"MIGLIN-PROOFING" YOUR SEPARATION AGREEMENTS

BY JUDITH L. HUDDART AND VICTORIA L. SMITH

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A. INTRODUCTION:

The Supreme Court of Canada has raised the bar for negotiation of family law agreements. The issue in Miglin v. Miglin was spousal support in a separation agreement, however, the principles enunciated apply to all negotiations of family law agreements. We have already seen that Miglin is being applied to cohabitation and marriage contracts as well as issues of property and custody and access . The Supreme Court of Canada itself recently applied Miglin in Hartshorne v. Hartshorne , an appeal of property arrangements under British Columbia's Family Relations Act. The authors of this paper propose that Miglin, and cases following it, establish higher goals and expectations for lawyers and clients in negotiating agreements. We suggest that since clients are going to be held to their agreements, they will be looking to their lawyers to ensure they make the best agreements possible – and to their lawyers for compensation if the agreements do not work out as they anticipate and cannot be overturned. This paper examines the principles from Miglin that now govern the negotiation of domestic contracts, outlines a negotiation process and techniques to implement these principles, and provides a sample separation agreement to assist lawyers and their clients to "Miglin-proof" their agreements.

B. THE MESSAGE FROM MIGLIN V. MIGLIN:

Mrs. Miglin asked for spousal support in the face of a full release of support in her separation agreement. The Supreme Court of Canada turned her down, adding that its decision applies to any modification of a spousal support agreement, through a court application. The Court went out of their way to tell us, many times, that they expect certainty, autonomy and finality in family law agreements (para. 57).

Miglin's Two-stage Test

Stage One – The Court must look first at the circumstances of negotiation and execution of the agreement to determine if there is any reason to discount it. In assessing "unimpeachable negotiations", they examine the circumstances or context within which the agreement was negotiated, using terms such as "fairness" and "exploitation" to determine whether they should intervene. Emotionally stressful negotiations do not necessarily mean parties are incapable of negotiating an agreement, nor do they necessarily signal vulnerability (para. 82). If there is a power imbalance or vulnerability in negotiations, these may be compensated for by the presence of counsel or other professionals, or both. The message is very clear:

> …the court should consider the agreement as a genuine mutual desire to finalize the terms of the parties' separation and as indicative of their substantive intentions. Accordingly, the court should be loath to interfere. (para. 83).

If the negotiations are satisfactory, the Court must then look at the substance of the agreement. In considering whether there has been a significant departure from the overall objectives of the Divorce act, the Court must bear in mind that parties have a large discretion in establishing goals and principles for themselves:

> The spousal support objectives should not operate so as to preclude parties from bringing their own concerns, desires and objectives to the table in negotiating what they view as a mutually acceptable agreement, an agreement they consider to comply substantially with the objectives of the Act. (para 55)

Stage Two – if the agreement is "unimpeachably" negotiated and in substantial compliance with the general objectives of the Act when negotiated, the Court should defer to the wishes of the parties and give their agreement great weight (para. 86). Nonetheless, there may be occasions where the Court may need to assess the parties' circumstances at the time of the application. Any change in the parties' circumstances from what could have been reasonably anticipated at the time of the negotiations must be significant, but need not be "radically unforeseen" or causally connected to the marriage. The applicant must demonstrate that:

1. the new circumstances were not reasonably anticipated;
2. n light of the new circumstances the terms of the agreement no longer reflect the parties' intentions at the time of execution and the objectives of the Act; and
3. the new circumstances have led to a situation that cannot be condoned (para. 88).

Since some change is foreseeable, there is a presumption that the future is to some degree uncertain (i.e. job market, parenting responsibilities, re-integration into the workforce, health, value of property). In the face of a full spousal release clause, such changes will not likely be sufficient to override an agreement. After examining the agreement the Court must ask:

1. could the parties have reasonably contemplated the situation?
2. does it still correspond to their originals intentions?
3. is it still in substantial compliance with the overall objectives of the Act? (para 89)

Hartshorne v. Hartshorne

About 6 months after Miglin, the Supreme Court of Canada had their first opportunity to apply it in assessing property provisions in a marriage contract in British Columbia's Family Relations Act. In addressing the issue of deference to be given to agreements, Bastarache J. again impresses on us (para. 40) what he and Arbour J. stated in Miglin:

…a court should be loathe to interfere with a pre-existing agreement unless it is convinced that the agreement does not comply substantially with the overall objectives of the Divorce Act. (para. 46)

The Court also noted in Hartshorne that the statutory scheme for judicial review in British Columbia sets a lower threshold than other provinces.

Although considering a marriage contract rather than a separation agreement, again the Court stresses principles of certainty, autonomy and finality, finding:

…courts must encourage parties to enter into marriage agreements that are fair, and respond to the changing circumstances of their marriage by reviewing and revising their own contracts for fairness when necessary. Conversely, in a framework within which private parties are permitted to take personal responsibility for their financial well-being upon dissolution of marriage, courts should be reluctant to second-guess the arrangement on which they reasonably expected to rely… (para. 36)

C. APPLYING THE MIGLIN MESSAGE TO NEGOTIATIONS:

The Miglin decision, followed in Hartshorne and other decisions, has raised the bar for family law lawyers. Miglin requires much more of lawyers who negotiate separation agreements than simply splitting each client's offer down the middle and drafting boiler plate release clauses to recite the words of court decisions. The message from our highest court is that the parties must negotiate an agreement that satisfies their needs and objectives in a meaningful way, since they will be held to their agreements. A negotiation process that accomplishes this involves clients who are fully informed, have shared and considered the concerns, goals and desires of each, and have thoroughly considered their choices, both within and beyond the law. Just reciting in an agreement that there has been "an equitable sharing of the economic consequences of the marriage and its breakdown" does not make it so - the parties have to understand what this means to them personally and have to know that it has been achieved. A family law agreement is a contract and parties must take responsibility for the contracts they execute as well as their own lives.

