

Everything You Wanted to Know About SSAG (but were afraid to ask!) – April, 2009

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What are the Spousal Support Advisory Guidelines (“SSAG”)?

In January of 2005, the Federal Department of Justice released a paper entitled “Spousal Support Advisory Guidelines: A Draft Proposal”, prepared by Professors Carol Rogerson and Rollie Thompson. Many follow up papers, citing cases and trends and making slight modifications to the original draft, were released subsequently, culminating in the final paper, “Spousal Support Advisory Guidelines” (the “SSAG”), released in July of 2008.

The SSAG are guidelines which address the issues of amount and duration of spousal support. The SSAG are *not* legislated and operate on an advisory and completely voluntary basis only. The SSAG do not deal with entitlement to spousal support, just amount and duration of spousal support once entitlement has been found.

What are the formulas under the SSAG?

The SSAG provide two basic formulas (and two hybrid formulas) which produce ranges for both the amount and the duration of spousal support. It is important to remember that amount and duration are interrelated parts of the formulas, and cannot be considered in isolation.

The first formula is the “Without Child Support” Formula, which applies when there are no children of the marriage, or when there are children, but they are no longer dependent as of the date of separation. This is the most straight-forward formula which the authors of the SSAG joke can be done on the “back of an envelope.” Of course, a computer makes the calculation that much easier!

The next formula is the “With Child Support” Formula, which applies when there are dependent children of the marriage *and* a concurrent child and spousal support obligation payable to the same person. This formula is very complex and *cannot be done by hand* unless you are a skilled lawyer, accountant and mathematician. This formula necessitates the use of computer software.

Finally, there are two hybrid formulas: one applies where the payor of spousal support is the custodial parent; the other applies where the parties are not paying table support under the CSG to one another, but are supporting an older child directly (usually while the child is undertaking post-secondary education). While not as complex as the “With Child Support” Formula, these two formulas do require a gross-up of child support as part of their calculations, which is most easily done by a computer program.

... hence, our software module – CHEQUEmate!

What is CHEQUEmate?

The CHEQUEmate Spousal Guidelines Calculator (“CHEQUEmate”) is one of the DIVORCEmate Tools One modules. CHEQUEmate quickly calculates the ranges of amount and duration of spousal support payments in accordance with the formulas contained in the SSAG.

What is the “Without Child Support” Formula?

Amount ranges from 1.5% to 2.0% of the difference between the spouses' gross incomes (the “gross income difference”) for each year of marriage (including pre-marital cohabitation), up to a maximum of 50.0%.

[The range remains fixed for marriages/cohabitation of 25 years or longer at 37.5% (1.5% x 25) to 50.0% (2.0% x 25) of the gross income difference. The upper end of this maximum range is capped such that the recipient does not receive more than 50% of the parties' NDI (“net income cap”).]

Duration ranges from 0.5 to 1 year for each year of marriage (including pre-marital cohabitation). Where the marriage/cohabitation is 20+ years, or where the marriage/cohabitation is 5+ years and the age of the recipient plus the years of marriage/cohabitation is 65+ years (“Rule of 65”), support will be indefinite (unspecified) in duration.

How do I determine a party's income?

The starting point for the determination of a party's income is the definition of income under the Federal Child Support Guidelines (the “CSG”), which includes the adjustments to income under Schedule III of the CSG and the adjustments under sections 17, 18 and 19 of the CSG.

However, unlike the CSG, social assistance is not to be treated as income for either party, for the purposes of the SSAG. Nor are any child-related benefits that a spouse receives for a child other than a child of the marriage to be included in income for SSAG spousal support purposes.

Income under the SSAG also includes government benefits (Canada Child Tax Benefit, Universal Child Care Benefit, National Child Benefit, provincial top-ups and supplements, GST refunds), and refundable credits (refundable medical credits, various other provincial benefits and schemes).

What is the “net income cap”?

In long marriages, a straight application of the formula can result in the recipient receiving more than 50% of the spouses' *net* income, notably where the recipient has little or no income and the payor is still employed and subject to tax and employment deductions. The authors have indicated that this result should never occur and have therefore introduced a “net income cap” in the final paper. The “net income cap” sets the upper end of spousal support at the point at which the net income of the parties is equalized. In other words, the spousal support is capped at the amount at which the parties each have 50% of the net disposable income.

