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Cause in the Quebec Law of Enrichment Without Cause

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INTRODUCTION

Articles 1041 and 1042 of the Quebec Civil Code [1] introduce the chapter "Of Quasi-Contracts". It is in the title "Of Obligations", in the book "Of the Acquisition and Exercise of Rights of Property".

This chapter of the Code lists two nominate quasi-contracts, relating to the voluntary management of another's business [2] and the reception of a thing not due.[3] Both of these existed as sources of civil obligations in Roman law and continued to be so recognized in most of the traditional legal systems extant in France up to the codification and unification of French civil law in 1804.[4] Texts similar in both format and meaning to articles 1041 and following of the Quebec Civil Code appear in the laws of France,[5] Belgium,[6]

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[1] Hereinafter cited as "C.C.".

[2] Art. 1043 through 1046 C.C., entitled "Negotiorum Gestio".

[3] Art. 1047 through 1052 C.C.

[4] The fullest explanation of this development from the Roman era up to the French codification appears to be that of Toullier, 11 *Droit Civil Français* 5th ed. (1830), 23-29, ss.15-21.

[5] Art. 1371 through 1381 C.C.F.

[6] Art. 1370 through 1381 C.C.B.

and Louisiana.[7] All appear to follow from the formulations of the *Projet du Code civil des Français.*[8]

Each of the two named quasi-contracts in the various codified civilian systems is of a severely limited scope. Like the ancient forms of action of the common law, these texts only give rise to obligations justiciable in the law courts upon the fulfillment of their respective time-honoured, enumerated conditions.[9] The exactitude of pleading required to succeed in *negotiorum gestio,* for example, before Quebec courts today probably is much the same as that which would have been demanded by the French royal courts of justice three centuries ago; it cannot be much less than that demanded of a pleader in *indebitatus assumpsit* in the days of Lord Mansfield. The plaintiff seeking recompense can qualify to plead *negotiorum gestio* only if he has assumed the management of some business of his own accord without the knowledge of its owner during the owner's incapacity. He must also have managed it throughout in a prudent manner.[10]

The general introductory words of articles 1041 and 1042 C.C. read as follows:

> Art. 1041. A person capable of contracting may, by his lawful and voluntary act, oblige himself toward another, and sometimes oblige another toward him, without the intervention of any contract between them.
>
> Art. 1042. A person incapable of contracting may, by the quasi-contract which results from the act of another, be obliged toward him.[11]

Since at least the 1892 *Arrêt Boudier* of the *Cour de Cassation* in France,[12] and the 1929 decision of the Supreme Court of Canada in *Regent Taxi & Transport Co.* v. *Congregation des Petits Frères de Marie,*[13] there has been judicial recognition at the most authoritative level of the proposition that an alternative source of civil obligations,[14] most probably founded in the Code chapter "Of Quasi-Contracts", exists in the principle of enrichment without cause.[15]

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[7] Art. 2293 through 2331 C.C.La.

[8] An II, édition officiel, 1804.

[9] What follows in this paragraph is only an abbreviated attempt to summarize the Quebec Civil Code provisions in point. For an excellent though highly involved discussion of the requirements of the action in *negotiorum gestio* in the law of France see Laurent, 20 *Principes de Droit Civil* 5th ed. (1893), 341-68, ss.310-340.

[10] Art. 1043, 1045 and 1046 C.C.

[11] *Cf.* art. 1371 C.C.F., art. 1370 C.C.B., and art. 2293 and 2294 C.C. La.

[12] 16 juin 1892, S.1893.1.281, D.1892.1.596.

[13] [1929] S.C.R. 650, especially the dissent of Mignault,J., 689-92.

[14] *Per* art. 983 C.C.

[15] See also the early Privy Council appeal from Quebec in *Price* v. *Neault* (1887), 12 App. Cas. 110, 115; 13 Q.L.R. 287.

Regardless of the juridical source for this species of obligation, as conceived in the minds of doctrinal writers *a posteriori*,[16] this creature of the jurisprudence, the obligation arising because of an enrichment without cause, can be said to arise in any situation manifesting four broadly described factors.[17]

Though formulated in different words, most authorities find these enumerated conditions must exist to found the action:

(1) An enrichment of the defendant;
(2) an impoverishment of the plaintiff;
(3) a correlation between the enrichment and impoverishment; and
(4) an absence of a civilly valid cause for this factual correlation.[18]

It is submitted that the first three requirements are of fact, not of law; in effect they merely require that the parties before the court be those actually having a justiciable controversy *inter se*. These factual criteria assure that an interested plaintiff has impleaded the right defendant.

Such preliminaries aside, the respective courts in the reported cases have had to deal with the sole legal issue between the various parties. They have had to decide, for a given plaintiff to succeed, whether or not his impoverishment and the commensurate enrichment of the defendant sprang from a common source — a source which ranks as a cause of obligations that is held valid in the positive civil law.

This cause, which bars the action *de in rem verso*[19] of the plaintiff, may come into existence at either of two points in time. First, the legal relationship between the parties may have provided the cause for a resulting enrichment/impoverishment co-relationship. For example, a delict may have been committed by the plaintiff against the defendant, and the former accordingly may have given the latter a rightful recompense. Second, some legal relation-

[16] See especially the conclusions and evaluations of others' theories in Challies, *Doctrine of Unjustified Enrichment in the Province of Quebec* 2d ed. (1952), 56; and Gendron, *Nature de l'enrichissement sans cause*, (1962) 5 No. 1 C. de D. 104.

[17] Most writers also add that there cannot be available to the plaintiff some other cause of action; see Jean-Louis Baudouin, *Les Obligations* (1970), 222, s.425, n.672.

[18] *E.g.* Paul Esmein *et al.*, 2 *Obligations;* volume 7 of Planiol and Ripert, *Traité Pratique de Droit Civil Français* (1954), 56-57, s.756.

[19] The term from Roman law used to designate (if not to describe) the cause of action for an enrichment without cause in modern civil law.

ship may, at the operative moment, afford the plaintiff a cause of action against the defendant. An example of this would be found in the non-fulfillment by the defendant of his duties towards the plaintiff under a synallagmatic contract between the parties.

The following pages will analyze the manner in which the courts have dealt with this elusive concept of cause in dealing with those situations in which all of the purely factual criteria have been established to exist by the party seeking recompense for another's enrichment, which is allegedly without cause, past or present. The idea of cause, this central theme in the action for enrichment without cause, will be seen to play a determinative role in situations ordered into the following categories of legal relationships:

I. Cause in a Civil Obligation.
   A. Valid Contract *Inter Partes.*
   B. Illicit Contracts.
   C. Ineffective Contracts.

II. Cause in Other Situations of Gain.
   A. Obligations Imposed by the Civil Law.
   B. Obligations Imposed by the Public Law.
   C. Unintentional Enrichment of a Defendant.
   D. Gifts and Officious Acts.

