



Spousal Support

by Jodi L. Wyman

When a married or common-law person separates from their spouse, some of the most common questions they ask their lawyer are about spousal support. It is a difficult area of law, mostly because it is so unpredictable. Two similar cases before the courts could have very different results.

Spousal support is meant to compensate for economic disadvantages from the marriage or its breakdown. Most often, there are economic disadvantages that arise from the care of a child or children. This factor becomes all the more important where there is a disabled child who may

require extra care, or care past the age of eighteen.

Giving up a career to move to another province with a spouse in the military is another common cause of economic hardship arising from the marriage.

The Divorce Act has outlined a number of factors for Judges to look at before they order one spouse to pay support to the other. The court will look at each party's present financial circumstances, the length of the relationship, each person's age, the roles of each partner in the marriage and the effect of these roles on their current financial circumstances. A spouse in a long-term marriage who dropped out of the

workforce to raise children at the sacrifice of their career is more likely to get support than someone in a short-term marriage where both spouses worked.

The greater the difference between each spouse's incomes, the more likely spousal support will be ordered.

One of the goals of spousal support in *The Divorce Act* is to help encourage the financial self-sufficiency of each spouse within in a reasonable period of time. Retraining or reeducation is often necessary. If one spouse has health problems, or is nearing retirement age, the goal of becoming self-sufficient may not be a realistic

possibility and the support could continue indefinitely.

Contrary to popular opinion, marital misconduct is not normally a factor in whether support will be ordered. Judges will not pay attention to evidence about who was the better spouse or why exactly the marriage ended. As with the law about dividing assets, the Canadian system is a no-fault one. As well, it is unusual to have both spouses agree as to exactly who is to blame.

Lawyers may be able to tell clients that support could be payable in their case, but giving an exact number is impossible.

This tends to make settlement difficult. To try to address this problem, a group of Canadian lawyers, Judges and legal professors have put together the Spousal Support Advisory Guidelines. They involve formulas to try to calculate a reasonable support amount based on a number of factors. These Guidelines are not law, but are being used by Judges more and more as a helpful reference point when trying to choose a reasonable number.

These Guidelines also take into account the tax implications of spousal support. It is a tax deduction for the payor,

and has to be claimed as income by the recipient.

Support can be payable (or waived) by the spouses in an agreement or it can be ordered by the court. An agreement is generally preferable, as it can be flexible enough to also include when the payments will end (such as remarriage, retirement or death) or set out a sliding scale so that as the recipient's income increases, support decreases. As well, keeping the issue between the spouses provides certainty, something lawyers cannot offer when taking a spousal support case to court.