

CANADA / JUDGMENT

# Setterfield v. Devlin

2022 BCSC 1774

## COURT

Supreme Court of British Columbia

## DECIDED

12 October 2022

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2022 BCSC 1774 Setterfield v. Devlin IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Setterfield v. Devlin, 2022 BCSC 1774 Date: 20221012 Docket: E220378 Registry: Victoria Between: Ashlyn Louise Setterfield Claimant And Brendan James Peter Devlin Respondent Before: The Honourable Mr. Justice Thomas Reasons for Judgment Counsel for the Claimant: S. Tucker Counsel for the Respondent: K. Henry Place and Date of Hearing: Victoria, B.C. September 1-2 and 26, 2022 Place and Date of Judgment: Victoria, B.C. October 12, 2022 Table of Contents Issue.. 4 Facts.. 4 Background. 4 Children.. 4 Separation.. 5 Finances. 5 Involvement of legal counsel 5 Restrictions on direct communications between the parties. 6 Removal of items and return of car 6 Mutual decision to resolve issues quickly and cheaply. 6 Initiation of child support 6 Claimant's finances. 7 Allegations of family violence. 7 Claimant's mental state. 7 Initial screening of impact of family violence. 7 Mediation/arbitration agreement.. 8 Support from the claimant's father 8 Assessment by family physician.. 8 Advice with respect to mediation/arbitration agreement 8 Access to housing. 9 First mediation.. 9 Claimant signs certificate of independent legal advice. 9 Loss of parental funding of legal fees. 10 Concerns over mediation/arbitration agreement and desire to proceed with mediation as soon as possible. 10 Claimant's knowledge of events in mediation.. 11 Second mediation.. 11 Role of Cascadia. 11 Continued financial support by claimant's father 12 Further mediations. 12 Meuser Report.. 12 Concern over bias. 12 Initiation of family claim in civil court.. 13 Position of the claimant 13 Legal Analysis.. 14 Section 19.3(1) 14 Improper advantage of claimant's vulnerability. 15 Nature and consequences of agreement 17 Length of mediation phase. 17 Mediation of family violence issue. 17 Void under common-law.. 18 Conclusions on s. 19.3(1) 18 Section 19.4. 18 Bias.. 20 Loss of parental funding for legal fees. 20 Conclusions.. 21 Issue

- [1] The central issue to be decided is whether the claimant should be permitted to continue with this family action despite entering into an mediation/arbitration agreement with the respondent in December 2020.
- [2] The claimant says there are two bases upon which the agreement should be set aside:
- a) The respondent took improper advantage of the claimant in forcing her to enter into the mediation/arbitration agreement; and

- b) The agreement is frustrated due to:
- i. Lack of legal funding to the respondent by her father; and/or ii. Bias by the arbitrator.

## Facts

### Background

- [3] The parties began dating in April 2017 while living in separate cities. They were married on September 1, 2017. The claimant is 32-years-old, is a stay-at-home mother, and has a medical condition which makes sexual intercourse painful. The respondent is 28-years-old, works as an apprentice carpenter, and uses pornography. These issues caused stress in the marriage.
- [4] The parties were of modest means. They had independent access to a joint bank account and shared the respondent's credit card and car. In addition, the claimant had her own bank account which had a balance of approximately \$10,000. It was untouched throughout the course of their relationship. Children
- [5] The parties have two young children, I.D., born on November 28, 2019, and W.S., born on January 20, 2021. The claimant suffered from hyperthyroidism and morning sickness during both of her pregnancies. I would characterize both of the claimant's pregnancies as difficult. Separation
- [6] On August 3, 2020, the claimant advised the respondent that she needed a time out from the marriage and asked if she could borrow his car. The respondent became upset and threw a bottle. The claimant asked some friends to come over to help her gather some items for herself and I.D. and pack the car. The claimant left shortly thereafter and stayed with some family friends.
- [7] On August 14, 2020, the claimant moved into the Cridge Transition House ("Cridge House") which is a transition home for women whom have suffered family violence. The house provides free housing, financial for food and necessities and emotional support. Finances
- [8] At the time of separation there was approximately \$12,000 in the joint bank account. Both parties had access to the account. Both withdrew funds from the account. The claimant and respondent divided the funds roughly equally. The respondent went on medical leave shortly after the separation and received income through Employment Insurance. The claimant remained in possession of her account that had a balance of approximately \$10,000. Involvement of legal counsel
- [9] On August 15, 2020, the claimant retained legal counsel and advised the respondent that the marriage was over. Parenting time for the respondent was arranged. The claimant had concerns about the respondent's ability to independently parent I.D. and insisted on supervised visits. Shortly thereafter, the respondent retained legal counsel. Restrictions on direct communications between the parties

