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INSIGHTS ON THE BUSINESS OF THE FAMILY

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THE ISSUE:

What if you could test drive your estate plan to ensure it really works?

For Canadian business families, the founder's will is a key component of their estate plan. There can be also many other pieces in the puzzle – from trusts and various business agreements to marital contracts and much more. The amount of documentation can be extensive – and lawyers, accountants and other family advisors often do great work in papering these plans.

BY PAUL RUSSELL

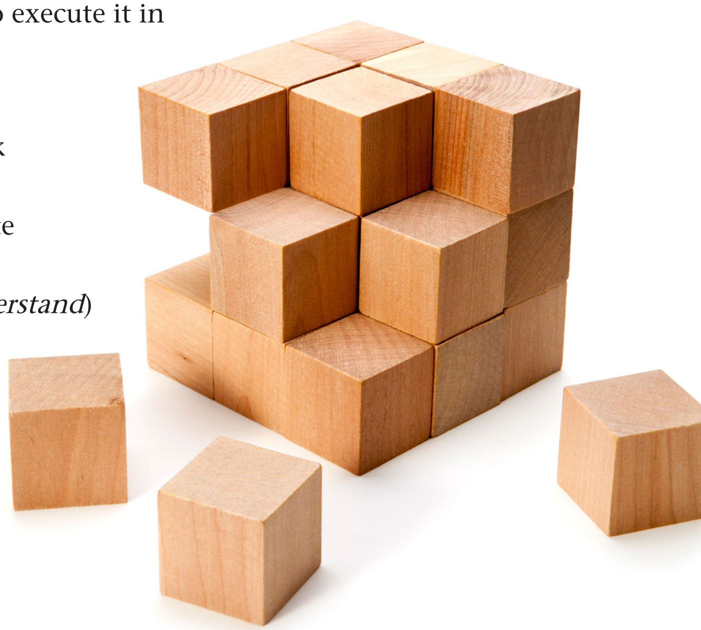
Now imagine this scenario. All of the documents are prepared. You've got the right people in place to fulfill the key executor and trustee roles. You've covered all the bases. Or at least it seems that way.

What could possibly go wrong?

What often sets in at this point is "estate planning fatigue" – and it can prevent founders from both formulating the right plan in the first place, and also "testing" their plan in advance to ensure that it's sound, and that it truly works. While estate plan preparation is typically document-intensive, the execution of the plan after the death of the founder is *human* intensive. The plan requires good people to execute it in accordance with what the founder wanted.

All of this begs several questions:

1. How confident are you that your plan will work and accomplish what you want (your legacy)?
2. Do you have the right people in place to execute the plan?
3. Do your executors and trustees know (and *understand*) your plan – as well as their own roles and what's expected of them?
4. Are there any gaps in terms of who does what? (If so, how are you filling these gaps ahead of time?)
5. Have you "rehearsed" the plan in advance – like a fire drill?



The benefits of "rolling the film" on your estate strategy – the 100 Day Plan

In the early 1900s, the Wright brothers worked on their design for the world's first powered aircraft on the beaches of North Carolina. They invested a lot of time and energy in building their airplane. *But would it fly?* The only way to find out was to do it – to test it. To fly it initially in order to determine if it could stay up in the air and fly further. And while their early tests got the Wrights' airplane off the ground (barely), the testing also highlighted the need for improvement. For a smoother and longer flight, it was clear the aircraft required changes.

So, ask yourself -- when your estate plan is put into action, will it be a smooth flight? That's what CMG's 100 Day Plan helps to reveal. It's both a documented plan and a process.

- **It clearly defines roles.** The 100 Day Plan defines everyone's role explicitly – particularly the responsibilities and standards for executors and trustees.
- **It creates a communications roadmap.** The plan lays out a process for sharing details of the plan with advisors and executors – *before the plan needs to be executed.* By sharing information in advance, founders can identify any holes in their plan ahead of time, and any specific issues that might need addressing. They can then revise the plan accordingly – and without the time pressures of having to adjust in the aftermath of the founder's passing.
- **It tests the estate plan ahead of time.** The 100 Day Plan is like "rolling the film" – a dry run of who does what, well in advance of when they need to do it. It assumes the founder (or principal) has died and the estate process has now gone into action. Just as the Wright brothers tested their airplane, founders can also test-drive their estate plans. This ensures there are no speed bumps in the process, and that there's a seamless transition to the estate. Founders can complete the entire process in several meaningful discussions held over the course of a year.

Most estate plans work well in terms of transferring the ownership of assets to where they're intended to go. However, most wealthy individuals have complex estates that require additional actions and expertise. It's not a simple as transferring a car to an adult child. There's much more involved.

How can the 100 Day Plan be a useful part of your estate planning process?

CMG partner Bob Gould has helped dozens of Canadian business families (and their founders) develop and "test drive" their estate plans. Below, we ask Bob to go deeper on the 100 Day Plan, and outline the ways in which families can benefit.

Where did you get the idea for this thing called the 100 Day Plan?

It wasn't a big idea. Rather, we consider an evolution of the planning we've done for business families for more than 30 years. I think we saw the benefits of this approach early on, but we hadn't formalized a repeatable, step-by-step process for it. That's something we developed over time. We often evaluate politicians based on their first 100 days in office. We thought this was a good time frame for evaluating estate plans, since they also involve a similar (and complex) transition. It's a suitable time frame to determine early on – is this working?

Why don't more founders/principals test drive their plans?

Let's be clear. They're not to blame. Fatigue is a big factor. Planning is a tough process for many business families. The stakes are high, family dynamics can be challenging, and large successful businesses are complex. It can make estate planning a time-consuming and exhausting process. Add in the fact that many business owners don't want to dwell on their mortality. (Who does?) You can see why test drives get bypassed, or not even considered at all.

