Inheritance Claims for Financial Provision of Dependants

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Inheritance (Provision for Family and Dependants) Ordinance, Cap. 481 ("the Ordinance") allows dependant to make an application for the Court to order "reasonable financial provision" from the estate of the deceased where his/her Will has made none or insufficient provision for the dependant (sections 3 and 4 of the Ordinance), or if he or she is not entitled to share the estate under intestacy rules and the deceased did not make a Will.

Who may apply?

s3 of the Ordinance provides that the following persons may apply for financial provision from the deceased's estate:

- the wife or husband of the deceased;
- a tsip (where 妾 means "concubine" in Chinese) or male partner of the deceased by a union of concubinage;
- an infant child of the deceased or a child of the deceased who is, by reason of some mental or physical disability, incapable of maintaining himself.

The above categories represent family members who would otherwise be entitled to share the estate under intestacy rules, hence a claim arises when they are deliberately excluded from inheritance by the Deceased's Will.

The following categories of persons must have been maintained before the death of the deceased, either wholly or substantially:

- a former wife or husband of the deceased – though it is to note that such order ceases to have effect should he/she remarry;
- a parent of the deceased;
- an adult child of the deceased;
- any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage – i.e. a step-child;
- a brother or sister of the half blood or the whole blood of the deceased; and
- any person who was maintained before the death of the deceased, either wholly or substantially.

Only an adult child of the deceased is entitled to share under intestacy rules, so he or she must be excluded by the Deceased's Will, yet they have to show that they were financial dependants before they are entitled to relief under this Ordinance.

At the same time, any person who was maintained, wholly or substantially, by the deceased before the death of the deceased can make a claim, irrespective of the relationship that the claimant may have with the Deceased. However, for this category of claimant, it would be necessary to explain his or her relationship with the Deceased, leading to the financial support made by the Deceased.

What is "reasonable financial provision"?

There are two standards for deciding whether there is reasonable financial provision for an applicant, provided by section 3(2) of the Ordinance:

1. where an application is made by the surviving spouse of the deceased (or a tsip or male partner by union of concubinage), the question is whether it would be reasonable in all circumstances for them to receive such financial provision, regardless of whether the spouse needs such provision for his/her maintenance;

2. in all other cases, the Court considers whether the financial provision would be reasonable in all circumstances of the case for the applicant to receive maintenance.

In other words, in order to assist the Court in considering a claim, it is almost inevitable for a narrative affirmation to be filed on behalf of an applicant detailing the relationship between the applicant and the deceased in order to assist the Court to consider all the circumstances of the case together with documentary evidence to show that he or she has been receiving financial support. It could be painful and embarrassing for the applicant to reveal the personal relationship in lengthy affirmation which will be disclosed to other parties to the proceedings, especially when such relationship is often not accepted by the other family members during the deceased's lifetime which often become the opposite parties to such claim.

Factors considered by the Court

Section 5 of the Ordinance provides guidance to the factors considered by the Court in determining whether reasonable financial provision has been made for the claimant, which generally include:

a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

b) the financial resources and financial needs which any other applicant for an order under section 4 has or is likely to have in the foreseeable future;

c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;

d) any obligations and responsibilities which the deceased had towards any applicant for an order under section 4 or towards any beneficiary of the estate of the deceased;

e) the size and nature of the net estate of the deceased;

f) any physical or mental disability of any applicant for an order under section 4 or any beneficiary of the estate of the deceased;

g) any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

It is important to note that pursuant to section 6 of the Ordinance, the general time limit for making such claim is six months from the Grant issued. Applicants may apply to the Court for interim payments out of the net estate of the deceased if there is an immediate need of financial applicant; and property which forms part of the net estate of the deceased is or can be made available to meet the need of the applicant.

The importance of applying within the stipulated six months was highlighted in *HCC v LPL, the sole Administratrix of Estate of KKW, Deceased* (2019). The applicant had cohabitated with the Deceased for 18 years prior to his death and intended to apply for financial relief pursuant to s.3(1)(b)(ix) of the Ordinance for a sum of HK$3 million. The applicant admits that she was "at least 205 days late" in taking out the originating summons and sought the Court's permission to take out the application. The respondent, the wife of the deceased, opposed the application.

Referring to the guidelines provided in *LZX v WYL (provision: family and dependants)* (2012) for out-of-time

applications, the Courts are held to have unfettered discretion, and "the onus lies on the plaintiff to establish sufficient grounds for taking the case out of the general rule and depriving those who are protected by it of its benefits ... the applicant must take out a substantial case for it being just and proper for the court to exercise its statutory discretion to extend the time" (emphasis added). Additionally, the judgement of LZX suggested that another relevant consideration is "whether a refusal to extend the time would leave the claimant without redress against anybody."

The applicant's case for delay was that "she did not consider that it was necessary to apply for financial provisions if she could (i) stay in the Property, and (ii) to be maintained by receiving rental payments of the carpark space therein [as she] did not want to cause hassle to [the respondent] as there was a mutual understanding that she could stay in the Property," and that she had applied and was refused legal aid. However, the judge found that even if the applicant's intention was to cause no hassle to the respondent, "it would be absurd" for the applicant to have applied for legal aid so late when Hammer – a holding company who was the registered owner of the Property (the Deceased being a director and shareholder of the company) – commenced proceedings in the Court of First Instance for an order of possession of the Property, seeing the applicant as a trespasser – 8 months prior.

The Court was "not satisfied [that the applicant] could provide good reasons to justify for her delay in taking out the original summons" which was furthered by her conduct in the case brought by Hammer, and the respondent's attempts at negotiations with the applicant. Additionally, she was held to be "unable to discharge her burden to establish an arguable case for her claim of financial provision under this Ordinance." The summons was dismissed.

