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## Spousal Maintenance Amidst Global Recession

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Family and Matrimonial Practice Series





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# Claiming Spousal Maintenance Amidst Global Recession

## Introduction

The COVID-19 has presented an unprecedented crisis to the world. Over the past few months, the resident unemployment rate was recorded as high as 4.5% in August 2020, while retrenchments have more than doubled in the second quarter of the year.

Further, more businesses have resorted to wage cuts and no-pay leave as a result of the economic downturn. As of 25 June 2020, it was reported that more than over 187,000 employees whose salaries were affected as most had their salaries were reduced by up to 25%.

Across multiple industries, many CEOs and other executives are taking partial and/or full pay cuts in response to the said pandemic. Examples of the said industries but not limited to are airlines, hospitality, restaurant, manufacturing and automotive .

Out of the many who were affected, some may be spouses / former spouses who are receiving or paying maintenance. This article seeks to address the issue of claiming spousal maintenance amidst a global recession. In essence, the pertinent question is whether a spouse may claim maintenance (nominal or otherwise) for a potential loss in employment (which had not yet materialised as of date of the ancillary matters hearing).

## Law of Spousal Maintenance

Section 113 of the Women's Charter empowers the Court to order the husband to pay maintenance to his former wife.

In determining spousal maintenance, the Courts will consider a multitude of factors,<sup>1</sup> including but not limited to:-

- the current/ prospective income and earning capacity of each party;
- the current / prospective financial needs and obligations of each party;
- the standard of living sustained by parties prior to the breakdown of the marriage;

- the age of each party and the duration of the marriage;
- any physical or mental disability of either party;
- any contributions (whether direct or indirect) made by parties to the marriage.

In **ATE v ATD and anor appeal [2016] SGCA 2**, the ex-Wife who sustains a high paying income, sought nominal maintenance in order to preserve her right to claim maintenance, in the event something untoward should happen to her should there be a need to do so in the future. Her request was acceded to by the lower court. Upon appeal, the Court of Appeal reversed the maintenance judgment and held that there should be no maintenance awarded to the Wife instead. The CA stated as follows:-

“[28] What seems to us to be clear in this: The courts cannot – and ought not to – order nominal maintenance automatically or as a matter of course. As already alluded to above, the court must examine closely all the facts and circumstances of the case before deciding whether or not to award nominal maintenance in order to preserve the wife's right to apply for maintenance in the future.

[29] Another (related) principle is that it will not suffice for the wife to argue – without more – that she is entitled to an order of nominal maintenance simply because her situation might change in the future. Indeed, it has, in general, **never been the duty of the courts to compensate parties for the vicissitudes of life** (this last-mentioned concept ought not to be confused with the more technical line of cases which relate to the role of intervening acts in the context of the ascertainment of the measure of damages to be awarded by the court (see generally the discussion in the decision of this court in *Salcon Ltd v United Cement Pte Ltd* [2004] 4 SLR(R) 353), although there is some overlap in terms of the central idea when viewed from a non-technical perspective).

More importantly, accepting such an argument would not only result in the blanket order of nominal maintenance in virtually every case, it would also result (in substance and effect) in making the husband a general insurer of sorts. This would be wholly contrary to the very purpose of awarding maintenance to a former wife in the first place – a point to which we will return shortly.

“Spousal Maintenance”

For present purposes, it suffices to note that an application for nominal maintenance takes place in the context of a marriage that has already been terminated. **In any event, it has never been – and ought not to be – the case that a party (let alone a former spouse) has a duty to be a general insurer vis-à-vis another party.** Indeed, in order to provide for the vicissitudes of life, persons generally have recourse to the purchase of insurance policies.

[30] Quite apart from the two general (and related) principles just referred to, it would be inadvisable for this court to lay down more specific principles simply because the factual permutations are enormous (from a human standpoint, possibly infinite). As already mentioned, the precise facts and circumstances of each case are of the first importance, and this is itself a (further, and third) general principle that is so obvious, yet vital. That having been said, we have also mentioned that the law in this particular sphere will undoubtedly evolve over time. Although it is not the case that specific factual matrices will necessarily lead to general principles being formulated, the entire process of legal development is far more nuanced and interactional in nature and, in this regard, it is entirely possible that

embedded within specific fact situations are general rules and principles which could be developed over time. Indeed, the facts of the present case illustrate this.”

[31] Before we consider the facts of the present case, there is another general principle that can, in our view, guide the courts. It is, arguably at least, as important as, if not more important than, the three general principles already set out above. And it is this: **The court ought always to bear in mind the underlying rationale and purpose for the award of maintenance generally to former wives.** As this court stated in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 (“*Foo Ah Yan*”), the overarching principle embodied in s 114(2) is that of financial preservation, which requires the wife to be maintained at a standard that is, to a reasonable extent, commensurate with the standard of living she had enjoyed during the marriage – but we also cautioned that s 114(2) had to be applied in a “commonsense holistic manner that takes into account the new realities that flow from the breakdown of marriage” (at [13] and [16]; emphasis in original...”

The principles in ATE v ATD were further affirmed in **TDT v TDS [2016] SGCA 35** whereby the Court of Appeal upheld the lower court's order in rejecting the Wife's application for a nominal maintenance. The CA stated :

"[72] ... It seems to us that what the Wife is seeking in the present case is for the Husband to be a general insurer of her legal costs and/or her damages in the proceedings which the Husband and BSPL have commenced against her. This is, as we observed in a different context in ATE v ATD, **wholly contrary to the very purpose of awarding maintenance to a former wife in the first place**.

[73] In fact, the Wife's stated reasons in her submissions for seeking an order of interim maintenance is to serve as "a useful Sword of Damocles to keep [the Husband] in check against filing frivolous actions against [the Wife]". It is **wholly unmeritorious** for the Wife to seek an order of nominal maintenance on this basis. Inasmuch as the Wife's complaint is that the Husband has commenced legal actions against her which are without merit, frivolous and vexatious, the appropriate way for such issues to be addressed is by applying to strike out the Husband's claims or by seeking an order of indemnity costs against the Husband. **The purpose of an order of maintenance is not to place a sword of Damocles over the Husband's head, but to ensure that the Wife achieves financial preservation.**





## “Application in the current context”

### Application in the current context

It can be seen in *ATE v ATD* and *TDT v TDS*, that the Court is generally less inclined to award spousal maintenance (or nominal maintenance) to provide for the vicissitudes of life, a fortiori to subject the other party with an obligation to insure their spouse just because that party claims that she may potentially face retrenchment or unemployment in the future. Something more must be shown on the facts and circumstances

of the particular case to justify the Court awarding the spousal maintenance / nominal maintenance that the wife is seeking. However, if the spouse had lost her employment during or before the ancillary matters hearing, this would be factors considered by the Court in awarding maintenance.



For more information on the article, or if you wish to learn more about the topics discussed, please contact:-

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