E.R.*, [2007] B.C.J. No. 358, 2007 BCSC 252 (Sinclair Prowse J.)  
 Married 19 years, traditional, 3 children: 21, 20, 17, husband 46, wife 47 (41 sep.)  
 2001 separation agreement: husband \$400,000/yr. as lawyer, property 66/34 to wife  
 Child support \$5,409/mo. plus \$10,000/yr; spousal support \$2,841/mo. plus \$10,000/yr.  
 Husband remarried, husband's new wife lawyer, now home, 2 children  
 Wife remarried, new husband businessman  
 Wife runs photography business, income stated \$6,000/yr., \$30,000/yr. imputed  
 Wife still entitled, compensatory, children and helped husband through law school  
 Range calculated using ceiling of \$350,000 for husband  
 Guidelines range: \$6,098-\$7,595, high end chosen since husband earns more than ceiling  
 Amount adjusted down for wife's income from assets, reapportionment, to \$3,772/mo.  
 Indefinite, review when wife 60 in 2020 (14 years), likely terminated then

*Rarog v. Rarog*, [2007] A.J. No. 195, 2007 ABQB 98 (McDonald J.)  
 Married 13 years, 2 children 13 and 10 with wife  
 2005 interim order: child support \$1,256, spousal support \$2,000/mo., husband \$96,724  
 Husband's 2006 income \$102,334  
 Wife's income \$14,900 plus business income \$9696, total \$24,596  
 Spousal support varied down, husband says \$855, wife says \$1,500  
 Spousal support reduced to \$1,100  
 SSAG referred to as advisory only; actual range not given  
 (Guidelines range estimated: \$1,026-\$1,716 or \$1,203-\$1,870, child support unclear]

*D.L.T. v. D.T.B.*, [2007] B.C.J. No. 303, 2007 BCSC 210 (Rogers J.)  
 Together 12 years (married 11), child 10 with wife, husband 48, wife 50 (48 separation)  
 Equal division of property  
 Wife worked as substitute teacher and tutot, one-year contract \$50,000

Husband helicopter business, now selling avionics, commission sales, \$50,000  
 Child support \$465/mo, plus s. 7 expenses (no amount specified)  
 Guidelines range zero to zero, spousal support dismissed, liberty to reapply if change

*J.E.M. v. L.G.M.*, [2007] N.S.J. No. 69, 2007 NSSC 52 (B. MacDonald J.)

Married 18 years, children 14 and 12 with wife  
 Husband works for federal government, earns \$56,694  
 Wife income from investments \$3,460/yr.  
 Child support \$796, plus all s. 7 expenses, equal division of property  
 Husband offers \$450 based on Guidelines (using higher income for wife)  
 Guidelines range: \$499-\$763, order for \$550/mo.

*Reggelsen v. Reggelsen*, [2007] B.C.J. No. 332, 2007 BCSC 219 (Halfyard J.)

Married 16 years, children 17, 14 and 13 with husband, husband 45, wife 52  
 Interim spousal support \$1,350/mo.  
 Husband engineer with B.C. Ferries, earns \$87,000  
 Wife no income, income of \$10,000 imputed, less than full-time, minimum wage  
 Child support \$67/mo. by wife  
 Spousal support \$1,400/mo., indefinite  
 (Guidelines range estimated: wife no income, \$1,070-\$1,427; if \$10,000, \$890-\$1,187)

*Frouws v. Frouws*, [2007] B.C.J. No. 282, 2007 BCSC 195 (Preston J.)

Married 18 years, husband 47, wife 42 (35 separation), 3 children with father  
 Children 22, 20 and 15, all with problems, one on street, one part-time work and studies,  
 15-yr-old psychiatric problems, mother now sharing time week about  
 Husband pharmacy manager in Kelowna, earns \$117,000  
 Wife part-time, residential care centre, earns \$18,000, income imputed \$30,000  
 Guidelines less help in "these unique circumstances", wife repartnered  
 Wife seeks spousal support after 7 years separation  
 No child support paid by her, wife cohabiting throughout, home split 50/50  
 Husband paid debts of \$15,000, wife wrongly received retro child tax benefit  
 Child support in split/shared custody, 2 vs. 1 set-off, husband pays \$492/mo.  
 No spousal support  
 (Guidelines range estimated: split custody range \$1,696-\$2,330)  
 (Custodial payor range: \$1,346-\$1,794)

*J.W.L.S. v. J.L.S.*, [2007] B.C.J. No. 247, 2007 BCSC 174 (Edwards J.)

Married 2 years, child 2 with wife, husband 39, wife 38  
 Husband earns \$74,000  
 Wife art director in film industry, earned \$70,000 at peak, now home  
 Wife's rental income \$7,200/yr.  
 Interim support August 2006: \$400 child support, \$1,800 spousal support  
 Child support \$689  
 Guidelines range: \$1,128-\$1,642  
 Spousal support order \$1,642/mo., for 11 months (18 months total)

*R.E. v. D.E.*, [2007] B.C.J. No. 226, 2007 BCSC 168 (Slade J.)

Together 16 years (married 11), children 16, 14 and 12 with wife, husband 43, wife 42  
 Husband plumber with company, works on side, income \$61,500  
 Wife in federal government, maternity/unpaid leaves for children  
 Wife working part-time \$27,000, full-time income imputed \$46,000  
 No economic disadvantage, day care addresses ongoing disadvantage  
 Child support \$1,214/mo., plus \$600/mo. for day care  
 Guidelines range zero to zero, whether wife full or part-time, no entitlement

*Wilm v. Wilm*, [2007] A.J. No. 109, 2007 ABQB 65 (Veit J.)

Married 6 years, some prior cohabitation; children 11 and 7 with wife, husband 30, wife 31 (29 separation)

Husband hockey player in Finland, drop in income, \$159,000

Child support \$2,112/mo. (should be \$2215 if income \$159,000)

Wife entitled to spousal support, at home, moved around

Her plan 2-year assistant speech therapist program, to be assessed at trial

Minimum wage income imputed until trial of \$21,000

His high access costs, employment costs, mandatory pension deductions

Low end of Guidelines range (40% INDI) ordered as interim spousal support

(Guidelines range estimated without pension deduction based on husband income of \$159,000: \$2606 - \$3411)

*Silliphant v. Drever*, [2007] B.C.J. No. 186, 2007 BCSC 153 (Joyce J.)

Married 21 years, children 22 and 19 with wife, husband 47, wife 43 (39 separation)

Husband earns \$71,620

Child support, older child employed part-time, 1 child amount (\$668), plus ½ difference to 2 child amount (\$1,075), for \$872/mo.

2003 agreement: spousal support \$300/mo., for one year ending June 2004

Final agreement, Miglin applied, insufficient

Wife can earn \$30,000, husband not pay full shot of her B.B.A.

Wife quit full-time job 5 years after separation

Guidelines range calculated: 1 child, \$411-\$940; 2 children, \$137-\$726

Spousal support of \$600/mo. ordered, indefinite

*Vynnk v. Baisa*, [2007] O.J. No. 274 (S.C.J.)(Klowak J.)

Married 10 years, husband 39, wife 33, 1 child aged 3 with wife

Husband critical care nurse, paid through own company, earns \$87,000

Child support \$774

Wife earns \$39,000

Compensatory basis: wife waitressed, two jobs, to put husband through school,

Delayed her own education, now likely to return to school

Periodic spousal support \$2,000/mo. for 5 years, 61% NDI

Increased for education, not adequately addressed by Guidelines

Plus lump sum support \$75,000 [all within global range at Guidelines maximum]

*Johal v. Johal*, [2006] O.J. No. 5264 (S.C.J.)(Hambly J.)

Married 12 years, 3 children 10, 9 and 5, interim interim custody with wife

2005 incomes used: husband police officer earns \$81,071, cohabiting, new home

Wife labourer, earns \$33,015

Interim child support \$1,528/mo., plus \$280 s. 7 expenses contribution

Spousal support: Guidelines range zero to \$333 says husband

Interim spousal support \$100/mo., leaves wife with 60%+ NDI

*Verbey v. Verutis*, [2006] O.J. No. 4267 (S.C.J.)(Turnbull J.)

Married 18 years, 2 children 13 and 8

Custody issues, interim equal shared custody

Husband engineer, earns \$109,000

Wife primary school teacher, disability, no benefits, no income

Child support not stated (estimated as \$1,514/mo.)

Guidelines range: \$1,880-\$2,483

Interim spousal support \$1,800/mo.

*Wetlaufer v. Wetlaufer*, [2007] B.C.J. No. 168, 2007 BCSC 137 (Master Baker)

Together 10 years (married 8), 2 children 8 and 4, husband 39, wife 36

Wife homemaker, cohabiting with doctor, he assisted with home purchase

Husband excavating business, income issues, \$70,000

Child support \$1,053

Guidelines range: \$1,044-\$1,333, interim spousal support of \$1,000/mo.

Careful budget analysis, especially wife's expenses, amount leaves both similarly short

*Fisher v. Fisher*, [2007] B.C.J. No. 52, 2007 BCSC 39 (Ehrcke J.)

Together 14 years (married 6), wife 44, husband 46

2 boys 19, attending community college, in loco parentis

Husband earns \$78,000 as construction supervisor

Wife personal care worker, health problems, 20 hrs/wk, \$15,000

Interim child support \$1,285, interim spousal \$910/mo.

Child support \$1,160/mo., children pay s. 7 expenses

Guidelines range: \$1,238-\$1,614, \$1,400 ordered, indefinite

*R.R. v. N.R.*, [2007] N.B.J. No. 3, 2007 NBQB 7 (d'Entremont J.)

Married 6 years, 2 children 10 and 7

2003 order: child support \$643, spousal \$600/mo.

Husband's business declined, income dropped from \$48,000 to \$37,640

Child support reduced to \$546/mo.

Wife retrained, job with government, income increased from \$8,580 to \$30,838

S. 7 child care expenses: \$8,160/yr., net \$3,918, husband pays 55%, \$180/mo.

Guidelines range: 0 to 0, no entitlement, self-sufficient

Support paid 6 years, length of marriage

*Kays v. Kays*, [2007] N.S.J. No. 1, 2007 CarswellNS 2 (Legere Sers J.)

Together 2 years and 3 months, (married 15 mos.), 1 child 5, mother's 16-year-old

Husband retired from Armed Forces 2003, now engineering co., earns \$95,226

Dec. 2002 consent order: child support \$950, spousal \$1,150, plus \$1,500 house expenses

Corollary relief judgment 2005: child support \$680, spousal \$1,519

Wife 34 (31 separation), teacher in England, returning there

Wants to do 4 ½ year nursing degree, but no serious employment effort

Child support \$803/mo., husband also pays \$700/mo. for another child

Counsel criticized for no Guidelines calculations

Spousal support \$1,519/mo. for 5 mos., \$1,000 for 7 mos., then end, 5 yrs paid total

[Estimated range if wife no income: \$1,604-\$2,074; if \$20,000 imputed, \$795-\$1,394]

*D.R.M. v. R.B.M.*, [2006] B.C.J. No. 3299, 2006 CarswellBC 3177 (Martinson J.)

Appeal from Master, Guidelines apply to interim support determination

Together 13 years (6 married), 3 children 11, 7 and 5, wife homemaker

Husband earns \$750,000

Master ordered: \$6,000/mo. child support, \$8,500/mo. spousal

Needs and means used, Guidelines rejected at interim stage

Child support appeal allowed, no reason to depart from table, \$12,028/mo.

Spousal support appeal dismissed, income above \$350,000

Discretionary decision, not clearly wrong

[Guidelines range at \$350,000, for comparison: \$6,820-\$8,229]

*C.E.A.P. v. P.E.P.*, [2006] B.C.J. No. 3295, 2006 BCSC 1913 (Rogers J.)

Together 21 years (12 married), wife and husband 44, 4 children 13, 10, 8, 6 with wife

Husband driver for Greyhound, earns \$56,927, child support \$1,342/mo.

Wife on disability pension, bipolar disorder, \$9,479

Guidelines range: 0 to 0, entitlement, but dismissal, liberty to apply if change

*Barnett v. Barnett*, [2006] A.J. No. 1697, 2006 ABQB 920 (Marceau J.)

Married 18 years, 2 children 22 and 15, husband 46, wife 40 (38 separation)

No child support for older son, estranged, other sources of funds

Husband oil pipeline consultant, deliberately reduced income, imputed \$120,000

Child support \$1,056/mo. plus \$474 contribution for s. 7 expenses (of \$708)  
 Wife at home, now works as labourer, earns \$23,000  
 Guideline calculations provided for income of \$140,000, not used  
 Crude net income calculations, spousal support of \$2,000/mo., indefinite  
 (estimated Guidelines range: \$1,889-\$2,590/mo.)

