

# Father's contribution towards purchase of property was a gift not a loan (*Klemensiewicz v. Klemens*)

Litigation | Litigation & Dispute Resolution | Real Estate | Real Property Limitations Act

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Due to the high cost of residential real estate in Ontario, many buyers require financial assistance from family members. Parents often contribute towards the purchase of property by their children, whether or not they live with them. In some cases, mortgage lenders may seek confirmation from the children as to any financial contributions being made by family members towards the down payment. If the parents are not going on title to the property, mortgage lenders may require the family members to sign documentation confirming that any financial contribution from the parents is a genuine gift, that does not include any obligation of repayment, rather than a loan, that may lead to a claim by the parents to an interest in the property. Disputes may arise if the parties subsequently disagree on whether this reflected their true state of affairs.

*Klemensiewicz v. Klemens*, 2025 ONSC 4603 (CanLII) arose from a bitter family dispute involving what the application judge called “two warring factions” dating back to the divorce of the applicant father and his wife in 2010. The father’s faction included two of the couple’s four children while the other two children sided with their mother.

At the time of the divorce, the father moved in with two of the children in their small house in Mississauga. Soon after, they decided to move to a larger home in the neighbourhood with a fully outfitted basement suite that would accommodate the father. However, the children could not afford the property without financial assistance from their father.

He eventually gave them \$525,000 and, with these funds, the children purchased the property. They contemplated using a type of loan agreement found on the internet to document the transaction, but it was never signed. What was signed was a general form obtained from a bank entitled a “gift letter.” The form stated in part that the father confirmed that a financial gift of \$525,000 was being provided to the two children and that the funds were a genuine gift and were non-repayable. The father never made any requests for repayment thereafter.

By 2025, circumstances had changed, and the father sought to recover his funds of \$525,000 from the children who were formerly aligned with him. He sought a declaration that the funds of \$525,000 were held in a constructive or resulting trust for his benefit.

Where a party transfers money to another for no consideration, the onus generally shifts to the recipient to prove that the funds were a gift. Otherwise, equity presumes a “resulting trust” in favour of the transferor: *Pecore v. Pecore*, 2007 SCC 17, at paragraph 24.

Accordingly, the respondent children had the onus to rebut the legal presumption that they received the funds in trust from their father rather than by way of gift.

Fortunately for the children, there was ample evidence supporting their position. The father admitted that he knew within a few months of the purchase in 2010 that he was not on the title of the house, yet he never did anything to alter the situation thereafter. Further, he admitted to paying rent and writing rent cheques to his children.

The application judge noted that the father could easily afford the gift as demonstrated by his financial disclosure in the family law proceedings. There was no documentary evidence supporting the contrary position that the money was a loan.

In the application judge's view, the attempt to reconfigure the \$525,000 as a loan was a result of "family tectonics" shifting before the application. The father and the respondent children were originally on one side; the other two children were on the other side with their mother, who passed away in 2021. By 2025, the father wanted the money back.

Further, the father's application materials belied his position since he initially contended that the \$525,000 was his contribution to the purchase of the home and that he should be registered as a title holder. After cross-examination, however, when it became clear that the father knew from the beginning that he was not on title, he changed positions to argue that the money was a loan.

The application judge therefore concluded that the \$525,000 was a gift and that the children had rebutted the presumption of resulting trust.

Although the application was determined on that basis, the judge also found that the father's application was time-barred under section 4 of the Ontario *Real Property Limitations Act*, which imposes a 10-year limitation on any action to recover land from the time the action first accrued. Courts have held that such claims include claims of resulting trusts in respect of land: *Waterstone Properties Corporation v. Caledon (Town)*, 2017 ONCA 623, at paragraph 32.

The transaction at issue and transfer of funds took place in 2011, and the evidence was that the father knew he was not on title to the property since that time. The application judge found that the claim was statute-barred since the material facts forming the claim were discovered or ought to have been discovered by the exercise of reasonable diligence at the time, citing *Browne v. Meunier*, 2023 ONCA 223, at paragraphs 9 and 14. As the application was not commenced until 2024, it was out of time.

The decision illustrates the type of unfortunate litigation that may arise between family members relating to the purchase of property. As the nature of relationships may change over time, care should be taken at the time of any significant advancement of funds to accurately document the true nature of any transactions. A PDF version is available for download [here](#).

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