

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

Does retirement stop spousal support?



Almost 40% of first marriages end in divorce in Canada; the divorce rate is even higher for second marriages/partnerships¹ Support for your ex may not end with the relationship. Support obligations may continue indefinitely. What happens when the payor retires? The payor is no longer employed? Do these support obligations cease?

In many cases, support obligations continue, even though you may be retired. Like many other things in life involving the law, decisions are decided on a case by case basis.

Couples may reach a formal agreement on breakup that covers what happens at retirement. A court order for support may cover this, though it is rare to see a stop date in an initial order that is linked to the retirement of the payor.

The onus is generally on the payor to show that (s)he has retired and that his or her income has dropped, demonstrating a material change in circumstances that would justify that a court could vary or terminate support obligations. "A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively a support order or any provision thereof on application by either or both former spouses."²

A court may conclude that retirement is reasonable, simply not a convenient ploy to terminate support payments, depending on how old the payor is and how well the payor is prepared financially for retirement.

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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He annually provides 100's of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As a Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

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Case in Point

The case of *Schulstad v. Schulstad*, 2017 ONCA 95 (CanLII) dealt with such an issue. Diann Schulstad appealed a court order terminating Carl Schulstad's obligations to continue to pay spousal support and maintain life insurance for her benefit, past his retirement date from a successful and high earning career as a surgeon. Diann was 69 and hadn't worked in years; Carl was 70 at the time. Carl estimated that his income would drop from about \$250,000 USD to about \$40,000 USD.

The Court of Appeal ruled that Diann had a valid claim for support payments and perhaps even a continuation of life insurance with her as beneficiary. The decision on the amount of spousal support was referred back to another application judge of the Superior Court of Justice for determination on what level of support Carl should continue to pay and whether the life insurance, if still in force should continue as is, be reduced or terminated.

Comprehensive retirement and retirement income planning should include considerations for support obligations. That includes whether obligations will terminate or be adjusted. There is the uncertainty of a court's decision and rationale for termination, variation, or when that might take effect. It may be prudent to seek legal advice in advance and attempt to negotiate terms satisfactory to both spouses rather than deal with the uncertainty of a decision made by the courts after retirement.

These considerations should be included in planning with the payor and recipient as each plan for their respective retirements or next phase of their lives.

¹Source: StatsCanada; Vanier Institute for the Family, 2010

²Source: *Schulstad v. Schulstad*, 2017 ONCA 95 (CanLII) para. 17

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