

# Globe Life

## COTTAGE LIVING

CABIN FEVER » INHERITANCE FEUDS

### A lakeside war of the Roses

Divvying up a cherished retreat can drive a wedge between a family – and money is rarely the issue



GRAHAM ROUMIEU FOR THE GLOBE AND MAIL

BY DAVID ANDREATTA

Even by the standards of the Plantagenets, the war of the Roses that erupted in an Ontario courtroom last year was ugly.

Its source was a \$1-million cottage on an island in Georgian Bay that, according to court papers, "played a pivotal role in the life of the Brian and Janice Rose family." Daughters Ashleigh and Kelsey spent every summer there as children in the 1980s and 1990s.

So central was the cottage to their lives that Mr. Rose entrusted it to the girls when they were still in elementary school. By the time they were teenagers, however, disagreements over its phone bills and maintenance led to accusations by the girls that he was mismanaging the trust and, eventually, a legal effort to bar him from the cottage.

"My biggest concern for this trust had been that the two girls would end up owning it together and they would have a falling-out over it," said Mr. Rose, 65, who has not spoken to his girls since the case was heard in March, 2006. "I don't think it could get much uglier."

As Canadians flock this long

weekend to cabins in the Okanagan Valley, bungalows in the Maritimes and camps in the Prairies, there is a good chance that countless of those holiday retreats will lead to bitter spats and dockside brawls between loved ones professing to "love" the cottage.

"In terms of assets that are fought over the most, cottages are at the top," said Ian Hull, a partner at the law firm of Hull & Hull LLP in Toronto, which specializes in estate litigation. "It's an emotional asset, and it's hard to say that anything else carries with it such an emotional attachment."

A poll conducted for Royal LePage this year found that primary residences and cottages were closely favoured in divorce settlements. Where 39 per cent of Canadian cottage owners said they would choose to keep their primary residence, 33 per cent said they would prefer the cottage.

And with waterfront cottages in some parts of British Columbia and Ontario pushing \$1-million in value, the considerable financial windfalls families stand to gain from inheriting summer homes also fuel disputes.

» SEE 'WAR' PAGE L2

FROM PAGE L1 » WAR

### It's 'gaining or losing a piece of their childhood'

» When it comes to squabbles over the family cottage, though, money is rarely the flashpoint, say lawyers, mediation experts and real-estate brokers.

It was a modest one-bedroom cottage valued at just \$19,600 on a spit of land near Lake Paul, N.S., that drove a wedge between the Parrish family. "It's been a trying point in our lives," Terry Parrish, 55, said of his estrangement from his sister, Donna Hirtle. "It's caused a division in the family, a close family growing up."

Court papers show that their father had wanted his estate split evenly between Terry, Donna and another daughter. But just months before his death in 2003, their father agreed to amend his will to leave the cottage to Donna.

That was fine with Mr. Parrish who, as executor of the will, oversaw the addition of the clause because he thought "the cottage" meant the building and not two individual parcels of land on either side of it. "The family cottage was a mutual cottage that everybody shared," said Mr. Parrish, who fondly recalled stories of hunting squirrels as a boy and throwing summer bashes as a teenager. Even after their parents divorced, their father allowed his ex and her new husband to use the place.

Ms. Hirtle saw the inheritance differently, and last year a provincial judge ruled that the cottage and the land belonged to her. "My father would be horrified," Mr. Parrish said.

Ms. Hirtle declined to discuss specifics of the case, but volunteered that at 59, with four children and seven grandchildren, she is wrestling with how to bequeath the cottage.

"I in no way want my children to go through what I've gone through," Ms. Hirtle said. "I can't stand the thought of any type of dissension in the family."

Jordan M. Atin, a Toronto estate and trusts lawyer who discusses such disputes in the book *The Family War: Winning the Inheritance Battle*, said parents too often delude themselves into believing their children are level-headed enough to hash out the details of sharing a cottage. "The family cottage is going to cause resentment even if all the kids don't like it the same," Mr. Atin said. "It's family history, and if you're not the one holding the family history you feel excluded."

Even in cases where the intentions of cottage owners appear cut and dried, nasty legal battles can erupt over wills. That sad reality was documented in a March, 2002, Ontario Superior Court decision in *Fair v. Campbell Estate*, which described the suit as an "exercise in appalling cynicism driven by greed."

Three grandsons of deceased widow Margaret Fair argued in court that she was mentally incompetent and that she had been coerced into leaving her cottage in Bracebridge to their aunt. The judge didn't buy it and threw out the case.

A message from *The Globe* left for the grandsons through their lawyer was not returned. As for the Roses, the judge removed Mr. Rose as trustee, but dismissed the girls' effort to dissolve the trust. Neither Ashleigh nor Kelsey Rose responded to e-mail messages, and a phone message left with their lawyer was not returned.

These scenarios are ones Lawrence Barns has seen repeatedly as head of the Canadian Association of Family Enterprise, which helps families navigate sensitive business and personal transactions. "When a lot of your best memories can be attached to a certain piece of property and that property comes up for distribution to the family, for some it's about gaining or losing a piece of their childhood," Mr. Barns said. "The attachment to a cottage is beyond dollars because it's much closer to people's hearts."



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#### Pre-emptive strikes

Douglas Hunter, author of *The Cottage Ownership Guide*, offers tips on how to avoid a family cottage war:

- » Talk to your kids. "Well before the unhappy state of reading a will, mom and dad need to sit down and say to their children, 'This is what we're thinking,'" Mr. Hunter said. "You'll find that maybe not everyone in the family wants a part of it."
- » Contact an accountant or tax lawyer familiar with cottages and second homes before you buy in order to help you find tax shelters.
- » "Even though cottages are an affair of the heart, you have to recognize that this is an investment and treat it that way," Mr. Hunter said.
- » Keep receipts and other evidence of improvements to the cottage as future tax deductions against the appreciation of the cottage.
- » "Give" the cottage to the intended inheritor on the condition that he or she pay for the capital gains taxes on the transaction.
- » "From the moment you buy a cottage, you have to think about how you're going to hand it down or sell it," Mr. Hunter said.

» David Andreatta