

Spousal Maintenance / Alimony

If only one of the spouses was found at fault for the breakdown of the marriage and the divorce entails a **substantial deterioration in the material situation** of the other spouse, the latter may demand that his/her reasonable needs be catered for even if he/she is not in material difficulty. The spouse **in material difficulty** may claim maintenance from his/her former spouse to cover his/her **reasonable needs** in proportion to the **earning capacity** and financial situation of the former spouse. A maintenance obligation to a spouse ceases when that spouse remarries. However, where the obligation is borne by a divorced spouse who was not found at fault for the breakdown of the marriage, the obligation ceases five years after the decree of divorce unless the court rules that the five-year period be extended at the request of the spouse with the maintenance entitlement **on grounds of exceptional circumstances**.

Considerations When Awarding Post-Divorce Alimony:

- the couple's standard of living during the marriage, and the extent to which each of them could maintain a similar lifestyle after divorce
- each spouse's **income, assets, and debts**
- whether one spouse has a lower earning capacity because that spouse was unemployed for periods of time while taking care of the family
- the length of the marriage
- each spouse's age and health
- **contributions** either spouse made to the other's training, education, or career advancement, and
- any other factors the judge thinks are fair.

Child support/maintenance

The extent of a maintenance allowance depends on the earnings and financial capacity of the person required to pay and on the reasonable needs of the claimant. Reasonable needs include everything which is essential to provide the maintenance of the claimant, not only in material terms but also in other respects (cultural and spiritual). In assessing the earning and financial capacity of the person required to pay maintenance, what is taken into account is not the income which he/she actually earns but that which he/she could earn if he/she made full use of his/her **earning potential**. Where there is a **change in**

circumstances, a change to the court ruling or maintenance agreement may be requested. Either party to the maintenance relation may request such a change. Depending on the circumstances, they may claim cancellation of the **maintenance obligation** or an increase or decrease in the amount of maintenance. The conditions for altering the level of the allowance are that either the reasonable needs of the person entitled to maintenance or the earning capacity of the person paying maintenance have increased or decreased. If the person with the maintenance obligation fails to meet that obligation voluntarily, he/she may be forced to do so. Furthermore, under the Penal Code failure to pay maintenance is an **offence punishable by a fine, non-custodial measures** or imprisonment of up to two years.

The court is obliged to place the child, so far as it is practicable and just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly **discharged his or her financial obligations** and responsibilities towards the child with the two considerations of:

- the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
- **the standard of living** enjoyed by the family before the breakdown of marriage;
- the financial and special needs of the child;
- any physical or mental disability of the child;
- the manner in which the child was being brought up and in which the parties to the marriage expected him or her to be educated;
- income, earning capacity (if any), property, or other financial resources of the child.