The revised and “final” version of the Spousal Support Advisory Guidelines will be released by the federal Department of Justice in July of this year. In this paper we will first outline some of the changes that will be found in the final version. Most of these changes were discussed in greater detail in our previous update paper, “The Advisory Guidelines 31 Months Later” (September 20, 2007) found on the Advisory Guidelines web site at: http://www.law.utoronto.ca/faculty/rogerson/ssag.html

Second, we will review the most significant developments in the case law, focussing on appellate level decisions. The most significant development is obviously the Ontario Court of Appeal’s endorsement of the Guidelines in its recent (January 2008) decision in Fisher v. Fisher, [2008] O.J. No. 38, 2008 ONCA 11. There have also been three recent decisions of the British Columbia Court of Appeal that are noteworthy: Beninger v. Beninger, [2007] B.C.J. No. 2657, 2007 BCCA 619 (December 2007) which offers a careful analysis of the use of the Advisory Guidelines in the variation context; Shellito v. Bensimhon, 2008 CarswellBC 469, 2008 BCCA 68 (February 2008) which deals with the disability exception; and Loesch v. Walji, [2008] B.C.J. No. 897, 2008 BCCA 214 (May 2008) which deals with the application of the Guidelines in high income cases over the $350,000 ceiling.

Following this, the paper goes on to specifically examine developments in the Ontario law of spousal support post-Fisher, offering practical suggestions for Ontario lawyers trying to develop a better understanding of the complexities of the Guidelines.

The appendices at the end of the paper provide summaries of recent Guidelines cases (since Sept. 12, 2007), not just from Ontario but from across the country. As the Advisory Guidelines become more frequently used in Ontario following Fisher, lawyers and judges will need to develop a more sophisticated understanding of their application. With more regular use, lawyers and judges will start moving beyond the formula ranges to deal with the other parts of the Guidelines scheme, including issues of entitlement, using the ranges, restructuring, exceptions and the application of the Guidelines on variation and review. A rich body of case law has developed in British Columbia as a result of the early and strong appellate endorsement of the Guidelines there and it offers a
helpful resource for Ontario lawyers trying to develop more sophisticated Guidelines arguments.

A. WHAT TO EXPECT IN THE FINAL VERSION

The changes that you will see in the final version of the Advisory Guidelines when it is officially released in July will by and large be no surprise. Much of the basic structure of the Guidelines remains the same. The document has been rewritten and re-organized to clarify meaning, to incorporate the three years of on-the-ground experience with the Guidelines, and to focus attention on issues that are often ignored, such as entitlement, application, using the ranges, restructuring, exceptions and self-sufficiency.

First, what won’t be changed in the final version:

- Even after the final version, the Guidelines will not be legislated, but will remain “advisory”.
- The two basic formulas – the without child support formula and the with child support formula – will not be changed, although there will be some minor tweaking.
- There will not be formulas to deal with some of the hard issues on variation and review: remarriage or repartnering of the recipient, second family obligations of the payor, or post-separation income increases for the payor.

Second, with respect to significant revisions, we have flagged the majority of these in our on-going updates:

- definition of income: social assistance to be excluded for spousal support purposes; Universal Child Care Benefit (UCCB) to be included
- without child support formula: maximum end of range for amount to be capped at 50 per cent of net (rather than gross) income
- “indefinite” support: change of terminology to “indefinite (duration not specified)
- with child support formula: addition of lower end of range for duration
- with child support formula, shared custody: shared custody formula adjusted to always include a 50/50 split of net family income
- step-children: with child support applies
- with child support formula, adult children: a special, hybrid formula added for adult children who are receiving child support under s.3(2)(b) of the Child Support Guidelines
- exceptions: several new exceptions added:
  - reapportionment of property in B.C.
• basic needs/hardship: inability to meet basic need in shorter marriages under the without child support and custodial payor formulas where the recipient has little or no income
• special needs of child (with child support formula)
• inadequate spousal support under with child support formula due to priority given to child support under s. 15.3 of the Divorce Act
• non-taxable payor income

B. RECENT APPEAL DECISIONS

(a) Fisher v. Fisher: The Ontario Court of Appeal Endorses the Guidelines

Fisher v. Fisher, [2008] O.J. No. 38, 2008 CarswellOnt 43, 2008 ONCA 11, 47 R.F.L. (6th) 235, is the first decision of the Ontario Court of Appeal to address the Spousal Support Advisory Guidelines. Following the “seminal” B.C.C.A. decision in Yemchuk, Justice Lang, with Justices Doherty and Goudge concurring, endorsed the Advisory Guidelines as a “useful tool” and applied them to the facts of the case. The Court reached a result consistent with the without child support formula, after restructuring was explicitly taken into account. Following in the footsteps of other appellate and trial courts, the Ontario Court of Appeal accepted the Guidelines as a “cross-check” or “starting point” that “will help in the long run to bring consistency and predictability to spousal support awards, encourage settlement, and allow parties to anticipate their support responsibilities at the time of separation” [para 100]. The Court expressed its optimism “that with experience, the Guidelines will become accepted as a reliable tool for the resolution of many cases” [para 101].

Fisher, like the B.C.C.A. decision in Yemchuk, offers a careful and thoughtful analysis of the legal status of the Advisory Guidelines. Understanding the Guidelines to be a “reflection of current law” rather than a “radically new approach,” Justice Lang analogized them to a “distillation of current case law” and compared their use in the courtroom to “counsel’s submissions about an appropriate range of support based on applicable jurisprudence” [para 98]. Cognizant of concerns, such as those expressed by the Quebec Court of Appeal, that the Guidelines might be used inappropriately as a rigid mathematical formula that precludes consideration of the parties’ individual circumstances, Justice Lang attached some important caveats to the Court’s endorsement of the Guidelines. She emphasized that the Guidelines do not replace an individualized analysis, but rather supplement it, and that the Guidelines must be applied in their entirety with attention to issues such as entitlement, ceilings and floors, restructuring, and exceptions:

[98] … Importantly, in all cases, the reasonableness of an award produced by the Guidelines must be balanced in light of the circumstances of the individual case, including the particular financial history of the parties during the marriage and their likely future circumstances.

[99] Accordingly, the Guidelines cannot be used as a software tool or a formula that calculates a specific amount of support for a set period of time. They must be considered in context and applied in their entirety, including the specific consideration of any applicable variables and, where necessary, restructuring.
While *Fisher* does not mandate the use of the Advisory Guidelines by courts or lawyers, it does recognize that the Guidelines are increasingly becoming part of the everyday fabric of spousal support decision-making. The Court indicates that the Guidelines “will assist in informing an appellate standard of review” and certainly suggests that where the parties have raised the Advisory Guidelines, trial judges should address them:

[103] In my view, when counsel fully addresses the Guidelines in argument, and a trial judge decides to award a quantum of support outside the suggested range, appellate review will be assisted by the inclusion of reasons explaining why the Guidelines do not provide an appropriate result. This is no different than a trial court distinguishing a significant authority relied upon by a party.

The *Fisher* case involved a fairly lengthy marriage without children in which both parties worked and it raised many significant spousal support issues that were intertwined with the use of the Advisory Guidelines:

- the differences between compensatory and non-compensatory support claims
- the use of time limits
- the proper role of review orders
- the impact of second families
- the treatment of post-separation income increases
- retroactive spousal support
- the standard of appellate review.

*Fisher* was a 19 year marriage without children. The husband completed his B.A. and B.Ed. during the early years of the marriage, with the wife’s financial assistance. For much of the marriage the husband was employed as a teacher, with his earnings peaking at $65,000. A few years before the separation in 2004, he obtained new employment with the teacher’s federation and his income started to increase, with the increases continuing post-separation. His 2003 income was $81,800; in 2004 (the year of separation), it was $125,000 and by the date of trial in 2006 it was $140,000. The husband had re-partnered with a woman who had two young children; his new partner was trained as a physiotherapist but stayed home to care for the children. She received child support of $700 per month from the children’s biological father.

The wife had worked during marriage, sometimes on a full-time basis and sometimes on a part-time basis, and had also taken university courses. Her average annual income during the marriage was approximately $30,000, but in the 2 years before separation she had earned $41,000 a year. The wife became severely depressed after the separation; she was unable to work and claimed disability benefits. In 2004 she was awarded interim spousal support of $2,000 per month. The wife eventually went back to full-time employment and was earning $30,000 per year at the time of the trial.

The trial judge placed significant weight on the husband’s second family obligations and on the wife’s prospects for increased income and a new relationship, and ordered step-down spousal support with a terminating review order: $2,600 per month for the
remainder of 2006, stepping down to $1,800 per month for 2007, and $1,050 per month for 2008, with either party able to request review after January 1, 2009. The trial judge refused to make the final order retroactive to the date when interim support had commenced. Although both parties raised the Advisory Guidelines, there was no reference to them in the trial judgement.

The Court of Appeal allowed the wife’s appeal, finding that the trial judge’s factual errors relating to the wife’s employment and potential new relationship constituted grounds for appellate intervention. The Court of Appeal then went on to determine support anew, replacing the trial judge’s order with a step-down time-limited order: $3,000 per month beginning October 2004, stepping-down on April 1 2008 to $1,500 and terminating in September 2011, for a total of seven years of support after separation. While the Court of Appeal, like the trial judge, found that indefinite support was not appropriate, the actual amount of support they awarded was significantly higher.

Justice Lang’s reasons, in which she engaged in a “traditional” spousal support analysis to reach a determination of the appropriate outcome before turning to the Guidelines to test the reasonableness of that outcome, include several significant rulings that we can do no more than flag, while noting that these rulings have important implications for the application of the Guidelines:

• The reasons draw an important distinction between compensatory and non-compensatory support claims. In Fisher, the wife’s support claim was found to be primarily non-compensatory in nature, justifying a transitional award, even in the context of a relatively lengthy marriage. This would allow the wife to gradually adjust her standard of living from the marital standard to one based upon her own income.

• Consistent with both the Advisory Guidelines and spousal support practice in other parts of the country, the Court of Appeal recognized an expanded role for time-limited orders, particularly in a non-compensatory case like this.

• In finding the trial judge to have been in error in ordering a review rather than simply terminating the spousal support, the Court of Appeal reinforced the message the Supreme Court of Canada delivered in Lesken—i.e. that review orders should be the exception rather than the norm and that they are appropriate when “a specified uncertainty about a party’s circumstances at the time of the trial will become certain within an identifiable time period” [para 70].

• On the second family issue, the Court endorsed a contextual, fact-specific approach, finding on the facts that the trial judge had erred in relying upon the husband’s obligations to his second family to reduce support, given that these obligations were obligations to step-children voluntarily undertaken, that his new partner was capable of working and contributing to the support of the second family unit; and that there was no evidence that his obligations to his first family would impoverish his second family.

• In determining the incomes of the parties in the context of the husband’s increased income after separation, the Court averaged the incomes earned in the
three years prior to separation and in the year of separation, resulting in an income of $89,825 for the husband and $35,500 for the wife. By implication, the wife was found to have only a limited entitlement to share in the husband’s post-separation increase, consistent with the finding that her support claim was primarily non-compensatory in nature.

- With respect to the commencement date for its order, the Court ruled that its order was to be retroactive to October, 2004, the date interim support had commenced, noting that this was consistent with the Advisory Guidelines which include interim support in calculating duration of awards.

In the final portion of her decision Justice Lang applied the Advisory Guidelines to test both her award and that of the trial judge, with a particular focus on the use of restructuring, a part of the Guidelines that is frequently ignored in practice. On the incomes as found, the without child support formula suggested a range of $1,290 to $1,720 per month for a duration of 9.5 to 19 years. Justice Lang noted that the Court’s award was outside the range for both amount (being higher) and duration (being lower). However she then went on to consider restructuring. Here the global range generated by the formula, when both amount and duration are taken into account, was $147,088 to $392,236. The Court of Appeal’s award, with a global value of $189,000, was found to fall squarely within that range (at the lower end), while the trial judge’s order, with a global value of $94,200 was found to be significantly below the Guideline range. Here we see the Advisory Guidelines being used to inform appellate review.

(b) **Beninger v. Beninger: The B.C.C.A. and the Application of the Guidelines in Variation Applications**

In Fisher the Ontario Court of Appeal emphasized the need to use the Guidelines carefully and with attention to their specific limitations and qualifications. In this respect the British Columbia Court of Appeal decision in Beninger v. Beninger provides a nice counterpart. A common misunderstanding, and one repeated in Fisher, albeit in a passing reference, is that the Advisory Guidelines have no application on variation.

In Beninger, where the issue was directly raised on the facts, the British Columbia Court of Appeal provided a careful analysis of the application of the Guidelines on a variation application. Dispelling the common misunderstanding that the Advisory Guidelines have no application on variation, Beninger offers a more accurate reading of the Advisory Guidelines. The decision recognizes that the Advisory Guidelines may be applicable on variation, but not in all cases, and that their use in the variation context must be approached with some degree of caution and an awareness of their possible limitations.

The case involved a long (25 year) traditional marriage with four children in which the husband had been a successful tax lawyer, ran into financial difficulties and ended up declaring bankruptcy shortly after the separation in 2000. He was unemployed for a period of time after the separation, then eventually began to work as a consultant.
A 2003 order had anticipated the husband returning to an income of $312,000 per year and set spousal support at $6,500 per month, in addition to child support for the one child who remained with the wife. A subsequent 2004 order, based upon an income of $120,000, ordered the husband to pay $2,000 per month spousal support.

In 2006, the husband returned to work as a tax lawyer on a contract basis with a gross annual income of $364,500. He applied for a variation of child and spousal support. The wife had tried to retrain and find employment but suffered from health problems and was essentially unemployed. After deducting business expenses, the trial judge set the husband’s income at $318,900 and ordered spousal support of $4000 per month.

In a decision written by Justice Prowse with Chief Justice Finch and Justice Huddart concurring, the Court of Appeal allowed the wife’s appeal and, guided by the Advisory Guidelines, increased spousal support to $9,000 per month. One of the main issues addressed by the Court of Appeal, apart from the determination of the parties’ incomes, was the application of the Guidelines in the context of a variation application under s. 17 of the Divorce Act.

Drawing from the Draft Proposal, Justice Prowse noted [at para 52] that the Guidelines are to be used with caution on variation applications because they were not designed to address some of the more complex issues that can arise on variation, including the impact of remarriage, second families and retirement. She noted that entitlement issues may also have arisen since the initial order. However, in an important ruling, Justice Prowse recognized that these complications do not preclude the use of the Guidelines as a tool in a variation application to assist in the determination of amount and duration; but they do require that any such use be undertaken with care and with sensitivity to the specific factual context:

The decision whether to use the SSAG as a guide on variation applications will have to be made cautiously and on a fact specific basis. [para 55]

On the particular facts of the case, Justice Prowse found that it was appropriate to use the Advisory Guidelines as a guide to determining the appropriate amount and duration of support. No issues of entitlement arose. Given the parties’ long traditional marriage and the adverse economic circumstances Mrs. Beninger continued to experience as a result of the marriage breakdown, she was found to have a strong continuing entitlement to substantial support on both compensatory and non-compensatory grounds. As for Mr. Beninger’s increased income post-separation, which was the basis for the variation application, there was no issue of Mrs. Beninger’s entitlement to share in it. Mr. Beninger’s increased income was found to be directly related first to the career he had embarked on as a result of the education he had obtained, in part, during the marriage and second to the skills developed in his years of working during the marriage which were facilitated by Mrs. Beninger’s efforts as a full-time homemaker. While Justice Prowse does not explicitly state this, it was also clearly relevant that at the time of the 2003 order the husband had gone bankrupt and was on disability but was now employed as a working lawyer again. The case could be seen as involving not so much a post-separation increase as a re-stabilization of the husband’s pre-separation income.
The Guidelines range under the *with child support* formula, based upon a finding that the husband’s income was $330,000 and a refusal to impute income to the wife, was found to be $8,500 to $10,000 for an indefinite duration. The $9,000 a month awarded by the Court of Appeal comes close to equalizing the net disposable incomes of the parties after taking into account child support.

