# RECENT AND INTERESTING FAMILY LAW DECISIONS

**Presented to the Canadian Bar Association Alberta**
**Family Law (North) Section**

**November 9, 2023**

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## 1. Property division, domestic contracts

### *Anderson v. Anderson*, 2023 SCC 13

This decision, on appeal from courts in Saskatchewan, considered whether to enforce a separation agreement made between separating spouses that did not conform to the statutory requirements for validity of an agreement deviating from the default rules governing property division.

At the end of a three-year marriage, the parties signed an agreement, witnessed by two friends, providing that each would retain the property held in his/her name and give up all rights to the other spouse's property, except for the family home and its contents. The agreement was prepared by the wife; there was no financial disclosure; and neither party had legal advice. The husband later sought to set it aside on based on the lack of legal advice and alleging duress.

The Supreme Court determined that the agreement was binding, despite the fact that it did not comply with formal requirements set out in the Saskatchewan *Family Property Act* that are similar to ss. 37 and 38 of Alberta's Act. The Court held that while a lack of independent legal advice and formal disclosure can undermine informed choice, it was not troubling in the instant case because the husband could not point to any resulting prejudice and there was no suggestion that the absence of safeguards undermined the integrity of the bargaining process or the fairness of the agreement. The Court reiterated the principles from cases like ***Miglin*** and ***Rick v Brandsema*** that domestic contracts are generally to be encouraged and that self-sufficiency, autonomy and finality are important objectives in the family law context.

The Court enforced the agreement according to its terms:

> 83 […] The parties were best positioned to organize the limited family property resulting from their short marriage and, given all the circumstances, the most fair and equitable solution is for their simple agreement to be given effect.

Saskatchewan's legislation differs from Alberta's FLA in that it contains a provision expressly providing that a court may take into consideration any agreement that does not meet the formal requirements of the Act and give whatever weight it considers reasonable to the agreement.

However, an approach similar to this has been adopted by courts in Alberta, even in the absence of legislative direction – see eg ***Corbeil v Bebris*** (1993), 141 AR 215; ***Kuehn v Kuehn***, 2012 ABCA 67.

The Court also reiterated the emphasis on the importance of financial disclosure in family law matters but pointed out that lack of disclosure in itself does not in itself nullify an agreement, and is only relevant if it affects the fairness of the parties' negotiations. In the case before it, there was no evidence that lack of disclosure created unfairness:

> 67 Given that disclosure is not a legislative requirement, **the lack of disclosure is only relevant if it undermined the fairness of the negotiation process.** As this Court has noted several times, disclosure is critical in family law to prevent misinformation and exploitation. […], however, **the goal of requiring disclosure between contracting parties is to prevent one party from misleading the other or from exploiting an asymmetry of information**. A lack of disclosure, on its own, will not necessarily call for judicial intervention. A court may intervene, however, where a failure to disclose is deliberate and coupled with misinformation, or where a failure to disclose leads to an agreement that departs substantially from the objectives of the governing legislation. In other words, the focus is on prejudice resulting from uneven access to information.
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> 68 **Here, the lack of disclosure did not result in unfairness to either party.** While the parties may not have been aware of the precise value of each other's assets and liabilities at the date of separation, **there has been no suggestion that either party concealed important information or otherwise misled the other. Nor has there been a claim that disclosure was needed to cure an existing asymmetry of information resulting from an imbalance of power in the relationship.**

## 2. Intimate partner violence

### *Ahluwalia v Ahluwalia*, 2022 ONSC 1303, reversed 2023 ONCA 476

The trial decision in ***Ahluwalia*** garnered attention when it was rendered in February 2022 as the first decision by a Canadian court recognizing a new tort of family violence. Much to the disappointment of many in the family bar, the trial decision was overturned by the Ontario Court of Appeal in July 2023. The Court considered that existing torts were adequate to provide remedies to individuals who suffered spousal abuse.

In the trial decision, Justice Mandhane had awarded the wife $50,000 for each of compensatory, aggravated, and punitive damages, for a total of $150,000, on the basis of the new tort, after finding that "the marriage before me was not typical: it was characterized by the Father's abuse, and a sixteen-year pattern of coercion and control. It was not just "unhappy" or "dysfunctional"; it was violent. The family violence the Mother endured at the hands of the Father is not compensated through an award of spousal support."

