

Financial support after a separation



ALAN KNOWSLEY
LEGAL MATTERS

If you have separated you may be entitled to receive, or may need to provide, ongoing support to your former spouse/partner.

This is called "spousal maintenance" and it is different to child support.

The entitlement to receive spousal maintenance, or liability to pay, applies not only to married/civil union couples, but also sometimes to de facto relationships.

Immediately after separation, interim spousal maintenance may be payable if one partner cannot meet their reasonable needs and the other partner has the ability to pay.

"Reasonable needs" does not mean simply the basics, such as food, clothing and shelter. It is what is required to maintain the standard of living that existed while the parties were together – essentially, the lifestyles the parties were accustomed to. To prepare a maintenance claim, the partner will need to prepare a household budget, having regard to income they might be receiving, including any child support, and work out what the

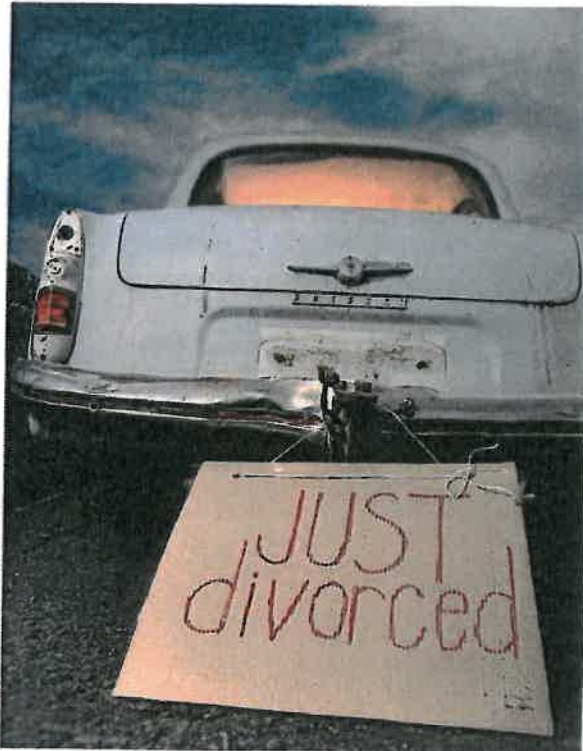
shortfall between income and outgoings is.

That shortfall would usually be the amount of maintenance sought. Whether the other partner can pay is a separate issue. Their standard of living is also taken into account. Beyond the period when interim maintenance is paid (usually only in place while the division of property is resolved), final maintenance may be payable.

To establish a claim for final maintenance, one partner must show the reason they cannot meet their reasonable needs is because of

- Child care obligations.
- The ability to become self-supporting owing to likely earning capacity.
- How functions were divided during the relationship (eg, one party working and the other staying at home).
- Standard of living while the parties were together.
- Health reasons.
- The need to undertake education/training to become self-supporting. The inability to earn as much as than the other partner because of different skill sets that existed before the relationship is not necessarily a reason for final spousal maintenance.

For example, if one spouse was a highly paid professional and the other had only basic work skills,



the disparity is not necessarily because of the factors the law allows to be taken into account.

However, if partners were of similar earning capacity and one gives up their profession to raise

the children, allowing the other to progress their career, that could be the cause of the now existing income producing capacity inequality. There is no set timeframe for how long maintenance is payable. There is, however, an expectation that each partner will become self-supporting over time. That could be several months or several years. Following separation, a delay in applying for spousal maintenance may demonstrate an ability to survive without maintenance and therefore damage the chance of a successful claim.

If the post-separation period will be economically difficult, you should consider obtaining advice as to whether you should apply for maintenance.

The financial implications of spousal maintenance can make a big difference following separation, regardless of whether you are the person receiving or the person making payments.

Column courtesy of Rainey Collins Lawyers, ph 0800 733 484 or raineycollins.co.nz. Send an email to alknowsley@raineycollins.co.nz if you have a legal inquiry. Our next free public seminar, on dealing with relationship property issues, will be on May 26, 12.15pm till 1.15pm. See our website.