In those rare cases where a court does decide a change is necessary, they will still be guided by the agreement and will look to this agreement for the parties' understanding of their relationship and their intentions at the time the agreement was made (para. 90). Without understanding the original intent of the parties, how can a court know if an agreement still reflects them?

Miglin tells us that what is "fair" depends not only on the circumstances of the parties but also on how they conceive of themselves, their marriage and its dissolution as well as their expectations and aspirations for the future (para. 56). Lawyers must draft separation agreements that set out the parties' intentions, principles, goals and expectations, as well as which aspects of the agreement can be changed, which cannot, and the process for dealing with change.

The Court in Miglin accepts that the interests of the parties are as valid as their legal rights. This gives us permission to problem-solve creatively, "to think outside the box" - but we need to do it properly. In order to comply with the standard established in Miglin, family law lawyers must ensure that their clients fully understand and participate in the negotiation process.

The Changing Role of the Family Law Lawyer

To work effectively in a post-Miglin world, we need to redefine and expand what it means to be an effective advocate. In addition to providing legal advice, we

must be principled negotiators, communication coaches, information resources and effective team players. We need to create and maintain a negotiating environment that will allow our clients to exchange their real needs and interests, gather and understand all important information, consider options and create settlements that satisfy their immediate and long term interests. In order to do this, we must expand our skills and shift our mindset. Effective lawyers after Miglin will:

1. Create a safe process for the resolution of disputes.

   In order to create safety, we need to establish respectful guidelines for communication, ensure that our clients' immediate parenting and financial needs are met, that health and life insurance is maintained and that neither will make unilateral decisions affecting the other while negotiations take place. We must respect our clients' financial opportunities and limitations. What process can our clients afford? Would these clients be better served by working out parenting arrangements with the assistance of a neutral mediator? What are the needs of the clients as to the pacing and speed of the process? How can we ensure that the process is efficient, cost effective and meaningful?

2. Recognize that one size does not fit all clients.

   As we increase our level of sophistication as negotiators, we will adapt the process to provide the support that our particular client needs. Clients come to us at various levels of capacity. Some clients need substantial support from us on an individual basis as well as the support of a team - counsellors, parenting coaches, financial specialists, and/or mediators. Other clients can manage well with our guidance and input when necessary.

3. Ensure that our clients have all the information they need before they make any important decisions.

   This includes much more than understanding their legal options for resolving their dispute. In most marriages, couples assume various roles and acquire differing levels of knowledge and expertise regarding their finances and their children. As lawyers, we must ensure not only that we balance the playing field by a thorough exchange of information but also that both clients fully and completely understand the information.

4. Help our clients to take a long-term view. Just as the family relationship will often continue after separation for couples with children or long term marriages, so must the contract that deals with those interests and obligations. We must encourage our clients not only to address the present but to look down the road and to anticipate the future. What happens if the future does not unfold as you anticipate? What if you get sick? What about your retirement? What if your children move in with your spouse? What if your new relationship should end? What will your financial picture look like when child support ends? Do you expect to be solely responsible for your future wellbeing from now on? If so, what do you need to be financially secure? If you expect to look to each other for help if you need it, do you want to define when you can do so and how?

Justice LeBel, for the minority in Miglin, points out that parties with on-going relationships in commercial contracts have similar needs and expectations to those negotiating family law contracts:

> Parties use commercial contracts as a framework for ongoing cooperation, rather than as a conflict resolution tool for allocating gains and losses in the event of a litigated dispute between the parties They thus work toward mutual accommodation, rather than resorting to judicial intervention to resolve conflicts when they arise (para. 181)

In family law, just as in commercial law, rigid contracts will not often meet clients' realistic, long-term needs. Business partnerships keep their contracts flexible and adaptable by considering issues such as retirement and death and building these possibilities into their agreements. Parties in family law contracts should have similar expectations. Most people would prefer to anticipate and accommodate change in a clear agreed-upon way, rather than leave the opportunity for change completely open-ended, or have a judge scrutinize their agreements after the fact.

Miglin has given the supreme judicial blessing to the movement toward a new form of advocacy. Rather than acting as hired guns or gladiators, we must now advocate for an effective process and a realistic, durable result customized to the needs of each particular client and family. What "unimpeachable negotiations" will come to mean in the courts is anyone's guess. But it is clear that we must now pay attention to process as well as outcome and that our failure to do so in an era

where our clients will be held to their agreements, will be risky business.

The Changing Role of the Client

The role of the client is also undergoing change. Most clients today want to participate actively in their own negotiations and retain control over the decisions that affect them. Clients come to us with various levels of capacity, requiring differing amounts of support in order to participate. The role of the client is, as far as they are able, to let go of the past and look to the future, manage their emotions, participate in gathering information, developing options and proposals, refrain from taking positions and focus on interests, and accept responsibility for creating their own best outcome. Indeed, after Miglin, the expectation is that clients assume responsibility for the settlements they reach.