- [10] On September 2, 2020, the claimant advised the respondent that she had a lawyer and requested that his communications to her be limited to logistical topics and issues pertaining to the parenting of I.D. The respondent followed this request and all communications with respect to the family issues, including how and when issues would be resolved, were conducted through legal counsel. Removal of items and return of car
- [11] On September 5, 2020, the claimant, with the assistance of some of her friends, removed all of the items from the apartment that she needed for herself and the child. A moving truck was needed to remove the larger furniture from the apartment.
- [12] On or about September 28, 2020, the claimant purchased a car and had one of her friends return the respondent's car. Mutual decision to resolve issues quickly and cheaply
- [13] In September, the parties lawyers began discussing potential resolution of the family issues. In early October, the claimant's counsel suggested a mediation. After some discussion counsel reached an agreement on a mediation arbitration process which would utilize a lawyer, Ms. Thompson, as a mediator/arbitrator. Both parties, through their counsel, indicated that they wished to try to resolve property division, support and parenting matters. Initiation of child support
- [14] On November 1, 2020, the respondent began paying the claimant child support pursuant to the Federal Child Support Guidelines. No spousal support was paid because the respondent was on social assistance and her income would be reduced were she to receive such support. In addition, the respondent received the Canada child benefit of \$843 per month (this was increased to \$1562 per month after the birth of W.S. in January 2021), COVID-19 and homelessness prevention benefits, and GST credits. Claimant's finances
- [15] The claimant's income was and is stable. She receives approximately \$50,000 a year through assistance and support. Prior to 2021, while living at Cridge House where she received financial support for food and free accommodations.
- [16] From the time of separation to at least the end of 2021, the claimant had access to more funds than the respondent. Within the means of the parties, the claimant was financially independent. Allegations of family violence
- [17] The claimant has made allegations of family violence against the respondent involving both her and their daughter. These allegations are denied. Notwithstanding their denial, I accept the claimant is fearful of and feels threatened and intimidated by the respondent.
- [18] Social services has performed three different inquiries into the respondents alleged inappropriate behaviour with I.D.; the police have also investigated. Social services concluded the respondent should be provided unsupervised access to I.D.
- [19] The claimant has alleged that the respondent has stalked and intimidated her during transitions with their daughter. These allegations are denied. I accept the claimant was fearful of the respondent during these transition periods. Claimant's mental state

- [20] I find the claimant was sleep deprived, under considerable stress and felt threatened and intimidated by the respondent during the fall of 2021. Initial screening of impact of family violence
- [21] The claimant raised issues of family violence with her legal counsel in August and in September. She had two different lawyers during this time. Both had an obligation to screen for family violence issues and the impact that these issues might have on the legal process. The claimant does not deny that her lawyers screened her for the impact that family violence might have on the legal process. Mediation/arbitration agreement
- [22] On November 12, 2020, Ms. Thompson sent a mediation/arbitration agreement to the parties and confirmed that a pre-mediation conference would be arranged for the claimant and her lawyer on November 30, 2020, and that the first mediation would occur on December 15, 2020 via Zoom. Support from the claimant's father
- [23] Around this time, the claimant's father came from his home in Arizona and stayed with the claimant. He provided her with emotional and financial support, and assisted with the children until late May 2021. After her father left, the respondent's mother stayed with her until February of 2022. Assessment by family physician
- [24] On November 17, 2020, the claimant's family physician provided the opinion that the claimant was "medically and emotionally stable". Advice with respect to mediation/arbitration agreement
- [25] On November 26, 2020, the claimant met with her lawyer to discuss the mediation/arbitration and the upcoming sessions. The claimant and her lawyer signed the mediation/arbitration agreement. The claimant acknowledged that she had received independent legal advice in deciding to enter into the agreement.
- [26] On November 27, 2020, the claimant's lawyer signed the certificate of independent legal advice certifying that she explained to the claimant: The meaning of the attached agreement and have given her independent legal advice prior to the signing of the agreement. I have also explained to my client that the agreement is an arbitration agreement within the meaning of the arbitration act and as such a court may set aside the agreement under various circumstances about which I've informed her. In my opinion, my client is aware of the need for disclosure of significant income, assets, debts and liabilities existing when this agreement is made and understands the nature and consequences of this agreement. I am satisfied that my client is not signing this agreement as a result of any duress or undue influence. My client has been separately screened for power imbalances in family violence and I'm satisfied my client is fully able to participate in this MV - arbitration it is doing so voluntarily.

