"I LOVE YOU SON, BUT YOU OWE ME!"
GIFTS & LOANS FROM PARENTS TO CHILDREN

By Brahm D. Siegel[1]

A contentious issue in family law arises when a spouse alleges that at the date of separation he or she owed a debt to a family member, usually a parent. The other party counters that no such debt existed and the funds were a gift. The consequences are obvious and sometimes extremely significant to the financial outcome of the case. If the debt is valid, it constitutes a credit in the equalization calculation and reduces the net family property of the claimant spouse. A further concern is that if the debt is ever repaid, the money will simply be given back to him/her by the parent.

This paper examines this issue and attempts to articulate some basic principles as to when a court is likely to assert that an intra-familial advance is a gift or a loan. Every reported case over the past ten years involving such an advance has been found and listed in the appendix, chronologically from 1993 to the present. There are twenty-three cases in all; 70% of them have been decided in the past four years. Almost all involve the advancement of funds by a parent to a child who then purchases a matrimonial home with his/her spouse or pays off all or part of their mortgage, followed by their separation and a claim by one of them that the funds were a loan.

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[1] Nathens, Siegel LLP, December 2003.

The Law

Courts have historically viewed intra-familial advances differently from advances between non-arm's length parties. Even in 1868 it was recognized that a gift from father to son "stands upon a different footing" than other kinds of transfers[2]. From this grew the notion of a "presumption of advancement", *i.e.,* that a gift has been intended in the case of a child where such presumption does not arise with a stranger.

This presumption is, however, rebuttable. A rebuttable presumption of law is a rule of substantive law that has certain consequences which flow upon proof of a particular fact or facts. It is a rule of law that compels the trier of fact to reach a certain conclusion in the absence of evidence to the contrary from the opponent. The standard of evidence the opponent needs to meet is on a balance of probabilities.[3] In the family law context, therefore, the onus is on the spouse who asserts the advance was a loan to prove that was the intention at the time of transfer and to do so on a balance of probabilities.[4]

The relevant intention is the intention at the time of advancement, not as it existed after separation. Acts or declarations subsequent to the advancement, if they are not so connected with the transfer as to be reasonably regarded as contemporaneous, are not admissible in favour of the donor to rebut the presumption. Only the acts and declarations said or done at the time of advance can be used to prove the donor intended them

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[2] *Armstrong v. Armstrong* [1868] Gr. 528 at 535.

[3] Sopinka, Lederman and Bryant, The Law Of Evidence in Canada (Toronto: Butterworths, 1999) pp. 104-05; *Clemens v. Clemens Estate* (1956), 1 D.L.R. (2d) 625 (S.C.C.).

[4] *Aguanno v. Aguanno*, 2002 CarswellOnt 1251, 30 R.F.L. (5th) 14 (S.C.J.).

to be loans[5]. The rationale for this rule, as Sachs J. commented in the case of *Aguanno v. Aguanno*[6], is that "it is all too easy for parties who are separated to have a revisionist perspective on advances made by parents while they were happily married."

Establishing the Intention

The evidence required to rebut the presumption of advancement is evidence of the donor's contrary intention at the time of transfer[7]. The weight ascribed to the evidence adduced to rebut the presumption depends on its reliability, independence and presentation. In the recent case of *Turner v. Hawkins*[8], Kent J. wrote:

> "Such evidence is best if it is documentary, next best if it is independent and of the least assistance to the court if it is only the oral evidence of the involved and interested parties testifying on the basis of their recollection. This is particularly so, if anything in the evidence of the parties reflects unfavourably upon their credibility or reliability."

A. Documentation Available To Rebut Presumption

Having documentation which conclusively "proves" the loan is obviously a benefit; not all documentation, however, is created equal.

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[5] *Shepherd et al v. Cartwright et al*, [1954] 3 All E.R. 649 at 652 (H.L.), quoted with approval in *Wilkosz v. Amato*, 1999 CarswellOnt 1611, [1999] O.J. No. 1958 (S.C.J.).

[6] *Supra* note 4.

[7] Sopinka, Lederman and Bryant, *supra* note 3. Please note that the 1992 edition states what is required is evidence of the "donee's" intention.

[8] *Turner v. Hawkins*, 2002 CarswellOnt 3537, [2002] O.J. No. 4099 (S.C.J.).

