

## RECENT DEVELOPMENTS REGARDING UNJUST ENRICHMENT

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### General Overview

The Supreme Court of Canada has recently taken the opportunity of reviewing the law regarding unjust enrichment in *Garland v. Consumers' Gas Co.*<sup>2</sup>, and has reaffirmed and elucidated several principles.

As confirmed by Iacobucci J.:<sup>3</sup>

“As a general matter, the test for unjust enrichment is well established in Canada. The cause of action has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment ...”

Thus, for recovery to lie, something must have been given, whether goods, services or money. The thing which is given must have been received and retained by the defendant, and the retention must be without juristic justification.<sup>4</sup>

With respect to the first two elements of the test for unjust enrichment, the relevant jurisprudence suggests that most courts have typically taken a straightforward economic approach. Consequently, discernment of the existence of a benefit, and a corresponding deprivation, will pose little difficulty where money has been paid by the plaintiff to the defendant. The conferral of a benefit and the existence of a corresponding deprivation may also occur under an ineffective transaction or as the result of the defendant acting in breach of a duty owed to the plaintiff.<sup>5</sup>

The manner in which assessments under the third prong of the test are to proceed appears to be somewhat less settled within the decided cases. However, as recently explained by Iacobucci J. in *Garland*, the proper approach to the juristic reason analysis is in two parts: firstly, the plaintiff

must show that no juristic reason from an established category exists to deny recovery (the established categories include a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations). Secondly, if there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case which may be rebutted if the defendant can show that there is another reason to deny recovery. And, at this stage of analysis, courts are to have regard to two factors: the reasonable expectations of the parties and public policy considerations.<sup>6</sup>

One of the more prominent statements of the principle of unjust enrichment includes the early and oft-repeated dictum of Lord Mansfield in *Moses v. Macferlan*<sup>7</sup>: “the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.”<sup>8</sup> Another is that of Lord Wright in *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.*<sup>9</sup>:

“... any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep.”<sup>10</sup>

The American *Restatement of the Law of Restitution: Quasi Contracts and Constructive Trusts*, 1937, states the principle of unjust enrichment in the following simple terms: “A person who has been unjustly enriched at the expense of another is required to make restitution to the other.” And, one of the leading Commonwealth texts on restitution elaborates on the notion as follows:

“[The principle of unjust enrichment] presupposes three things. First, the defendant must have been enriched by the receipt of a *benefit*. Secondly, that benefit must have been gained *at the plaintiff's expense*. Thirdly, it would be *unjust* to allow the defendant to retain that benefit. ...”<sup>11</sup>

While the dicta of Lord Wright was adopted by the Supreme Court of Canada in the seminal case of *Degelman v. Guaranty Trust Co.*<sup>12</sup> as the basis of restitution in Canada, the fundamental principles of the Canadian law of unjust enrichment were perhaps best described by Dickson J. in

the 1980 decision of *Pettkus v. Becker*<sup>13</sup>. Therein, Justice Dickson opined as follows:

“... [T]here are three requirements to be satisfied before an unjust enrichment can be said to exist: an enrichment, a corresponding deprivation and absence of any juristic reason for the enrichment.”<sup>14</sup>

And, in his work, *Remedies: The Law of Damages*, online, (Irwin Law, 2000), Jamie Cassels explains the evolution and present status of the law of unjust enrichment in Canada in the following terms:

