

The 'harsh reality' of spousal support



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By
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It was a beautiful summer day. Allen had a big grin on his face as his life was on track, at 46 he was mentally and physically fit, business was great and his children were making him proud. Life was good and Allen hoped was only going to get better. His ex-wife was happy, too, and on this particular weekend she was about to get remarried. Allen was even sending a gift with his children to her wedding.

"Most people would expect to stop paying spousal support when their ex-spouse remarries or enters a common-law relationship. Many are shocked and offended to discover they still must pay; the idea is outrageous and ludicrous, especially for men. Being legally obligated to continue providing spousal support when there is a new spouse just adds insult to injury in an already distasteful state of affairs," says Andrew Feldstein, principal of Feldstein Family

Law Group which has offices throughout the Greater Toronto Area.

Feldstein explained this misconception by sharing the example of Fred and his ex-wife Lois, who divorced after 20 years of marriage. Fred earns \$300,000 and Lois makes \$50,000. As part of their divorce settlement, the judge ordered Fred to pay her \$7,300 per month indefinitely. Ten years later, Lois starts cohabiting with a feckless lover who is 15 years her junior. Thinking that Lois and her partner would provide for each other, Fred applies to have his support payments stopped. To Fred's dismay, the court rejected his request. Lois' new living arrangement has not improved her financial status; her common-law spouse is unemployed and makes little to no contribution to their household. Fred's support obligations remain the same, as Lois' economic situation has not changed significantly.

Clearly it seems unreasonable to continue supporting a former spouse when they have a new spouse to shoulder that responsibility — even more so if the support money is potentially used to benefit the new partner as well.

"The harsh reality is that remarriage or re-partnering will not automatically end a person's spousal support entitlement," says Feldstein. "The law requires a material change in financial circumstances to justify adjusting an existing

order to pay; a change in marital status alone is insufficient."

Where the new partner makes more than the recipient spouse, the increased combined income may have a minimal impact on the payor's support obligations. Feldstein uses the following example to illustrate this: Say Jane was ordered to pay her ex-husband Jack \$3,600 per month and he remarries four years after the divorce. Jane and Jack's respective incomes are \$350,000 and \$100,000. Jack's new spouse makes \$175,000 a year. Jane noticed the combined income afforded Jack a slightly more comfortable lifestyle and requested an immediate end to support. Her termination request was denied, but the judge reduced the monthly amount to \$3,400. Jack's remarriage was a sufficient change that could vary the amount of support Jane owed him, but was not enough to terminate support completely.

Whether a payor must continue paying depends on numerous considerations. These include the basis of support, the length of the original relationship, the support recipient's age, level of achieved self-sufficiency, new standard of living, and the existence of a need for support. However, these factors offer very little guidance as to their weight and applicability in any case.

Thus, to the consternation of many support payors and lawyers alike, the law around spousal sup-

port and re-partnering is to some extent unpredictable.

"The *Spousal Support Advisory Guidelines* (SSAG) do not provide a formula that can be applied in these situations," says Feldstein. "Previously decided cases with ostensibly similar facts are not entirely reliable indicators of outcome for other individual scenarios."

The closest thing to certainty available is that a payor's re-partnering or remarriage may not constitute grounds for a reduction in spousal support. This can be a hard nut to swallow for support payors wanting to start a new life and family without the financial burdens stemming from a previous relationship. A payor's new familial responsibilities will not disentitle a former spouse to continued support; they have no bearing on the obligation to pay, or a recipient's entitlement. The few instances where a payor's remarriage reduced their monthly payments were grounded in distinct facts that are generally unhelpful absent nearly analogous circumstances.

Overall, the outcome in any re-partnering instance is entirely dependent on its unique circumstances. Experienced family law professionals such as Feldstein can make a reasonable assessment and present a case in the payor's favour, but the final impact is uncertain until the matter goes before the court. Although the SSAG and

case law offer a few guiding principles to assist a judge's decision of whether support should be reduced or terminated, certainty is a luxury payors rarely have. It is a difficult task to accurately predict how an ex-spouse's remarriage will affect someone's spousal support obligations without legal expertise.