III. Additional Sources of Cause.
   A. Natural Obligations.
   B. Custom.

IV. Relativity of Obligations.
   A. Cause and the *Stipulation Pour Autrui.*

I. CAUSE IN A CIVIL OBLIGATION

A. Valid Contract Inter Partes

Though the Quebec Court of Appeal avoided the issue in a 1962 decision,[20] a later case required it to declare that the presence of a contractual obligation proven to exist between the parties and giving rise to the established co-relationship of impoverishment and enrichment precludes the giving of judgment for an enrichment without cause.[21] This *ratio decidendi* of *Godon* v. *Dame Perault*[22]

[20] *Ville de Sept-Iles* v. *Trépanier,* [1962] B.R. 956, 958, *per* Taschereau,J.

[21] *Godon* v. *Dame Perault,* [1968] B.R. 877, 879. (An unpaid workman's action *de in rem verso* against a proprietor for enrichment without cause was barred by the finding that the proprietor was also the workman's co-contractant.)

[22] *Ibid.*

provides authority in Quebec's positive law for a proposition unquestioned in other civilian legal systems [23] and accepted by Quebec legal writers.[24]

Notwithstanding this basic principle, at least three reported decisions of Quebec courts have allowed claims in *de in rem verso* actions while recognizing the existence of valid bilateral contracts governing the parties' relationships. In one dated case a questionable award — affirmed on appeal as "having rendered perfectly justice to the parties"[25] — gave a man of full age an extra sum for work done on a parish church pursuant to a notarial contract with the local *fabrique.* In essence, it is submitted that the decision saw the Court of Appeal disregard the strictly drafted lesion provisions of the then three-years-old Civil Code.

Two puisne justices of the Quebec Superior Court appear, with all due respect, to have offered meaningless chants of *"enrichissement sans cause"* in cases clearly determinable under the law of contract. They thus betrayed gross misunderstanding of the actual, precise meaning and scope of the term. In one case, almost half a century ago, a defendant's husband had a plaintiff install a central heating system in her building. This was done as part of a scheme to renovate and convert the building into a *"maison de rapport".* The learned judge began by finding for the plaintiff in contract: *"Considérant qu'il est notoire pour les parties que la dite vente se faisait pour le bénéfice exclusif de la défenderesse . . .".*[26] It was added for good measure — perhaps it should be read only as an *obiter dictum* — that the case could be solved too by mere reference to the simplest rule of law: *"Considérant que plusieurs dispositions du Code civil, consacrent ce principe d'éternelle équité; 'Nul ne peut s'enrichir aux dépens d'autrui' ".*[27]

Gratuitous use of such homilies, in these and other similar cases,[28] does not alter the following conclusion: all sound Quebec authority affirms the principle that proof of enrichment pursuant

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[23] *E.g. Algemeene Bankvereeniging en Volksbank van Leuven* v. *Crédit Lyonnais,* Tribunal d'arrondissement de Luxembourg, 30 janv. 1932, Pas. 1933. 126, 128d; aff'd, Cour d'appel de Luxembourg, 7 avril 1933, *supra,* 130c.

[24] Baudouin, *supra,* 225, s.431-432, n.687 and 689, and authorities cited therein.

[25] *Fabrique de Ste-Julie de Somerset* v. *Paquet* (1869), 1 R.L. 430, 432; 20 R.J.P.Q. 353 (C.A.).

[26] *Gurney-Massey Co. Ltd.* v. *Dame Godreau* (1925), 63 C.S. 294, 295 *per* Bruneau,J.

[27] *Ibid.*

[28] See also *Ostiguy* v. *Coopérative de l'électricité de l'Ange-Gardien et St-Alphonse,* [1947] R.L. 31 (Cousineau,J.); phrases like *"équivalent à"* make it difficult to grasp the precise meaning of the learned judge's opinion.

to a valid bilateral contract is preclusive of an action for enrichment without cause.

The Civil Code provides that consent to a contract may arise by implication.[29] It follows then that facts establishing a defendant's implicit consent to a synallagmatic contract which impoverishes the plaintiff through expenditure of professional skill and time, while also leading directly to the defendant's enrichment, would cause a court to declare the plaintiff's right to recover in contract. No action would lie for enrichment without cause.[30] The importance of this distinction would relate to quantifying the plaintiff's damages: is he to receive an award for enrichment without cause, limited to the amount of the defendant's benefit *and* his own loss, or the full measure of the implied promise of payment? (Needless to say, this same difference as to quantification of damages applies as regards any contractual action, contrasted with the action for enrichment without cause.)

If Quebec's jurisprudence be devoid of serious consideration about why the same facts cannot give rise to rights in both contract and enrichment without cause, there has accumulated judicial opinion on an allied matter of something less than overwhelming profundity, *viz.* whether or not both contract and enrichment without cause may be pleaded in the alternative in the same action. The score in terms of reported Superior Court cases stands at 4:1, with one tie. Four judges have rejected such double-pleading outright, on the basis that the notions are "absolutely incompatible the one with the other, as the action *de in rem verso* precludes the existence of any contract".[31] One (unreasoned) judgment favours allowing pleading in the alternative.[32] Yet another judgment allowed the alternate pleading only because the defendant had failed to raise a timely dilatory exception[33] — even though the presiding judge had commented on their "absolute incompatibility the one with the other" only two years earlier.[34] The Court of Appeal, faced with an award supposedly founded in both contract

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[29] Art. 988 C.C.

[30] *Cardin* v. *l'Archevêque,* [1947] R.L. 157 (Duranleau,J.).

[31] *Challancin* v. *Guilbault* (1956), 60 R.P. 160, 162 *per* Brossard,J.; followed in *Active Business & Realty Co.* v. *Ziss,* [1963] R.P. 426. Similarly, see the reasoning of Ouimet,J. in *Bédard* v. *Bédard Transport Co. Ltée,* [1960] C.S. 472, 475; followed in *Epiceries Modernes Ltée* v. *Chaikin,* [1961] C.S. 155 (St-Germain,J.).

[32] *Langlois* v. *Labbé* (1914), 46 C.S. 373, 377 *per* Lafontaine,J.

[33] *Mailloux* v. *Commissaires d'écoles de la Municipalité du Village de St-Césaire,* [1958] C.S. 577, 579 *per* Brossard,J.

[34] *Cf. Challancin* v. *Guilbault* (1956), 60 R.P. 160, 162.

and enrichment without cause in a 1962 case, failed to deal with the question of alternative pleading though, significantly perhaps, it affirmed the award in contract only.[35]

A century of case law which has produced only a score of 4:1:1 at first instance cannot be said to have been finally determinative of this issue. Moreover, it appears that the scanty expressions of judicial reasoning have overlooked one essential fact: the mere allegation of the existence of a contract cannot be taken as proof of the existence of cause for the enrichment. It is fatuous to assume that a claim advanced in an adversarial forum proves the existence of the alleged state of fact. Judicial refusal to hear both claims is therefore open to severe criticism. The result has the same ring of the absurd as would denying relief to a plaintiff who, in the course of trial, proves the defendant deliberately ran him over (a delict), because the original plea as to the defendant's fault may have sounded alternatively in terms of negligent driving (a quasi-delict).

Kafka is alive and well and sitting in the courts of Quebec. One now can only hope for future clarification by the appellate tribunals.

