

Appendix I

SPOUSAL SUPPORT ADVISORY GUIDELINES: CASE SUMMARIES B.C. COURT OF APPEAL DECISIONS [June 2007 – June 2009]

For summaries of the appeal cases decided prior to June, 2007 see our paper “The Spousal Support Guidelines in B.C.: The Next Generation” (June 27, 2007) prepared for the CLEBC Family Law Conference 2007 and available at <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>

(* indicates cases that do not deal specifically with the Advisory Guidelines but are significant decisions on spousal support more generally)

(** indicates decision of the B.C.C.A. acting as the Yukon C.A.)

Bell v. Bell, [2009] B.C.J. No. 1201, 2009 BCCA 280 (Lowry J.A.)(June 18, 2009), reversing 2008 BCSC 694 (Stromberg-Stein J.)

Together 20 years (married 14), H 71, W 48, 2 children 21 and 16

2006 agreement/order: \$12 million assets equally divided, husband’s income \$1.5 million/yr., child support \$5,000/mo., spousal support \$10,000/mo., review when husband turns 70

Husband retired diplomat, corporate earnings

2008 review decision: child support for older child terminated, supported directly at Ontario university by husband, child support for younger \$2,745/mo., based on husband’s income of \$335,000/yr., spousal support terminated April 2008

Wife appeals:

Judge erred on husband’s income from corporation, really \$649,959 for 2007

Child support \$5,202/mo. for one child

SSAG not useful in circumstances, income well in excess of \$350,000,

Wife’s income \$180,000 from investments, plus \$30,000/yr. imputed for employment, \$210,000/yr.

Wife fashion designer in Ivory Coast, then diplomat’s wife, many moves

Non-compensatory basis, not encroach on her capital, his income much greater

Any spousal support short-lived, given his age and decline in income

His income cut in half since 2006, so too amount of support, i.e. \$5,000/mo.

[Without child support formula range on full income \$7,716-\$11,438/mo.]

James v. James, [2009] B.C.J. No. 1151, 2009 BCCA 261 (Hall J.A.)(June 1, 2009), reversing [2008] B.C.J. No. 1398, 2008 BCSC 975 (R. Holmes J.)

Married 20 years, H and W 52, 2 children, 21 year old still child of marriage

2004 consent order: husband earning \$498,000/yr., wife zero, child support \$3,000/mo., spousal support \$5,750/mo., review in 2009

Husband food distribution company, bonus/dividend paid then shareholder’s loan, income issues, no clear findings at trial or on appeal, income ranged between \$628,000 in 2003 and \$1,049,368 in 2006

2008 order: child support \$6,000/mo. 2005-06 (vs. table \$7,828), father pays 100% university expenses directly (\$22,676/yr.) going forward, spousal support continued at \$5,750/mo., competing applications to increase and terminate/reduce dismissed, retroactive child support for income increase but not retro spousal support as no duty of ongoing financial disclosure

Wife flight attendant, also home, took severance package shortly before separation, limited ability to earn and no viable career options,

High income means some discretion under SSAG, also a variation case and *Beninger*

Wife had need for increase, need a relative concept, husband had ability to pay, but husband's corporation also "exposed to the winds of economic fortune or misfortune"

Spousal support increased to \$9,000/mo., review still to take place in 2009

[Adult child formula range \$11,493-\$15,323/mo. if husband's income \$500,000/yr.]

Teja v. Dhanda, [2009] B.C.J. No. 928, 2009 BCCA 198 (Hall J.A.) (May 1, 2009), appeal allowed in part from *R.T. v. D.D.*, [2007] B.C.J. No. 1853, 2007 BCSC 1247 (Loo J.)

Married 10 years (plus 2 cohabitation), separated late 2005, H 42, W 37, 1 child 5, with wife

Both appealed trial decision: wife appealed child support, but not amount of spousal support, while husband appealed retroactive spousal support and timing of review

Husband specialist doctor, income issues, professional services corp., s. 18 CSG, no need to retain income, income at trial fixed at \$425,000, increased on appeal to \$630,000/yr.

Child support increased from \$3,447 to \$5,046/mo.

Trial spousal support: \$10,500/mo., review in 4 years (Aug. 2010), amount upheld on appeal

Separation traumatic for wife, child to start school, review earlier, in May 2010, 4 years support already, her need to generate income, income of \$25,000/yr. should be imputed

Retroactive spousal support, as interim from Nov. 2005 \$7,500/mo., back to May 2006

Trial judge considered two ranges in fixing amount: for \$425,000 and \$25,000: \$10,067-\$12,199/mo. and for \$425,000 and zero for wife: \$10,979-\$13,020/mo.

[If husband's income \$630,000 and wife zero, 1 child, range \$15,627-\$18,654/mo.]

Mann v. Mann, [2009] B.C.J. No. 829, 2009 BCCA 181 (Huddart J.A.) (April 28, 2009), appeal allowed from [2007] B.C.J. No. 1487, 2007 BCSC 980 (Halfyard J.)

Together 15 years (married 14), H 49, separated Oct. 1999, wife continued to care for children in home, moved back in and then out for good in 2001

Children 21 and 18, shared custody, younger until trial, older less so, she with wife at trial

Under 2001 agreement, husband agreed to refinance house, give her the family car, pay off debts and pay out \$16,000 to wife in return for her signing over the house, husband paid \$1,000/mo. as deductible spousal support only, reduced to \$500/mo. in Sept. 2005 when oldest turned 18

Husband supervisor with linen company, wife home with children, then after separation wife worked as claims advisor on contract basis with insurance company

Prospective child support \$1,002/mo., no reduction from full table amount

Retro child support ordered at trial back to March 2006, as amount sufficient until then (close to table amount for 2), full table amount thereafter for younger child, \$500/mo. extra for older child in 2005-06

On appeal, no error found in these awards, although doubts about 2004-05 analysis

Family assets divided equally by trial judge, including house, but reapportioned all post-separation (post-1999) pension and RRSP assets to husband

Modified on appeal: all family assets divided equally, including post-1999 pensions in light of shared custody arrangements, interest ordered

Wife did not seek spousal support until 2006, despite her low income, lump sum retroactive support ordered at trial, of \$25,000 (roughly \$700 x 3 years)

Entitlement not an issue, mostly compensatory, also non-compensatory

Husband's income \$111,688/yr. in 2007 (\$98,000 in 2002)

Wife's income \$40,000 in 2007 (\$16,000 in 2002)

Lump sum support ordered at trial too low, set aside, at least \$70,000, but husband can't pay lump sum SSAG used on appeal, but not shared custody formula, as formula couldn't adjust for full table child support (?)

Alternative hybrid formula used [but child support incorrectly added back to wife's income], 2002 range \$862-\$1,150/mo., 2007 range substantially the same

Spousal support of \$900/mo., for 8 years from July 2007

[Shared custody formula, properly adjusted for full table support, 2002 \$1,095-\$1,785/mo., 2007 \$950-\$1,632/mo.]

**Redpath v. Redpath*, [2009] B.C.J. No. 813, 2009 BCCA 168 (Chiasson J.A.) (April 9, 2009), dismissing application to vary or discharge decision of Lowry J.A. in chambers (Oct. 10, 2008) dismissing appeal from [2008] B.C.J. No. 68, 2008 CarswellBC 72, 2008 BCSC 68 (Warren J.) (Jan. 16, 2008)

Married 18 years, 2 older children gone, 3 younger in shared custody, husband 58, wife 43
 Husband earns \$260,000/yr. in bakery business
 2005 trial decision: spousal support \$3,500/mo. plus child support
 Spousal support increased to \$5,000/mo. on 2006 appeal, application of SSAG
 Application to vary by husband, based on wife's cohabitation and marriage
 Income imputed to wife: \$50,000 from invested assets, plus \$36,000 employment
 Child support: set-off, \$4,384 - \$1,643 = \$2,741/mo.
 Wife found to have commenced cohabitation May 2006, new husband earns \$658,000/yr.
 Spousal support terminated retroactive to May 2006
 Wife commences appeal; fails to file factum within prescribed time; husband applies to have appeal dismissed as abandoned; wife applies for extension of time
 Lowry J.A. (in chambers) refused application for extension of time and dismissed appeal on basis of prejudice to husband and appeal lacking merit
 Wife brings application to C.A. to vary or discharge chamber judge's dismissal of appeal
 Application dismissed. No error in finding of chambers judge that appeal lacked merit; also administration of justice brought into disrepute if wife permitted to disregard time limits

Kerr v. Baranow, [2009] B.C.J. No. 474, 2009 BCCA 111 (Smith J.A.) (March 23, 2009), reversing in part [2007] B.C.J. No. 2737, 2007 BCSC 1863 (Romilly J.)

Not married, 26 year cohabitation, no children, both 67
 Husband longshoreman, wife secretary;
 Wife has stroke in 1991, disabled and unemployed; separate in 2006 when wife moves to care facility (government subsidized, based on her income)
 Husband retired 2002, income \$70,520 (pension); wife's income (disability pension) \$28,787
 Range: \$1304-\$1739
 Wife seeks more than high end of range to enable her to pay for private bed while on wait list for subsidized private bed
 Trial judgment: spousal support of \$1739 ordered, high end of range for a few years to allow w to pursue private pay bed option, indefinite, retroactive to date of action; plus \$315,000 for share of property by way of resulting trust
 On appeal, appeal on property award allowed; no resulting trust, award of \$315,000 set aside.
 Appeal from quantum and duration of spousal support award was dismissed, and but appeal in relation to its commencement date was allowed.
 Commencement date was changed to date of trial; based on *D.B.S.* trial judge's award of retroactive spousal support could not be supported on evidence. No interim support sought and wife had no financial needs beyond her means.

Oyama v. Oyama, [2009] B.C.J. No. 527, 2009 BCCA 114 (Huddart J.A.) (March 12, 2009), appeal dismissed from [2007] B.C.J. No. 643, 2007 BCSC 428 (Neilson J.)

No error by trial judge in failing to order occupation rent, appeal dismissed
 Trial decision: married 25 years, 3 adult children, now 33, 32 and 26, H 63, W 57, separated 1996
 Equal division of family assets, except 2/3 house reapportioned to wife (\$467,000)
 No retroactive spousal support because of reapportionment
 Husband retired, now receives pension \$55,000/yr. in Japan
 Wife earns \$20,000/yr. in insurance business in Vancouver, could increase to \$30,000 in 2 years
 Range \$1,094-\$1,458/mo., indefinite, some concern for overlap with pension division
 Lump sum as poor communication and lack of reciprocity with Japan
 For duration of 16 years of husband's life, \$300/mo., then discounted and adjusted for contingencies
 Lump sum spousal support of \$50,000
 No child support for 26-year-old, 8 years in university, academic record and future ambitions unclear

**Hinds v. Hinds*, [2008] B.C.J. No. 2540, 2008 BCCA 547 (Smith J.A.) (Dec. 30, 2008), appeal allowed in part from *L.M.H. v. G.D.H.*, [2006] B.C.J. No. 1557, 2006 BCSC 1035 (Joyce J.)

Together 16 years (married 10), H 43, W 41, separated 2000, 1 child 17
 Trial judge found no entitlement to spousal support, reversed on appeal, sent back to be reheard
 Wife living with new partner since 2002, he disabled, not worked since 2004

Husband new partner, plus 1 child of hers plus 1 new child of relationship
 Husband earns \$48,000 in business, income issues, income splitting with new partner, 2/3 for him, 1/3 for her, reasonable for work partner performs, upheld on appeal
 Child support \$446/mo. plus \$134/mo. for s. 7 extracurriculars, retro support back to 2003 for husband's non-disclosure, not changed on appeal
 Trial judge: no entitlement as wife's new relationship, earning capacity of new partner and husband's limited ability to pay after child support obligations
 On appeal: compensatory basis for spousal support as wife home with child while husband focused on pesticide business
 Non-compensatory basis as wife disabled, throughout marriage, debilitating headaches, wife receiving CPP disability of \$9,984/yr.
 Her new partner testified at trial, no adverse findings, he unable to support wife
 [Formula range \$355-\$483-\$614/mo., with no adjustment for subsequent child]

Chutter v. Chutter, [2008] B.C.J. No. 2398, 2008 BCCA 507 (Rowles J.A.) (Dec. 9., 2008), reversing [2007] B.C.J. No. 1247, 2007 BCSC 814 (E.R.A. Edwards J.), leave to appeal to S.C.C. denied, May 28, 2009, [2009] S.C.C.A. 41

