

ARE YOU ENTITLED TO SUPPORT FROM AN ESTATE?

Your father has just died. You are in school and your father was paying your tuition and some of your bills. You are shocked to find out that your father left you nothing under his will. What are your options?

Perhaps you will decide to challenge your father's will. If you do, you will have a difficult job ahead of you. Normally, when a person makes a will, he is free to leave his assets to anyone he wishes. To be successful in setting your father's will aside, you must have a legal basis for challenging it. It is not enough to claim that the will should be set aside because it is unfair.

You will probably have to prove one of these three things:

- Either your father did not have the capacity to make a will
- While he signed the will, he did not approve of its contents, or
- Someone influenced him to make the will and the influence was more than the court will allow.

In the province of British Columbia, the law is different. If your father were a resident of British Columbia when he died, he may have a *moral duty* to include you as a beneficiary under his will, which will be recognized by the law. In Ontario, such a moral duty is not legally recognized.

So what should you do? You could consider hiring a lawyer to represent you in applying for support from your father's estate. The *Succession Law Reform Act* is an Ontario law which gives you the right to apply for support, provided you meet certain criteria. To qualify, you must be a member of a particular class. Generally, those who are eligible to claim support include spouses, children, grandchildren, common-law and same sex spouses, former spouses and in some cases, parents or siblings.

Since you are a child, you would fall within the class of individuals entitled to make a

claim for support against your father's estate.

There is an additional requirement. You must prove to the court that you are a person whom your father supported, or was under a legal obligation to support. Since your father was paying your tuition at school, you would probably be able to prove this to the court.

As a result, in spite of the fact that you were left out of your father's will, you may have rights against his estate. You can apply to the court for support.

In considering your claim, the court will look at a number of factors. These will include your assets, your ability to support yourself, your health, your needs, the closeness of your relationship to your father, and your father's circumstances at the time of his death. The court must also balance your claim against the claims of others (such as your mother and your other siblings) whom your father was either supporting or was under an obligation to support at the time of his death.

If you decide that you do wish to make a claim for support, you must do so within certain prescribed time limits. You must apply to the court within six months after the court has issued the Certificate of Appointment (or Letters Probate) in your father's estate. If you do not apply in time, and the estate is distributed, you may be successful but find that there are no assets to satisfy your claim. If the estate has been partially distributed, only the assets that remain will be available.

A court order for support can be very flexible. It can order regular payments to you, pay you a cash amount or set up a trust for you. The administration of your father's estate will be held up until your claim is dealt with.

So if you are left out of your father's will, you may find that you have a remedy. You should see a lawyer, preferably one with experience in handling cases such as these.