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**Family Law Newsletters**
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**— Franks & Zalev - This Week in Family Law**

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**News Item**

A recent edition of the Wall Street Journal offered this headline: "Divorce Plunged in Kentucky. Equal Custody for Fathers Is a Big Reason Why."

In 2018, Kentucky passed a law (the first state to do so) mandating that shared custody be the default/presumptive arrangement in separating families. Other states are reported to be following Kentucky's lead. The law essentially creates a rebuttable presumption of shared parenting.

Since the law was passed, divorce rates in Kentucky have apparently reduced in statistically significant fashion: Between 2016 and 2023 the Kentucky divorce rate fell 25%, compared with a nationwide decline of only 18%.

However, while proponents of the law argue that the law benefits children, avoids litigation, and that the reduction in divorce rates is an "unintended bonus"; others worry that the law actually puts women and children at risk, essentially forcing them to remain in abusive marriages for fear of leaving their children alone with a parent that may have a history of family violence.

To explain the phenomenon, proponents of the law suggest that that parents are more likely to stay together if they know they will be in continued regular contact after separation in any case. That explanation, to us, does not make much sense.

We do note that Australia tried the experiment with presumptive shared parenting and then reverted to the norm.

In any case . . . Good law? Bad law?

Discuss amongst yourselves.

**Sponsorship Undertakings: From "I Do" to "I.O.U."**

*Meen v. Kaur*, 2025 CarswellOnt 9400 (S.C.J.) — Agarwal J.

**Issues:** Ontario — Temporary Spousal Support

A short marriage. A quick separation. And a binding sponsorship undertaking.

The husband brought his new wife to Canada, agreeing to support her for three years and to keep her off social assistance. Days after she arrived, they split. She went on Ontario Works. He paid nothing. On a motion for interim spousal support, the question

was whether that sponsorship undertaking still carried weight — and how far it could push support beyond the low *SSAG* ranges usually found in very short term marriages without children.

The husband was living in Canada; the wife in India. They married in India in March 2023, and the husband returned to Canada the following month. A year-and-a-half-later — in August 2024 — the wife joined him in Canada as a sponsored spouse under the *Immigration and Refugee Protection Act*.

As a condition of sponsoring the wife to join him in Canada, the husband undertook to support the wife for three years so she would not need social assistance, and he promised to repay the government for any social assistance she did receive. The undertaking required him to provide her with "food, clothing, shelter, fuel, utilities, household supplies, personal requirements, and other goods and services, including dental care, eye care, and other health needs not provided by public health care," in amounts "sufficient for the sponsored person(s) to live in Canada." It further stated that "all social assistance paid to the sponsored person . . . becomes a debt owed by me to His Majesty in right of Canada and the province or territory concerned," enforceable directly against the sponsor. It seems someone has a debt to King Charles.

The marriage collapsed less than two weeks after the wife arrived in Canada. Despite having a full-time job earning about $84,000 a year — and despite having given the undertaking — the husband paid no support after separation.

The wife went on Ontario Works, receiving $733 a month, but her expenses were roughly $2,150 a month ($1,000 for rent, $150 for utilities, and $1,000 for food, internet, phone, and other necessities). By the time the matter came before Justice Agarwal, she had already borrowed $14,500 from her family to cover her ongoing shortfall.

The husband started an Application for a divorce in August 2024. The wife filed her Answer in January 2025, but neither party took steps to schedule an initial Case Conference.

In May 2025, the wife brought a motion that was permitted to proceed despite Rule 14(4.2) of the *Family Law Rules*, O. Reg. 114/99, which generally bars motions before a Case Conference unless "there is a situation of urgency or hardship or . . . some other reason in the interest of justice." While the reasons for allowing the motion to proceed before a Case Conference were not set out, we highly suspect it was on account of dire financial circumstances: *Rosen v. Rosen*, 2005 CarswellOnt 68 (S.C.J.) at para. 5 and *D. Jr. v. T.*, 2022 CarswellOnt 2668 (Ont. S.C.J.) at para. 6. The wife's financial hardship, coupled with the husband's sponsorship obligations, likely informed the decision to allow the motion to proceed.

The husband conceded that the wife was entitled to spousal support — a wise concession given his sponsorship undertaking and resulting contractual obligation (at least with King Charles) — but he argued that the amount should be set at $245 (gross) a month, based on *SSAG* mid-range. The wife, on the other hand, argued that this was an appropriate case to depart from the *SSAGs* entirely, and sought $2,500 a month in interim spousal support, retroactive to the date of separation.