(c) *Shellito v. Bensimhon: The B.C.C.A and the Disability Exception*

Disability cases, particularly those involving shorter marriages, raise difficult issues of spousal support on which the law is uncertain and unresolved. These issues inevitably spill over into the Advisory Guidelines. The Draft Proposal recognizes a possible exception to the formula outcomes for cases of disability. We will discuss disability cases in more detail below. Here we simply wish to draw your attention to *Shellito v. Bensimhon*, 2008 CarswellBC 469, 2008 BCCA 68, which is the first appellate decision on the Guidelines to deal explicitly with the issue and to recognize that disability may justify departure from the Guideline ranges.

The case involved a short relationship with no children, a relationship between 5 and 6 years. Both parties were in their late twenties when their relationship began and both had full-time employment. However the wife had suffered from serious migraines since childhood which resulted in her having to cease employment during the marriage. The wife, who was qualified as a teacher, was unemployed at the time of separation in April 2006 and had received interim spousal support of $750 for 12 months. The husband’s annual income as a corporal in the R.C.M.P. was taken to be $88,000, with overtime.

At trial in 2007 the trial judge ordered equal sharing of four properties owned by the husband, two of which he brought into the relationship, properties that had increased significantly in value during the course of the marriage because of rising real estate values. The husband’s claim for reapportionment was rejected, with the court balancing the wife’s ongoing need because of her disability against the short marriage and the premarital property. The wife thus received over $350,000 as a result of the equal property division.

With respect to spousal support, the trial judge found that the wife would be able to take on increasing levels of part-time employment beginning in September of 2007 and would likely be able to return to full-time employment by 2010, i.e. within a further three years. While recognizing that her part-time earnings would vary over this period, he imputed an average income to her of $18,000. In determining the amount of spousal support, the trial judge found that the maximum amount under the Guidelines *without child support* formula, $700 per month for 3 to 6 years was “too low” under the circumstances. Instead, support was set at $1,800 per month for 4 months until September 2007, dropping to $1,500 for the next 8 months, followed by $1,200 per month for the final 18 months. As a result spousal support was to be paid for a total duration of 4 years and 4 months.
The Court of Appeal upheld the trial judge’s decision on both property division and spousal support. Most of the reasons were devoted to the property issue. With respect to spousal support, the Court simply stated that the Guidelines were advisory and not “definitive: and that “the trial judge made no error in principle in departing from the SSAG to reflect the factor of Ms. Shellito’s disability.” [para 24]. The trial judge was found to have explicitly taken into account the asset division in reaching this result, thus there was no “double-counting” of the disability factor.

Shellito thus offers appellate level recognition that disability may be a factor justifying a departure from the formula ranges under the Guidelines. However, given the importance of the issue and the frequency with which it comes before the courts, one might have wished for a more extensive discussion of the issue. Neither the trial judge nor the Court of Appeal referred to the explicit recognition of disability as a possible exception in the Guidelines or to the suggestions in the Guidelines with respect to the structuring of such an exception. Neither compared the outcome under the Guidelines with that reached by the trial judge. That analysis would have shown that the trial judge’s order had a total value of $64,800 as compared to the maximum global award under the without child support formula ($700 per month for 6 years) of $50,400—a departure but not an extreme departure. The award did fall within the time limits suggested by the formula, and in fact it fell short of the maximum duration, suggesting an element of “restructuring”. It was only the amount that was increased beyond the formula ranges (even after taking restructuring into account). To what extent this result was driven by the somewhat unusual nature of the facts in this disability case—i.e. that the wife was expected to make a gradual recovery from her occupational disability or the significant property award—remains unclear.

(d)  

**Loesch v. Walji:** The B.C.C.A. and Incomes Above the Ceiling

The very recent decision (May 2008) of the B.C.C.A in *Loesch v. Walji*, [2008] B.C.J. No. 897, 2008 BCCA 214 deals with the application of the Guidelines in a very high income case where the payor’s annual income—estimated at $1.6 million although certainly higher—was well over the $350,000 ceiling. While the decision provides a nice review of the different approaches laid out in the Draft Proposal for dealing with cases involving incomes over the $350,000 ceiling, the case is an unusual one on the facts and the result—the Court of Appeal upheld an award even higher than the Guidelines formula would generate without regard to the ceiling—appears to have been driven primarily by a high degree of deference to the chambers judge on what was an interim order, made without the benefit of full financial disclosure, intended to maintain the status quo and bridge a very short period (five months) before trial.

*Loesch* involved a 21 year relationship (17 year marriage plus prior cohabitation) with four children aged 18, 17, 15 and 10. The three younger children were in private school and the eldest was in university. The husband was a very successful businessman, whose income had been moved off-shore, and the parties had enjoyed an extremely extravagant lifestyle. After the separation in 2004 the husband paid generous support, of approximately $50,000 a month, on a voluntary basis for about 3 years. Claiming
significant problems with debt, he cut back on those payments, expecting the wife to support herself and the children out of significant assets at her disposable through a family trust. The wife brought a motion seeking an order for interim child and spousal support. At the point the motion was heard, the trial date was only five months away. There had not been full disclosure; the husband admitted to an annual income of $900,000, and this was the figure that was used, grossed up to $1.6 million, although it was clear that his actual income was higher.

Using that figure of $1.6 million, the chambers judge first ordered interim child support of $30,000 per month—the table amount for 4 children. With respect to spousal support, the wife’s lawyer had provided a figure in the range of $30,000 to $35,000 based upon the Advisory Guidelines. After briefly noting that the Guidelines have a ceiling of $350,000 and that the court has discretion above that amount, the chambers judge ordered interim spousal support of $50,000 per month with the intention of preserving the approximate status quo until trial. After tax, the amount ordered produced approximately the same amount as the husband had been paying voluntarily.

The Court of Appeal upheld the interim orders. With respect to the spousal support order, they refer extensively to the Advisory Guidelines and their decision provides a nice review of the alternatives set out in the Draft Proposal for dealing with incomes above the $350,000 ceiling. The first approach, the “minimum plus” approach uses the formula to determine a minimum range at a payor income of the $350,000 ceiling, with discretion to go above that. In cases under the with child support formula this notional calculation at the $350,000 ceiling would be based upon the child support payable at the ceiling. In exercising discretion to go above this minimum, the actual amount of child support being paid would be taken into account. The Draft Proposal suggested that this first approach might make sense where incomes were close to the ceiling. On the facts of Loesch this first approach would have provided a minimum range of $5,835 to $7,123. The Court of Appeal suggests that if the Guidelines were of any assistance to the chambers judge in “the unusual circumstances of the[] parties”, it might have been preferable if she had explained the discrepancy between this amount and the amount ultimately ordered. The second approach set out in the Draft Proposal for incomes above the ceiling is one of “pure discretion”. This, noted the Court of Appeal, was evidently the approach taken by the chambers judge.

On the particular and “unusual” facts of the case, and an income “far beyond” the ceiling, the Court of Appeal found [at para 49] that the Advisory Guidelines were “really of no assistance” and in the simply deferred to the chambers’ judge’s exercise of discretion.

C. ONTARIO SPOUSAL SUPPORT LAW AFTER FISHER

Almost five months after the release of Fisher, there have now been sixteen reported cases applying the Advisory Guidelines, seven using the without child support formula and nine using the with child support formula. Included is one appellate level case, a decision of the Divisional Court in Pagnotta v. Malozewski, [2008] O.J. No 1318, 2008
CarswellOnt 1896. In two other cases, judges considered aspects of Fisher, but did not use the Guidelines. While still early, some tentative trends can be identified, not all consistent with Fisher.

(a) Regular and More Sophisticated Use of the Advisory Guidelines

In our travels around Ontario, we found that the Advisory Guidelines were already being regularly, even routinely, used by lawyers and judges in many parts of Ontario, but not universally so. After Fisher, lawyers will likely argue the Advisory Guidelines more often, especially in those areas where the Guidelines have not been much used to date. And if one of the parties argues the Guidelines, then Fisher holds that the trial judge should include “reasons explaining why the Guidelines do not provide an appropriate result” if the quantum is fixed outside the suggested range. At least one party will usually like the quantum ranges for amount and duration suggested by the Advisory Guidelines, so that this aspect of Fisher takes on added importance.

Here the experience of Ontario will likely replicate that of other jurisdictions where appeal courts endorsed the Advisory Guidelines, notably British Columbia and New Brunswick. The appellate endorsements there resulted in more lawyers arguing the Guidelines and more judges openly citing and using them in decisions. In these provinces, the Advisory Guidelines have become an accustomed and important part of the support toolbox of lawyers and judges, used in every case. The more frequently the Guidelines are used, the more sophisticated their use becomes. Lawyers and judges will then go beyond the formula ranges, as Justice Lang suggests they should in Fisher, when she emphasizes that the Guidelines should be “considered in context and applied in their entirety”, including entitlement, restructuring and exceptions.

British Columbia can provide a rich source of arguments and examples for lawyers wishing to use the Advisory Guidelines in negotiation or litigation, as it is a big province like Ontario that generates a wide variety of spousal support cases. The B.C. Court of Appeal endorsed the Guidelines back in August 2005. The most recent B.C. trial decisions are found in Appendix III to this paper.

(b) Interim Support

Seven of the 16 post-Fisher cases involve interim spousal support, including Pagnotta. The Advisory Guidelines are particularly useful at this stage. As Justice Kane put it in Langdon v. Langdon, 2008 CarswellOnt 545 at para. 7, “their importance increases when the court has only limited financial information”. Under the formulas, even in the absence of budgets, that limited information can generate a range for amount. The harder issues of duration can be left for trial. For the leading B.C. case on these interim Guidelines issues, see the reasons of Justice Martinson in D.R.M. v. R.B.M., [2006] B.C.J. No. 3299, 2006 CarswellBC 3177 (B.C.S.C.).

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(c) The Right Formula, The Right Numbers

It is vitally important that the right formula be employed in determining the spousal support ranges under the Advisory Guidelines. Once the right formula is identified, it is important to input the right numbers. Obvious, you might say, but lawyers and judges continue to experience problems on this front. Increased use of the Guidelines after Fisher will bring more of these potential problems to light.

There is only one without child support formula, which applies when there are no “children of the marriage”. That’s the easiest part to establish. The critical facts to input in these cases are the number of years of cohabitation or marriage (ending at the date of separation) and the gross incomes of the spouses. In determining income, as under the Child Support Guidelines, it is important to “gross up” any non-taxable income, as this will affect the range: see, e.g., Benson v. Benson, [2008] O.J. No. 578.

The with child support formula is in fact a family of formulas built around custodial and child support arrangements. There is the basic with child support formula that applies to cases where the recipient of spousal support is also the primary or residential parent receiving child support. Then there are two variations on this basic formula, for split custody and shared custody. In all of these cases, it is important to be clear on the facts which parent is receiving the child-related government benefits, such as the Child Tax Benefit and the new Universal Child Care Benefit (UCCB), especially in shared custody cases. These benefits are taken into account in computing the formula range and can make a noticeable difference, e.g. Tremblay v. Tremblay, [2008] O.J. No. 420 (the UCCB for the two youngest children was not included in the wife’s income, so that the stated range was about $200 per month too high).

Next there is the custodial payor formula, which applies where the payor of spousal support is also the primary or residential parent for the children. It is a hybrid formula, one in which the amount and duration of spousal support is determined by the length of the marriage and the gross income disparity between the spouses (after deducting amounts for child support obligations). It will produce different results from the basic with child support formula, e.g. in a long-marriage case like Grinyer v. Grinyer, 2008 CarswellOnt 366 (custodial payor formula not used, custodial payor range at income of $45,000 for the wife was $1,440-$1,921/mo. vs. the basic formula incorrectly used and range stated as $915-$1,260/mo.).

One last point for this formula: in many cases the payor of spousal support in the custodial payor situation will agree not to receive child support from the lower-income recipient and, in that case, there should be no deduction on the recipient side for any grossed-up amount of child support, as none is being paid. This non-deduction of child support from the recipient’s gross income will mean a lower range for the amount of spousal support.

Since the release of the Draft Proposal, we have also added another hybrid with child support formula, the adult child formula, applicable in the limited number of cases where
child support for the remaining child (or children) is determined under s. 3(2)(b) of the Child Support Guidelines. Section 3(2)(b) is usually employed where the child has gone away to school or has sizeable sources of income to assist in funding education.

(d) The Use of Time Limits

Before Fisher, the conventional Ontario wisdom was that time limits were rarely to be employed in spousal support cases, largely restricted to short child-less marriages and other exceptional situations. In Fisher, the Court of Appeal upheld the trial judge’s conclusion that an indefinite order was not appropriate on these facts after a 19-year marriage, but imposed a longer duration of seven years. This time limit would provide the wife “a reasonable transition” from the higher marital standard of living in this non-compensatory case, ruled Justice Lang.

This is an important caveat on time limits after Fisher: Fisher was a non-compensatory case. There were no children. And there was no other source of ongoing disadvantage arising from the roles adopted during the marriage.

In these non-compensatory cases, time limits recognize that there will be an end to spousal support in most cases, after a period of transition. The support may be large and the transition long, where the marriage is long and the income disparity substantial. Or it may be shorter and less generous for shorter marriages and smaller disparities.

The flip side of Fisher is that it says nothing about time limits in compensatory cases, in those cases where child care responsibilities or other decisions during the marriage have left one spouse with continuing economic disadvantages at the end of the marriage.

It will generally be incorrect to impose any time limit upon an initial order in a compensatory case, following the Supreme Court’s analysis in Moge. Courts should not underestimate the extent of a recipient’s labour market disadvantage or be quick to “deem” a recipient to be “self-sufficient” in future. Nothing in Fisher changes this well-settled law in compensatory cases, law that is reflected in both of the formulas under the Advisory Guidelines.

There has been a disturbing trend for courts to impose time limits, purportedly following Fisher, in cases where there are still dependent children in the care of the recipient of spousal support: Scott v. Scott, 2008 CarswellOnt 1246 (20-year marriage, 4 children 25, 19, 12 and 7, time limit of 5 more years spousal support, 9 years total, youngest then 13); Ali v. Williams, 2008 CarswellOnt 1757 (15-year marriage, children 14 and 12, 5 years total spousal support). In Grinyer v. Grinyer, 2008 CarswellOnt 366, the younger child had been living with the husband since 2007, but had previously lived with the wife after

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2 At trial, Campbell J. had canvassed the Ontario authorities on time-limited orders, concluding at para. 33: “courts appear to continue to make time-limited orders only where, because of a young age, short marriage or other factors, a dependent spouse is capable of achieving self-sufficiency, or where a spouse has sustained very little, if any, economic disadvantage as a result of the breakdown of the marriage.”: Fisher v. Fisher, [2006] O.J. No. 676 (S.C.J.)
separation. After a 22-year marriage with two children now 26 and 19, and despite having been home with the children and working part-time, the wife was granted time-limited spousal support for seven years.

