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— Franks & Zalev - This Week in Family Law

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Contents

• The Interim Partition and Sale Pendulum

• How's This for a "Shift in Culture?"

• When is a "Rule" not a "Rule"?

The Interim Partition and Sale Pendulum

Gole v. Meier, 2021 CarswellAlta 3258 (Alta. Q.B.) — Feasby J.

Mr. Gole and Ms. Meier were adult interdependent partners. Mr. Gole applied for partition and sale of the jointly owned acreage where Ms. Meier was living with their four-year-old daughter. Ms. Meier applied for exclusive possession of the acreage. There were also some support issues, but we are going to focus on the claims regarding the acreage. We don't have acreages in Toronto; but they sure sound nice.

There was significant equity in the property — but, notably, Justice Feasby did not state the estimated value of the property in his reasons so as not to prejudice efforts to sell the property at its highest price.

Mr. Gole argued that it could be assumed that the equity in the property would be divided equally between the parties; "not necessarily so" countered counsel for Ms. Meier, noting that there was also an outstanding action for division of family property and unjust enrichment which could lead to unequal division in favour of Ms. Meier.

Mr. Gole argued it was "obvious" that the acreage was going to have to be sold, and that there is no sense in the parties' equity being tied up preventing both parties from buying new accommodations. Ms. Meier argued that if she was successful in her property division claim, she might be able to purchase the property, so a sale should not proceed prior to a trial of her other property claims. And, in the interim, she argued, she and her daughter should have exclusive possession, and Mr. Gole should contribute to the insurance and mortgage payments on the property until trial.

In Wild Rose Country, section 15 of the *Law of Property Act*, R.S.A. 2000, c. L-7 (the "*Act*"), gives the court jurisdiction to order partition and sale of jointly owned land. Section 21 of the *Act* then provides that the court may stay proceedings for partition and sale where there is a pending application under the *Family Property Act*, R.S.A. 2000, c. F-4.7 or pursuant to s. 68 of the *Family Law Act*, S.A. 2000, c. F-4.5.

Allow us to digress for a moment or two.

It is becoming increasingly difficult to predict when a court will order the interim sale of jointly owned property. As is the case with many legal issues, the pendulum on this particular issue appears to be swinging — and we're not really sure where we are. We may be at the nadir.

On the one hand, courts have generally historically held that a joint owner has a *prima facie* right to partition and sale, which a court had only a narrow discretion to refuse where the applicant is behaving in an oppressive, vexatious or malicious manner: *Silva v. Silva* (1990), 30 R.F.L. (3d) 117 (Ont. C.A.); *Latcham v. Latcham*, 27 R.F.L. (5th) 358 (Ont. C.A.); *Scalia v. Scalia*, 2015 CarswellOnt 9780 (C.A.); *Marchese v. Marchese*, 2019 CarswellOnt 2050 (C.A.); *Kaphalakos v. Dayal*, 2016 CarswellOnt 9582 (Div. Ct.). Alternatively, partition and sale should not be granted where the sale would cause hardship to the responding party which amounts to oppression: *Afolabi v. Fala*, 46 R.F.L. (7th) 75 (Ont. S.C.J.) at para. 29 and 33 to 35 and *Kaphalakos v. Dayal*, 2016 CarswellOnt 9582 (Div. Ct.).

However, in *Silva*, while the Ontario Court of Appeal recognized that a joint owner has a *prima facie* right to partition and sale, at paragraph 23 the Court stated:

> [23] . . . where substantial rights in relation to jointly owned property are likely to be jeopardized by an order for partition and sale, an application under the *Partition Act* should be deferred until the matter is decided under the F.L.A. Putting it more broadly, the application under s. 2 should not proceed where it can be shown that it would prejudice the rights of either spouse under the F.L.A.

And in *Martin v. Martin* (1992), 38 R.F.L. (3d) 217 (Ont. C.A.), the same Ontario Court of Appeal confirmed that the sale of a matrimonial home prior to trial should not be made "as a matter of course":

> [26] Although there is clear jurisdiction under the *Partition Act* to order the sale of the parties' matrimonial home, I do not wish to be taken to have endorsed the wholesale issuance of these orders. In my view, an order directing the sale of the matrimonial home before trial should only be made in cases where, in all of the circumstances, such an order is appropriate. Orders for the sale of the matrimonial home made before the resolution of *Family Law Act, 1986* issues (particularly the determination of the equalization) should not be made as a matter of course . . . In addition, spousal rights of possession (s.19) and any order for interim exclusive possession should be taken into account.

