



When Family Law and Religion Overlap

by Jodi L. Wyman

One of the reasons family law is such an interesting area in which to practice is that so many other areas of law overlap into it. It allows a lawyer to keep up with legal developments outside of just domestic law.

One example is a new Supreme Court of Canada case. It talks about how marriage law is to be balanced against an individual's religious rights.

The case involved a married Jewish couple who were living in Quebec. When they divorced, they entered into a civil contract setting out the terms of their settlement.

One clause in the contract held that the husband would consent to give the wife a "get", a Jewish religious divorce. Legally, a person must be divorced by the courts in order to remarry. In the wife's faith, she also needed a get before she could remarry.

The husband then refused to consent to the get. The wife, aged thirty-one at the time, could not remarry as a result and suffered emotional damage by losing out on a new marriage and the opportunity to have children. The husband said he changed his mind because his wife was

harassing him. He did however, fifteen years later, consent to the get.

The wife sued the husband for \$1.35 million for damages as a result of the breach of contract. The lower court heard the case and awarded the wife the sum of \$47,000 in damages. The husband appealed that decision, claiming that his religious freedom was violated by the Judge's decision. The Quebec Court of Appeal overturned that decision based on the right to freedom of religion.

The Supreme Court of Canada agreed with the lower court. The Court found that there is a public interest in protecting equality rights and the ability of Jewish women to divorce and remarry. Those rights, in this case, outweighed the husband's religious freedom. There was also of course the public interest in enforcing binding contracts between spouses, as the Court has recognized in previous cases.

Essentially, the court decided that equality rights trump religious rights, but the question will be to what extent this rule is applied in future cases. The court noted that it was questionable whether the

husband really opposed the get based on his religious beliefs, or just out of spite for his former wife. In future cases, the court may not make the same decision if the facts are different.

As well, the case is notable because the civil courts usually decide to stay out of religious law.

Also, another question for future cases is would the decision be different if the couple had not entered into a contract involving a get. If breach of contract was not added into the equality argument, would the outcome have been the same?

Typical with these sorts of cases involving Charter rights, it is not easy to always understand the new principles of law that the Supreme Court of Canada is creating. If anything is taken from it however, it would be that marital contracts should be followed or else there could be financial consequences.