

## Alberta child support decisions re: Amortization/Depreciation/Capital Cost Allowance

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Note that the **principal portion of loan payments** does not appear in Financial Statements, so it should be taken into account when determining what amount of amortization should be deducted.

Note that CCA for **real property** must be included in guideline income (*Guidelines*, Schedule III, s 11). No analyzed cases departed from this rule.

Review of **146 Alberta decisions** on WestlawNext Canada using search phrase "adv: "child support" AND (amortization OR "capital cost allowance" or depreciation)".

Court of Appeal decisions (since *Guidelines* came into effect on May 1, 1997)

Case name	Finding	Adjusted Amortization
<i>C(M) v Z(V)</i> , 1998 ABCA 410 at paras 15-19	Upheld trial judge's ("TJ") additional \$3,000 based on farming inventory elections and capital cost allowance	\$3,000
<i>Gratton v Gratton</i> , 1999 ABCA 327 at paras 4-6	Upheld no addition to guideline income, deduction "was not appropriate". Draws from Retained Earnings not added either.	0%
<i>E(LW) v E(GL)</i> , 2004 ABCA 179 at para 14	Upheld deduction of CCA, "court's discretion when imputing income".	100%
<i>Sadowski v Lik</i> , 2010 ABCA 330 at paras 5-7	Upheld deduction of CCA, self-represented shareholder's explanation of expenses contradicted, so no evidence of expense before TJ.	100%?

\* None of the above decisions addressed the adequacy of financial disclosure.

Court of Queen's Bench decisions (since *Guidelines* came into effect on May 1, 1997)

Case name	Finding	Inadequate Disclosure?	Adjusted Amortization
<i>Lowry v Lowry</i> , 1998 ABQB 76 at para 8	"I cannot conclude this deduction does not represent "reasonable" expenses" regarding CCA on automobile.		0%
<i>Wasuita v Wasuita</i> , 1998 ABQB 537 at paras 24-27	Considered CCA, but added \$15,000.00 back due to other sources of income, no reference to adding back due to CCA.		0%

<i>P(DG) v P(VJ)</i> , 1998 ABQB 778 at paras 16-17	At least 4 categories of expense had personal component, court deducted two of them for analysis/comparison purposes, but no breakdown.		Unclear
<i>Frerichs v Frerichs</i> , 1998 ABQB 216 at paras 11, 18-20	Added back because vehicle not worth nothing at end of 5 years after 20% depreciation each year.		50% of motor vehicle
<i>S(KA) v M(DD)</i> , 1998 ABQB 494 at paras 7, 9, 21, 23	Relied on line 150 without adjustment (argument that income had decreased as well).		0%
<i>Jaasma v Jaasma</i> , 1999 ABQB 764 at paras 41-44	No evidence as to replacement of motor vehicle, so CCA added to guideline income.		100% of motor vehicle
<i>Pollard v Pollard</i> , 1999 ABQB 976 at para 129	Computer required to earn a livelihood, roughly 5 year lifespan due to rapid advancement in technology.		0% of computer
<i>Henderson v Henderson</i> , 1999 ABQB 545 at para 3	Ages of the children, lack of evidence about replacement, large amount of equipment purchased to date, substantial gift given to one child.		2/3 of photography and computer equipment
<i>Hauger v Hauger</i> , 2000 ABQB 423 at paras 49, 52	One employee doesn't need two trucks, two snowmobiles, and two quads. Value of vehicle quadrupled in a single year post-separation.		50%
<i>Johnson v Johnson</i> , 2000 ABQB 637 at para 17	No analysis. Painting business		50%
<i>Trueman v Trueman</i> , 2000 ABQB 780 at paras 19-32, 35	No evidence about replacement, but capital expenditures are required to maintain business. CCA and depreciation are the only means by which a capital expenditure can be claimed as an expense against income. Depreciation not necessarily CRA rates, which only apply to CCA, Financial Statements can depreciate for longer periods.		50% but no inclusion of corporate pre-tax income
<i>Balaban v Balaban</i> , 2001 ABQB 323 at para 20	Four children, non-shareholder has income under \$20,000, money not actually being set aside for replacement equipment.		100%

