

White or black?



FUJITSU

ScanSnap
ScanSnap iX1500
Now available in 2 colours

Find A Lawyer/Legal Supplier ▾

[Join AdvocateDaily.com](http://JoinAdvocateDaily.com)

AdvocateDaily.com
Canada's Legal Wire Service

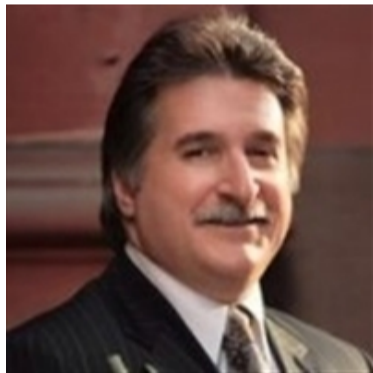
HAVE A SERIOUSLY INJURED CLIENT?

MCLEISH ORLANDO LLP
LAWYERS

Estates & Wills & Trusts

Decision is a wake-up call for fiduciaries: Ticker

By AdvocateDaily.com Staff



Estate trustees can't always assume they will be protected from litigation costs following a recent decision of the Ontario Court of Appeal, Toronto-area estates litigator and mediator [Charles Ticker](#) writes in [The Lawyers Weekly](#).

Referencing [Brown v. Rigsby 2016 ONCA 521](#), Ticker writes that in a departure from the norm, the court denied estate trustees indemnification of their legal costs.

He says the appellate court panel found that the two trustees who appealed the initial court ruling dividing costs among the parties had been "unreasonable" and acted in their own "self interest."

"It's a wake-up call for estate trustees and other fiduciaries," writes Ticker, principal of [Charles B. Ticker Law Office](#). "As a general rule, estate trustees involved in litigation over the estate are entitled to be indemnified for reasonably incurred legal costs. However, the Court of Appeal ruled that indemnification is not only conditional on the legal costs incurred being reasonable, but as well, the reasonableness of the conduct of the estate trustee seeking indemnification."

And that's where the court found the trustees failed the test, he says.

The case involved a family dispute over an estate with two children who acted as trustees pitted against three of their siblings.

The trio sought to remove their siblings as trustees and they wanted an accounting of how the estate had been disbursed, any misappropriated funds restored, and punitive damages if appropriate.

The action was settled before getting to court in 2014, Ticker writes and the parties agreed the question of costs would be determined by the court.

As Ticker details in the piece, they argued their motion before Justice Lynne Leitch on March 30, 2015. Each side sought an order that the other side pay the costs which totalled nearly \$150,000.

"No one interestingly, requested that the estate be ordered to pay costs," writes Ticker.

While Leitch found the initial premise to secure a passing of the accounts was reasonable, she also noted the trustees were evasive and made untrue statements in their affidavits.

"The judge concluded that the settlement in dispute between the parties reflected divided success and that the appropriate order was that each party be responsible for their own costs," Ticker writes. "The estate trustees /attorneys sought leave to appeal which was granted. The Court of Appeal observed that generally estate trustees

A new kind of law firm.

You run a modern, innovative business. So do we.

CONDUIT LAW
The evolution of law™

White or black?



FUJITSU

ScanSnap
ScanSnap iX1500
Now available in 2 colours

Toronto Lawyers ASSOCIATION TLA

Get Informed. Get Involved. Make an Impact.

Increase your productivity by collecting CPD hours cost effectively and efficiently.

LEARN MORE

DRL DATA RESCUE LABS

COMPUTER & CELL PHONE FORENSICS

UFED

are entitled to be indemnified for all reasonably incurred costs in the administration of an estate.”

Normally, Ticker explains, “This includes the legal costs of an action reasonably defended, to the extent these costs are not recovered from another person. However, a court may order otherwise if an estate trustee has acted unreasonably or in substance for his or her own benefit rather than for the benefit of the estate.”

The court noted that this includes the legal costs of an action reasonably defended, to the extent these costs are not recovered from another person, he says.

However, he adds, a court may order otherwise if an estate trustee has acted unreasonably or in substance for his or her own benefit rather than for the benefit of the estate.

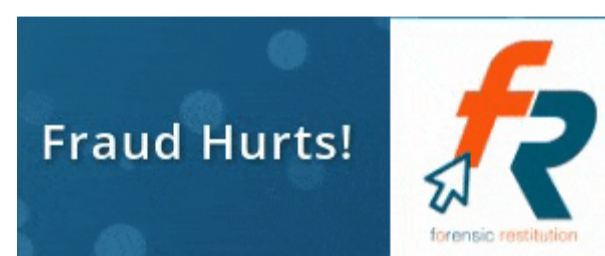
“In other words, play nice or pay the price.”

[To Read More Charles Ticker Posts Click Here](#)

AdvocatePlus >

- [The Fund Library publishes Samantha Prasad's "Year-end tax tips"](#)
- [Human Rights Tribunal of Ontario awards \\$120,000 award for discrimination in hiring process](#)
- [IIROC mandatory cybersecurity breach reporting](#)
- [Join Littler LLP for its 2019 Canada Conference](#)

[View more AdvocatePlus posts](#)



[HOME](#) [POSTS](#) [OPINION](#) [EVENTS/RELEASES](#) [TV](#) [PLUS](#) [ABOUT](#) [CONTACT](#) [@ADVOCATEDAILY](#)

[ADVOCATEDAILY](#)

