

## APPENDIX A

### SPOUSAL SUPPORT ADVISORY GUIDELINES, ONTARIO DECISIONS [July 10, 2008\* – May 13, 2009]

For cases decided prior to July 10, 2008 see the previous update papers at  
<http://www.law.utoronto.ca/faculty/rogerson/ssag.html>

[\*\* most noteworthy cases]

#### A. Appeal Cases

**\*\**Refcio v. Refcio***, [2009] O.J. No. 1539 (Ont.Div.Ct.)(Valin, Wilson and Ray JJ.)

Together 3.5 years (married 2), no children, separated Dec. 2005

Husband young lawyer, earns \$60,000/yr., left with family debts of \$63,000

Wife earned \$12,000 in 2001, left employment to go to school, after separation cohabits and then April

2007 has twins by new partner, no income, living at home with parents, emotional problems

Trial decision (June 2006)(Granger J.): spousal support of \$1,500/mo., from date of separation

Indefinite, until wife obtains employment, review in 5 years, no reference to SSAG

Div. Ct.: husband concedes terms of interim order, \$875/mo. for 3 years (already paid)

Failure to refer to SSAG not error, range stated as \$180-\$300/mo., 22 months (?)

Guidelines “not particularly helpful”, “modest”

Trial award “on high end of the range” for amount, but deference

Duration: finality needed, so time limit, 5 years to Dec. 2010

**\*\**Jessop v. Wright***, [2008] O.J. No. 3849, 2008 ONCA 673 (Ont. C.A.) (Lang, Rouleau and Watt JJ.A.)

(Sept. 29/08), varying 2008 CarswellOnt 6486 (S.C.J.) (McKinnon J.) (Feb. 21/08)

15 year marriage, 2 children 18 and 15, with wife; date of separation not stated; before 2000

Husband loses job after separation; nominal child and spousal support 2001-2005; finds new employment

April 2005; wife then seeks child and spousal support

Husband’s income: \$135,000 (2005), \$145,500 (2006), \$131,425 (2007)

Wife’s income: \$28,938 (2005), \$35,707 (2006), \$37,870 (2007, income plus severance); lost job in 2007, unemployed at time of motion

Motions judge: child support \$1772; spousal support \$2000/mo retroactive to May 2005

Appeal court criticizes motions judge for failing to explain how he arrived at the amount of support or specifying incomes on which award based.

No error to not apply Guidelines, as ranges not provided

Error to award same amount for years when wife working and earning \$25,000 - \$37,000 and years when unemployed; amount of spousal support should vary depending on recipient’s income

Award reduced to \$1700 per month from May 2005 until Nov 2007 when wife’s severance pay expired; amount said to fit one of Guidelines ranges provided by husband [SSAG range not provided, but calculated as \$1261- \$2030, midpoint \$1644, based on h \$131,425 and w \$35,000 as h argued; but using actual 2005 incomes range is \$1796-\$2575; actual 2006 incomes range is \$1654-\$2472, and actual 2007 incomes range is \$1261- \$2030]]

Award of \$2000 per month from Dec. 2007 upheld; amount sought by wife; noted to be at low end of Guidelines range or even below given wife’s unemployment [SSAG range not provided, calculated as \$2293-\$3125 if h \$131,425 and w zero income]

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\* Included are a few cases decided before July 10, 2008, which were not included in the last update, “The Spousal Support Advisory Guidelines Three and Half Years Later” (June 16, 2008, revised Aug. 1, 2008) which provides case summaries for the period Sept. 17, 2007- July 10, 2008.

**\*\*Vynnk v. Baisa**, [2008] O.J. No. 3747, 2008 ONCA 657 (Ont. C.A.) (Laksin, Simmons and Sharpe JJ.A)  
 (Sept. 19, 2008) affirming [2007] O.J. No. 274 (S.C.J.)(Klowak J.)  
 Married 10 years, husband 39, wife 33, separation 2005, 1 child aged 3 at date of trial, with wife  
 Husband critical care nurse, paid through own company, earns \$87,000  
 Child support \$774  
 Wife earns \$39,000  
 Strong compensatory claim: wife sponsored husband from Ukraine, waitressed, two jobs, to put him  
 through school,  
 Delayed her own education, now likely to return to school  
 Trial judge awarded periodic spousal support \$2,000/mo. for 5 years, 61% NDI  
 Higher quantum than if no time-limit; notes Guidelines range \$491-\$1151 but for up to 17 years  
 [restructuring by front-end loading to facilitate education, but not noted as such]  
 In addition, lump sum support of \$75,000 to recognize strong compensatory elements and support wife's  
 education  
 Trial judge of view that the Guidelines would only generate periodic award and thus would not adequately  
 address all the element of the case [but actually all within global range at Guidelines maximum]  
 Combined periodic and lump sum award upheld on appeal in brief reasons deferring to trial judge's finding  
 of wife's extraordinary efforts in facilitating husband's educational and career success.  
 Award generous, but no error  
 No reference to Guidelines in appeal judgment.

## **B. The Without Child Support Formula**

*Puckering (Litigation Guardian of) v. Puckering*, [2009] O.J. No. 1646, 2009 CarswellOnt 2118  
 (Ont.S.C.J.) (Blishen J.)

Married 30 years, 3 adult children, traditional marriage  
 Wife ovarian cancer, palliative care in home, no income (prior to separation)  
 Wife's expenses \$7,400/mo., some inflated  
 Husband software company, salary and bonus \$235,222/yr.  
 Interim spousal support, both compensatory and non-compensatory  
 SSAG range \$7,351-\$9,691/mo., indefinite, mid-point \$8,576/mo., \$8752 is 50/50 NDI  
 Wife seeks \$9,352, husband offers \$8,000, order for \$8,800/mo.

*Soares v. Soares*, [2009] O.J. No. 1560 (Ont.S.C.J.)(Ricchetti J.)

Married 31 years, 2 adult children, interim support  
 Wife home, now unable to work, accepted for interim motion  
 Husband earns \$76,740/yr.  
 Wife says range \$2,356-\$3,012, seeks \$2,500/mo.  
 Husband deducts union dues, attributes investment income to wife (\$4,944/yr),  
 says range \$2,136-\$2,728/mo.  
 Husband offers \$600/mo., youngest daughter (25) with him, her diabetes expenses \$400/mo.,  
 wife not sought CPP disability  
 Interim order \$2,000/mo.

*Cunningham v. Montgomery*, [2009] O.J. No. 1310 (Ont.S.C.J.)(Coats J.)

Married 22 years, husband 59, wife 58, 1 child 23 with husband, separated Jan. 2002  
 Interim separation agreement 2002: equal split of property  
 Income issues for husband, own business, his accountant's expert evidence accepted  
 Child support: daughter in university, graduates in 2009, terminates May 2009  
 Interim 4 mos. table amount to father of \$820/mo., then budget \$13,000 less child contribution \$4,000,  
 Balance of \$9,000, split equally, i.e. \$375/mo.  
 Interim spousal support: \$1,000/mo. from April 2002 to Dec. 2003, terminated by husband,  
 Then \$1,500/mo. from Sept. 2004 to April 2009  
 Transitional compensatory support, end in April 2009,

Wife member of Immigration and Refugee Board, on disability, income from \$107,000 to \$91,922/yr  
Husband own public relations co., 2002-04, earned about \$200,000 per year, now \$22,647  
Wife's income greater than husband's since 2005, support should have terminated then  
SSAG used to determine past support, compared to that actually paid in 2004 to 2009  
*Without child support* formula used, high end of range \$3,500/mo. 2004, \$3,000 in 2005, zero after  
Global amounts about same, no repayment  
[*Custodial payor* formula should have been used, 2004 range \$1,826-\$2,435, 2005 range \$1,668-\$2,224]

*Goddard v. Goddard*, [2009] O.J. No. 1293 (Ont.S.C.J.)(Kershman J.)  
Married 32 years, 2 adult children, husband 55, wife 54, interim interim support  
Wife earns \$58,000, managing community centre, may lose job in April 2009  
Husband manager of securities co. branch, income issues, he says \$120,000, offers \$2,000/mo.  
Wife says his income \$240,000, SSAG range \$5,688-\$7,538, or if \$200,000, then \$4,438-\$5,872/mo.  
No explanation for reduction in income, income fixed at \$200,000  
Long-term traditional marriage, entitled, low end of range for interim interim support, \$4,438/mo.  
Clearer picture of husband's income from report at interim hearing

*Jennett v. Jennett*, [2009] O.J. No. 1226 (Ont.S.C.J.)(Mulligan J.)  
Married 27 years (plus cohabitation for "several years"), 2 adult children, husband 55, wife 52  
Interim spousal support to be determined, separated March 2008, no support paid  
Wife CPP disability, \$12,252/yr.  
Husband locomotive engineer, CNR, reduced hours, \$103,000/yr., new partner (earns \$36,000/yr.)  
Husband paying mortgage of \$1,200/mo., wife in home  
Range \$2,836-\$3,309, order for \$3,309/mo. interim, wife pays mortgage

*Durocher v. Treitz*, [2009] O.J. No. 856, 2009 CarswellOnt 1079 (Ont.S.C.J.)(Gauthier J.)  
Cohabited 15 years, no children, husband 45, wife 40  
Wife lost job since separation, was earning \$75,000, now \$23,000, new partner (self-employed)  
Husband police officer, earns \$102,000/yr., living with another police officer (\$74,000) and her daughter  
Entitlement: non-compensatory only, loss of standard of living, stress of separation, loss of job  
Interim spousal support of \$1,750/mo., close to mid-range SSAG [range \$1,481-\$1,975/mo.]

