

Appendix III

REVIEW OF BC CASES BY ISSUE

[June 2007 – June 2009]

(Note: this review excludes issues specific to individual formulas)

(Note: this review is selective rather than comprehensive)

1. AGREEMENTS

- Poitras v. Garner*, [2009] B.C.J. No. 206, 2009 BCSC 144 (Goepel J.) (Feb 10, 2009)
(SSAG used to determine fairness of agreement with unequal asset division and waiver of spousal; agreement upheld)
- S.K. v. L.K.*, [2009] B.C.J. No. 105, 2009 BCSC 69 (Garson J.) (Jan 27, 2009)
(agreement set aside; interim spousal lower than SSAG)
- Williams v. Williams*, [2008] B.C.J. No. 2267, 2008 BCSC 1603 (Cole J.) (Nov 24, 2008)
(agreement unfair; SSAG used to determine spousal; low end of range because of reapportionment)
- T.(J.L.) v. T.(J.D.N.)*, 2009 CarswellBC 1564, 2009 BCSC 780 (Ehrcke J.)(June 12, 2009)
(agreement upheld; spousal under agreement lower than SSAG)
- Turpin v. Clark*, [2008] B.C.J. No. 2013, 2008 BCSC 1425 (Pearlman J.)(Oct. 27, 2008)
(agreement unfair *Miglin* stage 2, amount increased using SSAG; duration under agreement maintained)
- Dobie v. Rautenberg*, [2008] B.C.J. No. 1199, 2008 BCSC 826 (Smith J.) 2008
(just bcs lower than ssag doesn't mean agreement unfair- to be dealt with at trial, no adjustment of interim)
- M.(K.A.) v. M.(P.K.)*, 2008 CarswellBC 135, 2008 BCSC 93 (Barrow J.) 2008
(agreement set aside *Miglin* stage one; amount set as per SSAG but reduced over time due to repartnering)

2 ENTITLEMENT

(a) theories of entitlement

- Chutter v. Chutter*, [2008] B.C.J. No. 2398, 2008 BCCA 507
(good review of basic theories of entitlement; high assets don't preclude entitlement to spousal)
- Bell v. Bell*, [2009] B.C.J. No. 1201, 2009 BCCA 280.
(C.A. reverses trial finding of no entitlement because of high property)
- Hinds v. Hinds*, [2008] B.C.J. No. 2540, 2008 BCCA 547
(16 yr marriage; 1 child, wife disabled and repartnered; trial judge finds no entitlement, Court of Appeal finds entitlement on compensatory grounds)
- Mann v. Mann*, [2009] B.C.J. No. 829, 2009 BCCA 181
(good discussion of wife's compensatory claim)

(b) no entitlement cases-without child support

- Barton v. Ophus*, 2009 BCSC 858
(long marriage; both parties work, equal earnings during marriage; wife lower after separation; wife repartnered, no entitlement)
- Vlachias v. Vlachias*, [2009] B.C.J. No. 1241, 2009 BCSC
(10 year marriage, no children, limited or no entitlement based on income disparity)
- G.G.F. v. R.F.*, [2009] B.C.J. No. 215, 2009 BCPC 43 (Saunders Prov. Ct. J.) (Feb , 2009)
(8 yr marriage, no children; wife drug addict and on social assistanc, no entitlement)

- Lam v. Chiu*, [2008] B.C.J. No. 1648, 2008 BCSC 1177 (Pearlman J.) (Aug 28, 2008)
 (20 year marriage, no children, no entitlement based on income disparity; limited entitlement based on wife's temporary unemployment)
- Serpa v. Yueping*, 2007 CarswellBC 1795, 2007 BCSC 1181 (Edwards J.)
 (parties married in China; only cohabit 2 months)