D. NEGOTIATION CHECKLIST :

Principled or interest-based bargaining, rather than positional negotiation, will allow the parties to reach agreements that meet the expectations of Miglin. The following steps, while not necessarily sequential, reflect a principled negotiation process which we suggest is most likely to create an agreement which will be "Miglin proof".

1. Issues: Clients are asked to articulate what they hope to achieve from their negotiations. Lawyers assist their clients to identify and prioritize their issues and create a list of problems to be solved jointly.
2. Information: Clients should have and understand all important information before they make any substantial long term decisions. The parties, with the help of their lawyers, will decide what information they need and will participate in gathering that information. While supporting the clients' right to resolve matters as they choose, lawyers must ensure that their clients are fully informed of the legal model for resolution of their dispute. In areas such as spousal support, where a significant amount of judicial discretion affords a wide range of possibilities for resolution, clients should understand the principles which guide legal decisions around support, and the issues that need to be resolved - such as amount, duration, method of payment and opportunity for variation or review.
3. Interests: The building blocks of a solid agreement are the prioritized interests of each party. "Interests" are what underlie "positions", what motivate people - their needs, desires, fears and concerns. Interests are not only legal and financial, they are also psychological and emotional, immediate and long term. Lawyers listen for interests, ensure they are highlighted in the discussions and satisfied in the agreement.
4. Principles: The parties may agree upon principles or standards to guide them in the assessment of their options. They may choose standards derived from the law, the market place, or may develop their own. The agreement may recite the principles that the parties chose to guide their parenting or their support arrangements or their property division. Principles reflect the individual values and goals of the parties and can be revisited to resolve future disputes or requests for change.
5. Options: Once the parties have shared their interests and have agreed on the principles to guide them, they are ready to begin to generate options. Clients should understand that options come from one of three sources - the law, the real world (such as financial institutions, insurance carriers and the like) and, most importantly, the parties themselves. The best way to generate options is to brainstorm; to develop as many ideas as possible without judgment or ownership. Brainstorming expands creative thinking and often leads to solutions that were not previously apparent.
6. Alternatives: Clients may look at the Best Alternative To a Negotiated Agreement in order to understand the likely process and substantive results that would occur in the event a negotiated settlement is not reached. Looking at their "BATNA" helps the parties assess the value of the proposed settlement and can assist in moving parties beyond impasse.
7. Agreement: The parties select the options that maximize their interest satisfaction, honour their principles, and are preferable to their alternatives. The lawyers then draft the separation agreement, using clear, plain language, setting out the parties' principles, intentions, and goals, which aspects of the agreement may be changed and the process for change.

E. MIGLIN'S CHALLENGES AND OPPORTUNITIES:

Negotiation Options

Miglin challenges each of us to re-think the negotiation process we offer our clients. We recognize that our law school training and experiences in practice are grounded in an adversarial approach. Adopting negotiation techniques outlined in this paper may be an uncomfortable prospect for some of us; however, to help our clients create "Miglin proof" agreements we must seize the opportunity to begin re-tooling our skills to become effective negotiators, communicators and facilitators, as well as legal advisors. To truly assist our clients to take responsibility for their agreements, we must take responsibility for offering a process that meets their needs.

The Collaborative Process

We suggest lawyers learn about collaborative family law and offer it as an option to clients. This process of principled negotiation has taken root in every major city in Canada and the United States and is now expanding worldwide. Collaborative lawyers work alongside clients and, where appropriate, with other professionals, to provide comprehensive support to clients moving through the separation process. They contract with their clients to focus solely on helping the clients achieve a mutually acceptable settlement out of court. While collaborative lawyers ensure that their clients understand the legal model for resolution of their dispute, they give permission to their clients to think creatively within and beyond the law.

The Miglin decision endorses the essential principles of the collaborative process which honours interests as well as legal rights and which recognizes the capacity and responsibility of the parties to create durable settlements that meet their real needs.

We have provided with this paper a sample separation agreement arising from a collaborative process. This sample agreement uses language that is friendly to the clients, recites the principles upon which the clients have reached their agreement and contemplates how changes will be made in the future. We encourage lawyers to use and share any parts of this sample agreement you find useful.

THIS IS A SEPARATION AGREEMENT made this day of May, 2004.

B E T W E E N: JANE DOE ("Jane")

- and -

JOHN DOE ("John")

1.BACKGROUND

1.1 We were married to each other in Toronto, Ontario on May 17, 1989.

1.2 We have two children, Peter Doe, born August 15, 1997 and Mary Doe born November 5, 2000.

1.3 We separated on August 25, 2003. We will continue living separate and apart.

1.4 We have agreed to settle all issues between us.

1.5 We have agreed to enter into the following agreement which is a domestic contract within the meaning of the Family Law Act, R.S.O. 1990, c. F.3.

1.6 We agree to be bound by the terms of this Agreement.

1.7 We arrived at this Agreement through the process of Collaborative Law. At the commencement of the process, and throughout it, we agreed that the Collaborative Law Process was to focus upon reaching a comprehensive resolution of all issues relating to our marriage and separation.

1.8 In arriving at our Agreement, we have each applied our individual standards of reasonableness and acceptability. The conclusions we have reached are based in part on our respect and regard for each other. From time to time, we have considered what might happen if any issue were decided by a judge in court, but we have elected to make our own decisions whether or not a court might have adjudicated issues in the same manner.

1.9 Throughout the Collaborative Law process our negotiations were in good faith and we each fully and completely disclosed all information necessary or requested in order to resolve our property and support rights. We believe that this Agreement satisfies our interests and goals.

