

CANADA / JUDGMENT

## Robson v. Pellerin

2025 ONCA 680

### COURT

Court of Appeal for Ontario

### DECIDED

3 October 2025

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Robson v. Pellerin

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COA-24-CV-0175

Judges

Thorburn, Julie; Copeland, Jill M.; Gomery, Sally A.

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Robson v. Pellerin, 2025 ONCA 680

DATE: 20251003

DOCKET: COA-24-CV-0175

Thorburn, Copeland and Gomery JJ.A.

BETWEEN

John Sinclair Petifer Robson

Applicant (Appellant)

and

Marie Carmel Brigitte Pellerin

Respondent (Respondent)

Shawn Duguay, for the appellant

Marie Carmel Brigitte Pellerin, acting in person

Heard: September 3, 2025

On appeal from the order of Justice Pamela MacEachern of the Superior Court of Justice, dated January 19, 2024.

Copeland J.A.:

- [1] This appeal arises out of a strenuously contested trial that required the trial judge to decide many issues. The issues included parenting, child support, spousal support, whether there was a valid and enforceable separation agreement, a claim by the appellant for an order vesting title to the matrimonial home and cottage in his name as of the date of separation, equalization and post-separation adjustments, and the sale of the matrimonial home and cottage.
- [2] The appellant appeals from aspects of the trial judge's order relating to the equalization calculation, post-separation adjustments to the equalization payment, and the term of his spousal support payments.
- [3] The respondent appeared at the hearing, but chose not to file a factum addressing the issues on appeal. Although she provided brief oral submissions, she did not address the specific issues raised by the appellant.
- [4] I would allow the appeal in part in order to correct the credit for adjustments for post-separation payments. In all other respects, I see no error in the trial judge's conclusions.
- (1) Equalization [5] The appellant challenges two aspects of the equalization calculation related to funds loaned to the appellant by his mother.
- [6] First, he argues that the trial judge erred in calculating his net family property by assigning no value on the valuation date to the debt he claims was owed to his mother.
- [7] The factual context for this ground of appeal is as follows. The parties were married on March 17, 2001. The trial judge found that the date of separation and valuation date was August 4, 2016. The appellant claimed \$508,000 as the debt owed to his mother on the valuation date. This was comprised of \$53,000 advanced to the appellant before the date of the marriage, and \$455,000 advanced in three payments after the date of the marriage and

prior to the date of separation (the valuation date). The respondent did not deny that these funds were advanced to the appellant. But she argued that they were gifts and were traceable into the matrimonial homes, and thus should not reduce his net family property, pursuant to s. 4(2)5 of the Family Law Act, R.S.O. 1990, c. F.3 (“FLA”).

- [8] There was contested evidence on how to characterize the funds. In her analysis, the trial judge first considered the respondent’s argument that the funds were traceable into the matrimonial home and cottage. The trial judge found that the \$455,000 the appellant received from his mother post-marriage was traceable into the matrimonial home and the cottage (also a matrimonial home). Because these funds were traceable into the matrimonial home and cottage, the trial judge held that if they were gifts, they would not be excluded from the appellant’s net family property calculation under s. 4(2) of the FLA.
- [9] The trial judge then considered whether the funds were loans or gifts. Weighing all the evidence, the trial judge concluded on a balance of probabilities that the funds given to the appellant by his mother were loans at the time that they were advanced, “subject to repayment if she needed the money”. However, the trial judge found that all the debt was forgiven upon his mother’s death on May 3, 2015, prior to the valuation date. As a result, the trial judge found that there was no longer a debt owed by the appellant as of the valuation date. In other words, the trial judge valued the appellant’s claim to the debt owed to his mother as zero in the calculation of his net family property at valuation date because it was no longer payable. The trial judge did, however, include the \$53,000 that the appellant owed to his mother on the date of marriage as a debt owed by him on the date of marriage.
- [10] The appellant submits that the trial judge was correct in finding that the \$508,000 was advanced as loans, and does not challenge her finding that \$455,000 of these funds were traceable into the matrimonial home and cottage, and thus not excluded from the appellant’s net family property if the funds from his mother are characterized as gifts. However, the appellant argues that the trial judge erred in finding that the loans were forgiven by the estate at the time of his mother’s death and, as a result, erred in discounting their value to zero as of the valuation date. The appellant argues that each of his mother’s three children had received loans from her of roughly \$500,000, and that as the beneficiaries of the estate, they agreed to set off the loan amounts against each of their share of the estate. As such, they each “notionally” repaid their loan to the estate and received a further one-third share of the remainder of the estate.
- [11] The trial judge’s approach is consistent with the jurisprudence of this court. This court has approved the approach described in *Poole v. Poole* (2001), 16 R.F.L. (5th) 397 (Ont. S.C.), at paras. 35-36:

