

# Equity and equality are not the same thing

MARGARET O'SULLIVAN ADVISES PRACTITIONERS TO REMIND CLIENTS OF THIS CRUCIAL FACTOR WHEN DETERMINING THEIR CHILDREN'S INHERITANCE

ONE OF THE most challenging questions we face as advisors in family succession planning is whether children should be treated equally. Having spent over 35 years as a trust and estate lawyer, I have gained perspective, as well as practical insight, on this issue.

From a legal viewpoint, most common-law jurisdictions provide for testamentary freedom, and each of us is free to treat our children unequally, and even disinherit them. Financially dependent children, however, often have a claim for support.

Let me start out with the observation that, in my experience, almost all parents share the view that their children should be treated equally under their wills. Most are punctilious about this rule, particularly where some of their children have already received financial assistance during their lifetimes. The notion of complete formal equality has often been a core value for these parents, dating right back to when they made sure each child got the exact same-sized piece of apple pie. They know innately that, to avoid disputes, ensuring equal treatment is one line of defence.

From a cultural perspective, much has changed. In 1940, there might have been a disproportion between sons and daughters, and, in the 19th century, perhaps the eldest son would have been favoured. Having said that, Western approaches are being challenged by global mobility, and many clients with diverse religious and cultural backgrounds have different values and approaches to family inheritance and the treatment of children. Also, in most civil-law jurisdictions, mandatory succession rights will ensure a fixed proportion of some minimum amount goes to each child.

Not all parents share the notion of equal treatment or are concerned with it. Some may see giving one child more as being fair, perhaps to reward them for extra work and effort. In other situations, unequal treatment can be used to show disapproval or disappointment. In these cases, it is important for our clients to understand the consequences of unequal treatment, most importantly on the children's relationships with each other after their parents are gone. The effect of unequal

'When it comes to family succession, as in the laws of physics, for every action there is a reaction'

MARGARET O'SULLIVAN TEP  
IS MANAGING PARTNER  
OF O'SULLIVAN ESTATE  
LAWYERS, TORONTO



treatment, when combined with grief, should never be underestimated: it can cause a powerful emotional reaction, and can harm and even destroy children's relationships with each other. It may cause a permanent rift between siblings.

A will can be seen as the final report card from parents to their children. What leads to disputes and even litigation is often not the money itself, but the symbolic message conveyed to children, who may view what is left to them as a measure of their parent's love for them. Feelings of rejection and hurt that are unleashed in the aftermath can be a catalyst for litigation.

There are certain clear exceptions, such as where a severely disabled child's needs must be placed before their siblings', and family finances do not allow for equal treatment. In these cases, it is important to stress to our clients the need for them to communicate the reasons for the difference in treatment and their intentions. This is so that children's expectations are managed and there are no surprises.

In other cases, one child may be very financially successful and another may not. Parents may feel they want to give more under their wills to the less financially successful child, 'because they need the money' and their other child has no need. This situation can be a minefield. The financially successful child may feel that they are being 'penalised' for their success, and that their efforts are all for naught if their sibling ends up with a much larger inheritance. I like to tell my clients that, unless their child is as financially successful as Celine Dion (and maybe not even then), their child may resent any preference given to their sibling with this approach of 'equality of result', and that, to ensure their children always remain close, they need to consider these consequences.

When it comes to family succession, as in the laws of physics, for every action there is a reaction. Successfully navigating family succession involves looking ahead to try to ensure our clients thoughtfully consider and understand the consequences of their actions, and take them into account, in order to successfully pass on their wealth.