*D.B.C. v. R.M.W.*, [2006] A.J. No. 1629, 2006 ABQB 905 (Topolniski J.)  
 Married 13 years, 2 children 15 and 17, with wife  
 Husband and wife left Calgary for Nelson B.C. for 6 years, lived on investments,  
 homeschooled children, \$80,000/yr.  
 After separation, husband returned to Calgary investment work, earned \$213,553 in 2004  
 2004 trial order: child support \$2,163, spousal support \$4,000/mo, review January 2008  
 Husband earned \$773,471 in 2005, 2006 estimated over \$700,000  
 Child support increased to \$6,716/mo.  
 Wife various upgrading efforts unsuccessful, now 2 days/week in medical clinic  
 Application to vary by wife, sought Guidelines \$16,381-\$32,596/mo.  
 Husband's post-separation income increase, wife no contribution, not long traditional marriage, husband  
 out of work force 6 years before  
 Guidelines not applicable, income over \$350,000, no variation

*McIntyre v. McIntyre*, [2006] N.S.J. No. 529, 2006 NSSC 380 (Warner J.)  
 Interim support, 3 children, 5, 3 and 1, oldest autistic  
 Husband earns \$75,500, wife earns \$30,000 as self-employed chiropractor (imputed)  
 Child support \$1,371/mo.  
 S. 7 expenses: \$866/mo. child care, \$362/mo. special diet, husband pays \$450, wife \$189  
 Guidelines range: 0 to \$384; at zero, 44% INDI to wife, 62% cash flow  
 Wife's budget no deficit, only low income imputed, zero interim spousal support

*H.P. v. D.P.*, [2006] N.S.J. No. 511, 2006 CarswellNS 560 (Levy Fam.Ct.J.)  
 Married over 15 years, 2 children 15 and 11, with wife  
 Husband earns \$24,459 at building supply store, wife \$14,712 in retail  
 Child support \$362/mo., tax advantages to spousal support over s. 7 expenses  
 Spousal support \$175/mo., even though Guidelines range: 0 to 0  
 Support for 18 months until divorce and sale of home

*Aalbers v. Aalbers*, [2006] S.J. No. 757, 2006 SKQB 530 (Sandomirsky J.)  
 Married 17 years, 5 children 16, 15, 12 (Downs syndrome), 8 and 6, with wife  
 Wife homemaker, husband earns \$115,312 as hog and grain farmer  
 Income of husband: \$19,025 tax return, plus \$96,285 via s. 18 from numbered co.  
 Interim child support \$2,741/mo.  
 No interim spousal support: wife's income \$50,556 with child support and child benefits  
 Wife lives in family home, husband pays taxes and utilities, use of family van  
 Guidelines no help where entitlement not yet established  
 [Guidelines range estimated as \$688-\$1,083]

*Rapley v. Rapley*, [2006] B.C.J. No. 3213, 2006 BCSC 1854 (Bruce J.)  
 Married 11 years, 2 children 17 and 14, split custody, both spouses age 44  
 2001 separation agreement: husband grain farmer in Sask. pay \$150,000 re farm  
 child support for 2, spousal support \$500/mo. to Dec. 2010  
 Wife homemaker, from Hong Kong, limited English, moved to B.C. after separation  
 Only \$70,000 paid on farm  
 Interim orders: Nov. 2005, child support for 1 \$448  
 March 2006, child support \$350, spousal support \$1,150, plus \$10,000 advance  
 Husband earning \$56,200, wife no income, child support \$481/mo.  
 Balance of \$80,000 on farm to be paid, spousal support \$500/mo, another 4 years  
 Miglin considered, application to vary then if inadequate, youngest child 18 by then

[Guidelines range, split custody: \$999-\$1,244]

*Humphrey v. Humphrey*, 2006 CarswellOnt 8251 (S.C.J.)(G.P. Smith J.)  
 Married 17 years, 3 children 20, 18 and 18, husband 48, wife 47 (45 separation)  
 All with wife, oldest employed part-time, part-time university  
 Husband in family business, income issues, \$60,000  
 Wife homemaker, small home-based business, no interim sale of home  
 Child support \$902 (2 only), Guidelines range: \$1,083-\$1,361  
 Interim spousal support ordered \$1,300/mo.

*Stuart v. Multan*, [2006] M.J. No. 418, 2006 MBQB 238 (Allen J.)  
 Unmarried couple, together 11 years, 2 children 13 and 10, husband 45, wife 42  
 Wife earns \$46,000, husband earned \$110,000 until terminated March 2006  
 Husband now makes \$61,440, severance package ends Nov. 2006  
 Husband substantial time, but not 40%, child support \$860/mo.  
 S. 7 expenses: camps and transportation, \$155/mo., 57% by husband  
 Spousal support: no economic disadvantage, non-compensatory  
 Retroactive support after separation, would have ended Nov. 2006, 3 years total  
 Court would have made transition longer, amount lower, here more generous  
 Guidelines argued, but not used, as obligation ended now  
 2003 (3 mos) \$1,000/mo.; 2004, \$1,350; 2005, \$750; 2006, \$1,350  
 [all amounts near middle of Guidelines range]

*MacCarthy v. MacCarthy*, [2006] B.C.J. No. 3082, 2006 BCSC 1765 (Rice J.)  
 Married 22 years, 3 children 19, 16, 13, with wife, husband 46, wife 45 (44 separation)  
 Property divided, reapportioned 60/40 to wife, gifts from her father and disadvantage  
 Wife qualified as realtor, homemaker in past, income imputed at \$10,000  
 Husband logger, company, reduction in hours worked okay, \$110,000  
 Child support \$1,578 (2), spousal support range \$1,578-\$2,341  
 Spousal support of \$2,000/mo., indefinite, no review

*Smylie v. Smylie*, [2006] O.J. No. 4716 (Ont.S.C.J.)(Shaw J.)  
 Together 27 years (married 22), 3 children 20, 17, 8, with wife, both 46 years old  
 Husband lumber yard manager in Timmins, earns \$34,762  
 Child support \$517 (2), s. 7 child care expenses \$46/mo. by husband  
 Property: wife keeps home, pays equalization of \$40,326 to husband  
 Wife 2 part-time jobs, nurses registry and KFC, earns \$16,296  
 Wife home until 2004 separation, traditional marriage  
 Husband cohabiting, new partner makes \$40,000  
 Range: 0 - \$89, spousal support of \$200/mo., 60% NDI to wife

*Stamp v. Stamp*, [2006] N.J. No. 324, 2006 NLUFC 43 (Cook J.)  
 Married 25 years, 2 children, 1 adult (25), 1 16 with husband  
 No child support, no s. 7 contribution, wife no income  
 April 2006 consent interim order: \$1,050/mo., wife then WCB \$14,000  
 WCB ends Dec. 2006, wife graduates as teacher, looking for work  
 Husband earns \$62,500, interim support increased to \$1,950/mo., "within parameters"  
 [Custodial payor range: \$1,613-\$2,150]

*Ghahrai v. Mohammed*, [2006] O.J. No. 4651 (Ont.S.C.J.)(Fragomeni J.)  
 Married 9 years  
 2004 settlement: \$1,000/mo. for 18 mos., 26 mos. paid interim, plus \$6,000 lump sum  
 Wife applies to vary and seeks interim, support stopped April 2006, s. 17(10) applies  
 Wife wants to complete B.Sc. Nursing, 4 more years, \$14,000 OSAP loan  
 Husband earns \$80,000, has 2 (?) children, \$700/mo. day care  
 Husband says Guidelines range \$692-\$922, 4 ½ to 9 years, paid \$50,000 (\$692x6 yrs.)

## Application dismissed

*Hance v. Carbone*, 2006 CarswellOnt 7063 (Ont.S.C.J.) (Stayshyn J.)  
 Married 17 ½ years, husband 46, wife 43 (36 separation)  
 4 children: 24, 22, 22, 20, traditional marriage  
 1999 separation agreement: total support of \$1,083, \$611 child, \$472 spousal  
 Spousal support for 6 years only  
 Wife working part-time at Walmart, \$13,500, husband earns \$38,500  
 Guidelines range stated to be \$367-\$582, *with child support* formula  
 Spousal support of \$472/mo. ordered, 15 years  
 But no child support, no proof children of marriage  
 [Without child support formula range: \$547-\$729]

*Galloway v. Galloway*, 2006 CarswellBC 2758, 2006 BCSC 1677 (Macaulay J.)  
 Married 21 years, 2 children 21 and 18, students  
 Husband 59, veterinarian, earns \$235,000  
 Wife 52 (50 separation), started as vet, retrained as family doctor, earns \$96,000  
 Property division 50/50, husband's co. reapportioned 65/35 in his favour  
 Shared custody, no child support stated, family trust for s. 7 expenses  
 Spousal support: wife's choice to change careers, supported by husband  
 Wife working 3 ½ days per week, limits on practice by College, due to depression  
 Range stated by wife \$3,505-\$5,013 if husband \$275,000 and wife \$80,000  
 Spousal support of \$4,000/mo., to end when husband retires at 65, i.e. 6 years  
 [If shared custody, child support \$1,705, Guidelines range: \$1,921-\$3,335]

*J.A.M. v. D.L.M.*, [2006] N.B.J. No. 453, 2006 NBQB 359 (d'Entremont J.)  
 Married 6 ½ years, 2 children 7 and 4 with wife  
 Interim order: imputed \$70,000 to husband, child support \$898, spousal \$1,000/mo.  
 Husband superintendent of rental properties, minor shareholder, parents' corporation  
 Wife obtained work, 2 part-time jobs, around children's schedules, \$19,000  
 Property divided, husband's income determined as \$42,683  
 Child support \$611, plus husband to pay \$948 for \$1,185 child care paid  
 Both parents paid extracurricular expenses, husband \$877, wife \$152  
 Wife seeks \$1,000/mo., for 4 years (15 months paid already)  
 Guidelines range: 0 to 0, husband says no support  
 Short marriage, wife young, educated, employed, no entitlement

*H.T. v. C.T.*, [2006] Nu.J. No. 21, 2006 NUCJ 19 (Johnson J.)  
 Application to vary child and spousal support, reduction in income  
 Interim child and spousal support: \$4,250  
 Recipient wife disabled, husband lost contract, lower income, consumer proposal re debts  
 Husband's net income \$1,400 after payment of support  
 Husband has common law spouse and 2 children  
 Child support \$1,173  
 Guidelines range: \$968 - \$1,607 (incomes not stated)  
 Spousal support reduced to \$2,577, total \$3,750 support

*S.C.J. v. T.S.S.*, [2006] A.J. No. 1319, 2006 ABQB 777 (Lee J.)  
 Together 5 years total, multiple separations, 2 children (11 and 4) with husband  
 Wife 32 (29 separation), husband 36  
 Wife earned \$20,958 from employment/EI previously  
 Wife gambling addictions, residential treatment program just completed  
 Wife could earn \$26,400, but \$20,958 used, husband earns \$65,000  
 Custodial payor range: \$208 - \$276  
 Husband paid off her debts, no child support paid, \$7,500 interim costs to wife  
 No entitlement to spousal support

(Range if child support \$325: \$212 - \$283; if no child support, \$176 - \$235)

*R.L.W. v. R.G.W.*, [2006] A.J. No. 1316, 2006 ABQB 770 (Verville J.)  
 Married 14 years, wife 43 (38 separation), husband 44, 3 children (14, 13, 8) with wife  
 Husband earns \$125,000 in petrochemical industry  
 Wife works 80% (half-time before separation), biochemical technician, U of A  
 Wife earns \$45,253, full-time income imputed \$56,565  
 Child support \$2,301/mo., plus \$325/mo. for s. 7 expenses  
 Wife no budget, Guidelines range mid-point stated to be \$1,000 - \$1,100  
 Husband paid \$600/mo. not deductible for 2 years after separation  
 No great career disadvantage, but wife more child care  
 Spousal support \$500/mo., 4 more years  
 (Actual range estimated after s. 7 expenses: \$342 - \$1,017)

*Zolkowski v. Zolkowski*, [2006] A.J. No. 1297, 2006 ABQB 753 (Lee J.)  
 Married 4 years, wife has 13-year-old son, biological father unemployed  
 In loco parentis issue, and child support, put over to trial  
 Husband earns \$250,000 for drilling company, not including other sources  
 Wife no income, working on farm  
 Guidelines range if *with child support* formula: \$6,700 - \$7,800  
 Wife seeks \$10,000/mo., husband offers \$2,000 plus house expenses  
 Interim spousal support \$4,000 plus \$2,078 house expenses  
 (If *without child support* formula: \$1,250 - \$1,666)