However, in considering a motion for interim sale, for a long time, many courts did not even consider this secondary basis for refusing sale — that being the prejudice of legitimate rights under family law legislation. See for example, *Akman v. Burshtein*, 2009 CarswellOnt 1941 (S.C.J.).

While the *prima facie* right of a joint owner to partition and sale (absent, malicious, oppressive or vexatious conduct) seems to have ruled the day for a few decades, over the last decade (or perhaps a bit longer), the idea that such orders should not be made "as a matter of course" and should not be made if to do so would prejudice a substantial right in relation to jointly owned property seems to have gained prominence: *Kanura v. Simpraga* (2011), 3 R.F.L. (7th) 443 (Ont. S.C.J.) (where the Court defines "substantial rights in relation to jointly owned property" as issues of title/ownership or issues of possession); *Steele v. Doucet* (2019), 22 R.F.L. (8th) 471 (Ont. S.C.J.); *Mignella v. Federico*, 2012 CarswellOnt 12347 (S.C.J.); *Lall v. Lall*, 2012 CarswellOnt 12826 (S.C.J.); *Recoskie v. Paton*, 2014 CarswellOnt 12044 (S.C.J.); *Shouldice v. Shouldice*, 2015 CarswellOnt 4180 (S.C.J.).

Dombrowski v. Dombrowski, 2021 CarswellOnt 2080 (S.C.J.) (also a good review of both sides of the partition and sale argument); *Cohen v. Cohen*, 2013 CarswellOnt 15771 (S.C.J.); *Denofrio v. Denofrio* (2009), 72 R.F.L. (6th) 52 (Ont. S.C.J.); *Suprenant v. Suprenant*, 2009 CarswellOnt 8408 (S.C.J.); *Palmer v. Lumsden* (2018), 22 R.F.L. (8th) 232 (Ont. S.C.J.); *Trush v. Trush* (2007), 44 R.F.L. (6th) 69 (Ont. S.C.J.) all suggest that if a party might ever be in a position to buy out the home, they should be permitted to do so. While it is hard to see that wanting to buy the home raises a "substantial right in relation to jointly owned property," some courts view losing the chance to bid on the home as "hardship" sufficient to delay a sale: *Mitchell v. Leach* (2015), 68 R.F.L. (7th) 398 (Ont. S.C.J.). That said, some courts do not accept that a desire to buy the home is sufficient to delay a sale: *Doyle v. Doyle*, 2012 CarswellOnt 15348 (S.C.J.); *Allard v. Sylvain-Allard*, 2015 CarswellOnt 12692 (S.C.J.).

Recently, interim sale has also been refused for "practical" reasons — such as where the trial is imminent or soon: *Punit v. Punit* (2014), 43 R.F.L. (7th) 84 (Ont. Div. Ct.); *Ludmer v. Ludmer* (2012), 25 R.F.L. (7th) 397 (Ont. S.C.J.); *Duskocy v. Duskocy*, 2017 CarswellOnt 11624 (S.C.J.) (although a sale was actually ordered in *Duskocy*, the Court noted that a motion for sale when

trial was imminent might qualify as "oppressive"); *Lall v. Lall*, 2012 CarswellOnt 12826 (S.C.J.); *Steele v. Doucet* (2019), 22 R.F.L. (8th) 471 (Ont. S.C.J.).

Of interest, recently, some courts have also considered whether an ordered sale would promote settlement or instigate settlement discussions, adding a further consideration to the mix: *Vittery v. Vittery*, 2008 CarswellBC 1177 (S.C.); *Goldman v. Kudeyla* (2011), 5 R.F.L. (7th) 149 (Ont. S.C.J.).

Whereas the "other substantial property rights" consideration seems to have taken a bit of a backseat in Ontario for some time, that is not the case in Alberta. In *Buskas v. Reid*, 2017 CarswellAlta 1275 (Q.B.) and *Wolf v. Wolf*, 2019 CarswellAlta 581 (Q.B.), the Court was clear that the usual rules in favour of partition and sale do not apply to matrimonial property, and that the Court should not order the sale of the former matrimonial home if there are significant other financial matters still to be resolved.

