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LAWYERS & MEDIATORS

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LAWYERS & MEDIATORS

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IN THIS ISSUE:

Now Serving Midland!

We are pleased to announce the merger of Prost & Lediard with Devry Smith Frank *LLP* ('DSF').

Prost & Lediard has been a strong presence in Midland, Ontario for the past 4 decades, providing excellent legal services within the greater Georgian Bay area from its location at 323 Midland Avenue.

With the support of DSF's infrastructure and expertise across a broad range of practice areas, Prost & Lediard will be well-placed to be a top-rated, full-service law firm to serve an even greater number of satisfied clients.

This partnership with DSF will allow clients in Midland and within the greater Georgian Bay area to access DSF's vast pool of resources while maintaining their trusted relationships with Martin Prost and his team. We are proud to add Prost & Lediard to the DSF community and to continue to provide excellent legal services together.

Now Serving Haliburton!

In 2022, DSF acquired the practice of Bishop and Rogers in Haliburton, Ontario.

Located at 238 Highland Street, Bishop and Rogers has developed a strong reputation over the last 40 years for providing high-quality service to clients in Haliburton, Minden, and the surrounding areas.

We now offer Haliburton County residents our full array of legal services, with lawyers in ALL practice areas including Real Estate, Wills and Estates, Estate Litigation, Family Law, Business and Corporate Law, Bankruptcy and Insolvency, Power of Sale, Condominium Law, Municipal Law / Land Uses Planning & Development, and Immigration law.

Our present roster of over 70 lawyers (as well as law clerks, paralegals, legal assistants and administrators) can remotely assist rural communities and support our clients' legal needs no matter where they live.

EVENTS & SPONSORSHIPS

DSF / Woitzik Polsinelli *LLP* won best law firm in Durham in 2022 by Durhamregion.com for successfully serving Oshawa/Whitby, Clarington, Ajax/ Pickering, Port Perry and Uxbridge.

July 2022 - DSF / Woitzik Polsinelli *LLP* sponsored a hole for Connecting G.T.A.'s annual golf tournament which supports Connecting G.T.A.'s entrepreneur networking programs.

DSF / Woitzik Polsinelli *LLP* sponsored a hole for the Durham Outlook's hunger drive and charity golf tournament.

October 2022 - DSF / Woitzik Polsinelli *LLP* sponsored the beavertail truck for ReMax Broker Dorothy Harrison's Community Fall Festival event.

November 2022 - DSF / Woitzik Polsinelli *LLP* sponsored Cindy & Craig Real Estate Ltd.'s Winter Wonderland Charity Gala by donating NBA Raptors game tickets as a prize for the night's auction. All the event's proceeds went to "Feed the Need In Durham" which is an organization that distributes food to local emergency food providers.

November 2022 - DSF / Woitzik Polsinelli *LLP* sponsored the Durham Region Home Builders' Association President's Ball Carnival which raised funds for the children's treatment centre, Grandview Kids.

December 2022 - DSF / Woitzik Polsinelli *LLP* contributed the Durham Region Association of Realtors annual banquet and charity auction. Together we successfully fundraised for Durham Deaf Services, a non-profit organization serving Durham's hard-of-hearing community. Proceeds from this banquet were also donated to Herizon House, a community organization providing shelter and resources for abused women and their children.

DSF's Midland office sponsored the Julianna Matyas Memorial Golf Tournament organized by We Are The Villagers to support their non-profit children's programs.

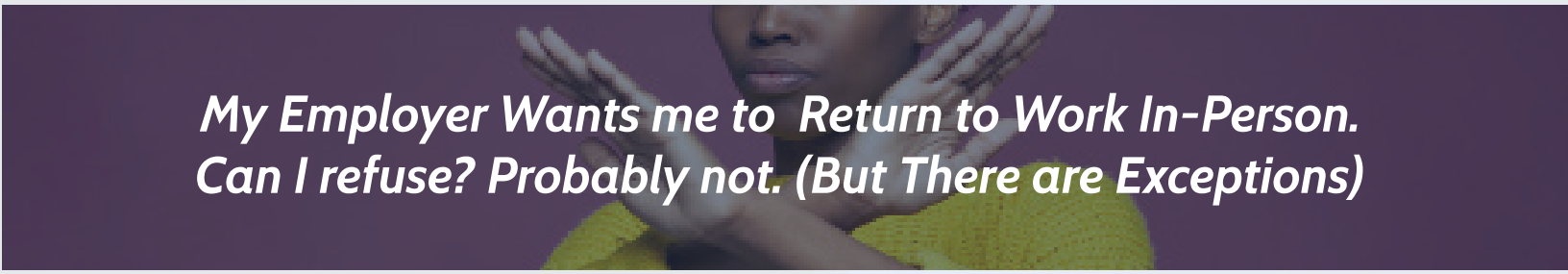
DSF sponsored the Orillia Hawks female hockey team for girls ages 7 to 18. We are happy to help their team flourish.

