

THE ADVISORY GUIDELINES 16 MONTHS LATER: CASES, CRITICISMS AND RESPONSES, REVISIONS (revised)

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A. SOME CASES

1. Appellate Decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chambers judge ordered diminishing time-limited support for 3 more years

\$6,000/mo. year 1, \$4,000 year 2, \$2,000 year 3, then zero, to encourage self-sufficiency

No time limit, only partial compensation, indefinite order substituted, subject to

review if husband's medical condition (legal blindness) interferes with income

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

Lower than range because of reapportionment order

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

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

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

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

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

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

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

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

With these support amounts, marriage agreement not unfair

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

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

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

Wife health problems, but will recover, poor English

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

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

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

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

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

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

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

Husband army officer, earns \$100,000

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

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

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

Trial judge used low end of range, income issues raised by wife

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

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

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

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

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

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

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

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

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

Trial judge erred by not engaging in a detailed individual analysis

Court states that [TRANSLATION] « the dossier as it is and the brief pleadings of counsel on this aspect do not permit us, in my opinion, to pronounce a judgment of principle upon the utilisation of the Advisory Guidelines. » Court refers to important criticisms of Advisory Guidelines found in judgments of Justices Julien and Gendreau [see cases below] and concerns about « recipes » and formulas being used to avoid the difficult individual analysis required.

2. The Without Child Support Formula

Leading Decisions

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

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

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

Without child support formula explicitly used

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

General reference to use of guidelines as “cross-check”

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

Maitland v. Maitland, [2005] O.J. No. 2252 (Ont.S.C.J.)(Pardu J.)
Married 29 years, 4 adult children, wife 45 at separation
Wife has health problems, can’t work, no income
Husband works as truck driver, \$28,439
Interim support \$1,344, husband also pays \$135/mo. for wife’s health insurance
Range \$889-\$1185 (or \$754-\$1050 deducting health ins.)
Exception for payor income \$20-\$30,000 noted, concerns re ability to pay
Support of \$700 ordered

A.M.R. v. B.E.R., [2005] P.E.I.J. No. 83, 2005 PESCTD 62 (S.C.T.D.)(Matheson C.J.T.D.)
Together 11 years (married 4), no children, husband seeks interim spousal support
Husband receives WCB \$11,858 non-taxable, grossed up to \$13,525
Wife earns \$18,557, also paying family debts
Below “floor” of \$20,000, no ability to pay, no support
(Range by formula: \$69-\$92)

McCulloch v. Bawtinheimer, [2006] A.J. No. 361, 2006 ABQB 232 (Q.B.)
(Sullivan J.)
Together 6 years, “adult interdependent partners”
Husband earns \$103,000, pays \$15,600/yr. in prior spousal support (exception)
Wife earns \$27,216, gross income difference \$60,184
Range \$451-\$602, for 3-6 years, global amount \$16,250-\$43,332
Detailed explanation of Guidelines and restructuring
No compensatory exception, no debt payment exception
Orders \$2,000/mo. for 9 mos., \$1,000/mo. for 9 mos., \$500 for 7 mos., total \$29,500

Other Trial Decisions [beginning with most recent decisions and working backwards]

A.G. v. C.G., [2006] B.C.J. No. 1157 (Prov. Ct.) (Baird Ellan Prof. Ct. J.)
26 year marriage; parties married in Peru, 2 grown children
Interim spousal support of \$1000/mo
Husband earns \$58,000; income imputed to be \$60,000; paying \$500 per month on mutual debt of \$50,000 and income tax debt of \$150 per month; willing to pay \$600 per month spousal
Wife, with limited English language skills and poor health, on social assistance; had worked full-time as daycare worker ten years until injured in 2003; income \$6120 on social assistance but court imputes income of \$9,000 based on part-time work at \$9/hr
SSAG range of \$1594 to \$2125 considered; spousal support set at \$1200/mo (i.e. below range) reflecting husband’s debt payments and wife’s potential to increase earning capacity
Order gives wife 1/3 of husband’s disposable income, husband 1/3, and 1/3 for debt.

A.A.C. v. M.A.B., [2006] N.S.J. No. 169, 2006 NSSC 136 (S.C.F.D.)(B. MacDonald J.)

Married 18 years, 2 children, last marrying July 2006, child support to end then, wife 48
Spousal support paid for one year, 1998-99, \$600/mo.
Wife agreed to no support in 1999, but reserved right to claim
Wife now earns \$40,500, husband earns \$53,500
No non-compensatory claim, so compensatory only
Range stated as \$304 to \$405, for 9 to 18 years, but wife claiming 9 years after separation
\$300/mo. ordered for one year

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

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

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

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

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

Lachambre v. Lachambre, [2006] S.J. No. 165, 2006 SKQB 143 (Q.B.)(Wilson J.)
Married 32 ½ years, 1 child now 30, wife homemaker for 20 years
Wife working as part-time cashier, now cook in restaurant, earns \$16,000
Husband earns \$55,695 as bus driver

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

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

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

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

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

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

H.D. c. J.-Y.L., [2005] J.Q. no. 18347 (C.S.)(Jacques J.C.S.)
Married 31 years, 2 children 26 and 24, younger (some disability) with father
Husband earns \$78,000, wife earns \$5,000 part-time, traditional marriage
Interim interim support \$1,000/mo.
Interim spousal support of \$1,700/mo., rejects Guidelines amounts
Wife sought \$2,800, states range as \$2,900-\$3,900

[But range appears to be \$2,281-\$3,041, without adjustment for son in father's care]

Stewart v. Tudorachi, [2006] O.J. No. 898 (S.C.J.)(Platana J.)

Together 22 years, no children, wife 50 (47 at separation), husband 48
No unjust enrichment, house in both names, sold and proceeds divided equally
Wife not worked since 1996, fibromyalgia, separated 2003, now student
Grade 12 equivalency, finished in 2008, then intention to do 3-year program
Husband married, 2 step-children, wife earns \$47,000 as teacher
Husband earns \$75,209, interim support \$2,400/mo.
Guidelines range \$2,004-\$2,673, husband offers \$1,800
Order for \$2,250, review in 2008

Santoro v. Santoro, [2006] B.C.J. No. 453, 2006 BCSC 331 (S.C.)(Powers J.)

Married 18 years, 3 children with wife, adults now (25, 24, 20)
Wife 50 (39 at separation), husband 53
Husband machinist, working in NWT, \$100,000
Husband remarried, new wife not working, her 2 children (21/17)
Wife disabled (back), agreed to lump sum support of \$20,000 and dismissal in 1994
Now on CPP Disability \$8,600/year
Miglin analysis, 2nd stage, variation
Guidelines of "limited use", range \$2,057-\$2,742, but prior agreement
\$1,200 per month ordered, review in 2 years

Girouard v. Girouard, [2006] O.J. No. 762, 2006 CarswellOnt 1089 (Sedgwick J.)

Married 38 years, wife 57, husband 62, 2 adult children
Wife on CPP Disability, \$6,960/yr., many medical problems, seeks \$1,000/mo.
Husband retired from Armed Forces, \$26,846, lives with new partner in her house
Recently resigned as rural mail carrier (\$18,711/yr.)
\$625 ordered, indefinite (range \$621-\$828)

Barter v. Barter, [2006] N.J. No. 52, 2006 NLCA 13 (C.A.)(Welsh J.A.)