The net disposable income for the purposes of this cap is calculated as follows:

$$\text{NDI} = \text{CSG Income} + \text{UCCB} - \text{Social Assistance} \pm \text{Child Support (basic/table amount and special expenses)} \pm \text{Spousal Support} - \text{Income Taxes} - \text{CPP} - \text{EI} - \text{Life Insurance} - \text{Union/Professional Dues} - \text{Extended Health/Vision/Drug Plan} + \text{Government Benefits and Credits}.$$

Note that the calculation of NDI here is more limited and may be different than the SUPPORTmate NDI figure, which allows the user to adjust NDI by the inclusion of other miscellaneous source deductions (including RRSP and RPP contributions), taxable benefits, plus or minus any other factors affecting cash flow.

It is important to note that the calculation of net disposable income for the purposes of this cap specifically excludes mandatory pension contributions. Accordingly, if a party is making mandatory pension contributions, the recipient may well receive more than 50% of the NDI at the upper end of the range. These mandatory RPP contributions are instead a factor to be considered in determining the appropriate location of spousal support within the range.

What is the “With Child Support” Formula for “Amount”?

Amount:

Determine the range of spousal support amounts that would be required to leave the lower income recipient spouse with between 40% and 46% of the parties' combined Individual Net Disposable Incomes (“INDI”):

Typical Sole Custody*:

Payor's INDI = CSG Income – Child Support (Basic Table + share of Special Expenses)
– Taxes/Deductions + Gov't Benefits/Credits – Spousal Support

Recipient's INDI** = CSG Income – Child Support (Notional Basic Table + share of Special Expenses) –
Taxes/Deductions + Gov't Benefits/Credits + Spousal Support

*Split and shared custody situations follow similar logic. For a more detailed breakdown of the Child Support deducted from INDI in each custody situation, see the answer to the question “What amounts are deducted as “Child Support” in the calculation of each party's INDI in the “With Child Support” Formula of SSAG?” below.

** The child support paid by the payor to the recipient is not included in the recipient's INDI.

According to the final SSAG paper, where all children are in shared custody, the SSAG range will be extended upward or downward, if necessary, to include a 50/50 split of NDI, calculated as CSG Income + UCCB - Social Assistance +/- Child Support (basic/table amount and special expenses) +/- Spousal Support - Income Taxes - CPP - EI - Life Insurance - Union/Professional Dues - Extended Health/Vision/Drug Plan + Government Benefits and Credits. Note that the calculation of NDI here is more limited and may be different than the SUPPORTmate NDI figure, which allows the user to adjust NDI by the inclusion of other miscellaneous source deductions (including RRSP and RPP contributions), taxable benefits, plus or minus any other factors affecting cash flow.

What is the “With Child Support” Formula for “Duration”?

Duration:

Initial orders: Spousal support is indefinite (duration not specified), subject to cumulative durational limits implemented by review or variation (set out below).

On Review/Variation:

The *lower* end of the spousal support range is the longer of:

- one half the number of years of marriage/cohabitation*;
- number of years until youngest child starts full-time school**.

The *upper* end of the spousal support range is the longer of:

- number of years of marriage/cohabitation*;
- number of years until youngest child finishes high school**.

*Length of Marriage Test (typically for medium/longer marriages of 10 years +):

- 0.5 to 1 year of support for every year of marriage/cohabitation. Where the marriage/cohabitation is 20+ years, or where the marriage is 5+ years and the age of the recipient plus the years of marriage is 65+ years (“Rule of 65”), support will be indefinite (unspecified) in duration.

**Age of Children Test (typically for shorter/medium marriages of less than 10 years):

- at the lower end: number of years until youngest child starts full time school;
- at the upper end: number of years until youngest child finishes high school.

What is included in each party's INDI under the "With Child Support" Formula of SSAG?

The determination of Individual Net Disposable Income ("INDI") for the payor and the recipient in sole, shared and split custody arrangements is set out in the above-noted boxed definition of the "With Child Support" Formula for amount.

INDI includes government benefits (Canada Child Tax Benefit, Universal Child Care Benefit, National Child Benefit, provincial top-ups and supplements, GST refunds), and refundable credits (refundable medical credits, various other provincial benefits and schemes), which are considered to be income under the SSAG.

However, when calculating INDI, be aware that social assistance is not to be included as income, nor are any child-related benefits that a spouse receives for a child other than a child of the marriage. Be further aware that mandatory pension contributions are *expressly* not allowed as deductions from income.

What is Notional Basic Table Child Support?

Notional child support is a "notional" amount of child support that a custodial parent is presumed to spend on the child(ren) in his/her care. This notional amount is approximated by determining the basic table amount that the custodial parent would have to pay (if not the custodial parent) under the CSG based on his/her income. In other words, the CSG table amount is used as a proxy measure of this notional amount. This notional amount is then deducted from the custodial party's INDI.

