

# **The Spousal Support Advisory Guidelines and the Older Client: Some Preliminary Thoughts**

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## **Appendix: Summaries of Relevant SSAG Cases**

### **I. Introduction**

Spousal support claims involving older clients have some distinguishing features. The children, if there were any, are typically grown and financially independent. The parties are experiencing—or facing the prospect of—decreasing incomes, as their earning capacities become limited by age and health and they move into retirement. Income from employment is replaced by pensions, government benefits and incursions into savings and other forms of capital. Older dependent spouses have little prospect of improving their earning capacity and incentives to promote post-divorce self-sufficiency—a dominant concern in modern spousal support law—become more and more irrelevant as the parties age. And finally, many of the relationships in which parties find themselves in the later stages of their lives are second or even third marriages, entered into after the termination of earlier relationships by divorce or the death of one partner.

To help focus this paper I have identified two common spousal support scenarios involving older clients: what I term the “**retirement and variation**” scenario and the “**second marriage later in life**” scenario:

#### ***Scenario 1— “Retirement and Variation”***

*This scenario involves a long traditional marriage where the parties have already been divorced for some years. The husband has been paying long-term spousal support, under either a court order or agreement. He will soon retire and his income will go down as he starts to rely on pension income. Several issues arise in this scenario. Will the husband be able to seek a downward variation of support when he retires—using the terminology of spousal support law, will his retirement constitute a “material change in circumstances”, the threshold test for seeking a variation? What if it is early retirement rather than retirement at the normal age? If the conditions for a variation are satisfied, how will the new amount of support be calculated? What if the pension has already been dealt with in the matrimonial property division—how will that affect the husband’s income for spousal support purposes? Will the wife be allowed to “double-dip”?*

#### ***Scenario 2— “The Second Marriage Later in Life”***

*This scenario involves a second (or perhaps third) marriage for one or both of the parties entered into later in life. The parties have no children. They entered the marriage with their financial resources and income-earning capacities shaped by events and choices in their previous lives. The wife is much less well-off financially than the husband. The*

*marriage lasts 10 years or less. This was not a long, traditional marriage where one spouse stayed home to look after children, but there are nonetheless strong elements of dependency and need. What kind of spousal support award will be made in these circumstances? Will there be a long-term support obligation? If the husband's income is a pension in pay, will the wife be entitled to share in the income even though the pension was accumulated in whole or in large part before the marriage? Does it make a difference if the marriage lasted 3 years or 5 years or 10 years?*

The law of spousal support that will be relied upon to resolve these issues is both complex and in many cases uncertain and unpredictable. Both the governing legislation—s. 15.2 of the federal *Divorce Act* and the corresponding provisions in provincial legislation<sup>1</sup>—and the leading appellate decisions interpreting it<sup>2</sup> provide only general principles and concepts, leaving much room for exercises of judicial discretion in their application to particular facts. The law of spousal support raises difficult policy choices and on many issues the law remains in flux and continues to evolve.

There has, however, been a recent development in this area of law that has reduced the uncertainty to some degree—the Spousal Support Advisory Guidelines, a draft version of which were released in January, 2005, and a final, revised version in July, 2008. The Advisory Guidelines (or SSAG as they known) are not legislated and are not legally binding. They are advisory only and are intended not to change the law but to reflect dominant patterns in the current law. Developed as a practical tool to assist in determining the amount and duration of spousal support under the federal *Divorce Act*, they utilize mathematical formulas to generate ranges for both the amount and duration of support using factors such as the parties' incomes, the length of the relationship, the parties' ages and the presence or absence of dependent children.

The Advisory Guidelines are now widely used by lawyers and judges across the country, especially so in those jurisdictions—B.C., New Brunswick and Ontario—where there has been strong appellate court endorsement of the Guidelines. This paper will examine the implications of this new development—the Spousal Support Advisory Guidelines—for spousal support cases involving older clients.

It is important to be clear that the Advisory Guidelines do not resolve or provide clear answers to all of the difficult and complex issues that arise in spousal support cases. To begin with, they deal only with the issues of amount and duration of spousal support; they do not deal with issues of entitlement or the effect of agreements; they are primarily applicable in the context of initial determinations of spousal support and have a more limited application in the context of variation applications; and they provide little guidance on the actual determination of income (which will significantly influence the

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<sup>1</sup> Provincial spousal support legislation applies outside of the divorce context, i.e. to unmarried couples and to married couples who have separated but are not seeking a divorce.

<sup>2</sup> The leading Supreme Court of Canada decisions on spousal support that I am referring to here include *Moge v. Moge*, [1992] 3 S.C.R. 420 (emphasizing a generous compensatory basis for spousal support); *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 (emphasizing the non-compensatory basis for spousal support and the discretionary nature of spousal support determinations), *Boston v. Boston*, [2001] 2 S.C.R. 413 (pensions and "double-dipping"), *Miglin v. Miglin*, [2003] 1 S.C.R. 303 (ability to override spousal support agreements), *Leskun v. Leskun*, [2006] 1 S.C.R. 920 (role of fault, review orders, self-sufficiency).

outcomes under the formulas) other than to adopt the same definition of income as under the Child Support Guidelines. These are all complex areas of law that are subject to ongoing development and evolution through judicial decision-making and case law. However, these other parts of a spousal support analysis are now often intertwined with the Advisory Guidelines, which have become the organizing framework through which a wide range of spousal support issues are now addressed.

Even within their own domain—the determination of the amount and duration of spousal support—the Advisory Guidelines do not offer definitive answers. They are not “rigid formulas”. They typically generate ranges for both amount and duration rather than precise figures, ranges that are relatively wide, necessitating a fact-specific determination of the precise location within the ranges. Furthermore, these ranges are intended at best as a starting point for analysis. They represent the dominant patterns of results in typical cases and are subject to a list of identified exceptions as well as allowing for individualized departures in exceptional or atypical cases where the formula results would be inappropriate under the current legal framework. The Advisory Guidelines do not eliminate the need for an individualized analysis sensitive to the facts and context of the particular case.

The Advisory Guidelines can be very helpful in the resolution of spousal support cases involving older clients. However, as this paper will show, many cases—such as the scenarios sketched out above—will raise complex issues that cannot be resolved through a simple application of the formulas in the Advisory Guidelines. The Advisory Guidelines raise many potential pitfalls for the unwary user. Appropriate resolution of cases involving older clients will require an informed and sophisticated understanding of both the complexities of the Advisory Guidelines and their interaction with other parts of the law of spousal support.

The paper will begin with an overview of the structure of the Advisory Guidelines, focusing on those aspects that are most significant in cases involving older clients. It will then examine how the spousal support issues in the two scenarios sketched above would be dealt with in the post-SSAG world.

This paper does not purport to provide a comprehensive survey of all of the difficult legal issues that are raised in spousal support cases involving older clients. Its focus is on the Spousal Support Advisory Guidelines and its aim is both to identify those aspects of spousal support cases involving older clients where the SSAG can be of assistance and to make you aware of how the SSAG will interact with other parts of the law of spousal support. Where possible, I have tried to identify useful sources that deal with these other issues on which the SSAG do not provide any guidance.<sup>3</sup>

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<sup>3</sup> For an excellent review of the issues on retirement, I highly recommend a recent paper written by Marie Gordon, “Back to *Boston*: Spousal Support after Retirement” forthcoming, *Canadian Family Law Quarterly*, (August 2009). An updated version of this paper is also being presented at the BC CLE Family Law Conference, 2009, Vancouver B.C. July 9 – 10, 2009.

## II. Overview of the SSAG

The full text (166 pages) of the Final Version of the Spousal Support Advisory Guidelines (FV), released in July of 2008, can be found on-line on the SSAG web site at the University of Toronto Faculty of Law:

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

This paper will not review the basic legal framework of the law spousal support on which the Advisory Guidelines draw (s. 15.2 of the *Divorce Act* and the *Moge* and *Bracklow* decisions of the Supreme Court of Canada which articulate a broad basis for entitlement to spousal support on, respectively, compensatory and non-compensatory grounds<sup>4</sup>) or the story of the development and increasing use of the Advisory Guidelines, all of which are dealt with in the Final Version.

For those who were familiar with the earlier Draft Proposal, the revisions in the Final Version are relatively modest and are set out in a separate document, the *Report on Revisions* (July 2008), which was released together with the Final Version and is also available on-line on the SSAG website, *supra*. (Many of the revisions relate to cases involving children, which are of less significance to those who deal with older clients.)

When faced with a case in which the Advisory Guidelines are being used, it is important that you familiarize yourself with the nuances and complexities of the scheme and do not simply rely, as many lawyers unfortunately do, on the numbers generated by the computer software programs that have been developed to do the formulaic calculations under the Advisory Guidelines. Uninformed and unsophisticated use of the Advisory Guidelines can lead to inappropriate and arbitrary results.

To respond to concerns about unsophisticated use of the Advisory Guidelines, a *User's Guide* is being developed, a document that will provide a brief and handy step-by-step guide to the use of the Advisory Guidelines in the interests of promoting more informed and sophisticated use. A first draft of the *User's Guide* was prepared to coincide with the release of Final Version: see Carol Rogerson and Rollie Thompson, *The Spousal Support Advisory Guidelines: A User's Guide to the Final Version* (First Draft) (July 11, 2008), available on the SSAG web site, *supra*. The *User's Guide*:

- highlights the main practice issues at the different stages of a Guidelines analysis;
- reminds you of common mistakes and things that are often missed;
- notes things that have been added or changed in the Final Version; and
- provides cross-references to leading case-law and to the relevant portions of the Final Version where an issue is more fully discussed.

On the SSAG web site you will also find a series of commentary papers analyzing ongoing developments in the use of the SSAG together with summaries of the case law under the SSAG. (The summaries of some of the SSAG cases most relevant to an elder law practice are also reproduced in the appendix to this paper.)

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<sup>4</sup> See *supra* note 2.

When people refer to the Advisory Guidelines they often mean different things. Not surprisingly, people often use the term “the Guidelines” to refer specifically to the formulas that generate ranges for amount and duration. However, the “Advisory Guidelines” can also mean the broader scheme laid out in the Final Version, one that both places the formulas in the broader framework of a spousal support analysis and provides important qualifications on the use of the formulas.

What follows is a basic overview of this broad framework of the Advisory Guidelines, drawn in large part from the Executive Summary and Chapter 3, “An Overview of the Advisory Guidelines.” It begins with an examination of the applicable formula in cases involving older clients—the *without child support* formula—and then goes on to lay out the considerations that must be addressed both *before* the formulas can be applied and *after* the formulas have generated their ranges for amount and duration. Emphasis is placed on those aspects of the scheme that will typically be engaged in cases involving older clients; for this purpose some “practice notes” for elder law lawyers have been inserted [in italics] at relevant points.

