



## Navigating the Complexities of Estate Trustee Appointments

### Legal Opinion and Case Summary: *James Estate (Re)*, 2024 ONCA 623

**Introduction:** The recent decision in *James Estate (Re)*, 2024 ONCA 623, by the Court of Appeal for Ontario on August 21, 2024, highlights the discretion courts have in appointing estate trustees, especially when the proposed trustee has a history of professional misconduct. The ruling emphasizes the judiciary's commitment to upholding public trust in the administration of justice.

### Case Summary

**Background:** Robert Emanuel James executed a will on September 7, 2022, leaving his estate to his four children and his common-law spouse, Ivorine Harrison. He named Eleanor Strachan-Weekes as the executrix and trustee [paras 2–3]. Mr. James passed away in April 2023. Following his death, Ms. Strachan-Weekes renounced her role, and the beneficiaries consented to appoint William John Franklin Bishop as the estate trustee [para 4].

**Procedural History:** William Bishop, a former lawyer disbarred in 2013 for involvement in fraudulent mortgage transactions, applied for a certificate of appointment as estate trustee in July 2023 [para 5]. The application judge, Justice Graeme Mew, raised concerns about Mr. Bishop's potential unlicensed practice of law and the swift actions surrounding his appointment [para 6]. The judge ultimately dismissed the application, leading Mr. Bishop to appeal [para 16].

### Comparison of Decisions

#### Judicial Discretion to Refuse Appointment:

Justice Mew exercised his discretion to refuse Mr. Bishop's appointment, emphasizing the court's responsibility to maintain public confidence in the administration of justice [para 6]. The judge expressed concerns about Mr. Bishop's past professional misconduct and the rapid sequence of events following Mr. James' death that led to the application [para 7].

The Court of Appeal upheld the application judge's discretion, affirming that judges have the inherent jurisdiction to refuse appointments to uphold the integrity of the judicial system, even if the application is unopposed and supported by beneficiaries [paras 28–46]. The court highlighted its supervisory role in estate proceedings under the *Estates Act* and the *Rules of Civil Procedure* [para 32].

#### Relevant Case Law:

- [Neuberger v. York, 2016 ONCA 191](#) ([para. 31])



- [Otis v. Otis \(2004\), 7 E.T.R. \(3d\) 221](#) ([para. 30])

#### **Proper Exercise of Discretion:**

Justice Mew concluded that the circumstances surrounding Mr. Bishop's involvement with Mr. James' estate planning raised legitimate concerns about the unlicensed practice of law. He determined that these concerns outweighed the beneficiaries' support for Mr. Bishop's appointment [paras 11–16].

The Court of Appeal agreed with Justice Mew's assessment, stating that his decision was appropriate given the context. The court emphasized that the judge had balanced the beneficiaries' wishes with the need to maintain public trust in the justice system [paras 47–58]. The lack of evidence to address the judge's concerns about Mr. Bishop's potential unlicensed practice of law was a crucial factor [paras 50–51].

Relevant Case Law:

- [Gonder v. Gonder Estate, 2010 ONCA 172](#) ([para. 33])
- [Radford v. Radford Estate \(2008\), 43 E.T.R. \(3d\) 74](#) ([para. 52])

#### **No Reasonable Apprehension of Bias:**

Justice Mew expressed concerns about Mr. Bishop's professional history and the rapid sequence of events leading to his proposed appointment. He invited Mr. Bishop and the beneficiaries to provide evidence to address these concerns, which they failed to do [paras 7–10].

The Court of Appeal found no evidence of bias in Justice Mew's decision. The judge's comments and approach reflected a proper exercise of judicial discretion and consideration of relevant factors [paras 59–74]. The court noted that the referral of the application to the judge was appropriate, given the need for a judicial order to waive the bond requirement, which was not fulfilled in the application [paras 63–70].

Relevant Case Law:

- [R. v. Teskey, 2007 SCC 25](#) [para 59]
- [R. v. S. \(R.D.\), 1997 CanLII 324 \(SCC\)](#) [para 59]

#### **Motion to Adduce Fresh Evidence:**

Justice Mew invited Mr. Bishop and the beneficiaries to provide evidence addressing the concerns raised. They did not present any new evidence during the initial application process [para 10].



The Court of Appeal dismissed the appellant's motion to introduce new evidence, noting that the evidence could have been presented during the initial application process. The absence of this evidence did not justify reconsideration [paras 18–27].

Relevant Case Law:

- [Palmer v. The Queen, 1979 CanLII 8 \(SCC\)](#) [para 19]
- [Bent v. Platnick, 2020 SCC 23](#) [para 23]

**Conclusion:** The *James Estate (Re)* decision serves as a critical reminder of the courts' vigilant role in overseeing estate trustee appointments. The decision reinforces the necessity for transparency and integrity in legal proceedings, ensuring that the administration of estates is conducted by individuals who uphold the law and public trust.

For those navigating similar legal challenges, our firm offers experienced counsel to guide you through the complexities of estate law and trustee appointments. We are dedicated to providing the meticulous representation needed to achieve favorable outcomes while maintaining the highest standards of legal practice.

[Click here for the full decision](#)

\*Contact us today for a consultation to discuss your estate planning needs and ensure your interests are protected with the utmost integrity and professionalism.

Note: Prospective clients should focus on the Application Judge's November 2023 Decision for detailed insights into the refusal of the appointment and the reasoning behind it.