

Spousal Support – Who Gets It???

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One of the most common concerns which individuals have upon a family break up is whether or not spousal support should be paid to one party, and if so, how much and for how long. Spousal support is a complex issue. This article provides an overview which is meant to provide a general understanding of what spousal support is, who is entitled to it, and how the quantum and duration are determined.

What is Spousal Support?

Spousal support is a payment made from one party to another upon the dissolution of the relationship. It can take the form of a set monthly payment for a specified duration or it can be one lump sum payment.

Although courts do not always differentiate between them, there are generally three different forms of spousal support awarded:

- 1) **Compensatory Support** – This form of support compensates an individual for their contributions to the relationship as well as for any losses that individual has suffered;
- 2) **Non-Compensatory Support** – In some cases support may be awarded on a needs basis. This form of support may be awarded by a Court where an individual is sick or disabled; and
- 3) **Contractual Support** – This form of support upholds a contract between the parties which governs support payments.

Why is Spousal Support Awarded?

The *Divorce Act* at s.15.2 (6) states that there are four objectives of spousal support orders:

- 1) Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- 2) Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

- 3) Relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- 4) In so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Who is entitled to Spousal Support?

Both married spouses and common-law spouses may be entitled to spousal support. An important distinction between the two is that common-law spouses must start an action claiming spousal support within one year of the breakdown of the relationship. No such limitation arises for married individuals.

In addition to being in a marriage or common-law relationship, courts will look at the conditions, means, needs and other circumstances of each spouse. This includes:

- 1) The length of time the spouses cohabited;
- 2) The functions performed by each spouse during the relationship; and
- 3) Any existing orders or agreements.

This is by no means an exhaustive list of factors which the court will consider when determining entitlement. Each case is determined on its own unique set of circumstances.

How much and how long?

Generally speaking, the longer the length of cohabitation and the greater the disparity between each party's incomes, the larger an award of spousal support will be and the longer the duration will be.

As stated above, spousal support calculations are complex. There are no tables to use as in child support calculations. Lawyers use special software designed specifically to calculate the entitlement, amount, and duration of support. After information is input into a computer, the software will provide a range for the spousal support amount and duration.

Depending on the means and needs of the individual receiving support, the court will generally award an amount of spousal support somewhere within the range provided by the software. The longer the relationship, the greater the presumption that the parties should have an equal standard of living.

Similarly, the length of the relationship will be taken into account when determining how long spousal support should be paid for. Awards for spousal support can be for a limited term or indefinite.

Conclusion

Spousal support is always determined based on each relationship's unique set of circumstances. As such, there will often be uncertainty surrounding this issue upon the break up of a relationship. We hope that this article has shed some light on a complex issue.