



Quantum Meruit

Introduction

I recently provided a second opinion in a case involving a claim for unjust enrichment. The facts were reasonably simple.

An elderly man had died leaving an estate of just less than \$2 million to his nephew. For the last six years of his life, his closest neighbours had provided extensive services for him. They basically did everything for him including driving, cooking, shopping, and generally looking out for his best interests. They alleged they had expended in excess of 12,000 hours of care.

There had never been a promise of inheritance nor any prior discussion between the deceased and his neighbours about payment for their services. When the entire estate was left to a nephew, however, their lawyer sued in unjust enrichment, claiming a constructive trust or alternatively, damages based on *quantum meruit*.

Having reviewed the facts and case law, my opinion was that the neighbours were unlikely to succeed in their claim for a constructive trust against the estate assets. I expected instead that a court would try to compensate them on *quantum meruit* basis for their time and effort. In my view, their time would be valued at \$10 to \$11 per hour. The case ultimately settled for \$150,000.

My research lead me to the law of unjust enrichment. From the plaintiff's perspective, I tried to establish a constructive trust. My conclusion was

that the plaintiff's claim for a constructive trust would likely fail. The plaintiff would likely succeed on a claim for *quantum meruit*. It appeared to me that the courts have established a threshold of sorts that must be met before the courts will award a claim for constructive trust. If the threshold is not met, then the courts are more likely to make an award for *quantum meruit*. In my opinion, the guidelines for meeting the threshold are not yet well defined by the courts.

Quantum meruit means "as much as he deserves."

My experience is that many lawyers plead unjust enrichment and claim the equitable remedies of constructive trust and in the alternative *quantum meruit*. There are, however, very few reported cases dealing with *quantum meruit*. It occurred to me that a paper on this interesting area of the law might be helpful.

What is Quantum Meruit ?

Blacks Law Dictionary, Fifth Edition, defines *quantum meruit* as follows.

Quantum meruit means "as much as he deserves." It is an expression that describes the extent of liability on a contract implied by law. It is an equitable doctrine, based on the concept that no one who benefits by the labour and materials of another should be unjustly enriched thereby. The law implies a

promise to pay a reasonable amount for the labour and materials furnished, even absent a specific contract.

The doctrine of *quantum meruit* is one part of the law of restitution, more commonly known as the law of unjust enrichment. In the law of unjust enrichment, there are two distinct, but related, remedies:

- *quantum meruit*; and
- constructive trust.

It is frequently open to the plaintiff, on the same facts, to claim in both. Although both claims may be based upon unjust enrichment, both the basis for the awards and the remedies differ. Depending on which remedy the court grants, the results are very different.

Generally speaking when the courts find unjust enrichment and impose a constructive trust, the awards are higher than when they award damages based on *quantum meruit*.

Constructive Trust

A constructive trust is *always* imposed by law. When the court makes a declaration of a constructive trust this, in effect, creates an enforceable interest in real or personal property.

Quantum Meruit

A claim in *quantum meruit* may either be:

- based on the intent of the parties; or
- imposed by law (in the absence of proven intent).

Quantum meruit is a claim for the payment of money to put the plaintiff

back in to the position he or she would otherwise have been in. In other words it is a monetary award that is *restitutionary* remedy. It does *not* create any enforceable interest in property.

Range of Claims in Quantum Meruit

The doctrine of *quantum meruit* encompasses a wide range of claims.

The range of claims, however, can generally be divided into two categories:

- those where the claim is asserted as a remedy in aid of an enforceable contract; or
- those where there is no enforceable contract or no contract at all.

In estate litigation these claims of *quantum meruit* frequently involve a plaintiff claiming restitution for services rendered to the deceased before death.

Enforceable Contracts

If the parties enter into a contract for services and services are rendered, the courts will impose an obligation on the person who has benefitted to pay reasonable compensation even though no contract price had been agreed.