Why is there so much confusion about "INDI"?

The INDI confusion may arise from the "boxed" definition of the "With Child Support" Formula found on page 76 of the SSAG, which does not expressly mention the +/- of spousal support in the first step, and is therefore somewhat misleading in its definition. If, however, you look at the second step in the "boxed" definition, the necessary inclusion/deduction of spousal support from INDI, as appropriate, is implicitly evident, since the only way to determine the range of spousal support is to deduct it from the payor's INDI and include it in the recipient's INDI.

What makes this calculation of INDI so complex and difficult is the fact that as the spousal support amount changes, so do the Special Expenses' component of Child Support (if applicable), the Taxes and Deductions and the Government Benefits and Credits. So the question becomes, how do you solve for an answer, when the answer affects the components making up that answer?

This spousal support range can only be determined by complex trial and error mathematical calculations, known as "iterations". These iterations are most easily calculated by a computer and specialized software, namely CHEQUEmate.

So while it is important to understand the logic and mathematics that go into these tricky calculations, it's not necessary to do these calculations yourself – all you have to do is push the "Calculate" button, and CHEQUEmate does the rest!

What is the difference between INDI and NDI?

Net Disposable Income ("NDI" in SUPPORTmate) is the "food, clothing and housing" money available (ie. the actual cash in hand) for each party *and* the child(ren) living with him/her, after payment of taxes, CPP, EI, other adjustments etc. and after receipt of the Child Tax Benefit and GST credit, if any. The payor's NDI *excludes* the actual child support paid to the recipient. The recipient's NDI *includes* the

actual child support received from the payor and does *not* remove any notional support from the recipient. The SSAG often refer to this as *Family Net Disposable Income*.

Individual Net Disposable Income (“INDI”) under SSAG is the “food, clothing and housing” money available for each party individually, *not including* the child(ren) living with him/her. INDI *excludes* the actual child support paid by the payor to the recipient and any notional support a custodial parent is presumed to spend on the children in his/her care. For a more detailed discussion of the child support excluded from INDI, see the next question.

What amounts are deducted as “Child Support” in the calculation of each party’s INDI in the “With Child Support” Formula of SSAG?

The amounts differ for the payor and the recipient depending on the custody arrangement:

Custody Arrangement	Payor	Recipient
Sole	Basic Table + share of Special Expenses	Notional Table + share of Special Expenses
Shared	Basic Table (even if payor is only paying setoff amount. If payor is paying more or less than the setoff amount, adjustment <i>may</i> be needed.*) + share of Special Expenses	Basic Table (even if payor is only paying setoff amount. If payor is paying more or less than the setoff amount, adjustment <i>may</i> be needed.*) + share of Special Expenses
Split	Basic Table (for children with recipient) + Notional Table (for children with payor) + share of Special Expenses	Basic Table (for children with payor) + Notional Table (for children with recipient) + share of Special Expenses

* Sole and shared custody often result in the same spousal support amounts under SSAG because the Basic Table amount in shared custody is equal to the Notional Table amount in sole custody (although the child support amounts and the corresponding family NDI apportionment continue to be very different in sole and shared custody situations.) However, where the child support setoff amount has been adjusted in accordance with section 9(b) and/or (c) of the CSG and the S.C.C. decision, *Contino v. Leonelli-Contino*, 2005 SCC 63, an adjustment may have to be made to the setoff amount for the purposes of the SSAG calculation, depending on the reason for the adjustment. Refer to the SSAG, section 8.6.2 for further details.

What is the hybrid “Payor of Spousal Support is Custodial Parent” Formula?

<p>Amount:</p> <ol style="list-style-type: none"> Reduce the payor’s CSG Income by the “grossed-up” Child Support (Notional Basic Table + share of Special Expenses). Reduce the recipient’s CSG Income by the “grossed up” Child Support actually being paid by the recipient (Basic Table + share of Special Expenses, or Applicable Actual Amount). Determine the adjusted gross income difference between the spouses. Amount ranges from 1.5% to 2.0% of the adjusted gross income difference for each year of marriage (including pre-marital cohabitation), up to a maximum of 50.0%. <p>Duration ranges from 0.5 to 1.0 year of support for each year of marriage (including pre-marital cohabitation). Where the marriage/cohabitation is 20+ years, or where the marriage/cohabitation is 5+ years and the age of the recipient plus the years of marriage/cohabitation is 65+ years (“Rule of 65”), support will be indefinite (unspecified) in duration.</p>
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What formula do I use when there are older children for whom the parents are contributing an amount of child support other than the Basic Table amount under the CSG?

