

CANADA / JUDGMENT

Innes v. Innes

2025 BCSC 2602

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Supreme Court of British Columbia

DECIDED

31 October 2025

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2025 BCSC 2602 Innes v. Innes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Innes v. Innes,

2025 BCSC 2602

Date: 20251031

Docket: E232826

Registry: Victoria

Between:

Susan Diane Innes, by her litigation guardians and representatives Robert Stephen Wells, Richard Craig Wells and David Edward Settle

Claimant

And:

Stuart Falconer Innes

Respondent

- and -

Date: 20251031

Docket: 232860

Registry: Victoria

Between:

Susan Diane Innes, by her litigation guardians and representatives Robert Stephen Wells, Richard Craig Wells and David Edward Settle

Plaintiff

And:

Stuart Falconer Innes, Kassandra Innes, Rachelle Innes, Meaghan Innes and Sarah Innes

Defendants

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(Summary Trial)

Counsel for the Claimant

and for the Plaintiffs:

C. Ziegler

T. Brown

Counsel for the Respondent

in the Family Proceeding:

T. R. Fraser

Counsel for the Defendants

in the Civil Proceeding:

M. Mark

Place and Dates of Hearing:

Victoria, B.C.

October 20 and 21, 2025

Place and Date of Judgment:

Victoria, B.C.

October 31, 2025

Introduction and Overview

- [1] This is a summary trial of related family and civil claims made on behalf of Susan Innes ("Ms. Innes") by members of her biological family as litigation guardians against her husband Stuart Innes ("Mr. Innes"), in the case of the family law proceedings, and, in the case of the civil proceedings, also against Mr. Innes's four daughters from an earlier relationship. (I will refer to Mr. Innes's daughters by their first names without any intended disrespect.)
- [2] The family proceeding was the subject of a summary trial earlier at the end of January 2025. On February 11, 2025, I made the following findings, which are the background for the summary trial I am deciding now:
- a) Mr. Innes and Ms. Innes began cohabiting in May 1998. They married on August 28, 1999. Ms. Innes brought into the relationship a home at 3400 Metchosin Road, title to which she had obtained in settlement of her divorce from her previous husband. Mr. Innes did not bring significant assets into the relationship.
 - b) There were no children of the marriage. Ms. Innes has one son from her earlier marriage, David Settle, who along with her two brothers are her litigation guardians in these proceedings. Mr. Innes has four daughters, who, along with him, are the defendants in the civil action.
 - c) The parties entered into a Marriage Agreement dated January 2000. Among other things, it reserved all of the title to the Metchosin Road Property to Ms. Innes.
 - d) In 2011, Ms. Innes decided to gift half the interest in the Metchosin Road property to Mr. Innes. This was accomplished by transferring title from being in her name alone to being in joint tenancy.
 - e) Beginning in 2017, Ms. Innes underwent cognitive decline, as a result of her Alzheimer's condition. She was ultimately hospitalized under the Mental Health Act on July 26, 2022 after she engaged in violent behaviour against Mr. Innes as a result of paranoid beliefs caused by her condition.
 - f) In the summer of 2018, Ms. Innes received two substantial inheritances. The total of the inheritances she received was \$483,747.96.
 - g) After she was hospitalized, Ms. Innes has lived in long term care. Mr. Innes continues to live at the Metchosin Property.
 - h) I held that even though the parties have not divorced or separated, "marriage agreements" under Part 5 of the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA") included agreements governing ownership of property during a marriage. I held that the Marriage Agreement was therefore enforceable despite the absence of a divorce or separation.

