BLOG

A $30 Million Question of Intention: Resulting Trusts, Hearsay and Corroboration in Waters Estate v. Henry

Estate Planning | Estates | Private Client Services

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Within weeks of hiring Gillian Henry ("**Gillian**") as a personal support worker for his housebound wife, Dr. William Waters ("**William**") began transferring substantial sums of money to her. In her first month of employment alone, she received more than $800,000. Over the following decade, William transferred more than $30 million through at least 393 separate transactions.

Were these transfers gifts, or investments in which William retained a beneficial interest? More importantly, who bore the burden of proving it?

In *Waters Estate v. Henry*, 2026 ONCA 704, the Court of Appeal for Ontario described the dispute as "a tale of two narratives." In one narrative, William was a financially sophisticated older man who freely gave his money to a woman who claimed that they were involved in a long-standing intimate relationship. In the other, Gillian was an "unscrupulous younger woman" who used a "predatory romance scam" to separate him from his money.

On November 12, 2026, the Court allowed the Estate's appeal and ordered a new trial. It found significant errors in the application of the presumption of resulting trust, the treatment of hearsay evidence, and the statutory corroboration requirement.

The Background

William was a wealthy businessman, academic, philanthropist, and member of the Order of Canada. In 2009, he hired Gillian to care for his chronically ill wife, Phyllis Waters ("**Phyllis**"). Gillian was deeply in debt. William paid her $60,000 per year; more than she had ever earned. Within weeks of starting her employment, William had bought Gillian a luxury car and transferred hundreds of thousands of dollars to her.

Gillian began using William's money to buy and renovate real estate, some of which she then gifted to her family members. She also used the money to purchase horses, jewelry, and luxurious vacations. One of her largest endeavors was a horse farm that became King of Hearts Stables ("**King of Hearts**"). The Estate later discovered that some of the money William transferred to Gillian actually belonged to Phyllis and was under William's control through a Power of Attorney. At trial, Gillian had virtually no recollection of the circumstances in which most of the transfers were made.

After William died, his estate trustees sued to recover the funds and the properties acquired with them. The Estate maintained that the transfers were not gifts. Gillian maintained that they were gifts from a man with whom she alleged she shared a long-standing, secret intimate relationship. There was no credible evidence of this alleged relationship beyond Gillian's oral evidence. Despite Gillian being unable to recall most of the transfers, the trial judge largely accepted Gillian's position based primarily on his finding that Gillian had established the existence of a long-term romantic relationship. Accordingly, the trial judge found that she had rebutted the presumption of resulting trust with respect to most of the transfers. The principal exception was King of Hearts, in which William was found to retain an 80 percent beneficial interest. The Estate appealed.

Error 1: Reversing the Burden of Proof

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The answer to who bore the burden is well settled. As the Supreme Court of Canada explained in *Pecore v. Pecore*, 2007 SCC 17, equity presumes bargains, not gifts. The recipient of a gratuitous transfer bears the burden of establishing, on a balance of probabilities, that the transferor intended a gift at the time of the transfer.

The trial judge correctly stated the governing principles but, according to the Court of Appeal, failed to apply them. For many of the transfers, there was little or no evidence of William's intention, and Gillian could not recall discussing them with him. Rather than asking whether Gillian had proven that the transfers were gifts, the trial judge looked for evidence that William intended to retain a beneficial interest, effectively reversing the burden of proof. As the Court observed:

It did not fall to the estate to prove that William maintained a beneficial interest in the items and properties; it fell to Gillian to prove that William relinquished any such interest.

Nor was the absence of documentation determinative. While a lack of loan agreements or repayment terms may sometimes support an inference that a transfer was intended as a gift, it does not necessarily do so. William documented some repayment obligations but not others. Gillian herself acknowledged owing William $101,000 for a Mercedes SUV and $400,000 used to discharge mortgages, neither of which was evidenced by formal loan documentation.

The trial judge also inferred that, because he found that some transfers were gifts, most of them were. The Court of Appeal rejected that reasoning, holding that it could not be "fairly inferred" that William "had a single, uniform intention that explained close to 400 transfers." A separate analysis of every transaction was not required, but the evidence called for greater particularization. At a minimum, transfers used to acquire real property should have been distinguished from those used to discharge debts or purchase personal items.

Error 2: Mischaracterizing the Handwritten Notes

Compounding his error of reversing the onus onto the Estate, the trial judge also excluded William’s contemporaneous notes. William was an inveterate note-taker. He kept detailed records of properties acquired by Gillian and the funds associated with them, though it was not always clear what the notes referred to. The Estate relied on these notes as evidence that William had not ceded control over the money.

The trial judge excluded all but one of the notes as inadmissible hearsay. He found them too vague and, in some instances, contradicted by other evidence. As a result, he found that they failed to satisfy the reliability requirement of the principled exception to the hearsay rule.

The Court of Appeal held that the trial judge had "applied the hearsay analysis to the wrong evidence." The significance of the notes did not depend on the accuracy of any particular entry. Rather, their value lay in what William's practice of recording and tracking the properties revealed about his state of mind. After all, why would someone keep detailed records of assets in which he had relinquished all beneficial interest?

