

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Cooper v. Cooper, 2007 NSSC 239

Date: 20070809

Docket: SFK No. 051180

Registry: Kentville

Between:

Jo-anne Doreen Cooper

Applicant

v.

Nigel Brian Cooper

Respondent

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Judge: The Honourable Justice Gregory M. Warner

Heard: June 29, 2007 in Kentville, Nova Scotia

**Final Written
Submissions:** July 13, 2007

Written Decision: August 9, 2007

Subject: Family Law: Separation Agreement and *Miglin* Analysis

Summary: Separation Agreement negotiated over two years gave the wife one-half the husband's military pension (\$212,000.00), virtually all of the matrimonial assets including the home (assets \$ 300,000.00 debt \$ 100,000.00) and fixed-term spousal support for six years from agreement (two and a half years paid before agreement) at \$ 2,500.00 per month or 40% of the husband's employment income. The husband assumed about \$3,000.00 in assets and \$ 41,000.00 in debt. The wife operated the farm property as a llama farm at a deficit each year and used up some of her capital and all of her income. After the fixed term spousal support ended she applied to set aside part of the

agreement and seek indefinite spousal support.

After separation the husband remarried. His wife, who had a good income, became seriously ill and is unable to work other than minimally. In anticipation of the end of his support obligation, the husband and his new wife adopted a child (now age 5). He has incurred substantial debts and is unable to borrow further.

The parties agreed the *Miglin* analysis applied and the Applicant acknowledged the agreement was properly negotiated, but with regards to the stage 1 step 2 analysis, the Applicant says achieving self-sufficiency, despite her optimism at the time, was never a realistic achievable goal. Furthermore, since the agreement circumstances have changed for the worse (stage 2 analysis).

Issue: Whether to override an agreement providing fixed-term spousal support and unequal division of assets in favour of wife, after long-term traditional marriage.

Result: The agreement was upheld.

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