“In Canada the development of the law of unjust enrichment has been achieved primarily through the evolution of the constructive trust. In a series of cases involving the property rights of cohabiting couples (beginning with *Rathwell v. Rathwell* [[1978] 2 S.C.R. 436 (S.C.C.)] and *Becker v. Pettkus* [[1980] 2 S.C.R. 834 (S.C.C.)]), the Supreme Court of Canada substantially consolidated the principles of unjust enrichment. [See also *Sorochan v. Sorochan*, [1986] 2 S.C.R. 38; *Peter v. Beblow*, [1993] 1 S.C.R. 980.] In these cases the Court affirmed that when one cohabitee contributes in money or services towards the acquisition of property by the other, the principle of unjust enrichment may require a restitutionary remedy in favour of the contributor. Liability in this situation does not turn on a contract between the parties, their intent, a tort committed by one against the other, or a statute. It turns simply on the autonomous principle of unjust enrichment. The Court reiterated that the remedy was available when (a) there has been an enrichment of one party; (b) a corresponding deprivation of the other; and (c) there is no juristic reason for the deprivation. The three-part test is now firmly part of Canadian law, though the scope of its application is still being elaborated. ...”<sup>15</sup>

Notwithstanding the rather straightforward doctrinal underpinnings of the notion of unjust enrichment, their application has sometimes given rise to difficulty. In particular, a review of the relevant jurisprudence suggests that while most courts have typically taken a straightforward economic approach to the first two elements of the test for unjust enrichment<sup>16</sup>, some jurists have struggled with identifying the meaning of the phrase “absence of juristic reason” in the third requirement identified above.

In this regard, an informative review of the concept of unjust enrichment and the manner in

which it is compensated is provided by Mitchell McInnes, in his article entitled “The Measure of Restitution” (2002), 52 U.Tor.L.J. 163. Therein, he writes:

“In Canadian law, the court must be satisfied not only that the defendant received an enrichment [ie. the clearest illustration of such an incontrovertible benefit involving the receipt of money] but also that the plaintiff suffered a *corresponding deprivation*. There must be not only a plus, but also a minus in the equation. Moreover, both sides of the equation must be capable of being expressed in economic terms. [See *Peter v. Beblow* (1993), 44 R.F.L. (3d) 329 (S.C.C.)] As Mr. Justice LaForest explained in *Air Canada v. British Columbia*, the action in unjust enrichment ‘is not intended to provide windfalls to plaintiffs who have suffered no loss. Its function is to ensure that where a plaintiff has been deprived of wealth that is either in his possession or would have accrued for his benefit, it is restored to him.’ [(1989), 59 D.L.R. (4<sup>th</sup>) 161 at 194 (S.C.C.)] Consequently, the defendant’s enrichment ‘is relevant only insofar as it was received at the [plaintiff’s] expense.’”<sup>17</sup>

With particular reference to the third element of the test for unjust enrichment – “lack of juristic reason for the enrichment” – McInnes says:

“In *Pettkus v. Becker*, Justice Dickson premised liability upon the ‘absence of any juristic reason for the enrichment.’ ... Some courts have interpreted that phrase to mean that an enrichment and corresponding deprivation should be reversed unless there is a good reason for *refusing* restitution. Moreover, judges have occasionally suggested that the *defendant* bears the burden of establishing such a reason. The better view, however, is that the third element of the action in unjust enrichment requires the *plaintiff* to prove a positive reason for *awarding* restitution. ... Despite some uncertainty in the lower courts, the Supreme Court of Canada has consistently followed that approach. ...”<sup>18</sup>

Maddaugh and McCamus, in their text *The Law of Restitution*,<sup>19</sup> observe that the discernment of the existence of a benefit, and a corresponding deprivation, will pose little difficulty where money has been paid by the plaintiff to the defendant. They further assert that the conferral of a benefit and the existence of a corresponding deprivation may also occur under an ineffective transaction or as the result of the defendant acting in breach of a duty owed to the plaintiff.<sup>20</sup>

With respect to the third prong of the analysis, the authors opine, in part, as follows:

“... the tri-partite formulation of the general principle appears to serve two functions. First, the phrase “juristic reason” seems likely to have been chosen to emphasize that relief in unjust enrichment is an exercise in applying legal doctrines rather than dispensing “palm-tree” justice. Second, the statement of general principle signals that the law is capable of growth and development in the light of the general principle and, accordingly, where the principle appears to apply to the facts a presumptive case of unjust enrichment is made out by the plaintiff. ... The third element of the general principle also serves to emphasize, however, that in any case where the enrichment results from the fulfillment of a contractual obligation or from some other “disposition of law”, a presumptive case is not established. ...”<sup>21</sup>

