

Step-Parents and Child Support Obligations

The Brady Bunch was ahead of its time. The blended family sitcom of the early 1970s is increasingly common. According to the 2011 census, 12% of families in Canada are in a blended or step family. So, what would have happened if Mike had left Carol? Would he have had child-support obligations for Cindy, Janet and Marsha?

There are no clear-cut, easy answers to these cases as the circumstances vary from family to family. However, two important elements of the *Divorce Act* make it clear that in many circumstances, some form of support for stepchildren may be required.

One of the goals of the *Act* is to ensure that a child will have a fair standard of support that ensures they continue to benefit from the financial means of both spouses after separation. The *Divorce Act* also makes it clear that a step parent who “stands in the place of a parent” can be obligated to pay child support in “such amount as the court considers appropriate, having regard to the other biological parent’s legal duty to support the child”. This means that a stepparent who has an active role in the raising of the children can be required to continue to support those children in the event of a relationship breakup.

The Courts will consider several factors to determine the level of financial support the stepparent is required to provide. These include the age of the children and the length of the relationship and is based to some degree on the level of the integration of the step-parent into the role of a parent. A stepparent who lives with very young children for 10 years will be more likely to face support obligations than someone who spends two years living with teenage stepchildren. Whether and to what extent the children maintain contact with their other biological parent is relevant and the amount of financial support that the other biological parent is able to contribute will also be a factor, as is the standard of living the biological parent(s) will be able to maintain on their own without the step-parent.

A pre or post nuptial or co-habitation agreement can be used to try to limit future child support obligations, but may not eliminate them. Child support is the right of the child and cannot be bargained away in a pre-nuptial agreement. However, child support payable by a step-parent is discretionary in the opinion of a Judge, not mandatory, as support for biological children is, and agreements can try to set some form of limit on the level of support based on the length of the relationship.

To be more likely upheld by the Courts, both parties must have independent legal representation at the time of signing the agreement, the agreement cannot be signed under duress and the agreed support obligations must be within reason and satisfy the goals of the *Divorce Act*.

If you are entering, or in a blended family, and want to understand your potential child and spousal

support obligations, please contact us for an initial consultation.

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