Unjust Enrichment

Prepared For: Legal Education Society of Alberta
Family Law 25

Presented by:
Richard Rand QC
Rand Kiss Turner
Edmonton, Alberta

For presentation in:
Edmonton – March 3, 2016
Calgary – March 8, 2016

(Prologue:

Quite some years ago I went to "Examinations for Discovery" in a divorce and matrimonial property action in which my learned friend was a quite senior lawyer, probably in his early to mid 50's. I recall thinking he was ancient.

He did not seem to have much by way of preparatory notes or lists of questions and it became apparent, fairly early on, that he did not know the file very well. In fact, what he seemed to be doing was staring rather fixedly at a printout of Section 8 of the Matrimonial Property Act, examining on it subsection by subsection and asking every question he could think of relative to each subsection. Mind you, by the time we got to subsection (m), "any fact or circumstance that is relevant", he was pretty much out of ideas altogether.

I remember thinking at the time, words to the effect "you stupid old starched fart…" but after he was (finally) done examining our client using that technique, I realized two things: It was, in fact, some approach to take to simply follow the guideline that is Section 8 of the Matrimonial Property Act and, secondly, he had made us both far more money than I could have otherwise reasonably anticipated we would have earned in a more focused Examination.

Unfortunately, with unjust enrichment claims, we have no Section 8.)

INTRODUCTION:

Any paper purporting to pick the "top five cases" relevant to an area of law is inherently fraught with difficulties from the outset.

Principal among those difficulties is the question of who decides? My first instinct was to turn to the notes in "Practice Note 2" (as it is, this week…), and its direction that we are not to play "Hey Dummy, Dummy, Dummy!" with our learned Queen's Bench Justices by citing leading cases to them.

Accordingly, per Appendix "C" to "Practice Note 2" (as it is, this week…), the two leading cases regarding "unjust enrichment" are "*Kerr v. Baranow* 2011 SCC 10 and *Rubin v. Gendemann* 2012 ABCA 38".

Okay, problem solved regarding the first two of my "top five" list? But, wait a minute, given that the SCC heard *Kerr v. Baranow* with "*Vanasse v. Seguin*", do I include then "Vanasse", and if I do, am I down to only two more leading cases? If I don't treat Vanasse as a separate case and add three more "top five" cases, am I cheating and playing with "too many men on the ice"?

Next issue: The initial "LESA" brochure promoting this five top areas of family law (really six, by the way) "top five" cases seminar did hype it as a presentation of "**the** top five cases relevant to five family law issues" (emphasis added). Furthermore, the "who should attend?" part of the brochure said that it is "targeted to all levels of practitioners, including junior lawyers… and more experienced lawyers…".

Imagine then my surprise, when our learned Chairperson, Ms. Miller, Q.C., in a recent telephone conversation about two weeks before our papers were due, suggested really I should be focussed on what has happened **since** *Kerr v. Baranow* because, after all, *"everybody knows Kerr v. Baranow…".* (This was in spite of her having had plenty of time over the years to learn she should not presume I know anything in particular and, it was also right after I had explained to her that my going last as a speaker at this seminar might not be the wisest move and might conflict with my current life motto "there is a nap for that".)

Of course, it was too late for me to resile from a focus on *Kerr v. Baranow*, indeed its predecessor case *Peter v. Beblow*, but I took great comfort in including Justice Greckol's decision in *Thew v. Nichol*, including as it does a very succinct review of all the (leading) "jurisprudence since *Kerr v. Baranow*". Of course she reviews far more than five cases but all under the aegis of one decision, her decision in *Thew v. Nichol*.

There remains then the argument that, by including *Thew v. Nichol*, (never mind *Vanasse v. Seguin*), I am back to being guilty of "too many men on the ice" regarding my "top five".

Of course if the mysterious "LESA" feels I have failed in my task, or otherwise let "her" down, I borrow from my "top five" favourite Dino McLaughlin quotes and say "Disbar me, I need the rest".

RWR

February, 2016.

PETER V. BEBLOW **[1993] 1 SCR 980**

Facts:

The parties, a British Columbia couple, lived in a common-law relationship for twelve (12) years. The female Appellant was principally involved in the domestic work in the household and raising the children of their blended family. The Respondent had purchased the house that they occupied although the Appellant had undertaken a number of projects relative to the house and home - gardening, planting a hedge, painting the home and the like.