

The Facts About SPOUSAL SUPPORT

Married and common-law spouses have a mutual obligation to support each other. This obligation continues after separation. The court will consider what effect the relationship has had on the economic positions of the spouses. Support may be in periodic payments (usually monthly) or in a lump sum payment.

Unmarried partners of both same-sex and opposite-sex common-law couples, are considered common law if:

- they have registered their common-law relationship with Vital Statistics, or
- they have lived together for at least 1 year and have had a child together, or
- they have lived together continuously for at least 3 years.

When making an order for spousal support the court can consider:

- how long the spouses or partners lived together;
- what functions each performed during the time they lived together;
- whether there is any order, agreement or arrangement dealing with spousal support;
- the financial needs of each;
- the financial means, earnings and earning capacity of each;
- their standard of living;
- any obligations to pay support for children or others;
- property settlement;
- whether the relationship has had an effect on the earning capacity or financial status of either.

However, when making an order for spousal support, the court cannot consider any misconduct of a spouse or partner.

A spousal support order should:

- recognize any economic advantages or disadvantages to the spouses as a result of the relationship or the breakdown of the relationship;
- consider financial matters dealing with caring for children, over and above child support;
- relieve any economic hardship of the spouses as a result of the breakdown of the relationship; and
- promote the economic self-sufficiency of each spouse within a reasonable period of time.

The spouse or partner being supported has an obligation to become independent of that support within a reasonable period of time. What is reasonable depends on the circumstances in each case, including things like the length of the relationship. Spousal support payments are tax deductible for the person who pays the support. They are included as income for the spouse receiving the support. There must be a written agreement or court order for the payments.



If there is a written separation agreement, the court may not make a spousal support order if the separation agreement already sets out spousal support, or one of the spouses or partners has released the other from paying support.

However, the court may consider making an order even if there is a separation agreement if:

- the spouse or partner who is required to pay support is in default;
- the support that the spouse or partner agreed to provide was clearly inadequate when the circumstances of both spouses are looked at the time the agreement was made; or
- the spouse or partner who released the other from paying support now needs social assistance.

The **Spousal Support Advisory Guidelines** (SSAG) are advisory only and are not part of any legislation. A lawyer can provide you with a calculation outlining the range of spousal support and duration of support suggested by the Spousal Support Advisory Guidelines. The range will show low, mid and high levels of spousal support. More information on the Spousal Support Advisory Guidelines is available online.

Where a court is considering an Application for a Child Support Order and an Application for a Spousal or Common-law Partner Support Order, the court must give **priority to child support**. If child support obligations result in the court not granting a spousal support order, or granting an order for a lesser amount than it otherwise would have, the court must provide the reasons for doing this. If a court has given priority to child support and later the amount of child support is reduced or the child support ends, the affected spouse or partner can apply for a **variation** of the order. The court would view the reduction or ending of the child support as a change of circumstances.

The Maintenance Enforcement Program (MEP) administers the spousal and child support obligations under the terms of a court order or agreement. Once an order or agreement has been registered with the program, the paying spouse must send the support payments directly to the program. The program processes the payments, keeps records of the payments and forwards the payments to the spouse receiving support.

If payments are not made, The Maintenance Enforcement Program has the power to enforce by:

- garnishing wages;
- garnishing bank accounts;
- suspending licences and passports;
- making the paying spouse come to court to explain why payments are not being made.

Support recipients can opt out of the program if they wish to, and payments can be made directly to them. However, recipients who are on Social Assistance may not be able to opt out.

The common law (case law) and the following Statutes govern spousal support in Manitoba:

- **The Family Law Act**
- **The Family Support Enforcement Act**
- **Divorce Act**



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