<i>K(K) v F(C)</i> , 2001 ABQB 422 at paras 2, 22-23	Pick-up truck used for primarily personal matters. Logging truck would need to be replaced at some time in the future, new truck would cost \$140,000. Shareholder's proposal accepted, so proportion not actually determined.		100% of pick-up truck, "small proportion" of logging truck
<i>B(AD) v L(JN)</i> , 2005 ABQB 375 at paras 16, 18	No analysis. Only half of net-income included as well.		50%
<i>Hall v Hall</i> , 2006 ABQB 329 at paras 26, 36-37	Not completely clear relating to non-vehicle CCA. Proper disclosure, "he has not taken extraordinary measures to hide or disguise income", used ITA same way as before separation. Predominant use of motor vehicle was to earn income (denied argument that he would need a vehicle for personal purposes anyways).	No	0%
<i>Lovich v Lovich</i> , 2006 ABQB 736 at para 77	Longer life out of equipment than ITA's CCA schedule.		\$1000 per year "adjustment"
<i>Battershill v Battershill</i> , 2007 ABQB 53 at paras 19-20	Evidence of shareholder, accountant, former spouse (former bookkeeper), due to personal benefits derived. Chiropractor only drove to and from place of work, but there were business capital assets.		25%
<i>Swaren v Swaren</i> , 2007 ABQB 193 at paras 138-140	Only 50% of farm loss deducted, because loss primarily due to depreciation, but 50% of the net loss can't exceed lesser of 30% of farm income or \$100,000.		See finding.
<i>Bains v Bains</i> , 2008 ABQB 271 at para 34	Taxi driver entitled to deduct CCA for cab, reasonable deduction. "It is also important to note that Mr. Bains has provided full financial disclosure to Ms. Bains. Here, Mr. Bains is not in default either with respect to existing obligations or to with respect to disclosure obligations."	No	0%
<i>J(AR) v J(DL)</i> , 2009 ABQB 22 at para 7	Amortization won't be deducted, unless income starts to fall below \$600,000		See finding.

<i>B(PD) v W(MR)</i> , 2009 ABQB 532 at para 31	Income grossed-up by 15% to account for meal deductions, writing off a portion of household expenses, depreciation, etc. 15% based on increase after previous determination by another judge.		Grossed-up all income by 15%
<i>Beaudry v Beaudry</i> , 2010 ABQB 119 at paras 26-30	Determined CCA was merely an accounting entry to reduce income as no money for replacement set aside. Not a very good interpretation of previous case law. (Real estate agent, so presumably CCA on vehicle)		100% (\$5919 in 2007, \$9363 in 2008)
<i>Hans v Hans</i> , 2010 ABQB 180 at paras 4, 28	Very high amount of CCA was against freight truck for freight business, CCA found to adequately reflect need to have an income producing asset of that magnitude of cost. "The financial disclosure made by Mr. Hans essentially supports his claim that the income shown on his personal income tax assessments should be used as his guideline income."	No	0%
<i>K(SD) v K(RD)</i> , 2011 ABQB 245 at para 25	Depreciation added back for years that the business didn't actually own the Cadillac.		See finding.
<i>Stevenson v Winkler</i> , 2011 ABQB 693 at para 12	Husband acknowledged personal use and was prepared to add back 50%. "While he does not set aside an amount for amortization, he clearly must replace these vehicles when needed and requires them for his work."		50%, proportion that Husband claimed was personal use.
<i>Empson v Findlay</i> , 2012 ABQB 757 at para 32	Attributing some of the "heavy" amortization "would be common with many personal services corporations". "a percentage of the claimed expenses could very likely have been added back as personal benefits from his company". Still used pre-tax earnings of \$146,611 without adjustment, as "Having regard to the amount of his income, I do not consider that it is necessary to" adjust.	Found in contempt for breaching disclosure order relating to monthly disclosure and invoices.	0%, due to high income

<p><i>Kostin v Eaket</i>, 2012 ABQB 756 at paras 76, 157</p>	<p>No direct comments about CCA, but many court applications and effort to obtain information necessary to determine income, ability to finance litigation costs exhausted.</p>	<p>Disclosure not forthcoming</p>	<p>50%</p>
<p><i>P(LR) v P(BJ)</i>, 2013 ABQB 685 at paras 24, 25</p>	<p>“It is not sufficient to simply list expenses and allege that they are legitimate for tax purposes. Without better substantiation, I am prepared to impute 50% of the amount of the expenses claimed as personal benefits to Mr. P. They may be completely legitimate for tax purposes, but for the purposes of determining what his appropriate income is for child support purposes, the Guidelines entitle me to consider deductions from income. I do not think the deductions have been fully proven by Mr. P and as a result, I conclude that half of those amounts should be brought back into his income.”</p>	<p>Inadequate disclosure</p>	<p>50% of all expenses</p>
<p><i>Shopik v Shopik</i>, 2014 ABQB 41 at paras 17, 67, 68</p>	<p>“Many of the PC's expenses relate to the expenses of acquiring and maintaining the Forest Heights Home”, “the PC pays the landlord, viz, the Husband, rent for its use of the Forest Heights Home”. “[T]he Husband did not provide this Court with any evidence on what amount is appropriately allocable to the PC's business”.</p>	<p>Inadequate disclosure</p>	<p>100% of home renovations</p>
<p><i>G(CR) v H(RM)</i>, 2014 ABQB 420 at paras 113, 114</p>	<p>“Ms. H sought to add back the amortization amounts, however, given the nature of the business, equipment will depreciate and will need to be replaced, therefore this amount will not be added back.” Landscaping and construction business. Other personal expenses added back though.</p>		<p>0%</p>

