

CANADA / JUDGMENT

Gill v. Gill

2025 BCCA 86

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 86 Gill v. Gill

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Gill v. Gill,

2025 BCCA 86

Date: 20250226

Docket: CA49815

Between:

Satdev Singh Gill in his personal capacity and in his
capacity as Executor of the Estate of Gurdarshan Singh Gill
also known as Gurdarshan Gill

Appellant

(Defendant)

And

Amarjit Kaur Gill, Lakhdev Singh Gill,
and Sarinder Kaur Gill

Respondents

(Plaintiffs)

Before:

The Honourable Justice Dickson

The Honourable Justice Winteringham

The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated

April 2, 2024 (Gill v. Gill, 2024 BCSC 526, Vancouver Docket S211876).

Oral Reasons for Judgment

Counsel for the Appellants:

D.A. Frenette

A. Girou

Counsel for the Respondents:

D. Hunter

M. Miazek

Place and Date of Hearing:

Vancouver, British Columbia

February 18, 2025

Place and Date of Judgment:

Vancouver, British Columbia

February 26, 2025

Summary:

This is an appeal from the chambers judge's decision to revoke a grant of probate on the basis that notice was not received by a recipient entitled to notice. The appellant raised two grounds of appeal: (1) the chambers judge erred in her formulation and application of the legal test required to prove notice pursuant to s. 121 of WESA and R. 25-2 of the Supreme Court Civil Rules; and, (2) the chambers judge made a palpable and overriding error in her assessment of the evidence tendered in support of the claim of non-receipt.

Held: Appeal dismissed. The chambers judge stated and applied the correct legal test, determining that the deemed delivery presumption was rebutted, that one of the intended recipients had not received notice of the grant application, and in reaching this conclusion, found that the appellant had not shown he made reasonable efforts to effect notice. In her assessment of the evidence, the chambers judge found the intended recipient presented evidence of specific facts and circumstances that established, on a balance of probabilities, that he had not received notice. There was ample evidence to support this finding.

WINTERINGHAM J.A.:

Overview

- [1] The appellant is one of three children of Gurdarshan Singh Gill and Amarjit Kaur Gill. The appellant is the named trustee and sole beneficiary of the father's estate. Gurdarshan died in 2013. In 2019, after mailing the notice to his siblings and his mother at a family property, the appellant obtained a grant of probate of his father's estate. One of the respondents, the appellant's brother, had been living in Mexico for about fifteen years. He attested that he never received the notice and only learned about the grant of probate after he returned to live at the family property in January 2021. Multiple legal proceedings were commenced, including an application to revoke the grant of probate.
- [2] The chambers judge granted the respondents' application to revoke the grant of probate, finding that the appellant did not give notice of the application to his brother, who he knew was living in Mexico at the time he applied for the grant. The appellant now appeals the chambers judge's order. The appellant contends that he did all that was statutorily required of him to give notice to his mother and siblings. He submits the chambers judge fell into error when she compelled a more onerous notice obligation that, in effect, demanded actual notice.
- [3] For the reasons set out below, I would dismiss the appeal. Based on the circumstances before her, the chambers judge accepted, on a balance of probabilities, that one of the entitled recipients did not receive notice, having lived in another country for over 15 years. Having applied the correct legal test, it is my view that there was an ample evidentiary record to support her conclusion.

Background to the Grant Revocation Application

- [4] Gurdarshan Singh Gill and Amarjit Kaur Gill married in 1969 and had three children together, Satdev Singh Gill (the appellant), Lakhdev Singh Gill, and Sarinder Kaur Gill (both respondents).[1] Gurdarshan's parents died in the late 1980s. Some time after Gurdarshan's mother died in 1989, a property in Delta and properties in the Lake Cowichan area were transferred from his mother's estate to Gurdarshan by way of a testamentary trust under his mother's will. In 2012, Gurdarshan's brother commenced a lawsuit against Gurdarshan personally, in his capacity as executor of their mother's estate, and in his capacity as trustee for the testamentary trust. The lawsuit was resolved in 2019 but had delayed probate of Gurdarshan's estate.
- [5] In 2008, Gurdarshan and Amarjit prepared wills. Under his will, Gurdarshan named Satdev as his trustee and left everything in his estate to Satdev. Under her will, Amarjit similarly named Satdev as her trustee and left her estate to Gurdarshan (unless he did not survive her for 30 days at which time the residue of the estate was to go to Satdev).
- [6] In 2019, Satdev, in his role as trustee, instructed his lawyers to prepare an application for a grant of probate of Gurdarshan's estate ("Probate Proceeding"). Pursuant to their instructions, the lawyers sent to each respondent a P1 notice of proposed application in

relation to estate ("Notice") as required by the Wills, Estates and Succession Act, S.B.C 2009, c. 13 ("WESA") and R. 25-2 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules]. The Notice for each respondent was sent by ordinary mail to 5864-104 Street in Delta, British Columbia (the "Family Property").