DSF sponsored the Youth Without Shelter's Annual General Meeting for 2022, an evening of celebration of the accomplishments of the resident youth, dedicated donors, and volunteers.

DSF sponsored the 2022-2023 ringette season of the 16AA Oshawa Storm female ringette team.

January 2023 - DSF sponsored the Wintersong Music Festival in Stouffville,Ontario featuring Juno Award winning musician Dan Mangan.

BLOGS



My Employer Wants me to Return to Work In-Person. Can I refuse? Probably not. (But There are Exceptions)

The end of the COVID-19 pandemic is in sight. Ontario has lifted many public health mandates and restrictions. Many Ontarians are resuming their pre-pandemic lives—including returning to work in-person.

Some have welcomed the transition from working-from-home to returning to the office, while others worry about the loss of the advantages of remote work. Remote work offers the possibility of a better work-life balance, flexibility for childcare, and the time and money saved on commuting. As such, many question whether employers have a right to demand continuing to work remotely, and whether employees may have a basis for refusal.

In most cases, employers do have the right to demand their employees return to the office, and employees, generally, do not have a right to refuse.[1]

However, this principle may not apply to all employment situations as there are a number of factors that must be considered to determine the rights and obligations of both parties to an employment agreement. These factors include the terms of the employment contract, human rights laws, and occupational and health regulations.

Employment contract

Specific attention should be paid to the express and implied terms of the employment contract.

Express terms are those clearly outlined in the agreement itself. Examples might include the wage amount, or the starting date of employment. Implied terms are not expressly stated in the agreement, but are implied by law. Thus, implied terms will largely depend on the province in which the employment takes place. An example might be where the employment contract does not provide for a termination notice period, in which case, the minimum standards as set out in employment standards legislation, would be implied into the contract.[2]

If the employment contract expressly and unconditionally permits the employee to work from home, then the employer would not have the legal basis to require this employee to return to in-person work, and the employee, in turn, would have a legitimate ground to refuse this demand.

Human Rights Laws

Human rights laws may also provide employees with a basis of refusal, but it must be on a prohibited ground of discrimination.[3] In Ontario, the Human Rights Code lists the following grounds: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.[4]

Employers cannot force an employee to return to work, if it would be discriminatory to do so. For example, if an employee cannot return to in-person work due to a disability (which is a prohibited ground of discrimination), the employer has a duty to accommodate, and this accommodation may be allowing for continued remote employment.

Occupational Health and Safety Regulations

Employers have a statutory duty to safeguard the health and safety of their employees pursuant to the Occupational Health and Safety Act (OHSA).[5] By law, an employer must take every reasonable precaution to maintain a safe working environment.[6] These steps include following any remaining COVID-19 public health guidance in good faith.

Employees generally have a right to refuse work which they have a "reasonable basis" to believe is unsafe or a danger to their health.[7] This being said, the reasonableness of this belief is ultimately decided by a government inspector, who would be called to evaluate the working conditions should the employer and employee be unable to address and redress such concern before-hand, and on their own.

[8] The standard of review for such decision is that of correctness, and based on the conditions at the time the work was refused.[9] The following situations are examples of unsafe working conditions granting a right to refuse work: driving a vehicle, which by certain characteristics, is not safe to operate;[10] or failure to provide roofing employees with anchoring technique/guard in case of fall.[11]

Courts have not tested whether simply attending a physical workplace during a pandemic qualifies as an unsafe working condition. Arguably, a workplace could be unsafe where the employer does not follow public health official guidelines, mandates, or restrictions. However, this alone may not necessarily be sufficient to refuse to attend the workplace. Every situation and workplace is different.

It is important for employers to carefully strategize through their return-to-work plans and ensure they are aware of each and every one of their various obligations. It is also important for employees to be aware of their rights to refuse unsafe work — despite the uncertainty as to what that could mean during a global pandemic.

Conclusion

Employers do have the right to demand their employees return to the office, and employees, generally, do not have a right to refuse. However, the employment contract, human rights legislation, and occupational health and safety regulations, each prove an added layer of complexity to that statement.

If an employment contract expressly and unconditionally permits the employee to work from home, then the employee would have a legitimate ground to refuse an employer demand to return to the workplace. Additionally, employers cannot force an employee to return to work, if it would be discriminatory and a violation of human rights to do so. Finally, employees have the right to refuse unsafe work — but there remains uncertainty as to what qualifies as an unsafe workplace during the pandemic.