- i) I found that the Marriage Agreement permitted gifts and that the transfer of title into joint tenancy in 2011-2012 amounted to a gift to Mr. Innes of half the value of the Metchosin Property.
 - j) The Marriage Agreement also says that property acquired by one spouse after the marriage is not to be shared unless there is evidence of a gift. Therefore, the inheritances were and, to the extent they can be traced, remain, Ms. Innes's property unless Mr. Innes can show that Ms. Innes made a gift of that part of her inheritance.
- [3] The issues I now need to decide flow from these earlier findings.
- [4] In particular, in the family proceeding, I must decide:
- a) What specific property is traceable to Ms. Innes's inheritance and therefore hers alone, unless subsequently made a gift? On this question, the onus is on the litigation guardians.
 - b) What, if any, gifts did Ms. Innes make to Mr. Innes or to his daughters? On this question, the onus is on Mr. Innes.
- [5] I find that Ms. Innes can equitably trace \$99,827 from her inheritance into reductions in the mortgage on or improvements to the Metchosin Road property or, alternatively, into gifts made to Mr. Innes's daughters. I accept that these gifts were valid gifts from him and from his share of the family wealth, but I do not think it is established that Ms. Innes understood that they would come from her inheritance or that she consented to that.
- [6] In light of my findings on these points, I will make a declaration of the parties' respective beneficial interests in the family home, and make orders for its sale based on these findings and based on the time Mr. Innes reasonably needs to find alternative accommodation and the time Ms. Innes's litigation guardians legitimately need to make an offer to buy Mr. Innes out, thereby avoiding the necessity of sale on the open market.

Appropriateness for Summary Trial

- [7] All parties agree that this proceeding is appropriately resolved by summary trial pursuant to Rule 11-3 of the Supreme Court Family Rules [SCFR] and Rule 9-7 of the Supreme Court Civil Rules [SCCR]. I agree. It would be disproportionate to require a full trial and I can find the necessary facts.

Factual Background

- [8] In my previous decision, I reviewed the background to Mr. Innes and Ms. Innes's marriage, Ms. Innes's dementia, her hospitalization and their subsequent physical, but not legal, separation. I will not repeat that.
- [9] For present purposes, what is relevant is what happened to the money Ms. Innes received as an inheritance.

- [10] At the relevant times, Ms. Innes and Mr. Innes had a joint account with Scotiabank, ending in 9382. One sum from her inheritances, \$11,244.10, paid to her in 2020, never went into this account and its proceeds are with Ms. Innes today. The relevant inheritance monies for my purposes were paid into the ****9382 account in two deposits:
- a) \$326,837.14 deposited on July 6, 2018.
 - b) \$145,656.72 deposited August 24, 2018.
- [11] According to Mr. Innes's evidence, prior to receiving the July 6, 2018 payment, Ms. Innes spoke to him about what they should do with the money. She told him that he should open a Tax-Free Savings Account (TFSA). He says he does not recall ever investing in a TFSA before then and that this was her idea.
- [12] While I accept that Mr. Innes's evidence is not neutral and can sometimes be self-serving, this conversation has the ring of truth. It is corroborated by the fact that in July 2018, the maximum allowable contribution was transferred into TFSAs in both Ms. Innes and Mr. Innes's name. I infer from this that, even though Ms. Innes may already have been suffering from cognitive decline to some degree, as of July 2018 she was still competent to make financial decisions. Indeed, she was probably more financially savvy than Mr. Innes at that point.
- [13] On July 6, 2018, the same day as the first inheritance deposit into the 9382 account, the following withdrawals or transfers were made from that account:
- a) \$2,828.77 to pay off a credit card/line of credit;
 - b) \$50,228.18 to pay off a different credit card/line of credit;
 - c) \$57,500 to a TFSA in Ms. Innes's name;
 - d) \$57,500 to a TFSA in Mr. Innes's name;
 - e) \$23,376.99 as payout of the mortgage on the family home.
- [14] That left \$135,403.20 from the inheritance money still in the ****9382 account. All but \$3,352.80 of that was transferred on July 13, 2021 to a joint investment account ending 7600 (\$67,700) and a joint savings account ending 2672 (\$50,000).
- [15] The August 24, 2018 deposit into the ****9382 account was transferred as follows:
- a) \$85,656 to the ****7600 account;
 - b) \$50,000 to the ****2672 account;
 - c) \$3,100 to a line of credit;
 - d) \$6,900.72 remaining in the ****9382 account.

