

CANADA / JUDGMENT

Davies v. Jane

2025 ONCA 752

COURT

Court of Appeal for Ontario

DECIDED

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Davies v. Jane

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Miller, Bradley; Zarnett, Benjamin; Madsen, Lene

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Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Davies v. Jane, 2025 ONCA 752

DATE: 20251107

DOCKET: COA-24-CV-1018

Miller, Zarnett and Madsen JJ.A.

BETWEEN

Rene Edith Irene Ruth Davies

Applicant (Respondent)

and

Charles Edwin Jane

Respondent (Appellant)

Charles Edwin Jane, acting in person

Emily Murray, for the respondent

Heard: September 4, 2025

On appeal from the order of Justice Brian W. Abrams of the Superior Court of Justice, dated August 16, 2024.

Madsen J.A.:

A. Overview [1] This appeal arises from an order setting aside a separation agreement under s. 56(4) of the provincial Family Law Act, R.S.O. 1990, c. F.3, and, in the alternative, under s. 15.2 of the federal Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.).

- [2] Under s. 56(4) of the Family Law Act, the court may set aside a domestic contract, or a provision in it, in certain enumerated circumstances related to the formation of the contract. Very different considerations justify court intervention under the Divorce Act. As set out by the Supreme Court of Canada in *Miglin v. Miglin*, 2003 SCC 24, [2003] 1 S.C.R. 303, the court may override spousal support terms of an otherwise valid agreement where continued reliance thereon is unacceptable: *Miglin*, at para. 63.
- [3] The trial judge concluded that incomplete financial information, the sharing of a lawyer during the negotiation process, and the wife’s vulnerabilities, together, resulted in a significantly unfair agreement. He exercised his discretion under s. 56(4) to set the agreement aside. In addition, applying *Miglin*, he held that the agreement should be “set aside” because it did not meet the objectives of the Divorce Act, failing both stages of *Miglin*.
- [4] The trial judgment was released almost two years after the conclusion of the trial and reflected extensive reliance on – indeed adoption of – the wife’s written submissions. Though the trial judge adverted to some arguments made by the husband, such references appear to have been directly drawn from the wife’s written submissions.
- [5] On appeal, the husband argues that the trial judge made procedural errors, made errors of fact, and erred in his application of both s. 56(4) of the Family Law Act and *Miglin*. He expresses concern about the significant delay in the release of the decision and its failure to demonstrate that his written arguments were considered.

- [6] I would grant this appeal in part. I would change the parties' "original bargain" only to the extent necessary to bring it into substantial compliance with the objectives of the Divorce Act.
- [7] The parties requested that, if the appeal were successful in whole or in part, this court make the appropriate decision on the record rather than remit to the Superior Court for a new trial. Given the extensive delays that the parties have already endured and a record (including an extensive Agreed Upon Statement of Facts, filed as evidence in the trial) that permits this approach, this court is able to substitute an appropriate result: Courts of Justice Act, R.S.O. 1990, c. C.43, s. 134; Cassidy v. McNeil, 2010 ONCA 218, 99 O.R. (3d) 81, at para. 39; Pustai v. Pustai, 2018 ONCA 785, at para. 53. This approach, where the record permits and circumstances are appropriate, is also consistent with the primary objective of the Family Law Rules, O. Reg. 114/99, to deal with cases justly in a way that saves expense and time and gives appropriate court resources to the case while taking account of the need to give resources to other cases: rr. 2(2), 2(3).

B. Background [8] The parties separated on December 31, 2014, after a 21-year marriage and 24-year relationship. They have four children: triplets, born in 1996, and a fourth child, born in 1999.