Most surprising of all was *Pagnotta v. Malozewski*, [2008] O.J. No 1318, 2008 CarswellOnt 1896, reversing in part 2007 CarswellOnt 9117, where the motions judge had time limited *interim* support, to a period of one year, after a 20-year marriage, a history of part-time work by the wife, and two teenage children in the wife’s care. The Divisional Court extended that time limit, but only to two years, when the wife was expected to be able to work full-time, “subject to further court order, either on motion or at trial”. Even if the wife did become employed full-time as a teacher, her income was still just more than one-quarter of the husband’s and it is difficult to see how any time limit could be imposed upon an initial order at trial, much less at the interim stage.

It is a critical first step in the support analysis to determine whether the rationale for spousal support is non-compensatory or compensatory, or a mix of the two. Only where the support is non-compensatory or at least primarily non-compensatory should the issue of time limits arise at the time of the initial order or agreement, as in *Fisher*. Otherwise, the initial order or agreement should usually be indefinite, with any time limits only to be fixed at a later review or variation hearing, depending upon the actual or imputed progress of the recipient towards self-sufficiency.

A good example of a compensatory analysis, one where support was left indefinite, is *Ferguson v. Ferguson*, [2008] O.J. No. 1140, 2008 CarswellOnt 1676. In *Ferguson*, the wife was only able to earn a very modest income after separation due to her economic disadvantage and health problems. The cessation of child support was treated as a change in circumstances, to justify increasing her spousal support from $1,304 to $2,700 per month.

(e) **The Proper Use of Review Orders**

*Fisher* repeats many of the reservations about review orders from *Leskun*.3 In *Fisher*, the trial judge had fashioned a “terminating review order”: support was to end in December 2008, with either party entitled to seek “a review of both entitlement and/or quantum of support after January 1, 2009”. The Court of Appeal extended the time limit, but removed the review provision. Lang J.A. expressed concerns about the cost of a “a second trial three years after the first”. Review orders should be “the exception, not the norm”, “appropriate when a specified uncertainty about a party’s circumstances at the time of trial will become certain within an identifiable timeframe” [para. 70]. Further, if there is to be a review, it should meet “the Leskun requirement for a tight delimitation of the facts subject to review” [para. 73].

All of this tight language should not obscure the continuing availability of review orders in these “appropriate” circumstances of “genuine and material uncertainty”, to use

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Leskun’s language.4 There is much “uncertainty” in spousal support cases, as spouses reorganise their lives after separation, especially in those cases where there are children and one spouse has been home full-time or part-time to care for those children.

Just as there is a danger of over-use of time limits after Fisher, there is also a danger of under-use of review orders afterwards. The facts of Fisher were not appropriate for a review order, said the Court of Appeal. There was little uncertainty. Mr. Fisher had changed jobs and his income had jumped to its new level. He had a second family. Ms. Fisher was back to her sales job, with little prospect of future change.

It is instructive that some of the cases that time limit spousal support after Fisher are cases which would have seemed ideal for review, e.g. Scott v. Scott, Ali v. Williams, Grinyer v. Grinyer. Scott quoted Fisher’s strong language about review. In Austin v. Austin, [2008] O.J. No. 421, the court did not time limit support, but also rejected a review based upon Fisher, leaving the wife’s expected self-sufficiency in five years to be dealt with by variation.

But in many compensatory cases, especially those involving children, a review order remains the best way to address the uncertain position of the recipient spouse and to give some structure to the assessment of amount and duration of support over time. Depending upon the length of the marriage, the time elapsed since separation, the age of the children and the age of the recipient, it will only be later in the process that time limits can become a real possibility.

(f) The Exceptions

After Fisher and Pagnotta, there should be some “articulated basis for departing” from the Guidelines in Ontario. One basis would be that a case falls within one of the “exceptions” identified in the Guidelines. The exceptions are too often ignored by lawyers and judges in Guidelines cases.

Fisher reminds us to look at the Advisory Guidelines “in their entirety”. In Fisher, for example, Justice Lang carefully applied the restructuring provisions. Restructuring will be the first step to consider when the formula ranges do not appear to generate a reasonable range of outcomes. But sometimes restructuring won’t be enough and it will be necessary to resort to the exceptions. Six exceptions were listed in the Draft Proposal, but that list will be extended to eleven in the final version, as indicated earlier.

In these cases, one party will inevitably argue that “the Guidelines” demand a certain range of outcomes on amount and duration, when what they really mean is “the formula”. In these cases, the formula will produce a range of outcomes that the party likes, usually a payor arguing for a lower range. But the formula is only a part of the Advisory Guidelines, and it is important to canvass the list of exceptions. If the formula range for

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amount looks instinctively too low or too high, or the range for duration looks too short or too long, that’s usually a sign that an exception is involved.

For the proper development of the Guidelines, it is critical that exceptions be identified and applied by lawyers and courts, for two reasons. First, so that jurisprudence develops around the exceptions as a guide to lawyers and judges. Second, so that the formulas are left to operate consistently and predictably in the “typical” cases.

(g) Illness and Disability Cases

A disproportionate number of cases that come before the courts involve the illness or disability of the recipient spouse, as these are hard cases that don’t settle. Especially difficult are the cases that involve permanent illness or disability after a short-to-medium marriage. The law in these cases is particularly uncertain and confused at the moment, as the courts can’t seem to work out any consistent approach. The Supreme Court of Canada addressed some of these issues in Bracklow, but we see the effects of its lack of guidance in these cases.

Under the Advisory Guidelines, most of these cases would fall under the without child support formula or the custodial payor formula (as the illness or disability sometimes means that the recipient parent will not have primary care of the children). In these cases, the Guidelines formulas in may produce ranges for amount and duration that just don’t seem “right”, that are “too low” or “too short”. Up until Fisher, Ontario courts have often been quick just to dismiss the use of the Advisory Guidelines in disability cases, and then move on to determine amount and duration by some other method.

After Fisher, Ontario courts will usually have to apply the Advisory Guidelines to disability cases. Almost invariably, in short-to-medium-length marriages, payors will want to argue the formula ranges, primarily to time limit their spousal support. If the opposing lawyer wants the court to depart from the formula ranges as to amount or duration, he or she will have to argue for the illness or disability exception.

Three approaches to these cases can be identified. A first group of courts will opt to resolve disability cases within the formula ranges, for both amount and duration, especially in short-to-medium marriages where the recipient spouse is relatively young. In effect, these courts do not recognize any disability exception. The recent B.C. Court of Appeal decision in Shellito v. Bensimhon, discussed in more detail above, while recognizing disability as an exception, came fairly close to the upper end of the formula ranges and imposed a time limit on support. A second group of courts will apply an exception, but only on duration, opting for an amount of support in the lower end of the range, on an indefinite basis. Yet a third group of courts will make disability an exception on both fronts by ordering an amount higher than the range and for an indefinite duration that indefinite, as was the case in Smith v. Smith, 2008 CarswellOnt 1921 (10-year marriage, range $390-$520/mo. for 5 to 10 years, support of $1,200/mo. ordered, indefinite).
These divergent approaches explain why the final version of the Advisory Guidelines will continue to reflect a possible exception for illness or disability, until the courts can settle upon one particular approach.
Appendix I

SPOUSAL SUPPORT ADVISORY GUIDELINES
APEAL CASES
[September 12, 2007 – April 28, 2008]

All Canadian cases using the Advisory Guidelines can be found in the papers at http://www.law.utoronto.ca/faculty/rogerson/ssag.html

A. Recent Ontario Appeal Cases


19 year marriage, separation 2004, no children

Husband completes B.A. and B. Ed. during marriage; then teacher earning $65,000; 1999 new job with teacher’s federation; income increases in last 3 years of marriage and continues to increase after separation: 2003, $81,800; 2004, $120,000; 2005, $132,000; 2006, $140,000

Husband new partner with two young children, staying home, receiving $700 per month child support

Wife worked during marriage, sometimes full-time, sometimes part-time; also took university courses; average earnings $30,000; income $41,000 for 2 years before separation unusually high

Wife depressed after separation; unemployed and on disability benefits; back to full-time employment, earning $30,000

October 2004, interim support $2000/mo

Trial 2006: spousal support of $2600/mo March 1 to Dec. 1, 2006, $1800/mo in 2007, $1050 in 2008; either party able to request review in 2009; no retroactive support; no reference to SSAG even though parties argued

Wife’s appeal allowed

Trial judge made errors in finding of fact relating to wife’s employment and potential new relationship

Wife’s claim for support primarily non-compensatory

Husband’s obligations to second family not to be relied upon to reduce support; new partner capable of working;

No basis for review order; no specified uncertainty

Support to be made retroactive to Oct. 2004; consistent with SSAG which include interim support in calculating duration of awards

Time-limited order appropriate; seven years of transitional support

Incomes determined by averaging incomes earned in 3 years prior to separation and in the year of separation; result: husband $89,825 and wife $35,500

Trial judge’s order replaced by order of spousal support for $3000 per month (for 3.5 years) beginning October 2004; step-down April 1 2008 to $1,500 (for 3.5 years); terminating Sept 1, 2011 (7 years total)

SSAG a “useful tool” or “litmus test” in determining reasonableness of award; when counsel address SSAG; trial judges should provide reasons if award amount outside range

Range: $1,290 to $1,720 ($15,483 to $20,644 annually), 9.5 to 19 years

Court’s award outside range for both amount (higher) and duration (lower), but allowed by restructuring because with global range [global range: $147,088 to $392,236; trial judge’s global award $94,200, outside range; Court of Appeal’s global award $189,000, within global range, at low end]


Interim support appeal allowed in part

Married 20 years, 2 children, with wife

Husband earns $127,453, child support $1,731/mo., plus $7,000/yr. s. 7 expense for dance

Wife no income at hearing, depression at separation, worked part-time since birth of second child
$34,000 imputed in Sept. 2007 as part-time French teacher, full-time by Sept. 2008
Interim spousal support of $2,000/mo. ordered, from August 2006 to August 2007, then terminated
Factors and objectives of Act not discussed, nor SSAG raised in argument
Interim support to continue until Sept. 2008, subject to further order
Guidelines range $1,179 to $1,940, mid-point of $1,563/mo. ordered from Sept. 2007 until then
“No articulated basis for departing from the Guidelines”

B. Other Recent Canadian Appeal Cases

Together 21 years, married 17, husband 46, wife 44, 4 children 18, 17, 15 and 10
Interim decision, husband provided generous support voluntarily for 3 years, 5 mos. to trial
Issues of income, debt, disclosure, family trust
Wife home, primary caregiver to children
Husband businesses, income goes offshore, not tax, says $900,000/yr., grossed-up to $1.6 million
Child support $30,000/mo., 1 in university and 3 in private school
Spousal support, above ceiling, range $30-$35,000/mo., order for $50,000/mo., ability to pay
Demanding standard of review on interim support appeal: “inordinately high or low”
Husband admitted income, other sources of income available to him in Canada, Dubai, Switzerland
Unusually extravagant lifestyle during marriage, husband little questioning of wife’s budget
Above ceiling case, possible approached considered
Range at $350,000 under with child support formula $5,835-$7,123/mo., preferable if discrepancy from Guidelines explained
Payor’s income “far beyond” the ceiling, Guidelines “really of no assistance”, pure discretion
After tax, support produces same amount as was paid voluntarily
Husband’s income in fact greater than that admitted, amount can be adjusted after trial
Whether trust for children a “special provision” for child support purposes also matter for trial

Together 5-6 years (married 4), husband 35, wife 33, no children
Wife serious migraines, worsened by stress, unable to work full-time, teacher’s certificate
Husband RCMP corporal, earns $88,000 with overtime
Property divided 50/50, despite short marriage, wife’s need vs. premarital property, upheld on appeal
Wife not work now, can work part-time in 4 mos., full-time in 3 years, $18,000 imputed during period of part-time employment
Support non-compensatory, Guidelines maximum $700/mo. for 3 to 6 years, “too low”, said trial judge
Wife sought $1,500-$2,000, interim support $750/mo. for 12 mos.
Support $1,800 for 4 mos., $1,500 for 18 mos., $1,200 for 18 mos., then end (52 mos. total)
Upheld on appeal, no error to depart from SSAG amount to reflect wife’s disability, no “double counting” of disability factor in property and support

25 year marriage, 4 children, separation 2000; two dependent children, one with each parent
Wife obtains M.Sc. in economics in early years of marriage and homemaker after birth of first child
Husband lawyer; obtains master of laws in early years of marriage; unsuccessful business ventures at end of marriage; bankruptcy 2001; unemployed due to depression; then consulting business
2003 order: assuming income of $312,000, child support for 1 child $2,111/mo; spousal support $6,500
2004 order: based on income of $120,000, child support for one child of $888/mo; spousal support $2,000;
subsequent variation requiring contribution to university expenses
Husband returns to work as tax lawyer on contract basis in 2006; income $364,500; remarried; new spouse earning $75,000; seeks variation of child and spousal support
Wife health issues, no income
Chambers judge finds husband’s income to be $318,900 (after deduction of business expenses of $45,000);
orders spousal support of $4000 per month
Wife appeals, arguing husband’s income much higher

Court of Appeal sets husband’s income at $330,650; not appropriate to impute income to wife
Child support raised to $2,711.07
Use of SSAG on variation: appropriate on these facts, wife has on-going entitlement to substantial support
both on compensatory and non-compensatory basis; appropriate to base spousal support on husband’s
increased income because career linked to education acquired during marriage and years of work
during marriage while wife cared for children
Range under with child support formula if husbands’ income $330,000: $8,500 - $10,000, leaving wife
with 48.9% of NDI
Spousal support ordered: $9000/mo, indefinite

Married 6 years, 2 children 9 and 5, with wife
Husband working as superintendent for parents’ rental property company, salary $42,684
Wife primary caregiver, also worked in company, now 2 jobs, call centre/retail, $19,000/yr.
Trial judge ordered child support, no further spousal support
Issues: gift vs. loan re home from husband’s parents, imputing income to husband
Gift, not loan, wife entitled to half of net proceeds from home
Couple income split during marriage, total close to $70,000, amount imputed in interim
No explanation by husband for drop in income after separation
Income imputed at $70,000, support issues remitted to trial judge
Trial judge to consider entitlement and, if entitlement, application of Guidelines
[Child support, $983/mo., Guidelines range (no s. 7 expenses): $149-$668/mo.]

