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COURT OF APPEAL FOR ONTARIO

OSBORNE A.C.J.O., AUSTIN and LASKIN JJ.A.

B E T W E E N :	)	
	)	**Mary Ann Currie**
PAULETTE BELL	)	**for the appellant**
	)	
Plaintiff/Respondent	)	
	)	
- and -	)	**Michael Harris**
	)	**for the respondent**
DONALD SCOTT BAILEY	)	
	)	
Defendant/Appellant	)	
	)	**Heard: November 27, 2000**
	)	

On appeal from the order of Justice Robert E. Zelinski dated October 22, 1999.

OSBORNE A.C.J.O.:

[1] The appellant, Donald Bailey, and the respondent, Paulette Bell, lived together from March 1989 until September 1997. After their separation, Ms. Bell commenced an action against Mr. Bailey for compensation for unjust enrichment and for spousal support. The trial judge, Zelinski J., concluded that Ms. Bell was entitled to a 45 per cent constructive trust interest in two of Mr. Bailey's assets, and converted that trust interest into a monetary award of $46,300 as compensation for unjust enrichment. He also held that Ms. Bell was entitled to spousal support of $600 a month for 48 months.

[2] Mr. Bailey appeals from that order. There are three issues on his appeal. First, is Ms. Bell entitled to spousal support under the *Family Law Act*, R.S.O. 1990, c.F.3? Second, was the trial judge correct in finding that Mr. Bailey had been unjustly enriched by the services and monetary contributions of Ms. Bell during their co-habitation? And third, if so, what is the appropriate monetary remedy?

1. Spousal Support

[3] The trial judge ordered Mr. Bailey to pay support of $600 a month for 48 months. Mr. Bailey submits that Ms. Bell is not entitled to support. He contends that she could obtain more remunerative employment, and that if she did, she would be self-sufficient. If Ms. Bell is entitled to support, he accepts that the time limited $600 a month support order is reasonable.

[4] In my opinion, the trial judge considered the appropriate factors in finding that Ms. Bell was entitled to support. In concluding that Ms. Bell was entitled to support, he took into account the circumstances of her relationship with Mr. Bailey, her needs and Mr. Bailey's ability to pay. By making a time limited support order (not an issue on this appeal), he took into account the prospect that Ms. Bell would obtain more remunerative employment at least by the end of the 4-year spousal support period. I see no basis upon which to interfere with the trial judge's conclusion that Ms. Bell was entitled to support. Since Mr. Bailey does not dispute the quantum or the duration of the support order, I would not give effect to this ground of appeal.

2. Unjust Enrichment

(i) The Evidence

[5] The trial judge concluded that both Ms. Bell and Mr. Bailey were credible witnesses, evidenced by the fact that their testimony was "largely complementary." However, the evidence of who did what when the parties co-habited is somewhat confusing. I propose to limit my references to the evidence to its significant features.

[6] Immediately before the parties began to co-habit, Ms. Bell resided in her parents' basement. During that time she was unemployed and living on public assistance, and had less than $2,000 in assets. Between January 1, 1989 and January 1, 1991, Ms. Bell received spousal support from an earlier relationship of $900 per month. In March 1989, Ms. Bell and her son moved into Mr. Bailey's house in Thunder Bay. At that time, Ms. Bell was 43 and Mr. Bailey was 46 years old. The understanding was that Ms. Bell would contribute about $450 per month to the joint household expenses. This is what she paid to her parents for rent and utilities before she moved in with Mr. Bailey. When she and Mr. Bailey separated in 1997, she had assets valued at almost $40,000.

[7] Ms. Bell was employed during most of the time she lived with Mr. Bailey. She worked at a senior citizens' home as a housekeeper until 1992, as a receptionist in a dental office and as a receptionist and payroll clerk for one year. In 1994, she took a 10-month course at Confederation College to upgrade her skills. She worked in a real estate office for six months and in the cafeteria of a forest products company for about two years. She was also employed as an office manager. Her income in the years 1989 to 1997 was:

1989	-	$13,437
1990	-	$25,708
1991	-	$28,676
1991	-	$25,997
1993	-	$17,573
1994	-	$ 4,810
1995	-	$ 2,868
1996	-	$12,532
1997	-	$27,397

[8] When the parties began to co-habit, Mr. Bailey was employed at Great-West Timber as a machinist. He earned about $30,000 a year. He changed jobs several times during the period of co-habitation. There is no evidence of his income between 1989 and 1996, although there was some evidence that his income increased after he left his job at Great-West Timber. His income in September 1997 was approximately $45,000 a year. Mr. Bailey took the position before and during the trial that because he and Ms. Bell were not married, he was not required by the *Family Law Act* to disclose his financial circumstances. Instead, he argued that Ms. Bell was required to establish unjust enrichment and the compensation to be paid to her to remedy it. He thus declined to file financial information setting out the value of his net family property or his income when he and Ms. Bell began to co-habit. This undoubtedly prolonged the trial, made any pre-trial less useful and made any settlement discussions less productive.