- [9] As set out in their Agreed Upon Statement of Facts, signed January 4, 2022:
- (a) The parties' agreed date of separation is December 31, 2014. At separation, the husband was 55 years old, and the wife was 52.
 - (b) The husband was the only income-earner during the majority of the relationship. He worked for the Ontario government for almost 36 years. His income shortly after separation was "upwards of \$80,000". His income in 2021 was \$90,217.
 - (c) The wife had not worked outside the home since 1992.
 - (d) The family moved to Peterborough in 1997 for the husband's employment.
 - (e) The wife lives with numerous health issues, including rheumatoid arthritis, Sjogren's syndrome, Hashimoto's Thyroiditis, and collagenous colitis. After separation, in 2018, she had surgery to treat oral cancer, as well as surgery related to endometriosis.
 - (f) After separation, the parties signed two separation agreements.[1]
 - (g) Their first agreement was signed September 10, 2015 (the "first agreement") and had no spousal support payable.
 - (h) Their second separation agreement was signed in October 2015 (the "second agreement"). That agreement provided, at s. 10, for spousal support payable in the amount of \$28,800 per year until the wife: (a) remarries; (b) cohabits in a relationship resembling marriage for one or more periods totaling three years; or (c) dies. That section also provided that "[t]he husband's obligation to pay spousal support will be suspended while the Wife cohabits in a relationship resembling marriage." Below, these terms are referred to as the "cohabitation

clause.” Section 11 of the second agreement provided for variation of the quantum of support, and s. 12 provided for annual indexing. The second agreement did not provide for security for spousal support.[2]

- (i) The wife could not currently afford her expenses and would “not be able to live off CPP alone.”
 - (j) The wife had a boyfriend residing in Texas. The wife could spend a maximum of six months per year in Texas.
 - (k) Relying on the second agreement, the husband stopped paying spousal support in December 2020, at which point he had paid spousal support for five years and two months.
 - (l) The wife brought a motion for interim spousal support. The motion was resolved on consent. At trial, the husband was paying interim monthly support in the amount of \$1,950.
- [10] There were financial difficulties at separation. The parties’ home was at risk of foreclosure. The husband and several friends put together an arrangement to purchase the home. In an attempt to secure financing, the husband sought a separation agreement reflecting a zero or minimal spousal support obligation.
- [11] The lawyer assisting with the transfer of the home also assisted with the separation agreements. The lawyer’s file was in evidence, and he testified. Both parties waived privilege. As his work with the parties progressed, the lawyer became less and less comfortable with the conflict of interest in preparing the separation agreement on behalf of both parties. Nevertheless, he stayed involved much longer than appropriate.
- [12] Specifically, the lawyer assisted both parties in the negotiation of the first agreement, which was signed primarily to assist the husband in securing financing for the purchase of the home. That agreement was intended to be interim, and the lawyer, accordingly, included no releases.
- [13] The lawyer subsequently assisted with the negotiation of the second agreement. He eventually told the parties that he could not represent them both. It was agreed that he would “represent” the wife, and the husband was advised to seek other counsel, which the husband declined to do. The lawyer met with the wife twice after determining he could no longer work with both parties collectively.
- [14] The wife led very little evidence regarding her understanding of the second agreement or any specific portions thereof. She testified that she understood the “cohabitation clause” that formed part of the spousal support terms. She qualified this, however, stating “well, I know it says that, but I have now found out that that is not really correct in the law”. Pressed as to whether she understood the cohabitation clause at the time the second agreement was entered into, she confirmed that she did.

[15] The lawyer testified that when he was drafting the second agreement, the husband “was getting rather anxious to conclude the file.” While the lawyer stated that in his view the husband was “driving the process”, he also testified that he did not see evidence that the wife was coerced into signing the agreement or that she was otherwise pressured into doing so. In his view, the wife understood the second agreement, and both parties seemed “comfortable with” it. The lawyer stated that he “would advise [a client] on ... the pros and cons of the agreement”. Responding to a question put by the husband, he said: “You both indicated that you were satisfied with the final version, so that was positive from my perspective.”

[16] The parties implemented the property terms of the second agreement, equalizing the two major assets: the home and the husband’s pension.