Documentation honestly created at the time of advance and well before separation almost always results in its characterization as a loan, regardless of whether one or both spouses execute the document. Documentation created "after the fact" sheds little light on the intention surrounding the advance at the time it was made and usually results in an unfavourable finding of credibility.

Of the twenty-three cases listed in the appendix, thirteen had promissory notes or some other written evidence signed by at least one of the parties well before separation. Of these, seven were held to be loans[9]. Of the remaining six, the courts held they were gifts either because the documentation was created for the benefit of the litigation[10] or long after the advance[11].

It is important to note that regardless of the nature of the documentary evidence, the transaction will not be held to be a loan if it does not comply with the *Limitations Act*[12], section 45(1)(g) of which bars an action to recover unless it is brought within six years of the funds being advanced. Such was the case in *Close v. Close*[13], where the wife's father lent her $90,000.00 in 1980. The loan was secured by a promissory note. The parties separated in 1991 with no payments having been made. Reilly J.

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[9] *Sauder v. Sauder*, 1996 CarswellOnt 1751, 23 R.F.L. (4th) 228 (Gen. Div.); *Salamon v. Salamon*, 1997 CarswellOnt 696 (Gen. Div.); *Pennock v. Pennock*, 2000 CarswellOnt 4300, [2000] O.J. No. 259 (S.C.J.); *Poole v. Poole*, 2001 CarswellOnt 1939, 16 R.F.L. (5th) 397 (S.C.J.); *Turner v. Hawkins*, *supra* note 8; *Cade v. Rotstein*, 2002 CarswellOnt 3871 (S.C.J.) and *Brownstein v. Hanson*, 2003 CarswellOnt 3036 (S.C.J.).

[10] *Manis v. Manis*, 2000 CarswellOnt 4591, [2000] O.J. No. 4539 (S.C.J.).

[11] *Chambers v. Chambers*, 1997 CarswellOnt 4272, 34 R.F.L. (4th) 86 (Gen. Div.); *Hendricken v. Douglas*, 2002 CarswellOnt 357, [2002] O.J. No. 392 (S.C.J.) and *Turner v. Hawkins*, *supra* note 8.

[12] *Limitations Act*, R.S.O. 1990, c. L. 15.

[13] *Close v. Close*, 1997 CarswellOnt 3638, 33 R.F.L. (4th) 210, 37 O.T.C. 98 (Gen. Div.).

ruled that section 45(1)(g) applied and that because the limitation period had expired, the loan was not legally enforceable and the wife could not therefore deduct its value from her net family property[14].

Another consideration is the specificity of terms in the document. The more specific and detailed the terms in one's promissory note, the more likely a court will find it is enforceable. Vague wording which fails to include payment dates or any explicit promise to pay will tend to result in its being characterized as a gift, especially when there is evidence the document was created after the funds were advanced or for the purposes of litigation. In *Chambers v. Chambers*[15], for example, a loan agreement between parent and child was signed after the funds were advanced and its wording read that the money was "interest-free and repayable when you are able to do so". The court held the document was so vague the parents could never enforce it against their son and the advance was held to be a gift.

B. *No Documentation Available To Rebut Presumption*

It is *not* the law that debts alleged to be owing to family members cannot be allowed unless the existence of that debt is corroborated by other evidence. Whether or not independent corroboration is required is up to the court and therefore depends on the circumstances. Oral evidence, in and of itself and uncorroborated by any other evidence, can be and sometimes is, sufficient

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[14] Section 50 of the *Limitations Act* provides for a new beginning of the limitation period upon a signed acknowledgment in writing by the debtor or acknowledgment of part payment in the case of an indenture, specialty (demand note not under seal), judgment or recognizance. Section 51 provides that where the debt is further to any lending or contract without specialty, the acknowledgment must be made or contained by or in some writing signed by the party or by his agent.

[15] *Supra* note 11.

to rebut the presumption of advancement.[16] In the case of *Close v. Close*[17], Reilly J. put it this way:

> "I believe [evidence of the intention] may be provided by oral evidence as well, as long as such testimony is sufficiently clear and cogent to persuade the court, on a preponderance of the evidence, of the existence of a specific debt. Mere assurances that uncertain sums were advanced over a period of time will not suffice. There must be reasonable certainty as to the amount and circumstance and that it was intended as a loan, and not a gift."