### **A. The Formulas: the *Without Child Support* Formula**

The Advisory Guidelines are constructed around two basic formulas: the *without child support* formula and the *with child support* formula. The dividing line between the two is the absence or presence of a dependent child or children of the marriage, and a concurrent child support obligation, at the time spousal support is determined. In cases involving older clients the applicable formula will most often be the *without child support* formula, which will be the focus of this paper. The *without child support* formula applies both when the parties had no children and when, if there were children, they have become financially independent.<sup>5</sup>

The *without child support* formula, a summary of which is set out in the box below, is built around two crucial factors: the income difference between the parties (or more precisely the difference between their gross incomes) and the length of marriage (or more precisely, the length of the relationship, including periods of pre-marital cohabitation). The formula relies heavily on the length of the relationship; both the amount and duration of support increase incrementally as the length of the relationship increases. This formula is constructed around the concept of “merger over time”: the idea that as a marriage lengthens, spouses more deeply merge their economic and non-economic lives, in both

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<sup>5</sup> In cases where there were initially dependent children at the time of the divorce, but they have subsequently become adults and child support has ceased, on a variation application or review there will be a cross-over from the *with child support* formula to the *without child support* formula (FV, 8.11). In cases where the only child support being paid is for an adult child or children who are attending university away from home and the child support is determined under s. 3(2)(b) of the Federal Child Support Guidelines rather than by using the tables plus s. 7 expenses, there is a hybrid formula based on the *without child support* formula (called *the adult children* formula) that deducts the gross-up amount of actual child support being paid by each spouse from their income (FV,8.10).

direct and indirect ways, giving the lower income spouse an increasing claim to protection against the loss of the marital standard of living on divorce.<sup>6</sup>

### **The *Without Child Support* Formula**

**Amount** ranges from 1.5 to 2 percent of the difference between the spouses' gross incomes (the **gross income difference**) for each year of marriage (or, more precisely, years of cohabitation), up to a maximum of 50 percent. The maximum range remains fixed for marriages 25 years or longer at 37.5 to 50 percent of income difference. (The upper end of this maximum range is capped at the amount that would result in equalization of the spouses' net incomes—the **net income cap**.)

**Duration** ranges from .5 to 1 year for each year of marriage. However, support will be **indefinite (duration not specified)** if the marriage is **20 years or longer** in duration *or*, if the marriage has lasted 5 years or longer, when the years of marriage and age of the support recipient (at separation) added together total 65 or more (the **rule of 65**).

Marriages involving older clients can take a number of forms, generating very different outcomes under the formula. As reflected in scenarios 1 and 2 above, some older clients may be divorcing later in life at the end of a long, traditional marriage. Alternatively, older clients may have re-partnered and may be experiencing the breakdown of these subsequent relationships, shorter in length and without children.

Under the *without child support* formula long marriages will generate significant spousal support obligations: the amounts will be a relatively high percentage of the income difference, leaving the parties with fairly similar, even if not equal standards of living, and the support will be paid on an indefinite basis (with no specified time limit but subject to the normal process of review and variation):

#### **Example 1-Long Marriage**

John and Mary were married for 28 years. Theirs was a traditional marriage in which John worked his way up the career ladder and now earns \$100,000 gross per year, while Mary stayed home and raised their two children, both of whom are now grown up and on their own. Mary is 50 years of age and has no income. John is 55.

Because the length of the marriage is over 25 years, the maximum range for amount applies—37.5 to 50 percent of the gross income difference (capped at equalization of net incomes).

The range for amount on an income difference of \$100,000 after a 28 year marriage would be:

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<sup>6</sup> “Merger over time” captures both the compensatory and non-compensatory spousal support objectives that have been recognized by our law since *Moge* and *Bracklow*. In short and medium length marriages without children, the formula generates outcomes that reflect a non-compensatory basis for spousal support; in long marriages with grown children the formula captures support that has a strong compensatory component mixed with non-compensatory components.

37.5 percent X \$100,000 = \$37,500/year (**\$3,125/month**)  
 to  
 50 percent X \$100,000 = \$50,000/year (**\$4,167/month, capped at \$4048<sup>7</sup>**)

**Duration** is indefinite (duration not specified) because the marriage is 20 years or over in length.

**The formula results in a range for support of \$3,125 to \$4,048 per month for an indefinite (unspecified) duration, subject to variation and possibly review.**

An award of \$3,125 per month, at the low end of the range, would leave Mary with a gross income of \$37,500 per year and John with one of \$62,500. An award of \$4,048 per month, at the high end of the range, would equalize the net incomes of the parties.

As will be discussed further below, the order is open to variation over time in response to changes in the parties' circumstances, including increases in Mary's income or the imputation of income to her if she fails to make reasonable efforts to contribute to her own support. John's retirement would also likely be grounds for variation.

For short and medium length marriages, the formula generates more modest amounts for a time-limited, transitional period only, with the transition period being longer or shorter depending upon the expectation and reliance interests flowing from the length of the marriage. However, in cases involving older clients the "rule of 65" may come into play with the result that the duration will be indefinite. Because the "rule of 65" will be very significant in an elder law practice, the discussion of this provision in the Final Version is worth reproducing:

### **7.5.3 The "rule of 65": the age factor and indefinite support**

The *without child support* formula provides that indefinite (duration not specified) support will be available even in cases where the marriage is shorter than 20 years **if the years of marriage plus the age of the support recipient at the time of separation equals or exceeds 65**. In a shorthand expression, we described this as the "**rule of 65**".

Thus, if a 10-year marriage ends when the recipient is 55, indefinite (duration not specified) support will be available because years of marriage (10) plus age (55) equals 65. Note that this is only a "rule" about duration, as the amount of support would be limited by the length of the marriage, i.e. 1.5 to 2 per cent per year or 15 to 20 per cent of the gross income difference in a 10-year marriage.

In reality, given the ages of the parties in the cases covered by the rule of 65, there will likely be significant changes in the amount of support ordered upon the retirement of one or both of the spouses. This refinement to the formula for duration is intended to respond to the situation of older spouses who were economically dependent during a medium length marriage and who may have difficulty becoming self-sufficient given their age.

**The "rule of 65" for indefinite (duration not specified) support is not available in short marriages (under 5 years in length).** The assumption in the current law is that short marriages generate only limited support obligations.

As with the long marriage scenario, it is helpful to provide some examples of the operation of this formula in cases of medium length and short marriages.

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<sup>7</sup> This is based on an assumption of Ontario residence and the applicable tax rates and mandatory deductions in November 2007.

### Example 2-Medium Length Marriage

Assume the marriage is 10 years in length, no children, and the incomes are the same as in example 1: \$100,000 for the husband and zero for the wife. The wife is now 55 and the husband 60.

The applicable percentage for determining the amount of support is 15% to 20% of the income difference of \$100,000.

The range for **amount** becomes \$15,000 to \$20,000 per year, or \$1250 to \$1667 per month.

As for **duration**, if the wife were slightly younger at the end of the marriage the normal rule for duration would apply, and the durational range would be from 5 to 10 years. However, in this case the “rule of 65” applies because the marriage was 5 years or longer in length and wife’s age at the time of separation (55) plus length of marriage (10 years) equals 65 or over (in this 65 exactly). Duration is thus indefinite (duration not specified).

**The formula results in a range for support of \$1250 to \$1667 per month on an indefinite basis (duration not specified) but subject to variation and possibly review.**

Awards within this range will leave the parties in very different income positions; the wife with a gross income of between \$15,000 and \$20,000 a year, and the husband with between \$80,000 and \$85,000 a year.

The husband’s retirement will likely be grounds for a downward variation in a few years. If the wife is capable of earning a modest income, at some point in the next few years there may be a downward adjustment of support on a variation or review. But the facts may not support this if health issues preclude employment.

As will be discussed below, there is a possibility that some courts might find the amount too low and rely on an exception to depart from the formula.

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### Example 3- Short Marriage

Assume the marriage is 5 years in length, no children, and the incomes are the same as in example 1: \$100,000 for the husband and zero for the wife. The wife is now 60 and the husband is 70. The husband has been retired for the duration of the marriage and his income is from pension and investments. The wife has many health issues and her employability is very limited.

The applicable percentage for determining the amount of support is 7.5% to 10% of the income difference of \$100,000.

The range for **amount** becomes \$7,500 to \$10,000 per year, or \$625 to \$834 per month.

As for **duration**, if the wife were slightly younger at the end of the marriage the normal rule for duration would apply, and the durational range would be very short, from 2.5 to 5 years. However, in this case the “rule of 65” applies because the marriage is 5 or over years in length (in this case just 5 years) and wife’s age at the time of separation (60) plus length of marriage (5 years) equals 65 or over (in this case 65 exactly). Duration is thus indefinite (duration not specified).

**The formula results in a range for support of \$625 to \$834 per month on an indefinite basis (duration not specified) but subject to variation and possibly review.**

Awards within this range will leave the parties with an even greater income disparity than in example 2 above; the wife will have a gross income of between \$7,500 and \$10,000 a year, and the husband with between \$90,000 and \$92,500 a year.

When the wife turns 65 and begins to receive Old Age Security (and perhaps modest CPP depending on her employment in her earlier life) there may be a downward adjustment on a variation or review.



As will be discussed below, there is the potential to “restructure” this award by front-end loading it—increasing the amount over the period until the wife starts to receive pension income by reduced the amount thereafter or even the terminating support.

As will also be discussed below, there is a possibility that some courts might find the amount too low and rely on an exception to depart from the formula.

## **B. Preliminary Issues—*Before the Formulas***

The basic operation of the *without child support* formula has been illustrated above. However, in a spousal support case, there are several preliminary issues that must be addressed before one can reach the step of applying the Guideline formulas to generate the ranges for amount and duration: application, entitlement and determination of income.

### **(1) Application**

First, there are some limits on the application of the Guidelines:

(i) Application under provincial law: The Advisory Guidelines were specifically developed under the federal *Divorce Act* and intended for use under that legislation. Provincial/territorial support law, which is applicable in cases involving unmarried couples or married couples who have separated and are seeking a divorce, is governed by specific statutory regimes. The Advisory Guidelines have frequently been used in spousal support determinations under provincial legislation. However, provincial/territorial laws do differ in some respects from the *Divorce Act* and any use of the Guidelines in the provincial/territorial context must take account of these distinctive statutes, especially on matters of entitlement for unmarried couples and agreements.