C. The Trial Decision [17] The trial judge set aside the second agreement under s. 56(4) of the Family Law Act. He did not expressly state the ground upon which he did so but referred to “incomplete financial disclosure” and the wife’s lack of understanding of the agreement. He emphasized that the limited advice received from the lawyer was insufficient to overcome the imbalance of bargaining power between the parties or the wife’s inherent vulnerabilities. The trial judge analogized to *Chee-A-Tow v. Chee A-Tow*, 2021 ONSC 2080, in which a separation agreement that “exploited a party’s vulnerabilities such that its terms deviate significantly from the relevant legislative objectives was found to be unconscionable”.

[18] In an alternative analysis, the trial judge applied Miglin, finding that the agreement was neither negotiated in unimpeachable conditions, nor did the substance of the agreement substantially comply with the overall objectives of the Divorce Act. He found that, at the time the contract was entered into, the husband controlled the family finances, and the wife was stressed, in poor health, and had no income. Further, the agreement did not effect a “genuine notion of equitable sharing.” Moreover, at the second stage, he determined that the agreement did not reflect the objectives of the Divorce Act.

[19] The trial judge proceeded to set spousal support afresh, based on the husband’s 2021 income of \$91,119, at \$3,616 per month commencing February 1, 2022. As the decision was not released until August 2024, this immediately put the husband in significant arrears. The trial judge also ordered the husband to obtain life insurance to secure spousal support obligations in an amount not less than \$800,000.

[20] At trial, the wife sought, and the trial judge ordered a further payment by the husband in the amount of \$69,849.35 on account of equalization. This appeared to reflect a “back-of-the-envelope calculation” made by the wife’s counsel in oral submissions and without evidence, suggesting a possible higher value of the home than the parties had initially used in determining equalization. This order was one of the subjects of the husband’s appeal. During oral argument before us, the wife properly conceded this aspect of the appeal should succeed.

[21] The question of retroactive support, from December 2020 (when the husband suspended spousal support) until February 1, 2022, remains outstanding. Written submissions were made shortly after the trial decision was released, but the parties still await a decision on this.

D. Issues [22] Given the wife's concession that the husband's appeal should succeed regarding the equalization payment, the following issues remain to be addressed:

- (a) What is the impact of the procedural irregularities raised by the husband?
 - (b) Did the trial judge err in setting aside the second agreement in its entirety under s. 56(4) of the Family Law Act?
 - (c) Did the trial judge err in applying s. 15.2 of the Divorce Act?
 - (d) What are the appropriate support terms, if any?
1. Impact of Procedural Irregularities [23] Adequate reasons for decision are not merely a precondition for deference but are also a basic entitlement of every litigant. Reasons should demonstrate that the judge has considered each litigant's argument and taken the time to explain why the losing party lost: *Penate v. Martoglio*, 2024 ONCA 166, 496 D.L.R. (4th) 50, at para. 21; *Lawson v. Lawson* (2006), 81 O.R. (3d) 321 (C.A.), at paras. 13, 44. Reasons should also be released on a timely basis: *Crump v. Fiture*, 2018 ONCA 439, at para. 29.

[24] As noted above, the delay in this case between the conclusion of the trial and the release of the decision was inordinate. Further, the trial decision reflected extensive reliance in the wife's written submissions with little, if any, reference to the husband's submissions. Indeed, the husband prepared a "concordance" demonstrating, in effect, wholesale adoption of the wife's written submissions. In this context, reasons cannot be said to be "adequate." Deference cannot be afforded.

[25] While delay, without more, is not a ground of appeal, any delay of this magnitude creates the very risk exhibited here: that a decision-maker will, in the absence of independent recollection of the details of the trial, over-rely on the submissions of one party, including where those submissions contain obvious mistakes. Here, this was evident in the decision on equalization, which was essentially duplicative of the wife's submissions, clearly incorrect, and made without evidence. While I recognize that there can be many causes for delay – personal or professional – this does not diminish litigants' entitlement to timely and responsive reasons.

[26] In this case, recognizing the joint request that this court determine the appropriate outcome, the delay alone does not justify setting aside the entire trial judgment. As varied herein, the decision accords with the facts in the record and the law.