Of the twenty-three cases surveyed, thirteen involved instances where the spouse alleging a loan had no back-up documentation. Of these, in seven the court found the advance was a loan notwithstanding the complete lack of documentation evidencing the transaction[18]. While this may seem surprising at first blush, in four of them[19] the court found that the other spouse conceded the existence of the debt in cross-examination; factoring these out means that only three resulted in a determination of "loan" in the absence of any documentation.

Of these three, two are instructive. In *Cooper v. Grace*[20] and *Wilkosz v. Amato*[21], the wife's parents advanced large sums of money to the parties to assist them with their home purchases. In the former the advance was

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[16] *Arvelin v. Arvelin*, 1996 CarswellOnt 394, 20 R.F.L. (4th) 87 (Gen. Div.).

[17] *Supra,* note 13.

[18] *Arvelin*, *supra* note 16; *Close*, *supra* note 13; *Cooper v. Grace*, [1998] O.J. No. 5385 (Gen. Div.); *Wilkosz v. Amato*, 1999 CarswellOnt 1611, [1999] O.J. No. 1958 (S.C.J.); *Whalen v. Whalen*, 2000 CarswellOnt 2476, [2000] O.J. No. 2658 (S.C.J.); *Meade v. Meade*, 2002 CarswellOnt 2670, 31 R.F.L. (5th) 88 (S.C.J.); and *Royston v. Royston*, 2003 CarswellOnt 695, [2003] O.J. No. 849 (S.C.J.).

[19] *Close supra* note 13, *Royston, Meade* and *Whalen,* all *supra* note 18.

[20] *Supra* note 18.

[21] *Supra* note 18.

$110,000.00 while in the latter it was $74,000.00. In both, no documentation of any kind existed to prove the nature of the advance and after separation the husband argued he had been the beneficiary of an unconditional gift that could not be turned into a loan. The parents then sued to recover.

The court found in favour of the parents in each case. Interestingly, despite the similar facts, very different factors operated to rebut the presumption of advancement.

In *Cooper v. Grace*, four different factors seem to have combined to rebut the presumption. First, the court was impressed with the description by the parents' financial counselor who arranged the transfer of funds and testified that the advance was a loan at the time of transfer. Second, the spouses apparently included a monthly repayment to the parents in their statement of monthly expenses used in mediation. Third, a small lump-sum repaid on the advance made it "improbable" it was unrelated to the advance; it was thus found to have been made with the husband's knowledge and consent. Fourth, the wife's mother provided in her will that the loan should be repaid to her estate and divided equally among her three children.

In *Wilkosz v. Amato*, only one piece of evidence seems to have been necessary to rebut the presumption, namely, the parents had previously loaned large sums of money to, and were repaid with interest by, their other child and her husband and had thus established a "pattern of lending" secured by oral promise. Kerr J. was quick to point out that while evidence of past lending to a spouse's sibling in and of itself is insufficient to justify a finding there was a similar agreement or arrangement in every case, the parties' testimony in this case made it "more probable" that they had done so.

It is thus submitted that where the opposite spouse does not admit the debt in cross-examination, rebutting the presumption of advancement in the absence of any documentation requires presenting a cohesive and effective case comprised of one or more of the following elements: credible witnesses, some evidence of repayment, a pattern of lending between parent and child and a pattern of lending from parent to siblings of the child.

Practitioners should be aware of two further points. First, commencing a lawsuit and even obtaining judgment against your child does not, in and of itself, rebut the presumption. While it is to be expected that after separation both parties will want to do their utmost to protect themselves and their family, such tactics do not shed light on the intention of the parties at the time of advancement. Commenting on this practice in Aguanno[22], Sachs J. said:

> "…the mere fact that, after the separation, one spouse and his or her parents have cooperated to evidence the alleged debt by way of a default judgment, does not in and of itself constitute clear evidence that the evidence was a loan, not a gift."

Second, moral obligations that a spouse may feel towards his or her parent are also not sufficient to rebut the presumption. Above all there must be an agreement. As the Ontario Court of Appeal stated in *Reynolds v. Reynolds*[23]:

> "Without an agreement there can be no debt. It would be a dangerous precedent to permit moral family obligations to creep

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[22] *Supra* note 4.

