

**Pecore Last 10 Years – Review of Appellate Decisions Citing *Pecore* – Parent /Adult Child  
Gratuitous Transfers – Estate Context**

**Kimberly Whaley**

<b>Year</b>	<b>Case</b>	<b>Type of Property</b>	<b>Evidence of Intention</b>	<b>Outcome : Gift /Trust</b>
2007	<i>Comeau v. Gregoire</i> 2007 NSCA 73	<b>Joint Bank Account</b> Mother held account jointly with one of her children	<ul style="list-style-type: none"> <li>• Testimony from various witnesses – mother and daughter were “very close”</li> <li>• If bank account was meant for convenience of helping with banking it would have made more sense to set one up with one of her other children who lived closer to her</li> <li>• Daughter testified that bank employee explained right of survivorship to them</li> <li>• All deposits and all withdrawals were made by the deceased</li> <li>• Annual statement sent to mother, mother paid tax on income</li> <li>• Bank employee testified that she was “100 percent sure” the account was joint</li> <li>• At one point mother withdrew \$80,000 from account and put it</li> </ul>	Gift

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			<p>in an investment solely in the name of daughter (post transfer conduct)</p>	
2009	<p><i>Simcoff v. Simcoff</i> 2009 MBCA 80</p>	<p><b>Real Property</b> Mother transferred title into name of herself and son as joint tenants</p>	<ul style="list-style-type: none"> <li>• Mother told son that she wanted property to go to him on her death</li> <li>• When she moved out of property, son received all rents and was responsible for maintenance and upkeep</li> <li>• Post-transfer conduct supported conclusion that mother used transfer as way for property to devolve to son on death</li> </ul>	Gift
2009	<p><i>Doucette v. McInnes</i> 2009 BCCA 393</p>	<p><b>Joint Bank Account</b> Five investment accounts – term deposits - in joint names with children except one son. Children not aware of accounts</p>	<ul style="list-style-type: none"> <li>• “spotty” but uncontested evidence – trial judge failed to properly incorporate uncontested facts</li> <li>• Children had no idea they were joint owners – Appeal Court noted this was important factor</li> <li>• Bank teller testified that although in joint names, only mother’s address on account –</li> </ul>	Gift

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			<p>only she received statements - Mother insisted on complete control</p> <ul style="list-style-type: none"> <li>• Mother surreptitiously obtained the signatures of her children on the banking documents</li> <li>• Shortly before death mother wanted to transfer GIC from one child to another but non-redeemable – Teller advised mother to see lawyer – perhaps make the gift by Will</li> <li>• Bank documents specified rights of survivorship</li> <li>• Mother received income from investments and paid taxes owing</li> <li>• Although – no evidence mother ever made any statements about her intention with respect to accounts and mother did not tell lawyer that the joint accounts would <i>not</i> form part of estate</li> </ul>	

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2009	<i>Breau v. The Estate of Ernest St.Onge et al</i> 2009 NBCA 36	<b>Joint Bank Account</b> Deceased added friend (who was 32 years his junior) as joint holder on bank account (also ‘gifted’ personal items and tools)	<ul style="list-style-type: none"> <li>• Deceased lacked mental capacity to gift personal items &amp; tools (notes from lawyer at the time assessing him for testamentary capacity- disoriented, memory loss, deteriorating cognitive capacity etc.)</li> <li>• Deceased required help with his finances – reviewing bills and writing cheques</li> <li>• Had daughter previously on bank account to assist with paying bills etc. supported conclusion that friend was added to account for convenience</li> <li>• Friend was also attorney under POA however trial judge did not take this into account – Appeal Court found this was not a determinative factor</li> </ul>	Resulting Trust
2010	<i>Fuller v. Harper</i> 2010 BCCA 421	<b>Real Property</b> 5 months before death, father tsf one-	<ul style="list-style-type: none"> <li>• Notary public testified that deceased “clearly intended” to register property in joint tenancy</li> </ul>	Gift

