# Equity Under the Wills Variation Act

In 2006, the B.C. Law Institute delivered a report recommending many welcome changes to modernize estate law.

The report also contained, however, one ill-considered recommendation to eliminate *Wills Variation Act* claims by adult children unless they are unable to be self-supporting.

The WVA is the statute which permits children and spouses of deceased individuals to challenge their wills after their death. Generally speaking, under this Act the courts will not interfere with a will if a parent has good reason to disinherit a child and properly documents those reasons.

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This new proposal, however, would eliminate claims by self supporting adult children even in the most deserving of cases. In doing so, it would reverse almost 90 years of jurisprudence.

It is difficult to advance any good policy reasons for eliminating the statutory discretion given by the WVA. The effect of the proposed amendment would be to uphold testators' testamentary freedom to disinherit children no matter just how frivolous, discriminatory or mean-spirited their reasoning may be.

The purported rationale for this proposed change is to make the law of British Columbia consistent with the law of other provinces. In fact, B.C. law is actually ahead of the other common law provinces because it permits the courts to bring more fairness into estate law by applying equity where required.

B.C. is also more consistent with most of the world where testamentary freedom is not a given. The concept of complete testamentary freedom is largely known only in the common law world.

Many who had the fortune to be raised in happy, healthy families find it difficult to imagine any parent unfairly disinheriting a child. Often however, successful WVA claims involve dysfunctional families where an abusive parent disinherits his or her own child. Others involve families that inappropriately discriminate, within their culture, usually against daughters.

Consider the following examples of successful WVA claims which this proposed recommendation would eliminate, if passed:

1) A South Asian mother's will left her estate to her sons, largely excluding her daughters. The judge found this reflected an inappropriate cultural bias and amended the will to provide the daughters a larger share.
2) A father's will left his gay son a life estate, whereas he gave two heterosexual sons outright gifts. The trial judge amended this will ruling "homosexuality is not a factor in today's society justifying a judicious parent disinheriting or limiting benefits to his child."
3) A mother's will disinherited one of three daughters. She had abandoned her first illegitimate daughter as a toddler, leaving her in an abusive home. She later married and became a supportive and loving mother to two adopted daughters. They enjoyed happy successful lives in contrast to the abandoned daughter who lived a life of economic struggle and abusive marriages. The judge divided the estate equally between the three.

The B.C. *Wills Variation Act* provided for equity in all of these cases.

How can it possibly be a step forward to eliminate this discretion simply to be consistent with other provinces? **BT**