Husband's notice of appeal struck
Judge indicated would be guided by Advisory Guidelines, hearing adjourned
Parties returned with settlement, husband now appealing consent order
Trial judge could not have "misapplied" Guidelines

Bourget v. Bourget, [2006] O.J. No. 419 (S.C.J.)(Smith J.)

Married 27 years, wife 51 (49 at separation), husband 52, no children
Husband earns \$32,500 as janitor
Wife receives \$8,124 on CPP Disability
Range \$775-\$1,007, wife seeks \$1,000, but lower incomes involved
Interim support of \$600 ordered, based upon Mackinnon paper, 40% NDI to wife

Rzepa-Burke v. Burke, [2006] M.J. No. 29, 2006 MBQB 16 (QBFD)(Clearwater J.)

Married 4 years, no children, wife 45 (43 at separation), husband 56
Husband disclosed, but then self-represented and no show at trial
Husband earns \$45,000, wife \$1,000/yr. (?), wife seeks indefinite support
Range \$300-\$325, for 52 months, \$16,900 maximum

Husband paid \$7,800 already interim, plus \$600 arrears owing
Order \$500/mo., review in one year, issues re wife's employment efforts

S.(D.) v. Sc.(Ma.), No. 500-12-267344-038, 27 janvier 2006 (C.S.)(Julien J.)
Married 22 months, cohabited 2 years, husband 77, wife 48 (45 at separation)
Interim support \$3,000/mo., wife seeking \$4,000/mo.
Husband got wife to quit job, paid her \$3,300/mo. from his company
Wife earned \$30,000 before marriage
Husband's income not disclosed, but assets \$12.7 million, ability to pay
Husband argues Advisory Guidelines, criticisms of Guidelines, rejected
Support of \$3,000/mo. ordered, until Sept. 2006 (43 months paid)
(Husband's income above ceiling, but if \$600,000, range would be \$3,000-\$4,000)

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

Elias v. Elias, [2006] B.C.J. No. 146, 2006 BCSC 124 (S.C.)(Bennett J.)
Married 24 years, wife 48 (47 separation), husband 50, 2 children out of home
Husband claims spousal support
Husband earns \$50,000 in construction, building own house, cash jobs, in-kind bonuses
Wife earns \$87,000 as lab tech, blip in overtime, \$60,000 without overtime
No entitlement to spousal support, no requirement of equalization under Guidelines
(Range \$312 to \$416, indefinite)

Barrick v. Barrick, [2006] O.J. No. 219 (S.C.J.)(Mazza J.)
Married 33 years, children ?, income issues
Husband receiving WSIB grossed up to \$40,000
No imputing income for failure to appeal unfavourable decision
No income imputed from alleged marijuana grow-op
Wife makes \$14,300 from CPP disability, part-time work, investment income
Range stated by husband's lawyer as \$555 to \$740, rejected as too low
Spousal support of \$1,000 per mo. ordered, to equalize incomes
(Range actually \$803 to \$1,070, indefinite)

MacElwain v. MacElwain, [2006] N.B.J. No. 13, 2006 NBQB 19 (Q.B.)(d'Entremont J.)
Married 32 years, 3 adult children, traditional marriage, wife 61 (59 separation)
Equal division of sizeable property
Interim spousal support since 2003 of \$4,500/mo.
Range stated as \$5,405 to \$7,207

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

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

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

Husband earns \$154,885, wife nothing

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

Husband wanted executive assistant and wife

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

Wife relies upon "compensatory exception" in Guidelines

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

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

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

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

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

Equal division of property

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

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

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

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

Interim spousal support \$1,500/mo.

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

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

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

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

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

Together 16 years (married 12)

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

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

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

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

Married 29 years, 2 adult children

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

2002 order for \$1,000/mo., terminating review order for 24 months

Wife earns \$32,850 at WeightWatchers and dog sitting

Husband earns \$50,000, disabled wife receives \$6,000/year

Wife states range as \$594 to \$792 indefinite (range seems to be \$536 to \$714)

Spousal support continued, at \$500/mo. indefinite

Chepil v. Chepil, [2006] B.C.J. No. 15, 2006 BCSC 15 (S.C.)(Ehrcke J.)

Married 24 ½ years, 3 grown children living with father, wife 46 (44 at separation), husband 52

Husband earns \$63,000 as deputy sheriff, will retire at 57

Wife retrained as radiographer, recently started job at \$55,000, student loans of \$16,000

2003 do-it-yourself agreement valid, wife waives pension and spousal support claims

Pension waiver not "unfair", *Miglin* applied, wife seeks \$600/mo.

Advisory Guidelines considered, \$250/mo. for 3 years, to assist wife to pay off loans
(Range \$250-\$333, indefinite)

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

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

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

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

H.E.H. v. S.L.H., [2005] N.S.J. No. 472, 2005 NSFC 19 (F.C.)(Levy J.F.C.)
Married 32 years, 2 adult children, wife 51
Wife housecleaner part-time, earns \$5,400
Husband machine operator, earns \$30,636, new partner
Support fixed at \$840/mo., 40% of gross income difference
Based on husband's low income, his payment of medical/drugs for wife, new partner

(Range: \$789-\$1,051)

Larocque v. Larocque, [2005] S.J. No. 695, 2005 SKQB 440 (Q.B.)(Sandomirsky J.)

Together 19 years (married 6?), wife 36

Husband earns \$58,000, wife earns \$13,000 maximum cleaning

Wife entitled to non-compensatory support

Low end of range would be \$1,067 (high end \$1,425)

Wife seeks \$1,000, granted

Wife's school program finished in 2-3 years, but no time limit, indefinite

Gosling v. Gosling, [2005] B.C.J. No. 2421, 2005 BCSC 1580 (S.C.)(Williams J.)

Married 14 years, 2 children 24 and 22, with mother, not "children of marriage"

Separation in June 1992, wife 39 then (52 now), relationship continued after separation

Property reapportioned, home 72/28 to wife, husband's pension 30% to wife

No retroactive spousal or child support, previous agreements

Wife earns \$31,090, husband earned \$86,262 in 2003 (2004 unusually high)

Guidelines mentioned, spousal support of \$1,000/mo., indefinite

(Range by Divorcemate: \$966-\$1,287)

Poirier v. Poirier, [2005] O.J. No. 4471 (Ont.S.C.J.)(Charbonneau J.)

Married 34 years, 2 children

Husband earns \$420,000 from businesses, wife \$10,800 in interest income

Husband's income fixed at "ceiling" of \$250,000, wife imputed income of \$50,000

Support of \$7,000/mo., indefinite (40 per cent of gross income difference)

Law v. Law, [2005] A.J. No. 1315, 2005 ABQB 723 (Alta.Q.B.)(Clackson J.)

Married 35 years, 2 adult children, husband 57, wife 55

Husband earns \$131,000, wife \$51,000

Range \$2,500-\$3,333 (37.5 to 50 per cent), indefinite

Order for \$3,000, to cease when husband retires and pension divided

To continue at 45 per cent of gross income difference

Nasby v. Nasby, [2005] S.J. No. 619, 2005 SKQB 422 (Sask.Q.B.)(Wilkinson J.)

Married 24 years, 4 children, youngest unemployed and with mother

Wife earns \$14,195 as bartender, husband earns \$72,779 (est.)

