Global Updates on Predatory Marriages

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I. Introduction

The scourge of predatory marriage is not a uniquely Canadian experience. While our courts have arguably heard and decided an alarming number of predatory marriage cases, there are just as many that go undetected, and are never adjudicated. While across the world there seem to be growing frequency of these predatory unions, it is still difficult to know the extent to which they occur. Given the aging demographics worldwide, these unions purely for purposes of financial exploitation will continue.

With this rise in prevalence there has also been some legislative reform. As an example, in the United States of America, a minority of states have already enacted legislation which provide rights to challenge a marriage post-mortem. In Canada, a small majority of provinces and territories have amended statutes such that a marriage no longer revokes a prior will. Thes are small developments, yet we have a lot of work to do still.

This short update will analyze some of the recent developments in the realm of predatory marriages. The focus will be on the United States of America, the United Kingdom, Australia and Canada for the purpose of evaluating decisions involving the capacity to marry and the use of equitable remedies.

New York State has already rendered two decisions based in equity which prevent a predator spouse from inheriting pursuant to New York State's Elective Share on the death of a spouse. In the United Kingdom, recent attention on predatory marriages has led to renewed interest from their Law Commission to determine whether laws should be updated. Finally, a recent case out of Australia demonstrates how equity can intervene to impose a constructive trust on property which was transferred and sold because of a predatory marriage.

II. Updates from the United Kingdom

In July of 2023, the United Kingdom increased the 'Net Fixed Sum' for a Statutory Legacy. Comparable to the 'Preferential Share' in Ontario, the Statutory Legacy is the sum a surviving spouse or civil partner is entitled to receive when a person dies intestate (without a valid Will). Consequently,

when someone marries in the UK and does not make a subsequent new will, the surviving spouse inherits the Statutory Legacy. The increase in the Net Fixed Sum only increases the chances that predators may capitalize on the opportunity to prey upon vulnerable, incapable, or older adults.

UK Law Commission

Considering increasing concerns, the UK Law Commission is taking a closer look at predatory marriages. In the UK, the issue mainly arises in relation to marriages but can also arise in relation to a civil partnership, given that a civil union also revokes any pre-existing will.

In the UK, where a will is revoked by a marriage or civil partnership, in the absence of the person making a new will, the intestacy rules will apply. On intestacy, the person's spouse or civil partner is likely to receive most of their estate, if not the entire estate. Where the person dies without issue (or other direct descendants), the spouse or civil partner receives the entire estate. Where the person has children (or other direct descendants), the spouse or civil partner receives the fixed net sum.[1]

The UK Law Commission released a consultation paper in 2017 which discussed the revocation of a will by marriage, however, did not specifically consider the risk of predatory marriages. Since this initial consultation in 2017, the Commission reports, "[t]throughout our weddings project, which ran from 2017 to 2022, consultees raised concerns with us about predatory marriages."[2]

The Law Commission is concerned that the rule may be out of step with current societal norms[3] announced on October 5, 2023, and as such, was seeking responses to a supplementary consultation on marriage laws. In this

[1] UK at p.60, para. 3.7 citing Administration of Estates Act 1925, s 46 and sch 1A; Administration of Estates Act 1925 (Fixed Net Sum) Order 2023 (Sf 2023 No 758), art 2.
[2] Pg. 54, para. 3.24.
[3] The Law Commission argues that this rule was enacted in a social and legal context very different than today's. The rule also made invariable what had, until then, been a rebuttable presumption developed by the courts which had only applied after marriage and the birth of a child or children.

consultation, the Law Commission asks, 'should marriage or civil partnership automatically revoke a will given the risk of predatory marriage?'

The supplementary consultation is part of a wider wills project undertaken in the UK. The reason for this being that the law on wills in the UK is primarily a product of the Victorian era and is still governed by the *Wills Act 1837* and relevant common law precedent. In May 2025, the Law Commission alas, published its report, 'Modernising Wills Law', as well as releasing a draft Bill for a new *Wills Act*.[4] The Law Commission's aim is to modernise the laws of Estates and Trusts, so it reflects contemporary needs and continues to protect the UK's most vulnerable.

In respect of predatory marriages, the Law Commission recommends abolishing the rule that a marriage or civil partnership automatically revokes a Will.

The Law Commission found that many are unaware that a Will is automatically revoked upon marriage. The unintended result is that testators' Wills are being revoked without their knowledge, and without testators necessarily wanting their Will to be revoked, thereby causing unintentional intestacies. The Law Commission noted that the automatic revocation rule operates in a way that is contrary to testamentary freedom.[5]

It was also found that the automatic revocation rule is contrary to the approach to capacity. Mental capacity under common law and statute is issue specific. It is therefore difficult to justify an exception to this principle in the case of the revocation rule. To the Law Commission, as a matter of policy, it is hard to see why a person who lacks the capacity to revoke their will intentionally should nevertheless revoke their will unintentionally, by getting married or entering a civil partnership.[6]

The Law Commission further expressed concern that this rule is being exploited in the form of predatory marriages. In their view, abolishing the rule

[4] The Law Commission's Report and draft Bill can be accessed through the following links: < Modernising wills: Final report – Law Commission> and < Modernising wills: Final Report Volume II: draft Bill for a new Wills Act – Law Commission>.
[5] Modernising wills: Final Report – Law Commission, *ibid.* at 13.123, page 424.
[6] Modernising wills: Final Report – Law Commission, *ibid.*, at 13.134, page 427.