### Selected Jurisprudence

The jurisprudence contains several examples of the varied manner in which the third prong of the unjust enrichment test has been interpreted and applied. For instance, in *Sorochan v. Sorochan*<sup>22</sup>, a case concerning the property rights of common law spouses, Dickson C.J.C. said this regarding the absence of juristic reason:

“... In *Pettkus*, the Court held that this third requirement would be met in situations where one party prejudices himself or herself with the reasonable expectation of receiving something in return and the other person freely accepts the benefits conferred by the first person in circumstances where he or she knows or ought to have known of that reasonable expectation.”<sup>23</sup>

In *Peter v. Beblow*<sup>24</sup>, Cory J. adeptly described the test for determining whether there is an absence of juristic reason for the defendant’s enrichment as follows:

“... when a claimant is under no obligation, contractual, statutory, or otherwise, to provide the work and services to the recipient, there will be an absence of juristic reasons for the enrichment.”<sup>25</sup>

In the same case, McLachlin J. confirmed that the assessment of whether there is an absence of juristic reason for the enrichment is a flexible one. Thus, while the fundamental concern should always be the legitimate expectations of the parties, the factors to be considered may vary with

the situation before the court.<sup>26</sup>

In the Alberta case of *Seward v. Seward*<sup>27</sup>, Ritter J. offered the following analysis regarding the “absence of juristic reason” for an enrichment to the defendant:

“... The court should consider two matters in determining whether there is an absence of juristic reason for the enrichment. First, the Court should consider whether there are any contractual or statutory obligations existing between the parties that would justify the enrichment. If the parties contracted to undertake certain activities, the fact that one of them greatly benefits from the contractual arrangement will not lead to a successful suit in unjust enrichment.

The second matter into which the Court should enquire is whether the enrichment and the deprivation are unjust in the circumstances. In this regard, the unjust requirement is met where a party prejudices himself or herself with reasonable expectation of receiving something in return, and the recipient party freely accepts the benefits conferred by the conferring party in circumstances where the recipient party knows, or ought to have known, of that reasonable expectation. (**Petkus v. Becker** (1980), 117 D.L.R. (3d) 257 (S.C.C.)).”<sup>28</sup>

And, in its more recent decision in *KPMG (Trustee in Bankruptcy of Ellingsen) v. Hallmark Ford Sales Ltd.*<sup>29</sup>, Lambert J.A., of the British Columbia Court of Appeal, made the following comments regarding the test – the third element in particular – for unjust enrichment in a commercial relationship:

“But like most simple legal tests it must be applied thoughtfully and not mechanically, particularly with respect to whether there is a juristic reason for the enrichment which is said to have taken the enrichment out of the category of being “unjust”. The juristic reason may be legal or equitable or both. But it must be measured in accordance with the principles of equity which underlie the remedies of restitution and the remedial constructive trust. So the “injustice” of an enrichment must be measured by the standard of “good conscience” and, in a commercial case, the “good conscience” must be good commercial conscience.

With respect to the requirement of “good commercial conscience”, I refer to the majority judgment of four judges of this Court in *Atlas Cabinets & Furniture Ltd. v. Nat. Trust Co.* (1990), 45 B.C.L.R. (2d) 99, particularly at pp. 109-112 ... At p. 109, in relation to the three tests for unjust enrichment set out in *Petkus v. Becker*, this was said:

