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Asian values are no excuse for disinheriting daughters, Canadian court rules, as Vancouver sisters win multimillion-dollar case

A British Columbia law, unique in Canada, forces parents' wills to fairly provide for all non-dependent adult children, regardless of cultural bias towards sons
The rules are highlighted by a recent victory for four sisters, who were each originally left with just 1.7 per cent of their parents' US$6.8 million estate

Topic | Vancouver

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The elderly Chinese immigrant came to the office of Vancouver lawyer Trevor Todd, a long-time neighbour, with plans to write his will.

He brought with him his wife of 35 years – and the intention to disinherit her and their daughter, and instead leave the entire family fortune to the couple's adult son.

"I told him 'forget it'," said Todd last week, of the encounter 15 years ago.

Todd's neighbour was hardly an outlier. Sex-based disinheritance of Asian women is widespread in Canada, lawyers told the *South China Morning Post*, with wives and daughters sometimes "shafted" (to use Todd's wording) by the will of a family patriarch.

But the phenomenon is now under scrutiny in Canada, thanks to a high-profile multimillion-dollar court victory for four sisters, who were represented by Todd.

The Litt family farm on Cambie Road, Richmond, in British Columbia. The property sold for C$10.5 million last year. Photo: Farms in BC

And a legislative quirk in British Columbia, little known outside the legal community, is giving ammunition to such women, by effectively forcing men to make fair provision for wives and adult daughters, regardless of tradition or culture.

The parents of Todd's recent clients – four Indo-Canadian sisters – left a BC estate worth more than C$9 million (US$6.8 million).

> **These [cases] aren't just fights in the court, they are fights among the family … cousins can't talk to cousins, sisters won't talk to brothers**
> **Lawyer Doug Chiu**

But the sisters were each originally willed only C$150,000 (US$114,000), or about 1.7 per cent of the total.

Their two brothers, meanwhile, were to split 93 per cent between them, amounting to at least C$4.2 million (US$3.2 million) each. In an interview, Todd called the will "ridiculously unfair".

But a July 17 British Columbia Supreme Court ruling overturned the will, and instead granted each sister about C$1.35 million (US$1 million), representing 15 per cent of the estate. Their brothers received 20 per cent each.

Vancouver lawyer Trevor Todd called a will leaving each of four Indo-Canadian sisters just 1.7 per cent of their parents' C$9 million estate "ridiculously unfair". Photo: Handout

The case highlights British Columbia's wills and estate law, unique in Canada, that lets non-dependent adult children challenge the fairness of a parent's will. This unusual provision allowed the sisters to fight back against what they called their parents' tradition-based preference for their brothers.

Todd and other lawyers said the case had repercussions for British Columbia's various Chinese communities, which they said had the tendency – widespread but not universal – to favour sons in legacies.

Richmond lawyer Bernard Lau said that "a lot of Chinese parents" want to leave their assets to their sons, "particularly if the daughter has married and changed her surname".

Thousands of Hong Kong-born people are returning to Canada

[1]

"We've seen cases where Chinese parents wanted to give 100 per cent of their estate to their sons or their spouse, and neglected others in the family, " Lau noted.

"By doing that, you're risking a court battle, that will invariably damage relationships."

Doug Chiu, a partner in Vancouver firm Hammerberg Lawyers, said he had seen families ruined by such favouritism.

"These [cases] aren't just fights in the court, they are fights among the family ... cousins can't talk to cousins, sisters won't talk to brothers. It gets messy."

'This is the custom among our people'

In the memory of litigant Amarjit Kaur Litt, her family's home life "was based on [her] parents' traditional East Indian cultural views, where 'boys were a blessing and girls were a disappointment'," wrote Madam Justice Elaine Adair, in her recent ruling on the will of Litt's parents, Nahar and Nihal Litt, who died within two months of each other in early 2016.