Justice Mandhane considered that the elements to establish liability for the tort of family violence should be drawn from the definition of "family violence" in the *Divorce Act*. She considered that existing torts such as assault, battery, or intentional infliction of emotional distress, are directed

at providing recourse for individual instances of wrongful conduct, and were inadequate to address the broader harm resulting from patterns of behaviour associated with family violence:

> [50] While trial judges must be cautious about developing new foundations for liability, there is scope to do so where the interests are worthy of protection and the development is necessary to stay abreast of social change: […].
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> […]
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> [54] While the tort of family violence will overlap with existing torts, there are unique elements that justify recognition of a unique cause of action. I agree with the Mother that the existing torts do not fully capture the cumulative harm associated with the *pattern* of coercion and control that lays at the heart of family violence cases and which creates the conditions of fear and helplessness. These patterns can be cyclical and subtle, and often go beyond assault and battery to include complicated and prolonged psychological and financial abuse. These uniquely harmful aspects of family violence are not adequately captured in the existing torts. In general, the existing torts are focused on specific, harmful *incidents*, while the proposed tort of family violence is focused on long-term, harmful *patterns* of conduct that are designed to control or terrorize. […] In the context of damage assessment for family violence, it is the pattern of violence that must be compensated, not the individual incidents.

On appeal, the Court characterized the issue it was called on to decide:

> 2 The issue before the court is not whether intimate partner violence exists. It does. It is not about whether societal steps should be taken to ameliorate the problem. They should be. The issue is whether, in the context of family law court proceedings – where numerous and varied remedies already exist – a tort specific to "family violence" should be created.

The Court of Appeal found that the circumstances alleged in the case before it satisfied the requirements of the torts of assault, battery, and intentional infliction of emotional distress, and therefore remedies were available to the wife on all three grounds. The Court however reduced the wife's award to $100,000, finding that while the compensatory and aggravated damages were entitled to deference, the addition of punitive damages was excessive in the circumstances.

Further, the Court of Appeal disagreed with the trial judge that the existing torts did not capture the pattern of conduct inherent in intimate partner violence. The reviewed a number of decisions and concluded that "Courts have long recognized that patterns of physical and emotional abuse constitute tortious behaviour. Contrary to the trial judge's conclusion, courts have considered the patterns of behaviour that constitute intimate partner violence without limiting their focus to individual incidents." In addition, "In the context of existing torts, courts have also specifically considered the *pattern* of abuse as a reason to award higher damages."

## 3. Notice Requirements for Relocation

### *Morad v Iannone*, 2023 ABCA 293

The decision discussed notice requirements for relocation under the *Divorce Act* in circumstances where there appeared to be initial consent for the mother to travel with the children to Florida, but the father subsequently brought an application for their return when the mother expressed an intention to remain there permanently.

The court dismissed the father's appeal of a decision allowing the mother to relocate. A key issue was the chambers judge's assessment of whether the mother had complied with notice requirements.

On the facts, it appeared that while the mother and children were in Florida, the parents were in continuous contact, and the father had the ability to view the children at daycare at any time and participate in multiple video calls each day. The father also visited the children in Florida three times. The father had not communicated objection to various programs in which the children were enrolled, and there was some evidence of his agreement, although his evidence was that his agreement was out of fear that the mother would cut off the video calls.

In the end, the chambers judge found there was "insufficient clarity around whether [the father] had permitted [the mother] to go to Florida on a permanent basis". It was not possible to suggest that the mother's travel with the children in May 2021 breached the notice requirements because she appeared to have the father's consent at the outset. The chambers judge also found that the father's objections to the children staying in Florida did not seem to have been clear, until he obtained a court order for the children's return and commenced proceedings under the *Hague Convention*.

The chambers judge found the question of whether the mother had complied with notice requirements regarding her intention to relocate was a "significant and troublesome issue in this case", but ultimately characterized her conduct as merely a 'technical breach" because of the father's initial consented to the mother travelling to Florida, and evidence that the father had called his mother-in-law prior to the mother's trip to ask if she and the children could reside with them in Florida "indefinitely".

The Court of Appeal stated that while the chambers judge's use of the language "technical breach" was not ideal, it was apparent that the judge's decision to allow relocation was made after considering all the circumstances before her, including the mother's non-compliance, in the context of the entire "best interests" determination. The Court emphasized, however:

> "To be clear, we do not condone parents undertaking a unilateral relocation or a "move first, ask second" type of approach. Parliament saw fit to add the notice provision to the *Divorce Act* for a reason."

