

CANADA / JUDGMENT

Strutzenberger v. Strutzenberger

2025 ONCA 836

COURT

Court of Appeal for Ontario

DECIDED

1 December 2025

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Strutzenberger v. Strutzenberger Collection Decisions of the Court of Appeal Date 2025-12-01
Neutral citation 2025 ONCA 836 Docket numbers COA-25-OM-0427 Judges Paciocco, David M.
Subject Family Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Strutzenberger v.
Strutzenberger, 2025 ONCA 836 DATE: 20251201 DOCKET: COA-25-OM-0427 Paciocco J.A. (Motion
Judge) BETWEEN Peter Alexander Strutzenberger Applicant (Moving Party) and The Director,
Family Responsibility Office, for the benefit of Freida Marlene Strutzenberger Respondent
(Responding Party) Peter Alexander Strutzenberger, acting in person Ian Matthews, appearing as
amicus curiae, Pro Bono Ontario Heather Puchala and Peter Howie, for the responding party
Heard: November 26, 2025 REASONS FOR DECISION

- [1] On February 23, 2018, a final spousal support order was issued against Peter Strutzenberger by Newton J., which imposed a retroactive support obligation for the years 2013-2017. Mr. Strutzenberger ultimately abandoned his appeal of that order. On February 23, 2021, Fregeau J., who was case managing a motion for change that Mr. Strutzenberger had initiated of the same February 2018 final order, noted that a prior motion to change had been litigated, and commented: The Respondent now seeks to re-litigate the same issues a third time. I have expressed my opinion on the merits of the Respondent's position and therefore recuse myself from hearing contested aspects of this matter going forward.
- [2] The motion to change was resolved by Pierce J. on June 9, 2023. Mr. Strutzenberger unsuccessfully appealed that order to this court (2023 ONCA 755). He brought a further motion to extinguish his spousal support arrears and costs, which was dismissed on February 20, 2024. An appeal of that order to this court was also dismissed on June 10, 2024 (2024 ONCA 455).
- [3] On March 6, 2025, the Family Responsibility Office initiated a default hearing against Mr. Strutzenberger in which he was ordered to pay arrears of \$52,567.92, and in default of payment, to be incarcerated for 90 days. That same day he was taken into custody and ultimately served the sentence imposed.

- [4] On August 15, 2025, Mr. Strutzenberger argued a motion in the Superior Court of Justice to extend the time to appeal the final default order of March 6, 2025, which was dismissed by Fregeau J. in reasons released on August 19, 2025. Mr. Strutzenberger now wishes to appeal the denial of the extension and seeks an extension of time to do so. He forwarded a Notice of Appeal dated October 1, 2025. Although it is not clear when that document was served or provided to the court, I will assume for the purpose of this motion that it was the same day. He was therefore approximately two weeks late in initiating his appeal.
- [5] Discretion may be exercised to extend the time to appeal prescribed by r. 61.04 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, where it is in the interests of justice to do so based on relevant considerations including: (i) an intention to appeal within the appeal period; (ii) the length of the delay in appealing and whether that delay is persuasively explained; (iii) the degree of prejudice to the responding party; and (iv) the merits of the proposed appeal: *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15; *Liu v. Chan*, 2024 ONCA 699, at para. 16.
- [6] I do not doubt that Mr. Strutzenberger formed the intention to appeal within the appeal period, and I have no reason to doubt his explanation for the delay, namely his health concerns after being released from jail and his mistaken assumption that the appeal period did not begin to run until the issued and entered order was obtained on September 4, 2025. As a general rule, the time period to deliver a notice of appeal runs from the date a judgement is pronounced, not the date it is signed and entered: *Fontaine v. Canada (Attorney General)*, 2012 ONCA 206, 289 O.A.C. 190, at paras. 57-60; *Gefen v. Gaertner*, 2021 ONCA 631, at paras. 7-8. Nothing about Fregeau J.'s reasons was uncertain and nothing of substance was missed, which is what would be required to displace the general rule and count time instead from the date of the formal order.
- [7] In my view, the prejudice to the respondent, the Family Responsibility Office, from the delay is minimal.
- [8] Nonetheless, in the unusual circumstances of this case, it is not in the interests of justice to grant the extension, and I will not exercise discretion to do so.
- [9] First, it is apparent from the appeal materials and the arguments made that the sole fault Mr. Strutzenberger finds with the order dismissing his motion to extend the time to appeal in the Superior Court of Justice is that Fregeau J. did not recuse himself from determining the motion. He bases this submission on the fact that Fregeau J. recused himself on February 23, 2021, from a motion to change that was finally resolved on June 9, 2023. It is manifest that this submission has no merit. On a plain and incontrovertible reading of his reasons for recusal, Fregeau J. did not do so because of bias, partiality, or conflict of interest, but because as a case management judge, he had expressed his views on the merits of that 2021 motion, which was resolved long ago. This appearance of bias issue was not raised by Mr. Strutzenberger before Fregeau J. in August 2025, as it should have been. It is not in the interests of justice to grant an extension to permit this issue to be argued now for the first

time on appeal.

- [10] Second, and more importantly, it is evident from both his written and oral submissions that Mr. Strutzenberger is attempting to use his appeal of the denial of his extension of time to appeal the order in default hearing as a mechanism for challenging, once again, the spousal support order of February 23, 2018, and the arrears of support that are still outstanding. The validity or wisdom of that order was not before Baxter J. during the default hearing. The sole issue was whether Mr. Strutzenberger had defaulted on the obligations set out in that order. Put simply, Mr. Strutzenberger's request for an extension of time to appeal the denial of an extension of time lacks merit because his attempt to appeal is, in substance, yet another collateral attack on an issue long settled. A collateral attack of this kind is an abuse of process. The appeal he proposes would also be an abuse of process. Moreover, to indulge this appeal by granting an extension would not only be a waste of court resources but it would be unfair to Freida Strutzenberger, the beneficiary of the order for payment of arrears, since he wishes to challenge those interests in a proceeding in which she is not a party.
- [11] The motion for an extension of time is dismissed. Costs are to be paid in the motion to the responding party, the Family Responsibility Office, on a partial indemnity basis in the amount of \$1,450.00, inclusive of costs and disbursements. "David M. Paciocco J.A."

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Prepared on 26 October 2026 · Esheria