2.DEFINITIONS

2.1 In this Agreement:

a. "children" means either Peter or Mary, or both;

b. "cohabit" means to live with another person in a relationship resembling marriage;

c. "equalization payment" means the payment referred to in s. 5 (1) of the Family Law Act;

d. "CCRA" means Canada Customs and Revenue Agency;

e. "Guidelines" means the Child Support Guidelines, as defined in s. 2 (1) of the Divorce Act;

f. "matrimonial home" means the property at 8 Lake Avenue, Toronto, Ontario.

g. "net family property" means net family property as defined in the Family Law Act;

h. "property" means property as defined in the Family Law Act.

i. "Canada Pension Plan Act" means the Canada Pension Plan Act, R.S.O. 1990, c. C.8;

j. "Change of Name Act" means the Change of Name Act, R.S.O. 1990, c. C.7;

k. "Children's Law Reform Act" means the Children's Law Reform Act, R.S.O. 1990, c. C.12;

l. "Divorce Act" means the Divorce Act, R.S.C. 1985, c. D.3.4;

m. "Estates Act" means the Estates Act, R.S.O. 1990, c. E.21;

n. "Family Law Act" means the Family Law Act, R.S.O. 1990, c. F.3;

o. "Health Care Consent Act" means the Health Care Consent Act, 1996, S.O. 1996, c. 2, Sch. A;

p. "Income Tax Act" means the Income Tax Act, R.S.C. 1985, c. 1 (5th supp.);

q. "Substitute Decisions Act" means the Substitute Decisions Act, 1992, S.O. 1992, c. 30;

r. "Succession Law Reform Act" means the Succession Law Reform Act, R.S.O. 1990, c. S.26;

s. "Trustee Act" means the Trustee Act, R.S.O. 1990, c. T.23.

3.A MUTUAL RESPECT FOR PRIVACY

3.1 We agree that we will in every way respect each other's privacy.

4. JOINT PARENTING

4.1 We will share joint custody of our children.

Parenting Principles

4.2 We agree that our children need the following:

a. To know we both love them.

b. To have the benefit of involvement of both parents.

c. To have two "homes" in every sense of the word.

d. To be left out of conflict between us.

e. For us to live in close enough proximity to each other to co-parent effectively.

f. To be emotionally, physically and financially secure.

g. To be supported to achieve academic and personal success, based on their goals and interests.

h. To have their ages and stages of development respected.

i. To have the benefit of expert advice, when needed, to assist in determining their best interests.

j. To have their wishes taken into consideration, when appropriate.

k. A mechanism to review parenting arrangements and resolve disputes.

l. The ability to take advantage of special opportunities that arise.

4.3 We will support each other's parenting and positively encourage the children in their relationship with each of us and our extended family and friends.

4.4 We will provide each other with all important information regarding the children and confer as often as necessary.

4.5 We will work co-operatively in further plans consistent with the best interests of the children and in amicably resolving concerns and issues that arise regarding them.

Parenting Schedule

Regular Time

4.6 The children will reside with each of us on a relatively equal basis. A typical example of our current co-parenting schedule is attached at Schedule "A".

4.7 We will each post the schedule in our homes and help the children to read it so they know what to expect and where they will be and who they will be with each day.

Holidays

Christmas

4.8 Jane will have the children from Christmas Eve to 3:00 p.m. on Christmas Day in even years and John will in odd years. John will have the children from 3:00 p.m. on Christmas Day to Boxing Day in odd years and Jane will in even years. We will share the balance of the Christmas holidays as we agree.

March Break

4.9 We expect that we will follow the regular schedule during March Break unless either of us has an opportunity to take the children away on vacation. A parent who wishes to take the children away for all or part of March Break will provide the other with 60 days' notice.

If one of us takes the children away on vacation in March Break, the other parent will have the first opportunity to do so the following year.

Summer

4.10 Each of us may have the children for a vacation for up to two weeks in the summer. Each of us will take one week's holiday to accommodate our babysitter's holidays and each of us may also have another week with the children. We will make arrangements for our summer holidays to accommodate our babysitter's schedule and any activities and camp the children may attend in the future.

Mother's Day/Father's Day

4.11 The children will be with Jane on Mother's Day with return by 10:00 a.m., or such other time as we agree, if it is John's weekend. The children will be with John on Father's Day with return by 10:00 a.m., or such other time as we agree, if it is Jane's weekend.

Statutory Holidays

4.12 We wish to share statutory holidays roughly equally and we expect this will happen naturally by way of alternating weekends.

Flexibility

4.13 Each of us wish to maintain some degree of flexibility with respect to our parenting schedule in order to allow the children to take advantage of opportunities that arise from time-to-time. In this regard, if either of us wishes to change the schedule, we will provide each other with as much advance notice as possible, recognizing that the more notice given the more likely the other person can grant the requested change. If the scheduled parent is unable or unwilling to grant the requested change, the schedule will remain as it is.

Review of Parenting Schedule

4.14 We understand that our parenting schedule may be amended from time to time as the children gets older to ensure that our schedule is appropriate for the children's age and stage of development, their schedule and activities and our own schedules.

4.15 We will hold a review of our Parenting Plan on an annual basis, in September of each year for the new school year, to make any necessary adjustments to the parenting schedule to ensure that the schedule is appropriate for the children's age and stage of development, each of our schedules and lives.

Decisions

Day-to-Day Decisions

4.16 We acknowledge that the parent with care of the children has the authority to make day-to-day decisions for the children. Each of will take into consideration the children's wishes with respect to decisions when they are old enough for this to be appropriate.

