

## **Spousal Support During Covid-19 Pandemic**

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The current circumstances and the measures taken by the government to stop the spread of the pandemic, cause a significant disruption to the economic flow. It obviously affects also those who have been paying spousal support and those at the receiving end.

Those who are obligated to pay spousal support may have suffered the consequence of reduction in pay or have been laid off completely, ending the usual cash flow.

The current circumstances do not qualify the receiving spouse for an emergency relief if the payor has decided, justifiably or not, to not remit the payment.

The financial hardship on the payor due to the current imposed situation, has not yet been tested to qualify as a material change in circumstance, which is generally the required ground to justify change in spousal support. It may be that the period of disruption in cash flow is only temporary and does not affect the level of income, if spousal support was calculated on the basis of average fluctuating income. The disruption of cash flow will probably become more significant, as the situation prolongs and the financial hardship on the payor become such that it would be justified to make a change.

However, the major issue that arises in the situation where a payor wishes to effect a change is the limited ability to approach the Court. Currently, only urgent matters are being considered and money matters do not always qualify as urgent.

Similarly, when it comes to enforcement of existing spousal support order. Normally, the enforcement is mandated on the Family Responsibility Office (FRO). This government office is similarly restricting its actions for enforcement due to the lack of ability to deal with defaulting payors in court, and realizing the objective situation that may cause the default. It does not mean, however, that the Family Responsibility Office (FRO) or anyone else for that matter, authorizes the change to existing order of spousal support.

FRO continues to enforce spousal support orders subject to its discretion to negotiate payments. Default hearings have been adjourned, however enforcement under the Family Responsibility, and Support Arrears Enforcement Act, and the Family Orders and Agreements Enforcement Assistance Act remain, including garnishment of employment insurance benefits up to maximum of 50%. The Canada emergency response benefit does not qualify for garnishment.

Certainly, parents may be attentive to each other's financial situation and may try to arrive at a temporary arrangement to get through the financial hardship for both parties, with a view to ensuring that basic needs are met.

A solution to the situation may be explored best, especially at times that the courts are not likely to intervene, in a mediation/arbitration setting by an experienced certified personnel, that can assist the parties in arriving at a binding agreements that may be enforced, if required, in the same fashion as a court order.

By utilizing the option of mediation/arbitration, the parties would have access to a resource that can assist in factoring in various issues that may include the financial ability, totality of assets and liabilities, the availability and ability to generate income by both parents and other matters that may be relevant.

If you find yourself in this predicament, either as a payor or as a recipient, and you wish to explore the options that are available, it would be best to consult a lawyer who also practices mediation and arbitration.

For further confidential evaluation of your situation, and to explore mediation/arbitration options, please contact one of our senior lawyers at 905-625-2874 or [contact@derushalawfirm.com](mailto:contact@derushalawfirm.com)

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