



**ESTATE RIGHTS OF COMMON  
LAW SPOUSES**

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## POINTS FOR DISCUSSION

1. Married spouses and property claims
2. Common Law spouses and property claims
  - Who is a spouse?
3. Spousal Support Claims – an obligations survives death?
  - Domestic contracts and the FLA
  - Recourse under the SLRA
  - Domestic contracts and the SLRA
4. The impact of Remarriage or common law arrangements on prior wills

## RECOURSE FOR SURVIVING MARRIED SPOUSES

Relief available to the married spouse is legislated. In Ontario, the Family Law Act provides property division remedies as a right to the married spouse.

Option to “take under the will” or to make an election.

- 6 month deadline!

Key Concepts:

- NFP
- Equalization
- Valuation Date

## ESTATE RIGHTS OF COMMON LAW SPOUSES

### Rights of Married Spouses vs Unmarried Spouses

The Supreme Court of Canada has upheld the constitutionality of the different treatment of married spouses vs common law spouses

Who is a “spouse” for common law purposes?

- To fit in the category of a “spouse” you must be able to demonstrate that you have cohabitated continuously for at least 3 years, or that that you are in a relationship of some permanence, if you have a child.

REMEDIES FOR THE COMMON  
LAW SPOUSE

## Unjust Enrichment Claims

- Trusts
  - Resulting Trusts
  - Constructive Trusts
- “Joint Family Venture” concept
  - *Quantum Meruit*
  - Proprietary Estoppel

## RESULTING TRUSTS

- One of the earliest models of relief
- Concept of “common intention”
- Inconsistent with underlying principles of resulting trust

“It’s hard to see how a resulting trust can arise from contributions made in kind over time to the improvement of an existing asset, or contributions in kind over time for its maintenance”

*Kerr v Baranow; Vanasse v Seguin*

## CONSTRUCTIVE TRUSTS

Due to the difficulties associated with common intention resulting trust, the Supreme Court clarified in *Kerr v Baranow*; *Vanasse v Seguin* that “the law of unjust enrichment, coupled with remedial constructive trust, remains the more flexible and appropriate lens through which to view property and financial disputes in domestic situations”

“Unjust Enrichment” is a guiding principle

- The purpose is to restore a benefit which justice does not permit one to retain
- The remedy is founded in common law and equity, not in legislation like claims for married spouses.

## THE “TEST” FOR ESTABLISHING A CLAIM

For a plaintiff to be successful in making such a claim, they must be able to establish the following three elements:

1. An enrichment of or benefit to the defendant by the plaintiff.
2. A corresponding deprivation of the plaintiff; and
3. The absence of any juristic reason for the enrichment.

“The Courts should exercise flexibility and common sense when applying equitable principles to family law issues with due sensitivity to the special circumstances that can arise in such cases.”



## UNJUST ENRICHMENT – THE TEST

1. **An enrichment of or benefit to the defendant by the plaintiff**
  - the benefit must be tangible
  - The benefit conferred on the defendant spares him an expense he would have had to undertake
2. **A corresponding deprivation to the plaintiff**
  - the plaintiff's loss will only be relevant to the extent that it can be shown that the defendant gained a benefit conferred by the plaintiff
3. **The absence of a juristic reason**
  - There is no reason in law or justice that justifies the defendant's retention of the benefit conferred by the plaintiff.
  - What about domestic work? I.e. housework?

## QUANTIFYING AN AWARD

Previously, there were two options:

Monetary award based on a “value received” or free for services basis or proprietary award, which generally takes the form a remedial constructive trust

***Joint Family Venture*** was established.

Contributions of both parties over time have resulted in the accumulation of wealth

The unjust enrichment occurs where it is demonstrated that throughout the relationship the parties engaged in a joint family venture, but, upon breakdown of the relationship, one of the parties is left with a disproportionate share of the jointly held assets.