B. Illicit Contracts

A situation might arise in which one person enriches another pursuant to a civil obligation and the civil obligation later fails because of nullity judicially pronounced. As the judgment will affect title given in the object of the contract retroactively,[36] one must ask whether such an annulled contract provides "cause" for an enrichment.

Except in the cases of successive contracts (Mignault gives the example of the rental of a house by the year for a term of five years),[37] cause is to be identified at the outset of an obligation.[38] If the law is to be consistent, the annulment of a contract, one might argue, would have to be viewed as retroactively revoking whatever claim that contract might have had to serve as the legally cognizable cause for an enrichment/impoverishment co-relationship. However, other considerations intervene.

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[35] *Ville de Sept-Iles* v. *Trépanier*, [1962] B.R. 956, 958; [1963] R.L. 85 *per* Taschereau,J.

[36] Baudouin, *supra*, 142-49, ss.249-262; *Russell* v. *Lefrançois* (1884), 8 S.C.R. 335, 355, 357 *per* Taschereau,J.; *Plasse* v. *Plasse* (1937), 75 C.S. 142, 144 *per* Trahan,J.

[37] 5 *Droit Civil Canadien* (1901), 202.

[38] *Ibid.*; Aubry and Rau, 4 *Droit Civil Français*, 4th ed. (1871), 321, s.345, n.2; Henri Mazeaud *et al.*, 2 *Leçons de Droit* (1966), 217, s.267; Bernard, *De la cause dans les contrats*, (1958) 9 Thémis 12, 19.

It appears well established in Quebec civil law that a contract formed by the parties for a subjectively illicit purpose, *"où le but que les parties ont voulu atteindre est illicite ou immoral"*, will be declared null.[39] Baudouin cites 38 examples from the Province's jurisprudence.[40] It should follow that the parties' status regarding one another, having been determined by normal rules of contract,[41] is beyond the scope of an action based on enrichment without cause.[42]

It is submitted that the action for enrichment without cause cannot properly operate in this field. Unfortunately, courts in both France and Quebec have done damage to the symmetry of the legal system through rulings to the contrary. A clear example of such a miscarriage appears in the *Arrêt Kerboua* of the *Cour de Cassation.*[43] *A* and *B* contracted, quite simply, to bribe a policeman, *C*. Though the high French court declared the nullity of the contract, which clearly violated public order, it also ordered the return of the monies paid by the plaintiff under the contract, reasoning that the null contract could not offer a properly cognizable cause for the enrichment of the party in possession of the funds.[44]

Quebec case law is remarkably scanty on this point. In *Ste-Catherine Improvement Co.* v. *Lacroix,*[45] however, a private company's four shareholders conspired to deceive a potential investor by each issuing a $2,000 demand note to the company. This was done on a tacit understanding that payment never would be demanded of any of the conspirators. As the shareholders were not previously indebted to the company, its demand for payment four years later was refused, the Superior Court saying "it would be a classic case of enriching one at the expense of another without any consideration whatever".[46]

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[39] Baudouin, *supra*, 136, s.238.

[40] *Ibid.*, 136-37, n.396-399.

[41] Note that this determination is to be made by the *juge d'office* even if not raised in pleadings: *L'Association St-Jean-Baptiste de Montréal* v. *Brault* (1900), 30 S.C.R. 598, 604-05.

[42] *Quaere* the effect in civil law of an illegal mode of performance, accepted by both parties, of a contract formed for a legitimate motive on both sides of the bargain. *E.g.* agreement after contractual formation to the use of a truck inadequate to transport a heavy load, in violation of the applicable law: *Ashmore, Benson, Pease & Co. Ltd.* v. *A.V. Dawson Ltd.*, [1973] 1 W.L.R. 828 (C.A.).

[43] *Kerboua* v. *Hiouel Ali Ben Salah*, Cass. civ., 19 déc. 1960, Bull. Cass. 1960.I.447, no.548.

[44] *Ibid.*, 448b.

[45] (1932), 38 R. de J. 44 (Greenshields,J.).

[46] *Ibid.*, 47.

"Consideration", in the common law sense of the term, might well have been absent; cause, quite arguably, was present for the defendants' notes.[47] Still, given the illicit character of this cause — the contract was motivated by a wish to deceive investors — one must find the mode of problem-solving adopted by Greenshields,J. questionable in the extreme. Its only possible justification might lie if one were willing to extend that common law import, the infamous corporate veil, into still further fields of Quebec law.[47a] Such a dubious extension should call for a good measure of discussion by the Court. None is to be found.

Having found the fraud of the plaintiff and defendants mutually conceived, enrichment without cause could have no role at all in the circumstances. The principle *nemo auditur propriam turpitudinem allegans* and articles 989 and 990 of the Civil Code should have foreclosed any action to the parties for recovery of funds already paid under a contract violative of public order and good morals. To quote Trudel in this context:

> *Si l'engagement a été exécuté, celui qui a payé la somme promise n'a aucune action civil en répétition; ... Cette rigueur est le corollaire de l'intérêt qu'a la société dans la répression des crimes.*[48]

The courts apparently will not allow a mistress to claim an award for enrichment without cause for her services *qua* mistress.[49] However, this may not be the case for any other services she may provide. A man whose mistress tends his children and businesses for four years while he serves in the army must make restitution for his patrimonial benefit and her loss of the opportunity to seek similar work for gain.[50]

The general attitude of the law in point is in accord with that of the law of obligations generally. If principles of public order and good morals are seen to prevent the enforcement of contracts

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[47] Regarding the distinction between the two legal systems' respective requirements see Litvinoff, 1 *Obligations*, volume 6 of the Louisiana Civil Law Treatise Series (1969), 494-96, ss.278-279.

[47a] On the general question of the proper place in Quebec law of the doctrine of corporate personality and the narrower issue of when to lift the corporate veil, see Martel and Martel, 1 *Les aspects juridiques de la compagnie au Québec* (1971), 4-15.

[48] Trudel, 7 *Traité de Droit Civil du Québec* (1946), 135-36. See also Mignault, 5 *Droit Civil Canadien, supra*, 203: *"La cause est illicite, non seulement lorsqu'elle est prohibée par la loi, mais encore lorsqu'elle est contraire aux bonnes moeurs ou à l'ordre public"*.

[49] *Joly* v. *Bonnafet et Alabardi*, Cour d'appel de Paris, 15 juin 1939, D.H. 1939.409, 409d-410a.

[50] *Ibid.*, 410a.

with an objectively valid cause because of the subjective motivations at play, so too would one expect the law to deny relief where the person claiming to have been impoverished without cause must plead her own illicit motivations for the course of conduct which led to that impoverishment.

C. Ineffective Contracts

There are two different types of legal situations in which the layman might find himself to have provided goods or services pursuant to a seemingly valid contract, yet be unable to secure a legal judgment against his co-contractant.[51] In the first case, the contract may have been legally valid at the moment of formation but have fallen to an *obstacle de droit* at some later date. Alternatively, the would-be plaintiff for enrichment without cause may have seen his contract rendered ineffective at conception for non-compliance with requirements of form.

