

The Advisory Guidelines 31 Months Later

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[Note: Case law summaries found in appendices to paper:
Appendix I: Appellate Cases
Appendix II: Case Law Update, April 19 – Sept. 12, 2007
Appendix III: Case Law Update By Province]

[This update repeats much of what was in our “27 Months Later Paper”, a comprehensive update issued on April 18, 2007. In that paper we informed readers of what we had learned in our most recent cross-country travels, set out some of the changes that we know will be made in the final version of the Advisory Guidelines, identified some of the hard issues of revision that remain, in addition to reviewing the ever-burgeoning case law on the Guidelines. The additions in this update are relatively modest and relate primarily to new case law developments (see, in particular, Appendix II which provides summaries of cases decided since the “27 Months Later” paper). We also bring you up to date on current plans for the release of the final version of the Advisory Guidelines. For the convenience of readers, we have highlighted changes in the text of the paper from the “27 Months Later” paper.]

We are now in the final phase of the Spousal Support Advisory Guidelines project, where our focus is on making revisions to the Draft Proposal. Our expectation, in early April, was that the revisions would be finalized this fall. Because of a fairly intense schedule of continuing consultations and presentations from April through July, that date has now been pushed back a few months. We will be working on the final revisions through October and early November and expect the revised and final version of the Advisory Guidelines to be released in January of 2008.

The *Draft Proposal* was released by the federal Department of Justice at the end of January 2005, over two and a half years ago. From then until July 2006, we toured the country, talking to groups of lawyers and judges, groups both large and small. For the most part, we explained how the Advisory Guidelines were constructed and how the Guidelines could be used to improve the consistency and predictability of spousal support awards. At each of these sessions, we picked up comments and reactions from those who attended, but many of the early comments reflected lack of knowledge of the Guidelines, or misconceptions or lack of use.

After the National Family Law Program in Kananaskis, Alberta, in July 2006, we began another cross-Canada tour, this time seeking out feedback from lawyers, mediators and judges, in small groups. The foundation for these sessions has been the “Issues

Paper”. The formal title of this paper is: “Issues for Discussion: Revising the Spousal Support Advisory Guidelines”. The paper identifies issues for revision and, on some issues, possible options for revision.

We have now been to British Columbia (Victoria, Vancouver, New Westminster, Kelowna), Alberta (Edmonton, Calgary), Saskatchewan (Saskatoon, Regina), Ontario (Kingston, London, Ottawa, Newmarket, Barrie, Toronto), Newfoundland and Labrador (St. John’s), Prince Edward Island (Charlottetown), Nova Scotia (Halifax), Manitoba (Winnipeg) and New Brunswick (Moncton, Saint John, Fredericton). This fall, while working on revisions, we also plan to return to Manitoba and also to visit some further locations in Ontario and Quebec.

In November 2006, we met for two days with the federal Advisory Working Group on Family Law, a national group, to seek their views on a short list of “hard” issues for revision. The Advisory Working Group met again on June 15-16, 2007, with a continued focus on revisions.

Thanks to the feedback we have obtained from these sessions, as well as our many formal and informal contacts with lawyers and judges, we have developed a detailed and practical sense of how the Advisory Guidelines are being used on the ground, and a more finely-tuned understanding of what revisions may be necessary. We have also continued to read a steady stream of reported spousal support decisions citing and using the Advisory Guidelines.

When the final version of the Spousal Support Advisory Guidelines is released, you can expect to see three documents:

- (i) a completely-revised final version of the 120-page complete document;
- (ii) a brief report of revisions, noting the changes from the *Draft Proposal*;
- (iii) a 20-page “operating manual” to the Advisory Guidelines.

The last of these three is intended to provide a summary step-by-step guide for the practitioner, something in between the executive summary and the full report. Once the “final version” has been released, there will be a continuing need to monitor for any major new developments in spousal support law.

A. What We’ve Learned So Far in the Feedback Sessions

We have acquired a mass of information from all those who came out to our sessions and here we are painting with broad strokes, just the major themes rather than the many detailed comments and suggestions we have received.

(1) Use by Lawyers with Clients and Other Lawyers to Shape Expectations

The most common use of the Advisory Guidelines by lawyers is with their own clients, to shape the clients’ expectations, of what they might pay or what they might receive. The Guidelines have been most valuable, we are told, in giving advice to payors,

especially to those who are reluctant to pay much or anything at all. To a lesser degree, the Advisory Guidelines have also been used with recipients, some of whom maintain unrealistic notions of the support they are entitled to receive. Lawyers appreciate having some “objective” ranges for these client discussions. This use of the Guidelines now appears to be nearly universal.

Lawyers also use the Advisory Guidelines in negotiations, as a starting point. Again, this use of the Guidelines is very widespread, even in those areas where there is no consensus among the sitting judges about the Advisory Guidelines. Where the local judges regularly use the Guidelines, then the Advisory Guidelines achieve near-universal use in negotiations by lawyers. Mediators also said they use the Guidelines regularly in mediations, again to shape the expectations of the parties or to provide a framework for discussions.

(2) The Ranges Are About Right

Everywhere that we have been so far, no one has said that the ranges under either formula were off-base for their area. There were comments about particular fact situations and specific subsets of cases, where the ranges seemed “high” or “low”. Judges and lawyers in some areas inhabit the low end of the ranges, while other areas are located at the high end of the ranges. With that caveat, most lawyers and judges did feel that the ranges were “about right”. Some judges told us that they continued to use “their own method” for calculating support, and then cross-checked their numbers against the Guidelines ranges, only to find their amount and duration to fall within the ranges.

We have often been told that the range in this or that case was “too low” or “too high”, only to discover that the cases turned out to be high income cases or exceptions or restructuring situations or just weird facts. There are certain sub-categories of cases, in specific provinces or localities, where the decided or negotiated outcomes are inconsistent with the Advisory Guidelines, even after taking into account exceptions and restructuring. These are the cases which have required more exploration by us at the feedback sessions.

(3) Unsophisticated Use of the Advisory Guidelines

We heard from judges who complained that some lawyers just pitched up the formula ranges, without analysis or explanation. And we heard from lawyers, who complained that some judges just take the formula ranges for amounts and picked the mid-point. There was a general complaint that some lawyers, or some judges, seem to have forgotten about that threshold step called “entitlement”. From these discussions, and from our reading of the cases, it appears that the Advisory Guidelines are often used in an unsophisticated fashion. In particular, issues like entitlement, exceptions and restructuring have not been recognised or analysed. The choice of a particular amount or duration within the range is often left unexplained.

To some extent, this is to be expected in the first year or two of the Advisory Guidelines. Over time, as lawyers and judges become more experienced, we would expect to see more sophisticated uses of the Guidelines.

(4) Software as Educator

For many lawyers, busy with the demands of practice, their only education about the Advisory Guidelines comes from the software, from the last computer screen. Not surprisingly, the screens mostly state conclusions, not analysis or reasons. This approach contributes to the unsophisticated use of the Guidelines just mentioned. The Advisory Guidelines are a tool, to be used as part of a broader support analysis. The computer print-outs must be read with a background understanding of the law and the Guidelines. We will be working with the software suppliers to encourage the use of more prompts and reminders, to ensure that lawyers and judges remain alert to the full operation of the Advisory Guidelines, before and beyond the formulaic ranges.

(5) British Columbia's Embrace of the Advisory Guidelines

In August 2005, the B.C. Court of Appeal decided the *Yemchuk* case, approving the use of the Advisory Guidelines as “a useful tool” in determining spousal support. Since *Yemchuk*, the Court of Appeal has continued to endorse and apply the Guidelines, in another *ten* appeals. In its 2006 *Redpath* decision, the appeal court incorporated the Guidelines ranges into the standard of appellate review in spousal support cases, discussed below. The trial courts now cite and use the Advisory Guidelines in every spousal support case, over 120 decisions now. This means that the Guidelines have been applied in a wide range of fact situations, both with and without children, testing their flexibility and usefulness. We are now seeing more sophisticated arguments and decisions in British Columbia using the Advisory Guidelines—what we call the “second generation” of the SSAG where use of the Advisory Guidelines goes beyond the “first generation” use—input the income figures into the formulas, get the range and choose the midpoint—to focus on issues such as entitlement, restructuring and exceptions. In our June 2, 2007 paper “The Spousal Support Guidelines in B.C.: The Next Generation”¹ we review the B.C. case law and examine these “second generation” issues which arise in the more sophisticated use of the SSAG.

(6) Lump Sum Settlements

A number of lawyers have told us that the Advisory Guidelines have been particularly helpful in calculating an appropriate lump sum for the settlement of support cases. This is true, not just in *without child support* cases, but even in *with child support* cases where the recipient is prepared to negotiate a lump sum.

(7) A New Term for “Indefinite” Support?

When we wrote the *Draft Proposal*, the term “indefinite” simply meant an order for support without a time limit at the time it was made. A perfectly respectable word, used regularly in Canadian spousal support law, we thought. Little did we know that the term “indefinite” would be misinterpreted by many as meaning “infinite” or “permanent”.

¹ Carol Rogerson and Rollie Thompson, “The Spousal Support Guidelines in B.C.: The Next Generation”, June 27, 2007, prepared for the Continuing Legal Education B.C. Family Law Conference—2007, Vancouver B.C., July 5 & 6, 2007, available on the SSAG web site at: <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>

To some extent, this flows from clients and lay persons misreading the term, either in our report or in software print-outs. But some lawyers made the same mistake. We will have to find a new term to express this concept, that such orders are subject to review and variation and, through that process, even to time limits and termination. We have even suggested, only half-jokingly, that “indefinite” orders should be renamed “variable, reviewable orders”.

(8) Duration Is Often Ignored

Our feedback sessions and the case law demonstrate that the Guideline ranges for amount are often used and applied, but then their guidance on duration is often ignored or forgotten. Consistent with *Bracklow*, the ranges for amount and duration must be understood as related dimensions of spousal support. Under the *without child support* formula, for example, the amounts in medium-length marriages are reasonably generous, but we also propose time limits in such cases. If orders in such cases were to be made “indefinite”, we would have to suggest that the monthly amounts ought to be adjusted to lower ranges.

In a few jurisdictions, there are appellate authorities or strong trial court tendencies favouring “indefinite” orders in all but the shortest of marriages, even without children. What we don’t know is how such “indefinite” orders work out in practice over time, whether support is subsequently stepped down or terminated upon review or variation. Duration has proven to be the most unpredictable aspect of spousal support, showing great variation from province to province and locality to locality.

(9) A Flexible Approach to the “Ceiling”

We have heard very few suggestions for changes to the “ceiling” of \$350,000 of gross annual payor income. Above this “ceiling”, the formula ranges should not generally be used and a case-by-case approach is required. From our travels, we know that informal ceilings have developed in some parts of the country, mostly in rural areas and areas where incomes are lower. At some point along the income scale, at \$150,000 or \$200,000 or \$250,000, some judges and lawyers begin to feel uneasy with the higher-income ranges under the formulas and fall back to lower amounts. This pattern was not observed in higher-income urban areas. Instead, in some cities, we heard of lawyers and judges applying the Guidelines formulas to payor incomes above \$500,000 and even as high as \$1 million. Despite these regional differences, most seemed content to let these patterns continue for now, leaving the \$350,000 “ceiling” in place.

(10) A Desire for Default Rules

When the Advisory Guidelines were first released, we sought to develop more consistency and predictability in spousal support outcomes, but we also recognised the need for flexibility in spousal support. The use of formula “ranges” went a long way to alleviate concerns about “cookie-cutter” justice, and many of those early criticisms about rigidity have now gone by the boards. If anything, as we mentioned above, lawyers and judges have tended to forget the exceptions and restructuring, additional mechanisms to obtain more flexibility under the Guidelines.

There is obviously a great hunger out there in family law for even more consistency and uniformity in spousal support. Some of the trends we've identified reflect attempts by judges, lawyers and clients to use the Advisory Guidelines as "default rules": to say that "indefinite" duration must mean the default answer of "permanent" support; or to argue that the formulas should continue to operate above \$350,000; or to treat the outside time limits on duration under the *with child support* formula as fixed entitlements. We have often been asked why we can't narrow the ranges even more. And some lawyers think the Advisory Guidelines should just be legislated, to impose particular outcomes. In our travels, we have continued to emphasise that the Advisory Guidelines are not "default rules", but only a tool to be used as part of the spousal support analysis.

B. Revisions Already Made or Now Proposed

Ever since the Advisory Guidelines were released in January 2005, we have received helpful advice and suggestions from lawyers, mediators and judges. As the Guidelines are applied on a daily basis to a wide range of real cases, necessary refinements are identified and new issues emerge. Here we bring together, in one listing, the specific changes made so far.

(1) Social Assistance Not "Income"

This small issue surfaced right away. We proposed that the definition of "income" under the Spousal Support Advisory Guidelines generally be the same as that under the *Federal Child Support Guidelines*. Shortly after the release of the Advisory Guidelines, we clarified that *all* social assistance should be excluded from income for spousal support purposes, usually from the income of the recipient. This differs from the treatment of social assistance under s. 4 of Schedule III to the Child Support Guidelines, which requires the inclusion of the spouse's portion of the social assistance income.

(2) Adult Children, Section 3(2)(b) and Another *With Child Support* Formula

The *with child support* formula is actually a collection of formulas based upon the custodial arrangements: the basic formula for sole custody or primary care, a shared custody formula, a split custody formula, and a formula where the custodial parent is the payor of spousal support. The first three have a similar basic structure, while the fourth custodial payor formula is a hybrid formula built around the *without child support* formula. The first three work best where there is a table amount of child support plus section 7 expenses under the *Child Support Guidelines*.

We were approached by a number of practitioners who found that these formulas did not work well in situations where child support was determined under section 3(2)(b) of the *Child Support Guidelines*, where the amounts did not reflect table amounts. These are usually cases where: (i) the "adult child" attends a post-secondary institution away from home; (ii) the child makes a sizeable contribution to his or her own education expenses; or (iii) there are other non-parental resources to defray education expenses, like scholarships or RESP's or grandparent monies. In these cases, an individual budget is

prepared for the child and, after the child and other contributions are deducted, the remaining deficit is then apportioned between the parents based upon their incomes.

We then recommended another formula, one which can be calculated with DIVORCEmate and ChildView. The formula only applies where there are no children for whom a table amount of child support is being paid. It should not be used where there is one older child away at university and another still at home in high school. It only works properly where both of the children went away to university, or where the only child was left attending university away from home.

In these s. 3(2)(b) cases, the additional formula uses the framework of the *without child support* formula, but adjusted for the child support amounts paid, another form of hybrid formula. Once each spouse's contribution to the child's budget has been allocated under s. 3(2)(b), those child support amounts are grossed up and deducted from each spouse's gross income. Then the *without child support* formula is applied, using the gross income disparity and the length of marriage factor to determine amount and duration.

Another advantage of this formula is that it eases the transition between formulas. Most of these cases are longer marriages and, once the child ceases to be a "child of the marriage" and child support stops, the spouses will "cross over" to the unadjusted *without child support* formula.

(3) Capping the Maximum at 50 Per Cent of Net Income Under the *Without Child Support* Formula

Early on after the release of the *Draft Proposal*, we suggested that lawyers and judges should look closely at the *net* incomes of the spouses in longer marriages under the *without child support* formula. This formula uses gross incomes and, where the marriage has lasted 25 years or longer, the maximum range will apply, with spousal support reaching 37.5 to 50 per cent of the gross income difference. At 50 per cent of the gross income difference, the recipient will often end up with more than 50 per cent of the spouses' net income, especially where the payor spouse is still employed and the recipient has little or no income. This result should never occur.

After discussing the issue at the November 2006 meeting of the Advisory Working Group, we decided to modify the *without child support* formula in such cases. *In our view, the recipient of spousal support should never receive more than 50 per cent of the couple's net disposable income or monthly cash flow.*

Once the software programs have incorporated this change, the formula range presented on the screen will reflect this limit at the upper end of the range. The software can calculate the "50 per cent of net income" limit with precision.

We also recognise that one of the advantages of the *without child support* formula is that you don't need a computer to do the calculations. For those without software, or more precise net income calculations, this "net income" cap can be calculated crudely by hand, at 48 per cent of the gross income difference. This "48 per cent" method is a second-best, but adequate, alternative.

(4) Adjusting the Limits of the Shared Custody Formula

At the time that the *Draft Proposal* was released, the Supreme Court of Canada had not handed down its decision in the case of *Contino v. Leonelli-Contino*. In the *Draft Proposal*, we recognised that our shared custody formula might have to be revised after *Contino* was decided. The decision came out in November 2006. By and large, the shared custody version of the *with child support* formula anticipated most of the Court's child support holdings in *Contino*: the use of the simple set-off of table amounts as a starting point; the rejection of multipliers; and the concern for the child's standard of living within each household.

We have also received much feedback from mediators and lawyers working with shared custody parents in determining spousal support. Many shared custody parents opt for a 50/50 split of the couple's total net disposable income or monthly cash flow after the payment of child and spousal support, so that the child(ren) end up with roughly the same resources and standard of living in each household. We agree that this equal split of net income should be available – not mandated, just available – in every shared custody case.

The shared custody formula for spousal support usually includes this “50/50” outcome within the range. In some cases, however, this “50/50” split falls just outside the upper or lower end of the range. *We have decided to broaden the “shared custody” formula range to include the “50/50” net income split in every case.* Again, the software will be adjusted to accomplish this result.

After testing out many case scenarios, we can tell you which cases will be affected by this modification. In the one-child cases, where the parents' incomes are not that far apart or the parental incomes are lower, the upper end of the spousal support range will have to be extended a bit to include the “50/50” split. In two-child cases, any extensions at the upper end are rare and small in amount. Where the recipient parent has little or no income, in two-child cases, this modification will require some lowering of the low end of the range to include the “50/50” split. In three-child cases, it will be necessary to extend the lower end of the spousal support range to include the “50/50” split, again where the recipient has little or no income and in some other cases where there is a huge disparity in parental incomes.

We may be proposing further revisions to the shared custody version of the *with child support* formula, after further consultations and analysis of the post-*Contino* case law.

C. Some of the Hard Issues Under Consideration

The “Issues Paper” sets out a detailed list of the issues for discussion. Every one of those issues has produced comments at one or another of the feedback sessions. There are some recurring issues that are truly “hard issues”, issues which have elicited

comments at almost every session and issues with which we continue to struggle in the revision process. Here we will just “flag” those issues, as the “Issues Paper” sets out the context and any options for revision.

- (1) Further Revisions to the Shared Custody Formula
- (2) Duration in Shorter Marriages With Young Children Under the *With Child Support* Formula
- (3) Step-Parent Cases, and What Formula Should Be Applied
- (4) Amount and Duration in Shorter Marriages Under the *Without Child Support* Formula, Especially Where the Recipient Has Little or No Income
- (5) Duration in Medium-Length Marriages Under the *Without Child Support* Formula

D. A Review of the Case Law: The Highlights

The case law under the Advisory Guidelines is burgeoning. Since our last comprehensive review of the case law in our “27 Months Later” paper of April 18, 2007, there have been 69 new cases discussing the Guidelines. This brings the total number of cases to 359 as of September 12, 2007. New cases are now appearing at a rate of 5 or 6 a week—not a surprise given that, as a result of strong endorsements by the Court of Appeal, the Guidelines are now referred to in virtually every spousal support decision in British Columbia.

Case summaries can be found in the appendices to this paper. Appendix I lists all appellate decisions since the release of the Draft Proposal in January 2005. Appendix II is a comprehensive list of the new decisions (since April 18, 2007) organized according to level of court (trial or appellate), date of release and the applicable formula (*with* or *without* child support). Summaries of the cases decided prior to April 18, 2007 may be found in the appendices of our “27 Months Later” paper (covering cases from October 5, 2006 to October 5, 2007) and our “20 Months Later” paper (covering cases from January 2005 to October 5, 2007), both of which can be found on the SSAG web site at:

English: <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>

French: http://www.law.utoronto.ca/faculty/rogerson/ssag_fr.html

Appendix III lists the new cases by province.

Watch for new cases in our case law updates, which are typically compiled on a monthly or bi-monthly basis and posted on QuickLaw, WestlaweCARSWELL, the CBA National Family Law Section site, Judicom for judges and the SSAG web site at the University of Toronto Faculty of Law.

The 359 Guidelines cases now include decisions from every province and territory. British Columbia has clearly generated the highest number of decisions (144), far surpassing the other provinces. Ontario comes in second (81). A significant number of cases have also come from Alberta (36) and Nova Scotia (28).² In their brief lifetime the

² After this come Newfoundland and Labrador (19), and Saskatchewan (18) and New Brunswick (16).

