

**IN THE SUPREME COURT OF NOVA SCOTIA**

Citation: Coady v. Osberg 2004NSSC127

Date: 20040628

Docket: S.H. No. 123335

Registry: Halifax

Between:

**Frances Cheyenne Coady**

Petitioner

-and-

**Lars Spencer Osberg**

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** April 13-16, 21 and May 13 and 17, 2004 at Halifax, Nova Scotia

**Written**

**Decision:** June 28, 2004

**Subject:** Whether separation agreement should be set aside as unconscionable under s. 29 of *Matrimonial Property Act* or under the *Miglin* test.

**Summary:** The parties separated on July 1, 1994 after a 17 year marriage and with the assistance of counsel, negotiated a separation agreement executed on June 6, 1996. The husband remained in the matrimonial home with the two teenage children of the marriage for whom he remained financially responsible. The separation agreement provided for, in effect, an equal division of the matrimonial assets and for spousal support to be paid to the wife for a guaranteed duration of 7½ years. The agreement also provided for the realization of the wife's half interest in the value of the matrimonial home by topping up the spousal support payment from \$1,300 per month to \$2,000 per month. The husband also agreed to fund the cost of tuition and books for his wife to obtain a Masters in Social Work degree. It was contemplated at the time that during the spousal support period, the wife would attain self-sufficiency by getting her degree and finding employment in the social work field.

As it turned out, the wife did not complete her degree until 2001 and it was two years later before she became employed with Statistics Canada. By that time, a Divorce Judgment had been granted (in 2002) but the outstanding issues relating to corollary relief remained to be determined, with the wife's assertion that the separation agreement was unconscionable and should be set aside.

**Issue:** Whether the 1996 separation agreement should be set aside as being unconscionable under s.29 of the *Matrimonial Property Act* (re: division of assets) or under the *Miglin* test (re: spousal support).

**Result:** The court made findings that the conditions surrounding the negotiation and execution of the separation agreement were satisfactory, that the agreement was not substantially unfair and that it was in substantial compliance with the general objectives of the *Divorce Act* at the time of its creation. The court also found that the wife's evidence regarding her circumstances at the time of trial failed to demonstrate that the separation agreement, fairly negotiated and substantially compliant with the objectives of the Act in its formation, is no longer so and ought not to continue to govern the parties' post-divorce obligations towards each other. The separation agreement was therefore declared to be valid and binding upon the parties and was to be incorporated into the Corollary Relief Judgment.

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**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S  
DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**

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