



Spousal Support and Early Retirement

The Unifor Legal Services Plan turns 30 in 2015, and many of our clients are now retired or anticipating retirement. If you fit into this picture, you may be asking,

“How can I possibly meet my existing support obligations to my former spouse when my income drops at retirement?”

Well, the first, short answer to that question is:

If you are planning to retire soon, you should seek legal advice about your existing support obligations before you apply for retirement.

Do not assume that your support obligation will change, automatically.

Most (in fact, almost all) court orders and separation agreements do *not* address specifically that the support obligation will end or reduce at retirement (never mind by what amount) for the good reason that it is very difficult to speculate on what each spouse’s circumstances will be at that time.

In general, the law requires that a support obligation be based on the information available at the time of the initial settlement or court order. However, in most circumstances, the law does provide for a right to seek a variation of the obligation when there is a *material change in circumstances* on the part of either spouse.

If possible, it is valuable to make clear in an agreement or order that retirement will be such a material change of circumstances. But that does not guarantee that a court will grant a reduction or termination in the support obligation if the spouse who is retiring does so voluntarily, and in the face of a clear obligation to support a dependent former spouse. Absent such language, it is the obligation of a spouse seeking a variation in a support obligation to prove that a material change in circumstances has taken place.

What is the age at which a person can retire and reduce his or her legal support commitment without being challenged? There exists no clear answer unless this has been negotiated and inserted into a written agreement between the parties. Such agreements are rare. Instead, most spouses rely upon the law, which confers a high degree of discretion upon a judge to determine whether a material change has taken place, and then, whether and by how much a support obligation should change.

In today’s more difficult economic times, people are working to a later age. Early retirement is less common than it was 20 or 30 years ago, partly due to increases in health and life expectancy, but also due to record levels of household debt. It is a given that the breakdown of a relationship adds financial stress to the lives of both spouses.

While it is probably still safe to assume that a decision to take retirement at the traditional age of 65 would be seen as reasonable, and not open to challenge, the greater the difference between 65 and an earlier retirement age, the more likely it becomes that the decision will be placed under a microscope, and the retiree expected to justify its reasonableness.

The courts will look at the impact of the retirement on the lives of both spouses and will take into account the following (and sometimes other) factors in deciding whether to grant relief to the payor:

- The health of the payor (this is the single most important factor) - medical evidence that retirement is necessary for the health of the payor will generally result in a successful variation outcome.
- Evidence of bad faith, namely that a spouse is retiring principally to avoid a support obligation, can be fatal.
- The existence of retirement incentive programs and/or problems in the workplace (such as the financial viability of the employer) can make a decision seem reasonable.
- Is there a prospect of other employment income being earned by the retiree after retirement?
- The length of the relationship between the parties and the degree of relationship dependence will be relevant. Is the spouse able to be self-sufficient at this point?
- Circumstances of clear need can influence the outcome.
- Are there still dependent children who might be affected?

Notes: This article is an edited version of an article that appeared in the Unifor Local 1285 newsletter, written by Wendela Napier, the Managing Lawyer of our Brampton Staff office. It provides general information only and is no replacement for an opinion by a family law lawyer that you personally retain, which will be based on your unique circumstances, and that of your family.

If you are planning to retire soon, you should seek legal advice about your existing support obligations before you apply for retirement. Do not assume that your support obligation will change automatically.

If you are an eligible Unifor Legal Services Plan member, your coverage for family law matters may include up to 12 hours of prepaid time with a lawyer.

For further information, please contact the Unifor Legal Services Plan at:

1-800-268-7573