"This article is intended to inform. Its content does not constitute legal advice and should not be relied upon by readers as such. If you require legal assistance, please see a lawyer. Each case is unique, and a lawyer with good training and sound judgment can provide you with advice tailored to your specific situations and needs."

This blog was co-authored by law student, Julia Ponedelnikova.

[1] Geoff Nixon, "Why your options may be limited if your employer wants you back in the workplace", CBC News, 4 July 2022, online: https://www.cbc.ca/news/business/canada-employers-wfh-office-return-1.6507545

[2] Employment Standards Act, 2000, S.O. 2000, c. 41, ss 57-58.

[3] Ontario, Human Rights Commission, COVID-19 and Ontario's Human Rights Code – Questions and Answers, (News Report), 18 March 2020, online: https://www.ohrc.on.ca/en/news_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-questions-and-answers

[4] RSO 1990, c H.19, s 2.

[5] RSO 1990, c O.1 [OHSA].

[6] Ibid, s 25(2)(h).

[7] Ibid, at s. 43(3).

[8] Government of Ontario, Part V: Right to refuse or to stop work where health and safety in danger retrieved from: https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger

[9] Fletcher v Canada (Treasury Board – Solicitor General Correction Service), 2002 FCA 424.

[10] Morey v CAT, 2022 ONSC 4621.

[11] Ontario Ministry of Labour) v Vixman Construction Ltd, 2019 ONCJ 955.

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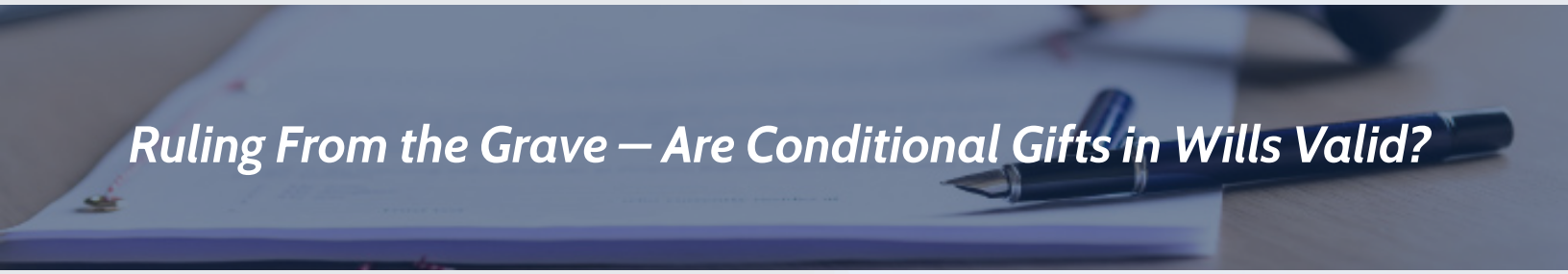

Ruling From the Grave — Are Conditional Gifts in Wills Valid?

A Will serves the function of expressing the testator's last wishes. However, for public policy considerations, not all requests should be granted. While putting conditions on how the beneficiary uses or receives the gift is permissible, there are requirements testators must follow if the gift is to be legally acknowledged.

Condition Precedents
A condition precedent in the context of wills is a condition or occurrence that must occur before the gift can be acquired.

Examples of Valid Condition Precedents

- To receive the money set aside for them, the beneficiary must complete college within 5 years.
- The beneficiary must marry before obtaining the automobile left in the testator's estate.
- The beneficiary cannot get the testator's shares in Company X until they turn 22.

Conditions should be written in a specific way in order to give the condition a reasonable chance of being followed.

A gift cannot, among other things, impose an unreasonable restraint on the beneficiary's ability to marry, require the beneficiary to commit a crime, or discriminate against others on the basis of race, religion, or nationality. There is no exhaustive list of voidable conditions.

Conditions Subsequent
A condition subsequent imposes a condition after the gift has already been received. Specifically, a condition subsequent revokes a gift if a specific event occurs. For instance, a testator leaves land to a specific beneficiary on the condition that the beneficiary never constructs a commercial building on it.

In most cases, testators cannot rule from the grave, meaning that if you leave certain assets or gifts for certain individuals, you cannot unduly restrict their use of them.

The In Terrorem Doctrine
In certain cases, it may be necessary to challenge the terms of the conditional gift in the Will. An In terrorem clause is a conditional gift in a Will, wherein a beneficiary will lose all entitlement to the gift if they breach or fail to adhere to the condition attached to the gift. It is generally used by a testator to encourage or dissuade particular conduct by a potential beneficiary.

In the British Columbia Supreme Court decision of Kent v McKay, the Court held that for the in terrorem doctrine to apply and to find the condition in question void, the following three conditions must be met:

1. The legacy in consideration must be real property, personal property, or a combination of the two;
2. The condition must be in restraint of marriage or one which forbids challenges to the Will; and
3. The threat must be "idle"; that is to say that the condition must be imposed solely to prevent the beneficiary from undertaking that which the condition forbids.