❖ *Older clients who have re-partnered may often have chosen to cohabit rather than to marry, thus provincial spousal support law will be applicable, in particular provisions determining which non-marital relationships give rise to a spousal support obligation (typically framed as a requirement of a two or three years of cohabitation). Some unusual living arrangements in cases involving older clients may raise issues of whether the requirement of cohabitation has been satisfied.*

(ii) Prior agreements: The Advisory Guidelines confer no power to re-open or override *final* spousal support agreements. This issue like entitlement (see below) is outside the scope of the Advisory Guidelines and continues to be dealt with under existing law—the common law doctrine of unconscionability, the evolving law applying the Supreme Court of Canada’s recent decision in *Miglin*,<sup>8</sup> and provincial statutory provisions which deal with the effect of a prior agreement on spousal support. A final agreement—i.e. one waiving or terminating spousal support or setting a fixed amount with no provision for review or variation—will thus preclude the application of the Advisory Guidelines unless the agreement can be it set aside or overridden under existing law.

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<sup>8</sup> *Miglin*, *supra* note 2.

- ❖ *Older clients who have re-partnered may have entered into a pre-nuptial agreement limiting spousal support. This agreement may preclude the application of the Guidelines. The Advisory Guidelines may play a role in the Miglin analysis in determining at either stage 1 or 2 whether there is substantive compliance with the Divorce Act objectives (see FV, 5.2, esp. footnote 53 and related text).*
- ❖ *In cases involving older clients where spousal support is being paid under a separation agreement or consent order, the terms of the order or agreement may preclude the application of the Guidelines to any re-determination of the amount or duration of spousal support.*

(iii) Application on variation and review: The primary application of the Advisory Guidelines is to initial determinations of spousal support at the point of separation or divorce (which includes both interim and “final” determinations), whether through negotiated agreements or court orders. There is a common misunderstanding that the Advisory Guidelines have no application in the variation context. This is incorrect. The Advisory Guidelines do have a role to play in the determination of spousal support in the context of variation and review, but it is a somewhat more limited role.<sup>9</sup> There are three aspects of this limited role, set out below.

- ❖ *Applications for variation of spousal support will be common among older clients as they experience the typical changes that come with age: declining health, decreasing incomes and retirement. As well, one or both parties may re-partner, prompting applications for readjustment of spousal support. An awareness of the more limited or qualified role that the SSAG play in the variation context is thus very important to those with an elder law practice.*

First, the Advisory Guidelines do nothing to change the current structure of the law governing variation and review, including the threshold determinations of whether the conditions for a variation or review have been met.

- ❖ *In the context of applications to decrease spousal support because of the payor’s retirement, there will often be a threshold issue of whether the retirement is a “material change in circumstances”. The law on this issue is complex and convoluted, as discussed below in the next section of the paper dealing with scenario 1 (retirement and variation).*

Second, given that the Advisory Guidelines are based on income sharing, they are well-suited to adjusting spousal support amounts to changing incomes over time. The Guidelines can thus be applied in a very straightforward way to increases in the recipient’s income and decreases in the payor’s income. However, in some cases, such as post-separation increases in the payor’s income or reductions in the recipient’s income, there are threshold issues of the relevance of the changed income to the spousal claim—issues essentially of “entitlement.” These threshold issues must be dealt with first, to

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<sup>9</sup> For an excellent discussion of the use of the Advisory Guidelines in variation applications, which both dispels misunderstandings and carefully sets out the limits on applicability, see the B.C. Court of Appeal’s December 2007 decision in *Beninger v. Beninger*, [2007] B.C.J. No. 2657, 2007 BCCA 619. This was not a case involving retirement, but rather one involving the opposite—a post-separation increase in the payor’s income.

determine to what extent, if any, the income change is to be taken into account, before the Guidelines can be applied.

- ❖ *If the threshold test for a variation or review on the retirement of the payor is satisfied, the Guidelines can quite appropriately be used to re-determine the amount of support in light of any decrease in the payor's income.*
- ❖ *Post-separation reductions in the recipient's income, for example because of health issues, will raise more complicated threshold issues of entitlement on any variation application to increase spousal support.*

Third, the impact of re-partnering, re-marriage and second families on spousal support have proven the most difficult to reduce to a formula given the uncertainty in the current law. These issues have been left to discretionary determinations under the evolving framework of the current law.<sup>10</sup>

- ❖ *Re-partnering is common among older clients. The Advisory Guidelines generally do not assist in determine the impact of the re-marriage or re-partnering of either the payor or the recipient on the amount and duration of spousal support.<sup>11</sup>*

## **(2) Entitlement**

The Advisory Guidelines do not deal with the issue of whether there is entitlement to spousal support, just amount and duration once entitlement has been found under the governing legal framework of the legislation and leading case law. A mere disparity of income that would generate an amount under the formulas does not automatically lead to entitlement. There must be a finding on entitlement, on a compensatory or non-compensatory basis, *before* the formulas and the rest of the Guidelines are applied.

Compensatory support claims are typically based on career disadvantage as a result of roles adopted and choices made in the marriage, the paradigmatic case being that where one spouse has left the work-force to care for children. However, compensatory support claims can also be based, in shorter and medium length marriages without children, on one spouse leaving employment and moving to facilitate the marriage or the other spouse's career, or on one spouse's loss of financial benefits as a result of the marriage, for example spousal support or pension benefits based on a prior relationship. Compensatory support can also be based on contributions to the other spouse's career.

A claim for non-compensatory support can be based not just on the inability to meet basic needs, but also on a drop in standard of living from the marital standard.

- ❖ *Generally current law provides a very broad basis for entitlement and entitlement will typically be found if there is a significant income disparity. Complete denials of*

<sup>10</sup> See FV, 14.6 and 14.7, and also Rollie Thompson, "The Second Family Conundrum in Child Support" (2001), 18 *Canadian Journal of Family Law* 227.

<sup>11</sup> In *M.(K.A.) v. M.(P.K.)*, 2008 CarswellBC 135, 2008 BCSC 93 (B.C.S.C), however, Justice Barrow found a creative way to deal with the impact of the wife's re-partnering in determining the appropriate amount of support. Drawing on the concept of "merger over time" he ordered that spousal support be reduced by 10% for every year of continued cohabitation.

*entitlement on initial applications are rare. The cases in which entitlement is contested tend to be short or medium length marriages without children, the kinds of cases that arise frequently in an older population where there has been re-partnering (see FV, s. 4.1, and footnote35 and related text). However, even in short marriages involving older clients, if there is a strong element of need on the part of the dependent spouse, this may weigh in favour of a finding of entitlement.*

The basis of entitlement is important, not only as a threshold issue, but also to determine location within the formula ranges or to justify departure from the ranges as an exception. Entitlement issues also arise on variation and review.

### ***(3) The Determination of Income***

With increased reliance on the Advisory Guidelines to determine the amount of support, the main issue in dispute in the majority of spousal support cases, as in child support cases, has become income. There are many disputes about income, but once those are resolved, the parties are often in agreement on the application of the Advisory Guidelines to determine amount.

The accurate determination of spousal incomes is critical to the proper application of the Advisory Guidelines. When you are presented with a computer printout showing the supposed range for amount under the Advisory Guidelines you should always check the income figures and inputs on which those ranges are based to ensure that they are accurate and that you are in agreement with them. Given that the formulas generate ranges for amount rather than precise figures, different assumptions about income may in many cases be inconsequential. However, in some cases such differences can result in quite dramatically different outcomes under the formulas.

The starting point for income determinations under the Advisory Guidelines is the definition of **income** used in the *Federal Child Support Guidelines*, subject to some minor adjustments for spousal support purposes. This is basically a “gross” income measure, income before taxes and other deductions.

The main such adjustment from the child support context is that social assistance is not treated as income for spousal support purposes. A spouse whose only income is social assistance will be treated as having an income of zero.

- ❖ *Where government benefits take the form of pensions, as will often be the case when clients are older, these will be included in income; social assistance, however, is not included in income.*

In the majority of cases, income issues are relatively straightforward and any disputes are limited in scope. However, the Advisory Guidelines do not, and cannot, solve the complex issues of income determination that can arise in cases involving self-employment income and various forms of non-employment income. These issues are to be worked out through the developing case law on income determination.

- ❖ *Cases involving older clients will often involve non-employment based income—pensions (public and private) and income from investments—and may raise difficult*

*issues about how income is to be determined for purposes of the Advisory Guidelines formulas.*

- ❖ *Some cases involving retirement have raised issues of whether certain retirement incentives are to be treated as income in the year they are received or property: see **Hurst v. Hurst**, [2008] O.J. No. 3800 (S.C.J.) and **Gammon v. Gammon**, 2008 CarswellOnt 6349 (S.C.J.).*
- ❖ *In cases where the payor retires and begins to receive income from an employee pension plan that was previously shared in the property division, an adjustment of income may be necessary to avoid double-dipping. The Advisory Guidelines do not change the law from **Boston v. Boston**<sup>12</sup> governing double-dipping. That law remains in place, determining if some portion of income should be excluded from the formula because it has been previously shared under property division. This issue*

In determining income it may be necessary, as under the *Federal Child Support Guidelines*, to **impute income** in situations where a spouse's actual income does not appropriately reflect his or her earning capacity. Income may need to be imputed not just to a payor spouse, but in addition a spousal support case may also require that an income be imputed to the recipient spouse, because of self-sufficiency issues.

- ❖ *In cases involving older clients, the use of imputing income to deal with cases of under-employment may be somewhat less frequent because of the limitations imposed on the earning capacity of both payors and recipients by health and age. Unreasonable early retirement is one obvious exception.*
- ❖ *In cases involving older clients, income may be imputed to deal with the under-utilization of assets, for example where assets received in the divorce settlement have been unreasonably dissipated or not properly invested and are not available as a source of income post-retirement.*

“Ceilings” and “floors” define the boundaries of the typical incomes to which the formulas can be applied. Because they involve income, I am dealing with ceilings and floors here. However, they can also be thoughts of as dealing with issues of application or as exceptions to the formulas. The ceiling is the income level for the payor spouse above which any formula gives way to discretion, which is set at a gross annual income for the payor of \$350,000. The floor is the income level for the payor below which no support is usually paid, which is set at \$20,000. To avoid a cliff effect, there is an exception for cases where the payor spouse's gross income is more than \$20,000 but less than \$30,000, where spousal support may not be awarded or may be reduced below the low end of the range. An additional exception is also necessary, to allow an award of spousal support below the income floor in particular cases.