2001 agreement: \$669 child support, \$1,331 spousal support, \$2,000 "cap"

Range \$1,831 to \$2,491 if 2004 incomes used

Or \$1,344 to \$1,792 if estimated lower incomes for 2005 used

Order of \$2,000 maintained on interim basis until trial

Cunningham v. Montgomery-Cunningham, [2005] O.J. No. 4297 (Ont.S.C.J.)(Fragomeni J.)

Married 22 years, 1 child 20 and independent

Wife says husband's 2004 income \$347,000, income at least \$139,000

Wife's income \$101,800, says husband, at least \$92,200

Order of \$1,500 interim, "guided by" Guidelines

[Range estimated as \$1,292 to \$1,733]

Morash v. Morash, [2005] S.J. No. 618, 2005 SKQB 411 (Sask.Q.B.)(Wilkinson J.)

Married 31 years, 1 child now 27
Wife homemaker, now educational assistant, earns \$20,674
Husband earns \$73,263, made voluntary non-deductible payments of \$1,441/mo.
Range stated as \$2,037 to \$2,717, order for \$2,250 interim

Hesketh v. Hesketh, [2005] O.J. No. 4053 (Ont.S.C.J.)(Heeney J.)
Married 17 years, wife 54 (49 at separation)
Entitled on compensatory (many moves and lost job) and non-compensatory grounds
Wife earns \$13,000, working 35 hours per week
Husband earned \$85,667 in 2004
Interim voluntary support of \$1,500
Range \$1,544 to \$2,059, indefinite (rule of 65)
Husband's new partner makes \$56,000, reason to go higher than range
Order for \$2,200, indefinite, plus \$424/mo. for 10 years for equalization payment

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

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

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

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

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

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

Bishop v. Bishop, [2005] N.S.J. No. 324, 2005 NSSC 220 (N.S.S.C.)(LeBlanc J.)
Together 13 years, 12 married, no children, wife 47 at separation
Wife health problems, irritable bowel syndrome, depression, etc., unable to work
Husband corporal in Armed Forces, earns \$57,300, cohabiting with partner and her 2 children
Range reported as \$1,188-\$1,584 (but actually \$931-\$1,241)
\$1,000 per month, for 10 years (11 in total), ordered

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

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

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

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

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

Romaniuk v. Romaniuk, [2005] O.J. No. 1818 (Ont.S.C.J.)(Maranger J.)

Together 9 years (married 3), wife 38 at separation, husband \$72,400
Wife in school til June 2006, husband went bankrupt, left with with debt
\$2,000 ordered til June 2006, then \$400 til debt paid in full
Guidelines “considered”, but no details (range would have been \$815-\$1,086)

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

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

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

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

3. The *With Child Support* Formula

Leading Decisions

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

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

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

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

Other Trial Decisions [beginning with most recent decisions and working backwards]

Dunning v. Dunning, [2006] O.J. No. 1927 (S.C.J.) (T.M. Wood J.)
Together 6 years (married 5), 2 children (ages 3 and 1) with wife
Application to vary 2005 consent order for child and spousal support
Father employed in U.S., income in \$Can set at \$160,893 resulting in child support of \$2,118
Mother registered nurse, moved back from U.S. after separation; presently earning \$20,000
from 2 part-time jobs
Uses SSAG range of \$2,568 to \$3,411 spousal support (giving wife 53.7% to 58.2% NDI);
duration indefinite but ceases when youngest child turns 18
Spousal support set at lower end of range (\$2,568) because wife's income will increase as
children get older and should be allowed to do so within reason without support being affected.
Review after 5 years at instance of either party

McCorriston v. McCorriston, [2006] S.J. No. 277, 2006 SKQB 217 (Q.B.F.L.D.)
(Ryan-Froslic J.)
Together 11 years (married 10 ½), 3 children 6, 5 and 5 with wife, husband 42, wife 44
Husband earns \$47,838 at CN Rail in Ontario
Child support \$899 plus s. 7(1)(f) expense contribution of \$41
Interim spousal support paid for 2 years of \$800, then \$453/mo.
Wife at home during marriage, now earns \$5,592 in retail part-time
Increasing to \$10,296 in fall 2006 and \$15,440 in fall 2007
Spousal support \$600/mo. to Sept. 2006, \$300 to Sept. 2007, then terminates
Wife argued for indefinite support until children finish high school
SSAG ranges (not taking into account s. 7 expenses, using Childview) if wife's income \$5,592:
\$23 to \$260; if wife's income \$10,296: 0 to \$71

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

Christensen v. Christensen, [2006] B.C.J. No. 930, 2006 BCSC 647 (S.C.)(Master Keighley)
Married 25 years, daughter 19 in college living with husband, no child support by wife
Daughter 26 employed, 21-month-old child, living with wife
Wife earns \$37,389 in Costco photo lab, husband earns \$87,860 in sales
No interim spousal support, submissions under Advisory Guidelines "considered"
[Range under custodial payor formula: \$1,055-\$1,406 assuming zero child support]

Frass v. Frass, [2006] S.J. No. 287, 2006 SKQB 189 (Q.B.F.L.D.)(Sandomirsky J.)
Child 9 with wife, interim child support \$625 plus \$58 for child care
Husband earns \$73,262, wife earns \$29,289
Interim spousal support: wife seeks \$750, husband offers \$200/mo.
Guidelines range stated as \$900 to \$1,100 by court, but husband paying debts
Interim spousal support reduced to \$700/mo.

Palmer v. Arena, [2006] O.J. No. 1811 (S.C.J.)(Gauthier J.)
Together 8 years (married 3 plus), child 5 with wife, husband 47, wife 48
Husband bipolar disorder, CPP disability, \$11,520, no child support (table \$111)
Wife earns \$75,000, child care \$200-\$250/mo.
Interim spousal support of \$750 paid for past 2 years
Custodial payor range rejected as "insufficient", support ordered at \$1,000 for 3 years
[Range estimated \$473 to \$630, for 4 to 8 years, order within global range by restructuring]

M.R.M. v. I.M.M., [2006] B.C.J. No. 1034, 2006 BCSC 568 (S.C.)(Joyce J.)
Married 28 years, 1 child 16 with husband
Wife earns \$39,819, child support \$342 plus \$68 for Catholic school fees
Husband earns \$63,000
Range \$600 to \$800, equalize standards of living, \$700/mo., indefinite

McGuckin v. McGuckin, [2006] B.C.J. No. 859, 2006 BCSC 582 (S.C.)
(Master Keighley)
Married 22 years, wife 55 (53 at separation), husband 49, 1 child 16 with wife
Husband Canada Post supervisor, earns \$54,000
Wife accountant/business, motor vehicle accident, income reduced, \$16,250
Child support \$469, interim spousal support \$700/mo, within Guidelines range
(Range estimated at \$316-\$779)

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

Boucher v. Boucher, [2006] N.S.J. No. 129, 2006 NSSC 88 (S.C.F.D.)
(Legere-Sers J.)

Married 13 years, 4 children (24, 22, 20, 18), separated 1993, wife 53 now (43 then)

Husband doctor, earns \$294,735, remarried

Wife no income

Husband supported all four children, paying child and spousal totalling \$52,000/yr.

