

The Spousal Support Advisory Guidelines Three Years Later

Professors Carol Rogerson and Rollie Thompson

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Appendix I: Case Law Update, Sept. 12, 2007 – Feb. 8, 2008

As we write this update, three years after the release of the Draft Proposal, we are putting the finishing touches to the revisions to the Advisory Guidelines. We expect the final version to be released by the end of March 2008.

One of the purposes of this relatively brief update is to let you know what to expect in the final version, and in particular to draw your attention to one significant new revision—the addition of a *minimum duration* to the *with child support* formula.

In addition, we review some of the significant developments in the case law, including the Ontario Court of Appeal's endorsement of the Guidelines in its very recent (January 2008) decision in *Fisher v. Fisher*, [2008] O.J. No. 38, 2008 ONCA 11 and the British Columbia Court of Appeal's careful analysis of the use of the Advisory Guidelines in the variation context in its December 2007 decision in *Beninger v. Beninger*, [2007] B.C.J. No. 2657, 2007 BCCA 619.

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 March 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 and exceptions.

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 to be capped at 50 per cent of net (rather than gross) income
- *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

- *with child support formula, shared custody*: shared custody formula adjusted to always include a 50/50 split of net family income
- *exceptions*: several new exceptions added:
 - reapportionment of property in B.C.
 - basic needs/hardship exception: inability to meet basic need in shorter marriages under the *without child support formula* where the recipient is low 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
- “*indefinite*” support: change of terminology to “indefinite (duration not specified)”

However, there is also one additional revision that emerged from our consultations that has not been as well-publicized and that we want to draw to your attention to—the addition of a *minimum duration* to the *with child support formula*.

B. Minimum Duration under the *With Child Support Formula*

All orders under the *with child support formula* are indefinite in form, which in the final version will mean “indefinite (duration not specified)”. In cases involving dependent children, there are often review terms attached to such orders or agreements and, of course, they are subject to variation. In the Draft Proposal, we set out a *maximum duration* or “outside time limit”, to maintain consistency with the *without child support formula* and to provide some structure for the process of review and variation. *The maximum duration was the longer of either one year of support for each year of marriage or until the youngest or last child completed high school.*

Absent any minimum duration, however, the maximum duration was not treated as an outside time limit, but instead as a default time limit, as a period for which a recipient was entitled to receive spousal support. The problem was especially acute in shorter marriages with very young children. This outcome was never our intention and, throughout our feedback sessions, we canvassed lawyers, mediators and judges about how these shorter marriage cases worked out in practice. Lawyers in particular wanted some kind of minimum duration, to create a range that would create room for meaningful negotiation around duration. Over the past three years, we did develop a strong sense of what a minimum duration for this formula could be.

As with maximum duration, there are two tests for minimum duration under the *with child support formula*. We have renamed these tests, to clarify their rationale and operation: the *length-of-marriage test* and the *age-of-children test*. **Under these tests, the minimum duration is the longer of either one-half year of support for each year of marriage or until the date one year after the youngest child starts attending school full-time.**

The school date for the *age-of-children* test will vary from province to province and even from school district to school district, based upon the availability of junior kindergarten, the age rules governing school registration and the program the child takes. Added to that is a one-year grace period, which allows the recipient spouse to make whatever preparations necessary to return to employment.

In practice, the *age-of-children* test will provide a minimum duration for shorter marriages and very young children, while the *length-of-marriage* test will typically apply to marriages of ten years or more or cases where children are already in school or close to starting full-time school.

It should be kept in mind that this will be a minimum duration for support and it says nothing about the proper *amount* of spousal support for this period. Further, the initial order will still be indefinite (duration not specified). Any time limit will only appear after a review or variation hearing, especially in cases involving young children. Finally, under the *with child support* formula, the rationale for support is compensatory and this should push most cases towards the longer end of the durational range, and away from the minimum duration.

Changes will be made to the software to incorporate the revisions in the final version by the date of release.