If the condition meets the standards of the in terrorem doctrine, it will be deemed null and void, and the gift will be absolute, regardless of whether there was a preceding or succeeding condition. According to this principle, a court will not uphold a no-contest clause that is a "mere" threat.

In order to be enforceable, a no-contest condition usually requires the designation of a substitute beneficiary for the gift (either a particular person or the residual estate). By doing so, the threat becomes "real" because an actual provision is made to gift another

person (i.e., a “gift-over”).

Public Policy Prevails
The Will under question in Kent contained the following no-contest provision:

“I HEREBY WILL AND DECLARE that if any person who may be entitled to any benefit under this my Will shall institute or cause to be commenced any litigation in connection with any of the provisions of this my Will other than for any necessary judicial interpretation thereof or for the direction of the Court in the course of administration all benefits to which such person would have been entitled shall thereupon cease and I hereby revoke all said benefits and I DIRECT that said benefits so revoked shall fall into and form part of the residue of my Estate to be distributed as directed in this my Will.”

In determining whether the aforementioned no-contest clause passed the three-part test, Justice Lander found that it was not in terrorem because it contained a gift-over provision to the residue, which was sufficient to pass the test’s third requirement.

However, the Court noted that despite the no-contest clause surviving the in terrorem doctrine, the clause was nonetheless void for public policy reasons. The no-contest clause, according to Justice Lander, was intended to prohibit any litigation in connection with any of the provisions of the Will. Therefore, it would have prevented a beneficiary from exercising their legal right to request support for dependents.

Conclusion

Although an individual is free to manage their estate however they see fit, the Kent decision demonstrates the limits of testamentary freedom when provisions of a Will are inconsistent with public principles or may cause social harm. The decision has been followed in a number of jurisdictions in Canada, including Ontario.

For more information regarding Wills, testamentary gifts, or any other trusts and estates related topic, please contact Colleen Dermody at Devry Smith Frank *LLP* at (705) 408-0344 or colleen.dermody@devrylaw.ca.

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This blog was co-authored by law student Owais Hashmi.

[1] Kent v McKay, [1982] 6 WWR 165

For all your queries please feel free to contact Colleen via email at colleen.dermody@devrylaw.ca or call 705-457-1440 / 705-408-0344.

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The Other Party Won't Follow our Court Order – What do I do?

"Orders are not suggestions" is a common sentiment in family court.

In light of the time, money, and effort that is involved in securing a final court order, it is no wonder that someone would become frustrated by the other party's refusal to comply with its terms.

A common question faced by lawyers, is what to do when one party fails to abide by an order – What are the options?

One form of legal recourse is to bring a contempt motion, asking the Court to find that the other party is in contempt of the court order. In family law proceedings, motions for contempt are governed by the Family Law Rules. Payment orders may not be enforced by a contempt motion.

Being found in contempt is a legal consequence for non-compliance with an order. The goal is to deter individuals who feel that they do not need to comply with some or all of the terms of an order. Parties who fail to comply not only interfere with the court process, but obstruct the course of justice. The consequences for being found in contempt range from fines to jail time. Ultimately, the objective with a finding of contempt is compliance.

In determining whether a party should be found in contempt, the Court will consider the following:

1. Was the party aware of the order's existence at the time of the alleged breach?
2. Did the order clearly and unambiguously state what should or should not be done?
3. Did the party who allegedly failed to comply do so in an intentional way?
4. Was the conduct demonstrated beyond a reasonable doubt? This is in part because findings of contempt are quasi-criminal in nature.

It is important to keep in mind that a finding of contempt is a remedy of last resort. The Court found in Hefkey[1] that a contempt finding should be made sparingly and with great caution.

In family law cases, the Court will be especially concerned with whether the parties have acted in a way that accords with the children's best interests. In Jackson[2], The Court noted that a party may be excused for non-compliance if it was objectively in the best interests of the child(ren). The Court also acknowledged the complex emotional dynamics that are involved in family law disputes, and the desire to avoid escalating the conflict further.

The importance of complying with the terms of a court order cannot be understated, and the Family Law Rules provide the Court with a range of remedies for non-compliance. That said, the Court will often exercise their discretion to find a party in contempt sparingly, and are hesitant to do so when there are other reasonable options available to send a message that the court order must be followed.

If you have more questions related to family law matters, please visit our website or contact Sarah Robus at Devry Smith Frank *LLP* to discuss any questions regarding family law and your options at 249-888-4642 or sarah.robus@devrylaw.ca.

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This blog was co-authored by law student, Kathleen Judd.

