

Cavanagh and Support Recipients:

A Path Toward Equity

Cavanagh v. Cavanagh (2022 & 2025) · Smith v. Smith (2025) · Openshaw v. Openshaw (2024)

The Alimony Reform Act: What Courts Must Consider

“In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider...” G.L. c. 208, § 53(a)

Length of marriage

Duration of the relationship

Age & health of parties

Ability to earn income based on capacity

Income & employability

Including with additional training

Economic contribution

Direct financial contributions

Non-economic contribution

Caregiving, homemaking, support

Marital lifestyle

Standard of living during marriage

Ability to maintain lifestyle

Each party’s post-divorce capacity for earning

Lost economic opportunity

Career sacrifice due to marriage

Cavanagh I, 490 Mass. 398 (2022): The Problem It Solved

BEFORE Cavanagh

"This isn't an alimony case."

Many courts applied G.L. c. 208, §53(c)(2) to deny alimony whenever all income was used in the child support calculation.

In those cases, only recipients in households with income above \$250,000, the then Child Support Guidelines cap, would receive both child support and alimony.

Result:

Caretakers of minor children could receive less support in divorces than childless spouses in equivalent marriages.

AFTER Cavanagh

All divorces involving children require a Cavanagh analysis.

Reinforced that child support and alimony serve distinct purposes

Result:

Courts should consider both alimony and child support in all cases, including the approximately **95% of Massachusetts households that earn less than \$450,000 annually**, the current Child Support Guidelines cap.

Why Cavanagh Matters: Equity for Caretakers

The Pre-Cavanagh Disparity: Same Income, Different Outcomes

Scenario	Annual Support	Notes
Longterm marriage, no children (spouse earned \$150k, other did not work)	~\$40,500/year	Alimony at tax-adjusted 27% of difference in income
Longterm marriage, one child in primary custody of recipient (same incomes)	~\$28,600/year	Child support only

Under the old practice by some courts, the caretaker of a minor child could be financially penalized compared to a childless spouse in an equivalent marriage.

The SJC's answer:

"[I]t makes little sense to tie the availability of alimony to the provision of child support where child support and alimony serve distinct purposes — child support is intended to provide financial support for children of the parties, whereas alimony is intended to provide financial support to an economically dependent former spouse." **Cavanagh I, 490 Mass. at 409 (emphasis in original).**

Cavanagh I: The Three-Step Framework

1

Calculate Alimony First

Calculate alimony based on statutory factors, then use post-alimony incomes to calculate child support.

2

Calculate Child Support First

Calculate child support first, then determine alimony on remaining income. In most cases, this produces a lower (or zero) alimony award.

3

Compare & Fashion the Most Equitable Order

Compare the base award and tax consequences from the Step 1 and Step 2 calculations and then *“fashion an order which would be the most equitable for the family before the court, considering the mandatory statutory factors set forth in G.L. c. 208, §53(a), and the public policy that children be supported as completely as possible by their parents’ resources”*

Cavanagh I, 490 Mass. at 411.

Cavanagh Scenario Analysis

Payor: \$150,000; recipient: \$0 • One minor child in recipient's custody • 27% alimony • Payor head of household

	Step 1: Alimony First Child Support Second	Step 2: Child Support First Alimony Second (N/A)	Alimony Only (No Child Support)
Gross Income	\$150,000 / \$0	\$150,000 / \$0	\$150,000 / \$0
Child Support	\$21,480	\$29,016	—
Alimony	\$40,508	—	\$40,508
Total Support	\$60,480	\$29,016	\$40,508
Total Taxes	\$43,129 / \$0	\$43,129 / \$0	\$43,129 / \$0
Net Available (After Support & Taxes)	\$45,195 / \$61,676 42% / 58%	\$77,855 / \$29,016 73% / 27%	\$66,363 / \$40,508 62% / 38%

Values shown: Payor / Recipient

Taxes: Federal, FICA, State

Criticisms of Cavanagh — and Why They Miss the Point

“The awards are too high”

No statute or case law defines what is “too high” when making an award of both alimony and child support. The consensus among practitioners that a 60/40 income split in favor of the payor “feels right” and that a 50/50 split is unfair to the payor is an unwritten norm, not the law. The child support worksheet flags substantial hardship if the support amount exceeds 40% of the payor’s available income, but Step 3 exists precisely to address those circumstances equitably.

“Courts can’t account for tax consequences without experts”

A legitimate concern — but one that cuts against low-income recipients most sharply. *Smith* confirms that where tax consequences are not presented, it is not an error for the court to fashion an equitable order without them. The answer is a court-provided or commercially available calculator that courts would accept as probative, not abandoning the framework.

“The calculations are too complex”

Complexity is a reason to build better tools, not to revert to a system that often denies alimony to caretakers in households earning less than \$450,000. The child support guidelines worksheet proves that self-calculating court tools are achievable.