[9] There was some evidence of the value of Mr. Bailey's house and his RRSPs at relevant times. His Thunder Bay property was appraised in 1988 (the year before the parties began to live together) and valued at $78,000. In 1997, when the parties separated, his property was appraised at $110,000. In March 1989 Mr. Bailey had RRSPs valued at about $49,000. In September 1997 his RRSPs had a value of about $121,000.

[10] Generally, the parties' 8-1/2-year co-habitation divides into two periods. In the first period of almost four years, Mr. Bailey took out a $40,000 mortgage on his Thunder Bay house to satisfy a $40,000 lump sum support obligation to his former wife. He paid the $40,000 lump sum spousal support to his former wife in April 1989, that is shortly after he and Ms. Bell began to live together. He used much of his take-home pay from his job as a machinist in Thunder Bay to pay off his $40,000 mortgage. During this period, Ms. Bell looked after the day-to-day household expenses such as groceries, common utilities and whatever expenses Mr. Bailey could not pay for, having regard to his other financial commitments. These commitments included "doubling-up" mortgage payments, which became $400 bi-weekly, and paying off 10 per cent of the principal on mortgage anniversary dates. Mr. Bailey was able to pay off his $40,000 in three years and 10 months by consistently taking advantage of accelerated prepayment rights contained in the mortgage. The trial judge concluded that Mr. Bailey's mortgage payments and RRSP contributions permitted him to contribute "very little" to household expenses.

[11] Ms. Bell presented cheques as evidence that she personally contributed $6,000 to Mr. Bailey's accelerated mortgage payments. Mr. Bailey contended that the cheques made out by Ms. Bell did not consist entirely of her money. He submitted at trial that some of the funds came from their joint savings account. He testified that he put funds into this joint account in order to make these extra lump sum mortgage payments. Ms. Bell testified that she did not know about any such deposits by the appellant. The trial judge found that Ms. Bell did pay $6,000 from her own funds to assist Mr. Bailey in paying off the mortgage. There is no basis upon which to interfere with that finding.

[12] Near the end of this first part of the co-habitation period, Ms. Bell began to mistrust Mr. Bailey. At the end of December 1993, she moved out of their bedroom. However, they continued to have sexual relations and to work together when it came to household management matters.

[13] After he paid off the house mortgage, with Ms. Bell's encouragement Mr. Bailey bought a new truck. He repaid the loan on the truck within 30 months. He then purchased a new boat and motor. When the parties separated, the truck and boat were valued at $10,000 and $5,000, respectively.

[14] There is evidence that in the 1989 to 1993 period Mr. Bailey made some improvements to his Thunder Bay house. These consisted of painting several rooms, replacing the linoleum flooring in the bathroom and kitchen, refinishing the bathtub, replacing the toilet, sink and vanity, replacing the kitchen countertops and tiles behind the kitchen sink, refinishing the kitchen cupboard doors, installing a new door on the linen cupboard, installing new living room and bedroom carpeting, installing new bi-fold closet doors, painting the basement walls and floor and installing a gas furnace. Ms. Bell assisted in paying for these improvements to Mr. Bailey's house and property, including the redecoration of several rooms in the house, the installation of the new flooring, and the refurbishment of the bathroom and kitchen. In addition, Ms. Bell paid for a vanity suite and improvements in the bathroom as well as a new stove, refrigerator and a sectional dining room suite. Mr. Bailey retained possession of these items after he and Ms. Bell separated. Ms. Bell produced cheques from her chequing account totalling approximately $800 to represent her financial contribution to these improvements. Other than the living room carpeting and the kitchen cupboard door refinishing, which were done by paid contractors, all of the improvement work was done by Mr. Bailey.

[15] Once Mr. Bailey paid off the mortgage on his house, he and Ms. Bell shared household and related expenses. In this second part of the parties' co-habitation, Ms. Bell began to contribute to her own RRSP account. The trial judge referred to the new set-up as a "pattern change". He found that Mr. Bailey made a direct contribution of $13,100 to Ms. Bell, most of which went into her RRSP account. Ms. Bell was able to accumulate some modest savings. She admitted that after December 1993 she made no further payments by cheque to pay for household expenses. She said that she continued to pay some of the household grocery expenses.

