

Second marriages and protecting your children



Charles Wagner

Joseph was 60 years old when he lost his wife to cancer. Online he met an Israeli named Rebecca, a 40-year-old widow. They emailed each other, grew to care for one another and decided to marry. Rebecca and her children moved into Joseph's home. The adult children from Joseph's first marriage feared that Rebecca and her children were going to take away their inheritance. Joseph assured his children that Rebecca signed an agreement under which she gave up all her claims under the Family Law Act and could not claim support against his estate when Joseph died. Joseph assured them they he left his children all of his money. Should the children have relaxed? Maybe - Maybe not.

Revocation by Marriage

Unless Joseph made a new will after he remarried or in contemplation of marriage, Joseph's old will was revoked by his marriage to Rebecca. By virtue of the laws of intestacy, despite the contract, Rebecca would receive a preferential share (the first \$200,000) and a distributive share (1/3) of the balance.

Family Law Act Considerations

So let's assume Joseph makes a new will. Can his children rely on the fact that their father had Rebecca sign a domestic contract? Rebecca's lawyer may argue that Joseph failed to disclose significant assets when the domestic contract was signed. Furthermore, her lawyer may argue that Rebecca's English was minimal and she did not have independent legal advice so there is no way she understood the nature and consequences of signing this contract. Accordingly, the contract may be set aside and Rebecca could exercise her right under

section 6 of Ontario's Family Law Act. That would entitle Rebecca to receive an equal division of net family property under section 5 of the legislation.

Succession Law Reform Act Issues

Now let's imagine that at Joseph's insistence Rebecca hires a lawyer who speaks Hebrew so she cannot later claim she did not understand the contract. Joseph's lawyer makes full and frank disclosure of all of his assets in the agreement. Can the children now relax? Unfortunately - the answer is not yet. Under Ontario law such an agreement is only one factor the court has to take into account and the court has the discretion to ignore the contract. For example, in *Butts Estate v Butts*, a husband and wife signed a separation agreement providing for \$500 per month support. No one disputed that this was to be a final agreement. Despite the fact that there was a contract where both parties fully understood the terms of that agreement the court decided that the support provided was insufficient and increased the support payments to be paid by the estate to the separated wife to \$1,000 per month.

There is a very old joke that death is not the end - it is the beginning of estate litigation. While the scenario outlined above is fictional it nonetheless reflects a growing trend. People often feel they were treated unfairly and go to court despite signing a contract where they agreed not to make any claim. Based on my experience in dealing with these cases, and what should be evident from this review, each situation's facts may make a world of difference to how a court might view a case. Whether a party is seeking to get married or there is a dispute after death, there is no replacement for seeking out the advice of a competent experienced lawyer who knows how to protect your interests.

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Despite large '68 emigration, Jewish life continues in Poland

Denise Rootenberg
Correspondent

TORONTO - Scholar, author and associate editor of *Midrasz* magazine Bella Szwarcman-Czarnota was recently invited by the Polish-Jewish Heritage Foundation of Canada and Beth Habonim Congregation to speak in Toronto about the continuity of Jewish life in Poland.

Following the antisemitic campaign of 1968, 35,000 Jews left the country. At first Szwarcman-Czarnota felt the continuing existence of the few remaining Jewish entities like the Social-Cultural Association of Jews gave legitimacy to the communist regime and, therefore, should cease to exist. Others, including the dilapidated Nozyks synagogue in Warsaw and the Srod-borowianka holiday home were frequented primarily by the elderly.

She was unaware then that Jewish life continued in smaller centres and now feels their contribution has been underestimated. "Their very existence belies the thesis that fear to reveal one's Jewish origin was a prevailing phenomenon in communist times."

However, it was the romantic concept of Jews (mostly well-educated city dwellers) reclaiming their Jewish identity that primarily captured researchers' imaginations and led to the misconception that there had been no Jewish life in Poland until the end of the

1970s. She admits that she mistrusted the "crypto-Jews" at first, wondering how they could assume the religion after decades of Catholic upbringing or at an advanced age.

After 1989, the Jewish renaissance was primarily religiously oriented, essential for creating a solid foundation, which could not be formed solely from "biology and genetics... [or] antisemitism, the Shoah and so-called Jewish humour." The simultaneous education of adults and their offspring began, with an initially small kindergarten, the youth organization ZOOM, the appointment of charismatic Rabbi Michael Schudrich and the Jewish Hot Line, a confidential service for people still hesitant about revealing their Jewish ties. A B'nai Brith lodge opened a year ago. A period of "golden harmony and accord" commenced, although divisions between religious and secular Jews and supporters of the democratic opposition movement and non-participants lay beneath the surface.

"For some people the very awareness of their Jewish roots is sufficient."

The monthly magazine *Midrasz*, partially funded by the Polish government, Festivals of Jewish Culture and the Jewish Book Fair attract many who would not participate in formal Judaism. That said, there have been many conversions of late, both Orthodox and - more



Bella Szwarcman-Czarnota - scholar, author and editor - talks about continuity of Jewish life in Poland.

recently - Reform. The aforementioned Nozyk synagogue, the most dynamic in Poland, is Orthodox and attracts the majority of media coverage and tourists. However, secular Jews outnumber Orthodox Jews in Poland and Szwarcman-Czarnota bemoans the dearth of attractive options for them.

The Ronald S. Lauder Foundation has been the largest sponsor of the Jewish revival in Poland. At present, 2,500 to 3,000 people are registered with Jewish organizations. When an audience member questioned the exorbitant cost of maintaining such a small community, Szwarcman-Czarnota responded that Poland was the cradle of European Jewish life for a millennium and is the repository of documents and artefacts that are not for export.

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Synagogue garden is testimonial to children who perished in the Holocaust

TORONTO - Beth Emeth Bais Yehuda Synagogue, a 1,300 member multi-generational family, is pleased to announce that construction has begun on The Samuel Edelstein Children's Garden (Garden), a landmark testimonial to the children who perished in the Holocaust, located at the entrance to the Conservative synagogue, 100 Elder St., Toronto. Tami Benayon (left) and Rena Attar, two of the three daughters of the late Samuel Edelstein, were on hand recently to witness the first stage of construction. Edelstein, a Holocaust survivor, believed that the best answer to the horrors of the Holocaust was each succeeding generation of Jewish children. Rena, Tami and Ruth Edelstein stated, "He would have been the first to say that we should be building gardens in tribute to the children of the Holocaust, not memorials, as gardens represent the total life cycle from beginning to end and then renewal." Beth Emeth Bais Yehuda Synagogue will also be one of the designated organizations in Canada to have the honour to plant in the garden a sapling from the famous Anne Frank's chestnut tree.