The “sharing the pain” question

As the SJC emphasized in *Cavanagh*, public policy supports sharing the pain in a divorce in a way that puts children first. This contrasts with the approach that the priority should be to keep the non-custodial parent whole when allocating support. When a payor can self-support and the recipient has primary custody, why should the non-caretaking parent walk away with more than 50% of the family's income?

The unspoken assumption: caretaking is still valued less than paid work.

Cavanagh II, 105 Mass. App. Ct. 620 (2025): Marital Need

Alimony Reform Act Standard: “[T]he amount of alimony should generally not exceed the recipient’s need or 30 to 35 percent of the difference between the parties’ gross incomes” **G.L. c. 208, §53(b)**

Trial Court Decision

After remand, the trial court calculated alimony at 32.5%, then refused to grant any alimony on the ground that alimony and child support exceeded the wife’s “need” — without conducting a detailed analysis of what that need was.

Appeals Court Ruling

The court erred in considering the availability of child support to evaluate the need for alimony. Relying on an “arbitrary” percentage is not a substitute for a detailed marital-need analysis. **Cavanagh II, 105 Mass. App. Ct. at 629.**

Practical Implication

Recipients should provide a detailed analysis of marital spending and lifestyle — not just a percentage calculation — when presenting their arguments for alimony. Document marital expenses thoroughly.

Watch Out For

Payors will argue that child-related expenses should be carved out of marital need, even though those expenses were embedded in the marital lifestyle before separation.

Smith v. Smith, 105 Mass. App. Ct. 505 (2025): Three Key Takeaways

Modification case: Husband sought a parenting time change; wife counterclaimed for increased alimony and child support based on husband's higher post-divorce income. The trial court awarded substantially more support than provided under the original separation agreement. Affirmed on appeal.

1

Strong Endorsement of Cavanagh

The Appeals Court affirmed the trial court's decision based on its extensive findings supporting its *Cavanagh* analysis. The substantially higher alimony award did not exceed the statutory percentage cap, the wife's need, or the husband's ability to pay. **Smith, 105 Mass. App. Ct. at 510–11.**

2

Tax Consequences Are the Parties' Burden to Present

Where tax consequences are not presented to the court, it is not error to fashion an equitable award without them. **Smith, 105 Mass. App. Ct. at 511-12.**

Suggests that recipients who lack resources for a Step 3 analysis at trial can stop at Steps 1 and 2 — arguments about taxes tend to favor payors, and the burden shifts to them to provide that analysis and make those arguments.

3

Upward Deviations Supported by Real-Life Parenting and Disparity in Lifestyles

The Court of Appeals approved of the trial court's upward deviation from the Child Support Guidelines based on two factors that are often present in cases with children: the children were spending substantially more than two-thirds of their time in the wife's care, and the award avoided gross disparity in the standard of living between the parties' households.

Smith, 105 Mass. App. Ct. at 516-17.

Openshaw v. Openshaw, 493 Mass. 599 (2024): Defining Marital Need

Regular savings made during a marriage may be considered a component of the marital lifestyle when awarding alimony. **Openshaw, 493 Mass. at 609–10**

Artificially Constrained Post-Separation Spending

Recognized that spending during the separation period for the caretaker may be “artificially constrained.” Notes that financial statements or calculations from the last few years of marriage may not accurately reflect the actual marital lifestyle. **Openshaw, 493 Mass. at 611.**

Caretaking Responsibility Affects Expense Patterns

Contains helpful language recognizing that the spending of the party with primary care of the children should be expected to be higher: the court noted that the “husband's postseparation expenses exceeded what he claimed the entire family spent pre-separation — despite the wife retaining primary responsibility for the unemancipated children.” **Openshaw, 493 Mass. at 613.**

Practical Takeaway: Document Marital Spending Carefully

Thorough expense documentation throughout the marriage is important to establishing marital need. Savings patterns, investment contributions, and family spending should all be captured in financial statements submitted to the court.

Open Question: Financial Abuse & the Marital Lifestyle

What is the marital lifestyle when one party's financial abuse deliberately suppressed the family's standard of living?

The Problem

Openshaw defines marital need as the lifestyle the family actually lived. But where financial abuse — controlling spending, withholding funds, concealing assets — kept that lifestyle artificially low, using documented marital spending will understate the recipient's true need.

The Gap in the Case Law

Neither *Cavanagh* nor *Openshaw* addresses this scenario directly. Courts assessing “need” based on constrained marital spending risk compounding the harm of financial abuse by locking recipients into a support level set by the abuser's control.

Potential Arguments

Practitioners should consider presenting evidence of what the marital lifestyle would have been absent the abuse — earnings capacity, industry benchmarks, spending patterns of comparable households — as part of the §53(a) “lost economic opportunity” and “marital lifestyle” factors.

An Area Ripe for Development

This is an open question with significant implications for a vulnerable population. As *Openshaw* and *Cavanagh* continue to be litigated, advocates should seek the appropriate vehicle to bring these issues before the courts.

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Thank you