

CANADA / JUDGMENT

Kim v. Choi

2020 BCCA 98

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 98 Kim v. Choi

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Kim v. Choi,

2020 BCCA 98

Date: 20200324

Docket: CA45984

Between:

Me Hee Kim

Respondent

Appellant on Cross Appeal

(Plaintiff)

And

Aesun Choi

Appellant

Respondent on Cross Appeal

(Defendant)

Before:

The Honourable Chief Justice Bauman

The Honourable Mr. Justice Hunter

The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated
March 26, 2019 (Kim v. Choi, 2019 BCSC 437, Nanaimo Docket S77677).

Counsel for the Appellant:

S.G. McPhee, Q.C.

J.P. Millbank

Counsel for the Respondent:

J.J. Kim

N. Shirazian

Place and Date of Hearing:

Vancouver, British Columbia

December 13, 2019

Place and Date of Judgment:

Vancouver, British Columbia

March 24, 2020

Written Reasons by:

The Honourable Mr. Justice Hunter

Concurred in by:

The Honourable Chief Justice Bauman

The Honourable Mr. Justice Butler

Summary:

The appellant appeals an order requiring her to return \$300,000 to the respondent based on a finding of unjust enrichment. The trial judge found that the money was paid by the respondent on the false representation that it constituted operating expenses for a restaurant she had purchased as part of a scheme to mislead immigration authorities. The appellant relies on the defence of illegality, or *ex turpi causa*, to oppose restitution. The respondent cross-appeals the failure of the judge to set aside the purchase of the restaurant on the ground of unconscionability.

Held: Appeal and cross-appeal dismissed. A claim for restitution based on unjust enrichment that derives from an illegal contract will not be barred by illegality unless the restitution will defeat or frustrate the policy underlying the illegality. In this case, restitution will not permit the

respondent to profit from the immigration scheme, but will unwind that part of that transaction which would otherwise result in unjust enrichment of the appellant. The respondent did not meet the burden of proof resting on her to establish that there was substantial unfairness in the bargain for the sale of the restaurant, and accordingly the trial judge did not err in refusing to set aside the agreement.

Reasons for Judgment of the Honourable Mr. Justice Hunter:

- [1] This appeal requires consideration of the scope of the defence of illegality, sometimes referred to by the Latin maxim *ex turpi causa non oritur actio*, in relation to a claim in unjust enrichment.
- [2] The appellant, Ms. Choi, appeals a trial decision ordering her to return approximately \$300,000 to the respondent, Ms. Kim, on the ground that Ms. Choi was unjustly enriched by overstating certain expenses required to be paid by the respondent to her. Ms. Choi resists such repayment on the basis that the transaction was tainted by an illegal purpose, namely to mislead immigration authorities, and accordingly the doctrine of illegality bars recovery by the respondent.
- [3] The doctrine of illegality operates to prevent enforcement of rights that arise from illegal conduct where enforcement of those rights would be inconsistent with the policy underlying the illegality. The foundation of the illegality defence is the protection of the integrity of the legal system. For this reason, courts have consistently refused to enforce contracts made for an illegal or improper purpose where enforcement would be seen as undermining the legal system.
- [4] In the case at bar, the unjust enrichment arose from a scheme that the trial judge concluded was intended to deceive immigration authorities in order for Ms. Kim to obtain resident status in Canada. As part of the scheme, Ms. Kim agreed to purchase a restaurant from Ms. Choi and to pay the operating expenses of the restaurant to Ms. Choi. Ms. Choi misrepresented the operating expenses. When Ms. Kim challenged the accuracy of the expenses, the scheme collapsed and Ms. Choi brought an end to Ms. Kim's immigration application.
- [5] The trial judge concluded that the overstated expenses represented an unjust enrichment of the appellant. There was no juristic reason why the funds should not be returned to Ms. Kim. He rejected Ms. Kim's claim for the return of the purchase price of the restaurant on the ground that the contract for purchase and sale constituted a juristic reason for the appellant's retention of the funds.