\*\**Cecutti v. Cecutti*, [2009] O.J. No. 580 (Ont.S.C.J.)(Kane J.)  
Married 40 years, husband 69, wife 70, 3 adult children  
Wife in home, exclusive possession, 2002 interim order \$5,000/mo. spousal support  
Traditional marriage, wife no income  
Husband accountant in practice, still working, no pension, new partner (\$41,000/yr.)  
Equalization of NFPs  
Husband agrees to pay spousal support of \$5,000/mo., indefinite, wife seeks \$10,000/mo. (50% gross)  
Husband's income averaged over 7 years, \$238,000/yr.  
Range \$7,225-\$9,443/mo., lower end of range, factors listed, \$7,225/mo. and \$12,000 retro  
Husband needs to slow down in future, variation likely

*Cote v. Cote*, [2009] O.J. No. 484 (Ont.S.C.J.)(Kane J.)  
Married 35 years, 3 adult children, husband 58, wife 51, interim support  
Husband works at Vale Inco, says income \$70,000, offers SSAG midpoint \$2,547/mo.  
Wife says his income \$150,000, SSAG midpoint \$5,469/mo.  
Wife earned \$30,000, but on sick leave for cancer since Sept. 2007, no income  
Interim spousal support \$5,000/mo.

\*\**Hayes v. Hanrieder*, [2009] O.J. No. 421 (Ont.S.C.J.)(Vogelsang J.)  
Cohabited 15 years, no children, husband 54, wife 58, separated 2004  
Wife in house until 2008 sale, also her mother and then her father  
Wife employment problems, working at Superstore part-time, \$15,082/yr.  
Husband Canada Post, retires July 2009, earns \$49,537/yr. (\$31,000 on pension)  
Independent, 50/50 relationship, each autonomous

No compensatory claim, only non-compensatory, transitional support  
Range \$631-\$841, midpoint \$736, when retired \$299-\$398, midpoint \$348/mo.  
Spousal support \$750/mo. from Feb. 2008 to retirement, \$350/mo. until Sept. 2011  
Total duration 7.5 years, 4 years in house after separation, plus 3.5 years

\*\**Beardsall v. Dubois*, [2009] O.J. No. 416 (Ont.S.C.J.)(Vogelsang J.)  
Married 4 years (cohabited 30 months), no children, separated Dec. 2005  
Husband military, retired 2000 to London, employment and pension \$92,600/yr.  
Wife also Armed Forces, medical technician, quit job in Petawawa, moved to London  
Wife employment problems, alcohol problems, quit \$12,000 job, to move to mother in Barrie, no income  
Entitlement to support conceded, vague agreement by husband to support wife  
Temporary spousal support of \$1,600/mo., from Aug. 2006  
Range \$463-\$618, 2 to 4 years, but disability exception and compensatory exception  
Order \$1,500/ mo. from Feb. 2009 to Nov. 2010, no retro support

*Raymond v. Raymond*, [2009] O.J. No. 5294 (Ont.S.C.J.)(Hennessy J.)  
Married 27 years, 2 adult children, husband 54, wife 52, long traditional marriage  
Husband's pleadings struck for non-disclosure  
Husband also not paid support \$2,600/mo. ordered in June 2007, satisfied out of house proceeds  
Property divided equally  
Husband earns \$95,648/yr., including grossed-up Quebec workers' comp payments (payable for 10 years)  
Wife various part-time jobs, earns \$31,922/yr.  
SSAG midpoint \$3,246/mo., payable from Oct. 2008  
Lump sum order: \$2,240/mo. (net after-tax) for 10 years, less 6% for present value, less 50% contingencies  
Total amount \$98,585, plus \$21,154 retro support, partially satisfied from remaining house proceeds

*Fritsch v. Fritsch*, [2008] O.J. No. 5238, 2008 CarswellOnt 7838 (Ont.S.C.J.)(Pazaratz J.)  
Married 24 years, 4 adult children, wife and husband both 62  
Wife works part-time retail, husband pipefitter  
1997 "temporary" order: spousal support \$250/mo., wife cohabiting for 3 years, husband earned \$57,000  
Treated by parties as final order, husband now retiring, seeks to terminate support  
Wife still cohabiting (17 years together), husband now cohabiting too  
Husband's income \$40,728/yr. (down from \$64,000), wife earns \$17,000 max.  
SSAG not apply, given age of order and variation, range stated as \$570-\$740/mo. if husband \$36,000  
Wife still entitled, support continued at \$250/mo. "very modest", no info re *Boston* argument

*Stewart v. Tudorachi*, [2008] O.J. No. 5111 (Ont.S.C.J.)(Warkentin J.)  
Together 22 years, no children, husband 53, wife 50, separated 2003  
Application to vary by husband to reduce or terminate support  
2006 order: support \$2,250/mo., husband earning \$73,000, wife no income  
Husband pipefitter, income reduced to \$63,000, health problems, married to teacher, she 4 children  
Wife has fibromyalgia, intended to upgrade, instead job for 8 months in 2008, \$28,000/yr.  
Wife quit job before hearing, income imputed at \$15-\$17,000/yr.  
SSAG "rule of 65" applies, no end date, circumstances different from *Fisher*  
Range for various incomes \$1,000 to \$1,500/mo. [range estimated at \$1,265-\$1,687/mo. on those found]  
Order for \$1,400/mo. for 2 years, then \$1,200/mo. indefinite

*Morrison v. Barclay-Morrison*, [2008] O.J. No. 4663, 2008 CarswellOnt 6956 (Ont.S.C.J.)(Czutrin J.)  
Married 5 ½ years, no children, separate 1995, husband now 40, wife 38  
At separation, husband earned \$47,257, wife \$24,627/yr.  
SSAG range then \$170-\$227/mo., for 3 to 6 years, lump sum calculator \$4,000-\$12,000 after tax  
If interim claim made in 1995, likely higher, \$600-\$800/mo., given property obligations  
Property calculations for equalization, house, husband's share \$10,329, home vested in wife

*Wallace v. Prince-Cox*, 2008 CarswellOnt 6434 (Ont. S.C.J.) (Tulloch J.) (Oct. 31/08)

8 -9 year common law relationship

W has spotty work record; h loaned her \$22,000 during relationship, never repaid

H income \$76,000

H paid interim support of \$800/mo for 14 months plus \$4,500

W in new relationship and plans to move to Calgary; income uncertain; imputed at \$24,00

W seeks spousal support of \$1000/mo for 6 years

No further entitlement to spousal support

SSAG range \$520-\$693/mo for 4-8 years; midpoint \$606/mo for 6 years, or \$33,984 after tax.

H already paid \$36,900 through interim support and \$22,000. W adequately compensated for relatively short relationship that resulted in no economic disadvantage to her

\*\**Wells v. Wells*, [2008] O.J. No. 3961 (Ont. S.C.J.) (Richetti J.) (Oct. 9/08)

3 year relationship (married 1 plus 3 prior cohabitation; separation 2007

W disabled; disability income of \$25,000 after gross up; child from prior relationship; child support from father excluded from her income; after separation sharing home purchased with ex-husband

H income \$70,000

W seeks \$1,200/mo interim spousal support, to give her 41% NDI; rejected; NDI approach not appropriate given short length of marriage

SSAG range: \$225-\$300/mo

Interim support of \$300/mo ordered; top end of range because of disability; by excluding child support received by wife from her income, range effectively increased; had this not been done, amount would have been increased by small amount beyond upper end of range to take account of disability

*Taylor v. Taylor*, [2008] O.J. No. 3900 (Ont. S.C.J.) (Richetti J.) (Oct. 7/08)

Immigration sponsorship; wife from India; married 2 years; cohabit only 10 months; separation 2006; h signs 3 year sponsorship until May 2008

Wife highly educated; employed now at \$14,000 but plans to seek certification of professional qualifications in Canada; h earns \$33,000 and supports parents

Wife seeks \$500 per month for 2 years (2006 to 2008) from separation to end of sponsorship agreement

Sponsorship agreement not a factor in decision because w did not seek social assistance

Court orders \$100/mo for 20 months for period from separation until Jan. 2008, or \$2000 lump sum plus pre-judgment interest.