will protect vulnerable individuals from financial abuse. Lastly, the automatic revocation rule found its conception in the Victorian period, with different social contexts and attitudes than today. For instance, for many marriages may not significantly alter existing testamentary plans, with later-in-life marriages being more common.[7]

Accordingly, as per the Law Commission's recommendations, sections 18 and 18B of the *Wills Act 1837,*[8] would be abolished in place of the following provision:

> **8 Revoking a will**
>
> (1) A will is not validly revoked unless it is revoked—
>
> (a) by a later valid will,
>
> (b) by a document
>
> (i) which expressly demonstrates the testator's intention to revoke the will, and
>
> (ii) in relation to which the formality requirements are met,
>
> (c) by its destruction by the testator with the intention of revoking it, or
>
> (d) by its destruction in the testator's presence by another individual whom the testator, with the intention of revoking the will, directed to destroy it on their behalf.
>
> (2) For the purposes of determining whether the formality requirements are met in relation to a document which expressly demonstrates the testator's intention to revoke a will, references in sections 10, 26(2) and 27(1) and Schedule 2 to a will include references to the document.[9]

[7] Modernising wills: Final Report – Law Commission, *ibid.*, at 13.164 at page 433.
[8] *Wills Act 1837*, c.26, at sections 18 and 18B.
[9] Draft Bill – Law Commission, (*supra note 4*) at section 8, page 4.

X v. A, 2021[10]

This decision was released at the end of 2021 and was described in the record, as "a case of elder abuse and predatory marriage." The applicant, X, in proceedings under the Family Law Act 1996, was seeking a declaration as to his entitlement to return to and occupy the former family home. The respondent, A, was represented by her litigation friend, C. Through C, A sought to nullify her marriage to X.

In a March 18, 2021, decision, it was determined that A did not have capacity to conduct litigation by reason of dementia. This led to A's nephew, C, being appointed as litigation friend. The court noted, "the finding in relation to capacity means that the Respondent did not have capacity on 26 May 2020, when the consultant psychiatrist examined her, and subsequently. There was no finding as to her capacity when she married on 2 April 2019, nor, when she transferred a half share in her home to the Applicant on 21 May 2019."[11]

The court was tasked with determining whether at the date of the parties' marriage, the Respondent did not within the meaning of section 12(1)(c) or (d) of the Matrimonial Causes Act 1973, validly consent to the marriage (in consequence of "unsoundness of mind" or "duress"); or, if capable of giving a valid consent, was suffering from a mental disorder at the time of the marriage, such that the marriage was voidable. Additionally, the court had to determine whether on May 21, 2019, the respondent had the capacity to authorise the transfer of the former matrimonial home to the applicant.[12]

Background

The Applicant entered the UK on a visitor visa on October 2, 2018. He had previously met the Respondent through an online relationship. The Respondent, who was also from Lebanon, visited the Applicant and began a relationship. There was evidence that the couple had differing versions about the marriage proposal and how the engagement was celebrated. There is

[10] [2021] EWFC 118 [*X*].
[11] *X*, *supra*, at para 5.
[12] *Ibid*., at para. 6 (i).

also evidence that the Respondent believed she was hiring the Applicant to be her nurse and was not in a romantic relationship with the Applicant.

The court noted that the Applicant "claims to be a gerontophile in his first statement but bisexual in his second statement. There is no evidence whatsoever he has had any sexual interest in older people prior to the Respondent," and, "[t]here is evidence that the Applicant has gay relationships."[13]

The Respondent's nephew told the court that when the Respondent returned from Lebanon in September 2018, she was behaving so strangely that her family did not recognise her, becoming easily confused and forgetful. A consultant psychiatrist assessed the Respondent in the garden of her home on May 20, 2020. His diagnosis, which was confirmed by a CT scan, indicated mixed type dementia, both Alzheimer's and vascular dementias. The scan showed clear evidence of dementia and changes in the brain. In his letter dated March 27, 2021, the psychiatrist reported, "it is very unlikely the Respondent would have had capacity about a year or two years ago."[14]

The Registrar of Births, Deaths and Marriages provided a written statement in which she expressed that she had no concerns about the legitimacy of the marriage, stating both parties seemed very happy on both occasions. She was, however, suspicious of the very obvious and large age gap and aware of the fact it was a secret marriage. As a result, she referred the matter to the Home Office.[15]

Analysis

The court looked at the statutory requirements for a nullity which are found in section 12 of the Matrimonial Causes Act 1973. The grounds on which a marriage is voidable are set out as follows:

[13] *Ibid*., at para. 23.
[14] *Ibid*., at para. 39.
[15] *Ibid*., at para. 50.

> A marriage celebrated after 31 July 2017 … shall be voidable on the following grounds only, that is to say:
>
> > (c) either party to the marriage did not validly consent to it, whether in consequences of duress, mistake, unsoundness of mind or otherwise.

For the purposes of duress under section 12.1 (c), the court found there is a clear pattern of controlling, coercive behaviour by the Applicant to the Respondent, and provided the following reasons:

> The timing of the wedding was so close to the property transfer that it suggests this was the reason the Applicant married the Respondent; the Applicant's claim that he is a gerontophile despite evidence of same sex relationships is suggestive of an ulterior motive; the Applicant's relationship with the Respondent should have been that of a nurse and patient, however, he misused the power that relationship gave him to enter into a romantic relationship with the respondent; evidence that the Applicant groomed the Respondent, including by taking her mother's name;[16] evidence that the Applicant caused the Respondent to take out several loans;[17] and, evidence that the Applicant gained access to the Respondent's Nationwide bank account.[18]

There was also evidence by way of a recorded conversation between the Respondent and Applicant on February 20, 2020, in which the Applicant accuses the Respondent's nephew of trying to take the house. The Applicant then forbid the Respondent from communicating with her family.