28 year marriage, 1 grown child; separation 2003, w 54 at trial, h 56
 Husband businessman, income \$156,000
 Wife works in business in early years of marriage, then home, then 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, post property settlement, found to be \$133,000 (employment, rent and \$50,000 interest on her RRSPs worth \$1 million) and husband's \$214,000 (employment plus rent)
 Trial judge finds no entitlement to spousal support in light of property settlement which satisfies need and marital standard of living
 Court of Appeal reverses.
 W entitled to support on both compensatory and non-compensatory basis.
 Re compensatory support, w's prospects for future financial success limited by role she played in marriage; as well, w contributed to business which is source of h's income. Fact that w earns reasonable income after separation does not operate to deny entitlement to spousal support. Nor does fact that she received substantial assets—h received roughly same value in assets
 Re non-compensatory support, trial judge interpreted need too narrowly, need a relative concept related to both marital standard of living and other spouse's post-separation standard of living; if w is required to encroach on capital to sustain marital standard of living, then she is suffering an economic hardship from breakdown of marriage
 Re SSAG court notes rejection of explicit exception for high property cases; once entitlement established, fact that a case is high asset does not make the Guidelines irrelevant
 Trial judge erred in including interest on RRSP's in w's income; appreciation in value of RRSPs not to be treated as income
 SSAG range using w income \$83,000 and h income \$214,000: \$4093-\$5,458, indefinite
 C.A. orders \$2800, commencing July 1, 2007; below SSAG for 2 reasons: w has RRSP's increasing in value while h has to save for retirement; also w's house exceeds her needs; her choice to keep assets in non-income producing form
 [SSAG range if interest on RRSP's included in w's income: \$3156-4208]

**Scott v. Scott*, [2008] B.C.J. No. 2189, 2008 BCCA 457 (Saunders J.A.) (Nov. 12, 2008), appeal allowed from 2007 BCSC 1255

17 year marriage, separation 2003, 2 children now in university, w 50, h 55
 Trial and consent order 2006, spousal support \$8000/mo; review when h leaves employer
 H had submitted his resignation at time consent order made, to take effect 7 months later
 H brings review when his employment is terminated; had not found new employment
 Chambers judge found h's conduct unreasonable and that wife would not have agreed to review order if she had known about h's resignation
 Court of Appeal allows appeal

Trial judge erred by inquiring into the review term itself and the state of mind of the parties when they made the agreement. This was not an application to strike the review term on basis of fraud or unconscionability.

Correct approach where review provided for by agreement set out in *McEachern*: once condition precedent to review has been established, next step to apply s. 15.2 of Divorce Act, taking into account the agreement as one of relevant considerations. Review clause relieves applicant from having to prove material change in circumstances as required on variation. Trial judge's focus on discussions prior to agreement influenced his view of application of Divorce Act factors under s. 15.2.

Matter remitted to trial court for fresh consideration.

Wang v. Poon, [2008] B.C.J. No. 2113, 2008 BCCA 442 (Prowse J.A.) (Nov. 7, 2008), varying in part [2007] B.C.J. No. 271, BCSC 194

Married 7 years (cohabited 6 years), still cohabiting at trial, husband 76, wife 47

Husband retired professor, income \$50,000

Met wife in China, sponsored to Canada, trained as hairdresser, limited English; income \$8,000

Most not family assets, condo reapportioned 90% to husband [approx. \$36,000]

No interim support order, 2 lump-sum payment \$2,500 and \$4,000

Sponsorship agreement to October 2010, used to fix duration

Amount \$850/mo. Feb. 2007-Feb. 2009; then \$600/mo. to Oct. 2010 (3 years, 7 mos.)

Trial judge stated award "More generous and of longer duration" than Guidelines

On appeal, Court of Appeal allows appeal on both division of assets and spousal support.

Re division of assets, trial judge erred in concluding certain bank accounts not family assets.

Re spousal support, award not as generous as trial judge thought. Award intended to be higher than SSAG

because of w's precarious financial situation, but actually awarded support at low end of global range

Spousal support extended for further 2 years at \$600/mo (total increase of \$14,400)

[C.A. finds h's income to be \$60,000; calculates SSAG range as \$455- \$606, 3.5 – 7 yrs; global range

\$19,110 - \$50,960; trial judge's award calculated as \$23,050, but should actually be \$30,925, total

amount still within global range; no reference to compensatory exception]

Beese v. Beese, [2008] B.C.J. No. 1894, 2008 BCCA 396 (Prowse J.A.) (Oct. 9, 2008), reversing [2006] B.C.J. No. 2903, 2006 BCSC 1662 (Goepel J.)

