



## Agreements by Jodi L. Wyman

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In family law, is a binding agreement actually binding?

The answer is not always. In the last year however the Supreme Court of Canada has placed some limits on when Courts can overturn agreements made by couples.

There are many types of agreements in family law: prenuptial or cohabitation agreements are for before parties enter a relationship, and separation agreements are made after the relationship is over. These are written contracts signed by couples after they have been properly advised by lawyers.

The Supreme Court recently addressed the issue of prenuptial agreements. In the *Hartshorne* case from British Columbia, two lawyers signed a prenuptial agreement on the day of their wedding. It set out how they would divide their property in the event of a divorce.

This was a nine year marriage which produced two children. The husband brought approximately \$1.6 million dollars in assets into the

relationship and the wife almost none. At the time of divorce, the agreement allowed the wife to keep property worth only \$280,000.00, and the husband kept assets worth \$1.2 million. The wife wanted to set aside the agreement and receive an equal split of the property as required by the legislation in British Columbia. At the time of their divorce, the wife argued that she did not realize she would be home with two children for most of the marriage thereby limiting her ability to earn an income and acquire assets of her own. She asked that the Court set aside the prenuptial agreement.

The Supreme Court of Canada said that once an agreement has been made, the parties are expected to follow through and not simply change their minds later. Just because an agreement does not allow for an equal division of assets does not automatically mean that it is unfair and should be set aside. Of particular importance was that both parties had met with their own lawyers and received advice before signing.

In April of 2003, the Supreme Court looked at Separation

Agreements in the Miglin case. After they split up, a couple in Ontario had signed an agreement that they would each waive any claim to spousal support from the other now and forever. Years later, the wife had great difficulty supporting herself financially. She did not expect this to happen at the time she signed the separation agreement. She asked the court to set aside the agreement and let her ask for spousal support from her former spouse.

The Supreme Court stated that Courts have to first look at the circumstances surrounding the discussion and signing of the agreement. They have to make sure it was fairly negotiated and that one spouse was not manipulating or pressuring the other. Secondly, the Court has to look at whether the terms of the agreement are fair and reasonable. The Supreme Court said only in extreme cases should a Judge interfere with a binding contract entered into by the couple fairly and reasonably. Just because things change in the future is not a reason to set aside an agreement.