- [7] On August 6, 2019, the Supreme Court of British Columbia issued to Satdev the grant of probate for Gurdarshan's estate. Between August 6 and August 16, 2019, Amarjit executed her consent and direction regarding the transfer of title of the Family Property to Satdev and on August 29, 2019, Satdev registered the transfer of the Family Property in his name.
- [8] In 2002, Lakhdev suffered injuries (including a brain injury) in a motorcycle accident. Lakhdev deposed that he had been helping his father run various family businesses until the time of his accident. Lakhdev stopped working after the accident. He went on disability benefits for a period of time and moved to Mexico in 2006. It was not disputed that Lakhdev lived in Mexico from 2006 until January 2021 when he returned to the Family Property.
- [9] Lakhdev deposed that he never received the Notice. He deposed that he only learned about the grant of probate in early February 2021. After a conversation with his mother about the Family Property, Lakhdev conducted a title search and learned that the Family Property was registered in Satdev's name. He immediately requested and was provided copies of the application for probate. On February 26, 2021, Lakhdev and his mother and sister filed a wills variation claim under s. 60 of WESA ("Variation Action"). On February 13, 2023, the respondents commenced a separate action challenging the validity of Gurdarshan's will ("Validity Action"). On February 23, 2023, the respondents filed a notice of application in the Probate Proceeding to revoke the grant of probate on the basis that they did not receive the Notice ("Revocation Application"). On February 23, 2023, Satdev filed a notice of application seeking to dismiss the Variation Action, raising a number of issues, including that the Variation Action was commenced out of time. Assuming compliance with WESA and R. 25-2, the limitation period for filing a wills variation action expired on March 3, 2020.
- [10] The Revocation Application (among other applications) came on for hearing July 5-7, 2023. On April 2, 2024, the chambers judge granted the application for revocation and ordered that the grant of probate issued on August 6, 2019 to Satdev be revoked: *Gill v. Gill*, 2024 BCSC 526. The chambers judge found that "Satdev did not give notice of the [Grant Application] to Lakhdev in accordance with WESA, s. 121": at para. 132. The chambers judge declined to determine whether Amarjit or Sarinder received notice.
- [11] On this appeal, the appellant alleges the chambers judge erred in revoking the grant of probate by: (1) misconstruing the test for delivery of notice under R. 25-2(5) and s. 121 of WESA; and (2) finding that notice had not been received.

WESA and R. 25-2

- [12] Section 121 of WESA requires an applicant for a grant of probate to give notice:

121 (1) An applicant for a grant of probate or administration must give notice of the proposed application to the persons referred to in the Supreme Court Civil Rules.

The parties agree that the respondents were all persons entitled to notice under s. 121 of WESA and R. 25-2.

[13] Rule 25-2(5) sets out when and how delivery of notice must be completed:

When delivery occurs under this rule

(5) Delivery of a document under this rule occurs as follows:

(a) if the document is sent for delivery to a person by ordinary mail to the person's mailing address, the document is deemed to be delivered on the date it is mailed;

[14] Section 29 of the Interpretation Act, R.S.B.C. 1996, c. 238, defines the terms "deliver" and "mail" as follows:

29 In an enactment:

"deliver", with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mailbox or receptacle at the person's residence or place of business;

"mail" refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver;

Chambers Judgment

[15] The chambers judge granted the revocation of the grant of probate on the basis that Satdev had not given notice to Lakhdev in accordance with s. 121 of WESA. She found that failure to give notice to Lakhdev was sufficient to revoke the grant, and found it was unnecessary to consider whether Amarjit and Sarinder had been given adequate notice.