[16] Leaving aside unsecured debts that were paid, this meant that, as of the end of August 2018, the following traceable assets existed from the inheritances:

- a) \$57,500 in each TFSA;
- b) \$100,000 in the ****2672 account;
- c) \$153,256 in the ****7600 account;
- d) \$23,377 in reduced mortgage debt on the family home;
- e) \$10,000 remaining in the ****9382 account.

[17] As Ms. Innes began to decline, Mr. Innes intermixed the joint accounts in ways he can no longer account for. There is therefore little point in further distinguishing between the **2672, **7600 and ****9382 accounts. In effect, they had a total of \$263,256 deriving from the inheritances at the end of August 2018.

[18] Of this, it is agreed that \$100,000 was paid into the trust account of McConnan Bion O'Connor & Peterson (later transferred to Brown Henderson Melbye pursuant to an order of this court), \$80,000 to a GIC (also later transferred into Brown Henderson's trust account) and \$1,114.75 was paid to Richard Wells for a family expense. What is thus at stake (in addition to the characterization of the amounts I stated to be deducted) is what happened to the remaining \$82,141.25.

[19] I note that Mr. Innes says he moved more than this into his sole account. Mr. Innes deposes to the following expenditures, which came out of a larger amount that seems to have included his liquidation of his own TFSA:

- a) \$59,311.74 in House Repairs & Maintenance;
- b) \$8,347.01 in Property Taxes;
- c) \$1,642.50 to the Canada Revenue Agency (it is not clear if this is for Mr. Innes's taxes or Ms. Innes's);
- d) \$9,470.45 for a travel by both Mr. Innes and Ms. Innes to New Zealand;
- e) \$46,450 in gifts to Mr. Innes's daughters, specifically:
 - i. \$14,700 to Meaghan
 - ii. \$19,750 to Rachel
 - iii. \$6,000 to Kassandra
 - iv. \$6,000 to Sarah.

[20] These total \$125,22.71.

- [21] I will address the circumstances of these gifts later, when I address whether the "presumption of resulting trust" when a parent or step-parent transfers value to an adult child has been rebutted with respect to Ms. Innes for these gifts.

Legal Test

- [22] What I left undecided in the previous summary trial of the family proceeding was what assets can be traced from Ms. Innes's inheritance. That is because it was that inheritance that was excluded from equal sharing by the Marriage Agreement.
- [23] But while Ms. Innes can trace into assets, she cannot trace into past expenditures. If money was spent, it was spent. There is nothing to trace.
- [24] To be sure, in principle it is possible for a spouse to bring an unjust enrichment claim against another one and, if the requisite tests are met, get a constructive trust remedy. But I found in the earlier summary trial that this possibility was deliberately foreclosed by Clause 5(a) of the Marriage Agreement: see para. 70 of my Reasons for Judgment ("Clause 5 explicitly tries to contract out of the constructive trust doctrine as exhibited by *Pettkus v. Becker*").
- [25] To be more precise, Clause 5(a) contracts out of unjust enrichment/ constructive trust claims for "benefits conferred by one [party] on the other." It does not contract out of unjust enrichment, constructive trust or resulting trust doctrines for benefits conferred on third parties, such as adult children. So that requires a different analysis, which I will shortly return to.
- [26] But for Ms. Innes to establish that she continues to have an equitable interest in an asset because of the exclusion of the inheritance, she must show that the asset, or some portion of the value of the asset, can be traced to the inheritance. Once she does this, the onus shifts to Mr. Innes to establish a gift.
- [27] With respect to the gifts to the daughters, the general rule is that a gratuitous transfer (i.e., a transfer that is not in return for approximately equivalent value) gives rise to a "resulting trust" back to the transferor. If there is a resulting trust, the transferee has the powers of a trustee, but the benefit of the property remains with the transferor.
- [28] The leading case is *Pecore v. Pecore*, 2007 SCC 17, in which an ageing father placed the bulk of his assets in joint accounts with one of his daughters who lacked the financial security of her siblings. In *Pecore*, the Court confirmed that the presumption of resulting trust continues to apply in modern times and the contrary "presumption of advancement" does not apply to adult children. This is a "rebuttable presumption of law" or "a legal assumption that a court will make if insufficient evidence is adduced to displace the presumption": *Pecore* at para. 22.

