NEWS

Hasbarah, CCZ plan to launch presence at Ryerson

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bomber and would have no qualms raising her daughter to be a shahid."

A couple of weeks ago, when US-based anti-Israel professor of linguistics Noam Chomsky was scheduled to address York students via satellite, CCZ and Hasbarah joined forces to provide information about what Chomsky stands for.

"We wanted to do a protest," Feferman said, "but the university administration wouldn't allow it, saying they didn't want a lot of noise and they were afraid that signs could be used as weapons." The students settled for a table with handouts about Chomsky and two large posters, one depicting Chomsky with [Hezbollah leader] Nasrallah. One poster quoted Chomsky's statement: "I see no antisemitic implications in denial of the existence of gas chambers, or even in denial of the Holocaust."

The event was successful in providing information, Feferman said. "Over the course of four hours, a few hundred people came by. About half of them were moderate people who said they had heard about Chomsky in their English class and didn't know he had these views. The other half were people who condemned Israel and insisted Hezbollah isn't a terrorist organization. At one point the latter group surrounded us, argued about issues and blamed America and Israel. We had good security, including non-uniformed security guards. We succeeded in raising awareness of Chomsky's worldviews, although at times it was confrontational. We're now organizing a protest for the Finkelstein event at U of T on Thursday."

Hasbarah and CCZ are making plans to launch a presence at Ryerson University, where the vice-president of the student union has made several unsuccessful attempts in recent months to impose a boycott, divestment and sanctions motion against Israel and has organized a number of anti-Israel programs on campus.

(Last week, when a couple of Ryerson Student Union leaders tried to introduce a boycott, divestment and sanctions campaign against Israel at the annual congress of the Canadian Federation of Students, more than two-thirds of the voting plenary rejected the call. B'nai Brith had called on the Federation to reject categorically the boycott proposal.)

"Two [Ryerson] students in the past few weeks called me and said they need help doing something," Feferman said. "We're going to try to find the students there and hope to start advocating properly on campus."

After the anti-Jewish near-rioting at York last week, one student, representing the "Independent Body and Advocates of Peace and Humanity at York," handed out flyers at a York senate meeting, stating its opposition to any comparison of Iranian President Mahmoud Ahmanidejad with Hitler and claiming that CCZ was marginalizing Iranians by attacking Iran's leader. According to Feferman, these same students who resent any criticism of Ahmanidejad and worry about a negative impact on Iranian students are active proponents of anti-Israel activity.

"Freedom of speech is only for them," Feferman said. "The right to censure a country's leader is only for them."

At the senate meeting, no discussion followed the student's statement advocating the removal of CCZ from campus. However, in a Facebook chat room later that evening, a member of the Independent Body and Advocates of Peace and Humanity wrote: "I just wanted the top authorities of the university to be informed.... Right after the meeting, other senators approached me and showed me their FULL support, whom of which [sic] control many things at the university."

According to Feferman, "that group wanted to use its freedom of speech in their anti-Israel campaign. Now they're adding a new element: Pursuing political and administrative means. They feel they have had success in reaching so many people over the years for their cause. They feel they can succeed further. Because of a lack of overall pro-Israel advocacy on campus, they have been 'educated' by them.

"At the end of the day, there's the issue of dignity," he added. "We have soldiers dying to protect us in Israel. We have to protect Israel's image on campus."

The Law Discriminates Against Common Law Spouses

Heather and Chaim never believed in marriage. They lived together for 20 years, had 3 children and were happy. Chaim was hit by a truck and died. He had no Will. Had Heather been legally married she could have:

1. had the right to elect for an equalization payment under the *Family Law Act* ; or
2. received an inheritance by virtue of an intestacy under the *Succession Law Reform Act*. Since there was no Will, Heather would have inherited a preferential share of the estate equal to $200,000 and 1/3 of the balance to share with the Chaim's three children.

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As a common law spouse the legislation only allows Heather to sue the Estate and seek support as a dependant. There is no statutory right to an inheritance or to property through an equalization payment. Clearly, Heather has fewer rights than she otherwise would have if she had married Chaim. Is the different treatment accorded to a common law spouse wrong? Does it offend the Charter of Rights and Freedoms?

The Charter of Rights and Freedoms has created a sea change in how Canadians view their laws and themselves. Canadians now challenge laws which they believe offend the equality provisions set out in Section 15 of the Charter of Rights and Freedoms. A Charter challenge is based on a two pronged test. The Court determines if the legislation discriminates against the claimant based on one of the listed grounds (or one that is analogous) and whether such discrimination is justifiable in a free and democratic society. Even if discrimination occurs, the legislation may still be valid if the impact is minimal or if it does not offend the dignity of the person.

In *M v. H.* the Supreme Court of Canada compelled Ontario to change the definition of "Spouse" as set out *in the support provisions of the Family Law Act.* Prior to that case, common law heterosexual couples were included in the definition of spouse, but Gay and Lesbian couples, by omission, were excluded. The Supreme Court of Canada ruled that, for the purposes of support under the *Family Law Act*, a spouse includes "…either of two persons ...". The court ruled that the *Family Law Act's* limiting the definition of spouses to heterosexual couples, for the purposes of support, was discriminatory and not justifiable. By changing the definition to "…either of two persons" the court redefined spouse to include couples made up of two men, two women or even two transvestites.

After *M v H.*, **Walsh v Bona** surprised many observers and profoundly changed the Canadian legal landscape. In contrast to its decision in *M v. H*, the Supreme Court of Canada upheld the definition of "Spouse" an only being a married couple in matters relating to division of Property.

In *Walsh v Bona*, a common law relationship ended after ten years. The woman sought a share of her late common law husband's assets, but the *Nova Scotia Matrimonial Property Act* (much the same as Ontario's *Family Law Act*) only gave legally married people the right to a share of their partner's property upon the dissolution of the relationship. Common law spouses did not have the same right. The Supreme Court of Canada held that the distinction did not offend the Charter of Rights and Freedoms because the differentiation was based on the individual's choice as to whether or not to be married. Those choices are based, in part, on the legal rights and obligations that flow from choosing to be married. To wipe out the distinction between marriage and common law relationships takes away an individual's freedom to choose between one type of family unit or the other.

Walsh v Bona has large implications for Estate Planning and Estate Litigation in Ontario. It seems that the distinction between married and common law spouses, in relation to property rights, does not offend the Charter. Accordingly, common law spouses are unlikely to successfully challenge the definition of spouse that precludes them from inheriting by virtue of the laws of intestacy under the *Succession Law Reform Act*, or from being permitted to make an election for an equalization payment under the Family Law Act.

In my view, regardless of the omission of common law spouse from the legislative definitions, disinheriting common law spouses is an invitation for estate litigation. Disinherited common law spouses still have common law remedies, the sufficiency of which, virtually guarantees estate litigation. For those in a common law relationship, the surest way to avoid estate litigation is to draft Wills that have their spouse's needs in mind and include them as beneficiaries. Do not mistake this for moralizing; it is Machiavellian counsel on how to avoid estate litigation.

Despite the temptation to jump to conclusions, it would be a mistake to substitute this review of the topic for substantive legal advice. For those considering this option, there is no replacement for a competent solicitor's own research, analysis and judgment.

Charles B. Wagner practices Commercial and Estate Litigation in Toronto. For those researching Estate Litigation, you may access his website for articles of interest and relevant on-line legislation at www.cbwagnerlaw.com or contact Mr. Wagner at 416 366 6743. The author gratefully acknowledges the assistance of Daniella Wagner in the preparation of this article.

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