[1] Hefkey v Hefkey, 2013 ONCA 44

[2] Jackson v Jackson, 2016 ONSC 3466

For all your queries please feel free to contact Sarah via email at sarah.robus@devrylaw.ca or call 249-888-4642.

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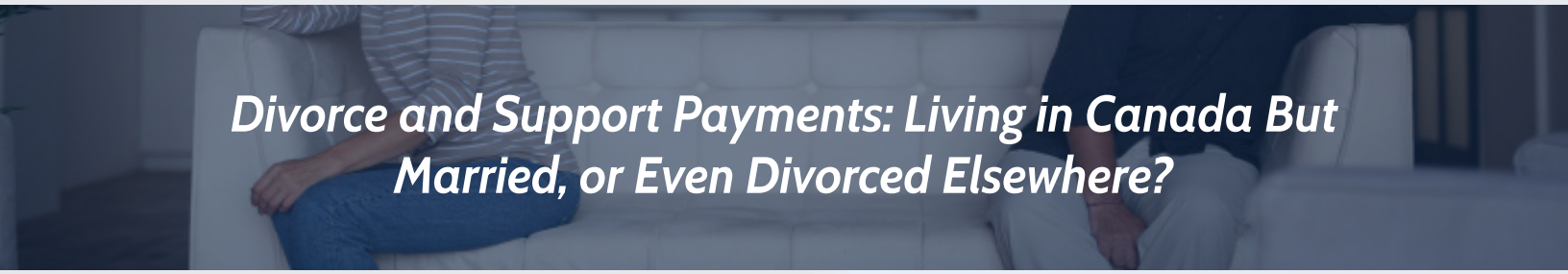

Divorce and Support Payments: Living in Canada But Married, or Even Divorced Elsewhere?

Just because you were married elsewhere, or maybe even have a divorce from a foreign country, does not necessarily mean that our Courts in Canada will not hear your matter.

Take for example, a recent case in 2017, where the Court of Appeal[1] handled a case where a Canadian citizen (husband) was married to a person who resided in China (wife). The wife had never come to Canada; however, the couple did have one child born to the marriage when the husband lived in China briefly.

The wife sought a divorce in Ontario including spousal support, child support and custody of the child pursuant to the Divorce Act. She further requested equalization of the net family property pursuant to the Family Law Act.

In response, the husband filed for divorce in China, seeking a divorce, custody and equalization or property.

In response, the wife brought a motion in an Ontario court requesting temporary child support which was granted.

The husband then requested that his application should be heard in China. The Ontario court agreed and allowed the application to move forward in China. The underlying reasons were that the application involved custody, access and support; therefore, the hearing should be pursued in the jurisdiction of the matrimonial proceeding.

Custody and a divorce were granted by the court in China to the wife. However, the issue of support and equalization were left to be brought forward in the Ontario courts as the husband did not disclose his proper financial information and all his financial holdings were in Ontario/Canada.

The Court of Appeal of Ontario was required to determine two questions:

1. Does an Ontario court have jurisdiction to hear and determine a corollary relief proceeding under the Divorce Act following a valid divorce in a foreign jurisdiction?
2. Does an Ontario court have jurisdiction under the Family Law Act to determine the issue of child support after a foreign court has issued a divorce?

The Court of Appeal held that Ontario Superior Court has jurisdiction to determine the issues of child support and equalization of net family property pursuant to the Family Law Act, R.S.O. 1990, c. F.3 (the "FLA"). However, there is no jurisdiction under that legislation, or otherwise, for the Superior Court to order spousal support.

From this case comes an important question – Will a foreign divorce be recognized in Canada?

The Canadian courts have stated that divorces obtained in other countries will be held valid if the laws of the parties' domicile (at the time of their divorce) would have recognized a foreign divorce.[2]

In Canada, s. 22 of the Divorce Act states that a divorce granted by a foreign jurisdiction will be recognized in Canada if either former spouse was ordinarily resident in that foreign jurisdiction for at least one year immediately preceding the commencement of the proceedings for the divorce.

In looking for a divorce, that is also a requirement. At least one of the parties has to be considered a "resident". For more information on what that may look like, contact our Family Law Department at Devry Smith Frank *LLP*.

What about remarriage?

Part of the process for authorization to remarry in Canada involves obtaining a legal opinion from a lawyer. The lawyer must give reasons why the divorce should be recognized in Ontario.
If you need help with a foreign divorce being recognized in Ontario, it is worthwhile to discuss your case with a family lawyer in our office.

If you have more questions related to Family Law, please visit our website or contact Katelyn Bell at Devry Smith Frank *LLP* to discuss any questions regarding your specific family law situation and your options. She can be reached at 416-446-5837 or Katelyn.bell@devrylaw.ca.