- [27] On November 30, 2020, the claimant, her lawyer, and her father met with Ms. Thompson. During this meeting, Ms. Thompson conducted a screening for family violence which specifically involved an assessment of whether family violence may adversely affect the ability of the claimant to negotiate a fair agreement or participate in the process.
- [28] The claimant does not say that the agreement was not explained to her; nor does she say that all of her questions were not answered by her lawyer and Ms. Thompson. Access to housing
- [29] On December 1, 2020, the claimant moved into a new apartment. The apartment was subsidized and cost approximately \$1,130 per month. First mediation
- [30] On December 15 and 16, 2020, a mediation occurred over Zoom. The mediation began with a further explanation of the mediation/arbitration process. The mediation was long and extended over two days. Claimant signs certificate of independent legal advice
- [31] On December 22, 2020, the claimant signed the certificate of independent legal advice regarding the agreement at her lawyer's office. Her lawyer was not present when she signed the certificate. In her affidavit, the claimant stated: No one explained to me what signing the certificate meant, whether I should or should not be signing the certificate at that point in time. I felt pressured to sign the certificate because the mediation/arbitration process had already begun.
- [32] The claimant does not state that her lawyer did not provide her with independent legal advice, only that she did not understand the significance of receiving the advice and implications of signing the certificate. Loss of parental funding of legal fees
- [33] On February 24, 2021, the claimant stated that her father would no longer pay her legal fees as they were too expensive. The claimant was eligible for legal aid. She applied for legal aid and received payment for legal fees through legal aid. Unfortunately, legal aid only provides compensation for a limited amount of lawyers' fees for the mediation/arbitration process. The claimant's father continued to pay Cascadia Counselling Ltd. ("Cascadia") for the counselling element of the mediation/arbitration process, which I would characterize as a combination of disbursements and treatment.
- [34] Legal aid does not have a limitation on the number of hours that a lawyer can charge through for family law claims brought through a civil action.
- [35] There is no affidavit evidence from the claimant's father with respect to why he stopped paying his daughters legal fees. The claimant simply states her father told her that the lawyers fees were too expensive and that he could not afford to pay them.
- [36] In my view, this was a pragmatic decision by the claimant's father as there would be no need to pay for his daughter's legal fees if the payments would be made by legal aid. I note the father continues to pay expenses associated with the mediation/arbitration process which do not prevent his daughter from receiving legal aid. Concerns over mediation/arbitration agreement and desire to proceed with mediation as soon as possible

- [37] On April 13, 2021, the claimant's new lawyer advised Ms. Thompson and the respondent's counsel that she was being paid by legal aid as the claimant's father had withdrawn his financial support. She indicated that she wished to proceed with the mediation "as soon as possible", but that she felt that the mediation/arbitration agreement should be terminated on the basis that it was "frustrated" because the claimant could not afford to pay her portion of Ms. Thompson's fees. Claimant's knowledge of events in mediation
- [38] On April 20, 2021, Ms. Thompson came to an agreement with the claimant's lawyer about payment of her fees so that the process could proceed. The claimant's new lawyer advised:
- a) one of the first matters for mediation will be to confirm the agreements made at the first market mediation as "her client believes the draft minutes of settlement require some modification before it reflects the agreements that were actually made"; and
  - b) the claimant's lawyer also indicated she was concerned about the viability of the mediation/arbitration agreement.
- [39] There was no mention of any concerns about the claimant being pressured during the mediation, or unconscionability of the arbitration/mediation agreement. Second mediation
- [40] On April 26, 2021, a further mediation occurred through Zoom.
- [41] The minutes of settlement for the December 15-16, 2020 and April 26, 2021 mediation resolved a number of issues about property division, child support, spousal support, interim guardianship, interim parenting time, the children's residence, and retaining Cascadia. Role of Cascadia
- [42] Cascadia was retained to pursuant to the mediation/arbitration agreement to arrange for an assessment of the respondent and the claimant and assist the parties in resolving co-parenting and communication issues. In addition, they were to provide a report and recommendations to Ms. Thompson. The assessment could fulfill many of the functions of the Section 211 report at a much lower cost.
- [43] Cascadia retained Dr. Meuser, a psychologist to conduct the assessments and review collateral information. Continued financial support by claimant's father
- [44] After the mediation, the claimant's father paid \$2,750 for his daughter's assessment and counselling pursuant to the mediation/arbitration agreement. This was significantly more than the legal fees charged by her counsel for the mediation. Further mediations
- [45] On May 27, 2021, a third mediation occurred through Zoom, and on November 4, 2021 a fourth mediation occurred through Zoom as the parties to continued to resolve outstanding issues.
- [46] Serial mediations are appropriate when extremely young children are involved and the parties can continue to make progress on common issues. Meuser Report