The court looked at the decision of Ormrod LJ, with whom Watkins LJ and French LJ agreed with the decision in *Hirani v Hirani*,[19] that "the crucial

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[16] The respondent advised in a police interview how haunted she was by the early death of her mother and how important her name was to the respondent.
[17] On January 31, 2019, she took out a bank loan with Santander for £2,000. When the cashier asked why she was getting the loan out, she actually pointed to the applicant standing outside the bank. A month later, she took out another loan for £1,600.
[18] *X*, *supra* at para. 55.
[19] [1982] EWCA Civ 1.

question in these cases, particularly where a marriage is involved, is whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual."[20]

The court also held that the test to be applied in this case is subjective. The Respondent is elderly with a current diagnosis of dementia, and the test should be applied on that basis and that controlling behavior alone is, therefore, in law sufficient to find subordination of the will of a party to a marriage so as to invalidate or vitiate consent.

Disposition

Although the Respondent understood she had undergone a marriage ceremony and was married to the Applicant, she did not refer to him as "her husband." On the contrary, she described the Applicant in a police interview as a lodger who does not pay his rent.[21]

The court determined that, "her decision was heavily weighed towards agreeing to the marriage because of the Applicant's position of power in relation to her. He was misusing a professional relationship, he was insisting upon secrecy so that she obtained no other opinions, and that formed part of the duress."[22]

As a result, the court found the Respondent did not validly consent as a consequence of duress and unsoundness of mind. The presumption of capacity was displaced, and the marriage is voidable. It there, followed that the Respondent did not have capacity to consent to the transfer of a half share in the matrimonial home as the date is so proximate to the date of the marriage.

[20] *X*, *supra*, at para. 61.
[21] In the police interview, she refers to the applicant as "the gentleman, by her mother's name" and that he "is never my husband."
[22] *X*, *supra*, at para. 77.

Langley v Qin, 2024 [23]

Background

The claimant in the case, Jill Langley ("Ms. Langley"), was an only child of Robert Harrington ("Mr. Harrington") and his first wife Eileen Harrington, to whom he was married for 66 years before her death in January 2018. Soon after the death of Eileen in 2018, Mr. Harrington married Guixian Qin ("Ms. Qin"), his paid caregiver, in June 2019, when he was 93 and she was 54. During the marriage in March 2020, Mr. Harrington made a will, professionally drafted by the law firm of Fraser and Dawbarns, and named Ms. Qin, or in her place her adult son from a previous relationship, as the sole beneficiary and executrix. Mr. Harrington told the will-drafter that he was estranged from Ms. Langley, which is why she had been excluded from the will. Mr. Harrington died two months later, on 26 May 2020. If the will executed on 24 March 2020 was invalid, then Mr. Harrington would have died intestate as his earlier wills made in 1997 and 2012 were revoked by his marriage to Ms. Qin. Ms. Langley claimed this to be a predatory marriage and that her father had been manipulated by Ms. Qin.[24]

Ms. Langley asked the court to pronounce against the will on the grounds of - Lack of testamentary capacity[25], Lack of knowledge and approval, and Undue Influence[26]. Ms. Langley also raised questions as to the whereabouts of more than £200,000, which had been withdrawn from Mr. Harrington's bank account since 2018.[27]

Ms. Qin denied the claim and stated that it was Mr. Harrington's own decision to make a will and stated that a few months after she moved in with Mr. Harrington, he started giving her money as he did not want her to work, eventually giving her thousands of pounds monthly.[28]

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[23] Langley v Qin, 2024 K10CL238
[24] *Ibid*, at para 1-12
[25] *Ibid,* at para 25
[26] *Ibid* at para 32
[27] *Ibid*, at para 23 - 36
[28] *Ibid,* at para 130 - 143

Outcome

The judge found that Mr. Harrington had a “delusional state of mind” as evidenced by his medical records, which showed that he suffered from paranoid delusions disorder, therefore he lacked the testamentary capacity to make a valid will. The court also found that Mr. Qin was unable to satisfactorily explain the money transfers made to her, and it was found that Ms. Qin has control over Mr. Harrington’s finances and that she “shopped around” local solicitors until a will writer was found who was willing to prepare Mr. Harrington’s will. As a result, Mr. Harrington’s last will was set aside with his estate distributed in accordance with the rules of intestacy.[29]

Concluding Comments:

While this was a success for Ms. Langley, as Mr. Harrington’s 2020 will was found to be invalid, and since there was no other valid will, the estate will pass under intestacy rules. Ms. Langley inherited £200,000. However, the court could not ignore the effect of the marriage itself, as established in the precedent set by Re Roberts [1978] 1 WLR 653. Consequently, Mrs. Qin stands to inherit a substantial portion of Mr. Harrington’s estate as his widow, despite her predatory motivation and behavior.

III. Updates from the United States of America

A small minority of states have already amended their Probate Code to explicitly allow post-death challenges to a marriage’s validity on the grounds of undue influence. In Florida, Texas, and California, state governments have amended their legislation to address some of the loopholes that permit predatory marriages to occur.

