

## **Recent News**

**May 12, 2008**

### **Family Ties: Should Love and Kindness be an Enriching Business?: Lovsin v. Hodgins Estate, 2008 ONCA 371**

This case was decided by the Court of Appeal for Ontario on May 12, 2008. It consists of an appeal from the judgment of Justice M. Thompson of the Superior Court of Justice on September 18, 2006. In the trial proceeding, Johanna Lovsin sued the estate of her former father-in-law John (“Jack”) Hodgins in unjust (or unfair and unwarranted) enrichment. She asked the trial Court to declare that a trust exists over the assets of his estate in her favour and to order payment to her of \$250,000 on the ground that the beneficiaries of the estate were unjustly enriched by the service she provided to Jack Hodgins and his late wife, Meryl. The trial judge, Thompson J., dismissed Ms. Lovsin’s case.

In seeking to set aside the dismissal of her claim in the appeal proceeding, Ms. Lovsin stopped seeking to establish the existence of a trust but maintained her claim for monetary compensation. She argued that the trial judge did not properly assess the evidence or properly apply the criteria to succeed in a claim for unjust enrichment. However, the Court of Appeal concluded that Ms. Lovsin could not succeed for two reasons: it agreed with the trial judge’s findings on the extent of her contributions; and she failed to show that it was unjust for Jack and Meryl Hodgins to accept the services that she provided without paying for them.

Ms. Lovsin was married to Jack’s son, John Hodgins Jr., for 16 years. They separated in 1997. During their marriage, they lived on a farm owned by Jack Hodgins. During that time, Ms. Lovsin provided services to Jack and Meryl Hodgins which contributed to their welfare. She helped with the farming operation; she helped care for her mother-in-law, Meryl Hodgins, especially after Meryl became ill with Alzheimer’s disease; she occasionally planted trees; and from time to time she provided domestic services to her in-laws.

After assessing the evidence on Ms. Lovsin’s contributions, the trial judge found that the benefit she gave to Jack Hodgins and any resulting loss to Ms. Lovsin simply were not significant enough to deserve compensation.

The Court of Appeal found that the trial judge did not significantly misunderstand any of the relevant evidence. Indeed, in relying on Ms. Lovsin’s own evidence, the trial judge found that:

- “Johanna’s yearly contribution to Jack’s farming operation amounted to, at most, a couple of weeks assistance driving the tractor and preparing meals during haying season”.

- Although Ms. Lovsin provided assistance to Jack Hodgins in caring for Meryl Hodgins after her dementia started, Jack Hodgins, not Ms. Lovsin, was the primary caregiver.
- Ms. Lovsin “performed light housekeeping, cooking and provided companionship for Meryl”.
- Ms. Lovsin contributed to Jack Hodgins’s well-being as he grew older, but only for a couple of years.

The Court of Appeal further supported the trial judge’s conclusions that Ms. Lovsin’s contributions were not great enough to warrant compensation and were no more than might reasonably be expected from a loving daughter-in-law.

The Court of Appeal also noted that granting a benefit to another person does not, by itself, constitute unjust enrichment. As Dickson J. said in *Pettkus v. Becker*, [1980] 2 S.C.R. 834 at p.848: “The common law has never been willing to compensate a plaintiff on the sole basis that his actions have benefited another.” To show that the enrichment was unjust, the provider of the benefits (here Ms. Lovsin) must reasonably expect to be compensated, and the recipients of the benefits (here Jack and Meryl Hodgins) must know or ought to have known of that reasonable expectation. The Court of Appeal believed that the trial judge was well aware of the requirement of a shared expectation of compensation. Furthermore, he found that this requirement had not been met and that Ms. Lovsin had not established the third criterion of a successful unjust enrichment claim: the absence of a legal reason for the enrichment.

The trial judge found that Ms. Lovsin’s expectation of compensation was linked to her relationship with her husband, not to the services she provided to her in-laws. She did not expect compensation for those services, and thus never discussed the subject with Jack Hodgins. Correspondingly, Jack Hodgins neither knew nor ought to have known that Ms. Lovsin expected to be compensated.

The Court of Appeal found that the trial judge’s finding of fact is supported by the evidence and that he properly concluded that Ms. Lovsin did not establish the absence of a legal reason for any enrichment. The Court therefore found no reason to overturn the judgment and dismissed the appeal.

**The moral of the story:** Courts still tend to be of the opinion that, in the absence of a sound legal reason to the contrary, assisting, supporting and enhancing the welfare of family members without expectation of compensation is a natural result of the familial relationship.

Furthermore, if you intend to receive compensation for services or domestic duties that you give to loved ones, be sure to make your intentions clearly known and have them acknowledge and agree to pay you for these services – the more specific the terms of service are, the better. Apparently, contract law has found its way into family affairs once again!