In the context of a domestic relationship those three circumstances are likely to be simpler to apply than in the context of a commercial relationship, where the essence of the relationship is the enrichment of the participants, perhaps at the expense of each other, all in the name of fair and honest business dealing. In a domestic relationship, equality of the parties to the relationship should normally be the standard of fairness. But, in a business relationship, honest dealing, not equal dealing, should set the standard of fairness. That is not to say that the three factors enumerated in *Pettkus v. Becker* are not equally applicable in commercial cases. They were referred to and treated as applicable in the majority reasons, on this point, of Chief Justice Dickson in *Hunter v. Syncrude*, [[1989] 1 S.C.R. 426] at p. 471. But it is important to understand what is meant by “enrichment”, by “deprivation” and by “juristic reason” in the context of a commercial relationship where ordinary and extraordinary flows of funds are part of the reality and purpose of the relationship. To my mind the key to the correct interpretation and application of the decisions of the Supreme Court of Canada on this subject to a commercial relationship is to focus on the “unjust” element of “unjust enrichment”.

.....

In my opinion the concept of the injustice of the enrichment as being against sound commercial conscience must continue to guide the application of the three tests in *Pettkus v. Becker* when they are applied to a commercial relationship.

In my opinion that passage continues to set out the applicable principles with respect to unjust enrichment in a commercial relationship.”<sup>30</sup>

### Unjust Enrichment in a Class Action Context

As author David A. Crerar observes, in his article entitled “The Restitutionary Class Action: Canadian Class Proceedings Legislation as a Vehicle for the Restitution of Unlawfully Demanded Payments, Ultra Vires Taxes, and Other Unjust Enrichments” (1998), 56(1) U.T. Fac. L. Rev. 47,

“... There have been very few Canadian class actions based on restitutionary principles. In addition to the Québec cases below, there have been three class

actions suits involving restitutionary principles in Ontario and one in British Columbia. In *Smith et al. v. Canadian Tire Acceptance Limited* [(1995), 19 O.R. (3d) 610 (Gen. Div.); aff'd (1995), 26 O.R. (3d) 95 (C.A.); leave to appeal to S.C.C. dismissed, [1996] S.C.C.A. No. 12 (S.C.C.)], the Borrowers' Action Society sued Canadian Tire for alleged credit card overcharges exceeding criminal interest rates. ... The Court dismissed the action after the defendant applied for summary judgment, agreeing that the late charges did not fall under the definition of interest under s. 347 of the *Criminal Code*.

A subsequent suit concerning overcharges failed on similar grounds in the case of *Garland v. Consumers' Gas Co.* [(1995), 22 O.R. (3d) 451 (Gen. Div.); aff'd (1996), 30 O.R. (3d) 414 (C.A.); rev'd (1998), 40 O.R. (3d) 479 (S.C.C.)] In the third case, *Windisman*, the plaintiff sued on her own behalf and on behalf of some 544 purchasers of units for underpaid and unpaid interest. [*Windisman v. Toronto College Park Ltd.* (1996), 28 O.R. (3d) 29 (Gen. Div.)] The defendant condominium developer argued that unjust enrichment principles should allow it to adjust the contractual terms after the closing of the condominium sales. In his judgment, Sharpe J. stated that no unjust enrichment had occurred, as the defendant received no benefit, and the plaintiffs suffered no detriment. However, if enrichment had taken place, the closure of the contracts of sale provided a juridical reason for this enrichment. In *Edmonds v. Accton Super-Save Gas Station Ltd.* [(1996), 5 C.P.C. (4<sup>th</sup>) 101 (B.C.S.C.)], the plaintiff claimed that the defendant gas station chains had incorrectly collected Goods and Services Tax at the rate of 7% on gasoline purchases. The action did not survive to the certification stage, as it was dismissed under a Rule 34 application to determine a point of law. ...<sup>31</sup>

Yet, notwithstanding Crerar's observations, since the date of his article, it appears that several additional class/representative actions involving, *inter alia*, claims for unjust enrichment have been launched – some successfully.<sup>32</sup> The most recent of these cases is the judgment of the Supreme Court of Canada in *Garland v. Consumer's Gas Co.*

Briefly stated, the *Garland* case, which has been in the courts for several years, was a class action on behalf of over 500,000 Consumers' Gas customers in which the representative plaintiff, Garland, asserted that the late payment penalties charged by the company violated section 347 of the *Criminal Code*. When the case reached the Supreme Court of Canada the first time<sup>33</sup>, the Court held that charging the late payment penalties amounted to charging a criminal rate of interest under section 347 and remitted the matter back to the trial court for further

consideration.

