



WILLS

Matter

WORKING WITH THE WILLS VARIATION ACT

In previous editions of *Wills Matter*, we have discussed how you and your lawyer can tailor your Will and organize your estate to ensure that it is distributed in accordance with your wishes. For the most part, it is 'your Will, your way'. Many people are surprised to learn, however, that there are some statutory restrictions that constrain how you can distribute your asset. The *Wills Variation Act* (the "WVA") is one such statute.

The WVA provides that if you leave a Will that doesn't make adequate provision for the proper maintenance and support of your spouse or child, then a court may, at its discretion, order a different distribution of your estate. The judge decides what scheme of distribution is just and equitable.

This can occur, for example, where a parent disinherits a child or treats one child more favourably than another.

If you are contemplating this type of arrangement, then you should discuss your options with your Wills and Estates Lawyer. Your lawyer might suggest some of these alternatives to disinheritance, which may decrease the chance of a child bringing a WVA action:

- 1) Not cutting the child out completely, but rather leaving him or her at least something of value;
- 2) Writing out your reasons for your decision in a separate document;
- 3) Creating a discretionary trust for the child's benefit, where a third party trustee has control of the trust funds; and
- 4) Ensuring that your estate assets pass outside your Will, so that there is no estate to challenge under the WVA.

Also keep in mind that there are some sure-fire methods of provoking your child to bring a WVA action. For instance, leaving a token gift of a nominal amount of money or including hurtful or insulting comments about the child in your Will, could drive the child to bring a WVA claim for vindication or to save face.

Your lawyer can advise you how to best achieve your goals and minimize the risk of a WVA challenge.*

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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