Important Decisions

4.17 We will make important decisions about the children's welfare together, including decisions about the children's:

(a) Education;

(b) Major non-emergency health care;

(c) Major recreational activities; and

(d) Religious upbringing.

Religion

4.18 Jane is a practising Roman Catholic. John is a non-practising Protestant. We have agreed that the children will be raised as a Roman Catholic although John will have the right to expose the children to the Protestant religion.

Education

4.19 We have agreed that the children will attend a Roman Catholic school until they finish Grade 8. The children's high school will be chosen with input from them.

4.20 Jane will be responsible for meeting and connecting with the children's teachers, although John may do so if he wishes.

Health

4.21 Jane will handle making regular dentist and doctor appointments. Each of us may consent to emergency medical care necessary for the children and will advise the other immediately of any emergency treatment.

Activities

4.22 Each of us may enrol the children in activities that take place on our own scheduled time with them. We will obtain each other's consent if activities are to take place on time that we share.

4.23 We will each use our best efforts to take the children to parties, social events and other activities that take place when we have care of him, particularly if the children express a strong wish to attend.

4.24 We agree that it is in the children's best interests that we both participate in special occasions involving the children, including games, concerts, recitals and the like. We will inform each other of these opportunities as soon as possible. We may both attend these events.

Communication

4.25 We agree to notify each other of all issues likely to affect the children. Our protocol for communication will be to communicate first by email. When necessary, we will schedule a telephone appointment or personal meeting.

4.26 We will communicate with each other about critical events, milestones, illnesses, symptoms and medications. Essential documents, such as the children's health cards, will be transferred between us when the children are transferring from one home to the other.

4.27 The children may telephone or email either parent when they wish.

Information

4.28 We may each make inquiries and be given information by the children's teachers, school officials, doctors, dentists, health care providers, summer camp counsellors and any and all others involved with our children.

Travel

4.29 If either parent plans a major trip with the children, we will consult with the other parent prior to confirming plans. If either parent plans a vacation with the children, that parent will give the other a detailed itinerary before it begins, including the name of any flight carrier and flight times, accommodation, including address and telephone numbers, and details as to how to contact the children during the trip.

4.30 If either parent plans a vacation without the children, that parent will give the other a telephone number where he or she can be reached in case of emergency or if the children wish to contact that parent.

Residency and Relocation

4.31 We intend to live close enough to each other to effect our co-parenting schedule. If, in the future, either of us intends to move our permanent residence so as to affect the viability of our parenting schedule, the moving party will give the other parent three months' written notice of the intended move and obtain the consent of the other parent. If we are unable to resolve this issue ourselves, it will be resolved under the Issue Resolution paragraph 11.

New partners

4.32 We understand that our children require an opportunity to adjust to our separation. We agree not to introduce any new partner to the children for a period of one year from the date of our separation, unless otherwise discussed and agreed upon in advance. We will notify the

other parent of our intention to introduce the children to a new partner before we do so.

5. NAME OF CHILDREN

5.1 We will not change our children's names.

6. CHILD SUPPORT

6.1 John is employed as a project manager with ABC Chemical Co. Ltd. and earns a base salary of $65,000.00 plus profit sharing and bonuses which are not guaranteed. John's income for the last three years was:

2001: $80,379.00;

2002: $85,700.00; and

2003: $76,756.00.

6.2 Jane is employed as a managing consultant with Bell Computers and earns a salary of $85,000. Jane's income for the last three years was:

2001: $81,150.00;

2002: $83,250.00; and

2003: $84,000.00

6.3 Mary is in daycare at a cost of $135.00 a week which will reduce to $90.00 a week in September, 2004. We receive a receipt for daycare and it is tax deductible to us.

6.4 Neither of us will pay child support to the other.

6.5 a. We agree to continue joint financial responsibility for our children and to deposit, by way of direct withdrawal, an equal amount, to be agreed upon from time to time, into a joint account for the children's expenses. We will review the amount to be deposited into this account on a yearly basis on June 1st of each year starting June 1, 2005.

b.This account will be used to pay the following costs:

Daycare

Sports activities such as hockey and gymnastics

Music lessons

Non-covered medical and dental costs, including orthodontics

School related costs

Tutoring, if necessary

Counselling, if necessary.

Summer camps and school trips

c. We will agree upon the expenses to be paid out of this account and we may add or substitute expenses for those above.

d. We will obtain each other's prior approval before making a withdrawal from this account. Each of us may obtain records for this account.

6.6 Our arrangements for child support will be reviewed when each child finishes high school.

6.7 We acknowledge our obligation to contribute to the support of the children so long as they are financially dependent within the meaning of the Divorce Act.

6.8 We wish our child support arrangements to reflect our equal sharing of time with the children. We believe that these child support arrangements are reasonable and meet the objectives of the Child Support Guidelines.

7. REVIEW OF CHILD SUPPORT

7.1 If either of us requests it, we will exchange income tax returns and any other documentation required by the Child Support Guidelines on May 1st of each year.

7.2 If our incomes change, parenting arrangements change or any other circumstances affecting the financial arrangements for the children change, we may change the child support arrangements in this Agreement.

7.3 This issue will be resolved under the Issue Resolution paragraph 11 of this Agreement.

8. POST-SECONDARY EDUCATION

8.1 It is important to us that our children each have a strong academic base on which to build satisfying careers and lives.

