

Hull on Estate and Succession Planning Podcast #38

Process for the Family Conference

December 12th, 2006

Suzana Popovic-Montag: Hi, and welcome to Hull on Estate and Succession Planning. You are listening to Episode #38 of our podcast on Tuesday, December 12th, 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?

Ian Hull: Great. We're moving into the festive season at full steam ahead and all is good.

Suzana Popovic-Montag: How's the Christmas shopping coming?

Ian Hull: (Laughter) That's another whole problem.

Laughter

Suzana Popovic-Montag: Ian, as you may recall at the end of our last podcast, we were just getting into a discussion about the course of the family conference. And we were setting up the fact that normally these conferences will start based on an agenda and we'll start with an introduction. When you and I do it as co-mediators, we'll start with an introduction by us, sort of outlining the process and what the participants can expect will happen, and then that's normally followed by an opening statement by the mother or the father or whoever's actually conducting the family conference. And then a little bit of a description of the plan that's being proposed by the family lawyer. And then that'll normally be followed by some break out sessions where we break up the family members according to their particular interests in order to sort of facilitate a more open and honest dialogue.

Ian Hull: And we call that stage in the process the caucus meetings. And certainly in our experience, we find these meetings really are the most meaningful part of the whole process and we will typically try to get to that stage fairly quickly.

Suzana Popovic-Montag: And that's why one of the things that we don't do that some people do when they conduct their conferences is give a lot of opportunity for people to air a lot of issues that may not necessarily be relevant to it. So by focusing the

discussion, making it as businesslike as possible, it helps maintain that within the family dynamic.

Ian Hull: So we encourage the opening to sort of set the stage but, the real work does get done in the caucus because that's obviously the opportunities for full and frank discussions between the parties.

Suzana Popovic-Montag: And then Ian, as a mediator, what normally would you do between these caucus sessions?

Ian Hull: Well, you've described it in the past. I think the best way that I can describe it and that is you call it shuttle diplomacy. And really what happens is we go into these caucus meetings and we gain information, we identify issues, we get a better sense of the emotions and the tactics that need to be employed to then work toward a solution.

Suzana Popovic-Montag: And I think the key really is on just what you said, to identify the issues. We can't actually resolve them, not within those caucus sessions and not right at the beginning. But by identifying all of those flashpoints, then at least you've got something that you can take back to maybe a later joint session or you take to another caucus room, so that those things can be, as we call it, massaged in between.

Ian Hull: In many cases, the concerns raised in the caucuses are set aside while the family reconvenes in a joint session to discuss some of the other parts of the estate plan, but it's still an opportunity to sort of keep working toward our ultimate goal and that is facilitating our business solutions.

Suzana Popovic-Montag: And I think as the conference goes on Ian, it becomes quite clear to us which issues are really decisive in the family, which ones are the flashpoints, and then we are able to use that to sort of help conduct the ongoing discussions between either the caucuses or further joint sessions.

Ian Hull: Because it's pretty, you know, you get to understand the concepts and the issues pretty quickly and you can identify what is indeed dividing the family as opposed to holding them together.

Suzana Popovic-Montag: And normally if things will go smoothly, you might actually be able to finish a family conference in one day or at one meeting, but what happens Ian if there's some of these flashpoints that just can't get resolved?

Ian Hull: Well we continue to work within the agenda and we always try to focus ourselves back to that agenda so that we can meet our goals of trying to get as much accomplished in a day that we've set out to get accomplished. But throughout the meeting process, we are never afraid to add items to the agenda, knowing that it may extend the process. If they're important items because the head or the heads of family didn't identify them to us or we didn't see them as an important issue, I'm never afraid and I know both of us, when we do these, we're never afraid to add to the agenda. For

example, we might have thought that the cottage property was going to go a certain way, and we were assured that that's the way it was going to go and we get to the family meeting and it turns out that that assumption was entirely wrong, and instead of Betty getting it easily in that sense, John is also saying, gee, he would have loved to have been able to get the cottage as well. And so it may be such a big issue that we want to sort of set it aside, add it as a new agenda item, and quite frankly, if we're going to run out of time that day to accomplish everything we were going to accomplish, just admit to everyone and say look, we're not going to try to bite off more than we can chew here. Let's add that as an agenda item and let's reconvene and one of the things we'll do always when we get into that situation is that we won't let people leave the room until we've set the next date. And if it takes calling offices or calling spouses or trying to re-jig things to get yourself in a situation where we can convene that meeting, we don't want anyone leaving without the next date set that day.

