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***The Supreme Court clarifies when courts must consider certain domestic agreements in dividing family property under Saskatchewan’s legislation.***

The Andersons were married in Saskatchewan for three years and separated in 2015. Ms. Anderson prepared an agreement that stated each of them would keep their own property and give up their rights to the other’s property except for the family home and household goods, which they owned jointly. Both parties signed the agreement before two of their friends who acted as witnesses. Neither party benefited from independent legal advice before signing the agreement. Ms. Anderson later filed for divorce. Mr. Anderson counter-filed to ask the court to divide the family property, arguing that the agreement was signed without legal advice and under duress.

Like other provincial family property laws, *The Family Property Act (FPA)* of Saskatchewan provides that family property will be distributed equally unless spouses agree otherwise through an interspousal or other domestic contract. Interspousal contracts are presumed binding if they meet certain requirements under the *FPA*, such as a formal acknowledgement by the parties that they understand the nature and the effect of their agreement in the presence of different lawyers. According to the *FPA*, domestic contracts that do not meet these formalities may still be considered by a court and given “whatever weight it considers reasonable”. Since no lawyers were involved in the Andersons’ agreement, it did not qualify as an interspousal contract.

At trial, the judge found the agreement was not binding, partly because the Andersons had not received legal advice before signing the domestic contract. As a result, he did not give it any weight in crafting his property division order. The judge divided the value of the couple’s assets equally under the *FPA* and ordered the wife to pay the husband a difference of around \$90,000. Ms. Anderson then took the case to the Saskatchewan Court of Appeal, which set aside the trial judge’s order. Relying on an earlier judgment of the Supreme Court of Canada (*Miglin v. Miglin*), which created a framework to consider agreements for spousal support under the federal *Divorce Act*, the Court of Appeal found that the couple’s original agreement was binding and therefore that it should have been considered in dividing the family property. It ordered Mr. Anderson to pay Ms. Anderson around \$5,000, using the trial judge’s property valuation at the date closest in time to the agreement. Mr. Anderson appealed to this Court.

The Supreme Court has allowed the appeal.

**The Andersons’ agreement was binding and the trial judge should have considered it when dividing the family property.**

Writing for a unanimous Court, Justice Karakatsanis gave effect to the Andersons’ agreement. She said the agreement was short, uncomplicated and reflected the intention of the parties to effect a clean break from their partnership. Moreover, Mr. Anderson could not point to any prejudice resulting from the lack of independent legal advice. She disagreed with the Court of Appeal’s reliance on *Miglin*, noting that the judge’s interpretive exercise is statute-specific. However, she arrived at the same conclusion that the trial judge should have given the agreement serious consideration.

Justice Karakatsanis said domestic contracts should generally be encouraged and supported by courts, within the bounds of the law, absent a compelling reason to discount them. Deference to such agreements flows from the recognition that self-sufficiency, autonomy and finality are important objectives in the family law context. Moreover, “courts must review domestic contracts with particular sensitivity to the vulnerabilities that can arise in the family law context, without presuming that spouses lack the agency to contract simply because the agreement was negotiated in an emotionally stressful context”.

The Court allowed the appeal, set aside the Court of Appeal's decision and enforced the agreement. It divided the family home and household goods equally as of the date of the trial, ordering Ms. Anderson to pay Mr. Anderson a difference of approximately \$43,000.

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**Breakdown of the decision: *Unanimous*:** Justice [Karakatsanis](#) allowed the appeal (Justices [Côté](#), [Rowe](#), [Martin](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed)

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