

Hull on Estates Podcast #32

The Family War - Winning the Inheritance Battle

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Paul Trudelle: Hello, and welcome to Hull on Estates. You're listening to Episode #32 on Tuesday, October 31st, 2006.

Welcome to Hull on Estates, a series of podcasts for the Canadian legal community dealing with issues and insights surrounding estate planning in Canada. Hosted by the lawyers of Hull and Hull, the podcast will touch on some key considerations when planning estates and Wills. Now, here are today's hosts.

Sean Graham: Well hi Paul, how are you?

Paul Trudelle: Good, Sean. Today we have a special guest, we have author and lawyer and estate specialist, Jordan Atin, and we're going to be speaking about his new book, "The Family War - Winning the Inheritance Battle". Welcome, Jordan.

Jordan Atin: Oh, thanks very much, it's a pleasure to be here.

Sean Graham: Now Jordan, I guess the most obvious question is, why did you decide to write the book?

Jordan Atin: Well, there are so many of these, what we call, family wars going on nowadays. Sadly, inheritances are causing so much trouble for families, they are destroying families, and really there is no book out there that helps empower people on how to avoid these fights, and how to deal with them once you are in them, and how to get out of them as quickly and as, in the best way possible. So that's what we were trying to do when we wrote this book.

Paul Trudelle: Now what is it about the passing of a loved one that seems to spur on or start up these battles?

Jordan Atin: Well, that's a good question, and I don't know if I have the complete answer. I often say that death causes strange things to families. Death and money are a combustible combination, and while the parent is there sort of acting as the referee on the scene, emotions between siblings can be, a lid can be kept on them. And even though there may be bad feelings, nothing, nobody really acts out until the parent passes away, and now the referee is gone and for whatever reason, that is the opportunity for siblings who have spent their lives together and had many good times and bad times no doubt, to battle one another.

Sean Graham: So I take it, I mean I understand most of these battles are essentially over assets, but I'm gathering from what you're saying that there is an undertone here that really is often not about the assets or the money or the property itself.

Jordan Atin: Yeah, as we say in the book, it's, most of these battles are over memories and not money. Usually the first thing that people say when they come in is, it's not the money, it's the principal. And I truly believe that in the vast majority of cases, that is exactly true. They are fighting, not so much for the money, they are fighting for, most often they are fighting to protect what they believe were the wishes of their parent. So the client will come in and say, this, you know, I'm standing up for my parent, my mother would never have wanted a Will like the one that my brother is trying to put forward, she must have been unduly influenced, or she lacked mental capacity, and these are not her true wishes. Or on the other hand, the party who is propounding the Will or holding up the Will saying, of course this is what Mom wanted. So that's how almost all estate battles are justified and rationalized by both parties.

Paul Trudelle: You mention the fight amongst siblings once a parent has passed away. What sorts of other scenarios do you see this fight arising?

Jordan Atin: Well now, thanks Paul, that's a good question. We're seeing so much of, as people get older and yet medical technology is keeping them alive, we are seeing a lot of people who are mentally incapable, who haven't passed away but are mentally incapable and those sorts of conflicts, conflicts arise out of that sort of scenario. For example, if Mom becomes mentally incapable and appoints one of her kids as a Power of Attorney, the other siblings may feel that that is unfair, or may feel that that sibling is trying to take advantage of Mom, and will cause all kinds of problems for that Attorney, for that Power of Attorney, and there will be accounting obligations and bad feelings and there could be a guardianship application. I mean, that's, those are what we are seeing more and more, and those are often the most difficult ones to resolve because Mom is still alive, and it's not just a pool of money that we're fighting over. We're fighting over Mom.

Sean Graham: What about, I mean, I may extend it and say, what about the extended family war, because I've certainly, in my practice, noticed second marriages seem to be a particular spur to this sort of litigation, and I was just wondering if you could touch on that?

Jordan Atin: Well, I think if I were to rank the factors that contribute to an estate dispute, I would have to put a second marriage at the top of the list. There is an inherent conflict between the new spouse and even if that spouse has been married to the deceased for many, many years, that new spouse, and the first family. That is, the children of the deceased, from another relationship. And you're going to have that tension between what to do, what can the deceased do to provide for that second spouse, and yet provide for his kids. Is he going to put the money in a trust during the lifetime of that second spouse, which means the kids are just sitting there waiting for the second spouse to die, until they get theirs. And that's not a good position to be in, and so there is really no good solution to a second marriage scenario that's going to keep everybody happy.

Paul Trudelle: Is your book written for people who are finding themselves in that family war already, or is there a broader market as well?

Jordan Atin: Well, predominantly the book is for people who are expecting to be in or in a family, an estate dispute. But so much of the book is tailored towards protecting one's rights, informing people, informing executors about what they should do to avoid getting themselves in an estate dispute, which is where so many estate disputes come from. Not from the Will or challenging the Will, but from what the executor does to administer the Will. So from that point of view, from the idea of, any beneficiary can get information from the book about what their rights are. When can they expect their inheritance, what rights do they have against the executor, things like that. We also give tips for the parents who are planning on perhaps excluding a child, if that's their desire, on how best to do that to avoid that child coming back and challenging the Will. So we've sort of captured it, hopefully from all angles.

