



# A Famous Case Revisited

Peter Bowal

## ***Becker v. Pettkus*: Limits of the Law**

*This new feature profiles a famous Canadian case from the past that holds considerable public and human interest. It explains what became of the parties and why it matters today.*

### **Limits of the Law**

The lay public have faith in the legal system to produce just outcomes. They expect the law and legal system to come to their rescue when they need it. But, lawyers are keenly aware every day that the law and legal system, as human institutions, have their limitations.

There are many limits to the law. One is unintended consequences. When legislators and judges make a law, they usually have intended consequences; to assist some people or remove an existing injustice. Yet they can never be sure how these new laws will play out in practice. Often the new law backfires and causes an unfortunate result that no one predicted. An increase in the minimum wage, for example, might mean that fewer of those jobs may be available, effectively hurting the same people the lawmakers sought to assist. Regulations designed to help people may hurt the same people.

Too many laws, and illogical or unjust laws, can give rise to black markets or civil disobedience. People find ways to get what they want by going around the law. A Supreme Court of Canada decision, or even a sentence or paragraph within a decision, may lead to even greater uncertainty or disputation. After the *Askov* case on what was a reasonable time for trial under the *Charter*, it was reported that thousands of accused criminals, some charged with very serious crimes, were released. Later the judge who wrote the decision said this was not what he intended. A Supreme Court of Canada decision in late 1999 about native fishing rights set off clashes along racial lines over east coast fishing. The Court took the rare step of issuing a press release to explain that its decision was not as broad as people had understood.

These limitations arise because legislatures and courts are too often called upon to cure all the ills of society. They are not equipped to do that. The law is very limited in its ability to change people's attitudes and opinions. Law reform and justice are agonizingly slow. Political priorities may not correspond with true justice priorities. Human factors such as the discretion, ignorance and the obvious inability to enforce every law all of the time also limit effectiveness of the law. Judges will simply be wrong in some decisions, and legislatures will adopt ineffective wording in some of their statutes. The written word has limitations.

### **The Facts in *Becker v. Pettkus***

The case of *Becker v. Pettkus* ([1980] 2 S.C.R. 834) is a tragic example of how law and justice can fail the weak and needy. It highlights how courts are ineffective to enforce their own judgments and the role money plays in accessing civil justice.

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Rosa Becker and Lothar Pettkus, two immigrants to Canada, met in 1955. They moved in together and lived as husband and wife, although they did not marry, and they had no children. Until 1960, Becker paid the rent and living expenses from her outside income and Pettkus deposited his income in a bank account in his name. In 1961, they bought a farm in Quebec. The money came from Pettkus' account and ownership ("title") was taken out in his name, as was the custom in those days.

They shared the farm labour and both worked very hard. They turned their farm into a profitable bee-keeping operation. Becker also earned some income which was used for household expenses and to repair the farmhouse. Their savings went back into the farm or the Pettkus bank account.

In 1971, with profits from the farm and more money from Pettkus' bank account, they purchased a property in Ontario and again registered it in his name. In 1972, Becker separated from Pettkus. He threw \$3,000 on the floor and told her to take it, along with a car and forty beehives with bees.

At his request, she moved back in with him three months later. She returned with the car, deposited \$1,900 in

his account, and the forty beehives without the bees. Shortly thereafter, with these returned assets, joint savings and proceeds from the sale of the Quebec land, they purchased another Ontario farm in Pettkus' name. They now

had two valuable pieces of land, and in 1974 they moved and built a house upon one of them. They lived off their income from their thriving bee-keeping business. In the fall of that year, she left him for good, taking the car and \$2,600 in cash.

She also sued for a one-half interest in the properties, bee-keeping business and assets acquired through their joint efforts. Pettkus and Becker had lived together as husband and wife for almost twenty years. Under Ontario legislation at that time, a common law wife was not legally entitled to a share in any property owned by her husband. Therefore, any remedy for Becker would have to be based on the wholly equitable doctrine of constructive trust and principles of unjust enrichment.