- [6] In this Court, Ms. Choi does not challenge the conclusion of the trial judge that the payment made in respect of the overstated expenses meets the test for an unjust enrichment. She says, however, that this is a case in which the judge should have applied the doctrine of illegality to deny recovery to the respondent because the entire transaction was part of an effort to deceive the immigration authorities as to the respondent's status in the country. The trial judge refused to give effect to this defence.
- [7] In my opinion, the trial judge committed no error in refusing to apply the doctrine of illegality to this case. The claim for restitution of moneys had and received as part of a transaction tainted by illegality is fundamentally different from the enforcement of an illegal contract. An unjust enrichment claim does not permit litigants to profit from their wrongdoing, but rather restores the status quo ante. Illegality will bar an otherwise valid claim in unjust enrichment only when restitution would defeat or frustrate the policy underlying the illegality, leading to inconsistency in the law and thereby undermining the integrity of the legal system.
- [8] In this case, restitution of the funds wrongfully obtained by Ms. Choi will not frustrate the policy behind the statutory prohibition against misleading immigration authorities. No inconsistency in the law arises from the trial judgment. The Court is not being asked to assist a party to an illegal scheme to receive a benefit from conduct that is illegal under public law. The effect of the order is that Ms. Kim will have her own funds restored to her and Ms. Choi will be prevented from being unjustly enriched by her misrepresentations. The defence of illegality does not apply to prevent restitution of wrongfully retained funds in these circumstances.
- [9] Ms. Kim cross-appeals from the decision of the trial judge dismissing the unjust enrichment claim with respect to the payment made to purchase the restaurant on the basis that the contract relied on by the trial judge as a juristic reason for retention of the funds was an unconscionable contract. On the findings made by the trial judge, I do not consider that the claim of unconscionable contract is made out.
- [10] For the reasons that follow, I would dismiss both the appeal and cross-appeal.

Background

- [11] The facts underlying this appeal are largely undisputed. The appellant, Ms. Choi, came to Canada from South Korea in 2007 to provide her children with a Canadian education. She applied for Canadian residence through a business entrepreneur route. She received a work permit and purchased a restaurant in Courtenay, British Columbia. The business was not a profitable enterprise and in the summer of 2013 Ms. Choi decided to sell the restaurant. She listed the restaurant for \$93,000.
- [12] The respondent, Ms. Kim, came to Comox, British Columbia with her children in August 2013 on a study permit. She also wanted to educate her children in Canada, and decided to seek permanent residence in Canada. Ms. Kim and Ms. Choi met in mid-August and in early

September had a conversation in which Ms. Kim wondered aloud as to the value of the café. Ms. Choi advised her of the selling price and offered to run the business for Ms. Kim if Ms. Kim wanted to buy it, as Ms. Kim was still on a study permit. Ms. Choi also offered to help Ms. Kim obtain residence status in Canada.

