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1. Integrity of the Bargaining Process Key to Enforceability of Separation Agreements: S.C.C.

In [Rick v. Brandsema](#), 2009 SCC 10 the Supreme Court of Canada unanimously overturned the British Columbia Court of Appeal [decision](#), agreeing with the trial judge's conclusion that the parties' negotiated separation agreement was unconscionable due to the husband's defective financial disclosure and exploitation of his wife's known mental vulnerabilities. Extending the principles set out in [Miglin](#) (which dealt with spousal support) to agreements on property division, the court found:

...that a duty to make full and honest disclosure of all relevant financial information is required to protect the integrity of the result of negotiations undertaken in these uniquely vulnerable circumstances. The deliberate failure to make such disclosure may render the agreement vulnerable to judicial intervention where the result is a negotiated settlement that is substantially at variance from the objectives of the governing legislation.

Such a duty in matrimonial negotiations anchors the ability of separating spouses to genuinely decide for themselves what constitutes an acceptable bargain. It also helps protect the possibility of finality in agreements. An agreement based on full and honest disclosure is an agreement that, *prima facie*, is based on the informed consent of both parties. It is, as a result, an agreement that courts are more likely to respect. Where, on the other hand, an agreement is based on misinformation, it cannot be said to be a true bargain which is entitled to judicial deference. (paras. 47-48)

See the following articles commenting on the case:

- [Divorce deal exploited B.C. farm wife's vulnerability, top court rules](#) a CBC news article
- [Supreme Court revises divorce settlement](#) by Kirk Makin, Globe and Mail Update, February 19, 2009

2. Unequal Division Threshold High But Not Insurmountable: Ont. C.A.

And, for another take on what is unconscionable, see [Serra v. Serra](#), 2009 ONCA 105, where the Ontario Court of Appeal found that a market-driven post-valuation date change in the value of a spouse's assets may be taken into account in determining whether an equalization of family property is unconscionable under [s. 5\(6\) of the Family Law Act](#). The court found that on the

particular facts of this case (where, through no fault on the part of the husband, there had been a dramatic drop in the value of his business since the separation date) an equal division of family property would be unconscionable, but stressed that "the threshold that an applicant must cross in order to open the door to an unequal division is...exceptionally high." (para. 71). The following articles point out the uncertainty this decision has introduced, especially for lawyers advising separating clients in today's economy:

- [*Equal division of net family property shocks the conscience of the court in Serra v. Serra Ont. C.A. 2009*](#) Toronto Family Lawyers Blog
 - [*Separating couples face uncertain times*](#) by Jodi Kovitz, published in the February 20, 2009 issue of *Lawyers Weekly*
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3. Foreseeable Remarriage Not Material Change

In [*Bhupal v. Bhupal*](#), 2008 CanLII 53129 (ON S.C.), an Ontario case that has generated some discussion, the court refused the husband's application to vary spousal support payments that had been agreed to in minutes of settlement negotiated by the parties. The court found that the wife's remarriage (and enhanced financial position) did not constitute a material change in circumstances, since the husband foresaw the possibility of remarriage at the time the settlement was signed and therefore "must be taken to have accounted for it when negotiating spousal support." The controversial aspects of the case are discussed in the following article:

- [*Bhupal v. Bhupal Ont. S.C.J. 2008 - Is remarriage material change for the purpose of varying spousal support?*](#)
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4. Family Law Resources

In the article [*Unjust Enrichment Claims: Practical Considerations*](#) posted February 2009 on CLE BC's *Practice Points*, author Eugene Raponi outlines the difficulties in prosecuting and avoiding unjust enrichment claims in family law cases.

The booklet [*One step at a time/Tax Rules for Family Law Practitioners*](#), a 2008 publication of PricewaterhouseCoopers, contains a 35-page summary of the tax rules related to support payments and property settlements designed to assist lawyers in family law or mediation practice. It also includes appendices dealing with general information on RRSPs, a sample s.74.5(3) election, a list of tax centres, a summary of financial statements and the condensed child support guideline tables.

How the downturn in the economy will affect family law practice is the subject of a February 20, 2009 *Lawyers Weekly* article, [*Divorce during a recession*](#), by Donalee Moulton.

5. Working With High Conflict Families: Advance Training

[*Collaborative Practice Manitoba*](#) and the [*Manitoba Bar Association*](#) are presenting the program *Solving the Puzzle: Managing High Conflict Divorce in the Children's Interest* with Carol Chandler, M.Ed., a chartered psychologist who specializes in working with high conflict families in the process of separation and divorce. This one and a half day limited enrolment program will be held April 24 and 25, 2009 at the Caboto Centre, 1055 Wilkes Blvd. For further information, contact lisa@kroft.ca. Registration is through the Manitoba Bar Association.

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