Even though a debt may have a specified face value, if the evidence indicates that it is unlikely that the promissor will ever be called upon to pay the debt, the value of the debt should be discounted to reflect that reality.

There is a compelling reason for taking this good hard look at the reality of the situation. A debt constitutes a credit in the equalization calculation, and reduces the net family property of the spouse claiming the debt. This has a direct impact on the equalization payment due, by either reducing the amount that party has to pay to the other (if he has the higher net family property), or increasing the amount that he will receive (if his net family property is lower). Fairness dictates that he should not receive a credit for a debt, with the financial benefits that flow from that credit, if he will never be called upon to pay the debt.

See *Cade v. Rotstein* (2004), 50 R.F.L. (5th) 280 (Ont. C.A.), at paras. 7-8.

- [12] Indeed, the appellant accepts that the trial judge applied the correct legal framework – from *Poole* – in assessing the probability that the appellant would be required to repay the loans as of the valuation date. However, he argues that she erred in not accepting his submission that he “notionally” repaid the loans to his mother’s estate.
- [13] This is an argument challenging the trial judge’s findings of fact. Such findings are entitled to deference and are reviewable on the palpable and overriding error standard. The trial judge considered the appellant’s argument about notional repayment of the loans and setting off the loans against what the beneficiaries, including the appellant, were entitled to receive from the estate. Based on her assessment of the evidence, the trial judge rejected this argument.
- [14] The trial judge’s reasons demonstrate that she carefully considered the evidence on this issue. In finding that the loans were forgiven by the mother’s estate, the trial judge relied on the following evidence: although the appellant had paid interest monthly on the loans prior to his mother’s death, he did not make any payments after his mother’s death; he never received a demand for payment from the estate; and the assets of the mother’s estate listed in the executor’s statement did not include debt owed by the appellant (or his siblings). The trial judge also rejected the appellant’s argument that the debt was not forgiven on his mother’s death because, if the estate needed the funds, it could have made a demand for payment from him, and therefore the debt was still owing until the estate was fully administered. The trial judge found that given the value of the estate (approximately \$1.15 million) and its estimated liabilities (\$113,000), there was no reasonable probability that the estate would make a demand on the loan for this reason. Even if the appellant continued to have a contingent liability to repay some portion of the debt after his mother’s death, the trial judge valued it at zero as of August 4, 2016.
- [15] I would add that the trial judge’s finding that the loans were forgiven on the appellant’s mother’s death is consistent with her finding that the loans were only subject to repayment if the appellant’s mother needed the money. When the appellant’s mother died with more than sufficient funds in her estate to cover the estate’s liabilities, there was no basis to find that she would need the money and hence no basis to find any continuing obligation on the part of the appellant to repay the loans at that point.