Why is it that the "traditional approach" to estate planning isn't enough?

The short answer is because the traditional approach is just words on paper. No one knows for certain if it will work until it's tested in action. We've seen many situations that haven't worked. And we also know that the "run the film" approach ahead of time would have increased the chances of a successful transfer and transition.

Families and their advisors spend a lot of time on the technical side. They're convinced that the only way to address and manage estate planning is to "contract good behaviour." So, they spend a lot of time tightly writing the documents. This documentation is both necessary and crucial, but thick documents alone don't make for good estate plans. What we need *in addition* are meaningful conversations with the key players charged with executing the plan – and a rehearsal of who will do what.

The irony is that there's so much in life that we *do* rehearse. We dry run the wedding ceremony before walking down the aisle. We dress rehearse plays before performing them. And large corporations have disaster recovery plans that they test every year. Companies document these recovery plans well, but they still run simulations to find the gaps. When COVID-19 hit, the companies that pre-tested their plans were glad they did.

We believe founders are well served by testing their estate plans the same way.

Does the plan also test a business owner's choice of executor(s)?

Absolutely. And it's often a critical weakness in the planning process. Naming your closest friends as executors might work for the average estate, but it can sometimes be a bad move for wealthy business owners. And yet that's what often happens. It's important to set measurable standards and qualifications for the position of executor – and close friends don't always have what it takes, *other than being a close friend*.

In a typical scenario that we see, a family office or lead advisor will convince the business owner to start planning his estate. Identifying the executors is one of the first steps. So, the owner invites his three closest friends to dinner to ask if they'd act as his executors and trustees in the event he dies before them. They're all honoured and touched, and typically they all agree.

"You can't know what you don't know." These test drives of the estate plan are really a practical way to find out what's not known.

The business owner leaves this conversation believing that he's done his bit. And he relies on his advisors to work out the technical details. But has he really picked the best people for such an important job as executor? That's what a test drive can help to uncover.

But don't trusted friends know the business owner better than anyone?

They know the owner well, *but they may not know his business well*. More importantly, they may not have the time or expertise to do what needs to be done. In other words, the job may not be right for them.

Before asking friends to act as executor, we encourage the founder to think through the tasks involved and what the executor(s) will really have to do. When an estate involves considerable wealth – with a variety of business and family dynamics at play – the executor and trustee roles can be full-time jobs that demand considerable expertise.

What happens if executors aren't up to the task?

Every situation is different. But there are many risks – including negative impacts to the business, the wealth and (most importantly) relationships in the business and the family.

Without a dry run, business management will have never met the founder's executors in advance. Yet suddenly, it's very possible that these people will show up at the business with authority and direction to make changes after the founder's death. Neither side is adequately prepared for this to happen. They're already dealing with the death, and now this. And that can lead to uncertainty, mistrust and a loss of confidence.

Conversely, executors with a lack of business experience may leave it to management to figure out the best actions. But this has significant risks as well. Without clear direction in sailing the ship, there can be conflict and infighting. The best talent in the business could end up leaving.

In either case, the business can suffer. In many cases, we've seen businesses end up being sold, with a significant drop in wealth resulting from this sale. And that's almost always *the opposite of what the founder wants*. It can be tragic.

What other pitfalls should founders look for?

There's an old saying: "you can't know what you don't know." And these test drives of the estate plan are really a practical way to find out what's not known. It might be certain impacts to the business if there's a change in control. It could be identifying gaps in responsibility, where the estate documents don't adequately spell out who is to do what. There are often communications tangles both in the business and the family.

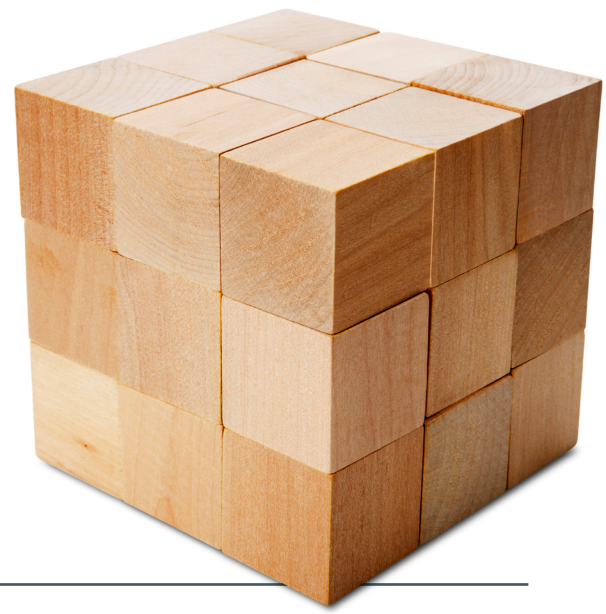
Then there's the personal side. We've seen test drives where we learn that the surviving spouse really doesn't want to be involved in decision making going forward. They just want their own financial security, not business ownership. A "dry run" can also be invaluable for testing the role that adult children may end up having in the business, and whether that's a good idea. Parents no longer need to speculate if their children can handle responsibility. The test drive enables them to observe it and know with certainty.

Bottom line: the 100 Day Plan process lets the founder, the family and the business address any potential concerns *while everyone is still here.* You don't have to guess.

Is there one reason above all others for founders developing and testing a 100 Day plan?

Yes. It removes the uncertainty from the estate plan, along with the secrets and drama that can occur in many families. It starts with a founder's letter that explains what they want to see happen for their business and in their family. This is written down, documented, rehearsed, and refined to ensure that everything runs as planned and people know their roles.

When the time arrives for real – as difficult as that will be – everyone is ready.



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