Advisory Guidelines have been considered by five provincial courts of appeal. The 358 cases include 16 appellate level decisions: eleven from the British Columbia Court of Appeal, two from the New Brunswick Court of Appeal, and one each from the Nova Scotia, Quebec and Alberta Courts of Appeal. The Advisory Guidelines have received strong endorsement from the British Columbia and New Brunswick Courts of Appeal and have been referred to with approval by the Nova Scotia and Alberta Courts of Appeal. They have, however, received at best a lukewarm reception from the Quebec Court of Appeal. Below we will discuss some of the more significant appellate and trial level decisions

Not all of cases we have collected are consistent with the Advisory Guidelines. The criteria for inclusion in our list is simply that the Advisory Guidelines have been referred to or considered. Our list includes a small number of decisions which have been very critical of the Advisory Guidelines and their usefulness: see, for example, the decisions of Justice Trussler in *V.S. v. A.K.*, [2005] A.J. No. 1357, 2005 ABQB 754 (Alta.Q.B), Justice Julien in *D.S. c. M.S.*, [2006] J.Q. no. 506, 2006 QCCS 334 (C.S) and Justice Campbell in *Vanderlinden v. Vanderlinden*, [2007] N.S.J. No. 107, 2007 NSSC 80. [The criticisms of Justice Julien were subsequently echoed at the appellate level by the Quebec Court of Appeal in *G.V. v. C.G.*, [2006] J.Q. no. 5231, discussed in more detail below. See our “20 Months Later” update for an extended analysis of the concerns that have been raised about the legitimacy and usefulness of the Guidelines.] The list also includes a number of cases where the Advisory Guidelines, and more specifically the ranges generated by the formulas, were considered, but the result in the case was not consistent with those ranges. Overall, the results in approximately 68% of the cases are consistent with the formula ranges for amount. (This percentage includes not only cases where courts explicitly relied upon the Guidelines but also those where the court may have discounted the usefulness of the Guidelines or declined to follow them, but where the result nonetheless falls with the Guideline ranges. Some of these are cases where lawyers or the court had erred in stating the proper range, with the erroneous numbers reflecting inaccurate determinations of income or mistaken calculations.)

There are several reasons why the results in the cases do not always fall within the Guidelines ranges. First, some of these are cases where the Advisory Guidelines are found not applicable, either because there is a finding of no entitlement or because there is a binding spousal support agreement. Second, the monthly amount of support may have been outside the formula range, but the combination of amount and duration actually fell comfortably within the global range permitted by “restructuring”, had that concept been considered. Third, the case may have clearly fallen within one of the “exceptions” that would explain a departure from the ranges, which counsel and the court may or may not have considered. Fourth, some of the litigated cases reflect weird and wonderful facts that make them truly “atypical”.

In general, what does a review of the case law show?

- The highest level of fit with the formula ranges is found in cases with dependent children. The amounts of support ordered in these cases are fairly consistently

- within the ranges for amount generated by the *with child support* formula barring exceptional circumstances such as debt or low incomes.
- Under the *with child support formula* there is a subset of cases where the range includes zero, revealing limited ability to pay after child support. Courts are using these ranges to support a finding of no entitlement to spousal support.
 - Under the *without child support* formula (*i.e.*, in cases without dependent children) there is a very good fit between the formula ranges and the outcomes in cases of *long* marriages. For *medium length* marriages without children there is also a fairly good fit, once restructuring is taken into account (although often it is not). The cases without dependent children where the results depart from the formula ranges typically fall into clearly recognized exceptions, such as disability, significant “compensatory” claims in a short marriage, or unequal property division.
 - Under both formulas we are seeing a few problems with short marriages: under the *without child support* formula in terms of both amount and duration, and under the *with child support* formula in terms of duration, although some of these cases fall into exceptions.
 - Many judges (and we suspect lawyers as well) are willing to consider and apply the Advisory Guidelines ranges for amount, but ignore the *Draft Proposal* with respect to duration.
 - The Advisory Guidelines are often understood as only the formulas, with little attention paid to the important issues that come *before* and *after* the formulas, such as entitlement, restructuring, and exceptions. Often missing as well is an analysis of the factors that determine where to set amount (and if relevant duration) within the range. But this will change with time and increased experience with the Guidelines, as shown by the increasingly sophisticated understanding and application of the Guidelines in B.C.
 - In those provinces where there is strong appellate endorsement of the Advisory Guidelines—British Columbia and New Brunswick—and hence frequent use of the Guidelines as a benchmark in spousal support decisions at the trial level, there has been a noticeable impact on the quality of the judicial reasons. Contrary to some initial concerns, the reasons are generally more extensive. There is much more discussion of the basis of entitlement and, particularly if a decision is made to depart from the formula ranges, much more extensive discussion of the application of the *Divorce Act* factors and objectives to the facts of the particular case than in decisions that do not rely upon the Guidelines.

Now for the highlights of the case law,³ beginning with the appellate decisions [which are also summarized in Appendix I].

(1) British Columbia Court of Appeal

³ See also our “Spousal Support in B.C.” paper, *supra* note 1, which provides a detailed review of B.C. cases.

The single most important decision to date remains that of the British Columbia Court of Appeal in *Yemchuk v. Yemchuk*, [2005] B.C.J. No. 1748, released in August of 2005, which endorsed the Advisory Guidelines as a “useful tool” in determining the amount and duration of spousal support. *Yemchuk* also clarified the courtroom status of the Advisory Guidelines as neither law nor evidence, but as part of legal argument and reasoning—something like a compilation of precedent. As Prowse J.A. stated:

They [the Advisory Guidelines] do not operate to displace the courts’ reliance on decided authorities (to the extent that relevant authorities are forthcoming) but to supplement them. In that regard, they do not constitute evidence, but are properly considered as part of counsels’ submissions.

The *Yemchuk* case is also a good example of several important issues that arise under the Advisory Guidelines. The case involved the determination of the quantum of support on a slightly unusual set of facts. The Yemchuks had been married for 35 years, had one grown child, the husband was 63 years old, and the wife 61. The retired husband received pension income of \$37,600 and sought spousal support from his employed wife, who earned \$75,000. The trial judge found no entitlement. The Court of Appeal reversed and found entitlement on both compensatory and non-compensatory grounds. The husband had taken early retirement from his job in order to accommodate his wife’s employment transfer to Winnipeg. *Yemchuk* nicely illustrates the need to engage in a thorough analysis of entitlement as a threshold issue before any consideration of the Advisory Guidelines. The analysis of entitlement is important not only as a threshold matter to determine if any spousal support will be paid, but also in shaping the exercise of discretion under the various steps of the Advisory Guidelines, such as determining placement within the range and exceptions. Mr. Yemchuk only asked for support until his wife retired and their pensions were divided.

Prowse J.A. used the *without child support* formula range of \$1,190 to \$1,580 per month, in deciding to order \$1,100 per month to Mr. Yemchuk. The Court explicitly discussed placement with the range: the lower end of the range was chosen to adjust for the wife’s employment expenses and deductions. The Court of Appeal stated that the Advisory Guidelines “are intended to reflect the current law rather than to change it”, “to build upon the law as it exists”. The Court described “the move away from a budget-laden analysis” as “appealing”.

Since *Yemchuk*, the B.C. Court of Appeal has considered the Advisory Guidelines in **ten** other decisions. The most important of these is the July 2006 decision in *Redpath v. Redpath*, [2006] B.C.J. No. 1550, 2006 BCCA 338. The Court incorporated the Guidelines ranges into the standard of appellate review and ruled that the trial judge had erred in ordering an amount of spousal support much lower than the Guidelines range under the *with child support* formula.

There were difficult property and income issues in *Redpath*, as the husband owned and operated a Granville Island bakery business. The couple had been married for 18 years and they had five children ranging in age from 8 to 18. The oldest lived with the father, the next oldest with the mother, and the other three children split their time equally between the two homes. The husband’s income was fixed at \$260,000 per year,

and the wife had no income, after having been home with the children during the marriage. In this split/shared custody arrangement, the trial judge ordered child support of \$4,000 monthly (the straight table amount would have been \$4,296 for four children). Spousal support was \$3,500 per month, to be reviewed in three years.

The trial judge erred, claimed the wife on appeal, by not referring to the Advisory Guidelines in his reasons. Justice Newbury clearly ruled that this was not an error: “I do not read *Yemchuk* as indicating that the Guidelines must as a matter of law be used by a judge in determining support.” Second, argued the wife, the trial judge had overemphasized self-sufficiency, after a long, affluent and traditional marriage, a point that seemed to be accepted on appeal. The Court was then faced with the deferential standard of appellate review in support cases set out by the Supreme Court of Canada in *Hickey v. Hickey*, [1999] 2 S.C.R. 518, a standard which would bar appeal courts from intervening simply because they would have “balanced the factors differently”. The next paragraph (para. 42), in which the court addresses the impact of the Guidelines on the standard of appellate review deserves quotation,:

Cases such as *Hickey*, however, were decided prior to the introduction of the Advisory Guidelines. Now that they are available to provide what is effectively a “range” within which the awards in most cases of this kind should fall, it may be that if a particular award is substantially lower or higher than the range and there are no exceptional circumstances to explain the anomaly, the standard of review should be reformulated to permit appellate intervention. In the case at bar, I find that although the trial judge obviously considered the appropriate factors and did not misapprehend the evidence, the figure of \$3,500 per month reached by him is simply too low in light of the Guidelines range of \$4,542 and \$5,510 per month.

Spousal support was increased to \$5,000 per month, to be reviewed in five years.

Some have argued that the ruling in *Redpath* has somehow made the Advisory Guidelines “more binding” or more strongly presumptive than in *Yemchuk*. It was argued in one subsequent case, successfully, that *Redpath* required trial judges to bring their spousal support awards within the formula ranges apart from “exceptional circumstances”: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (Master Taylor). Both of these interpretations of *Redpath* seriously overstate the decision’s effect, largely by misunderstanding the concept of “standard of appellate review”. The standard of appellate review is a method for defining the kinds of cases where an appeal court *may*, not *must*, intervene, to correct the trial result. If the determination of the amount and duration of spousal support is utterly discretionary, then it is very difficult for an appeal court to articulate the limits of the range of acceptable trial results and hence the deferential approach of *Hickey* (an approach which was also applied to child support appeals before 1997). In *Redpath* the Court of Appeal is simply recognizing that the Advisory Guidelines now offer some bench marks for the range of acceptable trial results, making it *possible* to justify appellate intervention when trial decisions fall substantially outside those benchmarks. A similarly-flexible approach to the Guidelines was taken by the Court of Appeal in its most recent decision in *Dunnigan v. Park*, [2007] B.C.J. No. 1364, 2007 BCCA 329.

The subsequent appeal case of *Stein v. Stein*, [2006] B.C.J. No. 2020, 2006 BCCA 391, supports this less rigid “standard of appellate review”. This is another *with child*

support case, where the trial judge ordered spousal support of \$2,500 per month for 3 ½ years duration. The Guidelines range was \$3,920 to \$4,883 per month. Once again, the trial judge had overemphasized self-sufficiency to the exclusion of other considerations. The support ordered left “a large gap” between the spouses and was “considerably less than is adequate to meet the objectives of s. 15.2 of the Divorce Act”. An amount of \$4,200 monthly was substituted. Further, the time limit was “too severe” and the support was to be reviewable before termination, depending upon the wife’s ability to find remunerative employment.

A recent decision of significance is *MacEachern v. MacEachern*, [2006] B.C.J. No. 2917, 2006BCCA 508, where the Court affirmed *Redpath* in over-turning another trial order for a low amount and short duration after a long marriage. To address the wife’s failure to make sufficient efforts towards self-sufficiency, Justice Prowse imputed a full-time income to the wife and then used the low end of the *without* child support formula range. Given the length of the marriage, the order was made indefinite rather than time-limited.

Of the other six decisions of the B. C. Court of Appeal, three involved a relatively straightforward application of the Guidelines and will simply be noted briefly:

- In *Tedham v. Tedham*, [2005] B.C.J. No. 2186, which followed shortly after *Yemchuk*, the Court of Appeal relied upon the Guidelines to overturn the three year time limit that the trial judge had imposed on a support order following a 16-year traditional marriage and also to adjust the quantum of the award. The amount of the award was set slightly lower than the range because of the reapportionment of matrimonial property in the wife’s favour.
- In *Kopelow v. Warkentin*, [2005] B.C.J. No. 2412 the range under the *with child support* formula was considered by the Court of Appeal in determining the appropriate support award in the context of a 13 year relationship with two children. In light of that award, the Court went on to assess the fairness of a marriage agreement leaving most of the property with the husband.
- In *R.S.M. v. M.S.M.*, [2006] B.C.J. No. 1756, 2006 BCCA 362 the Court upheld a trial order within the Guidelines range after a 30-year marriage, where the support provisions in a separation agreement had failed the *Miglin* test.

Two of the remaining decisions, *Toth v. Khun* [2006] B.C.J. No. 739, 2006 BCCA 173 and *Foster v. Foster* [2007] B.C.J. No. 244, 2007 BCCA 83 illustrate the use of the Guidelines to structure time-limited awards in short and medium-length marriages. These decisions are particularly worthy of note because both involved findings by the Court of Appeal that awards higher than the formula ranges for amount would be justified. However in both cases further consideration of restructuring might have revealed consistency with the formulas.

In *Toth v. Kun* the Guidelines were considered in the context of an application by a husband to vary support because of his retirement and the drop in his income. The case

involved a 10 year marriage with no children; the wife was over 20 years younger than the husband, but she had health problems. The trial judge reduced support, but continued the support obligation on an indefinite basis. The Court of Appeal found that to be too onerous on the husband, and instead ordered time-limited step-down support, with the result that support would be paid for a total duration of 6 ½ years. *Toth* offers a nice example of a result consistent with the time limits suggested by the *without child support* formula (in this case 5 to 10 years) in medium duration marriages without children. The Court of Appeal did set the amount of support higher than the range suggested by the Guidelines under the *without child support* formula because of the wife's health and limited language skills. If the Court had considered restructuring, they could found their award to be within the global range generated by the formula rather than seeing it as a departure from the Guidelines.

In *Foster v. Foster* the Court of Appeal used its determination of the periodic support to which the wife would have been entitled after a short marriage (5 years) with one child to quantify a lump sum order. Assuming a duration of three years (based upon the length of the marriage and the time required for the wife to complete a training program), the Court of Appeal found that an amount higher than the range under the *with child support* formula would have been justified given that the husband, who had sponsored the wife from Peru, had significantly greater income-earning capacity than the wife and left the marriage with a substantially greater proportion of assets. This very sensible "front-end" loading of the award to provide the wife with support for retraining need not have been viewed as a justified departure from the Guidelines but rather could easily have been encompassed by the concept of restructuring.

The last decision, *Narayan v. Narayan*, [2006] B.C.J. No. 2917, 2006 BCCA 508 is an unusual case in which the Court was required to grapple with the thorny and very B.C.-specific issue of the relationship between reapportionment of assets under the *Family Relations Act* and spousal support in a context where the *with child support formula* generated a range of zero to zero because of limited ability to pay after payment of child support for 4 children.

(2) New Brunswick Court of Appeal

In April of 2006 the New Brunswick Court of Appeal became the second appellate court to approve of the Advisory Guidelines with its decision in *S.C. v. J.C.*, [2006] N.B.J. No. 186. In this case the trial judge had actually considered the Advisory Guidelines in determining the amount of support in the context of a 25 year traditional marriage. The husband was an army officer earning \$100,000 a year. The factual wrinkle in the case was that the wife, who was 40 years old at the time of separation, had, in the 5 years since separation, retrained and found contract employment earning \$46,764 year, thus raising the "hard" issue of when a former spouse has become "self-sufficient". After considering the Guidelines range of \$1,625 - \$2,208; a month, the trial judge ordered spousal support of \$1,625 a month for 5 years, rejecting the wife's claim for an amount higher in the range (\$1,800) and for an indefinite duration.

Justice Larlee, writing for the Court of Appeal, dismissed the wife's appeal. She approved of the Advisory Guidelines in the following terms:

The guidelines have been referred to in many ways: a check, a cross-check, a litmus test, a useful tool and a starting point. But it is my view that whichever term one likes to employ, their use, through the available software, will help in the long run to bring consistency and predictability to spousal support awards. Not only will they foster settlement, they will also allow spouses to anticipate their support responsibilities at the time of separation.

The Court adopted the reasoning in *Yemchuk* on the issue of the Guidelines' consistency with current law.

On the issue of the time-limit imposed by the trial judge, Justice Larlee recognized that there is almost a presumption of indefinite support in a long traditional marriage and that a review was generally favoured over a time limit in such cases. However, she relied on deference to the trial judge's determination that a time limit was warranted on the facts, noting that the wife was young, had no dependents, was capable and had been quickly able to reintegrate into the work force, had found steady employment, and that 5 years was a longer term than that imposed in some cases in which time limits had been upheld in long marriages. The appropriateness of the time limit on the facts of this case is obviously open to debate--touching on the "hard" issue in the current law of the meaning of "self-sufficiency". However, the result in the case does bring home the point that even after a long traditional marriage there may be a finding at some point down the road that the recipient spouse has become self-sufficient and that entitlement to support has disappeared. Even an indefinite order does not mean permanent support without reduction or even termination at some point in the future.

Leave to appeal the decision in *S.C. v. J.C.* to the Supreme Court of Canada was sought but denied: [2006] S.C.C.A. No. 246 (Oct. 19, 2006).

The New Brunswick Court of Appeal's second consideration of the Advisory Guidelines was in its recent decision of March 29, 2007 in *Carrier v. Carrier*, 2007 CarswellNB 23, 2007 NBCA 23. The Court upheld a trial decision setting aside a separation agreement on the basis of Miglin. The trial judge's spousal support order, which was for an amount less than the Guidelines would suggest, was sustained as the wife had not addressed the issue of quantum on appeal. However, the Court of Appeal did expressly note that it would have been "preferable" if the Advisory Guidelines had been used.

(3) Quebec Court of Appeal

In *G.V. v. C.G.*, [2006] J.Q. no. 5231, released in June of 2006, the Quebec Court of Appeal became the third appellate court to consider the Advisory Guidelines. As with *S.C. v. J.C.*, this case also involved an appeal of a decision in which the trial judge had used the Guidelines. The case involved a 32-year marriage with three children, two of whom were independent and the youngest of whom resided with the husband. The wife, who was 55, was earning \$50,000 while the husband earned \$227,000. The wife paid child support of \$15,948 per year. The trial judge applied the Advisory Guidelines; using

the range of \$4,500 to \$6,000 per month under the custodial payor formula, she ordered support of \$4,500 per month, at the low end of the range, on an indefinite basis.

The Court of Appeal allowed the husband's appeal and reduced spousal support to \$2,705 per month after engaging in a detailed analysis of the wife's budget. The trial judge was found to have erred in relying as she did upon the Advisory Guidelines rather than engaging in a detailed individual analysis.

The decision contains no ruling in principle rejecting the use of the Advisory Guidelines, with Justice Forget stating that [TRANSLATION] « the dossier as it is and the brief pleadings of counsel on this aspect do not permit us, in my opinion, to pronounce a judgment of principle upon the utilisation of the Advisory Guidelines. »The Court did refer to the criticisms of the Guidelines contained in the judgments of Justices Julien and Gendreau (discussed above.)⁴ and the “important” concerns raised by Justice Julien about « recipes »and formulas being used to avoid the difficult individual analysis required by the *Divorce Act*. The Quebec Court did not disagree with *Yemchuk*, but emphasized that the B.C. appeal court had not endorsed an “automatic” application of the Guidelines without an individual analysis.

We are left with a judgment that echoes the standard criticisms of the Advisory Guidelines , but does not reject the Guidelines outright. Trial judges should not default to the Guidelines, suggests the Quebec appeal court, but must look at all the facts of the particular case.

(4) Nova Scotia and Alberta Courts of Appeal

The Nova Scotia Court of Appeal became the fourth Court of Appeal to consider the Guidelines in *Pettigrew v. Pettigrew*, [2006] N.S.J. No. 321, 2006 NSCA 98, where Justice Stewart at trial had used the Advisory Guidelines as a “cross check” in a case involving a 29 year traditional marriage. The husband argued on appeal that the trial judge had erred by using the Guidelines. Hamilton J.A. rejected this argument, reasoning that the trial judge had thoroughly assessed the evidence and the applicable law and had referred to the Guidelines only as a “cross-check.” Justice Hamilton also added the statement that the amount ordered “was less than the amount indicated by the guidelines” (at para. 17). That statement is a bit confusing, as it appears that the amount ordered was in the low end of the range under the *without child support* formula, based on the income figures found by the trial judge. (The confusion is explained if one goes back to the trial judgment and discovers that the trial judge calculated the lower end of the range for a 29

⁴ The Court of Appeal erroneously states that these critical decisions were not listed in our paper “The Spousal Support Advisory Guidelines 14 Months Later” distributed at the National Judicial Institute Appellate Court seminar held in Montreal, April 11, 2006. The “14 Months Later” paper, which was dated March 20, 2006 and which, as one of regular updates had been widely distributed beyond the appellate court seminar, did list Justice Julien's decision in [S.\(D.\) v. Sc.\(Ma.\), No. 500-12-267344-038, 27 janvier 2006](#). The decisions of Justice Gendreau were unknown to us at the time the “14 Months Later” paper was prepared and were added in the next update, “The Spousal Support Guidelines 16 Months Later”, dated May 31, 2006.

year marriage as 43% of the gross income difference rather than 37.5%.) The husband's appeal on amount was dismissed.

