# Protecting a Child's Inheritance

Thursday, October 24th, 2019

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# Thank you for joining us today!

- This session is being recorded for replay
- Listen-only mode during the presentation
- Please submit questions via the Question Panel
- Questions will be addressed in the Q&A session at the end of the presentation

# Presenters

Margaret O'Sullivan

Susannah Roth

# Introduction and Overview

- Protecting a child's inheritance is a primary concern for parents in their estate planning
- Need for a balanced and holistic approach
- Need a 360º perspective and effective integration of a multitude of considerations, including family law, tax and estate planning

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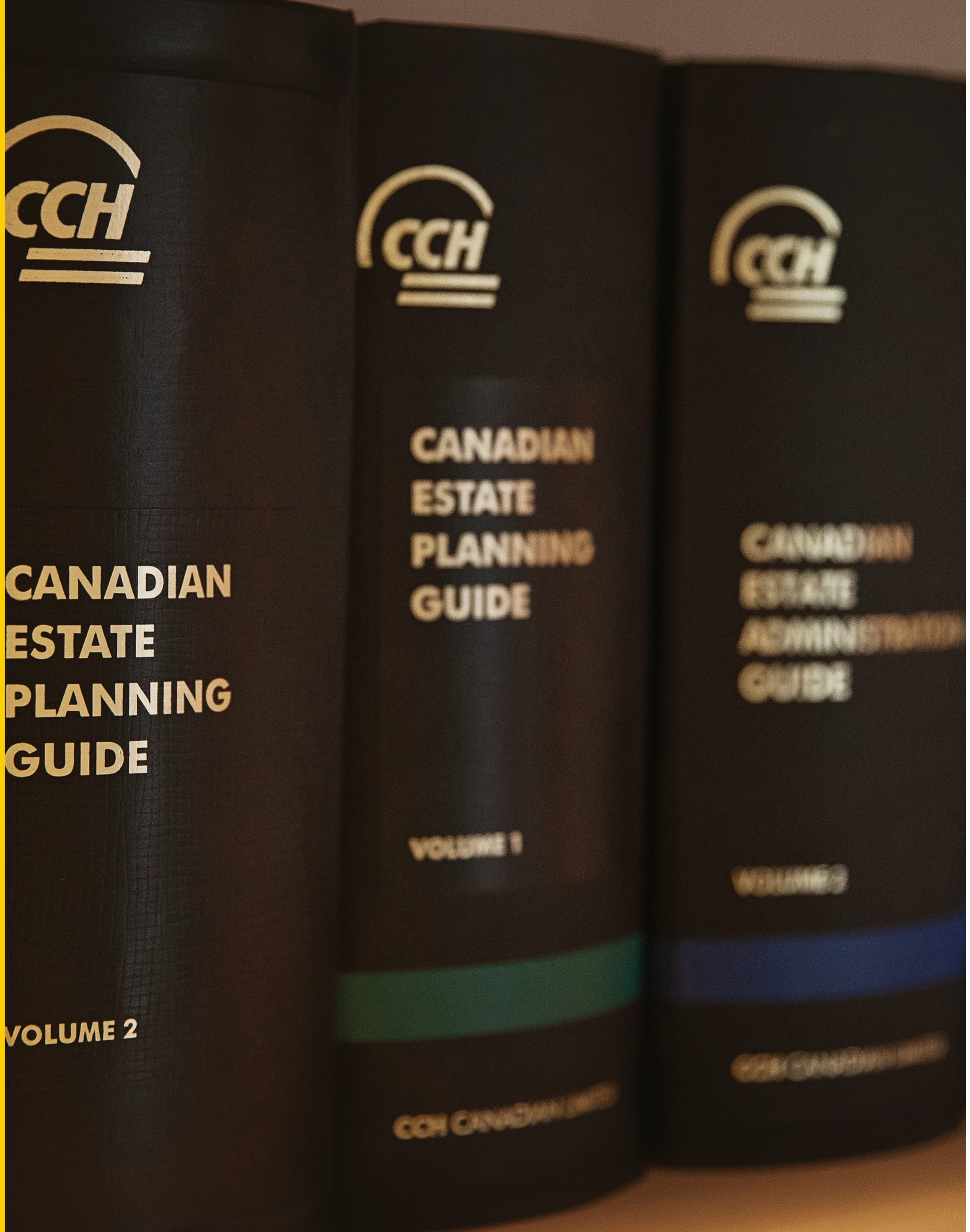
# POLL:

