

# Spousal Support

## Summary

Married and common-law couples have a mutual obligation to support each other. This obligation continues after separation.

The court will consider what effect the relationship has had on the economic positions of the spouses.

Support may be periodic payments, (usually monthly) or a lump sum payment.

Same sex and opposite sex common law couples are considered common-law for the purposes of spousal support, if:

- They have registered their common-law relationship with Vital Statistics;
- They have lived together for at least a year and have a child together; or
- They have lived together continuously for at least three years.

When making an order for spousal support the court can consider the following:

- How long the spouses or partners lived together;
- What functions each performed during the time they lived together;
- Whether there is any order, agreement or arrangement dealing with spousal support;
- The financial needs of each;
- The financial means, earnings and earning capacity of each;
- Their standard of living;
- Any obligations to pay support for children or others;
- Any property settlement obtained; and
- Whether the relationship has had an effect on the earning capacity or financial status of either.

When making an order for spousal support the court shall not consider any misconduct of a spouse or partner. This includes things like domestic violence and adultery.

The purpose of a spousal support order is to:

- Recognize any economic advantages or disadvantages to the spouses as a result of the relationship or the breakdown of the relationship;

## Lesson Plan Overview

Family law is an area of law that deals with family relationships, and the rights and responsibilities associated with the creation, transformation, or discontinuation of those relationships.

This lesson plan introduces students to the concept of spousal support in family law. The objectives of this lesson are to understand the purpose of spousal support and to recognize the different types of support considerations. Students should also be able to examine and analyze some of the main issues in spousal support matters, such as when support ends or is varied, and how the amount of support is decided.

## Activities & Discussion Questions:

- 1) Provide students with the *Dickson v. Dickson* case summary and have them answer the discussion questions.
- 2) Provide students with the Spousal Support Evaluation.

## Glossary

Maintenance Enforcement Program – government program that administers child and spousal support obligations.

SSAG – Spousal Support Advisory Guidelines – advisory guidelines dealing with setting an amount of spousal support.

- Take into account financial matters dealing with caring for children, over and above child support;
- Relieve any economic hardship of the spouses as a result of the breakdown of the relationship; and
- Promote the economic self-sufficiency of each spouse within a reasonable period of time.

The spouse or partner being supported has an obligation to become independent of that support within a reasonable period of time.

What is reasonable depends on the circumstances in each case, including things like length of the relationship.

Spousal support payments are generally tax deductible for the person who pays the support. Spousal support is included as income for the spouse receiving the support. There must be a written agreement or court order for the payments.

The court may not make a spousal support order where there is a separation agreement if:

- The separation agreement sets out spousal support; or
- One of the spouses or partners has released the other from paying support.

The court may make an order, even though there is a separation agreement, if:

- The spouse or partner who is required to pay support is in default; or
- The support the spouse or partner agreed to was inadequate when the circumstances of both spouses at the time the agreement was made are looked at; or
- The spouse or partner who in the agreement released the other from paying support now needs public assistance.

The Spousal Support Advisory Guidelines (SSAG) are advisory only and are not part of any legislation.

A lawyer can prepare a calculation outlining the range of spousal support amounts and duration suggested by the Spousal Support Advisory Guidelines. The range will show low, mid and high levels of support.

More information on the Spousal Support Advisory Guidelines is available online. <http://www.justice.gc.ca/eng/fl-df/spousal-epoux/ssag-ldfpae.html>

If a court is considering an application for a child support order and an application for a spousal support or common-law partner support order, the court gives priority to child support.

## Relevant Law:

### Federal Legislation:

*Divorce Act* – section 15.1(1) – (6)

### Provincial Legislation:

*The Family Maintenance Act* – sections 4(1), 5, 6, 7(1), 9(1), (2), (3), 10(1), 46 (1) (2), (3)

If as a result of giving priority to child support, the court cannot make a spousal or common-law partner support order or makes an order for a lesser amount than it otherwise would have, the court must provide reasons for doing this. Additionally if the child support amount is reduced or terminated the affected spouse or partner can apply for a variation of the order. The reduction or ending of the child support would be viewed as a change of circumstances by the court.

The Maintenance Enforcement Program (MEP) can administer and enforce spousal and child support obligations under the terms of a court order or agreement.

Once an order or agreement has been registered with the program, maintenance payments that the paying spouse would normally send directly to the spouse receiving the maintenance must be sent to the program. The program processes the payments, keeps records of the payments and forwards the payments to the spouse receiving support.

The Maintenance Enforcement Program has the power to enforce if payments are not made by:

- Garnishing wages
- Garnishing bank accounts
- Suspending licenses and passports
- Making the paying spouse come to court to explain why payments are not being made.

Recipients of support can opt out of the program if they wish to and payments can be made directly to them.

Recipients who are on social assistance may not be able to opt out.

Spousal Support in Manitoba is mainly governed by the commonlaw and:

- The provincial statute: The Family Maintenance Act.
- The federal statute: The Divorce Act.