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## MAKING A WILL—YOUR MORAL DUTY TO PROVIDE

A common misconception is that making a Will is the be all and end all when it comes to inheritance. The New Zealand Family Protection Act 1955 places a moral duty on Will makers to provide for certain family members. These family members include a spouse or partner, children, grandchildren, step children if maintained by the deceased and parents if maintained by the deceased or the deceased had no spouse, partner or children.

The case of *Williams v Aucutt* illustrates this rigorous moral duty to provide. A mother died leaving two daughters, her Estate was worth approximately \$1,000,000.00. In her Will she left one daughter (Aucutt) the equivalent of \$50,000.00 and left the residue to her other daughter (Williams). The mother explained that the reason she divided her Estate in this way was because compared to Aucutt, Williams was financially worse off.

Despite being financially stable Aucutt made a successful claim against her Mother's Estate under the Family Protection Act and was ultimately awarded a further 10% of the Estate.

This moral duty on Will makers to provide exists in other western nations however the duty is generally satisfied if family members needs are met financially. To claim a greater share of an Estate family members have to demonstrate a financial need.

The case of *Williams v Aucutt* shows that in New Zealand a Will Maker's moral duty to provide is taken further than just considering the financial needs of family members. The Judge in this case made it clear that the duty to support also involves recognising a person's place in the family.

So, how do you successfully prevent certain family members from making a claim and taking a share of your Estate? One mechanism is to set up a Trust of which that person is not a beneficiary. A Trust is the most effective way of controlling inheritance.

You can then either transfer all of your property/wealth into your Trust while you are living or leave the residue of your Estate to your Trust after you die. Your Will only applies to what you own personally and as a Trust is a separate legal entity, whatever is owned in a Trust will not be governed by your Will.

Collins & May Law currently provides a Free Will service, should you have any questions surrounding aspects of drafting a Will or creating a Trust please contact one of the Team.

**20 MINUTE FREE**

**WANT to review your Family Trust structure?  
 THEN call us and take advantage of our 20 Minute Free interview**