

**CAN I CLAIM A SHARE IN MY FORMER SPOUSE'S BUSINESS? TAKE TWO**

You have been living with a man for several years. During your union you work for the business owned by your spouse. When your relationship ends, he refuses to acknowledge that you contributed to the prosperity of his business. He also refuses to pay you any amount whatsoever on the grounds that you were paid a salary for the work you did. Can you claim money from him on the grounds that he was enriched during your life together while you were impoverished?

THE FACTS

A couple begin living together in the fall of 1991. The man has a real estate brokerage business of which he is the sole shareholder. His business is growing and he needs someone to help him. From the beginning of their union, the woman became his assistant. Each spouse worked between 60 and 70 hours a week. The man ran the business but the woman took care of the office, of computer support, file follow-up and advertising. After they broke up in 1999, she claimed \$400,000 from the man on the grounds that he was unjustly enriched during the union whereas she had been impoverished.

THE ISSUE

The court had to decide if the man had been enriched at the woman's expense while they were living together and if she had been impoverished. If it answered yes to that question, it then had to determine how much the man owed the woman.

THE DECISION

The court was of the view that because of her sustained and exceptional work, the woman allowed the man to be enriched. It found that the woman had been impoverished even though she had received a salary. Living together does not give the man licence to enrich himself at the woman's expense. It found that the woman was entitled to a share of the man's enrich-

ment, namely \$250,000 from which it deducted the salary she had been paid and an amount representing certain benefits that she had received, such as trips, excursions and gifts. She was ultimately entitled to \$85,000.

THE GROUNDS

For the court to find that there had been unjust enrichment giving rise to a claim, the woman had to prove that the man had genuinely been enriched and that in paying the way for his enrichment, she had been impoverished. Also, there should not be any legal reason justifying that enrichment.

When the woman started to live with the man, she had a car worth \$7,000, \$5,000 in RRSPs, shares worth \$7,500, \$12,000 in liquidities and \$19,000 equity in a property. At the time of the break-up, she had shares worth \$7,500 and \$30,000 in RRSPs. Moreover she had to withdraw close to \$10,000 from that investment in order to buy furniture because she had liquidated everything to live with the man. She was poorer than when she entered the relationship.

The man had assets worth \$588,859 when they started living together. At the time of the breakup, the court estimated that his net assets had increased by \$1,000,000 while they were living together. There are no legal reasons justifying that enrichment.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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PART TWO (cont'd)**

Even if the parties had a pleasant life together with excursions and trips, that does not justify his enrichment at her expense. She provided exceptional work that allowed his business to prosper. When worked on average more than 60 hours a week, she took care of the office, the accounts, the computer system, file follow-up and played the role of his collaborator.

The court therefore held that the woman was entitled to 25% of the man's enrichment from which it subtracted the wages paid by the business and an amount for her participation in his social activities during their life together. It ordered the man to pay the woman \$85,000.

The woman had to prove that the man had genuinely been enriched and that in paving the way for his enrichment, she had been impoverished.

References

Wilkie v. Lapensée, Superior Court (S.C.) Joliette 705-05-004633-007, April 19, 2005. Judge: J.-G. Dubois (J.E. 2005-938; EYB 2005-89720; (2005) R.D.F. 469 (Res))

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