- ❖ *Older clients may be low-income. The floor of \$20,000 payor income, with discretion to not apply the Guidelines between \$20,000 and \$30,000, may thus be relevant.*

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<sup>12</sup> *Boston*, *supra* note 2.

## B. *After the Formulas*

Many issues also remain to be addressed after the formula—in this case the *without child support* formula—is found applicable and has been used to generate ranges for amount and duration. These remaining issues are: choosing an amount and duration within the ranges, restructuring, and exceptions.

### (1) *Using the Ranges*

The *without child support* formula provides ranges for the amount and in some cases also for the duration of spousal support. The location of a precise amount or duration within those ranges will take into account the individual facts of the case and will be driven by a number of factors including the extent to which the support claims are compensatory or non-compensatory, the recipient's needs; the needs and ability to pay or the payor; work incentives for the payor; property division and debts; and self-sufficiency incentives. It should not just involve picking the mid-point.

### (2) *Restructuring*

Although the Guideline formulas generate separate figures for amount and duration, the Advisory Guidelines explicitly recognize that these awards can be “restructured” by trading off amount against duration. Restructuring can be used in three ways:

- to **front-end load** awards by increasing the amount beyond the formulas' ranges and shortening duration;
- to **extend duration** beyond the formulas' ranges by lowering the monthly amount; and
- to formulate a **lump sum** payment by combining amount and duration.

Restructuring works best when duration is clearly defined, and thus is most often applicable under the *without child support* formula in cases involving short and medium length marriages.

- ❖ *Restructuring may, however, have a somewhat limited application in cases involving older clients because of the “rule of 65” which may result in an indefinite duration in many medium length marriages. Restructuring may be more relevant in short marriages (under 5 years) where restructuring is often used to generate a lump sum award.*

### (3) *Exceptions*

The Guideline formulas are intended to generate appropriate outcomes in the majority of cases. The Guidelines recognize, however, that there will be cases where the formula outcomes will not generate results consistent with the support objectives and factors under the *Divorce Act*. The informal, advisory nature of the Guidelines means that the formula outcomes are never binding and departures are always possible on a case-by-case basis where the formula outcomes are found to be inappropriate. The Advisory Guidelines do, however, itemize a series of exceptions which, although clearly not exhaustive, are intended to assist lawyers and judges in framing and assessing departures

from the formulas. The exceptions create room both for the operation of competing theories of spousal support and for consideration of the particular factual circumstances in individual cases where these may not be sufficiently accommodated by restructuring.

Some of the exceptions are only relevant to cases involving dependent children under the *with child support* formula. Those that will be potentially applicable under the *without child support* formula are:

- compelling financial circumstances in the interim period;
- debt payments;
- prior support obligations;
- illness or disability of a recipient spouse;
- a compensatory exception for shorter marriages under the *with child support* formula;
- reapportionment of property (British Columbia);
- basic needs/hardship under the *with child support* formula and the *custodial payor* formula
- non-taxable payor income

❖ *The prior support obligation exception, which operates as an adjustment to income through the deduction of the prior support obligation from the payor's gross income, will often be relevant in cases involving older clients (FV, 12.3).*

❖ *The compensatory exception in short marriages may be relevant in a case of a short second marriage later in life where the formula generates a relatively low award that does not adequately compensate an older spouse who may sacrificed elements of his or her own economic security as a result of the marriage and in reliance upon the financial support the marriage would provide. For example a spouse may have left employment, sold a business or moved to facilitate the marriage. An older spouse may have more difficulty returning to their pre-marriage economic situation than a younger spouse. This exception may also apply in cases where a spouse has lost certain financial benefits as a result of the marriage, such as spousal support or pension benefits related to a prior marriage. Under this exception, support may be increased to compensate the spouse for these economic losses. The compensatory exception may also apply if there has been a significant contribution to the other spouse's career or business, although this may be somewhat less relevant in cases involving older clients.(FV, 12.5)*

❖ *In cases involving older clients, income earning capacity is often limited by health issues, thus making the illness/disability exception potentially relevant in cases of shorter marriages where the amounts of support may be modest and even time-limited if the "rule of 65" does not apply. This exception will be explored further in the next section of the paper in the discussion of scenario 2.*

### **III. Spousal Support and the Older Client in the Post-SSAG World: Two Examples**

In this part of the paper I will sketch out, in a somewhat preliminary way, how the two common spousal support scenarios involving older clients, laid out at the beginning of the paper, will be resolved in the post-SSAG world.<sup>13</sup>

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<sup>13</sup> The analysis at this stage is somewhat preliminary. I hope to refine it in a subsequent draft.

## A. Scenario 1- Retirement and Variation

*This scenario involves a long traditional marriage where the parties have already been divorced for some years. The husband has been paying long-term spousal support, under either a court order or an agreement that allows for variation if there has been a material change in circumstances. He will soon retire and his income will go down as he starts to rely on pension income.*

*For convenience, assume the facts as in example 1 above, 28 year traditional marriage, husband earns \$100,000, wife's income zero; husband has been paying spousal support of \$3000 per month since the divorce 10 years ago. The wife has never sought a variation although the husband's income has increased since separation. After his retirement, the husband will have pension income of \$70,000 per year.*

### Analysis:

1. You cannot simply go to the SSAG and apply the *without child support* formula, to generate a new range for amount of \$2187 - \$2920 a month (equalization of net income) by using a \$70,000 income figure for the husband.
2. This is a variation context, and therefore regard must be had to the limits on the application of the SSAG in the variation context.
3. The SSAG do nothing to alter the basic law with respect to variation of spousal support, which requires that the threshold condition of a material change in circumstances must be met.
4. Thus the first question that will need to be addressed is whether the retirement will constitute a material change in circumstances. Often the answer will be yes, but there can be complications. Here I will address two such complications: (i) early retirement and (ii) the issue of whether the retirement was “foreseeable” when the original order/agreement was made.
  - (i) early retirement: If the payor is retiring before the “normal” retirement age the retirement may not satisfy the requirement of a material change in circumstances. Courts will assess the evidence to determine the reasonableness of this choice; generally a payor will have to establish a reason beyond simply “choice”, for example evidence that the early retirement is in response to health issues. Often the threshold requirement is not met in cases of early retirement, or even if it is met, courts may impute additional income that could be earned. For some recent cases dealing with early retirement see *Francis v. Logan* [2008] BCSC 1028 and *Gajdzik v Gajdzik*, 2008 BCSC 160, which provides an excellent review of the law.<sup>14</sup> The resolution of this issue may depend in part on whether the support is being paid under a court order or agreement. If the latter, there may be issues of the interpretation of the agreement as it applies to early retirement.

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<sup>14</sup> *Gajdzik* was also the subject of a recent commentary by Philip Epstein and Lene Madsen, “This Week in Family Law” 2008-36, WestlaweCARSWELL. Gordon, *supra* note 3, provides a comprehensive review of the law on this issue.



(ii) the foreseeability of retirement. There is much confusion in the law with respect to the issue of whether there is a foreseeability component to the test for material change, such that a material change requires that the change have been unforeseeable at the time the original order was made. Thus if the change was foreseeable--which retirement usually is--it cannot constitute a material change. The long-standing, conventional formulation of the test for material change that it is one where the court would likely have made a different order if the changed circumstances had *existed* at the time the original order was made. On this formulation, there is no requirement that the change have been unforeseeable and retirement will usually satisfy the test. The confusion was introduced by the Supreme Court of Canada decision in its 1994 decision in *Willlick v. Willlick*<sup>15</sup> where a material change was identified as a change, that if the Court had *known* of the change of circumstances at the time of the making of the original order, it is likely that a different result would have been achieved. Or in other words, was the change unforeseen? The result is a convoluted body of law, with some courts applying a foreseeability test to determine a material change, which will often preclude a variation based upon retirement, and others adopting a more common sense approach that focuses on the circumstances on which the original order was based. The approach can also vary depend on whether the spousal support is being paid pursuant to a court order or under an agreement.<sup>16</sup>

5(a). If the retirement is found to satisfy the threshold of a material change in circumstances, there may in some cases be an issue of whether there is continued entitlement to support depending on how significant the decrease in the husband's income is and also on the wife's economic position if she, for example, begins to receive pension benefits. This is not an issue on the facts here, where there remains a strong needs-based and compensatory basis for support.

5(b). Assuming a material change and continued entitlement, we can then move to the SSAG. Although the SSAG have limited applicability in some variation contexts, they are well suited to dealing with decreases in the payor's income.

6. However, before the *without child support* formula can be applied, there needs to be a determination of the husband's new, post-retirement income.<sup>17</sup> Pensions can raise some complicated income issues. In cases where the payor retires and begins to receive income from an employee pension plan that was previously shared in the property division, an adjustment of income may be necessary to avoid double-dipping. The Advisory Guidelines do not change the law from *Boston v. Boston*<sup>18</sup> governing double-dipping. That law remains in place, determining if some portion of income should be excluded from the formula because it has been previously shared under property division. And it is

<sup>15</sup> (1994), 6 R.F.L. (4<sup>th</sup>) 161 (S.C.C.).

<sup>16</sup> For a review of this issue see Philip Epsteins' annotation to *Fishlock v. Fishlock* (2007), 46 R.F.L. (6<sup>th</sup>) 254 (Ont. S.C.J.). Gordon, *supra* note 3 also provides an excellent review of the law on this issue.

<sup>17</sup> There may also be an issue of whether any retirement incentive received in the year of retirement will be treated as income for that year. Typically the answer has been no: see *Hurst v. Hurst*, [2008] O.J. No. 3800 (S.C.J.) and *Gammon v. Gammon*, 2008 CarswellOnt 6349 (S.C.J.), both discussed in Gordon, *supra* note 3.

<sup>18</sup> *Boston*, *supra* note 2.

a complex and uncertain body of law, for *Boston* articulates a rule against double-dipping but then goes on to recognize many exceptions to the so-called rule. Difficult issues of whether there should be an exception to the rule against double-dipping arise in cases where there has not been an *in specie* division of the pension and the other spouse has received other assets in lieu of the pension.<sup>19</sup> For examples of Guidelines cases applying *Boston*, see *Pettigrew v. Pettigrew*, [2006] N.S.J. No. 321, 2006 NSCA 98 (N.S.C.A.), affirming [2005] N.S.J. No. 616, 2005 NSSC 219 (N.S.S.C.); *Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (N.S.S.C.F.D.); *Vanderlans v. Vanderlans*, [2007] N.J. No. 121, 2007 NLUFC 8 (N.L.U.F.C.), *Hurst v. Hurst*, [2008] O.J. No. 3800 (S.C.J.) and *Gammon v. Gammon*, 2008 CarswellOnt 6349 (S.C.J.). Some adjustments may also need to be made to the other spouse's income to reflect income, actual or imputed, from other assets that were received in lieu of a division of the pension.

