

COURT OF APPEAL FOR ONTARIO

CITATION: Riley v. Riley, 2026 ONCA 328

DATE: 20260508

DOCKET: COA-25-CV-0671

Miller, Zarnett and Monahan JJ.A.

BETWEEN

Winston Riley

Applicant  
(Appellant)

and

Anna Riley

Respondent

Larry M. Belowus, for the appellant

Nolan Wilson, for the respondent

Heard: January 13, 2026

On appeal from the order of Justice Pamela L. Hebner of the Superior Court of Justice, dated April 16, 2025, with reasons reported at 2025 ONSC 2363

**Zarnett J.A.:**

[1] The parties separated in 2015, after 20 years of marriage. In 2016, the appellant commenced an application seeking an equalization payment, among other relief. Orders for disclosure were made in 2016 and 2018.

[2] Nine years after its commencement, the equalization claim remained unresolved, despite case management by the motion judge.

[3] On duelling motions brought by the parties concerning compliance with court ordered disclosure, the motion judge found that the appellant had not complied, that his non-compliance was egregious, and that it was unfair to expect the respondent to defend the appellant's equalization claim without the ordered disclosure. Concluding that the appellant "[did] not intend to help the court come to a just resolution", the motion judge made an order striking his application under Rule 1(8) of the *Family Law Rules*, O. Reg. 114/99.

[4] The appellant argues that the motion judge erred in the exercise of her discretion to strike his application. He submits that she did not properly consider the lack of relevance of the documents he failed to disclose and the extensive disclosure that he did make. He argues that the motion judge failed to consider less drastic alternative remedies.

[5] For the reasons that follow, I would dismiss the appeal.

[6] The motion judge was entitled to view striking the application as warranted in the circumstances of the case. Three court orders for production of documents were made; the appellant failed to fully comply with them despite having a lengthy opportunity to do so. The motion judge's findings that the non-disclosure was egregious and that it was unfair to the respondent to expect her to defend the

equalization claim without the ordered disclosure undercut the appellant's arguments that the non-disclosure was of minimal relevance or was made up for by what was disclosed. The appellant did not propose any alternative remedy, let alone one that would remedy the fundamental unfairness to the respondent if she were required to defend a claim without the ordered disclosure.

### **Background**

[7] The principal contested issues in the equalization claim revolved around the value of the respondent's assets and the identification and value of assets owned by the appellant.

[8] At the time of separation, the respondent's principal assets were: the matrimonial home, which she owned; numbered companies that owned property in the Windsor area; vehicles; and "Riley's", a furniture and appliance store located on one of the properties.

[9] The appellant claimed to have no significant assets beyond balances in certain bank accounts totaling just over \$69,000 at the Valuation Date, according to his description in a May 2023 statement of Net Family Property. The respondent contested that assertion. The appellant declared bankruptcy in 2009 but did not disclose to the trustee that he had over \$190,000 in cash, kept in his basement. The respondent also alleged that the appellant had been stealing from her while working at Riley's, which led to her terminating his employment in March 2016.

She further alleged that, after separation, he became involved in two similar businesses: “Original Riley’s” and “Original Mattress”. She suggested that he had an interest in these businesses that existed on the date of separation or was funded by money he had at separation. Her position was that she required a forensic accounting of the appellant’s assets, including the businesses.

[10] The motion judge made several orders for disclosure throughout this litigation, briefly summarized as follows:

- **Order of September 15, 2016:** The respondent was ordered to provide five years of financial statements for every corporation in which she had an interest. The appellant was ordered to provide a copy of his bankruptcy filing. Both parties were ordered to provide income tax returns for five years, and all bank statements, retroactive to 2009.
- **Order of August 17, 2018:** The appellant was ordered to provide numerous items, including both outstanding disclosure from the previous order and additional items. The disclosure required under this order included statements for multiple bank accounts; credit card statements; loan and financing applications; leases and other documents related to various properties; corporate documents,

financial statements, business tax returns and business valuations for Original Mattress; and corporate documents for Original Riley's.

