

***Fisher* and After: The Spousal Support Advisory Guidelines in Ontario**

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Appendix I: Appeal Cases, Sept. 12, 2007 – May 20, 2008
Appendix II: Ontario Trial Decisions, Sept. 12, 2007 – May 20, 2008
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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 *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 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 disposal 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.¹ 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.).

¹ *Scott v. Scott*, 2008 CarswellOnt 1246 (S.C.J.)(Quigley J.); *Ali v. Williams*, 2008 CarswellOnt 1757 (S.C.J.)(van Rensburg J.).

(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.² 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

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

³ *Leskun v. Leskun*, [2006] 1 S.C.R. 920.

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

⁴ See Aston, "Review Orders: Let's Have Another Look" in Shaffer, ed., *Contemporary Issues in Family Law: Engaging with the Legacy of James G. McLeod* (Toronto: Thomson-Carswell, 2007) at 181 and (2007), 26 Can.F.L.Q. 253.

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 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 duration that is 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 APPEAL 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

Fisher v. Fisher, [2008] O.J. No. 38, 2008 CarswellOnt 43, 2008 ONCA 11, 47 R.F.L. (6th) 235, 88 O.R. (3d) 241 (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]

Pagnotta v. Malozewski, [2008] O.J. No. 1318, 2008 CarwellOnt 1896 (Div.Ct.), reversing 2007 CarswellOnt 9117
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

Loesch v. Walji, [2008] B.C.J. No. 897, 2008 BCCA 214 (Saunders J.A.)
 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

Shellito v. Bensimhon, 2008 CarswellBC 469, 2008 BCCA 68 (MacKenzie J.A.)
 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 \$1500-\$2000, interim support \$750/mo. for 12 mos.
 Support \$1800 for 4 mos., \$1500 for 18 mos., \$1200 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

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

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

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.]

Snyder v. Pictou, [2008] N.S.J. No. 77, 2008 NSCA 19 (Fichaud J.A.)

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

Lapp v. Lapp, [2008] A.J. No. 208, 2008 ABCA 15 (Conrad, Watson and Rowbotham JJ.A.)

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

Chalifoux v. Chalifoux, [2008] A.J. No. 174, 2008 ABCA 70 (Conrad and Rowbotham JJ.A., Berger J.A. 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. Ontario Cases After *Fisher*: January 11, 2008 – May 20, 2008

(a) The *Without Child Support* Formula

Kahle v. Kahle, [2008] O.J. No. 1454 (Gordon J.)

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

Benson v. Benson, [2008] O.J. No. 578 (J. Mackinnon J.)

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

Now on LTD until Oct. 2012, \$62,770/yr.

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.]

Gammon v. Gammon, [2008] O.J. No. 603 (Nolan J.)
 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

Hernandez v. Hernandez-Trueba, [2008] O.J. No. 1287 (Lemon J.)
 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 til 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

Austin v. Austin, [2008] O.J. No. 421 (R.J. Smith J.)

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]

Cerra v. Cerra, [2008] O.J. No. 373 (Lemon J.)

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.]

B. Ontario Cases Before *Fisher*: September 12, 2007 to January 10, 2008**(a) The *Without Child Support* Formula**

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]

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

(b) The *With Child Support* Formula

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]

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.),
 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

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]

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]

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.]

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)]

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*

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.]

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

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]

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.)(Blisshen J.)
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

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]

Appendix III

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

A. The Without Child Support Formula

Burridge v. Burridge, [2008] B.C.J. No. 854, 2008 BCSC 588 (Ehrcke J.)

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

Lucik v. Lucik, [2008] B.C.J. No. 759, 2008 BCSC 531 (Metzger J.)

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

Kerman v. Kerman, [2008] B.C.J. No. 710, 2008 CarswellBC 793, 2008 BCSC 500 (Metzger J.)

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

2001-2007: husband averaged \$114,212, wife \$28,932/yr.

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)

James v. James, [2008] B.C.J. No. 689, 2008 CarswellBC 775, 2008 BCSC 482 (Shabbits J.)

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

Paul v. Paul, [2008] N.S.J. No. 157, 2008 CarswellNS 197, 2008 NSSC 124 (Wilson J.)

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.]

Ward v. Ward, [2008] B.C.J. No. 661, 2008 CarswellBC 740, 2008 BCSC 457 (Butler J.)
 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 unemployed, 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

Maher v. Maher, [2008] N.J. No. 120, 2008 CarswellNfld 106, 2008 NLTD 68 (Goodridge J.)
 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 retired Oct. 2005, pension split 50/50, \$1,200/mo.
 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.

Lepp v. Lepp, [2008] B.C.J. No. 640, 2008 CarswellBC 717, 2008 BCSC 448 (Butler J.)
 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

Greene v. Greene, [2008] B.C.J. No. 610, 2008 CarswellBC 688, 2008 BCSC 426 (Wilson J.)
 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]

Muchekeni v. Muchekeni, [2008] N.W.T.J. No. 19, 2008 NWTSC 23 (Charbonneau J.)
 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

Hanssens v. Hanssens, [2008] B.C.J. No. 526, 2008 CarswellBC 591, 2008 BCSC 359 (Shabbits J.)
 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.

