

Testamentary Freedom and Dependents Relief

In Ontario, we all enjoy testamentary freedom subject only to claims by spouses or dependants. This means that adults are under no legal obligation to leave their estate to their children or to other family members unless they are dependents.

A husband or wife may make a claim for equalization of property against the estate if their spouse leaves them out of the Will or leaves them less than they would get in a divorce.

When a person dies without making adequate provision for the support of a dependent in their Will, the dependent may make a claim against the estate pursuant to Part V of the *Succession Law Reform Act*. The definition of a dependent includes a spouse, parent, child, brother or sister to whom the deceased was providing support or under a legal obligation to provide support immediately before the deceased's death.

If you are a senior and your children are grown, you might not think that you have any dependents but think again. One of your adult children could qualify as a dependent if you allow him or her to live rent free in your home and/or you regularly give money to that adult child or pay their bills.

Although there are no examples yet in Ontario of adult children making dependent's relief claims in Court, it is widely expected that such claims will materialize because of generational differences in financial management. Canadian seniors tend to be asset rich and debt free whereas many middle aged Canadians are heavily in debt and ill prepared for calamities such as the sudden loss of a job.

It is important to recognize a dependent relationship where one exists and to factor it into your estate plan so that the plan is not upset by a claim for dependent's relief after your death.