<p><i>Rattai v Rattai</i>, 2015 ABQB 45 at paras 21, 26</p>	<p>Didn't disclose any income. Personal benefits. Uncertainties in farming and income information. Imputed to amount just below what after-amortization income would have been. Refused to impute to even higher number though.</p>	<p>Inadequate disclosure</p>	<p>100% (although not entirely clear)</p>
<p><i>Emslie v Emslie</i>, 2015 ABQB 581 at paras 87, 153-156.</p>	<p>Expert's report added back \$12,000 in personal expenses. "A review of the financial statements for MBI indicates that the claim of \$12,000 for personal benefits from the corporation supports the magnitude of that claim (amortization, for example, is a non-cash item and is in each year many times the \$12,000 argued for)." "[I]n my view, in this case, the amount sought is more than justified by amortization alone."</p>	<p>No</p>	<p>Factor in adding back \$12,000 in personal expenses</p>
<p><i>Sidhu v Sidhu</i>, 2015 ABQB 661 at paras 66-68</p>	<p>"[D]epreciation of Mr.'s taxicab over time is an obvious and reasonable business expense for a taxi driver." "There was no evidence put before me with respect to the rate of depreciation of his taxicab (or taxicabs generally) over time." Permitted to make application to adduce fresh evidence.</p>		<p>Permitted depreciation of \$200/mo</p>
<p><i>L(CG) v L(DK)</i>, 2016 ABQB 71 at paras 61-69</p>	<p>Expert's report: expenses are reasonable, but "recognizes that there is an argument that would have an add-back set as high as 33%". Equipment had "an optimal life of 13.5 years and a useable life of 20 years". "I also take into account DKL's age, and conclude that he is likely to remain farming for some time so replacement of equipment is likely, and depreciation is a real issue for him." "Without detailed evidence as to actual depreciation rates, usage of particular pieces of equipment and the age of particular pieces of equipment, I am left with determining this issue on generalities."</p>		<p>50%</p>

<p><i>Swezey v Swezey</i>, 2016 ABQB 131 at paras 64-67</p>	<p>Wife suggested 50%. “In this case, there is no doubt that amortization is appropriate in a business of this type. The large trucks operated by CTS are essential to CTS' operations and have to be replaced from time to time. However, I have not been provided with evidence as to the realistic useful life of these trucks, nor any detailed calculations or expert evidence in relation to amortization. The notes to the CTS financial statements indicate the cost, rates of depreciation, accumulated depreciation and net book value for four categories of assets: equipment, vehicle, large vehicle, and computer. Detailed information was not provided regarding which assets are included in these categories. I note that CTS owns the Ford truck, tractor and utility trailer which are clearly used for personal purposes, although there is some evidence that they are also sometimes used for corporate purposes.” “Admittedly this is somewhat arbitrary, but in the absence of the information required by the Court to make a proper assessment, this is the best that can be done on the information that has been provided.”</p>	<p>Inadequate disclosure</p>	<p>30%</p>
<p><i>Banack v Johnson</i>, 2016 ABQB 576 at paras 23-24</p>	<p>“It is well recognized that CCA is a non-cash expense deduction. The amount deducted is discretionary, and tax provisions often allow very rapid depreciation of an asset well before the end of its useful life.” Wife suggested 50%. Pre-<i>Cunningham</i> decision that states wife had the onus, which has since reversed. “I am satisfied that not all of the CCA deductions are reasonable for the purpose of calculating Mr. Johnson's guideline</p>		<p>30% (but based on onus that has since reversed)</p>

	income, but given the range of deductions available and the lack of specific evidence, find that 70 per cent of the amount claimed is a reasonable deduction for present purposes.”		
<i>Kondics v Kondics</i> , 2017 ABQB 493 at paras 33-37	“The case law demonstrates that this determination turns on the facts of each particular case.” “The evidence in this case establishes that the Corporation is primarily based in a commercial space and not in the home. The trailer and inflatables are used for the real estate business. While there may be some personal benefit from a business computer, the use of it in a commercial space lessens the likelihood of a significant personal benefit. It is reasonable to anticipate that these assets will need to be replaced over time. Therefore, I find that the amortization is properly deducted as an expense in this case.”		0%