[23] *Reynolds v. Reynolds* (1995), 13 R.F.L. (4th) 179 (Ont. C.A.).

> into equalization calculations, no matter how deserving the recipient may be."

Recent Trends – Discounting The Debt

Assuming the presumption of advancement can be rebutted, is it a given that the full value of the loan will be included in the debtor spouse's net family property? Recent caselaw suggests not.

Since 1997 some the courts have utilized a two-pronged test. After first embarking on an examination of whether the presumption has been rebutted, they then assess the likelihood that the loan will be repaid. Depending on the findings to this question, the value of the loan may be reduced or "discounted".

This practice began in the case of *Salomon v. Salomon*[24] where a father made advances to his son totaling $12,000.00. The son then used the funds to buy a house and car. There were promissory notes signed in favour of the father which stated the funds would be repaid once the home or car were sold.

At trial the father testified he intended all along to get the money back from his son before he died. Aston J., however, found this was "unlikely". Noting the father was "sympathetic" to his son's financial circumstances and not likely to put pressure on him to repay, he treated the debt as a contingent liability rather than an absolute one and discounted the loans by 50% "to reflect the fact it may never be payable and that, if it is payable, it may be for a reduced amount or may not be payable for many, many years to

[24] *Salomon v. Salomon*, [1997] CarswellOnt 696, [1997] W.D.F.L. 337, [1997] O.J. No. 852, 26 O.T.C. 123 (Gen. Div.)

come." The son was thus allowed only to include $6,000.00 on his net family property statement.

The trend was continued in the 2001 case of *Poole v. Poole*[25]. The husband's parents advanced $80,000.00 to the parties over the course of their marriage. Three promissory notes were signed by the spouses. The monies were advanced and used to help them acquire or pay off mortgages on various homes owned by them during the marriage and family debts. After they separated the parents sent a demand letter to their son and his estranged spouse. They then sued both and the lawsuit was consolidated with the parties' matrimonial litigation.

Heeney J. found the promissory notes constituted debts on behalf of both parties. However, rather than simply inserting one-half the value of the debt in each spouse's net family property, he launched into a quest to determine the probability of whether the husband's parents would actually enforce the debt against each spouse. He justified his analysis accordingly:

> "Just because an asset or a debt has a certain face value, it does not automatically follow that the court must insert that face value in the net family property calculation. There may well be a valuation issue to be resolved, in situations where the face value of an asset or debt does not necessarily equate with its real value
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> For example, suppose that a spouse owned an asset on the date of separation that consisted of a promissory note owing to him of $20,000.00. If the evidence was that the promissor had no assets and little income, such that the likelihood of the spouse collecting on the note were at or close to nil, then the face value of the note would be discounted for equalization purposes to an

[25] *Poole v. Poole*, 2001 CarswellOnt 1939, 16 R.F.L. (5th) 397 (S.C.J.), [2001] O.J. No. 2154 (S.C.J.).

> amount at or approaching nil, in order to represent its true value in the equalization calculation.
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> Thus it can be said that the value of a promissory note to the holder of the note is directly related to the probability of collecting on the note.
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> Conceptually, there is no reason why the same approach should not apply where the spouse is the promissor, as opposed to the holder of the note. The value of the debt (using "value" in a negative sense) is directly related to the probability that the debt will be enforced against the promissor. Even though a debt may have a specified face value, if the evidence indicates that it is unlikely that the promissor will ever be called upon to pay the debt, the value of the debt should be discounted to reflect that reality.
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> There is a compelling reason for taking this good hard look at the reality of the situation. A debt constitutes a credit in the equalization calculation, and reduces the net family property of the spouse claiming the debt. This has a direct impact on the equalization payment due, by either reducing the amount that party has to pay to the other (if he has the higher net family property), or increasing the amount that he will receive (if his net family property is lower). Fairness dictates that he should not receive a credit for a debt, with the financial benefits that flow from that credit, if he will never be called upon to pay the debt".