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		<p>half joint interest in vacant lot to long-time friend Estranged son argued friend held lot in resulting trust for estate</p>	<ul style="list-style-type: none"> <li>• Deceased advised friend that he was adamant he did not want son to receive any share of the estate</li> <li>• Clause in his Will disinheriting son</li> <li>• Deceased wanted to gift land outright but Notary Public persuaded him to put in joint tenancy</li> </ul>	
2011	<p><i>Beaverstock v. Beaverstock</i> 2011 BCCA 413</p>	<p><b>Money Transfers</b> Mother gave money to son. Son died. Mother says money was a loan and sued son's wife (and executor) for return of the money. Wife says it was a gift.</p>	<ul style="list-style-type: none"> <li>• Trial judge "failed to begin his analysis with presumption of resulting trust" and made no finding of fact with respect to actual intention (did not even consider the question)</li> <li>• Appeal Court: Wife provided no evidence to rebut presumption of resulting trust</li> <li>• Mother's evidence was it was her intention to lend the money</li> </ul>	Loan
2012	<p><i>Van De Keere Estate, Re,</i> 2012 MBCA 109</p>	<p><b>Money Transfers</b> Father transferred various sums of</p>	<ul style="list-style-type: none"> <li>• Gifting daughter over 90% of his estate was inconsistent with behaviour by the deceased that</li> </ul>	Resulting Trust

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		<p>money (totalling \$408,000 ) to one daughter over 4 years before his death (unknown to his other children)</p>	<p>showed an intention to treat his children equally, by his earlier gifts and by his Will.</p> <ul style="list-style-type: none"> <li>• Lawyer testified that deceased made it clear that it was his intention to benefit his children equally</li> <li>• Deceased was a “careful man when it came to his money”</li> <li>• No explanation was provided as to why deceased would “strip himself of almost all of his assets”</li> <li>• Evidence from daughter was insufficient to establish a gift was intended</li> </ul>	
2013	<i>Bergen v. Bergen</i> 2013 BCCA 492	<p><b>Real Property</b> Parents transferred one-third interest in property to son. They fought and parents severed joint tenancy. Parents sued for order to sell property and that son held property</p>	<ul style="list-style-type: none"> <li>• Parents paid for the property and improvements</li> <li>• Hired a lawyer to tsf 1/3 interest</li> <li>• Parents wanted to keep “control” and wanted to avoid probate fees – thought they could do both</li> <li>• Found parents more credible – parents did not intend to make</li> </ul>	Resulting Trust

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		on a resulting trust. Son said parents were holding title on resulting trust for HIM.	immediate gift of beneficial interest in land	
2014	<i>Sawdon Estate v. Sawdon</i> 2014 ONCA 101	<b>Joint Bank Accounts</b> Between deceased father and adult sons	<ul style="list-style-type: none"> <li>• Direct evidence at the time the bank accounts were opened</li> <li>• Wording of the bank documents</li> <li>• Control and use of the funds</li> <li>• The terms of the POA that the father gave to one son</li> <li>• Tax treatment of the bank accounts</li> </ul>	Gift (the sons who held the legal title in the bank accounts held the beneficial right of survivorship for the other children equally)
2014	<i>Lorintt v. Boda</i> , 2014 BCCA 354, leave to appeal dismissed 2015	<b>Real Property</b> Requested lawyer to transfer his house to son. After discussion	<ul style="list-style-type: none"> <li>• Key evidence was lawyer's testimony which was supported by affidavits from the son</li> </ul>	Gift

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	CanLII 10577 (SCC)	agreed to transfer to father and son as joint tenants. Father died. Executor claims son held title in resulting trust.	<ul style="list-style-type: none"> <li>• Lawyer explained options to father, the concept of joint tenancy, spoke and understood English (although Father's first language was Hungarian)</li> <li>• Executor tried to put evidence of father's intent forward in affidavits – both trial and appellate courts found it not useful – as dealt with father's later inconsistent comments on his intention (not his intention at time of transfer) and medical diagnoses at a later date (not at the time of transfer)</li> </ul>	
2015	<i>Mroz v. Mroz</i> 2015 ONCA 171	<b>Real Property</b> Mother transferred title of her house (only significant asset) into name of herself and daughter as joint tenants	<ul style="list-style-type: none"> <li>• Mother wanted daughter to have title to the Property after her death BUT mother also wanted her other children to receive bequests under the Will from the sale of the Property</li> <li>• <i>All witnesses</i> testified this was mother's intention</li> </ul>	Trust