APPLICATION TO CASE LAW:  
VANASSE V SEGUIN

- 12 year common law relationship
- Both working during the first four years
- During the next 3.5 years Ms. Vanasse gave up her lucrative career to relocate to Halifax, where Mr. Seguin's company had relocated.
- Two children.
- Ms. Vanasse focussed on the family and household.
- After separation, they were in vastly different financial circumstances.
- Ms. Vanasse = \$322,000
- Mr. Seguin = \$8,450,000.00
- Ms. Vanasse sought constructive trust on the basis on unjust enrichment

## CONTINUED...

- The court was satisfied that the four primary criteria for identifying a joint family venture were present
- There was a link between her contributions to the family's accumulation of wealth since, it was noted, Mr. Seguin would not have made the efforts he did to build up his company, but for Ms. Vanasse's assumption of the household and child rearing calculations.
- Ms. Vanasse awarded one half of the family home, and one half interest in the prorated increase in Mr. Seguin's net worth during the period of the unjust enrichment.

## CLAIMS FOR QUANTUM MERUIT

Seek compensation for services rendered is able to rely on an express or implied promise of compensation or on a promise made by the deceased that the claimant will receive their compensation pursuant to the deceased's testamentary documents or by other means on remuneration

*Deglman v Guaranty Trust Co. of Canada (Successful)*

*Albadi v Greenzveig Estate (Unsuccessful)*

# Deglman v Guaranty Trust Co. of Canada (SUCCESSFUL)

- Deceased promised her nephew, who was living with her at one of her two homes while attending school, that if he was good to her and assist her with errands and general upkeep of her properties that she would make adequate provision for him in her will, and in particular, that she would leave to him the house in which he was then residing.
- The nephew performed tasks, took the aunt to appointments, helped her with errands, etc.
- The aunt did not keep her promise. She did not provide for him in her will
- The nephew brought an action for specific performance
- The court held that the nephew's right to recovery arose not from any enforceable contract made between him and the deceased aunt, but an "obligation imposed by law."
- The estate had received the benefit of the promise made.
- The court ordered that payment ought to be made for the fair value of the services rendered by the nephew since, to do otherwise, would result in an unjust enrichment.

## **Albadi v Greenzveig Estate**

- The plaintiff, an esthetician who was 41 years of age at the time of the hearing, had worked at a spa, where she met the deceased.
- The deceased was 77 years of age when he died of a heart attack.
- His estate was worth nearly \$2 million dollars.
- For 10 years the plaintiff supplemented her earnings by providing housekeeping services to the deceased. She was paid \$100 in cash for her work each time.
- Eventually, the plaintiff began attending at the deceased home several times per week to provide housekeeping services. She was always paid.
- The two became close. The deceased would pick the plaintiff up from work and treat her to dinner, shopping and movies.
- The deceased took the plaintiff on several trips, including a cruise to Alaska, the Caribbean and an expensive cruise to Russia and the Scandinavian countries, to name a few.
- The deceased paid for all of the trips, which the plaintiff admitted to enjoying.

## Continued....

- The plaintiff and the deceased did not have a romantic relationship. The plaintiff had a boyfriend who she bought a home with during the time in question
- The plaintiff alleged that the deceased promised to leave her his car and “some money” in his will and that he wanted to make some changes to his will, but he died before doing so.
- In applying the test for unjust enrichment, the court held that even assuming the deceased enjoyed the enrichment conferred by the plaintiff, both by virtue of services performed, and paid for, as well as her companionship outside the hours she was paid for, the plaintiff did not suffer a corresponding deprivation.
- The plaintiff appeared to have been enriched by the trips, not deprived
- The plaintiff’s claim was dismissed.



## PROPRIETARY ESTOPPEL

Geared to protect an individual who has relied, to their detriment, on the action (or inaction) of a property owner that caused them to believe that they are or would be the true owner of certain property to such an extent that it would be unjust to permit the owner to later turn around and assert his or her title.