Justice Agarwal began his analysis by referring to *Liddell-MacInnis v. MacInnis*, 2021 CarswellOnt 3322 (S.C.J.), where Justice Kraft summarized the principles governing claims for temporary (interim) spousal support:

> 1. **Triable Case Required:** The claimant must establish a *prima facie* (a triable) case for both entitlement and quantum: *Damaschin-Zamfirescu v. Damaschin-Zamfirescu*, 2012 CarswellOnt 14841 (S.C.J.); *Kowalski v. Grant* (2007), 43 R.F.L. (6th) 344 (Man. Q.B.); *Charbonneau v. Charbonneau* (2004), 9 R.F.L. (6th) 67 (Ont. S.C.J.); *Robles v. Kuhn*, 2009 CarswellBC 2239 (S.C.); and *Brown v. Brown*, 2004 CarswellBC 231 (S.C.).
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> 2. **No *Prima Facie* Case, No Interim Support:** A claim for temporary spousal support should be dismissed if the claimant cannot establish a *prima facie* case for entitlement: *Damaschin-Zamfirescu v. Damaschin-Zamfirescu*, 2012 CarswellOnt 14841 (S.C.J.); *Belcourt v. Chartrand* (2006), 28 R.F.L. (6th) 157 (Ont. S.C.J.); *Gerlitz v. Gerlitz*, 2005 CarswellAlta 1841 (C.A.), reversing in part 2005 CarswellAlta 1240 (Q.B.); and *Prikker v. Vaine*, 2010 CarswellOnt 7125 (S.C.J.).
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> 3. **Not a Trial:** The motion judge need not conduct an exhaustive review of the relationship or determine economic advantages or disadvantages; that is for trial: *Damaschin-Zamfirescu v. Damaschin-Zamfirescu*, 2012 CarswellOnt 14841

  

(S.C.J.); *Kowalski v. Grant* (2007), 43 R.F.L. (6th) 344 (Man. Q.B.); *Noonan v. Noonan*, 2006 CarswellPEI 48 (T.D.), reversed 2007 CarswellPEI 17 (C.A.); *Bater v. Bater*, 2006 CarswellOnt 4107 (S.C.J.); and *Gonzalez v. Ross* (2007), 36 R.F.L. (6th) 126 (Ont. S.C.J.).

4. **Holding Order:** The primary goal of temporary spousal support is to provide a reasonable solution to a difficult problem until trial. It is a "holding order" aimed at maintaining, as much as possible, the accustomed lifestyle: *Damaschin-Zamfirescu v. Damaschin-Zamfirescu*, 2012 CarswellOnt 14841 (S.C.J.); and *Kowalski v. Grant* (2007), 43 R.F.L. (6th) 344 (Man. Q.B.).

5. **Means and Needs Dominate:** Temporary spousal support is based mainly on the parties' means and needs; promoting self-sufficiency is of lesser importance *Damaschin-Zamfirescu v. Damaschin-Zamfirescu*, 2012 CarswellOnt 14841 (S.C.J.); *Lila v. Lila* (1986), 3 R.F.L. (3d) 226 (Ont. C.A.); *Kowalski v. Grant* (2007), 43 R.F.L. (6th) 344 (Man. Q.B.); *Robles v. Kuhn*, 2009 CarswellBC 2239 (S.C.) (Master); and *Ridgeway-Firman v. Firman*, 1999 CarswellOnt 1201 (Gen. Div.).

Furthermore, in short-term marriages involving an immigration undertaking, the sponsorship can be considered an "agreement" for the purposes of s. 15.2(4)(c) of the *Divorce Act*, which directs the court to consider "any order, agreement or arrangement relating to support of either spouse" when assessing the "condition, means, needs and other circumstances" of the spouses: *Gidey v. Abay*, 2007 CanLII 40212 and *Singh v. Singh*, 2013 ONSC 6476, para. 72.

The sponsorship undertaking is also often relevant to the amount of temporary spousal support. As explained in "Short marriages: immigration sponsorship cases" in part (b) of Chapter 7 of the *Revised Users Guide* to the *Spousal Support Advisory Guidelines*:

> One category of short marriages, those involving **immigration sponsorship agreements, raise some unique issues under the without child support formula**. These are cases where a marriage breaks down while a sponsorship agreement is in place. Most spousal sponsorship agreements now run for a period of three-years, but in the past the duration was as long as 10-years. **In some cases involving very short marriages, courts have used the duration of the sponsorship agreement as the appropriate measure for the duration of spousal support**, thus extending duration beyond the durational ranges generated by the Advisory Guidelines. As well, in such cases, **some courts have also ordered support in an amount beyond the high end of the range to generate an amount of support that will meet the recipient's basic needs and preclude resort to social assistance**. See *Gidey v. Abay*, [2007] O.J. No. 3693 (S.C.J.); *T.M. v. M.A.G.*, 2006 BCPC 604; *Singh v. Singh*, 2013 ONSC 6476; and *Carty-Pusey v. Pusey*, 2015 ONCJ 382.
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> Some of the identified exceptions may be relevant in these cases to justify a departure from the formula ranges and have certainly been relied upon by judges:
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> • the exception for compelling financial circumstances in the interim [See, for example: *Dunleavy v. Comeau*, 2019 ONSC 4535; *Blackstock v. Comeau*, 2018 ONSC 193; *Tasman v. HenIderson*, 2013 ONSC 4377; *Mignault v. Lauzon*, 2018 ONSC 5442; *Lindeman v. Desloges*, 2020 ONCJ 41; *Sandhu v. Dhillon*, 2021 ONSC 1143
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> • the compensatory exception in short marriages
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> • the basic needs/hardship exception
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> However, **although the case law on this issue is not settled, it does appear that the sponsorship agreement may be an independent factor in short marriages, leading to either an amount or duration outside the formula ranges**. [emphasis added]