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2015	<i>Foley (Re)</i> , 2015 ONCA 382	<b>Joint Bank Account &amp; Savings Bonds</b> Monetary transfers to daughter & savings bonds bequeathed under Will to daughter but deposited into joint account in names of both children & father shortly before death	<ul style="list-style-type: none"> <li>• Testimony from financial advisor: Father looking for a way to avoid probate costs and he assured her that his children would know how to divide the assets</li> <li>• Deceased was only person to deposit/withdraw from joint account</li> <li>• Corroboration of the gifts in written instructions provided to the financial advisor</li> <li>• Deceased would keep track &amp; record of any loans – he did not record the transfer of the savings bonds into the account as a loan</li> <li>• Financial advisor testified father wanted daughter to receive bonds as son received farm – met with deceased alone</li> <li>• Daughter was father’s attorney under POA</li> <li>• Expert evidence from geriatric psychiatrist re Father’s capacity</li> </ul>	Gift & Savings bonds were bequeathed to daughter

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2016	<i>Cowper-Smith v. Morgan</i> 2016 BCCA 200	<p><b>Real Property</b>            Mother transferred residence into joint names with daughter            Both the Property and Mother's investments were held in trust through document called 'Declaration of Trust'- Mother was beneficiary and daughter was bare trustee – upon death daughter entitled to both assets            “absolutely”            This rendered mother's estate devoid of assets</p>	<ul style="list-style-type: none"> <li>• Brothers knew of the transfer into joint names with sister but was told it was just for easier management of mother's affairs</li> <li>• Found that as the presumption of undue influence was not rebutted, it follows that the presumption of resulting trust was also not rebutted as Mother was unduly influenced by daughter when she made the gratuitous transfer and executed declaration of trust</li> </ul>	Trust
2016	<i>Andrade v. Andrade</i> 2016 ONCA 368	<p><b>Real Property</b>            Mother purchased home with a loan and mortgage, but put name of house and mortgages into children's names</p>	<ul style="list-style-type: none"> <li>• Trial judge found deceased son was legal &amp; beneficial owner – Overturned by Court of Appeal: son held house in trust for mother</li> <li>• Mother rented out house and collected rent</li> </ul>	Trust

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		<p>One child died – wife of child sought to recover his half-interest in house            Mother said house belonged to her as beneficial owner</p>	<ul style="list-style-type: none"> <li>• Children gave their money from jobs to mother while they lived in the house</li> <li>• Mother used money to pay mortgage</li> <li>• Evidence of intention was not lacking - trial judge failed to direct himself to question of mother’s intention – instead looked at intention of children</li> <li>• Mother “borrowed” their names for title and mortgage because she could not qualify and they could</li> <li>• Mother died before trial but was able to give evidence as to her intention in affidavit and cross-examination before her death</li> </ul>	
2016	<p><i>Zeligs v. Janes</i>            2016 BCCA 280</p>	<p><b>Real Property &amp; Joint Account</b>            Elderly mother held joint title in real property with one of her two adult children.</p>	<ul style="list-style-type: none"> <li>• Handwritten note by mother saying she wanted her daughter to be full owner when she died</li> <li>• Daughter saw mother put a copy of the note in an envelope to</li> </ul>	<p>Gift (but JT severed and ½ interest held in trust for Estate)</p>

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		<p>Mother also made daughter joint-holder of bank account and attorney under a POA. Daughter mortgaged the property and used money for her and her husband's benefit. Sold house and used funds for own benefit etc.</p>	<p>mail to other sister so she would know what was "going on"</p> <ul style="list-style-type: none"> <li>• Daughter also told sister about transfer</li> <li>• Trial judge found presumptions of undue influence and resulting trust were both rebutted BUT also found daughter severed the joint tenancy and extinguished the right of survivorship when she transferred the sale proceeds to herself and her husband</li> <li>• Mother's estate was entitled to one-half of the sale proceeds – which daughter held in trust for estate</li> </ul>	
2016	<i>Laski v. Laski</i> 2016 ONCA 337	<p><b>Joint Bank Account</b>          Father held certain bank accounts jointly with one of his three children (his daughter). Brother claimed she held funds on resulting trust.</p>	<ul style="list-style-type: none"> <li>• Clause in Will specified any assets held jointly with daughter were hers alone on his death – residue of estate split between other children</li> <li>• Vast bulk of evidence was produced by daughter</li> </ul>	Gift