- [13] On September 10, 2013, the parties entered into an agreement whereby Ms. Kim was to purchase the restaurant by paying Ms. Choi \$93,000. The trial judge concluded that Ms. Kim purchased the restaurant in order to secure enhanced access to achieving permanent residence and that her initial investment of \$93,000 was a business venture connected to her desire to gain that residence status.
- [14] On September 20, 2013, Ms. Kim met with an immigration consultant who advised her that the fastest way to obtain permanent resident status was as a skilled worker at the restaurant, rather than as the owner. After this meeting, Ms. Kim proceeded on a path to presenting herself to immigration authorities as a skilled worker. She submitted a resume and two letters of support to Canadian authorities. The trial judge found that these documents were false and were intended to mislead the immigration authorities.
- [15] Ms. Kim agreed to pay the operating expenses of the restaurant, and over the next eleven months paid Ms. Choi approximately \$377,000 for that purpose. The trial judge found that Ms. Choi had greatly inflated the amount that was required to pay operating expenses, and that approximately \$300,000 of this payment represented an unjust enrichment of Ms. Choi. The judge characterized the circumstances of this enrichment in this way:
- [180] What may have started out as an arrangement to benefit both parties quickly turned into a predatory scheme to extract money out of Ms. Kim on the pretext that it was necessary to keep the restaurant functioning.
- [181] I conclude that Ms. Choi took advantage of Ms. Kim's lack of business knowledge and simply pocketed sums of money that were not required for the business.
- [16] By September of 2014, Ms. Kim had become concerned about the amount of money she was paying to Ms. Choi. On October 11, 2014, she confronted Ms. Choi and asked her for the business records of the restaurant. Ms. Choi responded by locking Ms. Kim out of the restaurant and withdrawing her support for Ms. Kim's application for permanent resident status. Ms. Kim then returned to South Korea and instituted these proceedings against Ms. Choi to seek recovery of the funds she had paid.

The Trial Judgment

- [17] The trial judge reviewed the evidence as to payments and concluded that Ms. Kim had paid Ms. Choi \$480,000. Of this, \$93,000 represented the selling price of the restaurant and \$10,000 represented a "sauce fee" that Ms. Kim had agreed to pay in order to obtain a recipe for a sauce the restaurant was using. The balance of \$377,000 had been paid for what the trial judge characterized as "purported operating losses".

[18] The judge then excluded the \$93,000 payment and the \$10,000 "sauce fee" from the unjust enrichment claim on the ground that there were juristic reasons for Ms. Choi to retain those funds, namely the contract for purchase and sale of the restaurant and the agreement in respect of the sauce fee. Of the remaining \$377,000, the trial judge concluded that \$75,000 represented actual operating expenses of the restaurant that Ms. Kim had agreed to pay. The balance of \$302,000 was an overcharge. There was no juristic reason for Ms. Choi to retain that amount.

[19] Ms. Choi argued that Ms. Kim's claim for the recovery of her \$302,000 payment should be denied based on the defence of illegality, or *ex turpi causa non oritur actio*. She submitted that Ms. Kim sought to subvert the immigration process by submitting false statements to immigration authorities and being the undisclosed owner of a restaurant when applying as a skilled worker. She points to s. 127 and 128 of the Immigration and Refugee Protection Act, S.C. 2001, c. 27, which state in relevant part as follows:

127 No person shall knowingly

(a) directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

128 A person who contravenes a provision of section 126 or 127 is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not more than \$100,000 or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both.

[20] The trial judge accepted that the agreement to pay the operating expenses was an illegal contract within the meaning of the illegality defence because the purpose of the agreement was to avoid immigration requirements:

[234] ... The agreement to fund the operating expenses of the restaurant was not per se in breach of a statutory provision. However, Ms. Kim and Ms. Choi knew that the purpose of the agreement was to avoid immigration requirements. I adopt the reasoning in *Tsoi [v. Lai, 2012 BCSC 1082]* and conclude that even though the agreement to fund the operating expenses was not by itself illegal, because Ms. Kim and Ms. Choi knew that the purpose behind the agreement was to circumvent immigration rules, the agreement was an illegal contract.

[21] He concluded, however, that he had a discretion whether to give effect to the illegality defence:

[226] Traditionally, *ex turpi causa* had been applied rigidly. However, that approach has been relaxed and the public policy analysis now requires a balancing test. That is not to say that the court will lightly provide relief for an aggrieved party to an illegal agreement.