*L.D.D. v. G.C.D.*, [2006] B.C.J. No. 2636, 2006 BCSC 1499 (Silverman J.)  
 Married 14 years (plus 3 years cohabitation), husband 45, wife 41 (38 separation)  
 3 children – 7, 7, 6, with wife  
 Wife no income, return to school in 2-year course for teacher's aide  
 Little employment effort, in subsidized housing  
 Husband earns \$49,800 as engineering assistant, paid debts of \$10,000  
 Child support \$990, plus 100% s. 7 expenses including any day care  
 Interim spousal support \$500/mo., Guidelines range \$904 - \$1,284 says wife (incorrect)  
 Wife suggests \$635 spousal support, if husband's net income split 50/50 (incorrect)  
 Spousal support \$635/mo., for 2 years, \$500/mo. for 6 mos., \$300/mo. for 6 mos.  
 Total 6 years (3 years interim)  
 (Estimated actual range, no s. 7 expenses: \$364 - \$579)

*Brossart v. Brossart*, [2006] S.J. No. 637, 2006 SKQB 455 (Wilson J.)  
 Married 18 years, 2 children 15 and 13  
 Husband quit farming, earns \$55,200, no net income from farm rental  
 Child support \$771/mo., husband pays \$70/mo. extracurricular expenses (75%)  
 Wife earns \$18,500, wife says Guidelines range \$99 - \$534 if husband earns \$61,700  
 Judge estimates range with ChildView: \$149 - \$298  
 Interim spousal support \$300/mo. (husband had paid \$280/mo. interim)

*Kim v. Kim*, [2006] B.C.J. No. 2663, 2006 BCSC 1330 (MacKenzie J.)  
 Married 15 years, 2 children 16 and 13, with wife, wife 43, husband 45  
 Husband real estate agent, income issues, disclosure, deductions  
 Income estimated at \$90,000, conservative  
 Child support \$1,317, plus s. 7 expenses of \$7,000/yr., 83% by husband  
 Wife no income, Korean, language and health issues, interim spousal support \$1,300/mo.  
 Wife training as esthetician, 4 mos. to go, might earn \$15-\$16,000/yr.  
 Guidelines range: \$1,300 - \$1,687, *Redpath* applied  
 Spousal support \$1,300, indefinite, review in 5 years

## Appendix III

### SPOUSAL SUPPORT ADVISORY GUIDELINES CASE SUMMARIES BY PROVINCE [Updated to April 18, 2007]

**[This update covers new cases decided since our last update, Carol Rogerson and Rollie Thompson, "The Advisory Guidelines 20 Months Later", October 5, 2006" that is found on the SSAG website at <http://www.law.utoronto.ca/faculty/rogerson/ssag.html> ]**

#### ALBERTA

##### A. Appellate Decisions

none

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

*Sawatzky v. Sawatzky*, [2007] A.J. No. 182, 2007 ABQB 103 (Graesser J.)

Married over 25 years, interim order

Wife teller, earns \$27,000

Husband heavy equipment operator, incorporated, income issues, "safe" estimate \$71,000

Guidelines range: \$1,375-\$1,833

Interim order for \$1,833, high end of range since low end estimate of husband's income

Retroactive spousal support from separation, April 2006, pay extra \$833/mo. for 18 mos.

*Moss v. Moss*, [2007] A.J. No. 181, 2007 ABQB 102 (Graesser J.)

Married 18 years, 3 children, 1996 order combined child and spousal support \$1,750/mo.

2005: child support ended, \$1,750 spousal support ordered

Husband then at Labatt's earning \$99,000, wife earning \$14,000 at seasonal H & R Block

Husband's income reduced, little overtime, health problems, now \$64,000

Guidelines range: \$1,156-\$1,542, mid-point \$1,325 ordered

Wife encouraged to seek full-time work, can earn up to \$40,000/yr., no loss of support

*Peterson v. Ardiel*, [2007] A.J. No. 151, 2007 ABQB 90 (Lee J.)

Together 15 years, wife daughter (18), natural father pays \$400/mo. child support

Husband oilfield consultant, pays child support of \$375/mo. for another child

Husband claims drop in oil business, but income imputed of \$200,000

Husband remarried to nurse (earns \$30,000)

Wife operates dog grooming business, earns \$21,500

Original order in husband's absence \$3,500/mo., reduced to \$1,250 pending hearing

Husband argued Guidelines for \$500/mo. (?)

Spousal support of \$2,500/mo., indefinite

(Guidelines range estimated: \$3,347-\$4,462)

*Mitrovic v. Mitrovic*, [2007] A.J. No. 69, 2007 ABQB 44 (Veit J.)

Married 30 years, 1 adult child 22, special needs, receives AISH \$1,000/mo.

Wife 55 (53 separation), could earn \$25,000, employed during marriage

Husband's business income \$125,000, no child support

Guidelines range: \$3,125-\$4,166, \$3,125/mo. ordered, indefinite

Low end as husband's employment expenses, equal division not fair

*Evans v. Evans*, [2006] A.J. No. 1391, 2006 ABQB 800 (Thomas J.)  
 Married 28 years, 1 adult child, husband 55, wife 50 (48 separation)  
 Husband Armed Forces firefighter until 1992, many relocations  
 Husband retrained as licensed practical nurse 1992-93, while wife worked  
 Husband can earn \$65-75,000, near high end  
 Wife minimum wage employment, back problems, retraining in business course  
 Wife thinks she might earn \$30,000, but court says \$18,000 in 2006-07  
 Interim spousal support \$1,250/mo., final order \$1,250, review in 1 year  
 Used Guidelines as “check” [but range \$1,725-\$2,166, if \$70,000 and \$18,000]

*Elezam v. Ireland*, [2006] A.J. No. 1374, 2006 ABPC 230 (Norheim Prov.Ct.J.)  
 Together 6 years, ISO case, B.C. government initiated  
 Wife in B.C., on social assistance \$920/mo., health problems  
 Husband truck driver in Alta., earns \$37,400  
 Range \$262-\$349, 3 to 6 years, \$262/mo. ordered for 3 years

[See also *Zolkowski v. Zolkowski*, [2006] A.J. No. 1297, 2006 ABQB 753 (Lee J.) under with child support formula; step-children, not clear which formula applies]

### C. The With Child Support Formula

*Rarog v. Rarog*, [2007] A.J. No. 195, 2007 ABQB 98 (McDonald J.)  
 Married 13 years, 2 children 13 and 10 with wife  
 2005 interim order: child support \$1,256, spousal support \$2,000/mo., husband \$96,724  
 Husband’s 2006 income \$102,334  
 Wife’s income \$14,900 plus business income \$9696, total \$24,596  
 Spousal support varied down, husband says \$855, wife says \$1,500  
 Spousal support reduced to \$1,100  
 SSAG referred to as advisory only; actual range not given  
 (Guidelines range estimated: \$1,026-\$1,716 or \$1,203-\$1,870, child support unclear]

*Wilm v. Wilm*, [2007] A.J. No. 109, 2007 ABQB 65 (Veit J.)  
 Married 6 years, some prior cohabitation; children 11 and 7 with wife, husband 30, wife 31 (29 separation)  
 Husband hockey player in Finland, drop in income, \$159,000  
 Child support \$2,112/mo. (should be \$2215 if income \$159,000)  
 Wife entitled to spousal support, at home, moved around  
 Her plan 2-year assistant speech therapist program, to be assessed at trial  
 Minimum wage income imputed until trial of \$21,000  
 His high access costs, employment costs, mandatory pension deductions  
 Low end of Guidelines range (40% INDI) ordered as interim spousal support  
 (Guidelines range estimated without pension deduction based on husband income of \$159,000: \$2606 - \$3411)

*Barnett v. Barnett*, [2006] A.J. No. 1697, 2006 ABQB 920 (Marceau J.)  
 Married 18 years, 2 children 22 and 15, husband 46, wife 40 (38 separation)  
 No child support for older son, estranged, other sources of funds  
 Husband oil pipeline consultant, deliberately reduced income, imputed \$120,000  
 Child support \$1,056/mo. plus \$474 contribution for s. 7 expenses (of \$708)  
 Wife at home, now works as labourer, earns \$23,000  
 Guideline calculations provided for income of \$140,000, not used  
 Crude net income calculations, spousal support of \$2,000/mo., indefinite  
 (estimated Guidelines range: \$1,889-\$2,590/mo.)

*D.B.C. v. R.M.W.*, [2006] A.J. No. 1629, 2006 ABQB 905 (Topolniski J.)  
 Married 13 years, 2 children 15 and 17, with wife  
 Husband and wife left Calgary for Nelson B.C. for 6 years, lived on investments,

homeschooled children, \$80,000/yr.  
 After separation, husband returned to Calgary investment work, earned \$213,553 in 2004  
 2004 trial order: child support \$2,163, spousal support \$4,000/mo, review January 2008  
 Husband earned \$773,471 in 2005, 2006 estimated over \$700,000  
 Child support increased to \$6,716/mo.  
 Wife various upgrading efforts unsuccessful, now 2 days/week in medical clinic  
 Application to vary by wife, sought Guidelines \$16,381-\$32,596/mo.  
 Husband's post-separation income increase, wife no contribution, not long traditional marriage, husband  
 out of work force 6 years before  
 Guidelines not applicable, income over \$350,000, no variation

*S.C.J. v. T.S.S.*, [2006] A.J. No. 1319, 2006 ABQB 777 (Lee J.)  
 Together 5 years total, multiple separations, 2 children (11 and 4) with husband  
 Wife 32 (29 separation), husband 36  
 Wife earned \$20,958 from employment/EI previously  
 Wife gambling addictions, residential treatment program just completed  
 Wife could earn \$26,400, but \$20,958 used, husband earns \$65,000  
 Custodial payor range: \$208 - \$276  
 Husband paid off her debts, no child support paid, \$7,500 interim costs to wife  
 No entitlement to spousal support  
 (Range if child support \$325: \$212 - \$283; if no child support, \$176 - \$235)

*R.L.W. v. R.G.W.*, [2006] A.J. No. 1316, 2006 ABQB 770 (Verville J.)  
 Married 14 years, wife 43 (38 separation), husband 44, 3 children (14, 13, 8) with wife  
 Husband earns \$125,000 in petrochemical industry  
 Wife works 80% (half-time before separation), biochemical technician, U of A  
 Wife earns \$45,253, full-time income imputed \$56,565  
 Child support \$2,301/mo., plus \$325/mo. for s. 7 expenses  
 Wife no budget, Guidelines range mid-point stated to be \$1,000 - \$1,100  
 Husband paid \$600/mo. not deductible for 2 years after separation  
 No great career disadvantage, but wife more child care  
 Spousal support \$500/mo., 4 more years  
 (Actual range estimated after s. 7 expenses: \$342 - \$1,017)

*Zolkowski v. Zolkowski*, [2006] A.J. No. 1297, 2006 ABQB 753 (Lee J.)  
 Married 4 years, wife has 13-year-old son, biological father unemployed  
 In loco parentis issue, and child support, put over to trial  
 Husband earns \$250,000 for drilling company, not including other sources  
 Wife no income, working on farm  
 Guidelines range if *with child support* formula: \$6,700 - \$7,800  
 Wife seeks \$10,000/mo., husband offers \$2,000 plus house expenses  
 Interim spousal support \$4,000 plus \$2,078 house expenses  
 (If *without child support* formula: \$1,250 - \$1,666)

**BRITISH COLUMBIA****A. Appellate Decisions**

*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 reappportioned, 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

*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 reappportioned home 100% to wife (\$300,000)  
 Husband got RRSPs (balance after dissipation) and vehicle, 75/25 split over-all  
 Reappportionment 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  
 Reappportionment 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

**B. The Without Child Support Formula**

*Kauwell v. Melnyk*, [2007] B.C.J. No. 712, 2007 BCSC 485 (Shabbits J.)  
 Lived together 3 ¾ years, wife 50, husband 54, wife 3 children by previous marriage  
 Wife barber, reflexologist, on social assistance when met, now earns \$12,000 helping seniors  
 Husband welding inspection business and property investments, wife paid \$15,900 through company  
 Husband's draw \$68,000, plus retained earnings  
 Entitlement to spousal support based on need  
 Range \$262-\$350, 22 to 45 months  
 Support of \$350 for 42 months, maximum still modest amount  
 No unjust enrichment re property

*W.(C.L.) v. R.(S.U.)*, 2007 CarswellBC 666, 2007 BCSC 453 (Shabbits J.)  
 Lived together 6 ½ years, wife 45, husband 56, wife 2 children from previous marriage  
 2004 separation agreement: lump sum spousal support of \$31,000, release  
 Wife's workers compensation income \$15,000, husband \$67,000 retired engineer