7. Only after the incomes have been determined can the formula be applied to the income difference, using the factor of 37.5% to 50% of the gross income difference to determine the new range for amount of support. Note that the high end of the range will actually be capped at the amount that would result in equalization of *net* income, a calculation that will be performed by the computer software.

8. For simplicity, assume that this is a case where, a determination has been made that half the value of the pension was dealt with in the property division, the wife received the matrimonial home in lieu of her share of the pension and has no income, either from the pension or other assets, and that rule against double-dipping has been applied (not necessarily an appropriate assumption on these facts). The formula will use an income of \$35,000 for the husband and zero for the wife and the range will be \$1094 to \$1458 per month (or \$13,125 - \$17,500 gross per year). The wife would obviously be in a very different income position if there had been an *in specie* division of the pension and she will begin to receive her share of the pension when the husband retires.

9. After the new range has been generated, a decision still has to be made on where the amount should be set within the range. In a case such as this a court would carefully examine the parties net income positions and budgets to determine an appropriate amount within the range. As well, this determination could be influenced by the level at which the original support was set, which may or may not have been in accordance with the ranges that the Guidelines would generate.

10. The applicability of any exceptions should also be considered.

11. One could imagine the facts in scenario 1 being even further complicated by the remarriage of either the payor or recipient. As noted in the overview section of the paper, the Guidelines offer no formulaic solutions in these cases and the impact of remarriage must be dealt with under the evolving and uncertain framework of the current law.

**Conclusion:** The SSAG are very useful in determining initial support in cases involving the breakdown of long traditional marriages. However, in a case such as scenario 1,

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<sup>19</sup> This paper will not review the law applying *Boston* in any detail. For an excellent review see the Marie Gordon, "*Boston Revisited*", *supra* note 3.

which deals with the variation of the initial order prompted by the payor's retirement, the application of the SSAG is rendered very complex by issues of material change and issues that arise when dealing with income from a previously divided pension.

## **B. Scenario 2 - "The Second Marriage Later in Life"**

*This scenario involves a second (or perhaps third) marriage for one or both of the parties entered into later in life. The parties have no children. They entered the marriage with their financial resources and income-earning capacities shaped by events and choices in their previous lives. The wife is much less well-off financially than the husband. The marriage lasts 10 years or less. This was not a long, traditional marriage where one spouse stayed home to look after children, but there are nonetheless strong elements of dependency and need. What kind of spousal support award will be made in these circumstances? Will there be a long-term support obligation? If the husband's income is a pension in pay, will the wife be entitled to share in the income even though the pension was accumulated in whole or in large part before the marriage? Does it make a difference if the marriage lasted 3 years or 5 years or 10 years?*

*Assume as in examples 2 and 3 above, that the husband has an income of \$100,000 (either from employment or pension) and the wife's income is zero. The wife who had limited income-earning capacity at the beginning of the marriage is now unable to work because of health issues.*

*The analysis will work through the examples of a 10 year and 5 year marriage*

### **Analysis:**

1. Before one gets to the SSAG there may be some preliminary issues on these facts:

(a) Is there a pre-nuptial agreement or marriage contract that precludes the application of the Advisory Guidelines? If so, the SSAG cannot apply unless the contract is set aside or over-ridden using existing bodies of law: -common law, *Miglin*, or provincial statutory provisions governing the effect of spousal support agreements.

(b) Is this a case of cohabitation rather than marriage? If so, provincial spousal support law is applicable rather than the Divorce Act. The Advisory Guidelines, while developed under the federal *Divorce Act*, are commonly used to determine the amount and duration of support under provincial support legislation, but the statutory conditions for when non-marital relationships give rise to a support obligation must be satisfied, typically a period of *cohabitation* for 2 or 3 years.

(c) Is there entitlement to support under the principles articulated by *Moge* (compensatory basis) and *Bracklow* (non-compensatory basis). Entitlement is commonly found if there is a significant income disparity, but a finding of no entitlement to support is possible in some short and medium-length marriages despite an income-disparity.(FV, 4.1, and footnote35 and related text). On these facts a

finding of entitlement is likely given the wife's extreme need, but a determination of the basis for entitlement

2. Assuming no contract and entitlement, the analysis then moves to the SSAG.
3. Before the *without child support* formula can be applied, the gross incomes of the parties must be determined. On these facts, this is relatively straightforward: \$100,000 for the husband and zero for the wife. The issue of imputing income to the wife will likely not arise on these facts because her health situation precludes employment. Imputing income to the husband would only become an issue if he had unreasonably decreased his income post-separation.
4. The *without child support* formula also requires that the length of the relationship be determined. Although this is often referred to as the length of the marriage, the accurate description is the length of the relationship or period of cohabitation; this period thus includes pre-marital cohabitation and ends with separation. In this case assume relationships of either 5 or 10 years duration.
5. In cases involving older clients, the age of the recipient at separation is also a relevant factor in the *without child support* formula, for the purpose of determining whether the "rule of 65" operates in the case of relationships of shorter than 20 years in length to make support indefinite rather than time-limited. The "rule of 65" only applies if the relationship is 5 years or longer in length. Here assume that the 10 year relationship ends when the wife is 55 (and the husband is 60) and the 5 year relationship ends when the wife is 60 (and the husband is 70). In both cases the rule of 65 will apply because the length of the relationship plus the recipient's age at separation equal 65 or more.
4. Examples 2 and 3 in the earlier section of the paper illustrate the results generated by the *without child support* formula on these facts.

(a) for the 10 year marriage (w 55, h 60 at separation); h \$100,000, w zero:

**The formula results in a range for support of \$1250 to \$1667 per month on an indefinite basis (duration not specified) because of the "rule of 65"<sup>20</sup>, but subject to variation and possibly review.**

Awards within this range will leave the parties in very different income positions; the wife with a gross income of between \$15,000 and \$20,000 a year, and the husband with between \$80,000 and \$85,000 a year.

(b) for the 5 year marriage (w 60, h 70 at separation); h \$100,000, w zero

**The formula results in a range for support of \$625 to \$834 per month on an indefinite basis (duration not specified) because of the "rule of 65",<sup>21</sup> but subject to variation and possibly review.**

<sup>20</sup> Rather than for the durational range of 5 to 10 years that would otherwise be generated by the formula based on length of marriage alone with no consideration of the age factor.

<sup>21</sup> Rather than for the durational range of 2.5 to 5 years that would otherwise be generated by the formula based on length of marriage alone with no consideration of the age factor.

Awards within this range will leave the parties with an even greater income disparity than in the example above; the wife will have a gross income of between \$7,500 and \$10,000 a year, and the husband with between \$90,000 and \$92,500 a year.

5. If support is awarded within these ranges there will be significant income disparities between the parties. These differences may be ameliorated to some degree down the road when the parties' incomes change and there is a variation or review: in both fact scenarios the wife may become eligible for pension benefits at age 65 and in the second scenario the husband's income will likely decrease when he retires. At the point of the initial determination of support in the context of the separation and divorce however, awards within the range will leave significant income disparities and the wife will certainly experience financial need and hardship. This element of on-going need will shape the remainder of the spousal support analysis and the application of the SSAG.

6. The location within the range needs to be determined. On these facts, the wife's need, and the husband's ability may suggest an award at the high end of the range. Countering this would be the short length of the marriage, particularly in the case of the 5 year marriage.

7. Restructuring the award by trading amount off against duration works best when duration is fixed and so at first glance might not seem to be applicable in these cases because the rule of 65 has meant that the support award is indefinite. However, although the calculations may be more difficult and imprecise, it may still be possible to consider restructuring the award, to increase the amount even above the high end of the range to improve the wife's financial situation until she starts to receive some pension income of her own by reducing or even terminating support after she begins to receive her pension income. This may be especially attractive in the case of the 5 year marriage.

8. The applicability of any exceptions needs to be considered and may be a live issue on these facts. Of particular relevance on these facts will be the disability/illness exception.<sup>22</sup> The question that will arise is whether it is appropriate to either increase the amount of support or extend duration in cases of short and medium length marriages because of economic needs resulting from one spouse's illness or disability. In cases involving older clients, the "rule of 65" will often be applicable and will already have gone some way towards ameliorating the economic hardship experienced by ill or disabled spouses because the spousal support awards will not be time-limited and will continue on an indefinite basis. However, the modest amounts of spousal support generated by the *without child support* formula in cases of short/medium length marriages, even if extended on an indefinite basis, may still be found to be inappropriately low. These were difficult cases before the Advisory Guidelines, raising fundamental questions about the nature of marriage and the kinds of obligations it entails, and the illness/disability exception means that the law will continue its uncertain evolution in this area. I

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<sup>22</sup> The basic needs/undue hardship exception may also be relevant, but in most cases the same considerations would be brought into consideration of the disability exception in the cases involving older clients (FV, 12.7). For an example see *Simpson v. Grignon*, [2007] O.J. No. 1915, 2007 CarswellOnt 3095 (Ont.S.C.J.). The exception for compelling financial circumstances in the interim period may also be applicable (FV, 12.1).

reproduce below the discussion of this exception from the Final Version of the SSAG FV, 12.4):

#### 12.4 Illness and Disability

Many cases of illness or disability can be accommodated within the formulas. The central concern in many of these cases will be the recipient's need for long-term or indefinite support. Indefinite (duration not specified) support would be available under the formulas after 20 years of marriage or based upon the "rule of 65". And, in most medium-to-long marriages, with or without children, the ranges for duration and amount offer considerable scope to accommodate the needs of an ill or disabled spouse. Disability will be an important factor in locating the amount and duration within the ranges in these cases. ...

In some medium-length marriages, where the formulas generate time limits, **restructuring** may have to be employed .... Under restructuring, the monthly amount can be reduced and the duration extended beyond the maximum, especially where spousal support is effectively bridging until retirement, when the recipient's pension and old age benefits become payable. For this to be effective, the support amounts generated by the formula would have to be large enough to allow for a reasonable lower amount of monthly support. ...<sup>23</sup>

For many cases, however, neither the breadth of the ranges nor the expanded possibilities of restructuring are seen to provide an adequate response to illness or disability. In these cases, there are three distinct approaches to long-term disability, three approaches that became more sharply defined after *Bracklow* in 1999. Because these are "hard" cases, more of them turn up in the reported decisions. Below we have framed these three approaches using the language of the Advisory Guidelines, as courts increasingly have used the Guidelines to consider these issues.