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This blog was co-authored by law student, Kathleen Judd.

[1] Cheng v. Liu, 2017 ONCA 104

[2] Zhang v. Lin, [2010] A.J. No. 755, 2010 ABQB 420, 500 A.R. 357, at para. 53

For all your queries please feel free to contact Katelyn via email at katelyn.bell@devrylaw.ca or call 416-446-5837.

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Drawing the Line: Extended Families May Face Conspiracy Claims In Assisting Child Support Evasion — Leitch v Novac 2020 ONCA 257

When a couple divorces, it is common for extended family to provide support for their loved ones. Some families get involved and assist with finances while others provide emotional support for the separated spouse. While most families are invested in the outcome of a couple's divorce, some families take extreme measures to ensure that the separated spouse reduces his or her financial obligations for support or property. In the past, when a spouse hides income or assets with the assistance of extended family, the court's sanctions have largely been limited to an order of costs against the offending spouse or a finding of contempt. While claims against extended family members have been made in the past, these claims were uncommon and were largely unsuccessful.

In recent years, the Ontario Court of Appeal changed the landscape on conspiracy in permitting a conspiracy claim against a spouse's family for assisting him to divert income payable for child support. In Leitch v Novac 2020 ONCA 257, the wife sued her husband, her husband's parents, a family corporation, and several trusts and trustees, alleging that her husband's family and entities conspired to defeat her family law claim and conceal her husband's assets and income. After the couple separated, the husband's father incorporated a company to provide management services to a casino operation. The father and husband agreed orally that the husband would receive 40 percent of the management fees over the life of the contract. Before the contract ended, the casino owner bought out the contract for nearly $6 million and the lump sum was paid to the father's corporation. Instead of providing the husband's 40 percent share for spousal and child support, the husband's father kept all the income from the buyout.

The father, the corporations, and the trusts brought a motion for partial summary judgment to have the claims of conspiracy dismissed before trial. The motion judge awarded partial summary judgment, concluding that there was no unlawful conspiracy and that the wife did not establish damages but that the wife could still pursue a claim to impute additional income for the purpose of determining support. The wife appealed the summary judgment order, the costs award and the order for security for costs and preservation of assets to the Ontario Court of Appeal.

The Court of Appeal was asked to consider whether the motion judge erred in law in awarding partial summary judgment and in her analysis of the tort of conspiracy.

Ontario Court of Appeal Allows Appeal Against Extended Family For Conspiracy

In order to claim conspiracy against the extended family and the related entities, the wife had to prove whether or not the means used by the father and the husband were lawful or unlawful, whether the predominant purpose of their conduct was to cause her injury, or if the conduct was unlawful, whether the father and the husband should have known that injury to the wife was likely to result.

The Ontario Court of Appeal allowed the wife's appeal and emphasized the importance of the tort of conspiracy in family law where a third party assists a payor in hiding income or disclosure. Justice William Hourigan asserted that if the tort of conspiracy was not available, co-conspirators would be able to facilitate non-disclosure and are willing to "break both the spirit and letter of the family law legislation to achieve their desired result, including by facilitating the deliberate hiding of assets or income."[1] If the Court of Appeal accepted the motion judge's analysis, co-conspirators who engage in conspiracy could do so with impunity. The Court of Appeal noted that the tort of conspiracy would allow judgment against a co-conspirator which is often the only means by which a recipient will be able to satisfy a judgment.

Further, the Court of Appeal addressed the denial of justice that may occur in family law cases where third parties assist litigants, referring to these third parties as "invisible litigants". Beyond providing emotional support, invisible litigants become active participants in litigation to achieve their desired result which include facilitating nondisclosure and deliberating hiding assets and income. Using the

tort of conspiracy would be necessary in certain situations to ensure fairness and justice in family law cases.

Conclusion

The Court of Appeal's decision in Leitch expands the tort of conspiracy in family law within Ontario. This case should be regarded as a reminder that non-disclosure and deliberate concealment of assets and income would not be tolerated. Family members who act as invisible litigants are not immune from liability and should be cautious in interfering with family law disputes.

If you have any questions about your family law matter, please contact Zakiya Bhayat at (416)-446-5849 or Zakiya.Bhayat@devrylaw.ca

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This blog was co-authored by law student, Abby Leung.

[1] 2020 ONCA 257, para 45.

For all your queries please feel free to contact Zakiya via email at zakiya.bhayat@devrylaw.ca or call 416-446-5849.

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Entering Canada After Being Convicted of an Offence (Criminal Rehabilitation vs. Record Suspension (Pardon))

Individuals who were convicted of a minor or serious criminal offence may be considered inadmissible to enter Canada. However, individuals can overcome this criminal inadmissibility either by applying for criminal rehabilitation or a record suspension/pardon. This blog will detail the requirements for both processes to determine eligibility to enter Canada.

