



The Spousal Support Advisory Guidelines

Part One – Understanding the Formulas

Rosemarie Boll

The Spousal Support Advisory Guidelines (SSAGs) have been with us for three years. Although they are gaining acceptance in Canadian courts, there is still a lot of confusion about them. I believe part of the problem arises from the name. People are familiar with the Child Support Guidelines (CSG). The application of the CSGs is universal, mandatory and automatic. In uncomplicated cases, you pin down the parents' incomes, add in the children's extraordinary expenses, run your finger down the table, and there is the magic number – to the penny.

The SSAGs are very different. Notably, they are 'advisory' only – no judge is bound to apply them. Secondly, there are no tables and no magic numbers. Child support can be calculated with accuracy, but spousal support can only be narrowed to a range of reasonable possibilities. The SSAGs are two short formulas followed by 150 dense pages of policies and directions. There is much debate about how to apply those policies and directions. The most favourable interpretation can lead to an award many thousands of dollars higher than the least favourable one. This is why I believe it would be better to omit the word 'Guidelines' and rename them the 'Spousal Support Advisory Formulas.'

There are two basic formulas – the 'With Child Support' formula and the 'Without Child Support' formula. Having dependent children changes everything. One of the most common errors is using the wrong formula. Also, the SSAGs do not automatically apply to all spouses the way the CSGs automatically apply to all children. Claimants must first prove they are entitled to support. Once you have established eligibility, you can use the formulas to find out how much you might get.

Applying the correct formula generates a range of support options. The ranges are framed in two ways: 'quantum' (amount) and 'duration.'

With Child Support

The **‘With Child Support’ formula** is, confusingly, a whole set of formulas that take into account different custodial arrangements (sole, shared, and split custody, support paid for adult or step-children, and so on). In every case, the first step is to calculate the *amount* of spousal support:

1. Determine the Payor’s Individual Net Disposable Income (INDI), which is:
 - a. his Guideline Income (as per the Child Support Guidelines),
 - b. *minus* his taxes, deductions, and the child support he pays.
2. Determine the Recipient’s INDI, which is:
 - a. her Guideline Income,
 - b. *minus* the child support she receives,
 - c. *minus* her taxes and deductions,
 - d. *plus* her Government Benefits and Credits.
3. Apply the appropriate ‘With Child Support’ formula:
 - a. add the Payor’s INDI and the Recipient’s INDI.
 - b. the spousal support amount should be a figure that:
 - i. leaves the Payor with 54% – 60% of the combined INDIs and
 - ii. gives the Recipient 40% – 46% of the combined INDIs.

So, it is important to note that the formula generates a *range* of amounts, not a fixed figure.

The second step is to determine the *duration* of support – how long should support be paid? The SSAGs include two formulas.

1. The *length-of-marriage* test, generally applied to marriages of more than 10 years:
 - a. the upper end of the range is 1 year of support for each year of marriage; and
 - b. the lower end of the range is .5 year of support for each year of marriage.
2. The *age-of-children* test, generally applied to marriages of fewer than 10 years:
 - a. The upper end of the range is the date when the last child finishes high school; and
 - b. The lower end of the range is the date the youngest child starts attending school full-time.

Where there are different results in applying the two formulas, choose the longer one.

However, many judges do not impose a time limit at all. This is because there are so many variables – remarriage, second families, the Recipient’s progress towards self-sufficiency, and so on. Rather than trying to make a prediction in the face of so many uncertainties, the judge can say the Order is reviewable at a specific time (e.g. when the Recipient completes training or a child reaches a particular age). Alternatively, the judge can leave it for either party to apply to vary the Order when there is a change in circumstances.

The SSAGs are very different. Notably, they are ‘advisory’ only – no judge is bound to apply them. Secondly, there are no tables and no magic numbers. Child support can be calculated with accuracy, but spousal support can only be narrowed to a range of reasonable possibilities.

Without Child Support

The **'Without Child Support' formula** starts with different figures. It doesn't use Guideline Income, it uses *gross* (before tax) *income*. Secondly, the duration is calculated according to the years of co-habitation, not just the years of marriage (for simplicity's sake, I will still call it 'marriage').

First, to determine the *amount* of spousal support:

1. Calculate the *gross income difference* between the parties,
2. Determine the percentage of income-sharing according to the length of marriage:
 - a. For marriages of fewer than 25 years, multiply the length of the marriage by:
 - i. Upper range – 2% per year;
 - ii. Lower range – 1.2% per year;
 - iii. Then multiply the *gross income difference* by this percentage (1.2% – 2%) to obtain the amount of spousal support. The maximum sharing is 50/50.
 - b. Marriages of 25 years or more are treated differently. Do not factor in the years of marriage. This formula jumps directly to a percentage of the *gross income difference*:
 - i. Upper range, calculate 50% of the gross income difference;
 - ii. Lower range, calculate 37.5% of the gross income difference.

Next, determine the duration.

1. For marriages of fewer than 20 years, calculate .5 to 1 year for each year of marriage.
2. For marriages of 20 years or longer, the duration is indefinite. 'Indefinite' does not mean forever, it means there is no set end date – each case must be assessed on its own facts.

Ultimately, you will arrive at the range of support – the maximum and minimum amounts and the maximum and minimum duration. When you compare the high estimate with the low estimate, the difference can be huge – so how do you decide where you fit in the range? Many people take the easy road and just settle for the middle number, but end up short-changed. The SSAGs set out an extensive list of exceptions, limitations, and qualifications that can push the award past either end. And there are other considerations – should you trade off quantum for duration? What about a lump sum? A careful analysis can profit you immensely. The July 2008 Spousal Support Advisory Guidelines¹ are 166 pages long, and the March 2010 *New and Improved User's Guide*² is 56 pages long. It is a lot to go through, but it will be well worth it if you want to put forward your best possible case.

In my next column I will highlight some of the arguments you can make to maximize your entitlement or minimize your exposure for spousal support.

Notes

1. The Spousal Support Advisory Guidelines 2008
http://www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/pdf/SSAG_eng.pdf
2. The Spousal Support Advisory Guidelines: A New and Improved User's Guide to the Final Version
http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/tool-util/topic-theme/ug_a1-gu_a1

Rosemarie Boll is Staff Counsel with the Family Law Office of Legal Aid Alberta, in Edmonton, Alberta.