The importance of the above case is that any person who has been receiving financial support should seek legal advice as soon as the provider passed away, irrespective whether there is any other family member who continued such financial support on behalf of the deceased. A caveat is often filed so that he or she would receive notice of anyone who intends to apply for grant, and he or she is aware of the deadline for such claim to be lodged.

Can adult children succeed in a reasonable financial provision claim?

Looking at cases from the past, the issue of adult children claiming reasonable financial provision – whether it be pursuant to ss. 3 & 4 of the Ordinance or under the U.K.'s Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") – has been controversial. Success of the claims are highly dependent on the facts of the case, particularly if the adult child claimant has been estranged from their deceased parent.

Reasonable financial provision claims by adult children in Hong Kong

Claims for reasonable financial provision brought by adult children against the estate of their deceased parents are typically not entertained by the Hong Kong Courts. The following cases illustrate the difficulty adult children may have in bringing such claims, even if their parent had maintained them before their death:

1. *Kwan Chi Pun v Lai Hoi Yee* [2016] 4 HKLRD 689

The mother ("the Deceased") died in October 2011; pursuant to her Will dated 25 April 1989, her younger brother ("Kwan"), the plaintiff, was appointed executor of her Estate and the only beneficiary. The trial combined two actions: the first action, Kwan sought to "recover the possession of a landed property [("the Property")], which formed part of the Estate and has been transferred to him" from the Deceased's daughter ("Hoi Yee"); the second action, relevant to the current discussion, where Hoi Yee sought to have the Property transferred to her under s.4 of the Inheritance (Provision for Family and Dependants) Ordinance, Cap. 481, or alternatively sought a lump sum payment of HK$1 million for the purchase of a property.

The Property was purchased in 1987 with the Deceased and her then husband, Hoi Yee's father ("Lai"), as joint tenants; the Deceased signed another Sale and Purchase Agreement for the Property in June 1988 as sole purchaser. In 1989, the Deceased and Lai divorced; Hoi Yee was aged 5 and the Deceased had been granted sole custody. Since then, the Deceased and Hoi Yee resided at the property, and raised her daughter there. Hoi Yee left Hong Kong in 2002 to study in Canada and would return to Hong Kong every Christmas to stay with her mother.

While the Court accepted that Hoi Yee was entitled to make a s.4 claim under the Ordinance (pursuant to s.3(1)(b)(vi)), the Court examined her circumstances: while she was a dependent adult child of the Deceased, Hoi Yee at the time of the trial was 32 years old, and began working only 4 years prior, though a comment was made that "[h]er working life so far cannot be described as successful." At the time of the trial, she was employed as a tester "under a 1-year contract by a contractor working for the Immigration Department. She earns HK$13,000 per month net of MPF contribution. She is single and has no boyfriend." An expert witness also produced a medical report which stated Hoi Yee was suffering from adjustment disorder with mixed anxiety and depressed mood due to the death of her mother and mainly due to her dispute with her uncle Kwan. However, the report stated that "the prognosis is not negative" and with "current medical treatment at the frequency of once in 4 to 6 weeks, and such treatment is likely to be required until about 6 months after the conclusion of these litigations." She claimed that "to prepare for her return from Canada, her mother had discussed with her about selling the Property and applying the proceeds to purchase a bigger property in their joint name."

Regarding Hoi Yee's employment, the judge commented that she "has not fully made use of her earning capacity. She has a degree from Canada and clearly has an

advantage to be exploited." The judge also cast doubt onto the relationship between Hoi Yee and her mother due to evidence before the Court – namely Hoi Yee's behaviour and actions once she learned of her mother's death, and evidence from Kwan that stated the "mother and daughter relationship was not close. His sister [the Deceased] felt burdened by Hoi Yee's delay in completing her studies." The judge also commented that "I see no reason for [Hoi Yee] to believe that her mother would agree to live with her for as long as she liked."

Ultimately, Hoi Yee's s.4 claim was rejected. The judge held that "Hoi Yee's dependency on her mother must be coming to an end at the time of the Mother's death. There can be no question that the Mother had provided Hoi Yee with the best education which she could afford at considerable cost to her personal expenditure. With her foreign education, Hoi Yee was given a good start to her own independent life." In addition, the Deceased had purchased a life insurance policy for the benefit for Hoi Yee, which paid out in 2012 a sum of HK$1.3 million odd, and the judge considered that "the benefit must be viewed as a provision for Hoi Yee's maintenance in the event of the Mother's death." While there was nothing provided for Hoi Yee in the Deceased's Will, the judge stated: "I do not agree that failure to make any provision in her favour was unreasonable." Kwan also agreed to make an improved offer to Hoi Yee by allowing her to stay at the Property for no cost for several more months and agreed to pay her 15% of the net proceeds of Shares when sold.

2. *Tang Tim Chue v Tang Ka Hung Robert & Anor* [2018] HKCU 2818

Tang Tim Chue ("TTC") made an application under the Inheritance (Provision for Family and Dependants) Ordinance, Cap. 481 for financial provision from the estate of his father ("the Deceased"). The respondents were the executors named in the Deceased's Will, who are TTC's half-siblings. The Deceased's Will left everything to a woman ("Madam Yip") he cohabitated with following his divorce with TTC's mother, and the 4 children the Deceased had with Madam Yip. TTC sought monthly maintenance of HK$112,491 from his father's estate for the support of his wife and 2 sons, and the maintenance of the ancestral home. It was also based on an agreement referred to as the "light the lantern agreement" at one of the Deceased's birthday parties, where he promised (in front of the grandmother, TTC's mother, and TTC) that at his death, the Deceased would divide his personal estates into 4 equal shares and 2 of them would be given to TTC. The application at first instance was dismissed (June 2012), as TTC "failed to satisfy section 3(1)(vi) of the Ordinance to show that immediately before the death of the father he had been wholly or substantially maintained by his father, in the form of free accommodation or rent collected from his father's lands [as alleged by TTC]. He is not qualified to make an application under the Ordinance." With regards to the light the lantern agreement, though the judge agreed that the Deceased had failed his moral obligation, he held that "the father's breach of his promise under the light the lantern agreement simply did not come into play."

