

A. Factors to be considered in determining whether a spouse is entitled to spousal support, particularly where she seeks compensation for economic disadvantages arising from the marriage.

Moge v. Moge [1992] 3 S.C.R. 813 (S.C.C.)

Moge v. Moge is probably the most often quoted case dealing with spousal support

The parties were married in the 1950s in Poland, moved to Canada in the 1960, separated in 1973 and were divorced in 1980. The Wife worked part-time during the marriage cleaning offices. The majority of the marriage she spent as a traditional wife and mother, raising the children, cleaning the home and cooking. Following the parties separation, the Wife was granted \$150 per month in combined child and spousal support. She was laid off in 1987 and applied for and was granted an increase in spousal support to \$400. In 1989 the Husband applied for and was granted a termination of spousal support. The court held that the Wife had had sufficient time to become self-sufficient and the Husband had supported her for as long as he was required.

The Wife appealed and was granted \$150 per month spousal support indefinitely. The Husband appealed to the Supreme Court of Canada.

The Supreme Court of Canada heard from the parties and women's groups who presented statistical information regarding the negative financial impact of divorce upon women.

The Supreme Court of Canada reviewed the Divorce Act and noted that the Divorce Act sets out 4 criteria for granting spousal support. These are self sufficiency, economic consequences from the marriage, economic consequences from raising children and need at the breakdown. The SCC found that the trial judge had incorrectly focused his analysis on self-sufficiency only. The SCC stated that Courts must consider all 4 factors.

The Supreme Court of Canada explained that the time away from the workforce taken by women to raise children has a long term financial impact. They explained that during the time a spouse is away from the workplace, the other spouse has opportunities to gain job experience, make contacts, to take courses, gain seniority, etc. that will improve the working spouse's earning ability. The stay-at-home party may never achieve the income earning ability of the working spouse because of the loss of ability to make contacts, gain seniority, network, etc. In such a case, the SCC stated it is appropriate to compensate the non-working spouse for the time in the workforce given up during the marriage.

The SCC also stated that need may be a reason to grant spousal support. The SCC explained that it may be appropriate to grant spousal support to assist a spouse to maintain the standard of living they had during the marriage.

Overall, the SCC required Courts to look at all relevant factors which impact a spouse's ability to earn income.

Moge v. Moge changed the way our Courts looked at spousal support and led to more spousal support orders, of longer duration, than previously.