- **Order of September 11, 2018:** Both parties were ordered to disclose various items including: corporate minute books; corporate financial statements, income returns and assessments for any corporations with which they had been involved from 2014 onwards; personal insurance policies; and income tax information. The appellant was also ordered to produce details of financial and real estate transactions in which he had been involved with specified persons, and copies of rent receipts from a specified person. The appellant was also ordered to cooperate with the respondent's forensic accounting of his personal and business affairs for the last five years and to comply with reasonable requests for information by her accountant.

[11] The motion judge found that the respondent took her obligations under the orders seriously and complied with them. This included having business valuations completed for her assets and bringing motions compelling third-party institutions to produce records so she could comply with her obligations under the disclosure orders.

[12] The respondent brought a motion for an order finding the appellant in contempt of the disclosure orders in 2020. By 2023, this motion and two other

motions were outstanding: one by the respondent for an order striking the appellant's pleadings, and one by the appellant for various relief against the respondent.

[13] On March 31, 2023, the motion judge adjourned these motions and directed counsel to review the disclosure that had already been produced. Counsel met on May 3, 2023. Following this meeting, the respondent prepared an updated chart listing all allegedly outstanding disclosure from the appellant.

[14] The motions were heard on January 30, February 15, September 11, and November 13, 2024. The motion judge's reasons outline 28 categories of alleged deficiencies in the appellant's disclosure at the time the respondent's motion to strike was argued.

### **The Motion Judge's Decision**

[15] The motion judge underscored the importance of disclosure in family law cases, while noting that the power to strike out pleadings should be used sparingly and only in exceptional cases, citing *Roberts v. Roberts*, 2015 ONCA 450, 65 R.F.L. (7th) 6. She then applied the three-step test governing the exercise of judicial discretion to strike a party's pleadings set out in *Norris v. Norris*, 2019 ONSC 2795, 27 R.F.L. (8th) 167, at para. 20.

[16] Under the first step of the test, the motion judge found that the appellant's failure to comply with his disclosure obligations was a "triggering event" that justified striking the appellant's pleadings.

[17] The motion judge reviewed, in detail, the appellant's 28 disclosure deficiencies identified by the respondent. These included the fact that the appellant did not provide all his statements for multiple bank accounts and credit cards for the entire period that had been ordered. Some were provided but others were missing. The appellant had not provided credit applications that had been specifically ordered, or personal insurance policies, or accountants' invoices. He also had not produced documents relating to the businesses he was alleged to have an interest in, including all bank statements, business valuations, leasehold improvement documents, merchandise invoices, and documents respecting advertisements and signage.

[18] Faulting his efforts to comply, the motion judge noted that the appellant did not attend financial institutions for documentation he had been ordered to produce but claimed he could not find, nor did he seek third-party production by motion. He told the respondent to obtain bank statements for a joint account with their child from the child, which the motion judge found particularly problematic.

[19] Overall, she found the appellant's affidavit explaining his non-disclosures to be "rife with inconsistencies", especially concerning the businesses. In particular,

she noted the inconsistency of his claim that he had no interest in Original Mattress with the fact that a billboard sign for the company described it as “Original Mattress & Furniture by Winston Riley”.

[20] Under the second step of the test, the motion judge concluded that this was a case where an order striking the appellant’s pleading was entirely appropriate. The litigation had been stagnant for years due to the respondent’s focus on attempting to obtain disclosure from the appellant, at her cost.

[21] The appellant’s justifications for his non-compliance were, in the motion judge’s view, dishonest. He had “at best” not made the required effort to comply with orders and make financial disclosure and “at worst” actively tried to hide his finances. The respondent sought full disclosure so that a proper equalization analysis and support analysis could be undertaken with the assistance of a forensic accountant. She could not defend herself from the appellant’s claims without disclosure and it was unfair to expect her to do so.

[22] Finally, the motion judge concluded that no other remedies in lieu of striking the appellant’s pleading would suffice since the appellant’s lack of disclosure was “sufficiently egregious” and demonstrated that he did not intend to help the court come to a just resolution. There were no parenting issues remaining in the case and the respondent planned to withdraw all her claims after the appellant’s claims

were struck, except for costs. In these circumstances, in her view, striking the appellant's pleadings was an appropriate remedy.