Together 10 years, 2 children 10 and 11, with wife
Husband long-distance trucker, income issues, estimated at $40,000, child support $579/mo.
Wife home, stress problems, no income
Trial judge ordered 2 lump sum payments, totalling $4,700, as 22 mos. retroactive spousal support,
but no ongoing support
Following Advisory Guidelines, indefinite order substituted, $214/mo. based on trial amount

Married 23 years, 2 adult children, traditional marriage
Wife now full-time in Sears catalogue dept., earns $25,300
Husband earns $40,000, reduced income after post-separation motorcycle accident, but large settlement
Guidelines ranges used to assess reasonableness of retroactive spousal support award 1998-2005
Ongoing support of $1,000/mo. from 2006 on, in range

dissenting in part)
Married 22 years, 3 children, now 1 with husband
Wife sought spousal support under SSAG, $4,200-$6,300/mo. based on husband’s post-separation income
Husband now earning $171,432 as electrician in Yemen, earned $70-$80,000 during marriage
Wife receives income of $24,828 from disability policies and rent
Trial judge ordered child support by wife of $213/mo., spousal support by husband of $2,000/mo.,
Trial judge did not err in determining husband’s income, or in not basing support on actual income
Husband adopted “burdensome life” after separation, insufficient connection to marriage
But erred in including retroactive support in wife’s income, and in estimating monthly cash flows
Spousal support increased on appeal from $2,000/mo. to $2, 827/mo.
Dissent on property issues
[Custodial payor range, at $80,000 for husband: $1,256-$1675; at $100,000: $1,715-$2,287/mo.]
Appendix II

SPOUSAL SUPPORT ADVISORY GUIDELINES
ONTARIO TRIAL DECISIONS
[September 12, 2007 – May 20, 2008]


(a) The Without Child Support Formula

Together 18 years (married 8), no dependent children, interim support
Husband earns $120,000, wife $64,300
Wife experienced reduction in standard of living, frugal budget
Interim support of $1,250/mo. ordered, lower end of range sufficient for reasonable living standard
[Guidelines range $1,253-$1,671/mo.]

Smith v. Smith, 2008 CarswellOnt 1921 (Conway J.)
Married 10 years, husband 41, wife 50, no children
Entitlement based on need, “lengthy marriage’
Wife disabled at marriage, obsessive-compulsive disorder, physical problems
Earns $6,300/yr. as personal care worker, ODSP social assistance $10,872/yr.
Wife seeks support of $1,556/mo., interim support of $1,200/mo. from June 2007
Husband earned $45,866 in 2006 as diver, etc., only $32,927 in 2007
Guidelines range $390-$520, 5 to 10 years, but dollar-for-dollar deduction from ODSP
Guidelines rejected, $1,200/mo. ordered, no time limit, no review
[No mention of disability exception]

Dor v. Traynor, [2008] O.J. No. 1212 (Graham J.)
Married 14 years (cohabited 20?), 2 children 13 and 11, husband 48, wife 52
Interim dual nesting order, but husband failed to pay support, home sold
Children in temporary care of family & children’s services since Sept. 2007
Wife no income, disabled, degenerative disc disease, employability for trial
Husband earns $85,000
Interim spousal support based on need, $2,400/mo. ordered, considers medical expenses of wife
Guidelines range if 14 years, $1,488-$1,983/mo.; if 20 years, $2,125-$2,833/mo.
Plus $400/mo. on arrears, also advance on equalization ordered

Ferguson v. Ferguson, [2008] O.J. No. 1140, 2008 CarswellOnt 1676 (Hambly J.)
Married 22 years, husband 54, wife 49, 2 children 22 and 19, younger with wife, working
2004 orders: child support $600, spousal support $1,304/mo., spousal continued in 2006
Husband analyst in government, earns $80,833/yr., new partner since 2004
Wife arthritis, unable to work, modest income at best, $3,429/yr.
Cessation of child support a change in circumstances, even if spousal support not previously reduced
Range $2,129-$2,838/mo., 37.8 to 46.8% NDI to wife, order for $2,700/mo., indefinite

Married 25 years, husband 52, wife 48, 2 adult children, traditional marriage
Interim support $1,300/mo.
Husband firefighter, but heart attack, kidney disease and diabetes, blind
Wife on workers’ comp and CPP Disability, $15,116 ($6,371 non-taxable), cohabiting, partner $30,000
Guidelines range stated as $1,500-$2,000/mo., 44.9 to 51.5% NDI
Order for $1,500/mo., within customary range (36.6 to 47.5% NDI)
Support to terminate on his retirement in Sept. 2012, then OMERS pension split
[Range with gross-up for wife's income, $1,432-$1,909/mo.]

Together 15 years (married 7), no children, husband 58, wife 44, separated 2004
2005 separation agreement: $130,000 to wife, equalization and lump sum support, waiver of support
Application to set aside 6 months later, lump sum support $25,000 to $29,000
Not in compliance at stage 1 of Miglin
Husband skilled tradesman at Ford Motor
His income: 2005 $129,093; 2006 $109,837; 2007 $90,000
Wife rural mail carrier, income 2005 $23,949; 2006 $25,956, 2007 $25,956, then lost job
Spousal support: 2005 $2,500/mo.; 2006 $2,000/mo.; 2007 $1,500/mo., Guidelines considered
[Range 2005 $1,971-$2,629/mo.; 2006 $1,573-$2,097; 2007 $1,201-$1,601]
Husband retired at end of 2007, support to be reconsidered

_Langdon v. Langdon_, 2008 CarswellOnt 545 (Kane J.)
Married 29 years, 1 adult child, husband 50, wife 49, traditional marriage
Husband paying $1,733/mo. since June 2007
Husband says income $100,000, nickel industry, offers $3,125/mo., using SSAG range ($3,125-$4,167)
Wife says he earns more, $122,000-$194,000, nickel bonuses
Interim spousal support $3,800/mo., Guidelines more important where limited information

(b) The With Child Support Formula

Separation 2003, 2 children 17 and 13, with mother
Husband fails to disclose, answer struck, fails to appear at hearing
Income imputed at $100,000/yr., wife's income approx. $20,000/yr.
Interim child support $1,404/mo., insufficient evidence on interim to establish s. 7 expenses
Interim spousal support $1,000/mo., Guidelines range $925-$1,684
Low end of range because of uncertainty re wife's income
Support orders retroactive to August 2006

_Miles v. Swick_, 2008 CarswellOnt 1658 (Pazaratz J.)
Married 20 years, separated 1998, husband 60, wife 57, children 23 and 20, traditional marriage
1999 separation agreement: $3,000/mo. spousal support, no child support
 husband earning $119,000, wife $21,000
Now 1 child home with wife, in college
Oldest child in Alta., not dependent, but husband pays $7/800 voluntarily, not considered
Spousal support to be indefinite, following Guidelines
Wife educational assistant, earns $30,000
Husband real estate agent, variable income, issues re expenses, also pension $991/mo. from previous job
Husband's income $90,000/yr., child support agreed at $1,100/mo., table plus expenses
Spousal support $1,100/mo. [Guidelines range $916-$1,480/mo.]

_D'Vaz v. D' Vaz_, 2008 CarswellOnt 1492 (Backhouse J.)
Married 24 years, husband 59, wife 50, 4 children 24, 21, 18 and 13
Oldest with husband, no child support, other 3 with wife
Husband air conditioning business, income issues, cash income, estimated $185,000
Interim child support for 3, $3,103/mo.
Guidelines range $3,103-$4,201/mo.
Mid-point of $3,809/mo. ordered for interim spousal support, leaving wife 59.3% NDI
Long-term traditional marriage, good lifestyle, husband in matrimonial home, wife in apt., debts

Emery v. Emery, 2008 CarswellOnt 1165 (Gordon J.)
Married 16 years, separated Jan. 2004, husband 43, wife 38, children 18 and 15
May 2004 separation agreement: wife net proceeds from home sale, release support claims
Reconciliation for 18 months, re-separated in Dec. 2005, pension release survives, not spousal release
Wife working in retail store, catering part-time, income $24,000-plus
Husband machinist, earns $63,000
Oldest child in community college till 2009, employed part-time, support only for education expenses
One child amount of $584/mo. to wife, net difference to 2-child amount of $360/mo. direct to older child
Both debts, totalling $42,000-plus, Guidelines range $121-$490/mo.
Spousal support of $300/mo., indefinite, starting Jan. 2010
Lump sum support of $8,000 and husband to pay debts in meantime

Married 9 years, 2 children 13 and 9 with wife, separated May 2002
Husband earns $81,475 at Ultramar, child support $1,177/mo.
Income of $15,000 imputed to wife in clothing business
Husband paid spousal support of $750/mo. for 3 years, to end of 2005, none since
Guidelines range $673-$1,201/mo., husband seeks review when youngest child 12
No review after Leskun, expect wife to be self-sufficient within 5 years; if not, basis for variation
Spousal support of $800/mo., from Sept. 2005

Tremblay v. Tremblay [2008] O.J. No. 420 (Kane J.)
Together 7 years (married 4), separation 2005, husband 29, wife 27
3 children 7, 4 and 3 with mother; 1 child has learning disability
Husband post-separation income increase; from $56,000 to $100,000 (2008 estimated)
Wife attending school since separation; no work or school 2007/08; return to school Sept. 2008; no income attributed
Interim child support, Dec. 2007, $1983/mo., based on husband income of $100,000
Interim spousal support ordered $1,400/mo., mid-point of Guidelines range
Court notes that indefinite support not likely to be ordered at trial given short term of marriage, wife’s age and the educational qualifications she is obtaining
[Guidelines range: $1202-$1604 with no UCCB; with UCCB, $1,058-$1,469]

Two children 8 and 6 with wife, husband’s pleadings struck for non-disclosure and he didn’t attend
Unequal division of property
Husband electrician, own company, income “guesswork” at $75,000
Child support $1,098/mo., plus $117/mo. for summer camps under s. 7
Wife not employed, home, older child autism, younger learning difficulties
No interim order since Aug. 2006 separation
Spousal support of $1,250/mo. from Dec. 2006, SSAG considered
[Guidelines range estimated $1,097-$1,400]

Grinyer v. Grinyer, 2008 CarswellOnt 366 (Gray J.)
Married 22 years, plus another year of cohabitation (?), husband 46, wife 45
2 children: 26 on own; 19 in college, lived with wife until Apr. 2007, now with husband
Wife home, now works 3 days/wk. with Hearing Society, earns $22,000/yr.,
Husband operates grocery business, big issues of income, disclosure and lifestyle
His income found to be $108,000, cohabiting with partner (earns $30,000)
Retro child support to wife at $938/mo., but wife now to pay $188/mo.
Interim spousal order Apr. 2006 for $3,500/mo., $1,000/mo. paid in 2007 ($1,700/mo. in 2005)
Income of $45,000/yr. imputed to wife, as of Jan. 2009
Spousal support at $3,500/mo., retro to Feb. 2005, then $2,500/mo. until Jan. 2009
Fisher applied, to find duration of 7 years total, another 4 years to go, so $1,000/mo. for last 3 years
[Estimated custodial payor range, 23 years: $1,984-$2,645/mo at $22,000; $1,440-$1,921 at $45,000]
[Estimated without child support range, 23 years: $2,473-$3,297/mo.]

(a) The Without Child Support Formula

4 year cohabitation, both parties 32
Both working at beginning of relationship but then wife starts university and now half way through degree
Husband’s income $120,000; wife’s income $21,892 (student loans and part-time earnings)
Interim support under \textit{Family Law Act}: $500 per month from Nov. 2007 until earlier of May 2009 or trial
(19 months)
Court uses husband’s SSAG calculations [not specified] and chooses low end of range
[Estimated range: $491-$654, duration 2 to 4 years]

Long traditional marriage [length not specified], 2 children
Divorce 2003: husband’s income $71,749, wife’s income $32,175; child support $945 per month plus
education expenses under s. 7, plus $400 per month spousal support
Child support ends December 2006; wife seeks increased spousal support
Husband’s income now $79,363; wife’s income $49,230
Spousal support of $1000/per month ordered; strong compensatory claim
SSAG ranges presented and referred to as helpful guide but not specified
[Estimated range if marriage 20 years, $753-$1004; if 25 years range $942-$1256]

3 year marriage, no children
Husband Canadian citizen, wife Ethiopian; marry in Ethiopia in 2003; wife arrives in Canada in 2005;
separation 2006;
Under immigration sponsorship agreement husband obligated to support wife for 3 years, until Dec. 2008
Husband’s income $52,329; 4 children from prior marriage; paying child support, amount not specified
Wife on social assistance and studying English; part-time employment income of $480/mo ($5760/yr)
imputed
Interim spousal support under \textit{Family Law Act}; wife seeks $1500/mo
Court orders $900/mo, payable until Dec. 2008 [giving wife $1,200 per month with part-time work]; above
high end of SSAG range; justified by husband’s sponsorship agreement
[Range if no deduction for prior child support obligation: $175-$233, duration 1.5 -3 years]

42 year traditional marriage with 6 children, separation 2004
Husband retired
Agree to split husband’s pension [each $416 per month]; not included in equalization
Husband’s income after pension division $26,220; wife’s income after pension division $13,512
Range $397-$530, wife asks for $1000 per month [including pension] to equalize incomes under SSAG
Court orders $400 per month; equalization not appropriate; husband had assumed debt; wife had additional
income from inheritance, husband’s employment pension and RIF already divided in equalization(?);
wife will have income from equalization payment

(b) The With Child Support Formula

Married 17 years, 1 child 9, husband 43, wife 44
Husband earns $50,612, heavy equipment mechanic, cohabiting, her 3 children
Custody shared 2 ½ years, not principal residence to wife, child support $467/mo.
Wife cohabiting since July 2007, home 2 years in marriage, worked evenings, now in college

No spousal support paid to date, need/disadvantage, but no SSAG calculations by counsel
Spousal support $500/mo., indefinite, variable, wife should make self-sufficiency goal over 5 years
[Estimated range: $1,002-$1,244/mo., but recipient cohabiting]

Married 17 years, 2 children 15 and 13, equal shared custody
Wife employed NRC $34,230, husband electrician, own co., income issues, $82,560
Interim child support: $1,191 - $508 = $683, plus $250, for $933/mo.
Interim spousal support: range if simple set-off $141-$829/mo., $600/mo. ordered

and 2008 CarswellOnt 1894
Married 22 years, 2 children 21 and 19 in university, UVic and Carleton
Wife teacher, earns $50,400, no imputing for full-time or summer months
Husband broker RBC Dominion, will earn $153,140 in 2007 (earned more in 2005 and 2006)
Big s. 7 university expenses paid by husband: $42,201/yr.
First determine NDI split at first stage, then sort out spousal support, s. 7 cost-sharing at second stage
NDI 58% to husband, 42% to wife
2nd decision: no change in NDI split because of Fisher
Older child no longer child of marriage
Wife to contribute $228/mo. in 2008 for 2007 s. 7 expenses of younger child
Husband to pay spousal support of $2,633/mo., starting Jan. 2008

Married 20 years, 2 children 14 and 16, with wife in Edmonton
Husband in Parry Sound, doctor, 3-yr. average income $389,700
Wife home with children, now in law school, no income
No binding interim agreement, husband paid $12,000/mo. April 206 to June 2007
Child support $4,772/mo., plus $500/mo. for s. 7 summer camps
Wife seeks $10,126/mo., spousal, husband offers $8,000/mo.
Interim spousal support $8,800/mo., due to costs of access, recent income increase
[Estimated range $8,196-$9,838/mo.; if $350,000, $7,205-$8,794/mo.]