Separated 1997, divorced 2001: interim spousal support \$2,000/mo.  
 2001 order: \$2,000/mo. spousal support July 2001 to March 2003  
 \$1,500 April 2003 to March 2004, \$1,000/mo. thereafter, no review  
 Husband 47, remarried, earned \$70,000 in 2001, but \$182,152 in 2005  
 Wife 56, CPP disability \$12,000, now remarried, earns \$6,000, total \$18,000  
 Wife's remarriage a change in circumstances  
 Order no longer compensatory after 9 years, now non-compensatory  
 Wife's new husband retired, investment income \$32,000/yr., assets \$1.5 million  
 Support to terminate November 2008, 19 more mos., over 10 years total  
 Step-down order: \$750/mo. to December 2007, \$500 to Nov. 2008

*Scott v. Scott*, [2007] B.C.J. No. 336, 2007 BCSC 234 (Bruce J.)  
 Together 23 years (married 20), husband 48, wife 53  
 1 child of wife (28), 1 child of marriage (20), working, night courses, with husband  
 Wife administrator at credit union, earns \$36,200  
 Husband electrician supervisory, earns \$84,500  
 Guidelines range: \$1,389-\$1,852  
 Non-compensatory support, significant income disparity, \$1,600/mo. ordered  
 Until wife reaches 65 (12 years), similar standard of living

*Owen v. Owen*, [2007] B.C.J. No. 326, 2007 BCSC 230 (Chamberlist J.)  
 Married 37 years, husband 61, wife 57, 4 children, traditional marriage  
 Wife labourer at stockyards and EI, \$24,650/yr.  
 Husband truck driver, income reduced, \$50,000  
 Support on compensatory and non-compensatory basis  
 Guidelines range: \$781-\$1,041  
 Husband claimed business expenses on road, \$1,250/mo., some recognition of expenses  
 Spousal support \$750/mo., indefinite, no review

*Wang v. Poon*, [2007] B.C.J. No. 271, 2007 BCSC 194 (Humphries J.)  
 Married 7 years (cohabited 6 years), still cohabiting at trial, husband 76, wife 47  
 Husband retired professor, income \$50,000  
 Met wife in China, sponsored to Canada, trained as hairdresser, income \$8,000  
 Most not family assets, condo reapportioned 90% to husband  
 No interim support order, 2 lump-sum payment \$2,500 and \$4,000  
 Sponsorship agreement to October 2010, used to fix duration  
 Amount \$850/mo. 2007-Feb. 2009; then \$600/mo. to Oct. 2010 (3 years, 8 mos.)  
 "More generous and of longer duration" than Guidelines  
 (Guidelines range estimated: \$368-\$490, for 3.5 to 7 years, global amount within range)

*Kirk v. Kirk*, [2007] B.C.J. No. 126, 2007 BCSC 67 (Arnold-Bailey J.)  
 Married 30 years, 2 adult children, wife 63, husband 66, separated Dec. 1998  
 Wife worked during marriage, now disabled, \$24,250  
 Interim spousal support (Jan. 2005): \$7,000/mo., variation refused Sept. 2005  
 Husband earned \$1,344,669 in 2005 (predicted earlier by him as \$237,000)  
 Predicts \$215,518 in 2006  
 Guidelines "range" for 2005 income: \$41,263-\$55,017/mo. (!)  
 \$5,977-\$7,969/mo. if 2006 estimate, \$7,000/mo. within range, no interim variation

*Bramhill v. Dick*, [2007] B.C.J. No. 387, 2007 BCSC 262 (Chamberlist J.)  
 Together 14 years, second relationship, no children  
 Wife multiple sclerosis before cohabitation began, on social assistance in B.C.  
 Wife moving to facility in Alta., income to be \$4,800  
 Husband did not appear, self-employed mechanic, incorporated  
 Tax returns and financial statements provided, underemployed, income imputed \$33,095  
 Guidelines range: \$495-\$660; if wife zero income, \$579-\$772

Disability exception noted, interim spousal support \$772/mo. until house sold  
Duration: disability, long relationship, indefinite

*Fandrich v. Fandrich*, [2007] B.C.J. No. 40, 2007 BCSC 20 (Masuhara J.)  
Together 6 ½ years (5 ½ married), husband 67, wife 55 (52 separation)  
Husband owner and operator of helicopter co., earns \$200,000  
Wife Irish doctor, not qualified in Canada, now realtor, \$30,000 imputed  
Guidelines range: \$1,488-\$1,983, 3.5 to 7 years (\$62,500-\$166,500 taxable)  
Reapportionment of assets: 25% of Co. to wife, worth \$627,500  
Lump sum spousal support \$40,000

*Main v. Main*, [2006] B.C.J. No. 3256, 2006 BCSC 1876 (Master Keighley)  
Married 36 years, 2 adult children, husband 59, wife 58  
Wife unemployed, ischemic disease, \$28,990 disability/CPP  
Husband millwright, earns \$89,000, wishes to retire (pension \$26,238)  
Interim support, Guidelines range: \$1,250-\$1,667/mo.  
Mid-point \$1,458 leaves husband with \$230 net more per month

*Williston v. Williston*, [2006] B.C.J. No. 3248, 2006 BCSC 1869 (Rogers J.)  
Together 7 years (married 6), 2<sup>nd</sup> marriage, husband 48, wife 47  
Husband pays child support of \$300/mo. for 2 17-year-olds from 1<sup>st</sup> marriage  
Wife permanently disabled throughout marriage, social assistance now \$856/mo.  
Husband earns \$66,000 as travelling salesman  
Interim support \$1,500/mo. since Dec. 2005, entitlement admitted  
Family property divided equally  
Guidelines range: \$578-\$770, 3 ½ to 7 years  
Disability exception recognized, upper end ordered \$800/mo.  
Duration: not permanent, given short relationship, 8 years (i.e. 7 more)

*Saugestad v. Saugestad*, [2006] B.C.J. No. 3206, 2006 BCSC 1839 (Russell J.)  
Wills variation case, together 12 years (married 11)  
2 children of 1<sup>st</sup> marriage 30 and 29, 1<sup>st</sup> wife deceased  
Husband shipbroker, wife realtor when met, assets of her own, 59 now  
Retirement incomes: husband \$107,000, wife \$63,500  
Entitled to support, Guidelines range: \$700-\$900/mo.  
Husband left \$900,000 to wife, \$50,000 more than notional division of assets  
Wife awarded life interest in condo, generates rental income, no amount specified  
Not required to pay back \$29,000 owing to estate

*Y.L. v. G.Q.*, [2006] B.C.J. No. 3087, 2006 BCSC 1774 (Shabbits J.)  
Married 9 years, 1 child 8 with husband  
Wife returned to China, mental illness, unable to work, no income  
Husband earns \$70,000 in business  
Fall 2004 interim lump sum \$9,000 (6 x \$1,500)  
Guidelines used, 1.75% x 8 years 9 ½ mos., \$900/mo., again interim  
[Custodial payor should have been used, range \$646-\$861]

*Munro v. Munro*, [2006] B.C.J. No. 3069, 2006 BCSC 1758 (Brine J.)  
Married 18 years, 2 adult children, husband 43, wife 54 (49 separation)  
Husband earns \$149,600 as criminal lawyer  
Wife bookkeeper for husband, earned \$36,000  
Now reflexologist/electrolysis, \$24,000 imputed, vs. \$7,800 earned, insufficient effort  
Interim: 2001-02, \$1,700/mo. for 21 mos., 2003 \$4,000 for 12 mos., 2004-06 \$2,500/mo.  
Guidelines range: \$2,826-\$3,768, but \$1,200/mo. ordered, indefinite  
Reapportionment: husband debt of \$50,000, wife assets of \$120,000  
Husband had custody of children after separation, no support from wife

Husband now remarried and 2 young children

*Tsurugida v. Romero*, [2006] B.C.J. No. 3067, 2006 BCSC 1754 (Kelleher J.)  
 Married 21 years, 3 children 22, 20 and 18, husband 44, wife 47 (45 separation)  
 Husband mining co. CEO/shareholder, earns \$283,000  
 Wife earns \$48,000 investments, \$12,000 imputed minimum wage employment, \$60,000  
 Property divided equally, shares in trust to fund children's education  
 Interim spousal support \$8,800, then \$8,000/mo.  
 Range stated as \$5,700 to \$7,600, \$6,800/mo. ordered, indefinite, no review

*E.K.G.D. v. L.W.P.*, [2006] B.C.J. No. 3002, 2006 BCSC 1721 (Dillon J.)  
 Lived together 21 years, since wife was 18, wife 42, husband 51  
 Wife reeducated, nurse (1991), earns \$63,000 gross, \$52,928 net  
 Husband cargo surveyor, returned to university for B.Sc.  
 Now disabled, receives \$36,000/yr. tax-free, depression  
 Constructive trust, half of assets to wife  
 Spousal support for husband, \$500/mo. for 2 years  
 Range \$533-\$711, "netted down" as tax-free to husband

*Vanden Bos v. Vanden Bos*, [2006] B.C.J. No. 3003, 2006 BCSC 1722 (Master Baker)  
 Married 28 years, 3 adult children, traditional marriage, wife 50 (48 separation)  
 Husband truck driver, earns \$101,300, CCA issues  
 Wife \$650/yr., bookkeeping for husband, at home, CPP disability appeal refused  
 Range \$3,145-\$4,194, budgets considered  
 Interim support \$4,300/mo., leaves each with \$3,300/mo. net  
 Slightly out of Guidelines range, but no seriously in conflict

*Steernberg v. Steernberg Estate*, 2006 CarswellBC 2751, 2006 BCSC 1672 (Martinson J.)  
 Wills variation case, husband 74 at death, wife 52, together 7 years, married 5 1/2  
 Under prenuptial agreement and will, wife gets 10% of estate, 5 children 18% each  
 Entitlement to spousal support: wife quit job, moved to husband, caregiver in last years  
 Entitled to some support, quantum would be determined under Guidelines  
 Prenuptial agreement fair re property, but not for support  
 Wife's share varied to 15%, 5 children 17% each

*Smith v. Smith*, [2006] B.C.J. No. 2920, 2006 BCSC 1655 (Pitfield J.)  
 Married 26 years (28 total), 3 adult children, wife 54, husband 67 (64 separation)  
 Wife teacher, home and part-time when children young, now near full-time, \$55,000  
 Husband mechanic, ferry worker, health problems now, \$23,000 OAS/ CPP/pension  
 House on Salt Spring Island reapportioned 2/3 to husband, \$200,000 vs. \$100,000  
 Guidelines range: \$1,000-\$1,333  
 Lump sum of \$25,000 ordered, consistent with Guidelines  
 Present value of support if paid until wife 65: \$105,000-\$140,000  
 Deduct 30 per cent for tax: \$70,000-\$93,000  
 Less \$50,000 for reapportionment: \$20,000-\$43,000

*Crawford v. Crawford*, [2006] B.C.J. No. 2921, 2006 BCSC 1664 (Garson J.)  
 Together 20 years (married 15), 2 adult children 24 and 21, employed, with mother  
 Husband 56, wife 57 (48 separation), wife home until 1997  
 1997 separation agreement: spousal support of \$1,100/mo. for 18 mos., then \$950  
 To be reviewed when wife employed, wife employed Dec. 1997, but no application  
 Wife in motor vehicle accident in 2000, not worked since  
 Wife now CPP disability, rent and investment income: \$21,120  
 Husband steel fabricator, laid off, work injury, can return to work, \$40,000 imputed  
 Compensatory support, some reduction expected, income now close to when employed

Property reapportionment 62/38 to wife  
Guidelines range: \$472-\$629, order for \$400/mo.

