



Dependents

INFORMATION AND INSTRUCTION KIT

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Dependents

This is an important consideration, seldom fully appreciated.

Ontario law provides that someone who was dependent on the deceased can make a claim against the Estate for support separate and apart from what the dependent might inherit (under the Will or under the laws of Intestacy). When successful, these are claims for support, not inheritance, result in the Estate paying support to a claimant before the remainder of the Estate is divided among the beneficiaries of the Estate.

For a claim to be made, it has to be shown that the deceased has been providing support immediately before death, or the deceased has been under a legal obligation to provide support.

Dependents in the following categories can make a dependent's claim against the estate of the deceased under the Succession Law Reform Act:

1. Spouse, and possibly a common law mate
2. Parents
3. Children
4. Siblings

In this context, "spouse" includes married and common law spouses.

Children include grandchildren and any person who the deceased demonstrated a settled intention to treat as a child which means essentially treated as someone being supported.

Generally, a claim by a dependent must be made against the Estate within 6 months of the grant of Probate. Thus, if a dependent might make a claim, a prudent Estate Trustee should not distribute the Estate until after this 6 month period has expired.

Once an application is made, the Court will assess whether the deceased has made adequate provisions for the dependent(s). The Court will consider what was given

under the Will, or on Intestacy, and determine what is adequate. The Succession Law Reform Act sets out a list of the factors to be considered in determining what is adequate.

Can a dependent claim be made after more than 6 months of grant of Probate? Yes. The Court has the discretion to allow a dependent claim after 6 months of the grant of Probate but the claim will only pertain to the undistributed portion of the Estate.



Want more information?

**ARE YOU INTERESTED IN A CONSULTATION WITH PETER R. WELSH?
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