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Why racist restrictions no longer apply in land deals

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Today, anyone can buy a house, but it wasn't always that way

When London, Ont. lawyer Edward Richmond died in January at the age of 80, he left behind a a legacy which ensures to this day that no resident of Ontario resident will ever be prevented from buying a home by reason of race, creed or colour.

It all started out in April, 1948, when Bernard Wolf, who owned the owner of a successful ladies wear store in London, Ont., signed an agreement to buy a cottage property in the exclusive Beach O' Pines subdivision on the shores of Lake Huron near Grand Bend.

He hired young Ted Richmond, fresh out of law school, to handle the $6,800 purchase.

Richmond thought it was going to be an ordinary real estate transaction until he searched the title.

Examining the historical documents, he discovered a registered restriction or "covenant" in a 1933 deed. It provided that the land could never be sold, used, occupied or rented "by any person of the Jewish, Hebrew, Semitic, Negro or coloured race or blood."

The document's stated intention was to restrict the use, ownership and enjoyment of the whole recreational development "to persons of the white or Caucasian race" not otherwise excluded by the prohibition.

Richmond wrote to the lawyer for Annie Maude Noble, the vendor, stating that in view of the fact that the purchaser "might be considered as being of the Jewish race or blood," it would be a requirement for closing that the restrictions be released, and that the vendor obtain a court order declaring the restrictive covenant void.

With the approval of the vendor and her lawyer, Richmond brought what he thought would be a friendly court application to declare the restriction invalid. Three years earlier there had been an almost identical case brought by Drummond Wren, the owner of land on O'Connor Dr. in Toronto.

In that case, Justice Keiller Mackay (later Ontario's lieutenant governor) ruled a restrictive covenant was invalid and "obnoxious" on public policy grounds.

Mackay cited the United Nations charter, and statements by Franklin Roosevelt, Charles de Gaulle and Winston Churchill.

But the same result was denied Richmond and his client in 1948.

At the court hearing in Toronto, Richmond represented Bernard Wolf, and John R. Cartwright represented Annie Noble. (Cartwright was later to become Chief Justice of the Supreme Court of Canada.) Their joint application was opposed by the Beach O' Pines Protective Association.

Richmond and his client were devastated when the court upheld the validity of the covenant, demolishing their arguments.

The court said that since the covenant was to expire in 1962, it was not an "undue" restraint on the freedom of sale.

As well, it was not "void for uncertainty,", a legal term meaning it was not too vague to be enforced.

This, said the judges, was because it was actually possible for any court to determine whether a particular person was of the prohibited race or blood.

Finally, the court held the restriction was not void for being against public policy, since freedom to contract was not to be lightly interfered with.

Cartwright and Richmond immediately filed an appeal to the Ontario Court of Appeal.

At the same time, the Canadian Jewish Congress formed a behind-the-scenes committee to monitor the proceedings, provide advice and, eventually, financial assistance. Heading the committee was law professor Bora Laskin ,(later to become Chief Justice of Canada).

In January, 1949, the Court of Appeal gave a hostile hearing to the lawyers for both Noble and Wolf. Wolf was represented by J. Shirley Denison (later to become head of the Law Society of Upper Canada) and distinguished counsel Norman Borins.

Both had been hired and instructed by Richmond. Again, John R. Cartrwight acted for the vendor.

Barely disguising the anti-Semitism which was so prevalent at the time, five j justices of the Ontario Court of Appeal delivered what must rank as one of its all-time worst decisions.

It agreed with the trial decision, and noted that the restriction against those of Jewish, "Negro or coloured" race or blood was just to assure that the residents were "of a class who will get along together."

To say that this attempt to establish a place suitable for a pleasant summer residence offended against public policy, according to the Chief Justice, required a stronger imagination than he possessed.

Public reaction was swift.

The Toronto Star demanded legislation to end restrictive covenants and urged an appeal to the Supreme Court of Canada. With the financial support of Bora Laskin's legal team, Richmond and his colleagues agreed to take the case to the Supreme Court.

Just before the case was to be heard in Ottawa, John R. Cartwright, the vendor's counsel (who was being ppaid by the Canadian Jewish Congress), was appointed to the Supreme Court of Canada.

In his place the legendary John J. Robinette was retained to represent Mrs. Noble.

The reception in Ottawa was much friendlerfriendlier to Wolf and Noble than it had been at Osgoode Hall.

The Beach O' Pines case exploded when one justice asked the association's counsel what would happen if a gentile man bought a cottage, married a Jew, and then died.

The Jewish widow would inherit the cottage, but the Supreme Court justice wanted to know whether the covenant would be enforceable in this circumstance.

The Supreme Court reversed the decisions of the two lower courts and declared the covenant invalid. It got the right result for the wrong reasons.

Instead of ruling that the covenant offended against public policy, the court voided the restrictions on narrow legal grounds.

It was too uncertain to be enforced, the court said, and it couldn't attach to the land since it really didn't touch or concern the land, but only those who used it. As well, it was an illegal restraint on an owner's right to sell.

Although the decision was a victory of sorts for Richmond and his colleagues, the Supreme Court was silent on the public policy question.

As a result, it left intact the Court of Appeal's interpretation that racial restrictions were not contrary to public policy.

The document's stated intention was to restrict the use, ownership and enjoyment of the whole recreational development `to persons of the white or Caucasian race'

Public reaction was nevertheless favourable.

The Toronto Star's editorial was typical, expressing satisfaction that covenants would become illegal after the Noble and Wolf decision.

After the case was over, Bernard Wolf received court costs of $4,000 from the B Beach O' Pines, but donated it all and another $1,000 to the Canadian Jewish Congress.

Richmond never billed for his services, and Wolf never used the cottage. He sold it in 1951, declaring the struggle was a matter of principle.

While the parties were waiting for the Supreme Court to hand down its decision, the Ontario government bowed to public pressure as a result of the Wolf and Noble case.

It passed a law voiding restrictive covenants entered into after March 24, 1950, but it did not cancel out the old ones.

A half century after the case was over, one of the private cottages at the Beach O' Pines posted an ironic welcome sign: "Shalom."

Today , we take for granted in Ontario that anyone can purchase land without discrimination by reason of race, creed, colour, nationality, ancestry or place of origin.

To a large measure, that right came about because of Ted Richmond and those who assisted him in his crusade.

To him, and to them, we owe an eternal debt of gratitude.

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