The whole family had arrived from India in 1964, with little to their name. Father Nahar worked in a sawmill, but he and Nihal were farmers in India and they returned to the land in Canada, eventually buying berry farmland in Richmond, south of Vancouver, while living frugally for decades.

Proceeds from the sale of the farmland and a family home in Vancouver made up the large bulk of the estate.

British Columbia's Wills, Estates and Succession Act forces parents to make "adequate provision" for spouses and adult children in their wills. Photo: Shutterstock

All six children – sons Kasar Singh Litt and Terry Mukhtiar Singh Litt, and daughters Amarjit, Jasbinder Kaur Grewal, Mohinder Kaur Litt-Grewal and Inderjit Kaur Sidhu – worked on the farms from young ages, for varying amounts of time.

When both parents were elderly and ill, it fell mostly on the sisters to care for them.

> **The [Litt] Daughters say that, [their parents'] traditional and cultural beliefs are unacceptable**
> **Madam Justice Elaine Adair**

This was but one example of a lifetime of favouritism towards the sons, the sisters claimed: in subdivision documents described by Adair, Nahar wrote in 1991 that he wanted to divide the family farm in half, "and give half to my first son and the other half to my other son as I would like to retire. I am East Indian and this is the custom among our people".

The subdivision was never approved.

But the wills of Nahar and Nihal did not explicitly say why the asset division was so unequal among the sons and the daughters.

In Vancouver, he called us 'the g-word' and told us to go home

[2]

Justice Adair wrote in her ruling that the sisters, now in their 50s and 60s, considered it "readily inferable that the Parents' testamentary intentions were based on traditional East Indian customs and practices".

These customs, "fell far short of the moral standards of Canadian society, which provide for women and men to be treated equally", said Adair, summarising the daughters' position.

British Columbia Supreme Court Justice Elaine Adair. Photo: Western University

"The Daughters say that, as [their parents'] traditional and cultural beliefs are unacceptable, and since there were and are no valid or rational reasons to substantially disinherit them, the Estate should be divided equally among the Siblings."

Ultimately, Adair found that while the parents did not consider themselves fully bound by sex-biased tradition, "I have concluded that traditional cultural values had some influence on the Parents in how they treated the Siblings ... there was never equality of treatment between the Sons and the Daughters."

Accordingly, she collectively awarded the four sisters 60 per cent of the estate, and the brothers 40 per cent. The disparity in favour of the sons on an individual level was acknowledgement of the parents' "testamentary autonomy".

> **Chinese women go through much the same cultural pressure, and family pressure, when the proceeds of an estate are left to the older son, or the sons**
> **Lawyer Trevor Todd**

Todd told the SCMP that the women considered the ruling a major victory, not just for themselves but for other disinherited Asian women.

“They wanted to go through with this case to show that they had the courage to stand up to their brothers, to traditional values and cultural norms,” he said. “It’s just not uncommon [in Asian families] for the daughters to get shafted.”

He said he had represented many such ethnic Chinese women, although such cases were typically settled before trial.

Scared of falling home equity in Vancouver? Get a grip on reality

[3]

“Chinese women go through much the same cultural pressure, and family pressure, when the proceeds of an estate are left to the older son, or the sons. But I’ve found Chinese women will muster up the courage and proceed [with legal action, in contrast to Indo-Canadian women].”

BC’s Wills, Estates and Succession Act (WESA) requires that a will must “make adequate provision for the proper maintenance and support of the will-maker's spouse or children”. This includes non-dependent adult children.

Failure to do so allows the courts to alter a will, to make “just and equitable” provision for the spouse and children.

Todd said that WESA applied to foreign wills too, so long as the property in question was located in British Columbia.

Richmond lawyer Bernard Lau says a Chinese tendency to favour sons in wills varies according to the age and origins of the willmaker. Photo: Handout

Lawyer Bernard Lau said the prevalence of the "Eastern mindset" of sex-biased wills varied between various Chinese sub-communities, and according to age. "There is a tendency for elderly Chinese parents to favour sons over daughters [in their wills] ... We see less of that among the younger generation," he said.

