

C. The test applied when a party who has signed a contract regarding or waiving spousal support, seeks a variation

Miglin v. Miglin 2003 CarswellOnt 1374 Supreme Court of Canada, 2003

In this case, the husband and wife had signed a separation agreement, in the presence of counsel. In the agreement, the wife waived all rights to receive and to apply for spousal support. Years passed and she eventually needed spousal support. She applied for spousal support and was granted it by a lower court. The spousal support award was upheld at the Court of Appeal. The Husband appealed to the Supreme Court of Canada, arguing that the agreement was a defence to the Wife's application and she should be denied spousal support because she agreed to waive it in the contract.

The Supreme Court of Canada used this case to set out a two part test which courts must refer to when asked to overturn a properly executed agreement regarding spousal support.

The SCC stated a Court must first review the circumstances at the time the agreement was signed to determine if the agreement met the objectives of the Divorce Act (including whether the spouse could achieve self-sufficiency, whether economic consequences arising from the marriage and from the raising of children had been appropriately compensated and whether there had been proper disclosure and legal advice). If the Court felt that the agreement passed the first part of the test, then a Court should consider events that had transpired after the agreement had been signed, to determine if the Agreement continues to meet the objectives of the Divorce Act.

Miglin shows the importance of having a properly drafted agreement, with legal advice.