Together 18 years, 16 married, husband 48, wife 43 (38 at separation)
2 children 18 and 12, younger with father, older away at school in Winnipeg
Interim 2004 order, split custody: child support $661, spousal $1,750/mo., husband earned $83,000
Wife home during marriage, thyroid problems and fibromyalgia, no income
Husband hardrock miner, back problems, now shuttle bus driver at mine, earns $73,215
Wife entitled, husband paid support for 5 years, wife seeks $2,100/mo, indefinite
Mid to upper range, custodial payor: $1,562-$1,785/mo.
Spousal support of $1,750/mo. ordered, review in 2 years, concerns re health, employment effort
Husband much more debt, also borrowed for older daughter’s hairdressing education

Together 2 ½ years, 1 child 2, shared custody, wife 37
Wife earns $25,000, 28 hours/wk. in human resources
Husband computer systems analyst, earns $80,000
Child support $506/mo., plus 50% of gross day care costs, i.e. $188/mo.
Spousal support limited duration, not impute income now, $700/mo. for 2 years, similar living standards
[Estimated range $676-$1,268, $1,225/mo. for 50/50 split of NDI]

Together 2 years, husband 34, wife 35, child 1, and wife’s 6-year-old child of previous marriage
Wife brain tumour and seizures since April 2006, earned $100,000, now unable to work
Wife on long-term disability, $34,416/yr. non-taxable, $13,824 CPP

Husband human relations manager, earns $79,900, cohabiting (partner earns $50,000)
Child support $707/mo., at $78,400
Interim spousal support, $750/mo. for 7 months, husband argues SSAG
Order for $500/mo., 2 more years
[Estimated range 0 - $162/mo. if wife’s disability grossed-up; 0-$438/mo. if not]

Married 14 years, 2 children, wife 45
2007 consent interim order, husband says income $96,000, spousal support $400/mo.
Husband’s actual 2007 income $175,000, as broker, changed employers in 2006
Husband’s incomes: 2004 $67,000; 2005 $53,000; 2006 $162,700
At $175,000, child support $2,282/mo. plus $159/mo. net day care
2008 income estimated as $157,500, child support $2,079 plus $153/mo.
Spousal support: wife claims $2,000/mo., earns $49,230/yr.
Range stated at $175,000: $1,833-$2,900/mo. [seems to assume no s. 7 expenses]
Spousal support $1,500/mo. in 2007 and 2008
[Range, considering s. 7 expenses, at $175,000: $1,765-$2,811; at $157,500: $1,389-$2,327]

Together 12 years, married 10, separated 1995, 2 children 19 and 17, older with husband since 2005
Child support $343/mo. since 2005, equalization payment by wife to husband $77,590
Wife lawyer, not worked since 1997, outstanding wrongful dismissal action, claims disability,
no medical evidence, no support sought until 2005, interim dismissed then
Wife seeks $1,500/mo. support retro to 2001
Husband aeronautical engineer, earns $105,723
No compensatory basis, non-compensatory only, wife former primary earner in marriage
Wife says income $56,000, but non-disclosure and no credibility, income imputed $72,203 (low)
Child support: $921 - $662 = $259, plus wife to pay share of university expenses
No entitlement, wife no need, could earn more, Guidelines show zero range
Spousal claim dismissed, subject to review [variation?] if change

Married 22 years, 2 children 19 and 17, wife 50
Child 19 at university, husband paying $23,000/yr, no child support order
Husband earns $345,597, mining executive, child support $2,701/mo. for 1 child
Interim spousal support: wife seeks $8,125/mo., husband offers $3,000/mo.
Wife home with children, artist, husband’s income for spousal $281,480 (stock options excluded)
No income imputed to wife, out of work force 20 years, but high-risk career
Interim order $5,000/mo., mid-point of low-to-medium SSAG range

Married 8 years, 2 children
2003 order: child support $1,031 and spousal $1,500/mo., indexed, review in 3 years, husband $80,000
2007 review: child and spousal support now $2,818/mo.
Wife working at call centre in 2003 ($15,000/yr.), now started as court reporter, $30,000
Husband paid spousal support for 7 years, not much longer, review in 1 year (Nov. 2008)
Original amount on high side vs. SSAG, Guidelines used $750/mo, mid-range
[Estimated range, at $30,000 for wife: $163-$846/mo.]

Rheault-Momy v. Momy, 2007 CarswellOnt 7485 (S.C.J.) (Kane J.)
Interim decision, 2 children 14 and 11, husband 43, wife 44
Husband earns $74,000 as environmental officer, wife day care worker $42,000
Exclusive possession of home to wife until sale
Children primarily with wife, week-about shared custody to commence March 2008
Child support $1,085/mo. to March, then $1,476/mo. ($79,000 for husband)
Wife seeks spousal support $1,000/mo., parties provided SSAG calculations

Order for $400/mo. until wife moves
[Estimated range: sole custody 0-$372, shared custody 0-$517 (if $79,000)]

Married 16 years, 4 children, now just one aged 17
Husband earns $56,719, wife earns $19,875
Child support $526/mo., spousal support $623/mo.
Guidelines range: $192-$623, upper end to recognize s. 15.3 Divorce Act

Married 9 years, husband 35, wife 32, 2 children 13 and 9, with wife
2002 separation agreement: child support $750/mo. plus $1,000/yr. clothing, spousal $750/mo., 3 years
Husband’s income all dividends from corporation, $81,475
Child support $1,177/mo. plus $333/yr. section 7 expenses
Wife owns retail clothing stores, negligible income, $15,000 imputed
Wife unemployed in 2002, agreement assumed community college, her change of plans
Mediated agreement, no independent legal advice to wife
Agreement set aside, parties to submit Guidelines calculations
[Estimated range: $1,349-$2,065/mo.]

Married 5 years, 2 children 6 and 3, husband no answer, uncontested trial
Husband earns $48,945, child support $737/mo.
Wife unemployed in 2006, now at Scotiabank earning $17,900
Guidelines range $100-$336/mo.
Order for $200/mo., 7 mos. from Aug. 2006 to Feb. 2007 when unemployed
Child and spousal arrears, mortgage payments by wife all paid out of husband’s share of house proceeds

Together 5 ½ years, married 5, 1 child 5, husband custody of 2 children of previous marriage
Wife’s allegations of sexual abuse against husband, not verified
Custody to wife, unsupervised access to husband
Husband earns $59,566
Wife graphic designer, 2001 earned $53,013, web business, losses, on social assistance
Child support $554/mo., plus $240/mo. for counselling fees
Spousal support: husband should have paid for 6 mos. after July 2006 separation
Husband to pay $1,200/mo., from Dec. 2007 to May 2008
Amount higher than SSAG, low end of “customary range”, due to his 2 children
[Estimated range $1,010-$1,264; if notional deduction for husband’s 2 children, $591-$775]

Together 3 ½ years, married 2, 1 child 3, with wife, substantial time with husband
Husband earns $79,561 as plumber, child support $716/mo.
Wife home full-time 1 year, part-time after, owned florist business since 2000
Never made any money, wife could earn $18,400 as employee, limited options in small town
Interim consent order Mar. 2007: $700/mo. spousal support
Guidelines range $812-$1,115, $900/mo. ordered
4 factors for lower end: short cohabitation, wife living with parents, budget balanced,
full child support paid despite substantial time by husband

Interim, children 10 and 5, shared custody, home sold Oct. 2007
Husband’s SSAG range $1,888-$2,992, if his income $165,000, hers $45,000
Wife says his income $222,000, range $4,500-$5,500/mo.
Husband’s income determined as $204,000, no precise ChequeMate calculations
Table amount for husband $2,618/mo.
Wife in college, no income, “rough equality” intended
Interim child support $2,000/mo., spousal support $4,000/mo.

Married 20 years, 3 children 20 (university), 17 and 15 with wife
Wife bus driver for OCTranspo, $40,000, home 1987-95
Husband did not appear or disclose, income imputed as $96,000 based on bank statements
Child support $1,762/mo.
Spousal support $270/mo., at low end of Guidelines range, wife and children with 57.9% NDI
Unequal division of property, husband reckless, all equity in home to wife

Married 10 years, 2 children 9 and 7, equal shared custody
Husband broker, income issues, non-disclosure, 3-year average $180,367
Wife flight attendant, part-time, earns $30,394
Interim child support $2,344 - $448 = $1,896
Wife submits SSAG calculations based on husband’s 2006 income of $253,988
Calculations “not helpful” as different income finding
Interim spousal support $1,200/mo.
[Estimated range, at $180,367: $2,610-$3,570]
Appendix III

SPOUSAL SUPPORT ADVISORY GUIDELINES
REST OF CANADA CASE LAW
[September 12, 2007 – May 20, 2008]

A. The Without Child Support Formula

Married 16 years (plus one year cohabitation), separated 2003, husband 58, wife 54
Wife’s children 4 and 6 when together, now 26 and 28
Husband paid interim spousal support, by agreement: $4,879/mo. 2005, $4,600/mo. 2006 and 2007
Husband pilot at Air Canada, remarried, earns $267,845/yr., must retire at 60
Wife no income, home-based business selling Japanese health products
Range $5,654-$7,539/mo., husband’s offer at mid-point vs. wife’s claim for top end
Order for $6,597/mo., indefinite, review in 20 mos. when husband retires

Married 32 years, 2 adult children, husband 57, wife 58
Husband millwright, earns $70,100/yr., mine closing, to be laid off
Nov. 2006 interim spousal support $1,600/mo. plus mortgage and utilities
House proceeds reapportioned 75% to wife ($105,750), his non-payment of support
Wife part-time bank work, $19,747/yr., entitlement conceded
Range $1,574-$2,098; given reapportionment, low end of range, $1,600/mo.
Review when husband laid off and 7 mos. severance pay gone or Sept. 2009

Married 18 years, separated 1996, 3 adult children, wife 58
2000 consent order: husband lost Alcan job, $1 nominal order for spousal support, review in 2001
2006 review application, heard in 2008: husband didn’t disclose that re-employed
Range $1,919-$2,558; high end as non-disclosure and hardship of wife
Retroactive spousal support back 38 mos., total $97,321
Wife now earning $29,250/yr.
Husband retired at age 54, okay as new partner ill, 30 years in work camps, to obtain lump sum pension
Can find alternate employment, income of $50,000 imputed
Range $467-$622, so spousal support of $625/mo., for 6 more years (18 total)

Together 15 years (married 14), husband 71, wife 56
Wife aesthetician, not employed
Husband doctor, retired after separation, health problems accepted
Income now $15,618/yr., from OAS, CPP, investments
Equal division of family assets
Husband’s income below Guidelines floor, wife able to earn more, estimated $20,000/yr.
Spousal support adjourned, no support, wife to disclose income

Married 34 years, 5 adult children, husband 58, wife 60
Husband teacher and principal, on reserve, earns $59,000 non-taxable
Wife no income, worked in various clerical jobs, ran convenience store on reserve, now closed
Husband lives with family and girlfriend
Wife lives in matrimonial home on reserve, son, daughter, son-in-law, their 2 children

Wife seeks one-half of his net income as spousal support, estimated at $2,478/mo.
Guidelines range calculated on net income, as $1,844-$2,458/mo., tax issues raised
Support of $1,731/mo. ordered, less than minimum
Husband’s employment expenses, wife’s children should contribute, wife can work part-time
Non-deductibility a factor, duration to be indefinite
[Non-taxable exception would apply, also 50% net income cap at $2,345/mo.]

Married 21 years, no children, wife 44
Husband owns 2 construction companies, worth $1.1 million
2006 interim spousal support order $2,500/mo.
Equal division of family assets, hobby farm to be sold
Husband’s income $96,000/yr. (he said $60,000), but income splitting in past, also retained earnings
Husband new family, wife, 1-year-old and step-daughter 10
Wife unemploye, wanted to run equestrian centre, worked in construction, $20,000/yr. imputed
Wife assisted in husband’s company, could train as equipment operator
Range $2,185-$2,913 indefinite, low end of $2,250/mo. ordered, COLA clause, review provision

Married 26 years, husband 49, wife 44, adult children, traditional marriage
Wife health problems, unable to work, social assistance not included as income
Husband paid equivalent of $1,500/mo. re matrimonial home, wife in home
Spousal support April-September only issue
Husband’s 2005 income $89,715, range $2,783-$3,711/mo.
Spousal support fixed at $3,000/mo., or $15,000, less $3,500 benefits paid to wife
Total $11,500, to be paid $400/mo.

Married 13 ½ years, separated Jan. 1993, husband 51, wife 50, 2 adult children
1997 order: custody to husband, spousal support $2,500/mo. indefinite
Husband remarried in 1997, 2 more children 16 and 10 now
Husband chartered accountant, earned $221,197 in 2006
Wife unable to work, no income, bipolar disorder since 1983 and borderline personality disorder
Wife seeks increase in support, as children no longer with husband and 23.5% inflation
No to first ground, as no priority to child support under s. 15.3, support generous and indefinite
Yes to second, SSAG not used, as variation and also disability exception
Spousal support increased by cost of living, to $3,000/mo., indefinite, review when husband retires

Married 35 years, husband 60, wife 56, 3 adult children 32, 28 and 19, traditional marriage
Wife various jobs since 2002, $16,000 in 2007, but now $29,000/yr.
Husband trucker, company, income issues, investments, $90,000 in 2007, $70,000 2008 and after
Matrimonial home reapportioned 75/25 to wife, i.e. $378,750/$126,500
Wife entitled to spousal support for 5 years, until husband turns 65
Support for 2007 $3,000/mo., reduced to $2,000/mo. for use of family home
Support for 2008 and after $1,750/mo.
Both within SSAG ranges [range for 2007: $2,312-$3,083; for 2008: $1,281-$1,708]

Married 5 years, refugees from Zimbabwe, to Toronto then Yellowknife in 2003
Interim spousal support, triable issue re entitlement
Compensatory support claim, wife supported husband while his accounting education
Wife seeks $1,000/mo., she in 1st year of 4 year nursing program
Husband cohabiting, partner working full-time, no income stated for husband
Interim support of $700/mo., more than “very modest amount” under SSAG proposed by husband

Together 18 years (married 16), 2 children 25 and 24, separated 1997
Consent 1998 interim order: child support $775/mo., spousal support $1,000/mo. husband $56,200/yr.,
wife $11,628/yr.
Application to vary “interim” order til trial
Changes: wife’s income up, husband’s down, children independent
Child support arrears fixed
Spousal support duration 9 to 18 years, mid-point 13 ½ years, 36 more months
Husband now $49,915/yr., wife $21,457/yr.
Guidelines mid-range $789/mo., so $750/mo. for 36 months, or further order
With child support formula used to reduce spousal support arrears, mid-point $347/mo. vs. $1,000 paid
Husband also to pay $250/mo. on child support arrears, increased to $1,000/mo. after 36 mos.