TTC issued a summons seeking to adduce fresh evidence and appealed to the Court of Appeal ("CA") for the same claim, seeking to overturn the first instance judge's finding of facts that he had failed to prove he was wholly or substantially maintained by the Deceased immediately before his death.

The Court dismissed the appeal, holding that TTC had failed once again to prove his maintenance by the Deceased. TTC's arguments were as follows:

1. The ancestral home in which TTC lived (with the Deceased) was provided by the Deceased.

   The CA found that the first instance judge was "entitled on the evidence to say "Accordingly, even if TTC had been provided with accommodation at the ancestral home, it was not shown to be provided "by the deceased" within the meaning of section 3(1)(vi)" (emphasis added)". The CA also held that further evidence showed that immediately before the Deceased's death that TTC had not lived at the ancestral home.

2. TTC alleged that the Deceased authorized him to collect and keep rents from land owned by the Deceased to maintain his family as proved by the improvement in relationship between him and his father.

   The CA held that TTC failed to adduce further evidence, and merely repeated his case from the first instance court. The CA found that hostile litigation instigated by TTC against the deceased for a minor claim, TTC's involvement as the "driving force" behind his mother's institution of divorce proceedings, and the Deceased's codicil in 2004 (a year before his death) which directed his ex-wife, TTC, and his daughter by his ex-wife be excluded from attending his memorial/funeral/burial services and exclude their name from his Obituary.

U.K. Case Law

In 2017, the U.K. Supreme Court handed down the judgement for *Ilott v Mitson*, which was highly anticipated as it was the first application for reasonable financial provision to reach the Supreme Court. Below, we look at the decision of the Court in *Ilott v Mitson* and several applications for reasonable financial provision by adult children that followed.

1. Limiting awards to "maintenance": *Ilott v Mitson* [2017] UKSC 17

Mrs. Ilott was the only child of Mrs. Jackson; she left home secretly in 1978 to live with a boyfriend of whom Mrs. Jackson did not approve, causing a lifelong estrangement. Mrs. Jackson died aged 70 in 2004. In a Will and recorded Letter of Wishes dated 1984, Mrs. Jackson stated that "she [Mrs. Ilott]... wished to have nothing to do with me. Therefore, she receives nothing from me at my death." Her last Will, made in 2002, conveyed the same sentiment and bequeathed her estate (worth approximately GB£486,000) to three animal charities. Following Mrs. Jackson's death, Mrs. Ilott applied for "reasonable financial provision" under the 1975 Act.

At first instance, the judge found that Mrs. Jackson's will "did not make reasonable provision for Mrs. Ilott" and awarded her a lump sum of GB£50,000. The decision was appealed by Mrs. Ilott on the basis that the sum would not be enough; she sought to be awarded "capital provision amounting to half or more of the estate." The Court of Appeal held that the District Judge erred in his decision and proceeded to award Mrs. Ilott GB£143,000 to purchase the house she lived in, as well as a further GB£20,000. Mrs. Ilott appealed to the Supreme Court.

The Supreme Court held that the nature of the relationship between Mrs. Ilott and her deceased mother in this case was "of considerable importance" as the 26 years of estrangement was the reason for Mrs. Jackson's testamentary wishes, and also reflected that Mrs. Ilott was "not only a non-dependent adult child but had made her life entirely separately from her mother, and lacked any expectation of benefit from her estate."

The Supreme Court emphasised that the concept of maintenance "cannot extend to any or every thing which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living" at the current standard of living of the claimant. By reference to a 1981 judgement (In re Dennis, deceased), the maintenance, by definition is "the provision of income rather than capital". The importance of testamentary freedom was also reinforced by the Supreme Court.

The Court of Appeal took the view that charities chosen by Mrs. Jackson did not have any "competing need" in contrast to Mrs. Ilott; this was considered "erroneous" by the Supreme Court, as even though "she had had no particular connection [to the charities] during her lifetime ... [it] represented her freely made and considered choice of beneficiaries" as the wishes of the testator are a relevant factor to be considered in a 1975 Act claim.

The Supreme Court reinstated the original lump sum award of GB£50,000.

2. 10% of the estate to be passed to children?: *Wellesly v Wellesly & Ors* [2019] EWHC 11

Similarly, in this case a claim for reasonable financial provision was brought by an estranged daughter, Tara Wellesley ("Tara") against her father, the 7th Earl Cowley's estate, worth GB£1.3 million. The late Earl bequeathed Tara GB£20,000, and the rest of his estate was left in a Trust for his fourth wife. The daughter had been estranged from her father for over 30 years, and attempted to argue that the estrangement was caused by her step-mother; the judge held that the estrangement had in fact, been caused by her lifestyle of heavy drinking and drug use.

The Court dismissed Tara's claim, holding that she was living within her means and had no financial maintenance from her late father during her adult life. She was awarded only the GB£20,000 she had been left by the Earl. Tara also attempted to claim that where inheritance was available, that it was a breach of the Human Rights Act to require her to live on state benefits. This was rejected by the Court. She additionally attempted to argue that case law (citing Ilott v Mitson) established a precedent that 10% of the estate was to be passed to the children. Again, the Court dismissed the argument as each case is highly dependent on their circumstances.

