

# **AGING AND THE LAW SERIES**

**What Every Professional Needs to Know**

# LATER-LIFE LOVE

*Faculty: Laura Watts, LL.B., National Director, CCEL*

# Later Life Love



# Supporting Parents

## Filial obligations / Parents Support laws in Canada

- Moral obligations
- Cultural norms
- Statutory requirements



# When “Martha” met “Joseph”

## The Cast

- *Martha*      Assisted Living resident (82)
- *Joseph*      Assisted Living Resident (74)
- *Susan*      Martha’s daughter – mother of 3
- *Brandon*      Martha’s son – father of 2
- *Mr. Norris*      The Lawyer
- *Reyna*      Manager – “Sunshine Hills”
- *Various*      Joseph’s 3 ex – wives, 6 children, 8 grandchildren



# Martha and Joseph

## Key Facts

- Widow – new relationship 6 months
- Intimate relationship
- Eccentric, but capacity questions now too
- Change in 'style' – religious, modest
- Concern about undue influence
- Martha wants to have relationship
- Mixes up Joseph with 'Gerry' (husband)





# Martha and Joseph

## Developments

- Complaints to Manager
- Susan and Brandon Financial POA
- Susan Substitute Decision-maker Health
- Missing art objects - \$\$\$
- Martha revokes POA
- Trip
- Marriage
- Don't shift apartments – 2 AL apartments
- 3 months later, Martha says she wants to separate from 'Gerry' who isn't at all like he used to be



# Capacity Issues :

## Marriage, Separation, Divorce

### Legislation

- Provincial vs. federal jurisdiction
- Provincial marriage legislation



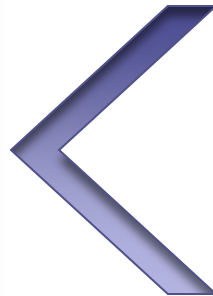


# Capacity Issues :

## Marriage, Separation, Divorce

### Capacity to Marry

*Test for  
Capacity to Marry*



*Test for  
Testamentary Capacity*



# Capacity Issues :

## Marriage, Separation, Divorce

### Court Decisions on Capacity to Marry:

- Durham v. Durham (1885), 10 P.D.80
  - Is the person capable of understanding the nature of the contract and the obligations and responsibilities it involves?
- Browning v. Reane (1812), 161 E.R. 1080
  - Is the party capable of understanding the marriage contract itself and...
  - Is the party capable of taking care of his own person or property?
- Banton v. Banton et al. (1998), 164 D/L/R/ (4<sup>th</sup>) 176 (Ont. Ct. Gen. Div.)
  - Applies Durham
  - But also accepts the second branch of the Browning test.

# Capacity Issues :

## Marriage, Separation, Divorce

### Capacity to separate or divorce

- *A.B. v. C.D.* [2009] B.C.J. No. 914  
(B.C.C.A.), recent BC case on capacity  
to separate / divorce
- Marriage caveats (ex. BC Marriage Act)

# Incapacity

- Later life love and the incapable spouse
  - support obligations
  - property claims
- Powers of attorney issues
- Family conferences



# Incapacity

- Later life love and the incapable spouse
  - support obligations
  - property claims
- Powers of attorney issues



# Incapacity

## ➤ Family conferences



Laing, "Financial Issues and the Incapable Spouse", Continuing Legal Education Society of British Columbia, February 2007.



# Wills & Gifts



*Last Will  
of*

- What happens if you remarry?
- The family conference
- Unexpected changes for estate planning

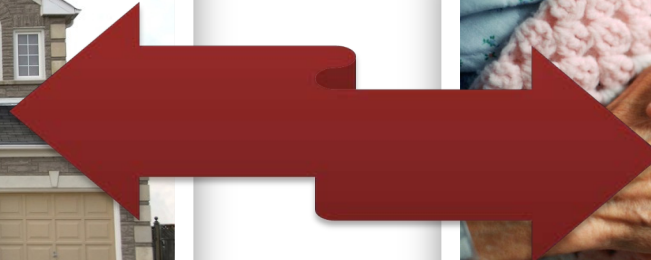
# Common Law Marriage – Key Issues

- When do rights accrue?
- What if you want no rights of “common law” but want to live together?
- Contracts and relationships



# Care Agreements

Care Agreements involve a transfer of property (usually the family home) in exchange for a promise of care and support, often even a promise to “care for life”.



# Care Agreements

## The “What Ifs...”

- ? *What if* the caregiver or care recipient marries or enters a marriage-like relationship after a care agreement is made?
- ? *What if* the caregiver or care recipient, married at the time of transfer of property, is later divorced or widowed?
- ? *What if* the caregiver needs to relocate? Does the care recipient expect that the promise of care will include remaining in that particular house?

# Advising Your Client



- Strategies and considerations
- What questions to ask
- Things to be look out for / be aware of

# Additional Resources

For information about how you can become a Certified Professional Consultant on Aging (CPCA) visit us at our website [www.agefriendlybusiness.com](http://www.agefriendlybusiness.com)

For information about the Canadian Centre for Elder Law visit us at our website [www.bcli.org](http://www.bcli.org)



# THANK YOU!

For more information, please contact us at:

Email: [info@agefriendlybusiness.com](mailto:info@agefriendlybusiness.com)

Telephone: 1-877-272-9066

Fax: 604-648-9647

Mailing Address:

**Age Friendly Business**  
907-6540 Hastings Street,  
Burnaby, British Columbia,  
Canada, V5B 4Z5





© 2010 - 2011 The Academy of Age Friendly Business (AAFB). All rights reserved.

This presentation is for informational purposes only. AAFB makes no warranties, express or implied.  
Aging and the Law is a proud member of the Age-Friendly Business™ International Group of Companies.