Advisory Guidelines suggest 13 year maximum duration, hybrid formula

(Range \$4,000 to \$5,330, but self-sufficiency issues)

Support for 3 more years: \$3,000/mo. 2006; \$2,500/mo. 2007; \$2,000/mo. 2008

S.R. v. N.R., [2006] B.C.J. No. 627, 2006 BCSC 412 (S.C.)(Metzger J.)

Married 11 years, both 40, 1 child 11

Reapportionment of condominium 100% to wife

Husband engineering business, income \$95,000

Child support \$729, interim spousal support was \$1,500/mo.

Wife doing Ph.D., one more year, 18 months time limited spousal support

\$2,500 per month, considered Advisory Guidelines, leaves each with 50% NDI

Wife working in 2006, likely earning \$32,400, seeks \$1,000/mo. spousal support

Wife says range \$562-\$1,311, husband says \$399-\$857, \$750 ordered

Yetman v. Yetman, [2006] O.J. No. 926, 2006 CarswellOnt 1374 (S.C.J.)

(Henderson J.)

Variation of interim order, 3 children, now only 2 dependent, incomes increased

Husband now earns \$89,388, wife earns \$21,300

Child support \$1,128 plus \$2,000/yr. for s. 7 education expenses

Advisory Guidelines considered, for order of \$1,400/mo.

(Range estimated: \$1,061-\$1,645)

Harding v. Harding, [2006] N.J. No. 64, 2006 NLTD 38 (S.C.T.D.)(Fowler J.)

Married 26 years, 2 children 18 (university) and 14 (high school), traditional marriage

Wife earns \$23,300 as cashier, husband earns \$99,500 CGA with Health Corp.

Child support: \$728 table for younger

Husband pays \$464 for older, based on budget after deduction of RESP

Guidelines range stated as \$1,570-\$2,256, "not totally realistic"

(Range actually \$1,297-\$1,890)

Husband offers \$1,000/mo., informal interim amount \$900

Order for \$1,200 indefinite (\$1,000 adjusted up for tax)

R.L.G. v. R.G.G., [2006] B.C.J. No. 466, 2006 BCSC 348 (S.C.)(Silverman J.)

Married 21 years (25 years together), 3 children 20, 18 and 14

Youngest child with wife, other 2 in college/university

Child support \$1,314 (3) plus 70% of \$8,000 university expenses

Husband federal civil servant \$78,236

Property divided, house reapportioned 60/40 to wife

Wife earned \$34,500 in 2004, 2005 health problems, surgery

Wife working in 2006, likely earning \$32,400, seeks \$1,000/mo. spousal support

Wife says range \$562-\$1,311, husband says \$399-\$857, \$750 ordered

DeCamillis v. DeCamillis, [2006] B.C.J. No. 2959, 2005 BCSC 1826 (S.C.)(Master Donaldson)
Married 23 years, 3 children 10, 19 and 13, with wife, child support \$2,507/mo.
Husband earns \$172,000, wife no income, \$30,000 imputed
Range \$2,627-\$3,441, interim spousal support \$3,250

McGahey v. McGahey, [2006] O.J. No. 738, 2006 CarswellOnt 1081 (S.C.J.)(MacKenzie J.)
One child, 7, with wife, child support \$648
Husband \$81,000, wife \$25,000 imputed, range \$1,078-\$1,684
Interim spousal support \$1,200

Verscheure v. Verscheure, 2006 CarswellOnt 832 (S.C.J.)(Marshman J.)
Together 11 years (10 married), 2 children
Wife little employment effort in 5 years, no income
Husband earns \$240,060
Child support \$2,698 til Sept./05, then children with husband
Spousal support paid for 5 years already
Custodial payor range \$2,469-\$3,292
Interim order \$3,750 for 6 months, \$3,000 for 6 mos., then \$2,500 til trial

Marr v. Marr, [2006] B.C.J. No. 339, 2006 BCSC 254 (S.C.)(Kelleher J.)
Married 8 years, 2 children 8 and 4, shared custody
Husband earns \$197,500
Child support agreed, 2/3 of table amount \$1,466
Wife living with new partner, no income
Interim spousal \$6,650/mo., husband's income reduced by 47% since
Husband proposes \$3,525, range \$4,541-\$5,458, order for low end, \$4,700

A.T. v. C.T., [2006] B.C.J. No. 309, 2006 BCSC 240 (S.C.)(Sinclair Prowse J.)
Married 22 years (plus one year cohabitation), husband and wife 43 (41 at separation)
3 children: 22, 20, 14, 2 youngest with wife
Husband Armed Forces, earns \$63,948
Child support \$846 (2) for 7 mos., then \$527 (1)
Wife taking residential care course for 7 mos. at community college
Spousal support indefinite, review in 4 years when last child finishes high school
Wife earns \$12,480 part-time, then \$27,967 full-time after course finished
Range calculated by "arithmetic", uses "difference" in net incomes
Order for \$604, then \$378/mo.
(Range for full-time: \$624-\$1,030 (2 children, part-time); \$321-\$813 (1, full-time))

Cornish v. Bacic, [2006] O.J. No. 397 (S.C.J.)(Pepall J.)
Married 10 years, 2 children 10 and 7 with husband
Husband earns \$95,626
Wife no income, previously earned \$22,620, that amount imputed
Range \$660-\$880, "too low", orders interim support of \$1,000/mo.

Pollock v. Pollock, [2006] O.J. No. 504 (S.C.J.)(Shaw J.)
Married 22 years, wife 43, husband 49
3 children, one with wife (age 14), 2 with husband (21/18)

Husband receives \$50,700 workers' compensation and CPP Disability
CPP payments to children too, husband paying debts
Wife no income, in mortgage-free family home
Counsel agree Advisory Guidelines "not of assistance"
Spousal support \$850/mo. (Range: \$776-\$966)

Lawrence v. Lawrence, [2006] B.C.J. No. 210, 2006 BCSC 167 (S.C.)(Ross J.)
Married 19 years, husband 42, wife 41 (40 separation)
4 children, 19, 19, 17, 15, with husband
Wife in Winnipeg with her parents, receiving \$8,890/yr. social assistance
Husband earns \$57,876 as manager of early childhood centre
Property divided, but home and substantial debts to husband
Custodial payor range, \$836-\$1,115, 9.5 to 19 years
Wife's social assistance not to be included in her income
Compensatory claim after traditional marriage, wife with health problems, unemployed
Mid-point of range, \$975/mo., review in 2 years as to wife's self-sufficiency efforts
No reduction for debts, as considered in property division

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

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

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

Wegner v. Wegner, [2005] B.C.J. No. 2290, 2005 CarswellBC 2488, 2005 BCSC 1497 and
[2005] B.C. J. No. 2020, 2005 CarswellBC 2195, 2005 BCSC 1294 (Metzger J.)
Married 20 years, 2 children 18 and 16 (plus 1 independent), wife 47 (45 separation)
Husband 49, earns \$111,502 as business executive

Wife self-employed writer, earns \$7,500, could earn \$12,000
Child support \$1,336
Spousal support range \$2,103 to \$2,627, \$2,300 ordered, indefinite

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

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

Ignacy v. Ignacy, [2005] O.J. No. 5264 (S.C.J.)(Gordon J.)
Interim interim decision, 2 teenagers
Husband earns \$127,286, wife \$66,640
Guidelines used, spousal support of \$1,000 ordered
No child support stated, but table \$1,524/mo.
(Range \$214 to \$1,177)