The most recent appellate decision came out of Alberta, a brief memorandum of judgment in *Lust v. Lust*, [2007] A.J. No. 654, 2007 CarswellAlta 808, 2007 ABCA 202, upholding [2007] A.J. No. 635, 2007 ABQB 214. This was a “custodial payor” case, where the higher-earning husband had custody of the two children and was ordered to pay \$700 per month spousal support for four more years, for a total duration of 5 ½ years after a ten-year marriage. On appeal, the wife sought spousal support of \$1,229 per month, incorrectly using the basic *with child support* formula rather than the custodial payor formula. The latter formula would suggest a range of \$524 to \$698 per month for 5 to 10 years, a range within which the trial decision fit comfortably, a point not made in the appeal decision. The Court of Appeal did state, at para. 10, that the Advisory Guidelines “are instructive as to one route to proper exercise of discretion in arriving at an award” but did not “fetter a trial judge’s discretion”.

(4) Trial Judgments

Here we will identify a few particularly helpful decisions under each of the two formulas.

(i) *The Without Child Support Formula*

One case under the *without child support* formula which should definitely be read as a general primer on the Guidelines is *McCulloch v. Bawtinheimer*, [2006] A.J. No. 361 (Q.B.) (Sullivan J.) The case provides an excellent overview of the Advisory Guidelines and a detailed explanation of the various steps in the scheme that need to be considered both before and after the formulas. The result in the case, which involved a six year relationship between “adult interdependent partners” as defined under provincial legislation, was consistent with the *without child support* formula after an explicit use of restructuring and findings that the compensatory and debt payment exceptions were inapplicable. For another careful example of restructuring to fix a lump sum, see *Smith v. Smith*, [2006] B.C.J. No. 2920, 2006 BCSC 1655 (Pitfield J.) (present value of monthly support if paid until payor 65, discounted for tax and adjusted for reapportionment, \$25,0000.

Four other decisions provide excellent discussions of different aspects of the *without child support* formula: *Carr v. Carr*, [2005] A.J. No. 391 (Q.B.) (Veit J.) (interim support, Guidelines used to divide resources after long marriage); *Modry v. Modry*, [2005] A.J. No. 442 (Q.B.) (Germain J.) (income of \$1.26 million above ceiling, discussion of Guidelines); *Maitland v. Maitland*, [2005] O.J. No. 2252 (S.C.J.) (Pardu J.) (consideration of low income issues where husband makes \$28,000 and wife disabled); and *A.M.R. v. B.E.R.*, [2005] P.E.I.J. No. 83 (S.C.T.D.) (Matheson C.J.T.D.) (wife earns less than floor, no ability to pay support to husband). Two recent cases deal with the issue of applying the SSAG to pension income: *Seguin v. Seguin*, [2007] O.J. No. 2962 (Ont. S.C.J.) (Hennessy J.) (under property division wife entitled to 50% of monthly pension in pay divided at source plus top-up support) and *LeBlanc v. LeBlanc*, 2007 CarswellOnt 4270 (Rogin J.) (*Boston* “double-dipping” argument raised in context of application of SSAG).

Two cases of note in which the *without child support formula* is applied in the context of long marriages without children are *Foley v. Girard*, [2006] O.J. No. 2496 (Ont. S.C.J.) (Aiken J.) (gay couple together 20 years) and *Long-Beck v. Beck*, [2006] N.B.J. No. 398 (Athey J.) (22 year relationship; wife quits job with husband's consent). Interesting entitlement issues were raised in *R.S.R. v. S.M.R.*, [2006] B.C.J. No. 2109 (Martinson J.) (discussion of Guidelines in context of determination of entitlement); *Eastwood v. Eastwood*, 2006 Carswell NB 655, 2006 NBQB (Clendening J.) (25 year marriage with no children, parties having similar incomes during marriage but husband moves to Toronto and income increases; no entitlement to support; similar standards of living) and *Kelly v. Kelly*, [2007] B.C.J. No. 324, 2007 BCSC 227 (Barrow J.) (17 year second marriage; wife on CPP disability and remarried; support terminated after ten years; good discussion of loss of entitlement to non-compensatory support; discussion of limited use of Guidelines in cases of remarriage and post-separation increases in payor's income). For a good discussion of the Guidelines in the context of shorter second marriages later in life, including non-compensatory entitlement, see *Rezansoff v. Rezansoff*, [2007] S.J. No. 27, 2007 SKQB 32 (Sandomirsky J.).

The list of cases dealing with exceptions is growing. For a case relying upon the *interim exception* to award higher support to provide a reasonable transitional amount to allow a spouse to retrain and "get back on her feet" see *Coulter v. Coulter*, [2007] B.C.J. No. 1723, 2007 BCSC 1153 (Master Bolton).

With respect to the *disability exception* see *Shellito v. Bensimhon*, [2007] B.C.J. No. 1081, 2007 BCSC 713 (Meyers J.) (higher amount, but within range for duration); *Williston v. Williston*, [2006] B.C.J. No. 3248, 2006 BCSC 1869 (Rogers J.) (use of disability exception, larger amount, but duration of 8 years after 7 year marriage), *Dick v. Bramhill*, [2007] B.C.J. No. 387, 2007 BCSC 262 (Chamberlist J.) (discussion of disability exception, 14 year marriage with no children); *Kirk v. Hackl*, [2007] S.J. No. 87, 2007 SKQB 82 (Wilkinson J.) (good review of disability exception cases in context of setting interim support after 4 year cohabitation). In the recent Ontario decision of *Simpson v. Grignon*, 2007 CarswellOnt 3095, [2007] O.J. No. 1915 (S.C.J.) (J. Mackinnon J.) the SSAG amounts (but not duration) were found "too low" after a 4 ½ year marriage where the wife was unable to work because of mental health problems, but without any explicit reference to the disability exception.

Cases dealing with the *compensatory exception* after a short marriage include *Ahn v. Anh*, [2007] B.C.J. No. 1702, 2007 BCSC 1148 (Ralph J.) (1 year marriage, compensatory claim based on wife moving from U.S. and giving up job, lump sum); *T.M. v. M.A.G.*, [2006] B.C.J. No. 3479, 2006 BCPC 604 (Brecknell Prov. Ct. J.) (1 year marriage, immigration sponsorship agreement for 10 years support) and *Fuller v. Matthews*, [2007] B.C.J. No. 656, 2007 BCSC 444 (Arnold-Bailey J.) (2.5 year cohabitation; compensatory exception based on actual evidence of loss of pay and pension credits by recipient teacher who moved and gave up job because of relationship. The recent follow-up decision in *Fuller v. Matthews*, [2007] B.C.J. No. 1622, 2007 BCSC 1099, where the husband's request for a reconsideration of the lump sum

calculation was dismissed, raises important issues relating to the method of calculating a lump sum using the SSAG figures.

Finally, *Chutter v. Chutter*, [2007] B.C.J. No. 1247, 2007 BCSC 814 (Edwards J.) is a “high property” case where no entitlement to spousal was found (husband’s income \$156,000; wife’s income \$49,000; each spouse left with \$4 million in assets; no entitlement to spousal support in light of property settlement which satisfies need and marital standard of living).

Several other recent cases of interest deserve mention: *Law v. Law*, [2005] A.J. No. 1315 (Q.B.) (Clackson J.) (support to continue after long marriage at 45 per cent of gross income difference until payor’s retirement); *Hesketh v. Hesketh*, [2005] O.J. No. 4053 (S.C.J.) (Heeney J.) (amount slightly above range ordered where husband cohabiting); and *Locke v. Ledrew*, [2006] A.J. No. 759 (Q.B.) (Veit J.) (consideration of effect of repartnering by both parties).

(ii) The With Child Support Formula

Three leading cases should be noted under the *with child support* formula. First would be *W. v. W.*, [2005] B.C.J. No. 1481 (S.C.), a decision of Justice Martinson which includes an extensive and illuminating discussion of the Guidelines. This decision was quoted and approved by the B.C. Court of Appeal in *Yemchuk*. Another careful decision is that of Justice Handrigan in *Fewer v. Fewer*, [2005] N.J. No. 303 (N.L.S.C.), who used the ChildView software to obtain the range in a Newfoundland case with lower incomes. In *Kerr v. Kerr*, [2005] O.J. No. 1966 (S.C.J.), Blishen J. of the Ontario Superior Court of Justice used this formula to decide temporary spousal support, in a case with 5 children and some s. 7 expenses.

Two more recent decisions of note include *Saunders v. Saunders*, [2007] N.B.J. No. 120, 2007 NBQB 133 (d’Entremont J.) (8 year marriage with two children; husband in armed forces and many moves; husband seeking termination of support after 3 years; support continued to allow wife to further her education) and *J.W.J.McC. v. T.E.R.*, [2007] B.C.J. No. 358, 2007 BCSC 252 (Sinclair Prowse J.) (19 year traditional marriage; wife remarried; income imputed to deal with lack of efforts re self-sufficiency; good discussion of continuing entitlement on compensatory grounds; range calculated using ceiling of \$350,00 for husband; support ordered at high end of range because husband earns more than ceiling; indefinite but review 14 years after separation when wife turns 60 and likely termination).

Several decisions under the *with child support* formula involve income issues, specifically issues relating to whether different incomes should be used for child and spousal support purposes. In *James v. Torrens*, [2007] S.J. No. 334 S.J. 334, 2007 SKQB 219 (Ottenbreit J.) the husband’s income was earned on a First Nations reserve and was thus exempt from tax. For child support purposes his income was grossed up, but the Court noted that the use of the same income figure under the SSAG was complicated by the fact that the husband would not be able to deduct spousal support against his income. In several recent B.C. decisions involving spousal support determinations many years

after separation, courts have struggled with the issue of how to deal with post-separation increases in the payor's salary which are relevant for child support purposes, but not necessarily for spousal support purposes and hence SSAG calculations: see *McIntosh v. McIntosh*, [2007] B.C.J. No. 1956, 2007 B.C.S.C. 1331 (Chamberlist J.) (spousal support not to be based on post-separation increases); *Mann v. Mann*, [2007] B.C.J. No. 1487, 2007 BCSC 980 (Halfyard J.) (husband's post-separation income increase not considered); and *Bryant v. Gordon*, [2007] B.C.J. No. 1460, 2007 BCSC 946 (Slade J.) (6½ years after separation, range for spousal support determined by using wife's current income and husband's income at separation).

The SSAG set the *ceiling* for application of the formulas at a payor income of \$350,000. For incomes over the ceiling, an individualized, fact-specific analysis is called for. The Draft Proposal notes that the ceiling will be of particular significance in high income cases under the *with child support formula* where there will already be significant child support awards based on the payor's actual income. For a case that does pay attention to the ceiling see *J.W.J.McC. v. T.E.R.*, [2007] B.C.J. No. 358, 2007 BCSC 252 (income \$400,000, ceiling of \$350,000 used to calculate spousal support range, *with child support* formula, high end chosen as husband earns more than ceiling). But some courts are simply ignoring the ceiling: see *E.(Y.J.) v. R.(Y.N.)*, 2007 CarswellBC 782, 2007 BCSC 509 (income \$602,400, table amount of child support, mid-point of Guidelines range ordered at \$15,128/mo., then to low end of range from January 2008 at \$14,148/mo.). In the recent B.C. case of *Teja v. Dhanda*, [2007] B.C.J. No. 1853, 2007 BCSC 1247 (Loo J.) the court also appeared to ignore the ceiling, rejecting the husband's request to have his income reduced to \$350,000 for purposes of the SSAG. However the facts of the case (husband's income of \$425,000 not very much above the ceiling, an award at low end of range, review in 4 years, young child starting school, wife able to focus on career and re-training) suggest that the result might also be viewed as an example of "front-end loading" a spousal support award to make reasonable provision for a relatively short period of retraining.

For nice applications of the *shared custody formula* see *Swallow v. De Lara*, [2006] B.C.J. No. 2060, 2006 BCSC 1366 (Master McCallum) and *Fell v. Fell*, [2007] O.J. No. 1011 (Linhares de Sousa J.) (midpoint of Guidelines range provides consistent standards of living in both households). Two recent shared custody decisions show trial judges choosing equalization of net disposable incomes as the appropriate outcome: *Nordio v. Nordio*, [2007] B.C.J. No. 1710, 2007 BCSC 1164 (Crawford J.) (award lower than SSAG range to reach "fair" result of equalization of net disposable incomes) and *J.W. v. M.H.W.*, [2007] B.C.J. No. 1597, 2007 BCSC 1075 (Romilly J.) (equalization of NDI within range).

There are three interesting cases under the *custodial payor* formula. *Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (S.C.F.D.)(Gass J.) involved an application of the custodial payor formula in the context of a 12 year marriage where the wife, the non-custodial payor, suffered from mental illness and was in receipt of disability payments. The husband brought a variation application 6 years after the separation. The result in the case--an order that support be paid for a further 3 years-- was consistent with the time limits generated by the custodial payor formula. The case also

offers a good discussion of the disability exception. *Martin v. Martin*, [2007] O.J. No. 467 (Linhares de Sousa J.) involved a 9 year marriage with two children in which the husband was the support claimant. Linhares de Sousa J. awarded lump sum support at the low end of the global range under the custodial payor formula adjusted for tax. On somewhat similar facts, Allen J. in *Shore-Kalo v. Kalo*, [2007] M.J. No. 297, 2007 MBQB 197 used restructuring to “front-end load” the award to provide a very short transitional period (2 years after a 7 year marriage.) to allow the husband, an Israeli lawyer, to re-qualify in Canada.

Finally, in *D.R.M. v. R.B.M.*, [2006] B.C.J. No. 3299, 2006 Carswell BC 3177 (S.C.), Justice Martinson set out in detail the rationale for the application of the Advisory Guidelines to interim spousal support orders. The case arose under the with *child support formula* but the issue is a general one and the applicable to cases under either formula.

Appendix I

SPOUSAL SUPPORT ADVISORY GUIDELINES APPELLATE CASE SUMMARIES

[Updated to Sept. 12, 2007]

[Note: this is a complete list of all appellate decisions since the release of the Draft Proposal in January 2005]

Alberta

Lust v. Lust, [2007] A.J. No. 654, 2007 ABCA 202 (Alta.C.A.)

Married 10 years, 2 children 8 and 4, with husband

Controlling father and his mother, weak wife, left home August 2005

Trial decision: custody to husband, access to wife, review in 1 year, counselling and report

Husband earns \$80,000; wife \$25,000 in doctor's office, few skills

Wife quit job, EI \$14,000, \$25,000 income imputed

Child support \$379

Spousal support: wife home 5 years, property divided, each \$170,000

support \$700/mo. for 4 more years, retro 19 months (total 5 ½ years)

Appeal: custody order upheld, even if unusual

SSAG "instructive as to one route to proper exercise of discretion", order upheld

[Custodial payor formula range: \$524-\$698 for 5 to 10 years]

[Wife incorrectly used *without child support* formula to claim \$1,229/mo. for 10 years]

British Columbia

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

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

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

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

Engineer husband retired early in 1997,

as wife transferred to Manitoba in federal government

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

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

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

Guidelines "a useful tool to assist judges", "intended to reflect the current law"

citing *W. v. W.*

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

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

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

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

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

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

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

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

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

Chambers judge ordered diminishing time-limited support for 3 more years: \$6,000/mo. year 1, \$4,000 year

2, \$2,000 year 3, then zero, to encourage self-sufficiency

No time limit, only partial compensation, indefinite order substituted, subject to review if husband's medical condition (legal blindness) interferes with income

Amount fixed at \$6,000, Guidelines range stated as \$6,300 to \$8,500 for 8 to 16 years
 Lower than range because of reapportionment order
 (Without child support range: \$6,260-\$8,347, if incomes as stated)
 [Custodial payor formula range (no child support from wife): \$4,712-\$6,283]

Kopelow v. Warkentin, [2005] B.C.J. No. 2412, 2005 BCCA 551 (Smith J.A.)
 Married 12 years (plus one year cohab), 2 children 15 and 13, with wife
 Wife earns \$30,000, now 55 (49 at separation), husband earns \$177,000
 Wife challenging marriage agreement property division, 78 per cent to husband
 Child support \$1,995, wife also entitled to spousal support
 Range \$3,037-\$4,015, \$3,500/mo. ordered
 With these support amounts, marriage agreement not unfair

Toth v. Kun, [2006] B.C.J. No. 739, 2006 BCCA 173 (Hall J.A.)
 Married 10 years, no children, husband 64, wife 41
 Interim support \$2,300/mo., varied to \$2,400 in April 2003
 Wife health problems, but will recover, poor English
 Husband earned \$70,000, but now retired, only \$42,000
 At trial: support varied to \$1,500, indefinite
 On appeal: too onerous, so time limited, step-down
 \$1,200/mo. to Sept. 2006, then \$1,000/mo. to Sept. 2009, support paid 6 ½ years
 Range \$525-\$700, 5 to 10 years [within global range on restructuring]

Redpath v. Redpath, [2006] B.C.J. No. 1550, 2006 BCCA 338 (Newbury J.A.)
 Married 18 years, wife 41, division of assets issues
 5 children 8 to 18, oldest with husband, next with wife, 3 shared
 Husband earns \$260,000, bakery business, income issues, wife no income
 Trial: child support \$4,000/mo., spousal support \$3,500/mo., review in 3 years
 (4 child table amount \$4,296)
 Advisory Guidelines may affect standard of appellate review
 Guidelines range: \$4,542-\$5,510, not referred to by trial judge
 Trial judge overemphasized self-sufficiency, amount “simply too low”
 Spousal support of \$5,000/mo., review in 5 years as children young, wife needs training

R.S.M. v. M.S.M., [2006] B.C.J. No. 1756, 2006 BCCA 362 (Saunders J.A.)
 Married 30 years; 2 grown children
 Separation agreement in 2001 providing for spousal support of \$700/mo and division of assets (at time of
 agreement husband unemployed, having lost job earning \$65,000; wife earning \$23,700)
 Wife tries to avoid agreement, claims greater share of assets and increased support
 Husband now earning \$78,000 and wife \$36,000
 Trial judge finds that agreement was not fairly negotiated (wife vulnerable and no proper legal advice) and
 that at time of formation it did not comply substantively with Divorce Act objectives; orders
 spousal support of \$1,600/mo after considering SSAG range
 (Guidelines range not stated, estimated at \$1312-\$1750)
 Order upheld on appeal.
 Re *Miglin* stage one, wife vulnerable but no substantive unfairness; but agreement fails *Miglin* stage 2--
 agreement did not contemplate husband's future employment)

Stein v. Stein, [2006], B.C.J. No. 2020, 2006 BCCA 391 (Saunders J.A.)
 Married 15 years, 2 children 13 and 9 with wife, husband 44, wife 39 (36 at separation)
 Equal division of family assets
 Trial: spousal support \$2,500/mo. for 3 ½ years
 Guidelines range: \$3,920-\$4,883, interim support \$3,000 after-tax
 Husband works in family business, earns \$207,433
 Wife receives rent \$7,000/yr., educated as animator, looking for work, good prospects
 Support ordered inadequate, increased to \$4,200/mo.

Duration: time limit unusual, too severe, review before termination

Narayan v. Narayan, [2006] B.C.J. No. 3178, 2006 BCCA 561 (Prowse J.A.)
 Married 18 years, husband 45, wife 37, 4 children with wife: 18, 16, 15, 5
 Husband earns \$58,000 at Shaw Cable, wife earns \$28,000 part-time at drugstore
 Child support \$1,240/mo., but problems of non-payment
 Trial judge reapportioned home 100% to wife (\$300,000)
 Husband got RRSPs (balance after dissipation) and vehicle, 75/25 split over-all
 Reapportionment upheld, no spousal support
 (Guidelines range: zero to zero]

MacEachern v. MacEachern, [2006] B.C.J. No. 2917, 2006 BCCA 508 (Prowse J.A.)
 Married 24 years (26 years total), 1 adult child, husband 58, wife 55 (51 separation)
 Separation agreement 2002: \$3,500 net of tax spousal support, review clause
 Reapportionment of property, 56% to wife
 Trial judge ordered spousal support: \$1,000/mo. for 2 years, \$500/mo. 2 more years, end
 Husband earns \$114,600 with auctioneer
 Wife home, then interior design business, lost husband's contacts after separation
 Wife working retail sales, part-time \$9,100, full-time income imputed to \$14,700
 Guidelines range: \$3,123-\$4,164, \$3,100 ordered, indefinite, no review
Redpath restated

Narayan v. Narayan, [2006] B.C.J. No. 3178, 2006 BCCA 561 (Prowse J.A.)
 Married 18 years, husband 45, wife 37, 4 children with wife: 18, 16, 15, 5
 Husband earns \$58,000 at Shaw Cable, wife earns \$28,000 part-time at drugstore
 Child support \$1,240/mo., but problems of non-payment
 Trial judge reapportioned home 100% to wife (\$300,000)
 Husband got RRSPs (balance after dissipation) and vehicle, 75/25 split over-all
 Reapportionment upheld, no spousal support
 (Guidelines range: zero to zero]

Foster v. Foster, [2007] B.C.J. No. 244, 2007 BCCA 83 (Prowse J.A.)
 Together 5 years, married 4, 1 child 5, wife 35, husband 49
 Wife from Peru, sponsored by husband, home during marriage
 Now working as chambermaid, income \$9,400 (incl. income assistance)
 Husband unemployed lawyer, buys and sells real estate, income imputed \$35,000
 Interim orders, recently \$219 child support, \$200/mo. spousal, not paid
 Trial: \$100,000 in property to wife (1/3 of assets), \$30,000 lump sum spousal support
 Child support \$326/mo.
 Appeal: assets reapportioned, wife's share reduced to \$40,400 (20%)
 Spousal support: wife's 3-year plan re college
 Guidelines range: \$141-\$352, maximum 15 years
 Appeal decision: \$400/mo, would leave wife with 52% of family NDI
 Converted to lump sum support of \$14,400
 Duration: 3 more years from trial to July 2009 (5 years total)
 10-year immigration sponsorship agreement runs to 2008

Dunnigan v. Park, 2007 CarswellBC 1441, 2007 BCCA 329 (Prowse J.A.)
 Married 25 years, traditional marriage, 2 adult children, husband 58, wife 52, separated 2002
 Trial: \$1,200/mo. spousal support, indefinite, upheld on appeal
 Husband earns \$53,000 in provincial government
 Wife caring for elderly mother, board and car free in Youbou, \$12,000 income imputed
 Wife applied for jobs, minimum wage employment only, limited skills, sufficient efforts
 Without child support range if wife \$12,000: \$1,200-\$1,600; if wife \$22,000: \$900-\$1,200
 SSAG range properly used as "a guide to a range of awards"
 Order left husband with after-tax income of \$2,400/mo. vs. wife \$935/mo.