[16] Before the chambers judge, the parties assembled an extensive application record for the various applications. The chambers judge summarized the evidence relating to the Notice as follows:

- a) Satdev instructed legal counsel to take steps to probate the will: at para. 58.
- b) On May 16, 2019, the lawyers' legal assistant made an affidavit of delivery in the probate proceeding, stating that she had mailed copies of the Notice and the will to the respondents by ordinary mail on April 26, 2019: at para. 59. The affidavit did not indicate the mailing addresses used: at para. 60.
- c) Satdev prepared an affidavit whereby he attached two letters from the lawyers' office addressed to the respondents: at para. 61. The first letter, dated April 26, 2019, was addressed to each of the respondents (and Lakhdev's daughters) and lists the Family Property as the mailing address: at para. 62. The second letter, dated June 7, 2019, enclosed Gurdarshan's will letter and was sent to the respondents at the Family Property: at para. 63.

- [17] The chambers judge next turned to the issues arising pursuant to the notice dispute, noting that each of the respondents deposed to never having received the Notice: at para. 65. The respondents agreed that the address of the Family Property was the proper personal mailing address for them at times material to the Revocation Application.
- [18] The chambers judge briefly described Lakhdev's evidence about the Notice. He had been living in Mexico since 2006 and came back to Canada in January 2021. After a conversation with his mother, he conducted a title search to the Family Property, learned that title to the Family Property was in his brother's name (not his mother's), and then discovered the Probate Proceeding: at para. 66.
- [19] The chambers judge then described some of the evidence about access to (and control of) the mailbox at the Family Property. Mail addressed to the Family Property was deposited in a Canada Post community mailbox approximately 500 metres from the home. The parties agreed that Satdev often collected the mail: at para. 71. The respondents contended that after July 2018, Satdev had exclusive control of the mailbox. Satdev denies this claim. The chambers judge determined that she did not need to resolve this evidentiary dispute about the mailbox or whether Amarjit or Sarinder received the Notice because of her finding that Lakhdev had not received the Notice.
- [20] The chambers judge then set out the evidence showing Lakhdev's connection to the mailing address used. The chambers judge noted that Lakhdev had moved to Mexico in 2006 and resided there until he moved back to British Columbia in or around January 2021. Lakhdev took the position that Satdev knew that mail sent to the Family Property during the time he was in Mexico would not come to his attention without Satdev taking further steps to bring it to his attention. Satdev agreed that he never told Lakhdev the Notice had been mailed, that he had applied for the grant, or that he was applying for probate for the estate: at para. 84.
- [21] The chambers judge moved to the legal framework governing her resolution of the notice dispute. She set out s. 121 of WESA and R. 25-2. Though decided under the Estate Administration Act, R.S.B.C. 1996, c. 122 (which was repealed and replaced by WESA in 2014), the chambers judge relied on this Court's decision in *Desbiens v. Smith*, 2010 BCCA 394 and cited extensively from it. Following her review of *Desbiens*, the chambers judge found that notice under the Estate Administration Act was to be functional, citing *Desbiens*, where Justice Groberman stated: "The notice requirement in s. 112 [of the EAA] is a functional one - it is not a meaningless pro forma exercise. It is designed to ensure that the persons listed receive notice of probate": at para. 28.
- [22] Relying on *Desbiens*, the chambers judge found that the respondents were entitled to notice under s. 121 of WESA and R. 25-2. She stated that the notice requirement under s. 121 of WESA and R. 25-2 went beyond the functional notice requirement set out in *Desbiens*. The chambers judge commented on the information contained in the Notice and stated that it was intended to provide the recipient an opportunity to assess their legal position in response to the application for a grant of probate. To support this proposition, the chambers

judge highlighted that the notice form mandated under R. 25-2 includes provisions that specifically alert the recipient to the existence of their right to oppose under R. 25-10(1) and their potential entitlement to claim against the estate under WESA: at para. 107. As such, the notice requirement in these circumstances serves as an increased function (at para. 107).