Award said to be higher than SSAG, but reasonable given husband's actions in forcing execution of unconscionable separation agreement and leaving w stranded in India without return airfare post-separation [compensatory exception not referred to]

[SSAG range not stated, calculated as \$48-\$63 for 1-2 years, max. global value \$1515]

*Parker v. Parker*, 2008 CarswellOnt 6381 (Ont. S.C.J.) (Bishop J.) (Oct 6/08)

Variation of consent order

19 year relationship (17 marriage plus 2 cohabitation), separation 1999, wife 16 when married

2 children, now 20 and 18, one special needs, on social assistance but w also pays some expenses

Consent order in 2000 when h's income \$6,240: child support \$4/mo and spousal support \$1/mo; variation clause

H's income increases immediately after order; now \$95,800; w on social assistance (Ont. Disability), \$14,767; h did pay ws' car insurance of \$775/yr until July 2008

W seeks retroactive child and spousal and on-going spousal

Court uses SSAG to calculate arrears and on-going support [calculations not provided]

On-going spousal support of \$2,655 per month

Immaterial that Ont. Disability may recoup disability payments; primary responsibility for child and spousal support with h and not state

*Merko v. Merko*, 2008 CarwellOnt 6361, 2008 ONCJ 530 (Ont. C.J.) (Maresca J.) (Sept. 30/08)

Immigration sponsorship; wife from Ukraine; married two years, cohabit only 12 months, separation 2006

Each party no income and dependant on family and friends

Both claim spousal support and make arguments using SSAG and imputed incomes  
No entitlement to support; very short marriage; economic lives never intertwined

*Hurst v. Hurst*, [2008] O.J. No. 3800 (Ont. S.C.J.) (Ducharme J.) (Sept. 24/08)

36 year marriage; separation 2000; divorce 2003; 3 grown children

2003 consent order : \$2000 per month spousal support until Aug. 2007 (h's expected retirement date); after retirement first \$2,261.70 of pension income not to be considered as income for spousal support purposes as divided through equalization payment

H does not retire until Dec. 1, 2007; receives \$70,000 lump sum retirement transferred into RRSP

W applies for variation and determination of support after Aug 2007

Retirement incentive not to be included in h's 2007 income for spousal support purposes

H 2007 income \$124,000; w's income imputed at \$23,000 (CPP, rental income; imputed income from hairdressing)

Guidelines may be applicable if agreement provides for review or variation; guidelines taken into account to ensure that support ordered "falls within the appropriate parameters"; \$3600 per month for 4 remaining months of 2007 [SSAG range not stated, calculated as \$3156-\$4143]

Ongoing support for 2008 \$1200/mo: based on h income \$51,790 (including only unequalized portion of pension) and w income \$18,767 [SSAG range not stated, calculated as \$1032-\$1301]

\*\**Gammon v. Gammon*, 2008 CarswellOnt 6349 (Ont. S.C.J.) (Nolan J.) ((Sept. 17/08)

15 year relationship; 7 years marriage, plus 8 prior cohabitation; no children; separation 2004

Separation agreement set aside; 2007 order for spousal support retroactive to separation (2004) based on parties' incomes (actual and imputed) and SSAG; \$1500 per month for 2007 based on w income (imputed) of \$25,956 and h's income (estimated) of \$90,000

H retires Dec. 1, 2007; gross monthly pension \$3700; in property division, 22.6% of pension equalized (based on 7 years of marriage); 77.4% available for support

H also receives retirement incentive of one-time payment of \$85,000, included in 2007 income but which could be sheltered all or in part in RRSP; also \$30,000 car voucher included in 2008 income

Application by H to vary support and set termination date

Neither severance package nor car voucher to be included in h's income (treated as post-separation income increase; w not entitled to share; basis of her support not compensatory; no significant contribution to h's career)

Support for 2007 recalculated using h's actual income (\$117,880) and mid range of Guidelines

Support for 2008 set at \$271/mo based on h income of \$34,365 (unequalized part of pension) and mid-range of Guidelines.

Termination date appropriate; SSAG range 7.5 to 15 years; had spousal support provisions of separation agreement had been negotiated in accordance with Divorce Act objectives, termination at low end of range would have been appropriate; in circumstances and given how long it took w to get the periodic support to which she was entitled, 10 year duration is appropriate; support to terminate in 2014.

\*\**Wright v. Wright*, [2008] O.J. No. 3118 (Ont. S.C.J.) (Langdon J.) (Aug. 11/08)

27 year marriage; separation 2003; 3 grown children

H has gravel business; w worked in business during marriage

Property division dealt with in separation agreement: h to pay w \$213,475 for shares of company by means of monthly payments of \$2,647 for 8 years

H's income from business \$105,000 (\$90,000 plus \$15,000 taxable benefits)

W had worked part-time as book-keeper after separation, now enrolled in on-line course; future income speculative; living with new partner and enjoying higher standard of living than during marriage; annual income of \$35,000 imputed

SSAG range calculated as \$1250 - \$1600

\$800 per month ordered; lower than SSAG to take account of h's monthly obligation to pay wife for her shares out of income generated by business

*Kretzschmar v. Séguin*, [2008] O.J. No. 2834 (Ont. S.C.J.) (Power J.) (July 17/08)  
Variation application; agreement providing for variation upon change of circumstances  
SSAG generally not applicable on variation (*Fisher*); but more specifically this agreement has specific formula giving wife 35% of husband's base income (result higher than under SSAG)

*Weatherhead v. Briant*, [2008] O.J. No. 3390 (Ont. S.C.J.) (Hennessy J.) (June 30/08)  
10 year common law relationship; separation 2006; wife higher earner;  
Husband applying for spousal support; started 3 year college program Sept. 2007  
Wife's income from business \$30 - 35,000; husband zero for months in school  
SSAG range stated as \$375-\$500 (if w income \$30,000) or \$483-\$583 (if w income \$35,000)  
\$450 per month ordered from July 07 to April 08 (almost 3 yrs); low end of range because h capable of earning some income during summer

### **C. The With Child Support Formula**

*Mann v. Mann*, 2009 CarswellOnt 2631 (Ont.S.C.J.)(Herman J.)  
Appeal from Court of Justice, 2 children  
2006 order: husband earned \$58,500, child support \$879 (2), spousal support \$150/mo.  
Husband loses job, new job lower income, \$42,900, motion to vary  
2008 trial decision: child support (1) \$395/mo., dental expenses \$66/mo., spousal support \$350/mo.  
Wife's income, 2 part-time jobs, 27 hours/week, dental assistant, \$23,639/yr.  
Husband seeks to impute full-time income to wife of \$27,800  
Same principles for imputing for spousal support as for child support, according to SSAG  
Onus on husband to prove imputation, not met  
[Range estimated \$64-\$366/mo.]

*Pollard v. Pollard*, [2009] O.J. No.1744 (Ont.S.C.J.)(Mossip J.)  
Married 18 years, 2 children, son 21 working full-time, daughter 20 living with wife, university  
Couple separated 2001, negotiations and legal advice, reconciled, separated again 2004  
Negotiated 2004 separation agreement on own: exclusive possession of home to wife until 2007,  
property divided, child support \$542/mo., son then with husband, daughter with wife,  
shared custody thereafter, no spousal support  
Wife challenges agreement in 2007, husband moves to enforce  
Equalization calculations close enough to NFP  
Child support: parties agreed to amount less than table, husband to continue to pay daughter's rent and tuition at university, no amounts stated, order made  
*Miglin* re support: stage 1, circumstances of negotiation okay, wife's pressure self-inflicted, move on  
But release of spousal support not in substantial compliance  
Wife home 8 years, relocated with husband during marriage  
Husband in 2004 earning \$85,000, \$104,000/yr. in 2008  
Wife limited employment in 2004, home staging business, now on EI course, no incomes stated  
Wife calculates spousal support of \$1,400/mo. as "fair", using *with child support* formula (?)  
Court orders \$1,400/mo., with time limit given her age and employability  
Support to begin Oct. 2007, continue for 36 mos. to April 2009, i.e. 4 ½ years total  
[Not possible to estimate ranges accurately without wife's income, child amounts]

*Unruh v. Rakowski*, [2009] O.J. No. 1706 (Ont.S.C.J.)(J. Wright J.)  
Application to vary by husband  
2002 consent order: husband receiving WSIB of \$37,400/yr. grossed up  
child support for 2 of \$537/mo., spousal support \$100/mo.  
Retroactive support ordered for 2007 to 2009, SSAG used for retro spousal support  
Husband now \$43,700/yr., child support \$661/mo.  
SSAG range \$14-\$234/mo., spousal support of \$220/mo. ordered

*Huska v. Adams*, 2009 CarswellOnt 2073 (Ont.S.C.J.)(Mulligan J.)  
Interim support, one child 6, equal shared custody  
Husband's income reduced by employer, from \$34,487 to \$23,400/yr.  
Wife at home, now part-time at A & W, \$14,800/yr.  
Interim child support: agreed to set-off, \$199-\$119, or \$80/mo.  
Interim spousal support \$80/mo., "Guidelines are just that"  
[SSAG range zero to zero; at zero, wife 51.9% NDI; at \$80 spousal support, 54% NDI]

*De Haney v. De Haney*, [2009] O.J. No. 1569 (Ont.S.C.J.)(Ricchetti J.)  
Together 9 years (married 1), 1 child 9 with wife, husband 39, wife 35, separated Nov. 2007  
Wife no income, home, out-of-date medical evidence, \$17,000 income imputed (minimum wage),  
wife previously worked as office manager  
Husband truck driver in construction, now less overtime, laid off for period, reduced income \$48,000  
Child support \$444/mo., retro child support and spousal support ordered  
Interim spousal support: wife says range \$1,304-\$1,606 [if husband \$69,000 and wife zero]  
Husband says none or \$300/mo., also paying \$308/mo. child support for another child  
Interim spousal support of \$900/mo. ordered  
[Range estimated at \$48,000 and \$17,000: \$100-\$410/mo.; after prior child support, 0 to \$230/mo.]