- [29] A presumption is of course not the same thing as an absolute rule. While the onus is on the adult child to show that a gift was intended, this onus can be met with appropriate evidence. There will "of course" be situations where a transfer between a parent and adult child was intended to be a gift: *Pecore* at para. 41. The issue is what the court can determine based on a balance of probabilities: *Pecore* at para. 44. As the court stated in *Pecore*, evidence from the transferee is admissible, but of course has to be considered in the light of its potentially self-serving nature.
- [30] In this case, there is the additional wrinkle that what must be proven is not an intention of gift from Mr. Innes or even Mr. and Ms. Innes jointly, but an intention that Ms. Innes meant to make the gift from her inheritance, as opposed to from Mr. Innes's wealth or joint wealth. If the correct interpretation of the evidence is that Ms. Innes understood that a gift was being made, but not that it was coming out of her inheritance, then the gift would still be valid, but it would, between the parties to the family law proceeding, have to be attributed to Mr. Innes. In other words, in these circumstances, there would need to be a constructive trust in the amount of the gift as against Mr. Innes's share of the family home.

What Assets Can Be Traced From the Inheritance

- [31] It is common ground that the TFSA in Ms. Innes's name, and the monies in the Brown Henderson trust account can be traced to Ms. Innes's inheritance.
- [32] In addition, when a person pays a secured debt, equity subrogates the payor into the position of the secured creditor: *Bishopgate Investment Management Ltd. v. Homan*, [1994] EWCA Civ 33, Leggatt L.J. If excluded property is used to pay down a mortgage, then the increased equity as a result of the payment is traceable to that excluded property. This result can also be understood as an example of the principle of "backward tracing" that discharge of a debt used to buy an asset can, at least sometimes, permit tracing into the asset purchased: see *Brazil v. Durant International Corporation*, [2015] UKPC 35 at para. 34, citing *Agricultural Credit Corp. of Saskatchewan v. Pettyjohn*, (1991) 79 D.L.R. (4th) 22 (Sask. C.A.), and *Reid v. Jager*, 2025 BCSC 2599 at paras. 61-68.
- [33] Thus the \$23,377 paid towards the mortgage can be traced as that much value in the home (either as an equalization payment of half of that amount or through payment to Ms. Innes before the remainder is split). To be sure, the fact that this equity is traceable does not mean it was not later a gift, a matter which I will address. But on that latter inquiry, Mr. Innes bears the burden of proof.
- [34] "House repairs" can be traced if, but only if, they increase the value of the property. They cannot be traced if they are regular maintenance and if they are essentially consumption choices of the family (i.e., cost more than the extra value they generate), then only the increased value can be traced.

[35] On the evidence before me, some, but not all, of the "house repairs" can be seen as improvements. I am going to take the approach of rough justice and set that at half the total, or \$30,000. As with the mortgage, it is at least arguable that these improvements were intended to be gifts.

[36] What remains as potentially traceable value are the gifts to the daughters. As with the mortgage and the home repairs, I will address that later.

Was the TFSA a Gift to Mr. Innes?

[37] I am first going address whether the TFSA in Mr. Innes's name was a gift. This may not be of great practical significance if he has liquidated it, but it is relevant, I think, for evidentiary purposes in terms of Ms. Innes's capacity to make gifts at this point.

[38] I find that the payment into Mr. Innes's TFSA was a gift. Ms. Innes proposed it. Indeed, Mr. Innes did not have a thorough understanding of what a TFSA was. The maximum amount was paid in from the account. I find that Ms. Innes understood exactly what was happening, and it can only sensibly be interpreted as gifting the amount of his TFSA to Mr. Innes.

Was the Payment of the Mortgage a Gift?

[39] In light of Ms. Innes's condition, the evidence for what she intended at the time of the payment of the mortgage is necessarily indeterminate, but I find on a balance of probabilities that Ms. Innes did not intend to gift Mr. Innes half of the equity she created by paying off the mortgage.

