

## Setting Aside a Gift

Courts will intervene to set aside or take back gifts acquired through undue influence. Judges find it repugnant to enforce gifts that are the result of fraudulently or coerced generosity.

In *Geffen v. The Goodman Estate*, a grandmother's new Will left her home and estate to her daughter Tzina, for the balance of her life. Upon Tzina's death, each of her children received an equal portion of the balance of the estate. Tzina was a manic-depressive and the grandmother was concerned about her daughter's ability to support and take care of herself and her children.

The grandmother's sons shared her concern for their sister Tzina, but felt the new Will was unfair. The original Will gave a life estate in the home to Tzina. The difference was that after her death, all the grandchildren were to share equally in the residue of the estate. The new Will disinherited the brothers' children. After some reflection, Tzina agreed that the new Will was unfair. A trust, administered by her brothers was set up whereby Tzina would have the house as long as she lived. After her death, the balance of the Estate would be equally divided among all the grandchildren. Before agreeing to set up this trust, Tzina had independent legal advice. Through this trust, Tzina gave her nieces and nephews a gift at the expense of her own children.

Tzina's son argued that his uncles exerted undue influence on his mother and manipulated her to divide the residue of the estate between all the

grandchildren. To presume undue influence, the court would have to decide that Tzina's brothers had the ability to dominate her decision making process, whether through manipulation or coercion. It would be irrelevant if this dominance was an outright or subtle abuse of power. Had the court accepted this argument, then the burden of

proof would have been on the uncles and cousins to prove that Tzina made the decision independently of them.

### CONCLUSION:

Courts will presume undue influence has been exerted when a gift is made by someone whose decision making process is dominated by the beneficiary of the gift. The court provided a non-inclusive list of these types of relationship and stated that Tzina and her brothers did not meet the test. The Supreme Court of Canada found that the relationship between Tzina and her brothers was such that the brother's were not dominant like a lawyer is to his client, parent to a child or a guardian to his ward. The court found that Tzina made up her own mind

about the Trust/Gift and partly based that belief on her limited casual contact with her brothers and the fact that she had independent legal advice before making the decision.

There is an old joke that death is not the end..... it is the beginning of estate litigation. Despite the temptation to jump to conclusions, it would be a mistake to view this canvassing of a significant legal issue as legal advice. It is always advisable to speak to a qualified lawyer to determine if circumstances are sufficient to make a claim to set aside a gift.



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