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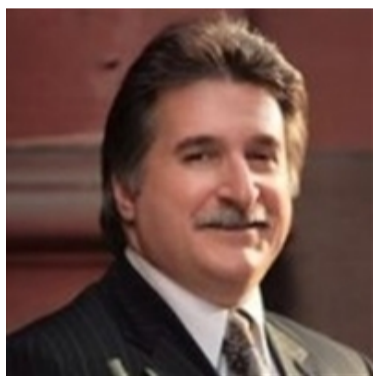
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Estates & Wills & Trusts

Consider relationship dynamics when choosing an estate trustee



Toronto-area estates litigator [Charles Ticker](#) says while courts will not lightly interfere with a testator's choice of estate trustee, a recent case illustrates that the courts will intervene when it comes to the welfare of the beneficiaries.

In [Bunn v Gordon](#), 2015 ONSC 4768 (CanLII), the two children of deceased Hazen Allan Simpson sought to revoke the appointment of their late father's girlfriend as estate trustee pursuant to s. 5 and s. 37 of the Trustee Act.

Simpson made his will in 2013, naming his girlfriend of more than three years, Carrie Gordon, estate trustee. In his will, Simpson gave his principal residence to Gordon and property owned in Burlington equally to his daughter Kristen Bunn and son William Bunn to be held in trust until they turned 21. In addition, the residue of the estate was left one third to Gordon, and one third to each child to be held in trust until they turned 21.

Simpson died on Jan. 30, 2014 and the applicants retained their present counsel just a few days later. Justice Paul Sweeny for the Ontario Superior Court noted that it seemed "from the outset that the administration of the estate would be contentious."

"This was a case with a blended family," say Ticker, who did not act in the matter and makes his comments generally. "This relationship seemed to have trouble from day one."

He tells [AdvocateDaily.com](#) that courts will not lightly interfere with a testator's wishes as to choice of estate trustee, which was reiterated in this case.

"Unless the will is going to be challenged for lack of capacity or undue influence, courts generally aren't going to interfere," he says.

Ticker says the governing principle on which the courts have relied to determine whether or not a trustee should be removed is the welfare of the beneficiaries, established in *Letterstedt v. Broers* (1884).

"The overriding principle is the welfare of the beneficiaries," he says. "The estate trustee is there to carry out the testator's wishes, administer the trusts set out in the will, and to make sure everything is fully administered and the beneficiaries' interests are protected."

What happened here, Ticker says, is there was clearly tension between these children and the girlfriend who was appointed estate trustee. Ticker notes that while it may be frustrating for a trustee to have beneficiaries looking over his or her shoulder, there is a fiduciary obligation to administer the trust.

The applicants raised four issues to remove the trustee under s. 37 of the Trustee Act, which included: the failure to provide a proof of death certificate; the removal of a trailer from the deceased's property; conduct with respect to an antique secretary's desk and carpenter's cupboard; and the sale of the Burlington property.



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While the case is fact specific and the arguments may appear petty, Ticker says the issues raised are common examples of what happens when personalities and emotions interfere with legal responsibilities.

“In all the circumstances of this case, I find that the relationship between the applicants and the trustee has broken down such that the trustee can no longer act as trustee,” wrote Sweeny in his decision. “To paraphrase the Court of Appeal in *Re Davis, supra*, it is apparent that an unfortunate but substantial degree of hostility now exists between the trustee and the beneficiaries.

“The antipathy towards the beneficiaries is such that it will prevent the proper administration of the estate. While it is not all one-sided, the trustee has the fiduciary obligation. In the circumstances, [Gordon] can no longer continue as estate trustee,” he continued.

Ticker notes that the age of the beneficiaries may have been a consideration in removing Gordon as trustee. “The estate had to be held in trust until each child turned 21, which means the estate was going to have to be administered over the course of a few years. Had it been a situation where it was an outright distribution, then the decision may have gone differently.

“The court made the right decision by basically saying, ‘I don’t care whose fault it is, you’re being removed and we’re going to appoint an estate lawyer and get this job done.’”

Ticker says the decision in *Bunn* highlights that choosing an estate trustee should not be done lightly.

“You should give some consideration to not only a person’s abilities to do the job — and it is a time consuming and difficult job — but you have to also consider the personalities and the relationships of the trustee and the beneficiaries,” he says.

“Sometimes you’re better off appointing a trust company or a neutral party who is not going to get caught up in all of this emotion and just do the job.”

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