



## Novel Coronavirus (COVID-19)

### Family Law

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# The Family Law Financial Implications of COVID-19

By Adam N. Black

The impact of COVID-19 is unquestionably far-reaching. For many individuals, the financial implications are particularly acute. Nearly one million Canadians applied for unemployment benefits in the latter half of March. Untold others have experienced a dramatic decline in the value of their savings and business interests.

Changes in an individual's financial circumstances will be magnified in the context of the breakdown of a relationship. That is particularly the case with respect to an individual's support obligation (or entitlement to support) and the division of property.

The loss of employment or reduction of income will trigger a support payor's need to change an existing support regime. Market forces, such as the current COVID-19 pandemic, ought to create a solid underpinning for a claim to reduce support. Of course, we are in the nascent stages of the economic downturn and it remains to be seen how judges will account for the current market circumstances in adjusting support. Support payors would be wise to address the issue of support as soon as a change in their income is known.

Perhaps the more vexing issue is the impact of a sharp decline in the value of assets following separation. Under Ontario's *Family Law Act*, married spouses share the increase in their net worth over the course of a marriage. Broadly stated, and with some exceptions, the spouse who accumulated more during the marriage owes the other spouse one-half of the difference between them. The amount owed, or equalization payment, crystallizes on the date of separation.

But what happens if an equalized asset declines in value after separation? For a jointly-owned asset, the answer is simple: both parties participate in the decline. For a solely-owned asset, however, the answer is not as straightforward. In order for the non-owner spouse to share the decline in value, recourse must be had to section 5(6) of Ontario's *Family Law Act* which permits an unequal division of property in exceptional circumstances. In the economic downturn of 2008, this provision was successfully applied to

ensure one spouse was not left shouldering the entirety of the post-separation decline in value of the asset.

Individuals experiencing a decline in their financial circumstances would be wise to address the impact of such a change on their family law matters. With a team of eight experienced family lawyers, the family law group at Torkin Manes LLP is well-equipped to assist you during these challenging times.

If you have questions about the financial implications of COVID-19 or any other family law matter, please ***contact a member of our team. For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.***

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