2. The trial judge erred in setting aside the second agreement under s. 56(4) of the Family Law Act [27] Section 56(4) of the Family Law Act provides that, where a spouse seeks to set aside a domestic contract or one of its provisions, a court may do so only under the following conditions:
- (a) if a party failed to disclose to the other significant assets, or significant debts or other liabilities, existing when the contract was made;
 - (b) if a party did not understand the nature or consequences of the domestic contract; or
 - (c) otherwise in accordance with the law of contract.
- [28] A determination under s. 56(4) is discretionary and therefore ordinarily attracts deference: *Torgersrud v. Lightstone*, 2023 ONCA 580, 93 R.F.L. (8th) 267, at paras. 10-11, leave to appeal requested but application for leave discontinued, [2023] S.C.C.A. No. 464. For the reasons already set out above at paras. 7 and 23-26, this is not an appropriate case for deference. Instead, I undertake a fresh analysis based on the record before this court, and substitute what is in my view the appropriate decision.
- [29] Section 56(4) of the Family Law Act, as set out in *Faiello v. Faiello*, 2019 ONCA 710, 438 D.L.R. (4th) 91, at para. 17, addresses the “intrinsic flaws in the formation of a contract that nullify the apparent consent between the parties and invalidate the agreement, allowing a court to set aside the contract” (emphasis in original). The burden is on the party seeking to set the agreement aside to show that one or more of the conditions of s. 56(4) have been met. Even where one of the listed criteria is met, the decision to set aside a domestic contract, or a provision in it, remains discretionary. The judge must determine what is appropriate in the circumstances of the case: *Faiello*, at para. 20; *LeVan v. LeVan*, 2008 ONCA 388, 90 O.R. (3d) 1, at para. 33.
- [30] Domestic contracts are to be encouraged. Not every apparent flaw will result in setting aside an agreement. As stated in *Anderson v. Anderson*, 2023 SCC 13, 481 D.L.R. (4th) 1, at para. 33: “As a starting point, domestic contracts should generally be encouraged and supported by courts, within the bounds permitted by the legislature, absent a compelling reason to discount the agreement”.
- [31] A lack of independent legal advice and formal financial disclosure can, but will not always, undermine informed choice. The absence of legal advice will not automatically vitiate a domestic contract: *Dougherty v. Dougherty*, 2008 ONCA 302, 89 O.R. (3d) 760, at para. 11. Evidence of prejudice arising from flaws in the negotiation process is an important consideration: *Anderson*, at paras. 10, 67 and 70.
- [32] In this case, there were flaws in the negotiation process for both separation agreements. This was particularly so for the second agreement, which is the focus of this decision. However, in my view, those flaws do not, on this record, “nullify the apparent consent between the parties and invalidate the agreement”.

- [33] Section 56(4)(a) refers to failure to disclose significant assets, debts, or liabilities. The lawyer testified that the husband signed a “family court financial statement” dated July 10, 2015, shortly before the agreements were executed, which set out his income and assets. Only the husband had an income. As noted, there were only two major assets, the matrimonial home and the husband’s pension (for which a family law value was obtained and disclosed), the value of which were both shared equally. The record reflects that the disclosure exchanged was adequate for both parties to understand the financial landscape upon which their agreement was based. While the trial judge’s reasons refer to “incomplete financial disclosure,” the reasons do not identify any apparent missing disclosure or specific prejudice arising to either party therefrom.
- [34] Section 56(4)(b) refers to a failure to understand the nature or consequences of the agreement. The record reflects that from the contract-formation perspective, and notwithstanding the problematic “joint” legal representation, the wife understood the nature of the second agreement and the consequences thereof. She participated in crafting the terms, including with respect to spousal support, and while the evidence was that the husband was more “directive” of the process, the wife told the lawyer she agreed as changes were made to the drafts. The lawyer testified: “[T]hey had already for the most part as a couple worked out the plan for their separation.” Consistent with the lawyer’s testimony, the wife specifically stated that she understood the cohabitation clause. While, as we determine below, certain terms in the second agreement should be overridden, this was not a case where lack of understanding vitiated this contract from the perspective of its formation.
- [35] Finally, s. 56(4)(c) considers whether there is a basis to set aside “otherwise in accordance with the law of contract.” It is under this branch that arguments about unconscionability, undue influence, and mistake, duress, and misrepresentation are typically considered. The wife’s position at trial, although not pled, was that she was under duress when she signed the agreements. She argued that she was vulnerable due to her health issues and lack of income and that her vulnerabilities were not compensated for by legal advice. This, she submitted, resulted in a “significantly unfair agreement”. The trial judge accepted this argument. She neither pled nor argued unconscionability.
- [36] The record is clear that the wife was vulnerable. At the same time, the evidence does not support the conclusion that she was under duress when she entered the contract: there was no evidence that the husband coerced her, nor did the evidence support the conclusion that she was dominated by him: *Lisa Ludmer v. Brian Ludmer*, 2013 ONSC 784, 33 R.F.L. (7th) 331, at para. 53, var’d on other grounds 2014 ONCA 827, 327 O.A.C. 133. While the legal advice that the wife received did not neutralize her vulnerabilities, the husband did not benefit from these vulnerabilities in a way that would justify setting the agreement aside in accordance with the law of contract.

