

# **A Practical Guide to Commencing a Joint Family Venture Claim;**

## **A View from the Trenches**

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# **A Practical Guide to Commencing a Joint Family Venture Claim; A View from the Trenches**

## **INTRODUCTION**

The purpose of this paper is to provide a practical guide to commencing claims for unjust enrichment and constructive trust as a result of common-law relationships. As a result of it being a practical guide, its purpose isn't to function as a "primary" for a base education on the fundamental principles of trust and nor is it intending to be a theoretical commentary on the present state of the law in Alberta. Both of these topics have been addressed in the previous super conference on common-law relationships and it's from these papers that I have heavily drawn upon in making some of the more general statements within this paper. It is my goal in reviewing this paper and in attending at this seminar that the reader or attendee will have a more focused approach when commencing an action of this type as a result of this "view from the trenches".

## **KNOW WHAT YOU'RE GETTING INTO**

At the very onset someone commencing the claim under unjust enrichment in regards to a common-law relationship needs to understand that this is not an easy area of the law to proceed in. Not only will you be presented with procedural difficulties, but must be prepared to find an area of the law that is based almost entirely in the principles of equity, and as a result has very little predictability.

At the very onset it should be noted that claims for unjust enrichment in the common-law context do not have a legislated means of addressing this issue. Yes the issue of support is dealt with under the *Adult Interdependent Partners Act*, but when it comes to property the *Matrimonial Property Act* does not apply. A more recent decision in *Kerr and Barranow* from our Supreme Court has provided frame work as to how these actions should be approached by the Court, but in the basis of this frame work was the principle of equity.

As a result of these actions being based in equity, there are no presumptions for which a Plaintiff can initially begin with. Under the MPA the parties at least begin with the presumption of equal division of property. Under common-law relationships there is no such presumption. There are no presumptions of advancement, there are no legislative starting points from which the Plaintiff can commence a claim. You must get use to the idea that you are starting at zero and moving up from there.