

A Politician's Bedfellow Releases and Rescission

by Albert S. Frank

A messy private life can lead to an interesting lawsuit.

The allegation was that Mel Lastman, first mayor of the amalgamated megacity of Toronto, had had a lengthy affair with a married woman, Grace Loui. The affair resulted in two sons, Kim and Todd Loui. The sons were born in 1958 and 1962, making them 43 and 40 years of age respectively in 2002. As the Court of Appeal put it, "[they] are both employed and obviously are no longer children."

They say that their mother had a clandestine relationship with Lastman from 1957 to 1971 and that he is their biological father. During the relationship they knew Lastman only as a friend of their mother. They lived as part of the Loui family with their mother, her two other children, and Mr. Loui. In 1969 Mrs. Loui and her husband separated.

After the separation Kim and Todd Loui and their mother depended on social assistance and inadequate monthly payments from Lastman. The payments stopped in 1974 when Mrs. Loui and Lastman reached an agreement. Under the agreement Lastman paid Mrs. Loui a lump sum of \$25,000 plus \$2,500 for legal fees. Mrs. Loui signed a Release forever releasing Lastman from all

actions and claims, and she withdrew any allegation or suggestion that Lastman was the father of Kim and Todd Loui.

As an adult, Kim Loui saw Lastman on television and came to suspect that Lastman was his father. He confronted his mother, who admitted the affair and confirmed that Lastman was the father of Kim and Todd Loui.

They sued, claiming that their father, Lastman, had failed to make adequate provision for their support.

Their mother sued, in the year 2000, claiming compensation on the basis that Lastman breached a fiduciary duty by failing to support the children. She also claimed on the basis that Lastman was unjustly enriched in that (1) he did not pay support for the children, and (2) she provided Lastman with affection, emotional support, and childcare and homemaking services for the children. As for the Release, she sought rescission on the basis that it was obtained by undue influence and coercion.

Rule 21

Lastman sought Orders under Rule 21 of Ontario's Rules of Civil Procedure. Under that Rule, and similar rules in other provinces, a claim can be struck out at an early stage on the basis that it is "plain and obvious" that it cannot succeed. Plain and obvious, that is, even assuming that the factual allegations are true. The

allegations, which are summarized above, have never been proven true, so we do not know if they are true or false.

The Motions Judge struck out Mrs. Loui's claims and most of the claims of Kim and Todd Loui. They appealed to the Court of Appeal for Ontario.

Retroactive Child Support

The sons' appeal is reported at ***Loui v. Lastman*** (No. 1), (2002) 61 O.R. 449 (C.A.). The three-judge panel of the Court of Appeal unanimously agreed with the Motions Judge.

One of the key issues raised was the question of retroactive support. According to the Court:

No matter how the appellants attempt to frame their action, in the end it is nothing more than a claim for retroactive child support and, as such, it cannot succeed.... It is not open to the appellants to come forward and make a support claim decades after they are no longer dependent.

Although sometimes retroactive child support can be ordered, this would only be where there is "some relation to the needs of the child and to his or her support." The Motions Judge was right in saying that "Child support legislation was not intended to operate as a weapon in the hands of grown-ups who sue their parents for perceived deficiencies in their upbringing."

Release and Rescission

Mrs. Loui's appeal is reported at ***Loui v. Lastman*** (No. 2), (2002) 61 O.R. 459 (C.A.). The three-judge panel of the Court of Appeal again unanimously agreed with the Motions Judge.

Her child support claim based on fiduciary duty failed because the obligation to support dependent children "was statutory and there was no separate civil duty of care." In other words, use the appropriate legislation or forget it. The claim also failed because of her delay in bringing it.

If the Release was valid, it barred her claim generally. She asserted that it had been obtained by undue influence and coercion and therefore should be rescinded, i.e. set aside. This would be a hard case to make where, as was the case here, she had had independent legal advice when entering into the agreement and granting the Release, but Lastman had to show it was "plain and obvious" that it could not possibly succeed, not just that the case would be a hard one to prove.

Delay

In Ontario there is no limitation period blocking equitable claims from being brought after a certain amount of time. "However, equitable claims are to be brought promptly." Her 30-year delay in suing after the end of the affair clearly established, under the circumstances, that

she acquiesced in the alleged breach of her rights.

So all aspects of her claim, including concerning rescission of the release, breach of fiduciary duty, and unjust enrichment, had to fail.

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Research has NOT been done to see if this article is still good law. Also, this is general information that might not apply to your particular situation.

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