- [23] The chambers judge rejected the appellant's argument that the deemed delivery presumption under R. 25-2(5) was operative in these circumstances. She noted that this Court has held that the word "deemed" in a statute does not always give rise to a conclusive presumption: at paras. 98-99, citing *Gray v. Kerslake*, [1958] S.C.R. 3, 1957 CanLII 21 at 9.
- [24] The chambers judge found that the appellant did not make reasonable efforts to ensure that Lakhdev was given notice pursuant to his obligations under s. 121 of WESA: at para. 117. The chambers judge stated that, where an applicant mails a notice knowing that it is improbable that the notice will come to the recipient's attention, the affidavit of delivery should set out why and what additional steps were taken: at para. 115. Based on the circumstances presented, the chambers judge found that Satdev had failed to show additional steps. The chambers judge set out the basis for her finding that he had failed to make reasonable efforts:
- a) Satdev knew Lakhdev was in Mexico and that it was unlikely that the mail sent to him at the family home would come to his attention without additional steps to bring the mail to his attention: at para. 117.
 - b) Satdev had no basis for believing that the lawyers' letters would be brought to Lakhdev's attention and yet did nothing further to ensure Lakhdev was aware of the letters: at para. 117.
 - c) Lakhdev's evidence, which the chambers judge accepted, demonstrated that he had not received the Notice: at para. 121.
- [25] The chambers judge found that the presumption of delivery was rebutted, based on Lakhdev's evidence that he had not received the Notice and the absence of evidence that he "somehow received the Notice notwithstanding the insufficiency of Satdev[s] efforts": at para. 123.
- [26] After finding that Lakhdev had not received the Notice, the chambers judge turned to consider whether she should exercise her discretion to revoke the grant of probate. She noted:
- [134] A failure to provide notice under WESA, s. 121 does [not] automatically result in a revocation. A failure to comply with WESA, s. 121 only "opens the door" for an application for a revocation order. A revocation order is discretionary and should be approached with restraint: *Desbiens* at paras. 68 and 70.

[27] The chambers judge, adopting the approach in *Russell Estate v. Larson*, 2019 BCSC 135 and *Desbiens*, found that the notice requirement under WESA was not "functionally satisfied" until February 5, 2021, when Lakhdev received and reviewed copies of the Notice, the grant, and the will: at para. 137. She concluded that an order revoking the grant would not be unduly favourable to Lakhdev in the circumstances, in part because he filed the Variation Action within one month after receiving functional notice. The chambers judge stated that no third parties were identified as being prejudiced and the only other persons entitled to receive the Notice were Amarjit and Sarinder. In the end, Lakhdev's claim has sufficient merit to warrant revocation: at para. 142.

On Appeal

[28] At the hearing, the appellant focused his appeal on the following grounds:

- a) First, the chambers judge erred in law by misconstruing the test for delivery of notice under the Rules and s. 121 of WESA, and erroneously concluded that Satdev had an obligation to make additional efforts to provide notice to Lakhdev beyond the requirements of R. 25-2.
- b) Second, the chambers judge erred in her factual findings that Lakhdev had not received notice by finding that the presumption of delivery had been rebutted based solely on Lakhdev's claim that he had not received the Notice.

Positions of the parties

- [29] The appellant takes the position that the chambers judge committed legal errors by formulating a legal test for the delivery of notice which is inconsistent with the requirements of WESA and the Rules. Further, the chambers judge erred in her assessment of the evidence when she found Lakhdev had not received the Notice.
- [30] In other words, the appellant submits that WESA and R. 25-2 do not contemplate personal delivery of notice, nor require an applicant to confirm with intended recipients that notice was received. Rather, the applicant need only meet the minimum threshold of having conducted reasonable efforts in terms of directing the notice to the correct mailing address. The appellant submits that the presumption of deemed delivery under R. 25-2(5) operates in this case because it is undisputed that the lawyers' letters were mailed and that the mailing addresses were admitted by the respondents to be the correct address for delivery.
- [31] The respondents take the position that the deemed delivery presumption under R. 25-2(5) was rebutted on the evidence (at the very least, with respect to Lakhdev) and that the evidence showed that the appellant failed to exercise reasonable diligence to ensure the Notice was received.

Analysis

Standard of review

- [32] I agree with the appellant that the question of whether the judge misstated the test for delivery pursuant to the statutory provisions is a question of law reviewable on a correctness standard: see *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.
- [33] If the chambers judge erred in her finding that Lakhdev had not received the Notice, then the error is reviewable on a standard of palpable and overriding error: see *Housen* at para. 10.

Issue 1: Did the chambers judge err in law (or principle) by misconstruing the test for delivery of notice under the Rules and s. 121 of WESA?

