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12 Things Everyone Wants To Know When They Separate

12 Things Everyone Wants to Know When They Separate is a report of answers to questions people have when they are contemplating or in the process of separating from their spouse.

#1: My wife and I just separated. We were only married for 2 years and don't have any kids. Do I have to pay her spousal support?

It depends on a number of different things including whether and for how long you lived together prior to getting married, if she earns less money than you and, if so, how much less, if she requires financial support, if you have the ability to provide her with financial support, if your wife sacrificed her career when you got married, and her ability to become self-sufficient in a short period of time, to name a few. All of these factors will be taken into consideration by the Judge in determining whether you should pay your wife some spousal support and, if so, how much and for how long.

When determining the amount of spousal support to be paid and the duration of support payable, if any, many Judges in Ontario now rely on the Spousal Support Advisory Guidelines. The Guidelines will generate a transitional amount of spousal support, with the length of the transition period being proportionate to the length of the Parties' cohabitation/marriage. For short marriages, like your own, the amount of support generated by the Guideline Formula will often be small and for a very short transitional period. The short transitional period allows spouses time to achieve or approximate the same standard of living that the spouses enjoyed while married, while at the same time encourages a clean break between the spouses. Unless you lived with your wife for a number of years before you got married, if the Judge orders any spousal support, it will likely be for no more than 2 years.

For more detailed information about how to determine whether your wife is entitled to spousal support and, if so, how much you would have to pay and for how long, we encourage you to read Lecture 3 of *Separating From Your Spouse 101*.

#2: My husband and I just separated and he has agreed that I have custody of the kids. How much child support will I receive?

The amount of child support is set by the Tables to the Federal Child Support Guidelines and will be based on your husband's income and the number of children you have. For example, if your husband makes \$123,000 a year and you have two children, he is

required to pay you \$1,679 per month in support.

In addition to the Table amount of child support, your husband will need to pay his "proportionate share" of your children's special and extraordinary expenses. These expenses include the following:

- a) Daycare/childcare for your children while you're at work or at school;
- b) Medical and dental insurance premiums for any private insurance benefits you have for your children;
- c) Non-insured medical, dental, and health care expenses;
- d) Private school tuition or tutoring;
- e) Post-secondary education expenses such as tuition fees, books, residence, and student fees; and
- f) Abnormally high expenses for your children's extra-curricular activities such as the fees for your son to play rep-hockey or baseball.

How much your husband has to contribute to these additional expenses depends on what your income is. If your annual salary is \$60,000, then your husband would be required to pay 67% of the cost of these expenses. You would be responsible for paying the balance.

For more detailed information about how to determine the amount of child support payable we encourage you to read Lecture 2 of *Separating From Your Spouse 101*.

#3: My husband and I just separated. How can I make sure that I have full custody of the kids?

There is no such thing as "full custody." What you likely mean is "sole custody." Sole custody generally means that the children will live primarily with you and that you will make all major decisions with respect to your children, including important decisions affecting their education, healthcare, religion, and other matters concerning your children's well-being.

To obtain an order for sole custody you must prove to the court that you were always the children's primary caregiver, that your husband had little or no involvement in the

raising and care of your children, and that you and your husband are not capable, due to animosity, domestic abuse, etc., to make important decisions with respect to the children together.

In recent years the judiciary has been making efforts to avoid using terminology such as "custody" and "access." Instead, Judges are using wording such as "primary residence," "secondary residence," and "decision-making authority."

For more detailed information about sole custody we encourage you to read Lecture 1 of *Separating from Your Spouse 101*.

#4: My wife and I just separated. Will she automatically get custody of the children?

No. There is no presumption that the mother will be granted sole custody of the children. Who gets custody and what type of custody is ordered depends on who was the children's primary caregiver during your marriage, where the children have been living since you separated, your involvement in the children's lives and upbringing, and how well you and your wife get along.

If you were heavily involved in your children's lives and you and your wife are separating on reasonably good terms, a Judge might award you joint custody and/or shared custody. Joint custody means that both you and your wife will have equal decision-making authority with respect to all major decisions affecting your children. It doesn't matter whether your children live most of the time with your wife as your decision-making authority is not dependent on how often the children reside with you. Shared custody means that the children live with you at least 40% of the time over a course of a full calendar year. An example of shared custody would be the children living with you and your wife on a week-on-week-off basis and the children living with each of you for an equal amount of time during their holidays from school.

For more detailed information about the different types of custody and residence arrangements we encourage you to read Lecture 1 of *Separating From Your Spouse 101*.

#5: My wife and I just separated. I've been told that she will get 1/2 of my assets. Is this true?

No. Property and assets are not physically split in Ontario. Rather what happens is that the net value of all property and assets owned by each spouse is calculated in

accordance with a specific method set out by the *Family Law Act*. Then, typically, a money adjustment, known as an “equalization payment,” is paid by the spouse with the higher net value of property and assets to the spouse with the lower value. The idea is to “equalize” your spouse’s net worth upon separation so that it is equal to your own.

