

Pet Trust Funds - Hull on Estates Podcast #76

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Suzana Popovic-Montag: Hi, and welcome to Hull on Estates. You're listening to Episode #76 of our podcast on Tuesday, September 11th, 2007.

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 & Hull, the podcast will touch on some key considerations when planning estates and Wills. Now, here are today's hosts.

Ian Hull: Hello Suzana.

Suzana Popovic-Montag: Hi there, Ian. How are you?

Ian Hull: Just great.

Suzana Popovic-Montag: That's good.

Ian Hull: Great to be on Hull on Estates. One of the things I tried to do this summer was catch up on the podcasts over the year that I had missed. And enjoyed listening to a bunch of the Hull on Estates earlier ones to catch up a little bit on my continuing legal education. So that was kind of fun.

But today we want to sort of turn our focus on a couple of things which we find in our other podcast, Hull on Estates and Succession Planning, we do much more of. And that is sort of look at some real world and what's the real world doing in estates. And we are always struck by the fact that the practice of law in the area of estates, whether it's contentious or non-contentious, touches the different parts of our lives in so many ways. And I had the privilege of being interviewed by the Globe & Mail last week...not last week, I guess it was a couple of weeks ago now. In August 30th, there was an article about what I thought was sort of a fun topic and that was the gifting of substantial gifts to animals. So why don't we spend a couple of minutes just talking about that, 'cause that was kind of a neat twist on estate planning that came out of New York City.

Suzana Popovic-Montag: It is an interesting twist, as you say Ian, and it's one that we're seeing more and more of, surprisingly. These pet trust funds and a very interesting concept. And, you know, in today's day and age, I think we'll see even more of it.

Ian Hull: Well, the article that we're talking about is an article about the late Leona Helmsley who was a very wealthy woman and managed to accumulate a lot of money over her days and she left \$12,000,000 in a trust for her dog. I was asked by the Globe & Mail what my impression of that was and I bluntly said that's a lot of dough for a dog. But more importantly...

Suzana Popovic-Montag: You got quoted on that exact comment.

Ian Hull: ...I did get quoted on that, that's right. I did get that quoted. But more importantly, I just think it was an interesting dialogue that we had. There was a couple of other...Michael Sullivan, who's the President of the...essentially the overriding...it's not the Humane Society, but I'll check his exact title here, but it's...and McCray, a great lawyer from out in Vancouver, was also...Bill MacRae was also interviewed. But, you know, the twist was this. I thought it was interesting is that this brings a unique situation obviously, but it brings the issue of estates alive and in person, so to speak, and brings it to the front of what every day-to-day people see and think about and it goes to the glamorous side of estates.

But Michael Sullivan is the head of the SPCA in Canada, had a great sort of view on it and admitted...and the article talks about the fact that people are using pet trusts more and more. And so the idea of a pet trust is, this is sort of an extreme example putting \$12,000,000 in, but the idea of a pet trust is something that we can add to our arsenal of options we want to put to our clients. Because as was noted in the article, an elderly person who may have got real fond affection for their animal, a dog or a cat, may be one of the main things in their lives because they may be a bit lonely or people aren't around as much to spend time socially with. The succession of the animal itself can be a really, really important factor in the estate plan.

Suzana Popovic-Montag: No, I think it's really a product of our day, our generation, and I'm not surprised that it has come to that level. And I think we'll see, as I said earlier, a lot more of these kinds of trusts and these kinds of plans being put into people's estates.

Ian Hull: So we want to just add that to our checklist and make sure that we've canvassed it with our clients. Not all of them will have \$12,000,000 bucks to throw around but nonetheless.

We've got a couple of cases we just want to make a comment on as well today, on this podcast. But before we go to that, one of the sort of underlying themes of Hull & Hull in the past year or so has been to develop and work with this whole new social media world. And in so doing, we've experimented with podcasting, we've experimented with blogging, but we've also had the chance to meet really great people in the new social media environment. And one of those great people is Joseph Thornley. And Joe is President of Thornley Fallis, a Public Relations firm that operates out of Toronto and Ottawa. And Suzana and I were privileged enough to be interviewed for an article that was published in the Ottawa Business Journal last...I guess it was published on August 31. It's available on-line. But it was a fascinating sort of discussion that we had about where social media is going and what our firm has been doing with it and other firms like ours to enhance our market position, but also to spread the message of the importance of social media.

Joe really prodded us and, you know, forced us to consider what is it that, as a boutique estate litigation firm, that made the social media, the blogging and podcasting, something that we would want to sort of step into and pour our time and resources into.

Suzana Popovic-Montag: And one of the neat comments that you made in that article was the fact that we're...and Joe picked up on this as well...that, you know, suddenly businesses are using social media in a different way, in a social environment, in a non-traditional fashion. And I think it's been really interesting to see. Certainly our experience has seen us use it in a different fashion than we would have ever expected and yet it seems to be working.