- [47] On January 7, 2022, Cascadia provided a preliminary summary of Dr. Meuser's findings and recommendations to Ms. Thompson and the parties.
- [48] Amongst other things Dr. Meuser recommended roughly equal co-parenting time between the parties. The recommendations did not support the claimant's desire to be designated the primary parent of the children.
- [49] Dr. Meuser's report notes: [the claimant] has reportedly lodged several complaints with MCFD [the Ministry for Children and Family Development] [i.e., physical and sexual abuse concerns]. All MCF DN related police files were independently investigated enclosed without evidence to substantiate any of the allegations. [The claimant] is described as "continually disrupting" implementation of the professionally mediated co-parenting schedule [mediator/arbitrator Ms. Thompson] with continued allegations about [the respondent]. Concern over bias
- [50] The claimant raised concerns that Ms. Thompson was biased because she had spoken with Dr. Meuser and described the claimant as "continually disrupting" implementation of the co-parenting schedule.
- [51] Ms. Thompson advised the parties that she spoke with Cascadia about this matter as she wished to encourage Cascadia to move the matter forward as requested by the parties. Her notes indicate that she informed Cascadia that the agreed parenting schedule was not being followed in light of allegations that were dealt with by the Ministry of Children and Family Development ("MCFD"). Cascadia's invoices note that Ms. Thompson spoke with Cascadia on September 20, 2021.
- [52] Ms. Thompson made it clear that although Dr. Meuser appears to have attributed a statement to her, she has not and has never communicated directly with Dr. Meuser. The quote "continually disrupting" is not language Ms. Thompson uses, nor is it her view of the situation.
- [53] The claimant deposed that she accepted that Ms. Thompson did not contact Dr. Meuser.
- [54] Ms. Thompson and Cascadia remain willing to work with the parties pursuant to the mediation/arbitration agreement. Initiation of family claim in civil court
- [55] On February 10, 2020 the claimant served a notice of family claim on the respondent and requested that the respondent terminate the mediation/arbitration process. The respondent refused to terminate the process and advised that he would be bringing an application to stay the notice of family claim. Position of the claimant
- [56] The claimant says the mediation/arbitration agreement should be set aside because:
- a) The respondent took improper advantage of her vulnerability, including her ignorance and need;

- b) She did not understand the nature and consequences of the mediation/arbitration agreement she signed. Specifically, she had hoped to raise concerns about family violence in the mediation phase of the mediation/arbitration process and did not understand that the mediation phase could extend beyond a single session;
  - c) When she signed the agreement, her father told her that he would cover all of her legal fees, but has since withdrawn his financial support. She cannot afford to pay a lawyer in the mediation/arbitration without his support; and
  - d) She believes Ms. Thompson has displayed bias and undermined her neutrality, making it inappropriate for her to continue as a mediator/arbitrator. Legal Analysis Section 19.3(1)
- [57] Section 19.3(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides the Court with the power to set aside an arbitration agreement if one or more of the following circumstances existed when the parties entered into the agreement:
- a) the party took improper advantage of the other party's vulnerability, including the other party's ignorance, need or distress;
  - b) a party did not understand the nature and consequences of the agreement; and
  - c) other circumstances existed that would, under the common law, cause all or part of the contract to be voidable.
- [58] As noted by Justice Schultes in *Aujla v. Aujla*, 2021 BCSC 1126 [Aujla], this section is virtually identical to the family law arbitration section in the former Arbitration Act, R.S.B.C. 1996, c. 55 and the past jurisprudence dealing with those sections is helpful in interpreting s. 19.3(1).
- [59] The respondent says the mediation/arbitration agreement is a procedural dispute mechanism and, as such s. 19.3(1) should be interpreted according to commercial as opposed to family law interpretative principles.
- [60] I disagree. In my view the critical issue are the circumstances governing the creation of the agreement. These circumstances must be evaluated within the family law context. I find the interpretive principles governing s. 93 of the FLA helpful in interpreting this section.
- [61] Section 93 of the FLA provides, in relevant part, as follows: 93 (1) This section applies if spouses have a written agreement respecting division of property and debt, with the signature of each spouse witnessed by at least one other person.
- (3) On application by a spouse, the Supreme Court may set aside or replace with an order made under this Part all or part of an agreement described in subsection (1) only if satisfied that one or more of the following circumstances existed when the parties entered into the agreement:
    - (a) a spouse failed to disclose significant property or debts, or other information relevant to the negotiation of the agreement;