3. Not estranged, but a "hopeless" case: *Shapton v Seviour* [2020] 3 WLUK 537

Colin Seviour ("Colin") died in August 2016, leaving his entire estate (worth approximately GB£268,000) to his wife, Maria Seviour ("Maria"). It was understood that Colin and Maria planned to leave their estate equally to their four children from previous marriages (two children each), on second death. Following Colin's death, Maria made a new Will, leaving out Colin's two children, Carly Shapton ("Carly") and her brother, due to Maria and Carly falling out. This resulted in Carly's claim for reasonable financial provision under the 1975 Act, claiming that it was "unreasonable" to not inherit anything from her father's estate given that they had an "incredibly close relationship." She sought enough capital for a new house that had separate rooms for her two children, and an office for her husband.

The judges assessed the financial position of both parties. At the time of the hearing, Carly and her husband lived a comfortable lifestyle; both of them worked in the hospitality industry. Though the couple had no savings and had accrued credit card debts of GB£20,000, their house was valued at GB£240,000. On the other hand, Maria had been diagnosed with Motor Neuron Disease shortly after Colin's death, which forced her to give up work and rely on state benefits, and lived in the modified home she previously shared with Colin. She was wheelchair bound at the time of the trial. Maria also had savings and bonds of approximately GB£57,000.

The judge dismissed Carly's application, holding that it was "absolutely hopeless". The judge commented that the modest size of the estate meant that "some 80% [of it] is tied up in Maria's house, where she has lived for many years and wishes to remain for as long as possible. ... [Additionally,] Maria suffers from a debilitating illness ... She will need every penny to live out her remaining years in dignity and comfort." By contrast, the judge found that Carly's application "was motivated by the view that she was entitled as of right to one quarter of her father's estate." He also commented that Carly and her husband are "relatively well off, despite their GB£20,000 credit card debts" which he commented were "self-inflicted". The couple's "high combined income, which is more than adequate to meet their day-to-day needs." The judge also enforced Colin and Maria's testamentary freedom. The change to Maria's will was "her prerogative."

In addition to her failed claim, Carly was ordered to pay GB£12,500 in legal costs, which are relatively low, as Maria's lawyer had acted on a pro-bono basis.

4. A successful estrangement case? Re H (Deceased) [2020] EWHC 1134 (Fam)

The father concerned died in 2016 ("the Deceased"), leaving behind an estate valued at GB£554,000 solely to the mother. The mother had sometime moved into a care facility after her husband's death. The Deceased's daughter ("C") brought a claim for financial provision for a two-bedroom flat (approximated between GB£380,000 – 500,000), funding for continued psychological therapy, capital to replace her car, and "an income fund to meet the shortfall in her living expenses" for herself and her two minor children, as they lived on state benefits due to her long-term psychiatric illness which caused her to be unable to work. Her claim, together with inheritance tax (which has been abolished in Hong Kong in 2006) would have exceeded the value of the estate.

Applying the two-stage approach from Ilott, the judge asked two questions:

i) Did the will make reasonable financial provision for C;

ii) If not, what reasonable financial provision ought now to be made for C?

Despite the fact that C, at the time of her father's death, had been estranged from her parents for the last 10-20 years (the dates were disputed by the reporting psychiatrist and C), and the Deceased had not provided financial assistance to C for a number of years prior to his death, the judge awarded her approximately a quarter of the Deceased's estate (GB£139,918). The judge held that she was in no doubt "in a position of real need" but also considered her estrangement and the fact that "the priority must be to ensure that C's mother, the beneficiary under the will, has sufficient funds properly to be maintained for the rest of her days."

The case also considered whether a Conditional Fee Agreement ("CFA") – where fees are paid dependent on success of the case – could form part of an award under the 1975 Act. The judge followed a decision handed down some 9 days prior to the hearing (Bullock v Denton) and considered that a balance was to be struck between the C's needs to fund the litigation and fairness to the estate. He awarded approximately half of the CFA she claimed, as her primary needs would not be met if she was required to meet the liability herself.

The reason behind the difference between the above UK cases and Hong Kong cases is that it is not a requirement for adult child to claim against the estate to show that he or she was financially maintained by the Deceased immediately prior to the death of the deceased under Inheritance (Provision for Family and Dependants) Act 1975, notwithstanding that the drafting of the Ordinance was predominately based on that similar legislation in the UK. Hong Kong has since the enactment of the legislation specifically drawn this distinction with the UK counterpart when it comes to adult child making a claim against the estate. In other words, it is within the prerogative of any person to disinherit his or her own child through making a Will in Hong Kong irrespective of whether such arrangement would create any financial hardship to that child and whether that child could end up relying on the social benefit as financial support due to such financial arrangement. While Hong Kong is not considered a "welfare state", it remains controversial whether anyone should receive social benefits if his or her basic financial needs could potentially be covered by the wealth of his or her own parent.

Final considerations

There are many ways a person can look to challenge the inheritance they may be due to receive and in recent years claims under the Inheritance (Provision for Family and Dependants) Ordinance, Cap. 481 have dramatically increased. In a growingly affluent society as Hong Kong changes to the traditional family structure and an increase in wealth – in particular when this is connected to the value of real estate – are believed to be part of the cause. Such claims can be quite significant and in often cases a dependant might receive as much as an individual would receive upon death of the spouse, while other family members might not receive as much inheritance as they initially expected.

Inheritance disputes of this nature, when seeking payment from the estate, can sometimes be resolved quickly through a flexible attitude and well-managed negotiation between the claiming parties and the beneficiaries. When this is not feasible, then litigation proceedings might become essential. Courts in Hong Kong generally have a discretion as to what they consider an appropriate and reasonable financial provision.