- [16] I am not persuaded that the trial judge made any palpable and overriding error in finding that the loans had been forgiven prior to the valuation date and, as a result, discounting their value to zero as of the valuation date. I would reject this ground of appeal.
- [17] The appellant's second argument regarding equalization and the treatment of the loans from his mother is made in the alternative. He argues that if the trial judge did not err in finding that the estate had forgiven the loans and, as a result, valuing them at zero as of the valuation date, she erred in treating the loans differently on the date of marriage and the date of separation. He argues that the effect of including the \$53,000 loaned to the appellant before the marriage as a debt at the date of the marriage is the same as concluding that the appellant repaid the \$53,000 during the marriage. Since the trial judge also found as a fact that all of the loans from the appellant's mother were forgiven by the estate at her death, the appellant argues that the trial judge's analysis is inconsistent and cannot stand.
- [18] I do not agree.
- [19] The process for calculating net family property for the purpose of equalization is strictly defined by the FLA. Section 4(1) of the FLA defines "net family property" as:
- the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,
- (a) the spouse's debts and other liabilities, and
  - (b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse's debts and other liabilities, other than debts or liabilities related directly to the acquisition or significant improvement of a matrimonial home, calculated as of the date of the marriage[.]
- [20] This definition specifically requires a spouse's property to be calculated as of the valuation date and "as of the date of the marriage".
- [21] The trial judge made a factual finding that the debts owed by the appellant to his parents were forgiven at the time of the mother's death on May 3, 2015. The appellant's mother's death preceded the valuation date by 15 months. Because the trial judge found that the loans were forgiven on the appellant's mother's death, there was no debt owing on the valuation date. However, "calculated as of the date of the marriage", as required by the FLA, the \$53,000 loan that long preceded the mother's death was properly characterized as a debt at that time.
- [22] This conclusion is driven by the factual findings of the trial judge and the provisions of the FLA. The specificity of the definition of net family property in the FLA is intended to promote certainty, predictability, and finality in the resolution of property issues at the end of a marriage: *Serra v. Serra*, 2009 ONCA 105, 93 O.R. (3d) 161, at para. 56. It is precisely for this reason that the threshold for departure from strict application of the formula, which the FLA itself contemplates under s. 5(6), is exceptionally high. As Blair J.A. states at para. 47 of

Serra: “The jurisprudence is clear that circumstances which are ‘unfair’, ‘harsh’ or ‘unjust’ alone do not meet the test. To cross the threshold, an equal division of net family properties in the circumstances must ‘shock the conscience of the court’[.]”

- [23] The appellant asks this court to do indirectly what cannot be done directly under the FLA: reassess what was clearly a debt at the date of marriage with the benefit of hindsight to avoid unfairness. Since unconscionability, not unfairness, is the threshold for departure from a strict application of equalization, this argument fails. The trial judge did not err in finding that the \$53,000 that the appellant owed to his mother at the date of the marriage should be included in the calculation of his property, debts, and liabilities at the date of marriage.
- (2) Post-separation adjustments [24] The appellant also argues that the trial judge erred in her treatment of two categories of post-separation adjustments claimed by him.
- [25] First, the appellant argues that the trial judge erred in giving him no credit as a post-separation adjustment for \$155,945.08 received as an inheritance from his mother’s estate and deposited into the parties’ joint account after the date of separation. This money was used for the benefit of the family, for the maintenance and improvement of the two jointly owned real properties, and to meet both parties’ expenses. He argues that, absent any evidence of his intention to gift these monies to the respondent, he should have been given credit for his sole contribution to these joint expenses. He argues that as with the inherited funds applied to the parties’ line of credit, he is entitled to a credit of 50 percent of the amount paid, \$77,972.54.
- [26] The circumstances relating to this argument are as follows. As noted above, the appellant’s mother died on May 3, 2015. On November 17, 2016 (i.e., post-separation), the appellant received an interim distribution of his inheritance from his mother’s estate of \$315,165.18. He used \$159,220 of that total to pay off a joint line of credit that same day. He then deposited \$155,945.08 into the parties’ joint account.
- [27] The trial judge found that the \$315,165.18 inheritance vested in the appellant at the date of his mother’s death (pre-separation), but was excluded property under s. 4(2) of the FLA. She then considered the impact of the appellant’s use of these funds after separation. She accepted the appellant’s argument that the \$159,220 paid into the line of credit was used to pay off debt incurred for family purposes that the parties were equally responsible for. She also found that the evidence did not support that the appellant intended to gift half of this benefit to the respondent without receiving credit as part of the resolution of their financial affairs post-separation. On this basis she credited the appellant with paying \$79,619.95 to the respondent’s benefit. This amount covered her half of the joint line of credit. This conclusion is not appealed.
- [28] However, the trial judge rejected the appellant’s argument that he should be credited for half of the \$155,945.08 from the inheritance deposited to the joint account post-separation. The trial judge reasoned that the joint account continued to be used to pay family expenses and she was not satisfied that there was evidence that specific expenses accrued solely to the