Married 4 years, husband 39, wife 38, separated May 2006
Wife in fashion marketing course in Toronto, now real estate agent in Vancouver, $32,947/yr.
Husband engineer, own company, income $193,462/yr.
Family assets reapportioned, short marriage, husband’s assets, 80-90% in husband’s favour
Wife did not give up much by move to Vancouver, no compensatory support
Husband paid off her student loans, real estate course and assisted her with new apartment
Wife has need, no interim application, wife seeks mid-point of $936/mo. for 3 years
[Guidelines range estimated at $790-$1,053 for 2-4 years]
Spousal support $750/mo. for one year

Married 28 years, husband 42, wife 41, 2 children 26 and 19, 19 on own, money from husband
2005 order: child support $595/mo., spousal support $1,500/mo., husband’s income $74,376, wife $10,698
Review in 2007, SSAG range in 2005 $1,168-$1,674/mo. under with child support formula
Husband’s income now $76,254/yr., social worker in government
Wife $24,000/yr., 2 jobs, teacher’s assistant and home care, underemployed
Range $1,633-$2,177, no change, $1,500/mo. continued, another review in 1 year

Married 28 years, 3 adult children, husband 53, wife 51, traditional marriage
Husband truck driver, income $105,480/yr.
2006 interim support $4,300/mo. plus retro lump sum of $12,900
Wife said annual income of $650 then, no disclosure of inheritance from father or $10,000 advance
Equal division of family assets, no further retro support
Entitlement not an issue, but income issues for wife
Income from employment imputed $25,000 plus $16,000 interest income, total $41,000
Guidelines range $2,015-$2,686, order for $2,500/mo., review in 2 years

Married 24 years, husband 60, wife 59, no children
1998 order: $470/mo. spousal support, indefinite, husband then earning $12-$16,000/yr.
Arrears not reduced
Husband disabled by 2003 accident, now receives workers’ comp and CPP, $14,415 ($5,460 non-taxable)
Husband cohabiting, new wife retired, her income reduced
Wife on social assistance, medical expenses
Change of circumstances, support reduced to $300/mo., indefinite, SSAG considered
[Range estimated as $432-$576, but payor’s income below floor income]

Married 18 years, 3 adult children, separated 1996
Various support orders since 1996: 1999 varied to child support $260/mo. (2), spousal support $190/mo.
Husband applied to terminate spousal support, 2003 injured arm, says no income, depends on partner
Wife bartender, work injury to back, cohabited 10 mos., now ended, just a factor, college studies, finishing June 2008
Guidelines quoted re uncertain duration in medium marriages
Support to continue until Dec. 2008 at $190/mo.

Together 18 years (married 17), husband 46, wife 55, 1 child 20
2005 interim order: child support $441/mo., spousal support $1,000/mo.
Wife depression and arthritis, school bus driver 20 hrs/wk, earns $20,877/yr.
Husband works as groundskeeper, receives workers comp ($230/mo.), income $49,756/yr.
Wife secondary wage earner, entitled, range $650-$866
Order for $650/mo., indefinite, permanent support
Arrears reduced, as interim support above Guidelines range

Together 11 years (8 married), no children, husband 44, wife 43
Wife fibromyalgia since 1996, separated 1998, interim spousal support $500/mo. since 2000
Home proceeds reapportioned 80% to wife, i.e. $64,000 in 2002
2002 order: $500/mo. spousal support, indefinite, review after Feb. 2007 added on appeal
Husband remarried, 2 children, wife at home, earns $60,000/yr. vs. $45,000/yr in 2002
Wife still receives $16,000 on disability, living in house
Range $577-$769 for 5.5 to 11 years
Illness/disability exception not warranted here, another 16 months support (11 years total)
Amount on low end, but reapportionment

Married 21 years, 1 child 19, on own, wife 43
Family assets divided equally
Husband runs noodle business company, income issues, cash/expenses, at least $100,000/yr.
Wife worked in photo lab, then home in 2001 to care for child when child had problems, not worked since
Interim spousal support $2,500/mo. (including child support)
Wife rental income $7,200/yr., 2 years to train and upgrade
Mid-range Guidelines amount $2,840/mo., as of Feb. 2010 income of $30,000 imputed
Spousal support reduced to low end of range, $1,650/mo., wife can sell house
Husband’s obligation to support his mother considered
[Estimated range now $2,436-$3,248; if wife $30,000 $1,649-$2,198]

Together 27 years (26 married), husband 57, wife 48, 4 children
Youngest child, 21, college student, with husband, no child support sought by husband
Wife earns $29,400/yr., hospital cleaner and housekeeper, 30-35 hrs/wk.
Husband earns $79,000 as lumber grader, but no overtime now, so income $58,968/yr.
Range $927-$1,236, order for interim spousal support of $950/mo.
Wife’s need and husband’s contribution to child’s education

Married 25 years, husband 60, wife 55, 2 children 26 and 25, both home, 26-year-old head injury
Husband heavy duty mechanic, earns $60,000/yr.
2003 order for spousal support $1,500/mo., review after 2006
Wife not making reasonable efforts for employment, 7 ½ years since separation
Income imputed as 20 hours, minimum wage, $800/mo., plus $700/mo. draw from RRSP, $18,000/yr.
Husband retiring, job requires heavy physical labour, pension plus half-time, $45,000
Equality of living standards, Guidelines upper end calculated and ordered
Order for $1,250/mo., review when husband 65
[Range estimated $938-$1,250]
Married 38 years, husband 68, wife 60, 3 adult children
Wife mostly home, worked on and off, now on long-term disability and CPP, $20,000/yr.
Husband carpenter, injuries, income of $57,000 from WCB and pensions
Both need some home care and assistance
Property division included Carpenters pension
Guidelines range, after pension division: $1,053-$1,404, $1,229/mo. mid-point
Spousal support of $1,250/mo., indefinite

20 year marriage; 2 children now adults; separation 2001
Husband carpenter at paper mill; 2006 income $77,049 (incl. overtime)
Wife worked, mainly part-time, during marriage; became legally blind after separation; now CPP disability, $10,600
Wife in U.S. after separation until 2003, husband left with children; since return living in matrimonial
home with children; no child or spousal support but husband making mortgage payments
Husband significant debt pre and post-separation: $49,900 consolidated loan (payments of approx.
$1000/mo) and $18,400 credit card debt; husband argues post-separation debt due to expenses incurred
for support of family after wife left for U.S. and continued mortgage payments
Husband new partner with three children, income $10,000; plus $500/mo child support
Husband’s income set at $72,000 (no overtime) and further $5000 reduction to reflect costs of
transportation to work (so $67,000)
Range: $1412-$1833
Re debt: evidence of debt source unsatisfactory; $36,000 found to be matrimonial debt at time of
separation; $12,000 wife’s share; taken into account in property division; wife gets no reapportionment
and no share of husband’s RRSP or company shares.
Re post-separation debt: some due to husband living beyond his means
Support payment of $1500 per month difficult given husband’s current budget; needs to use share of house
proceeds to pay down debt

26 year marriage; 3 children now adult; separation 2006
Wife homemaker, disability (MS in 1989)
Separation agreement dividing property; unequal division of property, wife gets parties RRSP’s worth
approx. $100,000 from which to draw income and providing for spousal support of $150 bi-weekly
until husband’s retirement, then re-negotiate
Husband’s income unclear; had been earning between $90,000 - $100,000 but had been suspended by
union; now studying and earning $18/hr
Wife unhappy with spousal support; argues would have gotten more under Advisory Guidelines; applies to
set aside agreement on various grounds
Agreement fair; no basis for setting aside agreement or spousal support provision

Married 5 years, plus 2.5 cohab (7.5 total) separate 2004
Move from Alberta to B.C. during relationship for husband’s job
Wife works during relationship
Interim spousal support, 2004: $1000/mo
Husband’s income $95,000; wife’s income $27,000
Range; $637-$850, 3.75 to 7.5 years
Spousal support of $650 per month for further 6 months (3 years, 9 months total)

Not married, 26 year cohabitation, no children, both 67
Husband longshoreman, wife secretary;
Wife has stroke in 1991, disabled and unemployed; separate in 2006 when wife moves to care facility
Husband retired 2002, income $70,520; wife’s income (disability pension) $28,787
Range: $1304-$1739
Wife seeks more than high end of range to enable her to pay for private bed while on wait list for subsidized bed
Spousal support of $1739 ordered, high end of range, plus $315,000 for share of property by way of resulting trust

24 year traditional marriage, 2 children, separate 2002
Husband fisherman in own business; income at least $50,000 (could be $60,000);
Wife health issues, very limited ability to earn income, income either zero or $4,500
Spousal support $2000/mo
SSAG used as litmus test for reasonableness of award:
  - if h $50,000 and w 0, range $1,500 - $2,000
  - if h $50,000 and w $4500, range $1365- $1820
  - if h $60,000 and w 0, range $1800-2400
  - if h $60,000 and w $4500, range $1665-$2220

Very long marriage (32 or 35 years depending on date of separation chosen)
Husband’s income $17,800, wife zero
Range: $550-$750, court orders $600 per month

4 year cohabitation, both parties 32
Both working at beginning of relationship but then wife starts university and now half way through degree
Husband’s income $120,000; wife’s income $21,892 (student loans and part-time earnings)
Interim support under Family Law Act: $500 per month from Nov. 2007 until earlier of May 2009 or trial (19 months)
Court uses husband’s ssag calculations [not specified] and chooses low end of range
[Estimated range: $491-$654, duration 2 to 4 years]

Unmarried cohabition 6.5 years; both prior relationships; no children
Wife lived and worked abroad for extended periods during relationship
Husband retired, income $50,000 (pension and investments); wife income imputed at $18,000
Spousal support $300/mo for 4 years; low end of range for duration appropriate because parties were establishing themselves in separate lives before separation
[Range if 6 years: $240-$320, 3 to 6 years; if 7 years, $280-$373, 3.5 to 7 years]

Parties married in 1971, first separated in 1992, frequent contact 1997-2000, final separation 2000 (total 29 years); 3 children
Wife homemaker; husband’s earning capacity and wealth increased dramatically over course of marriage;
assets of over $12 million; recent earnings of over $1 million
Husband paid wife $2000/mo beginning 1992; $3000/mo in 2000 and $6000/mo in 2005
Equal division of property ordered: wife receives equalization payment of $6 million
Wife agrees no claim for retroactive or on-going spousal support if equal division of property
Court applies SSAG hypothetically (ceiling ignored) to determine amount of spousal support that should have been paid 1999-2005 if wife entitled to 40% of husband’s gross income; amounts ranged from $28,000 to $86,800 per month; amounts found to be excessive but used to show that $6000 per month spousal support being paid as of 2005 inordinately low

29 year marriage; 3 children now adults; separation 2006
Husband 59; worked in steel industry; income $95,000 in 2005; falls into serious depression after separation and unemployed

Wife 54, homemaker; worked in day-care; 2006 income $18,526; alleges health problems and unable to keep working
Wife claims spousal support of between $2,600 and $3,500 per month in accordance with guidelines, based on income of $85,000 imputed to husband because of under-employment and zero income for her; seeking lump sum equivalent to husband’s interest in matrimonial home
Property division: each left with $205,000 in assets; wife owes husband equalization payment of $207,000 if she retains home
Lump sum spousal support of $120,000 ordered; plus $17,500 for retroactive support, based on assumption husband able to earn $65,000 and wife earning $18,000; wife needs $10,000 more per year for 12 years.

9 year traditional marriage plus 5 yrs. prior cohab (24 years), separate 2005
Wife one child prior relationship; one child of marriage; both adults
Husband’s income $62,000
Wife’s income $37,500 (interest on inheritance and equalization payment plus imputed employment income)
Spousal support of $800/mo; consistent with SSAG range

B. The With Child Support Formula

Gagnon v. Petke, 2008 CarswellBC 964, 2008 BCSC 610 (Bruce J.)
Together 12 years (married 10), 2 children 10 and 8, with wife, husband 43, wife 49
8-year-old severely autistic, constant care and supervision, wife left job as nurse, no income
Husband chartered accountant, cohabiting, not seen children since Dec. 2007
Interim orders 2006: child support $3,000/mo., spousal support $2,500/mo., s. 7 expenses $1,500/mo.
Government funds for child $526/mo., plus $6,000/yr. for expenses
Husband’s income based on 2004-06 average, $215,400/yr.
Child support $2,859/mo. plus $1,493/mo. to s. 7 expenses
Wife seeks $2,500-$3,500/mo. spousal support, husband offers $2,500/mo.
Guidelines range stated at $1,923-$2,124, excluding husband’s non-taxable sources of income (?)
Spousal support fixed at $2,500/mo., considering reapportionment and lesser deductibility
[Estimated range $3,629-$4,445/mo.]

Married 12 years, 2 children 13 and 11, with wife, husband 48, wife 39
2006 order: child support $1,757/mo., spousal support $1,800/mo., review Oct. 2007
Wife licensed practical nurse, wanted to become registered nurse, changed plan
Wife earned $20,663 part-time, imputed income of $45,000/yr. full-time LPN
Husband’s income $125,000 in 2006, reduced to $100,000 from trucking/logging business
Spousal support reduced to $900/mo., duration for another 6 years (9 years total)
Range $426-$1,079, SSAG less application where change from previous order
Income finding for spousal support not to affect child support, continued at $1,757/mo.

Married 18 years, 3 children
One child adult; next 18, finished high school, but likely university after year; last in high school
Husband taxi driver, income issues, stated income of $17,918/yr. accepted after analysis
Wife earns $16,800, worked throughout marriage
Child support $169/mo. (1), revived to $294/mo. for 2 if middle child goes back to school
Wife entitled to spousal support, as long-term traditional marriage
But husband no ability to pay, Guidelines range zero to zero, even if husband earned more

Married 16 years, husband 44, wife 43, child 15, with wife, in private school, learning disability
Husband lawyer, income issues, personal law corp., earns $122,950/yr.
Wife not working, taking MBA in communications until Nov. 2008, income imputed $4,500/yr.
Child support $1,083/mo., special expenses for school, $21,868/yr., 96% by husband
Range stated as $2,734-$3,416/mo. [but if s. 7 expenses considered, $2,281-$3,011]
Reapportionment, child’s special needs, 16-year marriage
Spousal support $3,100/mo., review in April 2009 after wife’s graduation

Married 17 years, 4 children under 16, with wife
Husband earns $1156,255/yr., corporate retained earnings matter for trial judge
Interim child support $2,421/mo.
SSAG “not much help” for interim spousal support, wife’s income not stated
Husband paying family home expenses (amount not stated), also $1,700/mo. voluntary spousal support,
total more than $475 above upper end of SSAG range according to husband’s counsel
Interim spousal support $2,500/mo. [if wife’s income zero, range $1,027-$1,502/mo.]

Married 6 years (together 7), children 6 and 5 with wife, at home
Husband major income issues, real estate developer, Germany and Canada
Income imputed for interim support $1,382,700/yr.
Child support, s. 4, table $17,100/mo., housing provided by husband’s corp., mortgage-free, expense
budget analyzed, $8,500/mo. ordered ($10,500/mo. if move out of home)
Spousal support: 2001 German marriage agreement provided $3,700/mo., but court orders more
Range if $350,000 ceiling $8,050-$9,630/mo. under with child support formula
Her “need” $8,500/mo., interim spousal support $8,500/mo. ($11,000 if move), plus $2,000/mo. if wife
takes retail management course

Married 7 years, husband 37, wife 43, children 9 and 7
2001 separation agreement: child support $2,500/mo., spousal support $2,500/mo.
2005 reduced by agreement to $3,500/mo. total; 2007 child support $1,303/mo., spousal $1,000/mo.
Wife working part-time at community centre, 2 days/wk., $15,600/yr.
Husband stuntman, income issues, union/WCB payments to corp., owned with new wife, $104,000/yr.
Child support $1,495/mo., s. 7 expenses $780/yr., husband pays $45/mo.
Spousal support indefinite, range $1,382-$2,067/mo., $1,800/mo. ordered, near mid-point

Married 10 years, 4 children 13, 15, 17 and 19, all with wife, husband 55, wife 50
Separated 1997, wife not worked since, by agreement between spouses, husband didn’t pay support
Family assets reapportioned 65/35 to wife, so $734,426 to wife, $395,500 to husband
Husband working half-time as vocational instructor, earning $27,000/yr.
Husband voluntarily reduced income from 2001 on, $70,000/yr. imputed, $63,000 from 2008
Child support arrears $51,362, s. 7 arrears $56,364, spousal arrears $36,000, set off vs. his assets
Lump sum child and spousal support as non-payment, husband leaving jurisdiction
Future table amounts $111,192, university and orthodontic s. 7 contribution $60,000
Spousal support: wife receives $7,000/yr. rental income, $20,000 imputed as admin assistant 2008 on
Guidelines ranges considered: $500/mo., 2002-07, $500/mo. for 12 more months, $6,000 lump sum
After deduction of future support lump sums, husband left with $74,582 from assets
[Range for $70,000 husband, $7,000 wife: $207-$502]

Married 6 years, child 4, move to Toronto with wife allowed

Husband earns $62,888, child support $580/mo.
Income imputed to wife of $32,496 in Toronto, consistent with her income history
Guidelines middle range $262/mo. [range estimated at $0-$469/mo.]

