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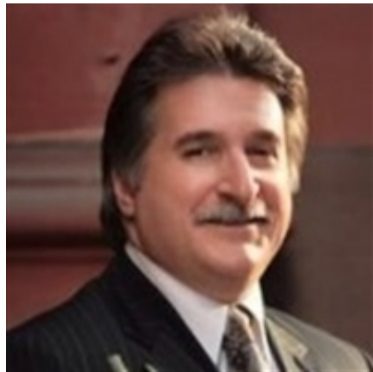
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## Estates & Wills & Trusts

# Limited grounds to contest a will: Ticker

By Paul Russell, AdvocateDaily.com Contributor



There are limited grounds upon which someone's will can be successfully challenged, Toronto-area estates litigator and mediator [Charles B. Ticker](#) tells [AdvocateDaily.com](#).

“Many people in Ontario are under the misconception that wills have to be fair,” says Ticker, who practises estates litigation and mediation at [Charles B. Ticker Law Office](#).

“In fact, people can exercise their testamentary freedom and do whatever they want with their money — subject to some restrictions, such as making adequate provision for their dependents and complying with public policy — even if that means giving the kids nothing,” he says.

Thanks in part to Canada's aging population, “The estate court docket has become extremely busy,” Ticker says, “and it is sure to continue in that direction.”

He points to a 2016 CBC [story](#) which indicates, “Canadians between 50 and 75 years old are set to inherit \$750 billion over the next decade, the largest intergenerational wealth transfer in Canadian history.”

“Because there is a lot of money on the line, the likelihood for a dispute among family members is increasing,” Ticker says. “In many cases, the dysfunctional relationship between siblings goes back to when they were kids, making them predisposed for a fight as adults over the inheritance.”

He says if the person making the will, or testator, gives different amounts to his children, that can be a source of tension. Conversely, an equal distribution of the inheritance can also cause problems, especially if one sibling played a bigger role in the parent's life, and feels that should be reflected in the size of their inheritance, Ticker says.

Blended families are another contributing factor, he says, noting there is often tension between children of the first marriage and the step-parent and the children from the second marriage.

Ticker listed eight reasons why people might want to contact a lawyer to launch a will challenge.

— A lack of testamentary capacity: Courts today still refer to [Banks v. Goodfellow](#), an English case from 1870, which sets out the principles of testamentary capacity, Ticker says.

The decision states: “It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties — that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”

— Improper execution: In Ontario, wills must be signed in front of two witnesses in the presence of the testator, Ticker says, “but there have been cases where the witnesses sign on different days, separately. Those wills are not valid.”



— Undue influence on the testator: “This is not easy to prove since it usually happens behind closed doors,” says Ticker, giving the example of someone “who threatens to put Dad into a nursing home unless he leaves him money in the will for a Porsche.”

— A claim of proprietary estoppel: Ticker explains that this arises when someone has been given a clear assurance that they will acquire a property when the testator dies, but then that doesn’t happen, even though they may have sacrificed something in their own lives in the expectation of being rewarded later.

— The will violates public policy in such areas as discrimination.

— Inadequate support for a dependent that the testator had an obligation to support.

— Improper drafting that requires court involvement to determine what the will means.

— If there is fraud or forgery.

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