



Unjust Enrichment by Scott D. Abel

With recent amendments to legislation, and the proclamation of new legislation, the differences between married couples and those living common-law continues to lessen.

Specifically, in regards to the division of property on separation, the *Family Property Act* now provides for the same rights to an equal division of property, regardless of whether you were married or living common-law.

However, regardless of the rights created pursuant to the *Family Property Act*, a spouse may still have options, in relation to the property of their ex-common-law spouse.

Long before legislation recognized property rights of common-law spouses, the courts were ensuring that equity and fairness played a role in the separation of common-law spouses.

The classic example is where farm land, machinery, equipment, and cattle are all owned by the “husband” (I say husband, although the parties are not married). The “wife”

(again, although not married) works on the farm, helps with chores, tends the garden and the house, and generally contributes to the growth of the farm. After a period of cohabitation, the couple separate.

As the parties are not married, and until the recent amendments to the legislation, the wife had no legislative entitlement to share in the value of the farm.

The courts, using principles of equity and fairness, determined that this was unfair. The courts used a legal principle called unjust enrichment, to provide some compensation to the wife.

Using the example above, in order for there to be unjust enrichment, the husband had to benefit from the wife’s efforts, the wife be deprived as a result of her efforts, and there to be no basis at law for the benefit and deprivation.

In the example above, the husband had the free and exclusive labour of the wife for several years, which benefited him. The wife gave up options off of the farm for employment

or income, to her detriment. As the wife was not paid for her efforts, nor received any other legal benefit, there is no basis at law for her deprivation. The courts would likely conclude that there has been unjust enrichment, and the wife would either be entitled to a monetary claim, or an interest in the husband’s assets.

This principle still exists, despite the amendments to the legislation. Rights under both the *Family Property Act*, and in equity, can exist together, and be used together in the appropriate circumstances.