

**MANDEL**

# Daughter in court over dad's 'racist' will



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## Eric Spence (Toronto Sun files)

There's little doubt the cranky old rector ever imagined his last wishes for dispersing his modest estate would end up in the venerable halls of the highest court in Ontario.

Before his death at 71, Eric Spence disinherited one of his daughters because she hadn't communicated with him in eight years. Verolin Spence convinced a lower court that the real reason he'd cut her out of his will was because she had a baby with a white man.

The judge threw out the "racist" will on public policy grounds and gave her half his \$400,000 estate.

On Friday, three judges of the Ontario Court of Appeal heard arguments on whether the judiciary should have stayed out of a man's final wishes, even if those wishes were offensive.

"He's not the first father to exclude a daughter," said lawyer Justin de Vries, representing the will's executor, BMO Trust. "People can do what they want. They can be capricious. They can be mean-spirited."

The courts, he said, should be "loathe to interfere" with testamentary freedom — or the right to dispose of your property as you see fit. At the end of the day, he argued, a person's clear final wishes shouldn't be policed by a hovering judge.

"We may not like it, we may find it distasteful," de Vries argued. "Private thoughts can be ugly but such is life."

In his will, Spence didn't actually come out and say he was excluding his daughter because she had an interracial child. Instead, he wrote: "I specifically bequeath nothing to my daughter, Verolin Spence, as she has had no communication with me for several years and has shown no interest in me as her father."

But Verolin successfully challenged the will in court by introducing evidence from a family friend who said the true motive behind the disinheritance was his fury that she'd had a "bastard white son."

"It is clear and uncontradicted, in my view, that the reason for disinheriting Verolin, as articulated by the deceased, was one based on a clearly stated racist principle," ruled Superior Court Justice Cory Gilmore in January.

“Does it offend public policy that the deceased’s other daughter, Donna, should receive the entire estate simply because her children were fathered by a black man? That, in my view, offends not only human sensibilities but also public policy.”

Verolin’s lawyer Earl Cherniak urged the appeal court to uphold Gilmore’s decision to void the will. “It was racist and abhorrent to Canadian values and designed to punish her for having a child by a white man.”

BMO argues the judge went too far in several ways: allowing outside evidence, second-guessing Spence’s “real” intentions and then striking out the man’s entire will. “If a will is unambiguous, that is the voice of the deceased,” de Vries insisted. “The court has no place in the private musings of Ontarians.”

Justice Eleanore Cronk asked why courts shouldn’t be allowed to look at outside evidence to see if the person’s final wishes violate public policy. She pointed to a decision recently upheld by the New Brunswick Court of Appeal, where a court voided the will of Harry McCorkill because leaving his entire estate to a violent neo-Nazi group in the United States was against Canadian policy.

The BMO lawyer maintained that was a very different case where the bequest was to an illegal group. Interfering here, where a disowned child cries racism, will open the floodgates: Every disappointed beneficiary will be in court claiming they were excluded for discriminatory reasons. “I just don’t think you can police it,” de Vries warned.

The courtroom was packed with lawyers — but neither of the two Spence daughters attended. Donna Spence, who lives in England, hasn’t participated in any of the proceedings.

So who should get the last say on their father’s last will and testament? The appeal court has reserved its decision.

But while that’s undetermined, there’s no question as to who the real winner is here: one-quarter of the estate is already earmarked for the lawyers.

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