

Hull on Estate and Succession Planning Podcast #41

Conclusion of 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 #41 of our podcast on Tuesday, January 2nd, 2007.

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 Ian, how are you today?

Ian Hull: Just great. Really excited about the fact that this podcast should land into the system in the year of 2007. So we will have weathered through our first calendar year. Not our first full year because we started in March. We'll have great fan fair and celebration when that comes around. But, we're into '07 having had some time off and ready to gear back up for a great year.

Suzana Popovic-Montag: Well Happy New Year to all of our listeners.

Ian Hull: So, in our last podcast, we spent a little bit of time talking about the problems that get created when a family member doesn't show up. But what we did do was we spent some time on the whole question of what steps to take after the family conference. We talked about the tax problem that came up, that was a glitch in following up on this family conference process. We talked about the fact that there's a lot of heavy lifting and hard work to do once you've created your constitution. But let's spend a few minutes just talking about the implementation of the estate plan.

Suzana Popovic-Montag: Well Ian, once the family constitution is actually signed, you've got to create those documents that the plan would necessitate. You've got to create, for instance, the Wills, the Powers of Attorney, any deeds of gift, any transfers of property, or any *inter vivos* documentation that will document any lifetime gifts of that nature. All of those documents have to be created in order to implement the plan.

Ian Hull: So let's just work through, as we worked through the last time, an example. Because, let's get an example just where small changes still needed a family agreement and one that we were involved with actually some time ago now.

Suzana Popovic-Montag: Well we had a situation, Ian where a father and mother had five children who were actually minors and they wanted to protect those children while they were small and under the age of minority. And they provided for trusts essentially,

they created a trust arrangement where each of the children would be entitled to income in capital during the time that they were minors and then they would be entitled to a different distribution once they became of age.

Ian Hull: But after the conference, the head of the family who had divided his estate between three adult children and then a trust for the grandchildren. After the conference, he decided that he didn't really want to have the grandchildren accessing the capital of the trust when they turned eighteen.

Suzana Popovic-Montag: And so, what they decided to do was to actually change the terms of the trust so that they would stagger the entitlement to the capital to an age beyond eighteen. And I think, if I recall in that case, they chose twenty-one and then twenty-five in terms of the payout of the capital.

Ian Hull: And what was helpful here was that the meeting and we talked last podcast about being at thirty thousand feet. The constitution really just demonstrated to everyone the concept, and the idea. We weren't locked in from a documentary standpoint yet. And when the lawyers rolled up their sleeves and started drafting this, before anything had actually been signed from what would be seen as a legal standpoint, a binding Will and so forth, the head of the family had this sort of revelation and this thought and came back to the family, asked for a family meeting to make sure that everyone was in agreement. Because in this case, although everyone was in town, they were busy and they weren't going to focus their attention on it. And the head of family just didn't want to be seen to be just sending an edict from above on this change of thought. And so it really worked out well because really, at the end of the day, no harm had been done in the sense that we didn't have to go varying trusts or taking court applications. But what it did was, and it was an interesting impact of the family meeting process, was that it forces the head of the family to also re-think, they listen to their children, they go back and re-think the estate plan and there's nothing wrong with coming back with revisions. But we found that even a small revision like this, relatively speaking, needed the cooperative family meeting just to tie the knots to make sure that there were no loose ends.

Suzana Popovic-Montag: And you don't always have to have a physical meeting. I mean those meetings can be conducted by conference call too in some circumstances. But the point is that there's that flexibility and that transparency that is so important because people are agreeing essentially to the plan based on their understanding at the time. And if you're going to change the terms of that, you've got to let them know.

Ian Hull: Alright, so one of the other sort of go forward plans in the course of wrapping things up on the family conference process is the ongoing theme that many of us as lawyers come to our clients with. And that is, it is so important to review your estate plan regularly.

Suzana Popovic-Montag: And even if there are no major changes in your personal circumstances, I think that you still want to look at your plan every few years, Ian just to make sure that it is still relatively appropriate.

Ian Hull: And again, the obvious example is the fact that tax laws are fluid and ever changing. There can be laws that get created that may affect things that have already been established. There's a classic scenario in Canada where income trusts were allowed to be used in the business environment, and then the government came in and changed the law and in fact grand-fathered it back. And essentially people had already planned around uses of the income trust and the government came in and said, not only can you not do it in the go forward basis, we're going to get rid of it in a historic basis as well. So, those are the sorts of changes that you may or may not understand may affect your estate plan.