In the first instance, *obstacles de droit*, because they do not affect the existence of a valid contractual cause at the moment of formation (the time at which cause is required to exist),[52] prevent success in an action for enrichment without cause. They similarly bar a contractual or delictual remedy, as the case may be.

A prescribed cause of action, *une déchéance*, or a situation of *res judicata* each are exemplary instances of enrichment of one party which, though perhaps unjust in the circumstances to some other party, all occur pursuant to a valid cause.[53] Indeed, to give a remedy in such cases would be to judicially overrule specific texts of law,[54] texts which are, presumably, intended to assure justice in legal proceedings. One commentator has put it this way:

> *Le système général de preuves institué par le Code civil [français] l'a été dans un but d'intérêt général qui n'est point contraire à l'équité, et l'équité, qui est à la base de l'action* de in rem verso, *ne commande en aucune façon qu'il y soit dérogé.*[55]

This was said in relation to a case where a creditor's action on a contract of loan failed for lack of a commencement of proof in

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[51] Situations where he has received an unenforceable judgment on a contract but wishes to proceed against another person who has received a benefit are considered in Division IV, *infra*.

[52] See n.33 and 34, *supra*.

[53] The list is that given by the Cour de Cassation in *Dame Masselin* v. *Decaens*, 29 avr. 1971, D.1971.Somm.197, 197c.

[54] *E.g.* art. 2183-2270 C.C.

[55] Naquet, S.1918-1919.1.41, 41, col. 2.

writing; the courts rejected his second action for enrichment without cause.[56]

One can only add, further to the observation of Me Naquet just quoted, that though the rules of enrichment without cause may well have been developed by the courts to further a general desire for justice in civil litigation, nothing could be more unjust than to allow this cause of action for enrichment without cause — arbitrarily and on an *ad hoc* basis — to abridge these long-enacted and commonly relied upon rules of civil law.

If the result of this reasoning process appears harsh, perhaps even unconscionable in certain instances, this may perhaps be ascribed to the Civil Code's formalized requirements of proof and its rigid and complex prescription texts. Be these articles beneficial or inequitable on balance — an important question, but one beyond the scope of the present article — rules of enrichment without cause, properly and consistently applied, cannot be appealed to for dispensation from such nominate rules.

Situations also have been litigated in which contracts purporting to transfer valuable prestations — property or indebtedness — have been executed by persons suffering from an incapacity of exercise. When the contract is held invalid *ab initio*, the co-contracting parties have claimed recompense for the enrichment without cause of the parties suffering the incapacities. The Quebec courts uniformly have allowed a recompense for the enrichment, since no cause could come into existence through the medium of a purported contract devoid of legal effect.[57] Such a result might be held as foreseen by article 1042 C.C.

The only discordant voice is that of the Honourable Mr Justice Barclay, dissenting in the Province's Court of Appeal.[58] He appeared prepared to accept that a null promise given by officials of a town without the required authorization of its council, would provide good juridical cause for the supposed counter-prestations, a notary's

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[56] *Vve Clayette* v. *Liquidateur de la Congrégation des Missionnaires de la Salette*, Cass. civ., 12 mai 1914, S.1918.1.41, 43, col. 1. See also *Laurens, syndic de la faillite Soc. Miquel et Tarayre* v. *Marty*, Cass. civ., 12 févr. 1923, D.P. 1924.1.129 (failure to register a construction privilege) and comment of Rouast, *loc. cit.* Quebec jurisprudence is to the same effect: *Durand* v. *Graham*, [1955] R.L. 510, 512; [1956] C.S. 97 (Jean,J.).

[57] *Péloquin* v. *Commissaires d'écoles pour la Municipalité de la cité de Sorel*, [1942] C.S. 200 (Archambault,J.); *Verville* v. *Commissaires d'écoles de la Municipalité scolaire de Ste-Anastasie-de-Nelson*, [1955] C.S. 114 (Edge,J.); *Ville de Louisville* v. *Ferron*, [1947] B.R. 438.

[58] *Ville de Louisville* v. *Ferron*, [1947] B.R. 438.

professional services. Thus Barclay,J. would have denied the notary relief for the town's enrichment without cause, even though he acknowledged the invalidity of the town's contractual obligation to pay for the services its officers requested and it received.[59] We thus learn that a contract which is not a contract is a contract.

Bearing in mind the essential factor of cause, which is sought in all actions *de in rem verso,* the actual results observed in cases involving these two species of ineffective contracts appear true to the starting premises of the law of obligations.

II. CAUSE IN OTHER SITUATIONS OF GAIN

A. Obligations Imposed by the Civil Law

In most instances the principle of freedom of contract requires that the intention of two parties, found from the meaning of their deeds or general rules of interpretation, governs their legal relationships.[60] Exceptionally, however, specific texts of law ascribe a precise legal consequence to forms of conduct. Persons allowing others to hold their immovable property without executing a lease are presumed by the civil law to be in a contractual relationship of lessor and lessee;[61] certain types of builders are presumed by law to supply all labour and materials pursuant to an initial contract.[62] In such situations, no claim can be raised outside of the legally imposed contract by alleging an enrichment without cause. Learned writers may use the short-hand device of speaking of the "subsidiarity" of the action *de in rem verso.* The most accurate explanation of these situations is that a cause is provided by a contract which governs the relationship *inter partes.* This contract, which has been imposed by some rule of the civil law which is of general application, offers a cause for any enrichment and impoverishment.[63] Accordingly, the enrichment cannot be claimed to have been without cause.

The Civil Code texts used as examples thus far in this Division are unambiguous, well-litigated and of long standing. Unless the statutory words in point are extremely clear, however, the court seized of such a matter may have to decide whether the intent of

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[59] *Ibid.,* 454-55.

[60] Art. 1013 C.C.

[61] Art. 1608, 1657 C.C.

[62] Art. 1793 C.C.F., art. 1690 C.C.

[63] *Epiceries Modernes Ltée* v. *Chaikin,* [1961] C.S. 155, 157 *per* St-Germain,J., a presumed lease; *Ville de Bagnères-de-Bigorre* v. *Briauhant,* Cass. civ., 2 mars et 8 juin 1915, D.P.1920.1.102, 103a.

the legislature was to create a contractual *lien de droit* between the parties, or merely to create by fiat a special right in one party and a correlative liability in the other. In the latter instance, where there arises no legal presumption of some pre-existing civil obligation of the defendant which could have served as cause for the plaintiff's impoverishment, the plaintiff will retain any rights he may have had to an additional remedy for enrichment without cause. The jurisprudence of France provides an example of such a quandary in legislative interpretation. A legal decree of 29 July 1939 [64] dealt with the situation of the child who worked on the family farm during a significant period of his adult life without receiving wages from his parents. The child, if he qualified,[65] received the benefit of something termed "a contract of labour for a deferred wage",[66] a benefit which could be opposed only during the devolution of the "debtor" parents' succession.[67]

At least three of France's regional Courts of Appeal have had to deal with the nature of this right, following civil claims by beneficiaries of the right described in the 1939 decree for the enrichment without cause of their parents. These were traditional civil claims, pursued outside of the rights conferred by the decree. The Courts at Besançon [68] and Orléans [69] each found that the decree's intent was to provide an additional right to the child, and not to impute a civil contract in those circumstances where it applied. These courts thus allowed the claims for enrichment without cause. The Court at Amiens held exactly to the contrary and dismissed the civil suit.[70] Though the interpretation of the intent of the 1939 decree is uncertain on the basis of the existing case law, the approach of the courts in France would be applicable here if Quebec courts faced the task of deciphering a civil enactment in similar circumstances.