Criminal Rehabilitation

Under Canada's immigration laws, individuals who have committed or have been convicted of a minor or serious crime outside Canada may not be allowed to enter Canada and are considered "criminally inadmissible". Depending on the crime, how long ago the crime was committed, and the individual's behaviour since the crime was committed, individuals may still be allowed to come to Canada under this category if they are deemed rehabilitated or if an immigration officer approves an application for criminal rehabilitation.

Deemed rehabilitation under Canada's immigration laws means that enough time has passed since the crime was committed so that the individual's criminal history does not bar entrance to Canada. Individuals are eligible to apply for deemed rehabilitation at a port of entry if the individual only had one conviction in total or committed only one crime, at least ten years have passed since the completion of all sentences, the crime committed is not considered a serious crime in Canada, and the crime did not involve any serious property damage, physical harm to any person, or any type of weapon. If an applicant believes that they are eligible, they must provide required documents including a recent police certificate from the country they were convicted in, along with court documents for each conviction, a recent criminal record check, and a passport or birth certificate. If deemed rehabilitated, applicants will be allowed to enter Canada, provided that they meet additional requirements for entry such as visitor visa requirements. Any request for deemed rehabilitation is not guaranteed to be approved.

If an individual is not eligible to apply for deemed rehabilitation, they may apply for criminal rehabilitation if the criminal act occurred outside of Canada and if five years have elapsed since the act or since the end of the sentence imposed. An application for criminal rehabilitation for a US applicant requires submitting a state police certificate, an FBI police certificate, documents relating to the sentence imposed, and court judgments that demonstrate the charge/s, the verdict, and the sentence imposed, among other documents.

If an individual needs to travel to Canada but cannot apply for rehabilitation because five (5) years have not passed since the end of the sentence imposed or are not eligible to apply for a record suspension, they must request special permission to enter or remain in Canada. After reviewing the application, an immigration officer may advise that the applicant could apply for special permission (temporary resident's permit) to enter Canada, or to advise that they do not recommend that the applicant travel to Canada.

Record Suspension (Pardon)

A record suspension (previously called pardon) allows people who were convicted of a criminal offence but have completed their sentence and demonstrated that they are law-abiding citizens to have their criminal record kept separate and apart from other criminal records. A record suspension has the effect of removing a person's criminal record from the Canadian Police Information Centre (CPIC). However, a record suspension does not erase a convicted offence nor guarantees entry or visa privileges to another country. A record suspension can be revoked or cease to have effect if the applicant is convicted of a new indictable offence, is found to no longer be of good conduct, found to have made a misleading statement, or is found ineligible for a record suspension at the time the record suspension was ordered. If a record suspension is revoked or ceases to have effect, the record of offence is added back to CPIC. An applicant may apply for a record suspension if they were convicted of an offence in Canada under a federal act or regulation of Canada as an adult and/or were convicted of a crime in another country and were transferred to Canada while serving that sentence under the

International Transfer of Offenders Act. An applicant does not need to apply for a record suspension if the applicant only received an absolute or conditional discharge, or were only convicted in a youth court or youth justice court.

To apply for a record suspension, an applicant must have completed all of their sentences which includes all fines, costs, restitutions, sentences of imprisonment, conditional sentences, probation orders, etc. The waiting period begins after an applicant has completed all of their sentences. The following table provides a short summary of the waiting periods:

Date	Waiting Period
Before June 29, 2010	· **5 years** – an offence prosecuted by indictment · **3 years** – an offence punishable on summary conviction · **10 years** – serious personal injury offence including manslaughter, an offence where an individual was sentenced to a prison term of 2 years or more, and an offence referred to in Schedule 1 that was prosecuted by indictment
Between June 29, 2010 and March 12, 2012	· **5 years** – any other offence by indictment and an offence referred to in Schedule 1 that is punishable on summary conviction · **3 years** – an offence other than the ones mentioned above, that is punishable on summary conviction · **10 years** – an offence prosecuted by indictment
On or after March 13, 2012	· **5 years** – an offence that is punishable on summary conviction

If eligible to apply, applicants can apply directly to the Parole Board of Canada (PBC) for a Record Suspension. Applicants must provide their criminal record, court information for each of their convictions, local police record checks, and documents to support identification, among other forms.

Conclusion

While criminal rehabilitation and record suspensions appear similar on its face, an important difference is that criminal rehabilitation focuses on criminal offences committed outside Canada while record suspensions focus on criminal offences committed within Canada. When the conviction is inside Canada, rehabilitation is not an option and applicants can apply for record suspension. Conversely, when the conviction is outside Canada, record suspension is usually not an option (unless convicted of a crime in another country and were transferred to Canada while serving that sentence under the International Transfer of Offenders Act) and applicants can apply for rehabilitation. Important to note, if an individual committed offences both inside and outside of Canada they require both an approval of rehabilitation and a record suspension in order to be admissible to Canada. The request for criminal rehabilitation cannot be made until a record suspension is first approved, unless the individual has only one (1) summary conviction offence in Canada.

