

Hull on Estate and Succession Planning Podcast #43

Estate Planning

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Suzana Popovic-Montag: Hi, and welcome to Hull on Estate and Succession Planning. You are listening to Episode #43 of our podcast on Tuesday, January 16th, 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.

Suzana Popovic-Montag: Hi there Ian.

Ian Hull: Hi Suzana.

Suzana Popovic-Montag: How are you today?

Ian Hull: Just great. One of the things before we start into the podcast today, wanted to talk a little bit about was the recent results that we're sort of following pretty closely in terms of our web page and our blog page. And it was exciting news. We're getting a tremendous number of hits on a daily basis to our blog page and we want to just encourage people to consider going to that. We're trying to hit issues that relate to estates generally, but we've had a lot of fun with that since we started it and we're looking forward to many more, interesting blogs, so you just can find that at www.hullandhull.com. Alright, we've spent some time talking about trying to avoid fights and we've talked about general concepts relating to estate planning. What I think we'd like to do now is move into a new sort of area of Hull on Estate and Succession Planning, and that is, talk a little bit more detail about estate planning issues. And really there's, people will call it wealth planning, some people will call it estate planning. But let's talk about what we're really all about. We've certainly will identify some of these issues again and remind people from time to time what issues might be flashpoints for problems later. But let's pretend, for the moment anyway, that we are now coming to see a lawyer and we want to start our estate plan, whatever stage we are at life.

Suzana Popovic-Montag: And an estate plan, Ian, is more than just dealing with your financial assets. I mean there's a lot of different areas that you focus on when you're creating a plan including, of course, the tax aspects, the family law issues. You want to consider disability planning and insurance planning as well. All is part and parcel of this whole heading of estate planning.

Ian Hull: So we want to organize things and plan and that's what it's all about. Let's talk about some of the preliminary issues that you just touched on briefly. And let's start with, for example, financial planning. And often an estate plan stems from advice from a

good financial planner or a good accountant who will start to remind us and push us to try to get things a little more organized.

Suzana Popovic-Montag: And all of that is going to be predicated on what the objectives that you have are in your estate plan. I mean you want to provide for the time when you retire, you want to provide for your children, you want to provide for things after your gone and all of that is part of the planning process.

Ian Hull: And while sometimes when we're in contentious situations, we often wonder if it wouldn't have been better if the person died with five dollars in their pockets. We can't always be that good about predicting what will be left at the time that we do pass away, but Suzana what are we getting at when we talk about financial planning?

Suzana Popovic-Montag: Well really, Ian, that kind of planning involves a review of your situation from a financial perspective and determining what it is that you now have, what you would like to have in the future and how you'd like to dispose of what you have at the end of the day.

Ian Hull: And certainly in our experience as lawyers who deal with the estate planning issues, we find is that a good estate plan often, as I say, gets provoked or moved forward by a good financial planner or an accountant. But the financial planners can be a really important source of ideas and concepts that you can then bring to your lawyer to develop into what will be ultimately your estate plan and your Will. And an estate plan I always like to tell my clients has two parts to it; it's, of course, organizing your affairs during your lifetime and then organizing the affairs after. And during your lifetime is issues that you might want to organize your affairs to deal with avoiding tax hits that may occur on your death, but you can also crystallize tax liabilities and so forth earlier than you pass away and help pass on more wealth to your kids and the like.

Suzana Popovic-Montag: And as part of that financial planning process we're going to explore the use of different kinds of vehicles like the traditional RRSP's or the RESP's, the use of different insurance products, and of course, planning for incapacity through a Power of Attorney for Property and I guess at the end of the day, with a Will as well.

Ian Hull: So it's not about and obviously a good financial planner gives you the advice as to which investments you may need and so forth. There is lots of information and any attempts to identify that sort of issue; we're just not well suited for. But it really is about planning and organizing things and it doesn't matter what age you're at, if you can start to think about how you want your financial assets to unfold right through the period of time after your death, the sooner you do that, the better.

Suzana Popovic-Montag: And that really leads into a discussion of the tax planning component to the wealth planning process itself because so much of what we do from a financial perspective is going to ultimately revolve around tax planning issues and trying to minimize the tax that's going to be paid during your lifetime and on your death to the extent possible.

Ian Hull: And an interesting thing is that we are almost always, from our perspective, ninety-nine percent of the time people come to see us about estate planning, they come to see us on the basis of a tax driven or a tax motivated suggestion that has either come from a financial planner or an accountant. And as we've said in other podcasts but it's worth mentioning again, the thing that I get frustrated with is people who want to plan their affairs with tax being the primary, if not only, concern because that brings with it huge problems on the other side and that's the emotional and the real family problems that can get created.