Faced with a recipient with a long-term disability, Canadian courts have responded with one of three approaches, here stated in declining order of frequency.

- i. *Lower Amount, Extend Duration*: most courts will extend duration, even to be "indefinite", while keeping the amount within the range, at or near the low end;
- ii. *No Exception*: a slightly smaller number of courts will fix an amount in the range, often towards the upper end, and use the maximum duration, even though that means support will end while need continues;<sup>24</sup>
- iii. *Increase Amount, Extend Duration*: a much smaller group of courts will respond to the greater need in disability cases by increasing amount and extending duration.<sup>25</sup>

After *Bracklow*, the law in this area remains uncertain. In our view, the third approach is the least consistent with *Bracklow*. The case law is dominated by the first two approaches, each of which can find support in the *Bracklow* decision. Our preference would be the second, "no exception" approach, which seems more consistent with the modern limits of spousal support as a remedy. But a slight majority of the reported cases see these cases as exceptions, mostly preferring the first, "lower amount, extended duration" approach. For now, as there is no dominant pattern or trend in the case law, we must recognize the possibility of an exception for these cases and leave the law to develop.

<sup>23</sup> See *Jens v. Jens*, [2008] B.C.J. No. 2013, 2008 BCCA 392 (Oct. 7, 2008) overturning [2007] B.C.J. No. 1673, 2007 BCSC 1123 [further extension of duration of spousal support in medium length marriage with disability/illness; amounts still within Guidelines maximum global range].

<sup>24</sup> For examples of cases where no exception was made, see *Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (N.S.S.C.F.D.); *Williston v. Williston*, [2006] B.C.J. No. 3248, 2006 BCSC 1869 (B.C.S.C.); and *Wise v. Wise*, [2006] B.C.J. No. 1143, 2006 BCSC 945 (B.C.S.C.).

<sup>25</sup> For example, *Bramhill v. Dick*, [2007] B.C.J. No. 387, 2007 BCSC 262 (B.C.S.C.).

**Conclusion:** The application of the SSAG is much more straight-forward in scenario 2 as compared to scenario 1. The major issue will likely be whether the economic hardship of the dependent spouse will warrant a departure from the outcomes suggested by the *without child support* formula based on one or more of the exceptions, in particular the illness/disability exception. The “rule of 65” will operate in many cases to ameliorate some of the harshness of this formula, which relates both amount and duration to length of marriage, by extending duration on an indefinite basis.

## Appendix

### Selected SSAG Cases Involving Older Clients

#### **Boston and “Double-Dipping” in the Guidelines**

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

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

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

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

W applies for variation and determination of support after Aug 2007

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

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

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

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

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

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

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

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

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

Application by H to vary support and set termination date

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

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

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

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

*Vanderlans v. Vanderlans*, 2007 CarswellNfld 119, [2007] N.J. No. 121, 2007 NLUFC 8 (Dunn J.)

Married 25 years, adult children now 30 and 25

2001 consent order: \$2,000/mo. combined child and spousal support deductible plus \$200 “additional” spousal support to December 2005

2002 consent order: \$2,000 plus now \$400

Provisional order 2005 from N.S.: extended support another 5 years, at \$1,600/mo.

Guidelines range: \$1,533-\$2,044

Husband RCMP officer, retired at 55 in 2005, pension \$31,000

N.S. court imputed \$60,000



Wife health problems, now 55, paid board by husband's mother  
*Miglin* analysis: stage 1 okay, no change at stage 2  
 No evidence on *Boston* double dipping issues  
 Provisional order not confirmed

*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"

*Puddifant v. Puddifant*, [2005] N.S.J. No. 558, 2005 NSSC 340 (S.C.F.D.)(Gass J.)

Married 12 years, 1 child 16 with husband, wife 42 (33 separation), husband 46  
 Wife mental illness, CPP disability and investments, \$14,918, no child support  
 Husband in Armed Forces, retired 2004, new partner nurse  
 Husband receives \$37,823, but \$4,667 his share of divided pension, so \$33,156  
 Husband applies to terminate \$600/mo. spousal support  
 Reduced to \$300/mo., disability exception considered, support for 3 more years (total 12)  
 (Range \$198 to \$264 under custodial payor, \$253 to \$337 if no pension deduction)

### **Retirement Incentives as Income**

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

36 year marriage; separation 2000; divorce 2003; 3 grown children  
 2003 consent order : \$2000 per month spousal support until Aug. 2007 (h's expected retirement date); after  
 retirement first \$2,261.70 of pension income not to be considered as income for spousal support  
 purposes as divided through equalization payment  
 H does not retire until Dec. 1, 2007; receives \$70,000 lump sum retirement transferred into RRSP  
 W applies for variation and determination of support after Aug 2007  
 Retirement incentive not to be included in h's 2007 income for spousal support purposes  
 H 2007 income \$124,000; w's income imputed at \$23,000 (CPP, rental income; imputed income from  
 hairdressing)  
 Guidelines may be applicable if agreement provides for review or variation; guidelines taken into account  
 to ensure that support ordered "falls within the appropriate parameters); \$3600 per month for 4  
 remaining months of 2007 [SSAG range not stated, calculated as \$3156-\$4143]  
 Ongoing support for 2008 \$1200/mo: based on h income \$51,790 (including only unequalized portion of  
 pension) and w income \$18,767 [SSAG range not stated, calculated as \$1032-\$1301]

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

15 year relationship; 7 years marriage, plus 8 prior cohabitation; no children; separation 2004  
 Separation agreement set aside; 2007 order for spousal support retroactive to separation (2004) based on  
 parties' incomes (actual and imputed) and SSAG; \$1500 per month for 2007 based on w income  
 (imputed) of \$25,956 and h's income (estimated) of \$90,000  
 H retires Dec. 1, 2007; gross monthly pension \$3700; in property division, 22.6% of pension equalized  
 (based on 7 years of marriage); 77.4% available for support

H also receives retirement incentive of one-time payment of \$85,000, included in 2007 income but which could be sheltered all or in part in RRSP; also \$30,000 car voucher included in 2008 income  
 Application by H to vary support and set termination date  
 Neither severance package nor car voucher to be included in h's income (treated as post-separation income increase; w not entitled to share; basis of her support not compensatory; no significant contribution to h's career)  
 Support for 2007 recalculated using h's actual income (\$117,880) and mid range of Guidelines  
 Support for 2008 set at \$271/mo based on h income of \$34,365 (unequalized part of pension) and mid-range of Guidelines.  
 Termination date appropriate; SSAG range 7.5 to 15 years; had spousal support provisions of separation agreement had been negotiated in accordance with Divorce Act objectives, termination at low end of range would have been appropriate; in circumstances and given how long it took w to get the periodic support to which she was entitled, 10 year duration is appropriate; support to terminate in 2014.

### **Other Cases—Appellate**

*Kerr v. Baranow*, [2007] B.C.J. No. 2737, 2007 BCSC 1863 (Romilly J.), appeal allowed in part, 2009 CarswellBC 642 2009 BCCA 111

Not married, 26 year cohabitation, no children, both 67

Husband longshoreman, wife secretary;

Wife has stroke in 1991, disabled and unemployed; separate in 2006 when wife moves to care facility

Husband retired 2002, income \$70,520; wife's income (disability pension) \$28,787

Range: \$1304-\$1739

Wife seeks more than high end of range to enable her to pay for private bed while on wait list for subsidized bed

Spousal support of \$1739 ordered, high end of range, plus \$315,000 for share of property by way of resulting trust

Court of Appeal: Appeal from quantum and duration of spousal support award was dismissed, and appeal in relation to its commencement date was allowed; commencement date was changed to date of commencement of trial; trial judge's retroactive award for spousal support could not be supported on evidence; appeal on property award allowed; no resulting trust

*Wang v. Poon*, [2008] B.C.J. No. 2113, 2008 BCCA 442 (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, income \$8,000

Most not family assets, condo reapportioned 90% to husband

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. 2007-Feb. 2009; then \$600/mo. to Oct. 2010 (3 years, 8 mos.)

"More generous and of longer duration" than Guidelines

(Guidelines range estimated: \$368-\$490, for 3.5 to 7 years, global amount within range)

Court of Appeal: trial judge intended award to be higher than SSAG but actually awarded support at low end of global range; Court of Appeal extends support, but total award still within Guidelines global maximum; good use of restructuring

*Shellito v. Bensimhon*, [2007] B.C.J. No. 1081, 2007 BCSC 713 (Myers J.), aff'd 2008 CarswellBC 469, 2008 BCCA 68 (MacKenzie J.A.)

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

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

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

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

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  
 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

*Smith v. Smith*, [2008] B.C.J. No. 1068, 2008 BCCA 245, 2008 CarswellBC 1218 (Newbury J.A.)  
 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]

*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]

## Other Cases-Trial

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

*Stewart v. Tudorachi*, [2008] O.J. No. 5111 (Ont.S.C.J.)(Warkentin J.)  
 Together 22 years, no children, husband 53, wife 50, separated 2003  
 Application to vary by husband to reduce or terminate support

2006 order: support \$2,250/mo., husband earning \$73,000, wife no income  
 Husband pipefitter, income reduced to \$63,000, health problems, married to teacher, she 4 children  
 Wife has fibromyalgia, intended to upgrade, instead job for 8 months in 2008, \$28,000/yr.  
 Wife quit job before hearing, income imputed at \$15-\$17,000/yr.  
 SSAG “rule of 65” applies, no end date, circumstances different from *Fisher*  
 Range for various incomes \$1,000 to \$1,500/mo. [range estimated at \$1,265-\$1,687/mo. on those found]  
 Order for \$1,400/mo. for 2 years, then \$1,200/mo. indefinite

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

3 year relationship (married 1 plus 3 prior cohabitation; separation 2007  
 W disabled; disability income of \$25,000 after gross up; child from prior relationship; child support from  
 father excluded from her income; after separation sharing home purchased with ex-husband  
 H income \$70,000  
 W seeks \$1,200/mo interim spousal support, to give her 41% NDI; rejected; NDI approach not appropriate  
 given short length of marriage  
 SSAG range: \$225-\$300/mo  
 Interim support of \$300/mo ordered; top end of range because of disability; by excluding child support  
 received by wife from her income, range effectively increased; had this not been done, amount  
 would have been increased by small amount beyond upper end of range to take account of  
 disability

*Fontaine v. Cormier*, [2008] N.B.J. No. 231, 2008 CarswellNB 290, 2008 NBQB 191 (d’Entremont J.)