In the circumstances, the Court found that the decision granted by the chambers judge did not have the effect of condoning a self-help remedy or allowing the mother's time in Florida to establish a new parenting *status quo*, since the mother had been the primary caregiver even before the move to Florida, and thus the move did not change the parenting arrangement.

## 4. Occupation rent

***Kuzuchar v. Kuzuchar*, 2023 ABKB 135**

This case involved claims for matrimonial property distribution in circumstances where the husband continued to occupy the matrimonial home for eight years after separation, during which time the wife was required to rent accommodations. The parties shared parenting of the children on a week on/week off basis, and had roughly equivalent levels of income.

The wife's claim for distribution of matrimonial property included a claim for occupation rent. Courts often consider that occupation rent claims should only be entertained where the occupying spouse has also claimed for contribution to expenses involved in maintaining the home. In this case, the husband did not formally request contribution but raised it in response to the wife's claim. Marion J found that the husband had resisted the wife's attempts to sell the house several years earlier. However, the wife failed to provide evidence demonstrating the likely rental value of the home.

Marion J considered that a straight-forward occupation rent calculation was not appropriate, but that nonetheless an adjustment of some sort was warranted.

He adopted the approach used in ***Martin v Martin***, 2019 ABQB 590, pursuant to which "the housing of the family unit, albeit fractured, is treated as a joint expense until trial." Consequently, Marion J assessed all expenses incurred by both parties in relation to accommodations during the post-separation period, and gave a credit to the wife to reflect the fact that her expenses were higher than the husband's:

> [143] This reflects that Ms. Kuzuchar paid $31,822 more than Mr. Kuzuchar toward the family accommodations, which is a benefit he received. Put another way, she paid $166,169 when her 50% share of the total cost was $150,258. Based on all of the facts, and having regard to section 8(c) and (m) of the *MPA*, I find it would not be just and equitable for Mr. Kuzuchar to have an equal share of the matrimonial

property without an adjusting equalization payment to reflect the benefit he enjoyed.

## 5. Retroactive variation, spousal support, interpretation of court orders

***Kantor v Kantor*, 2023 ABCA 237**

This case dealt with an application by the husband for reduction of spousal support, both prospectively and retroactively, on the basis that he had experienced periods of unemployment since a prior consent order.

The parties had agreed to a consent order that suspended the husband's obligation to pay spousal support because he lost his job. The order required him to notify the wife within 10 days of finding new employment, and then to start paying spousal support again within two months. If he did not find work within 6 months, the consent order provided that either party could apply to review or vary support.

The husband found work but did not notify the wife, and did not recommence paying support. Over the next three to four years, the husband had periods of employment and periods without work. The wife discovered that he had been employed some of the time and applied for an order requiring him to make all support payments he had missed. The husband cross-applied to reduce support.

The court held that the husband could not now rely on the clause of the consent order allowing him to seek a review of support, as that right was implicitly conditional on compliance with other terms requiring him to disclose new employment and to restart payments. The husband could not "cherry-pick" or treat the consent order "as a buffet, where he can pick and choose which paragraphs he might adhere to, and then at a later time, if convenient for him, choose to go back for seconds and maybe comply with another paragraph."

> [23] A court order must be interpreted as a holistic document, by reading it as a whole, in the context of the pleadings, the arguments and the circumstances in which the order was made: […]

The husband therefore could not claim a right to *a de novo* review of spousal support despite his non-compliance with parts of the earlier consent order. In addition, his right to claim a reduction in support for periods of unemployment was compromised by his failure to comply with the order:

> [28] We take this opportunity to underscore that disclosure in family law is a legal obligation, not a forensic technique. As this Court said in *Peters v Atchooay,* 2022

> ABCA 347 at para 113, the effect of changes of income of a payor on the payor's obligation is not to be assessed without accounting for lack of disclosure: "a payor parent does not get a free pass if they fail in their duty to provide timely disclosure simply because they can later show a drop in their income". While the Court in *Atchooay* was talking about child support, a comparable disclosure duty applies as to spousal support. […]

## 6. Guardianship, contact, alleged sexual assault, changing child's surname

***SR v MR*, 2023 ABKB 464**

Malik J dismissed an application by the biological father under the *Family Law Act* seeking guardianship and parenting or contact time with the 3-year-old child, and to change the child's surname, finding that none of those orders were in the child's best interests.

The mother alleged that the child was conceived when the father sexually assaulted her; the father claimed the parties' encounter was consensual. Since birth, the child resided exclusively with the mother and her partner. The child believed the mother's partner was her father, and had never met the biological father.

