



# AdvocateDaily.com

Canada's Legal Wire Service

 **Accounting for Law**  
Financial Peace of Mind for Lawyers

Need help with bookkeeping?  
[Start Now](#)

 **FELDSTEIN**  
FAMILY LAW GROUP  
PROFESSIONAL CORPORATION

Providing legal mentoring for lawyers and firms in need of additional support handling complex family legal matters.

[LEARN MORE](#)

**Estates & Wills & Trusts**

## Detailed notes crucial when undue influence suspected



A recent Ontario Superior Court decision, which in part turned on the notes and evidence of the lawyer taking an elderly client's instructions to transfer title of the client's home to the client and one of his children, highlights the importance of solicitors to be on the lookout for undue influence, says Toronto-area estates litigator [Charles Ticker](#).

"When taking will instructions or instructions to transfer property from an elderly client to a child, you have to be wary of certain red flags," he tells

[AdvocateDaily.com](#). "It's key to drill down, get all of the facts, meet with the client alone and take detailed notes."

In the matter of [Kozusko v. Kozusko](#), 2015 ONSC 4625 (CanLII), the applicants brought a motion for an order declaring the transfer of land from the deceased John Kozusko, to the respondent, his son John Michael Kozusko, was void due to undue influence.

The deceased John Kozusko died at age 87 in 2014 and was survived by four children, including the respondent. Three of John Kozusko's children moved out of his home many years before his death and the only child who remained in the house was the respondent.

In 2004, the legal title of the father's home was transferred to the father and the respondent as joint tenants. At the same time, the deceased made a will naming the respondent as his estate trustee and attorney for property and for personal care.

The plaintiffs claimed the circumstances around the transfer established a presumption that the respondent exercised undue influence over the deceased and, that, as a result, the 2004 transfer of title should be declared void. They pointed to the following factors to support their position about undue influence: the deceased spoke little English, he was 77 years old and in poor health, his wife had passed away in 2003, and he was unsophisticated and socially inactive.

Justice Irving W. André was not convinced that these factors created a presumption of undue influence, citing the deceased's long work history as a team leader at the Toronto Transit Commission and that he sought legal advice from a Ukrainian-speaking lawyer about his property.

"He was therefore not as unsophisticated as the applicants suggest," wrote André.

André went on to state that even if the circumstances did create a presumption of undue influence, the respondent had rebutted the presumption based on evidence from a neighbour as well as through interactions with his lawyer.

"There were filed affidavits from a neighbour who deposed that the deceased told him on several occasions he wanted the house to go to his son," says Ticker, who did not act in this matter and makes his comments generally.

"As well, the solicitor who did the real estate transaction, the will, and the powers of attorney was examined and she made it very clear that the deceased initially met with her alone to give his instructions.

 **Hodgson Russ**  
ATTORNEYS LLP


Offering U.S. Legal Advice for Cross-Border Clients

[www.hodgsonruss.ca](http://www.hodgsonruss.ca)

 **PatWorld**  
The Global Patent Database

Toronto  
[www.patworld.com](http://www.patworld.com)  
[salesna@patworld.com](mailto:salesna@patworld.com)

Developed by Patent Seekers

 **DRL**  
DATA RESCUE LABS

**COMPUTER & CELL PHONE FORENSICS**

UFED

“In fact, she sent the father away and told him to think about it. He came back two days later and said he wanted to go forward with the transfer. There was a memo to the file, and she took very detailed notes. She testified she went over the will with the deceased, paragraph by paragraph, and said she didn’t think there was any evidence that the son was unduly influencing his father,” Ticker says.

The court put a lot of weight on the lawyer’s notes and evidence, he adds.

Ticker says it's a fairly common scenario where a parent lives with one of his or her adult children. “The adult child is looking after the parent in his or her elder years or through chronic health issues and the other children have long left the nest.”

He says when taking instructions from a client who is elderly and who may be extremely dependent upon one family member, it’s important to watch for any red flags.

“What I take away from this case is the importance of asking questions, drilling down and taking detailed notes,” says Ticker. “That’s potentially what won the case here. The lawyer took the time to do a memo to the file, take notes, and even explain the options to the deceased.

“I think the court had confidence in that evidence and that’s why the transfer was not set aside. Had the lawyer not been able to produce notes or a memo, the case could have had a different outcome.”

[To Read More Charles Ticker Posts Click Here](#)



**KOSTER CONSULTING & ASSOCIATES**  
Denise Koster, B.A.A., P.H.Ec. WVTS  
Workplace Violence & Elder Abuse Specialist  
Threat Assessment Professional  
[kosterconsultingassociates.com](http://kosterconsultingassociates.com)



**Mitchell Rose**  
Chartered Mediator  
**MR**  
Rose Dispute Resolution  
Mediation & Arbitration



**AMK** Anton M. Katz  
Barrister & Solicitor  
Shareholders' Agreements  
[LEARN MORE](#)



**Jennifer Shuber**  
FAMILY LAWYER & MEDIATOR  
**G** GELMAN & ASSOCIATES  
FAMILY LAW LAWYERS



**OTTAWA**  
**Céline Dostaler**  
CRIMINAL DEFENCE LAWYER  
FREE CONSULTATION  
613.695.8595 | [celinedostaler.ca](http://celinedostaler.ca)




**MacDonald & Associates**  
EXTRAORDINARY EMPLOYMENT LAW  


## AdvocatePlus >

- [The Fund Library publishes Samantha Prasad's "Year-end tax tips"](#)
- [Human Rights Tribunal of Ontario awards \\$120,000 award for discrimination in hiring process](#)
- [IIROC mandatory cybersecurity breach reporting](#)
- [Join Littler LLP for its 2019 Canada Conference](#)

[View more AdvocatePlus posts](#)

 <p><b>MINERVA VALUATIONS</b> Valuation &amp; Corporate Finance Advisors</p>	<p><b>Expert Reports</b> Family Law Valuations/Forensic Damages Quantification Fairness Opinions</p>	<p><b>M&amp;A</b> Financial Due Diligence Outsourced CFO Services Capital Raising Assistance Buy-Side / Sell-Side Advisory</p>	 <p>Since 2015</p>
---	--	--	---

[HOME](#) [POSTS](#) [OPINION](#) [EVENTS/RELEASES](#) [TV](#) [PLUS](#) [ABOUT](#) [CONTACT](#) [@ADVOCATEDAILY](#)

[ADVOCATEDAILY](#)