

S/M/49/13

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

Citation: McCorkill v. Streed, Executor of the Estate of Harry Robert
McCorkill (aka McCorkell), Deceased – 2014 NBQB 148

Date : 2014 06 05

BETWEEN:

ISABELLE ROSE MCCORKILL

Applicant

- and -

COURT OF QUEEN'S BENCH
CLERK / SAINT JOHN



JUN 5 2014

FILED
DEPOSE

**FRED GENE STREED, EXECUTOR OF THE
ESTATE OF HARRY ROBERT MCCORKILL
(AKA MCCORKELL), DECEASED**

Respondent

COUR DU BANC DE LA REINE
GREYTON / SAINT-JEAN

-and-

**THE PROVINCE OF NEW BRUNSWICK as
represented by THE ATTORNEY
GENERAL, THE CENTER FOR ISRAEL AND
JEWISH AFFAIRS, LEAGUE FOR HUMAN
RIGHTS OF B'NAI BRITH CANADA, and
THE CANADIAN ASSOCIATION FOR FREE
EXPRESSION**

Interveners

BEFORE:

Justice William T. Grant

HEARING HELD:

Saint John

DATES OF HEARING:

January 27-28, 2014

DATE OF DECISION:

June 5, 2014

COUNSEL:

Marc-Antoine Chiasson for the Applicant

John D. Hughes for the Respondent

Richard A. Williams for the Intervener, Province of New Brunswick
as represented by the Attorney-General

Danys R.X. Delaquis for the Intervener, The Centre for Israel and Jewish Affairs

Catherine A. Fawcett for the Intervener, League for Human Rights of B'Nai Brith
Canada

Andy Lodge for the Intervener, The Canadian Association for Free Expression

DECISION

GRANT, J

[1] Harry Robert McCorkill died on February 20, 2004 having first made his last will and testament dated April 19, 2000. He named William Luther Pierce of Post Office Box 70, Hillsboro, West Virginia as his sole executor and the respondent, Fred Gene Streed ("Streed"), of the same address as his alternate executor. Mr. Pierce predeceased Mr. McCorkill so Streed became the executor and trustee.

[2] In the dispositive clause of his will he transferred all of his property to his trustee in trust to pay all his debts and taxes and to "...pay or transfer the residue of my estate... to the NATIONAL ALLIANCE, a Virginia corporation, with principal offices at Post Office Box 70, Hillsboro, West Virginia 24946, United States of America", the same address he used for both his executor and his alternate executor.

[3] On November 30, 2010, Streed applied for Letters Probate of the McCorkill Will showing a probate value of approximately \$128,500 Canadian and \$90,000 US, all of which was personal property. On May 6, 2013, Letters Probate were issued to Streed.

[4] Mr. McCorkill was never married and had no children. He had two siblings, a brother and a sister, both of whom survived him though he was not close to them.

[5] On July 18, 2013 his sister, Isabelle Rose McCorkill, filed an application with this court which was amended on August 29, 2013. In her amended application, Ms. McCorkill requests, *inter alia*, an order:

- a. **Declaring that the bequest provided at paragraph 3(b) of the Last Will and Testament of Harry Robert McCorkill (a.k.a. McCorkell) void as it is a bequest that is illegal and/or contrary to public policy;**

[6] On July 22, 2013, Ms. McCorkill was granted an *ex parte* injunction enjoining Streed as executor of the estate from paying, transferring or dispersing any portion of the estate and ordering that all the assets of the estate remain in the province of New Brunswick until further order of the Court.

[7] On July 31, 2013, after a hearing with notice to the respondent, that order was continued pending the disposition of this application on its merits.

[8] On August 19, 2013, the Province of New Brunswick ("the Province"), The Centre for Israel and Jewish Affairs ("the CIJA") and The League for Human Rights of B'Nai Brith Canada ("B'Nai Brith") were given leave to intervene in this application.

[9] On September 3, 2013, the Canadian Association for Free Expression ("CAFE") was also added as an intervenor.

APPLICANT'S GROUNDS

[10] In her amended Notice of Application, Ms. McCorkill sets out the following as the grounds of her application:

- g. **The payment or transfer of the residue of the estate to the National Alliance is against public policy and in contradiction with Canada's own laws, undertakings and commitments in that:**
- i. **The National Alliance is a long-standing neo-Nazi group in the United States that has also been active in Canada. Through its hate propaganda, the National Alliance promotes a**

political program parallel to that of the original World War II-era National Socialist Party of Germany (the Nazis) including genocide, ethnic cleansing, and the use of hate motivated violence and terror to achieve its aims.

- ii. **The National Alliance has a long history of inspiring and carrying out hate motivated violence and terror through its members and supporters in order to achieve its stated political aims;**
- iii. **The *Criminal Code* of Canada specifically prohibits hate propaganda in Canada and make criminal offences of advocating genocide and publicly inciting hatred;**
- iv. **Canada has been a signatory and party to the *International Convention on the Elimination of All Forms of Racial Discrimination* ("Convention") since 1970. Parties to the Convention shall condemn all hate propaganda and declare as offences hate propaganda, membership in racial supremacist groups and the provision of any assistance to racist activities, including the financing thereof;**
- v. **Canada has also signed on, and committed to, other international declarations and covenants which specifically protect individuals against any discrimination, advocacy of national, racial or religious hatred and incitement to discrimination and violence; ...**

ISSUES

[11] This application raises the following issues:

- A) Are the writings and other communications of the residual beneficiary of the estate, The National Alliance, (hereinafter sometimes referred to as "the NA") illegal and/or in violation of public policy?

B) If so, should the court declare the bequest invalid, given that it is made to a beneficiary whose activities are contrary to public policy but not made for specific purposes?

A. THE NA'S COMMUNICATIONS AND ACTIVITIES

[12] There is an extensive body of evidence dealing with both the communications and the activities of the National Alliance which has been filed by the parties and the interveners in this application which I will summarize in the following paragraphs.

Isobel McCorkill - Applicant

[13] In support of her application, Ms. McCorkill has sworn two affidavits and filed three sworn by Mark Potok, a senior fellow at the Southern Poverty Law Center ("the SPLC"), which is a non-profit civil rights organization in the United States. Portions of two of Mr. Potok's affidavits were ruled inadmissible. Ms. McCorkill makes no allegations in her affidavits about the National Alliance.

[14] In his third affidavit sworn November 20, 2013, Mr. Potok, states:

I have performed extensive research and have published several articles and chapters on right-wing extremist hate groups, including the National Alliance (NA). As I also explained, the SPLC has gathered numerous documents concerning the National Alliance through publicly available sources or subscriptions to NA publications.

[15] Mr. Potok also attaches four exhibits to his affidavit concerning the NA. The first is a document entitled "What is the National Alliance?" which is prepared by the NA and sets out its ideology and program. Under the heading "Summary of Statement of Belief" is found the following:

We may summarize in the following statement the ideology outlined above:

We see ourselves as a part of Nature, subject to Nature's law. We recognize the inequalities which arise as natural consequences of the evolutionary process and which are essential to progress in every sphere of life. We accept our responsibilities as Aryan men and women to strive for the advancement of our race in the service of Life, and to be the fittest instruments for that purpose that we can be.

[16] Under the heading "White Living Space" the document states:

... After the sickness of "multiculturalism," which is destroying America, Britain, and every other Aryan nation in which it is being promoted, has been swept away, we must again have a racially clean area of the earth for the further development of our people. We must have White schools, White residential neighborhoods and recreational areas, White workplaces, White farms and countryside. We must have no non-Whites in our living space, and we must have open space around us for expansion.

We will do whatever is necessary to achieve this White living space and to keep it White. We will not be deterred by the difficulty or temporary unpleasantness involved, because we realize that it is absolutely necessary for our racial survival. ...

...