[16] After December 1993, the parties continued to share the household chores. Both cooked, cleaned, dusted and did the gardening. Ms. Bell testified that they worked together "as a team" with respect to cooking, cleaning, gardening and other household chores. If she was at work, Mr. Bailey would cook or clean. If he was at work, Ms. Bell would contribute. Ms. Bell assisted in managing the house and looking after the garden. Mr. Bailey generally did the lawn mowing, snow removal and outside work.

[17] Mr. Bailey also did some work on the exterior of his house. He built a workshop, installed carpeting on the front steps and back patio, put in a two-tiered flower garden at the front of the house and installed a new fence at the back. He did all of this work and paid for it himself.

[18] There is no evidence as to the extent to which the various improvements to Mr. Bailey's house increased its value.

[19] As I assess the evidence, there was nothing unusual or unjust about the manner in which Ms. Bell and Mr. Bailey shared in the family enterprise in that second part of the 8-1/2-year co-habitation period.

(ii) The Trial Judge's Findings

[20] After reviewing the evidence, the trial judge concluded that, "Mr. Bailey has been enriched by the domestic services, sweat labour and direct financial contributions of Ms. Bell … Mr. Bailey has been enriched by the financial contributions of Ms. Bell who was, correspondingly, deprived". He found further that there was no juristic reason for the enrichment and that there was a clear causal connection between Ms. Bell's contributions and identifiable assets in respect of which she claimed a constructive trust. These assets consisted of Mr. Bailey's house and his RRSP accounts. He thus accepted Ms. Bell's constructive trust claim in respect of Mr. Bailey's house and his RRSP account. He rejected Ms. Bell's claim in respect of Mr. Bailey's interest in a family cottage property. No appeal is taken from that finding.

[21] The trial judge did not attempt to quantify the value of Ms. Bell's services and monetary contributions giving rise to his unjust enrichment finding, except to the extent that he related the value of her services and contributions to the increase in the value of Mr. Bailey's Thunder Bay property and his RRSP accounts during the period of co-habitation. The trial judge recognized that while she lived with Mr. Bailey, Ms. Bell was able to increase her asset base from virtually nothing to almost $40,000. However, beyond referring to this evidence in the context of Mr. Bailey's submission that the increase in Ms. Bell's net worth was cogent evidence that he was not unjustly enriched, the trial judge made no further reference to it.

[22] In the end, focussing on the increase in the value of Mr. Bailey's house and RRSPs, the trial judge found that Ms. Bell's direct and indirect contributions to the increase in the value of Mr. Bailey's house and some of the increase in his RRSPs "… were almost equal to those of Mr. Bailey but less than his contribution". He concluded that Ms. Bell was entitled to 45 per cent of the increase in the value of Mr. Bailey's house and an arbitrarily determined part of the increase in the value of his RRSP accounts. After first finding unjust enrichment and then finding that Ms. Bell was entitled to a constructive trust, the trial judge, relying on *Peter v. Beblow*, 1993 CanLII 126 (S.C.C.), [1993] 1 S.C.R. 980, converted Ms. Bell's constructive trust interest into a monetary award of $46,300. The breakdown of the $46,300 award is as follows:

(a) the increase in the value of Mr. Bailey's house in the period of co-habitation was $72,000, 45 per cent of which is	$32,400
(b) the applicable increase in the value of Mr. Bailey's RRSP accounts as found by the trial judge was $60,000, 45 per cent of which is	$27,000
	$59,400

[23] The trial judge then deducted the $13,100 that he found Mr. Bailey had given to Ms. Bell. After deducting the $13,100, he found that Mr. Bailey was unjustly enriched at Ms. Bell's expense by $46,300, less 45 per cent of any tax paid by Mr. Bailey if he had to collapse his RRSPs, "to pay the RRSP portion only of Ms. Bell's entitlement".

(iii) The Positions of the Parties

[24] Mr. Bailey contends that the trial judge was wrong in finding that there was evidence sufficient to establish that he was unjustly enriched to Ms. Bell's detriment. He also takes issue with the quantum of the monetary award, although he does not take issue with resort to a monetary award. Mr. Bailey submits that there was no evidence of any "domestic services" or "sweat labour" provided by Ms. Bell that were not also provided by him. He stresses that the value of Ms. Bell's assets increased substantially in the period of co-habitation. He contends that while the value of his assets increased during this time, Ms. Bell's contributions, direct or indirect, did not result in that increase. He thus submits that he was not enriched and that Ms. Bell did not suffer a corresponding deprivation.

