



The Spousal Support Guidelines are Here!

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Spousal support is probably the most emotional issue that separating couples have to deal with. All of the problems that lead to marital breakdown are often connected to this very complicated issue.

The process of determining spousal support issues can easily become a process of blame, resentment, guilt, anger, intense fear and frustration.

The law of spousal support has literally swung like a pendulum over the past 20 years. Courts have gone from linking blame for the end of the relationship with entitlement to support, (ie/ if leaving was your choice, you have no right to support), to seeking ways to compensate spouses whose sacrifices for the relationship have left them less able to support themselves.

Nowadays, the question of entitlement to spousal support is usually quite clear. But the questions of the amount to be paid, and for how long, continue to bedevil. It has become almost impossible for any two lawyers to agree on how much support should be paid, and for how long, making the law of spousal support difficult and unpredictable for all legal and mediation clients.

Enter the Spousal Support Guidelines. These draft guidelines, which are voluntary and advisory only, are the brainchild of two Canadian law professors and a committee of family practitioners. They have been researching support awards across the country for over three years. Based on this research, they have come up with a set of rules for determining spousal support with the goal of bringing about more certainty and predictability.

There are two basic formulas in the new guidelines: the “without children” formula and the “with children” formula.

The basic theory behind the “without children” formula is this: the longer you are married to or living with someone, the more your economic and non-economic lives become merged, with each spouse making countless decisions to mould his or her skills, behaviour and finances around those of the other. The role of the guidelines is to help people come up with support amounts and durations that adequately compensate for the

long term consequences of those decisions, and also ensure that issues of need, dependency, and loss of marital standard of living are fairly addressed.

Where there are dependent children, the primary rationale for spousal support is “compensatory”. When one spouse assumes primary responsibility for raising the children, that person often gives up a career or other opportunities. This creates a disadvantage to that person at the end of the marriage.

The core concept of both sets of guidelines is “income sharing”, though not necessarily equal income sharing. Contrary to the way spousal support has traditionally been analyzed by lawyers and judges, budgets will no longer play a part in determining support. Instead, the guidelines look to the incomes of the parties and apply a mathematical formula to determine the portion of spousal incomes to be shared.

The other core concept is that of a range of possible outcomes; neither formula will tell you exactly what the support amount should be, nor exactly how long it should last. Rather, the formulas produce a range of outcomes that mediators, clients and their lawyers can work with.

The “without children” formula is as follows:

- The amount of support is between 1.5% to 2% of the difference between the spouses’ gross incomes, multiplied by the number of years that they lived together;
- The duration of support will be between one-half and a full year of support for each year of the relationship.
- Duration becomes indefinite after 20 years of cohabitation, or, in relationships lasting 5 years or more, where the number of years of cohabitation plus the recipient’s age add up to 65 or more.

The “with children” formula is considerably more complicated. A software program is required to properly calculate amounts. In essence:

- Spousal support is an amount that will leave the recipient spouse with between 40% and 46% of the spouses’ net incomes after child support has been taken out.
- The duration under this formula is more complex and flexible. It relies on the length of relationship and also the duration of the post-separation parenting period remaining.

There are advantages and disadvantages to introducing a guidelines approach to a complex legal issue. These guidelines are intended to provide mediators, clients and their lawyers with a starting point for negotiations, to reduce conflict and to encourage settlement of spousal support claims. The disadvantages are that guidelines can be rigid, spousal support can sometimes be too complicated for such an approach, and the guidelines may be misinterpreted by people who do not fully understand them.

The spousal support guidelines are now entering the beginning of a trial period, where their advantages and disadvantages will be assessed, and modifications will undoubtedly follow.