Many states, however, do not provide a statutory remedy to allow a challenge to a voidable marriage after death. One of these states, Maryland, has heard and rendered a decision which held that a surviving spouse could be denied spousal rights based on the surviving spouse’s **inequitable** conduct.

[29] *Ibid,* at para 204 - 219

In the case of *In Re Robert Watkins,*[30] the **equitable doctrine of unclean hands** was successfully argued before the Orphans' Court. The doctrine itself "refuses recognition and relief from the court to those guilty of unlawful or inequitable conduct pertaining to the matter in which relief is sought."[31] In the *Watkins* decision, the Orphans' Court determined that undue influence was exercised over the Deceased, establishing a clear connection between the improper conduct and a claim before the Orphans' Court to a statutory share of the Estate. A cursory search reveals that this is likely the only Maryland case to use this doctrine to challenge a voidable marriage after death, however, it should be noted that New York courts have also exercised discretion in applying equitable relief in a similar situation.[32] A decision on appeal in one of those decisions was rendered in October 2022.

New York State – Equity in the Matter of Berk, 2010

New York's Estates, Powers & Trusts Law ("EPTL") was created to preclude one spouse from surreptitiously disinheriting the other. Similar statutes in other states allow the spouse of a decedent to elect to recover from the decedent's estate. In New York, that share is the greater of $50,000 or one-third of the estate.

A surviving spouse has a statutory right to claim their elective share automatically on death unless one of the enumerated grounds of disqualification are established.[33]

The plain language of section 5-1.1A of the EPTL, however, requires strict application, often leaving courts with little to no recourse even in the face of a predatory marriage.

In 2010, the Appellate Division of the State of New York, Second Department, - rendered two judgments that circumvented the strict application of the EPTL – holding that courts are empowered to exercise their

[30] 241 Md. App. 56 (2019).
[31] *Hicks v. Gilbert*, 135 Md. App. 394, 400 (2000) (quoting *Manown v. Adams*, 89 Md. App. 503, 511 (1991)).
[32] See *Campbell v. Thomas*, 897 N.Y.S. 2d 460, 471 (N.Y. App. Div. 2010) [*Campbell*].
[33] Including annulment, divorce, incest, bigotry, abandonment of spouse and failure to support.

powers of equity to prevent predator spouses from exploiting vulnerable adults and taking advantage of the elective share.

On October 26, 2022, the Supreme Court of the State of New York's Appellate Division, Second Judicial Department published its final decision in *Matter of Berk.*[34]

In 1997, Hua Wang (the "Petitioner") was hired as the decedent's live-in caretaker. On June 17, 2005, the petitioner, who was 48 at the time, married the 99-year-old decedent in a ceremony at the New York City Clerk's office. The decedent died on June 16, 2006. His will was admitted to probate in 2006, with testamentary letters issued to Harvey and Joel Berk as co-executors. The petitioner received no bequest under the decedent's will and commenced proceedings to determine the validity of her election against the decedent's estate.

The petitioner was awarded summary judgment on her petition from the Surrogate's Court; however, this was reversed by the Appellate Division on the ground that there was a triable issue of fact as to whether she forfeited her statutory right of election by her alleged wrongdoing.[35] The Court further concluded that the Surrogate's Court improperly directed the dismissal of the executors' counterclaims alleging, amongst other things, undue influence.[36]

After a second appeal was returned to the Surrogate's Court, a 37-day nonjury trial was held. Here, the Surrogate's Court determined that, at the time of the marriage, the decedent was mentally incapacitated and incapable of understanding the nature, effect, and consequences of the marriage to the petitioner or consenting to the marriage.[37] The trial decision held that a surviving spouse may forfeit, **or be equitably estopped** from asserting the statutory right of election where the spouse knows the mentally incapacitated

[34] 71 AD3d 883 (2d Dept. 2010).
[35] That is, by marrying the decedent allegedly knowing that he was a mentally incapacitated person incapable of consenting to a marriage, for the purpose of obtaining pecuniary benefits that become available by virtue of being that person's spouse, at the expense of the decedent's intended beneficiaries.
[36] 2022 NY Slip Op 06003.
[37] It was also determined that the petitioner knew that the decedent was mentally incapacitated at the time of the marriage and entered into the marriage to obtain pecuniary benefits of said marriage at the expense of the decedent's beneficiaries and that through her wrongdoing, the petitioner forfeited her right to take an elective share of the decedent's estate as the decedent's surviving spouse.

person was incapable of consenting to a marriage and deliberately took unfair advantage of the incapacity. The trial decision also provided an alternate ground where the surviving spouse exercised **undue influence** upon the decedent to induce them into marriage. Accordingly, the court determined that the petitioner was not entitled under the provisions of EPTL 5-1.1-A to take an elective share of the decedent's estate and denied the petition. The petitioner appealed that decision as well.

Upon dismissing the appeal, the Surrogate Court's trial decision rested largely on its assessment of the credibility of the witnesses and is entitled to deference,[38] with no basis in the record to disturb it.

