

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

Courts Don't Always Enforce Support Guidelines

Question: I've not been living with my wife for 10 months already. Am I legally separated from her? If I buy properties (a house) after I am separated from her? If I buy properties (a house) after I am separated, what happens? It is considered a conjugal property?

Answer: No. Legal separation in Ontario usually means that you no longer reside in the same residence or if you do then you lead separate lives under one roof. Thereafter, any property purchased after separation cannot be the subject of valuation for the purposes of equalizing your respective net worth positions, which in family law is called you "net family property." However, there are exceptions to this rule if you have used jointly-owned funds to buy property shortly after you separated a court would likely rule that the property must be shared equally.

Question: Spousal support is being determined now by new guidelines from Justice Canada. The bureaucrats' cookie-cutter formula calls for virtual equalization of incomes, irrespective of the spouse's needs (the previous criteria). Why doesn't someone challenge this insipid procedure and go back to a needs-based system? No wonder the spouses try to duck out!

Answer: Depends on which duck you're trying to avoid, and which cookie-cutter. Say the payer does not have custody of the child (ren), was residing together in a lengthy relationship and mom was largely dependant on his income to help raise their family. In such cases the law was developed well before the new advisory Spousal Support Guidelines. Such mothers will require as much as between 50-60 cents of every after-tax dollar earned between them. If dad earns a lot more, then it would be unfair to leave him with even 50 cents of earned income monthly, since between spousal and child support the custodial parent has more mouths to feed, clothe and shelter. Similarly, even without dependant kids, if the wife sacrificed most of her working life, raising the family so that dad could build his income; then the courts will still often equalize incomes, with or without the guidelines. But sometimes the guidelines go too far and are too generous, especially since they often fail to consider the payer's need and child-related costs. Conversely, if it's a short marriage with no kids, the guidelines do not usually recommend much, if any spousal support. The Spousal Guidelines are not law. They are merely advisory and are quite often either ignored or downplayed by the courts. You best bet for a fair result is still a damn good lawyer.

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