It is only the *increase* of the net value of your assets during your marriage that is equalized. Subject to certain specified exclusions and one exception, the increase is determined by calculating your assets less liabilities on the date of separation and subtracting the value of your assets less liabilities on the date of marriage. Look at it as if you were business partners that agreed to share the net proceeds of sale of your business equally after you each received the amount of money you initially invested in the business upon startup.

Once your and your spouse’s net worth is determined, the spouse with the greater net worth will pay one-half of the difference to the spouse with the lesser net worth so that both spouses are left with the same value of property. For example, if on the date of separation, after factoring in all of the deductions and exclusions allowed for by the *Family Law Act*, you have a net worth of \$100,000 and your wife has a net worth of \$50,000, you will need to pay to your wife or give her assets worth \$25,000 so that you both end up with a net worth of \$75,000.

For more detailed information about calculating your net worth and the equalization of net family property we encourage you to read Lecture 4 of *Separating From Your Spouse 101*.

#6: My husband and I just separated amicably. How quickly can we get a divorce?

While you can commence an Application for a divorce immediately after you separate, a Divorce Order cannot be made until you and your spouse have been living separate and apart for at least one full calendar year. A Judge may not grant the Divorce Order if there are outstanding issues with respect to your children that need to be resolved, such as custody and access and child support. If the Judge does grant the Order, your divorce will take effect 31 days after the date of the Divorce Order.

#7: My wife and I just separated and we have agreed that the children will live primarily with her. How long will I have to pay child support?

Child support is payable at least until a child has reached the age of majority which is 18 years in Ontario. If your child attends university or college, child support will be

payable at least until your child has completed his or her first degree or diploma. If you and your wife are both doctors, for example, and your son has aspirations of going to medical school, you could find yourself obligated to pay child support until he finishes medical school.

If your son suffers from a serious medical illness and/or has learning disabilities that affect his educational studies and ability to find a job after he turns 18, you will have to continue to pay child support. How much and for how long will depend on your son's needs and other sources of funding that are available to him such as disability benefits.

#8: My husband and I have separated but he refuses to move out. How can I get him out of the house?

If your husband poses a threat to your or your children's personal safety, you can commence an Application and bring a motion on an emergency basis seeking what is called an order for "exclusive possession" of the matrimonial home. "Exclusive possession" simply means that you are entitled to live in the house and your spouse is excluded from living in the house.

Otherwise, as a result of the Family Law Rules, you have to wait until a Case Conference has taken place before you can bring a motion for exclusive possession. A Case Conference is an informal attendance before a Judge to discuss your case. Typically a Case Conference is held within 2-3 months of the day the Application was filed.

For more detailed information about "exclusive possession" of the matrimonial home we encourage you to read Lecture 5 of *Separating from Your Spouse 101*.

#9: My wife and I just separated and she won't let me see my kids. What can I do?

You will need to immediately commence a court Application for access and other relief. Unfortunately, due to the Family Law Rules, you cannot bring a motion for access to your children until a Case Conference has been held on the substantive issues, for example, with respect to custody and access of your children, child and spousal support, and division of property, unless you can prove it is urgent that you have access to your children. Most people are unsuccessful in proving this.

The unfortunate reality is, as Case Conferences are typically held within 2 to 3 months of the day the Application was filed, it could be up to three months before you see your children if your wife is not permitting you to, which could have devastating long term

affects on your relationship with your children.

We encourage you to read *Separating from Your Spouse 101* which provides a short discussion about “parental alienation” which is the concept of one parent prohibiting the other parent from seeing his or her children.

#10: My husband has just moved out of our home and wants a divorce. Will the kids and I be able to stay living in the home?

It depends on the income and resources of both you and your spouse. Unfortunately, most mothers find that even with the receipt of child and spousal support, they cannot afford to continue living in the matrimonial home.

If continuing to live in the matrimonial home is simply not affordable, you and your spouse will likely need to sell the home. Assuming you and your husband own your house jointly, you will likely need to use your share of the net proceeds from the sale of the matrimonial home to purchase or rent a new home for you and the kids.

For a more detailed discussion about living in the matrimonial home after separation, we encourage you to read Lecture 5 of *Separating from Your Spouse 101*.

#11: My wife and I just separated after 5 years of marriage. We never lived together before we were married. I make more than her. How long will I have to pay spousal support?

The length of time depends on whether or not you have children and with whom they primarily live, whether your wife worked during the marriage or sacrificed her career to care for the children, and how much less her income is than yours.