The Court observed that the Estate was "effectively arguing" that the notes contained an implied assertion of William's continuing interest in the properties. An implied assertion is a belief that a person does not expressly state but that can be inferred from what they say or do.

The Court illustrated the concept by reference to *R. v. Baldree*, 2013 SCC 35, where it was argued that a caller's request to purchase marijuana implied a belief that the accused was a drug dealer. Because the caller could simply have been mistaken, it was found that the implied assertion was not sufficiently reliable.

William's notes were fundamentally different. He wrote them for himself, not for others. As the Court put it, it is "illogical to suggest that he set out to deceive himself about the fact implied by his conduct - his interest in the properties - or that he was mistaken about his own intentions." Necessity was obvious because William was deceased.

The trial judge, however, focused on the accuracy of the notes' express details rather than the reliability of the implied assertion. The same error tainted his alternative finding that the notes would be given no weight even if admitted.

The Court also noted an inconsistency in the trial judge's approach. In finding that William retained an 80 percent beneficial interest in King of Hearts, the trial judge relied on a September 2014 note notwithstanding some of the same deficiencies that led him to exclude the others, including references to preferred shares that were never issued. The Court therefore set aside the exclusionary ruling and left the admissibility and weight of the notes to be determined at the new trial.

An Alternative Route to Admissibility

The Court went further and identified another possible basis for admission. It noted that non-assertive conduct may sometimes be admissible as original circumstantial evidence without engaging the hearsay rule at all. On that approach, the issue is not hearsay reliability but whether the inference is reasonably

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available from the evidence and what weight it deserves. In other words, if the evidence were admitted for the fact of their existence, and not for the truth of the contents, they would not be hearsay and would therefore be admissible.

The Court acknowledged that the law of implied assertions "remains largely undeveloped" and left the issue for determination at the new trial.

Error 3: An Alleged Romantic Relationship Is Context, Not Corroboration

Gillian also had to satisfy the corroboration requirement in section 13 of the *Evidence Act*, which provides:

In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his or her own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence. (Emphasis added)

The rule exists because the deceased cannot answer back. Corroboration must consist of independent evidence that makes it probable that the interested party's evidence on a material issue is true. It may be direct or circumstantial and may consist of a single piece of evidence or several pieces taken together.

The trial judge relied heavily (sometimes exclusively) on Gillian's evidence of the alleged intimate relationship to explain the transfers. While the Court of Appeal accepted that evidence of an intimate relationship could support an inference of donative intent, it concluded that the relationship had been given "undue prominence," both as evidence of donative intent and as corroboration.

Most of the evidence concerning the alleged intimate relationship came from Gillian herself. Her evidence could not corroborate itself.

The only independent evidence consisted of William's medical records, including references to a prescription for Cialis and a physician's notation that William had "got a gf". While that evidence may have supported the existence of the alleged intimate relationship advanced by Gillian, which was denied by the Estate at trial, it said little about whether William intended to gift more than $30 million.

At trial, other medical records expressly showed that William was completely disinterested in sexual intimacy.

Furthermore, evidence showed that William transferred more than $800,000 to Gillian within her first month of employment, well before the alleged long-standing intimate relationship described by Gillian could have developed.

Lastly, the trial judge found that Gillian had "a significant motive to misrepresent, overstate, and fabricate evidence."

Even accepting the trial judge's findings for the purposes of its analysis, the Court observed that "the fact of physical intimacy was more context than corroboration." Evidence capable of supporting the existence of the alleged relationship was not evidence that William intended every transfer to be a gift.

The Result

The Court allowed the Estate's appeal and ordered a new trial on the disputed transfers. It also set aside the trial judge's findings on limitation defences and breach of fiduciary duty. On the limitations issues, the Court confirmed that discoverability in a resulting trust claim does not necessarily occur when the transfer is made. In this case, it depended in part on William's intentions and what he knew about Gillian's use of the funds.

Gillian's cross-appeal was dismissed. The Court upheld William's 80 percent beneficial interest in King of Hearts, confirmed Gillian's obligation to repay outstanding loans, and ordered that $1,938,000 traceable to Phyllis's funds be paid to the Estate and remitted to her. The Court also upheld the $700,000 costs award made against Gillian and awarded the Estate a further $50,000 in appeal costs.

Key Takeaways

1. The burden remains with the recipient. Where a gratuitous transfer is challenged, the transferee must prove that the transferor intended a gift. A lack of evidence does not assist the person who is asserting donative intent.

- Private records may be powerful evidence. The fact that a deceased person took notes can shed light on intention even where those notes are not relied on for the truth of their contents.
- Context is not corroboration. Evidence of an alleged close or intimate relationship may help explain why transfers were made, but s. 13 of the *Evidence Act* requires independent evidence capable of supporting the material facts in issue.
- Document significant transfers. Whether funds are intended as a gift, loan, or investment, contemporaneous records can help avoid years of expensive litigation.

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When the person who made the transfers is no longer alive to explain them, questions of burden of proof, corroboration, and evidentiary reliability can become outcome-determinative. *Waters Estate v. Henry* demonstrates that contemporaneous records may be among the most persuasive evidence of intention, even where their contents are incomplete, imperfect, or disputed.

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