Malik J found the parties to be equally credible and held that it was not possible on the evidence to conclude that the child was born as a result of a sexual assault, and therefore s. 20(4) of the *Family Law Act* did not apply to disqualify the father from guardianship.

The judgment offers a detailed discussion of how to assess allegations of sexual assault in the context of s. 20(4) – see paras 15-22.

Since the father had not made any meaningful offer to provide support for the child or otherwise demonstrated an intention to assume the responsibility of a guardian, he did not qualify for guardianship under s. 20(2) of the Act.

The father also failed to demonstrate he was a suitable guardian pursuant to section 23 of the Act, as he had refused to provide information about his education, employment, marital status or how he would support the child, and also refused to provide a criminal background check. Other than the father's assertion that a daughter should know who her biological father is, there was no evidence that appointing the Father as the Child's guardian, or making an order for contact, was in her best interests:

> "70 [...] The Child's age, her place within a stable family network, the fact that the Father is a stranger to her, the lack of an expert assessment on how to integrate the Father into the Child's life or at the very least, a proposed therapeutic integration

> plan, the Father's failure to understand that his introduction to the Child must proceed at a measured pace, and the Father's focus on his own interests strongly weigh against any form of contact. I have no evidence the Child is "ready to learn the information" of her parentage or that denying the Father contact would negatively impact on the Child's psychological integrity and would be detrimental to her best interests [...]."

Similarly, changing the child's surname to reflect the father's name was not in her best interests, especially since the father's applications for guardianship, parenting and contact had been refused

> 78 [..] The only reason I can see for amending the Child's birth certificate is to reinforce, in the Father's mind, his biological claim upon the Child rather than serving any practical purpose that would benefit her."

## 7. Appeal of arbitral awards

### *Schafer v Schafer*, 2023 ABCA 117

This decision addressed the interpretation of a common provision used in arbitration agreements to identify the rights of appeal that will be available to the parties from an arbitral decision.

The parties in ***Schafer*** had signed an arbitration agreement in which they selected an option providing for rights of appeal "in accordance with subsection 44 and/or 45 of the Arbitration Act." The father subsequently filed an appeal of a costs award issued by the arbitrator. The appeal was dismissed by the chambers judge on grounds that the father required leave to appeal, which he had not applied for, and the time to do so had expired. The father then brought the issue of the scope of the parties' appeal rights under the wording of the arbitration agreement before the Court of Appeal.

The father submitted that the wording of the appeal option the parties selected ("in accordance with subsection 44 and/or 45 of the Arbitration Act") should be interpreted in light of the other options set out in the agreement (which the parties did not select). In his view, this led to an interpretation that the parties had agreed to rights of appeal in accordance with section 44(1), which allowed him a "full spectrum of appeal rights" on fact, law and mixed fact and law, without requiring permission of the court to appeal.

The Court of Appeal disagreed with the father, noting the principle of statutory interpretation that "where parties have deliberately removed words from their agreement, those words are completely discarded".

The Court held that a provision providing for a right of appeal "in accordance with subsection 44 and/or 45 of the Arbitration Act", without further detail as to more specific appeal rights, had to be interpreted as a broad reference to section 44, and not section 44(1) alone. This meant that it was the rights under section 44(2) of the *Arbitration Act* applied:

> 59 Given the breadth of sections 44 and 45 of the *Arbitration Act*, it is difficult to accept the father's position that clause 15.1 (a) must be read as specifically invoking the rights under section 44(1) of the *Arbitration Act* only. Section 44(1) itself states that the rights under that subsection are available "[i]f the arbitration agreement so provides". We conclude that the Agreement in this case does not so provide.

As a result, the parties' rights of appeal were limited to appeal with leave of the court on a question of law only, pursuant to the language of s. 44(2).

## 8. Imputation of income

### ***Mohamud v Abdullahi*, 2023 ABKB 371**

This decision provides an interesting look at how courts are addressing imputation of income since the Court of Appeal decision in ***Peters v Atchooay***, 2022 ABCA 347, which replaced the deliberate evasion test with a test of reasonableness.

The case involved a 68-year-old father who had been laid off from his job and thereafter had decided to retire. The couple had five children, four of whom resided with the mother and all appeared still to be children of the marriage. The father stated he had health issues and applied for a downward variation of his support obligations.

