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## SPOUSAL SUPPORT

In general, parties are encouraged to settle their own disputes. If the parties are unable to come to an understanding on spousal support obligations, then a party can bring the matter before the court to seek spousal support (in the United States, spousal support is referred to as “alimony”).

The law on spousal support in Canada is fairly fluid. Nonetheless, if one party, as a result of the marriage breakdown, is unable to maintain a lifestyle similar to the lifestyle experienced during marriage, then that party is probably entitled to spousal support from the other spouse.

A court, in deciding support, will look at whether a party has “standing” to seek support (which is very much dependent on the legislation). A court will also look at the issue of *entitlement* to support. *Entitlement* to support is dependent on the relevant legislation. The *Divorce Act* states that spousal support should: a) recognize any economic advantages or disadvantages to the spouse 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 the obligation apportioned between the spouses through child support; c) relieve any economic hardship of the spouse 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.

Once the issues of *standing* and *entitlement* are addressed, the court will turn to the question of form of support, duration and amount. In terms of the form of support, a court may order periodic support, retroactive support or lump sum support. The court may also go so far as to order one party to maintain certain benefit plans or even secure the support order against property. Sometimes the court may even order a nominal support order for the purpose of protecting a party's right to future support. The duration of spousal support should be related to how effectively the objectives of spousal support (mentioned above) are being met. The amount of support should be sufficient to redress the disparity in lifestyles of the parties.

It should be noted that there are several factors that guide a spousal support order. These factors include the following: a) whether there is an ability to pay; b) whether there is a need; c) whether there is an economic disadvantage; d) whether there is an economic advantage; e) whether there is dependency; f) whether there is an express or implied contract for spousal support; g) whether a party is sick or disabled; h) conduct; i) whether one party has a second family; j) the duty of a disadvantaged party to support themselves; k) whether there is a domestic contract; l) tax issues; m) whether the lifestyles of the parties are disparate; etc.

In order to address the level of fluidity in spousal support cases in Canada, the federal *Spousal Support Advisory Guidelines* were finalized in 2008. They are slowly gaining influence within the family law system to provide consistency and predictability in connection with spousal support obligations. For further information on spousal support, please contact my office **(905-275-9871)** and schedule a consultation.

Adapted from James G. McLeod & Alfred A. Mamo, *Annual Review of Family Law, 2009* (Toronto: Carswell, 2009).