- [37] I note, further, that the property outcome the parties negotiated was conceded on appeal to be appropriate. The concerns raised in relation to the “cohabitation term” of the second agreement are more appropriately considered as part of the Miglin analysis, which relies on the objectives of spousal support in the Divorce Act to find “a proper balance between consensus and finality on the one hand, and sensitivity to the unique concerns that arise in the post-divorce context on the other”: at para. 78.
- [38] In my view, the trial judge erred in setting aside the second agreement under s. 56(4) of the Family Law Act.
3. The trial judge did not err in applying s. 15.2 of the Divorce Act, as it relates to spousal support [39] I would, however, uphold the trial judge’s alternative conclusion, guided by the Supreme Court of Canada’s decision in Miglin, insofar as it relates only to spousal support.
- [40] Section 15.2 of the Divorce Act confers authority on a court to order spousal support corollary to a divorce application. That section, as interpreted by the Supreme Court of Canada in Miglin and noted by this court in Faiello at para. 16, does not grant authority to “set aside” a separation agreement but establishes that the existence of a valid separation agreement is one factor for the court to consider when determining whether to award spousal support. Support terms under an otherwise valid agreement may in some circumstances be “overridden”: Faiello, at para. 17.
- [41] The decision of the Supreme Court of Canada in Miglin establishes a two-stage inquiry where, as here, a support application is made in the face of a valid agreement between the parties.
- [42] At the first stage, the court considers “the circumstances in which the agreement was negotiated and executed to determine whether there is any reason to discount it”: Miglin, at para. 80. Circumstances of negotiation that do not amount to unconscionability may be relevant, but the court is not to presume an imbalance of power: Miglin, at para. 82. Where the court is satisfied that the conditions under which the agreement was negotiated are satisfactory, the court then considers whether the substance of the agreement substantially complies with the objectives of the Divorce Act, reflecting an equitable sharing of the economic consequences of the marriage. The court considers the agreement in its totality, bearing in mind that all aspects of the agreement are linked and that parties have broad discretion to set goals and priorities for themselves: Miglin, at para. 84; Faiello, at para. 46.
- [43] If the agreement “passes” the first stage of the Miglin analysis, the inquiry proceeds to consider the circumstances at the time of the application for spousal support. As stated in Miglin, “[i]t is only where the current circumstances represent a significant departure from the range of reasonable outcomes anticipated by the parties, in a manner that puts them at odds with the objectives of the Act, that the court may give the agreement little weight”: at para. 91.