In March of 2000, the matter came before Winkler J. of the Ontario Superior Court of Justice<sup>34</sup>. Both the plaintiff and defendant brought motions for summary judgment and Winkler J. dismissed the plaintiff's claim against Consumers' Gas pursuant to the defendant's motion. In so doing, he refused to grant an order sought by the plaintiff for a declaration that the late payment penalties were illegal and void and, notwithstanding the 1998 decision of the Supreme Court of Canada, he concluded that, until attacked directly, the late payment penalties were "valid and binding upon the defendant and its consumers."

A further appeal to the Ontario Court of Appeal was dismissed, that court holding, *inter alia*, that the unjust enrichment action could not succeed because Consumers' was not enriched by the late payment penalties.<sup>35</sup>

When the case again came before the Supreme Court of Canada, in addressing the question of whether Garland, as representative plaintiff, had made out his claim for restitution for unjust enrichment under the first prong of the test, Iacobucci J. reasoned as follows:

"... The law on this question is relatively clear. Where money is transferred from plaintiff to defendant, there is an enrichment. Transfer of money so clearly confers a benefit that it is the main example used in the case law and by commentators of a transaction that meets the threshold for a benefit (see *Peel, supra*, at p. 790; *Sharwood & Co. v. Municipal Financial Corp.* (2001), 53 O.R. (3d) 470 (C.A.), at p. 478; P.D. Maddaugh and J.D. McCamus, *The Law of Restitution* (1990), at p. 38; Lord Goff and G. Jones, *The Law of Restitution* (6<sup>th</sup> ed. 2002), at p. 18). There simply is no doubt that Consumers' Gas received the monies represented by the [late payment penalties/LPPs] and had that money available for use in the carrying on of its business. The availability of those funds constitutes a benefit to Consumers' Gas. We are not, at this stage, concerned with what happened to this benefit in the ongoing operation of the regulatory scheme.

While the respondent rightly points out that the language of "received and retained" has been used with respect to the benefit requirement (see, for example, *Peel, supra*, at p. 788), it does not make sense that it is a requirement that the benefit be retained permanently. The case law does, in fact, recognize that it

might be unfair to award restitution in cases where the benefit was not retained, but it does so after the three steps for a claim in unjust enrichment have been made out by recognizing a “change of position” defence (see, for example, *Rural Municipality of Storthoaks v. Mobil Oil Canada, Ltd.*, [1976] 2 S.C.R. 147; *RBC Dominion Securities Inc. v. Dawson* (1994), 111 D.L.R. (4<sup>th</sup>) 230 (Nfld. C.A.)).  
 ...”<sup>36</sup>

Iacobucci J. thoroughly analyzed the third prong of the test for unjust enrichment in the following lengthy passage:

“The “juristic reason” aspect of the test for unjust enrichment has been the subject of much academic commentary and criticism. Much of the discussion arises out of the difference between the ways in which the cause of action of unjust enrichment is conceptualized in Canada and in England. While both Canadian and English causes of action require an enrichment of the defendant and a corresponding deprivation of the plaintiff, the Canadian cause of action requires that there be “an absence of juristic reason for the enrichment”, while English courts require “that the enrichment be unjust” ... It is not of great use to speculate on why Dickson J. in *Rathwell*, *supra*, expressed the third condition as absence of juristic reason but I believe that he may have wanted to ensure that the test for unjust enrichment was not purely subjective in order to be responsive to Martland J.’s criticism in his reasons that application of the doctrine of unjust enrichment contemplated by Dickson J. would require “immeasurable judicial discretion” (p. 473). The importance of avoiding a purely subjective standard was also stressed by McLachlin J. in her reasons in *Peel*, *supra*, at p. 802, in which she wrote that the application of the test for unjust enrichment should not be “case by case ‘palm tree’ justice”.