Suzana Popovic-Montag: And even if you do make changes to your plan that you think are relatively inconsequential, you still should at least turn your mind to possibly holding a meeting nevertheless. And I think, my philosophy certainly is, that's it better to err on the side of maybe having a meeting that in retrospect turns out to be unnecessary, rather than to create an air of mistrust or deception almost if things were to change from what people expected would happen at the end of the day.

Ian Hull: And it's funny, because we had one of those just recently. And it was literally, I mean, the head of the family sort of looked at me sideways and said because we sent out a note to them saying, look, you know, it's been two years since you've had a family meeting, do you want to have the family together again? And he sort of looked at me sideways at first and then it turned out that what had happened was this meeting, although the agenda looked fairly innocuous, this meeting ended up being very important. Because what had happened in the two years intervening was, the head of the family had gradually stepped back from the business a bit. And the kids, who were all owners of the business, were becoming gradually more involved in the day-to-day affairs. And that tension was building and it hadn't come to a crescendo, there was nothing that the head of the family really saw was a trigger point, but the fact that it was crescendoing, we were able to grab it and nip it at the bud. And we ended up, what we ended up doing was getting some advice on amending the shareholders agreement and amending the internal structure of the family company to reflect the tensions that were created. And the obvious example there was that the oldest member of the family, who had been working with the Dad directly, had now started being questioned by the other family members. And that was tough for him to enjoy and to live through. He had to get used to that, but the family members also had to be managing their expectations a little bit. So it was a really helpful meeting in that sense, which was an unexpected result. Sometimes they don't work out that way, sometimes they are fairly informal and they end up not doing as much within the confines of their existing estate plan. But this one actually turned out to be really helpful.

Suzana Popovic-Montag: And I think that's the key, Ian. I mean, we really, you can't always predict when a further meeting will be needed or when you've got to go back and look at things. But just to sort of keep that at top of mind and just on a regular basis, every few years, go back to the documents, make sure that it's still, you know, relatively what you want. That is an important thing just to sort of keep in the back of the mind.

Ian Hull: Alright, so in sort of summary of where we've been through this family meeting process. And what we've done is we've managed now to coincidentally, it's about, well we're at podcast number forty-one or forty-two now, forty-one at this point. We have really worked through this process pretty vigilantly and carefully, talking about the high price of not talking. And talking about the need to protect your estate with advance planning, and using the open dialogue approach.

Suzana Popovic-Montag: We also looked at, Ian, you know, what exactly is a Will and how do you protect or what we term bullet-proof a Will, so that at the end of the day, your testamentary intentions are not overturned or upset by people who are just disappointed in what has ultimately come about.

Ian Hull: We covered off as well some of the roles, the basic fundamental roles of the process. Executors, some income tax issues, and those sort of day-to-day obligations, accounting obligations, and the like.

Suzana Popovic-Montag: The interesting discussion we had with the recreational property conundrum, with those cottages and those kinds of assets that we're finding more and more estates have these days. And, of course, then we talked about the tax consequences that arise on death as well.

Ian Hull: So in sort of summary, we were able to talk about some of the frequent causes of estate litigation, the legal process, and the costs. And then we were able to spend some considerable time talking about the family conference solution itself. And on this note, we have now got on the web page some demonstration videos for the family conference. We've also got internally and you're free to e-mail us at www.hullandhull.com. You can send it to ihull@hullandhull.com or check on our web page. It's spopovic@hullandhull.com with any questions. But we've also managed to, with the excitement of the iPod world, we've got some preloaded iPods available where we're now. Because we've noticed that some of our users are struggling a little bit with the iPod itself, notwithstanding what looks like to be a pretty simple system. (Laughter)

Suzana Popovic-Montag: It's never simple.

Ian Hull: That's right. So we've got some preloaded iPods set up for focusing on the family meeting process and really focusing on the core issues that come out of our book "Advising Families on Succession Planning – The High Price of Not Talking". So not that we will walk away from this issue in the future, but we're turning into the New Year and we're going to turn into some real other interesting issues relating to estate planning. At the next podcast, we're going to start to talk about the, maybe it was the beginning of the family meeting process, but certainly an offshoot of the process. And that is the family office. Talk a little bit about the history, what the office can involve, and offer and talk about some structural considerations.

Suzana Popovic-Montag: Well, thank you very much Ian, I look forward to our next podcast.

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