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Lawyer Robinette played key civil rights role

Landmark 1949 case ended racial discrimination

Former colleague's new book focuses on famed lawyer

If you were to look at a list of the foremost Canadian lawyers of the past century, the name John J. Robinette would, without doubt, be at or near the top.

His name was a household word in Canada from the 1930s to the 1980s, when he acted as counsel in many high-profile criminal, civil and constitutional cases.

But it was not until I read a recent collection of reminiscences about him that I recalled his role in one of the most important real estate and civil rights cases in Ontario history.

I have had the pleasure this week of reading *John J. Robinette Peerless Mentor: An Appreciation*, by retired Justice George D. Finlayson, formerly of the Ontario Court of Appeal.

The book has just been published by the Osgoode Society for Canadian Legal History.

As a member of the firm then known as McCarthy and McCarthy (now McCarthy T trault), Finlayson worked closely with Robinette as an articling student, junior lawyer and then law partner. Their very close friendship continued until Robinette's death in 1996, two days before his 90th birthday.

Finlayson's recollections of his mentor make fascinating reading, combining his personal knowledge of the man with the legal, social and political settings in which he performed.

The watershed real estate case began in April, 1948, when Bernard Wolf, a successful London, Ont. businessman, 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's title search disclosed 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 of the cottage community "to persons of the white or Caucasian race" not otherwise prohibited by the restriction.

Richmond started a "friendly" court action to void the restriction. He represented Wolf, while John R. Cartwright (later Chief Justice of Canada) represented the vendor, Annie Noble.

Although the two lawyers did not disagree with each other, the court upheld the validity of the restriction.

It was not too vague to be enforced, the court said, nor did it offend against public policy. Freedom to contract was not to be lightly interfered with.

Cartwright and Richmond appealed 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. Barely disguising the anti-Semitism that was so prevalent at the time, five justices of the Ontario Court of Appeal 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."

This was merely an "innocent and modest" attempt to establish a place suitable for a pleasant summer residence, according to the Chief Justice.

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 Laskin's legal team, Richmond and his colleagues agreed to take the case to the Supreme Court of Canada. Just before it was to be heard in Ottawa, Cartwright, the vendor's counsel (who was being paid by the Canadian Jewish Congress), was appointed to the Supreme Court.

In his place, Robinette, then only 43 years old, was hired to represent Noble, with the Jewish Congress still paying the fees.

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

Robinette did not stress the public policy argument that the clause was offensive.

Instead he focussed on the narrow legal argument that the clause was void because it was too uncertain to be enforced.

The Supreme Court bought Robinette's argument that it was not possible to determine with certainty whether a buyer was "of the Jewish, Hebrew, Semitic, Negro or coloured race or blood."

The Supreme Court reversed the decisions of the two lower courts and declared the covenant invalid for uncertainty.

It also ruled that the restriction was an illegal restraint on an owner's right to sell.

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

Public reaction was nevertheless favourable. The Star's editorial was typical of most, expressing satisfaction that covenants would become illegal after the Noble and Wolf decision.

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 case.

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

In his reminiscences, Finlayson defends Robinette's failure or refusal to tackle the broader social issue and instead focus on the narrow discussion of the uncertainty of the wording.

He says Robinette's first obligation was to make full use of the arguments available. He was not one to martyr his client for a greater cause.

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, John J. Robinette and those who assisted them.

The Finlayson reminiscences make fascinating reading for anyone interested in the law and one of Canada's greatest advocates. I highly recommend it.

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