In both *Wolf* and *Buskas*, there was no urgency to the sale, and in *Buskas* there was a chance that the party in occupation might ultimately be able to buy out the other's interest. However, in *Gole*, the *status quo* was simply financially unsustainable and there was no reasonable prospect that Ms. Meier would be able to afford to buy the acreage. Borrowing a page from Ontario, Justice Feasby also noted that selling the property would simplify, not complicate, the resolution of the outstanding financial matters between the parties.

Notably, even if Ms. Meier is awarded all of the equity in the home at trial, that would not reduce the mortgage payments, so she would still be unable meet the expenses of the home. Even under the most optimistic assumptions, Ms. Meier could not reasonably afford to live in the home.

In a moment of unbridled candour, through counsel, Ms. Meier admitted that her efforts to maintain possession of the home was being used as leverage to get Mr. Gole to the bargaining table. In response, Justice Feasby made it clear that, "the Court . . . is not in the business of delaying the inevitable so that one party may exert pressure on another in an effort to extract more favourable settlement terms." Maybe a little too much candour.

Ms. Meier's argument for exclusive possession pursuant to s. 19 of the *Family Property Act* and s. 68 of the *Family Law Act* based on the best interests of the four-year-old child did not resonate with his Honour. While the enumerated factors in s. 20 of the *Family Property Act* included consideration of the "needs of any children residing in the family home," according to Justice Feasby (and he was correct in our view):

> [28] . . . What a four-year-old child needs is a home where her basic needs are met and she is loved. Absent conditions such as a disability requiring specialized accommodation, a four-year-old child does not need to live in a specific property.

There are some cases that suggest that "hardship" can include hardship to the children: *Kaing v. Shaw* (2017), 94 R.F.L. (7th) 396 (Ont. S.C.J.) (immediate sale of the home would be disruptive to the lives of the children and would uproot them from their relatives, friends, school, daycare and community); *Oppong Nketiah v. Oppong Nketiah* (2021), 59 R.F.L. (8th) 397 (Ont. S.C.J.); (the children were settled and attended school in the neighbourhood); *Nikolaou v. Nikolaou*, 2008 CarswellOnt 6640 (S.C.J.).

However, the weight of authority suggests that upset to children, attachment to the home, and proximity to friends and school, is not sufficient to postpone a likely sale: *Gainer v. Gainer* (2006), 24 R.F.L. (6th) 18 (Ont. S.C.J.); *Chrobok v. Chrobok*, 2006 CarswellOnt 4890 (S.C.J.); *Peterson v. Peterson*, 2018 CarswellOnt 15466 (S.C.J.); *Delongte v. Delongte*, 2019 CarswellOnt 20274 (S.C.J.). Children are resilient, children move houses, and a change of residence is more the rule than the exception today: *Gainer v. Gainer* (2006), 24 R.F.L. (6th) 18 (Ont. S.C.J.); *Coffey v. Coffey*, 2007 CarswellOnt 8639 (S.C.J.); *Carson v. Carson*, 2012 CarswellOnt 13423 (S.C.J.); *Black v. Black*, 2008 CarswellOnt 817 (S.C.J.); *Allard v. Sylvain-Allard*, 2015 CarswellOnt 12692 (S.C.J.).

His Honour also felt that the matter would be best advanced starting the disentanglement of their property interests now. Furthermore, an order for partition and sale now would allow for the sale to be completed prior to the trial over the division of family property. And this, in turn, would make for a more efficient trial because the value of the property would no loner be a triable issue.

The acreage was to be sold.

It would seem that the current state of the law with respect to interim sale can be summarized as follows:

- A joint owner has a *prima facie* right to partition and sale.
- A joint owner can prevent an interim sale by:
    - o showing that the moving party is acting oppressively, maliciously, or vexatiously;
    - o showing that a *genuine*, substantial right in relation to jointly owned property would be jeopardized by an interim sale or that the party would suffer significant hardship over-and-above the usual inconvenience of sale;
    - o establishing a genuine desire to purchase the home and the likely ability to purchase the home after other financial issues become more transparent (the case law is not firm on this one); or
    - o showing that practical considerations, such as an imminent trial, are a sufficient reason to delay the sale.

How's This for a "Shift in Culture?"

Thomas v. Wohleber, 2022 CarswellOnt 2211 (S.C.J.) — Kurz J.

Thomas v. Wohleber offers an excellent example of how the courts can try to ensure that high conflict cases get dealt with as expeditiously and efficiently as possible.