[17] Under the heading "An Aryan Society" it states:

We must have new societies throughout the White world which are based on Aryan values and are compatible with the Aryan nature. We do not need to homogenize the White world: there will be room for Germanic societies, Celtic societies, Slavic societies, Baltic societies, and so on, each with its own roots, traditions, and language. What we must have, however, is a thorough rooting out of Semitic and other non-Aryan values and customs everywhere. ...

In specific terms, this means a society in which young men and women gather to revel with polkas or waltzes, reels or jigs or any other White dances, but never to undulate or jerk to negroid jazz or rock rhythms. ...

[18] On the topic of "A Responsible Government" the document states:

... The fact is that we need a strong, centralized government spanning several continents to coordinate many important tasks during the first few decades of a White world: the racial cleansing of the land, the rooting out of racially destructive institutions, and the reorganization of society on a new basis.

The central task of a new government will be to reverse the racially devolutionary course of the last few millennia and keep it reversed: a long-term eugenics program involving at least the entire populations of Europe and America. Such a task is necessarily intrusive, and it will require large-scale organization.

[19] The Merriam-Webster online dictionary defines the term "eugenics" as "a science that tries to improve the human race by controlling which people become parents". It continues:

The first thorough exposition of eugenics was made by FRANCIS GALTON, who in *Hereditary Genius* (1869) proposed that a system of arranged marriages between men of distinction and women of wealth would eventually produce a gifted race. The American Eugenics Society, founded in 1926, supported Galton's theories. U.S. eugenicists also supported restriction on immigration from nations with "inferior" stock, such as Italy, Greece, and countries of eastern Europe, and argued for the sterilization of insane, retarded, and epileptic citizens. Sterilization laws were passed in more than half the states, and isolated instances of involuntary sterilization continued into the 1970's. The assumptions of eugenicists came under sharp criticism beginning in the 1930's and were discredited after the German Nazis used eugenics to support the extermination of Jews, blacks, and homosexuals. ...

[20] Under the heading "Program of the National Alliance" the document discusses one of its goals as "the attainment of governmental power". In explaining this, it states:

By governmental power we mean, of course, the power to make and execute all governmental policy. This implies a massive replacement of the existing power structures: legislatures, courts, military and police command cadres, and the mass media.

No mere election of a head of state can give us this power; no president or prime minister, even if he is installed by a military coup and has the backing of the top military leaders, can stand alone against the other elements of the power structure in a modern White state – especially not against the power of the mass media. In order for any power we acquire to be meaningful it must be total: that is, it must include all the major elements of the power structure.

[21] Later, in explaining why it is not necessary to build a larger power structure than the one it seeks to replace the document states:

The second reason why we don't have to build a power structure as large as the one opposed to us is that all the elements in the population we want to reach with our message are becoming increasingly responsive to that message. At the same time the opposed power structure is losing its own partisans. The government and the Jewish media will continue to have their hard core of support – Jews, feminists, some homosexuals, some Christians, the radical-liberal New World Order enthusiasts, most of the state and Federal bureaucrats, and others on government or media payrolls – but outside these special constituencies our enemies have very few real friends left, even among their beneficiaries. Blacks and mestizos as a whole, for example, can hardly be considered a staunch bulwark of the government, despite the favoritism it has shown them.

[22] Under the heading "Requirements for Membership" the document states:

Eligibility: Any White person (a non-Jewish person of wholly European ancestry) of good character and at least 18 years of age who accepts as his own the goals of the National Alliance and who is willing to support the program described herein may apply for membership.

Ineligible persons: No homosexual or bisexual person, no person actively addicted to alcohol or to an illegal drug, no person with a non-White spouse or a non-White dependent, (sic) and, except in extraordinary circumstances, no person currently confined in a penal institution may be a member. (The National Alliance does not advocate any illegal activity and expects its members to conduct themselves accordingly.)

[23] The second document attached to Mr. Potok's affidavit is the National Alliance Bulletin of April/May 1990. It contains a commentary by W.L.P. which are the initials of the National Alliance founder and primary executor under the McCorkill will, William Luther Pierce, entitled "On Being a Front-Line Soldier." He recounts a recent conversation with a skinhead who accused the National Alliance of not being front-line soldiers. The commentary continues in part:

I said, well, that depends upon how you define a soldier, but our conversation was over for all practical purposes. It was clear that his conception of a "front-line soldier" is someone who cracks the enemy's skull in the street with a baseball bat, rips his face open with a bicycle chain, or breaks his legs across a curbstone. And that's fine. It's a healthy, red-blooded response to the current situation in America's cities. Any decent White person – certainly, any White male – who can walk six blocks in a major American city without feeling rage rising in himself and a growing desire to engage in such activity needs to have his hormone level checked. It is clear that if *most* White males would respond to their rage in a direct, physical way, as skinheads do, then we would have no race problem, no Jewish problem, no homosexual problem, and no problem with White race traitors in America. Our cities would be clean, decent, safe, and White once again, after a relatively brief period of bloodletting.

The fact is, of course, that most White males will not take direct, physical action against their racial enemies. In fact, the minds of most White males are so addled by love-thy-nigger Christianity and Jewish TV that they don't even know who their enemies are. Still, it is good that a few do, and that they act accordingly. ...

...

Ultimately, we will win the war only by killing our enemies, not by any clever, indirect schemes which involve no personal risk. We should never forget that, and even if the skinheads served no other purpose than to remind us of it, we should be grateful for their activity. Our only regret in that regard should be that their activity is not better organized and better disciplined. (Underlining by Grant J.)

...

[24] Exhibit 3 to Mr. Potok's affidavit is the National Alliance Bulletin of January, 1994 which contains a commentary by Mr. Pierce entitled "Reorienting ourselves for Success" in which he states:

All the homosexuals, racemixers, and hard-case collaborators in the country who are too far gone to be re-educated can be rounded up, packed into 10,000 or so railroad cattle cars, and eventually double-timed into an abandoned coal mine in a few days time.

...

Those who speak against us now should be looked at as dead men – as men marching in lockstep toward their own graves - ...

[25] Pierce also wrote novels, one of which, "The Turner Diaries", he dedicated to John Paul Franklin, a serial killer. In an interview on CNN which aired on November 18, 2013 (see Exhibit 4 to Mr. Potok's affidavit), Mr. Franklin

estimates that he killed 22 people. The interviewer writes about the interview and Franklin as follows:

"I felt like I was at war. The survival of the white race was at stake," he says. Franklin compares himself to a U.S. soldier in Vietnam, trained to be a sniper in the war. The enemy, he explains, were Jews, blacks and especially interracial couples. "I consider it my mission, my three-year mission. ...

...

What was your mission? "To get a race war started."

...

Franklin's birth name was James Clayton Vaughn and he was born in Mobile, Alabama. He grew up in poverty and lived a childhood of abuse, he says.

...

He found a family and comfort in the white supremacy groups of the American South in the 1960's. Hitler's autobiographical manifesto, "Mein Kampf," moved him from hate to action. "I had this real strange feeling in my mind," he says. "I've never felt that way about any other book that I read. It was something weird about that book."

At 26, he changed his name to Joseph Paul Franklin. Joseph Paul in honor of Paul Joseph Goebbels, the Nazi minister of propaganda, and Franklin after Benjamin Franklin.

Province of New Brunswick - Intervener

[26] The Intervener, the Province of New Brunswick, filed two affidavits sworn by Kevin Fornshill who is the Chief Executive Officer and Director of Fringe Link Inc., a private company that provides research and training for law enforcement agencies. Mr. Fornshill worked for 24 years for the United States Park Police,

the last two of which he was assigned to work for the Joint Terrorism Task Force of the FBI in Washington, D.C. During that period of time he was involved with research of white extremist groups.

