

IF IT'S NOT FAIR.....

A young man was living with his elderly aunt. She promised that if he would be good to her, she would leave her house to him and take care of him in her Will. The nephew did odd jobs around the house, drove his aunt around town and to different cities. He honoured his aunt's request, but she did not keep her word and left him nothing in her Will. The Supreme Court of Canada determined that this was not an issue of enforcing a contract. It was an issue of fairness. In cases like these, the Courts have to determine if it would be inequitable to allow the promisor to keep everything while the other party provided the services. In this case, the Court found that the Aunt was unjustly enriched and it gave the nephew an award commensurate with the value of the services he provided.

In reviewing the merits of an Unjust Enrichment claim the courts look at three main issues:

1. How do you place a value on the services rendered?
2. Is there any legal reason why the nephew had to provide these services and as such does not deserve to be compensated out of the estate? For example, did he receive a salary for the services he provided?
3. Can the nephew corroborate his claim with some material evidence as is required by s. 13 of the *Evidence Act*.

Wills are attacked upon many technical and legal grounds. Was the Will executed properly? Did the testator have capacity? Is there a claim for a spouse under the *Family Law Act* or for a dependant under the *Succession Law Reform Act*? Sometimes, it also pays to ask whether or not being left out of a Will is fair. If the courts find that there is unjust enrichment, they may make a *quantum meruit* award.

Conclusion:

There is an old joke that death is not the end..... it is the beginning of estate litigation. Despite the temptation to jump to conclusions, it would be a mistake to view this canvassing of a legal issue of significance as legal advice. It is always advisable to speak to a qualified lawyer to determine if circumstances are sufficient to make a claim of unjust enrichment with the hope of it leading to a *quantum meruit* award.



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