To sum up, this is a technical and complex practice area and there are many factors to consider when evaluating if an individual may have a meritorious claim. As such claim will be adjudicated by the Family Court, which has an overall discretionary jurisdiction, and each case is very fact sensitive, legal advice should be sought from experienced practitioners when deciding the appropriate relief to be sought and quantification of the claim. ■

受養人的經濟給養繼承申索

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根據《財產繼承（供養遺屬及受養人）條例》（第 481 章）（《條例》）第 3 及 4 條，在死者遺囑並沒有為受養人提供給養或給養不足；或根據無遺囑繼承的規則他 / 她無權分享該遺產；或死者沒有訂立遺囑的情況下，受養人可向法院申請從死者遺產中提供「合理經濟給養」。

誰可申請？

《條例》第 3 條規定，下列人士可申請從死者遺產中提供經濟給養：

- 死者的妻子或丈夫；
- 死者在夫妾關係中的妾侍或男方；
- 死者的幼年子女，或死者因精神或身體不健全而無能力維生的子女。

根據無遺囑繼承的規則，上述的家庭成員本應有權分享遺產，因此當死者的遺囑故意排除他們的繼承權時，他們就可提出申索。

在緊接死者去世前是完全或主要靠死者贍養的以下類別人士：

- 死者的前妻或前夫 — 但若他 / 她再婚，該命令將會失效；
- 死者的父親或母親；
- 死者的成年子女；
- 任何人（非死者子女），而死者生前視該人為死者所曾締結的任何一段婚姻所建立的家庭的子女，且在緊接死者去世前，該人是完全或主要靠死者贍養的 — 即繼子 / 女；
- 死者的半血親或全血親兄弟姊妹；及
- 在緊接死者去世前完全或主要靠死者贍養的任何人。

只有死者的成年子女才有權根據無遺囑繼承的規則分享遺產，因此他 / 她必須被排除在死者的遺囑之外，同時必須證明自己是死者的經濟受養人，才有權根據《條例》獲得濟助。

同時，不論申索人與死者的關係，只要申索人在緊接死者去世前是完全或主要靠死者贍養的，即可提出申索。然而，此類申索人必須解釋他／她與死者是基於何種關係獲得死者的財政支持。

何謂「合理經濟給養」？

《條例》第 3(2) 條訂有兩項準則，用以決定申請人是否有「合理經濟給養」：

1. 由死者在生的丈夫或妻子（或在夫妾關係中的妾侍或男方）提出，不論配偶是否需要此給養以維持生活，在任何情況下他們接受這種經濟給養是否合理；

2. 於任何其他申請，法院會考慮經濟給養在所有情況下是否合理，以使申請人能夠獲得贍養。

換句話說，為了協助法院審理申索，不可避免的是申請人將需要以誓章形式詳細陳述與死者的關係， 以協助法院考慮案件的所有情況及書面證據，證明他／她以往獲得經濟支持。申請人必須詳細披露私人關係，亦會透露給訴訟的其他當事方，可能會令人痛苦和尷尬，尤其是該段關係在死者在生時通常不獲其他家庭成員接受，而家庭成員正是此類申索的另一方。

法院考慮的因素

《條例》第 5 條為法院在決定申索人是否獲得合理經濟合養的因素提供了指引，這些因素通常包括：

a) 申請人所擁有或在可預見的將來相當可能會擁有的經濟資源，及申請人所面對或在可預見的將來相當可能會面對的經濟需要；

b) 其他任何申請根據第 4 條作出命令的人所擁有或在可預見的將來相當可能會擁有的經濟資源，及該人所面對或在可預見的將來相當可能會面對的經濟需要；

c) 死者遺產的任何受益人所擁有或在可預見的將來相當可能會擁有的經濟資源，及該受益人所面對或在可預見的將來相當可能會面對的經濟需要；

d) 死者對任何申請根據第 4 條作出命令的人或對死者遺產的任何受益人所負有的任何義務和責任；

e) 死者淨遺產的多少及性質；

f) 任何申請根據第 4 條作出命令的人，或死者遺產的任何受益人，在肢體上或心智上的弱能狀況；

g) 法院在該個案的情況下認為是有關係的任何其他事宜，包括申請人或其他任何人的行為。

必須注意，根據《條例》第 6 條，此類申索的申請期限一般為自最初取得死者遺產的承辦之日起計六個月。有迫切財務需要的申請人，可向法院申請臨時命令，從死者淨遺產中撥出款項以付給申請人；亦可命令構成死者淨遺產一部分的財產即可動用或能供動用，以應付申請人的需要。

HCC v LPL, the sole Administratrix of Estate of KKW, Deceased (2019) 一案顯示了六個月申請限期的重要性。案中的死者去世前，申請人與死者同居了 18 年，申請人打算根據《條例》第 3(1)(b)(ix) 條申請經濟濟助，金額為 300 萬港元。申請人承認，她「遲了最少 205 天」提出申請，尋求法院許可。答辯人是死者的妻子，她反對該項申請。

參 考 *LZX v WYL (provision: family and dependants)* (2012) 有關逾期申請的指引，法院有絕對酌情權，「原告有責任提供足夠的理由，為何在超出一般規定的範圍提起訴訟，剝奪了受該範圍保障的人的利益……申請人必須提出實質事例，令法院行使其法定酌情權延長申請期限的做法公正和適當」（強調後加）。此外，LZX 的判決提出的另一個相關考慮因素是，「拒絕延長期限是否會使申索人無法對任何人進行申索」。

申請人提出的延誤理由是：「如果她能夠 (i) 留在該物業中，並 (ii) 通過收取泊車位租金來維持生活，她認為沒有必要申請經濟給養，因她不想對答辯人造成麻煩，雙方理解她可以留在該物業」，她提出法援申請，並已被拒絕。然而，法官認為，即使申請人的意圖並非對答辯人造成麻煩，但有見 Hammer（持有該物業的控股公司，死者是公司的董事和股東）在八個月前已向原訟法庭提起訴訟收回該物業，將申請人視為侵入者，申請人這麼遲才申請法援「是荒謬的」。

