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Desjardins Insurance agent Mike Francis, (centre) presents \$10,000 cheques to Michael Willis of Uncorked on Main and Helen Lu and her husband John Wu of Lilly Thai Cuisine, as part of Desjardins Insurance's Goodspark Small Business Grants Program.

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legal matters | ESTATES & TRUSTS

Challenging a Will because of "Undue Influence"



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The basic purpose of a Will is to allow individuals to set out their final wishes and instructions as to how their affairs should be handled after they pass away. Therefore, the Court will not set aside a Will lightly.

Often when a Will is challenged "undue influence" is one of the primary grounds. Although it may seem obvious to the Will challenger that the testator was influenced by an ill-intentioned friend or relative, because a Will challenge takes place after the testator has passed away, the testator is unable to say what really happened.

Understandably then, the threshold for establishing a Will was the product of undue influence is high. In *Banton v. Banton* the Superior Court of Ontario stated it must be "...established on the balance of probabilities that the influence imposed by some other person on the deceased was so great and overpowering that the document reflects the will of the former and not that of the deceased."

Although the facts of each case are unique, there are certain indicators of undue influence which have been noted in the case law, including:

- The testator is depending on the beneficiary for emotional and physical needs;
 - The testator is socially isolated;
 - The testator has experienced recent bereavement; and
 - The testator has made a new will not consistent with prior Wills.
- Simply showing there was opportunity or motive to unduly influence a testator, however, is not sufficient to prove undue influence.

Considering the high threshold and evidentiary hurdles for challenging a Will, those considering a Will challenge should evaluate their options by consulting with a lawyer experienced in estate litigation.

Call us we can help.



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