- [44] The trial judge found, and it is clear from the record in this case, that the spousal support terms set out in the second agreement foundered at the first stage of the Miglin analysis. While, as noted, the circumstances of execution did not vitiate the validity of the contract, the lack of evidence that the wife was advised as to the strength of her entitlements in the context of her evident health and financial vulnerabilities is a significant concern. The fact of the “joint retainer” until almost the point of execution of the agreement is also concerning. There is no evidence that the wife was cautioned as to the clear risks to her in the event of re-partnering with an individual not in a position to support her needs.
- [45] While the wife did not lead sufficient evidence to impugn the validity of the contract, at a minimum, the “circumstances surrounding the negotiation and execution of the agreement” affected the bargaining process and the “fairness at the time the agreement was concluded”: Anderson, at para 26, citing Miglin, at para. 92. Such circumstances permit a court to conduct a more in-depth review of the agreement at the first stage: Miglin, at para. 85. As this court’s decision in Faiello demonstrates, flaws in the negotiation of an agreement may not make it invalid under s. 56(4). At the same time, spousal support terms, or portions thereof, may fail to adhere to the factors in the Divorce Act at the time the agreement was negotiated: see Faiello, at paras. 1, 3 and 60.
- [46] As in Faiello, I conclude that the second agreement, when created, was not in substantial compliance with the objectives of the Divorce Act. I note that such compliance will “permit a broader gamut of arrangements than would be the case if testing agreements narrowly against the support order objectives”: Miglin, at para. 86. That said, for these parties, the cohabitation clause, as drafted, cannot stand.
- [47] The objectives of spousal support set out in the Divorce Act recognize both compensatory and non-compensatory considerations. Under s.15.2(6) of the Act, spousal support should,
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [48] As noted, when the second agreement was negotiated, the wife had not worked outside the home since 1992, a period of more than 20 years; the husband was always the breadwinner; this was a long-term relationship with four children primarily in the wife’s care while the husband was employed full-time; and the wife was, throughout the marriage and at separation, living with multiple chronic illnesses. The compensatory basis for indefinite

entitlement to spousal support was overwhelming. Her significant, and likely persisting, need was also obvious.

[49] In this context, a support arrangement that would summarily suspend support upon cohabitation did not comply with the overall objectives of the Divorce Act. On these facts, the cohabitation clause was a significant departure from the general objectives of the Act and did not reflect an equitable sharing of the consequences of the marriage or its breakdown.

[50] Since the spousal support terms of the second agreement do not survive the first stage of the Miglin analysis, it is unnecessary to address the trial judge's additional conclusion that the agreement also does not pass the second stage.

4. The appropriate spousal support terms [51] Where the court determines that an agreement fails to comply substantially with the Divorce Act, whether at the first or second stage of Miglin, this does not mean that the entire agreement is to be ignored: Miglin, at para. 86. To the contrary, the court states:

Provided that demonstrated vulnerability and exploitation did not vitiate negotiation, even a negotiated agreement that it would be wrong to enforce in its totality may nevertheless indicate the parties' understanding of their marriage and, at least in a general sense, their intentions for the future. Consideration of such an agreement would continue to be mandatory under s. 15.2(4). For example, if it appeared inappropriate to enforce a time-limit in a support agreement, the quantum of support agreed upon might still be appropriate, and the agreement might then simply be extended, indefinitely or for a different fixed term. [Emphasis added.]

[52] As in Pustai, I would adjust the parties' "original bargain" only to the extent necessary to bring it into substantial compliance with the objectives of the Divorce Act, while still respecting the framework the parties negotiated. By contrast, the trial judge essentially discarded the entire agreement, setting a support quantum afresh, without regard to the parties' original terms.

[53] I turn now to what in my view is required to make the spousal support terms of the second agreement compliant with the objectives of the Divorce Act.

i. Quantum and duration of spousal support

[54] In my view, the appropriate approach is to adjust the parties' spousal support arrangement only as follows: ss. 10(1)(a)-(b) which terminates spousal support upon marriage or three years of cohabitation, and s. 10(2), which suspends spousal support upon cohabitation, are deleted. Section 10(3), which the lawyer testified was included in error is also removed. Accordingly, section 10 of the second agreement shall read as follows:

10. Spousal Support

The Husband (or his estate) shall pay to the Wife, for her support, the sum of \$28,800.00 annually, payable bi-weekly in equal payments of \$1,108.00, with the first such payment due on October 8, 2015, and all future payments due two weeks following the previous payment, until the Wife dies.