C. Case Law Highlights

The 66 new Guidelines cases¹ since our “31 Months Later” update in September 2007, include two very important court of appeal decisions: the Ontario Court of Appeal decision in *Fisher v. Fisher*, [2008] O.J. No. 38, 2008 ONCA 11 and the British Columbia Court of Appeal decision in *Beninger v. Beninger*, [2007] B.C.J. No. 2657, 2007 BCCA 619.²

1. *Fisher v. Fisher*: The Ontario Court of Appeal Endorses the Guidelines

Fisher, released in early January of 2008, is the first decision of the Ontario Court of Appeal to address the 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 to reach 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

¹ For a regional breakdown, of the 63 trial decisions, 25 were from Ontario, 22 from B.C., 6 from Alberta, 4 from Newfoundland & Labrador, 3 from Saskatchewan, and one each from New Brunswick, Nova Scotia, and Manitoba.

² A third appellate level decision, that of the New Brunswick Court of Appeal in *D.L.M. v. J.A.M.*, [2008] N.B.J. No. 9, 2008 NBCA 2 (Larlee J.A., Turnbull and Robertson JJ.A. concurring), simply involved a brief reference to the Guidelines. After imputing a higher income to the husband, the Court of Appeal remitted the remaining support issues (including entitlement) to the trial judge, directing that the Advisory Guidelines be used to determine any amount and duration of spousal support if entitlement was found.

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 itself, involving a fairly lengthy marriage without children in which both parties worked, raised many significant spousal support issues that were intertwined with the use of the Advisory Guidelines, including the differences between compensatory and non-compensatory support claims, the use of time limits and review orders, the impact of second families, the treatment of post-separation income increases, retroactive spousal support, and the standard of appellate review.

Fisher involved 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 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 been earning \$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, which 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 *Leskun*—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 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.

2. ***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, who 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 as well, that entitlement issues may also have arisen since the initial order. However, in an important ruling, Justice Prowse also recognized, correctly, 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.

3. Trial Judgements

While the two Court of Appeal decisions in *Fisher* and *Beninger* clearly stand out in their significance, we would also like to draw your attention to three recent trial level decisions.

In *Hykle v. Hykle*, [2007] M.J. No. 360, 2007 MBQB 243, Yard J. applied the Guidelines to determine the amount and duration of spousal support in a complex case, the first Manitoba decision to provide a detailed examination of the Advisory Guidelines.

In *M.(K.A.) v. M.(P.K.)*, 2008 CarswellBC 135, 2008 BCSC 93 (B.C.S.C.), Justice Barrow relied upon the Advisory Guidelines in determining that a separation agreement failed the *Miglin* stage 1 test. Of even more interest was the creative way in which he dealt the impact of the wife's re-partnering in determining the appropriate amount of support. Drawing on the concept of "merger over time" he ordered that spousal support be reduced by 10% for every year of continued cohabitation.

Carson v. Carson, [2007] O.J. No. 3741 (S.C.J.), a case involving a very short marriage with a young child, shows Justice Aitken engaging in a very careful analysis to justify her decision to set spousal support at the low end of the range.

Appendix I

SPOUSAL SUPPORT ADVISORY GUIDELINES CASE SUMMARIES

[Sept. 13, 2007 – Feb. 4, 2008]

[This update covers new cases decided since our last update, Carol Rogerson and Rollie Thompson, "The Advisory Guidelines 31 Months Later", Sept. 12, 2007 which can be found on the SSAG website at <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>]

A. Appeal Cases

D.L.M. v. J.A.M., [2008] N.B.J. No. 9, 2008 NBCA 2 (Larlee J.A., Turnbull and Robertson JJ.A. concurring)

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.]

Fisher v. Fisher, [2008] O.J. No. 38, 2008 ONCA 11 (Lang J.A., Doherty and Goudge JJ. A. concurring)

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]

Beninger v. Beninger, [2007] B.C.J. No. 2657, 2007 BCCA 619 (Prowse J.A., Finch C.J.B.C. and Huddart J.A. concurring)

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 but 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

B. The Without Child Support Formula

Fernandes v. Fernandes, [2008] B.C.J. No. 130, 2008 BCSC 103 (Bracken J.)

