

CASE NO.

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**Cite as: Irving v. Irving, 1997 NSCA 182**

**DEBORAH LYNN IRVING**  
(Appellant)

- and -

**PAUL GREGORY IRVING**  
(Respondent)

**C.A. No. 136437**

Halifax, N.S.

**BATEMAN, J.A.**

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**APPEAL HEARD:**

November 12, 1997

**JUDGMENT DELIVERED:**

December 19, 1997

**SUBJECT:** **Appeal from an uncontested divorce incorporating separation agreement**

**SUMMARY:** Husband and wife agree in a separation agreement to all matters corollary to divorce and **Matrimonial Property Act**. Husband proceeded with uncontested divorce. Wife did not oppose. Wife subsequently appealed on basis that the agreement was unfair or unconscionable and sought to introduce fresh evidence.

**ISSUES:** Should the fresh evidence be received? Should the corollary relief order be set aside?

**RESULT:** This was not an application to admit fresh evidence of the usual kind as there was no determination on the facts before a trial court. In these circumstances, strict application of the **Palmer** test was inappropriate. The evidence was received; however, the appellant failed to demonstrate that she had an adequate excuse for not responding to the Supreme Court proceeding.

The Court expressed reservation as to whether an appeal lies, in any event, from a consent judgment. The case law supports a view that a consent judgment could only be attacked in a new proceeding in the Supreme Court.

**This information sheet does not form part of the court's decision. Quotes must be from the decision, not this cover sheet. The full court decision consists of 23 pages.**