法院「不認為［申請人］可提供充分理由，證明她延遲提出申請有正當理由」，加上她在 Hammer 提起的案件中的行為，以及答辯人曾試圖與申請人進行談判。她被裁定「無法盡其責任提出可論證的理由，根據《條例》申索經濟給養」，其申請因而被拒絕。

上述案件的重要性在於，任何獲得經濟支持的人，在提供者去世後應立即尋求法律諮詢，不論是否有其他家庭成員代表死者繼續提供經濟支持。一般而言，上述人士可於法院存檔知會備忘，以便當有人有意申請管理死者的遺產時得悉有關申請，同時又能提醒上述人士提出相關申索的申請期限。

成年子女能否成功申索合理經濟給養？

從過去的案例來看，成年子女申索合理經濟給養的問題一直存在爭議，不論是否符合《條例》第 3 及 4 條或英國 1975 年《繼承法（供養家庭和受養人）》（下稱「1975 年法令」）的規定。申索是否成功，很大程度上取決於案件的事實，尤其是如果成年子女申索人與已故父母的關係疏離。

香港成年子女的合理經濟給養索償

香港法院通常不受理成年子女向已故父母的遺產提起合理經濟給養的

申索。以下案例說明了成年子女在提出此類申索時可能會遇到的困難，即使其父母在去世前曾贍養他們：

1. *Kwan Chi Pun v Lai Hoi Yee* [2016] 4 HKLRD 689

母親（死者）於 2011 年 10 月去世；根據她在 1989 年 4 月 25 日訂立的遺囑，其弟 (Kwan，原告）被指定為遺產執行人及唯一受益人。審訊結合兩項訴訟：第一項是 Kwan 尋求向死者的女兒 (Hoi Yee) 收回一個物業，該物業屬於遺產的一部分，並已轉移給他；第二項與當前的討論有關，Hoi Yee 試圖根據《條例》第 4 條將物業轉移給她，或一百萬港元用作購買物業。

該物業於 1987 年由死者與她當時的丈夫（即 Hoi Yee 的父親 (Lai)）聯名購買；死者於 1988 年 6 月簽署了另一份買賣協議，獨資購買該物業。1989 年，死者與 Lai 離婚；Hoi Yee 當時 5 歲，死者獲得單獨監護權。從那時起，死者與 Hoi Yee 居住在該物業。Hoi Yee 於 2002 年離港赴加拿大求學，每年聖誕節返港與母親同住。

法庭承認 Hoi Yee 有權根據《條例》第 3(1)(b)(vi) 條，提出第 4 條訂明的申索，但法院審視了她的情況：她是死者的成年子女，審訊時已 32 歲，但在之前 4 年才開始工作，評論說「迄今為止她的事業不能說成功」。在審訊時，「她獲入境處承辦商聘用為測試員，合約期一年，扣除強積金供款後，月入 13,000 港元。她單身，沒有男朋友。」一位專家證人還提供了醫學報告，指由於母親的去世及主要因為與舅父的糾紛，Hoi Yee 患有適應障礙、焦慮和情緒低落。但是，該報告指出，「預後並非負面」，「目前的治療頻率為 4 至 6 週一次，可能需要治療直至訴訟結束後大約 6 個月」。她聲稱：「為了準備她從加拿大回港，母親曾與她討論過出售該物業，再聯名購買更大的物業。」

關於 Hoi Yee 的工作，法官評論她「沒有充分利用自己的能力。她擁有加拿大學位，顯然有優勢未發揮。」法官還對 Hoi Yee 與母親的關係表示懷疑，因法院收到證據顯示 Hoi Yee 在得知母親去世後的舉止和行為，以及 Kwan 的證供表明「母女關係不密切，他的姐姐（死者）覺得 Hoi Yee 拖延畢業時間，對她造成負擔。」法官還評論說，「Hoi Yee 沒有理由相信，只要她願意，母親就同意與她同住。」

最終，Hoi Yee 根據第 4 條提出的申索被駁回。法官認為，「Hoi Yee 對母親的依賴，必須隨著母親的去世結束。毫無疑問，母親曾可觀地付出了其個人開支為 Hoi Yee 提供了相對而最好的教育。Hoi Yee 曾留學海外，為獨立生活打下了良好的開端。」此外，死者購買了人壽保險，受益人為 Hoi Yee，在 2012 年支付了 130 萬港元的賠償，法官認為「該利益必須被視為用作在母親去世後贍養 Hoi Yee 的資金。」儘管死者在遺囑中沒有給予 Hoi Yee 任何遺產，但法官表示：「我不同意不給予她任何遺產是不合理的。」Kwan 亦同意向 Hoi Yee 提出更好的條件，准許 Hoi Yee 繼續免費居住在該物業數個月，並同意在出售物業後向她支付淨收益的 15%。

2. *Tang Tim Chue v Tang Ka Hung Robert & Anor* [2018] HKCU 2818

Tang Tim Chue (TTC) 根據《條例》申請從其父親（死者）的遺產中獲得經濟給養。答辯人是死者遺囑指定的遺囑執行人，他們是 TTC 的同父異母兄弟姊妹。死者遺囑指示將所有遺產留給葉女士，死者與 TTC 的母親離婚後，與葉女士同居並生下四名子女。TTC 要求從其父親的遺產中每月收取港幣 112,491 元贍養費，以供養其妻子和兩個兒子及維持祖屋。這是基於死者在一次生日聚會的「點燈儀式協議」，死者（在祖母、TTC 的母親和 TTC 面前）承諾死後會把個人財產分成 4 等份，其中 2 份分給 TTC。原訟申請被駁回 (2012 年 6 月），因 TTC「未能符合《條例》第 3(1)(vi) 條的要求，證明在緊接死者去世前，他是完全或主要靠其父親贍養，由其父親提供免費住宿或以其父親的土地收租 [據 TTC 稱] 為生。他沒有資格根據條例提出申請。」至於「點燈儀式協議」，儘管法官同意死者未履行道德義務，但他認為「父親違反點燈儀式協議的承諾不能當作有效。」

