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NEWSLETTER

Number 53

May 2014

The Will of Philip Seymour Hoffman– A Sad Lesson– On February 2, 2014 Philip Seymour Hoffman left this world under tragic circumstances. Nobody should die alone with a needle in his arm.

For those left behind, unfortunately, his Last Will and Testament was also ill-prepared and unready. Hoffman's Will was drawn up and signed in 2004 when he was living with Mimi O'Donnell and they had one child, little Cooper. Since that time, he and Mimi had two little girls, then separated as a result of his drug habits.

Hoffman, a doting father who cared deeply for his kids, left an estate exceeding thirty-five million dollars. If those he loved get all his money it will be a miracle.

Hoffman's will contained two common mistakes. First, it was written too rigidly. Second, it was not well tax-planned. Let's explore these concerns.

Generally speaking, a well-drafted will is written "algebraically", that is, if your kids or grandkids are little, it is better to describe them as "my children", "my grandchildren", "my issue" or whatever is appropriate in the circumstances. A good lawyer knows how to do this. In Hoffman's case, the draftsman addressed the wishes for one-year-old Cooper in considerable detail, but overlooked the possibility that Hoffman, who was then thirty-seven and living with an obviously fertile O'Donnell, might have had more children.

The second problem is that the effect of leaving most of the estate to O'Donnell, with whom he was not married, means that Uncle Sam will eventually end up with about half of Hoffman's wealth. Bad tax planning.

Now, the two problems intertwine: O'Donnell is given the right to decline some or all of her inheritance in favour of a trust fund for Cooper. But because the other two children are not mentioned, either by name or algebraically, the trust fund does not exist for them, and the otherwise sensible post-mortem tax planning is in large part ineffective.

Of course, Mimi will look after all three of her kids, but only after Uncle Sam takes roughly half the estate. And, there may be some opportunity to repair by having the two little girls, through litigation guardians, bring a lawsuit against the estate for relief. I don't know the first thing about New York law and don't have the faintest

clue as to what the outcome may be, but New York legal experts tell us there may be some hope. It does mean, though, that the girls need to sue their dad's estate. If you've ever hired legal help in New York, you'll have some idea what this might cost.

What lessons to draw from this? First, keep your will current. Second, don't draft too rigidly. Third, consider the tax effects of your will planning.

Finally, don't forget the human lesson in all of this. If you have a friend or a relative with an addiction which is killing them, care enough to reach out to save a life.

New Border Rules and What They Mean to You– Beginning June 1, 2014 both Canada and the US will scan passports on exit and on entry. Both countries will know when you leave and when you return.

So what? As it turns out, it's quite a big deal. Look at it this way: both Canada and Uncle Sam want to maximize the tax dollars they take out of your pocket, and both of them want to limit what they give back. Let's take two examples.

To be covered by OHIP you need to be present in Ontario for at least 153 days of the preceding 183 days. Starting June 1, OHIP will know if this is the case.

From the US side, many federal and state taxing statutes apply if you have been present in their jurisdiction for a certain period of time, often (but not always) half a year. If you spend more than 183 days in the US, Uncle Sam will treat you like a resident and tax you on all your income. Worse still, Canada will then consider you to have left the country and immediately will tax you on all your capital gains– a double whammy.

And it's not just the tax. Often it's just Big Brother wanting to know. Canada is bad for this, the Americans are worse. For all their "Live Free or Die" talk, American governments are passionate about tracking you. Under severe penalty, they require you to report all your income and assets. In one case the penalty was more than five times the size of an unreported bank account. Ouch!

Bottom line? There's no more flying under the radar for snowbirds. If you are going to spend more than a couple of weeks in the US, get some tax advice.

Giving Back to the Community– We love speaking to community groups about Estates and Business Succession topics. Whether business associations, church groups, service clubs or professional conventions, we are always happy to take part. We promise practical education in an entertaining and engaging fashion.

Substantive and Procedural Law– The rights and duties we have toward each other in a civilized and ordered society, including the remedies to right the wrongs and compensate for dereliction of duty, make up the substantive law. But the rules of the game when seeking a resolution of a wrong are known as the procedural law.

If you are injured in a stairwell that I failed to maintain, the measure of my negligence and your proper compensation are matters of substantive law, but the time period within which you can sue me, or the rules governing evidence, are procedural matters.

Guardians and Executors– In our estate planning we frequently encounter situations where the client wants to appoint Fred as the executor of the estate and also as guardian of the children. As a rule, we urge clients to consider appointing different persons to these roles.

Why? It's because of a kind of "reverse conflict of interest" and it goes like this: Fred becomes the guardian of the children, but he is also entrusted with their money. When the European Band Trip comes up, Uncle Fred is likely to take out his own chequebook, rather than dip in to the kids' trust funds. But if Aunt Mabel is in charge of the money, she is going to say, "Freddie, don't be silly– the money is here to provide for these things!"

Should you have two wills?– This isn't a trick question to double legal fees. There are actually circumstances where it is advisable to have two or more wills. Most common is if you have property such as shares in a private corporation where you don't want to pay the probate fees or face the delay of the process. The primary, or "normal" will deals with probatable assets, the secondary will deals with those for which probate is not necessary or desirable. Legal fees will, of course, be higher but generally only a small fraction of the savings which are produced.

There will be circumstances where you own property in another jurisdiction and where because of language or a different inheritance law you should have a separate will to deal with the property located there.

Be warned, though, that this stuff is akin to defusing bombs. It is not for the layman. In fact, it is not even for lawyers who only dabble in estate planning.

How Can You Defend a Criminal???– Actually, nobody at LMR practices criminal defence, but the question is a fair one and deserves an intelligent answer.

You have to start with the proposition that a society either affords every accused person a fair and open trial, or it does not. A corollary is that the accused is on trial not for being a nasty person, but for a specific crime. The sole purpose of the trial is to determine whether or not he broke the specific law, not to determine whether he is generally a horrible and despicable low-life scumbag.

In many societies today, bad guys are thrown into the trunks of black cars, driven out to the forest, beaten up and shot. Or worse. Of course, in those societies lots of good guys also get taken out to the same forest because they annoyed the wrong person. In Canada we don't do that.

The bottom line is this: the minute we relax the standards of evidence and due process for anyone, we start down the slippery slope of relaxing due process for everyone, until eventually there is no more due process. The guarantee of individual liberty lies with the criminal defence bar to raise every question, challenge every piece of evidence and force the Crown to prove a case beyond a reasonable doubt. The defence lawyer who relaxes this standard betrays not only his client, but betrays you and me as well.

The result of this is that as a society we can know that those who are punished are penalized because it was clearly proved they broke a specific law, not because the authorities or the lynch mob didn't like him.

The Words of the Law– Even lawyers occasionally admit that legal language can be hard to follow. No less an authority than Learned Hand, one of the greatest American jurists, said this, "In my own case the words of such an Act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception– couched in abstract terms that offer no handle to seize hold of– leave in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time. I know that these monsters are the result of fabulous industry and ingenuity, plugging up this hole and casting out that net, against all possible evasion."

Next time you find yourself a little baffled by some legalese, take comfort that you are in good company!

All non-attributed content in this Newsletter was written by Norman Bowley. Please direct all comments and criticism to his attention.