How to Start a Family Fight

July 7, 2010

I have just finished reading an article about "*Wills Challenges: The Hot Buttons*" by my colleague, *Natalie Schernitzki*. It reminded me that during my 30 years at the bar, I have had orchestra seats (and sometime the director's chair) to several epics waged within families. These battles, often raised to the scale of all-out war, are gripping, intense, full of intrigue and ultimately, of great destructive power. So personal are these conflicts that they sometimes belie ordinary understanding and demand combatants to undertake coolly calculated legal, business and psychological strategies.

One great such struggle currently before the Courts involves three generations of an Asian family who, at the time of writing, have appeared before the Court 6 times in less than 12 months. Having only recently been asked for advice in connection with this titanic struggle, I'm feeling a little left out of the action!

We lawyers often cynically ascribe most conflicts, including those among family, as ultimately about money. Sometimes this is right, and the fights about money are, with the counsel of good lawyers, usually resolvable by some re-distribution of the "pot" or re-allocation of the expenses. There may be some courtroom skirmishes along the way, but these cases typically settle when the parties are well represented.

Other family fights sometimes appear on the surface to be about money, but this is an illusion; money may be the currency of the dispute, but the fight is really about control, and especially, about power. Whether it is control of the direction of family business, control of where a demented parent or other ancestor will live, or about the power to dominate, at their heart these are battles which may define a family for generations.

If one follows a few rules, these family fights are easy to start. In fact, these fights are so easy to start that you don't have to follow all of the rules to ignite an explosion of family wrath; applying just one or two of these rules is almost guaranteed to blow the relationships within your family to smithereens.

These rules are formulated from the perspective of how to get the family riled up in the context of your own business, succession planning or estate planning. However, they can just as easily be applied with minor changes in context to situations where you are acting as an executor of an estate within the family, or as an attorney under a Power of Attorney (say, for an elderly parent). In these "representative" capacities, "Rule 1 – Be Secretive" works very well, but beware, you are going to

be part of the fight, and it could be very expensive and emotionally exhausting.

The Rules below on how to start a family fight are a back-handed look at tried and true behaviors to tear any family apart. No one would suggest, especially me, that this is a worthy objective, but sometimes looking through the glass from the other end gives an entirely different and useful perspective. More practically, this article may help readers come to grips with the need for action to avert family conflict when they observe these behaviors beginning to play out within their own families.

Rule 1: Be Secretive

Communicating with your spouse and adult children takes time and effort, especially if there are already weaknesses or rivalries in the relationships. A direct discussion could lead to whining you really don't want to hear, and a family meeting could well create lots of controversy with you at the centre.

Rule 2: Put off to to-morrow what you could do to-day

Chances are really high that to-morrow you will be alive and well, without any sign of dementia or debilitating disease. So you are in control to-day, and will be to-morrow too, and the day after that, and after that *ad infinitum*. It does not matter whether this is procrastination, or your expression of a subconscious belief in your own longevity, and infinite power and control.

Rule 3: Play favorites

Give special advantages to one child to the exclusion of another child. Since this is sometimes justified and reasonable, this rule is most effectively applied if done arbitrarily and without reason. This is sometimes hard to do without drawing a lot of criticism which puts you on the defensive, so a good variation of this rule is to entrust one child with private information or a private role (such as record keeping), secret from the others. This breeds lots of mistrust.

Rule 4: Tell different things to different people

Take different family members into your confidence, and give them contradictory explanations of your intentions. To get a rip-roaring fight going when you are gone in body or in mind, this is a very effective strategy because to honour your memory and wishes and to demonstrate their selfless loyalty and love, each will unswervingly attest to what you really wanted.

Rule 5: Change your mind and keep your family confused as to what you intend

Constancy in objective and purpose is never a good way to foster peace and harmony in the family. One of the great advantages of wills and powers of attorney is that, unlike a lot of other

estate planning tools, they are easily revoked and changed. Be careful about changing your will too frequently, because you run the risk of being dismissed as a bit of an old crank, but in my experience, frequently changing your power of attorney is a good way to keep the family off balance and ready to pounce on each other.

Rule 6: Don't consult

Your lawyer has lots of experience in dealing with succession planning and estate planning concerns, and given the chance, is likely a good problem solver. Don't give your lawyer the chance to wreck a good fight before it even starts. Take a line from Shakespeare out of context, and get rid of the lawyers.

If your children (or their spouses) already don't get along, or there are rifts about the future of the family business, or there is friction between your second spouse and your children, getting your lawyer's advice runs the risk of a reasonable solution based on his or her experience. Don't let peace break out by embarking on good planning or at the formative stages of a good fight.

Don't think you have to be rich to apply these rules. The really intense battles are often not about money, so don't think you need some big amount of wealth to play these games. Some of the most pitched battles concern the care or property of seniors with not much money who are usually no longer competent. (See reference to Asian family dispute above).

For more information on commercial litigation matters contact Natalie Schernitzki at (416) 306-1819 or at nschernitzki@beardwinter.com.

© Beard Winter LLP, 2025. All rights reserved.

The information contained in this article is for general information only and is not intended as legal advice or opinion. Should you require any advice or assistance with this or any other issue affecting your estate or business, then please do not hesitate to contact us.

Click to Subscribe To
The Beard Winter Defender

Disclaimer: The contents of this issue are provided for interest only and are not to be considered as, in any way providing legal advice to the readers by Beard Winter LLP or the individual authors of articles contained herein. All readers are strongly advised to obtain independent legal advice on any issue of concern to them from competent legal counsel in Ontario.