8.2 Each of us will contribute to an RESP or other investment vehicle an equal amount for the children's post-secondary education. We will hold these monies jointly in trust for the children and we will share authority to manage these investments. The proceeds of this account will be applied to the children's post-secondary education costs. In the event either of our children is unable to pursue post-secondary education, we will decide with the child how to best apply their share of this education fund for them.

8.3 We will contribute to the children's post-secondary education costs equally after taking into account the proceeds of the education fund, any scholarships or loans, in accordance with the Child Support Guidelines.

8.4 Any issue or concern with respect to this matter will be resolved under the Issue Resolution paragraph 11 of this Agreement.

9. EXTRAORDINARY MEDICAL AND DENTAL EXPENSES

9.1 We each have extended health benefits through our employment. We will each cover the children under our respective plans for as long as those plans are available to the children through our employment. We will co-ordinate coverage so that the children receive maximum benefits.

9.2 We will share, proportionate to our incomes, the children's extraordinary medical or dental costs not covered by any plans.

9.3 We will both maintain the children as beneficiaries of extended health insurance through our employment, and will sign documentation authorizing the other to make claims directly to our respective insurers. When either of us is reimbursed for a medical expense paid by the other we will immediately forward the reimbursed amount to the other.

10. LIFE INSURANCE

We wish to plan ahead to ensure our children will be provided for in the event of the untimely death of either of us. As long as either of our children are financially dependant within the meaning of the Divorce Act, we will each:

10.1 Keep a life insurance policy in the minimum amount of $500,000.00 (or such other amount as we agree).

10.2 Ensure that our policy remains unencumbered.

10.3 Designate and keep each other as beneficiary of our policy. The beneficiary is trustee only of the policy and will hold the proceeds in trust for the child in accordance with the trust terms set out.

A.The Trustee shall have the following powers, authority and direction:

i. To invest and reinvest any and all cash, securities and/or other property belonging to or forming part of the Trust Fund in their hands from time to time without limitation and whether or not there is a liability attaching to any such investments, and in making such investments the Trustee shall not be required to diversify and shall not otherwise be restricted by the provisions of section 27 of the Ontario Trustee Act, as amended from time to time, with the intent that the Trustee shall have the same full and unrestricted powers of investing and reinvesting as a beneficial owner;

ii. To place on deposit with any chartered bank or trust company any cash balance from time to time in the hands of the Trustee or any securities, title deeds or other documents belonging or relating to the Trust Fund;

iii. To take, institute, maintain, defend or defer any action or other proceeding which may be necessary or advisable in the opinion of the Trustee for the preservation or protection of or realization in respect of any cash, securities or other property forming part of the Trust Fund and to compromise and/or settle the same.

B. No person dealing with the Trustee shall be obliged to see to the application of money paid or property delivered to the Trustee, to enquire into the necessity or propriety of the Trustee exercising any of the powers herein conferred upon them or to determine the existence of any fact upon which the Trustee's power to perform any act hereunder may be conditioned.

C. Until the child ceases to be a child within the meaning of the Divorce Act or reaches the age of 25, the proceeds will be used to pay all payments for the children including but not limited to, contributions to the joint bank account, and post-secondary education. Any income from the proceeds not used in one year will be added to the capital. The Trustee may use capital for the children's needs; and

D. Pay to each child one half of the remaining proceeds when Mary turns 25 or ceases to be a child within the meaning of the Divorce Act.

10.4 Within 14 days of the signing of this Agreement, we will provide each other with a

copy of our policy and the trustee designation. We will sign the Directions in Schedules A and B attached to this Agreement, permitting the other to confirm directly with our insurer that our policy is unencumbered and in force.

10.5 If we cease to have the coverage provided for in this Agreement, we will immediately obtain replacement coverage under these terms and will provide each other with particulars and proof of the coverage and will do so an annual basis on request.

10.6 Each of us authorizes a lien and first charge against our estate for the full amount of the policy proceeds if the policy is not in force on our death.

10.7 If our policy is not in force when we die, in addition to any other remedy the surviving parent may have against our estate, the surviving parent may apply under the Succession Law Reform Act for relief for our child or children.

10.8 When both children cease to be financially dependent within the meaning of the Divorce Act, we may each deal with our policy as we wish.

11. ISSUE RESOLUTION

11.1 Should issues arise in the future concerning the children or financial arrangements for the children, we agree to try to resolve them informally. We will:

1. as a first step, arrange a telephone appointment or personal meeting to discuss the issue.

2. (a) If the issue is not resolved under step 1 and the issue concerns parenting arrangements, we will attend mediation within 14 days, or as soon as the mediator is available. The mediator will be Shelly White.

(b) If the issue is not resolved in mediation, we will return to the collaborative law process.

(c) If the issue is financial, we will return to the collaborative law process within 14 days or as soon as our lawyers are available.

12. SPOUSAL SUPPORT RELEASE

12.1 It is our mutual desire to each become financially independent and secure. Financial independence and security, for each of us, is being able to maintain as closely as possible the standard of living enjoyed during our marriage. As a result of the division of child care responsibilities and the sharing of assets and debts accumulated during the marriage, as reflected in the terms of this Agreement, we have achieved financial independence from each other. We are therefore able to each release our rights to spousal support from the other. We intend this spousal release to be forever final and non-variable.