[25] Ms. Bell contends that there was evidence to support the trial judge's finding that Mr. Bailey was unjustly enriched as a result of her direct and indirect contributions and that there is a causal connection between her contributions and the increase in value of Mr. Bailey's Thunder Bay house and his RRSPs. She contends that the trial judge did not err in converting Ms. Bell's constructive trust interest in Mr. Bailey's house and RRSPs into a $46,300 monetary award. Accordingly, Ms. Bell submits there is no basis to interfere with the trial judge's finding of unjust enrichment or with his monetary remedial award.

(iv) Analysis

[26] In my opinion, the trial judge erred in dealing with the unjust enrichment issue in two respects. First, his broad finding of unjust enrichment over the entire 8-1/2-year co-habitation period is not supported by the evidence and is therefore unreasonable. Until about January 1994, Ms. Bell's direct and indirect contributions assisted Mr. Bailey in paying off his $40,000 mortgage and in purchasing a new truck, boat and motor. In that period, Ms. Bell's available resources were committed to running the household and, as stated, helping Mr. Bailey pay off his mortgage debt. During this first part of her co-habitation with Mr. Bailey, Ms. Bell was required to do more than her share in respect of household management and related expenses. Thus, I think that there was evidence to support the trial judge's finding of unjust enrichment, but only in respect of Ms. Bell's contributions in the first part of the 8-1/2-year co-habitation period. Second, the trial judge erred in determining the quantum of the monetary award of $46,300. After finding that Ms. Bell's unjust enrichment claim was established, he granted Ms. Bell a constructive trust interest in two of Mr. Bailey's assets and then converted that interest into a monetary award. In proceeding as he did, the trial judge did not directly consider the value of Ms. Bell's contributions to the family enterprise. Moreover, this approach is inconsistent with McLachlin J.'s judgment in *Peter v. Beblow, supra*.

[27] As I have noted, the parties' circumstances, including their living arrangements, changed at the end of 1993. Mr. Bailey testified that by the end of 1993 Ms. Bell had begun to mistrust him. At that point he decided that he "had enough of the relationship".

Nevertheless, from January 1994 until their separation in September 1997, Mr. Bailey and Ms. Bell continued to work together in Mr. Bailey's Thunder Bay home. They cooked, cleaned, gardened and travelled together. As I have said, Ms. Bell observed in her evidence that she and Mr. Bailey "worked together as a team".

[28] In my view, there is nothing in the evidence which supports the finding that in the second part of their co-habitation Mr. Bailey was unjustly enriched to Ms. Bell's detriment. Rather, their contributions in their somewhat fractured relationship were proportional. From January 1994 until September 1997, when they separated, neither party was unjustly enriched by the contributions of the other. In that period, Ms. Bell admitted that she made no further payments by cheque for household related expenses. Nor did she contribute to Mr. Bailey's mortgage payments. She said that she continued to pay for some of the household groceries by cash.

[29] Ms. Bell's date of separation asset base was almost entirely accumulated during the time she lived with Mr. Bailey. The trial judge recognized that somehow Ms. Bell was able to accumulate this "pool of assets". However, as I have said, he did not do more than refer to it as a fact in his reference to Mr. Bailey' position at trial:

> In part, Ms. Bell's ability to increase her own assets to almost $40,000 was a consequence of Mr. Bailey's contributions to her, direct and indirect. Mr. Bailey does not argue that Ms. Bell, herself, has been unjustly enriched but rather takes the position that contributions to her are in the nature of compensation for her contributions to himself (sic) with the result that no further liability exists.

[30] The trial judge found that Mr. Bailey made direct payments totalling $13,100 to Ms. Bell. He credited the $13,100 against Mr. Bailey's obligation to compensate Ms. Bell consequent upon his finding of unjust enrichment. He made no further comment beyond that set out above about the fact that in the co-habitation period the value of Ms. Bell's assets increased from less than $2,000 to almost $40,000.

[31] The trial judge's broad finding of unjust enrichment extended beyond the first part of the parties' co-habitation. Therefore, some adjustment has to be made to the quantum of the monetary award which, as I have noted, was based on the increase in the value of two of Mr. Bailey's assets in the entire period of co-habitation. First, I will address the manner in which the trial judge established the compensation to which Ms. Bell was entitled as a remedy for unjust enrichment.

