

Spousal Support – Legislation

The Family Maintenance Act

Mutual support obligation

4(1) Spouses and common-law partners have the mutual obligation to contribute reasonably to each other's support and maintenance.

Personal expenses

5 The right of a spouse or common-law partner to support and maintenance within the meaning of section 4 includes the right, while living with the other spouse or common-law partner, to periodic reasonable amounts for clothing and other personal expenses and the right to sole discretion free of all interference from the other spouse or common-law partner in the use of those amounts.

Onus of self-support after separation

6 Notwithstanding section 4, a spouse or common-law partner has the obligation after separation to take all reasonable steps to become financially independent of the other spouse or common-law partner.

Factors affecting order

7(1) In determining whether to make an order under this Part or section 46, what provisions the order should contain, and, in particular, what is reasonable under sections 4, 5 and 6 for the purposes of the order, a court shall consider all the circumstances of the spouses or common-law partners, including the following:

- (a) the financial needs of each;
- (b) the financial means, earnings and earning capacity of each;
- (c) the standard of living of the spouses or common-law partners;
- (d) any obligation of either of them for the support and maintenance of a child or a person other than the other spouse or common-law partner;
- (e) any contribution of a spouse or common-law partner within the meaning of subsection (2);
- (f) the amount of any property settlement made between them;
- (g) where one of them is financially dependent upon the other, the measures available for the dependent person to become financially independent of the other, and the length of time and cost involved in taking those measures;
- (h) any impairment of the income-earning capacity and financial status of either resulting from the marriage or common-law relationship;
- (i) where one of them is financially dependent upon the other, whether and to what extent the dependent spouse or common-law partner is complying with the requirements of section 6;

The following sections 9(1)-9(3) concern the effect of a separation agreement on spousal support

Application for order

9(1) A spouse or common-law partner, or any person on his or her behalf, may apply to a court for an order of support and maintenance where

- (a) the other spouse or common-law partner is in breach of an obligation under this Part; or
- (b) an order is desired to fix the amount of support and maintenance payable to the other spouse or common-law partner.

Effect of separation agreement

9(2) Where spouses or common-law partners have separated by mutual agreement, and one of them has agreed in writing to release the other from liability for support and maintenance or to accept from the other specified periodic amounts for support and maintenance, no order shall be made under this Act for the support and maintenance of the spouse or common-law partner who has so agreed.

Restricted application of subsection (2)

9(3) Subsection (2) does not apply in the case of a separation agreement

- (a) where the spouse or common-law partner who is required by the agreement to provide support and maintenance is in default thereunder; or
- (b) where the support and maintenance that a spouse or common-law partner agreed therein to provide was inadequate having regard to the circumstances of both spouses or common-law partners at the date of the agreement; or
- (c) where the spouse or common-law partner who in the agreement released the other from liability for support and maintenance or agreed to accept from the other specified periodic amounts for support and maintenance has become a public charge or a person in need of public assistance.

Order

10(1) Upon an application under this Part, a court may make an order containing any one or more of the following provisions and may make any provision in the order subject to such terms and conditions as the court deems proper:

- (a) That one spouse or common-law partner pay to the other spouse or common-law partner, or to a third person on his or her behalf, such lump sum or periodic sums or both for support and maintenance or for clothing and other personal expenses as the court may determine.

Application to vary or discharge order

46(1) This section applies to an application to the court to vary or discharge

- (a) an order made under
 - (i) this Act, other than a child support order governed by section 37.2, or
 - (ii) *The Wives' and Children's Maintenance Act* (now repealed); or
- (b) an order made under *The Child Welfare Act* (now repealed) granting custody of, access to or maintenance for a child.

Order to vary or discharge

46(2) The court that made an order referred to in subsection (1) may, on application, vary or discharge that order if the court thinks it is fit and just to do so, having regard to any material change in circumstances that has occurred since the order was made or last varied.

Effective date of order

46(3) An order made under subsection (2) is not effective before the filing date of the application to the court to vary or discharge the order.

Divorce Act

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a)** the length of time the spouses cohabited;
- (b)** the functions performed by each spouse during cohabitation; and
- (c)** any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a)** recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b)** 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;
- (c)** relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d)** in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.