In cases where child support for an older child is determined under s. 3(2)(b) of the CSG (eg. child lives away from home or makes a large contribution to his/her education), such that child support is paid on a Paras/budget basis, the authors of the SSAG have suggested that it might be easier and cleaner to use a variation on the “Without Child Support” formula (similar to the hybrid “Payor of Spousal Support is Custodial Parent” Formula set out above) in calculating the amount of spousal support:

- a. Determine each spouse’s *actual* child support contribution under s. 3(2)(b) of the CSG.
- b. Reduce each spouse’s CSG Income by his/her “grossed up” *actual* child support contribution.
- c. Determine the adjusted gross income difference between the spouses.
- d. Amount ranges from 1.5% to 2.0% of the adjusted gross income difference for each year of marriage (including pre-marital cohabitation), up to a maximum of 50.0%.

In these “older child” cases, once the child ceases to be a “child of the marriage”, there may be a transition or “cross over” to the “Without Child Support” formula in any event.

CHEQUEmate contains a section called “Post-secondary Option” under the “Without Child Support” formula that allows for this second hybrid calculation.

Do I need to consider anything in addition to the formulas?

It is extremely important to keep in mind that the SSAG are much more than just mathematical formulas to be applied. In addition to the formulas, you must consider:

- Entitlement;
- Location within the Ranges;
- Restructuring;
- Ceilings and Floors;
- Exceptions;
- Other Miscellaneous Issues in the SSAG.

When should I consider entitlement?

The SSAG do not deal with the threshold issue of entitlement to spousal support, just the amount and duration of spousal support *once entitlement has been found*. In other words, there must be a finding (or agreement) on entitlement *before* applying the SSAG formulas.

Thereafter, entitlement continues to be an issue in assessing/analyzing spousal support vis-à-vis location within the ranges, restructuring and exceptions.

Continuing entitlement also arises on variation and review, particularly in applications to terminate spousal support.

In many cases, the range of support under the SSAG is very broad. How do I know where in the range support should be?

The SSAG discuss many factors to be considered in determining the appropriate placement of support within the range generated by the formulas. We have highlighted *some* of these factors for you.

The following factors *may* favour a support award at the higher end of the range:

- The recipient has a strong compensatory claim (eg. recipient moved/gave up employment for payor's benefit; recipient funded payor's education/training; recipient sacrificed employment opportunities because of child care).
- The recipient has limited income.
- The recipient has limited earning capacity.
- The recipient has compelling needs and standard of living.
- The recipient is older.
- The recipient will be undertaking retraining or education in the immediate future which is aimed at promoting self-sufficiency.
- The recipient has primary care of very young children, several children and/or special needs children (ie. age, number and needs of the children can restrict the custodial parent's ability to work).
- The marriage is long term.
- The marriage is short with young children and a stay-at-home custodial parent.
- There is no property to be divided.
- The recipient is carrying significant family debts (but not severe enough to fall within debt payment exception).
- There are local or regional differences (eg. parts of Ontario, especially 416 and 905 area codes).

The following factors *may* support an award at the lower end of the range:

- The recipient has a weak compensatory claim.
- The payor has limited income.
- The payor has limited earning capacity/ability to pay.
- The recipient does not have significant needs (eg. recipient has solid employment/income; recipient has reduced living expenses (ie. subsidized housing; mortgage free matrimonial home; shared housing costs)).
- The recipient has remarried/repartnered.
- The payor has significant needs.
- The recipient is younger.
- There is an unequal division of property in favour of the recipient.
- The recipient holds sizeable exempt or excluded assets after division of property.
- The payor is carrying significant family debts (but not severe enough to fall within debt payment exception).
- In the case of a traditional marriage, the payor has costs associated with going to work, in contrast to the non-working recipient.
- An incentive for the recipient to make greater efforts towards self-sufficiency is needed (although imputing income can also address this factor).
- There are local and regional differences (eg. Atlantic provinces).
- The payor has significant direct access costs (especially important when the payor is at the lower end of the income spectrum).

- The payor makes mandatory deductions for pension contributions (especially important when the payor is at the lower end of the income spectrum).

What is restructuring under the SSAG?

The SSAG permit spousal support awards to be “restructured” if a straight application of the formulas does not generate appropriate awards. In other words, restructuring is an important aspect of a SSAG analysis *after* the formulas have been applied to generate ranges for amount and duration.

