

ALTERNATIVE DISPUTE RESOLUTION

Sibling disputes extend beyond the grave

“Particularly troubling” says mediator Jack Zwicker, “are those situations in which parents scrupulously divide their estates equally among their children who still look for opportunities to use leverage against one another so as to extract advantage.”

By Jack Zwicker

Since the dawn of history, sibling rivalry has run the gamut from simple jealousy to bloody murder. One need only recall the story of Cain and Abel to appreciate the range of emotion of siblings in conflict.

Whether sibling rivalry is triggered by parents who favour one child over another, or by siblings who feel the need to compete for their parents' approval, the common denominator is that children who feel victimized by their families lash out.

Particularly troubling are those situations in which parents scrupulously divide their estates equally among their children who still look for opportunities to use leverage against one another so as to extract advantage.

It is important, then, for us to understand where the real sources of sibling conflict lie. As estate administration by its very nature demands that we interpret wills and advise clients about the means by which administration can be legally effected, the natural tendency for the profession is to encourage beneficiaries to deal with conflict by engaging in negotiation at some point.

Typically, that exercise occurs in a lawyer's boardroom where each beneficiary is represented by his or her own counsel and counsel for the estate are also present.

Because most counsel are motivated by a genuine desire to encourage beneficiaries to settle their differences so as to preserve family unity, in the face of discretionary testamentary provisions which treat all of them equally, the natural tendency is to get contending siblings to buy in to an exercise in 'horse trading' estate assets. All too often, this type of exercise proves unsuccessful for two basic reasons.

The first reason is that this type of negotiation is unprincipled. Fundamental to effective negotiation is the recognition that parties in conflict do not find themselves in that position purely by accident and that successful resolution depends upon determining and meeting the parties' needs.

Merely 'splitting the difference' between the parties stated positions, more often than not produces neither short term settlements nor enduring long term agreements.

The second and more important reason that 'horse trading' assets is often ineffective is that every conflict has both its own sources and its own history.

The positional behaviour of siblings in conflict during the course of negotiation, says more about the quality of their troubled relationship than it does about the manner in which estate assets might potentially be divided.

Where siblings who are strictly equal beneficiaries make an issue of nearly every point which needs to be discussed and where their behaviour during negotiation is continuously aggressive, and positional, estate lawyers need to consider whether more harm than good is likely to result from exercises in 'split difference' negotiation that fail to probe for the real sources of the conflict.

All too often, a fight among siblings for position reflects a sometimes accidental, and sometimes deliberate inequality in the manner in which their parents have treated them.

Parents who, for whatever reason, openly favour one child over another, create the preconditions for dysfunctional relationships between them and their chil-

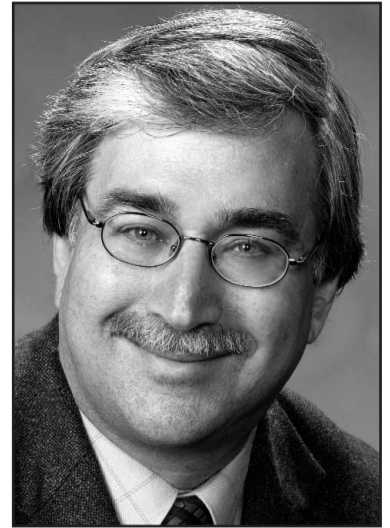
dren, and among the children. After the parents' death, both the child who may have been favoured and the child who feels or was disparaged lose an opportunity to jointly resolve their conflicts with their parents, and with one another.

In the absence of any opportunity for the disparaged child to express and resolve his conflicts with his deceased parents, the favoured child remains the only available target. Without the chance for parents and children to jointly discuss their relationships, conflict resolution is made that much more difficult.

It is hardly surprising then that siblings in some families behave explosively around the boardroom table when asked to attend a settlement meeting.

Where estate lawyers sense that the level of anger and positional behaviour on the part of siblings has less to do with their financial needs and more to do with their unarticulated psychological needs; it may better serve the parties' interests not to rush into premature negotiations.

Rather, counsel should encourage clients to name a trained mediator who is able to facilitate discussion about the need to deal with the disparaged child's



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anger at a favoured child, anger which traps both in a vicious cycle from which there is no escape until they each recognize that their interactions with one another are not of their making.

Effective mediation seeks to help siblings find the practical means to escape this vicious cycle of anger, making the process of dividing estate assets more comfortable and timely.

Jack Zwicker is a practising lawyer and mediator in Markham, Ontario. His practice involves business law, property law and estates.

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T: 416-777-0101
F: 416-865-1398
E: mobrien@aylaw.com
E: mmiller@aylaw.com

Aylaw Management Ltd.
Ernst & Young Tower
Toronto-Dominion Centre
P.O. Box 124, 18th Floor, 222 Bay Street
Toronto, Canada M5K 1H1

Deborah C. Anshell, LL.B., LL.M.
Mediator

Roster Mediator, Ontario Mandatory Mediation Program, Toronto



Deborah Anshell brings extensive training and experience in dispute resolution to her mediation practice, along with twenty years of civil litigation experience. Deborah has special expertise in the areas of insurance litigation, employment matters, and corporate/commercial litigation.

Tel: 416-322-8066 Fax: 416-322-6146
E-mail: deborah@anshell.com Web: www.deborahanshell.com
Check my calendar at www.anshell.mediatorates.com



"Turning Discord into Harmony"

Hopes government will let Barreau act

MONDOR

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"It's obviously not the case, but if that's the perception of the public then we must change it," said Mondor, who, like his predecessors, is hoping the government will hand the Barreau the power to temporarily suspend, or at least limit the practice of lawyers accused of a serious infraction committed in the midst of their practice.

Faced with these daunting chal-

lenges, Mondor is putting his own practice on hiatus for the coming year. Although he has long left Montreal's legal aid bureau to establish a law firm that now goes by the name of Mondor, Rougeau, Lambert & Leborgne, a sizeable portion of his clientele remain legal aid clients.

"For a criminal lawyer working at legal aid is the best school," says Mondor, who has been involved with the Montreal and Quebec Association of Defence Attorneys.

"Almost without exception, Montreal criminal lawyers have all worked at legal aid. It's a daily learning experience," he said. "The [collegiality] is excellent, and it has always served me as a source of reference and reflection. It's a formative experience. And then there's the clientele, people who ... often are the most impoverished and who often face problems with criminal justice — they present an altogether different reality." And not one he has relegated to the sidelines in spite of establishing his own law firm, he might well have added.