

We were behind Mercaz HaRav massacre, Hamas says

JERUSALEM (Arutz-7) – Hamas revealed statistics recently that contradicted predictions by supporters of the 'Disengagement' program in 2005 that the withdrawal from Gaza would lead to peace. Hamas also says it was behind the 2008 Mercaz HaRav Yeshiva massacre in Jerusalem.

Abu Obadiah, spokesman for the Izz al-Din al-Qassam military wing of the Hamas terrorist organization, confirmed predictions by nationalists that the expulsion of 9,000 Jews from Gush Katif and the withdrawal of the IDF from the area would be followed by an escalation in missile attacks.

He admitted for the first time that Hamas was respon-

sible for the massacre of young men, most of them teenagers, at the yeshiva. The attack was carried out by a Jerusalem Arab.

Obadiah also said Hamas was responsible for the murder of seven other Jews in attacks in the Hevron area and Samaria. He warned Israel that Hamas will continue to attack Israelis, who he said have to choose between "death and leaving Palestinian lands." He also called on Israeli Bedouins, many of whom have been involved in terrorist attacks and arms smuggling, to help carry out attacks against Israelis.

His statistics on the number of missiles, rockets and mortar shells fired at southern Israel since the expulsion in 2005 thoroughly contradicted

claims by the Sharon government and supporters of the 'Disengagement' program that the withdrawal would lead to peace. Sixty-nine per cent of nearly 11,000 mortar and missile attacks were executed after the expulsion, according to his figures.

He also said that of the 1,808 Hamas terrorists killed since the founding of the terrorist group 23 years ago, 1,053 died after 2006, when Hamas won the first and only Palestinian Authority legislative elections.

The escalation of missile attacks on southern Israel after 2005, which brought the metropolitan Tel Aviv area within the range of attacks, surprised political leaders who had banked on the expulsion as the road to

peace.

"I did not imagine that we would leave Gaza and they would fire Kassams from there," President Shimon Peres commented in July 2008.

Hamas leader: Holocaust a 'lie'

(JTA) – A top Hamas leader called the Holocaust a "lie."

"The lie according to which they were a victim of a holocaust and the (Jewish) people are a victim – this lie has crumbled with the holocaust of Beit Hanun, the holocaust of Al-Fakhura and the other countless holocausts...committed by the Zionist enemy," AFP, the French news agency, quoted Mahmoud Zahar as saying last Thursday. Zahar was listing incidents during the Gaza War two years ago and marking the second anniversary of the landing of an Israeli shell near Al-Fakhura, a school run by the UN Relief and Works Agency in the Jabaliya refugee camp.

Chilean senator calls country's Jews Israeli 'agents'

SANTIAGO, Chile (JTA) – A Chilean senator has charged that prominent Jews, including the country's interior minister, are agents of the Israeli government.

Senator Eugenio Tuma, who is of Palestinian descent, also said that Chilean Jews are responsible for holding back the country's recognition of a Palestinian state. Five Latin American countries – Bolivia, Brazil, Argentina, Uruguay and Ecuador – have recognized a Palestinian state in recent weeks.

The Palestinian community in Chile is believed to be the largest outside of the Middle East. At least 300,000 Chileans are of Palestinian descent, according to reports.

Tuma accused Interior Minister Rodrigo Hinzpeter, who is Jewish, of being "an activist and militant for the Israeli cause." He made similar remarks about Gabriel Zaliassnik, president of the Comité Representativo de las Entidades Judías en Chile, the Jewish community's central body.

"Senator Tuma's bigoted remarks are an affront to all Chileans and should be wholeheartedly condemned by the highest levels of government and civic society," said American Jewish Committee Executive Director David Harris. "Inserting the Israeli-Palestinian conflict into Chilean politics in such an odious way, and calling into question the loyalty to Chile of some of its most devoted citizens, is contrary to the nation's democratic and pluralistic tradition.

"Of course, there is an obvious irony to Senator Tuma's posture," Harris said. "As a Chilean of Palestinian origin, he deems it entirely appropriate to take up the Palestinian cause and press it in the corridors of Chilean power. Yet he questions the right of a Chilean Jew, like Mr. Zaliassnik, to affirm his belief in what's best for Chile's national interest."

Can assets of an estate be left to one heir, leaving others out in the cold?



Charles Wagner

estate be transferred to the support of Paul.... I do not think that this would be the correct disposition of the case. I believe that, apart from any residual value that is to be attributed to freedom of testamentary disposition...moral considerations continue to play a part in the analysis."

So has Ontario followed British Columbia's lead? Maybe, maybe not.

I have reviewed many related Ontario cases post Cummings. To the best of my knowledge no Ontario court has understood Cummings to mean that the moral claim of a disinherited adult non-dependent child was legally enforceable. As you recall both the adult children in Cummings were dependants, which means that the father was providing support or was under a legal obligation to provide support immediately before his death. It may be that the courts apply the moral obligation only for dependants. For example, in a recent Ontario case, *Johnson v. Huchkewich*, one disinherited daughter challenged her mother's will. The judge did not even address whether a child's moral claim constitutes a legal claim. The only relevance of "moral claims" was how it reflected on capacity. The daughter argued that her mother lacked the ability to assess and appreciate the moral claims of her children and therefore did not have capacity. The judge did not accept that argument.

So will the winds of non-dependent adult children's moral claims from British Columbia blow through Ontario? It still remains to be seen. However, there are a number of lawyers who believe it's coming. In her article on this topic, prepared for the Law Society of Upper Canada's continuing legal education program, Susan Woodley (a very well respected member of the bar in Ontario) answered the question this way: "almost, possibly, probably."

This short review of the case law should not be taken as legal advice. Based on my experience in dealing with these cases, they often turn on the specific facts. If you have a legal question relating to something similar, you are best advised to seek out competent legal counsel to determine your best course of action.

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While their father loved both Samantha and Reuben equally, in his will, and in accordance with his culture, all the assets of the father were left to the male heir. Is this legal?

The legality of a father's will may depend on which province's law applies. If the law of British Columbia governed, there is a very good chance that Samantha would succeed and the court would order the estate be split equally. If Ontario law applied and there were no other legal issues raised concerning the validity of the will, then Samantha would have a less likely chance to win. Why the uncertainty? Let's look at three cases to explain, *Tataryn v. Tataryn* (FN1), *Cummings v. Cummings* (FN2) and *Johnson v. Huchkewich* (FN3).

Tataryn was a case in British Columbia. It was ultimately decided by the Supreme Court of Canada. In summary, the deceased's will favoured one son and disinherited the other son and gave less money to the deceased's wife. The court varied the will based on the deceased's moral obligation to his wife and disinherited adult son. In British Columbia, unless there is some debt or the favoured child is a dependent, or there is a valid reason for disinheriting a person, each child has a moral and legally enforceable claim against the estate.

The importance of "moral claims" as set out in the Tataryn case was adopted by the Ontario Court of Appeal in 2004 in *Cummings v. Cummings*. In this unfortunate case a second wife was litigating against dependent adult children of a first marriage. The son, Paul, suffered from a progressively debilitating incurable neuromuscular disease known as Becker's muscular dystrophy. Paul was arguably entitled to the all of the small estate. Citing Tataryn, Justice Cullity explained, "The issue of the weight to be given to moral considerations is relevant in this case: it is posed quite directly by the [second wife's] concession that she is not in need of support. On a strictly needs-based approach, I might well be justified in ordering that the entirety of the net testamentary

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