“Restructuring” is the trade-off of amount against duration to arrive at an award within the global amount generated by the formula when amount is multiplied by duration. Awards may be restructured in three ways:

- front-end loading (increasing amount by shortening duration);
- extending duration (by decreasing amount);
- formulating lump sum payments (by combining amount and duration).

Restructuring applies primarily in three types of cases under the Without Child Support Formula:

- shorter marriages without children, where a clean break is wanted, or where a period of transition is needed to allow the recipient to adjust to a lower standard of living;
- long-term disability after a medium-length marriage, where more modest supplements to income over a longer period of time would be preferred. (It may be that restructuring in these cases is inadequate, requiring a departure from the global ranges altogether through the illness/disability exception.)
- longer marriages where the formula generates a time limit but current practice dictates indefinite (unspecified) support, and so amount may be reduced to allow for an extended duration.

Because restructuring ideally requires a fixed duration to trade off against amount, restructuring will generally only be advisable in cases where the formula generates time limits, rather than indefinite (duration not specified) support. Restructuring will therefore have limited application under the With Child Support Formula, primarily in cases where the recipient wants spousal support above the upper end of the range for a shorter period (eg. to pursue a more expensive educational program, often in shorter marriage cases). To convert periodic payments to a lump sum, the payor must have assets or resources available to make the lump sum payment. For front-end loading to occur, the following cases would be prime candidates, given the payor’s additional ability to pay:

- only one child;
- shared custody;
- two children, no s. 7 expenses and higher incomes;
- higher incomes generally.

For a sophisticated restructuring calculation, use DIVORCEmate’s SUMmate Quantum v. Duration Analyser, which will take into account the time-value of money and the income tax consequences of periodic spousal support.

Is there a ceiling beyond which the SSAG formulas do not apply?

The SSAG provide that where the payor has a gross annual income of more than \$350,000, the formulas should no longer be automatically applied to divide income beyond that threshold. The \$350,000, however, is not a cap on spousal support, as spousal support can and often will increase for income above that ceiling. Nor does the ceiling bar the continued use of the formulas as one method of arriving at an amount in a particular case. Instead, the court will have to exercise discretion in fixing the amount of spousal support.

CHEQUEmate will flag a payor's gross annual income that is over \$350,000 in the summary box on pages 2 and 3 of the printout. The software will, however, continue to apply the SSAG formulas, for the purposes of allowing the user to possibly formulate an argument as to how the court might exercise its discretion (being mindful that the continued application of the formulas over the ceiling without consideration of the specific facts of the case is not advocated by the SSAG).

Is there a floor below which the SSAG formulas do not apply?

The SSAG provide that where the payor has a gross annual income of \$20,000 or less, no spousal support should be payable. There is an exception, however, for support to be paid below the income floor in exceptional cases where the payor spouse has significantly reduced expenses (eg. living with parents or otherwise has significantly reduced living expenses; both spouses retired on low incomes).

Note that there is also the possibility of an exception to the formulas where the payor's income is more than \$20,000 but less than \$30,000, to eliminate a "cliff effect" of the floor of \$20,000. In these cases, it might be necessary to depart from the lower end of the range, depending on the payor's circumstances and his/her ability to pay.

CHEQUEmate will flag a payor's gross annual income that is less than \$20,000, or between \$20,000 and \$30,000 inclusive, in the summary box on pages 2 and 3 of the printout, but will continue to apply the formulas for the purposes of allowing the user to formulate an argument as to whether or not support should be awarded in accordance with the formulas.

How do I know if I should be outside the SSAG range altogether?

The SSAG formulas are intended to generate appropriate results in a wide range of *typical* cases. However, some cases are *unusual*, warranting special treatment. Also, some of the factors to be considered in placement within the SSAG ranges may be so *extreme* as to push an award outside the formula ranges altogether. These unusual or extreme situations are considered "exceptions" to the SSAG.

What are the exceptions to the SSAG?

Exceptions are required for *unusual* or *extreme* cases. Exceptions are recognized categories of departures from the ranges under the formulas, and are a "last step" to be used only where location within the ranges and restructuring cannot accommodate the unusual facts of a specific case.

The spouse claiming to fall within one of these exceptions bears the burden of proof.