While the earlier Appellate Division decisions in *Campbell v. Thomas*,[39] and previous *Berk* decisions placed greater emphasis on the undue influence exerted over the grantor, by acknowledging that a grantor could be tricked into marriage by dishonest motives or conduct, the Surrogate Court's decision following the trial in *Berk* arguably expanded the scope of equitable relief available in future predatory marriage challenges.[40]

IV. Updates from Australia

Unlike Canada, Australia has attempted to meet this challenge by legislating the factors required to determine capacity to marry. However, Australia's legislation falls short in that it requires the marrying parties to have the mental capacity to understand the effect of the *ceremony alone*, and not an understanding of the nature of marriage as an institution with all its consequences.[41] Some scholars have suggested that the legislation would be more effective if it required the understanding of the property consequences of marriage, yet judicial comment in Australia suggests that few people, if any, truly understand all the consequences of marriage.[42]

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[38] See *Matter of Nurse*, 160 AD3d 745, 748; *Matter of Boatwright*, 114 AD3d 856, 859.
[39] 73 A.D.3d 103 (2d Dept. 2010).
[40] The trial decision in *Matter of Berk*, 133 A.D.3d 850, 851 (2d Dept. 2015) focused on the caretaker's "insidious and duplicitous" conduct.
[41] *Marriage Act 1961* (Cth) subsection 23B(1)(d); see also Jill Cowley, "Does Anyone Understand the Effect of 'The Marriage Ceremony'? The Nature and Consequences of Marriage in Australia" [2007] SCULawRw 6; (2007) 11 Southern Cross University Law Review 125.
[42] Cowley, *ibid.* at p. 170 – 171

In the following Australian decision, the court declares a predatory marriage a nullity and relies on its discretion to apply equitable remedies to impress a constructive trust over property transferred into the name of the surviving spouse.

Ip v. Chiang, 2021

A 2021 predatory marriage decision out of New South Wales is worth examination. The judgment in *Ip v Chiang*,[43] is noteworthy since the court in that case applied an equitable remedy in finding that the estate of Long Sing Ip (the "Deceased") is entitled, as a constructive trustee, to recover property acquired by a predator spouse.

In *Ip,* Ms. Xiao Feng Ip, nee Liang, also known as Lisa Ip (the "**Plaintiff**") sued Ms. Lisa Tsui Pen Chiang (the "**First Defendant**"), *inter alia*, for equitable relief arising from the transfer to her, and her subsequent sale, of the deceased's residential property at Redfern (the "Redfern Property").

The Plaintiff submitted that the First Defendant tricked the Deceased, an elderly cognitively impaired widower, into transferring his principal asset through entry into what the court described as a "sham" process of marriage, separation, property settlement and divorce.[44]

After divorcing the First Defendant, the Deceased allegedly married her mother-in-law. While the court held that the Plaintiff's case did not depend on the determination of the validity of that marriage, it was adduced as evidence, going to the credibility of the First Defendant. She was actively involved in arranging the marriage ceremony.

Litigation Context

The central issue arises out of the disputed marriage between the Deceased and the First Defendant on September 3, 2013, and later dissolved on October 23, 2015 and the "binding financial agreement" which followed, dated July 6, 2015. The result of this agreement was a property settlement

[43] [2021] NSWSC 822 [*Ip*].
[44] *Ip*, *supra* at para. 4.

in which the Redfern Property was transferred by deceased into the sole name of the First Defendant on April 22, 2016 (the "**Transfer**").

Secondary to the Transfer is the issue of another disputed marriage between the Deceased (who by this point was a nursing home resident) and Ms. Lanying Guo (a former mother-in-law of the First Defendant) on April 26, 2016.

There were also disputed guardianship proceedings in the Guardianship Division of the NSW Civil and Administrative Tribunal relating to protective management of the estate, and person, of the Deceased.[45]

The Deceased

The Deceased was born on February 8, 1933, in China and died in Sydney on August 23, 2017, at the age of 84. He emigrated to Australia in 1975, becoming a citizen on March 29, 1985. His general practitioner observed him to be unsophisticated and poorly educated, only communicating in Cantonese.

The Incapacity of the Deceased

Ample evidence was submitted which speaks to the incapacity of the Deceased. Records of his time in hospital and his nursing home include evidence of "aberrant, aggressive and confused behavior consistent with mental illness."[46] As early as 2012, the general practitioner of the Deceased reported he was in poor health, suffering from dementia, and unable to manage the medication of his wife and himself. The Plaintiff's evidence is that at or about this time the deceased was often confused, forgetful, disinclined to shower and maintain a clean house, prone to lose things and to get lost, and experiencing difficulties in dealing with money in everyday circumstances.[47]

[45] Pursuant to orders made by the Tribunal on May 26, 2016, for appointment of the NSW Trustee as the deceased's financial manager and the plaintiff as his guardian.
[46] *Ibid*., at para. 114.
[47] *Ibid*.

The First Defendant, despite evidence to the contrary, insisted that the Deceased never suffered from dementia. The court concluded that this was detrimental to her credibility and her reliability as a witness of fact.

The First Defendant

The First Defendant was born in 1953 and came to Australia on January 16, 1988, becoming a citizen in 1991. She claims to have met the Deceased in early 2013, at a time when each was mourning the loss of a spouse. She says she commenced living in the Redfern Property in about April 2013, shortly after meeting the Deceased.

The First Defendant was 20 years younger than the Deceased. She was described as intelligent, sophisticated, determined, forceful and well-travelled. The court also heard evidence that the First Defendant was a gambling addict who had even borrowed $150,000 against the security of the Deceased's Redfern Property and used this money to pay the Casino.