[40] I accept that Ms. Innes had the capacity to make such a gift in July or August 2018, since she was clearly able to make the gift of the TFSA account. However, putting an inheritance into the equity of the mortgage is not the kind of "benefit" that Clause 5(b) contemplates. Nor is there the kind of clear evidence of an intent to make a gift that I found with the transfer into joint title.

[41] The same logic applies to the improvements funded from the inheritance, but with the additional problem that by the time these improvements were paid for, Ms. Innes had a further diminished capacity to understand what was going on. I find that these were not gifts.

Gifts to Daughters

[42] The evidence of what Ms. Innes wanted to do with the gifts to the daughters all comes either from Mr. Innes or the daughters. In my view, it establishes that she was fine with their receiving the money, but that does not mean she made a conscious decision that this money should come out of her inheritance. Rather, everything in the record is consistent with Ms. Innes agreeing with the idea that the gifts would come out of Mr. Innes's patrimony.

[43] I should make clear that there is no evidence whatsoever that the gifts were some attempt to systematically take advantage of Ms. Innes. In Meaghan and Rachel's case, they were made when there was substantial need. In the case of the other daughters, they were plausibly justified as providing fairness among the Innes's children, including Mr. Settle.

[44] That is, however, a different matter from whether there is sufficient evidence that Ms. Innes intended for the money going to the daughters coming out of her inheritance.

[45] Mr. Innes deposes as follows:

I deny that I gave any money to Meaghan, Rachel, Sarah, or Cassandra without first talking about it with Susan.

I deny that I gave any money to Meaghan, Rachel, Sarah or Cassandra unless Susan agreed.

On many occasions it was Susan's idea to give money to the children.

[46] Each of the daughters gives affidavit evidence of an interaction with Susan prior to the gift they received which also indicate that she understood there was going to be a gift and supported it.

[47] Mr. Mark relies on Ms. Innes's statements to her solicitor Bradley Bianchi on April 29, 2022 and May 5, 2022. Because these are statements of a party, they fit within an exception from the hearsay rules when relied on by a party adverse in interest. However, they do not, in my judgment, support the proposition that Ms. Innes understood herself to be giving the daughters a gift.

[48] In the April 29 meeting, Ms. Innes is recorded as saying, "Not to step-children b/c they have not contribute[d] to assets and just take from Susan." In the May 5 meeting, she is recorded as saying, "Stuart has systematically funnelled her inheritance money of approx. \$750K to various TSFFAs & other accounts to his kids without Susan's knowledge or consent".

[49] Mr. Bianchi had some concerns about memory loss but considered she was competent to give instructions to a lawyer.

[50] I am not willing to rely on these statements for the truth of what Mr. Innes or the daughters actually did and presumably Mr. Mark does not ask me to. So they do not show that money from Ms. Innes in fact was funnelled to the daughters since the vehicle for this, in Ms. Innes's opinion at the time, was surreptitious actions by Mr. Innes and/or the daughters that she could not testify to.

[51] On the other hand, the statements are evidence of state of mind and thus evidence that, as of Spring 2022 at least, Ms. Innes did not believe she had consented to gifts to the daughters from her wealth.

[52] I am conscious that by this time, Ms. Innes may already have been exhibiting paranoia. It was only a few months later that she physically attacked Mr. Innes based on a delusional belief he was trying to kill her cat. I think it is probable that she was aware that there was

money going to the daughters when the gifts were made and I also find it probable that she was agreeable to this at the time. But she may well not have realized that the money would effectively come entirely from her inheritance. There is no evidence that this was ever explained to her, let alone that she gave informed consent to that prospect. This may have been part of what she was reacting to when she met with Mr. Bianchi, albeit filtered through a developing paranoia.

- [53] I find, on a balance of probabilities, that Ms. Innes never gave informed consent to gifts coming out of her own inheritance. She did give consent to gifts coming out of Mr. Innes's share of the equity in the home.
- [54] There is no doubt that Mr. Innes wanted to make a gift to his daughters and that this was bound to come out of the wealth that the Inneses had accumulated. But to rebut the presumption of resulting trust, I would need convincing evidence that Ms. Innes understood these gifts were coming out of her inheritance, and that evidence is not available.

