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### THE LAW OF RESTITUTION

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

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#### What's New in this Update:

In *Chapman v. Ing*, 2025 ONCA 292 (Ont. C.A.), the Ontario Court of Appeal affirmed a trial decision applying the unjust enrichment analysis to a rather novel claim in the context of the dissolution of a relationship of cohabitation. The type of claim recognized by the Supreme Court of Canada in *Pettkus v. Becker*, [1980] 2 S.C.R. 834, and clarified by the Court in *Kerr v. Baranow*, [2011] 1 S.C.R. 269, grants relief in that context to a partner who would otherwise not own an appropriate share of jointly created wealth upon dissolution of the relationship. If the claimant can establish that the relationship constituted a “joint family venture” which the parties expect to endure indefinitely with the result that jointly created wealth will, in effect, be shared, a claim by the claimant for a more appropriate share of that wealth may succeed. In the *Chapman* case, the relationship of cohabitation was unusual. Although the relationship lasted for 16-20 years, it was said to be “on-again, off-again” with periodic separations.

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Further, though the parties had a child together, the male partner exhibited little interest in a parenting role. Further, though the parties collaborated in a number of business activities, their personal finances were not significantly integrated. On these and other grounds, the trial judge concluded that the relationship, though long-standing, did not constitute a “joint family venture”. Nonetheless, the judge did grant a claim by the female partner to a constructive trust on shares owned by the male partner in a numbered company, the sole asset of which was a multi-unit commercial/residential building. The building was acquired shortly before the dissolution of the relationship between the parties. Initially, the building was in a dilapidated and vacant state. Through the efforts of the female partner, however, the building was gradually renovated and administered by the female partner and the son in a manner that transformed the building into a successful business asset. The female partner was awarded a constructive trust on the male partner’s shares in the numbered company and could acquire these shares upon payment to him of an amount representing one half of the value of the company (*i.e.*, the value of the building) at the time of dissolution of the relationship. The claim is quite novel and is evidently not simply an application of the *Kerr* doctrine. The trial judge based the result on the tripartite unjust enrichment principle requiring a benefit to the defendant, a corresponding deprivation suffered by the plaintiff and no juristic reason for the transfer. The new rule would appear to apply in cases where, after dissolution of a relationship or cohabitation, one party single-handedly increases the value of a jointly owned asset.

In *Laliberté v. Merchant*, 2025 ABKB 349, an Alberta trial court dismissed a claim for unjust enrichment on the basis that allowing the claim would run counter to the policy underlying a rule that prohibited any agreement to transfer the value at issue. The defendant law firm was engaged in attempting to mount a class action on behalf of residential school survivors. The plaintiff paralegal and the firm had discussions concerning the recruitment of potential members of the class by the plaintiff. Appreciating that an agreement whereby the defendant recruited such individuals for the defendant would be contrary to the Alberta Law Society’s Code of Conduct, the plaintiff entered into individual agreements with potential class members to provide translation and consulting services in exchange for an assignment of a percentage of any eventual recovery by them. The defendant firm initially facilitated this scheme by lending funds to the plaintiff to cover his expenses and then transferring the agreed percentage of settlement funds to him. This arrangement, however, was held unenforceable in a proceeding in another province. The plaintiff then sued the defendant firm for unjust enrichment for the value of the recruitment work provided, in effect, to the firm. The Alberta court dismissed the claim on the basis that such relief would undermine the policy underlying the Code of Conduct prohibition of payment for recruitment of clients.

For reasons discussed in Chapter 31 of the text, English and Canadian courts have been reluctant to allow necessitous intervention

claims where the benefit consists in services designed to preserve the value of property. In a recent Nova Scotia Small Claims Court claim, *Rainbow International Restoration of Halifax v. Chen*, 2025 NSSM 28, relief was granted, however, to a disaster relief agency that repaired flood damage to a homeowner at the request of the homeowner's insurance agent. Although the court, in granting relief, emphasized that the plaintiff had responded "to the emergency in a timely and professional manner" and that there were serious risks to the health of residents if the damage was left unattended, it did not specifically invoke the doctrine of necessitous intervention. Rather, it simply relied on the general principle against unjust enrichment. Nonetheless, the case provides an attractive example of necessitous intervention preserving the value of property giving rise to a restitution claim.