Evidence discloses that the First Defendant was married three times prior to her marriage with the Deceased and that she was often absent throughout the marriage, travelling overseas. She continued, from time to time, to visit the Deceased at his nursing home until he passed away, thereby as the court described "protecting her investment by playing the role of a *bona fide* former wife and keeping track of his whereabouts and welfare."[48]

Land Transfer

The court heard evidence that the transfer of the Deceased's Property to the First Defendant involved a two-stage scheme. In the first stage, the Deceased executed a memorandum of transfer on or about September 9, 2013, of a transfer of the Redfern Property from him into the names of the First Defendant and himself as joint tenants, for the consideration of $1.00.

In the second stage, the First Defendant and the Deceased signed a Binding Financial Agreement on July 6, 2015, wherein the First Defendant allegedly gave the Deceased $150,000 cash in return for the transfer. Later, on April

[48] *Ip*, *supra* at para. 53.

22, 2016, the Deceased signed a Memorandum of Transfer, effecting the transfer of his property from him to the sole name of the First Defendant.[49]

The court concluded that there was a close connection between the marriage ceremony and steps taken to change title to the Redfern Property which were favorable to the First Defendant's interests.[50] There was also evidence that the First Defendant prepared, aided, and caused both transfer forms to be lodged for registration.[51]

Shortly after the property was transferred into her name, the First Defendant dealt with the Redfern Property in several transactions including:

1. Leasing the property to Ms. Guo's son, her former husband, at a weekly rental rate of $650 cash;

2. Mortgaging the Property for $150,000 (then paying the borrowed money to the Star Casino); and,

3. Selling the Property for $1,050,000 and using the proceeds to discharge the mortgage.[52]

The First Defendant then applied the remaining proceeds to purchase a residential unit in Pyrmont and two garage spaces in Pyrmont.[53]

<u>The Validity of the Deceased's Marriage to the First Defendant</u>

Under Commonwealth legislation (the *Marriage Act* 1961[54] and the *Family Law Act* 1975[55]), a marriage is void, and may be declared a nullity, on the ground that the consent of a party to the marriage was not "real consent" due to the party being "mentally incapable of understanding the nature and effect of the marriage ceremony."[56]

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[49] *Ip*, *supra* at para. 63.
[50] *Ibid*., at para. 66.
[51] *Ibid*., at para. 68.
[52] *Ibid*., at para. 74.
[53] *Ibid*., at para. 75.
[54] Cth, section 23B (1)(d)(iii).
[55] Cth, section 51.
[56] *Ip*, *supra* at para. 93.

Section 23B of the *Marriage Act* does not require a person to have a detailed and specific understanding of the legal consequences of marriage to have the capacity to give a valid consent; however, mere awareness of going through a marriage ceremony is not enough, a person must also understand the nature and effect of the ceremony involved.[57]:

The court believed at the time of the marriage ceremony, the Deceased was mentally incapable of understanding the nature and effect of the ceremony. This was clear from the evidence of his general practitioner and several lay observers who testified that, at the time of the alleged marriage, the Deceased was elderly and suffering cognitive impairment, probably the result of vascular dementia.[58]

There was also evidence that throughout the course of the short marriage, the First Defendant spent a significant amount of time away from the Deceased. As a pretext for a divorce and property settlement, she introduced the Deceased to her former mother-in-law, an elderly woman ordinarily resident in China.[59]

The First Defendant failed to call evidence which could go to the validity of the marriage.[60] The court was therefore of the opinion **that the marriage was void** within the meaning of section 23B of the *Marriage Act* 1961 and make a declaration under section 51 of the *Family Law Act* 1975 to the effect that it was a nullity.

The Court's Analysis

The court concluded that the Deceased (to the knowledge of the First Defendant) lacked capacity to marry the First Defendant and to execute the transfer of the Redfern Property to the First Defendant.[61]

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[57] *Ip*, *supra* at para. 97 where the court cites decisions in *AK v NC* [2003] FamCA 1006; 32 FamLR 16; [2004] FLC 93-178; *Oliver (deceased) v Oliver* [2014] FamCA 57.
[58] *Ibid*., at paras. 98-99.
[59] *Ibid*
[60] No evidence was adduced from the marriage celebrant, the two formal witnesses to the marriage ceremony, a photographer who attended the ceremony, her friend who introduced her to the deceased or others in whose company, she says, she and the deceased together enjoyed.
[61] *Ibid*., at para. 321.

Importantly, the court also concluded that all the transactions were unconscionable in nature, holding, "in finding that the impugned transactions were liable to be set aside as unconscionable dealings, I acknowledge that equitable intervention could equally be justified by reference to principles governing undue influence and breaches of fiduciary obligations."[62]

The court held that these findings were sufficient to justify the imposition of a constructive trust respecting the First Defendant's acquisition of the Redfern Property, attaching to her dealings with the property, including the proceeds of its sale traced into subsequently acquired property. According to the judgment, "her title to the property was acquired in such circumstances that she could not in good conscience retain a beneficial interest in the property, as a consequence of which she should be found to have held title as a constructive trustee for the deceased and, as such, liable to account to his estate for her dealings with his property"[63] [emphasis added].

The court held, by **imposition of constructive trust**, that the first defendant must account to the estate trustee/estate of the deceased for his property. The object of taking of accounts is to strip her of gains unconscionably made by her at the expense of the estate of the deceased.[64] The court held that because of a constructive trust having attached to the First Defendant's interests in the Redfern Property, it is not necessary for formal orders declaring the invalidity of intermediate transactions purportedly effected by the Deceased.[65]

Because of a constructive trust having attached to the first defendant's interests in the Redfern Property (culminating in her registration as sole proprietor of the property), it is not necessary for there to be formal orders declaring the invalidity of intermediate transactions purportedly affected by the deceased.