- (b) a spouse took improper advantage of the other spouse's vulnerability, including the other spouse's ignorance, need or distress;
- (c) a spouse did not understand the nature or consequences of the agreement;
- (d) other circumstances that would, under the common law, cause all or part of a contract to be voidable.

[62] Justice Wilkinson in *A.K.K. v. A.S.K.*, 2021 BCSC 1602, noted the Court should consider the issues set out in s. 93(3) holistically and not in isolation to each other as a combination of certain factors may lead to setting aside the agreement whereas each of the factors in isolation might not. Improper advantage of claimant's vulnerability

[63] My findings that:

- a) the claimant was fearful of and felt intimidated by the respondent;
- b) the claimant was fearful of the respondent during transitions of the child;
- c) the claimant was undergoing a difficult pregnancy and looking after a young child, which left her feeling exhausted many times; and
- d) the claimant recently terminated the relationship that had to establish counsel for herself, establish the claimant was vulnerable at the time the mediation/arbitration agreement was entered.

[64] My findings that:

- a) the claimant was living independently from the respondent;
- b) the claimant was financially independent from the respondent;
- c) the respondent restricted communications to the claimant to logistical matters and all communicates about family issues, including when and how issues would be resolved, were made through the parties' lawyers;
- d) the claimant had the support of family and friends, as well as the family physician, professional emotional support at Cridge House, and support of a counsellor;
- e) the claimant was screened by three legal professionals whom determined that family violence issues would not impact on her ability to enter into the mediation/arbitration agreement;
- f) the claimant was assessed by her family doctor who concluded that she was medically and emotionally stable;
- g) both the claimant and the respondent wanted to try to resolve outstanding issues quickly;
- h) the claimant received independent legal advice with respect to entering into the mediation/arbitration; and

- i) the mediation/arbitration agreement was explained to both the claimant and her father, are factors that mitigate against the claimant's vulnerabilities. Nature and consequences of agreement
- [65] The claimant says that it was her understanding prior to signing the mediation/arbitration agreement that issues of family violence would be discussed in the mediation phase, and that the mediation phase would only consist of one session. Length of mediation phase
- [66] The mediation/arbitration agreement provides that the mediation phase will be terminated and the parties will proceed to arbitration upon agreement by the parties or if the parties reach an impasse in mediation.
- [67] At any time, the claimant could stop the mediation phase by refusing to come to any further agreements and create an impasse. Part of the success of this process has been that the parties have been able to continue to resolve their issues through mediation over time. Mediation of family violence issue
- [68] In the claimant's first affidavit, she states:
41. Among other things, I came out of my discussion with [my lawyer] about med - are believing that [my lawyer] would be able to address [the respondent's] family violence and my safety concerns in the mediation phase of the mediation - arbitration process...
42. Leading up to mediation, however, I learned from [my lawyer] that I would be discouraged by Ms. Thompson from talking about family violence at mediation. As a "forward focused" process, based on making agreements, I was told talking about the past would make it hard to reach agreements.
- [69] The claimant does not say the mediation/arbitration agreement prohibited her from discussing family violence. She only states that she was discouraged by her lawyer and the mediator from discussing these issues as it might make it difficult to come to agreements on other issues. Not raising these issues was a strategic decision made by the respondent and the claimant's counsel to promote settlement. Void under common-law
- [70] For the reasons set out by Schultes J.'s in paras. 22-24, 27 of Aujla. I agree that the doctrines of unconscionability and frustration do not apply to s. 19.3(1)(c). A contract is void under common-law if it was formed as a result of duress, undue influence, fraud or misrepresentation.
- [71] My findings of fact do not support any fraud or misrepresentation relevant to the s. 19.3(1) analysis. The facts relevant to undue influence have been summarized in the previous paragraphs. Conclusions on s. 19.3(1)

