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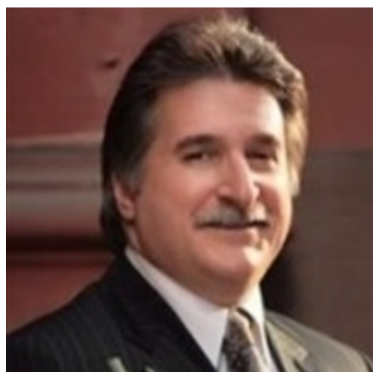
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Estates & Wills & Trusts

Contesting wills on the rise, Ticker not surprised

By AdvocateDaily.com Staff



Large asset transfers and a willingness to sue are fuelling an explosion in estate litigation, says Toronto-area estates litigator and mediator [Charles B. Ticker](#).

The *Independent* recently [reported](#) on a study by a U.K.-based life insurance provider that found around a fifth of that country's population, or more than 12 million people, would challenge a family member's will if they were unhappy with their inheritance.

The company's analysis of local court records also revealed a six-per-cent boost in the number of probate applications for 2018 compared with the previous year.

The numbers do not surprise Ticker, who practises estates litigation and mediation with [Charles B. Ticker Law Office](#).

He tells [AdvocateDaily.com](#) that he would expect to see similar results in a survey of Canadians.

"We're seeing more and more estates disputes clogging up our courts. It's an ongoing theme that when people feel something in a will isn't fair, they will challenge it.

"And with demographic trends, I think it's going to continue for a while," Ticker adds, pointing to Canadian [research](#) that suggests we are in the middle of the largest intergenerational wealth transfer in history, with approximately \$1 trillion expected to change hands between 2016 and 2026.

"That's a lot of money, and people will want to make sure they're getting their fair share," he says.

Still, Ticker warns potential litigants that a will challenge is not straightforward. According to the *Independent* story, the most common ground cited in contested U.K. wills is "undue influence," which involves allegations that the testator was forced to sign a will or was unreasonably coerced to set its terms.

"Undue influence is very hard to prove because it tends to happen in private. Some children try to influence their parents all the time, but it has to be more than that," says Ticker, who often uses a hypothetical scenario to explain the difference to clients.

"A child might say to a parent, 'I would love some money to buy a sports car,' or they might say, 'If you don't give me the money for a sports car, I'll put you in a nursing home,'" he says. "The first case might be called influence, but the second would lean more towards undue influence.

"It all depends on the precise circumstances, but there are red flags that a court will be looking out for."

In a typical challenge, Ticker says undue influence will be one among a number of grounds advanced by applicants for invalidating the will, including lack of testamentary capacity, improper execution of the will, lack of knowledge and approval of the contents of the will, forgery, and others.

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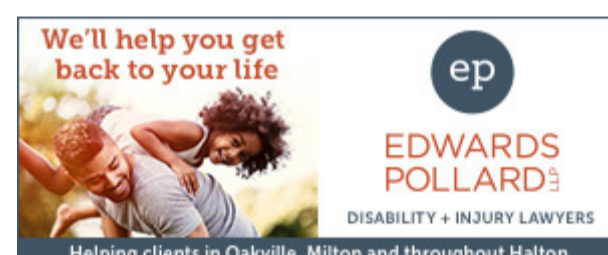
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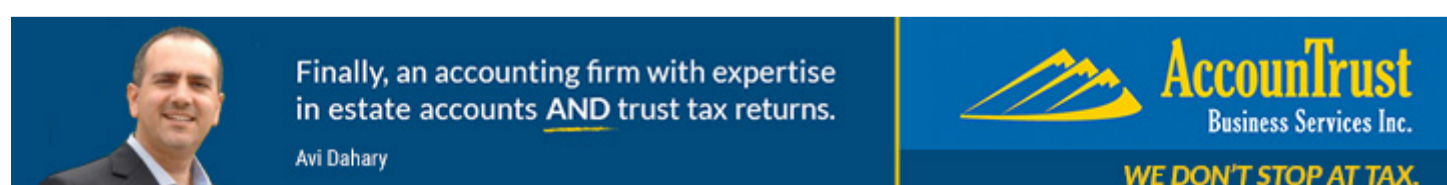
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