

SOME QUESTIONS AND ANSWERS ABOUT SPOUSAL SUPPORT

In Canada, when two people who are married ask the Court for a divorce, they can deal with many family issues related to money and their family property at the same time. One of the things that the Court can order is that one spouse has to give money to the other spouse, to pay for basic needs for living, such as housing, food, clothing and other necessary expenses. These payments from one spouse to the other are called “spousal support”.

Here is a sample situation to think about:

Sophie and her partner stopped have been married for two years, and they separated a month ago and are planning to get a divorce. Sophie did not finish school when she got married, and she has not been working outside of the home since then. Her partner has not been giving her any money since they separated. He said she can go back to school, or just get a job to look after herself. Sophie is having a hard time finding a job, and is worried about how she will be able to pay for all of her living expenses and go back to school.

She wants to know if she would be able to get some money from her ex-partner to help her.

Question 1: What exactly is "Spousal Support"?

Spousal support is money that one partner pays to the other one, after their relationship ends. The money, or financial support is for helping the person who has less money, to be able to keep living in a similar way as the couple did during the relationship. The money is called spousal support, because a "spouse" is a person who is legally married to another person.

Question 2: Is this the law for all of Canada?

Yes, it is the law for everyone in Canada who is married and getting a divorce.

For example, let's say we think about Sophie and her husband's. He was working to support the both of them during the marriage. When they get a divorce, then Sophie may be able to get spousal support payments from her husband to help her look after herself after they stop living together.

Question 3: What if I am married and I want to leave, but my spouse says I won't be able to get a legal divorce. Do I have to be divorced to get spousal support?

No, not in Ontario. In Ontario, you do not have to be divorced to get spousal support. As long as you and your spouse are separated, you can apply to the Court for spousal support.

Question 4: What if I never got married? Can I still get spousal support?

In Ontario, the law for spousal support also applies to some people who have been in a longer or significant relationship, even if they never got married. If you never married, you and your partner have to be considered "common law" spouses under Ontario law, to be able to apply to a Court for spousal support.

Question 5: How would someone know if they were common law spouses, to be able to ask for spousal support?

In Ontario, couples who are not married are considered "common law" spouses in these two situations:

- You and your partner lived together for three years or longer, or

- You and your partner were in a steady relationship and you have a child together, whether you lived together or not.

Ontario law says that in these situations, the people are “common law” spouses, and they can apply to the Court for spousal support. But in Canada’s other provinces and territories, the rules can be different.

Let’s think back to Sophie and let’s say she and her husband were not legally married but they lived together as a couple for 5 years. In Ontario, they would be considered common law spouses, Sophie may be able to get spousal support payments from her husband, after they stop living together.

Or maybe Sophie and her partner never married and weren’t able to live together. But they considered themselves a couple and had a baby together. If they break up, Sophie’s partner may have to pay her spousal support payments to help her pay for her living expenses.

Question 6. What if a woman is a newcomer or immigrant to Canada? Will her immigration status affect her right to get Spousal Support?

No, every person living in Canada has rights under family law, no matter what their immigration status is.

But, if you came to Canada with your spouse or partner, or to join that person here, you may be worried about whether you will be allowed to stay in Canada if the two of you stop living together. And if you have children, you may have questions about how this could affect them. If you are concerned about your immigration status, it is important to talk to an immigration lawyer.

Question 7: Which spouse or partner can get spousal support?

In some families only one partner in the relationship works outside of the home, and in other families, both partners have jobs. When you are breaking up, either person can ask their partner to make payments to help support them after the relationship. Usually the partner who has less money, or earns less money will ask the other person for support after they break up.

Question 8: When will the Court order that a person gets spousal support?

The Court will often order that the partner who will be living with a lower income after the relationship ends should get spousal

support. The purpose of spousal support is to make sure that the person with more money helps their ex-partner for a while, so that after the break up, they can keep living in a similar way as the couple did during the relationship.