*Beese v. Beese*, [2006] B.C.J. No. 2903, 2006 BCSC 1662 (Goepel J.)  
Together 7 years (3 married), no children, husband 48, wife 41 (35 separation)  
Husband earns \$52,495 as truckdriver, wife earns \$35,000 as clerk  
Compensation order \$175,000 for wife's use of personal injury settlement to pay  
off husband's business loans  
Guidelines range: \$175-\$233, 3 to 7 years  
Fully addressed by compensation order, no periodic support

*McAuley v. McAuley*, [2006] B.C.J. No. 2882, 2006 BCSC 1643 (Bruce J.)  
Married 20 years (plus 2 cohabitation), husband 44, wife 50 (48 separation)  
Children 19 and 22 (part-time student, working), not children of marriage  
Husband earns \$76,036 at Toyota, wife earns \$28,000 at career college  
Range \$1,320-\$1,760, support of \$1,600 compensatory, indefinite

*Boudreau v. Scaduto*, [2006] B.C.J. No. 2187, 2006 BCSC 1348 (Gill J.)  
Together 12 ½ months (11 married),  
Wife 2 children 12 and 15, \$2,400 U.S. child support from father  
Wife no income, moved from Maryland to B.C.  
Husband teacher, \$65,300, debts  
Interim spousal support, \$1,750/mo., then \$2,300 (Dec. 2005)  
Spousal support \$1,000/mo., 10 more months (23 total)  
Guidelines not argued, reference made to compensatory exception

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

*E.(Y.J.) v. R.(Y.N.)*, 2007 CarswellBC 782, 2007 BCSC 509 (Boyd J.)  
Married 20 years (plus 2 years' cohabitation), both spouses 52, 2 children 19 and 16  
Wife home, husband chartered accountant in firm, earns \$602,400  
Wife needs time to requalify, no income until Jan. 2008, then \$35,000 part-time imputed  
Child support \$7,580 table amount, including private school and university tuition  
Older child's travel, living expenses at university to be paid by husband  
Spousal support range: \$14,055-\$16,511/mo. if wife no income, \$12,849-\$15,447 if \$35,000  
Mid-point ordered, \$15,128/mo., then \$14,148 from Jan. 2008

*Gagne v. Gagne*, 2007 CarswellBC 671, 2007 BCSC 438 (Boyd J.)  
Married 11 years, 1 child 14  
Husband in restaurant business, income issues, earns \$109,300  
Child support \$982/mo.  
Wife earns \$28,893 as special education assistant, seeks \$2,500/mo. spousal, indefinite  
Entitlement not compensatory, no disadvantage, employed throughout, secure job  
Assets reapportioned "very heavily weighted in her favour"  
Range \$1,321-\$1,930, mid-point \$1,625/mo., that amount ordered  
Spousal support to be paid until December 2007 (5 years total)

*Upton v. Fasoli*, 2007 CarswellBC 765, 2007 BCSC 414 (Shabbits J.)  
Married 11 years, 2 children, 18 with husband, 16 shared 50/50  
Separated 1999, 2000 agreement, then 2003 order:  
Husband chiropractor, then earning \$90,000, wife \$18,000, child support \$923  
Spousal support \$1,500/mo. 2001-02, \$1,000 2002-04, \$500/mo. 2004-05, end June 2005  
Husband applies to vary child support, wife applies on review to continue spousal  
Registrar's report recommends increased child support, \$500 spousal for 2 more years to 2007  
Husband then cancer, disability income not taxable, \$82,500 grossed-up  
Wife's imputed income \$28,000

Child support: \$760(1)-\$441(2)=\$319 by husband  
 Spousal support continued at \$500/mo. for 2 more years (8 years plus total)  
 Amount affected by original order, so Guidelines not affect, but not deductible for husband now  
 Trial judge states spousal support not to continue past child 18 under Guidelines  
 (But error, here length of marriage, so could be another 3 years to maximum)

*Franciosi v. Franciosi*, [2007] B.C.J. No. 544, 2007 BCSC 368 (Goepel J.)

Married 15 years, 3 children 15, 12 and 9 with wife  
 Husband bricklayer, own co., income issues, \$100,000  
 Husband's new partner nurse  
 Wife home, then part-time bus driver, \$22,500, new partner \$30,000  
 Child support \$1,650/mo.  
 Entitled to spousal support, compensatory and non-compensatory  
 Guidelines range: \$864-\$1,683, interim support \$1,250/mo.  
 Spousal support \$1,500/mo. to end of 2017 (15 years)

*Salmond v. Salmond*, [2007] B.C.J. No. 388, 2007 BCSC 264 (Sigurdson J.)

Together 7 years (married 4), 1 child 4, husband and wife in 30's  
 Wife bookkeeper, earns \$38,000  
 Husband contractor, gas fields, income issues, earns \$106,250  
 Property divided equally, child support \$957/mo.  
 Entitlement compensatory, indefinite, review 6 mos. after child in Gr. 1 (Sept/09)  
 Husband offers \$800, wife seeks \$1,250, court orders \$1,000/mo  
 Short marriage, wife young  
 (Guidelines range estimated: \$1,070-\$1,774)

*Landrigan v. Bloomer*, [2007] B.C.J. No. 367, 2007 BCSC 254 (Boyd J.)

Married 19 years, 2 children 7 and 12, with wife, husband 51, wife 50  
 2006 order: spousal support \$1,200/mo., review 8 mos. later, wife disability  
 Wife's condition deteriorated, cause still unknown, could be temporary  
 Entitlement continues, not indefinite support, review Oct. 2007  
 House reapportioned 65/35 to wife, she buys out his share  
 Husband earns \$67,000, wife no income  
 Wife says range \$992-\$1,270, continue \$1,200/mo.  
 Husband says house sold, reduce support  
 Child support \$1,010/mo., plus \$200/mo. s. 7 expenses  
 Spousal support reduced to \$1,000/mo., due to reapportionment, capital gain on house

*J.W.J.McC. v. T.E.R.*, [2007] B.C.J. No. 358, 2007 BCSC 252 (Sinclair Prowse J.)

Married 19 years, traditional, 3 children: 21, 20, 17, husband 46, wife 47 (41 sep.)  
 2001 separation agreement: husband \$400,000/yr. as lawyer, property 66/34 to wife  
 Child support \$5,409/mo. plus \$10,000/yr; spousal support \$2,841/mo. plus \$10,000/yr.  
 Husband remarried, husband's new wife lawyer, now home, 2 children  
 Wife remarried, new husband businessman  
 Wife runs photography business, income stated \$6,000/yr., \$30,000/yr. imputed  
 Wife still entitled, compensatory, children and helped husband through law school  
 Range calculated using ceiling of \$350,000 for husband  
 Guidelines range: \$6,098-\$7,595, high end chosen since husband earns more than ceiling  
 Amount adjusted down for wife's income from assets, reapportionment, to \$3,772/mo.  
 Indefinite, review when wife 60 in 2020 (14 years), likely terminated then

*D.L.T. v. D.T.B.*, [2007] B.C.J. No. 303, 2007 BCSC 210 (Rogers J.)

Together 12 years (married 11), child 10 with wife, husband 48, wife 50 (48 separation)  
 Equal division of property  
 Wife worked as substitute teacher and tutot, one-year contract \$50,000  
 Husband helicopter business, now selling avionics, commission sales, \$50,000

Child support \$465/mo, plus s. 7 expenses (no amount specified)  
Guidelines range zero to zero, spousal support dismissed, liberty to reapply if change

*Reggelsen v. Reggelsen*, [2007] B.C.J. No. 332, 2007 BCSC 219 (Halfyard J.)  
Married 16 years, children 17, 14 and 13 with husband, husband 45, wife 52  
Interim spousal support \$1,350/mo.  
Husband engineer with B.C. Ferries, earns \$87,000  
Wife no income, income of \$10,000 imputed, less than full-time, minimum wage  
Child support \$67/mo. by wife  
Spousal support \$1,400/mo., indefinite  
(Guidelines range estimated: wife no income, \$1,070-\$1,427; if \$10,000, \$890-\$1,187)

*Frouws v. Frouws*, [2007] B.C.J. No. 282, 2007 BCSC 195 (Preston J.)  
Married 18 years, husband 47, wife 42 (35 separation), 3 children with father  
Children 22, 20 and 15, all with problems, one on street, one part-time work and studies,  
15-yr-old psychiatric problems, mother now sharing time week about  
Husband pharmacy manager in Kelowna, earns \$117,000  
Wife part-time, residential care centre, earns \$18,000, income imputed \$30,000  
Guidelines less help in “these unique circumstances”, wife repartnered  
Wife seeks spousal support after 7 years separation  
No child support paid by her, wife cohabiting throughout, home split 50/50  
Husband paid debts of \$15,000, wife wrongly received retro child tax benefit  
Child support in split/shared custody, 2 vs. 1 set-off, husband pays \$492/mo.  
No spousal support  
(Guidelines range estimated: split custody range \$1,696-\$2,330)  
(Custodial payor range: \$1,346-\$1,794)

*J.W.L.S. v. J.L.S.*, [2007] B.C.J. No. 247, 2007 BCSC 174 (Edwards J.)  
Married 2 years, child 2 with wife, husband 39, wife 38  
Husband earns \$74,000  
Wife art director in film industry, earned \$70,000 at peak, now home  
Wife’s rental income \$7,200/yr.  
Interim support August 2006: \$400 child support, \$1,800 spousal support  
Child support \$689  
Guidelines range: \$1,128-\$1,642  
Spousal support order \$1,642/mo., for 11 months (18 months total)

*R.E. v. D.E.*, [2007] B.C.J. No. 226, 2007 BCSC 168 (Slade J.)  
Together 16 years (married 11), children 16, 14 and 12 with wife, husband 43, wife 42  
Husband plumber with company, works on side, income \$61,500  
Wife in federal government, maternity/unpaid leaves for children  
Wife working part-time \$27,000, full-time income imputed \$46,000  
No economic disadvantage, day care addresses ongoing disadvantage  
Child support \$1,214/mo., plus \$600/mo. for day care  
Guidelines range zero to zero, whether wife full or part-time, no entitlement

*Silliphant v. Drever*, [2007] B.C.J. No. 186, 2007 BCSC 153 (Joyce J.)  
Married 21 years, children 22 and 19 with wife, husband 47, wife 43 (39 separation)  
Husband earns \$71,620  
Child support, older child employed part-time, 1 child amount (\$668), plus ½ difference to 2 child amount  
(\$1,075), for \$872/mo.  
2003 agreement: spousal support \$300/mo., for one year ending June 2004  
Final agreement, Miglin applied, insufficient  
Wife can earn \$30,000, husband not pay full shot of her B.B.A.  
Wife quit full-time job 5 years after separation  
Guidelines range calculated: 1 child, \$411-\$940; 2 children, \$137-\$726

Spousal support of \$600/mo. ordered, indefinite

*Wettlaufer v. Wettlaufer*, [2007] B.C.J. No. 168, 2007 BCSC 137 (Master Baker)

Together 10 years (married 8), 2 children 8 and 4, husband 39, wife 36

Wife homemaker, cohabiting with doctor, he assisted with home purchase

Husband excavating business, income issues, \$70,000

Child support \$1,053

Guidelines range: \$1,044-\$1,333, interim spousal support of \$1,000/mo.

Careful budget analysis, especially wife's expenses, amount leaves both similarly short

*Fisher v. Fisher*, [2007] B.C.J. No. 52, 2007 BCSC 39 (Ehrcke J.)

Together 14 years (married 6), wife 44, husband 46

2 boys 19, attending community college, in loco parentis

Husband earns \$78,000 as construction supervisor

Wife personal care worker, health problems, 20 hrs/wk, \$15,000

Interim child support \$1,285, interim spousal \$910/mo.

Child support \$1,160/mo., children pay s. 7 expenses

Guidelines range: \$1,238-\$1,614, \$1,400 ordered, indefinite

*D.R.M. v. R.B.M.*, [2006] B.C.J. No. 3299, 2006 CarswellBC 3177 (Martinson J.)

Appeal from Master, Guidelines apply to interim support determination

Together 13 years (6 married), 3 children 11, 7 and 5, wife homemaker

Husband earns \$750,000

Master ordered: \$6,000/mo. child support, \$8,500/mo. spousal

Needs and means used, Guidelines rejected at interim stage

Child support appeal allowed, no reason to depart from table, \$12,028/mo.

Spousal support appeal dismissed, income above \$350,000

Discretionary decision, not clearly wrong

[Guidelines range at \$350,000, for comparison: \$6,820-\$8,229]

*C.E.A.P. v. P.E.P.*, [2006] B.C.J. No. 3295, 2006 BCSC 1913 (Rogers J.)

Together 21 years (12 married), wife and husband 44, 4 children 13, 10, 8, 6 with wife

Husband driver for Greyhound, earns \$56,927, child support \$1,342/mo.

Wife on disability pension, bipolar disorder, \$9,479

Guidelines range: 0 to 0, entitlement, but dismissal, liberty to apply if change

*Rapley v. Rapley*, [2006] B.C.J. No. 3213, 2006 BCSC 1854 (Bruce J.)

Married 11 years, 2 children 17 and 14, split custody, both spouses age 44

2001 separation agreement: husband grain farmer in Sask. pay \$150,000 re farm

child support for 2, spousal support \$500/mo. to Dec. 2010

Wife homemaker, from Hong Kong, limited English, moved to B.C. after separation

Only \$70,000 paid on farm

Interim orders: Nov. 2005, child support for 1 \$448

March 2006, child support \$350, spousal support \$1,150, plus \$10,000 advance

Husband earning \$56,200, wife no income, child support \$481/mo.