In *Poole* the court listed the following facts in finding that it was "highly improbable" that the parents would ever call on the husband to pay his half of the debt:

- the debts were 11 and 17 years old;

- the parents never demanded payment except for the demand that led to the litigation which was motivated by a desire to collect from the wife;

- the parents advanced the money to the parties to help them out and it was not anticipated it was to be repaid until they could afford it and until the parents needed it;

- the husband's mother admitted that but for the separation they would not have demanded payment and commenced the litigation;

- the husband had not made any payments on the loan since separation;

- the parents were older (81 and 82) which made it less likely they would collect from the husband as compared to when they initially advanced the money in their sixties;

- the parents' need for the money would be even further reduced once they collected one-half from the wife, making it less likely they would seek to collect the husband's half;

- the husband did not show the debt on his applications for credit; and

- the husband's lawyer was virtually arguing the parents' case for them.

However, because the court could not say with certainty that there was no possibility *whatsoever* of the husband having to repay, the value of the debt was reduced by 90%. The wife was permitted to include the full one-half of the debt in her net family property.

Another recent case with strikingly similar facts is *Cade v. Rotstein.*[26] As in *Salomon* and *Poole*, the court found that a loan existed and then assessed its likelihood of being repaid. In this case the debt was discounted by 95%.

In *Cade*, the husband claimed loans owed to his parents totaling $192,000.00. The loans were made in a series of five advances, some of which were signed only by him and some signed together with the wife. As in *Poole*, the joint debts were old and no demand had been made save after separation. The monies were also advanced to assist the parties financially and the parents testified they would not have tried to recover but for the separation. The parents were elderly, did not need the money and testified that when the parties were together they did not expect to be repaid until they could afford to.

Wood J. discounted the husband's debt by 95%. In *Poole*, the discount was 90%. Although it is not clear, it seems that the extra 5% resulted from the court noting that in cross-examination the father testified he would never take action to collect the debts from his son. After the 95% discount, the remaining 5% debt ($9,600.00) was apportioned unequally between the parties because the wife had signed some of the promissory notes. Accordingly, a figure of $1,500.00 was held to be her debt for equalization purposes while the husband was permitted to deduct $8,100.00.

The same analysis with a much different result, however, occurred in another very recent case, *Brownstein v. Hanson*[27]. The husband's parents advanced a series of funds to the parties during their marriage totaling approximately $300,000.00. Three promissory notes were signed by both

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[26] *Cade v. Rotstein*, 2002 CarswellOnt 3871 (S.C.J.).

[27] *Supra* note 9.

parties. The notes contained clear provisions stating the money would be repayable upon separation or divorce or upon the death of both parties or the parents. In addition, the parents sent a "reminder notice" to the parties fourteen months before separation.

The husband alleged the advances were loans and there was a debt owed by both he and the wife to his parents. The wife asserted the funds were a gift and nothing more than advances on the husband's inheritance. The promissory notes, she argued, were simply evidence of the advances used by the parents to keep track of how much the husband had received.

After reviewing the facts and ratios in *Poole* and *Cade*, Blishen J. found the presumption of advancement had been rebutted but that no discount should be applied to the debt. In doing so, she observed the following "notable differences" between the case at bar and *Poole* and *Cade*:

- although the debts were old and there had never been a previous demand for payment, the promissory notes contained clear provisions which stated that the money would be repayable upon separation or divorce;

- although the money was advanced to assist the parties to pay down their mortgage, it was always anticipated they would be repaid on separation or divorce or death of the parties or death of the parents;

- because the parents were elderly and the notes contained a term requiring repayment upon their deaths, this contingency would come "sooner rather than later";

- given the sale of the parties' matrimonial home, the husband would be able to afford to repay the outstanding debt and also have sufficient funds to use as a downpayment on a new home;

- unlike in *Cade* and *Poole,* the father secured other advances to his children by way of promissory notes on exactly the same terms and conditions;

- the promissory notes contained an interest clause of 4%;and

- "most significantly", the promissory notes contained provisions requiring repayment to the parents' estates upon their death.

The court thus concluded that the Husband's probability of having to pay the debt was "extremely high…a virtual certainty." Both he and the wife were therefore permitted to claim 50% of the total on their respective net family property statements.

Critique and Conclusion

Not everyone agrees with the new trend of discounting debt in these types of situations. In his annotation to *Poole v. Poole*[28], Professor McLeod questions the wisdom of this approach. He argues that courts should focus more on whether the debtor sufficiently rebutted the presumption of advancement rather than engaging in "guesstimates" of what a creditor might do. Suggesting that the evidence in Poole was not adequate to rebut the presumption, he argues that since it appears the judge did not believe

[28] 16 R.F.L. (5th) 397 at 398.

the likely to ever have to pay the debt, he should not have been given any deduction.