benefit of the respondent. The trial judge found two exceptions to this conclusion, and credited the appellant for them: in December 2016, an investment was made in the respondent's TFSA in the amount of \$46,500; and in the spring of 2018, a vehicle was purchased for the respondent in the amount of \$13,394.[1] For these two expenses, the trial judge found evidence of a benefit accrued solely to the respondent from the inheritance funds deposited to the joint account, and that the appellant did not intend to gift them to the respondent without receiving credit as part of the resolution of their financial affairs after separation.

- [29] I agree with the appellant that just as with the inherited funds applied to the parties' joint line of credit, in light of the undisputed evidence that the other money deposited into the joint account was also used primarily for joint expenses, the appellant is entitled to credit for 50 percent of this amount as well.
- [30] However, I disagree with the appellant's calculation that he is entitled to \$77,972.54, or half of the \$155,945.08 of inheritance funds deposited into the joint account after separation. As noted above, the trial judge credited the appellant with post-separation payments of \$46,500 for the respondent's TFSA and \$13,394 for the purchase of a vehicle for the respondent because she was satisfied that these amounts had been expended to the respondent's sole benefit. This is a total of \$59,894 for which credit for post-separation payments has already been ordered out of the inheritance money. That leaves \$96,051.08 of the \$155,945.08 that one can infer went toward joint expenses. The appellant is entitled to a credit for half of this balance of \$96,051.08. As a result, I would conclude that in addition to the \$59,894 already credited to the appellant by the trial judge, the appellant is entitled to a further post-separation credit of \$48,025.54.
- [31] Second, the appellant argues that the trial judge erred in failing to give him credit for post-separation payments for expenses he paid related to carrying costs, maintenance, and claimed improvements to the matrimonial home and cottage.
- [32] The trial judge made no adjustment for post-separation expenses incurred by the appellant related to the maintenance, carrying costs, and claimed improvements to the matrimonial home and cottage.
- [33] I note that the appellant did not frame this issue at trial as he frames it on appeal. At trial, the appellant made a claim based on proprietary estoppel that the title to the matrimonial home and the cottage should vest in him as of the date of separation, August 4, 2016. The trial judge rejected the appellant's proprietary estoppel claim. The appellant does not appeal the trial judge's rejection of this claim.
- [34] As the appellant did not frame this issue at trial as a request for a post-separation adjustment, it is difficult to fault the trial judge for not giving the appellant credit for an adjustment for the maintenance, carrying costs, and claimed improvements to the matrimonial home and cottage.

[35] In any event, the trial judge's findings in relation to the appellant's proprietary estoppel claim fatally undermine the appellant's argument on appeal that he should be credited for post-separation payment of expenses related to the home and cottage.

[36] After the respondent moved out of the matrimonial home, the appellant occupied both the matrimonial home and the cottage exclusively, without paying occupational rent. In rejecting the proprietary estoppel claim, the trial judge made, inter alia, the following findings:

The father continued to occupy the house and cottage and received a corresponding benefit in doing so. These benefits included that he used the home for his business office. The mother is not seeking occupation rent from him. Although the father produced a significant list of expenses that he incurred for both properties since June of 2018, most of these related to his personal occupation, use and enjoyment of the property. To the extent that such expenses related to the capital of the property, such as property taxes and home insurance, these were more than offset by the benefit the father enjoyed through his continued use of the properties.