[32] Stated broadly, in reaching the conclusion that Ms. Bell was entitled to a 45 per cent constructive trust interest in the increase in the value of Mr. Bailey's Thunder Bay property and in part of his RRSP accounts, I do not think that the trial judge properly applied *Peter v. Beblow*.

[33] Ms. Bell's claim, properly construed, was based on unjust enrichment. Constructive trust and its substitute, a monetary award, are alternative remedies for unjust enrichment, not causes of action *per se*. Unjust enrichment requires a finding that Mr. Bailey was

enriched to Ms. Bell's detriment and that there was no juristic reason for the enrichment. As I have said, in the first part of the parties' co-habitation there was evidence to support the trial judge's unjust enrichment conclusion. Thus, the next question to be answered is – what is the appropriate remedy. McLachlin J. plainly stated in *Peter v. Beblow* that the first choice remedy for unjust enrichment is a monetary reward. The proprietary remedy of a constructive trust is limited to those cases where a monetary award is inadequate. McLachlin J. dealt directly with this issue in *Peter v. Below* at pp. 333- 34 in this way:

> Where a monetary award is sufficient, there is no need for a constructive trust. Where a monetary award is insufficient in a family situation, this is usually related to the fact that the claimant's efforts have given him or her a special link to the property, in which case a constructive trust arises. [Emphasis added.]

[34] In *Peter v. Beblow*, McLachlin J. made it clear that where unjust enrichment is established and a monetary award is adequate, the value of the contributions giving rise to a finding of unjust enrichment should be determined on a value received basis. In other words, if a monetary award is adequate (a non issue in this case), the increase in the value of Mr. Bailey's house and RRSPs is not an appropriate basis for assessing the compensation to which Ms. Bell is entitled. McLachlin J. put it in this way at p. 334:

> One starts, of necessity, by defining the property. One goes on to determine what portion of that property is attributable to the claimant's efforts. This is the "value survived" approach. For a monetary award, the "value received" approach is appropriate; the value conferred on the property is irrelevant. [Emphasis added.]

[35] Thus, if Mr. Bailey was unjustly enriched, in accordance with *Peter v. Beblow* the question to be answered is what was the value of Ms. Bell's disproportionate contributions, including the services she provided. Simply determining the increase in the value of Mr. Bailey's Thunder Bay property and part of the increase in value of his RRSP accounts while the parties cohabited and then awarding Ms. Bell a constructive trust interest, (here, 45 per cent of the relevant increases) is not the proper route to follow in answering the question posed above.

[36] The trial judge relied on *Clark v. Vanderhoeven* 1997 CanLII 12238 (ON S.C.), (1997), 28 R.F.L. (4th) 152 (Ont. Ct. (Gen. Div.)) as authority for the broad proposition that on a finding of a constructive trust the value of the trust can be converted into a monetary award and judgment issued accordingly. I accept that Marshman J. made a statement to that effect in *Clark*. However, the monetary award of $100,000 in that case was what the trial judge said was the value of the services received by the defendant. Thus, the trial judge's comments about directly valuing the constructive trust interest of the defendant and converting it into a monetary award are *obiter*. In any case, in my view, the trial judge's comments are not consistent with *Peter v. Beblow*.

[37] I should add that I accept that the value received calculation of a monetary award may, to some degree, reflect the extent to which the value of a particular asset was enhanced by the claimant's direct and indirect contributions. See *Nasser v. Mayer-Nasser* 2000 CanLII 5654 (ON C.A.), (2000), 130 O.A.C. 52 (C.A.) (leave to appeal to S.C.C. dismissed, [2000] S.C.C.A. No. 206). This, however, is part of the value received analysis; it does not mean that a back-door route to a monetary award by first finding a constructive trust and then valuing the claimant's constructive trust interest is justified.

[38] Once the trial judge found unjust enrichment and accepted that a monetary award was adequate, the issue of constructive trust should have left the table. He should have valued Ms. Bell's direct and indirect contributions (those contributions supporting the unjust enrichment finding) on a value received basis.