- [235] There are exceptions to relieve a plaintiff of the consequences of an illegal agreement. One of those exceptions is where the plaintiff was less at fault than the defendant: Tsoi at para. 13.
- [236] I find that Ms. Kim was less at fault.
- [237] Ms. Kim was unsophisticated and lacking life skills. She depended on others for advice and guidance. She looked to Ms. Choi and Ms. Choi's daughter, Ms. Edmonds, and Mr. Kwak for advice. She had few, if any, friends or associates to turn to at the time the agreement was made. Ms. Choi knew that she was a "puppet owner" and was prepared to take advantage of the illegal arrangement. Ms. Choi was far more sophisticated than Ms. Kim and had the upper hand throughout their relationship.
- [238] Ms. Choi benefited directly from the funds paid by Ms. Kim. She was able to use the funds for her personal use and to acquire a residence. Ms. Choi was able to secure her permanent residency while being party to the illegal scheme.
- [241] If Ms. Choi is permitted to keep the money, she will enjoy an unjustified windfall. That would be the result even if Ms. Choi and Ms. Kim were equally at fault. In these circumstances, barring Ms. Kim's claim on the basis of *ex turpi causa* would be unjust.
- [22] The trial judge then referred to a recent decision of the United Kingdom Supreme Court, *Patel v. Mirza*, [2016] UKSC 42, commenting as follows:
- [244] Although not binding, the comments of the United Kingdom Supreme Court in *Patel v. Mirza*, [2016] UKSC 42, are persuasive as they relate to the modern approach to *ex turpi causa*. The Court paid considerable deference to the comments of McLachlin J. (as she then was) in *Hall v. Hebert*, [1993] 2 S.C.R. 159, and concurred with the following principles:
- a) The power to refuse relief where illegality is involved is a limited one;
 - b) The power to refuse relief is justified where the plaintiff is allowed to profit from the illegal or wrongful act; and
 - c) Damages may be awarded as compensation for a personal injury, but not for the illegal act - no part of the award can be said to be profit or the windfall from the illegal act;

See: Patel at paras. 55, 191; Hall at 179-80.

- [245] Hall was a tort case. However, at 176, McLachlin J. observed that "the law must aspire to be a unified institution, the parts of which - contract, tort, the criminal law - must be in essential harmony".

- [246] In Patel, the plaintiff had advanced money to the defendant for the purpose of betting on shares using insider information that the defendant expected to receive. The agreement to use insider information amounted to a conspiracy between the parties to commit the statutory offence of insider trading. The information failed to materialize, but the defendant kept the money. The plaintiff sued in contract and unjust enrichment. The issue was whether the illegal contract prevented the plaintiff from recovering his money.
- [247] The Court ruled that the parties should be placed back into the position as if no contract had been entered into. Mr. Patel was awarded judgment.
- [248] It is noteworthy that the cases do not endorse a profit or windfall being included in the repayment of funds advanced. Ms. Kim will not realize a profit or windfall, but merely a return of some of her money.
- [23] The trial judge concluded that Ms. Choi had been unjustly enriched in the amount of \$302,000, which he rounded off to 300,000,000 Korean Won.
- [24] Finally, he noted that Ms. Choi had admitted that at least \$250,000 of money received from Ms. Kim went into the purchase of Ms. Choi's home. He ordered that Ms. Choi's home be impressed with a constructive trust giving Ms. Kim a 56% interest, capped at the monetary amount of the judgment.

Positions of the Parties

The Appeal of Ms. Choi

- [25] Ms. Choi does not contest the judge's finding that the elements of unjust enrichment were made out, but submits that the trial judge erred in failing to properly apply the doctrine of *ex turpi causa*, and more particularly failing to properly apply the exceptions to the doctrine as well as the more modern balancing test.
- [26] The position of Ms. Choi is that the doctrine of *ex turpi causa* is a complete defence and can bar recovery to an otherwise legitimate claim that is tainted with illegality or immorality. Ms. Choi relies on the statement in *Hall v. Hebert*, [1993] 2 S.C.R. 159, that the rationale for the defence of illegality is the integrity of the justice system. She argues that Ms. Kim's false statements to the immigration authorities were serious breaches of the Immigration and Refugee Protection Act, and that Ms. Kim was an active and knowing participant in an unlawful scheme.
- [27] Ms. Choi submits further that while the trial judge was correct in stating that courts have moved away from a more rigid approach to the *ex turpi* doctrine, the judge erred when he resolved the defence by balancing the interests as between the parties without attributing any importance to the overarching public policy, being the integrity of the justice system.