The parties have been engaged in litigation about the parenting arrangements for their two young children for several years. The case started with an urgent motion at the beginning of the pandemic back in March 2020, and has been winding its way through the system ever since. (If the name of this case sounds familiar, it's because it was also one of the first pandemic cases to consider whether a matter was urgent enough to be heard while the courts were largely closed — see the April 6, 2020 (2020-13) edition of *TFWL*.)

The parties attended a Settlement Conference before Justice Kurz on February 15, 2022. By that point:

- The children had been residing primarily with the mother since the parties separated in 2020, and had been having fairly limited parenting time with the father that did not include any overnights;
- The father was already on his seventh lawyer;
- The father insisted on appointing a specific assessor, but then rejected the assessor's recommendations when they did not go in his favour and alleged that the assessor was biased;
- The father had already brought one interim motion in December 2021 for significantly increased parenting time that involved voluminous materials (the father's statement of law alone was 19 single spaced pages with 94 footnotes) but was largely dismissed (he only obtained an extra four hours of parenting time a week);
- The father had scheduled, but not yet served, a second interim motion for increased parenting time that he wanted to argue in March 2022; and
- Even though spring trial dates were available, the father was refusing to schedule the case for trial because he thought it would be unfair to have to go to trial without first having overnight parenting time.

Justice Kurz was having absolutely none of this. In exercising his case management role, he vacated the long motion date (*ex proprio motu*) on the basis that parties are not entitled to bring endless motions, particularly where a motion for the exact same

issues had just been argued and decided only a few months earlier. In doing so, he reminded the parties of the Supreme Court's admonition in *Hryniak v. Mauldin*, 2014 CarswellOnt 640 (S.C.C.) for a substantial culture shift in the civil litigation system to ensure that courts are able to provide *timely* and *affordable* access to justice:

> [25] **The culture shift that [Justice Karakatsanis] called for [in *Hryniak*] did not anticipate two expensive motions on the same issue within three and a half months of each other.** To the contrary, that is the type of litigation from which our system of law must shift away. **Our courts are instead required to adopt processes which are "proportionate, more expeditious and less expensive means to achieve a just result than going to trial"**: para. 4.
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> [26] **A key feature of the culture shift required by *Hryniak* is the adoption of procedures based on the principle of proportionality**. As Karakatsanis J. wrote at para. 28 of *Hryniak*: "[t]he proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure." At para. 30, she pointed out that the proportionality principle is now reflected in many of the provinces' rules and can act as a touchstone for access to civil justice.
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> [27] **The necessary culture shift requires more than platitudes towards abstract principles of procedural justice. It requires concrete action, particularly by judges. They must act as guardians of both procedural fairness and access to justice.** As Karakatsanis J. wrote at para. 32 of *Hryniak*, "[t]he culture shift requires judges to actively manage the legal process in line with the principle of proportionality." [emphasis added]

To ensure that a *final* determination was not further delayed, Justice Kurz also scheduled the case for trial in the fall (he was not able to schedule it earlier because the father's lawyer was not available). And he ordered that the case could not be removed from the fall 2022 trial list without a further court order. He also ordered that neither party could bring any further motions without first obtaining leave from him.

Some have argued that this approach was high-handed and an affront to the notion of access to justice. But we agree with this approach entirely. One case cannot get so much "access to justice" that court resources are not available to others. We hope to see more of these types of decisions, particularly in high conflict parenting cases — cases that need to be driven to resolution. Nothing helps focus litigants on settlement more than a fixed trial date. And, if the case cannot be settled, any outstanding issues can then be resolved one way or another based on a complete evidentiary record. Allowing these cases to linger while the parties attend multiple conferences and/or bring endless motions for interim relief usually just exacerbates the existing problems without doing anything to actually resolve the matter.

The other interesting part of the decision is that in his reasons for vacating the father's long motion, Justice Kurz reviewed the various authorities that have considered the test for varying interim parenting orders, and set out the following framework for dealing with these types of issues:

> [45] . . . 1. There has been a "change in the circumstances of the child" since the time of the [prior interim] order: *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp), as amended, s. 17(5);
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> 2. That change must be a material one; i.e. one that materially affects the child: *Gordon v. Goertz*, [1996] S.C.J. No. 52 (S.C.C.), at para. 10. That means that the change must be "substantially important": *McIsaac v. Pye*, 2011 ONCJ 840, at para. 13;
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> 3. That material change must raise "exceptional circumstances where immediate action is required": *Grant v. Turgeon*, [2000] O.J. No. 970 22565 (S.C.J.), *Southorn v. Ree*, at para. 12;
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> 4. The order that those materially changed circumstances compel the court to make must meet the best interests of the child: *Miranda v. Miranda*, 2013 ONSC 4704, at para. 26, *Radojevic v Radojevic*, *ibid*, *Chyher v. Al Jaboury*, 2021 ONSC 8191, at para. 15, citing the previous decision in the same case at 2021 ONSC 4358 at para. 26, *Greve v. Brighton*, 2011 ONSC 4996, at para 24.