B. Obligations Imposed by the Public Law

Social interactions increasingly are regulated by special statutes which dictate specific solutions to conflicts in the community. Accordingly, a validly enacted law, which serves to deprive one

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[64] *Décret-loi relatif à la famille et à la natalité française*, Gaz. Pal. 1939.2.1165, D.P. 1939. 4.369, art. 63 *et seq.*, entitled *Du contrat de salaire différé.*

[65] *Ibid.*, art. 69.

[66] *Ibid.*, art. 64.

[67] *Ibid.*, art. 64, 67.

[68] *Epoux Grosjean* v. *Grosjean*, 17 mai 1944, D.C.1944.166.

[69] *Morin* v. *Dlle Morin*, 5 janv. 1949, Gaz. Pal. 1949.1.147.

[70] *Loncke* v. *époux Loncke*, 19 mai 1958, Gaz. Pal. 1958.2.76.

person of a patrimonial benefit to the advantage of another for some public purpose may well be seen as abridging the right of the former to a civil remedy for the latter's enrichment.[71] In essence, the statute itself may provide a legitimate cause for the civil co-relationship of gain and loss.

This is quite analogous to the case of civil enactments of general application, as exemplified by the French farm wage decree.[72] It often may be difficult to decide whether any given confiscatory statute, which confers a special right in one party or in a public authority over the patrimonial interests of another, also intends to affect the more general right of the latter to recompense for benefits received in the process.

A general principle applicable to the interpretation of statutes in the common law (the legal tradition which underlies Quebec public law) is to presume that the legislature intends to cause the least possible disruption of vested private rights by its passage of any public act.[73] Accordingly, it is reasonable to presume that any subsisting rights in private persons to sue for the enrichment without cause of the confiscating authority or of fellow citizens remains undisturbed, save by express enactment to the contrary. The Provincial Court of Appeal accordingly could hold[74] that a statute[75] giving a city fire brigade authority to raze buildings in the path of a fire did not of itself abridge the traditional civil law right[76] of the proprietors to seek recompense for the enrichment without cause of leeward proprietors or of the city.[77]

C. Unintentional Enrichment of a Defendant

The case law includes litigation arising in situations where a plaintiff allegedly acts in his own self-interest, but also coinciden-

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[71] *Nyczka* v. *Communauté des Soeurs de Charité de la Providence*, [1944] C.S. 119, 121 *per* Casgrain,J., regarding a statute (S.Q. 1926, 16 Geo.V, c.8, s.7) granting an asylum the benefit of the labours of its mental patients. Note of course that the law must be *validly* enacted: *Gaume* v. *Chauveau*, Cass. comm., 24 juin 1953, Bull. civ. 1953.III.167, no.240 (illegal wartime confiscation order).

[72] Division II.A., *supra*.

[73] *Jacobs* v. *Brett* (1875), L.R. 20 Eq. 1, 7 *per* Jessel,M.R.

[74] In *Cité de Québec* v. *Mahoney* (1901), 10 B.R. 378.

[75] 2 Vict. (Que.), c.30, s.12.

[76] See *Bossu* v. *Habert et Lerousseau*, Trib. de la Paix de Vanves, 26 juill. 1927, D.H.1927.535.

[77] But note the dissent of Lacoste,C.J., 10 B.R. 378, 392-93, who would have read an exemption from this duty of recompense as implicit in the statutory right of confiscation.

tally provides a benefit to a defendant. The plaintiff then brings an action for enrichment without cause. Almost invariably, the plaintiff will be able to prove some resulting impoverishment to himself.[78] Should the person impoverished have been motivated in his act by a desire for personal gain at another's expense — should, in effect, the "cause" of the *fait juridique* be an unfulfilled desire for unjustified personal profit — the party cannot succeed in an action *de in rem verso*.[79] Thus, just as in contractual litigation the court would have to enquire about the subjective cause of an underlying obligation, it must evaluate too the validity of motivations for unilateral acts resulting in situations of correlative impoverishment and enrichment.

A simple case in which an action might lead to enrichment without cause at the expense of the actor occurs where the actor's reasonable and honest expenditures benefit another at the actor's expense. The Court of Appeal considered just such a case before the promulgation of the Civil Code.[80] This case involved a long-term farm tenant, whose efforts to improve the land enriched the proprietor, who ultimately re-took possession of the land.[81]

The courts have also seen unfounded claims, equally clear in their result, raised by the person whose acts bring some small benefit to another's patrimony, but which are motivated by a desire for a far greater personal gain. One case of this latter type involved a son who repaired a house owned by his mother, a house in which he lived and which he expected to own himself shortly. The courts rejected his claim.[82]

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[78] He will be out of court immediately, of course, if his conduct happened to benefit the defendant at absolutely no cost to himself: *Tanguay* v. *Price* (1906), 37 S.C.R. 657, 666, adopting the reasons of Lacoste,C.J.K.B., dissenting (1905), 14 B.R. 513, 518-19. Also, *Labat* v. *époux Chassaigne*, Cass. req., 22 juin 1927, S.1927.1.328.

[79] *Gerente* v. *Primard*, Cour Royal de Grenoble, 12 août 1836, S.1837.2.330, 332; aff'd Cass. civ. 6 nov. 1838, S.1839.1.160. See also Challies, *Doctrine of Unjustified Enrichment in the Law of the Province of Quebec* 1st ed. (1940), 68.

[80] The Commissioners charged with the codification of the laws of Lower Canada in civil matters did not feel art. 1041 *et seq.* C.C. to be an alteration of pre-existing local law: de Lorimier, 8 *Bibliothèque du Code Civil de la Province de Québec* (1883), 86 *ff.* Neither did the Quebec Legislature, retrospectively, in 1874. They were not listed among the articles of the Civil Code suspended in operation as regards the hearing of matters delayed by the burning of the court house at Quebec City: *An Act to Provide a Remedy for the Losses Occasioned by the Burning of the Quebec Court House*, 37 Vict. (Que.), c.15, s.19.

[81] *Lawrence* v. *Stuart* (1856), 6 L.C.R. 294, 296-97, 301, 303-304.

[82] *Alain* v. *Dame Frenette* (1937), 75 C.S. 177, 180.

People's motives are not always so clear. More than one legal or moral duty may be at play in any given situation. These in turn may be balanced against a party's economic self-interest. The courts then are bound to identify the principal motivating factor resulting in an enrichment in order to decide what the cause of that enrichment is, and thus to pass upon the success of the *de in rem verso* action.[83] If, however, *A* undertakes conduct to the enrichment of *B* after having agreed contractually that it is to be at the expense of *B*, *A* can always collect the sum from *B*, regardless of *A's* motivations at the moment of the action. As between *A* and *B*, the contract would govern their respective legal rights. Once again, the presence of cause in a contract ousts any claim for enrichment without cause.

