

# Ronald W. Angland & Son

## LAWYERS

### THE FAMILY PROTECTION ACT

To most of us it would be unthinkable to cut some of our closest family members out of our Wills. It happens quite often and the reasons range from serious rifts within families to what seem to most people to be petty grievances.

Where a Will-maker has deliberately left a close relative out of their Will and it was their moral duty to provide financial support for that relative, application can be made to the Court for further provision from the deceased's estate. The Act contains the categories of persons who may bring a claim. Claims are not limited to blood relatives but may include de facto partners, step-children and others who were dependent on the deceased Will-maker. All claims must be filed within 12 months of the date on which Probate of the deceased's Will is granted.

Proceedings under the Family Court are filed in the Family Court. The claimant has to file an application, statement of claim and supporting affidavit. The last of those documents should contain the evidence which the claimant relies on to establish their right to provision from the estate. The lawyer who acted for the deceased is obliged to provide the Court with full details of the assets and liabilities of the estate and any documents or instructions that they had which may give some insight into the reasons for the exclusion of the applicant from his/her Will. The Court may order that the proceedings be served on other beneficiaries under the Will.

In many cases under the Family Protection Act, every endeavour is made to have the claim settled between the parties without having to proceed to a formal hearing. Settlement conferences are very often convened with a Judge presiding to see if the parties can resolve matters. However, that doesn't always happen and a formal hearing has to be held and a decision made by the Court.

The Court takes into account all aspects of the claimant's personal circumstances including their financial worth, their health and ability to make a living, and their relationship with the deceased. It also has regard to the value of the estate and the circumstances of other beneficiaries and whether the claimant had done anything which would disentitle him/her to succeed in the claim.

Needless to say applications to the Court are costly and time consuming. Where a Will-maker is minded to exclude some of their dependents from their Will a letter or memorandum setting out the full reasons for the exclusion should be left with their Will.

*This article has been prepared by Bessie Paterson, a Partner at Ronald W Angland & Son, 2 Chapman Street, Leeston.  
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