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1. Apportioning Contingent Tax Liabilities: S.C.C.

In [Stein v. Stein](#), 2008 SCC 35, the Supreme Court restored the lower court decision from British Columbia that apportioned the husband's contingent tax liabilities between the parties, finding that:

...the Court of Appeal erred in finding that the FRA [British Columbia's [Family Relations Act](#)] prevented the contingent tax liabilities to be divided between the parties and erroneously concluded that the speculative nature of the liability made it impossible for a fair reapportionment of assets to occur. The fact that this reapportionment will occur at some stage in the future, after the liability has crystallized, does not, in my view, violate a plain reading of the FRA. As a result, I would restore the trial judge's order that the parties shall share equally in any liability related to the reassessment or winding-up of all tax shelters, with the caveat that this division will be net of any revenue realized in respect of these instruments.

For commentary on the decisions of both the majority and the minority, see the articles:

- [Stein v. Stein and the Apportionment of Tax Liability among Divorced Partners, Part I](#) by Matthew Shogilev; and
- [Stein v. Stein and the Apportionment of Tax Liability among Divorced Partners, Part II](#) by Diana Younes.

2. Financial Disclosure and Pre-Nuptial Agreements: ON C.A.

The Ontario Court of Appeal in [LeVan v LeVan](#), 2008 ONCA 388 (CanLII) considered an appeal from a lower court decision setting aside a pre-nuptial agreement, pursuant to s. 56(4) of Ontario's *Family Law Act* which provides that:

- A court may, on application, set aside a domestic contract or a provision in it,
- (a) if a party failed to disclose to the other significant assets, or significant debts or other liabilities, existing when the domestic contract was made;
 - (b) if a party did not understand the nature or consequences of the domestic contract;
- or
- (c) otherwise in accordance with the law of contract.

The appeal court upheld the lower court's findings that:

...(i) the husband had interfered the wife's lawyer of choice; (ii) the wife's lawyers were unable to appreciate the consequences of the contract and impart them to the wife due to lack of financial disclosure and misrepresentations; (iii) the wife had not received effective independent legal advice and some advice provided was wrong; and (iv) the wife did not understand the nature or consequences of the contract she signed.

These findings are reasonably supported by the evidence presented at trial. I therefore see no reason to interfere with them in this case. In essence, the trial judge found that the husband failed to make full disclosure of his significant assets, that his disclosure was incomplete and inadequate and that his failure to make full disclosure was a deliberate attempt to mislead his wife. As such, the trial judge's decision to set aside the contract should be upheld.

3. Update on Provincial Legislation

Bill 4, [*The Provincial Court Amendment Act \(Family Mediators and Evaluators\)*](#) received Royal Assent and came into force June 12, 2008 (S.M. 2008, c.6), as did Bill 34, [*The Child and Family Services Amendment and Child and Family Services Authorities Amendment Act \(Safety of Children\)*](#) (S.M. 2008, c. 33).

4. Reminder re Changes to Claiming Eligible Dependent Credit

Effective January 1, 2008 (and retroactive for 2007), the [*requirements for claiming the Eligible Dependent Credit*](#) (formerly Equivalent-to-Spouse credit) changed, such that if the taxpayer and another person were required to make support payments for the child for 2007 (as in a shared custody situation) and as a result, no one would be entitled to claim the amount for an eligible dependant for the child, the taxpayer can still claim this amount providing that he/she and the other person(s) paying support agree that the taxpayer will be the one to make the claim.

5. No Bed of Roses

The article, [*Still No Bed of Roses*](#) by Jill Schachner Chanen, published in the June 2008 issue of the *ABA Journal* describes the practice of family law in the U.S. and includes information on electronic discovery and alternatives to litigation being used in U.S. jurisdictions.

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