

Hull on Estate and Succession Planning Podcast #28

Attending the Family Conference

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Suzana Popovic-Montag: Hi, and welcome to Hull on Estate and Succession Planning. You are listening to Episode #28 of our podcast on Tuesday, October 3rd, 2006.

Welcome to Hull on Estate and Succession Planning, a series of podcasts hosted by Ian Hull and Suzana Popovic-Montag, that will provide information and insights into estate planning in Canada, from the offices of Hull Estate Mediation in Toronto, Ontario, Canada. Here are Ian and Suzana.

Ian Hull: Hi Suzana.

Suzana Popovic-Montag: Hi there Ian, how are you today?

Ian Hull: Just great.

Suzana Popovic-Montag: That's good.

Ian Hull: So we're finally there, we are at the conference. And we've spent a lot of time building toward this moment, in fact we're going to, in the next short while, we've done a little video presentation of a conference that we're gonna get online at some point but I think it's worthwhile sort of going through the process a little bit today and really this is D-day, while there may be one or more conferences in the process, all the parties, everyone is involved has to perform at a hundred percent that day or we're not going to achieve our result and that is hopefully a signed family constitution. So, as we talked about in terms of the agenda in previous podcasts, we set out the conference itself, will start with the mediator who will often explain his or her role usually at the outset. What else is sort of the opening part of a conference can we expect?

Suzana Popovic-Montag: Well the mediator, Ian, will of course introduce people at the table who probably know one another but there may be some professional advisors at the table as well who are known by pretty much everyone and then after that, basically follow the agenda that we talked about quite a bit during our previous podcasts and highlight at the same time the rules that are going to govern the meeting and take it from there.

Ian Hull: So we've got this agenda, we've got this business environment, we're not going to be proceeding in the dining room table, we're going to be proceeding in an off-site typically neutral place with a business agenda and business rules. But what do, we have to dovetail into that of course is that we're dealing with family and we have to personalize it in so many respects on each of the participant's part but I think it seems to me that it behooves the mediators to be very good at balancing the business aspects of the meeting with the no doubt potentially emotional and important family aspects of it.

Suzana Popovic-Montag: And that's because it's, the goal at the end of the meeting is of course if it is a successful one, to have the family actually approve and sign a family constitution. Or if not, then at least develop an action plan to address issues that are still outstanding and then maybe schedule a further meeting.

Ian Hull: So what we've mentioned before in the past podcasts, the importance of a mediator, why don't we spend a few minutes just talking about the role of the mediator now at the conference itself.

Suzana Popovic-Montag: I think that it's really crucial to remember that the mediator has to remain neutral throughout the family conference process, and that means that, you know, he or she can't seem to be partisan to one particular, you know, branch of the family or provide any advice to anyone in the family including the person whose actually making the plan and the Will.

Ian Hull: So for this reason we find it often not very helpful to have your lawyer act as the mediator for the family meeting.

Suzana Popovic-Montag: However, since your lawyer will be heavily involved in developing and implementing the estate plan, it would be helpful for him or her to attend the family conference to provide information and assistance, but just short of actually being the mediator in the family meeting.

Ian Hull: So the family members, sort of staying focused on the role of the mediator, the family members should be told that the mediator has not been involved in the preparation of the estate plan or to what extent they have or have not been if they have been involved at all.

Suzana Popovic-Montag: I know in my experience, Ian, when I act as a mediator and I imagine you have the same experience, I find that once the family members understand that I have not had a part of preparing the estate plan, they'll treat me more as a resource for solving problems as they arrive rather than as a source of the problems themselves.

Ian Hull: And certainly when I act as a mediator, I ask the family members to sign two agreements at the start of the meeting just so that we can document the business side of the meeting itself and again, treat it like a business meeting and bring it all up a notch so to speak so that people understand what they're getting themselves into.

Suzana Popovic-Montag: And what are those two agreements?

Ian Hull: Well the first one is the Family Conference Agreement and that follows closely behind the family rules, the rules for the Family Conference itself.

Suzana Popovic-Montag: And the Family Conference Agreement sets the stage for the meeting and emphasizes our neutral role as mediators and basically the confidential

nature of the meeting itself. And the rules for the family conference, they outline the type of conduct that is expected from all the participants during the meeting.

Ian Hull: So the Agreement itself is, actually a form of it is, which can be helpful to just to look at is in my book *Advising Families In Succession Planning* at page 84, but sort of to summarize it in part anyway, the first part of it is that you identify all of the participants, and you list the names of all the participants, and that's important because as we've talked about, the invitees are the people coming to the meeting, need to be addressed carefully and this is a good starting point as we've listed all the participants.

