



Family Law

CALL US - BEFORE
YOUR EX DOES!



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LAWYER

Q

I am making a new will, and I have decided to cut my oldest child out. My friend says I can't do that, but it is my will and my money!

A

Your friend is wise to suggest you think carefully before taking such a drastic step. A recent case decided by the British Columbia Supreme Court [Grewal v Litt, 2019 BCSC 1154] varied the terms of the parent's wills to provide for principles of balance and fairness, in tune with Canadian values.

When the Litts died their estate was worth over \$9 million. They had 6 adult children, 4 daughters and 2 sons. All of the children had worked hard towards the success of the B.C. farms comprising the bulk of the estate. In addition, the daughters cared for their elderly parents through their father's dementia and their mother's hospitalizations. The sons received substantial gifts and benefits from the parents during their lifetimes, which the daughters did not receive.

The wills directed that the 2 sons receive \$4,200,000 each; the 4 daughters receive \$150,000 each. The daughters did not feel that this was fair and took the estate to court. Justice Elaine Adair agreed

to redistribute the Litt estate, granting 20% to each of the sons [\$1,800,000 each], and 15% to each of the daughters [\$1,350,000 each]. She wrote that in Canada, the parents' moral obligations to the daughters and achieving a result that was "adequate, just and equitable" to both genders was more important than the parents' testamentary autonomy, regardless of whether they had emigrated from a country which had different cultural values.

Bottom line, if you decide to make a will which is obviously unfair, you can expect that it may be challenged, and if so, you may find that a Court in Canada will set it aside and vary it.

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