When is a "Rule" not a "Rule"?

McNeil v. McNeil, 2022 CarswellOnt 636 (S.C.J.) — Van Melle J.

The Respondent, Mary, sought judgment in accordance with what she claimed to be the accepted terms of the Applicant, Rodney's, Offer to Settle dated October 14, 2020 (the "October Offer"). Mary accepted the October Offer on October 5, 2021.

Rodney argued that the October Offer was not a Rule 18 Offer pursuant to the *Family Law Rules*, O. Reg. 114/99, because he had not signed it personally, as is required by the rule. Therefore, argued Rodney, not being a Rule 18 Offer to Settle, the October Offer was not capable of acceptance because:

> a. The October Offer had been revoked by Mary's counter-offer of October 30, 2020 (the "Counter Offer"); or
>
> b. The October Offer was implicitly revoked by Rodney's subsequent Offer to Settle dated April 26, 2021 (the "April Offer"), the terms of which were less favourable to Mary than the October Offer.

The parties separated on April 6, 2017, after an 18-year marriage with one child. The main issues in the case were property division, child support, and a post-separation accounting.

Rule 18 of the *Family Law Rules* provides a special regime for the making and acceptance of offers that override the general common law of offer and acceptance:

> 18(1) In this rule,
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> "offer" means an offer to settle one or more claims in a case, motion, appeal or enforcement, and includes a counter-offer.
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> 18(2) This rule applies to an offer made at any time, even before the case is started.
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> 18(3) A party may serve an offer on any other party.
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> 18(4) **An offer shall be signed personally by the party making it and also by the party's lawyer, if any.**
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> 18(5) A party who made an offer may withdraw it by serving a notice of withdrawal, at any time before the offer is accepted.
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> 18(6) An offer that is not accepted within the time set out in the offer is considered to have been withdrawn.
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> 18(9) The only valid way of accepting an offer is by serving an acceptance on the party who made the offer, at any time before,
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> (a) the offer is withdrawn; or
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> (b) the court begins to give a decision that disposes of a claim dealt with in the offer. O. Reg.
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> 18(10) **A party may accept an offer in accordance with subrule (9) even if the party has previously rejected the offer or made a counter-offer.** O. Reg. 114/99, r. 18 (10). [emphasis added]

Mary argued that the October Offer was a Rule 18 Offer and was open for acceptance pursuant to Rule 18(10) despite the Counter Offer. Rodney argued that because his lawyer signed on the line that he should have signed, in breach of Rule 18(4), the October Offer was not a Rule 18 Offer, and accordingly was governed by common law, such that Mary's Counter Offer revoked the October Offer.

In *Riss v. Greenough* (2003), 37 R.F.L. (5th) 426 (Ont. S.C.J.) at para. 32, in a somewhat similar situation, the Court opined that the requirement to have an offer signed *personally* by the party making it and *also* by the party's lawyer, if any, was straightforward, uncomplicated, and *mandatory*. (In *Riss*, the Offer had not been signed by the lawyer.) The Court found that

the lack of a signature by counsel was sufficient to take the offer in that case out of Rule 18. Other cases have offered similar views: *Feng v. Philips* (2006), 26 R.F.L. (6th) 151 (Ont. S.C.J.); *Maki v. Granholm*, 2009 CarswellOnt 2232 (S.C.J.); *Miller v. Volk* (2010), 79 R.F.L. (6th) 207 (S.C.J.); *H. (K.) v. R. (T.K.)*, 2013 CarswellOnt 13253 (C.J.); *Studerus v. Studerus*, 2014 CarswellOnt 4751 (S.C.J.); and *Jones v. Cavanagh*, 2019 CarswellOnt 19406 (S.C.J.).

Some cases have also noted that because of the automatic, possibly significant cost consequences of not accepting a Rule 18 Offer to Settle, full technical compliance is required: *Clancy v. Hansman*, 2013 CarswellOnt 17601 (C.J.); *Children's Aid Society of Toronto v. P.B. and J.J.W.* (2019), 32 R.F.L. (8th) 469 (C.J.).