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## Decision in the Supreme Court of Canada

Since Rosa Becker had contributed work and money in the reasonable expectation of receiving an interest in the property, a majority of judges in the Supreme Court of Canada found a constructive trust on the basis of this common law relationship. Three requirements must be satisfied: there must be an enrichment, a corresponding deprivation, and absence of any good legal reason for the enrichment. The Court ruled that all three requirements were met in this case. Becker conferred benefits on Pettkus and never received anything in return from the land and business. It determined that the contribution of money and labour by Ms. Becker to the beehive business allowed Mr. Pettkus to acquire the property that he held in his name.

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She supported him for 5 years and she worked on the farm for 14 years. Pettkus accepted these benefits. To deprive her of her share, the Supreme Court continued, would be to also unjustly enrich Pettkus. The Court said:

[w]here one person in a relationship tantamount to spousal prejudices herself in the reasonable expectation of receiving an interest in property and the other person in the relationship freely accepts benefits conferred by the first person in circumstances where he knows or ought to have known of that reasonable expectation, it would be unjust to allow the recipient of the benefit to retain it.

*Becker prevailed in the Supreme Court of Canada. Half of all the property that they had acquired during their 19-year common law relationship would be held for her.*

Becker prevailed in the Supreme Court of Canada. Half of all the property that they had acquired during their 19-year common law relationship would be held for her. The Court put no monetary figure on the order. It left the parties to work out financial settlement according to the trust. Becker's lawyer valued the property at \$300,000 and demanded \$150,000 for her.

Establishing a constructive trust in the assets meant that Pettkus held the assets in trust for both of them. Becker would still have the problem of obtaining her money from her share of the assets. Pettkus was also ordered to pay her costs at all three levels of court.

## Follow-Up

Pettkus did not honour the Supreme Court of Canada judgment. He resolved that Becker would not recover this money. He used the law and legal system to prevent Rosa Becker from receiving what the Court decided was legally hers. He challenged the valuations of assets. He married another woman in 1976 who also fought in the courts for a declaration of a half-interest in the properties. He disposed of other assets. In a 1982 hearing, Pettkus insisted that he had given all of his assets to his new wife and that he owned nothing. He had spent a large portion of his estate on lawyers and legal proceedings.

In the fall of 1984, Becker tried to have the beehives seized and sold to recover the money. Pettkus appealed the seizure and he quit feeding the bees. Becker applied for a court order requiring him to feed the bees. By that time, most of the bees were dead. In the fall of 1984, the two Ontario properties were sold for \$69,000.00. All of this money that was to go to Becker was intercepted by Becker's lawyers to pay for a decade of legal fees. Rosa Becker had been victorious in the courts, but it was a frustrating, costly and futile victory using the Canadian law and legal system. Such claims require considerable time and expense to pursue in the court system. Collecting a judgment can be a long and difficult experience. She had nothing to show for it in the end. At age 60, without collecting a cent from her win, she was working as a live-in housekeeper for a dairy farmer in exchange for room and board plus \$60 per week wages.

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Alone, humiliated and defeated, Becker committed suicide by a bullet to her head on November 5th, 1986. In letters she left, she wrote “Don’t be sorry about my death.” Her suicide, she explained, was a protest against an unfair legal system which had deprived her of justice and left her penniless.

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## Legal Legacy

Ironically, Rosa Becker had left a significant legal legacy. She won the first case in Canada for property rights of common law spouses who separated. The Supreme Court of Canada had confirmed the principle of unjust enrichment as the basis of the constructive trust remedy in her case. Since the ruling most Canadian provinces have enacted legislation that recognizes common law relationships when dividing assets.

Pettkus also lamented that the ordeal left him in poverty because he had both spent and settled for \$80,000 which went to lawyers. He claimed that Becker’s lawyer’s demand for \$150,000 was wildly inflated and that he had tried to settle for less, but all offers were spurned. There appears to be some support for his view, as newspapers reported his lands ultimately selling for much less.

In May 1989, Pettkus’ last settlement cheque of \$13,000 was paid to Becker’s estate, almost three years after her death, ending the 15-year court battle.

This case represents one of the best real-life illustrations of the limits of the law.

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