

## Worried about the break up of your marriage? *It doesn't have to result in a vicious battle.*

Make your situation better. Read the wise advice in this article series authored by experienced family lawyers. Then consider how you'll proceed in the best interests of yourself and your family.

### **Article 8:** Resolving your family law dispute: Who pays spousal support and how much is paid?

*This is the eighth of ten articles designed to help people understand the complex area of family law. The articles are not a substitute for legal advice. They are meant to help you focus on the issues that you should consider when faced with family conflict.*

Spousal support is an area of great uncertainty in the law. Despite this, consideration of spousal support offers some useful opportunities to negotiate solutions that will benefit both you and your former spouse. In our opinion, it should always be considered together with child support and division of property.

Spousal support can be time limited or indefinite. It can be lump sum or periodical. Unlike child support, periodical spousal support is taxable if you receive it and tax-deductible if you pay it. All this flexibility offers opportunity to income split for tax purposes, and to trade off transfers of assets for a stream of income.

If either of you has substantial income or assets, you should consult your tax advisor and family lawyer to maximize family after-tax income when your issues are resolved.

Lawyers consider whether support is payable, how much support should be paid, and how long it should be paid for. The courts consider the needs and means of each person and their ability to pay, and the need to compensate a spouse for the economic disadvantage he or she has suffered as a result of being out of the work force to take care of the family.

Recently, Spousal Support Guidelines have been developed by a team of academics. They are not law, but the courts tend to refer to them as a helpful guide to the question of how much support should be paid and for how long.

Spousal support is also payable when a common law relationship breaks up, but there are strict time limits within which to apply after the break up. You should see a lawyer right away if your common law relationship has ended.

Spousal support is the law's way of recognizing that marriage is a continuing commitment, and that because people compromise their economic and social condition to enter into a permanent, exclusive relationship, and because spouses are not always economically equal at the breakup, one of them will often need assistance to achieve independence.

Independence and equality are not solely dependent on support. As I will discuss in my next column, spousal support should be considered along with the family's assets. The end result should be that both of your economic situations will be maximized in the process of settlement.

*Ronald J. Smith and Glenda Peacock are family lawyers and mediators based in Kelowna, BC. They wrote this article series to help people learn about preparing for collaborative and constructive solutions to the legal issues involved in marriage breakup.*

You can contact Smith Peacock for a consultation by phoning 250.860.7868 or 888.787.6484.

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