Hopper v. Hopper, [2005] A.J. No. 1825, 2005 ABQB 985 (Q.B.)(McMahon J.)
Married 25 years, 2 children 22 and 18, students, wife 53 (48 at separation), husband 56
Husband earns \$310,000 as anaesthetist, pays \$60,000 for all children's expenses
Wife trained as podiatrist, once earned \$43,000, but little now
Separated 2000, wife cashed in RRSPs of \$108,000, received \$20,000 interim lump sum
Then interim spousal support of \$2,500 for 19 months
Advisory Guidelines "not helpful" "in complex circumstances of this case"
Spousal support of \$6,000/mo. ordered, for 5 years (i.e. 10 years total) while rebuild practice
(Custodial payor formula range, if \$40,000 imputed to wife: \$5,363 to \$7,150)

Hennesey v. Hennesey, [2005] A.J. No. 1703, 2005 ABQB 883 (Q.B.)(Foster J.)
Together 17 years (15 married), 2 children 18 and 15, equal shared custody
Husband's income \$244,000
Interim child support \$2,170, spousal support \$2,500
Child support \$1,500, plus 100% s. 7 expenses (vs. table amount for 1, \$1,891; for 2, \$2,978)
Older child in university, summer employment with father, part-time job
Entitlement to spousal support, wife at home later in marriage, health issues
Wife previously loan officer and assistant bank manager, failed businesses after separation
Claim for \$5,000 to \$6,000 based upon Guidelines
Budget of \$7,835, cut down to \$3,200 and spousal support of \$3,200 awarded
(Range, at full table amount for 2: \$5,695-\$6,773)

Phillips v. Phillips, [2005] B.C.J. No. 2495, 2005 BCSC 1614 (S.C.)(Scarth J.)
Together 24 years (married 7), 2 children 16 and 13, with wife

Master ordered interim child support \$750, spousal support \$500, spousal appealed
Wife earns \$25,000, claims husband earns \$68,589
Husband claims on appeal that earns only \$50,000
Husband's income fixed at \$60,000, Advisory Guidelines range stated as \$213-\$721
Interim spousal support reduced to \$300
(Range at \$60,000: \$29-\$543)

Moggy v. Spry, [2005] O.J. No. 4939 (S.C.J.)(Del Frate J.)
Together 6 years (married 3), 1 child 8 months, with wife
Husband earns \$70,000, child support \$572, plus \$75/week child care
Wife 25 years old, student, only income Ontario Student Assistance Program (\$9,800?)
Range stated as \$975-\$1500, \$1,200 ordered on interim basis

Warren v. Warren, [2005] N.J. No. 335, 2005 NLUFC 38 (U.F.C.)(Noonan J.)
Together 7 years, married 4, 2 children 9 and 6 (mild cerebral palsy), with wife
Husband lives with partner and her two children (she earns \$29,200)
Husband construction worker, income issues, income \$41,243
Wife finished business course, thinks job possible at \$26,000
Child support \$551, plus 50% s. 7 expenses
Interim spousal support \$700 when no income
Entitlement, but no ability to pay using Guidelines and ChildView
(If wife earns \$26,000, zero support, wife has 50% INDI)

J.S.G. v. A.G.G., [2005] B.C.J. No. 2228, 2005 BCSC 1457 (B.C.S.C.)(Gray J.)
Together 16 years (married 13), wife 49 at separation, 2 children
Husband earns \$106,000, cohabiting, wife earns \$29,000 as care aide (casual)
Reapportionment of equity in matrimonial home to wife, \$49,000
Child support \$1,282
Range \$1,400-\$2,050 indefinite
Compensatory claim, but reduced for reapportionment
Support of \$1,700 mid-range, indefinite

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

Wittich v. Wittich, [2005] N.S.J. No. 377, 2005 NSSC 265 (S.C.F.D.)(B. MacDonald J.)
Married 10 years, wife 54 (52 at separation), one child 16 with father
Romantic relationship for 6 years before marriage, lived in same house
while wife still married to first husband
But not count as cohabitation for pension division
Wife homemaker, pension income from divided pensions of \$6,540/yr.]
Husband earns \$80,762 from job and pensions, promised to take care of wife
Guidelines rejected, no time limits, "significant dependency", larger amount

Indefinite order, \$2,100 per month
[Custodial payor range: for 10 years, \$755-\$1,007, 5 to 10 years
for 16 years, \$1,208-\$1,611, indefinite as rule of 65 applies, disability exception?]

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

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

C.G. c. G.V., [2005] J.Q. no. 14420 (Que.S.C.)(Borenstein J.)
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
Range \$4,500 to \$6,000, \$4,500 indefinite ordered

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

M.A.C. c. S.H., No. 700-12-034289-041, August 26, 2005 (Que.S.C.)(Wery J.)
Married 19 years, 4 children, now 2 with mother
Husband works construction, income attributed at \$60,000
Wife cohabited for past year, husband cohabiting more recently
Child support \$975, spousal support at \$830 mid-point of range, indefinite

A.A. v. B.B., [2005] N.B.J. No. 340, 2005 NBQB 286 (N.B.Q.B.F.D.)(Tuck J.)
Married 23 years, 2 children 25 and 22, wife 43 at separation (50 now)
1998 separation agreement: \$210 spousal, \$390 child (1)

Wife disabled since 1984, arthritis, CPP disability
Child support from Sept. 2003 to Dec. 2005 graduation, table plus s. 7 expenses
Husband's 2005 income \$65,209 (3 year average), construction, \$62,132 in 2004
With child support range presented as \$997 - \$1,357 at \$62,132
(*Without child support* range \$1,292 - \$1,723 at \$62,132, \$1,381 - \$1,841 at \$65,209)
\$1,200 ordered

Fancett v. Deprato, [2005] O.J. No. 3860 (Ont.S.C.J.)(MacKenzie J.)
Together 4 ½ years, 1 child 6 with wife, wife 36 at separation
Husband now disabled, off job, but no evidence, 2004 income \$65,318
Child support \$545, plus \$332 for s. 7 expenses
Wife clerical job \$12,486, now cohabiting, seeks spousal for past 18 months
Unable to use Guidelines because of changing incomes (?), \$600/mo. ordered
Child and spousal support used to offset husband's equity in home
L.A.K. v. A.A. W., [2005] A.J. No. 1140, 2005 ABQB 657 (Alta.Q.B.)(Johnstone J.)
Interim support, together 30 years, married 28 years, 2 children 18 and 15 with wife
Husband earns \$92,495, no deduction for loss on hobby business
Child support \$1,208 plus s. 7 expenses for tuition and books at community college
Wife earns \$39,500 as clerk, works 87% due to medical problems
\$1,000/mo. at "upper end" of Guidelines range (estimated at \$580-\$1163)

Stieda-Everitt v. Everitt, [2005] B.C.J. No. 1556, 2005 BCSC 1034 (B.C.S.C.)(Ehrcke J.)
Married 19 years, 3 children with wife
Proceeds of sale of matrimonial home reappportioned 55/45 to wife
Husband earned \$68,590, now working part-time for \$37,700 and pursuing pilot's licence
Wife earns \$6,000 as substitute teacher
Full income imputed to husband, child support \$1,182
Range: \$606-\$919, \$650 ordered, indefinite, review in 24 months (wife sought lower end)