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[62] *Ibid*., at para. 324.
[63] *Ibid*., at para. 325 where the court cites decisions in *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 108; *Muschinski v Dodds* (1985) 160 CLR 583 at 615-616; *Giumelli v Giumelli* (1999) 196 CLR 101 at 111-112.
[64] *Ibid*., at paras. 326-327.
[65] *Ibid*., at para. 331.

The court declared the marriage between the Deceased and the First Defendant a nullity and that the Deceased lacked the mental capacity to execute the transfers of the Redfern Property.[66] The court also declared that the First Defendant at no time paid the sum of $150,000.[67]

The Plaintiff was entitled to relief in the form of a declaration that whatever interest the First Defendant held in the Redfern Property was held by her upon trust for the Deceased, a declaration that proceeds of sale of the Redfern Property were held by the First Defendant upon trust for the Deceased, a declaration that the Pyrmont properties were held by the First Defendant upon trust for the Deceased, and an order that the First Defendant account to the estate trustee/estate of the Deceased for all rents, profits or benefits received by her from her lease or use of the Redfern Property and the proceeds of the Redfern Property by the First Defendant.

v. Updates from Canada

Some, but not all, provinces and territories in Canada have marriage legislation that contemplates the necessity of capacity to marry. For example, certain statutes prevent a marriage commissioner from issuing a license to, or solemnizing the marriage of someone known, or with reasonable grounds believe an individual lacks mental capacity to marry,[68] is incapable of giving valid consent,[69] or who has been certified as mentally disordered.[70]

For instance, section 7 of Ontario's *Marriage Act* prohibits persons from issuing a license to or solemnizing the marriage of any person who, based on what one knows, or has reasonable grounds to believe, lacks mental capacity to marry by reason of being under the influence of intoxicating liquor

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[66] *Ibid*., at para. 332.
[67] *Ibid*., at para. 335.
[68] Section 7 of the Ontario *Marriage Act*, R.S.O. 1990, c. M.3, provides: "No person shall issue a license to or solemnize the marriage of any person who, based on what he or she knows or has reasonable grounds to believe, lacks mental capacity to marry by reason of being under the influence of intoxicating liquor or drugs or for any other reason."
[69] *Marriage Act*, R.S.N.W.T. (Nu.) 1988, c. M-4 (Nunavut).
[70] *The Marriage Act*, CCSM c. M50.

or drugs *or for any other reason*.[71] In British Columbia, it is a criminal offence to issue a license for a marriage, or to solemnize a marriage, when the authority in question knows or has reason to believe that either of the parties to the marriage is mentally disordered or impaired by drugs or alcohol.[72] Where provincial or territorial legislation is silent on this issue of capacity and marriage (Nova Scotia, Prince Edward Island, New Brunswick, and Yukon) common law dictates that a marriage may be found to be void *ab initio* if one or both of the spouses did not have the requisite mental capacity to marry.

As such, whether by statute or at common law, every province requires that individuals have legal capacity to consent to, and therefore enter into a valid marriage.

Despite the various legislation on commissioning a marriage, it appears there is no diligence in heeding the provisions since marriages continue to be convened where there is no apparent attention paid to capacity and consent.

The following Canadian caselaw helps understand the approach taken by Canadian courts when dealing with Predatory Marriage and Predatory Relationship.

Ross Estate (Re), 2024 BCSC 459[73] *- Predatory Marriage*

This case involved an elderly man Mr. Ross, with mild to moderate signs of mental retardation, who executed a new will in 2019, leaving his estate to the respondent, replacing his previous will of 1979. The petitioners were the siblings of Mr. Ross asking the court to uphold a will that he made in 1979. He died in 2020. They argued that the subsequent will made by Mr. Ross in 2019 was invalid, either because he lacked capacity, or because of undue

[71] Section 7 of the Ontario *Marriage Act*, R.S.O. 1990, c. M.3, provides: "No person shall issue a license to or solemnize the marriage of any person who, based on what he or she knows or has reasonable grounds to believe, lacks mental capacity to marry by reason of being under the influence of intoxicating liquor or drugs or for any other reason."
[72] *Marriage Act*, RSBC 1996 chapter 282, section 35.
[73] Ross Estate (Re), 2024 BCSC 459

influence. In the 2019 will, Mr. Ross left his property to the respondent who he married in September 2016.[74]

The respondent deposed that she and Mr. Ross became friends in 1994-1995, and she had regularly visited his house that he shared with his mother since then. In 2001, Mr. Ross entered into a representation agreement, which named the director of a local seniors' center as his representative. That same year, he contacted a local law firm and asked to prepare a new will. The lawyer involved deposed that he was not prepared to do so, as he had concerns regarding Mr. Ross' testamentary capacity, and asked Mr. Ross' family doctor at the time for his opinion. The medical doctor was of the view that he showed "some possible evidence of delusional thought process", due to which the law firm refused to take his instructions for a possible new will.