(b) no entitlement cases with child support

- R.A.C. v. V.L.C.* [2009] B.C.J. No. 1233, 2009 BCSC 825
 (shared custody, husband claimant, wife high income and high child support)
- Godinez v. Gallant*, [2009] B.C.J. No. 840, 2009 BCSC 540 (Bernard J.)
 (low end of range zero, reapportionment, refusal to gross up husband's undeclared tips)
- Andreychuk v. Andreychuk*, [2009] B.C.J. No. 822, 2009 BCSC 549
 (zero range)
- Durrad v. Durrad*, [2009] B.C.J. No. 736, 2009 BCSC 492
 (zero range)
- Rotaru v. Rotaru*, [2009] B.C.J. No. 280, 2009 BCSC 191
 (wife earning more than husband if no income imputed to him, no entitlement)
- L.J.C. v. G.S.C.*, [2008] B.C.J. No. 2370, 2008 BCSC 1672
 (wife earning same as husband if no income imputed to him, no entitlement)
- Ginther v. Ginther*, [2008] B.C.J. No. 2440, 2008 BCSC 1650 (Barrow J.) (Nov. 10, 2008)
 (range zero to zero, no spousal)
- Hilton v. Hilton*, [2008] B.C.J. No. 2150, 2008 BCSC 1536 (Parrett J.)
 (range zero to zero, insufficient material re entitlement)
- Gaita v. Gaita*, [2008] B.C.J. No. 1558, 2008 BCSC 1111 (Gray J.)
 (low end of range zero, wife back to full-time, income restored)
- D.C.O. v. J.S.O.*, [2008] B.C.J. No. 1472, 2008 BCSC 1047 (Johnston)
 (range zero to zero, wife self-sufficient)
- Young v. Young*, [2008] B.C.J. No. 965, 2008 BCSC 672 (Bernard J.) (B.C.S.C.)
 (lower end of range zero, wife's economic disadvantage to be compensated through reapportionment; 64% of proceeds of matrimonial home to wife (additional \$80,000 approx.))
- Krupa v. Krupa*, [2008] B.C.J. No. 611, 2008 BCSC 414 (Ross J.)
 (custodial payor, male claimant, no entitlement after income imputed to husband)
- Dubey v. Dubey*, [2008] B.C.J. No. 605, 2008 CarswellBC 686, 2008 BCSC 413 (Wilson J.)
 (custodial payor, male claimant, income disparity but no entitlement)

3. APPLICATION ON INTERIM

- Garritsen v. Garritsen*, [2009] B.C.J. No. 691, 2009 BCSC 124 (Melnick J.) (April 7, 2009)
 (good discussion of interim exception; not applicable on facts)
- McClaghry v. McClaghry*, [2008] B.C.J. No. 1403, 2008 BCSC 982 (Allan J.) (July 24, 2008)
 (support lower on interim, no discussion of interim exception)
- Savage v. Savage*, [2007] B.C.J. No. 2764, 2007 BCSC 1566 (Groves J.) 2008
 (high costs of maintaining home)
- Coulter v. Coulter*, [2007] B.C.J. No. 1723, 2007 BCSC 1153 (Master Bolton) 2007
 (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.)

4. INCOME

(a) High Payor Income-Over the Ceiling

- Bell v. Bell*, [2009] B.C.J. No. 1201, 2009 BCCA 280

James v. James, [2009] B.C.J. No. 1151, 2009 BCCA 261
Teja v. Dhandra, [2009] B.C.J. No. 928, 2009 BCCA 198
Smith v. Smith, [2008] B.C.J. N. 1068, 2008 BCCA 245.
Loesch v. Walji, [2008] B.C.J. No. 897, 2008 BCCA 214
R.A.C. v. V.L.C., [2009] B.C.J. No. 1233, 2009 BCSC 825 (Griffin J.)
Hosseini v. Kazemi, [2009] B.C.J. No. 743, 2009 BCSC 502 (Boyd J.)
Bockhold v. Bockhold, [2009] B.C.J. No. 188, 2009 BCSC 130 (Ross J.)
Beninger v. Beninger, [2008] B.C.J. No. 2612, 2008 BCSC 1806 (Fenlon J.)
Bozak v. Bozak, [2008] B.C.J. No. 2080, 2008 BCSC 1458 (Stromberg-Stein J.) 2008
Turpin v. Clark, [2008] B.C.J. No. 2013, 2008 BCSC 1425 (Pearlman J.)
Abelson v. Mitra, [2008] B.C.J. No. 1672, 2008 BCSC 1197 (Brine J.)
J.E.B. v. G.B., [2008] B.C.J. No. 758, 2008 BCSC 528 (Master Young) 2008
C.L.M. v. R.A.M., [2008] B.C.J. No. 608, 2008 BCSC 217 (Melnick J.) 2008
O(S.) v. O.(C.S.), 2008 CarswellBC 444, [2008] B.C.J. No. 407, 2008 BCSC 283 (Master Taylor) 2008
Campbell v. Campbell, [2008] B.C.J. No. 202, 2008 BCSC 154 (Warren J.) 2008

(b) Low Payor Income—below the floor

James v. James, [2008] B.C.J. No. 689, 2008 CarswellBC 775, 2008 BCSC 482 (Shabbits J.) 2008
 (no spousal)
M. (W.M.) v. M. (H.S.), 2007 CarswellBC 2667, 2007 BCSC 1629 (Rogers J.)
 (low income but living off assets, spousal ordered, no reference to “floor”
Serpa v. Yueping, 2007 CarswellBC 1795, 2007 BCSC 1181 (Edwards J.) 2007
 (payor income between 20,000 - \$30,000, possibility of exception, no spousal ordered)

