FAMLNWS 2026-11

Family Law Newsletters
March 23, 2026

— Franks & Zalev - This Week in Family Law

Aaron Franks & Michael Zalev

Contents

Called it! The "Elevation" of the AFCC-O Parenting Plan Guide. Good Thing or Bad Thing? Discuss Amongst Yourselves . . .

***Tremblay-Chartier v. Blanchette* (2025), 23 R.F.L. (9th) 118 (Ont. Div. Ct.) — Backhouse, Lococo and Shore JJ.**

***Gjorsovski v. Krajisnik* (2025), 23 R.F.L. (9th) 350 (Ont. S.C.J.) — Breithaupt Smith J.**

***H.M. v. N.M.*, 2026 CarswellOnt 389 (C.J.) — Sager J.**

In the June 27, 2022 (2022-23) edition of *TWFL*, in a piece called "*Hey! Check Out The AFCC-Ontario Parenting Plan Guidelines! They Might Just Catch On! But Should They?*" we discussed the fact that the AFCC-Ontario Parenting Plan Guide was becoming an increasingly popular resource for courts, referring to cases such as *Melbourne v. Melbourne* (2022), 72 R.F.L. (8th) 84 (Ont. S.C.J.); *H. v. A.* (2022), 69 R.F.L. (8th) 18 (Ont. S.C.J.); *McBennett v. Danis* (2021), 57 R.F.L. (8th) 1 (Ont. S.C.J.); and *E.M.B. v. M.F.B.*, 2021 CarswellOnt 8802 (S.C.J.).

Please forgive the self-referencing, but in that edition, all those years ago, we offered the following musings (***emphasis*** added):

> There is nothing terribly significant about *Melbourne v. Melbourne*. It is a decision where parents were not able to agree on a parenting schedule. However, it is another in a line of cases where courts have placed significant reliance on social science research about child development summarized by the Association of Family and Conciliation Courts — Ontario Chapter (AFCCO) in its Parenting Plan Guide (2021), which can be found at: https://afccontario.ca/parenting-plan-guide-and-template/.
>
> This means that the AFCC-O Parenting Plan Guide is arguably gaining increasing importance when courts consider parenting plans. And this, of course, has its advantages and disadvantages. While having a "guide" or "guidelines" will certainly assist courts and enhance predictability, ***there is also the risk that, over time, these "guidelines" will become the default position***.
>
> The *Spousal Support Advisory Guidelines* offer a good example. Appellate courts first noted that the SSAGs are "useful" but not law. In the early years of the SSAGs, it was not an error to not apply the SSAGs where they were not fully argued: *Jessop v. Wright* (2008), 56 R.F.L. (6th) 29 (Ont. C.A.). But it was an error to use only the SSAGs without considering the factors and objectives in sections 15.2(4) and (6) of the *Divorce Act*, R.S.C. 1985, c 3 (2nd Supp): *Sawatzky v. Sawatzky* (2008), 59 R.F.L. (6th) 88 (Alta. C.A.); *Kynoch v. Kynoch*, 2013 CarswellMan 441 (C.A.); *Frank v. Linn* (2014), 48 R.F.L. (7th) 34 (Sask. C.A.). Courts only had to address the SSAGs if argued by counsel: *Fisher v. Fisher* (2008), 47 R.F.L. (6th) 235 (Ont. C.A.).