Ian Hull: And we, you know, sort of just to give people an understanding. I mean this is, it is working. We've been out doing this for about a year now. Our stats are, what we consider to be, just terrific. We get literally thousands of hits on our blogs in a month, we get hundreds and hundreds of downloads of the podcasts. And we think that it's being downloaded and blogs are being read by people who are specifically interested in what we do. And so that's very rewarding as well.

Suzana Popovic-Montag: And that was a neat comment that Joe himself made in the article, the fact that, you know, it's a very narrow focused marketing. And it's a little bit different from the traditional way where you just sort of advertise and hope that it'll hit or stick on someone. Whereas here we're just picking a niche and we're really focusing on that and hopefully it's doing a general service to everyone.

Ian Hull: So, just to wrap up. One of the things we, you and I Suzana, get to have the privilege of doing next week or is it the week after, I forget now. But coming up soon, we've got a couple of interesting events that we're going to be participating in. One is we are speaking at the Windsor Estate Planning Council about succession planning issues and estate planning and trying to factor in more than just the conventional thinking inside the box. Think outside the box a little bit, like we talked about a pet trust. Think about, you know, involving the family. Think about other unique twists and turns on making an estate plan work. And so we're really looking forward to going down to Windsor and speaking to that group. And then Suzana, I know you're speaking to the Ontario Bar Association a week or so later, to talk about just this point of niche marketing and niche positioning yourself in ways, of using creative ways and creative tools, with the Ontario Bar Association.

Suzana Popovic-Montag: I'm definitely looking forward to that one.

Ian Hull: So just as a sort of added little academic wing to the discussion today, I just wanted to talk about two cases briefly. Both recently decided. One is the *Mernick and Mernick* decision. And it came out in 2007. It's actually just been published in the ETRs in the August edition of the Estates and Trusts Reports, at Volume 32. And the *Mernick* decision itself is at page 288. It's an interesting case and really what I wanted to comment on was more about the process as opposed to the decision itself. What happened in *Mernick and Mernick* is, is that there was an interesting dovetailing between

the Ontario Superior Court's jurisdiction and a religious court Order. And how that religious court Order was to be applied and how it impacted on us, on the parties outside of the religious sphere. It was a Rabbinical Court and they...without getting too much into the details, the family, two brothers, were disputing over an estate. They went outside of the Court system, so to speak, went into the religious court to resolve the problem. They resolved it and then for enforcement purposes, they had to eventually come into the Superior Court. And why I think it's an important case is...well there's lots of interesting cases. They talk about how the summary judgment was effected in this case and so on. But what I thought was interesting to me was how again the different worlds in a sense collide and how they work together. And more and more often, we're seeing the role of a religious court in resolving disputes in estates is happening. I've participated in some of these hearings and these types of scenarios myself and I just think this *Mernick and Mernick* decision is a helpful decision. And take a quick look at it if you're interested in seeing how this twist of the two jurisdictions work themselves through.

The other decision I just thought I'd point out was, and I don't want to harp on the whole question of joint accounts endlessly. But the Nova Scotia Court of Appeal, in the *Comeau* decision, reported again in the same ETRs at page 216, came out with a great summary of a joint account dispute between parent and child. The deceased died intestate, survived by 10 kids and the whole question was, was the joint account for the kids surviving or was it for the 10 kids, 'cause it was an intestacy? And what I liked about this case was it went to the Court of Appeal. Two things that I thought were helpful, because these cases are popping up so often in our practices. Number one is that it carefully reviewed the whole trial court decision process and how a court will analyze this question of joint accounts. So that if you have to roll your sleeves up and get into a fight over a joint account, you look at this decision and it talks about what were the bullet points, what were the important steps in the game to...that the court thought were important at the trial level. And so that's good to know because again, we're always trying to either propound or to dispute the joint ownership issue, and it depends on what side you're on. But the second part I thought was helpful about this decision was that it then took us to that next analysis. And that was, what is an Appeal Court going to do with a carefully reasoned, properly analyzed joint account case? And in this case, they held that there was no grounds for appeal and the appeal was dismissed. But the way that the Court does it...is again, it's one of these cases that it's not a seminal case. It doesn't say things that we haven't heard before. But too often we read these cases looking for the newest word on something. But this case shows us how to, from a practical standpoint, work through and build a case on a joint account facts. And then how to deal with it at the appeal level, on both sides. So it didn't matter whose side you were on in this one. You can learn what the Courts were looking for, the kinds of trends they're looking for and the kinds of approaches that worked in this case. Because the facts again tie into the simple, you know, who owns on the account on death question.

But those are just two decisions I thought were kind of fun and worth looking at from an academic standpoint. And also from a practical standpoint.

Suzana Popovic-Montag: Well, that's great Ian. Thank you very much for that. And we'll speak soon.

Ian Hull: Great, thanks a lot Suzana.

This has been Hull on Estates with the lawyers of Hull & 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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