[39] In any case, in my opinion the assumptions underlying the trial judge's constructive trust analysis are suspect. Merely because in a particular period of co-habitation the value of certain assets (in this case Mr. Bailey's real property and his RRSPs) increases does not automatically lead to a finding of unjust enrichment. Furthermore, if unjust enrichment is found, these circumstances do not automatically lead to the granting of a constructive trust interest in the relevant assets. The trial judge correctly observed, again after referring to *Peter v. Beblow*, that there must also be a "clear causal connection", that is a link, between the contributions and the assets in respect of which a constructive trust is sought. In the circumstances of this case, this means that there must be direct or circumstantial evidence that Ms. Bell's contributions to the family enterprise enhanced the value of the assets over which she claimed and was granted a constructive trust. Consistent with the value survived approach, this generally, but not always, requires evidence of the difference between the "going in" (the date of co-habitation) and the "going out" (the date of separation) value of the assets over which a constructive trust interest is sought. It also requires a finding, supported by evidence accepted by the trier of fact, that the increase in value can reasonably be linked to the contributions of the claimant.

[40] In making his constructive trust finding with respect to Mr. Bailey's Thunder Bay property, the trial judge assumed that the increase in the value of the property came from the direct and indirect contributions of Mr. Bailey (55 per cent) and Ms. Bell (45 per cent). Looked at in the abstract, this may or may not represent a convenient split. However, it ignores the probability that in the period of co-habitation the value of Mr. Bailey's Thunder Bay property increased quite apart from anything either party did to enhance its value.

[41] Similarly, when the trial judge granted Ms. Bell a constructive trust interest in Mr. Bailey RRSPs, he recognized that some of the increase in value of Mr. Bailey's RRSP accounts had nothing to do with Ms. Bell. After he concluded that Ms. Bell was entitled to a 45 per cent interest in some part of the increase of Mr. Bailey's RRSP accounts, he turned to consider how much of that increase should be looked to in determining the appropriate monetary award. He found that the value of Mr. Bailey's RRSP accounts increased by slightly more than $72,000 over the co-habitation. He recognized that some of that increase was the result of the natural growth of the $38,000 in Mr. Bailey's RRSP accounts when he and Ms. Bell began to co-habit. The trial judge concluded that the increase in Mr. Bailey's RRSP accounts, that is the total increase in the value of Mr. Bailey's RRSP accounts, "must be reduced arbitrarily". In the end, he concluded that $60,000 was a fair, albeit arbitrary

sum, to be used first to establish Ms. Bell's constructive trust interest and then to establish the RRSP component of Ms. Bell's monetary award. All of this would have been unnecessary had the trial judge simply assessed the value of those contributions of Ms. Bell which gave rise to the finding of unjust enrichment.

[42] Since I think that the evidence supports a narrower finding of unjust enrichment than that made by the trial judge, and since it is accepted that a monetary award is adequate in this case, there remains to be considered what adjusted monetary reward is reasonable in the circumstances. One option is to order a new trial to determine the appropriate monetary award. In my opinion, it would not be in the interest of either party to order a new trial. Too much time and money has already been invested in this dispute. I will therefore do my best to determine what monetary award will reasonably remedy the unjust enrichment I have found to exist.

[43] Ms. Bell's entitlement to a monetary award as a remedy for unjust enrichment necessarily focuses on that period ending in December 1993, during which she contributed, in both a direct and indirect way, to the discharge of Mr. Bailey's $40,000 mortgage and his purchase of a truck, boat and motor. She is entitled to be compensated for her disproportionate contributions to the family enterprise in that period. It seems to me that a monetary award of $15,000 is appropriate in all of the circumstances. This will take into account the value that Mr. Bailey received as a result of Ms. Bell's contributions. I see no need to specifically deduct the $13,100 that the trial judge found Mr. Bailey paid to Ms. Bell. This payment is nothing more than part of the evidentiary mix.

[44] Since a monetary award is appropriate and no constructive trust interest should have been considered in this case, I see no need to include a *proviso* that Mr. Bailey be entitled to a deduction of 45 per cent of any tax he has to pay as a consequence of collapsing his RRSPs to pay any part of Ms. Bell's monetary entitlement.

3. Conclusion

[45] I would, therefore, allow the appeal in part, and vary paragraph one of the judgment by substituting a figure of $15,000 in place of the $46,300 found by the trial judge as an appropriate monetary remedy for unjust enrichment. Since Mr. Bailey has achieved divided success on the appeal (he has succeeded in reducing the monetary award for his unjust enrichment, but failed on the spousal support issue), I would allow the appeal in part without costs. Unless there are settlement offers which might change the disposition of the trial costs (no costs), I would not change the trial judge's disposition of costs.

RELEASED: AUG 27 2001
"CAO"

"C.A. Osborne A.C.J.O."

"I agree Austin J.A."

"I agree John Laskin J.A."