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			<ul style="list-style-type: none"> <li>• Lawyer’s testimony was supported by her contemporaneous notes – she suggested clause in Will as Father had told her he suspected son would challenge entitlement to joint accounts – Lawyer wanted testator’s intention to be clear</li> <li>• Testator told lawyer he did not want to identify the exact joint assets in Will as that would make his life “a living hell” if son knew the extent of assets that would fall outside of estate</li> <li>• Investment Advisor’s evidence: joint accounts were opened on testator’s instructions and had rights of survivorship</li> <li>• Close to his death, testator signed direction prepared by the investment advisor transferring securities into joint account – Testator told investment advisor he felt he was dying and he</li> </ul>	

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			<p>wanted to make sure his daughter was taken care of</p> <ul style="list-style-type: none"> <li>• Advisor understood that the assets were for daughter's benefit only, testator complained that his son was bullying him and asking for money that the testator did not want to give. He wanted to protect his daughter</li> <li>• Son's evidence was "bald and self-serving"</li> <li>• Evidence was "overwhelming" that the Testator intended gifts</li> </ul>	
2016	<i>Franklin v. Cooper</i> 2016 BCCA 447	<p><b>Real Property</b>          Deceased mother transferred title of her home to herself and daughter as joint tenants</p>	<ul style="list-style-type: none"> <li>• Daughter claimed the transfer was a result of an "agreement" and in consideration of expenses she had paid for in the past and she agreed to support her mother and not put her in a nursing home</li> <li>• Daughter claimed lawyer explained joint tenancy and right of survivorship to mother and she agreed that was what she wanted – but lawyer was not</li> </ul>	Trust

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			<p>called as a witness, his file was destroyed</p> <ul style="list-style-type: none"> <li>• No written evidence of an agreement</li> <li>• Sister testified mother put title into joint tenancy to prevent mother from being defrauded into transferring her title away to a third party (she saw a tv show about this)– she claimed she had been offered the joint title first</li> <li>• Mother told all three children they would split the house</li> <li>• No direct evidence to establish intention of a gift (court rejected evidence of daughter)</li> </ul>	
2016	<i>Thorsteinson Estate v. Olson</i> 2016 SKCA 134	<p><b>Real Property</b>          Deceased transferred land into the name of herself and a man she treated like a son (William). During her life she commenced</p>	<ul style="list-style-type: none"> <li>• Deceased signed Deed of Gift and at the time of transfer expressed an intent to gift the land to William</li> <li>• It was the deceased’s idea to transfer land prompted by high</li> </ul>	Gift

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		<p>action requesting tsf be set aside based on resulting trust (among others) Estate continued on the action.</p>	<p>probate fees incurred in William’s father’s estate</p> <ul style="list-style-type: none"> <li>• The deceased on her own volition contacted and instructed the lawyer to prepare the Deed and transfers</li> <li>• The transfer was consistent with her Will and the close “mother/child” relationship</li> </ul>	
2017	<p><i>McKendry v. McKendry</i> 2017 BCCA 48</p>	<p><b>Real Property</b> Deceased mother transferred legal title to her home into joint tenancy with her son.</p>	<ul style="list-style-type: none"> <li>• At time of transfer it was clear son held property in trust for Mother. Later Mother decided to remove trust conditions so that son would receive property absolutely on death.</li> <li>• Court of Appeal: Mother’s intentions were “manifest and unambiguous”</li> <li>• When she tsf property – she did so with intent that son held property in trust. She had a lawyer prepare a trust declaration reflecting that intention – although son did not</li> </ul>	Gift



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			<p>sign it – it was clear evidence of her intention</p> <ul style="list-style-type: none"> <li>• Later she consulted new lawyer – through lawyer’s note and a two-page document prepared by lawyer – mother “unambiguously renounced” her beneficial interest in the right of survivorship</li> <li>• Her Will also stated that the property was registered in JT with son and he would receive it subject to registered mortgages</li> <li>• Nothing more would have been gained had the Mother executed a deed of gift under seal – no further act of delivery was required because of existing joint tenancy.</li> </ul>	