Graves v. Okanagan Trust Company (1956) 20 W.W.R. (N.S.) 17 (B.C.S.C.)

What is Reasonable Compensation?

A brief review of the case law reveals the courts may appear somewhat arbitrary in deciding what is “reasonable.” It is difficult to reconcile some of the cases. In some cases, the courts have attempted to just “ballpark” the value of the everyday services performed—services such as shopping, driving, cleaning, and paying bills.

Let us look at some examples.

1. *Mikita v. Lick*

1992 Carswell BC 2199

In this case successful counsel (R. Trevor Todd) convinced Mr. Justice Selbie to set aside both a transfer of land and a Will. Both documents had been signed by an elderly gentleman shortly before his death. He had transferred his home to himself and his housekeeper in joint tenancy. He had executed a Will

disinheriting his children and leaving everything to the housekeeper.

When she was first hired, the agreement had been that the housekeeper be paid for her services. This contract was later superseded by the transfer and the Will.

The judge set aside both the Will and the transfer of land based on his finding that the deceased had lacked mental capacity. The judge also found the housekeeper to be untruthful. Nevertheless he allowed her claim of *quantum meruit* and awarded the sum of \$20,000 for about one year of nursing care.

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In doing so, Justice Selbie stated *inter alia*:

Lick claims by way of counter-claim —“k) alternatively, compensation in equity”—*quantum meruit*. I find justification for this claim. Putting all else aside, there is no question that she looked after the deceased for a period of time especially after his release from hospital in July of 1989. It was a role someone would have had to undertake as he could no longer function by himself. The difficulty is in determining just how much time she spent with him. Her lack of credibility colours any such determination. Her evidence is really all that there is except for the sometime observations of various persons. The question of whether he paid her on a regular or irregular basis or whether she obtained monies on an informal basis is quite unanswerable on the evidence. She certainly lived in his home during the last months of his life, receiving at least room and board for her services. It is my view that equity

should recognize a claim by her for compensation. In that case Mikita argues that the \$19,000 she received in December should be set off against any such right and that \$19,000 and, presumably, the car, was in excess of any entitlement. I appreciate the argument but, taking everything into consideration, and recognizing the need to be arbitrary in setting any amount, I allow her claim for *quantum meruit* in the amount of \$20,000.

2. *Emmerling v. Eschment* 1998 Carswell BC 1013

This case deals with the difficulty in assessing the merits of a claim for care provided in expectation of an inheritance. This case also illustrates some factors considered by the court to determine which remedy to accord.

In this case the deceased died *in testate*. The plaintiff applied for a declaration that defendants held real and personal property of the deceased in trust for him. In the alternative, the plaintiff claimed restitution on the basis of *quantum meruit*.

In his claim the plaintiff alleged that the deceased had told him and others that he intended to provide for the plaintiff after his death. The plaintiff asserted that he not only cared for the deceased, he contributed to upkeep and maintenance of the deceased’s home. He sought to establish a claim to an interest in the real property.

The evidence showed that plaintiff did minor repairs, routine maintenance, and lawn-mowing. Evidence of a home inspector, however, was that home appeared neglected and poorly maintained.

The court found that the contributions by the plaintiff fell far short of establishing that he maintained or enhanced the value of the property significantly. Thus they found these contributions did not create any equitable interest in the land.

There was no evidence that plaintiff made any contribution to the acquisition of the deceased’s other assets, directly or

indirectly. Therefore there was no basis for the plaintiff's claim through constructive or other trust.

The plaintiff, however, had lived in the deceased's home for six years. He claimed they became friends. During the last two years of the deceased's life, the plaintiff took care of routine daily chores, helped with meal preparation and laundry, drove him to appointments, and helped administer medication.

The plaintiff helped the deceased live out his final years in his own home without paid help that was otherwise required. The plaintiff was unemployed while living with the deceased, but obtained employment paying \$31,000 per year after the deceased's death.