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

Van Wieren v. Van Wieren, [2008] B.C.J. No. 26, 2008 BCSC 31 (Johnston J.)

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

Carberry v. Stringer, [2008] N.J. No. 6, 2008 NLUFC 1 (Handrigan J.)
 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

Mabin v. Mabin, [2008] B.C.J. No. 17, 2008 BCSC23 (Hinkson J.)
 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)

Kerr v. Baranow, [2007] B.C.J. No. 2737, 2007 BCSC 1863 (Romilly J.)
 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

Snook v. Snook, [2007] N.J. No. 391, 2007 NLUFC 30 (Dunn J.)
 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

M. (W.M.) v. M. (H.S.), 2007 CarswellBC 2667, 2007 BCSC 1629 (Rogers J.)

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

Duggan v. Elson, [2007] O.J. No. 4188 (Ont. S.C.J.) (Brown J.)

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]

Conquergood v. Dalfort, [2007] B.C.J. No. 2337, 2007 BCSC 1556 (Shabbits J.)

Unmarried cohabitation 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]

Campbell v. Campbell, [2007] A.J. No. 1188, 2007 ABQB 637 (Phillips J.)

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

Katrib v. Katrib, [2007] A.J. No. 1156, 2007 ABQB 626 (Read J.)

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.

[Estimated range if h \$65,000 and w \$18,500: \$1453-\$1938; low end of range for 12 years, no discounting, lump sum \$209,232]

Lamb v. Lamb, [2007] B.C.J. No. 2149, 2007 BCSC 1466 (Mashuhara J.)

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
[Estimated range: \$735-\$980]

Casedemont v. Casedemont, [2007] O.J. No. 3843 (Ont. S.C.J.) (Linhares de Sousa J.)

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]

Gidey v. Abay, [2007] O.J. No. 3693 (Ont. S.C.J.) (Brown J.)

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 *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]

Stemberger v. Stemberger, 2007CarswellOnt 5913 (Ont. S.C.J.) (Pierce J.)

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

C. The With Child Support Formula

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]

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. for 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.]

Lalonde v. Lalonde, 2008 CarswellOnt 308 (S.C.J.)(Hennessy J.)

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]

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.,

Radford v. Radford, [2008] S.J. No. 17, 2008 CarswellSask 18, 2008 SKQB 13 (Gunn J.)

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

Husband doctor earned \$327,324 (2006), \$288,687 projected (2007)
 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.]

Redpath v. Redpath, [2008] B.C.J. No. 68, 2008 CarswellBC 72, 2008 BCSC 68 (Warren J.)
 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

Schill v. Schill, [2008] B.C.J. No. 66, 2008 CarswellBC 70, 2008 BCSC 63 (Powers J.)
 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)

Bekkers v. Bekkers, [2008] O.J. No. 140, 2008 CarswellOnt 173 (S.C.J.)(R. Smith J.)
 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

Havrot v. Moore, [2008] O.J. No. 146, 2008 CarswellOnt 162 (S.C.J.)(Panet J.)
 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, adjourned

C.J.H. v. S.G.H., [2008] B.C.J. No. 2, 2008 BCSC 5 (Rogers J.)
 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

Jakubowski v. Kopacz-Jakubowski, [2008] O.J. No. 3, 2008 CarswellOnt 2 (S.C.J.)(Kane J.)
 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.]

Rea v. Rea, 2007 CarswellOnt 8257 (S.C.J.)(G. Smith J.)

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

Vandenbussche v. Walters, [2007] O.J. No. 4747 (S.C.J.)(Turnbull J.)

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]

Wilson v. Marchand, [2007] O.J. No. 3738, 2007 ONCJ 408 (Zisman J.)

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]

McNicol v. Bartel, 2007 CarswellBC 2886, 2007 BCSC 1744 (Dorgan J.)

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]

Meliambro v. Meliambro, 2007 CarswellOnt 7699 (S.C.J.)(J. Mackinnon J.)

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]

Emery v. Emery, 2007 CarswellBC 2889, 2007 BCSC 1747 (Powers J.)