Hewko v. Hewko, [2005] B.C.J. No. 1416, 2005 BCSC 904 (B.C.S.C.)(Curtis J.)
Married 21 years, children 21 and 15, with wife, wife 43 at separation
1999 settlement: child support \$1,300, spousal \$3,000 and \$24,000 lump sum
Husband health problems, working part-time, earns \$58,164 (\$108,000 before)
Wife many health problems, university and teacher's degree not reasonable plan, no income
Child support reduced to \$795
Guidelines "in the range of \$1,400/month" (Range by Divorcemate: \$1,049-\$1,287)
Spousal support of \$2,000 ordered, reviewed in 18 months and \$25,000 then imputed to wife

M.S. v. W.S., [2005] B.C.J. No. 1447, 2005 BCSC 939 (B.C.S.C.)(Romilly J.)
Together 15 years (married 12), wife 36 at separation
2 children, 12 and 8, younger with learning disability and in private school
Equal division of family assets
Child support \$2,286 plus 80/20 split of s. 7 expenses (\$25,694/year)
Husband makes \$207,432 in family business
Wife returned to film school, paid by husband, could earn \$30-\$40,000 as animator
Guidelines "not law", spousal support of \$2,500 ordered
(Range by Divorcemate: \$3,941-\$4,897 if wife no income, \$3,432-\$4,539 if \$30,000)

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

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

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

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

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

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

Simmonds v. Simmonds, [2005] N.J. No. 144, 2005 NLUFC 10 (Nfld.U.F.C.)(Handrigan J.)
Married 4 years, 2 children 10 and 3, with wife

Husband makes \$83,945, wife \$10,210 part-time
Child support \$1,013 plus \$163 for day care
Formula calculated by arithmetic, range reported as \$650-\$925
Spousal of \$400 ordered, as requested by wife, review in October 2007
(Range by Divorcemate: \$839-\$1,416)

Skipton v. Skipton, [2005] N.S.J. No. 83, 2005 NSSC 43 (N.S.S.C.)(Warner J.)
Together 9 years (married 7), one child age 8, wife 32 at separation
Husband \$57,000 in military, wife \$5,700 employment insurance
Both formulas applied, with and without child support, as “check”
Formula calculated by arithmetic, low end of range reported as \$616. \$616 ordered.
(Range by Divorcemate: \$793-\$1,133)

Anderson v. Anderson, [2005] N.S.J. No. 176, 2005 NSSC 94 (N.S.S.C.)(Warner J.)
Together 12 years (married 11), custody in dispute, 2 children placed in husband’s custody
Husband makes \$50,000, wife now cohabiting and no income
Wife seeks \$500 per month for 14 months as spousal support
Wife’s request less than guidelines, so support ordered as requested.
(Hybrid formula: \$554-\$738, for 6-12 years)

Zelko v. Zelko, [2005] O.J. No. 653 (Ont.S.C.J.)(Cusinato J.)
Married 15 years, 2 children 14 and 12, wife 36 at separation
2001 order: \$1,031 child support, \$1,500 spousal support
2 children now with father
Wife makes \$14,000, i.e. child support of \$211
Wife still to receive \$1,500 spousal, indefinite
Discussion of guidelines, but unable to do calculations without software
(Hybrid formula: \$894-\$1,193 for 7.5 to 15 years)

Araya v. Gaete, [2005] O.J. No. 704 (Ont.S.C.J.)(Young J.)
Married 23-plus years, 3 children, 1 left with wife
Husband makes \$50,000, wife laid off, \$10,000 imputed
No child support, shared custody agreement
Guidelines cited in discussion on entitlement
\$800 interim spousal support ordered
(Range by Divorcemate: \$1,150-\$1,533 indefinite)

McPhee v. McPhee, 2005 CarswellOnt 683 (Ont.S.C.J.)(Gordon J.)
Application to vary, husband’s income reduced, wife’s increased
Child support adjusted, but spousal left unchanged at \$1,500 per mo.
Support still within range computed using guidelines (no details given)

B. SOME CRITICISMS AND SOME RESPONSES

The release of the Draft Proposal has already achieved one of its goals: the rekindling of a serious debate about the law of spousal support. In general, the guidelines have had a very warm reception from lawyers and judges, as people appreciate the benefit of greater

consistency and predictability. Again and again, we hear that it is helpful to have a range to know that one's claim, offer, settlement or decision is "in the ballpark".

Some criticisms are very specific, more in the nature of feedback about particular parts of the guidelines. These comments are very helpful, as we look to revisions and improvements to the guidelines over the coming year. Others criticize the very idea of guidelines, any guidelines, not just these guidelines, as they prefer pure case-by-case discretion. Often these criticisms assume a rigid scheme of guidelines, not the advisory guidelines we have actually published. We do not focus here upon either of these critiques.

In between are those who suggest that these particular guidelines are flawed. One of the major sources of these criticisms was the late Professor Jay McLeod, in his weekly newsletter. Some of the "flaws" identified by these critics flow from a misreading of the Draft Proposal. Many of the criticisms are not fleshed out, little more than "bullets". Below we have identified the most common "bullets".

(1) "Unprincipled"

Many of the critics simply don't like the current state of spousal support law. They prefer a stricter compensatory approach, a more "principled" approach, as if *Bracklow* never happened. The advisory guidelines are then criticized for not restoring this "principled" approach.

But the advisory guidelines are **not** a "law reform" project. It is not our task to change the broad principles of *Moge* and *Bracklow*. The law remains clear that spousal support can be found on compensatory and non-compensatory grounds. In turn, that law is reflected in the advisory guidelines on amount and duration. If the Supreme Court were to change the law, e.g. to narrow the scope of *Bracklow*, then the advisory guidelines would have to adjust too.

A related criticism has been that the advisory guidelines don't provide "principled" answers to the "hard questions" in spousal support law. Again, this is not a reform exercise. The "hard questions" are often entitlement issues. The guidelines identify these hard issues and often provide some assistance in their resolution, but there is no consensus in the current law and these hard issues are to be decided by the courts.

(2) Not Consistent with the Legislation, or Its Language

We have summarized each formula in a phrase, one that captures the current law on amount and duration in the relevant cases: "merger over time" for the *without child support* formula and "parental partnership" for the *with child support* formula. These phrases do not represent new theories of spousal support, just shorthand labels for the existing law which is set out in more detail in Chapters 5 and 6 of the Draft Proposal. The *without child support* formula reflects the mix of compensatory and non-compensatory thinking found in *Moge* and *Bracklow*, which interpreted the objectives of s. 15.2(6) of the *Divorce Act*. The *with child support* formula is profoundly compensatory, reflecting the analysis of *Moge*, which in turn emphasized paragraphs (a) and (b) of s. 15.2(6).

(3) Consistency for Consistency's Sake

Professor McLeod referred to “the appeal to unprincipled consistency”. What comes to mind is Ralph Waldo Emerson’s famous quote: “a foolish consistency is the hobgoblin of small minds”. In the law of spousal support, a little consistency would not be “foolish”. But this is not consistency for its own sake. It’s about a fundamental principle of law: equal treatment, the similar treatment of similar cases. These formulas generate outcomes across a wide range of cases in a consistent, principled fashion, serving as a healthy check upon one’s “gut feeling” or budget-based result.

(4) Just “Averages”

The formula ranges are not just “averages” of all the spousal support cases decided out there. Given the wild scatter of outcomes, that would not be helpful or instructive.