(c) Income—Adjustment for Double Dipping

Jens v. Jens, [2008] B.C.J. No. 1886, 2008 BCCA 392 (Levine J.A.) (Oct. 7, 2008)
 (no double-dipping if husband to pay support based on income from business dealt with in asset
 division)
Holmes v. Matkovich, [2008] Y.J. No. 51, 2008 YKCA 10 (Newbury J.A.) (July 17, 2008)
 (no double-dipping if husband to pay support based on income from farm dealt with in asset division)
Trewern v. Trewern, [2009] B.C.J. No. 343, 2009 BCSC 236 (Metzger J.) (Feb 26)
 (pension divided, wife receiving payments from pension, no double-dipping, husband to include full
 amount of his pension income in SSAG calculation)
Bozak v. Bozak, [2008] B.C.J. No. 2080, 2008 BCSC 1458 (Stromberg-Stein J.) (Nov. , 2008)
 (no double-dipping if husband to pay support based on income from prof. corp. dealt with in asset
 division)

(d) Non taxable income

Gagnon v. Petke, 2008 CarswellBC 964, 2008 BCSC 610 (Bruce J.)
 (incorrect treatment; non-taxable income excluded)
B.(P.C.) v. B.(T.L.), [2007] B.C.J. No. 2361, 2007 CarswellBC 2606, 2007 BCSC 1599 (Rogers J.) 2008
 (non-taxable portion of h income grossed up)

(e) Different Incomes for Child and Spousal Support

Benninger v. Benninger [2008] B.C.J. No. 2612, 2008 BCSC 1806 (Fenlon J.) (Oct. 10, 2008)
McIntosh v. McIntosh, [2007] B.C.J. No. 1956, 2007 BCSC 1331 (Chamberlist J.) 2007

5. LUMP SUM

Roach v. Dutra, [2009] B.C.J. No. 353, 2009 BCSC 229
 (adjustment for lump sum)

Hartshorne v. Hartshorne, [2009] B.C.J. No. 1050, 2009 BCSC 698 (Leask J.)(May 28, 2009)
Fearnside v. Fearnside, [2008] B.C.J. No. 1525, 2008 BCSC 1072 (Gray J.)(Aug. 1, 2008)
 [no adjustment for tax]
Freeman v. Freeman, 2008 CarswellBC 1366, 2008 BCSC 857 (Martinson J.)
 [reduction for payment by lump sum]
Kerman v. Kerman, [2008] B.C.J. No. 710, 2008 CarswellBC 793, 2008 BCSC 500 (Metzger J.)-retro to be [lump sum retroactive support intended to be tax free but no adjustment for tax]
Fuller v. Matthews, [2007] B.C.J. No. 1622, 2007 BCSC 1099 (Arnold-Bailey J.) 2007 tax issues
 [no adjustment for tax ,but other adjustments make it OK(?)]

6. IMPACT OF REAPPORTIONMENT

Stanger v. Dehen, [2009] B.C.J. No. 1193, 2009 BCSC 778 (Rice J.)
 (mid-range)
Godinez v. Gallant, [2009] B.C.J. No. 840, 2009 BCSC 540 (Bernard J.)(April 28, 2009)
 (no spousal after reapportionment)
Hosseini v. Kazemi, [2009] B.C.J. No. 743, 2009 BCSC 502 (Boyd J.)(April , 2009)
 (no adjustment but short time limit)
Durrad v. Durrad, [2009] B.C.J. No. 736, 2009 BCSC 492 (Gray J.)
 (no spousal, range zero to zero)
Conner v. Conner, [2009] B.C.J. No. 616, 2009 BCSC 423 (Brooke J.)
 (below range support)
Williams v. Williams, [2008] B.C.J. No. 2267, 2008 BCSC 1603 (Cole J.) (Nov 24, 2008)
 (low end of range)
Dong v. Liu, [2008] B.C.J. No. 2559, 2008 BCSC 1795 (Savage J.)
 (100% reapportionment and no support, or 75% reapportionment and lump sum support)
Bassi v. Grewal, [2008] B.C.J. No. 2218, 2008 BCSC 1573 (Truscott J.)(Nov. 18, 2008)
 (low end of range)
Busby v. Busby, [2008] B.C.J. No. 1889, 2008 BCSC 1334 (Halfyard J.)(Oct. , 2008)
 (no spousal)
Roper v. Roper, [2008] B.C.J. No. 1642, 2009 BCSC 1174 (Grauer J.)
 (below mid-range)
E.A.T. v. M.S.T., [2008] B.C.J. No. 1456, 2008 BCSC 1029 (Fisher J.)
 (minor reapportionment, mid-to-high range)
Lucik v. Lucik, [2008] B.C.J. No. 759, 2008 BCSC 531 (Metzger J.) 2008
 (low end of range)
Young v. Young, [2008] B.C.J. No. 965, 2008 BCSC 672 (Bernard J.) (B.C.S.C.)
 (no spousal, but low end of range zero)
Simmons v. Simmons, [2007] B.C.J. No. 1792, 2007 BCSC 1206 (Gray J.) 2007
 (no need for spousal after reapportionment)
W.J. M. v. L.A.M., [2007] B.C.J. No. 1283, 2007 BCSC 842 (Halfyard J.) 2007
 (no spousal after reapportionment)