With respect to Professor McLeod, it is submitted that while it is a far more challenging task for judges to assess the likelihood that a debt will be repaid, this step does more to maintain fairness and preserving the integrity of the equalization payment scheme in the *Family Law Act* than either including or not including the debt in its entirety. As long as the courts are going to maintain a low threshold for the requirement to rebut the presumption, some safeguards need to exist to prevent spouses from "manufacturing" debts to the detriment of their spouses.

Second, Professor McLeod's comments seem to overlook a crucial difference between normal creditor-debtor relationships and relationships between parents and children in cases of separation and divorce, namely, the latter are non-arm's length transactions taken without the involvement or knowledge of the other spouse, subject to fabrication and manipulation of evidence which can be, and sometimes is created after the fact, and almost always with the desire to unfairly improve one's position in the case. None of these factors are as common in regular creditor-debtor relationships.

Finally, section 4(1) of the *Family Law Act* provides that "property" includes contingent property. Since there is nothing in the Act which mandates exactly how property must be valued, it is suggested it is open to the court to use its discretion to assign a value other than that which the spouse asserts.

For these reasons, it is respectfully submitted that the discretionary approach in cases such as *Poole*, *Cade* and *Brownstein* is to be welcomed. Although more work for the court, examining each case on its merits to

determine the likelihood of repayment makes it more likely that fabricated loans or gifts cloaked as loans will be ferreted out. Once practitioners come to appreciate that this discretion exists, as it does in many other aspects of family law, they can better advise their clients. In the end this only serves to improve the integrity of the family law process as a whole.

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CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Nera v. Nera, 1993 CarswellOnt 1778, [1993] O.J. No. 2852 (Gen. Div.), var'd on other grounds [1995] O.J. No. 2404 (Gen. Div.).	$30,000.00 from husband's parents.	No documentation.	No	Gift	N/A
Arvelin v. Arvelin, 1996 CarswellOnt 394, 20 R.F.L. (4th) 87 (Gen. Div.).	Wife alleging debt to mother's estate of $20,500.00. Husband alleging debt to parents of $10,000.00.	No documentation for either party to support allegations of debt.	No	Debt by wife to mother's estate fixed at $14,500.00. Debt by husband to parents of $10,000.00.	No

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Sauder v. Sauder 1996, CarswellOnt 1751, 23 R.F.L. (4th) 228 (Gen. Div.)	$5,000.00 from husband's parents.	Written acknowledgment by husband to parent.	No	Loan	None
Salamon v. Salamon, 1997 CarswellOnt 696 (Gen. Div.).	Two advances to husband from parents, one for house, one for car, totaling $12,000.00.	Promissory notes stating loan to be repaid without interest at a later date if house/car sold.	No	Loan (contingent liability)	50%
Close v. Close, 1997 CarswellOnt 3638, 33 R.F.L. (4th) 210 (Gen. Div.).	3 advances to wife by mother for $16,000.00 and 1 by her father for $90,000.00.	Nothing on the $16,000.00. Wife signed promissory note to father for the $90,000.00.	1 payment on the $16,000.00, none on the $90,000.00.	$16,000.00 is loan. $90,000.00 is statute barred by Limitations Act.	None

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Chambers v. Chambers, 1997 CarswellOnt 4272, 34 R.F.L. (4th) 86 (Ont. Gen. Div.).	$85,000.00 to husband from his parents.	Written document signed after advance. Wording so vague parents could never enforce against son.	No	Gift	N/A
Cooper v. Grace [1998] O.J. No. 5385 (Gen. Div.).	Two advances totaling $110,000.00 from wife's mother to wife.	No documentation.	Yes, by both parties from joint account.	Loan	None
Gervasio v. Gervasio (1999) 45 R.F.L. (4th) 342 (Gen. Div.).	Husband's parents advancing total of $78,000.00 to parties during marriage.	No	No	Even though parents obtained summary judgment, no deduction allowed.	100%