Balance of \$80,000 on farm to be paid, spousal support \$500/mo, another 4 years

Miglin considered, application to vary then if inadequate, youngest child 18 by then

[Guidelines range, split custody: \$999-\$1,244]

*MacCarthy v. MacCarthy*, [2006] B.C.J. No. 3082, 2006 BCSC 1765 (Rice J.)

Married 22 years, 3 children 19, 16, 13, with wife, husband 46, wife 45 (44 separation)

Property divided, reapportioned 60/40 to wife, gifts from her father and disadvantage

Wife qualified as realtor, homemaker in past, income imputed at \$10,000

Husband logger, company, reduction in hours worked okay, \$110,000

Child support \$1,578 (2), spousal support range \$1,578-\$2,341

Spousal support of \$2,000/mo., indefinite, no review

*Galloway v. Galloway*, 2006 CarswellBC 2758, 2006 BCSC 1677 (Macaulay J.)

Married 21 years, 2 children 21 and 18, students

Husband 59, veterinarian, earns \$235,000

Wife 52 (50 separation), started as vet, retrained as family doctor, earns \$96,000

Property division 50/50, husband's co. reapportioned 65/35 in his favour

Shared custody, no child support stated, family trust for s. 7 expenses

Spousal support: wife's choice to change careers, supported by husband

Wife working 3 ½ days per week, limits on practice by College, due to depression

Range stated by wife \$3,505-\$5,013 if husband \$275,000 and wife \$80,000

Spousal support of \$4,000/mo., to end when husband retires at 65, i.e. 6 years

[If shared custody, child support \$1,705, Guidelines range: \$1,921-\$3,335]

*L.D.D. v. G.C.D.*, [2006] B.C.J. No. 2636, 2006 BCSC 1499 (Silverman J.)

Married 14 years (plus 3 years cohabitation), husband 45, wife 41 (38 separation)

3 children – 7, 7, 6, with wife

Wife no income, return to school in 2-year course for teacher's aide

Little employment effort, in subsidized housing

Husband earns \$49,800 as engineering assistant, paid debts of \$10,000

Child support \$990, plus 100% s. 7 expenses including any day care

Interim spousal support \$500/mo., Guidelines range \$904 - \$1,284 says wife (incorrect)

Wife suggests \$635 spousal support, if husband's net income split 50/50 (incorrect)

Spousal support \$635/mo., for 2 years, \$500/mo. for 6 mos., \$300/mo. for 6 mos.

Total 6 years (3 years interim)

(Estimated actual range, no s. 7 expenses: \$364 - \$579)

*Kim v. Kim*, [2006] B.C.J. No. 2663, 2006 BCSC 1330 (MacKenzie J.)

Married 15 years, 2 children 16 and 13, with wife, wife 43, husband 45

Husband real estate agent, income issues, disclosure, deductions

Income estimated at \$90,000, conservative

Child support \$1,317, plus s. 7 expenses of \$7,000/yr., 83% by husband

Wife no income, Korean, language and health issues, interim spousal support \$1,300/mo.

Wife training as esthetician, 4 mos. to go, might earn \$15-\$16,000/yr.

Guidelines range: \$1,300 - \$1,687, *Redpath* applied

Spousal support \$1,300, indefinite, review in 5 years

[See also *Lloyd v. Lloyd*, [2007] B.C.J. No. 493, 2007 BCSC 349 (Gropper J.), listed under *without child support* formula; step-children, both formulas discussed]

[See also *Y.L. v. G.Q.*, [2006] B.C.J. No. 3087, 2006 BCSC 1774 (Shabbits J.), listed under *without child support* formula, should have been custodial payor formula]

## MANITOBA

**A. Appellate Decisions**  
none

**B. The Without Child Support Formula**  
none

**C. The With Child Support Formula**

*Stuart v. Multan*, [2006] M.J. No. 418, 2006 MBQB 238 (Allen J.)  
Unmarried couple; together 11 years, 2 children 13 and 10, husband 45, wife 42  
Wife earns \$46,000, husband earned \$110,000 until terminated March 2006  
Husband now makes \$61,440, severance package ends Nov. 2006  
Husband substantial time, but not 40%, child support \$860/mo.  
S. 7 expenses: camps and transportation, \$155/mo., 57% by husband  
Spousal support: no economic disadvantage, non-compensatory  
Retroactive support after separation, would have ended Nov. 2006, 3 years total  
Court would have made transition longer, amount lower, here more generous  
Guidelines argued, but not used, as obligation ended now  
2003 (3 mos) \$1,000/mo.; 2004, \$1,350; 2005, \$750; 2006, \$1,350  
[all amounts near middle of Guidelines range]

**NEW BRUNSWICK****A. Appellate Decisions**

*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)

**B. The Without Child Support Formula**

*Eastwood v. Eastwood*, 2006 CarswellNB 655, 2006 NBQB 413 (Clendening J.)

Married 25 years, wife 51, husband 48, no children

Interim interim support \$500/mo., then interim support \$775 (June 2006)

Husband insurance appraiser, moved to Toronto, earns \$60,000

Wife earns \$30,773, incomes similar until 2002 then his increased

Wife requesting \$900/mo. based on Guidelines [range \$911-\$1,216]

But both worked, no hardship, equal assets, wife self-sufficient

No entitlement and hence Guidelines no application, arrears to be paid

*Corney v. Corney*, [2006] N.B.J. No. 484, 2006 NBQB 384 (d’Entremont J.)

Married 21 years, second marriage, no children, children of previous relationships

Husband 55, wife 60 (58 separation)

Wife custodian, earns minimum wage \$18,000, worked throughout marriage

Husband truck driver, earns \$40,000, new partner (\$18-\$20,000)

Range \$578-\$770, support of \$600/mo., indefinite

*Fournier v. Fournier*, [2006] N.B.J. No. 443, 2006 NBQB 357 (Wooder J.)

Together 10.5 years (8 married), second marriage, wife 48 (45 separation), husband 49

Wife CPP disability, workers comp (\$13,680 not taxed, grossed up) \$27,792

Marital property divided, both spouses repartnered, no details re partners

Husband earns \$81,095 as mechanical engineer

Guidelines range: \$700 - \$933, 5.25 to 10.5 years

Interim spousal support \$1,200, paid for 2 ½ years (above range, reflected in duration)

Non-compensatory support, \$815/mo., for 5 more years

*Walsh v. Walsh*, [2006] N.B.J. No. 441, 2006 NBQB 338 (Wooder J.)

Married 29 years, 3 children (28, 25, 23), wife 50 (48 separation), husband 52

Youngest child (23) with husband, kidney transplant in 1997, finished school

Husband at Canada Post, \$48,026, wife convenience store clerk, \$13,817

No request for child support, no obligation as no evidence re disability and abilities

*Without child support* formula used, range: \$1,069 - \$1,425

Lower end, \$1,070/mo., indefinite

*Trewin v. Trewin*, [2006] N.B.J. No. 421, 2006 NBQB 341 (Bell J.)

Married 28 years, wife 52, husband 53, 1 child (30), special needs

Husband RCMP officer, 25 years, retired, then N.B. government, now on disability

Wife health problems too, 7 relocations in RCMP, interim support \$1,700/mo.

Marital debts exceed assets, wife pays husband \$7,218, pensions divided  
 Wife imputed income of \$6,000, husband receives \$45,800 (incl. grossed-up benefits)  
 Range: \$1,244 - \$1,658  
 Maximum \$1,650 ordered, indefinite, to equalize living standards

**C. The With Child Support Formula**

*Saunders v. Saunders*, 2007 CarswellNB 163, [2007] N.B.J. No. 120, 2007 NBQB 133 (d'Entremont J.)  
 Married 8 years, 2 children 6 and 4, wife at home, 4 moves in 8 years  
 Husband engineer in Armed Forces, earns \$90,971, new partner (\$10,000) and 1 child, to Ottawa  
 Wife to B.C., working on college and education degree, 5 year plan, 3 more years, no income  
 Interim support: \$600 child, \$500 spousal, wife seeks 5 years of spousal support  
 Child support \$1,292 (Ont.), plus child care expenses of \$324/mo, husband pays \$259/mo.  
 No undue hardship for debts or access expenses  
 Economic disadvantage, spousal range \$1,058-\$1,545  
 Order for \$1,058, indefinite, review in April 2009

*R.R. v. N.R.*, [2007] N.B.J. No. 3, 2007 NBQB 7 (d'Entremont J.)  
 Married 6 years, 2 children 10 and 7  
 2003 order: child support \$643, spousal \$600/mo.  
 Husband's business declined, income dropped from \$48,000 to \$37,640  
 Child support reduced to \$546/mo.  
 Wife retrained, job with government, income increased from \$8,580 to \$30,838  
 S. 7 child care expenses: \$8,160/yr., net \$3,918, husband pays 55%, \$180/mo.  
 Guidelines range: 0 to 0, no entitlement, self-sufficient  
 Support paid 6 years, length of marriage

*J.A.M. v. D.L.M.*, [2006] N.B.J. No. 453, 2006 NBQB 359 (d'Entremont J.)  
 Married 6 ½ years, 2 children 7 and 4 with wife  
 Interim order: imputed \$70,000 to husband, child support \$898, spousal \$1,000/mo.  
 Husband superintendent of rental properties, minor shareholder, parents' corporation  
 Wife obtained work, 2 part-time jobs, around children's schedules, \$19,000  
 Property divided, husband's income determined as \$42,683  
 Child support \$611, plus husband to pay \$948 for \$1,185 child care paid  
 Both parents paid extracurricular expenses, husband \$877, wife \$152  
 Wife seeks \$1,000/mo., for 4 years (15 months paid already)  
 Guidelines range: 0 to 0, husband says no support  
 Short marriage, wife young, educated, employed, no entitlement

## NEWFOUNDLAND AND LABRADOR

### A. Appellate Decisions

none

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

*Vanderlans v. Vanderlans*, 2007 CarswellNfld 119, [2007] N.J. No. 121, 2007 NLUFC 8 (Dunn J.)

Married 25 years, adult children now 30 and 25

2001 consent order: \$2,000/mo. combined child and spousal support deductible  
plus \$200 “additional” spousal support to December 2005

2002 consent order: \$2,000 plus now \$400

Provisional order 2005 from N.S.: extended support another 5 years, at \$1,600/mo.

Guidelines range: \$1,533-\$2,044

Husband RCMP officer, retired at 55 in 2005, pension \$31,000

N.S. court imputed \$60,000

Wife health problems, now 55, paid board by husband’s mother

*Miglin* analysis: stage 1 okay, no change at stage 2

No evidence on *Boston* double dipping issues

Provisional order not confirmed

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

*Stamp v. Stamp*, [2006] N.J. No. 324, 2006 NLUFC 43 (Cook J.)

Married 25 years, 2 children, 1 adult (25), 1 16 with husband

No child support, no s. 7 contribution, wife no income

April 2006 consent interim order: \$1,050/mo., wife then WCB \$14,000

WCB ends Dec. 2006, wife graduates as teacher, looking for work

Husband earns \$62,500, interim support increased to \$1,950/mo., “within parameters”

[Custodial payor range: \$1,613-\$2,150]

## **NORTHWEST TERRITORIES**

**A. Appellate Decisions**  
none

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

*Gross v. Gross*, 2006 CarswellNWT 80, 2006 NWTSC 66 (Charbonneau J.)

Married 6 years, separated 2000

Husband's child of previous relationship, 9 when married, now 21

Wife immigrant from Moldova, pianist and music teacher, moved to NWT

Now suffering from schizophrenia, treatment, at best part-time employment

Wife on social assistance, property divided equally, seeks \$2,500/mo. support

Husband earns \$83,758; argues SSAG and says range \$400-\$500/mo

Non-compensatory support, indefinite given illness

Guidelines not helpful, "unique" case, \$900/mo. ordered

[Range \$628-\$837, no reference to disability exception]

**C. The *With Child Support* Formula**  
none

**NOVA SCOTIA****A. Appellate Decisions**

none

**B. The Without Child Support Formula***Shurson v. Shurson*, 2007 CarswellNS 142, [2007] N.S.J. No. 129, 2007 NSSC 101 (Legere-Sers J.)

Married 28 years, 3 children, youngest (22) in university, father pays her \$925/mo.

