

## An Unfair Gain for Someone With Corresponding Loss to Another Without Proper Legal Reason May Give Rise to an Unjust Enrichment Situation



The legal cause of action known as unjust enrichment arises in equity (fairness); and while a Defendant may have engaged in some form of wrongful conduct, fault or blame are generally unnecessary for a successful unjust enrichment case brought by a Plaintiff. Additionally, the applicable circumstances for legal cases involving unjust enrichment can arise within many areas of law including, among others, common business matters, family law cases, and as discussed below very frequently arise within construction law proceedings.

### Elements

Per Iacobucci J. for the Supreme Court of Canada in *Garland v. Consumers Gas Co.*, [2004] 1 S.C.R. 629 at page 645, paragraph 30:

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 ...

The first two elements are often obvious and therefore easily demonstrated. Simply stated, did the defendant receive a benefit; and if so, did this benefit occur at the expense of the plaintiff? The third element, "absence of juristic reason" may be challenging to demonstrate in certain circumstances.

### Frequently Occuring Situations



In the construction law context, unjust enrichment tends to arise where a contractor



and property owner enter into an agreement involving certain project specifications and then subsequent project specification changes alter the original agreement so significantly that the original pricing agreed to becomes irrelevant. For example, a handyman type contractor is hired to build a backyard deck for the cost of materials plus fifty dollars per hour for labour (a "cost-

plus" contract). While the work is underway, the homeowner becomes very impressed and asks the contractor to add a 10' x 10' gazebo. Unfortunately, when this type of situation happens, all too often, the homeowner and contractor fail to discuss and agree to pricing for the new aspects of the project. In such a circumstance, it may be perceived by both laypersons and some lawpersons that the existing agreement of cost of materials plus fifty dollars per hour persists; however, this is incorrect - the law avoids operating so as to create a contract where a contract was absent. Accordingly, in this example situation there is a contract for the deck project but no contract for the gazebo project; thus, if the homeowner fails to make proper payment for the deck project the contractor may sue for breach of contract but no similar right to sue for breach of contract will exist if the homeowner fails to make proper payment for the gazebo project. It is obvious to people of common sense that the contractor requires fairness with some equitable right of action for payment on the gazebo project. This right of action arises as a claim for unjust enrichment.

### Quantum Meruit

As per the above example, the law avoids creating a contract where a contract was absent. Of course, without a contractual agreement, the issue of establishing a fair price arises. The issue of fair price is resolved by the law of quantum meruit. A very loose translation from Latin is simply 'quantum of merit' or even simpler, the amount that it is worth. Accordingly, our gazebo building contractor from the example above should receive the fair market rate for gazebo building. If this fair market rate is one hundred dollars per hour, so be it. Again, the law will avoid presuming that the homeowner and contractor would have agreed to the same rate for the gazebo project as was previously agreed to for the deck project. Of course, this could also go the other way to the benefit of the homeowner if the fair market rate for gazebo building is less than the previous rate agreed to for the deck work.

It is notable that the quantum meruit should be based on the value to the customer rather than the time and material expense to the contractor; *R. v. Wallberg*, [44 S.C.R. 208](#).

### Juristic Reason

As mentioned earlier, the third element in proving a case of unjust enrichment requires the absence of a juristic reason that might otherwise negate the legal obligation for the plaintiff to receive restitution from the defendant for the received benefit. This essentially means that the received benefit must be an 'unjustly' received benefit.

There are juristic reasons from established categories which may bar a plaintiff from recovering restitution from the defendant including:

- ▷ A contract whereas if a contract truly exists then the contract takes precedence - the law of unjust enrichment is intended only to fill the gap where a contract is absent;
- ▷ A disposition of law where a juristic decision was previously reached;
- ▷ A donative intent where the received benefit was intended as a gift but the giver subsequently seeks payment; and
- ▷ A common law or equitable law or statutory law reason such as unlawfulness.

The fourth category above may be best understood by using altering our example from above and consider a situation where a marijuana grow-op was built for the homeowner instead of a gazebo. In such a situation, it is highly unlikely that the contractor would succeed if suing the homeowner for receiving the benefit of a grow-op. It is obvious and sensical to most common sense thinking people that courts will avoid rewarding someone for doing something blatantly unlawful.

### Additional Examples

A further situation that often arises in the construction context is where a homeowner and contractor enter into an 'under-the-table' agreement for the purpose of avoiding taxes on the project. Although an 'agreement' was reached per se, the terms of the agreement were unlawful and therefore a legally enforceable contract fails to exist. Without the 'agreement' being deemed a legally enforceable contract, neither the homeowner or contractor may sue for breach of contract. In these circumstances, the courts will often frown on the arrangement; however a

claim for unjust enrichment may be successful as the courts appear to view avoidance of taxes in a somewhat softer manner than the blatantly unlawful group example described above.

Another situation can occur where an apparent contract was entered into; however, one of the parties was legally non-existent such as when the wrong name was entered upon the contract documents. Per *Juddav Designs Inc. v. Cosgriffe*, [2010 ONSC 6597](#) at paragraph 14:

The remedy of unjust enrichment is available where a benefit is conferred on one party at the expense of another party in the absence of any contractual obligation to pay.

Additionally, it is worth noting that construction law cases for unjust enrichment where a legally enforceable contract fails to exist is a two-way street. Homeowners may sue a contractor for unjust enrichment where payment was provided and then subsequently defects in workmanship are discovered but the lack of an enforceable contract means that there is also a lack of a warranty on workmanship.