[55] Section 11 of the agreement, which provides for the variation of the quantum of spousal support in circumstances including, but not limited to, a party's retirement, does not require any change by this court. I observe that the wife's cohabitation or marriage could, upon sufficient evidence of material change in circumstances, be considered under this section. Section 12, which provides for indexing the spousal support amount in accordance with the Consumer Price Index does not require any change by this court.

[56] The husband stopped paying spousal support under the second agreement in December 2020. He then started paying interim monthly spousal support in the amount of \$1,950. On August 16, 2024, the trial judge ordered the husband to pay \$3,616 per month starting February 1, 2022, creating an instant arrears obligation. The court was advised that the Family Responsibility Office is enforcing these amounts.

[57] As indicated, an order regarding retroactive support between December 2020 and February 1, 2022, had not been received by the parties when this appeal was heard.

[58] For clarity, support amounts owing shall be recalculated to reflect the ongoing bi-weekly obligation of \$1,108, as set out in the second agreement as amended by this Order and as indexed in accordance with s. 12 of the second agreement, from January 1, 2021, with credit to the husband for all payments made.

ii. Life Insurance

[59] Section 15 of the second agreement provided for life insurance in the amount of \$200,000 payable to the wife in the event of the husband's death. However, while under s. 15(1)(iii), the intent appears to have been to secure both child and spousal support, s. 15(1)(i) provides that the amount be held by the wife "in trust for the Children". The amount is also reduceable by \$15,000 each year, which, if implemented, would leave little remaining at this time notwithstanding the ongoing spousal support obligation set out above.

[60] In line with the wife's submissions, the trial judge ordered security for spousal support only, in the amount of \$800,000. This amount is excessive and is set aside.

[61] To meet the objectives of the Divorce Act, section 15(1)(i) of the second agreement shall read as follows. No other life insurance terms negotiated by the parties require adjustment:

- (i) The husband shall obtain (if he does not already have such insurance) life insurance on his life payable to the Wife, in the amount of \$200,000.

E. Disposition [62] The appeal is allowed in part. Except as varied by this decision, the terms of the parties' Separation Agreement dated October 16, 2015, shall remain in full force and effect.

[63] Section 10 of the parties' Separation Agreement dated October 16, 2015, shall read as

follows:

10. Spousal Support

The Husband (or his estate) shall pay to the Wife, for her support, the sum of \$28,800.00 annually, payable bi-weekly in equal payments of \$1,108.00, with the first such payment due on October 8, 2015, and all future payments due two weeks following the previous payment, until the Wife dies.

[64] For clarity, support amounts owing under the Separation Agreement dated October 16, 2015, shall be recalculated by the Family Responsibility Office to reflect the ongoing bi-weekly obligation of \$1,108 as set out and as amended by this Order and as indexed in accordance with s. 12 of the agreement, from January 1, 2021, with credit to the husband for all payments made since that date.

[65] Section 15(1)(i) of the parties' Separation Agreement dated October 16, 2015, shall read as follows:

(i) The husband shall obtain (if he does not already have such insurance) life insurance on his life payable to the Wife, in the amount of \$200,000.

[66] The trial judge's order that the husband pay to the wife the sum of \$69,849.35 to equalize net family property is set aside.

[67] Success in this matter is divided. There shall be no order as to costs.

Released: November 7, 2025 "B.W.M."

"L. Madsen J.A."

"I agree. B.W. Miller J.A."

"I agree. B. Zarnett J.A."

[1] In the reasons, the trial judge refers to three agreements. The second of these was an amending agreement, which is not at issue here. The "second agreement" in this decision is synonymous with the "final agreement" referred to by the trial judge.

[2] While not noted in Agreed Upon Statement of Facts, the second agreement did require the husband to obtain insurance on his life in the amount of \$200,000, payable to his wife (as explained in more detail below).

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