



Spousal Support Increases after Divorce

By Scott Abel

Many people believe that the granting of the divorce will provide some finality in their dealings with their now ex-spouse. They will no longer have to deal with their spouse, and can move on with their lives. For many, moving on with their lives means an increase in income, and an improvement in lifestyle.

However, that increase in income may result in the parties returning to court – not only to address the issue of child support, but also to address the issue of spousal support. Is a spouse entitled to share in a post separation increase in one spouse's income, through increased spousal support?

The answer of course, whenever one is dealing with the law, is maybe. The answer will be found in the specific facts of the case, and the purpose of the spousal support order in the first place.

Spousal support is often ordered on a compensatory basis – did one spouse suffer a disadvantage economically,

during the marriage. For example, was one spouse allowed to pursue their career, uninterrupted, while the other spouse remained at home with the children interrupting their career. If so, then the spouse who remained at home may need to be compensated financially for the decisions made by the spouses while married.

Now the spouses have separated, and the spouse who continued to work during the marriage continues to advance through the company ranks, with a corresponding increase in their income. Should the spouse who remained at home to care for the children share in the post-separation increase in income?

If the continued increase in income can be linked or traced to the career path of the spouse during the marriage, the answer may be “yes”. This was the path the spouse was on, and the marriage, separation and divorce did nothing to deviate from that path. If that is the case, why shouldn't the stay at

home spouse also benefit from that career path coming to fruition, even after separation.

In order to share in the post-separation increase in income, the stay at home spouse must show that they contributed to the acquisition of the other spouse's skills or credentials, thereby contributing to their ability to earn the increased income.

Essentially the court, if it concludes that the spouse is entitled to an increase in spousal support after separation due to an increase in income of the payor spouse, is presuming a continuing equalized standard of living upon separation.

In the case of a long term marriage, where one spouse benefitted financially from the joint efforts the spouses undertook throughout the marriage, and the stay at home spouse can demonstrate a tangible contribution, then perhaps this is not an unreasonable conclusion.

Each case will always be determined on its own set of facts. However, as much as someone may wish to believe that once the divorce is pronounced, the relationship with their spouse is over, this may not be the case. The decisions, roles and sacrifices made during the marriage can have long term consequences for both spouses, long after the divorce is pronounced.