- [34] The appellant's primary submission is that the chambers judge required too much of the appellant in the circumstances presented here. He submitted that the chambers judge incorporated a legal test that demanded proof of "actual delivery" which is not what WESA or R. 25-2 require. Relying in part on the statute, and on *Desbiens and Russell*, the appellant says that the question for the Court was whether the applicant for a grant of probate had exercised reasonable diligence in ascertaining the mailing addresses for intended recipients of the Notice.
- [35] In my view, the chambers judge carefully set out the statutory provisions and jurisprudence that governed her analysis. She identified that s. 121 of WESA allowed for a finding of "deemed delivery": at paras. 98-99. However, she went on to find, correctly in my view, that the deemed delivery provision is not a "conclusive presumption": at para. 96. The appellant conceded as much. The chambers judge considered the requirements for rebutting a presumption such as the one before her and was guided by the analysis in *Toronto (City) v. Alloway*, 2022 ONCJ 557 [Alloway]:
- [6] Despite its conclusory nature, I see no reason why such a denial, if believed on a balance of probabilities, should not be sufficient to displace the presumption. In my view, what else is a defendant - who in fact did not receive the notice in the mail - expected to say other than, "I never received it"? Such a denial may gain further strength if made under oath or affirmation. However, such a denial need not always be believed.
- [36] The appellant relies on *Desbiens and Russell* in support of his submission that the chambers judge found the appellant had not demonstrated reasonable efforts to comply with WESA, s. 121. On this point, the appellant focused on the facts of *Desbiens*, where Justice Groberman had found the only efforts the applicant had made in that case consisted of mailing notices by ordinary mail to speculative addresses. Similarly, in *Russell*, Justice Dardi noted that the applicant had not made any effort to ascertain whether the address for notice was current. In both those cases, the Court looked at what the applicant had actually done and measured that specific conduct against the standard of reasonable diligence.

- [37] Russell and Desbiens both involved cases where the addresses for notice were incorrect. However, in my view, those cases do not stand for the proposition that reasonable diligence will necessarily be proven by locating "correct addresses". Here, the chambers judge stated: "Desbiens did not merely establish a diligence obligation in relation to the addressing of mail. It established the broader proposition that an applicant is obliged to make reasonable efforts to ensure persons entitled to notice are likely to receive notice": at para. 113. She went on to conclude that s. 121 notice is a functional notice. Her words here make the point:
- [114] The function is served when the notice is received. Thus, the diligence obligation requires an applicant to make reasonable efforts to give effective notice. If the goal is effective notice, then the applicant's reasonable efforts must take into account the relevant facts and circumstances known to them.
- [115] Accordingly, an applicant who mails a notice to an address knowing that it is improbable that the notice will come to the intended recipient's attention thereby has not made a reasonable effort. In such circumstances, more effort is required.
- [Emphasis in original.]
- [38] The chambers judge next considered whether Lakhdev had rebutted the presumption of deemed delivery. Adopting the principles from Alloway, the chambers judge accepted, on a balance of probabilities, that Lakhdev did not receive the Notice. I will say more about the sufficiency of the evidence when I address the second issue; however, in my view, this finding was open to the chambers judge.
- [39] In sum, the chambers judge set out the legal framework governing her determination of what was required of the appellant. The chambers judge did not impose a greater obligation on the appellant to prove delivery beyond that required by WESA and R. 25-2(5). Rather, she found in the circumstances that the respondents had rebutted the presumption of deemed delivery, on a balance of probabilities.
- [40] Based on the circumstances before her, the chambers judge determined that more was required of the appellant--relying in part on his own knowledge about his brother's circumstances. The chambers judge was satisfied that the appellant did not make reasonable efforts to give notice to Lakhdev for the purpose of s. 121 of WESA. At times, the appellant in his oral submissions suggested that all that was required was to show he made "reasonable inquiries" (to locate a correct address) or demonstrate "due diligence" (to find the correct address). I agree that in some cases, locating the correct address will be all that is required but in a case such as this one (where there is a tenuous connection to a mailing address), more may very well be required of the applicant.
- [41] On that point, the appellant invited this Court to set out the specific steps required for an applicant to prove reasonable efforts. I would decline that invitation. A formulaic approach is not beneficial. As the chambers judge stated, each case will turn on the particular circumstances presented.