Married 26 years, 2 children 19 and 16
2006 order: reapportioned assets 65/35, child support $1,027/mo., spousal $1,500/mo., review in 3
Husband realtor, income then $80,000, wife’s $20,000 doing accounting for real estate companies
Husband applied to vary in 2004, 6 mos. later, for lower income, but dismissed
Unilateral reduction to child support only in 2005, $433/mo. for 1 child
Husband self-employed, income issues, expenses, failure to earn to capacity
Income 2004 $29,147; 2005 $21,597; 2006 $40,455; new partner too
Income imputed as $65,000/yr., child support varied as of July 2005
Child support down to 1 child in Feb. 2008, as $608/mo.
Wife now earning $40,000, formula range 0-$329 vs. $722-1,349/mo. for 2006 incomes
Non-compensatory support, reduced to $500/mo., terminating as of Jan. 2006 (3 years total)

Length of marriage not stated, 3 children: 21 not “child” and 19, with husband, 15 shared equally
Separated 1999, 2003 agreement: child support for 2, $5,000/mo., spousal support $6,000
Husband now paying child support for 1, $2,500/mo., applies to terminate spousal support
Husband lawyer, earns $672,000/yr
Wife home, returned part-time as home economics teacher, accepts full-time imputed income of $60,000
Wife remarried, new husband’s income $300,000 (but paying child and spousal support)
Range $7,736-$19,500/mo., wife seeks low end
Child support arrears ordered, ongoing $3,500/mo.
Spousal support of $6,000/mo. continued until wife’s new husband not paying spousal support (July 2009)
Then stepped down: $4,000/mo. to July 2010, $2,000/mo. to July 2011, then end (8-plus years total)
Above ceiling income, financial situation of both spouses improved

Married 13 years, 4 children 21, 19, 16 and 12
Husband claims spousal support of $1013/mo., mid-range, based on his income figures
Wife earns $93,300/yr., income imputed to husband of $97,300/yr.
Child support $1,410/mo.
Husband self-sufficient, both good incomes, no entitlement to spousal support

Married 12 years, 2 children 7 and 5, with wife, husband 37, wife 33
Both from India, wife flight attendant with Cathay Pacific, typical income $53,521/yr.
Husband home theatre technician, earns $36,000, seeks spousal support
Equal division of family assets, retroactive child support by husband
Child support $555/mo. plus s. 7 expense re nanny, $506/mo.
Income disparity, but no disadvantage, both self-sufficient, wife’s obligations to children, no entitlement
[Custodial payor range estimated $159-$212/mo., if entitlement]

Married 12 years, 4 children 12, 10, 8 and 7
Husband’s income $275,000/yr., wife no income
Child support $5,477/mo. plus $3,074/mo. s. 7 expenses
Guidelines range $2,461-$3,990, spousal support of $2,500/mo. for 12 years

Married 8 years, 2 children 11 and 8, husband 50, wife 46, separated 2002
2003 consent order: child support $1,200/mo., spousal $3,100/mo., review August 2007
Husband then earning $98,000/yr., now $125,865/yr., income issues, winemaking business

Wife home before, now employed, earning $48,000 since Jan. 2006
Child support $1,767/mo.
Husband says spousal support was restructured, paid more than Guidelines range
Spousal support to end March 2008 (total 5 yrs, 8 mos.)
[Range in 2003 estimated as $1,740-$2,354/mo., now range $917-$1,687/mo.]

Married 16 years, 1 child 14 with husband
2005 interim order: no child support by wife, spousal support $600/mo.
Wife health issues, post-partem depression, then schizoaffective disorder
LTD benefits plus CPP Disability, $5,544 plus $9,840, total $15,393/yr.
Spousal support non-compensatory, duration not indefinite, 13 more years (16 years total)
Husband works at car dealership, earns $48,000 (including bonus), new partner and her 2 children
Custodial payor range $233-$420/mo., but spousal support to continue at $600/mo.
Higher as her need and inability to manage, severe disability, parenting time and access expenses
Child support $128/mo., no undue hardship as adjusted already in spousal support
[Exceptions applicable: disability, non-primary parent to fulfil parenting role]

Married 11 years, separated 2000, 3 children 16, 14 and 11, equal shared custody
3 prior interim agreements: 2000: child support $1,270, spousal support $933; 2001: child support $1,339,
spousal support $933; 2005: child support $900, spousal support declining to $700 and then $300
Husband medical equipment salesman, $168,117/yr.; wife earns $38,000
Interim child support: oldest now with husband, others equal shared: $2,282-$667=$1,515/mo.
Guidelines range $1,827-$2,567, mid-range of $2,195/mo. ordered as interim spousal support

Married 15 years, husband 42 and wife 39 at separation, separated 2001, 3 children 21, 18 and 12
Husband management at Iron Ore Co., earns $138,463/yr.
Wife own music business, earns $7,680/yr.
2002 separation agreement: no spousal support, child support $350/mo. per child, husband $500/mo. for
wife’s house expenses, 70% property to husband, wife no independent legal advice
Agreement set aside: non-disclosure, fundamental breach as husband didn’t comply, unconscionable
Child support of $700-$800/mo. below table amount of $1,400/mo.
Spousal support: $1,202/mo. would be low end of SSAG range, so $500/mo. well below
Agreement also set aside for no substantial compliance

Together 16 years (married 13), 1 child 12, equal shared custody, husband and wife 39, separated 2004
Husband earns $38,500/yr., licensed practical nurse, wife $35,000 as medical clerk at hospital
No child support, as husband pays 100% of s. 7 expenses, okay under s. 9 ($336-$308=$28 if set-off)
Wife worked throughout, husband new partner (also LPN)
Entitlement based on interdependency, from 2006 petition, 3 years spousal support
$200/mo. for 2006 (range $160-$214); $175/mo. for 2007 (range $183-$245); $150/mo. for 2008-05-20

*Pelot v. Saagh-Pelot*, 2008 NSCSS 80 (O’Neil J.)
Married 17 years, wife 50, children 19 and 15
Older child with husband, engineering student, younger with wife
Wife underemployed as lecturer, not sufficient effort, earns $31,741/yr.
Wife says SSAG range $1,566-$2,288 using $136,000/yr. as husband’s income
Husband engineering professor, income determined as $125,000/yr.
Child support, split custody: $1,025 - $280 = $745/mo. interim
Spousal support $600/mo. interim, indefinite, review fall 2008
[Estimated range if wife earned $50,000: $643-$1,376/mo.]

Together 16 ½ years (married 15 ½), children 14 and 23, adopted by husband, husband 47, wife 52
Husband investment dealer, $1.09 million in 2007, wife no income
Child support $8,647/mo. table amount
Guidelines used for interim spousal support unless exceptional circumstances
Trial in 2 months, above ceiling income, range $29,493-$34,324/mo.
Wife can get by on $25,000/mo.

Together 11 years, 2 children 10 and 5 with wife
Wife homemaker, no income exception social assistance
Husband fisherman, owns motel, income issues, expenses, $60,000 imputed
Child support $848/mo.
SSAG calculations for different incomes, to be recalculated and top end of range awarded, as addendum
[Estimated range $848-$1,108/mo.]

Together 18 years (married 14), 4 children 18, 11, 8 and 5, with husband since 2004 separation
Wife’s income $60,500, child support $1,104/mo., plus $400/yr. for oldest child, plus 33% of net day care
Husband earns $113,383/yr.
Primary care continue with husband, wife’s time to increase to between 33 and 38% of time
Spousal support on non-compensatory basis, wife’s poor financial decision-making in past
Budget “need” of wife $360/mo. after tax, or $570/mo. gross
Spousal support of $570/mo., reducing to $470/mo. in Sept. 2009, when her income increases, no day care
Custodial payor range stated as $543-$739/mo., 9 to 18 years, at low end as non-compensatory
Duration, total of 7 years, ending Dec. 2011
[Custodial payor range actually lower, estimated at $448-$597/mo.]

Married 27 years, husband and wife 55, 2 children 23 and 17, younger with wife, Grade 12
Separated 2005, 2005 interim order: child support $563/mo., spousal support $1,750/mo.
Husband earns $77,211 as industrial relations officer with government
Child support $722/mo.
Wife field auditor, Nielsen, 56 hrs/4 wks, earns $26,000
Range $747-$1,297, spousal support of $1,000/mo. ordered, as husband contributing $175/mo. to education expenses of 23-year-old, also pays $450/mo. mandatory pension contribution
No time limit, but husband likely to retire in 2010, variation then

Married 11 years, 3 children 9, 8 and 6, with wife
Husband’s past cocaine abuse, children with him alternate weeks if his mother present
Husband stockbroker, but home from Jan. 2004 to Oct. 2006, now earns $11,000 part-time, car dealership
Wife earns $780,000/yr. as financial advisor
Husband states range as $16,220-$19,126 if $780,000; $6,738-$8135 if $350,000 [wrong formula]
Interim spousal support, exceptional circumstances, his drug abuse and capacity to earn
Income of $60,000/yr. imputed to husband, interim spousal support $1,500/mo.
[Custodial payor range at $350,000/$11,000: $2,988-$3,984; at $350,000/$60,000: $2,552-$3,403]

Married 10 years, husband and wife 39, 2 children 13 and 9
2004 order: child support $600/mo., spousal support $650
2007 change to shared custody, husband applies to vary
Husband machinist earning $45,640 in 2004, terminated employment in 2005, for more time with children
Husband’s income now $29,300/yr., no income imputed for underemployment
Wife’s income $6,045 in 2006, $20,800 in 2007, each has new common-law partner
Child support under s. 9: husband pays $89/mo. extracurricular expenses, wife $22/mo.
Table amount $413, set-off in 2006 $331, 2007 $128, child support fixed at $350/mo. 2006, $150/mo. 2007

Husband paid $377/mo. spousal support
Guidelines range: 2006, $303-$540; 2007, 0 to 0
Spousal support continued at $377/mo. for 2006, none for 2007 and after

Humphreys v. Humphreys, 2008 CarswellBC 186, 2008 BCSC 24 (Crawford J.)
Married 34 years, 5 children, wife 59
Adult 25 with Down’s syndrome with wife, also 4th child, paying low room and board
Wife home, only available part-time, income of $6,400/yr. imputed
Husband school board administrator, earns $107,865, new wife “substantial income”
Child support $970 less $325 provincial disability, for $645/mo.
Range $2,035-$2,634, indefinite, order for spousal support of $2,400/mo.

Husband earns $107,579/yr., Sask. Energy, substantial overtime
Interim child support for one $906/mo.
No income stated for wife, working same job, interim spousal support $800/mo.
Guidelines “should not be applied”, no explanation

Pegler v. Avio, 2008 CarswellBC 169, 2008 BCSC 128 (Dickson J.)
Together 14 years, not married, child 10, with wife, husband 65, wife 51
Wife has multiple sclerosis, receives CPP disability $6,000/yr.
Wife economics degree, worked previously, unlike to work now
Husband economics professor, earned $124,467 in 2006
Husband went half-time in 2007, own health issues, investment income too
Husband will retire within one year, income $77,244 in 2007
Interim order Feb. 2007: child support $716, spousal support $2,087/mo. (maximum level)
Unjust enrichment: husband to pay $840,000 to wife, for house and pension
Child and spousal support amounts to continue until retirement
Duration: disability exception, no time limit (max. 13 more years otherwise), binding on estate
[Estimated range if wife $6,000: $1,287-$1,797, but $2,087 maximum if wife no income]

Wu v. Dipopolo, 2008 CarswellBC 164, 2008 BCSC 112 (Gray J.)
Together 12 years, married 5, 2 children 5 and 2, husband 35, wife 39
Family assets divided, debts allocated, 55% of net assets to wife
Husband operates rental, clothing, other businesses, income issues, cash transactions
Wife says $150,000, husband says $83,000, court finds $100,000
Wife student, travel and airline industry diploma, no income
Child support $1,444/mo., plus husband pays all child care, $850/mo.
No lump sum spousal support
Guidelines range stated as $1,672-$2,241/mo. [appears no s. 7 expenses considered]
Some reapportionment, but zero income, need, intends roughly equivalent standards of living
Spousal support of $2,000/mo., review in Sept. 2010 or full-time employment of wife
[Estimated range if s. 7 payments all by husband: $1,270-$1,610/mo., if shared $1,444-$1,899]

M.(K.A.) v. M.(P.K.), 2008 CarswellBC 135, 2008 BCSC 93 (Barrow J.)
Married 21 years, 2 children 17 and 14, with wife, wife 42
2005 separation agreement: child support $1,173/mo., $1,000/yr. s. 7 expenses
no spousal support, husband’s income $95,000
Husband in pharmaceutical sales, 2006 income $109,050, cohabiting
Wife home during marriage, cohabiting since separation, now earns $41,900/yr. (2007)
Child support $1,559/mo.
Miglin analysis: negotiated okay, but no substantial compliance on stage 1
Wife argues range $1,650-$2,221/mo., but repartnering
Wife still entitled, compensatory, income of $38,000 imputed to wife starting Jan. 2005
Husband’s income $100,000, range then $671-$1,300/mo.
Amount chosen at low end, as not needs-based, ending in 10 years

But repartnering, merger over time with new partner, reduce spousal support by 10% per year
Spousal support $750/mo. (2005), $600 (2006), $525 (2007), $450 (2008), etc.,

Together 24 years, married 20, 3 children 21, 18 and 17
Oldest in university, each parent pays $600/mo, 18 on own, 217 home with wife
Interim spousal support, Sept. 2005: $12,500/mo., husband’s income $300,000
Dec. 2005 consent order: $6,500/mo., review in 3 years
Wife works part-time for Weight Watchers, earns $3,000/yr., seeks support under SSAG
Interim spousal support at $6,500/mo., until trial of issues of entitlement, etc.
[Estimated range at $300,000 if child support for one, plus $600/mo. each: $7,606-$8,941/mo.]
[Estimated range if child support for two, plus $600/mo. each: $6,650-$7,854/mo.]