"I don't want to stereotype, but it's somewhat prevalent in families of Chiuchow [Chaozhou] or Fukien [Fujian] background, that sons tend to be held in higher regard, at least among the older generation, than daughters who have changed their last name after marriage."

Vancouver's 'spicy' property-price curbs work. Why haven't Hong Kong's?

[4]

Burnaby-based lawyer George Lee, who largely serves Mandarin-speaking clients, said that the tendency was less observable among recent mainland Chinese immigrants, since many became parents under China's one-child policy.

But the case still sent a message to Chinese families, said Lee. "Discrimination, this favouritism, is not acceptable here".

Lau said the case "completely wipes out the misconception" that just because a person leaves a will, that this is ironclad.

"If it's solely on the premise of cultural values ... the implication now is that you need more than just that."

To anyone planning to draft a sex-biased will premised on "Chinese cultural values", Hammerberg's Chiu said: "Get advice."

'Parents can still be unfair ... outside the scope of a will'

The lawyers interviewed by the *Post* agreed that ways remain to get around the WESA rules, if a parent is determined that sons should get the bulk of their assets.

"Parents can still be unfair ... if it happens outside the scope of a will," said Lau.

Assets that were gifted to, or placed in joint ownership with, a son during the lifetime of the parent would not be subject to WESA, Lau said.

"Parents don't have to make fair and equitable distribution [to daughters]. There is a moral obligation to do so, but if the parents don't want [to] there are many ways to get around it," said Lau.

> **Most clients say: Oh, that is not fair, because I have my right [to divide my estate] however I want to**
> **Lawyer George Lee**

Other money management techniques could include the use of trusts, insurance policies and retirement savings plans, suggested Todd.

And in a will, "you can disinherit a child for valid and rational reasons," he said, calling this the "evil child" discretion.

"But that wasn't the case here [for the Litt family]," Todd said. "These women worked like slaves for their parents."

If a parent is fixed on uneven distribution in a will favouring a son over a daughter, said Lau, it is crucial that the reasons be clearly set out.

"It could simply be for a practical reason, that the sons have made more contribution during the lifetime of the willmaker," he said. But the Litt case showed that simple cultural preference was inadequate.

He burned a Chinese flag outside Meng Wanzhou's court hearing. Here's why

[5]

George Lee said the WESA rules were "very unique", and that foreign-born clients were often surprised to hear about them.

"Most clients say, 'Oh, that is not fair, because I have my right [to divide my estate] however I want to' ... but when you explain the consequences, they say 'Oh, if that is the case, then I may not create a huge disparity between my children.'"

Lee said that he generally advised clients to have a will written in British Columbia to cover property there, and to have a separate will governing assets in other jurisdictions.

Doug Chiu of Hammerberg Lawyers. Photo: Handout

The Litt case held particular significance to Vancouver for two reasons, said Chiu: the demographics of the city with its high Asian population, and the skyrocketing property values that have hugely increased the stakes when it comes to the division of legacies.

This latter point was highlighted by Adair in her ruling, calling it "an important factor that cannot be ignored".

"The Parents and Litt Farms also benefited from the immense rise in property values in the Lower [British Columbia] Mainland," the judge found. "This rise in property values had nothing to do with any of the parties' efforts and labour."

The 30 hectare Litt family farm sold for C$10.5 million (roughly US$8 million) last year, despite an official valuation of just C$513,493 (US$390,429), reflecting huge speculative interest in such properties.

Said Chiu: "You might not think, hey, we come from a very rich family with means – but because of real estate [legacies in Vancouver have] appreciated in value. That's where this conflict comes from."

Harking back to the encounter with his Chinese immigrant acquaintance 15 years ago, Todd said that favouring sons in wills on cultural grounds had no place in British Columbia.

"They just need to be educated," he said, referring to people like his former neighbour. "These old traditions need to be done away with here ... this case is as important to the parents as it is to their children."

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