

B. Factors to be considered when deciding if a spouse in a short term marriage is eligible for spousal support

Bracklow v. Bracklow, [1999] 1 S.C.R. 420 (S.C.C.)

The parties began living together in approximately 1985, married in 1989, separated in 1992 and were divorced in 1995. The wife made more money than the husband to start and paid for more than half of the family expenses, including expenses for her two children from a previous marriage. Over the course of the relationship, she began to develop serious psychiatric problems. As a result of these problems, she stopped working in 1991 and did not return to work.

A Court ordered interim spousal support of \$275 per month. The Wife appealed and was granted \$400 per month spousal support, ending in 1996. The Court of Appeal found she was not entitled to spousal support, but ordered the \$400 per month, until 1996, stating it was an amount suggested by the Husband. The Court of Appeal found that the Wife had not suffered financially as a result of the marriage, and therefore did not feel it was reasonable to require the Husband to pay spousal support indefinitely.

She appealed to the Supreme Court of Canada, where she was found to be entitled to spousal support. The Supreme Court of Canada noted that there are three reasons to pay spousal support, which they referred to as contractual, compensatory and non-compensatory. Contractual support must be paid if the parties have signed an agreement that spousal support will be paid. Compensatory support may be ordered when a Court finds that one spouse has been economically disadvantaged by the marriage. Examples of this are the financial impact from taking time off to raise children, or the impact of becoming sick during a relationship. The SCC defines 'non-compensatory' support as support required to assist with immediate need at the breakdown of a relationship. An example of this is spousal support paid to enable educational upgrading. In *Bracklow*, the SCC stated that, in determining whether a spouse is entitled to spousal support, a Court must consider all three reasons. The Supreme Court of Canada found that need alone may be a sufficient basis for the granting of spousal support, even in short-term marriages and concluded that the entitlement to support may continue where there is a dependency that occurred during a marriage.