

# **Surviving the Gauntlet of Presumption**

**Recent Cases on Joint Accounts and Other Property  
(in 15 minutes or less!)**

**Toolbox Seminar**

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**GARDINER ROBERTS**



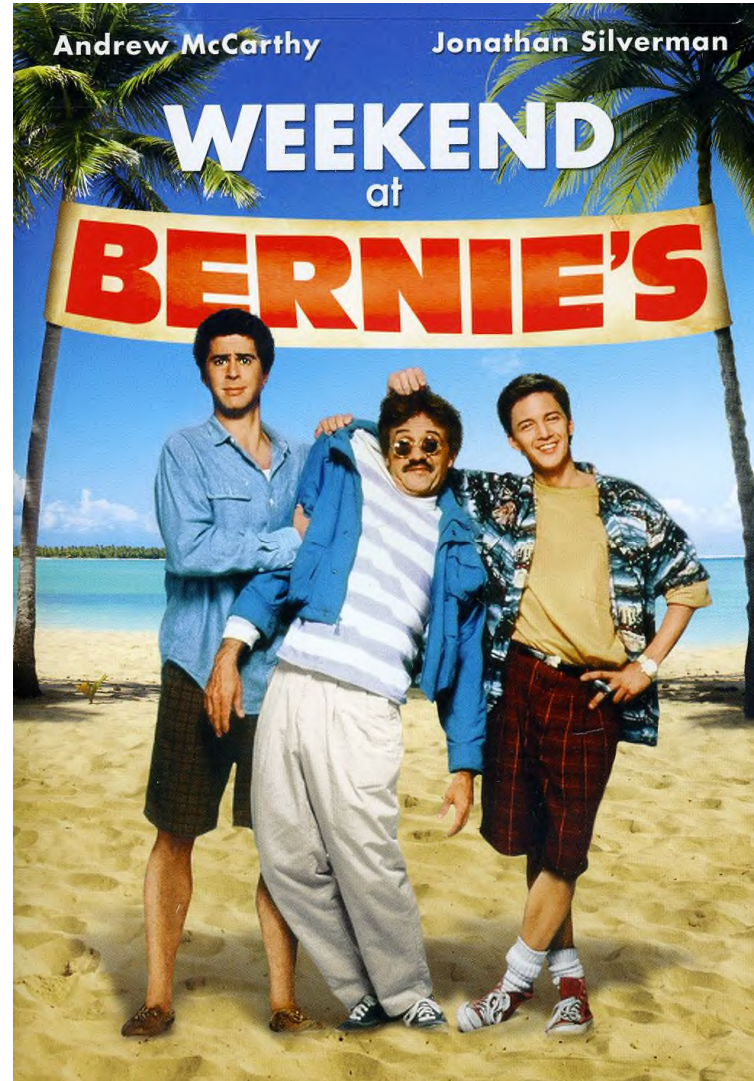
## Joint Accounts and Other Property

What was the intent of the  
(now deceased) transferor?

Gift or Trust? Both?



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# The Gauntlet of Presumption

1. The Presumption of Resulting Trust
2. The Presumption of Advancement

In the absence of clear evidence of intention, the law presumes either:

1. The joint nominee holds the property in trust for the deceased; or
2. The deceased intended to advance (gift) the property to the joint nominee

## Presumption of Resulting Trust

Where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that the deceased intended to gift him or her the property.

i.e. – Equity presumes bargains, not gifts.

## Presumption of Advancement

Where a transfer is made for no consideration, but the transfer is to a spouse or minor child of the deceased, the onus is placed on the challenger to demonstrate that no gift was intended.

i.e. – People give their dependants stuff for free!

## Rights of Survivorship

Rights of survivorship vest when the joint ownership of the property is created.

Therefore, the gift is *inter vivos* (“between the living”) and passes outside the Estate.



## *Pecore v. Pecore*

Per Justice Rothstein, at paragraph 54:

“Should the avoidance of probate fees be of concern to the legislature, it is open to it to enact legislation to deal with the matter.” 😊

*Sawdon v. Watch Tower Bible and Tract  
Society of Canada [2014] O.J. No. 573*

- Father creates joint bank accounts with 2 of his 5 children
- Father instructs 2 sons to distribute the contents of the accounts equally among the 5 children
- WTB and Tract Society argues the accounts form part of the Estate
- Ruling: The accounts passed outside the Estate. The beneficial interests of the 5 children all vested at the time joint title was created.

## *Lyell v. Lyell, 2013 SKQB 330*

- Grandmother puts granddaughter on condo title as “joint tenant”
- Grandmother intended to gift condo to granddaughter after death & avoid probate fees
- Grandmother changed her mind about gift, but dies before she can take action on title
- Ruling: Grandmother cannot unilaterally revoke gift – it vests at time of granting joint interest.

A constructive trust in real property falls under the jurisdiction of the *Real Property Limitations Act*, R.S.O. 1990, c L. 15

Interested parties may be able to commence action in recovery for 10 years following attempt to sever their interest (instead of the usual 2 years).