*Boyd v. Boyd*, [2009] O.J. No. 1526 (Ont.S.C.J.)(Cavarzan J.)  
Married 17 years, 3 children 19, 14 and 11, separated Aug. 2004, separation agreement  
Husband in arrears of child support, and equalization payments under agreement  
Husband in matrimonial home, paid \$20,000, then only one of three \$10,000 instalments  
Wife agreed to waive spousal support, but only if all instalments paid  
November 2005 oldest child to live with husband  
Child support resolved, but \$1,064/mo. shown for 2009 (3 child amount, but split custody?)  
Order for \$3,400 in retro s. 7 expenses  
Husband earns \$54,091 (including grossed-up structured settlement), wife earns \$34,422  
Temporary order Oct. 2007: spousal support of \$400/mo.  
SSAG calculations provided for 2005-09: zero support 2005, 2008, 2009, \$100/mo. in 2006,  
\$125-\$150/mo. in 2007  
Spousal support ordered of \$160/mo., calculated at 40% of \$400/mo., now that 60% of instalments paid

*Tenhoeve v. Tenhoeve*, [2009] O.J. No. 1423, 2009 CarswellOnt 1882 (Ont.S.C.J.)(G.P. Smith J.)  
Together 21 years (married 18), 4 children, only 2 dependent, 5 with wife, 18 away at university  
Husband hydro power line technician, earns \$118,673/yr.  
Wife works 2 part-time jobs, earns \$23,904/yr.  
Child support: \$1,021/mo. for one, plus \$500/mo. when 18-year-old home with wife, otherwise no child  
support for him as husband owns rental building and pays debt on his apartment  
Wife seeks interim spousal support of \$3,027/mo, SSAG range \$2,283-\$3,027/mo.  
Amount unrealistic given level of family debt: husband paying \$2,500/mo. on rental building and  
\$433/mo. to credit union  
Interim spousal support \$500/mo., rental property and home to be sold (husband in home)  
[No reference to interim exception or debt exception]

*Graham v. Wilson*, [2009] O.J. No. 1432, 2009 CarswellOnt 1866 (Ont.S.C.J.)(Shaw J.)  
Together 10 years, 2 children 8 and 6, with wife, access issues  
Husband plumber, 20-30 hrs/wk, \$47,500/yr., 2 other jobs not available this year  
Husband does not have to leave town and children to work out west  
Wife bartender, part-time, 12-13 hrs/wk, earns \$10,000/yr.  
Child support \$717/mo.  
SSAG range \$36-\$306/mo., children with husband 6 nights out of 14, expenses recognized  
Interim spousal support \$200/mo.

*Lana v. Navarette*, [2009] O.J. No. 1201 (Ont.S.C.J.)(Backhouse J.)  
Together 12 years, children 13 and 10, with wife, husband 39, wife 38, separated Dec. 2006  
Income issues re husband, non-disclosure, works with brother as vice-president, fixed at \$280,450  
Child support \$3,505/mo., property issues  
Family made 4 moves between Edmonton and Toronto, to accommodate husband  
Wife not worked outside home since 1995, no high school, no income  
Husband failed to pay support, wife forced onto social assistance  
SSAG range \$5,864-\$7,194/mo., 53.5 to 58.1% NDI, indefinite, 5 to 11 years  
Spousal support ordered at midpoint, \$6,506/mo., indefinite, 55.8% NDI

*Morey v. Morey*, [2009] O.J. No. 1160, 2009 CarswellOnt 1502 (Ont.S.C.J.)(Gray J.)  
Married 14 years, 2 daughters 13 and 7, with wife  
Husband executive Air Canada, earns \$212,000/yr.  
Wife employed at ScotiaBank, \$104,000/yr.  
Nov. 2008 consent order: sell home, child support \$2,676/mo.  
Interim spousal support, range \$700-\$2,150/mo., modest support pending trial, so below midpoint (\$1,450)  
Order for \$1,200/mo., s. 7 expenses for private school, day care, summer camp  
[S. 7 expense amounts not specified, and not considered in SSAG calculations]

*Perrins v. Perrins*, [2009] O.J. No. 1143 (Ont.S.C.J.)(Hourigan J.)  
Married 7 years, 2 children 14 and 8, with wife  
Wife educational assistant, home on disability, back in September, income \$26,585  
Husband police officer, earns \$81,348/yr.  
Interim child support \$1,175/mo.  
Interim spousal support: wife seeks SSAG midpoint \$532/mo., husband says can only afford \$300  
Order for \$350/mo., halfway between SSAG low end (\$173/mo.) and midpoint

*Jackson v. Boyle-Jackson*, [2009] O.J. No. 716, 2009 CarswellOnt 861 (Ont.S.C.J.)(Festeryga J.)  
Married 29 years, 1 child 11, with wife, husband 53, wife 51, separated 2007  
Wife disabled, brain injury in car accident, structured settlement and CPP, income \$48,804/yr.  
Husband earns \$823,322/yr.  
Interim child support \$6,237/mo.  
Interim spousal support \$18,900/mo., to produce 50/50 split of NDI, midrange SSAG  
SSAG range stated as \$18,300-\$22,400 [appears to be partially adjusted for s. 7 expenses]  
Each pay share of listed s. 7 expenses, including private school, riding (amounts not specified)

*Cassaday v. Krpan*, [2009] O.J. No. 651, 2009 CarswellOnt 808 (Ont.S.C.J.)(Mossip J.)  
Married 7 ½ years, 2 children, son with husband since Sept. 2008, daughter (15) with mother  
Separated Dec. 1998, wife then 44, 2001 separation agreement, support to be reviewed in 2004  
Husband imputed income \$120,000, real income lower, wife then \$11,000, spousal support \$2,250/mo.  
Review, wife now earns \$40,000, husband's income reduced to \$82,000/yr.  
Child support: \$735-\$367=\$368/mo.  
Spousal support continued at \$2,250/mo. from 2004 to Dec. 2007, none after that  
*With child support* duration range interpreted as 4 to 8 years  
Spousal support for 3 more years, to Dec. 2007, total of 6 years (plus some support 1999-2001)  
[SSAG range for amount, split custody formula, using current incomes: \$90-\$628/mo.]

*Shelley v. Shelley*, [2009] O.J. No. 813 (Ont.S.C.J.)(Reilly J.)  
Together 16 years (married 15), wife's child of first marriage now 26, 2 children 21 and 15  
Separated 2001, all three children with husband  
Husband works construction, with his father and then his son, income issues, no income determined  
Retroactive child support from 2001 to 2007 of \$17,000, \$370/mo. for one child going forward  
Wife earns \$40,000, seeks retroactive spousal support from Nov. 2001 to April 2004  
Wife claims \$13,090, i.e. \$935/mo. for 14 months, midpoint of SSAG range, as "reimbursement"  
No entitlement now, 8 years after separation, would have been then, independent by 2004  
No retroactive spousal support, property divided, no occupation rent by husband

*Calvert v. Stewart*, [2009] O.J. No. 528, 2009 CarswellOnt 671 (Ont.S.C.J.)(Matheson J.)  
Married 21 years, 3 children 21, 16 and 10, 21-year-old on own, 2 with mother  
Husband paying \$1,000/mo. to 21-year-old, retro child support determined  
Child support \$3,430/mo. (2)  
Section 7 expenses: equestrian for 16-year-old, \$8,000/yr., no, voluntary only by husband  
Child (10) learning disability, private school, \$13,088/yr, 1/3 by wife, 2/3 by husband, \$727/mo.  
Both spouses doctors, bad financial managers, lots of debts  
Husband internist, earns \$274,000/yr., wife pediatrician, earns \$139,667/yr.  
Spousal support: no entitlement, not mere disparity in income, quoting SSAG final version,  
Guidelines calculations provided by counsel (numbers not stated)  
[If consider private school and contributions to daughter, SSAG range estimated as 0 to \$1,559/mo.]