New Brunswick

S.C. v. J.C., [2006] N.B.J. No. 186, 2006 NBCA 46 (Larlee J.A.)
 Married 25 years, two adult children, wife 42 (40 separation), husband 45,
 Traditional marriage
 Husband army officer, earns \$100,000
 Wife working in Kingston, Ont., on contract with Health Ministry, earns \$46,764
 Interim support \$1,850
 Trial judge ordered \$1,625/mo., using Advisory Guidelines, for 5 years
 [range was \$1,625 - \$2,208; wife wanted \$1,800]
 Wife appealed amount at low end of range, sought indefinite duration, and questioned trial judge's
 determination of her income
 Appeal dismissed, Guidelines approved, help to bring consistency and predictability
 Almost a presumption of indefinite support in long traditional marriage;
 review generally favoured over time limit in such cases
 But deference to trial judge: wife young, no dependents, capable, steady employment
 Wife quickly able to reintegrate into work force, 5 years a longer term
 (Leave to SCC denied: [2006] S.C.C.A. No. 246 (Oct. 19, 2006))

Carrier v. Carrier, 2007 CarswellNB 155, 2007 NBCA 23 (Larlee J.A.)
 Married 21 years, 1 adult child
 1996 separation agreement: wife waived spousal support
 Equalization payment \$500/mo. for 3 years
 Husband then earned \$50,000, wife earned \$15,910
 Now husband earns \$30,680 non-taxable workers compensation [\$41,400 grossed up]
 Wife on social assistance, earns \$1,800
 Trial judge set aside separation agreement, ordered \$700/mo. spousal support
Miglin analysis: wife vulnerable in 1996, terms "appalling"
 Order for \$700/mo. upheld, "preferable" if Guidelines had been used
 Wife accepted amount, husband did not address quantum on appeal
 (Range estimated: \$1,040-\$1,386, indefinite)

Nova Scotia

Pettigrew v. Pettigrew, [2006] N.S.J. No. 321, 2006 NSCA (Hamilton J.A.), affirming [2005] N.S.J. No.
 616, 2005 NSSC 219 (Stewart J.)
 Married 29 years, separated 2003, 2 children now grown
 Husband retired from military in 1994; worked in Saudi Arabia and now Australia; income \$110,000
 Wife worked at odd jobs during marriage; not employed since 1995; employment after separation;
 Income \$20,141 (including her half of husband's divided military pension)
 Trial judge ordered spousal support of \$2,900/mo. after considering relevant factors and SSAG
 (Range: \$2,808-\$3,744, mis-stated to be \$3,257-\$3,744 by trial judge)
 Husband argues award too high and trial judge erred in using the SSAG
 rather than assessing the evidence herself and applying the law
 Appeal dismissed; trial judge thoroughly assessed the evidence and the applicable law; referred to
 Guidelines only as a "cross-check and amount ordered less than amount indicated by the
 Guidelines

Quebec

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

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

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

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

Trial judge applied Advisory Guidelines: range \$4,500 to \$6,000;

low end of range ordered, \$4,500 indefinite

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

Trial judge erred by not engaging in a detailed individual analysis

Court states that [TRANSLATION] « the dossier as it is and the brief pleadings of counsel on this aspect do not permit us, in my opinion, to pronounce a judgment of principle upon the utilisation of the Advisory Guidelines. »

Court refers to important criticisms of Advisory Guidelines found in judgments of Justices Julien and Gendreau and concerns about « recipes » and formulas being used to avoid the difficult individual analysis required.

Appendix II

SPOUSAL SUPPORT ADVISORY GUIDELINES CASE SUMMARIES [April 19 – Sept. 12, 2007]

[This update covers new cases decided since our last update, Carol Rogerson and Rollie Thompson, "The Advisory Guidelines 27 Months Later", April 18, 2007" which can be found on the SSAG website at <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>]

A. Appeal Cases

Lust v. Lust, [2007] A.J. No. 654, 2007 ABCA 202 (Alta.C.A.)
Married 10 years, 2 children 8 and 4, with husband
Controlling father and his mother, weak wife, left home August 2005
Trial decision: custody to husband, access to wife, review in 1 year, counselling and report
Husband earns \$80,000; wife \$25,000 in doctor's office, few skills
Wife quit job, EI \$14,000, \$25,000 income imputed
Child support \$379
Spousal support: wife home 5 years, property divided, each \$170,000
support \$700/mo. for 4 more years, retro 19 months (total 5 ½ years)
Appeal: custody order upheld, even if unusual
SSAG "instructive as to one route to proper exercise of discretion", order upheld
[Custodial payor formula range: \$524-\$698 for 5 to 10 years]
[Wife incorrectly used *without child support* formula to claim \$1,229/mo. for 10 years]

Dunnigan v. Park, 2007 CarswellBC 1441, 2007 BCCA 329 (Prowse J.A.)
Married 25 years, traditional marriage, 2 adult children, husband 58, wife 52, separated 2002
Trial: \$1,200/mo. spousal support, indefinite, upheld on appeal
Husband earns \$53,000 in provincial government
Wife caring for elderly mother, board and car free in Youbou, \$12,000 income imputed
Wife applied for jobs, minimum wage employment only, limited skills, sufficient efforts
Without child support range if wife \$12,000: \$1,200-\$1,600; if wife \$22,000: \$900-\$1,200
SSAG range properly used as "a guide to a range of awards"
Order left husband with after-tax income of \$2,400/mo. vs. wife \$935/mo.

B. The *Without Child Support* Formula

Coulter v. Coulter, [2007] B.C.J. No. 1723, 2007 BCSC 1153 (Master Bolton)
10 year marriage; separation 2006; second marriage for both; no children of relationship; husband 62, wife 52; both children from previous marriages;
Husband insurance manager earning \$70,000; paying \$12,000 per year child support
Wife ran jointly-owned gift shop during marriage; business closed shortly after separation; wife now unemployed; plans (likely unrealistic) to upgrade skills and become insurance broker; too early to impute income but wife needs to be realistic about her plans
SSAG range, after adjusting for husband's prior child support obligation: \$735-\$981
Interim order for \$1,500 per month
Interim exception; need to go higher than SSAG to provide adequate support for short-term transitional period and also to provide reasonable standard of living.

Ahn v. Ahn, [2007] B.C.J. No. 1702, 2007 BCSC 1148 (Ralph J.)
1 year marriage, separation 2005; wife 50, husband 59; met through matchmaker; husband wealthy businessman; health issues and needed someone to care for him

Wife employed for 25 years in Washington state as data processor; had risen to position of supervisor; salary \$52,000 USD; moved to B.C. after marriage
 Husband's net worth \$3 million; interim spousal support of \$3,500/mo since separation plus mortgage payments on matrimonial home where wife continues to reside
 After separation wife remains in Canada, too embarrassed to return to Washington state; obtains permanent resident status; husband undertakes to support her for 3 years until 2009; unable to find work; skills need upgrading
 Division of family assets, including 25% of matrimonial home (worth \$830,000) to wife
 Spousal support: under SSAG formula, given short length of marriage and interim support payments, spousal support obligation would have come to end; but court relies on compensatory exception to award further support
 Wife awarded further lump sum of \$50,000 (based on one further year of support at \$3,500 per month plus one half of mortgage payments on matrimonial home) to further compensate her, on top of division of family assets, for economic disadvantage from her change of residency and employment

Brown v. Brown, [2007] N.B.J. No. 330, 2007 NBQB 227 (S.J. McNally J.)
 20 year marriage (plus 1 year cohabitation); separation in 2003; 1 adult child of relationship plus wife 1 adult child of previous relationship; wife now 48 (44 at separation)
 Wife grade X education; at home for most of relationship, some part-time; now health problems; earning \$17,000
 Husband violent; wife does not apply for support until 2006;
 Husband worked in lumber mill during marriage; 2006 income \$43,000; quit in 2006 because of medical problems; now combination of seasonal work in Alberta as skidder operator and employment insurance; capable of earning \$54,000
 Application under Family Services Act, SSAG applied
 SSAG range (based on husband income of \$43,000): \$666-\$888; \$750 ordered; indefinite; retroactive to date of separation

Seguin v. Seguin, [2007] O.J. No. 2962 (Ont. S.C.J.) (Hennessy J.)
 28 year traditional marriage; 3 grown children, separation 2004
 Husband retires in 2004, mainly pension income, \$4,392.59 per month
 Wife some part-time employment during marriage, but health problems and unemployed since 2003
 Property division: pension to be divided at source, w to get 50% of pension income on monthly basis
 Spousal support; order for \$1922/mo until pension division,; after pension split at source, \$1922 to made up from pension split plus top-up; middle of SSAG range, leaves wife with 46.5% of income

Heimsoth v. Heimsoth, [2007] A.J. No. 969, 2007 ABQB 539 (Sirrs J.)
 Married 24 years, 2 adult children, wife 50, separated 1999
 2002 order: spousal support \$4,000/mo., review in 3 years
 Wife says post-separation depression means can't work, 3 psychiatrists testify
 Court holds depression not that bad, wife can work, intentionally under-employed
 Husband earns \$149,778, up from 2002-04 average of \$121,836, new partner, nurse
 Wife home 10 years, compensatory support still, 2 more years support (10 total)
 Step-down order: \$4,000/mo. to Dec. 2007, \$3,000 to July 2008, \$2,000 to Dec. 2008, \$1,000 to July 2008, then end
 Husband paid support "in accordance with spousal support guidelines" since 2002 (range for 2002 order: \$3,625-\$4,833)

Simmons v. Simmons, [2007] B.C.J. No. 1792, 2007 BCSC 1206 (Gray J.)
 Married 12 years, wife now 79, husband 87, husband now dementia
 Property: marriage agreement unfair, only 18% of assets to wife, plus waiver of support
 Wife has pensions, investment income, total \$52,500
 Husband living on \$1.8 million property, while wife sold hers and earning interest on \$500,000
 Husband's income \$35,600, but if added interest on property, would be \$125,600
 Range of \$1,100 to \$1,500, indefinite, court would order \$1,800/mo. given her needs and his

Reapportion \$500,000 to wife, give her 38% of family assets, provide her \$25,000 income
If reapportionment, no need for spousal support to maintain her standard of living

Bentley v. Bentley, [2007] B.C.J. No. 1780, 2007 BCSC 1204 (Holmes J.)

Married 28 years, 2 adult children, husband and wife both 52 (49 at separation)

Family assets equally divided

Husband Air Canada pilot, earns \$169,459, less union dues \$167,671

His income also reduced for mandatory deductions, including pension contributions, to \$156,720 (?)

Wife has scoliosis and other health problems, unemployable, seeks \$7,000/mo. support

Incorrect "net" range calculated as \$4,898-\$6,530, court orders \$5,700/mo.

[Formula range \$5,240-\$6,986, maximum 50% NDI \$6,852/mo., \$5,700/mo. leaves wife 42.9% NDI]

Cooper v. Cooper, [2007] N.S.J. No., 332, 2007 NSSC 239 (Warner J.)

Married 26 years, traditional marriage, many moves as husband in military, 3 adult children, separated 1998

Husband receives military pension and works as engineer

Wife operates money-losing llama farm, spousal support ended in 2006

2000 separation agreement: wife received net assets of \$200,000, husband net debt of \$37,000

Equal split of military pension, spousal support of \$2,500/mo. for 6 years (2 ½ years paid since separation)

Miglin applied, as no corollary relief judgment, negotiations unimpeachable

Compliance on stage 1: reference to SSAG, wife failed to seek self-sufficiency, continued hobby farm

Fixed-term support in return for unequal division and wife wanted llama farm

[2000 range: husband's income \$91,000, wife's \$10,000, range \$2,531-\$3,375, indefinite]

Objectives met on stage 1, also reverses for husband considered on stage 2, no spousal support

Briere v. Saint-Pierre, 2007 CarswellOnt 4763, [2007] O.J. No. 2926 (R. Smith J.)

Together 24 years, common-law same-sex couple

Applicant school principal, earns \$100,000

Respondent supply teacher earns \$22,000, could work full-time to earn \$32,000

Respondent had left previous employment, to run two restaurants owned by them, failed

Joint condominium to be sold

Range stated with mandatory pension contribution deduction for applicant of \$8,256,

RRSP deduction of \$5,000 for respondent, incomes \$100,000 and \$24,000: \$2,265-\$3,020

Interim spousal support of \$2,000/mo., if \$32,000 to respondent and pension deducted

[Range if \$100,000/\$32,000, no pension deductions: \$2,040-\$2,720]

[Range if \$100,000/\$32,000, pensions deducted: \$1,942-\$2,589]

England v. England, 2007 CarswellAlta 999, 2007 ABQB 494 (Nielsen J.)

Married 21 years, no children, wife 52 (45 at separation)

Husband employed by Telus, severance 2002, consulting now, income \$96,400-\$105,600

Wife severance from Telus in 1993, diagnosed with lupus, not employed since

Two independent medical examinations: rheumatologist, not lupus,

Psychiatrist, possible somatoform disorder

Husband's net worth \$1 million, wife's \$575,000, property divided in 2003

Wife entitled to support: disadvantage from breakdown, economic hardship

Interim support \$32,500/yr. (\$2,708/mo.) since 2002, all expenses paid by husband 2000-02

Amount: long marriage, similar living standards, \$32,500/yr. continue

This amount "squarely within the range" under SSAG [Range: \$2,531-\$3,374]

Duration: til Dec. 2010, review then, not indefinite

Wife's share of Telus pension to begin Sept. 2010, also her health and steps to improve situation

Serpa v. Yueping, 2007 CarswellBC 1795, 2007 BCSC 1181 (Edwards J.)

Married in China, cohabited there 58 days, then husband back to Canada

Wife never came to Canada, as husband changed his mind, "married" 6 months

Wife employed in China, left job in May 2006 because of stress, one-line medical report, inadmissible

Husband earns \$27,000, between \$20,000 and \$30,000 where support could be less

Guidelines range \$34 to \$49 for 6 to 12 months, i.e. \$204 to \$588 total
Wife self-sufficient, no entitlement to spousal support

Fuller v. Matthews, [2007] B.C.J. No. 1622, 2007 BCSC 1099 (Arnold-Bailey J.)
Application by husband for reconsideration of lump sum support decision: 2007 BCSC 444
Short marriage, compensatory exception
Support partly calculated under SSAG as \$1,000 for 27 months, total \$27,000 as lump sum
Husband argues failure to consider after-tax value, should be only \$16,120 lump sum
No reconsideration, opportunity to argue point at trial, expert evidence required, approximate numbers
Some adjustment for tax on wife's loss of credit for pension time

Leblanc v. Leblanc, 2007 CarswellOnt 4270 (Rogin J.)
Married 26 years, 3 children adults, one 35-year-old disabled adult, with wife
1996 order: \$300/mo. child support, \$1,600 indexed (now \$2,163/mo.) spousal support
Husband applies to vary, then earning \$108,000, now retired at 62, child support continue at \$300
Pension \$50,000, unequalized portion \$27,256
Wife works part-time at Sears still, \$12,000, CPP \$4,560, \$16,560 total
Husband argues Boston, range \$340-\$453/mo. on unequalized pension, SSAG rejected by judge
Spousal support varied to \$1,000/mo.
[Range on full husband pension: \$1,045-\$1,393]

Deringer v. Hill, 2007 CarswellSask 334, 2007 SKQB 206 (Sandomirsky J.)
Married 26 years, children, traditional marriage, both spouses 49
2004 settlement/consent order: spousal support \$450/mo., 3-year review
Husband's income \$80,100, Ipsco, includes overtime (1/2 previous year), also stock options
Wife osteoporosis, osteoarthritis, fibromyalgia, doctor says unable to work
Judge imputes \$15-20,000 income, can do some work, illness exception under SSAG
Range \$1,875-\$2,500, order for \$1,875/mo., to encourage self-sufficiency, no review, indefinite
W.J. M. v. L.A.M., [2007] B.C.J. No. 1283, 2007 BCSC 842 (Halfyard J.)
Married 21 years (plus 3 prior cohabitation); 3 children now grown; separation 2001
Wife moved out and 2 younger children remained with husband; wife 42 at time of separation
Husband logger, earns \$67,596
Wife did not work outside home after children born, but husband wanted her to after children all in school
Wife works as house-cleaner after separation; cohabiting with new partner; court finds insufficient efforts;
imputes income of \$25,000
Cohabitation irrelevant to claim for reapportionment and spousal support because claims based on
compensation for economic disadvantage
Voluntary interim support of \$500/mo for 24 months after separation; wife paid no child support
Wife claims reapportionment and spousal support at low end of SSAG range
Home (value of \$249,000) reapportioned 75/25 in wife's favour
No spousal support; any claim for spousal support satisfied by reapportionment
Wife did not lose any opportunities to earn income during marriage that were no longer available to her at
point of separation; wife had means to earn reasonable income after separation and made choice
not to

Chutter v. Chutter, [2007] B.C.J. No. 1247, 2007 BCSC 814 (E.R.A. Edwards J.)
28 year marriage, 1 grown child
Husband businessman, income \$156,000
Wife returned to work as dental hygienist after child started school, earns \$49,000
Interim spousal support of \$3250/mo
Each spouse left with \$4 million in assets
Wife's total income, including interest and rent, \$133,000 and husband's \$214,000
No entitlement to spousal support in light of property settlement which satisfies need and
marital standard of living

Skelly v. Skelly, [2007] B.C.J. No. 1243, 2007 BCSC 810 (Bruce J.)

Married 18 years (plus 2 years prior cohabitation), 1 child, separation 2000

Wife worked part-time during marriage after child in school

Daughter ill with leukemia after separation and wife quit work; daughter died in 2002

Wife unemployed until 2005; now part-time in pharmacy earning \$15,335 (2006)

Husband helicopter pilot, earns \$84,360

2004 consent order provided for spousal support: 50% of husband's gross monthly income less 50% of wife's gross monthly income over \$500 (less 75% after Sept 1., 2005), review after September 2005.

Husband applies for review seeking reduction of amount and time-limit on grounds of wife's failure to make reasonable efforts to become self-sufficient

Wife's efforts reasonable in circumstances; not capable of earning more given her circumstances

SSAG relevant in determining amount on review

Range based on parties average incomes over past 2 years: \$1589-\$2110

Mid-to high end of range equivalent to amount owed under consent order if 100% of wife's earnings deducted from amount owed by husband;

Consent order varied to provide that 100% of wife's earnings to be deducted from amount owed by husband

Support to be indefinite

Derksen v. Derksen, [2007] B.C.J. No. 818, 2007 BCSC 542 (H.J. Holmes J.)

33 year traditional marriage; 2 grown children; separation 2004

2006 interim spousal support \$2,100 per month

Husband's average income over past 4 years, \$77,289; over past 8 years, \$80,431

SSAG range based on 4-year average: \$2415-\$3220; 8-year average: \$2514-\$3351

Court orders \$2400 per month indefinite

Lower end chosen because husband's income likely to go down as he slows down and works less overtime

Torres v. Marin, 2007 CarswellYukon 27, 2007 YKSC 29 (Gower J.)

Married 31 years, 4 children, husband 61, wife 63

Husband Chilean refugee, self-employed painter

Wife back problems, arthritis, unemployable

2000/2002 orders: husband imputed income \$32,000, child support \$281 (1), spousal \$200/mo.