[42] In the case at bar, the chambers judge set out the correct legal test and applied the governing legislative framework and case authority appropriately. She determined that the deemed delivery presumption was rebutted, that Lakhdev had not received the Notice, and in reaching this conclusion, found that the appellant had not shown he had made reasonable efforts to effect notice. I would not accede to this ground of appeal.

Issue 2: Did the chambers judge err in finding Lakhdev did not receive notice?

[43] The appellant submits that the chambers judge erred when she determined that Lakhdev's denial was sufficient to support his assertion that he did not receive the Notice. In his factum, the appellant expressed the submission this way:

[T]he evidentiary threshold for rebutting deemed notice under Rule 25-2(5) is a bare claim of non-receipt made in an affidavit, and a grant may be revoked on such evidence, following a summary hearing without the benefit of live evidence. It is unclear how a personal representative could challenge and disprove such an allegation;

[44] It is my view that this submission ignores the body of uncontroverted evidence before the chambers judge. As stated previously, the chambers judge decided that she did not need to resolve the controversy about the control of the mailbox or whether the appellant and Lakhdev had an "agreement" about the delivery of important documents. Rather, the chambers judge decided the notice issue based on evidence that was not controverted. There was ample evidence before her on which she could base this finding about Lakhdev's non-receipt. I highlight just some of that evidence.

[45] First, it was not controverted that Lakhdev was living in Mexico at the time the Notice was delivered to the Family Property and that he had been living in Mexico for over 15 years. The appellant knew where his brother was living. On the evidence before her, the chambers judge made a reasonable inference that Lakhdev would not receive the Notice unless someone brought it to his attention.

[46] Second, Lakhdev deposed that he did not receive the Notice. The appellant suggests that this evidence was undermined during the examination for discovery of Lakhdev. The appellant identified aspects of an examination for discovery of Lakhdev where he was cross-examined about his mailing address. The appellant points to Lakhdev's admission that the Family Property was the "proper" mailing address:

Q: I want to clear up one issue. Somewhere in the record I think it's in a pleading that the notice ought to have been mailed to you in Mexico.

But in your sworn evidence you admit that you always maintained the Delta property as your mailing address in Canada; am I correct about that?

A: The first part that I've stated that it should have been mailed to me in Mexico, I've never said that.

Q: That's my understanding.

A: I don't agree with that.

Q: What I understand you to have said is Delta property was my address, that was the proper place for my mail to be sent?

A: That's correct.

- [47] I do not agree with the appellant's submission that the cross-examination undermines Lakhdev's denial about receiving the Notice. It does not establish that Lakhdev's denial should be disbelieved. Lakhdev conceded that the Family Property was his mailing address but that concession does not end the inquiry. The cross-examination did not detract from Lakhdev's evidence that he did not receive the Notice. There was evidence to corroborate Lakhdev's assertion that he did not receive the Notice, mailed to an address where he did not reside.
- [48] Third, on his own evidence, the appellant agreed that he never told Lakhdev that the Notice had been mailed or that he had applied for the grant of probate. The appellant knew where his brother was living and took no steps, beyond instructing his lawyers to prepare and mail the Notice, to inform his brother about the application for the grant of probate.
- [49] The uncontroverted evidence constituted much more than a "bare claim of non-receipt". The chambers judge was satisfied that the appellant knew of circumstances that should have caused him to question whether his brother would receive the Notice. The Notice was delivered to an address where Lakhdev had not resided for 15 years. Regardless of the dispute about the mailbox or arrangements for the appellant to organize delivery of "important mail", the Notice contained information important to the recipient, and the burden on the appellant was not an onerous one. Simply put, the appellant knew his brother's circumstances, instructed his lawyer to apply for probate, and then sent the Notice to the Family Property.
- [50] On the facts presented to her, the chambers judge determined that Lakhdev was entitled to receive notice and he presented evidence of specific facts and circumstances that established, on a balance of probabilities, that he did not receive the Notice. There was ample evidence to support the chambers judge's finding.
- [51] I would not accede to this ground of appeal.

Disposition

- [52] For the reasons set out, I would dismiss the appeal.
- [53] DICKSON J.A.: I agree.
- [54] EDELMANN J.A.: I agree.

[55] DICKSON J.A.: The appeal is dismissed.

"The Honourable Justice Winteringham"

[1] The parties share surnames. To avoid confusion and meaning no disrespect, I refer to the parties and family members by their first names.

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