Suzana Popovic-Montag: And certainly, we as litigators benefit from all those problems that are created because so many times, these plans that we do end up dealing with are tax driven and trying to avoid either probate fees or income taxes. And so many times the amount that you're saving or trying to save is going to be more than lost when it comes to paying lawyers trying to unravel a poorly drafted estate plan.

Ian Hull: And an example of where recently it seems to be a fixation with many people is this creation of joint accounts to avoid probate fees, where someone will be an elderly person may have some assets in an account, a bank account or an investment account and then they'll go and put the account in joint names. Which may or may not be the correct thing to do for that individual at the time, but often it is being almost exclusively motivated by the tax savings that gets created by doing this. And if you actually sat down and did the math, how much tax you're actually going to save, and then compared that to the fact that your going to lose control of this asset potentially, that things like, terrible things can happen to those assets if you have the joint holder, for example, takes the money without telling you and those kinds of things. There are tremendous complications get created, all for the saving of what can be a small percentage of the asset in tax.

Suzana Popovic-Montag: Another example, I think Ian, that we see quite often, especially lately, is the dual Wills or the multiple Wills scenario, where you've got a primary and a secondary Will. The first Will dealing with assets that will need probate, and the second one with assets that won't. And we've seen a lot of difficulties arise from either interpretation issues or timing issues, where those kinds of plans, albeit well intentioned, don't always necessarily unfold the way you would've hoped they would.

Ian Hull: And we just shouldn't forget anyway that although probate tax is a tax, it isn't an overwhelming one. And the other sort of bug-a-boo I have with taxes on the income tax side as well, because, for example, the creating of an estate plan to avoid paying capital gains can be a tremendous motivator. It can be a great idea in the right circumstances, but it is often done by mechanisms that essentially people lose control of the asset when they enter into what is known as an estate freeze. And really from my perspective anyway, again although tremendous tax savings can be accompanying with this, someone who has been very used to controlling the assets him or herself comes with a big surprise if they're not well prepared for it when they lose control or a significant amount of control over those assets.

Suzana Popovic-Montag: I think that sort of reminds me of our last conversation about the family conference Ian. That whole idea that, you know, your allied professionals should speak to one another, so that when you've got, for instance, an accountant doing an estate freeze, he or she has the ability to speak with a lawyer who will know the legal implications of what's being proposed. And both of those consequences, the accounting one, the financial one, the tax ones all of those things can be discussed with the people who are planning their estate.

Ian Hull: Okay, let's just in an introductory way turn to family law issues, because for example in Ontario, the family law issues can be tremendously impactful on the estate planning process. In Ontario, for example, if someone gets remarried, it can have a devastating effect to an existing estate plan if it's not properly dealt with. So we can't forget the importance of the shared community of property type approach that most jurisdictions, not just Ontario, but most jurisdictions in the Commonwealth and in the United States take with regard to division of assets on death with families.

Suzana Popovic-Montag: And I think that really underscores the understanding what the rights are of an individual who is either a common-law spouse or a married spouse or children of individuals. They need to know what their rights are and what the different planning mechanisms or techniques that are out there are available to them.

Ian Hull: And it's an old adage, but it's still an important adage, and that is when you do enter into a significant change in your life, for example, a remarriage situation, or a marriage situation, or enter into a serious relationship long term of some nature. Those are sorts of trigger points that can't be forgotten in the context of your existing estate plan. And you know, one of the first things I'll often ask a client when they come in the door is whether it's a fight or it's a non-contentious matter. I'll just, the first question I'll ask is, do you have a Will? Because it can be, the statistics are frightening as to how few people get into situations without a Will and then all sorts of new problems arise.

Suzana Popovic-Montag: And even apart from a Will, I think we'd be wise to keep in mind the fact that things that you do during your lifetime, like the gifts that you make to family members or to other people who aren't family or loans that you make to them can have consequences as well. And it's always good to be cognizant of that in advance so that you don't get surprised at the end of the day.

Ian Hull: So another area of consideration that we've just, in terms of wrapping things up on, is the question of what happens if we become disabled and what kind of impact that could be in terms of our estate plan. But I think what we'll do is we'll save that for our next podcast because we're going to open with our next podcast touching on some of the core concepts of what estate planning is. We were talking about some of the issues relating to it but let's really focus on what estate planning is and start working through these issues and rolling our sleeves up with them.

Suzana Popovic-Montag: I am looking forward to it Ian. Thanks very much.

Ian Hull: Thanks.

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