

## Real Case Studies - Hull on Estate and Succession Planning Podcast #70

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Suzana Popovic-Montag: Hi, and welcome to Hull on Estate and Succession Planning. You are listening to Episode #70 of our podcast on Tuesday, July 24<sup>th</sup>, 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 there Ian.

Ian Hull: How are you doing?

Suzana Popovic-Montag: I'm good thanks, how are you?

Ian Hull: I'm just great. We're, as we are working through our summer podcasts, a couple of things have come up. I was at a conference just before the summer. And someone came up to me and was asking me about a specific case. And they said to me, you know, they tried to tell me...well they went ahead and told me their story and their concerns about their own personal families. And they said, you know, do these things really happen in real life? And, and it sort of struck me that I thought what might be fun to do for a couple of podcasts is just talk about a few cases that are of some note. That, not to get overly legalistic about the cases and what the judges are doing, but tell a bit about the story, about what happens out there, what we actually see day in and day out in the courtrooms unfolding. And it's real family drama as we've said. And we spend a lot of time trying to avoid these family dramas. But I just thought it might be kind of fun to talk about a few of the cases that actually do land in the system, so to speak.

Suzana Popovic-Montag: I think that's a neat idea Ian, because so many times, you know, we take these fact scenarios for granted basically, because we've seen so many. And a lot of them have, you know, some common themes. But everyone is still fact specific. But the individuals who are actually living through these difficulties, through these trying times, for them this is their one and only. And it's really important for us as, you know, when we're involved, to keep those kinds of things in mind.

Ian Hull: So, one of the things that we talk about and we've talked about on different podcasts is the family tensions that get created by what are essentially, some consider may be luxury items or recreational properties. And I was privileged to be interviewed by the *Globe and Mail*, and I was quoted in an article on Friday, June 29<sup>th</sup>, about a case

about a family cottage fight. And that was the case of *Rose vs Rose* which is, the headline calls it a “*Lakeside War of the Roses*”.

Suzana Popovic-Montag: And what was this case about Ian?

Ian Hull: Well it was a case about a family and how to divvy up or to split up, and as it turned out to be, the family cottage. And what was interesting, not as much about as I say. I’m not sure it’s all that interesting for us today to go through all of the facts and the law and all of the stuff that really resulted of some note to our day-to-day practice. But more importantly, to see some of the themes that flow through this case and some of the other cases we want to talk about.

And this case was a classic situation where a trust was arranged for the kids to enjoy the benefit of a cottage that was held in the trust. And sure enough, for...we won’t, as I say, for a variety of reasons, the trust had to be wound up. And in the course of winding up the trust, the big question came up. What do we do with this asset? And in a lot of trusts, you might set them up with putting shares in a company. Or say it’s a new venture and you start a company and you put shares in it or something like that. But in this case, of course, the main asset was the cottage itself. And that was the source of tension in the context of the wind up of the trust. What do we do with this asset? Short question was who gets it? And I just thought it was an interesting point. I mean, this case is obviously become a bit of a flashpoint for people. And I think it sends a couple of messages. One is, is that we can never forget that when we do bring these family estate planning disputes to the forefront, it can become particularly public. And in this case, it became so public that, well, lots of the lawyers knew about it. But then it was interesting enough even for the *Globe and Mail* to write a small article about it. So, you know, we want to try to create an estate plan that doesn’t cause a family fight. But again, add the extra layer of what might be seen by some as some embarrassment for having got there...drag their dirty laundry through the media is another, you know, sort of side issue.

Suzana Popovic-Montag: I think another thing to keep in mind as well is that, you know, these fights are not always based on just the money. But many times there’s also the principle and we’ve heard that in many, you know, situations. As well as the emotion that underlies certain assets that mean special things to different people.

Ian Hull: Okay. So that was the first case that we sort of struck us as one that was worthy of mention. Let’s talk about another case. One of the other cases that has come up over the last little while and we’ve talked about, and I just want to briefly remind everyone about, was just that case about what happens with joint accounts. And we don’t need to get into that anymore than to say that there has been that significant development. And again, that was a real life situation. When we’re setting up joint accounts and the Supreme Court of Canada in the case called *Pecore* came down pretty clearly on that.

One of the things that we talked about in some of our, in the process of trying to create good estate plans, is to be current and to stay on top of things. And there’s a case that came out in the last year or so called *Webster vs Webster*. And in that case, they talked

about limitation periods and equalization payments and some of the things, the family law questions and all of that. And again, we're not trying to get too esoteric about the law about it. But it was an interesting case in the sense that it reminds us that should we face a situation, as may be unfortunate as it is, that we have a contentious environment. Or we have a problem that we think needs some attention, or some legal guidance that arises out of an estate. We cannot forget the hard and fast rules of how quickly you have to move. So, if you're one of these people that are sitting there and you're kind of p---d off or you're kind of angry about a family situation. Mom or Dad died. Or your grandmother died. This decision was, and again we won't get into all of the facts, but it was a good reminder that we can't lie, sit back and wait around in respect of our interests. And we can't wait too long, because if you have that occurring, you could actually lose your rights. So you may want to be angry, you may want to get yourselves talking to a lawyer quickly and so you don't miss limitation periods and that.

Suzana Popovic-Montag: And on the flipside of that Ian, many times people are going through a grieving process. And so there might be situations where not just that they're angry. They're looking to, you know, explore their rights. But people who are also just in these situations who need to seek legal advice notwithstanding the fact that it's still too fresh, and it's still too new.

Ian Hull: Okay. Another case that came out in the last year is a case call *McMullen*. And it was an interesting case because it brought to life, which we're trying to talk about cases that bring to life the things we're talking about, so that we're not just talking about esoteric points. It brought to life the limits of a Power of Attorney. And in this case, it was this 86 year old widower who had commenced an application against two of his three daughters who held his Power of Attorney. And the application was to set aside the transfer of an interest in the father's condominium property of his two daughters. And what basically happened was the ownership of the property got pulled out from under his wing, so to speak. And it turned into an all out war, where the daughters were...one daughter was accusing the other two daughters of manipulating. They were accusing the father of not having capacity, and they were fighting over money. A case that again illustrates the fact that these are tangible examples of the fact that families get torn apart. And worst of all, you bring out the dirty laundry. You're bringing out issues of what was essentially hatred between siblings plus issues of whether or not the father had capacity at the time. So you were making this gentleman, you know, be tested in that sense as to capacity. And he was being questioned as to his ability to make decisions, questioned his abilities to make, you know, bring law suits and so forth. So you can see that in this situation, it brings out the worst of everyone. And in large part, could may have been avoided. Who knows in this one? May have been avoided if somebody had sat down before with the three daughters. The father sat down and said look, this is my Power of Attorney, this is what I've decided to do, and this is how I've decided I'd like it to be, you know, managed, so to speak. And who knows in this case if it would have helped. But this case is another illustration, a real life illustration, of how bad goes to worse.

Suzana Popovic-Montag: I think Ian, it's also a good illustration of the fact that these documents, these Powers of Attorney that so many people make, are very important

documents. And they have the potential, as we always say, to be abused and misabused by people. So when you're setting up these arrangements, you have to keep in mind the fact that you're choosing someone that you're relying on implicitly to do what you would want them to do.

Ian Hull: Absolutely. Well, I think that gives us a few illustrations. And maybe for our next podcast, we'll come up with a couple of more just to sort of put some meat on the bones of, you know, to illustrate that these things really do happen and they really do produce cases and produce real life situations.

Suzana Popovic-Montag: That's great Ian. I look forward to our next podcast. Thank you.

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