Sean Graham: Now in terms of, I mean, I've read the book, it's a great read. What I do notice is that there's not a lot of references to, I mean you are an Ontario lawyer, there's not a lot of references to this Ontario statute or that Ontario statute. Presumably, that's by design. I'm just wondering if you can give me a sense of the scope of who might find this book useful?

Jordan Atin: Well, that is, certainly by design, and thank you very much for your kind comments. This book is, I think, applicable, and was intended to be applicable, all over not only North America, which has the same system of law as Ontario, but all over basically Europe, whether England, Australia, so many countries that have our estate system and our estate laws. And this book is completely applicable to those situations because the issues are exactly the same, though perhaps you have to serve a claim within 20 days here in Ontario, but you get 30 days in Arkansas, doesn't matter in the sense that it's not something that, we're not suggesting this book replaces a lawyer. But what it does is arm you with the information that you're going to need to get yourself through an estate dispute, or to protect yourself. So yes, it is certainly intended to be worldwide.

Paul Trudelle: So safe to say that a family war rages all over.

Jordan Atin: Sadly, yes. In fact, most of the books we've sold, and we've sold a great number already, are going to the United States.

Sean Graham: That's interesting, I take it there is no shortage of this sort of dispute. Now in terms of, how are you hoping the book, you've mentioned, touched on it a bit, in terms of how you think it will help people. But specifically, an average reader, say a lay person not a lawyer, what could they take from the book say at the outset of a family war, that may help them on the way through that dispute?

Jordan Atin: Well, that, the book really does focus on that kind of issue. We take the reader through the ways of dealing with the unreasonable sibling. It's my experience and we note this in the book that siblings generally take the same role in estate disputes after the parent died that they did in the family when they were kids. So you have the big brother who's the bully, you have the younger brother who might be the victim, or the

daughter who is the victim, or the child who's caught in the middle, trying always to make peace. Those roles repeat themselves interestingly in the estate battle. So you have the aggressive child, who's pushing the litigation forward. You have the other younger brother who's trying to stand up for himself for the first time in his life. And you have the sister who's caught in the middle, trying to mediate. This book gives people the tools to understand what's going to happen, to understand how to deal with that aggressive brother or that victim child or the black sheep, how to be the peacemaker, how to resolve, how to work with your lawyer, how to resolve these disputes as quickly as possible. Because the reality is, if a dispute goes on too long and unfortunately it's a very short window, but if it goes on too long, there are going to be generations of cousins who will never know one another because of the family war.

Paul Trudelle: With respect to the warning signs, you mentioned the second marriage, you mentioned the bully brother, are there other warning signs or hot button issues, or areas that you find tend to lead to more litigation?

Jordan Atin: Well, one of the classic ones is when children are treated differently in the Will. Certainly as an estate, if I were giving advice to someone planning their Will who didn't want to cause a family war and did want to treat their children equally is to do exactly that. Because a Will is the last thing that your parent says to you as a child. It's the very last thing and it's in black and white. And kids will immediately look to the Will to see if that Will reinforces what they always perceived. Were they always the one who was left out, was their brother Johnny always the one who was put in control and domineering. And is that reflected in Mom's last Will, because really that's what's happening. They are playing through everything that's happened in their lives and this is the last thing that Mom said to me, did she trust me, did she give me the same as my brother, did she love me the same as my brother, did she put restrictions on how much I could get, maybe she didn't trust my husband, she didn't trust my choice in partner, is that how it's always been? So that's why it's so important, I think, for parents to recognize the importance in what they are putting down in black and white, it's the last thing they are ever going to say to their kids.

Sean Graham: Now, you mentioned in one of the prior questions that you discuss the relationship between the member of the family who's in the family war and the lawyer. And one thing I've always noticed is that when a client comes and mentions that it's a matter of principal, you have to respect that of course, as a lawyer. But I find it important to set out at the outset what that matter of principal is likely to cost. And fairly often that sort of changes the mentality, do you mention that at all in the book?

Jordan Atin: Yes, we do, in fact we take the reader through a sort of a typical, a sample, an example estate case from start to finish, showing them where, what's going to cost, what's going to be expensive and what's not going to be as expensive, where is their time going to be spent. Cost is a huge prohibitive factor to pursuing this and I think that's one of the reasons that most estate cases settle, because the cost of battling is just too high. And so yeah, the book does take you through, it's not going to talk about dollars and cents because, of course, that does depend on the jurisdiction you are in. But certainly

you will understand that the more intense periods of time during the proceedings will cost more money.

Paul Trudelle: Well that's wonderful, thank you very much Jordan, and we wish you all the best with your book, and we understand that there is a great deal of interest in such a book at this time.

Sean Graham: And Jordan, just one last point. If somebody does want to purchase the book, how can they, how can they track it down?

Jordan Atin: Well, thanks for the plug, Sean. Right now, it's not yet in bookstores, it will be shortly. It just came out but if they want to get it, they can go to our website, which is www.thefamilywar.com. They can also call 1-877-439-3999 and order the book that way.

Sean Graham: Well, thanks again Jordan. I'm sure you will be getting a lot of orders, it's a great book and best of luck with it.

Jordan Atin: Thanks again guys.

This has been Hull on Estates with the lawyers of Hull and Hull. The podcast you have been listening to has been provided as an information service. It is a summary of current legal issues in estates and estate planning. It is not legal advice and you are reminded to always talk with a legal professional regarding your specific circumstances.

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