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## Common-law partners must share wealth after breakups: Supreme Court.

By Mike De Souza, Postmedia News February 18, 2011

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### The Supreme Court of Canada in Ottawa.

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OTTAWA — The nation's top court has weighed in on breakups of unmarried couples who live together, concluding that a partner who gets rich at the expense of the other in a relationship must share what he or she accumulates.

While changes to laws in the 1970s and 1980s provided rights that allowed married couples to split property following a divorce, the same rights do not apply to an unmarried couple that lives together.

In a unanimous decision on two cases from Ontario and British Columbia, the Supreme Court of Canada ruled that a person deserves fair compensation for making a sacrifice, such as giving up a career, in support of a partner, when he or she is engaged in a "joint venture" as a common-law couple.

"In my view, where both parties have worked together for the common good, with each making extensive, but different, contributions to the welfare of the other and, as a result, have accumulated assets, the money remedy for unjust enrichment should reflect that reality," wrote Justice Thomas Albert Cromwell.

"The money remedy in those circumstances should not be based on a minute totting-up of the give-and-take of daily domestic life, but rather, should treat the claimant as a co-venture, not as the hired help."

Under Canada's constitution, conditions and legislation governing family law, marriage and relationships fall under provincial jurisdiction.

The Ontario case was about an Ottawa couple, Michele Vanasse and David Seguin, who have two children and lived together for 12 years before separating, while the British Columbia case involved a couple that lived together for 25 years, Margaret Kerr and Nelson Baranow.

Vanasse was seeking compensation after giving up her job for a few years in the 1990s while Seguin built up a successful business, which he eventually sold for about \$11 million. The Supreme Court agreed with a trial ruling that Vanasse should get about \$1 million in compensation as a portion of his wealth for the period when she gave up her job, moved to Halifax and stayed at home to take care of their two children.

"I can tell you that I am pleased, and I spoke to my client this morning and she was ecstatic," said John E. Johnson, Vanasse's lawyer. "She said she's waited a long time for this, she always believed in the righteousness of her cause and she's glad it's all over."

The court also awarded her legal costs for the lengthy battle.

"It's a good day all around for Ms. Vanasse," said Johnson, who described the ruling as a significant development in family law. "It's not going to be the answer to everybody's situation. It's much better if people protect their interests before they enter into these relationships because this is a very expensive way to find out how the story ends."

Hunter Phillips, a lawyer representing Seguin, said that he was disappointed by the ruling which he believes has changed the law by loosening conditions for calculating a monetary reward for unmarried couples in a case of "unjust enrichment."

This concept of "unjust enrichment" is considered to be defined by a case when one spouse is allowed to accumulate wealth because of an arrangement or sacrifice made by the other partner. But Phillips added that the decision does not guarantee automatic property rights for all common-law couples.

"There's a common misconception amongst the public that a common law marriage means that after some period of cohabitation, there's automatic property rights," said Phillips. "That is wrong and that (Supreme Court) decision doesn't change that at all."

Kerr was seeking compensation after sharing a home and other assets that Baranow eventually helped purchase. He also filed a counterclaim to receive compensation for his own "housekeeping and personal assistance services provided after (Kerr) suffered a debilitating stroke."

In this case, the courts ordered a new trial and hearing to review both claims, while awarding legal costs to Kerr.

Lawyers for both parties said they were pleased with the decision, although Baranow's lawyer, Susan Label added she was disappointed that the court had awarded Kerr the legal costs.