12.2 a. This Agreement has been negotiated within a process that has informed us and allowed us to share and consider our current and future financial prospects. It fully represents our intentions and expectations. We each have had independent legal advice and each of us has received all the disclosure we have asked for and need in order to understand the nature and consequences of this Agreement and to come to the conclusion, as we do, that the terms of this Agreement, including the release of all spousal support rights, constitutes an equitable sharing of both the economic consequences of our relationship and its breakdown.

b. The terms of this Agreement substantially comply with the overall objectives of the Divorce Act now and in the future and our need to exercise our autonomous rights to achieve certainty and finality.

c. The terms of this Agreement and, in particular this release of spousal support, reflects our own unique particular objectives and concerns. Among other considerations, we are also relying on this spousal support release, in particular, as a base upon which to plan our future lives.

12.3 We understand that we have choices both within and beyond the law. We have chosen to make decisions for ourselves and do not want the courts to undermine our autonomy as reflected in the terms of this Agreement, which we intend to be final and certain settling of all issues between us. We wish to be allowed to get on with our separate and independent lives, no matter what changes may occur. We specifically anticipate that one or both of us may lose

our jobs, become ill and be unable to work, have additional child care responsibilities that will interfere with our ability to work, find our financial resources diminished or exhausted whether through our own fault or not, or be affected by general economic and family conditions changing over time. Changes in our circumstances may be catastrophic, unanticipated or beyond imagining. Nevertheless, it is our intention that no change, no matter how extreme will alter the spousal support releases in this Agreement and our view that these terms reflect our intention to always be separate financially. We fully accept that no change whatsoever in our circumstances will entitle either of us to spousal support from the other.

12. ALTERNATE SPOUSAL SUPPORT RELEASE CLAUSE

12.1 It is our mutual desire to each become financially independent and secure. Financial independence and security, for each of us, is being able to maintain as closely as possible the standard of living enjoyed during our marriage. As a result of the division of child care responsibilities and the sharing of assets and debts accumulated during the marriage, as reflected in the terms of this Agreement, we have achieved financial independence from each other.

12.2 a. This Agreement has been negotiated within a process that has informed us and allowed us to share and consider our current and future financial prospects. We each have had independent legal advice and each of us has received all the disclosure we have asked for and need in order to understand the nature and consequences of this Agreement and to come to the conclusion, as we do, that the terms of this Agreement constitute an equitable sharing of both the economic consequences of our relationship and its breakdown.

b. The terms of this Agreement substantially comply with the overall objectives of the Divorce Act now and in the future as well as our need to exercise our autonomous rights to achieve certainty and finality.

c. The terms of this Agreement and, in particular our need for financial independence, reflect our own unique particular objectives and concerns. Among other considerations, we are relying on this financial independence, as a base upon which to plan our future lives.

12.3 We understand that we have choices both within and beyond the law. We have chosen to make decisions for ourselves and do not want the courts to undermine our autonomy as reflected in the terms of this Agreement, which we intend to be final and certain settling all issues between us. If, due to loss of employment, or illness, or changes in family conditions we suffer economic reversals, we must make our best efforts to maintain our financial independence.

12.4 It is also important for us that our children have similar lifestyles in each of our homes and that we set an example for our children to assure them that neither of their parents will ever take financial advantage of the other.

12.5 We recognize, despite our goal of financial independence and security, that there may be future circumstances beyond our control that we cannot now predict that may significantly and drastically reduce the standard of living of one or the other of us. In this event, we agree to review the support provisions of this Agreement with the assistance of a mutually acceptable financial planner to determine if there has been a significant reduction in the standard of living of one of us from that enjoyed during our marriage. We acknowledge that such a review will not automatically trigger a change in the support provisions of this Agreement, however, it is important for us to provide for this review in the event we may be able to assist one other financially to some degree in the future.

13. MATRIMONIAL HOME

13.1 The matrimonial home located at 8 Lake Avenue, Toronto, Ontario was sold on November 29, 2003 and the proceeds were divided equally.

14. PERSONAL PROPERTY

14.1 We have divided the contents of the matrimonial home and our personal property in a manner satisfactory to both of us.

15. EQUALIZATION OF NET FAMILY PROPERTY

15.1 We accept as accurate the values in the Net Family Property Statement attached as Schedule "B".

15.2 John owes Jane an equalization payment in the amount of $38,500.00 payable by spousal RSP rollover in accordance with paragraph 16 immediately upon receipt of the signed Separation Agreement.

15.3 We agree that the payment set out in paragraph 15 together with the other benefits given by this Agreement, fully satisfies any entitlement either of us has to an equalization of our net family property.

16. RRSP TRANSFERS

16.1 On signing this Agreement, John will rollover from his RRSP to Jane's RRSP $38,500 of his RRSP in Mutual Trust, pursuant to s. 146(16) of the Income Tax Act. John will also complete Form T2220 and deliver it immediately to Jane to effect the rollover.

16.2 John confirms that these RRSPs are not locked in and are available now for Jane to transfer to other RRSP assets or collapse. John also confirms that Jane is not liable for any commissions or other charges on the transfer or collapse of these RRSPs except her own income tax.

17. PAYMENT OF DEBTS

17.1 Jane will be responsible for payment of the following debts and will indemnify and save John harmless therefrom:

(c) Canada Customs and Revenue Agency debt in the amount of about $6,700.00;

(e) RRSP loan in the amount of about $11,500.00; and

(f) Loan to her father in the amount of about $14,500.00.

17.2 John will be responsible for his Visa debt in the amount of about $6,300.00 and will indemnify and save Jane harmless therefrom.