**What is the most important objective in passing assets to children?**

a) Tax minimization
b) Capital succession down to grandchildren
c) Protection against claims by a child’s former spouse
d) Ensuring enough assets for a comfortable lifestyle




# When Can Estate Planning for Passing Wealth Go Awry?

Historically, many plans were too tax-driven and did not factor in non-tax considerations.

# When Can Estate Planning for Passing Wealth Go Awry?

- A parent freezes the shares of their private company.
- Growth shares are issued to children in the parent’s name in trust for the children.
- A formal trust is not used.
- The growth shares increase dramatically in value.
- At the financially immature age of 18, when they reach the age of majority, the children are entitled to require the shares be issued to them.

# When Can Estate Planning for Passing Wealth Go Awry?

A major issue is gifts, including business interests, a home or cottage which become subject to matrimonial claims due to lack of planning.

# When Can Estate Planning for Passing Wealth Go Awry?

- A parent buys a home for their child pre-marriage.
- The child marries without a marriage contract.
- On marriage breakdown, the entire value is subject to sharing and equalization.

# Financial Assistance to Children

Parents sometimes advance funds to a child without any written documentation and without a clear understanding themselves between them and their children whether the advance is a gift or a loan.

# Financial Assistance to Children

- A parent advances $300,000 to their child to buy a home.
- On the child's marriage breakdown, is the amount a loan they can deduct against their property which is subject to equalization?
- On the parent's death is the advance a debt the child must repay to the parent's estate?

“If you fail to
plan, you are
planning to fail”

- Benjamin Franklin

# Outcomes of Failing to Plan

- Transfers of substantial wealth at a financially immature age
- Exposure of gifts and inheritances to matrimonial and other claims

# Outcomes of Failing to Plan

- Disputes and litigation where intent is unclear
- Unintended and inadvertent transfer of wealth to persons other than children and grandchildren
- Inefficient transfers of wealth and lost opportunities to minimize tax

# Important Tools in Protecting a Child's Inheritance

- Testamentary trusts
- Cohabitation agreements and marriage contracts
- Gift and loan planning