Together 16 years (married 13), husband and wife 44, 3 children 16, 14 and 12, with wife
16-year-old daughter serious physical and mental impairments, constant care required, wife granted respite care services by government
Husband aircraft technician with Air Canada, earns $74,000/yr., little involvement with children
Wife works part-time in retail craft store, earns $8,200/yr., not “underemployed”
Child support $1,322/mo.
Spousal support $500/mo., both compensatory and non-compensatory, near mid-point of SSAG range
S. 7 expenses for football, basketball and band for 2 boys $1,370/yr., not daughter’s school lunch, transport
[Estimated range $294-$629 if s. 7 expenses considered; $329-$666 if not]

Married 18 years, 2 older children gone, 3 younger in shared custody, husband 58, wife 43
Husband earns $260,000/yr. in bakery business
2005 trial decision: spousal support $3,500/mo. plus child support
Spousal support increased to $5,000/mo. on 2006 appeal, application of SSAG
Application to vary by husband, based on wife’s cohabitation and marriage
Income imputed to wife: $50,000 from invested assets, plus $36,000 employment
Child support: set-off, $4,384 - $1,643 = $2,741/mo.
Wife found to have commenced cohabitation May 2006, new husband earns $658,000/yr.
Spousal support terminated retroactive to May 2006

Together 2 years, married 1, 1 child 21 mos., husband 31, wife 27, separated Oct. 2006
Husband adopted wife’s 8 year old child, but no relationship and no support now by agreement
Husband teacher earns $60,410, student wife’s income $17,880 (student loans)
Child support $564, plus 77% of day care costs
Consent order March 2007 for $435/mo. spousal support, after sale of home
Wife received 61% of home proceeds, paid off debts
Wife seeks support for 2-3 years to finish studies, husband says no more
Range $341-$819, spousal support of $435/mo. ordered to Dec. 2008 (18 mos. total)

Together just over 1 year, married 1 year, 1 child 11 mos., husband 32, wife 37
Wife’s interim move from Kelowna to Vancouver allowed, with child
Wife on maternity leave, marketing job in Vancouver, earning $29,500 half-time
Husband earns $89,000, Interior Health Unit, child support $815/mo.
Interim spousal support, at half-time income, range $900 - $1,500/mo.
Short marriage, prospect of full-time employment, $800/mo., wife to notify of income changes

Married 16 years, 1 child 15, with wife, husband 47, wife 56

Child support $701/mo., husband to pay $2,500/yr. for private school, activities
Husband earns $74,432, wife earns $36,167
Spousal support indefinite, husband paid $450/mo. voluntarily since 2005
Wife earns $32,000, new job in Aug. 2007, earning $42,000
Mid to upper end of SSAG range, $750/mo. for 2007, $600/mo. for 2008
[Estimated range at $32,000: $403-$925; at $42,000: $39-$584]

Married 14 years, 2 children, wife 45
2007 consent interim order, husband says income $96,000, spousal support $400/mo.
Husband’s actual 2007 income $175,000, as broker, changed employers in 2006
Husband’s incomes:  2004 $67,000; 2005 $53,000; 2006 $162,700
At $175,000, child support $2,282/mo. plus $159/mo. net day care
2008 income estimated as $157,500, child support $2,079 plus $153/mo.
Spousal support: wife claims $2,000/mo., earns $49,230/yr.
Range stated at $175,000:  $1,833-$2,900/mo. [seems to assume no s. 7 expenses]
Spousal support $1,500/mo. in 2007 and 2008
[Range, considering s. 7 expenses, at $175,000: $1,765-$2,811; at $157,500: $1,389-$2,327]

Married 23 years, separated 2000, 7 children, traditional marriage, wife 52
2 children with wife, 25 mentally-challenged, 12 physical disabilities
2002 order: child support $1,800, spousal $700/mo., husband earned $81,000
2006 order: child support $988 plus s. 7, spousal $1,750/mo, husband $110,000
Review in June 2007, Guidelines applied on review
Wife part-time teaching assistant, earns $20,000/yr., could earn $30-$35,000
25-year-old receives $800/mo. disability and $500/mo. employment
Husband police officer, income with overtime $102,000, remarried, new wife has child 15
Matrimonial home reapportioned 2/3 to wife, $54,000 extra
Child support $922/mo. for one
Ranges for wife’s income $20,000: $1,627-$2,258; $30,000: $1,254-$1,913; $35,000: $1,057-$1,735/mo.
Order for $1,300/mo., until review in Feb. 2008, time for wife to seek further employment
[If range calculated as 2 children, ranges about $200/mo. lower]

Together 5 years, married 4, separated 2001, wife 37
3 children of previous relationships:  17 on own, 15 group home, 13 with new partner’s parents
1 child 12, with husband since 2005
Wife seeks child support for 3 and spousal support
Husband not in place of parent, 6 year delay, wife living with another man since 2004
Spousal support both compensatory and non-compensatory, wife home during relationship
Wife on social assistance (not income), also some waitressing $4,991 (2005)
Husband earned $29,991 (2005)
Lump sum for past, without child support formula used, no child support by wife
Range $1,875 - $2,500/yr., mid-point $2,187/yr. for 3.75 years, $8,203 lump sum
[Custodial payor range:  $127-$169/mo. for 2.5-5 years, global $3,810-$10,140 ($8,213 net)]

Nykiforuk v. Richmond, 2007 CarswellSask 675, 2007 SKQB 453 (Ryan-Froslie J.)
Together 17 years, married 12, 2 children 17 and 7 with wife
Wife home, U.S. art and design certificate, $2,400/yr. rent only income
Husband musician, corporation, income issues, $65,000
Interim child support $910/mo., s. 7 expenses not proved, left to trial
Interim spousal support: no income imputed to wife, range $801-$1,090/mo.
Husband voluntarily paid (including $1,061/mo. mortgage) $4,000/mo. 2005,
$3,000/mo. 2006-07, $2,000/mo. since Aug. 2007
Interim order for spousal support of $1,100/mo.

Together 12 years, 2 children 13 and 10, with wife
Judicial dispute resolution, parties agree to binding decision on rest
Home sold, proceeds divided, $212,000 each
Wife actress, earning $12,000, imputed income of $24,000
Husband $90,000, child support not stated, table $1,290/mo.
Guidelines considered
Spousal support $700/mo., retro to April 2005, continue 2 more years (4 ½ years total)
[Estimated range: $526-$1,276]

Mid-length marriage, 2 children 15 and 7, with wife
Husband mechanic, now earns $26,000 in new common-law partner’s business
Partner a substantial income
Income of $50,000 imputed to husband, given past employment, former business
Wife continuing care assistant, just started employment, earns $24,000/yr.
Child support $715/mo.
Property divided equally, plus $7,000 for husband’s former business
Entitlement to spousal support, but Guidelines range suggests no amount of support
But husband’s cohabitation, lower shelter costs, $200/mo. ordered
[Guidelines range 0 to 0 at $50,000, 0-$268 at $60,000]

Together 20 years, married 18, 2 children 21 and 17, husband 44, wife 55
Wife not working, stay-at-home mother, cares for granddaughter
Husband millwright, earns $56,195, but previously earned $71,000
Oct. 2005 interim consent order: child support $711, spousal $1,900/mo.
Mar. 2006 consent order: child support $575 (1), spousal $1,500/mo., review in 3 years, husband $71,000
Application to vary by husband, after change in jobs, new job no overtime, dismissed
Husband knew of change in jobs at time of order, chose to work less, now cohabiting
Amount ordered in 2006 still within Guidelines range, even with lower income

Together 12 years, married 7, husband 35, wife 38, 2 children 9 and 2, week-about shared custody
Wife works in family business, bankrupt, earns $23,800 (including car, cellphone)
Child support: set-off agreed, $1,020 - $353 = $667, plus $274/mo. by husband for child care
Dec. 2005 interim order: child support $793/mo., spousal $250/mo.
1995 cohabitation agreement/marriage contract: wife waived spousal support
Miglin analysis: fairly negotiated, compliance then, but 1st child not planned, financial problems of wife
Range based on rotated child benefits: $364-$901, standard of living analysis, mid-range
Spousal support of $620/mo., review 6 months after youngest starts Grade 1

Man v. Phamisith, 2007 CarswellOnt 7117 (S.C.J.) (Blishen J.)
Married 5 years, 2 children 6 and 3, husband no answer, uncontested trial
Husband earns $48,945, child support $737/mo.
Wife unemployed in 2006, now at Scotiabank earning $17,900
Guidelines range $100-$336/mo.
Order for $200/mo., 7 mos. from Aug. 2006 to Feb. 2007 when unemployed
Child and spousal arrears paid by wife all paid out of husband’s share of house proceeds

Married 15 years, 2 children 18 and 16, split custody, husband 58, wife 46
Husband lawyer on disability since 35, cease at 65
Wife not work outside home, now cohabiting, income of $24,000 imputed
Husband’s income $81,120 tax-free, $100,632 taxable, grossed-up $243,742
Child support: $2,033 - $220 = $1,813/mo.
Husband’s debt problems reflect poor money management
Wife entitled, more non-compensatory, range $3,800-$4,800
Exceptional circumstances: husband older, young children, wife cohabiting, her actual expenses low
Spousal support $2,000/mo. (from which husband can deduct certain debt payments), no time limit

Married 21 years, husband 52, wife 50, 3 children 20, 17 and 15, with husband
Property divided equally, including husband’s professional corporation
Husband doctor, income issues, earns $502,984 including net income from corp.
Wife trained as nurse, home, now personal support worker, $15,000/yr. plus $25,000/yr. investments
Husband says $2,700/mo. for 2 years, interim support $4,000/mo. since Oct. 2005
Range $7,952-$10,603/mo., order for $6,500/mo., indefinite
[Estimated range at $350,000: $5,037-$6,717/mo.]

Interim support, 2 children 18 and 14 with wife
Husband amusement park operator, corporation, income issues, $120,000 imputed
Wife earns $29,280 at Home Depot, rounded to $30,000
Child support $1,696/mo. for 2, another older child living with wife, working part-time
Guidelines range $1,611-$2,260, but exception
Abnormally high costs of maintaining home, plus $2,200/mo. mortgage
Interim spousal support $3,000/mo., plus husband continues to pay mortgage until sale or trial

Married 16 years, 2003 separation, wife 40
4 children: 14 and 16 with wife, 2 older children with husband
Husband manager and sales, income $150,000, lost his job, gambling addiction and debts
Wife home, now living with partner and child
Child support $1,136/mo.
4 children: 14 and 16 with wife, 2 older children with husband
Husband manager and sales, income $150,000, lost his job, gambling addiction and debts
Wife home, now living with partner and child
Child support $1,136/mo.
2003 separation agreement: spousal support postponed, while husband paying debts
Duration for spousal support of 3 years, no marketable skills, training required
Amount $1,500/mo.
Range if husband $124,815: $1,626-$2,015; if $109,248, $1,383-$1,733

Together 23 years, married 10, 2 children 22 and 17, younger with wife, husband 56, wife 58
Interim: child support $2,080/mo. and spousal $4,000/mo.
No re-apportionment, equal division, payment by wife of $321,984, she keeps house
Wife copy editor, home 5 years, full-time work, 3 days/week since 2003
Wife earns $56,000, health issues, 4 days imputed, $75,000/yr.
Husband lawyer, income issues, $275,000 determined
Child support $2,277, spousal support $5,000/mo., reviewable after Nov. 2008, husband’s income
[Estimated range: $3,980-$5,679]

Together 15 years, married 14, husband 45, wife 43, 2 children 15 and 12, with wife
Separated 2000, 2002 order: child support $1,192/mo., spousal $808/mo., husband earned $97,000
2004 split custody, varied: child support $488/mo., husband earning $100,000, wife $31,000
Husband remarried, salary and retained earnings $130-$140,000
Wife earns $30,251 full-time with London Life
Child support $944/mo.
Husband seeks to terminate/reduce spousal support, wife to continue
Spousal support requested less than Guidelines range, duration 7.5 to 15 years
Order for $808/mo. for 2 years, $400/mo. for 2 years, end Sept. 2011, i.e. 11.5 years total

[Estimated range for $140,000: $1,819-$2,511]

Married 21 years, husband 50, wife 46
3 children, 17 (special needs) with husband, 15 and 14 with wife
Interim order 2007: child support $4,964/mo., spousal $8,036/mo., access of wife to accounts until then
Property divided: $1.6 million each
Husband senior vice-president, Wood Gundy, earns $670,965/yr.
Wife imputed income $20,000 part-time employment and $48,000 investment income, $68,000/yr.
Child support: $8,972 - $595 = $8,377/mo., no s. 7 expenses
Spousal support: wife not worked outside home, real estate licence, seeks $10,000/mo.
Guidelines not applicable, above ceiling
Wife overspending, increasing debt, $5,000/mo., time limit premature, review in 2 ½ years
[Estimated range at $670,965: $10,512-$12,808; at $350,000: $4,290-$5,673]

Married 11 years, 3 children 13, 11 and 9, with wife
Wife at home in Fort McMurray, moved to Edmonton, interim support
Husband earns $175,000 as power engineer and rent from home
Child support $3,161/mo., $300/mo. to s. 7 expenses, husband large access expenses
Wife home 8 years, employed full-time at $60,000 since 2003
Range stated as $1,485-$2,411/mo. [estimated as $1,073-$1,994 after s. 7 expenses]
No interim spousal support, “may” be disadvantage, left to trial

Married 21 years, both spouses 50 (45 at separation), 1 child 22 with wife
Daughter student, finishes university 2008, works part-time, $3,500/yr.
Nov. 2002 to May 2005: husband paid $3,000/mo. combined support, net
June 2005 divorce: child support $500/mo., spousal $3,500/mo.
Husband then on disability, $113,645/yr., wife $10,146 income, review in 15 months
Husband applies to reduce and time limit support, wife applies to maintain
Traditional marriage, wife some efforts to work part-time, retail sales, $14,000/yr.
Wife sufficient effort towards self-sufficiency, still entitled
Husband pilot, again on disability, $131,241/yr.
Child support of $500 continued
Guidelines range $3,145-$3,911, parties used mid-point in 2005 settlement
Spousal support of $3,500/mo. to continue, indefinite for now
Judge remains seized, as child finishing school and husband returning to work

Together 11 years, married 9, 1 child 5, with wife
Wife administrative clerk, earns $35,628/yr., home 3 years
Husband police officer, earns $83,680/yr., cohabiting with another officer
Also $18,000/yr. tax-free DVA disability payment, grossed up to $22,500, total income $106,180
Child support $956/mo.
Guidelines apply to interim support, range $1,114-$1,800
Low end of range will cover budget shortfall of wife, $1,100/mo.

Together 21 years, married 17, husband 46, wife 44, 4 children 18, 17, 15 and 10
Interim decision, husband provided generous support voluntarily for 3 years, 5 mos. to trial
Issues of income, debt, disclosure, family trust
Wife home, primary caregiver to children
Husband businesses, income goes offshore, not tax, says $900,000/yr., grossed-up to $1.6 million
Child support $30,000/mo.
Spousal support, above ceiling, range $30-$35,000/mo., order for $50,000/mo., ability to pay
Together 15 years, married 12, children 8 and 17
Wife on disability, back and fibromyalgia, since before marriage, $14,862/yr.
2005 interim order: child support $1,075, spousal $1,750/mo., husband earned $88,722
Custody varied from principal residence to wife, to shared custody
Husband earns $93,209
Child support $1,062/mo. by set-off
Guidelines range for spousal support $771-$1,275
Order for $850/mo., for roughly equal monthly cash flow, review in 2 years