Spousal support is also a way of giving value to the things that a partner did for the family, other than working outside of the home. Usually spousal support is meant to help a partner while they make arrangements to be able to support themselves.

Think back to Sophie's story. Let's say we know she and her husband were married, or common law spouses. Her husband worked to earn money for the family during their relationship, and Sophie did not work outside the home, because she was looking after the home and they were planning to have children.

After they broke up, she says she is struggling to get a job and support herself. If her husband has an income, he would probably have to pay her spousal support, because she has less money, and because she looked after their home during the marriage, instead of building job skills and a career.

Question 9: How much money will the spousal support payments be?

The amount of spousal support depends on many factors. There are government guidelines that set out suggested amounts of spousal support for different situations. The guidelines take into account:

- how long the couple was in a relationship;
- how many children they are still looking after; and,
- how much money each partner earns.

The guidelines are suggestions, not rules that must be followed. Most Court orders for spousal support follow the guidelines as a starting point, but the Court can also consider other factors.

Question 10: What other factors can the Court consider, to decide the amount of spousal support?

The Court must look at the length of the relationship. It can also consider other details about the relationship.

- i) Such as, how did each partner contribute to the family during the relationship? This means things like whether one person stayed home to look after the family, or help the other partner with their schooling or work;

- ii) also, the Court wants to know if one partner left school early, or took a lower paying job, so that the other partner could do well at work;

- iii) The Court will also look at what each partner owns, how much money each one earns, and what kind of work and income each might have in the future. If it will be difficult for one partner to start working because of their age, health, amount of education or work experience, that is also important to the Court.

- iv) Another important question is will the person who is paying spousal support have enough money to also look after themselves and other responsibilities, such as a new family.

In our example, Sophie may not have any work experience, and she did not finish her education. If she is an older woman, that may also make it difficult for her to find a job. Or, if she is younger, her chances of eventually getting a job may be better. These details would be important to the Court. The Court may decide that Sophie's husband has to pay for spousal support for a while, to give her time to find a full-time job or to go to school to

be able to get a better-paying job for herself. If her situation makes it unlikely that she will be able to get a job, her husband may be ordered to always pay her spousal support, as long as he has enough money to also support himself, and the other people he is responsible for.

Question 11: Should I tell the Court if my partner was abusive during the relationship?

Yes. This is also important to the Court. The Court will consider if there was physical, emotional or financial abuse in your relationship. The Court will consider whether any abuse in the family will make it hard for a person who was abused to work and support themselves.

Question 12: What if the partners don't tell the Court about all of the money they really have?

The law says that both partners have to give full information about their finances so that the Court can make a decision about spousal support. If a person does not provide a full and honest picture of the money they have, the Court can look at the way they are living, and make an estimate about their finances, and use that to make an order for spousal support. If you don't think your ex-

partner is telling the Court everything about the money they have, you should tell your lawyer, or the Court.

Question 13: What if there are kids and they stay living with one of the parents after the separation? Is spousal support supposed to take care of the children too?

No. Spousal Support is supposed to help with the spouse or partner's living expenses. If that parent is also looking after children of the relationship, they may also get Child Support. Child Support is supposed to help with the expenses of raising the children.

Not everyone has a legal right to get spousal support after their relationship ends. It depends on the things that the Court considers, described above in Question 10.

But both parents have to help pay for the care of their children. And if one parent ends up raising the children most of the time, then the other parent has to pay them child support, unless there are good reasons why the other parent cannot afford to pay money to support the children.

Question 14: Can I get Spousal Support AND Child Support?

Yes, sometimes a person is ordered to pay their ex-partner both Child Support and Spousal Support.

But, if they can't afford to make both payments, the law says that child support has to come first, before spousal support is paid. The Court can order that you should get both child support and spousal support, but what happens is that after your partner pays for child support, if they can't afford to pay the full amount of spousal support, then those payments end up being less than what the Court ordered.

Later, if the situation changes, maybe because the child grows up and child support payments end, or because the child stops living with you most of the time, then the Court can make an order to increase the amount of spousal support you are getting.