[27] In his affidavit sworn November 26, 2013, Mr. Fornshill attaches a number of exhibits most of which are taken from the National Alliance website or other National Alliance publications. They oppose immigration, promote racism and extol the white race. One posting from September 9, 2010 recounts an incident that occurred at Xavier University concerning the posting by the NA of an inflammatory flyer which referred to a robbery of three students at gunpoint. The flyer, entitled "Just in case they didn't bring this up in your orientation", alleged that "an urban hell surrounds the campus" and urged students to "stop fearing the smears."

[28] The National Alliance became involved in this matter after an article appeared in the Cincinnati Enquirer quoting one of the victims as saying, "We were trying to be nice" to the robbers. Robert Ransdell, the NA's Northern Kentucky Unit coordinator, commented,

This is an example of not being prejudiced or worrying about being prejudiced as resulting in somebody being robbed. I think that blacks have become accustomed to the realities of whites these days, and that is that whites are willing to submit – not willing to fight back. They are easy targets... because they have been indoctrinated from the cradle with this white guilt stuff.

[29] The website also quotes Mr. Ransdell, who approved the flyer, as saying:

Some of the stuff was kind of inflammatory in there. But honestly I don't know – and the person that wrote the flyer made a good point. Should we really be sensitive to what we call people who are going to go up and put a gun

to the head of people just for a few bucks? I'd have to say I'd call them savages.

[30] Mr. Fornshill also attaches to his affidavit a transcript of a July 30, 2011 radio broadcast by Erich Gliebe who has sworn two affidavits in support of the National Alliance in this application. In that broadcast, entitled "Exposing the Holocaust Story", Mr. Gliebe says that the story of the Holocaust has played a big role in the western world for many decades and that it affects the behaviour of people who, because of their blind belief in it, refuse to join and contribute to an organization like the National Alliance that is trying to "remedy the situation." He says, "These fearful Whites can't bear to be perceived as sharing a similar ideology to those people - namely, the German National Socialists - who supposedly killed millions of people... deliberately." He continues,

According to the Jews and their allies, the Holocaust was the attempt on the part of the German National Socialists, to exterminate the race of the Jews. The Germans conceived the plan and tried to carry it out by rounding up Jews from all over Europe, shipping them off to "death camps" and then killing them, usually using the delousing agent Zyklon-B. Masses of Jews were herded into more or less sealed rooms, and then gaseous Zyklon-B was forced into the rooms, killing the unfortunate victims. Most of the victims were then cremated. This extermination process resulted in the deaths of six million Jews and millions of others, including Gypsies, homosexuals and political criminals.

That is, in essence, the "official" version of the Holocaust, and all of the "official" sources pretty much agree on the above mentioned generalities. But if one tries to sift through the glut of so-called "information" on the subject in search of specifics, he is in for a long, discouraging, and wearisome struggle. His labors will most likely turn up only a jumble of contradicting claims and obvious exaggerations. The "specifics" are not specific at all, and in fact, are rather fuzzy. Although essentially all of the "approved" Holocaust literature toes the line when it comes to the 6-million-Jews figure, there are many gross and impossible-to-discount discrepancies in the details, especially

when one sees how the "official" version has changed through the years.

...

[31] Mr. Gliebe then purports to poke holes in the "official" version and expose it as an "enormous Jewish extortion racket." He concludes:

So the official version of the Holocaust is not only a money-making scheme, it is also a weapon of restraint. It chains the minds of people and tends to prevent them from trying to fix what is wrong with society, even when they don't LIKE what's going on and, deep down, WANT to do something.

...

But, from the white racist perspective, Jews lie a lot – almost habitually, it seems – or at least they bend the truth, turn it into half-lies, and leave out crucial information much of the time. And there is no getting around that sometimes Jews just plain lie about things, and they do so knowingly. So the realization that the Jews have lied for decades about the Holocaust doesn't really strike us as being much different from the way they usually behave.

However, as I mentioned earlier in this broadcast, the way that the Holocaust lie is used to browbeat our people into submission and to make a large portion of them fearful to do what they know they SHOULD do to remedy our race's plight... THAT is why the lie that we call the Holocaust must be destroyed. Once that lie is sufficiently exposed and weakened, then the programs and policies of the National Alliance will help to organize our people into a force that will set our race back on the path to a destiny of greatness.

[32] Mr. Fornshill also references a flyer discussed on the National Alliance website on August 12, 2011 concerning a murder/suicide involving a white girl

and a black boy. The flyer, which was addressed to "white parents" warns "Don't let your daughter date blacks, it might be a matter of life and death."

[33] Mr. Fornshill also includes in his affidavit an excerpt from the National Alliance website of July 6, 2012 which states in part:

... People are beginning to see that the survival of our Race is much more important than the survival of the United States as a country. If the country cannot stand for the Race then the Race needs to found a new country. That is the ultimate goal of the National Alliance and the public can see that with the quality people who are members and the understanding of the quality of people we want to recruit that indeed we are a very serious organization and we can be and will be the Vanguard of hope for the racially conscious of our beleaguered people.

[34] Mr. Fornshill also attaches an excerpt from the National Alliance website of July 7, 2013 following the trial concerning the shooting in Florida of Trayvon Martin by George Zimmerman. The website posting reads as follows:

As predicted, riots have begun as a result of the Zimmerman verdict. An interesting note regarding this latest Media Circus is just how obviously they distorted the facts in order to achieve their desired result.

On cue from their Jewish masters, professional Race-baiters, Al Sharpton and Jessie Jackson, riled up their followers against Whitey like Voodoo practitioners in a bad horror movie.

Never mind the fact that Zimmerman was only half white. Never mind the fact that in the 513 Days Between the Trayvon shooting and the Zimmerman verdict, 11,106 Blacks were murdered by other Blacks.

For the first time in decades average White people are seeing past Mainstream Media's lies, thanks to the blatant contradictions regarding this particular case.

[35] In his affidavit of August 31, 2013, Mr. Fornshill deposes that three members of the National Alliance, including its chief executive officer, were convicted in 2006 of threatening and intimidating a Mexican and Native Americans at a bar in Utah. He also deposes that another member was convicted of attempting to bomb a January, 2011 Martin Luther King, Jr. Day parade in Spokane, Washington.

[36] Finally, Mr. Fornshill deposes that a financial supporter of the National Alliance, whom he describes as a racist skinhead, was responsible for a shooting at an Oak Creek, Wisconsin Sikh Temple in August 2012 though he does not indicate that that individual was convicted of anything.

B'nai Brith - Intervener

[37] Anita Bromberg, who is the national director of legal affairs for the Intervener, The League of Human Rights of B'nai Brith Canada, also filed an affidavit in support of B'nai Brith's position which she swore on September 4, 2013. In that affidavit, she deposes as follows:

2. **B'nai Brith Canada has been at the forefront of the battle against antisemitism, racism and bigotry since its formation in Canada in 1875. Through the League, B'nai Brith Canada monitors the activities of hate groups in Canada and documents all reported incidents of antisemitism.**
3. **I have been involved in the anti-hate activities of the organization since I began working with the League in 2002 and have co-authored its annual report, *The Audit of Antisemitic Incidents* (herein after referred to as the "Audit"). This report, published annually since 1982 by the League, is a major vehicle for reporting findings of antisemitism to the public.**

4. **As documented in the Audit, incidents of antisemitism have shown an increasing trend. Antisemitism of far right groups and individuals have consistently featured in the Audit's findings.**
5. **Far right groups identified as such in the Audit promote white supremacist, racist viewpoints similar to those held by the National Alliance. While the white supremacist groups in Canada are distinct, they do share ties with American groups often interacting on web forums.**
6. **Attached to this my affidavit as Exhibit "A" is the 2002 *Audit of Antisemitic Incidents* which documents the continued activities of various white supremacist groups in Canada, the recruitment drives as well as the use of the Internet to spread their brand of hatred.**

Centre for Israel and Jewish Affairs - Intervener

[38] Shimon Koffler Fogel is the chief executive officer of the Intervener, The Centre for Israel and Jewish Affairs ("the CIJA"), and has served as the founding national director of community services at the Canadian Jewish Congress. He also served as a consultant to Parliament's standing committee on foreign affairs and is a member of the round table on global security under the Department of National Defence.