Husband 53, wife 50 (47 at separation), husband armed forces

Spousal support of \$2,500/mo. paid 2004-2006

Guidelines support indefinite support, but subject to review when pension divided

Wife earns \$22,747 working 80% part-time, income imputed of \$25,000, even \$30,000

Husband earned \$160,000 in 2006 (\$140,000 other years), work and pension, repartnered

Spousal support of \$3,500/mo. ordered

(Range estimated: \$3,391-\$4,521 if \$160,000 and child support considered)

*Adams v. French*, 2007 CarswellNS 97 (S.C.), [2007] N.S.J. No. 91, 2007 NSSC 57 (Wilson J.)Married 4 years (cohabited 4 ½), 2<sup>nd</sup> marriage, each adult children

Unequal division of matrimonial assets, husband keeps premarital RRSPs, 66% of house

Husband chartered accountant, earned \$68,600 in 2005

Wife in photography business, then real estate broker, earned \$23,900 in 2005

No compensatory support, as wife established career during marriage

Range: \$250-\$330/mo., 2 to 4 years (global range: \$6,000-\$17,820)

Lump sum spousal support of \$7,500 ordered

*Horne v. Horne*, [2007] N.S.J. No. 78, 2007 NSSC 61 (Legere-Sers J.)

Married 25 years, husband 48, wife 49, 2 adult children, traditional marriage

Husband CN Rail, earns \$78,800, but on disability for part of 2006

Wife part-time with Liquor Commission, part-time grocery store, \$22,000

Interim spousal support of \$1,500, Guidelines considered, “under” Guidelines

(Guidelines range estimated: \$1,775-\$2,366)

*C.E.H. v. D.W.S.*, [2007] N.S.J. No. 7, 2007 NSFC 1 (Comeau C.J.F.C.)

Together 15 years (3 married), no children

Husband earns \$59,061 for municipality, wife employment insurance \$4,785

Both involved in losing property rental business, wife as manager

2004 consent order: \$1,200/mo. indefinite, review 2 years later

Agreement so Advisory Guidelines not used, \$1,200 continued

Guidelines would reduce amount (?) [but range \$1,018-\$1,357 estimated]

*Coady v. Coady*, [2006] N.S.J. No. 530, 2007 NSSC 394 (Williams J.)

Married 21 ½ years, husband 61, wife 57, 2 adult children, separated 1993

Husband mayor in 1993, earning \$92,000, part tax-free

Wife no income, depression, stayed in matrimonial home, delayed payment to husband

Spousal support \$3,500/mo. agreed in 1993, reduced in two stages to \$3,158 in 1997

Husband unilaterally reduced to \$1,083/mo. later in 1997

Interim without prejudice variations, to \$2,000/mo. in 2003, to \$1,000/mo. in 2005

Husband now receiving only pension, \$28,236, remarried, new wife \$27,600

Wife receives pension and rent, \$13,158/yr., daughter lives with her rent-free

Guidelines “of limited utility here”, retroactive spousal support

1998: \$1,900/mo. (estimated range: \$1,586-\$2,114)

1999: \$1,900 (range: \$1,662-\$2,216)

2000: \$1,900 (range: \$1,701-\$2,268)

2001: \$2,000 (range: \$1,886-\$2,515)

2002: \$2,000 (range: \$1,833-\$2,444)

2003: \$1,900 (range: \$2,021-\$2,695)  
 2004: \$1,600 (range: \$2,135-\$2,847)  
 2005: \$1,200 (range: \$989-\$1,305)  
 2006: \$650 (range: \$405-\$540), indefinite

Equalization payment from wife offset against retroactive support

*Pentz v. Cutcliffe*, [2006] N.S.J. No. 544, 2006 NSFC 49 (J. Campbell J.)

Together 18 years, wife 58, husband 46, no children

Husband letter carrier, earns \$48,000

Wife earns \$8,000 as personal care worker

Wife seeks indefinite support, husband says maximum 6 years

Range: \$900-\$1,200, 9 to 18 years

Non-compensatory support, for 4 years at \$990/mo.

### C. The With Child Support Formula

*Vanderlinden v. Vanderlinden*, [2007] N.S.J. No. 107, 2007 NSSC 80 (Campbell J.)

Together 7 years (married 5), 1 child 6

Husband ex-military, pension, \$60,000

Wife student loan debt \$16,000, going to CompuCollege, tuition \$15,850

Wife no income

Child support \$523 (\$450 before)

As self-reps, negotiate agreement August 2005 using Guidelines:

Spousal support at \$1,100/mo. for 65 months, \$71,400

Wife accepted \$600/mo. for 3 years, husband assumed all debts

Then \$13,800 left to pay, at \$115/mo. afterwards

Miglin/property: not substantial compliance, unfair re debts

Husband relieved of wife's student loan payments and \$13,800 support

Continue \$600/mo. to August 2008, wife graduates April 2007

Criticisms of *without child support* formula, but this *with child support* formula

(Guidelines range estimated: *with child support* formula, \$1,153-\$1,460 after May 2006)

(Range before May 2006, child support \$450, spousal \$1,049-\$1,313, mid-point \$1,176)

*Horvath v. Horvath*, [2007] N.S.J. No. 90, 2007 NSSC 70 (Wilson J.)

Married 8 years, 2 children 11 and 8, with wife, husband 35, wife 40

Wife unemployed, limited income as casual teacher's aide

Husband electrician earns \$53,540, in bankruptcy

Child support \$763

Spousal support entitlement, Guidelines range \$664-\$903/mo.

Support of \$650/mo., indefinite, as wife some ability to earn

*J.E.M. v. L.G.M.*, [2007] N.S.J. No. 69, 2007 NSSC 52 (B. MacDonald J.)

Married 18 years, children 14 and 12 with wife

Husband works for federal government, earns \$56,694

Wife income from investments \$3,460/yr.

Child support \$796, plus all s. 7 expenses, equal division of property

Husband offers \$450 based on Guidelines (using higher income for wife)

Guidelines range: \$499-\$763, order for \$550/mo.

*Kays v. Kays*, [2007] N.S.J. No. 1, 2007 CarswellNS 2 (Legere Sers J.)

Together 2 years and 3 months, (married 15 mos.), 1 child 5, mother's 16-year-old

Husband retired from Armed Forces 2003, now engineering co., earns \$95,226

Dec. 2002 consent order: child support \$950, spousal \$1,150, plus \$1,500 house expenses

Corollary relief judgment 2005: child support \$680, spousal \$1,519

Wife 34 (31 separation), teacher in England, returning there

Wants to do 4 ½ year nursing degree, but no serious employment effort

Child support \$803/mo., husband also pays \$700/mo. for another child  
Counsel criticized for no Guidelines calculations  
Spousal support \$1,519/mo. for 5 mos., \$1,000 for 7 mos., then end, 5 yrs paid total  
[Estimated range if wife no income: \$1,604-\$2,074; if \$20,000 imputed, \$795-\$1,394]

*McIntyre v. McIntyre*, [2006] N.S.J. No. 529, 2006 NSSC 380 (Warner J.)  
Interim support, 3 children, 5, 3 and 1, oldest autistic  
Husband earns \$75,500, wife earns \$30,000 as self-employed chiropractor (imputed)  
Child support \$1,371/mo.  
S. 7 expenses: \$866/mo. child care, \$362/mo. special diet, husband pays \$450, wife \$189  
Guidelines range: 0 to \$384; at zero, 44% INDI to wife, 62% cash flow  
Wife's budget no deficit, only low income imputed, zero interim spousal support

*H.P. v. D.P.*, [2006] N.S.J. No. 511, 2006 CarswellNS 560 (Levy Fam.Ct.J.)  
Married over 15 years, 2 children 15 and 11, with wife  
Husband earns \$24,459 at building supply store, wife \$14,712 in retail  
Child support \$362/mo., tax advantages to spousal support over s. 7 expenses  
Spousal support \$175/mo., even though Guidelines range: 0 to 0  
Support for 18 months until divorce and sale of home

## NUNAVUT

**A. Appellate Decisions**  
none

**B. The *Without Child Support* Formula**  
none

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

*H.T. v. C.T.*, [2006] Nu.J. No. 21, 2006 NUCJ 19 (Johnson J.)

Application to vary child and spousal support, reduction in income

Interim child and spousal support: \$4,250

Recipient wife disabled, husband lost contract, lower income, consumer proposal re debts

Husband's net income \$1,400 after payment of support

Husband has common law spouse and 2 children

Child support \$1,173

Guidelines range: \$968 - \$1,607 (incomes not stated)

Spousal support reduced to \$2,577, total \$3,750 support

**ONTARIO****A. Appellate Decisions**

none

**B. The Without Child Support Formula***Rezel v. Rezel*, [2007] O.J. No. 1460 (S.C.J.)(Harvison Young J.)

Married 5 years, second marriage, wife 61, husband early 60's

Both computer analysts, earning \$100,000 at separation in 1998

Wife loses job in 2004, seeks spousal support

Husband uses Guidelines to argue that duration ended, delay

Short marriage, no merger of economic lives, wife not serious about return to work

No entitlement

*Jones v. Wilson*, [2007] O.J. No. 896, 2007 ONCJ 93 (Thibideau J.)

Together 6 ½ years, wife 55

Cohabited more than 3 years in marital relationship, despite husband's arguments

Husband earns \$50,000 as long-haul truck driver

Wife earns \$15,000 as cleaner, teenage son

Guidelines ranges provided for different periods of cohabitation

Range: \$306-\$408 for 3 to 6 years, spousal support ordered \$350/mo. for 3 years

*Lewis v. Lewis*, [2007] O.J. No. 742 (S.C.J.)(Aitken J.)

Married 29 years, husband 50, wife 47, 3 children 30, 29 and 22

Net family property calculated and split

Wife worked part-time and full-time at nursing home, now full-time clerk/receptionist

Wife earns \$35,188, new partner

Husband worked at AECL as fireman, wrongfully dismissed, settlement, \$60,600 (2 yrs. salary)

Husband operates fencing business, earns \$32,000/yr., i.e. \$92,600 to Dec. 2006

Range: \$1,811-\$2,415

Equal partnership, long marriage, equal incomes

Wife only requested \$2,000/mo., less than equalization

Interim spousal support: \$2,000/mo. to Dec. 2006

Nothing from Jan. 2007 when husband's income just from fencing, revisit at trial

*Serra v. Serra*, [2007] O.J. No. 446 (S.C.J.)(Herman J.)

Together 26 years (married 24), husband 62, wife 56 (50 separation)

1 child of wife's 1<sup>st</sup> marriage, plus 1 of this marriage, both adults

Wife worked early years, then home since 1983, no income

Interim support \$12,500/mo., December 2002 on

Husband owns marine and textile businesses, decline since separation

Net family property \$10 million, equal division means \$3.3 million payment plus condo

Husband salary imputed at \$250,000

Wife limited skills, but self-sufficiency includes generating income from assets

Her income imputed at \$43,000/yr.

Spousal support \$10,000/mo., until transfer of husband's condo interest, then \$7,500/mo.

Indefinite, but no support while husband pays equalization instalments Sept/07 to Sept/11

(Guidelines range estimated: \$7,812-\$10,416, wife no income; \$6,469-\$8,625 if \$43,000)

*Colquhoun v. Colquhoun*, [2007] O.J. No. 9, 2007 CarswellOnt 18 (Whalen J.)

Married 20 years, husband 54, wife 49 (41 separation), no children

Husband's job ended 2004, running common law wife's Molly Maid business and rentals

Income imputed of \$50,000

Wife personal care worker and rentals, imputed income \$20,800

Interim support \$1,000/mo., 2 years paid

Guidelines range: \$730-\$973, indefinite  
 Final order \$1,000/mo., leaves husband 52.6% net income, wife 47.4%

*Lopez v. Tarnocai*, [2006] O.J. No. 5318 (S.C.J.)(Herman J.)  
 Together 5 years, both from Mexico  
 Wife medical doctor, but visitor, working as exotic dancer, \$14,400/yr.  
 Husband geologists, earning \$100,000 (\$208,751 in 2005)  
 Interim spousal support of \$1,000/mo. ordered  
 Considered Guidelines, NDIs, different results  
 (Guidelines range \$537-\$716/mo., 2.5-5 years, restructured \$1,084-\$1,432, 1-2.5 years)

*Friend v. Paul*, [2006] O.J. No. 5315 (S.C.J.)(Herman J.)  
 Married 17 years, 4 children, one now at university  
 1994 order for \$1,500/mo. interim interim child and spousal support, never varied  
 Last child finishing university in April 2007  
 Husband earns \$64,604, wife earns \$41,000  
 Child support, budget, \$244 rent plus \$250 expenses, total \$496/mo.  
 Wife seeks \$500/mo. spousal support, 13 years since separation, still entitled  
 Spousal support of \$300/mo. to April 2007, over 50% NDI  
 After April 2007, \$500/mo. (Guidelines range: \$502-\$669)

*Soper v. Soper*, 2006 CarswellOnt 7496 (Matheson J.)  
 Together 24 years (married 20), 1 adult child 23  
 Husband at Inco, earns \$83,862, wife day care worker \$15,205  
 Interim support \$1,000/mo. (Sept. 2003), \$1,500/mo. (June 2006)  
 Guidelines considered, support \$1,800/mo., indefinite  
 [Range \$2,060-\$2,746, but if only 20 years used, \$1,716-\$2,288]

*Fournier v. Burton*, [2006] O.J. No. 4084, 2006 CarswellOnt 6201 (S.C.J.)(Smith J.)  
 Married 20 years, wife 44 (39 separation), 2001 consent order: \$1,200/mo., indefinite  
 Husband applies to vary to terminate or time limit  
 Wife took courses for Grade 12, community college, but ill with cancer/depression  
 Change in circumstances, not making \$20,000 5 years later, unlike expected  
 Husband's income unchanged, \$53,100 (estimated as not stated)  
 Guidelines range: \$1,488 - \$1,770, higher than order  
 Order continued, review in 4 years

*Lehtomaa v. Lehtomaa*, [2006] O.J. No. 4130 (S.C.J.)(Shaw J.)  
 Married 40 years, husband 73, wife 65 (63 separation)  
 Guidelines range: \$442 - \$590, wife seeks income equalization, \$500 spousal support  
 Equal lifestyles, not incomes, use means and needs  
 Husband significant medical issues: loss of arm, hip replacement, cancer, cataracts  
 Uses scooter, his needs greater  
 Husband's income \$2,828/mo. (OAS, CPP, pension, workers comp)  
 Wife's income \$1,648 (OAS, CPP, pension)  
 Interim spousal support: \$100/mo. to equalize [disability exception?]