So too a special text of law may apply to characterize the nature of an enrichment. Thus, for example, *U*, a usufructuary, leases to *L*. *L* forces *U* to effect major repairs,[84] so as to afford *L* useful enjoyment.[85] *U* sues *B*, the bare owner, for the enrichment to *B* at *U's* expense, citing Civil Code provisions making a bare owner responsible for major repairs to property subject to a usufruct.[86] The Court of Appeal for Paris, in upholding the action of the usufructuary for the enrichment without cause of the bare owner, effectively found that the subjective cause motivating *U* — the successful suit by *L* compelling repairs by *U* as lessor — was overridden by provisions in the Code governing the mutual obligations of a bare owner and usufructuary of property.[87] The law has irrefutably imputed a cause for *U's* actions, for all purposes.

D. Gifts and Officious Acts

A gift is a contract at civil law.[88] Accordingly, a patrimonial benefit derived from a gift arises in a situation of valid legal cause. To show that the impoverishment of the donor and the enrichment of the donee are devoid of cause, one must establish the absence of a desire by the donor (the person impoverished) to benefit the

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[83] *Société d'applications gazières et électriques* v. *Société Dupleix*, Cour d'appel de Douai, 23 oct. 1952, D.1952.733, 733d. A sub-lessor and sub-lessee shared heating expenses. The sub-lessor was denied relief for the expense of a new heating system, since it was found to be an expenditure motivated on his part mainly by a desire to reduce his own future expenses.

[84] *Cf.* art. 1612.3 C.C.

[85] Art. 605 C.C.F., *cf.* art. 468 C.C.

[86] *Cf.* art. 468, 1641.1 C.C.

[87] *Epoux Clémençon* v. *Vve Crespin du Gast*, Cour d'appel de Paris, 27 juill. 1928, Gaz. Pal. 1928.2.697, 698a-b.

[88] Art. 755 C.C.

donee by a unilateral act. That is, one must disprove the existence of the contract.

Conversely, should *A* offer to benefit *B* for reward, and, after *B* has refused to contract, *A* nevertheless proceeds to act in *B's* benefit, a presumption will arise that *A* intends to give *B* a gift of this benefit. On this simple fact pattern the cases show that an action by *A* against *B* for enrichment without cause will fail,[89] the presumed contract of gift providing sufficient cause.[90] This meddlesome, officious act will be deemed a gift.

The jurisprudence has established certain classes of situations in which a presumption — albeit a rebuttable one[91] — will arise that a gratuitous gift will or will not furnish the cause for an impoverishment/enrichment correlation. A professional person acting within the very broadest bounds of his calling[92] may be presumed not to intend a gift of his services.[93] Benefits to charities may be presumed to be gifts[94] and so too, aid to close relatives[95] — if not to mere friends.[96] Apparently, a gift from a non-relative is not to be presumed the cause of the enrichment of a person *in extremis*.[97] This very reasonable counter-presumption applies especially when a "donor" would likely have foreseen the exercise of a right to recompense from one owing a civil[98] or a natural obligation[99] of support and maintenance to the recipient of the benefit.[100]

Another class of presumptions exists in the case law: the elderly relative, *E*, promises to leave the young relative, *Y*, something in his will in exchange for services in *E's* lifetime. Since principles of freedom of testation are generally recognized as rendering null any

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[89] *Adams* v. *Dame Adams* (1919), 28 B.R. 278, 281 *per* Lamothe,C.J.

[90] See also *Beliveau* v. *Corporation du Village Saint-Sauveur* (1934), 40 R.L. 182, 192-93 *per* Archambault,J.

[91] *Ibid.*

[92] *Chauvin* v. *Bickerdike* (1938), 76 C.S. 451, 457 *per* McDougall,J.: advocate receiving an award for business advice given to a legal client.

[93] *Ville de Louisville* v. *Ferron,* [1947] B.R. 438 (notary); *Paquin* v. *Grand Trunk Railway Co.* (1896), 9 C.S. 336, 338-39 (physician).

[94] *Louisiana College* v. *Keller* (1836), 10 La. 164 (S.C.). Note especially the discussion of the cause of the obligation in such circumstances at page 167 of the judgment.

[95] *Alain* v. *Dame Frenette* (1937), 75 C.S. 177, 181 *per* Langlois,J.

[96] *Gagnon* v. *Héritiers d'Honorius Perron,* [1959] C.S. 90 (Jean, J.).

[97] *Ibid.*

[98] *Lord* v. *Oliver* n.d. (ca. 1887), 10 L.N. 356 (Gill,J.).

[99] *Alguire* v. *Leblond* (1937), 75 C.S. 130 (Archambault,J.).

[100] Natural obligations as cause for enrichment is discussed in Sub-division III.A., *infra.*

alleged contract of this sort in the law of Quebec,[101] a remedy is sought for the alleged enrichment without cause. Because a null contract cannot offer juridical cause for such an enrichment/impoverishment correlation, one should expect an award to follow, all other conditions for the action *de in rem verso* being established.[102] Cases to the contrary appear to arise in situations where the conduct or relationship of the parties leads to a presumption that a gift *inter vivos* was intended during the lifetime of the deceased.[103]

III. ADDITIONAL SOURCES OF CAUSE

An examination of civil law cases discloses situations in which the courts tend to reject actions for enrichment without cause, though all of the traditionally required elements for such a suit appear to be present.[104] Sometimes the enrichment/impoverishment relationship is present and no civil obligation or other legally mandated situation of gain and loss is proven to exist. Yet the legal mind still responds to the facts of the case by judging the enrichment to be justifiable for some reason.

Such situations, where the courts do allow remedies as they strive for abstract justice between the parties to various suits, all involve types of lower level obligations. Two such classes of obligations which appear to have been relevant to reported lines of jurisprudence are discussed in the following Sub-divisions.

A. Natural Obligations

The civil law recognizes the existence of a right, personal to the individual, for support from certain close relatives in times of need.[105] Such rights, however, will be held beyond the bounds of commerce, or transference by contract, due to their extrapatrimonial character.[106] Nonetheless, acts done pursuant to such natural rights and obligations during the lifetimes of the parties[107] which result

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[101] But *cf. Fortin* v. *Fortin* (1916), 49 C.S. 267 *per* Guerin,J. (C.R.), *sed quaere.* See also *Dame Boisvert* v. *Bélanger* (1930), 48 B.R. 395, 397.

[102] *Gaudet* v. *Dame Gaudet*, [1959] C.S. 230, 232 *per* Ferland,J.

[103] *Bernier* v. *Bernier* (1901), 7 R. de J. 277, 278-79 *per* Pelletier,J.; followed in *Bernier* v. *Bédard*, [1957] R.L. 485 (Choquette,J.).

[104] See Division I, *supra.*

[105] *E.g.*, art. 166 C.C.

[106] *Proulx* v. *Proulx* (1909), 10 R.P. 13.