[39] In his current position Mr. Fogel spends considerable time studying and researching various organizations that are white nationalist/supremacist and anti-Semitic such as the National Alliance. In an affidavit sworn on November 27, 2013 he deposes that the CIJA's mandate is to represent and protect the Jewish community's interests by maintaining ongoing contact with government and political leadership and with representatives of Canada's diverse cultural communities, with the media and with the general Canadian public.

[40] Mr. Fogel further deposes that the Jewish community has historically been a target of racism, hate and group vilification. He states that one of the objectives of the CIJA is to fight against anti-Semitism in any form in Canada and around the world and that its predecessor organization, The Canadian Jewish Congress, has consistently worked against Nazi, Neo-Nazi, white nationalist and white supremacist organizations.

[41] He recites the following information about the NA as found on the websites of the Southern Poverty Law Center and the Anti-Defamation League:

29. **According to the Southern Poverty Law Center's (SPLC) website (www.splcenter.org), which I have read, NA materials call for the eradication of the Jews and other races. While the NA and associated groups dehumanize all non-whites as threats to Aryan racial and cultural purity, according to the Handbook, Jews are considered a more pressing threat to the NA than other groups. According to ADL's website, on the subject, the NA's founder in his essay "Who Rules America" wrote:**

"The Jewish control of the American mass media is the single most important fact of life, not just in America, but in the world today. There is nothing – plague, famine, economic collapse, even nuclear war – more dangerous to the future of our people."

30. **The SPLC has reported, and I have read the reports and believe, that the NA has produced and influenced more violent criminals in the last three decades than any other neo-Nazi organization. According to the SPLC reports, NA members were connected to at least 14 violent crimes between 1984 and 2005, including bank robberies, shootouts with police and, in Florida, a plan to bomb the main approach to Disney World.**

- 31. According to the ADL's website, the NA have used billboards, hung organizational banners in prominent locations, rented booths at gun shows, posted their propaganda materials on public property and distributed NA literature in suburban neighborhoods and on college campuses. The ADL specifically mentions one popular item that has been distributed by the NA at secondary schools and colleges – the SAGA of... White Will!! – a racist, anti-Semitic comic book that encourages students to join the fight for "nationalism and racial and ethnic self-determination everywhere".**
- 32. According to the ADL's website, the NA has also had significant influence through its publication and distribution of books authored by William Pierce. One such book, *The Turner Diaries* calls for the violent overthrow of the government and the systematic murder of Jews and non-whites in order to establish an "Aryan" society. This book has been implicated as a motivation for the 1995 Oklahoma City bombing that caused the death of 168 people and injured 680. The book was also the inspiration behind a crime spree that included murder, robbery and the bombing of a synagogue by a white supremacist gang connected to the NA.**
- 33. According to the ADL's website, *The Turner Diaries* was required reading for the Aryan Republican Army, and influenced white supremacists as far away as Britain, where the book inspired the bombing of ethnic neighbourhoods and a gay bar in London, killing three people in April 2000.**
- 34. According to the ADL's website, in addition to the publication and distribution of Pierce's books, the NA has also been active in promoting hatred through Resistance Records, producing and distributing music replete with fierce lyrics directed against Jews and other minorities. Canadian neo-Nazi skinheads originally founded this operation in 1993. According to ADL's website, Erich Glibe, Pierce's successor in the winter 2000 issue of NA's Resistance magazine, described the utility of white power music as**

"awakening and mobilizing the White Youth of today into a revolutionary force to destroy the system.

Fred Gene Streed - Respondent

[42] The respondent, Fred Gene Streed, filed an affidavit in response to this application in which he recites what he has done as executor of the estate to date. He addresses the application in the following paragraphs:

- 12. The affidavit of Mr. Potok on behalf of the Southern Law Center I believe to be deliberately misleading, because the documentation used is from the early years of the foundation and existence of the National Alliance. Articles written by the founder Mr. Pierce more than a decade before his death in 2002 are being advanced as a basis for invalidating the Testator's Will more than a decade after Pierce's death. A picture of Adolf Hitler is clearly submitted for inflammatory, not probative, value. To the extent that the testator sympathized with the purposes of the National Alliance I believe he was simply exercising his political freedom.**
- 13. It is also my belief that the political writings of the founder of the National Alliance, William L. Pierce, were legal and in compliance with the laws of the United States of America at the time they were written. As the laws and the social mores of the United States have changed with time the message and views expressed by the organization have also changed. These changes were advocated in no small part by the Testator, Harry Robert McCorkill, before his death. It is my belief that this is why Mr. Potok has had to rely on material several decades out of date.**
- 14. The additional mention of specific individuals and their crimes and punishment is a transparent attempt to smear the Testator and Beneficiary with guilt by association, which I believe is not a legitimate method of legal proof. Since I am not affiliated with the National Alliance I prefer to leave the particulars of these matters to the present head**

of the National Alliance, Mr. Erich Gliebe, who has better access to the true facts of membership alleged for those individuals in the affidavit of Mr. Potok than I can command from my own recollections.

[43] Erich J. Gliebe has been Chairman of the National Alliance since 2002 when William Luther Pierce died. He deposes, *inter alia*, as follows:

- 2. I became Chairman of the National Alliance (NA) in 2002 by a vote of the members of the Board of Directors, succeeding William Luther Pierce who died in 2002. I was personally acquainted with him and with the Testator named in the present proceeding, Harry Robert McCorkill.**

- 3. When I joined the NA in 1990 it was my aim to introduce traditional European culture to its activities. My own heritage and background are German and I had always been interested in history and my heritage. I believed the NA presented current and historical events accurately and that it addressed concerns of people of European descent. At the time I was a member of a German folk dance group which performed at festivals and other functions.**

- 4. It was my aim to introduce traditional European culture to the NA, so I organized the Cleveland Local Unit well enough that we were able to promote its first cultural festival in November 1996, and subsequent cultural festivals in Cleveland, St. Louis and Detroit. This endeavour was assisted by the Resistance Records label, purchased by William Pierce in 1999. He felt we should reach young people through their music, and then introduce them to classical and European folk music. The record label did have some success in that aspect, and some new members attended the cultural festivals.**

- ...**

- 6. Because of the attention given to the NA in the affidavit of Mark Potok, I make this affidavit chiefly**

in rebuttal of the characterizations therein of the NA as a neo-Fascist organization and of alleged concerns with public policy.

7. Throughout my years in the NA, I have been aware of Mr. Potok's writings for the Southern Poverty Law Center (SPLC) and its publications, in particular because it has depicted the NA as a "hate group". From this I believe the SPLC distorts the facts and publishes false reports about the NA and its members.

...

11. With regard to specific accusations in Mr. Potok's affidavit, I believe it is misleading the Court to refer to language from the NA's foundational document, decades old, to stir up concerns that the present-day NA has violent intentions. I am aware of current media reports that decades ago Canadian authorities may have carried out nutritional experiments on aboriginal schoolchildren. I see the Potok affidavit as a similar attempt to inject the past into the present.
12. With regard to specific allegations about individuals, Potok's paragraphs 13 and 14, after consulting or reviewing such records as are available to me, I can say that on that basis I believe McVeigh and Compton were never members of the NA, that no records appeared for Vanbiber, Carlson and Page, that Mathews left the NA in the 1980's to form his own group, and that Hanson was a member for a time. Carrothers was dismissed after being convicted, Harpham was dismissed for non-payment of dues six years before the incident alleged, that McGhee left four years before the incident alleged.
13. In the current edition of the NA Members' Handbook (2005) appears on page 9: "The National Alliance continues to maintain a Zero Tolerance policy towards illegal activity and any member involved,

suggesting or even hinting (at) such activities will be immediately expelled from the organization." ...