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Wilkosz v. Amato, 1999 CarswellOnt 1611, [1999] O.J. No. 1958 (S.C.J.).	Series of advances to spouses from wife's parents totaling $74,000.00.	No documentation but history of similar advances to spouse's siblings which were repaid with interest.	No	Loan	None
Mancuso v. Conti, 1999 CarswellOnt 4452, [1999] O.J. No. 4967 (S.C.J.).	$39,000.00 to husband from his mother.	No documentation.	No	Gift	N/A
Pennock v. Pennock, 2000 CarswellOnt 4300 (S.C.J.).	$50,000.00 to husband from his mother.	Yes. Spouse had records showing he was paying interest to parent at 5% per year.	Yes	Loan	None

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Whalen v. Whalen, 2000 CarswellOnt 2476 (S.C.J.).	Three advances to parties by wife's parents totaling $47,000.00.	No documentation.	No	Two of the three advances held to be loans ($39,000.00), the other a gift.	None
Manis v. Manis, 2000 CarswellOnt 4591, [2000] O.J. No. 4539 (S.C.J.).	$50,000.00 to husband from his mother.	Document containing no explicit promise to pay or any due date and obtained for the litigation, not as an element of any transaction.	No	Gift	N/A
Seiffert v. Bryce, 2001 CarswellOnt 817 (S.C.J.).	$255,000.00 from wife's parents.	No	No	Gift	N/A

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Poole v. Poole, 2001 CarswellOnt 1939, 16 R.F.L. (5th) 397 (S.C.J.).	Series of advances by husband's parents to spouses totaling $80,000.00.	Promissory notes signed by both spouses.	Some minor payments.	As to the wife, a loan. As to the husband, a contingent loan.	Wife – no discount. Husband – discounted by 90%.
Hendricken v. Douglas, 2002 CarswellOnt 357 (S.C.J.).	$10,000.00 to husband from his mother.	Promissory note, drafted and signed long after money advanced.	No	Gift	N/A
Aguanno v. Aguanno, 2002 CarswellOnt 1251, 30 R.F.L. (5th) 14 (S.C.J.).	Two sums totaling $100,000.00 from husband's parents to husband.	No documentation.	No	Gift	N/A

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Meade v. Meade, 2002 CarswellOnt 2670, 31 R.F.L. (5th) 88 (S.C.J.).	$10,000.00 advanced to wife by her mother, and $4,000.00 by her aunt.	No documentation, but husband acknowledges debt and that wife had been paying parents back.	Yes	Loan – both sums.	None
Turner v. Hawkins, 2002 CarswellOnt 3537, [2002] O.J. No. 4099 (S.C.J.).	Husband's parents made two advances totaling $62,000.00, one for $50,000.00, the other for $12,000.00. Wife's mother advanced $62,000.00.	Mortgage in favour of husband's mother for $50,000.00 signed by both parties. After the fact documentation re: $12,000.00 advance. No documentation for advances by wife's mother.	No payments on any funds advanced.	Mother's mortgage fo4 $50,000.00 valid against both parties. Father's advance of $12,000.00 a gift. Wife's mother advance of $62,000.00 a gift.	None.

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Cade v. Rotstein, 2002 CarswellOnt 3871 (S.C.J.).	Five advances by husband's parents totaling $192,000.00.	1st advance – promissory note signed by both parties. 2nd advance – addendum to 1st promissory note, signed by both parties. 3rd advance – note signed by husband only. 4th advance – note signed by husband only. 5th advance – note signed by husband only.	No	Loans, but discounted.	By 95%. ($9,600.00 permitted)

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Goldring v. Lococo, 2002 CarswellOnt 4579, 33 R.F.L. (5th) 338 (S.C.J.).	Wife's father suing husband for $180,000.00 advanced during marriage. Wife having passed away.	Yes, both parties.	No.	Conditional gift repayable only on separation or divorce. Since wife passed away in course of loving marriage, advance characterized as gift.	N/A
Royston v. Royston, 2003 CarswellOnt 695, [2003] O.J. No. 849 (S.C.J.).	Husband's mother advanced $20,000.00 to husband.	None	None	Loan	None

CASE NAME	FUNDS ADVANCED	EVIDENCE TO SECURE ADVANCE	PART OF MONEY REPAID?	LOAN OR GIFT	IF LOAN, REDUCED BY?
Brownstein v. Hanson, 2003 CarswellOnt 3036 (S.C.J.).	Husband's parents advanced series of funds to parties during marriage, totaling approximately $300,000.00.	Three promissory notes and a reminder notice, both parties signing notes.	None	Loan	None