

BFLG'S Tips on How to Build a Strong Case for Spousal Support

Of all of the legal issues stemming from divorce, spousal support is by far the most complex and unpredictable.

The laws of spousal support do not make a calculation of spousal support any simpler. That's because before there can be a calculation of the amount of spousal support, there must first be a determination IF a person is even entitled to spousal support.

Married spouses are automatically entitled to ask for spousal support just because of marriage. But that doesn't mean the right to claim spousal support is strong. A married spouse still must first establish entitlement to spousal support in accordance with the language of the Divorce Act which states:

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.

(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).

(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.

(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.

(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.

(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.

As is evident, to establish a valid claim to spousal support, a married spouse must prove contributions to the relationship (monetary and non-monetary), how those contributions negatively affected the spouse claiming spousal support, how those contributions positively affected the other spouse and how those economic consequences can be remedied with spousal support so that such spouse can become financially independent without spousal support. In some cases, the economic consequences of marriage or the economic disparity is so small that spousal support is not justified or the entitlement is so weak that the amount or duration of spousal support is minimal.

If, however, entitlement to spousal support is strong, then the next two factors to consider are quantum (eg. how much per month) and duration (eg. for how long).

In that case, the law requires a careful consideration of a long list of factors such as the length of the relationship, what each spouse's role was during the marriage, what career sacrifices/benefits each spouse experienced in the relationship and if there was a written agreement (eg. prenup). In rare cases, misconduct can influence the quantification and duration of spousal support.

Unmarried spouses have another law that governs spousal support. Unlike the Divorce Act for married spouses, unmarried spouses (also called common law spouses) are only entitled to seek spousal support IF they have cohabited continuously for at least 3 years OR have a child together.

It is critical for unmarried spouses to meet this pre-condition to be able to assert a claim for spousal support. If this threshold test is met, then the same considerations that were listed above for married spouses equally apply to common law spouses, although Ontario's Family Law Act provides a longer list of factors to determine quantum (eg. how much per month) and duration (eg. for how long).

Section 33 of the Family Law Act states:

- (8) *An order for the support of a spouse should,*
- (a) *recognize the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;*
 - (b) *share the economic burden of child support equitably;*
 - (c) *make fair provision to assist the spouse to become able to contribute to his or her own support; and*
 - (d) *relieve financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home).*
- (9) *In determining the **amount and duration**, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including,*
- (a) *the dependant's and respondent's current assets and means;*
 - (b) *the assets and means that the dependant and respondent are likely to have in the future;*
 - (c) *the dependant's capacity to contribute to his or her own support;*
 - (d) *the respondent's capacity to provide support;*
 - (e) *the dependant's and respondent's age and physical and mental health;*
 - (f) *the dependant's needs, in determining which the court shall have regard to the accustomed standard of living while the parties resided together;*
 - (g) *the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;*
 - (h) *any legal obligation of the respondent or dependant to provide support for another person;*
 - (i) *the desirability of the dependant or respondent remaining at home to care for a child;*
 - (j) *a contribution by the dependant to the realization of the respondent's career potential;*
- (l) if the dependant is a spouse,**
- (i) *the length of time the dependant and respondent cohabited,*
 - (ii) *the effect on the spouse's earning capacity of the responsibilities assumed during cohabitation,*
 - (iii) *whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,*

- (iv) whether the spouse has undertaken to assist in the continuation of a program of education for a child eighteen years of age or over who is unable for that reason to withdraw from the charge of his or her parents,*
- (v) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support,*
- (vi) the effect on the spouse's earnings and career development of the responsibility of caring for a child; and*
- (m) any other legal right of the dependant to support, other than out of public money.*

(10) The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

Just the same with married spouses, unmarried spouses must prove how their contributions to the relationship affected the spouses differently and why spousal support is required to afford their cost of living until they can become economically self-sufficient.

BFLG asks its clients to help build the factual foundation and evidentiary record to support a claim for spousal support by answering these questions:

1. Describe all your education since high school by building or refreshing your CV with as many details of the schools, colleges, universities, courses, degrees, transcripts, GPA, certificates, licences, titles, start and end dates of these, and any ongoing plans for further education or training;
2. Describe all your work experience since high school in the above CV with as many details of the employers, apprenticeships, internships, work-study, co-ops, self-employment, titles, start and end dates of these, promotions, and annualized income in each position;
3. Describe how your relationship affected your above educational and employment history and your spouse's educational and employment history, career path, annual income and income-earning capacity;
4. Describe why your current state of education, employment, employability and income necessitate spousal support;

5. Describe why your spouse's current state of education, employment, employability and income have been positively impacted by your sacrifices and concessions;
6. Describe what contributions you made that advanced your spouse's career, career potential and earnings;
7. Describe how cohabitation, marriage, pregnancy, child-birth and raising children have permanently damaged your employability and income, while your spouse's employability and income have improved;
8. Describe what your spouse said or did that caused you to forego education, employment, employability and income for the benefit of the family;
9. Describe what sacrifices you made to care for a child who suffered from illness, disability or other cause;
10. Describe how your spouse's education, employment, employability and income will improve into the future based on your sacrifices and concessions;
11. Explain any physical, medical, age-related, psychological or emotional challenges that you face as result of your relationship and how that affects your employment, employability and income;
12. Describe your historical standard of living and lifestyle during your relationship using examples;
13. Explain how you will spend the spousal support you are asking for in light of your historical standard of living and lifestyle during your relationship using examples;
14. Describe any extreme misconduct by your spouse that the court would find unconscionable;
15. Explain if you have a career, vocational or business plan for yourself and what that is including dates, programs, duration and costs.

In conclusion, the law of spousal support involves complex social, financial and career factors. Thorough research, preparation and documentation are essential. Building a compelling case requires compelling, credible and objective evidence. BFLG is here to help you build your strong case for spousal support.

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