The court inferred, from the plaintiff's subsequent employment, that he had the capacity to earn income. They further inferred that the plaintiff could have done so had he not instead cared for deceased for the last two years of his life.

The plaintiff was entitled to an award of \$40,000 for unjust enrichment, on a "value received" basis, or *quantum meruit*.

In this decision, the court followed the B.C.C.A. decision of *Clarkson v. McCrossen Estate* (1995) 3 B.C.L.R. (3d) 80, which suggest *the amount awarded is a matter of impression rather than calculation*. This approach was also followed in *Beattie v. Badger Estate* (December 14, 1995), Doc. Vancouver C933150 (B.C.S.C.), and in *Mikita v. Lick* supra.

3. ***Clarkson v. McCrossen Estate*** (1995) 3 B.C.L.R. (3d) 80

This case stands for the proposition that when services are rendered out of a sense of familial duty, that fact alone does not preclude a legitimate expectation of compensation.

Where the services are provided by a close family member, the courts may start from the position that the services were provided out of a sense of love or obligation, without any expectation of compensation. The courts may then deny making any award.

Quantum Meruit in the Absence of an Enforceable Contract

Where there is no contract or where it is unenforceable, the court may nevertheless impose an obligation to pay reasonable compensation. This obligation is designed to prevent the unjust enrichment of the recipient. Often the unenforceability arises from a failure to comply with the *Statutes of Frauds*, or an inability to subdivide real property.

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Let us review some cases.

1. ***Degelman v. Guaranty Trust Co. of Canada***

S.C.C. (1954) 3 D.L.R. 785

Degelman is a classic case of an unjust enrichment leading to damages for a *quantum meruit* claim. The case stands for the proposition that if services are rendered pursuant to an unenforceable contract, the court will impose an obligation to pay for those services.

In this case, the Supreme Court of Canada upheld an award of damages for *quantum meruit* to a nephew of the deceased. He had performed certain personal services for his deceased aunt. They had had an oral contract that his aunt would leave him her house in return for his care.

The court held that even though the contract was not enforceable, the law imposed an obligation to prevent an unjust enrichment. (The *Statute of Frauds* requires a contract to transfer land must be in writing to be enforceable.) The court awarded an amount valuing the services "on a purely business basis."

Mr. Justice Cartwright stated, at page 794:

I agree with the conclusion of my brother Rand, that the respondent is entitled to recover the value of these services from the respondent administrator. This right appears to me to be based, not on the contract, but on an obligation imposed by law.

2. ***West v. Wilson***

1998 Carswell BC 840

The plaintiff performed unpaid work on the defendant's farm. In return the defendant promised to give the him part of the farm land. The parties executed an agreement of sale for that part of the land. Because the property was within the agricultural land reserve, it could not be subdivided. The parties were therefore unable to register the agreement.

The plaintiff brought an action claiming, *inter alia*, *quantum meruit* for farm work that he performed.

The court found that the defendant intended to make a gift of the parcel of land to the plaintiff but the gift was not perfected or completed. They also found the plaintiff's labour had enriched the defendant, and that the plaintiff had suffered a corresponding deprivation without juristic reason. Accordingly the plaintiff established his claim in *quantum meruit*.

The court found the plaintiff was entitled to \$40,000 as compensation for 4,000 hours of farm work.

Constructive Trust or Quantum Meruit?

A claim for unjust enrichment, if successful, may be found to either warrant the imposition of a constructive trust or merely damages for *quantum meruit* (based on a reasonable fee for the services provided).

As noted above, generally speaking, the awards of constructive trust are far higher than those of *quantum meruit*. Plaintiffs' counsel should therefore plead unjust enrichment and claim the remedy of a constructive trust. Alternatively they should claim damages for *quantum*

meruit. Defence will want to try to limit any successful claim to damages rather than a declaration of trust.

What is a Constructive Trust ?

A constructive trust comes into existence, regardless of any party's intent, when the law imposes upon a party an obligation to hold specific property for another. The person obligated becomes by force of law a constructive trustee toward the person to whom he owes performance of the obligation.