Perhaps as a result of these two formulations of this aspect of the test, Canadian courts and commentators are divided in their approach to juristic reason. As Borins J.A. notes in his dissent (at para. 105) [in *Garland*], while “some judges have taken the *Pettkus* formulation literally and have attempted to decide cases by finding a ‘juristic reason’ for a defendant’s enrichment, others have decided cases by asking whether the plaintiff has a positive reason for demanding restitution”. In his article, “The Mystery of ‘Juristic Reason’”, *supra*, which was cited at length by Borins J.A., Professor Smith suggests that it is not clear whether the requirement of “absence of juristic reason” should be interpreted literally to require that plaintiffs show the absence of a reason for the defendant to keep the enrichment or, as in the English model, the plaintiff must show a reason for reversing the transfer of wealth. Other commentators have argued that in fact there is no difference beyond semantics between the Canadian and English tests (see, for example, M. McInnes, “Unjust Enrichment – Restitution – Absence of

Juristic Reason: *Campbell v. Campbell*' (2000), 79 *Can. Bar Rev.* 459).

Professor Smith argues that, if there is in fact a distinct Canadian approach to juristic reason, it is problematic because it requires the plaintiff to prove a negative, namely the absence of a juristic reason. Because it is nearly impossible to do this, he suggests that Canada would be better off adopting the British model where the plaintiff must show a positive reason that it would be unjust for the defendant to retain the enrichment. In my view, however, there is a distinctive Canadian approach to juristic reason which should be retained but can be construed in a manner that is responsive to Smith's criticism.

It should be recalled that the test for unjust enrichment is relatively new to Canadian jurisprudence. It requires flexibility for courts to expand the categories of juristic reasons as circumstances require and to deny recovery where to allow it would be inequitable. As McLachlin J. wrote in *Peel, supra*, at p. 788, the Court's approach to unjust enrichment, while informed by traditional categories of recovery "is capable, however, of going beyond them, allowing the law to develop in a flexible way as required to meet changing perceptions of justice". But at the same time there must also be guidelines that offer trial judges and others some indication of what the boundaries of the cause of action are. The goal is to avoid guidelines that are so general and subjective that uniformity becomes unattainable.

The parties and commentators have pointed out that there is no specific authority that settles this question. But recalling that this is an equitable remedy that will necessarily involve discretion and questions of fairness, I believe that some redefinition and reformulation is required. Consequently, in my view, the proper approach to the juristic reason analysis is in two parts. First, the plaintiff must show that no juristic reason from an established category exists to deny recovery. By closing the list of categories that the plaintiff must canvass in order to show an absence of juristic reason, Smith's objection to the Canadian formulation of the test that it required proof of a negative is answered. The established categories that can constitute juristic reasons include a contract (*Pettkus, supra*), a disposition of law (*Pettkus, supra*), a donative intent (*Peter, supra*), and other valid common law, equitable or statutory obligations (*Peter, supra*). If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis.

The *prima facie* case is rebuttable, however, where the defendant can show that there is another reason to deny recovery. As a result, there is a de facto burden of proof placed on the defendant to show the reason why the enrichment should be retained. This stage of the analysis thus provides for a category of residual defence in which courts can look to all of the circumstances of the transaction in order to determine whether there is another reason to deny recovery.

As part of the defendant's attempt to rebut, courts should have regard to two factors: the reasonable expectations of the parties, and public policy considerations. It may be that when these factors are considered, the court will find that a new category of juristic reason is established. In other cases, a consideration of these factors will suggest that there was a juristic reason in the particular circumstance of a case but which does not give rise to a new category of juristic reason that should be applied in other factual circumstances. In a third group of cases, a consideration of these factors will yield a determination that there was no juristic reason for the enrichment. In the latter cases, recovery should be allowed. The point here is that this area is an evolving one and that further cases will add additional refinements and developments."<sup>37</sup>

In the end result, therefore: (i) the transfer of the late payment penalties were found to constitute a benefit to Consumers' Gas; (ii) the parties agreed that a deprivation had been suffered; and, (iii) no juristic reason for the enrichment was found. Moreover, Iacobucci J. found that Consumers' Gas could not avail itself of any defence.

