

legal matters | ESTATES & TRUSTS

Challenging a Will because of "Undue Influence"



M. Jasmine Sweatman

B.A., J.D., LL.M., TEP.,
C.S., EPC, CPCA

Certified
Specialist in
Estates &
Trusts

Wills, Powers
of Attorney,
Trusts, Estate
Litigation and
Administration,
Corporate,
Real Estate

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.

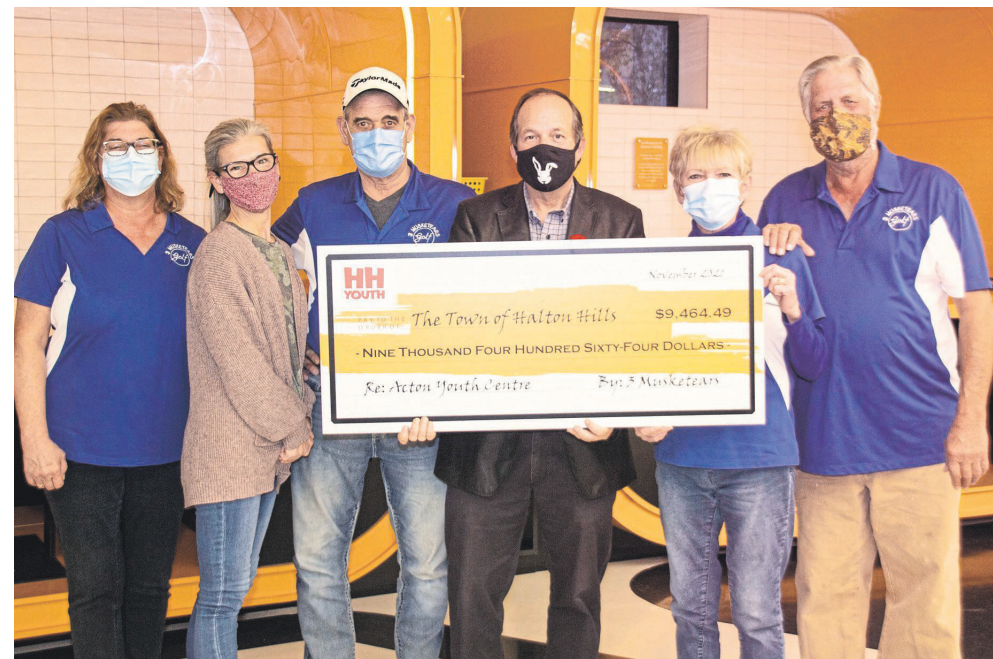
Call us we can help.

SWEATMAN 145 Mill St., Georgetown
LAW FIRM 905.877.0121

www.sweatmanlaw.com

*Sweatman Law Professional Corporation

COMMUNITY



Town of Halton Hills photo

Mayor Rick Bonnette (centre) accepts a cheque for \$9,464.49 from Three Musketeers Golf Tournament organizers (from left) Kathy Toth, Melissa Toth-Rooney, Gord Toth, Kathy Everson and Rick Everson for the new Acton Youth Centre.

KEEPING LOCAL YOUTHS' MEMORY ALIVE

GOLF TOURNAMENT PROCEEDS TO SUPPORT NEW ACTON YOUTH CENTRE

The Three Musketeers' legacy continues.

This year, it's the new Acton Youth Centre reaping the benefits of the \$9,464.49 that was raised from the golf tournament held in memory of local youths Mark Everson, Travis Toth and Rory Dick, who were struck and killed by a freight train in rural Halton Hills.

The "Three Musketeers" name was chosen to symbolize their friendship.

The funds will go toward furnishings and recreational opportunities for the new centre's outdoor patio space.

Established 17 years ago, the tournament — organized by the youths' friends and family — has supported various community initiatives, including the Three Musketeers Skatepark in Acton.

"We are thrilled that the families and friends of the Three Musketeers have chosen the Acton Youth Centre as the recipient of their generous donation," said Hal-

ton Hills Mayor Rick Bonnette. "This act of kindness serves to support and enhance opportunities for youth in the Acton community and continues the legacy of the loved ones who tragically passed so many years ago."

The Acton Youth Centre, located at 19 Willow St. N. (within the Acton Town Hall), opened its doors to the community this fall. It will serve as a hub of activity and a place for youth to gather, recreate, socialize, learn, collaborate, innovate, access local services and grow.

As part of the town's youth services, the municipality operates two youth centres with locations in Acton and Georgetown. Both centres are operated by trained staff in partnership with social service agencies, including Reach Out Centre for Kids (ROCK), ADAPT and Support House.

All programs are provided at no charge and open to youth ages 12 to 24 years old. For more information, please visit halton-hills.ca/youth.

MORE ONLINE

SIGN UP FOR OUR
WEEKLY NEWSLETTER AT
THEIFP.CA