*Bentley v. Bentley*, [2009] O.J. No. 441 (Ont.S.C.J.)(Linhares de Sousa J.)  
Married 31 years, husband 64, wife 62, 3 children, one in university  
Sept. 2004 separation agreement: child support \$526/mo., spousal support \$1,275/mo.  
husband's income then \$63,000, wife's \$15,000/yr.  
Wife now earns \$38,000/yr.  
Husband teacher, retired Jan. 2008, income reduced from \$72,000 to \$20,900,  
legitimate health reasons to retire, now remarried, moved to Denmark  
Income imputed to husband, can work part-time, so \$38,000/yr.  
Child support reduced to \$350/mo., each pay 50% of section 7 expenses (not stated)  
Spousal support suspended, no ability to pay, despite wife's need and role during marriage  
Unless SSAG calculations provided to show otherwise [range estimated, 0 to 0]

*Boju v. Corr*, [2009] O.J. No. 443 (Ont.S.C.J.)(Harvison Young J.)  
Married 4 years, 1 child 2, with wife in Arizona  
Husband accountant, Romanian, refugee claim in Canada, work permit in meantime  
Husband earns \$52,000/yr., wife not employed, living with well-off parents  
Child support \$421/mo. plus \$280/mo. medical s. 7 expenses  
Entitlement to spousal support, interim  
Wife says range \$1,008-\$1,093/mo. (?), but only claiming \$500/mo., granted  
[Range estimated at \$876-\$1,097, if husband paying child support and full medical expenses]  
*Gardner v. Gardner*, [2009] O.J. No. 340, 2009 CarswellOnt 387 (Ont.S.C.J.)(Tulloch J.)  
Married 21 years, 2 children 22 and 20, husband 48, wife 47, separated 2004  
Both children away at university, with husband in summer months  
Wife cook, CAW, earns \$43,500/yr.  
Husband welder, Bruce Power, health problems, less overtime, earns \$86,000/yr., paying debts  
Entitlement to spousal support continues, wife claims \$1,111-\$1,482 (using *without child support* formula)  
No child support paid by wife (would be \$401/mo. for daughter home for 4 months)  
Husband paying \$8,000/yr. post-secondary expenses, wife's contribution would be \$3,200/yr. (\$400/mo.)  
Low end of range is \$1,111, less \$400/mo. child support, i.e. \$710/mo. interim spousal support  
[If correct *custodial payor* formula used, range would be \$428-\$571/mo. if 2 children, \$688-\$917/mo. if 1]

*Hansen v. Roy*, [2009] O.J. No. 282 (Ont.S.C.J.)(Pazaratz J.)  
Together 8 years, husband 50, wife 52, separated Sept. 2007, wife 5 children of previous relationships  
Two children 12 and 6 when husband moved in, now son 22 and daughter 15  
Son receives \$204/mo. CPP disability, father pays no child support  
Daughter's father pays child support of \$355/mo.  
Wife receives WSIB \$18,000/yr, grossed-up to \$22,250/yr., housekeeper previously  
Husband does autobody work, various employers, problems with disclosure  
Husband admits parent for daughter, but not son, found "settled intention" for both  
Son in college, graduating April 2009, living at home, income \$15,000/yr. employment and CPP, table only  
appropriate, no section 7 expenses  
Husband big issues with income, left job, now part-time at lower wages, income imputed as \$43,680/yr.  
Child support for 2 is \$659, less \$355 by one father, leaves \$304/mo., reduced in May 2009 to one child,  
\$401-\$355, or \$47 per month

Spousal support: both agree support to be time limited, but no SSAG and no budgets  
Court says range is 0-\$345/mo., \$300/mo. going forward, for 4 ½ years total, to end in Dec. 2011  
Support of \$1,200/mo. for 2007, \$250/mo. for 2008-09  
[Error in reducing for lower step-parent child support; if correctly done, range 0 to \$184/mo.]

*McFadden v. Sprague*, [2009] O.J. No. 258, 2009 CarswellOnt 294 (Ont.S.C.J.)(Power J.)  
Married 20 years, husband 56, wife 50, son (16) with husband, daughter (23) with wife  
SSAG used to determine spousal support for 2004-2007, using equal NDI where split custody  
Husband did earn \$70,000, now physical and emotional problems, no income  
Wife earned \$187,000 in 2007 in U.S.  
Child support \$1,528/mo. by wife to husband  
Big section 7 expenses for troubled children, \$24,611/yr. in 2007  
Spousal support to be paid by wife to husband, from 2004 to 2007  
Illness or disability exception applies, also debt payment exception, amount should fall within range  
Spousal support set at \$4,500/mo. from Jan. 2007 on  
[Range difficult to determine due to s. 7 expenses; without expenses, estimated at \$3,495-\$4,303/mo.]

*Korkola v. Korkola*, [2009] O.J. No. 343 (Ont.S.C.J.)(Gilmore J.)  
Together 14 years (married 12), 2 children 10 and 7, husband 39, wife 35, separated 2005  
Wife dental assistant, then home, now in 4-year nursing program  
Husband orthopaedic surgeon, 2004 incorporated practice, income issues, \$540,000 in 2008  
Shared custody, husband pays full table amount, \$7,444/mo.  
Agreement between parties that NDI split 50/50 via child and spousal support (and deduct husband's RRSP contributions)  
Lump sum for compensatory spousal support \$12,000 (half of tuition, etc. for nursing program)  
Includes consideration of post-separation income increase, "advantage" to husband  
Periodic support "non-compensatory" (?), \$9,212/mo. to get 50/50 split, to be recalculated each year  
Duration: agree time limited, husband says 2 more years (5+ total), wife 6 years (9+ total)  
June 2012 wife graduates, plus 1 year to find employment (7 years total), \$50,000 imputed to wife last yr.  
[SSAG shared custody formula range \$9,968-\$14,486/mo., without any RRSP deduction]

*Holmes v. Holmes*, [2009] O.J. No. 94, 2009 CarswellOnt 87 (Ont.S.C.J.)(Nolan J.)  
Married 16 years, husband 48, wife 36 when separated in 2002  
Two children 18 and 16, older with wife, younger with husband (2007)  
2005 order: husband earned \$81,285, wife \$20,900, child support \$1,024 plus s. 7 expenses  
spousal support \$1,000/mo., review in 3 years  
Income issues, husband now earns \$80,000 at CNR  
Wife real estate appraiser, imputed income \$20,900  
Child support: \$719-\$179=\$540/mo. plus s. 7 tuition for older of \$5,786/yr.  
Spousal support: compensatory, *Fisher* distinguished  
Another review not warranted, \$1,000/mo. continued (SSAG midpoint stated to be \$960/mo.)  
Termination after 6 more years, Dec. 2014, i.e. 10 years total, both children finished university  
[Split custody formula range estimated as \$1,035-\$1,460/mo.]

*Hofmann v. Hofmann*, [2008] O.J. No. 5335 (Ont.S.C.J.)(Matheson J.)  
Married 3 ½ years, wife 2 children of previous marriage, aged 20 and 17, separated Dec. 2006  
Wife receives \$408/mo. from natural father  
Husband sponsored wife and 2 children, short marriage but wife moved from U.S.  
Wife can't work, motor vehicle accident in 2005, benefits until 2008, then social assistance  
Interim child support: \$743-\$408=\$335/mo. for one child  
Interim spousal support: husband earns \$83,000, income issues  
Wife's income from social assistance, child tax benefit, child support  
Wife says SSAG range \$1,719-\$2,180/mo. [correctly calculated]  
Husband says \$401-\$535 (using incorrect *without child support* formula)  
Interim order for \$1,250/mo. spousal support

*Quattrociocchi v. Quattrociocchi*, [2008] O.J. No. 5341 (Ont.S.C.J.)(Lemon J.)  
Married 17 years, 3 children, son 13 and twins 6, interim support  
Husband contractor, serious income issues, he says \$60,000, used for interim  
Interim child support \$1,177/mo.  
Wife on social assistance, so income zero, deficit \$600/mo.  
SSAG range \$505-\$762  
Interim spousal support \$600/mo.

*Rowley v. Rowley*, [2008] O.J. No. 5342 (Ont.S.C.J.)(Lemon J.)  
Married 3 ½ years, 1 child 5 months  
Husband financial advisor, changed employers, 2008 income \$67,000  
Wife on maternity leave, EI, 2008 income \$38,000, but EI \$18,288/yr.  
Return to work July 2009, income then \$58,000  
Child support \$620/mo.  
Spousal support: range 0 to \$409/mo., husband paying \$1,200/mo. on consent, no tax benefit  
Order for \$500/mo., indefinite  
[Range estimated if wife \$38,000: 0-\$353/mo., if \$18,288: \$376-\$879/mo.]