It is known that the *SSAGs* result in low numbers in short term relationships with no children: *Refcio v. Refcio* (2009), 74 R.F.L. (6th) 295 (Ont. Div. Ct.); *Tasman v. Henderson*, 2013 CarswellOnt 9222 (S.C.J.); *Carty-Pusey v. Pusey*, 2015 CarswellOnt 10607 (C.J.). The *SSAGS* also do (as noted above) contemplate a "compensatory exception" for short marriages without children: *Black v. Black*, 2015 CarswellNB 449 (C.A.) — such as where someone moves across the globe for marriage, perhaps?

 

After reviewing both parties' circumstances, Justice Agarwal ordered the husband to pay the wife $1,150 a month in temporary spousal support. Although this was well above the *SSAG* ranges — the mid-range being $245 a month — his Honour found it appropriate given the sponsorship undertaking and the wife's significant financial hardship. Even at this level, the wife would struggle to meet her basic expenses, and the amount still left the husband with the vast majority of the parties' combined net disposable income.

The order required temporary spousal support to be paid until the earlier of the husband's sponsorship obligations expiring in August 2027 or the trial. While it is unusual for a motion judge to set a fixed end date to a temporary support order, Justice Agarwal's approach was particularly poignant and practical in this particular situation. Given the high cost of litigation, the delays in moving a matter through the family court system, and the potential tactical advantage the wife would have enjoyed if the order remained indefinite — leaving the husband to push the case forward while she had little incentive to do so — setting a clear duration encouraged a final resolution and avoided unfairly shifting the burden of advancing the case. We like it.

The wife's request for retroactive temporary support was dismissed. Justice Agarwal noted that such orders are generally best determined at trial, where the court can assess all relevant factors, including whether and when notice was given, the payor's conduct, the recipient's circumstances, and any hardship the award might cause: *Kerr v. Baranow* (2011), 93 R.F.L. (6th) 1 (S.C.C.) at paras. 207-212.

This case reinforces that a sponsorship undertaking is more than a bureaucratic formality - it is a binding promise that can have a decisive impact on spousal support in even the shortest of marriages. Justice Agarwal's decision to order support well above the *SSAG* range reflects the courts' willingness to treat such undertakings as a floor for quantum and duration, particularly where the recipient is in genuine financial hardship.

The ruling also shows a pragmatic approach to duration. Setting the end date to coincide with the expiry of the sponsorship obligations avoided leaving the order open-ended, which could have shifted the tactical burden onto the husband to push the case forward while giving the wife little incentive to do so. In the context of high litigation costs and systemic delay, this was a practical way to balance fairness and efficiency. This is an approach we might like to see in other interim support situations; it levels the interim support playing field.

But the case also raises broader structural questions — the kind we have discussed before — including in *"War(d) and Peace"* in the July 21, 2025 (2025-26) edition of *TWFL*, about the *long-running saga of Ward v. Murphy* (2025), 11 R.F.L. (9th) 274 (N.S. C.A.). That case showed how the pursuit of a "perfect" process can lead to years of litigation and enormous expense over modest differences in outcome. Here, too, the current family court process will require at least one Case Conference, one Settlement Conference, and likely a Trial Management Conference — all before a trial that will take a day or two to complete, followed by time for a written decision, and the possibility of an appeal. Sometimes the perfect *is* the enemy of the good (Google attributes this to Voltaire — but who knows?).

The type of dispute that was before the court in *Meen v. Kaur* — and countless others like it — could probably be resolved far more quickly and at far less expense in a process that focuses on early resolution. That might mean, for example, deciding the case on a largely paper record, supplemented by brief oral examinations, concise submissions, and a short decision that is "good enough" to end the matter.

Coupled with resources to facilitate settlement — such as subsidized or free mediation — this approach would give those litigants who want to settle a meaningful off-ramp before the hearing. Nothing encourages settlement more than an imminent hearing. And nothing discourages it more than a system where delay benefits one party at the expense of the other. If cases like *Meen* continue to have to run the full procedural gauntlet, they will drain not only judicial and administrative resources but also the litigants' bank accounts — resources that could be far better spent on resolving more complex or genuinely urgent matters.

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