



How Not to do a Pre-Nuptial Agreement

By Jodi Wyman

Sometimes the best way to learn is to make mistakes. The easier way is to learn from other people's mistakes. A recent Ontario case can teach lawyers how not to do a pre-nuptial agreement. In that case, the agreement was poorly done, and it cost the divorcing husband \$5.3 million.

A couple was married in 1996. The husband had business assets of \$14 million when the couple became engaged, and wanted a marriage contract in place. That way, if the couple divorced, the wife would not be entitled to a sharing of assets under provincial legislation. The wife was agreeing to give up her career to raise the couple's children, but she agreed to sign the pre-nuptial contract.

After the couple separated, the husband's business assets were worth \$33 million. The wife asked the Court to set aside the pre-nuptial agreement. The Judge did exactly that, after finding a number of problems with how the agreement was prepared and signed.

The first problem was that of timing. The agreement was signed only two days before the wedding. The husband had made it very clear that there would be no wedding if there was no signed agreement. The Judge found that the wife was pressured into signing as a result. The lesson here is to ensure these types of agreements are prepared well in advance of the wedding. It is not something to be left until the last minute.

Secondly, the wife took the agreement to a lawyer, who told her it was not fair and she should not sign it. The husband then told his fiancée to fire that lawyer, and she did. He sent her to a different lawyer who had previously acted for him. The fact that there was a conflict of interest was not disclosed to the wife. The wife went through the terms of the agreement with her new lawyer for less than one hour, and no changes were made before it was signed. The lesson here is to ensure that each person signing an agreement has good legal

advice from an impartial lawyer. As well, each party should listen to the legal advice they get.

One of the major reasons the Judge set aside the agreement was because he said the husband did not provide full disclosure of his assets. He owned shares in a complicated family business. The Judge felt that the husband had an obligation to make sure his fiancée knew full details of his income and all of his assets. He decided that the husband had misled his wife deliberately so she would sign the agreement.

The lesson here is about dealing fairly and honestly in marriage contracts. Negotiating contracts is different in business than in family law. There is an obligation to make full disclosure of income and the value of assets. Basically, how can someone waive their rights if they do not have a full picture of the situation? In separation agreements, cohabitation agreements and marriage contracts, each person needs to know what they are entitled to

before they decide they are willing to forgo it.

A marriage contract is not something to be taken lightly or done in a hurry, or it could be costly.