

## 1) What is a Wills Variation claim?

A Wills Variation claim is one whereby the provisions of the Will can be challenged by way of legal action, and the Court can vary the terms of the Will. [Wills, Estates and Succession Act, s. 60]

## 2) Who may bring a Wills Variation claim?

Only spouses and/or children can bring a Wills Variation claim. Independent adult children can bring such claims.

## 3) Timelines for bringing a Wills Variation claim

A proceeding with respect to a Wills Variation claim must commence within 180 days of the representation grant being issued, and the legal proceeding must be served on the Executor within 30 days after the 180-day period expires, unless the Court orders otherwise. [Wills, Estates and Succession Act, s. 61]

## 4) What does the court consider in determining as to whether it will vary the terms and conditions of the Will maker's intentions?

There are two categories of claims that the Court looks at in determining whether to alter the terms of a Will:

- a. A legal challenge – this would include such things as a spouse's half interest in a matrimonial home or, alternatively, if a claimant alleges monies owing to them pursuant to a debt or a situation where services have been rendered without compensation to the claimant; and
- b. A moral challenge – the Court assesses whether the Will has made "adequate, just and equitable" provision for the claimant. In assessing a moral claim, the Court will look at a number of factors, including the following:
  - iii. Testator's autonomy;
  - iv. Size of the Estate;
  - v. Contribution and expectation;
  - vi. Misconduct/poor character;
  - vii. Estrangement/neglect;
  - viii. Gifts and benefits made by the testator during his/her lifetime;
  - ix. Unequal treatment of the children; and
  - x. Testator's reasons for disinheritance/subordinate benefit.

In claims of independent adult children who have been disinherited, the Court seems to have set a different standard in terms of this category of claim. In such situations, the Court has set a standard of whether the testator's reasons for disinheritance are "valid and rational". The reasons do not have to be justifiable.

## 5) Legal fees incurred in a Wills Variation Claim

The issue of legal fees is a complicated one which varies from case to case, and in some instances a successful claimant may be entitled to recover legal fees/costs from the Estate, and if unsuccessful they can be penalized by having to pay legal fees/costs.

For assistance with estate planning or administering an estate, contact a member of our experienced estate team at Fulton & Company LLP.



**LEAH CARD**  
lcard@fultonco.com



**LYLE BACKMAN, Q.C.**  
lbackman@fultonco.com



**DANIELLE LESLIE**  
dleslie@fultonco.com



**TYSON MCNEIL-HAY**  
tmcneil-hay@fultonco.com