Together 8 ½ years, no children, separated June 2004, husband 61, wife 49  
 Husband and wife in lobster buying business together, unincorporated business, no assets  
 Assets divided, house sold  
 Husband’s income \$63,000/yr. from lobster sales, rental income  
 Wife split income before separation, paid \$30,509 in 2005, worked in retail jobs since, not working at trial  
 Interim spousal support order Jan. 2007 \$2,666/mo., voluntary payments in 2006 \$18,625 (\$1,552 net/mo.)  
 SSAG range \$669-\$892/mo., 4 ¼ to 8 ½ years  
 Order for \$892/mo., for one more year ending May 2009, 5 years total

*Dufresne v. Dufresne*, [2008] O.J. No. 2289, 2008 CarswellOnt 3422 (Lalonde J.)

Married 30 years, separated 1999, husband and wife 60, traditional marriage  
 3 children 28, 25 and 22, 2 older with husband, younger with wife after separation  
 Child support to wife ended 2007  
 Since 2000, spousal support of \$925/mo.  
 Support increased to \$1,070/mo. in 2007 plus \$150/mo. for medical insurance  
 Husband federal government employee, earned \$96,000 til retirement in 2008  
 Husband’s pension \$46,747/yr. (\$19,000 less after division), remarried, new wife earns \$5,000/yr.  
 Wife nurse, worked 4 days/week in doctor’s office, around child care obligations, earned \$40,000/yr.  
 Wife retired at 60 in 2007, pension \$21,897/yr.  
 Husband applies to terminate/reduce support, wife seeks to continue \$1,070/mo.  
 SSAG “not help in achieving a just result”, \$600/mo. ordered, indefinite, plus \$150/mo. insurance  
 [Estimated range: \$777-\$1,035/mo.]

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

Married 16 years (plus one year cohabitation), separated 2003, husband 58, wife 54  
 Wife’s children 4 and 6 when together, now 26 and 28  
 Husband paid interim spousal support, by agreement: \$4,879/mo. 2005, \$4,600/mo. 2006 and 2007  
 Husband pilot at Air Canada, remarried, earns \$267,845/yr., must retire at 60  
 Wife no income, home-based business selling Japanese health products  
 Range \$5,654-\$7,539/mo., husband’s offer at mid-point vs. wife’s claim for top end  
 Order for \$6,597/mo., indefinite, review in 20 mos. when husband retires

*James v. James*, [2008] B.C.J. No. 689, 2008 CarswellBC 775, 2008 BCSC 482 (Shabbits J.)  
 Together 15 years (married 14), husband 71, wife 56  
 Wife aesthetician, not employed  
 Husband doctor, retired after separation, health problems accepted  
 Income now \$15,618/yr., from OAS, CPP, investments  
 Equal division of family assets  
 Husband's income below Guidelines floor, wife able to earn more, estimated \$20,000/yr.  
 Spousal support adjourned, no support, wife to disclose income

*Smith v. Smith*, 2008 CarswellOnt 1921 (Conway J.)  
 Married 10 years, husband 41, wife 50, no children  
 Entitlement based on need, "lengthy marriage"  
 Wife disabled at marriage, obsessive-compulsive disorder, physical problems  
 Earns \$6,300/yr. as personal care worker, ODSP social assistance \$10,872/yr.  
 Wife seeks support of \$1,556/mo., interim support of \$1,200/mo. from June 2007  
 Husband earned \$45,866 in 2006 as diver, etc., only \$32,927 in 2007  
 Guidelines range \$390-\$520, 5 to 10 years, but dollar-for-dollar deduction from ODSP  
 Guidelines rejected, \$1,200/mo. ordered, no time limit, no review  
 [No mention of disability exception]

*Benson v. Benson*, [2008] O.J. No. 578 (J. Mackinnon J.)  
 Married 25 years, husband 52, wife 48, 2 adult children, traditional marriage  
 Interim support \$1,300/mo.  
 Husband firefighter, but heart attack, kidney disease and diabetes, blind  
 Now on LTD until Oct. 2012, \$62,770/yr.  
 Wife on workers' comp and CPP Disability, \$15,116 (\$6,371 non-taxable), cohabiting, partner \$30,000  
 Guidelines range stated as \$1,500-\$2,000/mo., 44.9 to 51.5% NDI  
 Order for \$1,500/mo., within customary range (36.6 to 47.5% NDI)  
 Support to terminate on his retirement in Sept. 2012, then OMERS pension split  
 [Range with gross-up for wife's income, \$1,432-\$1,909/mo.]

*Gammon v. Gammon*, [2008] O.J. No. 603 (Nolan J.)  
 Together 15 years (married 7), no children, husband 58, wife 44, separated 2004  
 2005 separation agreement: \$130,000 to wife, equalization and lump sum support, waiver of support  
 Application to set aside 6 months later, lump sum support \$25,000 to \$29,000  
 Not in compliance at stage 1 of *Miglin*  
 Husband skilled tradesman at Ford Motor  
 His income: 2005 \$129,093; 2006 \$109,837; 2007 \$90,000  
 Wife rural mail carrier, income 2005 \$23,949; 2006 \$25,956, 2007 \$25,956, then lost job  
 Spousal support: 2005 \$2,500/mo.; 2006 \$2,000/mo.; 2007 \$1,500/mo., Guidelines considered  
 [Range 2005 \$1,971-\$2,629/mo.; 2006 \$1,573-\$2,097; 2007 \$1,201-\$1,601]  
 Husband retired at end of 2007, support to be reconsidered

*Gadzik v. Gadzik*, [2008] B.C.J. No. 206, 2008 BCSC 160 (Wilson J.)  
 Married 25 years, husband 60, wife 55, 2 children 26 and 25, both home, 26-year-old head injury  
 Husband heavy duty mechanic, earns \$60,000/yr.  
 2003 order for spousal support \$1,500/mo., review after 2006  
 Wife not making reasonable efforts for employment, 7 ½ years since separation  
 Income imputed as 20 hours, minimum wage, \$800/mo., plus \$700/mo. draw from RRSP, \$18,000/yr.  
 Husband retiring, job requires heavy physical labour, pension plus half-time, \$45,000  
 Equality of living standards, Guidelines upper end calculated and ordered  
 Order for \$1,250/mo., review when husband 65  
 [Range estimated \$938-\$1,250]

*Fernandes v. Fernandes*, [2008] B.C.J. No. 130, 2008 BCSC 103 (Bracken J.)  
 Married 38 years, husband 68, wife 60, 3 adult children

Wife mostly home, worked on and off, now on long-term disability and CPP, \$20,000/yr.  
 Husband carpenter, injuries, income of \$57,000 from WCB and pensions  
 Both need some home care and assistance  
 Property division included Carpenters pension  
 Guidelines range, after pension division: \$1,053-\$1,404, \$1,229/mo. mid-point  
 Spousal support of \$1,250/mo., indefinite

*Conquergood v. Dalfort*, [2007] B.C.J. No. 2337, 2007 BCSC 1556 (Shabbits J.)

Unmarried cohabitation 6.5 years; both prior relationships; no children  
 Wife lived and worked abroad for extended periods during relationship  
 Husband retired, income \$50,000 (pension and investments); wife income imputed at \$18,000  
 Spousal support \$300/mo for 4 years; low end of range for duration appropriate because parties were establishing themselves in separate lives before separation  
 [Range if 6 years: \$240-\$320, 3 to 6 years; if 7 years, \$280-\$373, 3.5 to 7 years]

*Stemberger v. Stemberger*, 2007CarswellOnt 5913 (Ont. S.C.J.) (Pierce J.)

42 year traditional marriage with 6 children, separation 2004

*Appendix II: Trial Decisions, Without Child Support, Sept. 12, 2007 – July 10, 2008 29*

Husband retired

Agree to split husband's pension [each \$416 per month]; not included in equalization  
 Husband's income after pension division \$26,220; wife's income after pension division \$13,512  
 Range \$397-\$530, wife asks for \$1000 per month [including pension] to equalize incomes under SSAG  
 Court orders \$400 per month; equalization not appropriate; husband had assumed debt; wife had additional income from inheritance, husband's employment pension and RIF already divided in equalization(?); wife will have income from equalization payment

*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

*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

*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

*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

*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

*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]

*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

*Bell v. Bell*, [2007] B.C.J. No. 1105, 2007 BCSC 732 (Halfyard J.)  
 Married 9 years, wife 59, husband 78, no children, 3<sup>rd</sup> marriage for wife, 2<sup>nd</sup> 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

*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

*Kauwell v. Melnyk*, [2007] B.C.J. No. 712, 2007 BCSC 485 (Shabbits J.)  
 Lived together 3 ¾ years, wife 50, husband 54, wife 3 children by previous marriage  
 Wife barber, reflexologist, on social assistance when met, now earns \$12,000 helping seniors  
 Husband welding inspection business and property investments, wife paid \$15,900 through company  
 Husband's draw \$68,000, plus retained earnings  
 Entitlement to spousal support based on need  
 Range \$262-\$350, 22 to 45 months  
 Support of \$350 for 42 months, maximum still modest amount  
 No unjust enrichment re property

*W.(C.L.) v. R.(S.U.)*, 2007 CarswellBC 666, 2007 BCSC 453 (Shabbits J.)  
 Lived together 6 ½ years, wife 45, husband 56, wife 2 children from previous marriage  
 2004 separation agreement: lump sum spousal support of \$31,000, release  
 Wife's workers compensation income \$15,000, husband \$67,000 retired engineer  
 Wife now working at animal hospital, earns \$18,800  
 Agreement valid and enforceable, no unjust enrichment  
 Wife missed 1-year limitation from end of relationship, so no spousal claims  
 Even if not missed, lump sum within Guidelines global range



Range \$5,070/yr. to \$6,760/yr., 3 years 3 mos. to 6 ½ years  
Global range \$16,477 to \$43,940, mid-point \$30,208

*Shurson v. Shurson*, 2007 CarswellNS 142, [2007] N.S.J. No. 129, 2007 NSSC 101 (Legere-Sers J.)  
Married 28 years, 3 children, youngest (22) in university, father pays her \$925/mo.  
Husband 53, wife 50 (47 at separation), husband armed forces  
Spousal support of \$2,500/mo. paid 2004-2006  
Guidelines support indefinite support, but subject to review when pension divided  
Wife earns \$22,747 working 80% part-time, income imputed of \$25,000, even \$30,000  
Husband earned \$160,000 in 2006 (\$140,000 other years), work and pension, repartnered  
Spousal support of \$3,500/mo. ordered  
(Range estimated: \$3,391-\$4,521 if \$160,000 and child support considered)

