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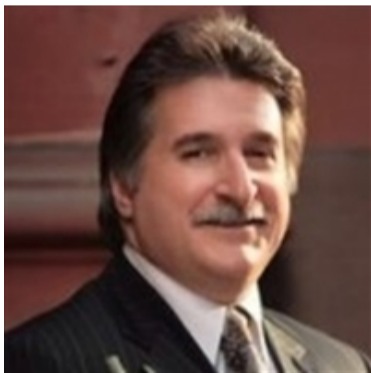
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## Estates & Wills & Trusts

# Court rules 'discriminatory' scholarships contrary to public policy



A recent Ontario Superior Court decision involving a "discriminatory" trust is yet another indication that the courts will intervene when provisions in a will are contrary to public policy, says Toronto-area estates litigator [Charles Ticker](#).

"It's interesting. You don't read anything about these issues for decades and then in the course of a year we get all kinds of decisions coming down the pike dealing with testamentary freedom," Ticker says. "Certainly, it's a sign courts are getting more involved in this area."

The latest matter — [Royal Trust Corporation of Canada v. The University of Western Ontario et al.](#), 2016 ONSC 1143 — involves questions arising from the will of Dr. Victor Hugh Priebe, who died in January 2015.

Priebe's estate trustee, Royal Trust, sought the court's opinion, advice and direction on several provisions contained within his will, namely scholarships and bursaries to be awarded to Caucasian male, single, heterosexual students in scientific studies.

Another provision in the will directed funds to be awarded to "a hard-working, single, Caucasian white girl who is not a feminist or lesbian, with special consideration, if she is an immigrant, but not necessarily a recent one," the endorsement states.

"I have no hesitation in declaring the qualifications relating to race, marital status, and sexual orientation and, in the case of female candidates, philosophical ideology ... void as being contrary to public policy," Justice Alissa K. Mitchell wrote in her decision. "Although it is not expressly stated by Dr. Priebe that he subscribed to white supremacist, homophobic and misogynistic views ... (the provisions laid out in the will) leave no doubt as to Dr. Priebe's views and his intention to discriminate on these grounds."

She also noted the position taken by the Office of the Public Guardian and Trustee is not opposed by Royal Trust. Rather, the trustee had asked the court for guidance on how to administer the doctor's estate in accordance to his will.

Ticker, who did not act in this matter and makes his comments generally, says the court relied on [Canada Trust Co. v. Ontario Human Rights Commission](#), a case where the deceased left money in trust to create scholarships for students, but limited the recipients to mainly white Christian men.

"A slight difference with *Canada Trust* was that the settlor made it clear they were prejudiced and made a racist statement. There's no question that was contrary to public policy and there was discrimination," Ticker tells [AdvocateDaily.com](#). "In *Royal Trust*, the testator didn't come out and say he thinks heterosexuals are superior, or that white people are better than black people, but if you read between the lines it is pretty clear where he was coming from."

Ticker adds that because Priebe wanted to set up trusts to benefit students of public institutions, the court had no difficulty saying it ran contrary to public policy.



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"I find it remarkable that a medical doctor in this day and age would have a will with these kinds of provisions," he says. "I don't see this case as being appealed, as it makes a perfectly clear and correct decision based on precedent and clearly it's well established now as a matter of principle that the courts will intervene with testamentary freedom where provisions are contrary to public policy."

He says what will be more interesting is the Ontario Court of Appeal's decision in [Spence v. BMO Trust Company](#), 2015 ONSC 615 (CanLII), where Justice Cory Gilmore set aside the will of the deceased Rector Emanuel Spence, who had disinherited his daughter Verolin Spence while leaving his estate to his other daughter Donna Spence and her two children. Applicant Verolin Spence asserted that the will was void for public policy reasons due to the deceased's racist views and should be set aside, resulting in an intestacy.

The appeal court heard arguments in September 2015, Ticker says, but the trial decision was an example of courts going beyond the unambiguous wording of a will when there is evidence of an improper purpose contrary to public policy.

"That's the decision everyone is waiting for," he says.

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