



The Spousal Support Advisory Guidelines

Part Two – Fitting in the Ranges

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As discussed in the last issue of **LAWNOW**, the Spousal Support Advisory Guidelines (SSAGs) are not a precise measure of a person's support claim. Instead, applying the correct formula (*with child support* or *without child support*) results in two ranges – amount and duration. For example, say the formula forecasts an award between \$450 and \$700 per month, with a term between 3 and 6 years. The low range is $\$450 \times 36$ months = \$16,200. The high range is $\$700 \times 72$ months = \$50,400. The difference, \$34,200, is huge. How do you decide what's fair?

A. Section 9 – Using the Spousal Support Advisory Guideline Ranges

Several factors can push the numbers (amount and/or duration) higher or lower – or even outside – the ranges. The factors which can nudge the numbers up or down are:

9.1 Strength of any compensatory claim

- ↑ The quantum goes up if the claimant suffered significant economic disadvantages because of the marital roles (e.g. the claimant gave up job opportunities to benefit the other spouse's education or career).
- ↓ The quantum goes down if, post-separation, the claimant has need but that need does *not* arise from the marital roles (e.g. simply losing the former standard of living).

9.2 Recipient's Needs

- ↑ The claimant has limited income and/or earning capacity, because of age, health, or other circumstances.
- ↓ The claimant already has a solid base of employment, other income, or reduced living expenses (living in a mortgage-free matrimonial home, subsidized housing, or family-provided housing, including living with a new partner).

No single factor controls the outcome. Several may operate in any one case, sometimes pulling in different directions.

9.3 Age, Number, Needs and Standard of Living of Children

- ↑ A child with special needs usually demands more time and resources from the care-giving parent.
- ↑ The claimant cared for infants or toddlers.
- ↑ Post-separation, the claimant and the children have a lower standard of living than the payor.
- ↓ More children means less income is available to pay spousal support ('squeezing' the range); however, there are often strong reasons to go higher within this 'depressed' range.
- ↓ The claimant cared for an older or an adolescent child.

9.4 Payor's Needs and Ability to Pay

\$20,000 is 'the floor' below which the payor has no obligation to pay support.

- ↓ The payor has difficulty maintaining a modest standard of living.
- ↓ The payor has large compulsory deductions, including pension deductions, compared to the claimant.
- ↓ The payor spends significant sums directly on the children's expenses during the payor's parenting time.

9.5 Work Incentives for Payor

The SSAGs recognize the need to motivate the payor to keep working:

- ↓ The payor has additional out-of-pocket costs of going to work every day which are not subsidized by the employer or tax deductions (e.g. substantial costs for clothing, commuting to work, parking, tools, etc.)
- ↓ The payor is in the work force and claimant is not (particularly when the claimant has no dependent children).

9.6 Property Division and Debts

- ↑ There is very little property to divide.
- ↓ The claimant receives a large amount of property.
- ↓ The claimant owns sizeable exempt or excluded assets.

When the payor assumes a greater share of debts it reduces the numbers; conversely, when the claimant takes on a greater share it raises the numbers.

9.7 Self-Sufficiency Incentives

- ↑ The claimant needs money now for retraining or education that will lead to better-paid employment and less support in the long term.
- ↓ An incentive generally encourages the claimant to make greater efforts to self-sufficiency.

No single factor controls the outcome. Several may operate in any one case, sometimes pulling in different directions. The ranges accommodate local and regional differences, recognizing that awards in some parts of the country are higher than others¹.

B. Section 10 – The Next Step: Restructuring

Having narrowed the range, you may want more flexibility with the actual payments. ‘Restructuring’ means trading off amount against duration.

There are three ways to restructure an award:

1. increase the monthly payments and shorten the term (front-end loading);
2. lower the monthly payments and extend the term; or
3. make a lump sum payment, which combines amount and duration.

Unlike monthly payments, lump sums are not tax deductible for the payor and not taxable income for the recipient.

10.2.1 Restructuring by front-end loading

Increasing the payment and shortening the term will quickly cut the ties between the spouses and allow them to go their separate ways. It is useful in short marriages without children where the support is meant to let the claimant transition to a lower standard of living. Another way to front-end load is with step-down payments, for example \$1,500 per month in year one, \$1,000 per month in year two, and \$750 per month in the final year. The total value of the award (in this case \$39,000) should still fall within whatever global range was generated by the formula.

A lump sum is another type of front-end loading. In very short marriages with a modest support entitlement and sufficient property, a lump sum achieves a clean break. It can be a single payment or a few payments spread over time. Unlike monthly payments, lump sums are not tax deductible for the payor and not taxable income for the recipient.

¹ Although the SSAGs are intended to do away with the imprecision and uncertainty of budgets, they are only advisory. Be sure to prepare and submit a budget with your supporting material.

10.2.2 Restructuring by Extending Duration and Reducing Amount

Decreasing the payment and lengthening the term can be practical in medium-length marriages where the claimant has long-term need and would be better off with modest supplements to other income over a longer period (e.g. the claimant has a long-term disability and receives disability benefits). Similarly, the payor might extend the term until the claimant reaches retirement age and pension income kicks in. It is also beneficial when there is a cross-over from the *with child support* formula to the *without child support* formula. This happens when children who were dependent at the time the spouses separated have now become independent.

The only limit to restructuring is that the overall value of the restructured award should remain within the global – or total – amounts generated by the formula when amount is multiplied by duration.

The third and final part of this series on the SSAGS, on Ceilings and Floors, Exceptions, and Self-Sufficiency, will appear in my next column.

Notes

1. The Spousal Support Advisory Guidelines 2008 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 www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/tool-util/topic-theme/ug_a1-gu_a1/index.html

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