## Point of View

# Rights of disinherited second wife – full and frank disclosure

Charles Wagner

People who sign domestic contracts should know that failure to make full and frank disclosure of all relevant financial information opens the door for the contract to be set aside.

In the LeVan case, Richard's family's business was worth $30 million. Before his marriage to Erika, Richard's family insisted that they enter into a marriage contract. The contract excluded Richard's business interests and severely restricted Erika's rights to support upon end of marriage or upon Richard's death. The court set aside the contract and the LeVan case became the seminal case for the proposition that full and frank disclosure should be a foundation stone of every domestic contract.

When trying to understand this case, it is helpful to review key provisions under the Family Law Act (FLA). Two people who are engaged or married to each other can agree about what happens when their marriage ends or upon death. In other words, the provisions of the FLA meant to protect the financially weaker spouse do not apply if the parties sign a contract that say they do not apply. While the FLA allows for a spouse to choose to take an equalization of net family property and support, the law also allows spouses to make their own deal. There is, however, another provision in the FLA that protects the financially weaker spouse.

Section 56(4) was the key provision that Erika relied on to protect herself. A court may set aside a domestic contract if a spouse failed to disclose significant assets existing when the domestic contract was made or if the other spouse did not understand the nature or consequences of the contract.

While Richard provided some information, there was no information about his income, no value as to his interest in the family business or his beneficial interest in a Trust. Also, as the wedding approached Richard began to undermine his wife's relationship with her lawyer. Richard found Erika a new lawyer who did not possess relevant financial information. Richard kept telling Erika that if the contract was not signed there would be no marriage. At trial, the judge found that Richard did not want Erika to know his income or the value of his assets because he wanted to control their lifestyle.

Richard was afraid that full disclosure might lead to more aggressive demands and a less favourable contract. The judge concluded that Richard did not make full and frank disclosure and she exercised her discretion to set aside the contract. However, failure to make financial disclosure may not be enough for a court to set aside the contract.

In LeVan, the failure to disclose opened the door to allow the judge the discretion to set aside the contract. Significant to the court's decision, was that Erika did not have effective independent legal advice, she did not understand the nature and consequence of the contract, Richard misrepresented the nature and terms of the contract, he deliberately failed to disclose his entire assets and interfered with Erika's receipt of legal advice.

Another important fact was that the contract was unfair. Although there is nothing in the FLA that suggests that fairness is a consideration in deciding whether to set aside a marriage contract, the Court of Appeal agreed that fairness is an appropriate consideration in the exercise of the court's discretion.

LeVan was decided in 2006 and is still binding law.

Whether a spouse makes full and frank disclosure in a domestic contract is very relevant in the context of estate disputes. If the contract is set aside, the surviving spouse may turn to their statutory rights for a division of net family property and support under the FLA.

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, seek legal advice to determine your best course of action.

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# Seminar explored conflicts between physicians and patients

TORONTO – Legal, ethical and religious experts last week explored the conflicts that can arise between physicians and patients when it comes to 'heroic' lifesaving measures.

B'nai Brith Canada's eighth annual Trust and Estate Seminar was held at Shaarei Shomayim Synagogue June 2.

The successful, well-attended event, geared towards lawyers and accountants, offered interesting and informative presentations and discussions focussed on the ramifications of what is widely known as the Rasouli case.

Hassan Rasouli went into hospital in 2010 to have a benign brain tumour removed but suffered devastating effects after contracting meningitis and could only be kept alive through the use of a ventilator, feeding tube and other medical interventions. He had not put his 'end-of-life' directives into writing, nor had he formally designated a substitute decision-maker, so when doctors wanted to take him off life support, his wife had to go all the way to the Supreme Court to stop them. While the case was wending its way through the courts, his medical condition was upgraded from 'persistent vegetative state' to 'minimally conscious' and he is still alive in hospital today.

The Rasouli case offers important lessons for lawyers, accountants, religious leaders, patient advocates and families, as each of the panelists – including lawyers involved on both sides of the court cases – attested.

Charles Wagner of Wagner Sidlofsky LLP chaired the half-day event and Anita Bromberg, formerly national director of legal affairs for B'nai Brith Canada, co-chaired.

The seminar was accredited by the Law Society of Upper Canada for both professional and substantive hours as part of its annual continuing professional development requirement.

# BGU, MIT sign new pact

BGU Dean of the Faculty of Engineering Sciences Prof. Joseph Kost (left), BGU Rector Prof. Zvi Hacohen, MIT-Israel Faculty Director and MIT's Dean of Graduate Education Prof. Christine Ortiz created the first MIT-Israel/BGU Seed Fund on Sunday. (Photo: Dani Machlis/BGU)

BEER-SHEVA, Israel – The relationship between the Massachusetts Institute of Technology (MIT) and Israeli academic institutions has been expanded through an agreement signed last week with Ben-Gurion University of the Negev (BGU).

MIT has collaborated with BGU since 2007 and MIT students from around the world have done internships in Israel at businesses, startups and research labs at universities – including BGU – through MIT's International Science and Technology Institute (MISTI) program.

Through their new agreement, MISTI has established one of its global seed funds at BGU, to support new cooperation between faculty and research scientists at both institutions. The MIT-Israel/BGU Seed Fund is the first of its kind in Israel but administrators expect more will be set up in future.

"We at BGU are excited and looking forward to tightening our collaboration with MIT faculty and students," said Joseph Kost, dean, faculty of engineering sciences, BGU.

"We see this as another step in creating widespread, lasting relationships between the scientific communities at MIT and BGU and hope to launch other MIT-Israel Seed Funds in specific areas of interest and with other Israeli academic institutions," said David Dolev, assistant director, MISTI and managing director, MISTI MIT-Israel.

Dolev was in Israel last week with Christine Ortiz, dean of graduate education, MIT and faculty director, MISTI MIT-Israel, as part of Massachusetts Governor Deval Patrick's trade mission to Israel.

MITSI seed funds have been established in 18 countries, including Israel, China, France, Germany, India, Italy, Japan, South Africa and Spain.