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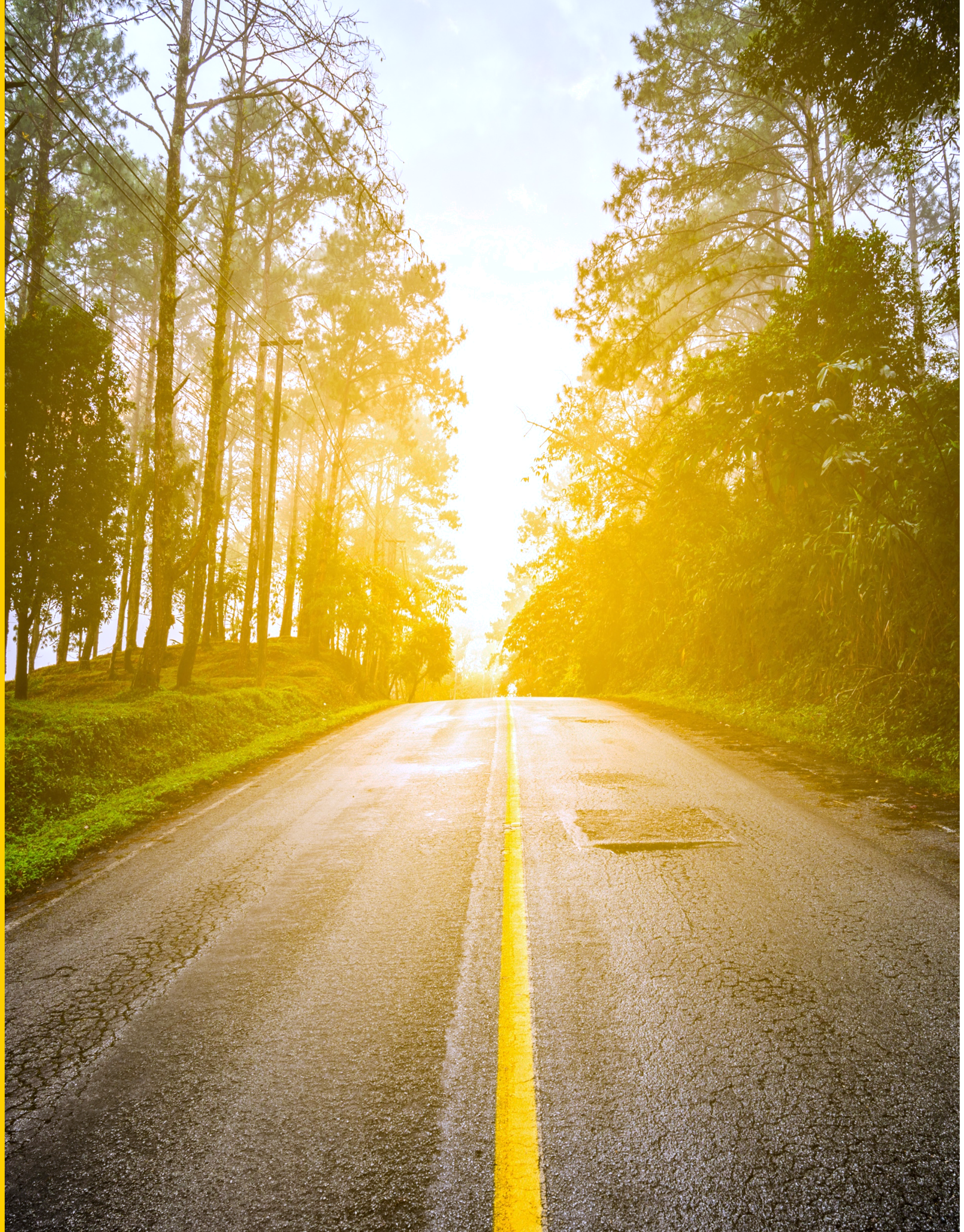

# Testamentary Trusts for Children

Created by will and only come into effect on death: no current need for tax compliance or ongoing administration or costs.

# Testamentary Trusts for Children

Alternative to the common but often too simplistic approach of an outright distribution of assets, including at one or more fixed ages, such as 25, 30 and 35.

# POLL:

## What do you think is a financially mature age for children to control and receive their inheritance?

a) 21

b) 25

c) 30

d) 35

e) 40

# Testamentary Trusts for Children

The trust can continue for a lengthy period, including child's lifetime or longer

# Testamentary Trusts for Children

Child can be appointed a trustee at an appropriate age such as 21, 25 or 30 and learn how to manage their inheritance with the guidance of their co-trustees, including investment management, and tax minimization and compliance

# Testamentary Trusts for Children

- Child can be given significant powers at a financially mature age, such as 30, 35 or 40, to appoint, replace and remove their trustees
- Trustees can have the power to terminate the trust and transfer it to the child, or possibly their children as provided under the parent's will

# Testamentary Trusts for Children

- Child can be given power at a financially mature age to appoint to whom the trust fund is paid on the child's death
- Power to appoint the trust fund can be general: for example, to anyone or limited or specific: to their children or charity, and possibly income to their spouse

# Testamentary Trusts for Children

- Testamentary trust for a child can be optional or mandatory
- Amount of control given to a child can depend on what is appropriate

# Testamentary Trusts for Children

If a child has special needs or requires additional protection, the trust can be designed to give less control and can ensure protection by co-trustees having control over decision-making

# Testamentary Trusts for Children

Benefits of Using a Testamentary Trust:

- Tax minimization and income splitting
- Probate fee minimization
- Ensuring capital succession to grandchildren
- Matrimonial and creditor protection

# Testamentary Trusts for Children

- The trust can be optional
- The trust can be terminated if not useful or desired
- The trust is a sophisticated wealth protection vehicle – a protective “umbrella” for rainy days
- The trust is an extremely flexible vehicle which can be customized to each individual situation