- [72] Although the claimant was vulnerable, her vulnerabilities were more than mitigated in the circumstances of this case. The claimant was sufficiently advised as to the nature and consequences of the agreement. The concerns that she raised dealt with strategic decisions made by her and her counsel; the concerns did not stem from any misunderstanding about the agreement.
- [73] In considering all these factors holistically, I have no hesitation in finding that the claimant has not met the onus of establishing factors sufficient for me to set aside the mediation/arbitration agreement pursuant to s. 19.3(1). Section 19.4
- [74] Section 19.4 of the FLA states the Court must order a stay unless against a legal proceeding brought in respect of a matter agreed to be submitted to arbitration unless it determines the agreement is void, inoperative or incapable of being performed.
- [75] The claimant says there are two issues that either individually or together make the contract incapable of being performed: bias and limitations on legal aid.
- [76] In my view, the concept of "incapable of being performed" is best considered within the legal context of frustration. I rely upon the decision of Justice Harris in *Veritas Geophysical (Nigeria) Limited v. Energulf Resources Inc.*, 2010 BCSC 1253 at paras. 47-49, for the following principles:
- a) Frustration occurs when a contract has become incapable of being performed because the circumstance in which performance is called for rendered that thing radically different from that which was undertaken by the contract. *Non haec in foedera veni*: it was not that I promised to do.
  - b) The test for frustration can be summarized as follows:
    - i. the event in question must have occurred after the formation of the contract and cannot be self-induced; ii. the contract must, as a result, be totally different from what the parties intended. This difference must take into account the distinction between complete fruitlessness and mere inconvenience; iii. the disruption must be permanent, not temporary or transient; iv. the change must fundamentally affect the nature, meaning, purpose, and consequences of the contract so far as it concerns either or both parties; and
    - v. finally, the event that brought about such radical change must not have been foreseeable.
- [77] The requirement that the contract be incapable of being performed is not a literal requirement. For example, in *Krell v. Henry*, [1903] 2 K.B. 740 (C.A.), an agreement to rent a room overlooking King Edward VII's coronation route was found to be frustrated when the coronation was cancelled because the King had fallen ill. Obviously, the room could have been rented and paid for on the day of the intended coronation, but the rental of the room in those circumstances had been rendered something fundamentally different from what the been contracted for. Bias

- [78] The claimant accepts Ms. Thompson did not speak with Dr. Meuser, but is concerned that the statements attributed to Ms. Thompson by Cascadia to Dr. Meuser indicate a degree of bias on behalf of Ms. Thompson that will make any arbitration decision made by her immediately appealable and rendered void on appeal due to bias.
- [79] In my view these concerns fall far short from establishing bias such that the agreement is incapable of being performed, or that Ms. Thompson has lost jurisdiction over the process.
- [80] The claimant does not agree with the opinions expressed by Dr. Meuser and argues his conclusions are so flawed that the agreement is incapable of being performed. She is free to challenge both his opinions and the factual basis for his opinions should the matter proceed to the arbitration phase. Her concerns with Dr. Meuser's preliminary views do not make the agreement inoperable.
- [81] In my view she is simply unhappy that Dr. Meuser has recommended equal parenting time. Loss of parental funding for legal fees
- [82] The plaintiff says she will be unable to pay for a lawyer to represent her should the mediation/arbitration agreement continue as payment for her lawyer through legal aid will soon be exhausted.
- [83] The claimant has not established on a balance of probabilities that she would be unable to pay for a lawyer if she were to continue with the mediation/arbitration process. I say this because:
- a) her father continues to pay expenses associated with the mediation/arbitration process. He has only stopped paying for items that qualify for payment through legal aid;
  - b) there is no direct evidence with respect to why he stopped paying for legal fees; and
  - c) there is no direct evidence as to whether he would resume paying for his daughter's legal fees if she was unrepresented in the mediation/arbitration process because she exhausted funding available through legal aid.
- [84] The claimant's evidence with respect to her father's decision to pay her legal fees, her father's financial circumstances, his knowledge about the case, relevant conversations about cost, expenses and the manner in which the action proceeded are suspiciously absent from her application materials.
- [85] The claimant has not established on a balance of probabilities that her father's decision to stop paying her legal fees was not foreseeable and the extent, if any, that the result was self induced by the claimant actions and manner in which she elected to proceed with the process. Conclusions
- [86] The claimant's application to have the agreement set aside pursuant to s. 19.1(3) of the FLA is dismissed.

[87] The respondent's application to have this action stayed pursuant to section 19.4 of the FLA is granted.

[88] The claimant will return to the mediation/arbitration process by December 1, 2022.  
"Thomas J."

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