## Analysis

[23] Rule 1(8) of the *Family Law Rules* provides:

If a person fails to obey an order in a case or a related case, the court may deal with the failure by making any order that it considers necessary for a just determination of the matter, including,

- (a) an order for costs;
- (a.1) an order to pay an amount to a party or into court as a penalty or fine;
- (b) an order dismissing a claim;
- (c) an order striking out any application, answer, notice of motion, motion to change, response to motion to change, financial statement, affidavit, or any other document filed by a party;
- (d) an order that all or part of a document that was required to be provided but was not, may not be used in a case;
- (e) if the failure to obey was by a party, an order that the party is not entitled to any further order from the court unless the court orders otherwise;
- (f) an order postponing the trial and any other step in the case; and
- (g) on motion, a contempt order.

[24] The appellant does not dispute that the motion judge had the power to make the order she did under r. 1(8) of the *Family Law Rules*. Instead, he argues that the motion judge erred in exercising her discretion to give effect to that power. He

refers to the primary objective of the *Family Law Rules*: to enable the court to deal with a matter justly: r. 2(2).<sup>1</sup> The appellant claims that the respondent had assets at the Valuation Date of several million dollars, while his were negligible. As such, he complains that the effect of the order is to deny him any right to pursue equalization, a result he says is unjust.

[25] This contention ignores, however, that “[t]he most basic obligation in family law is the duty to disclose financial information”: *Roberts*, at para. 11. It was that basic obligation that the motion judge found the appellant to have egregiously breached. The breach went directly to the question of what constituted dealing with the case justly. The whole point of requiring disclosure from the appellant was to allow the respondent to defend against the appellant’s contention about his assets. As the motion judge found, it would be unfair to expect the respondent to defend the equalization claim without the ordered disclosure; the non-disclosure showed that the appellant “did not intend to help the court come to a just resolution”.

[26] Where an order for financial disclosure has been made and not obeyed, r. 1(8) of the *Family Law Rules* explicitly provides that striking an application may result. Although that remedy is reserved for “exceptional cases where no lesser remedy will redress the party’s failure to comply”, striking a claim where appropriate is “entirely consistent with the primary objective of the *Family Law*

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<sup>1</sup> Dealing with matters justly includes ensuring a procedure that is fair to all parties, saving expense and time, addressing the case in manner appropriate to its importance, and balancing the allocation of court resources to the case with the demands of other cases: r. 2(3).

Rules to ‘deal with cases justly’”: *Manjunath v. Kuppa*, 2024 ONCA 668, at para. 10.

[27] The appellant relies on the decision-making framework for a motion under r. 1(8) set out in *Mullin v. Sherlock*, 2018 ONCA 1063, 19 R.F.L. (8th) 1, where this court said, at paras. 44-46:

First, when faced with an allegation of failure to obey a disclosure order, before granting a remedy, the judge must be satisfied that there has been non-compliance with the court order.

Second, once satisfied, a judge may have recourse to the alternatives described in Rule 1(8). In assessing the most appropriate remedy, a judge should consider the following factors:

- the relevance of the non-disclosure, including its significance in hindering the resolution of issues in dispute;
- the context and complexity of the issues in dispute, understanding that an uncomplicated case should have little tolerance for non-disclosure, whereas a case involving extensive valuation of assets may permit some reasonable delay in responsiveness;
- the extensiveness of existing disclosure;
- the seriousness of efforts made to disclose, and the explanations offered by a defaulting party for the inadequate or non-disclosure; and
- any other relevant factors.

Having considered these factors, the judge will then determine the best remedy. The orders identified in Rule 1(8) are not exclusive. Other approaches may be appropriate. For example, one option might be to invite

the moving party to seek at trial an adverse inference from the failure to disclose and for the motion judge to memorialize this invitation in reasons for decision. Parties frequently rely on another option, namely a request for an adjournment to allow for more time to effect disclosure. Occasionally this may be appropriate especially in a complex case, but an adjournment should not be considered to be automatic. Fully compliant disclosure is the expectation, not the exception.

[28] The appellant argues that the motion judge's approach was inconsistent with the framework because she did not properly focus on the relevance of the undisclosed material, which the appellant says was minimal or nonexistent, the significance of what had been disclosed, or the availability of an alternative remedy.