Harris J discussed other decisions rendered since ***Peters***, looking at the evidentiary requirements related to imputation of income and the different outcomes in cases involving child support versus spousal support.

Harris J noted statements from other cases indicating that:

- evidence should focus on the payor's capacity to earn income at all points in the applicable timeframe: the date of the order in effect, the date of the variation application, and during the years in between for which a variation is sought;
- at a minimum, establishing employment capacity includes evidence of the payor's age, technical skills, education, health, work history, and realities of the labour market;

- where under-employment or unemployment is alleged to be due to health issues, medical evidence for the entire duration of time in question is required;
- the payor must provide evidence of efforts to find alternate employment;
- Cogent, credible, and objective evidence is required, rather than bare assertions.

In ***Mohamud***, the father's evidence was found to be lacking in many of these regards – it was largely based on assertions in his affidavits about his medical conditions and his ability to find new employment in his field at his age, but was not backed up by medical records or other concrete evidence.

While acknowledging that there are cases in which the courts have found retirement at the father's age to be reasonable, Harris J drew a distinction based on the fact that what was at issue in the case before her was child support, rather than spousal support. She held that the father was capable of pursuing at least part-time, minimum wage employment, and attributed employment income to him at that level, in addition to his pension income, for purposes of support.

> 40 Without children, the Father would have every right to retire. However, this is not the fact scenario before the Court. The fact is, he does have children and he is obligated to support them in a way that is consistent with his capacity to do so.

## 9. Hague Convention

### *MOG v COG*, 2023 ABCA 19

Watson JA dismissed an application by the mother to stay an order requiring the return of the child to the custody of the father in Sweden pursuant to the *Convention on the Civil Aspects of International Child Abduction* (*"Hague Convention"*). The mother had brought the child to Canada initially with the father's consent, but consent was apparently revoked when the mother then decided she wished to stay in Canada.

In undertaking the three-part test for a stay, the key question was whether there was a serious question to be tried that the court should exercise its discretion under article 13(b) of the *Hague Convention* not to order return of the child there was a "grave risk" that doing so would expose the child to physical or psychological harm or place the child in an intolerable situation.

Watson JA emphasized that that analysis had to remain focused on the interests of the child, not the applicant parent:

> [25] ... it is not, in my respectful view, arguable that returning the child to a civilized, friendly, democratic country – which has already engaged itself in relation to legal proceedings on this matter and has inquired into a variety of things including social welfare considerations – would be intolerable for the child herself. The real intolerableness would end up being that *of the mother* who would feel extremely, no doubt, unhappy about the fact that her daughter has returned to her father, and she is not with her mother.

Watson JA was also not persuaded that the fact there was an outstanding arrest warrant for the mother in Sweden, which could make her unable to return to Sweden to attend legal proceedings seeking to get her daughter back to Canada, created irreparable harm for her. He emphasized that the court had to trust that the Swedish authorities would handle the situation appropriately and come up with some method for the mother to be able to exercise her right to pursue legal proceedings:

> [32] […] I am not persuaded that there is irreparable harm to the mother as a result of her having some difficulty potentially in dealing with the issue in Sweden. It does seem to me that the legal structure and the system in Sweden which has already been accepted to be valid by our country's accession to the *Hague Convention* and theirs as well must be relied upon. We must be able to say the Swedish authorities will do what they are supposed to do and act in accordance with the law including the *Hague Convention*.

The decision is in line with the Supreme Court decision in ***F v N***, 2022 SCC 51, which dealt with whether an Ontario court should exercise jurisdiction to decide a custody dispute where there is an application for return of the child to a country that is not a party to the Hague Convention. The Court in both cases noted that domestic law in Canada has absorbed the *Hague Convention*, and that the best interests of children remain paramount. The onus is on the 'abducting parent' to establish serious harm and that this is a "high threshold" with a "demanding burden".

## 10.Family law and bankruptcy

### *Kelley (Re)*, 2022 ABKB 726 and *Feser (Re)*, 2023 ABKB 509

***Kelley (Re),*** 2022 ABKB 726 dealt with the treatment of a matrimonial property claim in the context of the personal bankruptcy of one of the spouses.

The wife, who had been declared bankrupt, was the sole owner on title of a property that had served as the couple's matrimonial home. At the time of the wife's bankruptcy, she and the

husband had been separated for about three years, but no action for division of matrimonial property had been commenced.

