

## **It's all mine, isn't it?**

### **German Compulsory Rights of Inheritance may affect Testamentary Dispositions in Canada**

One of the more problematic areas of German estate law is that of the so-called "Pflichtteilsrechte" contained in the German Civil Code (Bürgerliches Gesetzbuch- BGB). Certainly in Ontario, it is not uncommon to find German immigrants who left Germany many years ago and who have drawn up a last will and testament that is valid under the laws of Ontario. They will be surprised to hear that this testament may be subject to challenge by potential heirs living in Germany.

This is what happened to a client of ours: she was the common law wife of a German ex-pat who had moved to North America many years ago but had retained his German citizenship. Her partner had wanted to take care of her. They had been living together for 20 years. In his testament which was valid based on Canadian law, he left her everything, including a house, cash in various bank accounts and household effects. He had two grown children from his first marriage. They lived in Germany and were German citizens. When they heard about dad's Canadian testament in which dad had left them some artworks, books and family pictures, they became very angry. It seems they didn't like dad's new partner. They demanded that she give them some of the family antiques and their father's prized Porsche Old Timer.

When she told them "It's all mine", they suddenly remembered that dad had two German bank accounts and an old-age insurance plan. When stepmom wouldn't budge, they hired a lawyer in Germany and were able to freeze the bank accounts and file a notice of seizure to prevent further insurance plan distributions to Canada. They claimed that dad was actually resident in Germany because he had a registered place of residence in his old home town. They said he had wanted to leave his partner to return to Germany and had merely returned to Canada "to pack things up" when he became ill and died. The German judge was persuaded by their claims.

She first issued a freezing order preventing the widow from obtaining a pay out of the funds on deposit with the bank and any further payments of insurance premiums to Canada. This was served on stepmom in Canada by airmail by the German court. Until then, she had thought she was protected by Canadian law.

The German judge then issued a court order requiring the Canadian widow to provide a full listing of all of dad's estate assets, both in Canada and in Germany. You may think that a Canadian citizen is under no legal obligation to provide information to a German court because the German court has no legal authority in Canada. In this case, refusal to cooperate could mean losing all claim to the money in Germany.

It turns out that dad had lots of money in his two German bank accounts and his old age insurance premiums were also considerable. The German lawyer representing the children suggested that a bargain could be made: stepmom could keep all the assets in Canada and the children could get all of the assets in Germany. Good deal or not?

We are still fighting over it.

©Sylvia Jacob

#### **münchen**

hohenzollernstr. 84  
80801 münchen  
Deutschland  
tel +49.89.33 04 07 07  
fax +49.89.33 04 07 06

#### **toronto**

480 university avenue, suite 1600  
toronto, ontario m5g 1v6  
canada  
tel +1.416.597 99 22  
fax +1.416.597 33 70

principal: sylvia jacob

barrister & solicitor (ontario, canada)  
solicitor (england & wales)  
rechtsanwalt (deutschland)

[www.jacoblaw.com](http://www.jacoblaw.com)