# Cohabitation Agreements and Marriage Contracts

- Overview of equalization under Ontario family law legislation
- Marriage rights vs. cohabitation rights
- Gifts and inheritances received pre-marriage and post-marriage
- Special treatment of a matrimonial home

# Domestic Contracts

- Cohabitation agreements
- Marriage contracts

# When is a Pre-nuptial Contract Advisable for a Child?

- Child has an existing interest under a trust
- Child owns a home before marriage
- Child has shares of a private company
- Child has earned or acquired substantial assets, possibly gifted or inherited
- Child will be gifted or inherit substantial assets in future, including private company shares, a distribution from a trust, a family cottage or other special assets
- Second marriage, children of a prior marriage

# When is a Post-nuptial Agreement Advisable?

- Problematic to obtain
- Validity concerns in certain situations
- Other approaches including trust and loan planning

# When is a Co-habitation Agreement Advisable for a Child?

- Concern about support and property claims, particularly if child has substantial assets
- Concern about equitable claims for property ownership under the law, even though family law legislation provides no right to property division

# When is a Co-habitation Agreement Advisable for a Child?

- Orderly division of personal effects on relationship breakdown or death
- Orderly provision for the family home on relationship breakdown or death
- Cohabitation agreements can continue as marriage contracts so they deal with the partners both cohabiting and marrying

# Gifts and Loans

- Importance of documentation
- A will can set-off loans and gifts to children to equalize children

# Financial Assistance to Children

- Special treatment of a matrimonial home
- Use of a loan including a registered mortgage to assist a child
- Treatment of loan on matrimonial breakdown
- Treatment of a gift on matrimonial breakdown
- Problems of making a gift vs. loan in obtaining third-party financing

# Special Issues: the Family Cottage

- Passing a cottage on death: advantages of a trust versus outright distribution and helpful Ontario case law
- Domestic contracts

# POLL:

**How comfortable are you (or your clients) in talking to children about money and their inheritance?**

a) Very comfortable and no hesitation
b) Somewhat comfortable in need to know
c) Uncomfortable
d) These matters should not be discussed with children

# The Big Picture:

- Need for financial literacy
- Breaking the silence on money matters
- Family wealth conversations

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# Resources:

**Our Advisories:**

Estate Planning and Marital Property Considerations

Using a Trust in Your Estate Plan

Planning for Succession of Your Cottage or Vacation Home

**Our Blogs:**

Family Meetings: An Underutilized Tool- December 17, 2015

The Family Wealth Conversation - Too Little, Too Late?-March 1, 2017

Planning with a Discretionary Trust for the Matrimonial Home-March 25, 2014

**Articles:**

*Why family gifts and loans require planning*, Margaret O'Sullivan, The Advisor's Edge, June 30, 2017.

*Are marriage contracts enforceable?* , Margaret O'Sullivan, The Advisor's Edge, December 9, 2016.

*Margaret has been an expert columnist for Advisor.ca and Advisor's Edge magazine since 2011.*

# Trust and Estate Essentials: Achieving Success in Family Succession

After this webinar you may have further questions about succession matters. We have the perfect resource for you, our 20th anniversary special edition book. This book will help to clarify and demystify major issues that arise in family succession.

To order hard copies of this book for yourself, colleagues or clients, please email us at: osullivanestatelawyers@osullivanlaw.com or purchase on amazon.ca.

# Our Blog:

Our firm also has a bi-weekly blog in which we cover current domestic, cross-border and multijurisdictional trust and estate issues. We strive to be clear, concise and also provocative. Our goal for each post is to provide a few ‘pearls of wisdom’ – easy to comprehend, relevant, and when strung together, an important and valuable collection.

If you would like to subscribe to our blog, please register at https://www.osullivanlaw.com/blog/. Once you subscribe to our blog you will also receive a complimentary electronic copy of *From Us to You: Selected Blog Posts Volume Three*. Please feel free to let your family members, colleagues and friends know about this opportunity as well.

Please also feel free to visit us at www.osullivanlaw.com or add us to LinkedIn.

# Questions?

**To ask our speakers a question,**
type your question into the Questions Panel located in the bottom right portion of the screen.

# Thank you for joining us today!


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# Thank you!

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