The exceptions under the SSAG (not intended to be an exhaustive list) are as follows:

1. Compelling Financial Circumstances in the Interim Period:
 - Where there are compelling financial circumstances at an interim stage (eg. one spouse may have to carry large and often unmovable expenses, most likely for housing or debts, in the short run; one spouse may have short term transitional needs at the interim stage).
2. Debt Payment:
 - Family debts exceed assets, the payor is carrying a disproportionate share of those debts and debt payments are excessive or unusually high.

3. Prior Support Obligations:

- The payor (or recipient) has prior spousal or child support obligations (either through an agreement or as a custodial parent), requiring that spouse's income to be adjusted prior to applying the formulas ("first family first" exception). This exception is handled by CHEQUEmate.

4. Illness and Disability:

- The recipient's illness or disability is not accommodated by the maximums in the ranges or by restructuring (eg. young recipient; short marriage; payor has low income). Best solution may be to lengthen duration beyond range, but maintain amount at lower end of range.

5. Compensatory Exception in Short Marriages Without Children:

- The recipient has a large compensatory claim disproportionate to the length of the marriage, particularly in short to medium length marriages where there are no children (eg. recipient gives up or accepts lesser employment to accommodate payor's employment transfer(s); recipient moves across country to marry payor and gives up employment/business; recipient works to put payor through post-secondary or professional program, but separates before enjoying payor's enhanced earning capacity).

6. Property Division, Reapportionment of Property:

- Because B.C.'s legislation empowers a court to reapportion property between spouses on grounds that overlap with spousal support considerations, spousal support (in B.C. only) may have to be reduced below the SSAG formula range where a sufficiently large reapportionment order has been made on support grounds.
- No other explicit exception for high property awards should be recognized given that property and support are governed by distinctive laws and serve different purposes.

7. Basic Needs/Hardship: Without Child Support, Custodial Payor Formulas:

- In short to medium marriages (eg. 1 – 10 years), where the recipient earns no or low income, and where the SSAG formula, even after restructuring, will not provide sufficient income for the recipient to meet his/her basic needs (particularly acute in big cities), spousal support may be awarded outside the SSAG ranges if the payor has the ability to pay for a short, transition period.

8. Non-Taxable Payor Income:

- Where payor has legitimate non-taxable income (ie. workers' compensation, disability payments or income earned by an aboriginal person on reserve) and is unable to deduct spousal support, payor's ability to pay may be affected. Tax positions of the spouses need to be balanced – payor's reduced ability to pay versus needs or loss of recipient who still has to pay taxes on support.

9. Non-Primary Parent to Fulfill Parenting Role under the Custodial Payor Formula:

- The recipient is an involved non-custodial parent from a shorter marriage with a young child (or children) who needs support in excess of the "Without Child Support" formula to fulfil his/her parental role (the "parenting exception").

10. Special Needs of Child:

- A child with special needs may affect the custodial parent's ability to work, requiring spousal support beyond the amount and duration ranges of the SSAG.

11. Section 15.3: Small Amounts, Inadequate Compensation under the With Child Support Formula:

- Where priority is given to child support, resulting in spousal support (pursuant to an agreement or court order) in an amount less than the recipient would otherwise have been entitled, spousal support may have to continue past the SSAG duration limit and possibly even increase in amount, as permitted in s. 15.3 of the Divorce Act.

What other miscellaneous issues do I need to keep in mind when considering the SSAG?

