

**IN THE SUPREME COURT OF NOVA SCOTIA**  
(FAMILY DIVISION)

**Citation:** Vanderlinden v. Vanderlinden, 2007 NSSC 80

**Date:** 20070314

**Docket:** 1201-060469

**Registry:** Halifax

**Between:**

James Frederick Vanderlinden

Petitioner

v.

Diane Michelle Vanderlinden

Respondent

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**Judge:** The Honourable Justice Douglas C. Campbell

**Heard:** August 28, 2007 & October 26, 2007 in Halifax, Nova Scotia

**Subject:** Family Law  
Setting Aside Separation Agreement  
Spousal Support  
Assumption of Matrimonial Debt

**Summary:** The parties separated after a five year marriage and created a home made settlement which applied the midpoint of the range in the Spousal Support Advisory Guidelines, quantified the total payment for its duration, assigned the entire debt load of the parties to the husband in lieu of partial compliance with his spousal support obligation and arranged for the balance to be payable in two monthly amounts over two fixed term time frames.

**Issue:** Whether the separation agreement should be set aside and if so what relief should be substituted.

**Result:** The Spousal Support Advisory Guidelines are expressly not applicable to this case because of the parties' insolvency. Their inappropriate use promoted an agreement that could be considered unconscionable under the

*Matrimonial Property Act* and failing in substantial compliance with the principles of the *Divorce Act*. It exceeded the husband's ability to pay. In the result, the wife was ordered to assume responsibility for her student loan debt. The first term stage of spousal support was conceded and would continue for the balance of its term. The second fixed term stage of spousal support was deleted.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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