[29] I disagree.

[30] It is clear that the motion judge did properly consider the relevance of the non-disclosure in accordance with the *Mullin* framework. To assess a party's net family property and equalization claim, the court requires a complete financial picture. Because the appellant did not provide all his bank account statements or documents related to the businesses in which he was alleged to have an interest, the motion judge found that the court could not fairly assess his equalization claim.

This was an assessment of relevance.

[31] The appellant seeks to excuse his failure to produce what was ordered in connection with the businesses known as Original Mattress and Original Riley's by contending that the documents are not relevant because he did not own an interest in the businesses at the relevant valuation date. But that fact is contested; the motion judge found the appellant's evidence to be rife with inconsistencies. The documents were ordered produced as they were relevant to the contested issues of whether the appellant had an interest, when, and of what value; they were clearly relevant to disputed issues.

[32] The appellant points to the fact that some of the statements that he failed to produce pertain to a period after separation. He submits that for this reason they could not be relevant. He also points out that other statements he failed to produce, though they pertain to the time before separation, were for periods between the dates of statements that he did produce, and could only be of minimal relevance, if any. However, financial activity after the date of separation may illuminate what was in place at the time of separation; the date range ordered reflects this. And it is not necessarily the case that information in a missing statement is revealed by a prior or subsequent statement. The order for production of all statements reflects this by requiring all statements produced.

[33] The motion judge made each of the disclosure orders, case managed this matter for years, and heard the motions leading up to the order under appeal over four days. She was intimately familiar with the issues in the litigation. She found

that the non-disclosure was egregious, that it would be unfair to expect the respondent to defend the equalization claim without the information that was ordered disclosed, and that by his non-disclosure the appellant evinced an intention not to assist the court in coming to a just resolution. These findings undercut any assertion that the non-disclosure lacked, or had minimal, relevance to the issues in dispute. The motion judge clearly considered the non-disclosure to be of significant relevance. Her findings are owed deference in this court.

[34] The appellant also argues that the motion judge failed to consider the disclosure the appellant did make. I do not accept this submission.

[35] The reference in *Mullin* to the “extensiveness of existing disclosure” does not suggest a level of disclosure beyond which breaches of further disclosure obligations are to go without a remedy. Rather, *Mullin* sets out a list of factors to consider as part of a holistic assessment of the default in its full context. That is what the motion judge did here.

[36] The motion judge did not lose sight of what had been produced by the appellant. Her discussion of the specific disclosure complaints referred repeatedly to what the appellant had and had not produced in a category. She correctly looked beyond what was produced to consider what had not been produced, what efforts had been made to comply, the explanations for non-compliance, and the effect of the non-compliance on the prospect of a just resolution of the matter. She

appropriately considered the production the appellant made in its proper context. The appellant's production was not a controlling factor in favour of the appellant, because of the effect of his remaining non-disclosure on the respondent's ability to defend the equalization claim.

[37] Finally, the appellant argues that the motion judge did not consider alternative, less drastic, remedies. An alternative remedy must be one that would address the prejudice caused by non-disclosure. The appellant did not propose any such remedy to the motion judge, or to this court. Simply asserting that the matter should proceed without the disclosure is not an alternative remedy, where the non-disclosure makes it unfair to expect the party entitled to the disclosure to respond to the claim against them.

[38] The motion judge's order was an exercise of discretion. This court will not interfere with a discretionary order unless the lower court misdirected itself, came to a decision that is so clearly wrong as to amount to an injustice, or gave no or insufficient weight to relevant considerations: *Penner v. Niagara (Regional Police Services)*, 2013 SCC 19, [2013] 2 S.C.R. 125, at para. 27. In my view, none of the grounds for appellate interference has been established.

### **Disposition**

[39] I would dismiss the appeal.

[40] The appellant shall pay costs of the appeal to the respondent in the agreed upon amount of \$10,000, all inclusive.

Released: May 8, 2026 "B.W.M."

"B. Zarnett J.A."

"I agree. B.W. Miller J.A."

"I agree. P.J. Monahan J.A."