- 14. Under my leadership the NA began requiring applicants for membership to undergo a probationary period of at least one-year before admission (2011); more recently the Board of Directors approved having only supporters rather than members. In my broadcast and other statements on behalf of the NA I speak of the need to get back to real activism and offer viable alternatives to the decadent practices surrounding us. I have not been able to verify Potok's Exhibit 7, but the NA has no programs in Canada.**

[44] Mr. Gliebe filed a second affidavit sworn November 12, 2013 in opposition to the application but it does not address the issue of public policy which has been raised by this application.

[45] The respondent also filed an affidavit from Malcolm Ross, which deals with his involvement in preserving the assets of the estate and includes an exhibit critical of the Southern Poverty Law Center. In that exhibit which Mr. Ross describes as "reputable commentary," the author lists several alleged "lies" of the SPLC, in one of which he states:

SLPC (sic) again uses guilt by association logic and tries to portray Chuck Baldwin's Liberty Fellowship Church in Kalispell, MT as a gathering of anti-government white supremacists.

...

SPLC ignores the quality of people who regularly attend and contribute to Liberty Fellowship's services. It also ignores that there are people who attend that are Chinese, African, Spanish, Canadian, Native Indian, among other ethnicities.

The Canadian Association for Free Expression - Intervener

[46] The Intervener, The Canadian Association for Free Expression ("CAFE"), filed an affidavit in opposition to this application sworn by its executive director, Paul Fromm, in which he states *inter alia*:

1. I am the Executive Director of the Canadian Association for Free Expression, (CAFE) and as such have personal knowledge of the information sworn to below and am authorized to speak on behalf of the Association.

...

3. The objectives of CAFE are as follows:

(a) To operate exclusively as a charitable corporation for the purposes of education and general benefit to the community;

(b) To promote respect for and observance of freedom of speech and expression generally;

(c) To engage in and to encourage research into and awareness of freedom of speech and expression generally in light of common law tradition and the Charter of Rights and Freedoms of the Constitution of Canada;

(d) To establish and fund educational scholarships and research programs, provided however, that no funds or assets of the Corporation shall be:

(i) used for any political purpose;

(ii) paid to any political organization.

...

5. Over the past thirty years, CAFE has developed an enhanced knowledge and expertise in relation to the issue of freedom of speech and expression.

...

7. CAFE has an interest and mandate in ensuring and protecting the Fundamental Freedoms contained in Section 2 of the Canadian Charter of Rights and Freedoms, specifically, Section 2(a) freedom of thought, belief, opinion and expression, including freedom of the press and other media communication and Section 2(d) freedom of association.

8. CAFE has no financial interest in the disposition of this Estate.

[47] In his affidavit Shimon Koffler Fogel challenges the *bona fides* of both The Canadian Association for Free Expression and Mr. Fromm as follows:

35. In 1981 Paul Fromm founded the Canadian Association for Free Expression (CAFE) and remains its leader.

36. Attached as Exhibit "A" is a copy of the Wikipedia website pertaining to Paul Fromm, which I have read.

37. CAFE presents itself as an organization concerned with the promotion and preservation of Freedom of Speech but its record of activism suggests a different agenda.

38. In 2004 CAFE was a signatory to the New Orleans Protocol, a gathering of white nationalist leaders such as Don Black (Stormfront), Kevin Alfred Strom (former managing director of National Vanguard), Willis Carto (founder of the Holocaust denial organization Institute for Historical Review) and David Duke (former grand Wizard of the Ku Klux Klan).

39. In the early 1990's Mr. Fromm was a speaker at several events hosted by the Heritage Front, including events marking the birthday of Adolf Hitler and honouring the memory of Robert Matthews

(leader of the nationalist group, The Order) at a "Martyr's Day Rally".

40. When his activities became known to his employer, The Peel Board of Education, he was warned that continued participation would result in a recommendation for termination.
41. In 1997 Mr. Fromm was terminated from his position as a teacher by the Peel Board of Education because of his continued involvement in such activities. ...
42. Mr. Fromm has published numerous YouTube videos on the Internet promoting his ideas. I have viewed several of Mr. Fromm's YouTube videos. Mr. Fromm introduces himself in these videos as the "Midnight Man" for Stormfront Radio, with a show every night at midnight eastern time. The videos reference the www.stormfront.org website and promote it. Attached as Exhibit "C" is a copy of a publication on the Stormfront forum website (www.stormfront.org/forum). This document references "the Jewish Problem" and more specifically that:

"The origin of the problem with the Jews is, once again, in the blood. As a group, as a *race*, they suffer from psychopathy – a mental disorder whose main symptom is the ability to lie like there is no tomorrow."

ANALYSIS AND DECISION

[48] Much of the content of the affidavits filed by the respondent focused on discrediting the SPLC's evidence as being deliberately misleading, containing half truths and implying guilt by association. However, even if I accept every allegation these deponents make against the SPLC, that does not change the writings of the NA from William Luther Pierce 20 years ago to Erich Gliebe and others today, along with their foundational documents, Mr. Pierce's writings, their website, their other publications, and the transcripts of Mr. Gliebe's radio

broadcasts. All of these publications can only be described as racist, white supremacist and hate-inspired. They are disgusting, repugnant and revolting.

[49] While they may be protected by the first amendment under the US Constitution, there is a difference between that Constitution and the **Canadian Charter of Rights and Freedoms** which protects freedom of speech under Section 2(b) but also provides under Section 1 thereof:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[50] Section 319 of the **Criminal Code of Canada** makes the public incitement of hatred a criminal offence. Section 319(2) states:

(2) Every one who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

[51] In the case of **R. v. Andrews**, [1990] 3 S.C.R. 870, the court considered the constitutionality of the predecessor to Section 319. In **Andrews**, the majority decision written by Dickson, C.J. upheld the constitutionality of Section 319(2) of the **Criminal Code** and, in doing so, adopted much of the reasoning of Cory, J.A. then of the Ontario Court of Appeal.

[52] Cory, J.A. found that Section 319(2) of the **Criminal Code** violated Section 2(b) of the **Charter of Rights and Freedoms** but that it was justified under Section 1 of the **Charter**. In reviewing his decision, Dickson, C.J. states:

The appellants belonged to the Nationalist Party of Canada, a white nationalist political organization. Mr. Andrews was the party leader and Mr. Smith its secretary. Both were members of the party's central committee, the organization responsible for publishing and distributing the bi-monthly *Nationalist Reporter*. This publication constitutes the primary subject-matter of the prosecution and was subscribed to by 43 individuals and 50 groups, clubs or organizations.

Pursuant to a search warrant, 89 materials were seized from the home of the appellants. Included in these materials were copies of the *Nationalist Reporter*, letters written by subscribers, subscription lists and mimeographed sticker cards containing such messages as "Nigger go home", "Hoax on the Holocaust", "Israel stinks" and "Hitler was right. Communism is Jewish". The ideology expressed by the material was summarized as follows by counsel for the appellants:

... the material argues that God bestowed his greatest gifts only on the "White people"; that if it were God's plan to create one "coffee-coloured race of 'humanity' it would have been created from Genesis"; and that therefore all those who urge a homogeneous "race-mixed planet" are, in fact, working against God's will. In forwarding the opinion that members of minority groups are responsible for increases in the violent crime rate, it is said that violent crime is increasing almost in proportion to the increase of minority immigrants coming into Canada. A high proportion of violent crimes are committed by blacks. America is being "swamped by coloureds who do not believe in democracy and harbour a hatred for white people." The best way to end racial strife, an excerpt opines, is by a separation of the races "through a repatriation of non-whites to their own lands where their own race is the majority..." The "Nationalist Reporter" also promulgated the thesis that Zionists had fabricated the "Holocaust Hoax" and that because Zionists dominate financial life and resources, the nation cannot remain in good health

because the "alien community's interests" are not those of the majority of the citizens either culturally or economically.