The father describes many of the expenses he paid as "renovations", such as renovating the bathroom and painting the exterior of the home and renovating the kitchen at the cottage. None of these were undertaken with the mother's agreement, and there was no evidence before me, including from the expert appraisers who testified, that the renovations resulted in an increase in the market value of the properties. I find that all of the expenses incurred by the father related to his personal use and enjoyment of the properties, which does not support an equitable claim.

[37] These factual findings by the trial judge foreclose the appellant's claim for a post-separation adjustment based on expenses related to the matrimonial home and cottage. I see no basis to interfere in them. I would reject this ground of appeal.

(3) Spousal support [38] The appellant argues that the trial judge erred in failing to account for the period of post-separation cohabitation of close to two years in calculating the ten years of periodic spousal support payable to the respondent. The appellant argues that the ten years of spousal support ought to have commenced at the date of separation, August 4, 2016, rather than starting on July 1, 2018, a few days after the date the respondent moved out of the matrimonial home (on June 25, 2018).

[39] The trial judge found that the respondent was entitled to ongoing periodic spousal support on a compensatory basis, payable for ten years from July 1, 2018 to July 1, 2028 at the "mid range" of the Spousal Support Advisory Guidelines. The trial judge based the commencement date for spousal support, July 1, 2018, on the respondent moving out of the matrimonial home on June 25, 2018. The trial judge found that the respondent did not begin to focus on her career, which had been treated as secondary to the appellant's once they had children, until she moved out of the matrimonial home. She found that the parties continued to be financially intertwined during the two years they lived in the matrimonial home after the date of separation. The appellant had been paying spousal support to the respondent since July 1, 2018 under an interim order by Mackinnon J. dated November 21,

2019.

- [40] On appeal, the appellant does not challenge the respondent's entitlement to spousal support or the quantum of support ordered, only the commencement date. He argues that by fixing the start date for the ten years of spousal support as July 1, 2018, the trial judge gave him no credit for the almost two years that the parties continued to cohabit post-separation, during which time he argues that he continued to provide a significant financial benefit to the respondent.
- [41] In recognition of the discretion involved in crafting spousal support orders and in order to promote finality, absent reviewable error, a trial judge's decision in relation to spousal support is entitled to significant deference: *Hickey v. Hickey*, [1999] 2 S.C.R. 518, at paras. 11-12. As the Supreme Court cautioned in *Hickey*, at para. 11, "appeal courts should not overturn support orders unless the reasons disclose an error in principle, a significant misapprehension of the evidence, or unless the award is clearly wrong." Indeed, even where there is an error in the manner in which a trial judge calculated support, this court may choose not to intervene if, "when all factors are considered, it remains a fit and appropriate award in the circumstances of [the] case": *Green v. Green*, 2015 ONCA 541, 387 D.L.R. (4th) 512, at para. 66.
- [42] I see no basis to interfere in the trial judge's decision that the ten years of support would commence on July 1, 2018. The trial judge was clearly alive to the fact that the parties continued to live in the same house for almost two years after the date of separation. That fact was germane to several issues before the trial judge, including the date of separation (contested below, although not in issue on appeal), the issues regarding post-separation adjustments to equalization, and spousal support. I am not persuaded that the trial judge failed to consider that the parties continued to live under the same roof for almost two years after the date of separation in her determination that support should be payable for ten years from the date the respondent moved out of the matrimonial home. I see no palpable and overriding error in her conclusions on spousal support. I would reject this ground of appeal.

## Disposition

- [43] I would allow the appeal in part. The appellant is entitled to a further credit as a post-separation adjustment in the amount of \$48,025.54. I would add this amount to the list of credits for post-separation payments at para. 34 of the trial judge's order.
- [44] In light of the divided success, I would make no order for costs of the appeal.

Released: October 3, 2025 "J.A.T."

*"J. Copeland J.A."*

*"I agree. Thorburn J.A."*

*“I agree. S. Gomery J.A.”*

- [1] The trial judge noted that this figure was based on her making a slight reduction due to a dispute about the protection plan that was purchased for the vehicle.

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