Suzana Popovic-Montag: And of course you identify the family that the conference is all about and the mediator as well, just so that you've got a history of how this whole process unfolded ultimately.

Ian Hull: And then really the next sort of core part of any Agreement will just outline the fact that the mediator is a neutral mediator, that they don't offer legal advice, and that they are not lawyers if they happen to have that hat as well, but rather that they are really understood to be truly neutral parties in the process.

Suzana Popovic-Montag: The Agreement also sets out the fact that it recognizes firstly, the importance of open and honest communications and then secondly, clarifies the fact that these are privileged settlement discussions so that, you know, what happens at this meeting stays at this meeting.

Ian Hull: And I think, you know, the rest of the agreement a lot of it deals with sort of partly the rules and partly the process, but it's an important document to go through with the parties because it also sets the stage for what really is most important and that is, transparent and full communication.

Suzana Popovic-Montag: And the effect of the agreement is really to treat the family conference like a true mediation in that the mediator can't be subpoenaed or required to give evidence about the family conference.

Ian Hull: That also means that the documents shared at the family conference that are privileged, meaning that they would not be required to be disclosed in any litigation proceeding, will maintain that privilege status if litigation occurs typically in these situations.

Suzana Popovic-Montag: And this encourages, of course, the full disclosure of information at the family conference without the family members worrying about whether the disclosure could subsequently be used against them in some fashion or another.

Ian Hull: Alright, well why don't we take a minute in this podcast in terms of winding up the first part of our discussion on the conference itself, and just take a minute talking about some of the preliminary thoughts you might have about the rules for the meeting,

we've got the Agreement itself, that document signed and carefully reviewed with everyone whose at the table. Let's spend a couple of minutes on the rules.

Suzana Popovic-Montag: I think it's equally important, Ian, for the mediator to review the rules for the meeting with the family members, after all, the rules are designed to promote an atmosphere of mutual respect and courtesy amongst the participants.

Ian Hull: And each family member typically is asked to sign a copy of the rules also as well as the Agreement at the start to emphasize it's importance, because it seems to me anyway there's nothing like putting in black and white the rules of engagement, it keeps the business environment, we keep coming back to that term, business environment, but I think it's certainly I use that term a lot in a family meeting because it helps delineate really what is going on because you will obviously turn into family issues that can become emotional and the like. But if you ask parties that are participating to sign these two documents at the outset, it really does set a good business tone to the meeting itself.

Suzana Popovic-Montag: Can you give perhaps just a couple of examples, Ian, of some of those rules that you would emphasize to the people who are participating.

Ian Hull: Sure, well one example with a view of working toward family harmony and the process itself is the clear identification that the parties, all of the parties, are committed to full and frank disclosure of their estate planning intentions. And I say that because it's not always the family, head of the family that needs to be committed to that process, but indeed there may be situations where some of the siblings have to make some disclosure as to what they would intend and that obvious example is where the head of the family says sure, I want to benefit my kids but there's enough money here that we want to make sure that the next generation is affected to and sometimes, depending on the estate plan, the global family estate plan issues need to be covered.

Suzana Popovic-Montag: I know one rule that we've used during our meetings is to tell the participants that basically because this a possible emotionally charged atmosphere, that everyone's required to use professional and businesslike language in their approach to the discussion and to refrain from any harsh language or unnecessarily raised voices of that nature because that just sets a different tone for this otherwise businesslike meeting.

Ian Hull: And you know, not to be overly legalistic about it, but I always like to remind everyone in the room that they are bound by the Family Conference Agreement and by signing it they are agreeing to be bound by it. As I say, it's not necessarily a legal issue as much as it helps enforce the protocol that has to really be maintained throughout.

Suzana Popovic-Montag: I think another rule that we normally would include is a recognition of the fact that, you know, anyone can leave at any time during the family conference but that even if they do leave, that they're still bound by the terms of the Agreement itself, including the term as to respecting the privacy and the confidentiality of the information that's been exchanged at the conference.

Ian Hull: All right, well I think that's helpful, and we really got, we set the stage for the opening part of the conference itself and the mechanics behind that. We'll spend some time in the next podcast talking about issues of disclosure in the course of the conference itself. But I think we're really in a position to complete this important day or days that we are going to be engaged in.

Suzana Popovic-Montag: That's great. Thank you very much Ian.

Ian Hull: Thanks Suzana.

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