Cory J.A. in the Ontario Court of Appeal, referring specifically to the contents of the *Nationalist Reporter* and other publications of the Nationalist Party, characterized this material as "rubbish and offal", and stated that the writings were "malodorous, malicious and evil".

[53] Dickson, C.J. later discussed Cory, J.A.'s conclusion that s. 1 of the *Charter* saved the constitutionality of section 319(2) of the *Criminal Code*. He continued:

... Instrumental in reaching this conclusion was his rejection of the argument that the dissemination of hate propaganda represents little harm to society. Cory J.A. was unable to discount the danger presented by such expression, noting that s. 319(2) was introduced into the *Criminal Code* only after extensive study by the Special Committee on Hate Propaganda in Canada (hereinafter "the Cohen Committee") and, in a passage which has been much quoted, stating (at pp. 179-80):

I would have thought it sufficient to look back at the quintessence of evil manifested in the Third Reich and its hate propaganda to realize the destructive effects of the promotion of hatred. That dark history provides overwhelming evidence of the catastrophic results of expressions which promote hatred. The National Socialist Party was in the minority in the Weimar Republic when it attained power. The repetition of the loathsome messages of Nazi propaganda led in cruel and rapid succession from the breaking of the shop windows of Jewish merchants to the dispossession of the Jews from their property and their professions, to the establishment of concentration camps and gas chambers. The genocidal horrors of the Holocaust were made possible by the deliberate incitement of hatred against the Jewish and other minority peoples.

It would be a mistake to assume that Canada today is necessarily immune to the effects of Nazi and other hate literature.

In light of the above comment, Cory J.A. concluded that the public and willful promotion of hatred against identifiable groups was the very antithesis of all the essential values and principles stressed by this Court in *Oakes, supra*, and that the aim behind s.319(2) clearly constituted a pressing and substantial objective under s.1.

Considering next whether the proportionality of s. 319(2) to Parliament's valid objective met the requirements of *Oakes*, a number of factors led Cory J.A. to conclude that the provision was justifiable under s. 1. He noted, for instance, that the need for communications to promote "hatred" prevented an unduly wide limitation upon the freedom of expression, stating (at p. 179):

Hatred is not a word of casual connotation. To promote hatred is to instill detestation, enmity, ill-will and malevolence in another. Clearly an expression must go a long way before it qualifies within the definition in [s. 319(2)]. When an expression does instill detestation it does incalculable damage to the Canadian community and lays the foundations for the mistreatment of members of the victimized group.

[54] These eloquent statements are equally applicable to the evidence that is before the court in this application. Mr. Streed asserts that the writings of the NA attached to Mr. Potok's affidavits are dated while Erich Gliebe says it is misleading to rely on the NA's foundational documents to "smear" them. However, there is nothing "dated" about the anti-semitic rantings of Mr. Gliebe, the current Chair of the National Alliance, in his 2011 radio broadcast, the transcript of which is set out in Mr. Fornshill's affidavit. (See paragraph 31, *supra*).

[55] Neither is there any evidence before the court that the NA has distanced itself from its "dated" foundational documents. Mr. Gliebe says that the NA now has "supporters" rather than "members". In the same paragraph he says that the NA now requires its members/supporters to "undergo a probationary period of at least one year before admission". However, he doesn't elaborate as to how those measures render the organization's vitriol "dated" or any less repugnant.

[56] The respondent also submits that the writings of the NA were not in violation of any laws in the United States when they were published. However, they clearly violate the ***Criminal Code of Canada*** and this court takes judicial notice of the fact that in this age of the internet national boundaries are meaningless for purposes of spreading hate propaganda such as that disseminated by the NA. In that regard I also accept and rely on the evidence of Anita Bromberg that white supremacist groups in Canada share ties with American groups and interact with them on web forums.

[57] This brings me to the first salient question in this application, whether or not the NA disseminates information that is in violation of public policy in Canada.

[58] What constitutes public policy is a question that has been considered in many cases. In the case of ***Re: Wishart Estate (No. 2)*** 1992 CanLii 2679 (NBQB); (1993) 129 NBR (2d) 397 Riordon, J. considered whether or not a direction in a will to destroy four horses violated public policy. He quoted extensively from the Missouri case of ***Eyerman et al v Mercantile Trust Co. N.A. et al*** 524 S.W.2d 210 including the following:

The term 'public policy' cannot be comprehensively defined in specific terms but the phrase 'against public policy' has been characterized as that which conflicts with the morals of the time and contravenes any established interest of

society. Acts are said to be against public policy 'when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency, so as to be injurious to the interests of the state, apart from illegality or immorality'. *Dille v. St. Luke's Hospital*, 355 Mo. 436; 196 S.W. 2d 615, 620 (1946); *Brawner v. Brawner*, 327 S.W. 2d 808, 812 (Mo. banc 1959).

[59] In *Canada Trust Co. v. Ontario Human Rights Commission* [1990] O.J. No. 615 (O.C.A.) the court considered whether a trust document establishing a charitable trust based on white supremacy, religious supremacy, racism and sexism violated public policy. Writing for the majority, Robins, J.A. stated at paragraph 34:

34. Viewing this trust document as a whole, does it violate public policy? In answering that question, I am not unmindful of the adage that "public policy is an unruly horse" or of the admonition that public policy "should be invoked only in clear cases, in which the harm to the public is substantially incontestable, and does not depend on the idiosyncratic inferences of a few judicial minds": *Re Millar*, [1938] S.C.R. 1, [1938] 1 D.L.R. 65 [per Crocket J., quoting Lord Aitkin in *Fender v. Mildmay*, [1937] 3 All E.R. 402, at p. 13 S.C.R.]. I have regard also to the observation of Professor D.W.M. Waters in his text on the Law of Trusts in Canada, 2nd ed. (Toronto: Carswell, 1984), at p. 240 to the effect that:

The courts have always recognized that to declare a disposition of property void on the ground that the object is intended to contravene, or has the effect of contravening public policy, is to take a serious step. There is the danger that the judge will tend to impose his own values rather than those values which are commonly agreed upon in society and, while the evolution of the common law is bound to reflect contemporary ideas on the interests of society, the courts also feel that it is largely the duty of the legislative body to enact law in such matters, proceeding as such a body does by the process of debate and vote.

Nonetheless, there are cases where the interests of society require the court's intervention on the grounds of public policy. ...

[60] In the case of *Re Estate of Charles Millar, Deceased* [1938] S.C.R. 1 Duff C.J. stated at p. 4:

It is the duty of the courts to give effect to contracts and testamentary dispositions according to the settled rules and principles of law, since we are under a reign of law; but there are cases in which rules of law cannot have their normal operation because the law itself recognizes some paramount consideration of public policy which over-rides the interest and what otherwise would be the rights and powers of the individual. It is, in our opinion, important not to forget that it is in this way, in derogation of the rights and powers of private persons, as they would otherwise be ascertained by principles of law, that the principle of public policy operates.

[61] Public policy, then, embodies the "interests of society" as expressed in the morals of the time, the common law and legislation. In respect to the latter in *Canada Trust Co., supra.*, Tamopolsky, J.A. stated at paras. 92-94:

92 Public policy is not determined by reference to only one statute or even one province, but is gleaned from a variety of sources, including provincial and federal statutes, official declarations of government policy and the Constitution. The public policy against discrimination is reflected in the anti-discrimination laws of every jurisdiction in Canada. These have been given a special status by the Supreme Court of Canada in *Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, 52 O.R. (2d) 799 (note), 17 Admin. L.R. 89, 9 C.C.E.L. 185, 7 C.H.R.R. D/3102, 86 C.L.L.C. Paragraph 17, 002, 23 D.L.R. (4th) 321, [1986] D.L.Q. 89 (note), 64 N.R. 161, 12 O.A.C. 241, at p. 547 S.C.R., p. 329 D.L.R.