The average support payor is unaware that situations like those of Fred and Jane can happen to them. These predicaments are so absurd that they seem unrealistic and impossible. In reality, countless support payors find themselves still supporting a former spouse and, by inference, the new partner. Such cases are not uncommon; it happens to real people every day. However ridiculously unfair and frustrating it is to be stuck on the paying end of the support stick, that is just how life and the law operate, and Allen, whom we met at the beginning of the column isn't going to let Canadian law get him down.

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TECHNOLOGY

Microsoft sets Windows 10 free



**COMPUTER
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By
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What's the sweetest four-letter word in software? Free! And Microsoft is offering free copies of Windows 10 to many current users of Windows. By free, I mean really free. It's a full Windows 10 — not a limited use or a trial edition which expires, but a permanent copy which Microsoft will support for the life of your device.

The freebie is available to most users of Windows 7 and 8. Of course, there's always the fine print.

Here's what Microsoft says: "It is our intent that most of these devices will qualify, but some hardware/software requirements apply and feature availability may vary by device. Devices must be connected to the internet and have Windows

Update enabled. ISP fees may apply. Windows 7 SP1 and Windows 8.1 Update required. Some editions are excluded: Windows 7 Enterprise, Windows 8/8.1 Enterprise, and Windows RT/RT 8.1. Active Software Assurance customers in volume licensing have the benefit to upgrade to Windows 10 Enterprise outside of this offer."

Windows RT users look like they're being shut out, probably because RT generally runs on tablets with less powerful processors. But otherwise, Microsoft's offer appears to be a reasonable deal for the majority of Windows 7 and 8 users.

Given that Microsoft is not generally known for acting charitably with its customers, why is the company doing this? Windows 8 bombed. The user interface changed to accommodate tablet and phone users. Windows 8 required a steep learning curve if you used Windows on a desktop or notebook computer. That prompted many Windows users to stick with the tried and true Windows 7.

According to Netmarketshare, 61 per cent of the world's computers on the Internet used Windows 7 in June. This is a three percentage-point increase from the prior month.

Staying put on Windows 7 will not help Microsoft in its quest to sell additional value-added cloud-based software services. Hence, Microsoft hopes the freebie will entice you to upgrade. If you're an accountant who is counting versions, there was no Windows 9.

Microsoft's Windows 10 was scheduled for launch on July 29.

Since this is generally a slow time of year for accountants, it could be the right time to test out Windows 10 on a machine or two.

Is Windows 10 worth your time to install and use? I'd say yes, with some qualifications.

The latest pre-release version of Windows 10 looks a little rough around the edges, with a user interface which is inconsistent. However, Microsoft has a habit of pulling it all together for the formal release. I hope that will be the case this time around.

The new desktop user interface will be friendlier to Windows 7 users than Windows 8, returning the Start Menu to its rightful place. And Windows 8 desktop users will need to unlearn that interface to a large extent and revert to the more established user interface.

A sleek new web browser will speed up your online experience.

The Cortana desktop assistant will help in searching for files and providing notification of appointments.

Don't put off claiming your Windows freebie too long. The offer expires one year after the official release of Windows 10. After expiry, you'll pay US\$119 or more for Windows 10.

Assuming you qualify, how do you claim your free copy of Windows 10? If you have Microsoft's automatic software updates enabled, it's easy.

Look at your Windows system tray. It's in the lower right corner of your display, unless you've changed the default location. Look for an icon displaying the Windows logo. If you move your mouse pointer over it, you'll see a popup, "Get Windows 10."

Click the icon and you'll view a window with details on how to get the new operating system. After claiming your copy of Windows 10, it will automatically download in the background to your computer. You will be notified once the software download completes. Then you can choose a convenient time to install it.

Finally, here's a tidbit only an accountant will truly appreciate.

Microsoft's free upgrade to Windows 10 is not a free upgrade, according to Microsoft.

It's a "marketing and promotional activity," according to Microsoft's first calendar quarter 10-Q filing with the U.S. Securities and Exchange Commission.

Sharp-eyed bean counters will see it's all to do with revenue recognition. A free upgrade would have required Microsoft to defer recognition of some Windows revenue starting in January, when the freebie was announced.

Windows sales to OEMs of consumer licences were off 26 per cent from the prior year in the first quarter. Windows earnings would have been further depressed if revenue was deferred to recog an upgrade. So remember it's a promotion, not an upgrade, when you download your upgrade to Windows 10.

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