18. PENSIONS

18.1 Jane has a pension through her employment with the Bell Computers. John does not have a pension.

18.2 We requested and received a joint valuation of Jane's pension during negotiations for this Agreement. We understand that, although Jane's pension has been appropriately assigned a discounted cash value for the purposes of the division of property, ultimately Jane's benefit of a full pension entitlement with cost of living increases, as compared with John's RRSP's, may be more valuable to her when she receives it. Notwithstanding the ultimate value of Jane's pension to her, John is satisfied with the joint valuation for the division of assets.

18.3 Neither of us will make a claim to share in any pension of the other, including but not limited to any company pension plans, deferred profit sharing plans, registered retirement savings plans and registered home ownership savings plans.

19. RELEASES

General Release

19.1 We intend this Agreement as a full and final settlement of all issues between us and all rights and obligations arising out of our relationship.

19.2 Except as otherwise provided in this Agreement, we release each other from all claims at common law, in equity or by statute against each other, including claims under the Divorce Act, the Family Law Act, and the Succession Law Reform Act.

Estate Release

19.3 We wish to achieve financial independence from one another during our lifetimes and in the event of our deaths. We have each sought professional advice on estate planning and have secured our financial responsibilities for our children. Except as otherwise provided in this Agreement, we release each other from all claims either of us may have against the other now or in the future under the terms of any statute or the common law, including claims for:

a. a share in the other's estate;

b. a payment as a dependant from the other's estate under the Succession Law Reform Act;

c. an entitlement under the Family Law Act;

d. an appointment as an attorney or guardian of the other's personal care or property under the Substitute Decisions Act; and

e. participation in decisions about the other's medical care or treatment under the Health Care Consent Act;

19.4 Except as otherwise provided in this Agreement, on the death of either party, the surviving party will not:

a. share in any testate or intestate benefit from the estate; or

b. act as personal representative of the deceased; and

c. the estate of the deceased party will be distributed as if the surviving party had died first.

20. GENERAL TERMS

No Conditions

20.1 There are no representations, collateral agreements, warranties or conditions affecting this Agreement.

Reconciliation

20.2 If we agree to try to reconcile our relationship but cohabit for no longer than 90 days, this Agreement will not be affected. If we cohabit for more than 90 days, this Agreement will become void, except that any transfers or payments made up to that time will not be affected or invalidated.

Severability

20.3 Except as otherwise provided in this Agreement, the invalidity or unenforceability of any terms of this Agreement does not affect the validity or enforceability of any other term. Any invalid term will be treated as severed from the remaining terms.

Headings

20.4 The section headings contained in this Agreement are for convenience only and do not affect the meaning or interpretation of any term of this Agreement.

Separation Agreement to Survive Divorce

20.5 If a divorce judgment issues, all of the terms of this Agreement will continue.

Applicable Law and Interpretation

20.6 The interpretation of this Agreement is governed by the laws of Ontario.

Agreement to Bind Estate

20.7 This Agreement binds our heirs, executors, administrators and assigns.

Amendments

20.8 Any amendments to this Agreement must be in writing, signed by us, dated and witnessed.

Execution of Other Documents

20.9 We will sign any documents necessary to give effect to this Agreement.

Non-Compliance

20.10 Any failure to insist on the strict performance of any terms in this Agreement will not be a waiver of any term.

Costs

20.11 We will each pay our own costs for the negotiation and preparation of this Agreement.

Where Consent is Required in this Agreement

20.12 Where consent is required under this Agreement, it will not be unreasonably withheld. If we cannot agree whether consent is being reasonably withheld, we will use our Issue Resolution paragraph as outlined at paragraph 11 to resolve the matter.

Effective Date

20.13 The effective date of this Agreement is the date on which the last of us signs it.

21. JOINT PREPARATION

21.1 We acknowledge that each of us with our lawyers have fully participated in the preparation of this Agreement. It is to be construed as if we are joint authors.

22. INDEPENDENT LEGAL ADVICE AND FINANCIAL DISCLOSURE

22.1 We acknowledge that:

a. we have each had independent legal advice;

b. we have each read the Agreement and have full knowledge of the contents;

c. we understand our respective rights and obligations under this Agreement, the nature of this Agreement and the consequences of this Agreement;

d. we have made full and complete disclosure of

our financial circumstances to each other, including but not limited to our income, assets and debts and provided all financial information requested by the other as set out in Schedule D attached;

e. the terms of this Agreement are acceptable to us both and satisfy our interests;

f. we are entering into this Agreement without any undue influence, fraud or coercion; and

g. we are signing this agreement voluntarily.

24. TO EVIDENCE OUR AGREEMENT we have each signed this Agreement before a witness.

DATED at Toronto, the day of May, 2004

Witness:)
)
_____) _____
As to the signature of:) JANE DOE

DATED at Toronto, the day of May, 2004.

Witness:)
)
_____) _____
As to the signature of:) JANE DOE

SCHEDULE "B"
DIRECTION AND AUTHORIZATION

TO: ABC Insurance Company
999 Main Street
Toronto, Ontario

FROM: Jane Doe

RE: Policy # 1234567890

I, Jane Doe, irrevocably authorize and direct you to release to John Doe any information he requires regarding the above life insurance policy to confirm the amount of the death benefit, that the policy is in effect and in good standing and that he continues to be named beneficiary, in trust for Peter Doe, born August 15, 1997 and Mary Doe born November 5, 2000.

DATED at Toronto, the day of May, 2004.

Witness:)
)
_____) _____
As to the signature of:) JANE DOE