Suzana Popovic-Montag: That's really important Ian, I agree. Especially in situations where people are as busy as we are these days, it's very hard to get all these people in the room at one time, let alone twice. And the other thing I think that's really important at the end of these sessions that do carry over into a later session is that some really detailed notes are kept of what has actually been accomplished that day. So that in addition to the agenda and the unfinished items that are on that agenda, we've also got a synopsis of what has actually been resolved during the course of that conference.

Ian Hull: And that can, in part, go to our next goal and that is, creating at the end of the day, a family constitution. And sometimes we will find that we've drafted a partial constitution identifying the issues that we were able to go through, and able to achieve at some level. It doesn't always work because some issues are tied to others, and for example, the cottage example. It's a good one where we were involved in a family meeting where we had a family that we thought we had the cottage and the business. It was a small family business, small in the sense that they were producing one item and they were, it was profitable to keep everybody happy but it was a small item that was being produced and they were, the son who was going to take it over, was quite worried about competition from the far east and he said that, you know, at the family meeting to the surprise of everyone, well look, I'm not sure I can or want the family business anymore, lets talk about a liquidation. Maybe now's the time to get out while the market is reasonably hot and people might still be interested in it before we get taken over by competition. And he said and as a result of that I am more interested in the family cottage and so these sorts of twists and turns we don't sort of throw our hands up and say oh, you never mentioned this before. We identify it and we bring it into a business agenda, and we try to keep it within some sort of rigid plan. Most of our family conferences, quite frankly, are tough to do in one day but, I shouldn't say most, many are done in one day. But we try to use our documenting, like you say, and using the partial or at least a draft family constitution to start that process if we're going to move into subsequent days.

Suzana Popovic-Montag: I think committing pen to paper on the issues that have been agreed to Ian, or even partially agreed, is so important because, you know, when people

come back another time, it's so much easier to back track if you haven't crystallized the issues that have already been decided or the tasks that have been allocated or that, I think it just really helps to commit what has been accomplished so far.

Ian Hull: So if the first meeting goes well, and there happens to be the necessity for a further meeting, what we try to do is we'll summarize those agreements reached, like you say, in writing so that people leave with the amended agenda, with the new date and they come back ready to roll their sleeves up to continue to work. So before the next meeting is adjourned and we move into the family members' sort of further agenda, we will also discuss with everybody the possibility of this further meeting, but also discuss with people, revisit the agenda. We've talked about how hard we want to work at creating this agenda, but when we're going to impose a further meeting, in that sense, in the process we like to make sure that everybody is participating in the further amendments to the agenda and it's not just again an edict from above. A decision that the head of the family says look, we can't get this all done today, I'm not going to decide this and that, I want a meeting and I want it on my terms. This is another opportunity for people around the table to talk and discuss some of the future plans, and it's certainly in our experience that throughout the course of a day, the agenda has moved around so much that it's nice at the end to summarize what we've done and then also talk about what we're prepared to work on in the future. And some things, we've found in the past agenda items, simply fall off the list, they just aren't issues that we thought that were going to be a problem

Suzana Popovic-Montag: And I think that's the real advantage of the process Ian, that flexibility, where you can go to issues or come back or around to other issues that weren't necessarily front and center at the very beginning. And just like the family constitution itself, which we always describe as a living or a fluid document, so too is the agenda and so it's all part and parcel of the whole process and how it ultimately unfolds.

Ian Hull: And sort of the final thought on the agenda is the obvious one and that is the business impact of focusing peoples' attention and trying to make sure that when we make the decision to come back again, it is for good reason. And like you say, people are busy, it's expensive, it's time consuming, nobody wants to come back to these issues unless they really think they should and the way you can identify that they should is to make sure that you keep it businesslike and focused.

Suzana Popovic-Montag: Well that's great Ian, thanks very much for that. I think for our next podcast we might just turn to the issue of what happens if you've got family members who just don't buy into the process, and they don't ultimately approve the plan.

Ian Hull: And even further if they won't even come to the meeting. So that's great, why don't we talk about that glitch and that twist in our next podcast.

Suzana Popovic-Montag: Thanks very much Ian.

Ian Hull: Thanks Suzana.

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