> Years later, it came to be that the SSAGs had "rightly gained currency over time such that compliance is increasingly seen as typical": *Wild v. Wild* (2019), 24 R.F.L. (8th) 26 (Alta. C.A.); *Thompson v. Thompson*, 2019 CarswellAlta 26 (C.A.). The "canary in the coalmine" for a possibly unreasonable spousal support award became a departure from the SSAGs ranges in the absence of an obvious reason for doing so: *Aquila v. Aquila* (2016), 76 R.F.L. (7th) 1 (Man. C.A.); *Fisher v. Fisher* (2008), 47 R.F.L. (6th) 235 (Ont. C.A.); *Wharry v. Wharry* (2016), 89 R.F.L. (7th) 61 (Ont. C.A.). The SSAGs were, at that point, a "litmus test for reasonableness": *Rémillard v. Rémillard* (2014), 52 R.F.L. (7th) 299 (Man. C.A.); *Wild v. Wild* (2019), 24 R.F.L. (8th) 26 (Alta. C.A.).
>
> Today, although still not law, appellate courts have expressed the view that the SSAGs should not be lightly departed from because, without them, it is very difficult to establish a principled basis for spousal support: *Slongo v. Slongo* (2017), 89 R.F.L. (7th) 27 (Ont. C.A.). The SSAGs are now the presumptive starting point and any departure requires adequate explanation: *McKinnon v. McKinnon*, 2018 CarswellOnt 10598 (C.A.); *Politis v. Politis* (2021), 61 R.F.L. (8th) 27 (Ont. C.A.).
>
> ***In other words, what started out as "guidelines" is now essentially presumptive***. We all watched it happen. ***Some 15 years after their release, a failure to consult the SSAGs now constitutes a legal error***: *Gray v. Gray* (2014), 50 R.F.L. (7th) 257 (Ont. C.A.); *M. (D.R.) v. M. (R.B.)*, 2006 CarswellBC 3177 (S.C.). ***The SSAGs have now essentially become the equivalent of binding judicial authority that must be distinguished if not used.***
>
> To be very clear, we are not remotely opposed to the SSAGs. We love the SSAGs. But they must be used properly, and we should not just automatically default to the mid-range levels of quantum and duration.
>
> We are also not opposed to the AFCC-O Parenting Plan Guide. We simply make the point that it is meant to be useful and not dispositive. We should not be defaulting to the "proposed parenting plans" for children of particular ages. ***There is the concern that, with such guidelines, courts may unintentionally sacrifice the best interests of the specific child(ren) before the court at the altar of expediency.***

So it was, and so it went.

And then came *Tremblay-Chartier v. Blanchette* (2025), 23 R.F.L. (9th) 118 (Ont. Div. Ct.).

But before we discuss *Tremblay-Chartier v. Blanchette*, we raise a point of order.

Everyone — lawyers (us included) and judges (and even the Divisional Court) regularly refer to the "AFCC-O ***Guidelines***." But they are not "Guidelines." The publication is actually called the AFCC-O Parenting Plan ***Guide***. Not "Guidelines." Guide. That matters. The Federal and Provincial Child Support ***Guidelines*** are legally binding regulations. They have the force of law. The *Spousal Support Advisory* ***Guidelines***, while technically advisory, have essentially been elevated by judicial decisions (as explained above) to such status such that departures require explanation.

A "Guide", however, is different. It's a helpful resource. A starting point. A map. One is not obliged to follow a "guide." The AFCC-O Parenting Plan Guide does not constitute "guidelines". It never did, and it was never intended to be.

We refer to the cases that we commented on in the June 27, 2022 (2022-23) edition of *TWFL* as set out above. The decisions referenced therein noted that the AFCC-O Guide "summarizes basic social science knowledge" about the effects of parental separation and provides "suggestions and guidance" to help improve communications and cooperation between separated parents. It offers "helpful advice" and "valuable guidance" about formulating parenting arrangements that meet the needs of children. That is what the Guide was meant to do.

Perhaps the linguistic slippage from "guide" to "guidelines" explains *Tremblay-Chartier v. Blanchette* (2025), 23 R.F.L. (9th) 118 (Ont. Div. Ct.) and how the AFCC-O Guide has now seemingly been elevated by the Divisional Court to something far more than just a "guide." It is now a "mandatory consideration."