In 2003, Mr. Ross' friends contacted the PGT expressing their concerns about possible financial abuse of the deceased by his representative. During this time Mr. Ross was issued a "certificate of incapability" after having a geriatric psychiatrist finding him to have a "mild / moderate degree of mental retardation". The PGT thereafter became the committee of his estate. In 2015, Mr. Ross accidentally started a housefire in the property he previously shared with his mother, leaving it inhabitable, leading him to move in with the respondent. In January 2017, he had removed his 1979 will from the law office where it was stored. By 2018, Mr. Ross showed signs of dementia, and his condition significantly worsened in 2019-2020. He had a stroke in April 2020 and died about five weeks later.[75]

At the time his assets were worth approximately half a million. Though Mr. Ross did not understand what a marriage was, he understood what a contract was between two people, and referred to marriage as a legal contract and romantic relationship. The petitioners argued that the respondent attempted to isolate Mr. Ross though rejecting his palliative care

[74] *Ibid*, at para 6- 30
[75] *Ibid*, at para 70 - 94

team, criticizing his community support system, and being resistant to people visiting them.

Outcome

The court decided that both the 1979 and 2019 wills were invalid, and that Mr. Ross' capability to understand what a marriage or marriage like agreement was severely limited, and that his interest in pursuing a marriage-like relationship with the respondent was nonexistent, except to the point where the respondent directed it. As such, he was not considered the respondent's spouse by means of legal marriage or a marriage-like relationship. In the end the petitioners had substantial success and had costs awarded to them and the marriage was set aside. [76]

King v Vimhel, *2024 BCSC 1745*[77] – *Predatory Relationship*

This case involved an elderly woman, Ms. King, in an abusive and predatory relationship with a younger man Mr. Vimhel, who systematically manipulated his vulnerable victim for the purpose of financial gain.[78]

Ms. King met Mr. Vimhel, when she was 77 years old and lived alone in a North Vancouver in a house worth over $1.2 Million (the "Property"), along with which she owned a vacation home in Parksville and had savings of approximately half a million. Mr. Vimhel was about 15 years younger than Ms. King and described himself as an "artist" and lived out of his vehicle.

Soon after their meeting, Mr. Vimhel began exerting undue influence and taking control over the plaintiff's relationships and finances. In 2017, he moved the plaintiff from her primary residence into a motel and made sure that none of her loved ones knew of her location. Mr. Vimhel employed a variety of tactics to isolate Ms. King from her family and friends by:[79]

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[76] *Ibid*, at para 199 - 231
[77] King v Vimhel, 2024 BCSC 1745
[78] *Ibid*, at para 1 - 5
[79] *Ibid*, at para 19

- preventing her from contacting her friends and family, including by blocking their phone numbers;
- frequently criticizing her family members;
- writing cruel emails from her account to her family, directing them not to contact her;
- changing the locks on the Property and locking her in the Property when he left;
- prohibiting her from leaving the Property without him;
- reporting her family to the police for harassment; and
- instructing counsel on her behalf to author letters to her children directing them not to contact her.

Mr. Vimhel also got full control over the plaintiff's finances by: [80]

- having her revoke the power of attorney that she had granted to a trusted friend, and causing her to grant a new power of attorney to him;
- taking money from her without her knowledge or consent;
- signing documents using her name and signature;
- having her sell the Parksville vacation home and place the $515,000 of proceeds in a joint account with him (the account was emptied by 2020); and
- forcing her to register him as a joint tenant to the Property.

Eventually, the abuse became so consistent and severe that Ms. King came to believe that he would kill her if she did not do what he wanted.

Ms. King's daughter hired a private investigator who was able to locate the whereabouts of Ms. King in November 2018. Ms. King's children were

[80] *Ibid*, at para 20

horrified by the conditions she was living in and reported the situation to the police on multiple occasions to no avail. In 2020, Ms. King's daughter was finally able to rescue her mother with the help of her grandchildren and several police officers. At this point, Ms. King discovered that all her accounts and assets had been drained by Mr. Vimhel, at which point she revoked Mr. Vimhel as POA and appointed her children in his place. Ms. King's last remaining asset was the Property, which was registered in the joint names of herself and Mr. Vimhel.[81]

Outcome

The British Columbia Supreme Court found that Mr. Vimhel held his share of Ms. King's Property in a resulting trust, in favour of Ms. King. The Court set aside Ms. King's transfer of the Property and returned the Property solely to her name. Justice Donegan reasoned that (i) Mr. Vimhel did not give Ms. King any value in exchange for receiving a joint interest in the Property, and (ii) Ms. King did not willingly intend to gift Mr. Vimhel all the rights of a joint owner. In addition, the Court found that Ms. King's transfer of the Property was a result of Mr. Vimhel's undue influence over her.[82]

The Court also awarded Ms. King with punitive damages in the amount of $50,000, describing their relationship as a predatory relationship of an "extreme nature" and that Mr. Vimhel was a "predator" systematically manipulated his vulnerable victim for the purpose of financial gain.[83]

Concluding Comments

While this global update is unfortunately, short on legislative amendments, it does shine a light on the evolution of equitable remedies. In all four jurisdictions canvassed, there is evidence that courts are looking to the law of equity to 'fill the gaps' where the common law has failed to keep pace. Where it concerns predatory marriages, it is likely that more practitioners will begin to make claims for equitable relief on behalf of their clients.

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[81] *Ibid*, at para 23 - 40
[82] *Ibid*, at para 48 - 65
[83] *Ibid*, at para 57

This update to a larger Predatory Marriages paper is intended for the purposes of providing information only and is to be used for the purposes of guidance. This paper is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive, June 2025