Together 7 years (3 married), separation 2000, 2nd marriage for h, 3rd for w; h 48, w 41 (35 separation)

No children of own, w 1 prior child; h 2 prior children

W clerk, unemployed when relationship begins, stayed home during relationship to care for children of both; brings \$265,000 damage award for automobile injury into relationship, used to fund unsuccessful businesses during relationship

Significant debt due to failed business ventures; h inherits two properties shortly before separation

Husband earns \$35,000 at separation, now \$52,495 as truck driver,

Wife cohabits for first 4 years after separation, now earning \$35,000 as clerk

Husband left with 100% of family assets and responsibility for family debts that exceed assets by \$77,000.

Trial judge makes compensation order of \$175,000 for wife's use of personal injury settlement to pay off

husband's business loans; secured against h's inheritance;

Guidelines range stated as: \$175-\$233, 3 to 7 years, but trial judge finds spousal support objectives fully

addressed by compensation order, no periodic support; in alternative \$175,000 characterized as lump

sum spousal support to compensate w for loss of her settlement funds

Court of Appeal sets aside compensation order as unjustified under FRA

W entitled to spousal support to compensate her for being out of work force for 7 years while assuming role of homemaker

Using SSAG ranges referred to by judge, of \$200 [mid-range] for 5 years, converted into lump sum of \$12,000

[SSAG range calculated as \$153-\$204; if use separation date incomes, w zero and h \$35,000, then range \$306-\$408; no reference to compensatory exception; no discount for lump sum]

Jens v. Jens, [2008] B.C.J. No. 1886, 2008 BCCA 392 (Levine J.A.) (Oct. 7, 2008), appeal allowed from [2007] B.C.J. No. 1123, 2007 BCSC 1123 (Meiklem J.)

10 year relationship (8 married plus 2 cohabitation); separation 2004, w now 51

W sold her business and house after marriage; did not work during marriage; health problems
 Oct. 2004, agreement then consent order, spousal support \$2750/mo, until April 2006, review Feb. 2006
 2006 review: spousal support extended for further 14 months to June 2007
 Wife seeks variation, May 2007, further health issues and surgery, postponed because of litigation; spousal support extended further 3 months to ameliorate hardship of postponed surgery
 W appeals; after 2007 order further health issues, on social assistance (disability) since Jan. 2008
 Court of Appeal allows appeal, sets aside order of chambers judge and orders spousal support of \$2000/mo for 5 years.
 New evidence admissible in interests of justice
 Since 2001 H heavy duty mechanic in mining industry in north; income 2004, \$68,000; 2005-2007, \$93,000; also approx. \$40,000/yr from helicopter rentals
 H argues income should not include helicopter rentals (*Boston*, double-dipping) and that income from mining is recent and higher than income in most of marriage
 C.A. rejects double-dipping, finds h's income \$130,000 because entitlement largely needs based and large income disparity; w's income zero (social assistance not income)
 Entitlement both on non-compensatory grounds as well as compensatory (w's economic disadvantage from selling house and business)
 Variation, but none of factors suggesting qualified use of SSAG on variation applicable [C.A. not concerned with post-separation income increase]
 SSAG range: \$1625 - \$2167, 5-10 yrs
 C.A. orders \$2000/mo for further 5 years (8 yrs total), subject to variation; amount for first three years higher than SSAG but no retroactive adjustment; amount determined by agreement

Chera v. Chera, [2008] B.C.J. No. 1807, 2008 BCCA 374 (Smith J.A.) (Sept. 25, 2008), appeal dismissed from [2008] B.C.J. No. 657, 2008 BCSC 465 (Josephson J.)
 Married 5 years, 1 child 5, lived with husband's parents, wife continued until June 2007
 Trial: wife proposed to move with child to Toronto, allowed
 Husband earns \$62,889/yr., wife imputed income in Toronto of \$32,496/yr. based on past experience
 Child support \$580/mo., spousal support of \$262/mo., mid-point of SSAG range, both retro to June 2007
 Appeal dismissed
 Wife primary caregiver, her ongoing child care obligations, compensatory support
 Duration indefinite, as preschool child, uncertainty, subject to variation
 Little explanation of amount, but undoubtedly circumscribed by his income, child support and income imputed to wife