Tremblay-Chartier was a motion for an interim parenting schedule. The motion judge granted the father week-about parenting time with a 15-month-old child. The Divisional Court felt the judge below offered unacceptably short reasons and did not meaningfully engage with the required statutory factors in s. 24(3) of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, the *status quo*, or allegations of family violence (where the police investigation "came to not (*sic*)").

People can certainly argue for or against the actual schedule that was put in place by the motion judge.

What we are interested in is paragraph 40 of the Divisional Court's reasons (again, in Ontario, interim orders are appealed, if leave is granted, to the Divisional Court, an intermediate Court of Appeal that is binding on the Ontario Court of Justice and the Ontario Superior Court):

> While the AFCC-O **Guidelines** are not binding law, Ontario courts have accepted the social science behind the guidelines when making parenting orders in the best interests of young children: *Hatab*, at para. 61. **If a judge departs from the established and widely accepted social science research, reasons are needed to depart from same.** None were given in this case. [**emphasis** added]

Read that again. A departure from the established and widely accepted social science research — which is summarized in the Guide — requires "justification." That is no longer saying the Guide is "helpful." That is a rule. That is elevating the AFCC-O Guide to "must consider" status. And the Divisional Court does not appear to only require reasons where counsel argue the Guide and the court does not follow it — they appear to require reasons even where counsel do not seek to rely on the Guide.

Allowing the appeal, the Divisional Court replaced the schedule ordered by the motion judge with their own schedule, which increased over time over the following seven months and then until trial. However, ironically, in setting out the new schedule, the Divisional Court did not themselves actually refer to the AFCC-O Guide.

A mere six weeks later, in *Gjorsovski v. Krajisnik* (2025), 23 R.F.L. (9th) 350 (Ont. S.C.J.), Justice Breithaupt Smith confronted this edict from *Chartier* head on in another interim parenting motion, this time for a three-year-old boy.

Her Honour did not mince words:

> [22] . . . However, none of these motions- or trial-court judges opine that the AFCC-O Parenting Plan Guide should be universally applied, with every family's facts being held up to it as a yardstick of developmentally-appropriate parenting time arrangements. And yet this is now the apparent directive of the Divisional Court, absent the Court of Appeal's prerequisite in *Fisher* that reference to the tool must be made in argument before a judge must address it. **The only interpretation of *Tremblay-Chartier* is as an obligation: going forward, all assessments of the best interests of children vis-à-vis the division of parenting time between their two households must account for the Guide. If this is correct, then the Guide is no longer seen as helpful guidance, but is now a mandatory consideration.** [emphasis added]

Her Honour ain't wrong. Unless and until the Court of Appeal says otherwise, it certainly appears that, in a single sentence, the Divisional Court has bestowed upon the AFCC-O Guide the force of quasi-law.

There are significant differences between the SSAGs and the AFCC-O Guide. The *Spousal Support Advisory Guidelines* are backed by a mathematical model. The same inputs over-and-over again will garner the same ranges and results time-after-time, no matter who does the calculating.

But the AFCC-O Guide is not the same. It is not the SSAG. As Justice Breithaupt Smith asks: What is the input data? The ages of the children? The level of conflict? The *status quo*? The distance between homes? How do you quantify psycho-educational factors, inter-personal relationships, or historic caregiving roles? Well, you can't.

As noted by Justice Breithaupt Smith, "the SSAG provides a logical framework that is transferable and can be applied to the specific facts of a particular case; the Guide provides suggestions based on research and best practices." To us, these are fundamentally different tools. Treating them as equivalent risks distorting both.

A caution is offered right in the preface to the Guide:

> The statements in these materials that summarize the social science research **reflect the considered views of the Task Force Members**. As with similar materials, **the Guide does not provide an exhaustive discussion of issues addressed** and **does not include citations**. Interested **readers should consult the large, published literature on child development** and post-separation parenting in peer-reviewed social science journals. [emphasis added]

So, by its own description, the Guide is a helpful starting point — not a definitive answer or a mandatory consideration. The Guide is the "considered view" of 13 Task Force Members — smart, well-meaning and experienced Task Force Members, most of whom we know and all of whom we hold in the highest regard — but still just 13 members of a Task Force. By definition, there had to be compromises in coming up with the Guide — and there is no way to know where those compromises were made.