Husband applies to vary, still income issues, below "floor", 2006 income \$19,625

But still ability to pay \$200/mo., order continued, indefinite

[Range: \$613-\$817, as wife no income, but husband below floor]

T.M. v. M.A.G., [2006] B.C.J. No. 3479, 2006 BCPC 604 (Brecknell Prov. Ct. J.)

Marriage less than 1 year; married 2001, separated 2002;

Husband sponsored wife and her child from Ukraine; under sponsorship agreement obligated to support wife for 10 years

2004 spousal support order \$1,300 per month, based on estimated income for husband of \$67,000

Husband applies for review seeking cancellation of spousal support

Continued entitlement to spousal support both under sponsorship agreement and because wife still in need and making reasonable efforts to improve English language skills and upgrade education

SSAG not applicable because of sponsorship agreement

Spousal support of \$1300 per month continued; review after 2008

G.L. v. D.W., [2006] B.C.J. No. 1293, 2006 BCPC 243 (Moss Prov. Ct. J.)

10 year cohabitation; separation 2005; both children from previous relationships;

Wife aboriginal and lives on reserve; husband not aboriginal and lived in wife's house on reserve

Husband pursued music therapy degree during first part of relationship; paid wife \$200 per month while going to school; \$450 per month afterwards

Husband's income \$36,137; has medical problems (MS) and debts, but also RRSPs and investments.

Wife seeks spousal support to compensate her for supporting husband while he pursued his education

Wife's income unclear: no earnings but many benefits from living on reserve and some rental income

Fixed formulas (SSAG) do not provide much assistance when incomes nebulous
Wife has short-term financial need; spousal support of \$350 per month for 1 year.

Bell v. Bell, [2007] B.C.J. No. 1105, 2007 BCSC 732 (Halfyard J.)

Married 9 years, wife 59, husband 78, no children, 3rd marriage for wife, 2nd for husband
Wife health problems, but part-time bookkeeping plus CPP disability, income imputed \$20,000
Husband longshoreman, retired 1999, pension \$51,779
Property divided, 100% of home equity reapportioned to wife (\$113,500), 62/38 split overall
Range \$488-\$650, \$600 ordered for 3 years, then review with onus on wife to continue support

Shellito v. Bensimhon, [2007] B.C.J. No. 1081, 2007 BCSC 713 (Myers J.)

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
Wife no work now, can work part-time in 4 mos., full-time in 3 years, \$18,000 imputed then
Support non-compensatory, Guidelines maximum \$700/mo. for 3 to 6 years, "too low"
Wife seeks \$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)
Brief reference to disability exception

Simpson v. Grignon, 2007 CarswellOnt 3095, [2007] O.J. No. 1915 (S.C.J.)(J. Mackinnon J.)

Married 4 ½ years, no children, separated December 2005
Husband computer engineer, earns \$78,202
Wife 45, mental health problems, depression and anxiety, deterioration in 2005
Wife was receiving ODSP at marriage, can't work
Wife in matrimonial home, to be sold and equal division, net proceeds \$34,000 each
Since separation, husband paid \$2,228/mo. mortgage/taxes/utilities, plus \$500/mo.
Range \$489-\$652 too low, even with restructuring, but duration range okay
Non-compensatory basis for support
Husband to pay \$2,228 plus \$600 for 3 months, wife then to vacate house
Spousal support increased to \$1,200/mo. until house sold
Husband to pay \$2,228 for house (half to be reimbursed from wife's proceeds on sale)
Spousal support then to be paid at \$1,700/mo. to December 2009 (4 years total)
[No reference to disability exception, interim circumstances exception]

Warren v. Warren, 2007 CarswellNfld 165, 2007 NLTD 103 (Handrigan J.)

Married 34 years, husband 53, wife 54, 3 adult children
Husband funeral director, shares in corporation, income \$40,000 including bonus
Wife worked seasonally in funeral home, health and emotional problems, no income
Entitlement, range \$1,225-\$1,667, indefinite
Mid-point of \$1,458 chosen, leaves wife with 47.5 % NDI
Factors for amount identified, e.g. husband's work-related costs, "soft" benefits from co.,
husband's health, wife's displacement from employment, relative housing costs

C. The *With Child Support* Formula

Ahern v. Ahern, [2007] O.J. No. 3439 (Ont. S.C.J.) (Blisshen J.)

Married 20 years; separation 2005; 3 children with wife, one university, two high school
Wife bus driver, \$40,000
Husband inadequate income disclosure, income imputed as \$96,000
No support paid since separation
Child support: \$1762/mo (table amount for 3 children)
Spousal support: \$270/mo, low end of SSAG range, leaves wife with 57.9% NDI
Retroactive child and spousal support to date of separation

Winsemann v. Donaldson, [2007] B.C.J. No. 1936, 2007 BCSC 1322 (Kelleher J.)

20 year cohabitation; separation 2004; wife 45, husband 51; 2 children, 20 and 16

Husband commercial fisherman

Wife at home during marriage; after separation goes to university, BA in English in 2006, only finds part-time work delivering newspapers, \$6000 per year.

Consent order April 2006 (based on husband income of \$75,986): child support for youngest child only, \$706; spousal support \$1707 per month; review any time after Oct. 31, 2006 (i.e. 6 months after wife's graduation)

Husband seeks to terminate spousal support on review, arguing decline in his income and wife under-employed.

Wife seeks increase in spousal support, child support for older child who has started university, and s. 7 expenses for younger child.

Husband's income \$58,000; wife under-employed, \$16,640 imputed (minimum wage)

Child support for older child attending university, \$200 per month; no s. 7 expenses for younger child
SSAG range stated as \$249- \$621; \$600 per month ordered, higher end of range; duration 10 years

McIntosh v. McIntosh, [2007] B.C.J. No. 1956, 2007 BCSC 1331 (Chamberlist J.)

17½ year marriage; separation in 1998; wife 49 and husband 48; 4 children with wife, 21, 19, 17, 14, only 2 now children of marriage, 17 year old maybe for only one more year

Wife not employed after birth of first child; husband in RCMP; both personal bankruptcy before separation
1999 order: \$1,180 per month interim child support and \$1,200 interim spousal; based on h's income of \$54,700

Trial 2001: permanent child support of \$1325 per month (based on h's income between \$63,000 and \$64,000); remainder of hearing delayed; spousal support not dealt with; interim order remains

2006: child support reduced to \$957 by support enforcement agency for two younger children who still qualify for child support

Husband remarried; in substantial arrears of spousal and child support; income now between \$75,000 and \$80,000 (RCMP and business income)

Wife part-time until 2002 because caring for children and ill mother; then trains as health care aid; income now between \$32,000 and \$35,000

Continuation of trial in 2007 to deal with spousal support arrears and on-going spousal support

Discussion of complications of applying SSAG in situation many years past separation where incomes have changed significantly since separation; SSAG to use payor income at separation but child support being assessed on current income; some discussion of impact of payor's remarriage

SSAG calculations presented by parties assuming different incomes (husband \$75,000 and \$80,000; wife \$30,000 and \$35,000) and different amounts of child support (1 or 2 children) ranging from low of \$0-\$644 (h \$75,000, w \$35,000, 2 children) to high of \$366-\$1098 (h \$80,000, w \$30,000, 1 child)

Court finds calculations "informative but not binding" because spousal support not based on payor's post-separation earnings

Re arrears, court finds spousal support should have been reduced to \$750 per month in 2004 after wife had retrained and found full-time employment.

Permanent spousal support of \$750 per month ordered, increasing to \$950 per month when only 1 child of marriage; support obligation to continue until 2015, for total of 17 years after separation; strong compensatory claim

Nordio v. Nordio, [2007] B.C.J. No. 1710, 2007 BCSC 1164 (Crawford J.)

7 year marriage (plus 10 years cohabitation, total 17 yrs), separation 2006, 2 children, 11 and 10; shared custody

Wife part-time, then special ed instructor, \$29,940; husband, dock manager, \$142,712 (both 3 yr. average)

Parties agree on following inputs for calculation:

contributions to registered pension plan (?): h \$9,000, w. \$1,744

child care expenses: h \$2,400, w \$1,000

union dues: h, \$2,520, w \$449

Child support: \$1482 (set-off plus s. 7 for childcare)

SSAG range under shared custody formula stated as \$1890-\$2,658

Court orders \$1476 per month spousal support, fair outcome, equalizes net disposable incomes

James v. Torrens, [2007] S.J. No. 334, 2007 SKQB 219 (Ottenbreit J.)

3 year cohabitation, separation 2004; 1 child of relationship and wife 1 child from previous relationship, receiving \$200 per month support from father; both children with mother

Wife in mat. home and husband making monthly mortgage payments of over \$1000 per month

Wife's income \$29,019

Husband teacher on First Nations reserve, income \$53,146, tax exempt, grossed up to \$88,000 (?) for CSG [using DivorceMate gross up calculator, would be \$76,200]

Interim child support for 1 child, \$758 per month (?) [table amount on payor income of \$88,000 is \$951 per month; table amount on income of \$65,000 is \$758], plus \$162 s. 7 expenses; issue of *in loco parentis* to older child to be dealt with at trial

Wife claims interim spousal support and files SSAG calculation

Court notes use of SSAG complicated by fact husband not able to deduct spousal support against his income; order for \$350 per month

SSAG ranges:

[if h income \$88,000 and CS \$951: range \$532-\$1171]

[if h income \$88,000 and CS \$758 + \$162: range \$553-\$1193]

[if h income \$65,000 and CS \$758 + \$16 range \$0 - \$246]

[if h income \$76,200 and CS \$758 + \$162: range \$142-\$714]

[if h income \$53,146 (non-taxable) and CS \$758 + \$162: range \$128-\$574; middle of range \$354]

M.I. v. S.D.I., [2007] B.C.J. No. 1925, 2007 BCSC 1310 (Ralph J.)

Married 11 years, 2 children 11 and 8, shared custody since 2005, wife and husband 44, separated 2001

Wife customer service agent with Air Canada, works part-time, earns \$27,800

Husband sales manager, electronics, earns \$113,000

Child support: \$1,611 - \$438 (using \$27,800 for wife) = \$1,173, child expenses similar

Husband pays 2/3 of s. 7 expenses for child care, figure skating, hockey

Home reapportioned 55% to wife, to be sold, rest of family assets divided equally

Wife could work more now, can earn \$36,000

Spousal support of \$800/mo., indefinite, review in 4 years

[Range estimated: \$922-\$1,607, \$800/mo. leaves wife 47.8% NDI; if wife earned \$48,000, range \$605-\$1,322]

Teja v. Dhandra, [2007] B.C.J. No. 1853, 2007 BCSC 1247 (Loo J.)

Married 10 years, 1 child 4 with wife, husband 40, wife 35, separated 2005

Wife lawyer, not practiced, career development officer at university, moved to follow husband

Husband retina specialist, medical school in Ontario, residencies, income increased in 2004

Income issues, s. 18 Guidelines, wife says \$630,000, husband says \$400,000, judge finds \$425,000

Husband seeks to reduce income to \$350,000 ceiling, due to his overwork, but rejected

Income of \$25,000 imputed to wife

Child support \$3,447/mo., some benefit to wife

Spousal support range \$10,067-\$12,199, order for \$10,500/mo., compensatory

Review in 4 years, child in school, wife can study for master's degree in counselling psychology

Brown v. Cross, [2007] B.C.J. No. 1847, 2007 BCSC 1221 (Wilson J.)

Common-law, together 13 years, 2 children 17 and 12, with wife, separated 2003

Wife home until 2001, part-time support worker, earns \$21,479, full-time imputed \$34,000

Husband works supercargo, income issues, company, earns average \$113,739

Child support \$1,620/mo.

Wife seeks \$500/mo. for 5 years, until youngest finishes high school, granted

[Range \$1,122-\$1,791]

Schwab v. Schwab, [2007] B.C.J. No. 1795, 2007 BCSC 1217 (Arnold-Bailey J.)

Together 11 years, married 8, 4 children 12, 11, 8, 7, with wife, husband 41, wife 38 (36 at separation)

Husband earns \$70,000, child support \$1,634

Property divided equally, except family recreation property of husband, 85% to husband

Wife taking course to Nov. 2007, resident care attendant, then hopes job \$24,000/yr.
 Various scenarios: if wife zero income, range \$602-\$914; if \$12,000, 0-\$321; if \$18,000, then zero
 Order for \$321/mo., review in July 2008

Fraser v. Pelletier, 2007 CarswellBC 1791, 2007 BCSC 1183 (Chamberlist J.)
 Appeal of Master's order, interim spousal support of \$850/mo., to equalize NDIs
 Shared custody, child support \$581/mo.
 Real numbers mean \$1,800/mo. required to equalize, says wife, calculation error by Master
 Appeal dismissed, sufficient support until trial

Wetmore v. Wetmore, [2007] B.C.J. No. 1732, 2007 BCSC 1177 (Balance J.)
 Married 8 years, children 11 and 10, with wife, wife 40, separated 2002
 Husband self-employed, income: 2002, \$140,000; 2003, \$119,000; 2004, \$215,785; 2005, \$168,475.
 2006 income \$192,290, child support \$2,577
 S. 7 expenses: \$300/mo. child care, \$725/mo. dance and riding
 Spousal support compensatory, wife working part-time for airline, 2006 earned \$8,866
 Insufficient effort, limiting hours for children, \$22,000 imputed
 Spousal support of \$3,400/mo., continued amount from previous agreement, review in 2 years
 [Range estimated as \$3,149-\$4,080]

Shore-Kalo v. Kalo, [2007] M.J. No. 297, 2007 MBQB 197 (Allen J.)
 Married 7 years, 2 children 8 and 7
 Husband Israeli lawyer, wife Canadian, moved back to Winnipeg 2002
 High-conflict re access, sole custody to wife, supervised access to husband
 Prenuptial agreement, little shareable property
 Spousal support claim by husband: entitled at separation in 2003
 Problematic behaviour, little employment since, not qualified in Canada still, zero income
 Disadvantaged by breakdown and move to Canada
 Transitional support for 2 years to qualify as lawyer, could have done it 2003-05
 SSAG duration: 3.5 to 7 years, too long, so quantum to be increased
 Wife earns \$55,000, but capital from family trust/grandmother, her parents pay child expenses,
 including private school
 No child support claim by wife, custodial payor range \$327-\$430/mo.
 Spousal support of \$700/mo. for 2 years
 [Global range \$13,734-\$36,120, order totals \$16,800]

Williams v. Williams, [2007] N.J. No. 257, 2007 NLUF 20 (Cook J.)
 Married 24 years, 1 child (24) independent, other 19 in college and with wife
 Wife personal care attendant, earns \$20,000
 Husband oil and gas technician, works outside Canada, quit Malaysian job just before hearing
 Intentional unemployment, full year income imputed, also veteran disability pension grossed up
 Husband's income \$184,862, child support \$1,424, plus university expenses \$295/mo. (of \$330/mo.)
 Entitlement to interim spousal support, range \$3,727-\$4,708
 Order for \$4,212/mo., leaves wife and son with 50.3% of NDI

J.W. v. M.H.W., [2007] B.C.J. No. 1597, 2007 BCSC 1075 (Romilly J.)
 Married 7 years, husband 46, wife 37 (34 at separation), children 9 and 7 with wife
 Shared custody: 3 of 4 weekends with husband, plus some days
 Husband financial advisor, earns \$60,000, wife personal care attendant, earns \$22,828
 Child support: set-off \$549, husband should pay more but family debts, \$600/mo.
 Spousal support: \$100/mo., deviated from SSAG, priority to child support
 "Dire" financial circumstances, significant debts, not divided under FRA, exceed assets
 [Range: 0-\$329, \$100/mo. splits NDI equally]

Loran v. Loran, [2007] S.J. No. 371, 2007 SKQB 253 (Wilson J.)
 Married 15 years, 2 children 15 and 12, with wife

Husband vice-pres. of credit union, earns \$132,605
 Wife works 60% part-time with Sask Power, earns \$47,180
 Interim child support \$1,780
 S. 7 extracurricular expenses \$5,150/yr. (\$429/mo.), no child care expense where maternal grandmother
 Spousal support: wife's "Leskun" argument, no medical evidence, part-time ok on interim basis
 Range \$999-\$1,804, order for \$1,000/mo. interim, low end as wife living in mortgage-free home

LeFranc v. LeFranc, [2007] B.C.J. No. 1566, 2007 BCSC 1052 (Truscott J.)
 Married 9 years, husband 40, wife 32 (30 at separation), 2 children 9 and 6 (learning disability) with wife
 Husband earns \$72,307 in excavation business, child support \$1,084
 Wife worked as excavator, home, now part-time in candle factory, earns \$17,000
 Husband paid \$853 mortgage, within SSAG range \$322-\$897/mo.
 Sept. 2007: if wife enrolls in nurse's aide college program, then spousal support \$1,200/mo.
 Within range too [if wife's income zero: \$1,105-\$1,402], review in June 2008
 If wife not pursue education, spousal support continue at \$853/mo.

Mann v. Mann, [2007] B.C.J. No. 1487, 2007 BCSC 980 (Halfyard J.)
 Together 15 years, married 13, 2 children 19 and 16, husband 48, wife 43, separated 1999/2001
 Child 19 independent, was shared custody, child 16 with wife, time with husband, but no s. 9
 Husband earns \$111,688, child support fixed at \$835 [1997 table amount?]
 Entitlement to spousal support at separation, but delay, wife now earning \$37,128, since 2004
 SSAG no assistance, unusual case
 Not consider any of husband's post-separation income increase from \$55,000
 Wife's disadvantage and hardship, but not permanent, self-sufficient now
 Lump sum support of \$25,000, would have ordered \$700/mo. for 36 months if timely
 [Range for \$111,688/\$37,128: \$1,217-\$1,943; range at separation \$55,000/\$2,500: \$770-\$1,044]

Manning v. Bain, [2007] O.J. No. 2816 (Belch J.)
 Cohabited 11 years, separated Nov. 2002, 3 children, with wife
 Husband self-employed, radiator/cooling business, income on tax return plus retained earnings
 Income fixed at \$74,201 in 2004, \$63,227 in 2005, no 2006 return yet
 Wife works at Sears call centre now, home during relationship, earns \$19,313
 Child support \$1,236 for income \$63,227
 Wife claims \$400/mo. spousal support, in SSAG range (using \$71,071 for husband's income)
 Order for \$400/mo., leaves wife with 62.6% NDI
 [Range if \$63,227: 0-\$96/mo.; range if \$71,071: 0-\$415]

Hornby v. Hornby, [2007] A.J. No. 788, 2007 ABQB 464 (Foster J.)
 Together 10 years (married 8), child 9, wife 42 (37 at separation)
 Husband investment specialist CIBC, earns \$208,973
 Wife home, then BSW (2004-06), employed part-time, earns \$15,121
 Property divided, including husband's post-separation condo, so no retro support
 Child support \$1,696/mo.
 Interim spousal support \$2,500/mo., wife seeks \$3,000/mo. for 2 more years
 Husband's 2000/2001 income \$112,639
 SSAG range \$2,548-\$3,185, guide only, if wife worked full 12 mos. income \$22,681
 Spousal support of \$2,000/mo., if wife earns more than \$3,200/mo. gross, reduce by half of excess
 If wife earns \$38,000/yr., support to terminate, otherwise terminate in one year, i.e. 6 2/3 years total
 [Range if incomes \$208,973/\$15,121: \$4,647-\$5,738; if \$112,639/\$2000 at separation: \$2,367-\$3,122]
 [If incomes \$112,639/\$15,121: \$2,034-\$2,692; if \$112,639/\$38,000: \$1,137-\$1,872]

Bryant v. Gordon, [2007] B.C.J. No. 1460, 2007 BCSC 946 (Slade J.)
 Married 19 years, husband 51, wife 53, 3 children (1 died), 22 at university, 17 at home with wife
 2002 order: \$1,388 child support, \$2,150 spousal support, husband then \$116,700, wife \$6,000
 Child support varied to \$1,013 (1) in 2006, plus direct payments of \$500 to older child
 Husband's income now \$139,966

No change in table amount, increase to \$750/mo. for older child (table amount difference), direct
 Spousal support: 6 ½ years since separation, court considers ranges for previous and new incomes
 Wife's lack of self-sufficiency efforts, part-time only, income of \$38,000 imputed (vs. \$30,000)
 That income used with husband's at separation \$116,700, range \$1,145-\$1,820
 Spousal support \$1,800/mo., indefinite, review in 2 years
 [Range if husband \$140,000, wife \$30,000: \$1,969-\$2,705]

Celotti v. Celotti, [2007] O.J. No. 2538 (Olah J.)

Married 12 years, 3 children 9, 7 and 5, with wife, husband very involved
 Interim child and spousal support, tax-neutral, \$6,000/mo.
 Husband in family construction company, earns \$221,000
 Child support \$3,639/mo., s. 7 expenses for hockey/dance \$1,000/mo., paid by husband
 Spousal support: wife home, no income, child of a subsequent relationship
 Wife some obligation towards self-sufficiency, delayed by 4th child
 Wife seeks "income equalization", rejected, in part using SSAG
 Parties agree to only look at NDI, court rejects
 Court estimates SSAG range, low to mid: \$3,014-\$3,534 (61.8-63.8% NDI)
 Order for \$1,950/mo., review in 13 months

Martin v. Blanchard, [2007] O.J. No. 2713 (Taylor J.)

