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

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).1 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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1 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 with 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 Yemchus 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 benchmarks 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.)2 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.

2 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.
The Advisory Guidelines 27 Months Later

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 vaule of monthly support if paid until payor 65, discounted for tax and adjusted for reapportionment, $25,0000.


(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).


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


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)”


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 dimishing 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]


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
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]

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

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)

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

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)

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

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)

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

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

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**

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**

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

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  Equalization payment $500/mo. for 3 years
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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)

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)
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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

B. The Without Child Support Formula

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

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

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

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)

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 pension credits from employment interruption: $12,700
Total lump sum support of $43,037

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

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

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

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
Married 4 years (cohabited 4 ½), 2nd 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

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 drive
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

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

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)

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]

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
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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)

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.

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

Together 17 years (married 12), wife 2 children of 1st 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

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

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
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)

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 reappropriated 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)

Together 26 years (married 24), husband 62, wife 56 (50 separation)
1 child of wife’s 1st 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)

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%

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

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.

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)

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)

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

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

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

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

Together 7 years (married 6), 2nd marriage, husband 48, wife 47
Husband pays child support of $300/mo. for 2 17-year-olds from 1st 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)

Wills variation case, together 12 years (married 11)
2 children of 1st marriage 30 and 29, 1st 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

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
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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]

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 91/2 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

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]

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

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
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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

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

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

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.

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

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

Married 28 years, 1 adult child, husband 55, wife 50 (48 separation)
Husband Armed Forces firefighter until 1992, many relocations
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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]

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

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

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

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?]

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

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.
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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

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.

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

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

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?)

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

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)

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)

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)

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

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

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

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.

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)

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

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)

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

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

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)

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

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.

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)

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)

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)

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
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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)

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

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]

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

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.

Together 10 years (married 8), 2 children 8 and 4, husband 39, wife 36
Wife homemake, cohabiting with doctor, he assisted with home purchase
Husband excavating business, income issues, $70,000
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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

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

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

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]

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]

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

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
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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.)

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

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

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

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]

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
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Guidelines range, split custody: $999-$1,244

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.

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]

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

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

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]

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*

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. reappropriated 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*

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

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

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)

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)

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)

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)

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)

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
ALBERTA

A. Appellate Decisions
none

B. The Without Child Support Formula

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.

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

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)

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
Appendix III Case Updates by Province--Alberta

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]

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

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)

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)

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.)

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

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)

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)

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)
Appendix III Case Updates by Province—B.C.

BRITISH COLUMBIA

A. Appellate Decisions

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

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)

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

Lived together 3 3/4 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

Lived together 6 1/2 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

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 pension credits from employment interruption: $12,700
Total lump sum support of $43,037

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

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

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

Together 17 years (married 12), wife 2 children of 1st 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

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

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

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 reappropriated 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)

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

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
Appendix III Case Updates by Province—B.C.

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

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

Together 7 years (married 6), 2nd marriage, husband 48, wife 47
Husband pays child support of $300/mo. for 2 17-year-olds from 1st 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)

Wills variation case, together 12 years (married 11)
2 children of 1st marriage 30 and 29, 1st 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

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 91/2 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

Married 21 years, 3 children 22, 20 and 18, husband 44, wife 47 (45 separation)
Husband 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

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

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

Married 26 years (28 total), 3 adult children, wife 54, husband 67 (64 separation)
Husband mechanic, ferry worker, health problems now, $23,000 OAS/PP/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

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.

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

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

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

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

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)

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)

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)

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

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

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 tutor, one-year contract $50,000
Husband helicopter business, now selling avionics, commission sales, $50,000
Appendix III Case Updates by Province—B.C.

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

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)

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)

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)

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

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
Appendix III Case Updates by Province—B.C.

Spousal support of $600/mo. ordered, indefinite

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

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

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)

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

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)

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

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]

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)

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

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

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

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

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

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

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

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

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

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

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

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

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)

Married 4 years (cohabited 4 ½), 2nd 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

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)

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]

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

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_

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)

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

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.

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
Appendix III Case Updates by Province—Nova Scotia

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]

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

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

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

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

Together 6 ½ years, wife 55
Cohabit more than 3 years in marital relationship, despite husband’s arguments
Husband earns $50,000 as long-haul truck drive
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

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 support: $2,000/mo. to Dec. 2006
Nothing from Jan. 2007 when husband’s income just from fencing, revisit at trial

Together 26 years (married 24), husband 62, wife 56 (50 separation)
1 child of wife’s 1st 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)

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
Appendix III Case Updates by Province—Ontario

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

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)

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]

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

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?]

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.) (Stayshyn J.)
listed under with child support formula; should actually have been without child support formula]

C. The With Child Support Formula

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?)

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

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

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)

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]

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.

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, till last in school (2004)
Mid-point of Guidelines range is zero, leaves wife with 56% NDI (range: zero to $247)
No interim spousal support

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

Married 17 years, 3 children 20, 18 and 6, with wife
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.

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

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
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

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)

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

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)

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

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