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]

Hodder v. Hodder, 2007 CarswellNfld 361, 2007 NLTD 202 (Hoegg J.)

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)]

Katz v. Nimelman, 2007 CarswellOnt 7659 (S.C.J.)(Frank J.)

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

Le Bel v. Chartrand, [2007] O.J. No. 4586 (S.C.J.)(Brown J.)

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

Toms v. Toms, [2007] O.J. No. 4589 (S.C.J.)(Tucker J.)

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.]

Nykiforuk v. Richmond, 2007 CarswellSask 675, 2007 SKQB 453 (Ryan-Froslic 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.

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)]

K.C.F. v. L.A.F., [2007] A.J. No. 1466, 2007 ABQB 698 (Hawco J.)

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]

Marshall v. Marshall, 2007 CarswellNS 618, 2008 NSSC 11 (Forgeron J.)

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]

Newton v. Newton, 2007 CarswellOnt 7349 (S.C.J.)(Steinberg J.)

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*

McAllister v. McAllister, [2007] B.C.J. No. 2739, 2007 BCSC 1866 (Masuhara J.)

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

Austin v. Austin, [2007] O.J. No. 4283, 2007 CarswellOnt 7130 (S.C.J.)(R. Smith J.)
 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.]

M.(L.) v. M.(I.), [2007] N.J. No. 379, 2007 CarswellNfld 333, 2007 NLUFC 29 (Cook J.)
 Together 12 years, married 7, husband 35, wife 38, 2 children 9 and 2, week-about shared custody
 Husband pilot, changed jobs, income from \$62,973 (2006) to \$75,384 (2007)
 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.)(Blisshen 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, mortgage payments by wife all paid out of husband's share of house proceeds

B.(P.C.) v. B.(T.L.), [2007] B.C.J. No. 2361, 2007 CarswellBC 2606, 2007 BCSC 1599 (Rogers J.)
 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

Milton v. Milton, [2007] N.B.J. No. 414, 2007 NBQB 363 (French J.)
 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.]

L.(N.) v. L.(S.), [2007] O.J. No. 4262, 2007 CarswellOnt 7116 (S.C.J.)(J. Mackinnon J.)
 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]

Savage v. Savage, [2007] B.C.J. No. 2764, 2007 BCSC 1566 (Groves J.)
 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

Heimbecker v. Heimbecker, [2007] A.J. No. 1172, 2007 ABQB 645 (Graesser J.)
 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.
 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

Wiltshire v. Sutherland, [2007] B.C.J. No. 2267, 2007 BCSC 1535 (Sigurdson J.)
 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 reapportionment, 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]

Peterson v. Peterson, [2007] B.C.J. No. 2272, 2007 BCSC 1524 (Powers J.)
 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 \$100,00, 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]

T.L.P. v. F.J.P., [2007] A.J. No. 1114, 2007 ABQB 600 (Macklin J.)
 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]

Royer v. Royer, [2007] A.J. No. 1101, 2007 ABQB 594 (Lee J.)
 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

Hykle v. Hykle, [2007] M.J. No. 360, 2007 MBQB 243 (Yard J.)
 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

L.D.F. v. S.J.F., [2007] B.C.J. No. 2651, 2007 BCSC 1800 (Master Young)
 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.

Carson v. Carson, [2007] O.J. No. 3741 (S.C.J.)(Aitken J.)
 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

Tymoszewicz v. Tymoszewicz, [2007] O.J. No. 3649 (S.C.J.)(Eberhard J.)
 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.

Ahern v. Ahern, [2007] O.J. No. 3439 (S.C.J.)(Blishen J.)
Married 20 years, 3 children 20 (university), 17 and 15 with wife
Wife bus driver for OTranspo, \$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

Loesch v. Walji, [2007] B.C.J. No. 2663, 2007 BCSC 1807 (Martinson J.)
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

Ouellet v. Ouellet, [2007] S.J. No. 481, 2007 SKQB 298 (Wilkinson J.A.)
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

Zanewycz v. Zanewycz, [2007] O.J. No. 3567 (Pierce J.)
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]