Judgment had to be exercised by us to identify the dominant ranges of support outcomes, those clusters you can find in the cases. Negotiated settlements don’t always track the decided cases and here we had the benefit of the expert advice of the Advisory Working Group on Family Law. Some cases contain exceptional facts, that would take them out of any formula. We had to classify categories of cases, starting with the big divide in the case law between cases with and without dependent children. In some sub-sets of cases, we had to identify emerging trends in the law, e.g., short marriages with young children. The formulas are the product of a comprehensive process of review and testing before the release of the Draft Proposal by the federal Department of Justice.

And the formulas are not the guidelines, a point which also takes us to the next bulleted criticism.

(5) Too Rigid

Those that worry about the advisory guidelines being “too rigid” reach this conclusion by one of three routes. Some assume a more rigid scheme than the one we proposed, without reading the full Draft Proposal. Others focus upon the formulas to the exclusion of the rest of the guidelines. And a third group predicts that the advisory guidelines will be applied in a rigid and inflexible fashion, whatever the intentions of the authors.

There are critical steps *before* the formulas: application, entitlement, determination of income, ceilings and floors. And there are critical steps *after*: location within the ranges, restructuring, exceptions, variation and review. By these steps, there remains room for the exercise of judgment on the facts of an individual case, facts other than those built into the formulas.

Nothing in the case law or experience so far suggests that judges are applying the advisory guidelines in a rigid fashion.

(6) “Too Low” or “Too High”

The *Divorce Act* is a national statute and these advisory guidelines generate ranges that must operate across the country. In some “high support” areas, like the 416 and 905 area codes

of Ontario, the ranges are sometimes criticized as “too low”. In other “low support” areas, like New Brunswick, we hear the ranges are “too high”. These statements tend to be impressionistic in nature.

First, both formulas already adjust for income levels. The formulas will generate lower support numbers in lower-income areas and higher ones in higher-income areas. The *without child support* formula also adjusts for length of marriage. The *with child support* formula also adjusts for taxes, number of children, child benefits and child support obligations. To the extent that a region or locality has lower incomes or more traditional marriages or longer marriages or more children, the formulas make adjustments.

Second, as we travel across the country, we continue to update the research and apply these formulas to the cases decided in the past two or three years – those cases where entitlement has been found – with interesting results. In general, about 50 to 65 per cent of cases fall within these ranges, or very close to the ranges. In areas where spousal support tends to be lower, like New Brunswick, trial decisions tend to cluster at the lower end of the ranges, but still within the ranges. In Alberta, cases were well-distributed across the ranges, with some higher and some lower. (There was a particular cluster of cases below the *without child support* range in Alberta, cases of long traditional marriages where the wife had little or no income.) The British Columbia decisions fit the formulas particularly well. In most jurisdictions, the *with child support* formula “fits” the cases slightly better than does the *without child support* formula, if only because there are more exceptions in the latter cases.

The “too low” or “too high” criticisms would suggest that most cases in those provinces will fall outside the ranges, something that has not proven to be the case in any research so far, despite first impressions.

(7) Couldn't the *With Child Support* Formula Be Simpler? Why Software?

There are two criticisms here: one a wish for greater simplicity, and another about the need for computer software. At first glance, some like Prof. McLeod say, “there had to be a simpler ‘unit pricing’ scheme”. The *without child support* formula can be calculated on the back of an envelope. Why not the second formula too? Short answer here. Simple gross income formulas just didn't work.

Section 15.3 of the *Divorce* Act requires that priority be given to child support and that spousal support be paid out of what's left over. Determining “what's left over” is what we call “individual net disposable income”. It requires close consideration of taxes and deductions, government benefits and credits, and the tax effects of some section 7 expenses. Spousal support is not simple in these cases and any useful formula has to make a wide range of automatic adjustments. In short, the real world is complicated and so too must be the formula.

Both DIVORCEmate and ChildView can now do these calculations, as can the AliForm software used in Quebec. Some lawyers object to the use of software, based upon expense or other concerns. Without software, it is very difficult to provide reliable net income figures or section 7 expenses or other critical numbers, even if we did not have spousal support guidelines.

There is a live concern for unrepresented and self-represented litigants. Here the software issue is part of a much larger problem of access to legal information and advice, not unique to spousal support guidelines. And the glib answer here is that it's not as if the current law of spousal support is so readily accessible to unrepresented spouses. It is a serious issue in family law generally and we are working on ways to make the numbers more widely available.

(8) What's the Courtroom Status of the Guidelines?

The advisory guidelines are not "law" and will not be legislated. But neither are they "evidence" or "expert evidence" and there is no need to "prove" the document. The Draft Proposal is really part of legal argument and reasoning. The Draft Proposal can be cited like any other article, text or government document. This approach has been adopted by the B.C. Court of Appeal in the *Yemchuk* case and by Justice Martinson in *W. v. W.*, both found in the list of cases above.

For the advocate, the guidelines build upon the existing use of software calculations of net income and support scenarios, already presented by lawyers and accepted by judges. The guidelines ranges can best be presented as part of the brief or argument: first you argue the statute and broad principles, then a few similar cases, then the usual budget, expense and ability to pay arguments, capped off by a presentation of these ranges. The ranges can be argued to reflect the dominant ranges of the existing case law on amount and duration, as explained above.

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

C. SOME MISUNDERSTANDINGS

As you can see from the above criticisms, a number of them are based upon misunderstandings or misreadings of the Draft Proposal. In this section, we want to highlight and correct a few other common misunderstandings we have identified in our travels across Canada.

(1) "Indefinite" Doesn't Mean "Permanent"

For some reason, the release of the advisory guidelines has caused some people to think that the concept of "indefinite" support has changed. "Indefinite" under the guidelines still means what it has always meant: an order without specific time limit at the time it is made, subject to the usual processes of variation and review. Under the guidelines, "indefinite" support is not "permanent" support. Some lawyers seem to think that "indefinite" orders under either formula mean that the recipients will receive the amount initially determined until they die. The normal process of variation and review means that the amount will usually be modified, reduced or even terminated when entitlement ceases.

(2) The Formulas Don't Work Above the Ceiling

The “ceiling” is set at a gross annual income for the payor of \$350,000. As we have said, we are looking for feedback on whether this ceiling itself is too high. When the payor’s income exceeds that ceiling, the formulas no longer operate and you are into the wild blue yonder of individual decision-making. Some lawyers for recipients incorrectly attempt to use the formula ranges to push for very high amounts in these “above-ceiling” cases. This is a misuse of the formulas, as the Draft Proposal makes clear. The use of the formulas in such cases only serves to discredit them, even though they work reasonably well in typical cases.

(3) The Exceptions Are Not Exhaustive

In listing “exceptions”, we have identified five commonly-recurring fact situations that justify a departure from the formula results. Other “exceptions” are identified in various parts of the Draft Proposal. The list of exceptions is plainly not exhaustive. Going back to basics, these guidelines are “advisory” only, so that the guidelines outcomes need not be applied where they don’t make sense. The whole idea of advisory guidelines is to leave sufficient flexibility to make case-by-case adjustments or “exceptions” as necessary, unlike the rule-like Child Support Guidelines.