Justice Breithaupt Smith identifies a similar issue:

> [28] With every respect to the distinguished 13 Task Force Members, might it be imprudent to assess all potential decisions regarding parenting time apportionment through the lens of a single body of Ontario-based professionals?

The AFCC-O Parenting Plan Guide was *not* designed as a litigation tool. It was developed by an interdisciplinary Task Force of lawyers, mental health professionals, and academics to help parents, and the professionals who advise them, negotiate child-focused, developmentally appropriate parenting arrangements outside the courtroom. The materials expressly state they are "not intended to provide legal or other professional advice."

Professor Nicholas Bala and then-family lawyer (now Justice) Andrea Himel explained this in their paper on the Guide's development. The materials are resources that parents can use on their own, but they are also intended to help family lawyers and mediators prepare clients "to address issues with their professional advisors." (See Nicholas Bala & Andrea Himel, "Using the AFCC-O Parenting Plan Guide and Template: Resources for Ontario Family Lawyers and Their Clients" (2020), 2020 CanLIIDocs 3849, available on CanLII.) The paper notes that the materials discuss "the value of making plans without court involvement" while emphasizing "the importance of seeking professional advice." The Guide was meant to help ordinary families figure out what might work for them and was meant to support settlement — not to be a yardstick to be mandatorily applied at contested hearings. True, the authors acknowledged there "may be scope" for citing its general statements in court — but as a basis for judicial notice, not as a mandatory benchmark.

Professor Bala and (now Justice) Andrea Himel further acknowledge there "may be scope for citing some of the general statements about child development in contested proceedings as a basis for judicial notice." But they immediately caution, as we do above, that the materials reflect a *consensus* among Ontario professionals — *not definitive scientific authority*. Very respectfully, that is a very long way from, "every parenting decision must now be measured against the Guide, with departures requiring reasons and an explanation."

Notably, even the cases the Divisional Court relied upon — *Hatab*, *McBennett*, and *Melbourne* — describe the Guide as "great assistance," "helpful information," "suggestions and guidance." None of them suggest it must be applied or distinguished in every case — even if argued by counsel.

It is also noteworthy that the Ontario Court of Appeal in *Fisher* required that the SSAG be argued by counsel before a failure to address them would constitute error. But *Tremblay-Chartier* contains no equivalent requirement. Must judges now address the Guide — and then either apply or distinguish it — even if neither party raises it? It certainly appears so as the *Chartier* reasons do not suggest otherwise. After all, if "reasons are needed to depart from" the social science research, and the Guide is treated as its summary, the obligation exists whether or not counsel raises it.

Parenthetically, it is also interesting to note the now-present dichotomy at the Divisional Court with respect to the SSAGs and the AFCC-O Parenting Plan Guide. In *Carrubba-Gomes v. Gomes*, 2025 CarswellOnt 18854 (Div. Ct.), the Divisional Court held that, despite rulings from the Ontario Court of Appeal with respect to final support decisions, a court on an interim support

application *need not* consider and apply the SSAGs, even if referenced in argument. But, pursuant to *Tremblay-Chartier v. Blanchette*, lower courts must now consider and explain any departure from the AFCC-O Guide.

So on interim motions, reasons are required to depart from the AFCC-O Guide but not the SSAGs? That's a head-scratcher that needs clarification.

