



WILLS

Matter

DO I HAVE A CASE?

My Mother passed away some years ago, and left everything to my Father. My Father just died, and I found out that he left each of my two siblings \$100,000.00, and me only \$1.00. That does not seem fair. What can I do?

As a child, you must be either a natural or a legally adopted child in order to be able to make an application to the Court to vary your parent's Will, but that is not the end of the story.

On the one hand, the law says that your Father had the right to choose how he divided his assets upon his death. The Court will want to honour your Father's Will. This principle is called "testamentary autonomy".

On the other hand, the law says that your Father had certain legal and moral duties to his children to divide his assets upon his death in a way that properly provides for his children. The Court will want to make sure your Father made proper provision for his children in his Will.

In all cases, the Courts will try and balance these two principles when looking at whether or not to change a parent's Will.

What are some of the factors and considerations used by the Courts in balancing these principles and deciding whether a parent's Will should be changed?

- (a) the age of the children involved;
- (b) the financial needs of the children involved;
- (c) the value of the Estate;
- (d) the number of children involved;
- (e) is there a living spouse;
- (f) the relationship between the parent and the children involved;
- (g) was a child estranged from the parent; and
- (h) the reason for disinheriting a child.

These are but a few of the considerations that the Courts will look at when deciding whether to change a parent's Will.

Whether you are drafting your Will or considering challenging a Will, it is important to talk to an experienced Wills & Estates lawyer for legal advice.

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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