

Things You Want to Know About Spousal Support, but Were Afraid to Ask: Understanding the Law on Spousal Support

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Child and Spousal Support for Legal Support Staff

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EVERYTHING YOU WANTED TO KNOW ABOUT SPOUSAL SUPPORT BUT WERE AFRAID TO ASK

INTRODUCTION

The introduction of the Spousal Support Advisory Guidelines¹ (the “Guidelines”) was for most family practitioners an “idea whose time had come”. Prior to the Guidelines, practitioners found it difficult to advise clients with respect to specific issues related to spousal support such as entitlement, quantum, duration and more specifically, how to structure the settlements. In fact, it would be fair to suggest that prior to the Guidelines, spousal support settlements were discretionary with very little consistency in the outcomes.

GUIDELINES

The Guidelines were developed to bring more certainty and more predictability to the determination of spousal support under the Federal *Divorce Act*.² The Guidelines were released in January, 2005 in the form of a draft proposal and more recently, they were revised and the new Spousal Support Advisory Guidelines were released in July, 2008, accompanied by a summary of the revisions.³ A full version of the Spousal Support Advisory Guidelines and the summary of revisions can be located at www.justice.gc.ca/eng/pi/fcy-fea/spo-epo/g-ld/spag/index.html.

The Guidelines were intended as a practical tool to assist spouses, lawyers, mediators and Judges in determining the amount and duration of spousal support in typical cases. The various components of the Guidelines, including the basic formula, restructuring, and exceptions, are intended to reflect best practices and emerging trends across the country. ⁴

It is important to note that the Guidelines are significantly different from the *Federal Child Support Guidelines* in that they are not legislated by the Federal Government and are simply informal Guidelines that are to be used on an informal basis. Notwithstanding the fact that they are informal Guidelines, it is clear from practicing in the area, as well as a review of the jurisprudence, that both practitioners and the courts have relied significantly upon the Guidelines and, in most cases, reference the Guidelines as well as the associated calculations in their decisions.

¹ Carol Rogerson and Rollie Thompson, *Spousal Support Advisory Guidelines*, Department of Justice, 2008 at viii [Rogerson].

² *Divorce Act*, RSC 1985, c 3 (2d Supp).

³ All references to the Guidelines are specific to the new Spousal Support Advisory Guidelines released in 2008.

⁴ Rogerson, *supra* note 1 at vii.

In this paper, we will explore the legislative jurisdiction for spousal support for both married and unmarried couples, as well as distinguish between the different models of support and the associated case law. We will also discuss the three key concepts: entitlement, quantum and duration, as well as review applications. In addition, we will briefly discuss the concept of the ceiling and the floor for spousal support and how these concepts have been interpreted in the associated case law. This paper has been drafted to explore the numerous concepts arising in spousal support at an intermediate level. The assumption has been made that the audience has a basic understanding of spousal support, as well as the leading decisions of *Moge v. Moge*,⁵ *Bracklow v. Bracklow*⁶ and *Miglin v. Miglin*.⁷

In the formal presentation, we intend to focus on the practical application of the main concepts.

LEGISLATIVE JURISDICTION PURSUANT TO THE DIVORCE ACT

The Court's jurisdiction to award spousal support, in respect of married couples, is pursuant to the *Divorce Act*. For the explicit purpose of this paper, we have outlined the relevant provisions that are referenced.

Spousal support order

15.2(1) A court of competent jurisdiction may, on a 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 is reasonable for the support of the other spouse.

Interim order

15.2(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).

⁵ *Moge v Moge*, [1992] 3 SCR 813 [*Moge*].

⁶ *Bracklow v Bracklow*, [1999] 1 SCR 420.

⁷ *Miglin v Miglin*, 2003 SCC 24 [*Miglin*].