[107] Or thereafter, such as the burial expenses of a father borne by children who renounced the succession, according to one Provincial Court case: *Compagnie d'assurance funéraire de Montréal Ltée* v. *Dalpé*, [1970] R.P. 61 (Rondeau, Prov.Ct.J.).

in the actors' respective impoverishment and enrichment will be regarded as being founded upon a legally cognizable cause.

Still, since the obligation is personal to the parties within the stated degrees of relationship, a claim by a child upon whom his father called for aid against his brother to defray a portion of the expense cannot succeed in an action *de in rem verso*. The impoverishment of the first son, and the consequent enrichment of the second, found their cause in the right which the father chose to exercise against the first son.

By and large, in the legal system of today, just as in the days of the Romans, it is impossible to conceptualize multilateral civil relationships. The *lien de droit* is only a bipartite animal. Thus the action for enrichment without cause in the instance last considered is not permitted to alter the essentially personal, extrapatrimonial, bilateral character of the right of a parent to his child's support.[108]

B. Custom

Though most of society's recognized duties of people towards one another find expression in nominate texts of law within civilian systems, it is to be recognized that an ever-evolving framework of positive obligations, some necessary to the very functioning of society, exist still by force of custom alone. "[T]hough not on a par with the laws enunciated by Parliament or found in texts of the Civil Code, custom and usages play, in an undeterminable yet certain fashion, a considerable role in juridical life."[109] Thus, the existence of a customary duty might legitimately be the legally cognizable cause of an enrichment/impoverishment correlation.

One class of cases in point relates to situations where a family relationship may allow one to call on another for certain types of services. Once rendered, this customary obligation offers a legally cognizable cause for the enrichment and correlative impoverishment.

Courts in France appear to be prepared to find "*un pacte familial coutumier*"[110] to offer a sufficient cause for the unpaid labours of

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[108] Ripert, criticising the decision in *A.P.* v. *J.P.*, Tribunal Civil de Bar-le-Duc, 5 juin 1943, D.1944.J.18, 18d, 19b.

[109] Louis Baudouin, *Les Aspects généraux du droit privé dans la Province de Québec* (1967), 59, translated. Cited especially are notarial and commercial forms, and examples of the adoption of custom within the Civil Code; *e.g.* art. 445 (usufruct), 1016 and 1024 (contract), 1530 (sale), 1635 and 1639 (lease and hire): *supra*, 56-58.

[110] *Epoux Bergez* v. *Epoux Bergez*, Tribunal civil de Pau, 22 mars 1940, Gaz. Pal. 1940.1.475, 476b.

an engaged couple on the farm of the fiancé's father. In one such case, a court decided as follows:

> *Attendu qu'en réalité c'est un pacte familial coutumier qui a régi les rapports des parties, un pacte qui comporte point la stipulation d'un salaire actuel ou différé jusqu'au jour de la rupture.*
>
> *Attendu que l'action* de in rem verso *n'étant que subsidiaire, le seul fait de l'existence de ce pacte suffirait à la rendre irrecevable.*[111]

Similarly, a Quebec case saw a wife claim $30,000 for her services as a legal secretary and bookkeeper to her husband over a term of six years. The court deemed such an arrangement, intended during its currency to benefit the married couple generally, a bar to the wife's action for enrichment without cause.[112]

A key factor in such decisions appears to be whether or not a reasonable man would expect monetary remuneration to pass in any given dealing between relatives.[113] The exceptional character of services rendered, or the distance of the relationship, all militate against the finding in custom of a cause for an enrichment, and accordingly in favour of the success of the action *de in rem verso.*[114]

Universal and even localized usages and expectations may offer a customary cause, civilly cognizable in enrichment situations, even outside of familial relationships. A common duty to apprehend thieves provides a valid cause for the impoverishment of an individual who takes time to ride at the head of a posse to effect a thief's capture and the recovery of a bank's stolen money.[115] Similarly, a proprietor who accedes to a local custom allowing the transport by a carrier for reward of goods across a body of water he owns cannot, it has been held, retroactively claim the carrier to have been enriched without good cause.[116]

Occasional usage "suffices to constitute just cause", at least for actions prior to the litigation.[117] It might be supposed that one can

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[111] *Ibid., Epoux V.* v. *B.*, Cass. civ., 26 mai 1965, D.1965.628, 628b affirming the reasons for judgment of the Court of Appeal for Orléans.

[112] *Dame L.* v. *B.*, [1970] C.S. 87, 90 (Trépanier,J.). This judge, however, saw it in terms of an implicit 'contract' between the spouses; *sed quaere.*

[113] *Dame Deschamps* v. *Rougerie,* Tribunal du Grand Instance de la Seine, 8 juin 1960, D.1960.Somm.125. The case applies these principles in a situation of services rendered by a mistress.

[114] *Sicotte* v. *Dame Desmarteaux* (1934), 73 C.S. 59, 63 *per* Forest,J. Award to nephew for eleven years' labour for an aunt who raised him.

[115] *Wark* v. *People's Bank of Halifax* (1900), 18 C.S. 486, 488-90 (Circuit Court, Lemieux,J.). Although Wark was denied $35 for performing a hazardous duty, he was awarded $5 for his work in effecting the arrest: *supra,* 487.

[116] *Consorts Polverel* v. *Vve Arnal,* Tribunal civil de Florac, 17 juin 1952, Gaz. Pal. 1952.2.286, 288d.

[117] *Ibid.*

prevent such common usages from providing a cause for another's enrichment only by serving notice of an intention not to be a party to the custom before anything is done in reliance upon the particular usage. An analogy might be drawn to the disproving of a liberal intention by purported donees, as discussed in Sub-Division II.D, *supra*. Unfortunately, the limited reported litigation in this most interesting area allows for little speculation on the precise scope of customary obligations as sources for the cause of civilly justifiable enrichment.

IV. RELATIVITY OF OBLIGATIONS

A. Cause and the Stipulation Pour Autrui

It is a general rule of the civil law of obligations, subject to the specific exception of the *stipulation pour autrui*,[118] that the "effects" [119] of contracts are limited to the contracting parties. Yet a recurring question in the law of enrichment without cause is whether a contract between *A* and *B* can provide the cause for a benefit which is enjoyed by *C*, though provided by *B*, and at the expense of *A*. If, for example, *A* offers a prestation in exchange for *B's* (worthless) promise of future payment, and *C* enjoys a benefit from this prestation, does *A* have an action *de in rem verso* against *C*?

Very learned authority in France suggests the answer to this question is that *A* can succeed provided the relationship is not too extenuated (*trop éloignée*).[120] It is submitted that, at least in the civil law of Quebec, the test should be whether the contract between *A* and *B* included, expressly or implicitly, a valid stipulation for the benefit of *C*. If, and only if, this test is met can the contract produce juridical effect *extra partes*, and offer a cause for *C's* enrichment, without doing violence to the general rules of the relativity of obligations.

No case, either in the legal history of Quebec or of France, has come to the attention of this author in which the reasoning here proposed is adopted by a court. However, with the exception of a few cases following a line of thought which will be questioned below, the outcome of most reported cases is not in conflict with this theory.

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[118] Art. 1029 C.C.