***Holmes v. Matkovich*, [2008] Y.J. No. 51, 2008 YKCA 10 (Newbury J.A.) (July 17, 2008), appeal allowed in part from 2007 CarswellYukon 11, 2007 YKSC 11 (Veale J.)
 Together 18 years (married 6), separation 2006, 1 child 16 (at trial in 2007) with wife, wife 48, husband 45
 Husband failed to disclose, pleadings struck, uncontested hearing, no appearance by husband or his lawyer
 Spouses built up hay farm since 1994
 Wife many health problems, receives income from trust fund, \$44,000 in 2006
 Husband operates farm, prospecting, gold mining, heavy equipment rental, incorporated co.
 Income issues, estimated at \$211,000
 Child support \$1,555,
 Farm 100% to wife on property division
 Spousal support range: \$3,753-\$5,013
 Self-sufficiency not practicable, not high end as farm to wife, some equality in living standards
 Trial judge orders \$4,000/mo., indefinite
 Husband's appeal allowed in part; property aspects of trial judge's order stayed and remitted to court below; spousal support order remains in force
 Re spousal support husband, husband's *Boston*, double-dipping argument re unfairness of basing spousal support on income from divided assets rejected; assets in issue not a pension, no double-dipping concern
 Husband also argues lost employment so spousal support should be lower; argument rejected; post-trial events not dealt with on appeal; need to bring variation application

Smith v. Smith, [2008] B.C.J. No. 1068, 2008 BCCA 245, 2008 CarswellBC 1218 (Newbury J.A.) (June 13, 2008), appeal and cross-appeal allowed from [2006] B.C.J. No. 2051, 2006 BCSC 1356 [*sub nom J.K.S. v. J.G.S.*]

Married 10 years, husband 62, wife 51, separated 1999

One child 16 with wife, some chronic psychiatric difficulties

Husband orthodontist, earns \$477,206/yr., likely retire when 70, work less after 65

Wife part-time flight attendant, retired 2005, not worked since, interior design training

Couple spent lavishly, husband supported wife until 2005, in hope of reconciliation

Trial decision 2006: family assets divided, 30% of husband's corporate interests *in specie*

Reversed on appeal, compensation order made instead, \$237,990 to wife

Also 10% interest in husband's property company ordered on appeal

Child support order at trial upheld: husband's table amount \$3,854/mo., but \$3,528/mo. ordered

Reduced by \$326/mo., table amount for wife at \$35,000/yr. imputed income

Also husband to pay all special expenses of \$3,000/mo.

Spousal support at trial: 7 years of support until June 2013 when wife 65, husband 70

Step-down order: \$13,750/mo. for 3 yrs., \$11,000/mo. for 2 yrs., \$8,000/mo. for 2 yrs.

Trial judge not required as matter of law to state conceptual basis for spousal support

Above ceiling case under SSAG, husband supported wife for 7 years, trial judge restructured

Reduced on appeal to encourage self-sufficiency, wife no efforts and still spending

Order for \$8,000/mo. for 4 years, then \$6,500/mo. to reflect husband's reduced earning capacity

No time limit, but order may be varied when husband retires completely

[*With child support* range if husband \$477,206, wife \$35,000, no s. 7 expenses: \$11,368-\$13,802/mo.]

[If \$3,000/mo. s. 7 expenses: \$9,237-\$11,351/mo.; if husband \$350,000, no s. 7: \$7,601-\$9,470/mo.]

[*Without child support* range if incomes \$477,206/\$35,000: \$5,528-\$7,370, mid \$6,449/mo., 5-10 years]

Loesch v. Walji, [2008] B.C.J. No. 897, 2008 BCCA 214 (Saunders J.A.) (May 20, 2008), appeal dismissed from [2007] B.C.J. No. 2663, 2007 BCSC 1807

Together 21 years, married 17, husband 46, wife 44, 4 children 18, 17, 15 and 10

Interim decision, husband provided generous support voluntarily for 3 years, 5 mos. to trial

Issues of income, debt, disclosure, family trust

Wife home, primary caregiver to children

Husband businesses, income goes offshore, not tax, says \$900,000/yr., grossed-up to \$1.6 million

Child support \$30,000/mo., 1 in university and 3 in private school

Spousal support, above ceiling, range \$30-\$35,000/mo., order for \$50,000/mo., ability to pay

Demanding standard of review on interim support appeal: "inordinately high or low"

