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Adoption and Estate Planning

In Ontario, the legal status of adopted children is governed by the *Child and Family Services Act*, R.S.O. 1990, c. C.11, which provides that, upon the issuance of the adoption order, an adopted child ceases to be a member of one family and legally becomes part of another. Accordingly, Ontario law is clear that a child who has been adopted has no rights to a share in the estate of a biological parent, grandparent, aunt or uncle, or other biological family member on intestacy or as part of a class gift left to "children", "issue", or some other class of family members.

The definition of "child" within the *Succession Law Reform Act*, R.S.O., c. S.26, does not distinguish between biological and adopted children. Adopted children, accordingly, have all of the same rights as a biological child, unless a distinction is made within the relevant Last Will and Testament. If a parent is survived by two children, one biological and one adoptive, both children will receive an equal benefit on intestacy. Adopted children, similarly, are entitled only to apply for dependants' support in respect of an adoptive parent's estate.

Legislative changes have recently been made in Saskatchewan to facilitate the process of reconnecting biological parents and children who have been adopted by other families. Similar changes may be coming to other Canadian provinces in the future. If a relationship between a biological parent and an adopted child has been re-established and the parent or child wish to leave a benefit to the other as part of an estate plan, it is increasingly important to advise estate planning clients that provisions to benefit biological children (or other relatives) who have been adopted must be included within a Last Will and Testament. Absent a specific reference to the individual who has been adopted, he or she will not have any entitlements after the death of a biological family member.