The husband claimed a 50% ownership interest in the house based on an agreement purportedly made at separation. The trustee rejected that on the basis that the agreement constituted a fraudulent preference or transfer for under value and did not constitute an enforceable contract as no consideration was present.

The husband appealed the decision to the Registrar, who agreed that the husband's claim based on the agreement should be refused but held that he had a potential property interest in the home pursuant to the *Matrimonial Property Act* that could be proven in bankruptcy. He ordered that the stay of proceedings under the BIA be lifted to allow the husband to file and prosecute a claim to the matrimonial home under the MPA.

The Court of Appeal reversed the Registrar's decision and restored the Trustee's decision disallowing the husband's claim, noting that where there are competing proceedings under the BIA and the MPA, timing is critical:

> 28 As discussed earlier, the law is clear that the rights conferred under the *MPA* are personal in nature, until such time as they are converted to an interest in property by court order.
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> 29 It is also clear that under the *BIA*, property owned by the bankrupt passes to the Trustee as of the assignment free and clear of all executions or "other processes": ss. 70 and 71. Once that has taken place the property is no longer divisible in the *MPA* process.
>
> 30 It follows that spouses (or interdependent adult partners) who hold matrimonial property will be at risk of financial loss if that property is lost due to their partner's insolvency. From their perspective, and the perspective of creditors of the bankrupt spouse, timing is critical. If at the time of assignment into bankruptcy there is a matrimonial property order in place whereby property is divided, the creditors will not be entitled to recover against the entire value of the property, but only the bankrupt's portion. Conversely, if there is no *MPA* order in place at the time of bankruptcy, the property will pass unencumbered to the Trustee, leaving it unavailable for division when the *MPA* process is completed...

***Feser (Re)***, 2023 ABKB 509, which dealt with the effect of bankruptcy proceedings on a claim for child and spousal support.

The wife applied to annul the husband's bankruptcy, arguing that he was using it to avoid support obligations and enforcement of a damage award the wife had obtained against him for cyberbullying.

Neilson J dismissed the application to annul the bankruptcy, finding that while the husband had not made full disclosure of his actual income, he was genuinely insolvent at the time of the assignment, and therefore his resort to bankruptcy was not an abuse of process and his intent, though questionable, did not reach the level of fraud.

Neilson J observed that under the BIA, support obligations are claims provable; an order of discharge does not release the bankrupt from any debt or liability arising under a judicial decision or an agreement respecting support of a spouse or child; and the stay of proceedings against a bankrupt does not apply to support claims. Thus, "if Feser considered that the bankruptcy would protect him from his child support obligations or enforcement of the Cyber-bullying judgment and costs, he is mistaken in that regard".

## 11.Punitive damages; lack of disclosure; egregious misconduct

### *Manjunath v. Kuppa*, 2023 ONSC 6057

This decision dealt with a particularly egregious case of misconduct by a spouse in matrimonial proceedings, and imposed significant sanctions on the husband as well as two other individuals found to be collaborators. The decision followed an uncontested trial in which the husband's pleadings had been struck for failure to provide disclosure and numerous deliberate breaches of court orders.

The husband was found to have carried out a long-term plan over a period of years designed to deprive the wife of the benefits of the family assets. This included inducing her to sign a settlement agreement, an application for divorce, and a transfer of her share of the matrimonial home, all without consideration, without disclosure or discussion of the contents of the documents, and without legal advice. The husband had colluded with two others, also defendants in the action, to sell various properties and disappear the proceeds of sale. By the date of trial, most of the husband's assets had been removed from his known accounts; he claimed to have no income though living a lavish lifestyle; and the limited disclosure the wife had been able to obtain came largely from third parties through a Norwich order.

The court found the husband to be controlling and abusive throughout the marriage. All three documents signed by the wife were found to be shams. The settlement agreement and transfer of the wife's interest in the home were set aside. The court held it would be unconscionable to enforce the prior divorce judgment and declared it to be void *nunc pro tunc*.

In addition to making substantial orders against the husband for property equalization, lump sum spousal support and outstanding costs, the court also held the two other defendants jointly and severally liable with the husband for portions of those payments, as a consequence of their

participation in the husband's scheme, which included lying to the court, hiding assets, and deliberately flouting orders for disclosure and payment into court of funds that they held on the husband's behalf.

The court also took the unusual step of ordered punitive damages against all three defendants - in the amount of $1 million against the husband, and $700,000 and $500,000 against the other two defendants - in light of their "high-handed, malicious, arbitrary and highly reprehensible conduct".