*Kerr v. Magnan*, [2006] O.J. No. 4127 (S.C.J.)(Platana J.)  
 Married 39 years, wife retired (June/06), husband already retired  
 No spousal support in 2004 divorce  
 Guidelines not of assistance where low incomes, needs and means used  
 Husband's "net": \$2,450/mo., wife's "net": \$1,329/mo.  
 [Grossed up \$38,500 vs. \$19,000, range \$409-\$812]  
 Interim spousal support \$300/mo.

*Hance v. Carbone*, 2006 CarswellOnt 7063 (Ont.S.C.J.) (Staysbyn J.)

listed under *with child support* formula; should actually have been *without child support* formula

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

*Yeates v. Yeates*, 2007 CarswellOnt 2107 (S.C.J.)(Greer J.)

Married 15 years, husband and wife 48, 3 children 17, 14 and 11, with wife

Child 17 has cerebral palsy/epilepsy and child 14 autism

Wife home with little respite, access issues

Husband accountant with CRA, earns \$108,872

Child support \$1,964

Section 7 expenses: wife gets \$16,500/yr. subsidies for special needs, list “unattainable”

Husband to pay \$1,300/mo. for expenses

Interim spousal support \$2,500/mo., wife seeks permanent spousal support of \$3,500, can’t work

Husband argues Guidelines, *Andrews*, maximum 60/40 NDI split

Order for \$2,500 indefinite, well above Guidelines range (estimated \$848-\$1,233)

(Special needs exception?)

*Fell v. Fell*, [2007] O.J. No. 1011, 2007 CarswellOnt 1604 (S.C.J.)(Linhares de Sousa J.)

Married 12 years, 3 children 12, 9 and 4

Shared custody, equal time, interim for 18 mos., continued

Wife part-time nurse, \$43-44,000, secondary earner in marriage

Would earn \$70-80,000 if full-time

Husband pilot in Armed Forces, earns \$95-96,000

Child support set-off: \$1,762 - \$816 = \$946/mo.

Interim spousal support \$400/mo.

Wife can keep working part-time until youngest in full-time school, given history

Mid-point of Guidelines range leaves consistent standard of living, \$450/mo.

(Guidelines range estimated: \$99-\$784, mid-point \$444)

Review when full-time school, wife’s income expected to be \$70,000 then

*Ansara v. Ansara*, [2007] O.J. No. 783 (S.C.J.)(Del Frate J.)

Married 17 years, 1 child 8, with wife

Husband lawyer and director, community legal clinic, \$106,000

Wife deputy town clerk, earns \$49,143

Child support \$924 interim

Guidelines range: \$642-\$1,435, \$1,000/mo. interim spousal support ordered

*Martin v. Martin*, [2007] O.J. No. 467 (S.C.J.)(Linhares de Sousa J.)

Married 9 years, children 13 and 8

Property divided 75/25 to wife, husband’s debts to wife reduces payment to zero

Husband alcohol and cocaine problems, now working for Dell, \$36,000

Child support \$518, 27% of s. 7 expenses (\$165/mo.)

Husband seeks spousal support, wife earns \$90,000

Husband claims \$300-\$400/mo for 3 years, based on Guidelines

Entitlement, lump sum of \$15,000 for disadvantage from marriage breakdown

(Guidelines range estimated, custodial payor: \$414-\$552, 4.5 to 9 years)

(Lump sum awarded, after tax adjustment, at low end of global range)

*Vynnk v. Baisa*, [2007] O.J. No. 274 (S.C.J.)(Klowak J.)

Married 10 years, husband 39, wife 33, 1 child aged 3 with wife

Husband critical care nurse, paid through own company, earns \$87,000

Child support \$774

Wife earns \$39,000

Compensatory basis: wife waitressed, two jobs, to put husband through school,

Delayed her own education, now likely to return to school

Periodic spousal support \$2,000/mo. for 5 years, 61% NDI

Increased for education, not adequately addressed by Guidelines  
Plus lump sum support \$75,000 [all within global range at Guidelines maximum]

*Skirten v. Lengyel*, [2007] O.J. No. 679 (S.C.J.)(Platana J.)

Unmarried couple, together 5 years, 1 child 3, with wife

Husband labourer, earns \$24,960, wife earns \$16,682

Child support \$224/mo.

Guidelines range: zero to zero

Husband not appearing, owns house and motorcycle, wife seeks \$112/mo.

Court looks at household standard of living comparison

“Notwithstanding Guidelines”, husband should pay something, \$50/mo.

*Davies v. Davies*, [2007] O.J. No. 388 (S.C.J.)(Herman J.)

Married 11 years, 2 children 9 and 6, with wife

Husband Environment Canada scientist, earns \$66,388

Wife earns \$32,000

Child support \$992/mo. plus child care

Wife home 7 years, til last in school (2004)

Mid-point of Guidelines range is zero, leaves wife with 56% NDI (range: zero to \$247)

No interim spousal support

*Johal v. Johal*, [2006] O.J. No. 5264 (S.C.J.)(Hambly J.)

Married 12 years, 3 children 10, 9 and 5, interim interim custody with wife

2005 incomes used: husband police officer earns \$81,071, cohabiting, new home

Wife labourer, earns \$33,015

Interim child support \$1,528/mo., plus \$280 s. 7 expenses contribution

Spousal support: Guidelines range zero to \$333 says husband

Interim spousal support \$100/mo., leaves wife with 60%+ NDI

*Humphrey v. Humphrey*, 2006 CarswellOnt 8251 (S.C.J.)(G.P. Smith J.)

Married 17 years, 3 children 20, 18 and 18, husband 48, wife 47 (45 separation)

All with wife, oldest employed part-time, part-time university

Husband in family business, income issues, \$60,000

Wife homemaker, small home-based business, no interim sale of home

Child support \$902 (2 only), Guidelines range: \$1,083-\$1,361

Interim spousal support ordered \$1,300/mo.

*Smylie v. Smylie*, [2006] O.J. No. 4716 (Ont.S.C.J.)(Shaw J.)

Together 27 years (married 22), 3 children 20, 17, 8, with wife, both 46 years old

Husband lumber yard manager in Timmins, earns \$34,762

Child support \$517 (2), s. 7 child care expenses \$46/mo. by husband

Property: wife keeps home, pays equalization of \$40,326 to husband

Wife 2 part-time jobs, nurses registry and KFC, earns \$16,296

Wife home until 2004 separation, traditional marriage

Husband cohabiting, new partner makes \$40,000

Range: 0 - \$89, spousal support of \$200/mo., 60% NDI to wife

*Ghahrai v. Mohammed*, [2006] O.J. No. 4651 (Ont.S.C.J.)(Fragomeni J.)

Married 9 years

2004 settlement: \$1,000/mo. for 18 mos., 26 mos. paid interim, plus \$6,000 lump sum

Wife applies to vary and seeks interim, support stopped April 2006, s. 17(10) applies

Wife wants to complete B.Sc. Nursing, 4 more years, \$14,000 OSAP loan

Husband earns \$80,000, has 2 (?) children, \$700/mo. day care

Husband says Guidelines range \$692-\$922, 4 ½ to 9 years, paid \$50,000 (\$692x6 yrs.)

Application dismissed

*Verbey v. Verutis*, [2006] O.J. No. 4267 (S.C.J.)(Turnbull J.)

Married 18 years, 2 children 13 and 8

Custody issues, interim equal shared custody

Husband engineer, earns \$109,000

Wife primary school teacher, disability, no benefits, no income

Child support not stated (estimated as \$1,514/mo.)

Guidelines range: \$1,880-\$2,483

Interim spousal support \$1,800/mo.

*Hance v. Carbone*, 2006 CarswellOnt 7063 (Ont.S.C.J.) (Stayshyn J.)

Married 17 ½ years, husband 46, wife 43 (36 separation)

4 children: 24, 22, 22, 20, traditional marriage

1999 separation agreement: total support of \$1,083, \$611 child, \$472 spousal

Spousal support for 6 years only

Wife working part-time at Walmart, \$13,500, husband earns \$38,500

Guidelines range stated to be \$367-\$582, *with child support* formula

Spousal support of \$472/mo. ordered, 15 years

But no child support, no proof children of marriage

[*Without child support* formula range: \$547-\$729]

**SASKATCHEWAN****A. Appellate Decisions**

none

**B. The Without Child Support Formula***Kirk v. Hackl*, [2007] S.J. No. 87, 2007 SKQB 82 (Wilkinson J.)

Cohabited 44 months, both husband and wife have alcohol and health issues

Wife functionally blind, non-compensatory basis for support, disability exception

Husband earns \$69,384 in family business

Wife imputed rental income \$5,040, few details of her past income or disability income

Interim spousal support \$1,000/mo., economic dependency

(Guidelines range estimated: \$322-\$429)

*Rezansoff v. Rezansoff*, [2007] S.J. No. 37, 2007 SKQB 32 (Sandomirsky J.)

Married 6 years, second marriage, no children, wife 60, husband 67

Interim spousal support: \$1,200/mo. for 16 mos.

2004 trial: \$1,100/mo., review in 2 years

Husband seeks termination on review, husband now receives \$47,708 in pensions

Wife receives \$6,024 pension, unemployable, health problems

Guidelines range: \$625-\$833, 3 to 6 years, husband paid \$13,014 more than maximum

Non-compensatory support, 6 more months, \$625/mo., 4 years total duration

**C. The With Child Support Formula***Aalbers v. Aalbers*, [2006] S.J. No. 757, 2006 SKQB 530 (Sandomirsky J.)

Married 17 years, 5 children 16, 15, 12 (Downs syndrome), 8 and 6, with wife

Wife homemaker, husband earns \$115,312 as hog and grain farmer

Income of husband: \$19,025 tax return, plus \$96,285 via s. 18 from numbered co.

Interim child support \$2,741/mo.

No interim spousal support: wife's income \$50,556 with child support and child benefits

Wife lives in family home, husband pays taxes and utilities, use of family van

Guidelines no help where entitlement not yet established

[Guidelines range estimated as \$688-\$1,083]

*Brossart v. Brossart*, [2006] S.J. No. 637, 2006 SKQB 455 (Wilson J.)

Married 18 years, 2 children 15 and 13

Husband quit farming, earns \$55,200, no net income from farm rental

Child support \$771/mo., husband pays \$70/mo. extracurricular expenses (75%)

Wife earns \$18,500, wife says Guidelines range \$99 - \$534 if husband earns \$61,700

Judge estimates range with ChildView: \$149 - \$298

Interim spousal support \$300/mo. (husband had paid \$280/mo. interim)

## YUKON TERRITORY

**A. Appellate Decisions**  
none

**B. The Without Child Support Formula**  
None

**C. The With Child Support Formula**

*Holmes v. Matkovich*, 2007 CarswellYukon 11, 2007 YKSC 11 (Veale J.)

Together 18 years (married 6), 1 child 16, with wife, wife 48, husband 45

Husband failed to disclose, pleadings struck, uncontested hearing

Spouses built up hay farm since 1994

Wife many health problems, receives income from trust fund, \$44,000 in 2006

Husband operates farm, prospecting, gold mining, heavy equipment rental, incorporated co.

Income issues, estimated at \$211,000

Child support \$1,555, farm 100% to wife on property division

Range: \$3,753-\$5,013

Self-sufficiency not practicable, not high end as farm to wife, some equality in living standards

Order for \$4,000/mo., indefinite