

Testamentary capacity, undue influence and Banton v Banton

TORONTO – George Banton, 88, was alone and depressed. A 32-year-old waitress named Muna enters his life and gives it meaning. He marries Muna and makes a new will giving her everything. At trial, Justice Cullity set aside the finding that George Banton lacked testamentary capacity and that Muna unduly influenced him.

On May 16, 2011, a mock appeal of the case will be held at Shaarei Shomayim as part of the Continuing Legal Education Seminars put on by the Lawyers Division of Bnai Brith Canada, Estate and Trusts Group.

The trial judge's finding as to the invalidity of the will was based on the fact that George's decision to disinherit his children was rooted in the delusional belief that one of his sons had assaulted him and that all of his children were only interested in his money. Charles B. Wagner (<http://bit.ly/cwagner>) and Ian Hull (<http://bit.ly/ianhull>) will be the lawyers representing Muna in the mock appeal before Jordan Atin (<http://bit.ly/jordanatin>).

In the mock appeal, Wagner will argue that, even if George was incorrect in his



JORDAN ATIN
Mock appeal judge

beliefs, there is case law that stands for the proposition that the mistaken belief of an untruth does not necessarily qualify as a psychotic delusion, if a reasonable person could have believed it to be true. Furthermore, there are cases, such as *Chalmers v. Uzelac*, in which courts have found that if the decision to disinherit was not the sole reason for the disinheritance then the will may be valid.

Can we imagine how George felt? He was alone waiting for the mercy of a phone call and visit from his children. Arguably, that all changed with Muna. Wagner will suggest that George's main reason for changing his will was his love of Muna – not the delusional beliefs



IAN HULL
Represents Muna Banton

about his children. However, even if the court accepts Wagner's argument, that is not the end of the debate.

In the mock appeal, Archie Rabinowitz (<http://bit.ly/arabinowitz>) and Kimberly Whaley (<http://bit.ly/kwhaley>) will be representing the Banton children. Rabinowitz will argue that, regardless of George's capacity, Justice Cullity was correct in finding that Muna unduly influenced him into disinheriting his children. If Muna did so, the will should be set aside even if George had testamentary capacity. The key will be to demonstrate that Muna's influence was so great and overpowering that the will was not truly authored by George. He did no more than delegate his will-making power to Muna. Furthermore,



CHARLES B. WAGNER
Represents Muna Banton

Rabinowitz will point out that, at the time in question, George was terminally ill with cancer. He was frail, his hearing was impaired, his memory was failing and he was detached from reality. Accordingly, the threshold for undue influence for someone like George was substantially lower.

The seminar, sponsored by Scotia Private Client Group, Shaarei Shomayim Syna-



ARCHIE RABINOWITZ
Represents Banton children

gogue and B'nai Brith Canada is designed to assist professionals that deal with issues relating to elder abuse. Each attendee will receive a binder and a flash drive, which will contain papers prepared by the lawyers about different aspects of the case as well as some actual court documents relating to the case.

At the end of the seminar,



KIMBERLY WHALEY
Represents Banton children

there will be a question-and-answer session.

As noted above, the seminar will be held Monday, May 16, 2011 at Shaarei Shomayim, 470 Glencairn Ave., ON M5N 1V8. Registration and breakfast starts at 7:30 a.m. and the seminar starts at 8 a.m. For information or to register, call Hyla Reichmann at (416) 633-6224, ext. 128, or email hreichmann@bnaibrith.ca

Itanu Toronto honours woman, social group

Shlomo Kapustin
Correspondent

TORONTO – An enterprising young woman and a valued social group were recognized for their good works recently.

Itanu Toronto, UJA Federation's Inclusion Initiative, held its fourth annual awards ceremony and gave kudos to the Bagel Club of Jewish Family & Child and Yaffi Ulman. The event, which attracted a pre-Passover crowd of about 100 people, took place at the Canadian National Institute for the Blind.

Founded in 2002 to enhance the participation of special-needs people in Toronto's Jewish community, Itanu stakes out unusual territory.



YAFFI ULMAN
Itanu Toronto honouree

"We don't provide services," said Ellen Terry Cole, the evening's master of ceremonies and the executive director of the Miles Nadal JCC. "We challenge, raise awareness and build capacity in community organizations

to make Toronto and the Jewish community a more welcoming place."

Keynote speaker Toni Silberman, whose husband lived with ALS for 21 years, dazzled the audience with a passionate and articulate account of her experiences.

"People with disabilities are social beings," she said. "They, like us, need the touch of another hand, the smile and laughter of friends."

Each of this year's award recipients inhabits a different niche in the special-needs community.

The Bagel Club provides more than just bagels. At two Toronto locations, its members come together once a week to discuss world events, attend group outings and simply shoot the breeze. Most importantly, though, is the mutual respect and authenticity that the group brings to adults experiencing social isolation and mental-health issues.

Ulman, on the other hand, has devoted her energies to children with disabilities. From her work with Friendship Circle and Chai Lifeline to her own five-year-old offering, Camp Aim, she has come a long way from the girl who, when asked seven years ago to volunteer, replied, "I do not do special needs."

While both honourees cater exclusively to people with special needs, Itanu strives to change the wider community's attitudes. According to Sandi Pelly, the group's sole staff member, it ensures that people with special needs are allowed to participate fully in Jewish communal life, even by adding elevators for the physically disabled.

"If we can only continue to infuse inclusion throughout the community," said Pelly, "we'll know that we've been successful when Itanu Toronto is no longer needed."

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