

# Justify departures from spousal support guidelines: OCA

By Paul Russell, AdvocateDaily.com Contributor



A recent decision by the Ontario Court of Appeal reaffirms the idea that Spousal Support Advisory Guidelines (SSAGs) must be the framework for determining and amending support payments, Markham family lawyer [Cheryl Suann Williams](#) tells [AdvocateDaily.com](#).

The guidelines suggest appropriate ranges of support in a variety of situations, says Williams, principal of [Williams Family Lawyers](#). The SSAGs do not provide advice on whether a spouse is entitled to support, she adds, as that depends on how the law applies to the situation.

“Judges usually start looking at support orders in the mid-range of the SSAGs,” Williams says. She notes there are many factors — other than income — that are taken into consideration when deciding on support levels, such as the age of the parties involved and the length of their marriage.

“When deciding on support, judges rely on the SSAGs for guidance, unless there is a reason to deviate from it,” she says. “There is case law that states that their rulings should fall within the SSAGs unless judges can give an explanation as to why they are departing from it.”

She refers to a 2018 [case](#) involving a 60-year-old man and his ex-wife, who were married for 28 years before separating in 2007. At that time he was earning an annual income of \$91,300 from a major car company.

Their separation agreement, which was not implemented, called on him to support his spouse and the youngest of their three children, according to the court judgment.

In 2010, 2012 and 2015, the man filed motions to change his child and spousal support, the judgment states, with the first one based on material changes in circumstances, as he lost his executive position with the car company.

He found another job but left that, according to the judgment, before making an assignment in bankruptcy and having his driver's licence suspended by the Family Responsibility Office (FRO) for defaulting on his support payments.

The ex-wife suffered from "a number of serious health ailments," the judgment states, with her only source of income being a Canada Pension Plan (CPP) disability pension of \$10,770 per year.

The decision states that in 2017, an Ontario Superior Court judge granted the man's request to not pay spousal support for approximately two years. The judge noted that the "respondent apparently had no income at the date of trial, and that he was unable to work as a mechanic while his driver's licence was suspended by the [Family Responsibility Office] for default on his support obligations."

A "support holiday" of between 23 and 27 months was granted, according to the decision, as the judge in 2017 deemed that the respondent should have an opportunity to "get himself on his feet" so that he could gain employment and pay spousal support.

In 2018, the appeals court judge ruled that "both decisions — to give the respondent a two-year 'support holiday' and to award future support below the level recommended by the SSAGs — constitute unjustified departures from the SSAGs and were errors. The SSAGs are the presumptive starting point for awarding support. Any departure from them requires adequate explanation."

"I strongly agree with the appeal court's decision here," says Williams, who was not involved in the case and comments generally. "I was quite surprised by the judge's statement that he suspended payments as a way to help the defendant 'get himself on his feet.' It is quite unusual, frankly, to allow a two-year hiatus in paying support."

Even a low amount of support "can make a difference as to whether a person can afford to go to the grocery store," she says.

"There is no reason to not pay any support at all, even if someone's income has dropped," Williams says. "The average person can do something to earn at least a minimum wage income, while those who qualify for a CPP disability pension are probably not generally employable."

If the ex-husband is able to work, she says, "the onus is still on him, after a 28-year marriage, to provide support for himself, and the other person."

When crafting separation agreements for clients, Williams says she is guided by case law and the SSAGs.

“I’m always trying to anticipate the conditions in the future that will constitute the reasons for a change,” she says.

Those conditions could include one of the former spouses moving in with a new partner for more than three years, she says. “If the expenses of the person receiving support are significantly reduced, that may also be a factor in changing the amount of support.”

Williams says some clients want separation agreements that clearly spell out the dollar value of all future payments. The level of these support payments will not be subject to review, even if conditions change, she says.

“I represented one client who ran a very successful franchise business,” she explains. “He told me, ‘Even if I’m in a coma, my business will be successful, thanks to the people I have hired as managers.’”

“Locking into a fixed amount gave him security, and the knowledge he can go on and make as much money as possible, without having his spousal support reviewed. He could plan his life then,” Williams says.