*Oyama v. Oyama*, 2007 CarswellBC 632, 2007 BCSC 428 (Neilson J.)  
Married 25 years, 3 adult children, husband 63, wife 57, separated 1996  
Equal division of assets, except 2/3 house reapportioned to wife (\$467,000)  
No retroactive spousal support because of reapportionment  
Husband has pension income \$55,000  
Wife earns \$20,000 in insurance business, could increase to \$30,000 in 2 years  
Range: \$1,094-\$1,458 indefinite  
Spousal support of \$300/mo., some concern for overlap with pension division  
For duration of 16 years, then discounted, contingencies, lump sum support of \$50,000

*Vanderlans v. Vanderlans*, 2007 CarswellNfld 119, [2007] N.J. No. 121, 2007 NLUFC 8 (Dunn J.)  
Married 25 years, adult children now 30 and 25  
2001 consent order: \$2,000/mo. combined child and spousal support deductible  
plus \$200 “additional” spousal support to December 2005  
2002 consent order: \$2,000 plus now \$400  
Provisional order 2005 from N.S.: extended support another 5 years, at \$1,600/mo.  
Guidelines range: \$1,533-\$2,044  
Husband RCMP officer, retired at 55 in 2005, pension \$31,000  
N.S. court imputed \$60,000  
Wife health problems, now 55, paid board by husband’s mother  
*Miglin* analysis: stage 1 okay, no change at stage 2  
No evidence on *Boston* double dipping issues  
Provisional order not confirmed

*Lewis v. Lewis*, [2007] B.C.J. No. 561, 2007 BCSC 374 (Powers J.)  
Married 29 years, husband 68, wife 64, 65 in August 2007  
Separation agreement 1995: spousal support \$2,700/mo.  
New agreement 2000: reduced to \$2,500/mo. when husband made \$80,000  
Husband professional engineer, now retired, sold own company  
Husband’s retirement income, including RRSP \$60-\$65,000  
Wife homemaker, now CPP \$14,400, new partner on disability pension \$10,460  
Guidelines range: at \$60,000, \$1,425-\$1,900; at \$65,000, \$1,581-\$2,108  
Spousal support ordered \$1,750, indefinite

*Adams v. French*, 2007 CarswellNS 97, [2007] N.S.J. No. 91, 2007 NSSC 57 (S.C.)(Wilson J.)  
Married 4 years (cohabited 4 ½), 2<sup>nd</sup> marriage, each adult children  
Unequal division of matrimonial assets, husband keeps premarital RRSPs, 66% of house  
Husband chartered accountant, earned \$68,600 in 2005  
Wife in photography business, then real estate broker, earned \$23,900 in 2005  
No compensatory support, as wife established career during marriage  
Range: \$250-\$330/mo., 2 to 4 years (global range: \$6,000-\$17,820)  
Lump sum spousal support of \$7,500 ordered  
*Jones v. Wilson*, [2007] O.J. No. 896, 2007 ONCJ 93 (Thibideau J.)

Together 6 ½ years, wife 55  
 Cohabited more than 3 years in marital relationship, despite husband's arguments  
 Husband earns \$50,000 as long-haul truck driver  
 Wife earns \$15,000 as cleaner, teenage son  
 Guidelines ranges provided for different periods of cohabitation  
 Range: \$306-\$408 for 3 to 6 years, spousal support ordered \$350/mo. for 3 years

*Bramhill v. Dick*, [2007] B.C.J. No. 387, 2007 BCSC 262 (Chamberlist J.)  
 Together 14 years, second relationship, no children  
 Wife multiple sclerosis before cohabitation began, on social assistance in B.C.  
 Wife moving to facility in Alta., income to be \$4,800  
 Husband did not appear, self-employed mechanic, incorporated  
 Tax returns and financial statements provided, underemployed, income imputed \$33,095  
 Guidelines range: \$495-\$660; if wife zero income, \$579-\$772  
 Disability exception noted, interim spousal support \$772/mo. until house sold  
 Duration: disability, long relationship, indefinite

*Owen v. Owen*, [2007] B.C.J. No. 326, 2007 BCSC 230 (Chamberlist J.)  
 Married 37 years, husband 61, wife 57, 4 children, traditional marriage  
 Wife labourer at stockyards and EI, \$24,650/yr.  
 Husband truck driver, income reduced, \$50,000  
 Support on compensatory and non-compensatory basis  
 Guidelines range: \$781-\$1,041  
 Husband claimed business expenses on road, \$1,250/mo., some recognition of expenses  
 Spousal support \$750/mo., indefinite, no review

*Coady v. Coady*, [2006] N.S.J. No. 530, 2007 NSSC 394 (Williams J.)  
 Married 21 ½ years, husband 61, wife 57, 2 adult children, separated 1993  
 Husband mayor in 1993, earning \$92,000, part tax-free  
 Wife no income, depression, stayed in matrimonial home, delayed payment to husband  
 Spousal support \$3,500/mo. agreed in 1993, reduced in two stages to \$3,158 in 1997  
 Husband unilaterally reduced to \$1,083/mo. later in 1997  
 Interim without prejudice variations, to \$2,000/mo. in 2003, to \$1,000/mo. in 2005  
 Husband now receiving only pension, \$28,236, remarried, new wife \$27,600  
 Wife receives pension and rent, \$13,158/yr., daughter lives with her rent-free  
 Guidelines "of limited utility here", retroactive spousal support  
 1998: \$1,900/mo. (estimated range: \$1,586-\$2,114) *The Advisory Guidelines 27 Months Later*  
*Appendix II Case Update, Oct. 5, 2006 - April 18, 2007 7*

1999: \$1,900 (range: \$1,662-\$2,216)  
 2000: \$1,900 (range: \$1,701-\$2,268)  
 2001: \$2,000 (range: \$1,886-\$2,515)  
 2002: \$2,000 (range: \$1,833-\$2,444)  
 2003: \$1,900 (range: \$2,021-\$2,695)  
 2004: \$1,600 (range: \$2,135-\$2,847)  
 2005: \$1,200 (range: \$989-\$1,305)  
 2006: \$650 (range: \$405-\$540), indefinite

Equalization payment from wife offset against retroactive support

*Rezansoff v. Rezansoff*, [2007] S.J. No. 37, 2007 SKQB 32 (Sandomirsky J.)

Married 6 years, second marriage, no children, wife 60, husband 67

Interim spousal support: \$1,200/mo. for 16 mos.

2004 trial: \$1,100/mo., review in 2 years

Husband seeks termination on review, husband now receives \$47,708 in pensions

Wife receives \$6,024 pension, unemployable, health problems

Guidelines range: \$625-\$833, 3 to 6 years, husband paid \$13,014 more than maximum

Non-compensatory support, 6 more months, \$625/mo., 4 years total duration

*Fandrich v. Fandrich*, [2007] B.C.J. No. 40, 2007 BCSC 20 (Masuhara J.)

Together 6 ½ years (5 ½ married), husband 67, wife 55 (52 separation)

Husband owner and operator of helicopter co., earns \$200,000

Wife Irish doctor, not qualified in Canada, now realtor, \$30,000 imputed

Guidelines range: \$1,488-\$1,983, 3.5 to 7 years (\$62,500-\$166,500 taxable)

Reapportionment of assets: 25% of Co. to wife, worth \$627,500

Lump sum spousal support \$40,000

*Gross v. Gross*, 2006 CarswellNWT 80, 2006 NWTSC 66 (Charbonneau J.)

Married 6 years, separated 2000

Husband's child of previous relationship, 9 when married, now 21

Wife immigrant from Moldova, pianist and music teacher, moved to NWT

Now suffering from schizophrenia, treatment, at best part-time employment

Wife on social assistance, property divided equally, seeks \$2,500/mo. support

Husband earns \$83,758; argues SSAG and says range \$400-\$500/mo

Non-compensatory support, indefinite given illness

Guidelines not helpful, "unique" case, \$900/mo. ordered

[Range \$628-\$837, no reference to disability exception]

*Stearnberg v. Stearnberg Estate*, 2006 CarswellBC 2751, 2006 BCSC 1672

(Martinson J.)

Wills variation case, husband 74 at death, wife 52, together 7 years, married 5 1/2

Under prenuptial agreement and will, wife gets 10% of estate, 5 children 18% each

Entitlement to spousal support: wife quit job, moved to husband, caregiver in last years

Entitled to some support, quantum would be determined under Guidelines

Prenuptial agreement fair re property, but not for support

Wife's share varied to 15%, 5 children 17% each

*Fournier v. Fournier*, [2006] N.B.J. No. 443, 2006 NBQB 357 (Wooder J.)

Together 10.5 years (8 married), second marriage, wife 48 (45 separation), husband 49

Wife CPP disability, workers comp (\$13,680 not taxed, grossed up) \$27,792

Marital property divided, both spouses repartnered, no details re partners

Husband earns \$81,095 as mechanical engineer

Guidelines range: \$700 - \$933, 5.25 to 10.5 years

Interim spousal support \$1,200, paid for 2 ½ years (above range, reflected in duration)

Non-compensatory support, \$815/mo., for 5 more years

*Lehtomaa v. Lehtomaa*, [2006] O.J. No. 4130 (S.C.J.)(Shaw J.)

Married 40 years, husband 73, wife 65 (63 separation)

Guidelines range: \$442 - \$590, wife seeks income equalization, \$500 spousal support

Equal lifestyles, not incomes, use means and needs

Husband significant medical issues: loss of arm, hip replacement, cancer, cataracts

Uses scooter, his needs greater

Husband's income \$2,828/mo. (OAS, CPP, pension, workers comp)

Wife's income \$1,648 (OAS, CPP, pension)

Interim spousal support: \$100/mo. to equalize [disability exception?]

*Trewin v. Trewin*, [2006] N.B.J. No. 421, 2006 NBQB 341 (Bell J.)

Married 28 years, wife 52, husband 53, 1 child (30), special needs

Husband RCMP officer, 25 years, retired, then N.B. government, now on disability

Wife health problems too, 7 relocations in RCMP, interim support \$1,700/mo.

Marital debts exceed assets, wife pays husband \$7,218, pensions divided

Wife imputed income of \$6,000, husband receives \$45,800 (incl. grossed-up benefits)

Range: \$1,244 - \$1,658

Maximum \$1,650 ordered, indefinite, to equalize living standards

*Elezam v. Ireland*, [2006] A.J. No. 1374, 2006 ABPC 230 (Norheim Prov.Ct.J.)

Together 6 years, ISO case, B.C. government initiated

Wife in B.C., on social assistance \$920/mo., health problems

Husband truck driver in Alta., earns \$37,400

Range \$262-\$349, 3 to 6 years, \$262/mo. ordered for 3 years