(4) High Assets and Unequal Division of Property Can Be an “Exception”

A good example of this flexible approach would be our approach to the issue of an “exception” for high asset cases or cases where there is an unequal division of property. We say that there should not be an “automatic” exception for such cases, as the current case law is not clear whether spousal support should be reduced or refused just because of the property division (apart from any income issues). But it is clear that the property division may lead to a departure from the formula outcomes in any particular case. If both parties have high assets, a court may find no entitlement, as both parties are seen as self-sufficient. Or, if there is an unequal division of property based upon compensatory considerations, as occurs in B.C., again there may be a reduction or even elimination of spousal support in some cases. Most often, adjustments for property division can occur in locating the amount or duration within the ranges.

(5) The *With Child Support* Formula Requires Iteration, Not “Arithmetic”

As mentioned above, the calculations under the *with support* formula require software. In those provinces where DIVORCEmate or ChildView are commonly used, this misunderstanding has not arisen. But in those where software is rarely used, both lawyers and judges have used “arithmetic” to do the calculations. By “arithmetic”, we mean that the individual net disposable incomes of the spouses are calculated, the two combined and then the percentages of 40 and 46 per cent of INDI applied to this total and then support determined. We appreciate that the formula in the box might leave this impression, even if the text of Chapter 6 or the more detailed Appendix C clarifies the point.

But it's not a matter of subtraction, addition and division. It's a matter of "iteration", which requires software. What the software does is, by increments, to increase the amount of spousal support and, for each iteration, to work out the tax and benefit implications for each increment, until the formula percentages are obtained. Complicated, yes, but necessary. Each transfer of a dollar from the higher-income payor to the lower-income recipient increases the size of the INDI pool, because of the tax advantages of deductible-includible spousal support. Further, the payment of spousal support will reduce the recipient's child tax benefit and GST credit. In effect, determining 40 to 46 per cent of INDI requires you to hit a moving target.

The use of "arithmetic" to determine the range under the *with child support* formula will generally underestimate both ends of the range, as can be seen from the cases noted above. Only with software can the formula ranges be correctly calculated.

(6) Duration under the *With Child Support* Formula in Shorter Marriages

Under the *with child support* formula, all orders are "indefinite in form". Again, "indefinite" has its usual meaning, as we explained above, including the processes of variation and review. We have also set out in Chapter 6 of the Draft Proposal what we call "outside time limits", i.e., a generally-understood outside limit on the eventual duration of these "indefinite" orders. We posit two tests for these "outside time limits": a longer-marriage test based upon length of marriage and a shorter-marriage test based upon the age of the last or youngest child. There has been some misunderstanding of this second, shorter-marriage test, similar to that with "indefinite" orders generally. A recipient in a shorter marriage under the *with child support* formula does not simply receive the amount of spousal support initially determined until the youngest child finishes high school. The amount of support will be varied or reviewed over time, especially in response to the recipient's employment and income situation. Where the recipient remarries or repartners, the support will reduce or even terminate. Other entitlement issues will arise. Very few recipients will actually receive spousal support until this "outside time limit" and those who do will be receiving reduced amounts.

D. SOME POSSIBLE REVISIONS

While we have this opportunity, we want to highlight three possible revisions to the advisory guidelines, ones that we can already predict. For the *with child support* formula, there is one other significant change, the new table amounts of child support that became effective May 1, 2006 under revisions to the *Federal Child Support Guidelines* (SOR/2005-400) and their provincial counterparts. The new table amounts are generally higher, reflecting federal and provincial income tax reductions since 1996-97. In general, the effect of these new table amounts is to reduce the quantum ranges under the *with child support* formula, although the reductions may be small. These amendments also include a new definition of "extraordinary" for expenses under section 7(1)(d) and (f).

(1) *Contino* and Shared Custody

On November 10, 2005, the Supreme Court of Canada handed down its decision in *Contino v. Leonelli-Contino*, [2005] S.C.J. No. 65, 2005 SCC 63, addressing the contentious

question of child support in shared custody cases under s. 9 of the Child Support Guidelines. This is not the place for a detailed account of the decision. It is enough to say that the Court ruled that the starting point under s. 9 should be the simple set-off of the table amounts for the number of children involved in the shared custody arrangement. The use of multipliers was rejected. In moving up or down from that set-off amount, a court should exercise its discretion by looking at the actual expense budgets of the parents, any special or extraordinary expenses for the children, the assets and liabilities of the parents, and – most importantly – the child’s standard of living in each household. Of particular importance, it appears, is whether the child support order is an initial order or a variation after a change to shared custody, as was the case in *Contino*. In the result, the Court ordered support of \$500 per month, higher than the simple set-off amount (\$128), lower than the full table amount (\$688), but higher the Ontario Court of Appeal figure (\$400).

We are currently discussing whether there should be any adjustments to the shared custody version of the *with child support* formula, now that *Contino* has been decided. We will let you know as soon as possible.

One point should be noted already. In cases of shared (and split) custody, lawyers should look closely at the family net disposable income results (including both child and spousal support in the recipient’s income), to ensure a reasonable over-all allocation of net income.

(2) Adult Children, Section 3(2)(b) and the Choice of Formula

The *with child support* formula works best where there is a table amount plus section 7 expenses. But there are a number of these cases that do not use table amounts, that fall within s. 3(2)(b) of the *Child Support Guidelines*. Why? Because the children attend a post-secondary institution away from home. Or they make a sizeable contribution of their own to their expenses. Or there are other non-parental sources to defray education expenses, like scholarships, RESPs or grandparents. In these cases, an individual budget is usually constructed and any remaining deficit apportioned between the parents, the old *Paras* method. The result is a different and usually lower amount for child support, that does not reflect the usual table-plus amount.

We would now recommend that, in these s. 3(2)(b) cases, it would be better to use the *without child support* formula, with one adjustment. Once you have calculated each spouse’s child support contribution, then gross up that amount and deduct it from each spouse’s gross income. Once gross income has been adjusted, then proceed to determine the gross income difference and work out the spousal support, in the usual manner under this formula. There is a further advantage in using the suggested approach in these cases, as most of these spouses will soon “cross over” to the *without child support* formula in any event, as these last children cease to be “children of the marriage”.

This version should only be used where there are no other children for whom a table amount of child support is being paid, e.g. *not* where there is one child at home in high school and one away at university. This formula can now be calculated with the new versions of ChildView and DIVORCEmate.

(3) Consideration of Net Incomes at the Extremes of the Without Child Support Formula

The *without child support* formula uses gross incomes and the gross income difference to determine the amount of spousal support. In two situations, however, you must also examine net incomes closely. First, where the payor's gross income is down near the floor, net income and ability to pay of the payor is a critical consideration, not just for the exception between \$20,000 and \$30,000 per year, but even just above \$30,000. Second, at the other extreme of the *without child support* formula, where the maximum range hits 37.5 to 50 per cent of the gross income difference, you should carefully compare the net incomes of the spouses. In particular, net incomes should be considered closely in these cases where the payor spouse is still in the work force and the recipient is not, to ensure that adequate allowance is made for the payor's taxes, deductions and work-related expenses.

We continue to travel around the country, speaking to lawyers and judges, responding to questions, eliciting comments and gathering feedback, all with a view to the revision of the *Draft Proposal*. We now expect that it will be fall 2007 before the "final" version is released. Until that time, we welcome any comments, criticisms or suggestions.

May 31, 2006

(revised June 21, 2006 to include the decision of the Quebec Court of Appeal in *G.V. v. C.G.* released June 5, 2006)