Constructive Trust Interest

- [55] Ms. Innes can equitably trace the value of the mortgage repayment (\$23,377), \$30,000 in improvements and \$46,450 in gifts to the daughters from her inheritance. This totals \$99,827.
- [56] The most appropriate remedy is to recognize a constructive trust in this amount on the property, which would have to be discharged after sale and prior to disbursing the proceeds between the parties. If Ms. Innes buys out Mr. Innes, she should be entitled to do so for half the appraised value of the property (\$890,000) less this amount (i.e., \$790,173). That would be \$395,086.50.

What to Do With the Civil Action

- [57] In light of the way I have resolved the family claim, the civil claim becomes unnecessary. Ms. Innes does not have a claim for tracing or unjust enrichment against the daughters because she can be made whole as against Mr. Innes in the family proceeding through a constructive trust. The gifts are clearly valid as between Mr. Innes and his daughters and there is enough equity to pay for them. I need not analyze what would happen if Ms. Innes could not be made whole, which would raise difficult factual and legal issues.
- [58] In the circumstances, I think the appropriate thing to do is to stay the civil action on the basis that it can only be revived if, for some reason, Ms. Innes is not able to obtain the value of the gifts through the family home, either by buying out Mr. Innes based with a credit for the constructive trust interest I have recognized or through payout in a sale to a third party.

[59] In the (apparently unlikely) event that she is unable to recover the amounts of the gifts from the Property, the judge adjudicating the claim would have to determine whether the daughters had changed their position in reliance on the apparent validity of the gifts. Because it is unnecessary for me to do that, I make no findings on that point.

Conclusion and Order

[60] I therefore order as follows:

1. A declaration is made that Ms. Innes has a constructive trust interest in the amount of \$99,827 in the property with a civic address of 3400 Metchosin Road, Victoria, B.C. (the "Property").
2. A declaration that this constructive trust interest ranks, in equity, in priority to the equitable interests of Ms. Innes and Mr. Innes declared by the court on February 11, 2025.
3. The claimant has the right to purchase full legal and equitable title to the Property by providing a binding offer, with proof of financing, to the respondent no later than 4 p.m. on December 31, 2025.
4. If the claimant does not provide the respondent an offer as set out in paragraph 3, or waives her right to make such an offer, the parties will have joint conduct of sale of the Property.
5. The claimant's offer to buy out the respondent must provide the respondent until 4 p.m. April 30, 2026 to deliver vacant possession, unless otherwise agreed by the respondent.
6. An accepted purchase of the property must not provide for possession earlier than 4 p.m. April 30, 2026, unless otherwise agreed to by the respondent.
7. After deduction of all reasonable incidental costs of sale, including legal fees, realtors' fees and other expenditures either to complete the transaction or to get the Property ready for sale, the proceeds will be paid out as follows:
 - a) \$99,827 to Ms. Innes in return for her constructive trust interest in the Property;
 - b) All remaining proceeds to be split equally between Ms. Innes and Mr. Innes.
8. A permanent stay of proceedings of Victoria Registry No. S232860, to be reinstated only on evidence that Ms. Innes is unable to recover.

(SUBMISSIONS ON COSTS)

[61] THE COURT: Neither party was substantially successful in the family law proceeding. I order that the parties bear their own costs of that proceeding.

- [62] Costs are in the cause for the civil proceeding. If, as I expect, the civil action can be resolved without further litigation, then the parties can arrange to come before me to resolve costs of that proceeding if they cannot work them out themselves. I do not really have enough information to resolve the issues there. I expect such an application would take about half a day, so I encourage the parties to work out the costs of the civil action themselves. If there is substantive litigation, then the judge addressing that can also address costs.
- [63] So the order today will just be costs in the cause for the civil proceeding and each party bears his or her own costs in the family proceeding. Once the Property has been dealt with, the parties to the civil proceeding have leave to come to me for a dismissal order and I will deal with costs then.

"J. G. Morley, J."

The Honourable Justice Morley

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