Think about Sophie and her husband. Lets' say they have a child who lives with her after the separation, and visits the father on weekends. The Court can order that Sophie should get BOTH child support and spousal support.

But maybe Sophie's husband can only afford to pay child support, because his job does not pay very much and he also has to look after a new wife and baby on the way. After several years, Sophie's child graduates from college and gets a job, so the father does not have to pay child support to Sophie any more. She can

ask for her spousal support payments now, if she is still earning less money than her ex-partner.

Question 15: How long can I keep getting spousal support payments?

Spousal support can be a one-time payment, but most often it comes in regular, monthly payments. Sometimes the payments are for a set period of time, and sometimes they may continue forever. If Sophie is too unwell or elderly to work, the Court might order that she keeps getting spousal support from her ex-partner forever, as long as he is able to pay. But in most cases, the Court will order spousal support for a specific period of time, and expect that with that help, Sophie will be able to support herself in time.

Question 16: Do I have to go to Court to get spousal support?

If the couple who is separating can agree about the amount of spousal support payments, and also when, and how long they will be paid, then they don't have to get a Court to order spousal support. The government guidelines set out the fair amount of spousal support in different situations. It is a good idea to talk to a lawyer who can tell you the amount in the guidelines, for your

situation. A lawyer can also review what spousal support you and your partner have talked about. It is important to talk to your own lawyer about any agreement with your ex-partner, before you finally agree on or sign anything.

Question 17: If a couple can agree about paying spousal support, what should they do?

It is important that both partners have a clear understanding of their agreement about spousal support payments. In addition to who will pay spousal support, you should think about details such as how much money the payments will be, how often they will be paid, when the payments will begin and end, and how they will be paid.

If both partners can agree on these details, it is important to write the details down. It is also a good idea for both partners to get their own lawyer to review the written agreement and get legal advice about whether it is fair.

Question 18: Is a written agreement between ex-partners legal?

An agreement between ex-partners about spousal support, on its own or as part of a larger agreement when they separate, can be

legal, and they can be forced to follow it. They will have to do certain things to make the agreement legal:

- both partners have to sign the agreement;
- someone else has to sign it, to prove that they saw or witnessed both partners actually sign the agreement; and
- the date when they signed has to be beside all the signatures.

Next, it is important to take the signed agreement to file it with a Family Court. That way a government office, called the Family Responsibility Office or FRO, can make sure that the person who is supposed to pay spousal support makes the payments. A lawyer can help you with this.

Let's say Sophie and her ex-partner have agreed that he will start to pay her spousal support. He has a good job and Sophie still isn't working. Her ex-partner has offered to help her move on by paying her the same amount of money every month, for 3 years. Sophie thinks this will be enough time to finish a course and get a job, so she can look after herself. They write down what they have talked about.

Sophie tells her ex-partner that before she is sure, she is going to talk to a lawyer. After getting advice from a lawyer, she decides she will accept this arrangement. She signs the written agreement

in front of her lawyer, who also signs it, and they put the date on the agreement. Sophie's ex-partner asks his sister to watch as he signs the agreement too, and then his sister also signs, to say she witnessed his signature, and they write the date. Sophie's lawyer has agreed to file the signed agreement with Family Court.

Question 19: What if I don't think my partner will agree to pay me a fair amount of spousal support?

Sometimes partners that are breaking up are too angry to agree to anything. Sometimes, if one of the partners has been a bully or abusive during the relationship, an agreement might not end up being fair. If you don't feel you are able to ask your partner for spousal support, or if you can't agree on all the details about spousal support payments, it may be better to ask for a Court Order for spousal support, from Family Court.

CONCLUSION

It is always a good idea to talk to a family law lawyer if you want to leave your partner, or if the relationship has ended. You should ask about spousal support and other rights and options you may have.

You should also know that there is a greater risk of violence when an intimate relationship is ending. If you are in immediate danger, you can call the police at 911.

You can find more information on the Family Law Education for Women (FLEW) website.

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