The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of

a human rights code the special nature and purpose of the enactment (see Lamer J. in *Insurance Corporation of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145 at pp. 157-58), and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional, but certainly more than the ordinary – and it is for the courts to seek out its purpose and give it effect.

93 In addition, equality rights “without discrimination” are now enshrined in the Canadian Charter of Rights and Freedoms in s. 15; the equal rights of men and women are reinforced in s. 28; and the protection and enhancement of our multicultural heritage is provided for in s. 27.

94 Finally, the world community has made anti-discrimination a matter of public policy in specific conventions like the International Convention on the Elimination of All Forms of Racial Discrimination (1965), G.A. Res. 2106 A (XX), and the International Convention on the Elimination of All Forms of Discrimination Against Women (1979), G.A. Res. 34/180, as well as Articles 2, 3, 25 and 26 of the International Covenant on Civil and Political Rights (1966), G.A. Res. 2200 A (XXI), all three of which international instruments have been ratified by Canada with the unanimous consent of all the provinces. It would be nonsensical to pursue every one of these domestic and international instruments to see whether the public policy invalidity is restricted to any particular activity or service or facility.

[62] In my view engaging in activity which is prohibited by Parliament through the enactment of the *Criminal Code of Canada* falls squarely within the rubric of a public policy violation. In addition, as the applicant has pointed out, the NA’s various communications and activities contravene the values set out in the *Charter of Rights*, provincial human rights legislation as well as the International Conventions which Canada has signed all of which promote equality and the dignity of the person while prohibiting discrimination based on various grounds, including race and ethnic origin.

[63] I find that the information the NA disseminates is hate propaganda which is every bit as "malodorous, malicious and evil" as the material excerpted by Dickson, C.J. in *R v. Andrews, supra.* and which is of the kind targeted by the *Criminal Code* which makes its dissemination illegal. It follows, therefore, and I further find, that the dissemination of it by the NA violates the public policy of Canada.

B. Should the court declare the bequest to be invalid, given that it is made to a beneficiary whose activities are contrary to public policy, but not made for specific purposes?

[64] The respondent and CAFE also submit that cases where the courts have struck wills down as being against public policy are limited and only involve cases where the bequest itself is objectionable such as in the case of *Re Wishart Estate, supra.* They submit that the jurisprudence deals with repugnant conditions that are attached to bequests, not to the quality of the beneficiary as a person or organization. They submit that even in cases where a person has a criminal record, they are still entitled to receive a bequest, the obvious exception being where the crime, such as murder, was committed in order to obtain the bequest. On that issue see Tarnow, N.M. *Unworthy Heirs: The Application of the Public Policy Rule in the Administration of Estates*, (1980), 58 Can. Bar Rev. 582.

[65] CAFE cites the case of *Bolianatz Estate v. Simon*, [2006] S.J. No. 64 where the court refused to invalidate a gift to a beneficiary who had been stealing from the testator prior to the testator's death. In that case Richards, J.A., in separate but concurring reasons, stated at paragraphs 58 & 59:

... the general orientation of the law is very much against involving the courts in superintending the question of whether particular beneficiaries merit their inheritances. Bequests are not denied because a beneficiary is of bad

character, has behaved immorally or has been involved in criminal activity.

In terms of general principle, this recommends itself as a sound approach. It fits with the basic assumption that individuals are entitled to dispose of their property as they see fit. It promotes certainty and efficiency in the handling of wills by avoiding costly and protracted disputes over the proper allocation of testators' assets. And finally, it recognizes and avoids the deep problems involved in attempting to identify the particular kinds of behavior which should deny an inheritance.

[66] They also rely on *Jake Estate v. Antleman* 2006 NBQB 371 where Creaghan, J. refused to void a gift as being against public policy. In that case, he stated at paragraph 22:

Although it may be argued that policies of the State of Israel are not in total conformity with policy of Canada as the country where the Will was executed and with whose law the validity of the Will must conform, I cannot find any basis for finding that a testamentary gift to the Government of Israel is contrary to public policy.

[67] CAFE submits that there is nothing objectionable within the bequest itself. The only objection lies, they submit, within the applicant's perception of the beneficiary and that it should not be interfered with.

[68] They further submit that the gift merely expresses Mr. McCorkill's desire to benefit the National Alliance. There is no evidence, they submit, that the gift contains any conditions or connotation of violence. In that regard, they rely on Section 2 of the *Charter of Rights* which guarantees freedom of speech. They further submit that if a testamentary gift is not subject to any conditions which call for a use that is against public policy then the court should not interfere with the testator's right or freedom to dispose of his estate as he sees fit.

[69] They further submit that if the court intervenes it will open the floodgates to frivolous estate litigation. They submit that the certainty which has long been associated with testamentary bequests and which has served the English common law tradition so well will be eroded if courts intervene in cases where the character and/or quality of the beneficiary is challenged because that, they submit, is irrelevant.

[70] They further submit that since Mr. McCorkill would have been entitled to give money to the National Alliance while he was alive, there should be no reason he cannot do so on his death.

[71] Finally, the respondent submits that there is no evidence before the Court that if the will is upheld the National Alliance will use the money against any minority groups. They support CAFE's submissions and, in particular, submit that voiding this bequest would set a dangerous precedent.

ANALYSIS AND DECISION

[72] While the jurisprudence on voiding bequests on the grounds of public policy tends to deal with conditions attached to specific bequests, in my opinion the facts of this case are so strong that they render this case indistinguishable from those.

[73] Unlike most beneficiaries, the National Alliance has foundational documents which state its purposes. Moreover, those purposes have been expanded upon, explained and disseminated in various forms of media by the NA since its inception. They consistently show that the National Alliance stands for principles and policies, as well as the means to implement them, that are both illegal and contrary to public policy in Canada. If the organization has changed in these respects since its inception then it was incumbent upon the respondent, particularly through the evidence of Erich Gliebe, the current

President of the National Alliance, to demonstrate that in this application. It has not done so.

[74] The facts of this case can be distinguished from most other cases because in most cases, a beneficiary of an estate does not "stand for" something identifiable. They don't have foundational documents. A drug dealer does not "stand for" dealing drugs. He or she may have a criminal record of doing that but that does not mean that that is what they stand for. Their crimes are not the purpose for which they exist, their *raison d'être*.

[75] Unlike in the ***Jake Estate*** case, *supra.*, where there was no finding by the court that the State of Israel's *raison d'être* was contrary to public policy in Canada, in this case it is abundantly clear that what the National Alliance stands for and has stood for since its inception, its *raison d'être*, is contrary to public policy in Canada. In fact, as mentioned earlier, what it stands for, anti-semitism, eugenics, discrimination, racism and white supremacy, violates numerous statutes and conventions that have been passed by Parliament and the Legislatures and endorsed by the Government of Canada, including the ***Criminal Code***.

[76] The evidence before the court convinces me that in the case of the NA the purpose for which it exists is to promote white supremacy through the dissemination of propaganda which incites hatred of various identifiable groups which they deem to be non-white and therefore unworthy. Those purposes and the means they advocate to achieve them are criminal in Canada and that is what makes this bequest repugnant.

[77] It is also what makes this situation comparable, in my view, to a gift to a trustee for a purpose that is contrary to public policy. The law of wills is concerned with the intent of the testator and from the very fact that Mr.