TTC 發出傳票以援引新證據，並向上訴法庭提出上訴，要求推翻原訟法官關於他未能證明自己在緊接死者去世前完全或主要靠其父親贍養的判決。

法庭駁回了上訴，指 TTC 再次未能證明他由死者贍養。TTC 的論點如下：

1. TTC 與死者一起居住的祖屋是由死者提供的。

   上訴法庭認為，原審法官有權根據證據指出，即使 TTC 獲祖屋作為住所，也未能顯示祖屋是第 3(1)(vi) 條所指「由死者」提供的（強調後加）。上訴法庭還認為，進一步的證據顯示，在緊接死者去世前，TTC 並非在祖屋居住。

2. TTC 稱，死者授權他從死者擁有的土地收取租金，以供養其家庭，顯示他與父親的關係得到了改善。

   上訴法庭認為，TTC 無法提供進一步證據，只是重複原訟法庭的論點。上訴法庭認為，TTC 因小事對死者提起過惡意訴訟，TTC 是其母親提起離婚程序背後的「推手」，以及 2004 年（死者去世前一年）死者的遺囑指示其前妻、TTC 和他前妻的女兒禁止參加他的追悼會 / 喪禮 / 葬禮，並將他們的名字從遺囑中剔除。

英國的判例

2017 年，英國最高法院下達了對 *Ilott v Mitson* 案的判決，這個判決備受關注，因為這是首次有合理經濟給養的申請訴至最高法院。下面我們看看法院對 *Ilott v Mitson* 案的判決，以及其後幾項成年子女提出的合理經濟給養申請。

1. 限制「贍養」判給：*Ilott v Mitson*[2017] UKSC 17

Ilott 太太是 Jackson 太太的獨生女。Ilott 太太於 1978 年離家出走，與 Jackson 太太不同意的男朋友同居，此後二人關係疏離。Jackson 太太於 2004 年去世，享年 70 歲。在 1984 年的遺囑和願望信中，Jackson 太太說：「她 [Ilott 太太]…想與我脫離關係，所以在我死後，她從我這裡什麼也得不到。」她的最後一份遺囑於 2002 年訂立，傳達了同樣的情感，並指示將遺產（價值約 48.6 萬英鎊）贈給三個動物慈善機構。Jackson 太太去世後，Ilott 太太根據「1975 年法令」申請了「合理經濟給養」。

初審時，法官裁定 Jackson 太太「沒有為 Ilott 太太提供合理的給養」，判給她一筆過 50,000 英鎊的款項。Ilott 太太提出上訴，理由是數額不足。她尋求獲得「相當於遺產一半或更多的經濟給養」。上訴法院裁定，地方法院法官的判決錯誤，並判給 Ilott 太太 143,000 英鎊，用以購買她居住的房屋，以及另外 20,000 英鎊。Ilott 太太向最高法院上訴。

最高法院裁定，在此案中 Ilott 太太與已故母親的關係「非常重要」，長達 26 年的疏離關係是 Jackson 太太訂立遺囑的原因，也反映出 Ilott 太太「不僅並非受養的成年子女，且她的生活完全與母親分開，對獲得母親的遺產沒有任何期望。」

最高法院強調，贍養的概念「不能擴展到申索人希望擁有的任何東西，最高法院強調，贍養的概念「不能擴展到申索人希望擁有的任何東西，而必須顧及日常生活費用」，按照申索人目前的生活水平。參考 1981 年的一項判決 (In re Dennis, deceased) 贍養的定義是「提供收入而不是資金」。最高法院還重申了遺囑自由的重要性。上訴法院認為，Jackson 太太選擇的慈善機構，與 Ilott 太太沒有任何「競爭需要」。最高法院認為這是「錯誤的」，因為即使「她一生中與慈善機構沒有任何特別聯繫……[它]代表了她自由選擇和考慮的受益人」，因為立遺囑人的意願是「1975 年法令」申索應考慮的因素。

最高法院恢復了原審一筆過 50,000 英鎊的判決。

2. 遺產的 10% 傳給子女？：*Wellesly v Wellesly & Ors* [2019] EWHC 11

同樣，在另一宗案件，關係疏離的女兒 Tara Wellesley 就其父親第七代 Cowley 伯爵的遺產提出合理經濟給養申索，價值 130 萬英鎊。已故 Cowley 伯爵遺贈 Tara 20,000 英鎊，其餘財產留在信託基金，供其第四任妻子使用。女兒與父親疏離了 30 多年，她辯稱這是由繼母造成。法官認為，疏離實際上是因她酗酒和吸毒所致。

法院駁回了 Tara 的申索，認為 Tara 能負擔自己的生活，在成年期間沒有得到已故父親的經濟贍養。她僅獲得伯爵留下的 20,000 英鎊。Tara 還聲稱，在有繼承權的情況下，要求她依靠國家福利生活是違反《人權法》的。法院對此予以拒絕。她亦辯稱，判例（援引 Ilott v Mitson 案）確立了先例，把遺產的 10% 傳給子女。法院再次駁回了這個論點，因為每宗案件須視乎其個別情況而定。

