



New Spousal Support Considerations by Jodi L. Wyman

The most recent Supreme Court of Canada case on the issue of spousal support has already been a topic of much debate in the legal community.

While the Supreme Court tries to give guidance about the interpretation of Canadian law, often their decisions just create more confusion for lawyers.

Spousal support, sometimes also called alimony, is a payment from one spouse to the other after the couple separate. It can be a monthly payment, or a lump sum.

The Divorce Act says that spousal support is meant to help with economic disadvantages from the marriage or its breakdown. It should also let the couple share the financial implications of child care (such as giving up a career to raise children). The Act also specifically states that one goal of support is to promote the self-sufficiency of the lower income spouse. For example, the spouse may need money to return to school before heading back into the workforce.

The Act also clearly tells Judges that they shall not take into account any misconduct on the

part of the spouse in relation to the marriage. Our system is “no-fault” with regard to spousal support and division of property. Whether the husband or wife was a terrible partner is irrelevant. This has been a cornerstone of the system for years.

Lawyers now wonder whether this has changed.

In the case recently heard by the Supreme Court, a couple was married for 20 years. She worked and helped put the husband through school. The wife injured her back in 1995 and was left disabled and without an income. The husband, after carrying on an affair, left the wife for another woman in 1998. The couple was divorced the next year.

The husband paid spousal support for five years, and then asked the Court to stop the payments. He said that the wife should have been self-sufficient at that point.

The Supreme Court said that the wife’s inability to become self-sufficient was because of the emotional devastation caused by the husband’s misconduct, and ordered support to continue. They said that looking at the *emotional consequences* of the

misconduct is different than looking at the misconduct itself.

The Court also noted the wife was almost 60 years old and had limited work experience. The Judges made it clear these were also important factors to the case.

The Court’s intention was not to punish the husband, but instead to recognize that the wife was damaged by the end of the marriage. But are those two sides of the same coin?

This case raises many questions for lawyers. Would the outcome have been different if the marriage ended not because of adultery? What if the wife’s own conduct somehow drove her husband away? How can someone best end a marriage with an emotionally fragile spouse? The Court found that the wife was “bitter to the point of obsession”. Is this reasonable? Does this case discourage a spouse from moving on? Will it encourage revenge litigation?

It will be interesting to see how the lower courts deal with the case.