When determining the amount of spousal support to be paid and the duration of support, many judges in Ontario now rely on the Spousal Support Advisory Guidelines. For marriages like yours of short duration, when there are no children, the Guidelines will generate a transitional amount of spousal support, with the length of the transition period being proportionate to the duration of the parties’ cohabitation/marriage. In your case, assuming you and your wife do not have any children and that you did not live together for a number of years before getting married, the transition period would be no more than 5 years.

The short transitional period allows your wife time to achieve or approximate the same standard of living the two of you enjoyed while married, while at the same time

encourages a clean break between you and your wife.

If you and your wife do have children together, and if the children live most of the time with your wife, the Guidelines will recommend that spousal support be paid indefinitely, meaning there is no specific end date for support. However, the Guidelines will recommend that support be payable for a range of years; for example for between 3 and 7 years.

For a more detailed discussion about how to determine the length of time you may have to pay spousal support, we encourage you to read Lecture 3 of *Separating from Your Spouse 101*.

#12: I owned the house that my wife and I lived in before we got married. Do I get to keep it now that we've separated?

The house will continue to be your sole asset. However, your spouse may have a right to live exclusively in the house for an undetermined period of time. As well, the increase in the value of the house from the date of your marriage to the date of your separation will form part of the equalization of your net family property and assets. This could result in you having to pay to your wife half of the net increase in the value of your house.

If you want to sell your house but your wife is refusing to move out, you may unfortunately have to bring a motion requesting an Order that your wife move out of the house by a certain date and for her consent to the sale of your house.

As a result of the Family Law Rules, you will have to wait until a Case Conference has taken place before you can bring this motion.

For a more detailed discussion about what do to when the matrimonial home is owned by you, we encourage you to read Lecture 5 of *Separating from Your Spouse 101*.

Glossary of Terms

The following is a list of terms used in this report:

Access: The time a parent, who does not reside with the child on a primary basis, spends with the child. Under the *Divorce Act*, a spouse who has access rights is also entitled to receive information about the child's health, welfare, and education, unless a court orders otherwise.

Case Conference: An informal attendance, before a Judge, to discuss your case.

Child Support: An amount of money paid by one parent to the other parent on either a monthly basis or as a lump sum payment. Child support is payable until a child is no longer defined as a "child of the marriage" in accordance with the *Divorce Act* or a "dependent" as defined by the *Family Law Act*. The amount of child support is determined by the Child Support Guidelines and is based on the income of the parent paying the support and the number of children for whom support is payable.

Divorce Order: A final order made by a Judge in a divorce case. On taking effect, a Divorce Order legally ends a marriage but it cannot be made until you and your spouse have been living separate and apart for at least one year. Once a Judge grants the Order, your divorce will take effect 31 days after the date the Judge signs the Divorce Order.

Equalization Payment: The amount of money paid by the spouse with the higher net value of property and assets to the spouse with the lower value so that at the end of the marriage both spouses are left with the same net value of property and assets.

Exclusive Possession of the Matrimonial Home: Generally means that only one of the married spouses lives in the house (with or without the children) until the Parties have agreed on what is to be done with the matrimonial home or until trial. Both married spouses have an equal right to "possess" the matrimonial home to the exclusion of the other spouse. It does not matter in whose name the home is registered. Common law spouses do not have rights to exclusive possession as they do not have any statutory property rights in Ontario.

Federal Child Support Guidelines: A set of rules and simplified tables. The Guidelines set out a base amount of monthly financial support, known as the "table amount," to be paid based on the paying parent's annual income and the number of children.

Joint Custody: Joint custody means that both parents will have equal decision-making authority with respect to all major decisions affecting your children. It does not matter whether your children live most of the time with one parent over the other as your decision-making authority is not dependent on how often the children reside with either you.

Matrimonial Home: Where the married spouses and their family (if applicable) resided during their marriage. It is possible to have more than one matrimonial home. The term only applies to married spouses as common law spouses do not have any property rights in Ontario.

Parental Alienation: The concept of one parent prohibiting the other parent from seeing or having a relationship with the children of the marriage/relationship.

Sole Custody: One parent has the authority to make all decisions with respect to the children, including important decisions affecting their education, healthcare, religion, and other matters concerning the children's well-being. When a parent has sole custody, the children also typically reside primarily with that parent.

Spousal Support Advisory Guidelines: In the last several years, Professors Rollie Thomson and Carol Rogerson have developed a set of Advisory Guidelines to assist separating spouses, lawyers, and the court in determining the appropriate amount of spousal support to order and the duration of support. The final version of the Spousal Support Advisory Guidelines was released in July 2008 and is available online at: <http://www.law.utoronto.ca/faculty/rogerson/ssag.html>

In determining the appropriate amount and duration of spousal support, the Guidelines use two basic formulas. One is for when there are children of the marriage and child support is being paid and the other is for when child support is not being paid.

Table Amount of Child Support: The Table Amount of child support is the amount of support determined to be owed by using the Federal Child Support Guidelines.