7. EXCEPTIONS

(a) Interim Exception

see above under heading “Application on Interim”

(b) Compensatory Exception

Ahn v. Ahn, [2007] B.C.J. No. 1702, 2007 BCSC 1148 (Ralph J.) 2007
 (1 year marriage, wife moves and leaves job)

(c) Disability

Shellito v. Bensimhon, 2008 CarswellBC 469, 2008 BCCA 68

(disability exception relied upon to raise amount)

Paheerding v. Palihati, [2009] B.C.J. No. 830, 2009 BCSC 557 (MacKenzie J.)(April 27, 2009)

(9 year marriage; wife disabled from spousal abuse, max amount, indefinite duration)

E.A.C. v. L.A.C., [2009] B.C.J. No. 283, 2009 BCPC 49 (Wingham Prov.Ct.J.)(Jan. 8, 2009)

(9 yr. marriage with children, wife disabled, no exception, terminating review order)

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

(13 ½ yr marriage, 2 children, variation, disability, soSSAG not applicable)

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

(11 yr. marriage, no children, disability exception not warranted, support terminated after 11 years)

Pegler v. Avio, 2008 CarswellBC 169, 2008 BCSC 128 (Dickson J.)

(14 year marriage, one child, disability exception relied upon to make duration indefinite)

(d) Debts

Bockhold v. Bockhold, [2009] B.C.J. No. 188, 2009 BCSC 130 (Ross J.)(Feb. , 2009)

(below range for many reasons, including debts)

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

(debt exception not applicable, wife's share of matrimonial debts taken into account in asset division, rest post-separation debt)

J.W. v. M.H.W., [2007] B.C.J. No. 1597, 2007 BCSC 1075 (Romilly J.) 2007

(lower than SSAG, significant debts not taken into account in property division)

(e) Property-Reapportionment (see separate heading above)**(f) Property-Double –Dipping (see above under “income” heading”)****(g) Property-High Assets**

Chutter v. Chutter, [2008] B.C.J. No. 2398, 2008 BCCA 507

(high assets don't preclude entitlement to spousal; spousal support below range; wife needs to sell mat. home and invest some of proceeds))

Bell v. Bell, [2009] B.C.J. No. 1201, 2009 BCCA 280.

(C.A. reverses trial finding of no entitlement because of high property)

(h) Other Exceptions

Waters v. Conrod, [2008] B.C.J. No. 1256, 2008 BCSC 869 (Johnston J.) (July 2, 2008)

(income from capital)

8. SELF SUFFICIENCY

McEwan v. Fisher, [2009] B.C.J. No. 831, 2009 BCSC 559 (Cole J.) (April 27, 2009)

(9 yr marriage, no children, wife insufficient efforts; 2 yr. time limit on variation)

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.*]

(10 yr marriage, 1 child; wife no efforts; reduction of amount but no time limit)

Hosseini v. Kazemi, [2009] B.C.J. No. 743, 2009 BCSC 502 (Boyd J.)(April , 2009)

(h \$351,649/yr., step-down order to terminate when wife earning \$50,000 as O.T.)

V.E.T. v. C.E.T., [2009] B.C.J. No. 730, 2009 BCSC 444

(shorter review period)

Lane v. Creighton, [2008] B.C.J. No. 2389, 2008 BCSC 1689 (Bruce J.)(Dec. , 2008)

(insufficient efforts, low end of range, review 3 yrs)

- Abelson v. Mitra*, [2008] B.C.J. No. 1672, 2008 BCSC 1197 (Brine J.)
(income imputed, step-down order)
- Pfann v. Pfann*, [2008] B.C.J. No. 654, 2008 CarswellBC 747, 2008 BCSC 452 (Goepel J.)
(26 yr. marriage, 2 children, h \$65,000, w now earning \$40,000, w now self-sufficient, support terminated)
- W.J. M. v. L.A.M.*, [2007] B.C.J. No. 1283, 2007 BCSC 842 (Halfyard J.) 2007
(no spousal, reapportionment plus wife no efforts, her choice to earn lower income)
- Winsemann v. Donaldson*, [2007] B.C.J. No. 1936, 2007 BCSC 1322 (Kelleher J.) 2007
(wife under-employed, income imputed)
- LeFranc v. LeFranc*, [2007] B.C.J. No. 1566, 2007 BCSC 1052 (Truscott J.) 2007
(spousal support higher if wife pursues educational program, lower if not).

