

Know the obligations when making a will

People making wills have a moral obligation to close relations (such as their spouse/de facto partner, children and grandchildren) to consider their position when deciding who to leave any of the estate to.

If a will is challenged, the court will decide if the deceased met their moral obligations to those relations and, if not, may change the distribution of the estate.

In a recent example, a father's will, which left everything to his wife (the mother of his children), was successfully challenged by their children in the High Court.

Unusually, the case involved biological children making a claim while the biological parent was alive (in contrast to estate claims by biological offspring against step-parents).

This was a result of a unique family situation, in which the children were estranged from their own parents.

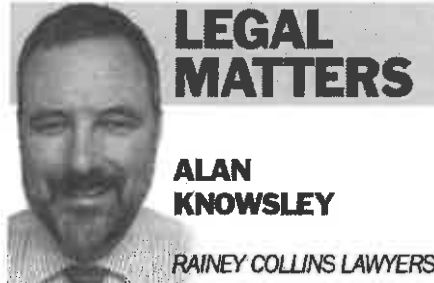
At the time of his death, the man and his wife had built up an estimated \$3 million in wealth.

When he died in 2009, the man left behind his wife, adult children and grandchildren. Under his will, the man's estate went to his surviving wife.

If his wife had predeceased him, \$25,000 would have gone to each child and the remainder to charity.

A letter of intent, provided with the will, clarified that the couple shared a sincere belief that all people should provide for their own welfare.

The couple themselves had not accepted inheritances from their parents as a result of that belief.



Their adult children successfully argued that the deceased had failed in his moral obligations towards them and that it was likely their mother would also fail to make provision for them.

A troubled family history was relayed to the court. While the children were young, the father worked long hours and the mother's mental illness resulted in the children being placed in foster care.

The court accepted that the mother's parenting "left a lot to be desired".

She had inappropriately used physical discipline on her children, and continued to be emotionally manipulative and controlling, playing the children off against each another.

Throughout the children's adulthood, the parents refused to offer help and support through various difficult times – steadfast in the belief that parents should not provide support into adulthood for their children.

The children felt their difficult childhood had contributed to numerous problems in their adult lives. While the mother was personally wealthy, many of the children were impoverished and

suffering from health issues.

Though the court acknowledged that a surviving spouse's claim against an estate is generally paramount, it clarified that that was not an absolute rule.

It found that the man's indifference to his children was neglectful, and at the time of his death his offspring were deserving of his recognition and emotional support.

On balance, based on the exceptional family history, the court found the deceased breached his moral obligations towards his children by not providing for them in his will.

Despite the mother being alive, the residue of the estate was divided, with 55 per cent going to the mother, and the rest distributed among the children.

The more usual family protection claims involve one or more children being given less than their siblings, or adult children being left out of a will in favour of their deceased parent's partner.

The court will not necessarily restore an equal division, but will consider what is the minimum that should be given to each claimant to satisfy the deceased person's moral duty.

There is usually a greater moral obligation to provide for children in poor circumstances, such as financial or health.

If you have been left out of a will you need to get legal advice quickly because there are time limits on challenging wills.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have an inquiry, email aknowsley@raineycollins.co.nz.