There is certainly something to this position. Given the special nature of a Rule 18 Offer and the possible material cost consequences of not accepting a Rule 18 Offer, presumably, the Rules require that a Rule 18 Offer to Settle be signed by the lawyer and the client specifically for the purpose of focussing the lawyer's and client's minds on the special nature of a Rule 18 Offer.

However, what sort of comment would this be if other Courts had not expressed opposing views?

In *Gogas v. Gogas* (2011), 11 R.F.L. (7th) 369 (S.C.J.), in declining to follow *Riss*, Justice Healey offered the following interpretation of Rule 18(4):

> [15] The result in *Riss* arose from a strict interpretation of subrule 18(4), which provides that an offer shall be signed personally by the party making it and also by the party's lawyer, if any. Quinn J. found that a lack of signature on an offer by a lawyer was sufficient to invalidate the offer. At para. 32 of the judgment he wrote:
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> > . . . Subrule 18(4) states that "an offer shall be signed personally by the party making it and also by the party's lawyer, if any". This is a straightforward, uncomplicated requirement. It also is mandatory. The lack of a signature by counsel is sufficient to invalidate the offer. I do not think that anything in rule 2 should be used to resuscitate the offer and, being invalid, resort cannot be had to subrule 18(16) . . .
>
> [16] Pursuant to subrule 2.01(1)(a) of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, a failure to comply with those rules is an irregularity, does not render a document in a proceeding a nullity, and the court may grant all relief on such terms as are just to secure the just determination of the real matters in dispute. The same wording is not found in Rule 2 of the *Family Law Rules*. Instead, the court is required to promote the primary objective, which is to deal justly with cases. Dealing with a case justly includes, as set out in subrule 2(3)(a), ensuring that the procedure is fair to all parties. With the greatest of respect to Quinn, J., I find it implicit in this directive that the court should not require strict compliance with a rule where to do so would mean that the case is dealt with unjustly. That would include, in appropriate circumstances, not nullifying a document.
>
> [17] The policy reasons behind subrule 18(4) are unknown; the Rules Committee did not publish discussion papers prior to or after the *Family Law Rules* came into effect. One can easily speculate that the requirement of a lawyer's signature was included to ensure that the terms of an offer had received the scrutiny and advice of legal counsel before being extended to the opposing party in order to lessen the likelihood of the offer being ambiguously drafted, reneged or set aside. Where, as in this case, the offer is delivered to the opposing party through the offeror's lawyer's office, there can be little doubt that the lawyer has had input into the creation of the offer, has provided advice on the offer, and is aware of it being delivered to the opposing party. The signature of the lawyer adds nothing in such circumstances.

Similar sentiments about not invalidating a Rule 18 Offer for a technicality were expressed in *Thursfield v. Gambacort*, 2005 CarswellOnt 6800 (C.J.); *Deelstra v. Van Osch*, 2003 CarswellOnt 204 (S.C.J.); *Kawana v. Shemal* (2011), 8 R.F.L. (7th) 438 (B.C. S.C.); and *Rofail v. Naguib*, 2012 CarswellOnt 4187 (S.C.J.).

In both *Riss* and *Gogas*, the disputed offers were missing the signature of the lawyers. Here, the October Offer was missing the client's — Rodney's — signature.

There was no explanation as to why, in *McNeil*, Rodney's lawyer signed the Offer twice and Rodney did not personally sign. However, according to Justice Van Melle, given that Rodney and his counsel prepared and served the October Offer, to now rely on Rodney's failure to personally sign the October Offer would defy common sense and the intent of the *Family Law Rules*.

In granting Mary's motion for judgment, Justice Van Melle also noted that there had already been partial compliance with the accepted October Offer, including the removal of property from the home, the transfer of some property between the parties, and the delivery of some property to the child. Only two more steps had to be taken for full compliance: Mary had to pay $278,729 to Rodney for equalization, and Rodney had to transfer his interest in the matrimonial home to Mary.

Query why the *Family Law Rules* ***require*** both signatures — if both signatures are not required. And the *Family Law Rules* still do not include an equivalent provision to the *Rules of Civil Procedure* such that a failure to comply with the *Rules* is an irregularity. Very respectfully, despite decisions to the contrary, when a *Rule* that can have material consequences is clear, it is dangerous to suggest it need not be followed, for how are counsel and parties to know which Rules have "give"?

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