*Tang v. Li*, [2008] O.J. No. 5343 (Ont.S.C.J.)(Lemon J.)  
Married 2 years plus cohabitation (?), 1 child 4  
Husband earns \$32,000, wife earns \$15,320  
Interim child support \$293/mo.  
SSAG range 0 to \$44/mo., described as “low”, interim spousal support of \$100/mo. ordered

\*\**Petit v. Petit*, [2008] O.J. No. 5437 (Ont.S.C.J.)(Platana J.)  
Together 12 years (married 8), 2 children 8 and 6, wife 37, separated Dec. 2006  
Husband in Dryden, wife in Smooth Rock Falls (1000 km away)  
Husband moved to Dryden after mill closed in Falls  
Wife moved there, no employment, Anglophone community, returned to Falls in Dec. 2006  
Interim order March 2007: children in primary care of husband, continued  
Entitlement to spousal support non-compensatory, wife earns \$29,120/yr.  
Child support \$431/mo.  
Husband earns \$121,212/yr., SSAG range \$942-\$1,256 for 6 to 12 years  
Wife seeks \$2,000/mo., ordered by judge, review in 5 years  
Exception for non-primary parent to fulfil parenting role, cost of travel for access

*Santos v. Santos*, [2008] O.J. No. 5110 (Ont.S.C.J.)(Sproat J.)  
Husband earns \$100,000, child support \$1,404/mo.  
Child 18 with husband, no claim for child support (wife would have to pay \$211/mo.)  
Husband carrying debt of \$154,000  
Wife earns \$25,000  
SSAG range stated by wife as \$449-\$1,283, spousal support of \$400/mo. ordered (debt exception?)  
[Split custody formula range \$217-\$920/mo. if zero child support by wife]

*Enright v. Enright*, [2008] O.J. No. 4949 (Ont.S.C.J.)(Lauwers J.)  
2 children 19 and 17  
2003 consent order: child support \$846/mo., spousal \$775/mo., husband then \$62,000, wife \$22,000  
Husband seeks to vary child support, review spousal support  
Husband earns \$73,370, wife earns \$33,925/yr.  
Oldest child in 2<sup>nd</sup> year university  
Child support \$875/mo. (1 ½ children), plus \$815/mo. for university expenses of older child  
For younger child, equestrian lessons and driving lessons not qualify as s. 7 expenses  
Wife seeks \$1,000/mo. spousal support (\$1,087/mo. stated to be upper end under SSAG?)  
Spousal support reduced to \$425/mo., leaving wife with 56% NDI  
[if 1 child home, section 7 expenses, range 0-\$371/mo.; if 1 child, no s. 7 expenses, range \$164-\$764/mo.]

*Hajir v. Farshidfar*, [2008] O.J. No. 4712 (Ont.S.C.J.)(Horkins J.)  
Married 18 years, 2 children 23 and 19, husband 51, wife 49  
Married in Iran, husband to Canada in 2000, wife and children in 2003, separated then  
Husband cab driver, real estate agent, security guard, renovating and selling houses  
Wife seeks to impute income of \$60,000, but court only imputes \$18,000/yr.  
Husband paid \$450 to \$600/mo. support informally, plus apartment rent of \$500/mo.  
Wife unable to hold steady job, poor English  
19-year-old at York U., works part-time, student loans, living at home  
Child support \$156/mo. table amount  
Spousal support: SSAG range \$257-\$368/mo., upper end 51% NDI to wife and children, compelling  
Spousal support ordered of \$368/mo., increased when child support ends

*Shepherdson v. Shepherdson*, [2008] O.J. No. 4703 (Ont.S.C.J.)(Kershman J.)  
3 children, 2 adults, one dependent  
Husband's income, accounting practice, income splitting before, personal and vehicle expenses  
Income for 2008 is \$86,360, child support for one child \$769/mo.  
Wife earns \$70,000, similar incomes in 2007  
SSAG: wife at 47.8% INDI, range is zero to zero, no interim spousal support

*Macropoulos v. Macropoulos*, [2008] O.J. No. 4534 (Ont.S.C.J.)(Lemon J.)  
Together 25 years (21 married), 2 children 19 and 17, wife 53, separated 2003  
Husband's income imputed at \$40,000, living with new partner in her home  
Previously worked in investment business, now on EI, few educational credentials  
Husband and wife "rollercoaster" work histories  
Child support of \$367/mo. for one child, younger, with wife  
Older child cocaine problems, in treatment, paid by husband's new partner  
now with husband, no child support  
Wife has cancer, in wheelchair, ODSP (assistance) \$18,996/yr  
Entitled to spousal support, living rent free in parents' condo  
Amount: husband unable to pay now, SSAG zero [incorrectly treated ODSP as wife's income]  
SSAG used re retro support 2003-2006, low end close to zero, no retro spousal support  
[If wife zero income, split custody range \$571-\$738/mo., if only child with wife, range \$735-\$927/mo.]

*Vanos v. Vanos*, [2008] O.J. No. 5002, 2008 CarswellOnt 7377 (Ont.S.C.J.)(Flynn J.)  
Together 16 years (married 14), 1 children 13 and 10, separated 2005  
Wife 2 children of previous relationship, now 23 and 22, all four living with wife  
Husband's 2007 income \$301,143/yr.  
22-year-old in university treated same, biological father never paid  
Child support for 3 is \$4,087/mo.  
Wife unemployed, part-time jobs, imputed \$15,000/yr.  
Wife accepts husband's income averaged over 7 years is \$150,000/yr. for spousal support purposes  
SSAG range \$2,063-\$2,831, interim spousal support of \$2,412/mo. ordered (midpoint)

*Czupiel v. Czupiel*, 2008 CarswellOnt 6969 (Ont.S.C.J.)(Ricchetti J.)  
Interim, 3 children 17, 16 and 12, with wife  
Husband appliance service business, income issues, \$120,000/yr. attributed  
Child support for prior child \$800/mo., husband now living with mother of 5<sup>th</sup> child  
Temporary child support \$2,135/mo.  
Temporary spousal support: wife earns \$20,000/yr, SSAG range \$802-\$1,680/mo.,  
order for \$1,000/mo.  
[No adjustment made for prior child support; if adjusted, range would be \$219-\$846/mo.]

*Dickinson v. Dickinson*, 2008 CarswellOnt 6788 (Ont. S.C.J.) (Gauthier J.) (Nov 17/08)  
Variation  
11 year marriage, separation 2005, 3 children 12, 10 and 8 with w  
H support for prior child, \$300/mo

2007 interim order based on h income \$107,000 and w \$29,000: \$1,935 child support and \$850 spousal  
H brings application to vary based on income decrease for 2008  
H income found to be \$84,000; w income now \$35,488, material change  
Child support for 3 children: reduced to \$1575  
Interim spousal support; SSAG range stated as 0 -\$464; \$500/mo ordered  
[If h prior child support obligation of \$300 taken into account and assumed to be non-deductible, SSAG range would be 0-\$171]

*Lalonde v. Lalonde*, 2008 CarswellOnt 6710 (Ont. S.C.J.) (Gordon J.) (Nov 12/08)

Variation

25 year marriage, 2 children, 1 adult, 1 university

2005 consent order based on h income \$100,000 and w income \$32,000: child support \$773 and spousal \$1,130; increases in incomes to constitute material change

Both incomes increase; w seeks retroactive and prospective increase in spousal and child support

H income \$139,304; w. income \$44,447

Child support: \$1,175.25 (no s. 7, post-secondary expenses covered by RESP and child's income)

Spousal support: SSAG range stated as \$1813 - \$2,723; \$1825/mo ordered; lower end of range chosen because h income based on significant overtime; he should be rewarded for his efforts

Retroactive spousal: h underpaid at least \$700/mo from what SSAG would suggest since 2005; total \$32,900, discounted for tax to \$17,750.

*Nikolaou v. Nikolaou*, 2008 CarswellOnt 6640 (Ont. S.C.J.) (Sheppard J.) (Nov 12/08)

Duration, time-limits

6 year marriage, separation 2005, 1 child now 9 with w

H income found to be \$50,000 and w \$16,560

Child support: \$462

Spousal support: \$460/mo, based on SSAG calculations provided by counsel; to terminate in 2011 (i.e. 6 years after separation) based on evidence that w has educational training that will allow her to be self-sufficient

[SSAG range not provided, calculated as \$171-\$496]

*Jiwaji v. Jiwaji*, 2008 CarswellOnt 6537 (Ont. S.C.J.) (Wood J.) (Nov 4/08)

Duration

7 year marriage, separation 2002, 2 children now 9 and 12 with w; 1 special needs

W from Kenya, no employment experience in Canada, plus health problems, now 50

2002 interim order based on h income \$43,000: child support \$609 and spousal \$800/mo

H's income \$62,100 (\$40,980 plus imputed benefits); w no effort to work, \$8000 imputed based on limited earning capacity

Child support: \$931

Spousal support: SSAG range \$450 - \$745, max 15 years [note duration based on Draft Proposal, revisions to durational range in final version of Guidelines not recognized]

Spousal support for further 4 years (10 years total): 2 years at \$597 per month (mid-range) and then 2 years at \$450, then review

Initial figure gives w 53.1% NDI, court acknowledges seems low, but 61.9% of actual dollars available

*Lickfold v. Robichaud*, 2008 CarswellOnt 6138 (Ont. S.C.J.) (Linhares de Sousa J.) (Oct 21/08)

Shared custody

5 year common law relationship; separation 2006, 1 child 6, shared custody (w not allowed to move child back to N.B.)