Consequently, the appeal was allowed and Consumers' Gas was ordered to repay late payment penalties collected from the appellant in excess of the interest limit stipulated in section 347 of the *Criminal Code* after the action was commenced in 1994 in an amount determined by the trial judge.

### ENDNOTES

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<sup>2</sup> [2004] S.C.J. No. 21; 2004 SCC 25

<sup>3</sup> QL at p. 10

<sup>4</sup> Reference: *Peel (Regional Municipality) v. Canada* (1992), 98 D.L.R. (4<sup>th</sup>) 140 (S.C.C.), at p. 154

<sup>5</sup> Reference: P.D. Maddaugh and J.D. McCamus, *The Law of Restitution*, (Looseleaf Edit.), (Aurora, Ont.: Canada Law Book, 2004), at pp. 3-16 – 3-18

<sup>6</sup> *Garland*, QL, at p. 13

<sup>7</sup> [1558-1774] All E.R. Rep. 581 (K.B.)

<sup>8</sup> at p. 585

<sup>9</sup> [1943] A.C. 32 (H.L.)

<sup>10</sup> at p. 61

<sup>11</sup> Reference: Goff and Jones, *The Law of Restitution*, 6<sup>th</sup> Edit., (London: Sweet & Maxwell, 2002), at p. 17, para. 1-016

<sup>12</sup> [1954] 3 D.L.R. 785 (S.C.C.)

<sup>13</sup> (1980), 117 D.L.R. (3d) 257 (S.C.C.)

<sup>14</sup> at pp. 273-274

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15 QL, Chpt. 7, at p. 1  
16 see, for example, *Peel (Regional Municipality) v. Canada* (1992), 98 D.L.R. (4<sup>th</sup>) 140 (S.C.C.), at pp. 155-  
156  
17 at p. 172  
18 at pp. 174-175  
19 (Looseleaf Edit.), (Aurora, Ont.: Canada Law Book, 2004)  
20 at pp. 3-16 – 3-18  
21 at pp. 3-18, 3-19  
22 (1986), 29 D.L.R. (4<sup>th</sup>) 1 (S.C.C.)  
23 at p. 7  
24 (1993), 101 D.L.R. (4<sup>th</sup>) 621 (S.C.C.)  
25 at p. 636  
26 at p. 645  
27 (1996), 194 A.R. 348 (Q.B.)  
28 at p. 372  
29 (2000), 190 D.L.R. (4<sup>th</sup>) 47 (B.C.C.A.)  
30 at pp. 68-69  
31 at p. 95  
32 See: *Halvorson v. British Columbia (Medical Services Commission)* (2003), 227 D.L.R. (4<sup>th</sup>) 644  
(B.C.C.A.); *Nanaimo Immigrant Settlement Society v. British Columbia* (2001), 84 B.C.L.R. (3D) 208 (C.A.);  
*Macleod v. Viacom Entertainment Canada Inc.* (2003), 28 C.P.C. (5<sup>th</sup>) 160 (Ont. S.C.J.); *Garland v. Consumers’*  
*Gas Co.*, [2004] S.C.J. No. 21 (S.C.C.).  
33 ((1998), 165 D.L.R. (4<sup>th</sup>) 385 (S.C.C.)  
34 (2000), 185 D.L.R. (4<sup>th</sup>) 536 (Ont. S.C.J.)  
35 (2001), 208 D.L.R. (4<sup>th</sup>) 494 (Ont. C.A.)  
36 QL, at p. 11  
37 QL, at pp. 12-13