

Trust Me Not

Husband loves his wife and wants to protect her in case he dies prematurely. His concern is his wife's inexperience in handling large sums of money. Husband's advisors counsel him to leave sufficient money in trust for his wife and out of the trust's income pay her a monthly allowance. To cover any unforeseen contingencies, his trustees could be given discretion to draw upon the capital of the trust under certain situations. She is the sole beneficiary of the trust so everybody is happy.. right? Maybe not. The wife may feel as if she lost her independence and any control of her life. Can the children go to camp or Private School? Can she go on vacation? That depends. The wife has to present herself to the trustees and justify her need of money. The loss of control can be humiliating.

This scenario is not that unusual. Both Estate Planners advising the husband and Estate Litigators advising the wife ignore the rule of *Saunders v. Vautier* at their own peril. Over a hundred years ago, in England, an uncle left shares in a company in trust for his nephew stating that the nephew was only to receive the stocks when he reached 25 years of age. The nephew was the sole beneficiary of the trust and he did not want to wait. Enter the lawyers. They persuaded the court to terminate the trust and immediately transfer the stocks to the nephew. The legal principle of this case is known as the "rule in *Saunders v. Vautier*." Courts have applied it in Ontario and many parts of Canada. As a result, regardless of the testator's intention, Courts

have terminated trusts if all the beneficiaries agree, have the requisite mental capacity and are of age.

How is *Saunders v. Vautier* applied in Canada? Well in one case, Isidor Jacob Klein designated his wife Bessie as the preferred beneficiary for an insurance policy. He directed his trustees to pay Bessie \$15,000 per year out of the capital/ revenue of the trust fund. Bessie was not pleased. Upon Isidor's demise, she asked the court for immediate payment of the full proceeds. The Trustee's lawyers argued that Bessie's request was in direct contradiction to the testator's intention. They also argued that the wording of the policy had contingencies and limitations so that Bessie was not the sole beneficiary. The court sided with Bessie. They found that even though Isidor did not want Bessie to receive immediate payment, he clearly wanted her to get all the money. They relied on *Saunders v. Vautier* and nullified the restrictions postponing her enjoyment of the gift because

Bessie was the sole beneficiary and sui juris (i.e. over the age of majority and not suffering from any mental incapacity).

Going to court to set aside a trust can be very complicated. Despite the temptation to jump to conclusions, it would be a mistake to substitute this case review for substantive legal advice. For those considering this option, there is no replacement for hiring a competent solicitor whose own research, analysis and judgment should be canvassed prior to going to court.



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