

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

THE LAW OF RESTITUTION

by The Late Peter D. Maddaugh and John D. McCamus

Release No. 2, November 2023

What's New in this Update:

In *Carleton Condominium Corporation No. 519 v. Ottawa-Carleton Standard Condominium Corporation No. 656 et al*, 2023 ONSC 1780 (Ont. S.C.J.), the plaintiff condominium corporation was obliged to replace electrical equipment located on its property which had the purpose of distributing power supply from the local hydro authority not only to its own building but to two neighbouring buildings originally constructed by the same builder but now owned by separate condominium corporations. The neighbouring corporations did not question the need for replacement of the equipment but one of them refused to contribute to the cost of doing so. There was no contractual obligation requiring a contribution to these costs. A successful restitution claim, however, was permitted. The trial court reasoned that the neighbours were receiving an “incontrovertible benefit” at the plaintiff’s expense and that there was no juristic reason requiring this transfer of value to the neighbouring corporations. The authors suggest that this case demonstrates the capacity of the

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

unjust enrichment principle to provide a basis for restitutionary relief in novel cases. The “existing categories” of restitutionary recovery offer no direct support for such a claim. Nonetheless, relief was made available in what appears to be appropriate circumstances by reliance on the three elements of the underlying unjust enrichment principle.

In *Sheehan v. Samuelson*, 2023 NSSM 27 (N.S. Sm. Cl. Ct.), a Nova Scotia Small Claims court held that the consequences of the recent changes in criminal legislation which no longer prohibit the provision of sexual services for a fee are, firstly, that contracts to provide such services are enforceable by the sex worker and secondly, if that holding is not correct, restitutionary claims for the value of such services are available. On the latter point, the court relied on recent Canadian authorities that permit parties to illegal contracts who are, to some degree, implicated in the illegal conduct to bring restitutionary claims in appropriate circumstances.

In *Sidhu v. Sidhu*, 2023 BCSC 449 (B.C.S.C.), the British Columbia Supreme Court considered whether the “joint family venture” concept — developed by the Supreme Court in *Kerr v. Baranow*, [2011] 1 S.C.R. 209 (S.C.C.), to aid in the resolution of disputes concerning ownership of jointly created wealth upon the dissolution of relationships of cohabitation — could apply to other types of familial relationships. The dispute concerned a close relationship between a daughter-in-law and her husband’s parents, with whom the couple lived rent-free. Upon dissolution of the couple’s marriage, the daughter-in-law sought a share of the parents’ assets on grounds of unjust enrichment. The plaintiff argued that the relationship of the couple to the parents exhibited all the characteristics of the “joint family venture”. Apart from living together, the children participated in the family business and the daughter-in-law, at least, assumed that they were sharing the benefits of jointly created wealth. The trial judge appeared to accept that the concept could apply to such a relationship but did not do so in the particular factual context. Financial integration was not complete. The children maintained separate bank accounts from the parents and purchased rental properties on their own account. For a time, the daughter enjoyed and kept separately earned employment income from another source. The court was not persuaded that the daughter-in-law had established a direct link between her contributions and the acquisition, preservation, maintenance, or improvement of the assets in dispute. The authors raise the question as to whether the “joint family venture” concept is necessarily linked to cohabiting couples.

In *Bob Landscaping Corp. v. Fang*, 2023 BCSC 218 (B.C.S.C.), a claim by a landscaper with respect to extra work necessitated by unexpected aspects of the particular project was denied on the basis of a “clean hands” defence. In an attempt to pressure the customer to enter into an agreement to pay for the extra work, the landscaper denied the customer access to his property, filed an inappropriate builder’s lien and presented false invoices with respect to the extra

work. The landscaper's claim for restitution for the value of the extra work was denied on the basis that the landscaper did not come to court with "clean hands". The authors have added a new section to Chapter 3 providing an account of the clean hands doctrine and its relationship to all types of restitution claims.

Historically, there has been some controversy in English law as to whether there exists a pre-requisite to the application of equitable tracing doctrine that the asset in question had passed through a fiduciary relationship in such fashion as to create an equitable proprietary interest. Canadian law has abandoned any such requirement. In *RnD Funding Pty. Limited v. Roncane Pty Limited*, [2023] FCAFC 28 (F.C.A.), a full court of the Federal Court of Australia held that such a requirement does not exist in Australian law.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages