

**NOVA SCOTIA COURT OF APPEAL**

**Citation: Robinson v. Morrell Estate, 2009 NSCA 127**

**Date:** 20091210

**Docket:** CA 305792

**Registry:** Halifax

**Between:**

Anne Robinson

Appellant

v.

Susan Elaine Ostrom, Executrix of the Estate of Ezra Morrell

Susan Elaine Ostrom, Walter Ostrom and Ingrid Ostrom

Respondents

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**Judge:** The Honourable Justice Oland

**Appeal Heard:** September 9, 2009

**Final Submissions Received:** November 16, 2009

**Subject:** Wills - Separation Agreements - Renunciation of Testamentary Gifts

**Summary:** A couple signed a separation agreement which included a provision whereby they agreed to renounce and waive any claim in the estate of the other and any right to share in the estate of the other. When they divorced, its terms were incorporated in the corollary relief judgement. When he died, the former husband had not changed his will which left the residue to his former wife. The Chambers judge held that the separation agreement did not revoke the will and accordingly, she was entitled to the testamentary gift. The mother of the deceased appeals.

**Issue:** Whether, before a testator's death, a person can contractually obligate himself or herself to renounce a testamentary gift.

**Result:** Appeal dismissed. The Chambers judge's reasoning was flawed. However, the appellant failed to produce any legal

authority that a contractual promise to renounce, given for consideration before the death of a former spouse, binds a person to renounce a testamentary gift after his death. Even if the former spouse were so bound, it does not appear that there is any privity of contract which would allow the appellant here, who was not a party to the separation agreement, to enforce the separation agreement.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 15 pages.**