McCorkill left his entire estate to the NA I infer that he intended it to be used for their clearly stated, illegal purposes. For me to find that such a gift was valid would require that I ignore an overwhelming body of evidence. The Court of Appeal has made the point on more than one occasion that trial judges must not "check their common sense at the court room door". Allowing this bequest to stand because it doesn't repeat those stated purposes but bestows the bequest on the organization whose very existence is dedicated to achieving them would be doing just that, in my view.

[78] Moreover, while the bequest doesn't advocate violence, it would unavoidably lead to violence because the NA, in its communications, both advocates violence and supports its use by others of like mind such as skinheads. It attempts, in some of its writings, to profess zero tolerance for violence or illegal activity but its writings and publications consistently expose those disclaimers as disingenuous.

[79] In its foundational documents, and more recently in Mr. Gliebe's affidavit opposing this application which he swore on July 26, 2013, the NA attempts to project an image of itself as a cultural organization promoting traditional European culture and heritage to young people through music and festivals. These feeble protestations only call to mind the attempts by the Nazis in Hitler's Germany to mask their true intentions through organizations like the Hitler Youth. History tells us that behind the mask lurked some of the worst evil ever visited on the human race.

[80] Mr. Gliebe also protests that the NA's records show that the Oklahoma bomber, Timothy McVeigh, and others identified by the SPLC as having been inspired by the writings of the NA were never members of the NA. In my view the fact that there is credible evidence before the court of any connection, no matter how small, between the NA and the evil visited on society by people such

as McVeigh and Joseph Paul Franklin only underlines what Cory, J.A. (as he then was) called "... the destructive effects of the promotion of hatred." and "... the catastrophic results of expressions which promote hatred.": see paragraph 53, *supra*.

[81] CAFE further submits that decisions such as this dealing with public policy should be left to Parliament and the Legislatures and that the courts should not interfere. (See also para. 59, *supra*.) That submission ignores the fact that Parliament has spoken loudly and clearly on this very subject in s. 319(2) of the ***Criminal Code*** as well as the fact that the New Brunswick Legislature has enacted the ***Human Rights Act***, R.S.N.B. 1973 c. H-11, the preamble to which states, in part:

Whereas recognition of the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition or political belief or activity is a governing principle sanctioned by the laws of New Brunswick; ...

[82] That submission also might have carried more weight if, in this case, the Attorney General had not intervened. However, the Attorney General has intervened and clearly stated the position of the government that this bequest is in violation of the public policy of this province and should be voided. It would not be practical for legislatures to pass legislation dealing with individual wills. An intervention such as this by the Attorney General is the only practical way for a government to deal with a particular case in order to ensure that the principles set out in legislation such as the ***Human Rights Act***, *supra*, are upheld. That intervention sends a strong message about the effect of this bequest on the public policy of this province.

[83] CAFE also submits that since Mr. McCorkill was legally permitted to donate money to the NA during his lifetime there is no compelling legal

argument for prohibiting him from doing so on his death. I don't accept the premise of that submission. He may have been able to donate to the NA during his lifetime but I absolutely reject the submission that it was legal for him to assist an organization in the dissemination of hate propaganda. As mentioned earlier the NA's activities offend section 319(2) of the **Criminal Code** and, as a contributor, he would have been a party to that offence.

[84] Moreover, even if the bequest were not illegal but violated public policy for other reasons, the court could still void it. In **Egerton v Brownlow** (1853) 10 Eng. Rep. 359 (H.L.C.) the Lord Chief Baron discussed this in the following passage at p. 417:

... The owner of an estate may himself do many things which he could not (by a condition) compel his successor to do. One example is sufficient. He may leave his land uncultivated, but he cannot by a condition compel his successor to do so. The law does not interfere with the owner and compel him to cultivate his land (though it be for the public good that land should be cultivated) so far the law respects ownership; but when, by a condition, he attempts to compel his successor to do what is against the public good, the law steps in and pronounces the condition void, ...

[85] Thus, in this case if the right of free speech in Canada were unfettered by the **Criminal Code** and Mr. McCorkill could have legally donated to the NA while he was living, this court would still have the authority, on making a finding that the bequest violates public policy, to step in and declare it void. See also **Fox v Fox estate** 1996 CanLii 779 at p. 11.

[86] Mr. Streed also submits that there is no evidence before the court that the NA will use the bequest for any purposes that violate public policy such as inciting hatred against Jewish people and other identifiable minorities. The answer to that submission is found in the foundational documents of the NA which demonstrate that it is dedicated to precisely that and related purposes as

the means of achieving white supremacy, white living space and its other racist goals. The fact that it may use some of the bequest to pay someone to clean its office premises or to fund a cultural festival does not mean that the bequest is used for other purposes. All of its activities are clearly focused on achieving its core purposes and thus any money it spends, from whatever source or for any activity, contributes, either directly or indirectly, to achieving those purposes.

[87] Finally, CAFE and the respondent submit that if the Court intervenes and voids the bequest because of the nature of the beneficiary then the floodgates will be open and estate litigation will flourish where bequests are left to persons who are not of stellar character. In my view, there is little risk of that. Each case must be dealt with on its own merits and I have little doubt that the expense of litigation will discourage frivolous applications. It is difficult to imagine too many applications that would be based on such a strong factual background as this one. On the contrary, in my view, if the court allowed this bequest to stand it would increase the risk of opening the door to bequests to other criminal organizations.

[88] Moreover, the jurisprudence concerning cases that are contrary to public policy goes back 200 years in the English common law tradition and more than a century in Canada alone. Despite that long history, it can hardly be said that there has been a deluge of cases where the courts have intervened in an estate or trust or even a contract on the grounds of public policy.

[89] I therefore find that while the voiding of a bequest based on the character of the beneficiary is, and will continue to be, an unusual remedy, where, as here, the beneficiary's *raison d'être* is contrary to public policy, it is the appropriate remedy.

DISPOSITION

[90] In summary, I find that the purposes of the National Alliance and the activities and communications which it undertakes to promote its purposes are both illegal in Canada and contrary to the public policy of both Canada and New Brunswick. Consequently, I declare the residual bequest to it in the will of Harry Robert McCorkill to be void.

[91] I further declare that as a result of this finding, there is an intestacy with respect to the residue of the estate of Harry Robert McCorkill and that the residue shall be divided amongst the next of kin of the said Harry Robert McCorkill in accordance with the *Devolution of Estates Act*, R.S.N.B. 1973 c.D-9, as amended.

[92] With respect to the administration of the estate, Ms. McCorkill requests that I direct Mr. Streed to turn the assets of the estate over to her lawyer in trust and order Mr. Streed to pass his accounts within 30 days. However, I have not, by this decision, removed Mr. Streed as executor or otherwise invalidated the will nor has Ms. McCorkill provided any grounds for removing Mr. Streed as executor. That would require a separate application under the Probate Rules.

[93] With respect to Mr. Streed's accounts, if he wishes to have them passed for whatever reason, including if he wishes to resign as executor, then he can renew the application he previously made for that purpose to the Probate Court.

[94] Ms. McCorkill also requests, and I hereby make, an order permanently enjoining any individual associated with the estate from distributing, paying or transferring the residue of the estate or any part thereof to the National Alliance without further order of either this Court or the Probate Court.

COSTS

[95] Ms. McCorkill is entitled to her costs on a solicitor and client basis from the estate. Mr. Streed is also entitled to his costs from the estate on a solicitor and client basis. While he has not been successful, he did not write the will. Mr. McCorkill did and Mr. Streed had a duty to propound it as the surviving executor.

[96] The province has not requested costs and CAFE has been unsuccessful in its intervention. While the submissions of CIJA and B'nai Brith have both been helpful, their own purposes were also served by intervening so I will award them each a lump sum of \$3,000.00 including disbursements to be paid out of the estate.



**William T. Grant
Judge of the Court of Queen's Bench
of New Brunswick**