Husband admitted income, other sources of income available to him in Canada, Dubai, Switzerland

Unusually extravagant lifestyle during marriage, husband little questioning of wife's budget

Above ceiling case, possible approached considered

Range at \$350,000 under *with child support* formula \$5,835-\$7,123/mo., preferable if discrepancy from Guidelines explained

Payor's income "far beyond" the ceiling, Guidelines "really of no assistance", pure discretion

After tax, support produces same amount as was paid voluntarily

Husband's income in fact greater than that admitted, amount can be adjusted after trial

Whether trust for children a "special provision" for child support purposes also matter for trial

Shellito v. Bensimhon, 2008 CarswellBC 469, 2008 BCCA 68 (MacKenzie J.A.) (Feb. 13, 2008), appeal allowed in part from [2007] B.C.J. No. 1081, 2007 BCSC 713

Together 5-6 years (married 4), husband 35, wife 33, no children

Wife serious migraines, worsened by stress, unable to work full-time, teacher's certificate

Husband RCMP corporal, earns \$88,000 with overtime

Property divided 50/50, despite short marriage, wife's need vs. premarital property, upheld on appeal

Wife not work now, can work part-time in 4 mos., full-time in 3 years, \$18,000 imputed during period of part-time employment

Support non-compensatory, Guidelines maximum \$700/mo. for 3 to 6 years, "too low", said trial judge

Wife sought \$1500-\$2000, interim support \$750/mo. for 12 mos.

Support \$1800 for 4 mos., \$1500 for 18 mos., \$1200 for 18 mos., then end (52 mos. total)

Upheld on appeal, no error to depart from SSAG amount to reflect wife's disability, no "double counting" of disability factor in property and support

Beninger v. Beninger, [2007] B.C.J. No. 2657, 2007 BCCA 619 (Prowse J.A.) (Dec. 14, 2007), appeal allowed from [2006] B.C.J. No. 3388, 2006 BCSC 1969
 25 year marriage, 4 children, separation 2000; two dependent children, one with each parent
 Wife obtains M.Sc. in economics in early years of marriage and but homemaker after birth of first child
 Husband lawyer; obtains master of laws in early years of marriage; unsuccessful business ventures at end of marriage; bankruptcy 2001; unemployed due to depression; then consulting business
 2003 order: assuming income of \$312,000, child support for 1 child \$2,111/mo; spousal support \$6,500
 2004 order: based on income of \$120,000, child support for one child of \$888/mo; spousal support \$2,000; subsequent variation requiring contribution to university expenses
 Husband returns to work as tax lawyer on contract basis in 2006; income \$364,500; remarried; new spouse earning \$75,000; seeks variation of child and spousal support
 Wife health issues, no income
 Chambers judge finds husband's income to be \$318,900 (after deduction of business expenses of \$45,000); orders spousal support of \$4000 per month
 Wife appeals, arguing husband's income much higher
 Court of Appeal sets husband's income at \$330,650; not appropriate to impute income to wife
 Child support raised to \$2,711.07
 Use of SSAG on variation: appropriate on these facts, wife has on-going entitlement to substantial support both on compensatory and non-compensatory basis; appropriate to base spousal support on husband's increased income because career linked to education acquired during marriage and years of work during marriage while wife cared for children
 Range under *with child support* formula if husbands' income \$330,000: \$8,500 - \$10,000, leaving wife with 48.9% of NDI
 Spousal support ordered: \$9000/mo, indefinite
 [Note two subsequent, related proceedings between parties. First is variation application by wife for increased child and spousal support based on increase in h's income post-2006: see *Beninger v. Beninger* [2008] B.C.J. No. 2612, 2008 BCSC 1806 (Fenlon J.) (Oct. 10, 2008), summarized below in trial decisions. Second is w's application to vary 2004 order reducing arrears, ultimately dismissed by the B.C.C.A. for want of jurisdiction to vary order cancelling arrears under s. 17 Divorce Act; see *Beninger v. Beninger*, [2009] B.C.J. No. 638, 2009 BCCA 638 (Smith J.A.) (April 2, 2009)]

Dunnigan v. Park, 2007 CarswellBC 1441, 2007 BCCA 329 (Prowse J.A.) (June 4, 2007), appeal dismissed from [2006] B.C.J. No. 987, 2006 BCSC 688
 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.