Law of Trusts on Canada,
Donovan Waters, page 378

Lord Denning in *Hussey v. Palmer* (1972) 3 All E.R. 70 (CA), described a constructive trust as follows.

By whatever name it is described, it is a trust imposed by law whenever justice and good conscience require it. It is a liberal process, founded upon large principles of equity, to be applied in cases where the defendant cannot conscientiously keep the property for himself alone, but ought

to allow another to have the property or a share in it. It is an equitable remedy where the court can enable an aggrieved party to obtain restitution.

The principle of "unjust enrichment" lies at the heart of the constructive trust. The principle of "unjust enrichment" has played a significant role in the development of this equitable remedy.

The few cases that have been decided cannot be taken as the final word on any of these matters.

Lord Mansfield in *Moses v. Macferlan* (1760), 2 Burr. 1005, 97 E.R. 676, stated:

The gist of this kind of action is the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.

One of the earliest situations that a constructive trust was imposed concerned the acquisition of a secret profit by persons who were employed to act for others. Since then, it has been applied to countless different fact patterns.

Though the doctrine of constructive trust is perhaps best known for its application in matrimonial and cohabitation property cases, it is by no means limited to those cases.

In *Clarkson v. McCrossen Estate* (1995) 13 R.F.L. (4th) 237 (BCCA), Chief Justice McEachern stated:

I wish to mention that the law of unjust enrichment is in its early formative stages; it will continue to mature incrementally. The few cases that have been decided cannot be taken as the final word on any of these matters. They point the direction the law is taking, but not the many contours that must be traversed along the way.

As seen in *Emmerling* and many other cases, the courts will examine the extent of the contributions. They will decide whether or not the contributions maintained or enhanced the value of the property to the extent necessary to create an equitable interest in it. They will ask questions such as the following.

- Were there any contributions, either directly or indirectly, to acquire any of the assets?
- Would an award of *quantum meruit* be inadequate?

In effect, the courts impose an undeclared “threshold” test to meet. Depending on the plaintiff’s contributions, they may warrant either the imposition of a constructive trust or merely reasonable compensation for the services provided. Usually the courts require that the unjust enrichment be referable to a *specific property* before the plaintiff will be given an interest in the property under a constructive trust.

Common Law Marriages

Recent decisions illustrate the approach of the courts in deciding between constructive trust or *quantum meruit* in claims arising in common law marriages.

1. *Verbeke v. Hirst Estate*

2000 BCSC 1387

In this case, the plaintiff had lived in common law relationship with the deceased for 43 years. The judge found she had given up a career to provide domestic services and health care to the deceased. The plaintiff also made substantial financial contributions to the household. The couple lived essentially on the plaintiff’s pension and food that she grew.

The estate’s major asset was property registered solely in the deceased’s name.

Elements of unjust enrichment were established and there was a direct link between the services rendered and the deceased’s property. The court found that an award of money on the basis of *quantum meruit* would be inadequate for the contribution made.

In this case the court allowed the plaintiff’s claim for a declaration of a constructive trust. She was granted a

half-interest in the property and in the net cash in the estate.

In reaching its decision, the court cited one of the leading authorities in Canada on unjust enrichment, stating as follows:

The claim for an interest in the estate by way of constructive trust depends on whether the plaintiff has established the three elements of unjust enrichment set out in *Becker v. Pettkus*, [1980] 2 S.C.R. 834 (S.C.C.):

- (a) an enrichment;
- (b) a corresponding deprivation; and
- (c) the absence of any juristic reason for the enrichment.

...the law of unjust enrichment creates a complicated relationship... .

The contribution of domestic service and health care at the expense of a career and employment income can clearly form the basis of unjust enrichment and found a claim in constructive trust: *Peter v. Beblow*, [1993] 1 S.C.R. 980 (S.C.C.). As McLachlin J. (now C.J.C.) recognized, these services are of great value to the family economy.