If you have any questions related to your immigration law matter, please visit our website or contact Dayna Devonish-Montique at Devry Smith Frank *LLP* at 705-526-9328 ext 101 or at dayna@prostlaw.com.

"This article is intended to inform. Its content does not constitute legal advice and should not be relied upon by readers as such. If you require legal assistance, please see a lawyer. Each case is unique, and a lawyer with good training and sound judgment can provide you with advice tailored to your specific situations and needs."
This blog was co-authored by law student, Abby Leung.

For all your queries please feel free to contact Dayna via email at dayna@prostlaw.com or call 705-526-9328 / 705-526-1209.

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DSF is growing!

Dale Lediard

Dale Lediard joined DSF as a result of the merger of our firms in 2022. He was called to the bar in 2009 and understands his clients' highest value is peace of mind. Dale completed his undergraduate degree in Physical & Health Education at the University of Toronto and completed his law degree at Osgoode Hall Law School. After completing his articles at a prominent downtown Toronto law firm, he returned with his family to his hometown of Midland. Over the course of his career, he has primarily practiced in the areas of Family Law, Employment Law, Wills & Estates (administration & litigation), Real Estate, Civil Litigation, Construction Lien Litigation, and Personal Injury.

Martin Prost

In 2022 Martin Prost joined DSF when our firms joined forces. Upon being called to the bar in 1974, Martin began his practice of law in the Town of Midland. Although he remains in general practice, his interest gravitated to family law and other areas of law involving personal conflict. He has since cultivated his ability to practice conflict resolution by attending relational mediation courses, and creating community-based restorative justice programs.

Dayna Devonish-Montique

Dayna Devonish-Montinique joined the firm in 2022 when Prost & Lediard Law merged with DSF, and was called to the bar that same year. She completed her LL.B. (Hons) from the University of the West Indies, Barbados, and has received her Certificate of Competence from the National Committee on Accreditation as an internationally trained lawyer. Prior to joining DSF, Dayna articled at Prost & Lediard Law where she gained extensive experience in matters regarding Wills & Estates, civil and small claims matters. Dayna's practice areas include the aforementioned areas, as well as Immigration Law, Corporate Law, and Civil Litigation. Dayna enjoys both a solicitor-based practice and being in the courtroom.

Locations

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Letter from our managing partner

The final quarter of 2022 was full of growth and excitement. We are pleased to welcome many new lawyers to our firm, and we are proud of our two newly acquired locations.

Last autumn, we acquired the office of Bishop & Rogers to service Haliburton and Minden, Ontario. The main practice areas of our lawyers in this location include commercial litigation, real estate law, personal injury law, mediation, and insurance defence, however through our acquisition we can now refer local clients to one of our many lawyers in our full-service practice.

This new location was founded by Fraser Rogers who has practiced real estate law in Haliburton for over 40 years and has chosen to remain within this new acquisition. We also hired Colleen Dermody, who is an associate lawyer practicing wills and estates law, and real estate law from our Haliburton office.
Around the same time, we acquired the practice of Prost & Lediard in Midland, to complement our Barrie office in the service of Simcoe County.

Prost & Lediard's primary areas of practice have centered around wills and estates, real estate, family law, and mediation, however, since joining DSF they can now connect their clients with a full-service legal team to assist them at every turn.

Joining our family from Prost & Lediard are its founding lawyers, Martin Prost, and Dale Lediard.

Martin Prost has practiced law since 1974 and has spent decades refining his capacity for mediation by constantly participating in alternative justice and family dispute mediation programs to further his education.

Cofounder Dale Lediard was called to the bar in 2009 and since then he has practiced in family law, employment law, wills & estates, real estate, civil litigation, and other areas of law.

Prost & Lediard is also home to many highly qualified legal assistants and law clerks, as well as our newest lawyer Dayna Devonish-Montique whose practice focuses on wills and estates, immigration law, corporate law, civil litigation, and real estate.

We are grateful to these exceptional lawyers for choosing to work with us and we anticipate much success together.

Now that 2023 is here, we look forward to the new clients we have yet to serve, the lawyers who have yet to join our team, and the practices we have yet to acquire.

Thank you for spending 2022 with Devry Smith Frank *LLP*, and we are eager to help our clients and our partners flourish in this new year.

Larry Keown
Managing Partner
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Devry Smith Frank *LLP*
Lawyers & Mediators