3. 並非疏離但「沒有希望」的情況：*Shapton v Seviour* [2020] 3 WLUK 537

Colin Seviour 於 2016 年 8 月去世，把全部財產（價值約 268,000 英鎊）留給妻子 Maria Seviour。據了解，Colin 和 Maria 計劃在 Maria 去世後，將財產平均留給先前婚姻生下的四個子女（各兩個子女）。Colin 死後，Maria 訂立新的遺囑，剔除了 Colin 的兩個子女 (Carly Shapton 及其兄弟)，因為 Maria 和 Carly 鬧翻了。因此，Carly 根據「1975 年法令」申索合理經濟給養，聲稱他們不繼承父親的遺產是「不合理的」，因為他們與父親的「關係非常親密」。她要求足夠購買一棟新房子的資金，給她兩名子女獨立房間和丈夫一間辦公室。

法官評估了雙方的財務狀況。聆訊時，Carly 和她的丈夫過著舒適的生活；他們都在酒店業工作。儘管二人沒有積蓄，並欠下了 20,000 英鎊的信用卡債務，但他們的房子價值 240,000 英鎊。另一方面，Maria 在 Colin 死後不久被診斷患有運動神經元疾病，被迫放棄工作，靠國家福利維生，住在她以前與 Colin 同住的改建房屋中。在審訊時，她需要靠輪椅代步。Maria 有大約 57,000 英鎊的儲蓄和債券。

法官駁回了 Carly 的申請，認為該申請「絕對沒有希望」。法官評論說，

遺產的規模中等，意味著「其中約 80% 已綁在 Maria 的房子，她在這裡住了很多年，希望繼續住下去。…[另外，]Maria 身患重病……她需要錢才能有尊嚴和舒適地度過餘生。」相比之下，法官認為 Carly 的申請「是基於她有權獲得其父親四分之一財產的權利。」他還評論說，Carly 和她的丈夫「相對富裕，儘管他們欠了 20,000 英鎊的信用卡債務」，他評論這是「自找的」。這對夫婦的「合共收入高，足以滿足他們的日常需求。」法官還執行了 Colin 和 Maria 的遺囑自由，認為更改遺囑是 Maria 的「權利」。

除了申訴失敗外，Carly 還被勒令支付 12,500 英鎊的訟費，訟費相對較低是因為 Maria 的律師提供無償服務。

4. 關係疏離但成功申索的例子？ Re H (Deceased) [2020] EWHC 1134 (Fam)

案中的父親於 2016 年去世（死者），把價值 554,000 英鎊的遺產留給案中的母親。母親在丈夫去世後搬進護老院一段時間。死者的女兒 C 申索經濟給養以購買一間兩房公寓（約 380,000 英鎊至 500,000 英鎊）、繼續進行心理治療的資金、更換汽車的資金，以及「用於補貼她的和兩個未成年子女生活費的資金」，因為她患長期精神病，無法工作，靠國家福利過活。她的申索加上遺產稅（香港已於 2006 年廢除遺產稅）將超過該遺產的價值。

法官採用了 *Ilott* 案的兩階段方法，提出了兩個問題：

i) 遺囑是否為 C 提供了合理經濟給養；

ii) 如果沒有，現在應該為 C 提供怎樣的合理經濟給養？

儘管在父親去世時，C 已與父母疏離了 10 多 20 年（精神科醫生和 C 對日期提出異議），而死者在去世前多年並未向 C 提供經濟援助，法官仍判給她死者遺產約四分之一 (139,918 英鎊）。法官認為，她毫無疑問「處於有真正需要的境況」，但也考慮了她與死者關係疏離，以及「首要是確保 C 的母親（遺囑的受益人）有足夠資金維持餘生的生活。」

該案亦考慮了「按條件收費協議」(CFA)，即按案件的成敗決定訟費，是否可以構成根據「1975 年法令」作出的裁決的一部分。法官跟隨在聆訊前 9 天下達的一項判決 (Bullock v Denton)，認為必須在 C 支付訴訟費用的需要與公平分配遺產之間取得平衡，判給她申索的 CFA 的大約一半，因為若她必須自己承擔訟費，就會無法滿足基本需求。

上述英國案例與香港案例的分別在於，與《財產繼承（供養遺屬及受養人）條例》的要求不同，在英國申索遺產的成年子女，毋須證明在緊接死者去世前由死者贍養，儘管該條例主要以英國的類似法例為基礎。在成年子女就遺產提出申索方面，香港其後的立法突顯了香港法例與英國的區別。換句話說，任何人均可通過在香港訂立遺囑，取消子女的繼承權，不論這種安排是否會為子女帶來經濟困難，以及子女是否會因這種財務安排而須依賴社會福利為生。雖然香港不被視為「福利國家」，但任何人若有可能靠父母的財產來滿足基本財務需要，是否還應獲得社會福利呢？這點仍然存在爭議。

最終考慮

挑戰可能獲得繼承權的方法眾多，近年來根據《條例》提出的申索大幅增加。在香港日益富裕的社會中，傳統的家庭結構發生了變化，財富的增加（尤其是與樓價相關的財富增加）相信是原因之一。這種申索涉及數額可以很可觀，在很多情況下，受養人可獲得與死者配偶一樣多遺產，而其他家庭成員所獲得的遺產可能不如預期。

在申請從遺產中支付的過程中，靈活變通的處事方式，以及申索人與受益人之間妥善管理的談判，有時可以迅速解決這種性質的繼承糾紛。否則，就必須通過訴訟解決。香港法院通常有酌情權決定適當和合理的經濟給養。

總括而言，這是一個專業而複雜的執業領域，在評估申索是否合理時要考慮許多因素。由於此類申索由擁有整體裁量管轄權的家事法庭審理，而每宗案件均非常具有事實敏感性，因此，在決定適當的濟助和申索時，應向有經驗的法律從業人員尋求法律意見。■