[119] *"D'effet"* in the French-language text of the Code.

[120] Paul Esmein *et al.*, 2 *Obligations, supra*, 56, s.755. No more specific guidance is offered.

In situations where *A*, in contracting with *B*, did not know of the necessary benefit to *C*, and hence they could not mutually intend the contract to be to *C's* benefit as required by article 1029 C.C.,[121] an action will lie by *A* against *C*. *C's* enrichment is without cause vis-à-vis *A*.[122]

The converse also would follow. Thus, where *A* and *B* intend *C* to benefit and a *stipulation pour autrui* in *C's* favour can be identified,[123] a "cause" accordingly exists vis-à-vis *A* and *C* for *C's* benefit; *A's* action *de in rem verso* against *C* will fail.[124] Again, it is to be admitted that the proposed theory is not expressly accepted in any reported Quebec case. But neither are there *rationes decidendi* — or even *rationes scriptae* — cogently adopting any other legal reasons for the judgments rendered. The theory of the express or implied *stipulation pour autrui* alone appears to be in accord with the general law of the relativity of civil obligations.

B. Another View

Only one reasoned Quebec judgment does not accord in its result with the theory proposed in the last Sub-division. This case, *Merchants Coal Supply Co.* v. *Dame Ellison*,[125] has been followed in Quebec,[126] and has at least one counterpart in the jurisprudence of France.[127] Consider the situation where *A* sells to *B* without knowledge of *C's* existence. *C* benefits, however, this having been *B's* motive for contracting with *A*. Cause exists in the contract between *B* and *C*, either due to an alimentary obligation[128] or to a contract of gift.[129] The *Merchants Coal* theory finds *C* enriched at the expense not of *A*, but of *B*, by claiming the goods were already in *B's* patrimony at the time when *C* was benefited.[130]

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[121] See *Halle* v. *Canadian Indemnity Co.*, [1937] S.C.R. 368.

[122] *Lafleur* v. *Dame Damiens* (1931), 69 C.S. 79 *per* Greenshields,A.C.J.; *Edouard Gohier Ltée* v. *Dame Taillefer* (1936), 75 C.S. 46 (Demers,J.); *Hocquart* v. *Vve Mignot*, Cass. req., 4 févr. 1901, S.1902.1.229.

[123] *Halle* v. *Canadian Indemnity Co.*, [1937] S.C.R. 368.

[124] *Corporation du Collège de l'Assomption* v. *Morin*, [1944] C.S. 69 (Salvas,J.); *contra, Schroeder* v. *Rieger*, Justice de Paix de Luxembourg, 16 mars 1900, Pas. 1901.4.46.

[125] (1933), 71 C.S. 486 (Circuit Court, Archambault,J.).

[126] *Vipond-Tolhurst Ltd.* v. *Dame Racine*, [1946] C.S. 266 (Tyndale,J.).

[127] *Moreau* v. *Roberts*, Tribunal civil de la Seine, 22 févr. 1913, Gaz. Pal. 1913.1.634.

[128] *Merchants Coal* and *Vipond-Tolhurst* cases, *supra.*

[129] *Moreau* v. *Roberts*, *supra.*

[130] *Cf. Debien* v. *Dumoulin* (1919), 56 C.S. 271, and additional reasons for judgment reported at page 542 (Court of Review).

It is submitted that this criterion for differentiating the well-founded from the unfounded action, based upon the existence of cause between the person enriched and a party at arm's length from the one actually impoverished, is artificial and unworkable. *B* can engage in a contract of gift to *C* of the goods of *A; A* can still recover from *C*.[131] The relationship of *C* to *B* would not be material to *A*'s action. Also, if this theory be adopted the legal solution differs according to the moment that *A* and *B* agree for title to pass to *B*.

To allow the contract or other obligations between *C* and *B* to influence the *de in rem verso* action between *C* and *A* appears an unwarranted departure from the over-all scheme of the civil law. No textual authority for such a departure has ever been offered.

CONCLUSIONS

The establishment of the action for enrichment without cause in the jurisprudence of Quebec as a legal institution, certain in application and just in effect, can only stand to further the equitable administration of civil justice in the Province.[132] And it is precisely such certitude of application and scope at the bench and bar which would make this relatively obscure action a force which contributes meaningfully to the over-all justice of the civil litigation process. Essential to this understanding is an appreciation of the manner in which the presence or absence of cause determines the appropriateness of the action in various circumstances. Factors including civil bilateral obligations of differing sorts, legal obligations and gifts, natural and customary obligations, and the relativity of obligations must all be appreciated. A mindless kotow in the direction of vaguely relevant formulations out of the most convenient dusty law book does little to engender respect for the legal process.

The very formulation of this action as one for enrichment without cause potentially allows the civil law to achieve a level of certainty

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131 Art. 593, 583, 406 C.C.

132 This conclusion is drawn notwithstanding the fact that a major civilian system obviously can flourish without the existence of such a cause of action. See *Nortje en'n* v. *Pool, N.O.*, 1966 (3) S.A. 96 (A.D.), where the Appellate Division of the South African Supreme Court decided, 3-to-2, that no generalized cause of action for enrichment without cause exists in uncodified Roman-Dutch law; this decision was made after consideration of Quebec authorities, *inter alia.* But *cf. obiter dicta* to the contrary in *Pretorius* v. *van Zyl*, 1927 O.P.D. 226 (de Villiers,J.P.), and *Hauman* v. *Nortje*, 1914 A.D. 293. Note also the similarity of early Dutch doctrinal expressions to those in French law from which the modern action in Quebec and French law supposedly follows: Grotius, *Jurisprudence of Holland*, 3.1.15, 3.30.1; Voet, *Commentary on the Pandects*, 6.1.36.

in justice above that found in the comparable *quantum meruit*[133] and *quantum valebat*[134] counts of the common law. Rather than deciding in each case very subjectively whether a court is faced with a claim for a "recovery of *deserving* amounts",[135] a Quebec court ought to be able to relate its judgment of the appropriateness of each claim to a logical, developed, yet flexible and ever-developing, concept of cause.

It is for these reasons that the general theory of cause in the law of obligations must be better understood in the context of the action for enrichment without cause than has been the case in the bulk of Quebec case law to date.[136]

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[133] Action for the value of services rendered: "for such promise to pay *tantum quantum meruerit* [sic] is certain enough, and he shall make the demand what he deserves; and if he demand too much, the jury shall abridge it according to their discretion." (*Hall* v. *Walland* (1621), Cro.Jac. 618, 619; 79 E.R. 528, 528-29.)

[134] Action for the value of goods received: differentiated from *quantum meruit* in *Boult* v. *Harris* (1676), 3 Keeble 469; 84 E.R. 828.

[135] Stoljar, *Law of Quasi-Contract* (1964), 165 (emphasis added), and *passim.* See also Goff & Jones, *Law of Restitution* (1966), 11-14, 16-26, where factual criteria limiting the scope of the action are enumerated; the authors claim (page 14) that these relate to the injustice of allowing the plaintiff to obtain an award in certain given circumstances, circumstances which have distilled out of centuries of case law.

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