### TEST

1. Encouragement of the plaintiffs by the defendant land owner;
2. Detrimental reliance by the plaintiffs to the knowledge of the defendant owner; and
3. The defendant owner must later seek to take “unconscionable” advantage of the plaintiff by reneging on an earlier promise.

## SPOUSAL SUPPORT – AN OBLIGATION THAT SURVIVES DEATH?

- Property rights of the survivor spouse will be examined in context of other rights available, including those of support.
- The law of spousal support is governed by the *Divorce Act* for married spouses and the FLA for married and unmarried spouses.
- If you are entitled to support you are also a “dependant” under the FLA
- A surviving spouse or former spouse can enforce a spousal support order after the death of their spouse.

**DOMESTIC CONTRACTS MADE  
PURSUANT TO PART IV OF THE FLA**

- Three types of domestic contracts
- Beware “mutual releases”
- Legislation trumps – ensure beneficiary designations are changes to match what is agreed!
- Disclosing assets – important!

Intersection between domestic contracts and dependant’s relief claims made pursuant to the SLRA - one of the factors considered by the court when a claim is made under the SLRA is any agreement between the deceased and the dependant.

Therefore, it goes without saying that for an agreement to be considered it must be valid!

**RECOURSE FOR SURVIVING SPOUSES  
UNDER THE SUCCESSION LAW  
REFORM AT (SLRA)**

**Succession Law Reform Act**

58(1) Where a deceased, whether testate or intestate, has not made adequate provision for the proper support or his dependants or any of them, the court, on application, may order that such provision as it considers adequate be made out of the estate of the deceased for the proper support of the dependants or any of them.

CONTINUED

## Who can make an SLRA Claim?

A “dependant” is defined in s.57 of Part V of the SLRA as:

- The spouse of the deceased,
- A parent of the deceased,
- A child of the deceased, or
- A brother or sister of the deceased.

To whom the deceased was providing support or was under a legal obligation to provide support immediately before his or her death.

- 6 months deadline!

## CONTINUED

- The Court has wide discretion when making an award for support.

68(1) subject to subsection (2), the incidence of any provision for support ordered shall fall rateably upon the part of the deceased's estate to which the jurisdiction of the court extends.

(2) the court may order that the provision for support be made out of and charged against the whole or any portion of the estate in such proportion and in such manner as the court seems proper.

- Not necessarily restricted to the estate residue, after the deduction of specific bequests!

## DOMESTIC CONTRACTS AND THE SLRA

The Court is required to consider “any agreement between the deceased and the dependant.”

A domestic contract has ability to preclude applicant from successfully asserting that they are a dependant and entitled to support.

A domestic contract may bar an application from meeting dependant criteria if the following requirements are met:

1. It contains a full and final spouse support release
2. The deceased was not actually supporting the applicant before death, and
3. The applicant has not brought an application to overturn or vary the contract before the deceased's death.

## CONTINUED...

What about situations where a domestic contract keeps the support entitlement alive, even if the payor is paying “zero dollars” or very little support to the recipient? On the death of the deceased, the recipient may choose from the following options:


1. If the contract is incorporated into a court order, the support obligation binds the estate unless the order provides otherwise. (surviving spouse can continue to receive support)
2. If the support order of agreement is not binding on the estate, the surviving spouse may apply under the SLRA for support, since they would still fit the definition of a “dependant”
3. Regardless of whether the order or agreement is intended to be binding or not of the estate, the surviving spouse can apply under the SLRA for a different amount of support if the support they are receiving is inadequate



IMPACT OF REMARRIAGE OR  
COMMON LAW ARRANGEMENTS ON  
PRIOR WILLS

**Under Ontario Law, Marriage revokes a will!**

- Succession laws take over
- Court will not interfere to “guess” intentions of testator
  - Could destroy a carefully planned will
- Succession laws take over – as if the deceased died “intestate”
  - Beware – predatory marriage (Anna Nicole Smith?)
- You can make a will in contemplation of marriage to protect yourself.



**Thank You!**  
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