1. Material Changes, Reviews and Issues of Continuing Entitlement:
 - The SSAG do not override prior court orders or affect the basic legal structure of variation and review. Section 17(4.1) of the Divorce Act requires a material change of circumstances as a threshold for a variation of court-ordered spousal support. A review is possible only if such a provision was included in the initial order and the precondition for the review has been met.
 - Nor do the SSAG override prior agreements, and the caselaw as established by the SCC in *Miglin v. Miglin* applies. The SSAG can only be applied: at a stage one *Miglin* analysis of the “substantial compliance” of the prior agreement with the Divorce Act factors and objectives; if a review provision or a material change provision is triggered in a prior agreement; or if the court decides to override a prior agreement.
2. Reduction in Spousal Support because of Changes in Income
 - The SSAG can be used to determine spousal support on a variation or review (if there has been a material change in circumstances or a precondition for review has been met) in the following circumstances:
 - The payor spouse’s income goes down;
 - The recipient spouse’s income goes up; or
 - The payor spouse applies to reduce or terminate support on the grounds that the recipient spouse ought to have a higher income.
3. Post-Separation Income Increase of the Payor:
 - Where the payor’s post-separation income increases, the recipient *may* be entitled to share in the increase depending on the length of the marriage, the roles adopted during marriage, the time elapsed between the date of separation and the income increase, and the reason for the increase (eg. new job vs. promotion with same employer; career continuation vs. new venture). The SSAG formulas can define the upper limits of support if the full amount of the income increase were to be shared.
4. Post-Separation Income Reduction of the Recipient:
 - Where the recipient’s post-separation income decreases (eg. loss of job, illness, disability), the recipient *may* be entitled to an increase in support, depending on the facts of the case. The SSAG formulas can define the upper limit of any increase in support if the recipient’s drop in income is to be considered.
5. Crossover Between the “With Child Support” Formula and the “Without Child Support” Formula:
 - When the child support obligation ends, either spouse should be able to apply to cross over from the “With Child Support” Formula to the “Without Child Support” Formula, which will only affect the amount of spousal support, not the duration.
6. The Payor’s Remarriage/Repartnering:
 - The payor’s remarriage or repartnering is usually not grounds for a reduction in spousal support, apart from some exceptional cases. In fact, remarriage or repartnering may improve the payor’s ability to pay as a result of sharing expenses with the new spouse or partner.
7. The Recipient’s Remarriage/Repartnering:
 - Where the recipient remarries or repartners, there is no automatic reduction in spousal support, although the amount and duration of spousal support is *often* affected (reduced, suspended or sometimes even terminated), depending on the circumstances.
8. Second Families:
 - The effect of second families (ie. subsequent children) on spousal support is discretionary, depending on the particular facts of the case.

Why do CHEQUEmate and/or SUPPORTmate sometimes produce different income tax calculations than other income tax preparation software programs on the market?

CHEQUEmate and SUPPORTMATE look into the future, using the most recent tax and government social benefit information released in current federal and provincial budgets. Some of these provisions may not be effective until later in the year, but they will be in effect by the time the taxpayers begin paying/receiving child and spousal support.

CHEQUEmate and SUPPORTmate also incorporate changes to provincial social programs, changes in marginal tax rates and other changes that affect the net disposable incomes of tax paying Canadians. Accordingly, CHEQUEmate and SUPPORTmate figures will be different than tax programs already on the market, such as 2008 Quicktax or even our own Tools One 2008, which rely on past tax and benefit information in their calculations.

(With respect to B.C., both SUPPORTmate and CHEQUEmate additionally deduct the Medical Services Plan Premium ("MSP") from NDI and INDI, respectively, to arrive at a more accurate comparison of actual cash flows.)

What is the difference between SUPPORTmate and CHEQUEmate? Do I need both programs?

CHEQUEmate provides a range of spousal support payments according to the SSAG, while SUPPORTmate allows the critical examination of this range and its effect on NDI for the family, as well as the individual, in the context of each client's particular circumstances.

SUPPORTmate allows the user to put the SSAG support range into perspective by comparing cash flows and percentages for the payor as well as the recipient and the children.

SUPPORTmate allows the brainstorming of taxable spousal support only, or any combination of child support (under the CSG or otherwise) combined with spousal support. SUPPORTmate calculates the following for five possible "what if" scenarios: the income taxes paid; GST, CCTB, UCCB, NCB and refundable cash credits; net disposable income; net after tax cost or benefit to the payor and the recipient.

Under the SSAG, there are a number of instances when one would want to engage in an in depth examination of the very criteria that SUPPORTmate analyzes:

- placement of spousal support within the SSAG ranges;
- exceptions to the SSAG formulas;
- restructuring of support awards;
- support when income is above the ceiling or below the floor;
- other discretionary issues.

As Professor Thompson, one of the SSAG authors, states:

The use of SUPPORTmate and those family NDI numbers is really important, not just in this transition phase (where Ontario judges still think in family NDI terms), but also for the location of the right amount within the ranges. In particular, the family NDI numbers should be calculated and argued carefully in cases of shared and split custody. Also, I tell audiences that close attention to net disposable income numbers is critical for high end "Without Child Support" formula cases (those of 25

years or more at the ceiling) and at the low end for any case below \$30,000 and those just above \$30,000.

In short, SUPPORTmate complements CHEQUEmate, and is an essential tool in negotiating and advocating each individual client's spousal support position.

If I have CHEQUEmate, why do I need to read the SSAG?

There is a lot more to the Spousal Support Advisory Guidelines than just math!