H income \$54,243; w \$18,000; h prior child, pays \$300/mo child support

Child support; h table amount \$500; w table amount \$156; h wants set-off; court finds w not able to pay any child support; h to pay \$500/mo; h to pay all s. 7 expenses

Spousal support: SSAG range presented as 0 - \$336; no spousal support ordered

*Renton v. Renton*, 2008 CarswellOnt 6150 (Ont. S.C.J.) (Arell J.) (Oct 21/08)

Custodial payor, duration

12 year marriage; separation 1997; 2 children, with father since 2000; older child in college since Sept. 2007

Informal support, then 2002 minutes of settlement and 2003 consent order: \$1000/mo spousal support

H remarried and 1 new child; w's income steadily increased

H applies to terminate spousal support

H income \$103,500 (2007) and \$93,300 (2008); W \$45,500 and \$46,500.

W now paying child support of \$688, plus share of s. 7 (college expenses)

SSAG range for duration 6 -12 years; 9 years reasonable period in light of h's major responsibility for child support and wife's increased income; duration to commence in 2000

Spousal support reduced to \$750/mo as of Sept. 2007; then to \$500 per month as of Sept. 2008 to cease June 2009.

[SSAG calculations for amount under *custodial payor* formula not provided; calculated as \$585-\$780 based on 2007 incomes and no s. 7; \$468-\$624 based on 2008 incomes and no. s.7]

*DeVos v. Devos*, 2008 CarswellOnt 6145 (Ont. S.C.J.) (Turnbull J.) (Oct 20/08)

11 year marriage, plus 1-2 years prior cohabitation; separation 2005; 2 children 5 and 11

H income \$57,000

W only claims spousal support for 10 months, March – Dec. 2006; claims \$200 per month based on

CHEQUEmate calculations; \$2000 retroactive spousal support awarded

[SSAG calculations not provided; w's income unknown]

*Santos v. Santos*, [2008] O.J. No. 3899 (Ont. S.C.J.) (Sproat J.) (Oct 6/08)

Interim

20 year marriage; separation 2007; 3 children, 18 (in university, with h), 17 and 14 (with w in mat home)

Dispute about incomes; precise calculations not possible; \$100,000 imputed to h and \$25,000 to w

H to pay w child support of \$1404 (table for 2 children), plus 80/20 sharing of s. 7 expenses(private school, university tuition)

Spousal support: parties to submit SUPPORTmate and CHEQUEmate calculations based upon income levels set my court

*Sawula v. Sawula*, [2008] O.J. No. 3672 (Ont. S.C.J.) (Matheson J.) (Sept 10/08)

Interim

22 year marriage, separation 2007; 5 children, 3 oldest in university, funded by RESP; 2 remaining with w in mat home

H surgeon, was earning \$600,000; heart attack post-separation, now \$456,000

W income of approx. \$36,000

Interim child support for 2 children at home: \$5,542

Spousal support; w seeks spousal support in accordance with Guidelines; court orders \$7518 as requested by wife

[SSAG range not provided, calculated as \$6491 - \$8170 based on h income at \$350,000 ceiling and child support for 2 children.]

*Danby v. Danby*, [2008] O.J. No. 3659 (Ont. S.C.J.) (Gordon J.) (Sept 9/08)

Variation

25 year traditional marriage; separation 1994; 5 children; only 2 dependent in 1999 when settlement agreement; since June 2005 only 1 dependent

H, now 59, took early retirement in 2005, pension income \$49,000

W now three jobs, \$42,000, anticipates reduction, court sets at \$34,000

H seeks termination of spousal support and termination of child support for 1 child; w seeks increase of spousal support

H income imputed at \$63,000 (early retirement unreasonable; can earn extra income; use income in year before retirement)

Child support for 1 remaining child: \$900 plus s. 7 university in future

Spousal support: SSAG range 0 - \$438; court orders \$300 as requested by w, but found to be low as prior award did not meet spousal support objectives because priority to child support

*Clements v. Clements*, 2008 CarswellOnt 5692 (Ont. S.C.J.) (Heeny J.) (Sept 4/08)

Interim support

11 year relationship (8 marriage plus 3 cohabitation); separation 2006; 2 children with mother still in matrimonial home

H \$70,621; w \$29,443

Interim child support \$1036

Spousal support: SSAG range zero to \$573; no interim spousal support payable, h paying mortgage on mat home, \$1,100/mo; court also looks at budgets

\*\**Spikula v. Spikula*, [2008] O.J. No. 3931 (Ont. S.C.J.) (Shaw J.) (Aug 28/08)

16 ½ year relationship (13 marriage plus 4 cohabitation), separation 2007, 1 child 5 with mother;

Father relocates for work reasons to another city 200 km away after separation

Wife at home, then part-time employment; now \$28,544 (2 part-time jobs)

Child support \$719

Spousal support: parties agree on application of SSAG after determination of income; SSAG range \$738-\$1039

\$750 per month ordered; good discussion of why lower end of range chosen; h will have significant travel expenses to exercise access and significant child-care costs; w will get significant equalization payment which can generate income

\*\**Dabrowska v. Bragagnolo*, [2008] O.J. No. 3155, 2008 ONCJ 360 (Ont. C.J.) (Sherr J.) (Aug 11/08)

7 year common law relationship; separation 2006, one child age 5 with mother

W university education in Poland, waitress and factory worker before child; stayed home with child; on social assistance after separation; modest earnings of \$10,780, trying to improve position, no imputation of income

H paid \$1,400/mo interim support for 1 year after separation, then reduced to \$635, then \$270 (child support only); h trucker and hours significantly reduced at end of 2007 because of new regulations

H income set at \$35,000 for 2008 and \$40,000 from 2009, no 3 year averaging; no intentional under-employment, table amount of child support ordered

Spousal support 2008: SAGG range \$1 - \$229 calculated by court, support set at \$229, guideline result reasonable, leaves w with 51.3% NDI

Spousal support 2009: SSAG range \$99-\$356 calculated by court, support set at \$350, leaving w with 51.3% NDI

Duration: good review of revisions in SSAG final version setting durational range under *with child support* formula; notes SSAG provides that duration should not be set in initial order and that limits to apply on subsequent variation or review; notes that here durational range 3 -16 years; order indefinite, subject to variation; w's income likely to increase, affecting both amount and duration of spousal support

*Kemp v. Helfrich*, [2008] O.J. No. 3729 (Ont. S.C.J.) (Plantana J.) (Aug 1/08)

Interim support

13 year relationship (4 marriage plus 9 cohabitation); separation 2005; 2 children 6 and 13, temporary sole custody to w

H moves to Alberta after separation; high access costs

H income in dispute re amount of overtime and time off work to exercise access; 2007 income \$76,073; income for 2008 set at \$85,850

W income \$33,879 (said to be net, but seems to be used in calculations as gross)

Interim child support: \$1229 (1 child Alta. Table) plus s. 7 (daycare)

SSAG calculations provided based on h income of \$76,073 (0-\$538) and \$93,300 (\$390-\$1075) [s. 7 not taken into account in calculations] [SSAG range for income of \$85,850 not before court but calculated as \$251-\$916, not taking into account s. 7]

Spousal support of \$400 per month ordered, based on SSAG and review of financial statements

*Drago v. Catalfo*, 2008 CarswellOnt 5250 (Ont. S.C.J.) (Karakatsanis J.) (July 24/08)

Interim support

10 year marriage; separation 2006, 2 children 6 and 4 with mother in mat home

H no payments since separation

H income \$192,300; w \$83,352 (teacher)

Interim child support \$2483 plus significant s. 7; interim spousal \$1000/mo

SSAG not explicitly relied upon but parties using calculations based upon different income assumptions  
[SSAG range based on incomes found by court not provided but calculated as \$1045-\$2308, not including s. 7 expenses]

*Kajorinne v. Kajorinne*, [2008] O.J. No. 2789 (Ont. S.C.J.) (Pierce J.) (July 8/08)

20 year marriage; separation 2004, 2 children 12 and 14, with w

Interim sep. agreement 2005 based on h income \$77,851: child support \$1009 plus s. 7 and \$817/mo spousal

H subsequently unemployed, income \$22,000 from employment insurance

W now employed, income \$27,500

Child support reduced to \$335/mo, plus some s. 7

Spousal support terminated; SSAG calculations provided by h show no spousal support payable [also reference to exception for payor income between \$20,000 - \$30,000]

\*\**Vanasse v. Seguin*, [2008] O.J. No. 2832 (Ont. S.C.J.) (Blisshen J.) (July 4/08)

12 year common law relationship; separation 2005; 2 children now 10 and 8

W employed in first part of marriage; no employed after birth of children and still unemployed

H acquired and sold business during marriage; living off investments

Interim agreement 2006, child support \$2186, spousal \$5000/mo

H income imputed as \$450,000 (using "conservative" 6% figure for return on investment)

W imputed income of \$85,000 as of July 2008 (investment interest on property award for unjust enrichment plus \$45,000 imputed employment income)

Child support \$5472/mo (table amount despite shared parenting arrangement)

SSAG stated not to be applicable because income over \$350,000 ceiling; court uses Murray/Mackinnon study to show dominant pattern of 48.6 – 57.5% NDI in cases where child support in pay

Spousal support of \$3,800 per month ordered, giving w 48% NDI

[SSAG range not provided but calculated using \$350,000 income ceiling for h as \$4817-\$6687]

Time limit appropriate given length of relationship, ages of children, shared parenting, regime, w's age, good health, and past employment record.