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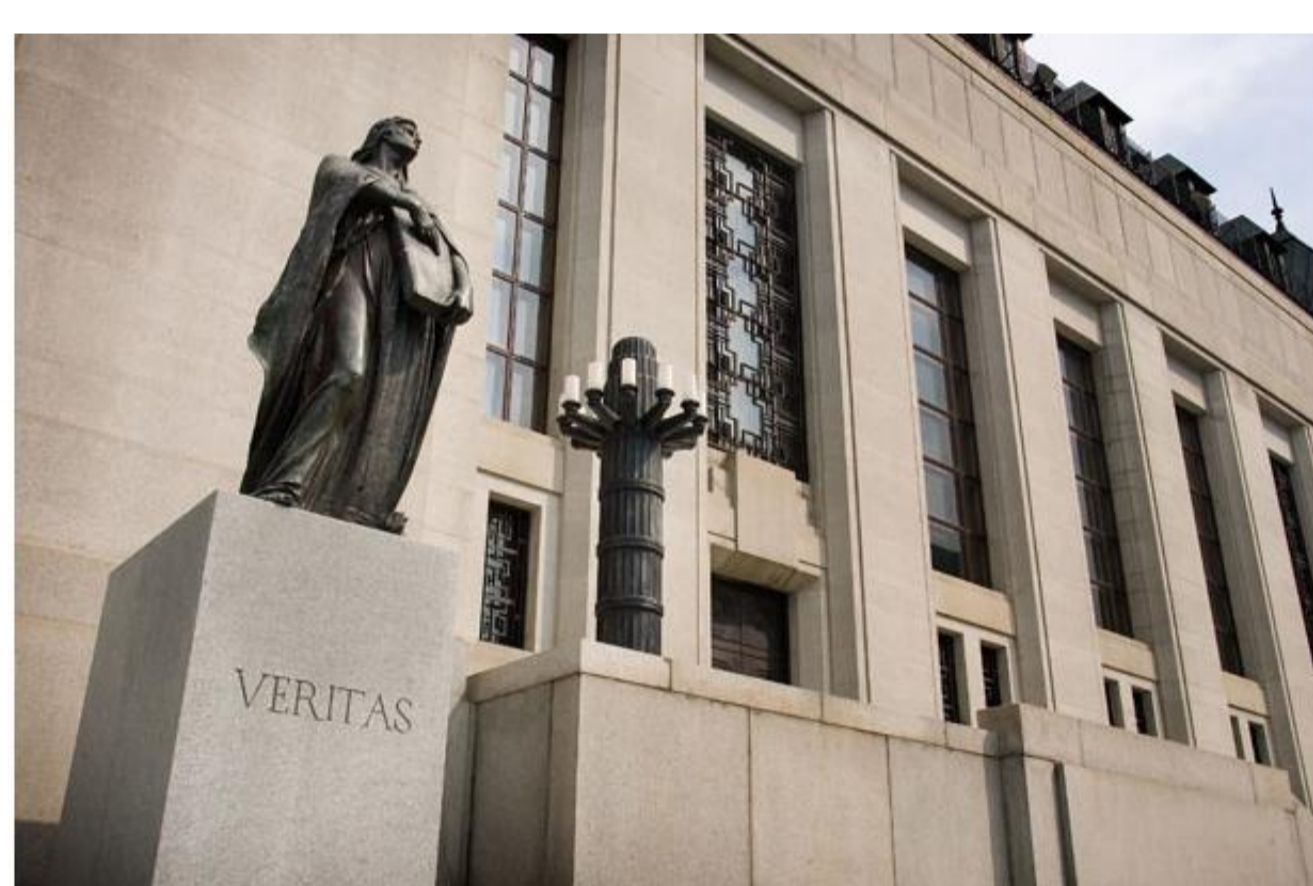
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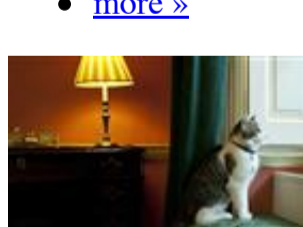
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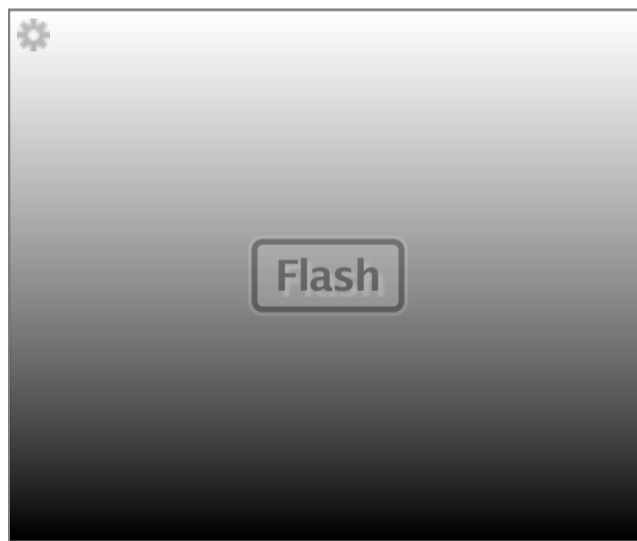
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