Married 22 years, husband 46, wife 44, 3 children 22, 20 and 15, youngest with wife
 2005 "kitchen-table" agreement: \$20,000 equalization payment and \$5/mo. spousal support
 Husband earns \$56,000
 Wife laid off from part-time bus driver job, now in community college until 2008/2009,
 Wife also works as part-time limo driver, earns \$11,232
 Miglin: no substantial compliance, also no legal advice and other "concerns"
 Child support \$519/mo.
 Wife entitled to spousal support, seeks mid-point of SSAG range \$723/mo.
 Order for \$723/mo., review earlier of 1 year after program completed or 6 mos. after full-time employment

Duff v. Duff, [2007] N.B.J. No. 260, 2007 NBQB 222 (Quigg J.)

Married 15 years, 3 children 13, 12 and 10, shared custody, week about
 Wife CMA, accountant with firm, contract basis, earns \$25,657
 Husband engineer with Aliant, earns \$87,289
 Child support: set-off agreed, \$886, retro to separation
 Spousal support under *Family Services Act*, same principles, SSAG used
 2005 range: \$365-\$1,084; 2006 range: \$462-\$1,210
 Order for \$1,000/mo., retro only to Dec. 2005 filing of divorce petition
 Marital property divided equally, family debt issue

Logan v. Logan, 2007 CarswellBC 1435, 2007 BCSC 904 (Chamberlist J.)

Married 31 years, 3 children, last now 18 with wife, husband 61, wife 55
 2004 order: child support \$761, spousal support \$2,400/mo., husband \$100,000, wife \$4,000
 Wife registered nurse, knee problems, can't work, CPP disability \$10,020/yr.
 Husband's income increased with bonuses to \$108-\$118,000
 Post-separation increase in husband's income not change in circumstances
 Husband living with fiancée, no disclosure from her
 Review, SSAG range for \$110,000/\$10,000: \$2,394-\$2,981, used as litmus test
 Court uses budgets and tax tables, permanent spousal support of \$2,400/mo.

Fraser v. Pelletier, 2007 CarswellBC 1428, 2007 BCSC 891 (Master Baker)

Application by wife under "slip rule", error in software calculations
 Husband earns \$109,200, wife \$43,200, shared custody (?)
 Spousal support of \$868/mo. ordered, to equalize NDIs
 Wife says \$1,800 spousal support required to equalize, but more complex issues
 No reconsideration as further analysis required and decision now under appeal

Ferchert v. Ferchert, [2007] B.C.J. No. 1315, 2007 BCSC 873 (Master Keighley)

Married 7 years, children 17 and 9 with wife

Husband bio-engineer, earned \$109,886 with federal government

Moved to Ohio after separation, to live with girlfriend, income imputed \$50,000

Wife works in floral supply store, earns \$10,000

Interim child support \$759, plus \$299 for section 7 expenses

Guidelines range 0-\$247, \$247/mo. interim spousal support ordered

High end due to dire financial circumstances of wife

P.H.D. v. M.L.D., [2007] B.C.J. No. 1302, 2007 BCSC 863 (Rogers J.)

Married 15 years, 3 children 8, 5 and 2, with wife, husband and wife 39

High conflict, many interim applications

Husband systems control engineer, mining industry, earns \$86,500, wife homemaker

Child support \$1,651

Spousal support: no ability to pay if paying mortgage (\$960), private school fees (\$845)

Range \$1,000-\$1,350, order for \$1,200/mo. interim spousal support

S. 7 expenses: no to private school, but \$4,800/yr. extracurriculars, \$334/mo. for husband

[Range stated before s. 7 expenses, as after expenses range is \$891-\$1,220]

P.G.A. v. B.M.A., [2006] B.C.J. No. 3386, 2006 BCSC 1964 (Barrow J.)

Married 17 years, 2 children 10 and 17, with wife, husband and wife in early 50's

Husband on CPP disability, \$12,229, lives with mother in Ontario

Wife works as legal assistant, earns \$49,000

Older child now independent, but intending university, younger at home

Wife paid husband voluntarily \$225/mo. support since May 2003 separation

Reapportionment on basis of "liability" for child under s. 65(1)(f) vs. husband's need

Family assets split equally

Husband can earn another \$7,000, so \$19,229, child support \$172/mo.

No s. 7 expenses for Rotary Club exchange program

Need, not compensation, basis for spousal support, range stated \$769-\$1,025

But Rotary program as parental sacrifice, so lower \$725/mo.

[But custodial payor range, 1 child: \$537-\$716, appears that stated range no children]

G.F.W. v. J.L.W., [2006] B.C.J. No. 1440, 2006 BCSC 964 (Masuhara J.)

Married 22 years, husband 48, wife 47, 2 children 15 and 13 with wife

Husband and wife both have MBAs

Wife home, younger child many health problems since birth, now real estate sales

Income imputed of \$20,000

Husband lost job in 1998, since then in real estate and business ventures, little success

Latest a roofing tile company, earns \$78,000, child support \$1,160

Assets reapportioned 70/30 to wife

S. 7 expenses: wife claims \$27,000/yr.

Court allows private school tuition (most paid by maternal grandparents), orthodontics, Tennis lessons, total \$15,572, husband pays \$1,084/mo.

Range considered (not stated), spousal support of \$800/mo. ordered, review in 2 years

[Range after s. 7 expenses estimated as 0-\$578, before expenses \$466-\$1,061]

Georgiou v. Georgiou, [2007] O.J. No. 2201 (Ont.S.C.J.)(Pierce J.)

Married 13 years, child 16 with husband, wife 49

2003 order: \$2000/mo. spousal support, child support \$62/mo, not paid by wife

Husband then earned \$86,000, wife \$8,000

Husband now earns \$102,960, wife earns \$12,480 at grocery store (24 hours/week)

Husband applies to terminate or reduce spousal support

Range \$1205-\$1607 for 6.5 to 13 years

Order for \$1500/mo., review in 18 mos., wife should work more hours

Toews v. Toews, [2007] B.C.J. No. 1146, 2007 BCSC 746 (Crawford J.)
 Married 20 years, 3 children 25, 24 and 20, husband and wife both 45
 Youngest child with wife, in college
 Husband helicopter pilot, many moves, including Macau, dismissed 2006
 Husband new aviation safety business, tax low, income averaged from past 3 years \$125,000
 Wife nurse's aide, home, new business manufacturing screens, income \$50,000
 Child support \$650/mo., husband pays university/college expenses, son worked all of 2006
 Range \$1022-\$1867, order for \$1440/mo., for 5 years, then review
 Retroactive child support to 2004, retro spousal support to 2005

Damian v. Damian, 2007 CarswellOnt 3169 (Ont.S.C.J.)(Pazaratz J.)
 Costs decision after trial, issues of custody, spousal support, property division
 Medium term relationship, husband teacher, earns \$82,050, self-represented,
 Wife unemployed, one child 9, completely successful on all issues, reasonable offers to settle
 Husband rigid and narrow-minded approach to litigation
 Spousal support ordered of \$1400, with review in 3 years
 Wife offered time-limited support, \$1300 for 3 years
 Wife's offer should have been particularly attractive, as Guidelines range \$1682-\$2112
 Substantial indemnity costs awarded of \$10,646

Wong v. Smith, [2007] B.C.J. No. 1055, 2007 CarswellBC 1091, 2007 BCSC 701 (Powers J.)
 Married 6 years, husband 49, wife 39, child 5 with wife
 Husband in various businesses in B.C. and Australia, no tax returns, did not attend at trial
 Husband's income imputed \$75,000, wife earns \$41,500
 Child support \$698 plus \$252 for child care (60%), i.e. \$950/mo.
 Range \$49-\$613, 14 years maximum, lower end here
 Reapportionment of property, 90/10 on house (\$267,000 equity)
 Husband's share of property \$38,000, wife's request for \$20,000 lump sum granted

Hinz v. Hinz, [2007] S.J. No. 216, 2007 SKQB 169 (Smith J.)
 Married 26 years, 3 children, 1 left, 24, last year university, with husband
 Wife earns \$37,000, table amount of child support \$310/mo. for one year
 Wife home 13 years, 1993 return to employment
 Wife cohabiting for 2 years, new partner earns more than husband
 Husband earns \$90,000
 Support to be reviewed in 3 years, wife's finances unsettled
 Interim support of \$900/mo. for one year, but no child support paid
 Wife seeking \$1500, husband offering \$500, neither party Guidelines numbers
 Order for \$1400, within range, review in 3 years
 [Custodial payor formula estimated at \$1369-\$1825, indefinite]

Shillington v. Shillington, [2007] S.J. No. 241, 2007 SKQB 168 (Sandomirsky J.)
 Married 20 years, both 42, 3 children 21, 18 and 15, oldest working, 18 with wife, 15 with husband
 Wife earns \$15,000 in retail, husband farmer \$65,600 (pays little tax)
 Child support: set-off \$566-\$109=\$457, during school year father to pay \$719/mo.
 Interim spousal support \$1,000/mo., continued at \$1,000, indefinite based on Guidelines
 [Range \$521-\$945, indefinite]

Elieff v. Elieff, [2007] O.J. No. 1802 (S.C.J.)(Perkins J.)
 Spousal support and costs, wife and 4 children, husband's income \$150,000
 Child support \$3,064/mo., plus \$200 for orthodontics
 Case adjourned for Guidelines and NDI calculations
 High end of Guidelines range chosen, \$2,654/mo., leaves 63.7% NDI to wife

G.(L.D.B.) v. G.(K.L.), 2007 CarswellBC 1028, 2007 BCPC 134 (Hicks Prov.J.)
 Together 21 years (married 17), 3 children 18, 17 and 13 with wife, husband 49, wife 46
 Wife earns \$29,000 in multiple retail jobs
 Husband works construction, earns \$89,000 including overtime, partner earns \$50,000
 Child support \$1,677/mo.
 Past section 7 expenses allocated: grad expenses, hockey, dental
 No spousal paid since separation over 5 years earlier
 Range \$576-\$1,110, reflective of budget evidence, wife seeks mid-point \$852/mo.
 Court orders \$600/mo., indefinite
 Lower as children now teenagers and opportunities for wife to improve skills

Stoyshin v. Stoyshin, 2007 CarswellOnt 2825 (S.C.J.)(Cusinato J.)
 Interim support, 2 children, wife doing B.Ed., graduating June 2007
 Husband works in family business with 3 others, income issues
 Husband's income \$83,417, including benefits, but not family gifts, rent-free house
 Child support \$1,481/mo., including some s. 7 contribution
 Spousal support \$1,350, based on Guidelines

Thorimbert v. Thorimbert, [2007] B.C.J. No. 851, 2007 BCSC 94 (McEwan J.)
 Together 14 years (10 married), husband 48, wife 44, 2 older children (24, 23)
 Child 14, shared custody
 Wife health problems, fibromyalgia, depression, no income
 2002 agreement/subsequent 2004 interim order: \$1,800/mo. child and spousal support
 Husband tradesman at Cominco, earns \$65,978 3-year average with overtime
 Child support \$618-0=\$618, plus \$250/mo. for all s. 7 expenses
 Range \$732-\$976
 Spousal support of \$900/mo. for 12 mos., then \$600/mo. for 8 mos. (6 years total)
 Doubts re degree of disability, no application for CPP disability either

Vargas v. Berryman, [2007] B.C.J. No. 694, 2007 BCSC 470 (Stromberg-Stein J.)
 Married 11 years, 2 children 11 and 8, wife 36, husband 32
 Husband air traffic controller, earns \$102,665 on sick leave, \$118,000 on return to work
 Wife from Cost Rica, limited English, intentionally unemployed, \$20,800 imputed
 Child support: \$1,472 - \$315 = \$1,157/mo.
 Husband paid house expenses and support for 1 ½ years since separation
 Husband offers spousal support \$1,500 for 5 years, then \$1,000 for 5 years more
 Wife seeks \$2,000/mo. for 10 years, diminishing
 Shared custody range \$1,360-\$2,490
 Spousal support ordered \$1,800/mo. for 10 years, no review

Clement v. Clement, 2007 CarswellOnt 2225 (S.C.J.)(Gordon J.)
 Husband applies to set aside minutes of settlement from day-long settlement conference
 Husband earns \$65,000, child support \$601
 Guidelines range used, \$1,318-\$1,638, parties used mid-point, review in 4 years
 Both parties represented, no unfairness in settlement, upheld

Droit de la famille – 061122, [2006] J.Q. no. 17350, 2006 QCCS 7734 (Richard J.C.S.)
 Separated 2003, children in shared custody
 Husband earns \$163,200, wife earns \$23,332, child support \$192.85/week (\$836/mo.)
 Wife proposes Guidelines ranges from AliForm, no analysis
 Guidelines rejected, based on Court of Appeal decision
 Spousal support based on budgets of \$2,500/mo., indefinite

Appendix III

SPOUSAL SUPPORT ADVISORY GUIDELINES CASE UPDATE BY PROVINCE [April 19 – Sept. 12, 2007]

[This update covers new cases decided since our last update, Carol Rogerson and Rollie Thompson, "The Advisory Guidelines 27 Months Later", April 18, 2007" that is found on the SSAG website at <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>]

ALBERTA

A. Appeal Cases

Lust v. Lust, [2007] A.J. No. 654, 2007 ABCA 202 (Alta.C.A.)
Married 10 years, 2 children 8 and 4, with husband
Controlling father and his mother, weak wife, left home August 2005
Trial decision: custody to husband, access to wife, review in 1 year, counselling and report
Husband earns \$80,000; wife \$25,000 in doctor's office, few skills
Wife quit job, EI \$14,000, \$25,000 income imputed
Child support \$379
Spousal support: wife home 5 years, property divided, each \$170,000
support \$700/mo. for 4 more years, retro 19 months (total 5 ½ years)
Appeal: custody order upheld, even if unusual
SSAG "instructive as to one route to proper exercise of discretion", order upheld
[Custodial payor formula range: \$524-\$698 for 5 to 10 years]
[Wife incorrectly used *without child support* formula to claim \$1,229/mo. for 10 years]

B. The Without Child Support Formula

Heimsoth v. Heimsoth, [2007] A.J. No. 969, 2007 ABQB 539 (Sirrs J.)
Married 24 years, 2 adult children, wife 50, separated 1999
2002 order: spousal support \$4,000/mo., review in 3 years
Wife says post-separation depression means can't work, 3 psychiatrists testify
Court holds depression not that bad, wife can work, intentionally under-employed
Husband earns \$149,778, up from 2002-04 average of \$121,836, new partner, nurse
Wife home 10 years, compensatory support still, 2 more years support (10 total)
Step-down order: \$4,000/mo. to Dec. 2007, \$3,000 to July 2008, \$2,000 to Dec. 2008,
\$1,000 to July 2008, then end
Husband paid support "in accordance with spousal support guidelines" since 2002
(range for 2002 order: \$3,625-\$4,833)

England v. England, 2007 CarswellAlta 999, 2007 ABQB 494 (Nielsen J.)
Married 21 years, no children, wife 52 (45 at separation)
Husband employed by Telus, severance 2002, consulting now, income \$96,400-\$105,600
Wife severance from Telus in 1993, diagnosed with lupus, not employed since
Two independent medical examinations: rheumatologist, not lupus,
Psychiatrist, possible somatoform disorder
Husband's net worth \$1 million, wife's \$575,000, property divided in 2003
Wife entitled to support: disadvantage from breakdown, economic hardship
Interim support \$32,500/yr. (\$2,708/mo.) since 2002, all expenses paid by husband 2000-02
Amount: long marriage, similar living standards, \$32,500/yr. continue
This amount "squarely within the range" under SSAG [Range: \$2,531-\$3,374]

Duration: til Dec. 2010, review then, not indefinite

Wife's share of Telus pension to begin Sept. 2010, also her health and steps to improve situation

C. The *With Child Support* Formula

Hornby v. Hornby, [2007] A.J. No. 788, 2007 ABQB 464 (Foster J.)

Together 10 years (married 8), child 9, wife 42 (37 at separation)

Husband investment specialist CIBC, earns \$208,973

Wife home, then BSW (2004-06), employed part-time, earns \$15,121

Property divided, including husband's post-separation condo, so no retro support

Child support \$1,696/mo.

Interim spousal support \$2,500/mo., wife seeks \$3,000/mo. for 2 more years

Husband's 2000/2001 income \$112,639

SSAG range \$2,548-\$3,185, guide only, if wife worked full 12 mos. income \$22,681

Spousal support of \$2,000/mo., if wife earns more than \$3,200/mo. gross, reduce by half of excess

If wife earns \$38,000/yr., support to terminate, otherwise terminate in one year, i.e. 6 2/3 years total

[Range if incomes \$208,973/\$15,121: \$4,647-\$5,738; if \$112,639/\$2000 at separation: \$2,367-\$3,122]

[If incomes \$112,639/\$15,121: \$2,034-\$2,692; if \$112,639/\$38,000: \$1,137-\$1,872]

BRITISH COLUMBIA

A. Appeal Cases

Dunnigan v. Park, 2007 CarswellBC 1441, 2007 BCCA 329 (Prowse J.A.)
 Married 25 years, traditional marriage, 2 adult children, husband 58, wife 52, separated 2002
 Trial: \$1,200/mo. spousal support, indefinite, upheld on appeal
 Husband earns \$53,000 in provincial government
 Wife caring for elderly mother, board and car free in Youbou, \$12,000 income imputed
 Wife applied for jobs, minimum wage employment only, limited skills, sufficient efforts
 Without child support range if wife \$12,000: \$1,200-\$1,600; if wife \$22,000: \$900-\$1,200
 SSAG range properly used as “a guide to a range of awards”
 Order left husband with after-tax income of \$2,400/mo. vs. wife \$935/mo.

B. The Without Child Support Formula

Coulter v. Coulter, [2007] B.C.J. No. 1723, 2007 BCSC 1153 (Master Bolton)
 10 year marriage; separation 2006; second marriage for both; no children of relationship; husband 62, wife 52; both children from previous marriages;
 Husband insurance manager earning \$70,000; paying \$12,000 per year child support
 Wife ran jointly-owned gift shop during marriage; business closed shortly after separation; wife now unemployed; plans (likely unrealistic) to upgrade skills and become insurance broker; too early to impute income but wife needs to be realistic about her plans
 SSAG range, after adjusting for husband’s prior child support obligation: \$735-\$981
 Interim order for \$1,500 per month
 Interim exception; need to go higher than SSAG to provide adequate support for short-term transitional period and also to provide reasonable standard of living.

