

Spousal Support Advisory Guidelines –

A brave new world for practitioners?

On May 1, 1997, the family law landscape changed dramatically with the introduction of the *Federal Child Support Guidelines*. On January 27, 2005, the landscape changed once again when the Department of Justice Canada released the Spousal Support Advisory Guidelines: A Draft Proposal.

However, the spousal support advisory guidelines (SSAG) differ dramatically from the *Child Support Guidelines*. Most notably, while the *Child Support Guidelines* were enacted as regulations pursuant to the *Divorce Act*, R.S.C. 1995, c.3 (2nd Supp.), the SSAG are informal guidelines, intended to operate on an advisory basis only within the existing legislative framework.

The *Child Support Guidelines* introduced the concept of table amounts of support tied to the payor's level of income. Once income is determined, identifying the appropriate quantum of support is, in the majority of cases, a simple matter of looking up the table amount. The SSAG, on the other hand, set out a different approach. Instead of tables, the SSAG contain two distinct formulas which provide ranges for both quantum and duration of spousal support. While the formula for determining ranges in situations where there are no dependent children of the relationship is straightforward, the formula for cases where there are dependent children is complex and requires the use of specialized software to generate the calculations. One of the challenges lawyers will face is understanding the conceptual framework behind the SSAG and the application of the formulas. Like the *Child Support Guidelines*, the SSAG emphasize determining income. To the extent there are issues with respect to determining income under the *Child Support Guidelines*, the same issues will arise under the SSAG.

What are some of the limitations lawyers should be aware of? First, the issue of entitlement is not dealt with under the SSAG. Entitlement remains a threshold issue to be determined before the guidelines will be applicable.

Secondly, the guidelines do not deal with the effect of a prior agreement on spousal support. This issue, like entitlement, is

outside the scope of the guidelines given their informal nature. The primary application of the guidelines is to initial determinations of spousal support upon separation or divorce. Accordingly, the third limitation is with respect to subsequent reviews and variations. While the guidelines can be applied in certain situations, such as increases in the recipient's income and decreases in the payor's income, they do not deal with more complex situations such as re-partnering and second families.

Since the SSAG produce ranges for both quantum and duration of spousal support, there is considerable scope for tailoring the outcome to the unique circumstances of each particular case. The draft proposal also promotes the use of re-structuring by trading off quantum against duration in order to produce solutions that most appropriately meet the needs of individual clients. Accordingly, lawyers will need to be creative in advocating on behalf of their clients and identifying, together with their clients, the solution that best fits each case.

Promoting consistency, simplifying the process, reducing conflict and encouraging settlement are worthwhile objectives. It is too soon to tell whether the SSAG will achieve these objectives. Since they are truly advisory, their use is intended to be voluntary rather than mandatory. This begs the question: will the SSAG promote consistency or encourage even greater inconsistency from region to region and province to province? How much reliance will lawyers be able to place on the SSAG in advising their clients?

The SSAG are, in a sense, the first iteration of an attempt to formulate another approach to spousal support which shifts the focus away from conventional means of assessing support based on budgets. The SSAG do not, unlike the *Child Support Guidelines*, have the force of law. For now, they are another tool in the lawyer's arsenal.

Yvonne Bernstein is a claims manager with LAWPRO.