9. VARIATION AND REVIEW

(a) Post-Separation Income Increase

- Jens v. Jens*, [2008] B.C.J. No. 1886, 2008 BCCA 392 (Levine J.A.) (Oct. 7, 2008)
(post-separation income increase taken into account because support non-compensatory(?))
- Hartshorne v. Harshorne*, [2009] B.C.J. No. 1050, 2009 BCSC 698 (May 28, 2009)
(post-separation income increase included when calculating retroactive support)
- Mann v. Mann*, [2009] B.C.J. No. 829, 2009 BCCA 181
(shared custody, post-separation increase included in income)
- Logan v. Logan*, 2007 CarswellBC 1435, 2007 BCSC 904 (Chamberlist J.) 2007
(Post-separation increase in husband's income not change in circumstances)
- Bryant v. Gordon*, [2007] B.C.J. No. 1460, 2007 BCSC 946 (Slade J.)
(wife insufficient efforts; on variation, husband's income at separation used)

(b) Payor post-separation income decrease

- McAllister v. McAllister*, [2007] B.C.J. No. 2739, 2007 BCSC 1866 (Masuhara J.)
(husband's decrease in income not material change in circumstances)

(c) Recipient post-separation income decrease

- Liggins v. Sikorski*, 2009 BCSC 818 (Curtis J.) (June 19, 2009)
(wife lost job after separation; support based on her previous income)

(d) Remarriage/repartnering

- Hinds v. Hinds*, [2008] B.C.J. No. 2540, 2008 BCCA 547
(16 yr marriage; 1 child, wife disabled and repartnered, but new partner no ability to pay, trial judge no entitlement, C.A. finds compensatory entitlement and sends back for rehearing)
- Barton v. Ophus*, 2009 BCSC 858
(long marriage; both parties work, equal earnings during marriage; wife lower after separation; wife repartnered, no entitlement)
- Rakose v. Rakose*, [2008] B.C.J. No. 1632, 2008 BCSC 1165 (Crawford J.) (Aug 2, 2008)
(20 year traditional marriage; 3 children; wife engaged but not cohabiting; review in 2 yrs when married)
- C.L.M. v. R.A.M.*, [2008] B.C.J. No. 608, 2008 BCSC 217 (Melnick J.)
(wife remarried, step-down order)
- M.(K.A.) v. M.(P.K.)*, 2008 CarswellBC 135, 2008 BCSC 93 (Barrow J.)
(wife repartnered, reduce spousal by 10 % every year)
- Redpath v. Redpath*, [2008] B.C.J. No. 68, 2008 CarswellBC 72, 2008 BCSC 68 (Warren J.)
(18 yr marriage, 5 children, wife cohabitating, new husband earns \$658,000/yr., spousal support terminated; C.A. dismisses appeal: *Redpath v. Redpath*, [2009] B.C.J. No. 813, 2009 BCCA)

(e) Recipient Inheritance post-separation

Gosling v. Gosling, [2008] B.C.J. No. 1870, 2008 BCSC 1323 (Wilson J.)

(Wife's inheritance material change in circumstances; relevant because spousal support order non-compensatory (?), Spousal support terminated)

Enemark v. Enemark, [2009] B.C.J. No. 148, 2009 BCSC 104 (Chamberlist J.) (Feb. 2009)

(27 yr. traditional marriage, w receives inheritance; husband seeks termination arguing w no need because saving money; no termination, income from investing inheritance imputed to wife)

10. WILLS AND ESTATES

Lamoureaux v. Kalyk, [2009] B.C.J. No. 878, 2009 BCSC 584 (Slade J.) (April 30, 2009)

(SSAG used to quantify deceased's legal obligation to wife, but moral obligation leads to higher amount of support)

Viberg v. Viberg Estate, [2009] B.C.J. No. 38, 2009 BCSC 27 (Chamberlist J.) (Jan 14, 2009)

(all of estate left to wife from whom deceased was separated, children contesting will, SSAG not helpful in determining deceased's support obligation to wife because income from business uncertain)