Ahn v. Ahn, [2007] B.C.J. No. 1702, 2007 BCSC 1148 (Ralph J.)
 1 year marriage, separation 2005; wife 50, husband 59; met through matchmaker; husband wealthy businessman; health issues and needed someone to care for him
 Wife employed for 25 years in Washington state as data processor; had risen to position of supervisor; salary \$52,000 USD; moved to B.C. after marriage
 Husband’s net worth \$3 million; interim spousal support of \$3,500/mo since separation plus mortgage payments on matrimonial home where wife continues to reside
 After separation wife remains in Canada, too embarrassed to return to Washington state; obtains permanent resident status; husband undertakes to support her for 3 years until 2009; unable to find work; skills need upgrading
 Division of family assets, including 25% of matrimonial home (worth \$830,000) to wife
 Spousal support: under SSAG formula, given short length of marriage and interim support payments, spousal support obligation would have come to end; but court relies on compensatory exception to award further support
 Wife awarded further lump sum of \$50,000 (based on one further year of support at \$3,500 per month plus one half of mortgage payments on matrimonial home) to further compensate her, on top of division of family assets, for economic disadvantage from her change of residency and employment

Simmons v. Simmons, [2007] B.C.J. No. 1792, 2007 BCSC 1206 (Gray J.)
 Married 12 years, wife now 79, husband 87, husband now dementia
 Property: marriage agreement unfair, only 18% of assets to wife, plus waiver of support
 Wife has pensions, investment income, total \$52,500
 Husband living on \$1.8 million property, while wife sold hers and earning interest on \$500,000
 Husband’s income \$35,600, but if added interest on property, would be \$125,600
 Range of \$1,100 to \$1,500, indefinite, court would order \$1,800/mo. given her needs and his
 Reapportionment \$500,000 to wife, give her 38% of family assets, provide her \$25,000 income
 If reapportionment, no need for spousal support to maintain her standard of living

Bentley v. Bentley, [2007] B.C.J. No. 1780, 2007 BCSC 1204 (Holmes J.)
 Married 28 years, 2 adult children, husband and wife both 52 (49 at separation)
 Family assets equally divided
 Husband Air Canada pilot, earns \$169,459, less union dues \$167,671
 His income also reduced for mandatory deductions, including pension contributions, to \$156,720 (?)
 Wife has scoliosis and other health problems, unemployable, seeks \$7,000/mo. support
 Incorrect “net” range calculated as \$4,898-\$6,530, court orders \$5,700/mo.
 [Formula range \$5,240-\$6,986, maximum 50% NDI \$6,852/mo., \$5,700/mo. leaves wife 42.9% NDI]

Serpa v. Yueping, 2007 CarswellBC 1795, 2007 BCSC 1181 (Edwards J.)
 Married in China, cohabited there 58 days, then husband back to Canada
 Wife never came to Canada, as husband changed his mind, “married” 6 months
 Wife employed in China, left job in May 2006 because of stress, one-line medical report, inadmissible
 Husband earns \$27,000, between \$20,000 and \$30,000 where support could be less
 Guidelines range \$34 to \$49 for 6 to 12 months, i.e. \$204 to \$588 total
 Wife self-sufficient, no entitlement to spousal support

Fuller v. Matthews, [2007] B.C.J. No. 1622, 2007 BCSC 1099 (Arnold-Bailey J.)
 Application by husband for reconsideration of lump sum support decision: 2007 BCSC 444
 Short marriage, compensatory exception
 Support partly calculated under SSAG as \$1,000 for 27 months, total \$27,000 as lump sum
 Husband argues failure to consider after-tax value, should be only \$16,120 lump sum
 No reconsideration, opportunity to argue point at trial, expert evidence required, approximate numbers
 Some adjustment for tax on wife’s loss of credit for pension time

W.J. M. v. L.A.M., [2007] B.C.J. No. 1283, 2007 BCSC 842 (Halfyard J.)
 Married 21 years (plus 3 prior cohabitation); 3 children now grown; separation 2001
 Wife moved out and 2 younger children remained with husband; wife 42 at time of separation
 Husband logger, earns \$67,596
 Wife did not work outside home after children born, but husband wanted her to after children all in school
 Wife works as house-cleaner after separation; cohabiting with new partner; court finds insufficient efforts;
 imputes income of \$25,000
 Cohabitation irrelevant to claim for reapportionment and spousal support because claims based on
 compensation for economic disadvantage
 Voluntary interim support of \$500/mo for 24 months after separation; wife paid no child support
 Wife claims reapportionment and spousal support at low end of SSAG range
 Home (value of \$249,000) reapportioned 75/25 in wife’s favour
 No spousal support; any claim for spousal support satisfied by reapportionment
 Wife did not lose any opportunities to earn income during marriage that were no longer available to her at
 point of separation; wife had means to earn reasonable income after separation and made choice
 not to

Chutter v. Chutter, [2007] B.C.J. No. 1247, 2007 BCSC 814 (E.R.A. Edwards J.)
 28 year marriage, 1 grown child
 Husband businessman, income \$156,000
 Wife returned to work as dental hygienist after child started school, earns \$49,000
 Interim spousal support of \$3250/mo
 Each spouse left with \$4 million in assets
 Wife’s total income, including interest and rent, \$133,000 and husband’s \$214,000
 No entitlement to spousal support in light of property settlement which satisfies need and
 marital standard of living

Skelly v. Skelly, [2007] B.C.J. No. 1243, 2007 BCSC 810 (Bruce J.)
 Married 18 years (plus 2 years prior cohabitation), 1 child, separation 2000
 Wife worked part-time during marriage after child in school

Daughter ill with leukemia after separation and wife quit work; daughter died in 2002
 Wife unemployed until 2005; now part-time in pharmacy earning \$15,335 (2006)
 Husband helicopter pilot, earns \$84,360
 2004 consent order provided for spousal support: 50% of husband's gross monthly income less 50% of wife's gross monthly income over \$500 (less 75% after Sept 1., 2005), review after September 2005.
 Husband applies for review seeking reduction of amount and time-limit on grounds of wife's failure to make reasonable efforts to become self-sufficient
 Wife's efforts reasonable in circumstances; not capable of earning more given her circumstances
 SSAG relevant in determining amount on review
 Range based on parties average incomes over past 2 years: \$1589-\$2110
 Mid-to high end of range equivalent to amount owed under consent order if 100% of wife's earnings deducted from amount owed by husband;
 Consent order varied to provide that 100% of wife's earnings to be deducted from amount owed by husband
 Support to be indefinite

Derksen v. Derksen, [2007] B.C.J. No. 818, 2007 BCSC 542 (H.J. Holmes J.)
 33 year traditional marriage; 2 grown children; separation 2004
 2006 interim spousal support \$2,100 per month
 Husband's average income over past 4 years, \$77,289; over past 8 years, \$80,431
 SSAG range based on 4-year average: \$2415-\$3220: 8-year average: \$2514-\$3351
 Court orders \$2400 per month indefinite
 Lower end chosen because husband's income likely to go down as he slows down and works less overtime

T.M. v. M.A.G., [2006] B.C.J. No. 3479, 2006 BCPC 604 (Brecknell Prov. Ct. J.)
 Marriage less than 1 year; married 2001, separated 2002; husband sponsored wife and her child from Ukraine Under immigration sponsorship agreement obligated to support wife for 10 years
 2004 spousal support order \$1,300 per month, based on estimated income for husband of \$67,000
 Husband applies for review seeking cancellation of spousal support
 Continued entitlement to spousal support both under sponsorship agreement and because wife still in need and making reasonable efforts to improve English language skills and upgrade education
 SSAG not applicable because of sponsorship agreement
 Spousal support of \$1300 per month continued; review after 2008

G.L. v. D.W., [2006] B.C.J. No. 1293, 2006 BCPC 243 (Moss Prov. Ct. J.)
 10 year cohabitation; separation 2005; both children from previous relationships;
 Wife aboriginal and lives on reserve; husband not aboriginal and lived in wife's house on reserve
 Husband pursued music therapy degree during first part of relationship; paid wife \$200 per month while going to school; \$450 per month afterwards
 Husband's income \$36,137; has medical problems (MS) and debts, but also RRSPs and investments.
 Wife seeks spousal support to compensate her for supporting husband while he pursued his education
 Wife's income unclear: no earnings but many benefits from living on reserve and some rental income
 Fixed formulas (SSAG) do not provide much assistance when incomes nebulous
 Wife has short-term financial need; spousal support of \$350 per month for 1 year.

Bell v. Bell, [2007] B.C.J. No. 1105, 2007 BCSC 732 (Halfyard J.)
 Married 9 years, wife 59, husband 78, no children, 3rd marriage for wife, 2nd for husband
 Wife health problems, but part-time bookkeeping plus CPP disability, income imputed \$20,000
 Husband longshoreman, retired 1999, pension \$51,779
 Property divided, 100% of home equity reapportioned to wife (\$113,500), 62/38 split overall
 Range \$488-\$650, \$600 ordered for 3 years, then review with onus on wife to continue support

Shellito v. Bensimhon, [2007] B.C.J. No. 1081, 2007 BCSC 713 (Myers J.)
 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
 Wife no work now, can work part-time in 4 mos., full-time in 3 years, \$18,000 imputed then
 Support non-compensatory, Guidelines maximum \$700/mo. for 3 to 6 years, "too low"
 Wife seeks \$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)
 Brief reference to disability exception

C. With Child Support Formula

Winsemann v. Donaldson, [2007] B.C.J. No. 1936, 2007 BCSC 1322 (Kelleher J.)
 20 year cohabitation; separation 2004; wife 45, husband 51; 2 children, 20 and 16
 Husband commercial fisherman
 Wife at home during marriage; after separation goes to university, BA in English in 2006, only finds part-time work delivering newspapers, earning \$6000 per year.
 Consent order April 2006 (based on husband income of \$75,986): child support for youngest child only, \$706; spousal support \$1707 per month; review any time after Oct. 31, 2006 (i.e. 6 months after wife's graduation)
 Husband seeks to terminate spousal support on review, arguing decline in his income and wife under-employed.
 Wife seeks increase in spousal support, child support for older child who has started university, and s. 7 expenses for younger child.
 Husband's income \$58,000; wife under-employed, \$16,640 imputed (minimum wage)
 Child support for older child attending university, \$200 per month; no s. 7 expenses for younger child
 SSAG range stated as \$249- \$621; \$600 per month ordered, higher end of range; duration 10 years

McIntosh v. McIntosh, [2007] B.C.J. No. 1956, 2007 BCSC 1331 (Chamberlist J.)
 17½ year marriage; separation in 1998; wife now 49 and husband 48; 4 children with wife, now 21, 19, 17, 14, now 2 children of marriage, not clear whether 17 year old will remain child of marriage for more than one year
 Wife not employed after birth of first child; husband in RCMP; both declare personal bankruptcy shortly before separation; no assets to divide
 1999 order: \$1,180 per month interim child support and \$1,200 interim spousal; based on h's income of \$54,700
 Trial 2001: permanent child support of \$1325 per month (based on h's income between \$63,000 and \$64,000); remainder of hearing delayed; spousal support not dealt with; interim order remains in place
 2006: child support reduced to \$957 by support enforcement agency for two younger children who still qualify for child support
 Husband remarried; in substantial arrears of spousal and child support; income now between \$75,000 and \$80,000 (RCMP and business income)
 Wife works part-time until 2002 because caring for children and ill mother; then trains as health care aid; income now between \$32,000 and \$35,000
 Continuation of trial in 2007 dealing with issues of spousal support arrears and on-going spousal support
 Discussion of complications of applying SSAG in situation many years past separation where incomes have changed significantly since separation; SSAG to use payor income at separation but child support being assessed on current income; some discussion of impact of payor's remarriage
 SSAG calculations presented by parties assuming different incomes (husband \$75,000 and \$80,000; wife \$30,000 and \$35,000) and different amounts of child support (1 or 2 children) ranging from low of \$0-\$644 (h \$75,000, w \$35,000, 2 children) to high of \$366-\$1098 (h \$80,000, w \$30,000, 1 child)
 Court finds calculations "informative but not binding" because spousal support not based on payor's post-separation earnings
 In dealing with arrears, court finds spousal support should have been reduced to \$750 per month in 2004 after wife had retrained and found full-time employment.

Permanent spousal support of \$750 per month ordered, increasing to \$950 per month when only 1 child of marriage; support obligation to continue until 2015, for total of 17 years after separation; strong compensatory claim

Nordio v. Nordio, [2007] B.C.J. No. 1710, 2007 BCSC 1164 (Crawford J.)

7 year marriage (plus 10 years cohabitation, total 17 yrs), separation 2006, 2 children, 11 and 10; shared custody

Wife part-time work, then special ed instructor, \$29,940 (3 yr. average); husband, dock manager, \$142,712 (3 yr. average);

Parties agree on following inputs for calculation:

contributions to registered pension plan (?): h \$9,000, w. \$1,744

child care expenses: h \$2,400, w \$1,000

union dues: h, \$2,520, w \$449

Child support: \$1482 (set-off plus s. 7 for childcare)

SSAG range under shared custody formula stated as \$1890-\$2,658

Court orders \$1476 per month spousal support, fair outcome, equalizes net disposable incomes

M.I. v. S.D.I., [2007] B.C.J. No. 1925, 2007 BCSC 1310 (Ralph J.)

Married 11 years, 2 children 11 and 8, shared custody since 2005, wife and husband 44, separated 2001

Wife customer service agent with Air Canada, works part-time, earns \$27,800

Husband sales manager, electronics, earns \$113,000

Child support: \$1,611 - \$438 (using \$27,800 for wife) = \$1,173, child expenses similar

Husband pays 2/3 of s. 7 expenses for child care, figure skating, hockey

Home reapportioned 55% to wife, to be sold, rest of family assets divided equally

Wife could work more now, can earn \$36,000

Spousal support of \$800/mo., indefinite, review in 4 years

[Range estimated: \$922-\$1,607, \$800/mo. leaves wife 47.8% NDI; if wife earned \$48,000, range \$605-\$1,322]

Teja v. Dhanda, [2007] B.C.J. No. 1853, 2007 BCSC 1247 (Loo J.)

Married 10 years, 1 child 4 with wife, husband 40, wife 35, separated 2005

Wife lawyer, not practiced, career development officer at university, moved to follow husband

Husband retina specialist, medical school in Ontario, residencies, income increased in 2004

Income issues, s. 18 Guidelines, wife says \$630,000, husband says \$400,000, judge finds \$425,000

Husband seeks to reduce income to \$350,000 ceiling, due to his overwork, but rejected

Income of \$25,000 imputed to wife

Child support \$3,447/mo., some benefit to wife

Spousal support range \$10,067-\$12,199, order for \$10,500/mo., compensatory

Review in 4 years, child in school, wife can study for master's degree in counselling psychology

Brown v. Cross, [2007] B.C.J. No. 1847, 2007 BCSC 1221 (Wilson J.)

Common-law, together 13 years, 2 children 17 and 12, with wife, separated 2003

Wife home until 2001, part-time support worker, earns \$21,479, full-time imputed \$34,000

Husband works supercargo, income issues, company, earns average \$113,739

Child support \$1,620/mo.

Wife seeks \$500/mo. for 5 years, until youngest finishes high school, granted

[Range \$1,122-\$1,791]

Schwab v. Schwab, [2007] B.C.J. No. 1795, 2007 BCSC 1217 (Arnold-Bailey J.)

Together 11 years, married 8, 4 children 12, 11, 8, 7, with wife, husband 41, wife 38 (36 at separation)

Husband earns \$70,000, child support \$1,634

Property divided equally, except family recreation property of husband, 85% to husband

Wife taking course to Nov. 2007, resident care attendant, then hopes job \$24,000/yr.

Various scenarios: if wife zero income, range \$602-\$914; if \$12,000, 0-\$321; if \$18,000, then zero

Order for \$321/mo., review in July 2008

Fraser v. Pelletier, 2007 CarswellBC 1791, 2007 BCSC 1183 (Chamberlist J.)
 Appeal of Master's order, interim spousal support of \$850/mo., to equalize NDIs
 Shared custody, child support \$581/mo.
 Real numbers mean \$1,800/mo. required to equalize, says wife, calculation error by Master
 Appeal dismissed, sufficient support until trial

Wetmore v. Wetmore, [2007] B.C.J. No. 1732, 2007 BCSC 1177 (Balance J.)
 Married 8 years, children 11 and 10, with wife, wife 40, separated 2002
 Husband self-employed, income: 2002, \$140,000; 2003, \$119,000; 2004, \$215,785; 2005, \$168,475.
 2006 income \$192,290, child support \$2,577
 S. 7 expenses: \$300/mo. child care, \$725/mo. dance and riding
 Spousal support compensatory, wife working part-time for airline, 2006 earned \$8,866
 Insufficient effort, limiting hours for children, \$22,000 imputed
 Spousal support of \$3,400/mo., continued amount from previous agreement, review in 2 years
 [Range estimated as \$3,149-\$4,080]

J.W. v. M.H.W., [2007] B.C.J. No. 1597, 2007 BCSC 1075 (Romilly J.)
 Married 7 years, husband 46, wife 37 (34 at separation), children 9 and 7 with wife
 Shared custody: 3 of 4 weekends with husband, plus some days
 Husband financial advisor, earns \$60,000, wife personal care attendant, earns \$22,828
 Child support: set-off \$549, husband should pay more but family debts, \$600/mo.
 Spousal support: \$100/mo., deviated from SSAG, priority to child support
 "Dire" financial circumstances, significant debts, not divided under FRA, exceed assets
 [Range: 0-\$329, \$100/mo. splits NDI equally]

LeFranc v. LeFranc, [2007] B.C.J. No. 1566, 2007 BCSC 1052 (Truscott J.)
 Married 9 years, husband 40, wife 32 (30 at separation), 2 children 9 and 6 (learning disability) with wife
 Husband earns \$72,307 in excavation business, child support \$1,084
 Wife worked as excavator, home, now part-time in candle factory, earns \$17,000
 Husband paid \$853 mortgage, within SSAG range \$322-\$897/mo.
 Sept. 2007: if wife enrolls in nurse's aide college program, then spousal support \$1,200/mo.
 Within range too [if wife's income zero: \$1,105-\$1,402], review in June 2008
 If wife not pursue education, spousal support continue at \$853/mo.

Mann v. Mann, [2007] B.C.J. No. 1487, 2007 BCSC 980 (Halfyard J.)
 Together 15 years, married 13, 2 children 19 and 16, husband 48, wife 43, separated 1999/2001
 Child 19 independent, was shared custody, child 16 with wife, time with husband, but no s. 9
 Husband earns \$111,688, child support fixed at \$835 [1997 table amount?]
 Entitlement to spousal support at separation, but delay, wife now earning \$37,128, since 2004
 SSAG no assistance, unusual case
 Not consider any of husband's post-separation income increase from \$55,000
 Wife's disadvantage and hardship, but not permanent, self-sufficient now
 Lump sum support of \$25,000, would have ordered \$700/mo. for 36 months if timely
 [Range for \$111,688/\$37,128: \$1,217-\$1,943; range at separation \$55,000/\$2,500: \$770-\$1,044]

Bryant v. Gordon, [2007] B.C.J. No. 1460, 2007 BCSC 946 (Slade J.)
 Married 19 years, husband 51, wife 53, 3 children (1 died), 22 at university, 17 at home with wife
 2002 order: \$1,388 child support, \$2,150 spousal support, husband then \$116,700, wife \$6,000
 Child support varied to \$1,013 (1) in 2006, plus direct payments of \$500 to older child
 Husband's income now \$139,966
 No change in table amount, increase to \$750/mo. for older child (table amount difference), direct
 Spousal support: 6 ½ years since separation, court considers ranges for previous and new incomes
 Wife's lack of self-sufficiency efforts, part-time only, income of \$38,000 imputed (vs. \$30,000)
 That income used with husband's at separation \$116,700, range \$1,145-\$1,820
 Spousal support \$1,800/mo., indefinite, review in 2 years
 [Range if husband \$140,000, wife \$30,000: \$1,969-\$2,705]

Logan v. Logan, 2007 CarswellBC 1435, 2007 BCSC 904 (Chamberlist J.)
 Married 31 years, 3 children, last now 18 with wife, husband 61, wife 55
 2004 order: child support \$761, spousal support \$2,400/mo., husband \$100,000, wife \$4,000
 Wife registered nurse, knee problems, can't work, CPP disability \$10,020/yr.
 Husband's income increased with bonuses to \$108-\$118,000
 Post-separation increase in husband's income not change in circumstances
 Husband living with fiancée, no disclosure from her
 Review, SSAG range for \$110,000/\$10,000: \$2,394-\$2,981, used as litmus test
 Court uses budgets and tax tables, permanent spousal support of \$2,400/mo.

