

**CASE NO.**

**VOL. NO.**

**PAGE**

SUSAN WALSH

WAYNE BONA

- and -

(Appellant)

(Respondent)

THE ATTORNEY GENERAL OF  
CANADA and THE ATTORNEY  
GENERAL OF NOVA SCOTIA

(Third Parties)

CA 159139

Halifax, N.S.

FLINN, J.A.

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**[Cite as: Walsh v. Bona, 2000 NSCA 53]**

**APPEAL HEARD:**

February 7, 2000

**JUDGMENT DELIVERED:**

April 19, 2000

**SUBJECT:**

**Constitutional Law - Charter of Rights - Equality Rights - Provisions of Matrimonial Property Act, R.S.N.S. 1989, c. 275 (providing benefits to married spouses) does not apply to common law relationships - definition of "spouse" - discrimination - s. 15(1) - justification**

**SUMMARY:**

The appellant and the respondent, while not married, lived together in a common law relationship for approximately 10 years. Two children were born of this relationship. The appellant and the respondent own their own home. Other assets have been acquired during the relationship. The parties separated in 1995. The appellant brought an application under the **Matrimonial Property Act**, R.S.N.S. 1989, c. 275 seeking an equal division of assets. In conjunction with that application, she sought a declaration that the **Charter** is infringed by the definition of "spouse" in s. 2(g), because it does not include, or recognize, her common law relationship. The Chambers judge dismissed the application deciding that:

1. marital status is not an analogous ground upon which to base a claim of discrimination under s. 15(1) of the **Charter**;
2. alternatively, the exclusion of the definition of common law spouse from the provisions of s. 2(g) of the **Matrimonial Property Act**

does not constitute discrimination under s. 15(1) of the **Charter**;  
and

3. alternatively, if s. 2(g) of the **Matrimonial Property Act** is found to be discriminatory then it is saved by s. 1 of the **Charter**.

**RESULT:**

Appeal allowed.

1. The **Matrimonial Property Act** denies a person in a common law relationship benefits which are granted to a similar person in a marriage relationship. There is differential treatment for the purpose of s. 15(1) of the **Charter**;
2. Marital status is an analogous ground upon which a claim for discrimination under s. 15(1) may be made (see: **Miron v. Trudel**, [1995] 2 S.C.R. 418);
3. The differential treatment of the appellant, by the provisions of the **Matrimonial Property Act**, violates the purpose of s. 15(1). A reasonable person, in circumstances similar to those of the appellant, would find that the **Matrimonial Property Act** has the effect of demeaning the appellant's human dignity. As a result there is a violation of s. 15(1) of the **Charter**;
4. The Crown has not demonstrated that the exclusion of those in a common law relationship, from the provisions of the **Matrimonial Property Act**, is pressing and substantial. That being the case, the Crown has failed to discharge its onus of proving that the discrimination in this case is demonstrably justified in a free and democratic society;
5. The Court of Appeal rejected the appellant's submission that the definition of "spouse" in the **Family Maintenance Act**, R.S.N.S. 1989, c. 160 should be read in to the **Matrimonial Property Act**. It is for the Legislature, not the Court, to define with precision, common law relationships which are to be included within the provisions of the **Matrimonial Property Act** so as to comply with the Constitution;
6. The Court of Appeal declared s. 2(g) of the **Matrimonial Property Act** to be unconstitutional and of no force and effect. That declaration was temporarily suspended for 12 months to enable the Legislature to devise new criteria for eligibility under the

**Matrimonial Property Act** including whatever transitional provisions may be deemed necessary, and to pass new legislation that meets the constitutional requirements of s. 15(1) of the **Charter** as set out in the Court's reasons for judgment;

7. The Court of Appeal agreed to hear further, from the appellant, on whether an individual remedy was available, and appropriate, for the appellant in this case.

**This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 41 pages.**