Zavari v. Zavari, [2008] B.C.J.No. 453, 2008 CarswellBC 512, 2008 BCSC 317 (Ballance J.)
 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 reapporioned, 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

King v. King, [2008] B.C.J. No. 346, 2008 CarswellBC 382, 2008 BCSC 259 (Parrett J.)
 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

Vanden Bos v. Vanden Bos, [2008] B.C.J. No. 344, 2008 CarswellBC 386, 2008 BCSC 257 (Parrett J.)
 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

Pratt v. Pratt, [2008] N.B.J. No. 85, 2008 CarswellNB 116, 2008 NBQB 94 (French J.)
 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]

M.R.S. v. A.M.S., [2008] N.J. No. 67 (N.L.Prov.Ct.)(Howe Prov.Ct.J.)
 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.

Hampton v. Hampton, [2008] B.C.J. No. 292, 2008 CarswellBC 340, 2008 BCSC 209 (Chamberlist J.)
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

Rayvals v. Rayvals, [2008] B.C.J. No. 233, 2008 BCSC 176 (Loo J.)
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

Chow v. Ng, [2008] B.C.J. No. 217, 2008 BCSC 172 (Garson J.)
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]

Gehla v. Gehla, [2008] B.C.J. No. 218, 2008 BCSC 175 (Chamberlist J.)
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

Gadzik v. Gadzik, [2008] B.C.J. No. 206, 2008 BCSC 160 (Wilson J.)
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]

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 NLUF 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]

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.]

Hiebert v. Hiebert, [2008] B.C.J. No. 867, 2008 BCSC 596 (Chamberlist J.)
 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.

Bains v. Bains, 2008 CarswellAlta 628, 2008 ABQB 271 (Veit J.)
 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

Boulton v. Beirne, [2008] B.C.J. No. 832, 2008 BCSC 577 (Myers J.)

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

Agoritis v. Agoritis, [2008] S.J. No. 270, 2008 SKQB 199 (Wimmer J.)

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.]

J.E.B. v. G.B., [2008] B.C.J. No. 758, 2008 BCSC 528 (Master Young)

Married 6 years (together 7), children 6 and 5 with wife, wife 28, 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

Snutch v. McMichael, [2008] B.C.J. No. 707, 2008 BCSC 497 (Burnyeat J.)

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

Lou v. Lou, [2008] B.C.J. No. 702, 2008 CarswellBC 784, 2008 BCSC 490 (Gerow J.)

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]

Chera v. Chera, [2008] B.C.J. No. 657, 2008 BCSC 465 (Josephson J.)

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.]

Pfann v. Pfann, [2008] B.C.J. No. 654, 2008 CarswellBC 747, 2008 BCSC 452 (Goepel J.)
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)

C.L.M. v. R.A.M., [2008] B.C.J. No. 608, 2008 BCSC 217 (Melnick J.)
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

Krupa v. Krupa, [2008] B.C.J. No. 611, 2008 BCSC 414 (Ross J.)
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

Dubey v. Dubey, [2008] B.C.J. No. 605, 2008 CarswellBC 686, 2008 BCSC 413 (Wilson J.)
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]

Glase v. Glase, [2008] B.C.J. No. 569, 2008 CarswellBC 647, 2008 BCSC 387 (Warren J.)
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

Pickford v. Pickford, [2008] B.C.J. No. 548, 2008 CarswellBC 627, 2008 BCSC 380 (Balance J.)
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.]

Mumford v. Mumford, [2008] N.S.J. No. 138, 2008 NSSC 82 (O’Neil J.)
 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]

Pederson v. Pederson, [2008] B.C.J. No. 490, 2008 CarswellBC 564, 2008 BCSC 342 (Master Keighley)
 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

Leaman v. Leaman, [2008] N.J. No. 96, 2008 CarswellNfld 87, 2008 NLTD 54 (Goodridge J.)
 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

Ellis v. Ellis, [2008] N.S.J. No. 102, 2008 CarswellNS 126 (O’Neil J.)
 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 NSSC 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.]

O(S.) v. O.(C.S.), 2008 CarswellBC 444, [2008] B.C.J. No. 407, 2008 BCSC 283 (Master Taylor)

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.

N.P. v. J.B., [2008] P.E.I.J. No. 18, 2008 PESCTD 16 (Taylor J.)

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.]

J.H.A. v. C.G.A., [2008] M.J. No. 94, 2008 MBQB 62 (Little J.)

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.]

Krell v. Krell, [2008] B.C.J. No. 226, 2008 BCSC 158 (Halfyard J.)

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

Campbell v. Campbell, [2008] B.C.J. No. 202, 2008 BCSC 154 (Warren J.)

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]

Huntly v. Huntly, [2008] M.J. No. 48, 2008 MBQB 42 (Rivoalen J.)

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.
 Interim 2003 order: child support for 2, spousal support \$2,078/mo.
 Range \$2,035-\$2,634, indefinite, order for spousal support of \$2,400/mo.
Staudt v. Staudt, [2008] S.J. No. 117, 2008 SKQB 87 (Ottenbreit J.)
 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 reappportionment, 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.,

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.]

Graham v. Graham, 2008 CarswellMan 38, 2008 MBQB 25 (Thomson J.)
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]

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)

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

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)]

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.

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]

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

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.]

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.

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