Total duration of 10 years support from date of separation appropriate; so further 7 years, when children 17 and 15.

W's request for lump sum spousal rejected

*Billingsley v. Billingsley*, [2008] O.J. No. 2617 (Ont. S.C.J.) (R.J. Smith J.) (June 30/08)

Interim support

7 year marriage; separation 2006; 2 children; wife 1 prior child; h convicted of sexual abuse of w's child

H income imputed at \$125,000 (w had argued for \$200,000); w income \$32,700

Child support for 3 children, \$1977 (\$2209 table minus \$232 from step-daughter's biological father)

SSAG range, \$811 - \$1654, \$800/mo ordered

\*\**Mann v. Mann*, [2008] O.J. No. 2942, 2008 ONCJ 231 (Ont. C.J.) (Sherr J.) (June 19/08)

Use of SSAG on variation application to recalculate spousal support because of changed incomes

19 year marriage; w primarily at home with 2 children; 2 part-time jobs after separation

2006 order based on h \$58,500 and w \$28,700: child support \$879 (table 2 children) and \$150 spousal

Both parties' incomes drop; h now \$42,900, w. now \$23,693; oldest child ceases to be child of marriage Dec. 2007; court asked to recalculate support for 2007 and 2008

For 2007, SSAG show no spousal support payable; although SSAG only advisory and not designed for variation motions (*Fisher*) provide a useful starting point when court being asked to recalculate spousal support back to time of final order; reasonableness of guideline award needs to be

assessed against individual circumstances of case; here with no spousal has 57.5% NDI, reasonable result; no basis to depart from Guidelines  
For 2008, CS for 1 child only, \$395/mo, plus \$66/mo s. 7 (dental), total \$461; SSAG range stated as \$94-\$247; w wants \$815 to give her 61% of NDI; far too high; court orders \$350; leave w with 52.4% NDI (52.7% with s.7); reasonable result [incorrect SSAG calculations used; SSAG range zero to \$27 if no s. 7; no spousal support payable; if include s. 7 expenses; w left with 52.2% NDI before spousal]

**\*\*Durakovic v. Durakovic**, [2008] O.J. No. 3537 (Ont. S.C.J.) (Scott J.) (June 11/08)  
7 year marriage; separation 2004; 2 children now 10 and 5; h 57 and w 20  
Children with w; h supervised access  
Interim support \$8,300/mo combined child and spousal; h in arrears; no payment  
H doctor, partially retired; engaged in many religious and philanthropic activities; some U.S. employment; many issues re assessing income; determined to be \$225,000  
W unemployed but some issues re family trust, income of \$14,400 imputed (min wage)  
Child support \$2862, plus \$500/mo s. 7 (mainly private school)subject to accounting at end of year based on actual expenditures  
W seeking spousal support for further 5 years (8 ½ yrs total)  
Parties did not submit SSAG calculations but court refers to SSAG to confirm its own analysis  
Appropriate duration 6 years from date of separation (ct. looks to length of marriage and date youngest child in full time school)  
Spousal support \$4,500/mo from May/04 to Jan/06; then \$3,500/mo until April 2010  
Result stated to be “not outside of an alternate calculation projected by use of SSAG” (implicit reference to restructuring?) [SSAG range not provided; calculated as \$4024-\$5097, taking into account s. 7 expenses]  
On-going support from Jan 2008 converted to lump sum [\$98,000 in periodic payments for 28 months converted to lump sum of \$49,907 after discount of 30% for tax, 3% for present value and 25% for negative contingencies]

**Baker v. Baker**, 2008 CarswellOnt (Ont. S.C.J.) (Turnbull J.) (June 4/08)  
Interim interim support application  
4 year marriage; separation 2008; 1 child, 3 yrs. old  
H in mat home; w with parents  
H income approx \$80,000  
Interim interim shared custody  
C.S. \$500/mo (lower than table of \$719 bcs shared custody)  
SSAG range \$1589 - \$2008  
\$1500 interim interim spousal support ordered, but noted no info at this stage re h’s carrying costs on mat home

**Arsenault v. Arsenault**, [2008] O.J. No. 2782 (Ont. S.C.J.) (Plantana J.) (June 4/08)  
17 year marriage; separation 2007; 2 children, 1 adult, younger child in grade 12  
W home until youngest child in grade 9, now part-time, \$14,040  
H \$99,550, now in B.C.  
No child support paid after separation because h paying off debts; now paid off  
Child support \$902 (B.C. table)  
SSAG range \$1688-\$2329; spousal support of \$2000/mo ordered (amount w requested), indexed to cost of living

## APPENDIX B

### MYTHS AND TIPS ABOUT THE SPOUSAL SUPPORT GUIDELINES

The Lawyers Weekly, Vol. 28, No. 45 (April 10, 2009)

The Spousal Support Advisory Guidelines have now become part of the standard toolkit of lawyers, mediators and judges across the country. The “final version” of the Advisory Guidelines was released last July, after extensive feedback and some revisions to the 2005 Draft Proposal. In this short piece, I want to identify two “myths” or “misses”, frequently found in the case law. And I also want to offer a couple of “tips”, two quick “hits” that might help in specific cases.

*Myth No. 1: The Advisory Guidelines do not apply to variations or reviews.*

This myth was reinforced by a passing comment in *Fisher v. Fisher*, [2008] O.J. No. 38, where the Ontario Court of Appeal suggested that the Advisory Guidelines only applied to initial orders and not to variation orders. Occasionally, judges go one step further, treating review orders like variations, as beyond the operation of the Guidelines, e.g. *Cassaday v. Krpan*, [2009] O.J. No. 651 or *Bryant v. Gordon*, [2007] B.C.J. No. 1460.

The Advisory Guidelines can and often do apply to variations and reviews. In *Beninger v. Beninger*, [2007] B.C.J. No. 2657, the B.C. Court of Appeal applied the SSAG in a variation case, but recognized that they must be used “with caution”. There may be entitlement issues at this stage, or other more complex issues, like remarriage, second families, retirement or some post-separation income increases of the payor. Where the issues are amount and duration and changing incomes, the Advisory Guidelines can be used, as in *Beninger*. In Ontario, see *Mann v. Mann*, [2008] O.J. No. 2942.

If reviews are used properly, following *Leskun*, the Advisory Guidelines should usually apply easily at the subsequent review, as many of the more complex variation issues around entitlement should arise less often. A good discussion is found in *Cavanaugh v. Cavanaugh*, [2008] N.B.J. No. 590. See also *Skelly v. Skelly*, [2007] B.C.J. No. 1243.

*Myth No. 2: The Advisory Guidelines do not help with the determination of income.*

The Spousal Support Advisory Guidelines use the same definition of “income” as that found in the Federal Child Support Guidelines, with some minor modifications. These changes are set out in chapter 6 of the final version. That’s the technical answer.

There are some situations where the income for child support purposes can differ from that used for spousal support. First, when the payor’s income increases after separation, the child will get the full benefit of any income increase, but the same is not

necessarily true for spousal support: see chapter 14.3. Second, where the payor's annual income is above the "ceiling" of \$350,000, it is likely that the table amount formula for child support will be ordered up to \$1 million or more, but the same is not so true for spousal support: see chapter 11.3. Finally, there may be cases where income will be imputed for child support, a strong case for imputing, but not as much for spousal support purposes, e.g. attributing corporate retained earnings to income or treating stock options as income.

In the end, though, income determination is mostly a question of investigation and evidence and fact, for spousal support as it is for child support.

*Tip No. 1: Use the right version of the right formula.*

Sounds dumb, but I still see instances where the wrong formula is used and then the ranges are rejected as "not helpful". Cases where the *without child support* formula is used, even though the payor parent has the custody of the children and the *custodial payor* formula should be used. Cases where the basic *with child support* formula is used, instead of the *custodial payor* formula.

Or other basic errors. Ranges for amount under the *with child support* formula are often calculated without taking into account section 7 expenses. The *custodial payor* formula assumes that the recipient of spousal support is also paying child support. If not, then a simple adjustment must be made, one that lowers the range for the amount of spousal support.

These basic mistakes should be caught by opposing lawyers, protecting the interests of their clients. And, if not by the lawyers, then they should be picked up by judges. Of course, this does require full disclosure of software calculations by lawyers, to their colleagues and to the courts.

*Tip No. 2: What if the payor can't deduct spousal support for tax purposes?*

The final version added a new exception, the *non-taxable payor income exception*: chapter 12.8. The formulas assume that the payor can deduct spousal support for tax purposes. But some payors have incomes derived largely from legitimately non-taxable sources, e.g. workers' compensation, disability payments, income earned by an aboriginal person on reserve, or some overseas employment arrangements. For child support, we just "gross up" these incomes. But that simple solution doesn't always work for spousal support, hence the exception.

One new twist, not explicitly flagged in the final version: in some countries, the payor cannot deduct spousal support for tax purposes and this same exception may be extended to resolve these cross-border cases.

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