While CHEQUEmate can simplify the formulas by doing the complex mathematical calculations for you, you must understand and be able to apply the SSAG in order to properly serve your client. In addition to detailing the formulas to be applied in determining the appropriate ranges of spousal support, the SSAG and subsequent follow up papers also, inter alia:

- review the legislative framework, judicial history and philosophical theories behind spousal support;
- discuss entitlement issues that arise prior to the application of the SSAG formulas and on an on-going basis;
- set out factors to be considered in determining the appropriate amount of spousal support within the SSAG range;
- outline exceptions to the SSAG formulas;
- address when and how to restructure spousal support awards;
- discuss variations and reviews of spousal support orders;
- identify issues beyond the scope of the SSAG.

What other points should I remember about SSAG?

- The SSAG are NOT legally binding; they are informal and completely voluntary.
- The SSAG provide a "check" or "litmus test" in case conferences or negotiations.
- The SSAG may have more application in interim orders.
- The threshold issue of entitlement is NOT addressed in the SSAG; entitlement is already assumed.
- The formula outcomes are only the first step in determining spousal support under the SSAG.
- Amount and duration are interrelated parts of the formulas, and cannot be considered in isolation.
- Regional differences (both within and between provinces) are NOT addressed in the SSAG (although position in the range *may* somewhat address these differences).
- Cost of living differences are NOT addressed in the SSAG, and will be relevant particularly where the parties live in disparate communities (although position in the range *may* somewhat address these differences).
- The definition of Income under the SSAG is essentially the same definition as the federal Child Support Guidelines (the "CSG"), which includes Schedule III adjustments and ss. 17, 18 and 19 (imputing income) adjustments. The SSAG, however, do not include social assistance as income.

- Imputing income can help to deal with the “disincentives of self-sufficiency created by generous amounts of spousal support” and may be fair and reasonable in subsequent reviews or variations.
- Be careful grossing up incomes in the “With Child Support” Formula; accounting for actual income taxes *and not “notional” income taxes* may skew results.
- The length of marriage under the SSAG *includes* any period of pre-marital cohabitation.
- The SSAG’s “Rule of 65” (length of marriage/cohabitation plus age of recipient) does NOT apply to marriages/cohabitation of less than 5 years.
- Spousal support may “cross over” from the “With Child Support” formula to the “Without Child Support” formula, by way of a variation, when the children cease to be “children of the marriage”.
- All spousal support orders/agreements are subject to the normal processes of variation and review according to the relevant legislation and the caselaw.
- The SSAG are a work-in-progress, subject to discussion, experimentation and feedback.

With respect to the “With Child Support” formula:

- Orders are indefinite (unspecified) in duration, with outside time limits; spousal support may well decrease or terminate altogether prior to the outside time limit.
- Be wary of the SSAG’s boxed formula which fails to +/- spousal support in calculation of INDI and which forgets to include payor’s Government Benefits and Credits.
- The more child support, the less spousal support.
- Child support paid by the payor is NOT included in the calculation of the recipient’s INDI.
- Mandatory pension contributions are *expressly* not allowed as deductions from income when calculating INDI.
- In shared custody cases, the draft SSAG paper provided that *no* adjustment should be made to the child support paid even if the court orders or the parties agree that an amount more or less than the straight set-off amount (ie. the difference between the parties’ respective basic table amounts under the CSG) should be paid. However, the final SSAG paper provides that the setoff amount may need to be adjusted in accordance with s. 9(b) and (c) of the CSG, in light of the S.C.C. decision, *Contino v. Leonelli-Contino*, 2005 SCC 63.
- Where all children are in shared custody, the SSAG range will be extended upward or downward, if necessary, to include a 50/50 split of NDI, as calculated in this section, per the final SSAG paper. NDI, as calculated here, equals CSG Income + UCCB - Social Assistance +/- Child Support (basic/table amount and special expenses) +/- Spousal Support - Income Taxes - CPP - EI - Life Insurance - Union/Professional Dues - Extended Health/Vision/Drug Plan + Government Benefits and Credits. Note that the calculation of NDI here is more limited and may be different than the SUPPORTmate NDI figure, which allows the user to adjust NDI by the inclusion of other miscellaneous source deductions (including RRSP and RPP contributions), taxable benefits, plus or minus any other factors affecting cash flow.
- Length of marriage has no influence on quantum in the “With Child Support” formula.
- In cases where child support for an older child is determined under s. 3(2)(b) of the CSG, the authors of the SSAG have indicated that a variation on the “Without Child Support” formula is to be used to calculate spousal support, as set out in one of the questions above.
- The appellate courts of most provinces have accepted/endorsed the SSAGs, with the exception of Alberta (see *Sawatzky v. Sawatzky*, 2008 CarswellAlta 1626 (Alta. C.A.)).