After distinguishing *Tremblay-Chartier* and finding that the operative language regarding the Guide was obiter (the appeal having been allowed for insufficient reasons), her Honour had this to say:

> [32] For the reasons listed above, and particularly because of the clear difference between the SSAG and the Guide, **clarification is needed from the Court of Appeal as to whether *Tremblay-Chartier* in fact changes the import of the Guide and sets it as a mandatory benchmark against which all proposed parenting time structures are to be measured.** Again, it must be noted that, unlike the Court of Appeal in Fisher, **the Divisional Court did not require that the Guide be argued by counsel before a failure to consider it would trigger a reversible error of law.**
>
> [33] With very sincere respect for my distinguished colleagues sitting on the Divisional Court, **I disagree that the Guide should be a mandatory consideration, and I decline to apply it to my analysis where counsel have not referred both to its specific content and to the underlying social science upon which a particular recommendation is based**. In this matter, both counsel made only vague references to the Guide. Neither undertook any detailed analysis of its applicability; neither took any pains to compare and contrast the parties' proposed schedules with the portions applicable to a preschooler. No underlying social science principles or scholarly articles were cited. No expert opinion specific to this family was tendered. I thus decline to apply the general contents of the Guide in my analysis of Danilo's best interests. [emphasis added]

Justice Breithaupt Smith declined to apply the Guide to the case before her. Neither counsel meaningfully engaged with the Guide nor relied on it in argument. No social science was argued. No expert opinion was tendered.

To be very clear, this is not remotely a rejection of the Guide. It is — as it has been found to be countless times — an excellent resource, and a laudable non-exhaustive list of insights regarding parenting time considerations.

To further complicate matters, a few weeks later, Justice Sager of the Ontario Court of Justice decided a parenting trial in *H.M. v. N.M.*, 2026 CarswellOnt 389 (C.J.). In *H.M.*, Justice Sager took a more circumscribed view as to what the Divisional Court was saying in *Tremblay-Chartier* (although also referring to the "guide" as "guidelines"). That said, Justice Sager actually engaged with the Guide's recommendations and provided reasons for departing from them — which, ironically, may be exactly what *Tremblay-Chartier* requires:

> [226] Although it is not binding on the courts, the Guidelines provide a great deal of helpful information and reflects a professional consensus in Ontario about the significance of current child development research for post-separation.
>
> [227] In *Tremblay-Chartier v. Blanchette*, 2025 ONSC 6273 (CanLII), the Divisional Court considered the Guidelines and wrote that "If a judge departs from the established and widely accepted social science research, reasons are needed to depart from same."
>
> [228] The Guidelines state that an equal parenting schedule for children aged 18 to 36 months is appropriate "if parents have fully shared in the caretaking arrangements before the child has reached this age" and "as long as the separations from each parent are not too long (no more than two to three days or two nights for example)." The Guidelines also emphasize that "a parenting plan needs to be individualized to meet the needs of specific children and parents."
>
> [229] The Guidelines include a section entitled "Special Considerations in Making a Parenting Plan" which include subheadings such as "Parents Who Never Lived Together", "Long Distance Parenting", "Family Violence" and "Parental Substance Abuse or Mental Illness".

And then, finding that the case before her presented "special circumstances", Justice Sager held:

> [233] The court has found that **the mother has engaged in a concerning pattern of excluding the father** from M.N.M.'s life and minimizing the importance of M.N.M.'s relationship with the father. **The evidence demonstrates that the mother does not fully support M.N.M. having a healthy and meaningful relationship with his father**. She has put unreasonable limits on the father's parenting time with M.N.M. and created obstacles to the father being fully involved in M.N.M.'s life. It is therefore in M.N.M.'s best interests for the court ordered parenting schedule to address these findings and the concerns they present, **as opposed to defaulting to the AFCC Parenting Guidelines for children M.N.M.'s age.** [**emphasis** added]

For practitioners, the cautious approach is obvious. If you are arguing a parenting case, have the Guide with you. Maybe put it before the court. Lean on the provisions that help you. Explain how your proposed schedule does or doesn't align with the recommendations for the appropriate developmental stage. If the Guide helps your client, make it hard to ignore.

Hopefully the Court of Appeal will wade into this thicket sometime soon.

End of Document