The defendant had argued that the plaintiff had been given a roof over her head, and was responsible for her own choices. The defendant said therefore that any award should be based on *quantum meruit*, and \$40,000 would be adequate.

With the imposition of a constructive trust, however, the plaintiff received more than twice that amount.

2. *Soulos v. Korkontzilas*

(1997) SCR 217

Here the Supreme Court of Canada ruled a constructive trust may be imposed “to hold persons in different situations to high standards of trust and probity and prevent them from retaining property which in ‘good conscience’ they should not be permitted to retain.” *This was in spite of an absence of enrichment and a corresponding deprivation.*

3. *Atkinson v. Carrell*

47 B.C.L.R. (3d) 265

The parties to this litigation had lived common law for seven years. During that time the female defendant used funds from a divorce settlement to purchase certain assets as investments including a residence, mobile home park, and mobile homes. The plaintiff only contributed \$100 as a deposit on the house, and nothing to the other properties.

The male plaintiff brought an action seeking an interest in the defendant’s assets. Their value totalled \$530,000. The court closely examined what the plaintiff contributed toward the properties and awarded him \$25,000 for *quantum meruit*.

4. *Baird v. Iaci*

37 B.C.L.R. (3d) 1

This case illustrates a situation where even though the plaintiff could not establish a constructive trust, the courts made a significant award, based on *quantum meruit*.

The plaintiff and the defendant entered into a sexual relationship in 1987. At that time the plaintiff had a dream of owning a farm. She needed money to finance her dream.

The defendant started paying the plaintiff’s rent and expenses. He bought a farm that the plaintiff managed in exchange for being allowed to live in the farmhouse rent-free. The farm increased in value during their relationship. The defendant stayed at the farm one or two nights a week, during which time the parties occupied the same bed.

The relationship subsequently deteriorated and the plaintiff later brought an action for the imposition of a constructive trust both in the farm and on a portfolio of mortgages. In the alternative, she sought judgment on a *quantum meruit* basis.

The court held that the plaintiff could not satisfy the requirements for proving the existence of a constructive trust in the farm or in the mortgage portfolio. The plaintiff had not contributed in any way to the defendant’s portfolio or to any other of the farm’s expenses.

Furthermore, the plaintiff benefitted financially from her relationship with the defendant since he provided her with a free place to live and he paid her expenses. Since she had not provided any enrichment to the farm or to the portfolio, and did not suffer any deprivation, she could not claim that the defendant had been unjustly enriched so as to support her constructive trust claim.

Notwithstanding this finding, the court found that it was through the plaintiff's diligence that the farm investment had been discovered. Further she had contributed \$3,500 toward its purchase. Based on these factors, they ruled the plaintiff was entitled to receive some damages from the net appreciation in value of the farm.

The court held that she was entitled to damages in *quantum meruit* equal to one-third of the farm's value (after subtracting its original cost and renovation expenses).

Conclusion

As we have seen, the law of unjust enrichment creates a complicated

relationship between the remedy of unjust enrichment and the constructive trust.

I summarize in the most important points for practitioners to remember,

1. The courts have in effect set up a threshold that must be met before they will make an award for constructive trust upon the assets in dispute. It is not very clear just what proof the courts will require to meet the threshold. If the threshold is not met, then the courts will likely make an award for *quantum meruit*. It is generally advisable for plaintiff's counsel to plead unjust enrichment and a constructive trust, and alternatively damages for *quantum meruit*.
2. Defence counsel will usually argue that if there is to be an award of damages, they should be limited to a *quantum meruit* award.
3. Generally the courts will award a greater sum of money or interest in assets if the plaintiff is able to

establish the basis a constructive trust.

4. If the plaintiff is unable to establish a constructive trust, then the courts may well award damages on a *quantum meruit* basis. Damages will then be calculated on a comparatively low hourly rate to be paid for the services provided. ▲

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