

Family Law Appeals: Unique Considerations and Recent Guidance from the Court of Appeal

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Author: Ryan Kniznik

When considering a family law appeal, the function of the appellate Court and the level of respect given to the initial decision, also known as the standard of review, are important.

The Court of Appeal has recently provided guidance in a number of family law decisions on how they approach cases, ranging from addressing fact finding, credibility assessments, parenting and support matters. The common theme is that great respect is given to the initial decision.

For example, in *Alajajian v. Alajajian*, 2021 ONCA 602, the Court confirmed that “factual findings and credibility assessments are entitled to substantial deference. This is especially so in family law cases” (para. 4 - <https://canlii.ca/t/jj017>). In *Ballanger v. Ballanger*, 2020 ONCA 626, the Court emphasized respect given to support Orders in order to promote “finality in family law litigation...” (para. 22 - <https://canlii.ca/t/j9z55>). Lastly, in *N. v. F.*, 2021 ONCA 614, a majority of the Court drove home the respect given to parenting matters, and for appeal Courts to avoid the temptation in family law cases to render a “results-based” decision (paras. 5-6, 35-41 - <https://canlii.ca/t/jj24z>).

In addition to the respect given to the initial decision, the Court of Appeal has recently reiterated that its role is to correct error and not re-do trials. The Court in *N. v. F.*, described itself as an “error-correcting institution” (para. 41 - <https://canlii.ca/t/jj24z>), and in *Alajajian v. Alajajian*, stated that “The appellant is seeking to retry the case on appeal. That she cannot do...” (para. 5 - <https://canlii.ca/t/jj017>).

Understanding that an appeal is not an opportunity to redo a trial and that the Court does not lightly interfere with decisions is helpful when contemplating an appeal. The common themes in how family law appeals are approached act as a guidance when considering whether to proceed with an appeal or how to defend one, with a view to whether errors are present to displace the respect given to the initial decision.

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