Fraser v. Pelletier, 2007 CarswellBC 1428, 2007 BCSC 891 (Master Baker)
 Application by wife under "slip rule", error in software calculations
 Husband earns \$109,200, wife \$43,200, shared custody (?)
 Spousal support of \$868/mo. ordered, to equalize NDIs
 Wife says \$1,800 spousal support required to equalize, but more complex issues
 No reconsideration as further analysis required and decision now under appeal

Ferchert v. Ferchert, [2007] B.C.J. No. 1315, 2007 BCSC 873 (Master Keighley)
 Married 7 years, children 17 and 9 with wife
 Husband bio-engineer, earned \$109,886 with federal government
 Moved to Ohio after separation, to live with girlfriend, income imputed \$50,000
 Wife works in floral supply store, earns \$10,000
 Interim child support \$759, plus \$299 for section 7 expenses
 Guidelines range 0-\$247, \$247/mo. interim spousal support ordered
 High end due to dire financial circumstances of wife

P.H.D. v. M.L.D., [2007] B.C.J. No. 1302, 2007 BCSC 863 (Rogers J.)
 Married 15 years, 3 children 8, 5 and 2, with wife, husband and wife 39
 High conflict, many interim applications
 Husband systems control engineer, mining industry, earns \$86,500, wife homemaker
 Child support \$1,651
 Spousal support: no ability to pay if paying mortgage (\$960), private school fees (\$845)
 Range \$1,000-\$1,350, order for \$1,200/mo. interim spousal support
 S. 7 expenses: no to private school, but \$4,800/yr. extracurriculars, \$334/mo. for husband
 [Range stated before s. 7 expenses, as after expenses range is \$891-\$1,220]

P.G.A. v. B.M.A., [2006] B.C.J. No. 3386, 2006 BCSC 1964 (Barrow J.)
 Married 17 years, 2 children 10 and 17, with wife, husband and wife in early 50's
 Husband on CPP disability, \$12,229, lives with mother in Ontario
 Wife works as legal assistant, earns \$49,000
 Older child now independent, but intending university, younger at home
 Wife paid husband voluntarily \$225/mo. support since May 2003 separation
 Reapportionment on basis of "liability" for child under s. 65(1)(f) vs. husband's need
 Family assets split equally
 Husband can earn another \$7,000, so \$19,229, child support \$172/mo.
 No s. 7 expenses for Rotary Club exchange program
 Need, not compensation, basis for spousal support, range stated \$769-\$1,025
 But Rotary program as parental sacrifice, so lower \$725/mo.
 [But custodial payor range, 1 child: \$537-\$716, appears that stated range no children]

G.F.W. v. J.L.W., [2006] B.C.J. No. 1440, 2006 BCSC 964 (Masuhara J.)
 Married 22 years, husband 48, wife 47, 2 children 15 and 13 with wife
 Husband and wife both have MBAs
 Wife home, younger child many health problems since birth, now real estate sales
 Income imputed of \$20,000

Husband lost job in 1998, since then in real estate and business ventures, little success
 Latest a roofing tile company, earns \$78,000, child support \$1,160
 Assets reapportioned 70/30 to wife
 S. 7 expenses: wife claims \$27,000/yr.
 Court allows private school tuition (most paid by maternal grandparents), orthodontics, Tennis lessons,
 total \$15,572, husband pays \$1,084/mo.
 Range considered (not stated), spousal support of \$800/mo. ordered, review in 2 years
 [Range after s. 7 expenses estimated as 0-\$578, before expenses \$466-\$1,061]

Toews v. Toews, [2007] B.C.J. No. 1146, 2007 BCSC 746 (Crawford J.)
 Married 20 years, 3 children 25, 24 and 20, husband and wife both 45
 Youngest child with wife, in college
 Husband helicopter pilot, many moves, including Macau, dismissed 2006
 Husband new aviation safety business, tax low, income averaged from past 3 years \$125,000
 Wife nurse's aide, home, new business manufacturing screens, income \$50,000
 Child support \$650/mo., husband pays university/college expenses, son worked all of 2006
 Range \$1022-\$1867, order for \$1440/mo., for 5 years, then review
 Retroactive child support to 2004, retro spousal support to 2005

Wong v. Smith, [2007] B.C.J. No. 1055, 2007 CarswellBC 1091, 2007 BCSC 701 (Powers J.)
 Married 6 years, husband 49, wife 39, child 5 with wife
 Husband in various businesses in B.C. and Australia, no tax returns, did not attend at trial
 Husband's income imputed \$75,000, wife earns \$41,500
 Child support \$698 plus \$252 for child care (60%), i.e. \$950/mo.
 Range \$49-\$613, 14 years maximum, lower end here
 Reapportionment of property, 90/10 on house (\$267,000 equity)
 Husband's share of property \$38,000, wife's request for \$20,000 lump sum granted

G.(L.D.B.) v. G.(K.L.), 2007 CarswellBC 1028, 2007 BCPC 134 (Hicks Prov.J.)
 Together 21 years (married 17), 3 children 18, 17 and 13 with wife, husband 49, wife 46
 Wife earns \$29,000 in multiple retail jobs
 Husband works construction, earns \$89,000 including overtime, partner earns \$50,000
 Child support \$1,677/mo.
 Past section 7 expenses allocated: grad expenses, hockey, dental
 No spousal paid since separation over 5 years earlier
 Range \$576-\$1,110, reflective of budget evidence, wife seeks mid-point \$852/mo.
 Court orders \$600/mo., indefinite
 Lower as children now teenagers and opportunities for wife to improve skills

Thorimbert v. Thorimbert, [2007] B.C.J. No. 851, 2007 BCSC 94 (McEwan J.)
 Together 14 years (10 married), husband 48, wife 44, 2 older children (24, 23)
 Child 14, shared custody
 Wife health problems, fibromyalgia, depression, no income
 2002 agreement/subsequent 2004 interim order: \$1,800/mo. child and spousal support
 Husband tradesman at Cominco, earns \$65,978 3-year average with overtime
 Child support \$618-0=\$618, plus \$250/mo. for all s. 7 expenses
 Range \$732-\$976
 Spousal support of \$900/mo. for 12 mos., then \$600/mo. for 8 mos. (6 years total)
 Doubts re degree of disability, no application for CPP disability either

Vargas v. Berryman, [2007] B.C.J. No. 694, 2007 BCSC 470 (Stromberg-Stein J.)
 Married 11 years, 2 children 11 and 8, wife 36, husband 32
 Husband air traffic controller, earns \$102,665 on sick leave, \$118,000 on return to work
 Wife from Cost Rica, limited English, intentionally unemployed, \$20,800 imputed
 Child support: \$1,472 - \$315 = \$1,157/mo.
 Husband paid house expenses and support for 1 ½ years since separation

Husband offers spousal support \$1,500 for 5 years, then \$1,000 for 5 years more
Wife seeks \$2,000/mo. for 10 years, diminishing
Shared custody range \$1,360-\$2,490
Spousal support ordered \$1,800/mo. for 10 years, no review

MANITOBA

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

no cases

C. The *With Child Support* Formula

Shore-Kalo v. Kalo, [2007] M.J. No. 297, 2007 MBQB 197 (Allen J.)

Married 7 years, 2 children 8 and 7

Husband Israeli lawyer, wife Canadian, moved back to Winnipeg 2002

High-conflict re access, sole custody to wife, supervised access to husband

Prenuptial agreement, little shareable property

Spousal support claim by husband: entitled at separation in 2003

Problematic behaviour, little employment since, not qualified in Canada still, zero income

Disadvantaged by breakdown and move to Canada

Transitional support for 2 years to qualify as lawyer, could have done it 2003-05

SSAG duration: 3.5 to 7 years, too long, so quantum to be increased

Wife earns \$55,000, but capital from family trust/grandmother, her parents pay child expenses,
including private school

No child support claim by wife, custodial payor range \$327-\$430/mo.

Spousal support of \$700/mo. for 2 years

[Global range \$13,734-\$36,120, order totals \$16,800]

NEW BRUNSWICK

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

Brown v. Brown, [2007] N.B.J. No. 330, 2007 NBQB 227 (S.J. McNally J.)

20 year marriage (plus 1 year cohabitation); separation in 2003; 1 adult child of relationship plus wife 1 adult child of previous relationship; wife now 48 (44 at separation)

Wife grade X education; at home for most of relationship, some part-time; now health problems; earning \$17,000

Husband violent; wife does not apply for support until 2006;

Husband worked in lumber mill during marriage; 2006 income \$43,000; quit in 2006 because of medical problems; now combination of seasonal work in Alberta as skidder operator and employment insurance; capable of earning \$54,000

Application under Family Services Act, SSAG applied

SSAG range (based on husband income of \$43,000): \$666-\$888; \$750 ordered; indefinite; retroactive to date of separation

C. The *With Child Support* Formula

Duff v. Duff, [2007] N.B.J. No. 260, 2007 NBQB 222 (Quigg J.)

Married 15 years, 3 children 13, 12 and 10, shared custody, week about

Wife CMA, accountant with firm, contract basis, earns \$25,657

Husband engineer with Aliant, earns \$87,289

Child support: set-off agreed, \$886, retro to separation

Spousal support under *Family Services Act*, same principles, SSAG used

2005 range: \$365-\$1,084; 2006 range: \$462-\$1,210

Order for \$1,000/mo., retro only to Dec. 2005 filing of divorce petition

Marital property divided equally, family debt issue

NEWFOUNDLAND AND LABRADOR

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

Warren v. Warren, 2007 CarswellNfld 165, 2007 NLTD 103 (Handrigan J.)

Married 34 years, husband 53, wife 54, 3 adult children

Husband funeral director, shares in corporation, income \$40,000 including bonus

Wife worked seasonally in funeral home, health and emotional problems, no income

Entitlement, range \$1,225-\$1,667, indefinite

Mid-point of \$1,458 chosen, leaves wife with 47.5 % NDI

Factors for amount identified, e.g. husband's work-related costs, "soft" benefits from co.,
husband's health, wife's displacement from employment, relative housing costs

C. The *With Child Support* Formula

Williams v. Williams, [2007] N.J. No. 257, 2007 NLUFC 20 (Cook J.)

Married 24 years, 1 child (24) independent, other 19 in college and with wife

Wife personal care attendant, earns \$20,000

Husband oil and gas technician, works outside Canada, quit Malaysian job just before hearing

Intentional unemployment, full year income imputed, also veteran disability pension grossed up

Husband's income \$184,862, child support \$1,424, plus university expenses \$295/mo. (of \$330/mo.)

Entitlement to interim spousal support, range \$3,727-\$4,708

Order for \$4,212/mo., leaves wife and son with 50.3% of NDI

NOVA SCOTIA

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

Cooper v. Cooper, [2007] N.S.J. No., 332, 2007 NSSC 239 (Warner J.)

Married 26 years, traditional marriage, many moves as husband in military, 3 adult children, separated 1998

Husband receives military pension and works as engineer

Wife operates money-losing llama farm, spousal support ended in 2006

2000 separation agreement: wife received net assets of \$200,000, husband net debt of \$37,000

Equal split of military pension, spousal support of \$2,500/mo. for 6 years (2 ½ years paid since separation)

Miglin applied, as no corollary relief judgment, negotiations unimpeachable

Compliance on stage 1: reference to SSAG, wife failed to seek self-sufficiency, continued hobby farm

Fixed-term support in return for unequal division and wife wanted llama farm

[2000 range: husband's income \$91,000, wife's \$10,000, range \$2,531-\$3,375, indefinite]

Objectives met on stage 1, also reverses for husband considered on stage 2, no spousal support

C. The *With Child Support* Formula

no cases

ONTARIO**A. Appeal Cases**

no cases

B. The Without Child Support Formula

Seguin v. Seguin, [2007] O.J. No. 2962 (Ont. S.C.J.) (Hennessy J.)

28 year traditional marriage; 3 grown children, separation 2004

Husband retires in 2004, mainly pension income, \$4,392.59 per month

Wife some part-time employment during marriage, but health problems and unemployed since 2003

Property division: pension to be divided at source, w to get 50% of pension income on monthly basis

Spousal support; order for \$1922/mo until pension division,; after pension split at source, \$1922 to made up from pension split plus top-up; middle of SSAG range, leaves wife with 46.5% of income

Briere v. Saint-Pierre, 2007 CarswellOnt 4763, [2007] O.J. No. 2926 (R. Smith J.)

Together 24 years, common-law same-sex couple

Applicant school principal, earns \$100,000

Respondent supply teacher earns \$22,000, could work full-time to earn \$32,000

Respondent had left previous employment, to run two restaurants owned by them, failed

Joint condominium to be sold

Range stated with mandatory pension contribution deduction for applicant of \$8,256,

RRSP deduction of \$5,000 for respondent, incomes \$100,000 and \$24,000: \$2,265-\$3,020

Interim spousal support of \$2,000/mo., if \$32,000 to respondent and pension deducted

[Range if \$100,000/\$32,000, no pension deductions: \$2,040-\$2,720]

[Range if \$100,000/\$32,000, pensions deducted: \$1,942-\$2,589]

Leblanc v. Leblanc, 2007 CarswellOnt 4270 (Rogin J.)

Married 26 years, 3 children adults, one 35-year-old disabled adult, with wife

1996 order: \$300/mo. child support, \$1,600 indexed (now \$2,163/mo.) spousal support

Husband applies to vary, then earning \$108,000, now retired at 62, child support continue at \$300

Pension \$50,000, unequalized portion \$27,256

Wife works part-time at Sears still, \$12,000, CPP \$4,560, \$16,560 total

Husband argues Boston, range \$340-\$453/mo. on unequalized pension, SSAG rejected by judge

Spousal support varied to \$1,000/mo.

[Range on full husband pension: \$1,045-\$1,393]

Simpson v. Grignon, 2007 CarswellOnt 3095 (S.C.J.)(J. Mackinnon J.)

Married 4 ½ years, no children, separated December 2005

Husband computer engineer, earns \$78,202

Wife 45, mental health problems, depression and anxiety, deterioration in 2005

Wife was receiving ODSP at marriage, can't work

Wife in matrimonial home, to be sold and equal division, net proceeds \$34,000 each

Since separation, husband paid \$2,228/mo. mortgage/taxes/utilities, plus \$500/mo.

Range \$489-\$652 too low, even with restructuring, but duration range okay

Non-compensatory basis for support

Husband to pay \$2,228 plus \$600 for 3 months, wife then to vacate house

Spousal support increased to \$1,200/mo. until house sold

Husband to pay \$2,228 for house (half to be reimbursed from wife's proceeds on sale)

Spousal support then to be paid at \$1,700/mo. to December 2009 (4 years total)

[No reference to disability exception, interim circumstances exception]

C. The With Child Support Formula

Manning v. Bain, [2007] O.J. No. 2816 (Belch J.)

Cohabited 11 years, separated Nov. 2002, 3 children, with wife

Husband self-employed, radiator/cooling business, income on tax return plus retained earnings

Income fixed at \$74,201 in 2004, \$63,227 in 2005, no 2006 return yet

Wife works at Sears call centre now, home during relationship, earns \$19,313

Child support \$1,236 for income \$63,227

Wife claims \$400/mo. spousal support, in SSAG range (using \$71,071 for husband's income)

Order for \$400/mo., leaves wife with 62.6% NDI

[Range if \$63,227: 0-\$96/mo.; range if \$71,071: 0-\$415]

Celotti v. Celotti, [2007] O.J. No. 2538 (Olah J.)

Married 12 years, 3 children 9, 7 and 5, with wife, husband very involved

Interim child and spousal support, tax-neutral, \$6,000/mo.

Husband in family construction company, earns \$221,000

Child support \$3,639/mo., s. 7 expenses for hockey/dance \$1,000/mo., paid by husband

Spousal support: wife home, no income, child of a subsequent relationship

Wife some obligation towards self-sufficiency, delayed by 4th child

Wife seeks "income equalization", rejected, in part using SSAG

Parties agree to only look at NDI, court rejects

Court estimates SSAG range, low to mid: \$3,014-\$3,534 (61.8-63.8% NDI)

Order for \$1,950/mo., review in 13 months

Martin v. Blanchard, [2007] O.J. No. 2713 (Taylor J.)

Married 22 years, husband 46, wife 44, 3 children 22, 20 and 15, youngest with wife

2005 "kitchen-table" agreement: \$20,000 equalization payment and \$5/mo. spousal support

Husband earns \$56,000

Wife laid off from part-time bus driver job, now in community college until 2008/2009,

Wife also works as part-time limo driver, earns \$11,232

Miglin: no substantial compliance, also no legal advice and other "concerns"

Child support \$519/mo.

Wife entitled to spousal support, seeks mid-point of SSAG range \$723/mo.

Order for \$723/mo., review earlier of 1 year after program completed or 6 mos. after full-time employment

Georgiou v. Georgiou, [2007] O.J. No. 2201 (Ont.S.C.J.)(Pierce J.)

Married 13 years, child 16 with husband, wife 49

2003 order: \$2000/mo. spousal support, child support \$62/mo, not paid by wife

Husband then earned \$86,000, wife \$8,000

Husband now earns \$102,960, wife earns \$12,480 at grocery store (24 hours/week)

Husband applies to terminate or reduce spousal support

Range \$1205-\$1607 for 6.5 to 13 years

Order for \$1500/mo., review in 18 mos., wife should work more hours

Damian v. Damian, 2007 CarswellOnt 3169 (Ont.S.C.J.)(Pazaratz J.)

Costs decision after trial, issues of custody, spousal support, property division

Medium term relationship, husband teacher, earns \$82,050, self-represented,

Wife unemployed, one child 9, completely successful on all issues, reasonable offers to settle

Husband rigid and narrow-minded approach to litigation

Spousal support ordered of \$1400, with review in 3 years

Wife offered time-limited support, \$1300 for 3 years

Wife's offer should have been particularly attractive, as Guidelines range \$1682-\$2112

Substantial indemnity costs awarded of \$10,646

Elieff v. Elieff, [2007] O.J. No. 1802 (S.C.J.)(Perkins J.)
Spousal support and costs, wife and 4 children, husband's income \$150,000
Child support \$3,064/mo., plus \$200 for orthodontics
Case adjourned for Guidelines and NDI calculations
High end of Guidelines range chosen, \$2,654/mo., leaves 63.7% NDI to wife

Stoyshin v. Stoyshin, 2007 CarswellOnt 2825 (S.C.J.)(Cusinato J.)
Interim support, 2 children, wife doing B.Ed., graduating June 2007
Husband works in family business with 3 others, income issues
Husband's income \$83,417, including benefits, but not family gifts, rent-free house
Child support \$1,481/mo., including some s. 7 contribution
Spousal support \$1,350, based on Guidelines

Clement v. Clement, 2007 CarswellOnt 2225 (S.C.J.)(Gordon J.)
Husband applies to set aside minutes of settlement from day-long settlement conference
Husband earns \$65,000, child support \$601
Guidelines range used, \$1,318-\$1,638, parties used mid-point, review in 4 years
Both parties represented, no unfairness in settlement, upheld

Quebec

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

no cases

C. The *With Child Support* Formula

Droit de la famille – 061122, [2006] J.Q. no. 17350, 2006 QCCS 7734 (Richard J.C.S.)

Separated 2003, children in shared custody

Husband earns \$163,200, wife earns \$23,332, child support \$192.85/week (\$836/mo.)

Wife proposes Guidelines ranges from AliForm, no analysis

Guidelines rejected, based on Court of Appeal decision

Spousal support based on budgets of \$2,500/mo., indefinite

SASKATCHEWAN

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

Deringer v. Hill, 2007 CarswellSask 334, 2007 SKQB 206 (Sandomirsky J.)

Married 26 years, children, traditional marriage, both spouses 49

2004 settlement/consent order: spousal support \$450/mo., 3-year review

Husband's income \$80,100, Ipsco, includes overtime (1/2 previous year), also stock options

Wife osteoporosis, osteoarthritis, fibromyalgia, doctor says unable to work

Judge imputes \$15-20,000 income, can do some work, illness exception under SSAG

Range \$1,875-\$2,500, order for \$1,875/mo., to encourage self-sufficiency, no review, indefinite

C. The *With Child Support* Formula

James v. Torrens, [2007] S.J. No. 334, 2007 SKQB 219 (Ottenbreit J.)

3 year cohabitation, separation 2004; 1 child of relationship and wife 1 child from previous relationship, receiving \$200 per month support from father; both children with mother

Mother living in matrimonial home and husband making monthly mortgage payments of over \$1000 per month

Wife's income \$29,019

Husband teacher on First Nations reserve, income \$53,146, tax exempt, grossed up to \$88,000 (?) for CSG [using DivorceMate gross up calculator, would be \$76,200]

Interim child support for 1 child, \$758 per month (?) [table amount on payor income of \$88,000 is \$951 per month; table amount on income of \$65,000 is \$758], plus \$162 s. 7 expenses; issue of *in loco parentis* to older child to be dealt with at trial

Wife claims interim spousal support and files SSAG calculation

Court notes use of SSAG complicated by fact husband not able to deduct spousal support against his income; order for \$350 per month

SSAG ranges:

[if h income \$88,000 and CS \$951: range \$532-\$1171]

[if h income \$88,000 and CS \$758 + \$162: range \$553-\$1193]

[if h income \$65,000 and CS \$758 + \$16 range \$0 - \$246]

[if h income \$76,200 and CS \$758 + \$162: range \$142-\$714]

[if h income \$53,146 (non-taxable) and CS \$758 + \$162: range \$128-\$574; middle of range \$354]

Loran v. Loran, [2007] S.J. No. 371, 2007 SKQB 253 (Wilson J.)

Married 15 years, 2 children 15 and 12, with wife

Husband vice-pres. of credit union, earns \$132,605

Wife works 60% part-time with Sask Power, earns \$47,180

Interim child support \$1,780

S. 7 extracurricular expenses \$5,150/yr. (\$429/mo.), no child care expense where maternal grandmother

Spousal support: wife's "Leskun" argument, no medical evidence, part-time ok on interim basis

Range \$999-\$1,804, order for \$1,000/mo. interim, low end as wife living in mortgage-free home

Hinz v. Hinz, [2007] S.J. No. 216, 2007 SKQB 169 (Smith J.)

Married 26 years, 3 children, 1 left, 24, last year university, with husband

Wife earns \$37,000, table amount of child support \$310/mo. for one year

Wife home 13 years, 1993 return to employment

Wife cohabiting for 2 years, new partner earns more than husband

Husband earns \$90,000

Support to be reviewed in 3 years, wife's finances unsettled

Interim support of \$900/mo. for one year, but no child support paid

Wife seeking \$1500, husband offering \$500, neither party Guidelines numbers
Order for \$1400, within range, review in 3 years
[Custodial payor formula estimated at \$1369-\$1825, indefinite]

Shillington v. Shillington, [2007] S.J. No. 241, 2007 SKQB 168 (Sandomirsky J.)
Married 20 years, both 42, 3 children 21, 18 and 15, oldest working, 18 with wife, 15 with husband
Wife earns \$15,000 in retail, husband farmer \$65,600 (pays little tax)
Child support: set-off \$566-\$109=\$457, during school year father to pay \$719/mo.
Interim spousal support \$1,000/mo., continued at \$1,000, indefinite based on Guidelines
[Range \$521-\$945, indefinite]

YUKON TERRITORY

A. Appeal Cases

no cases

B. The *Without Child Support* Formula

Torres v. Marin, 2007 CarswellYukon 27, 2007 YKSC 29 (Gower J.)

Married 31 years, 4 children, husband 61, wife 63

Husband Chilean refugee, self-employed painter

Wife back problems, arthritis, unemployable

2000/2002 orders: husband imputed income \$32,000, child support \$281 (1), spousal \$200/mo.

Husband applies to vary, still income issues, below “floor”, 2006 income \$19,625

But still ability to pay \$200/mo., order continued, indefinite

[Range: \$613-\$817, as wife no income, but husband below floor]

C. The *With Child Support* Formula

no cases