- [28] Ms. Choi further submits that the trial judge erred in law in relying upon the majority judgment in *Patel v. Mirza*. She submits that the critique of *Patel* contained in *Ochroid Trading Ltd v Chua Siok Lui*, [2018] SGCA 5, a judgment of the Court of Appeal of Singapore, more accurately reflects the law of Canada. The Singapore Court of Appeal rejected a discretionary approach to the application of illegality to unjust enrichment claims. The Court concluded that whether a claim in unjust enrichment ought to be allowed notwithstanding the illegality of the underlying contract has to be determined by reference to the reason why the contract is prohibited, a concept referred to in *Hall* as stultification.
- [29] Finally, Ms. Choi submits that the trial judge erred by failing to properly apply the principle of *in pari delicto* in his conclusion that Ms. Kim was less at fault for the illegal agreement.

The Cross-Appeal of Ms. Kim

- [30] Ms. Kim cross-appeals the decision of the judge that the existence of the purchase and sale agreement was a juristic reason not to award her restitution for the \$93,000 sale price, arguing that the sale agreement was an unconscionable agreement and should be set aside.
- [31] The basis of the cross-appeal is that Ms. Kim was in a vulnerable position because of her lack of sophistication and her tenuous immigration status. Ms. Kim submits that the purchase price of the restaurant was excessive and constituted an improvident transaction.
- [32] If the purchase and sale agreement is set aside as unconscionable, Ms. Kim argues that she should recover the purchase price on the same legal basis as the overstated expenses.

Analysis

The Appeal - Illegality and Unjust Enrichment

- [33] The doctrine of illegality as expressed in the Latin phrase *ex turpi causa non oritur actio* was developed to ensure that the judicial process not be used for abusive, illegal purposes. It is a doctrine founded in public policy. The doctrine has found expression primarily in relation to illegal contracts, but its application has been extended to tort claims as well in *Hall v. Hebert*. There has been relatively little discussion in Canadian cases of the application of the doctrine of illegality to unjust enrichment cases.
- [34] The evolution of illegality as a defence to enforcement of contracts was recently summarized by Justice D. Smith in *Lindsay v. Ambrosi*, 2019 BCCA 442. The claimant in *Lindsay* had brought a claim in quantum meruit for services rendered under a contract for real estate services. The Real Estate Services Act, S.B.C. 2004, c. 42, expressly prohibits an individual from bringing an action for remuneration in relation to real estate services unless the person claiming the remuneration is licensed to provide real estate services or exempted from the requirement to be licensed, neither of which applied in *Lindsay*. The defendants resisted the quantum meruit claim with the defence of illegality.

[35] Justice Smith reviewed the scope of the illegality defence in these terms:

[24] Historically, the doctrine of illegality was divided into two categories: common law illegality and statutory illegality. Courts refused to enforce illegal contracts or provide quantum meruit for the services performed under an illegal contract based on the prohibition from *Holman v. Johnson* (1775), 98 E.R. 1120, where Lord Mansfield stated at 1121:

The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may say so. The principle of public policy is this No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.

[25] Although the principle in *Holman* was intended to be a flexible one, eventually it ossified into an absolute rule that if a contract was either expressly or impliedly prohibited by statute, it was void ab initio. This was described in *Still v. Minister of National Revenue*, [1998] 1 FC 549 (C.A.), 154 D.L.R. (4th) 229, as the "classical" model of illegality (at para. 25).

[26] In recognition of the unfairness that could result from strict adherence to the classical model, courts developed various means of providing relief in appropriate situations. A proliferation of exceptions to common law and statutory illegality developed as a way to circumvent the rigidity of the classical approach to illegality. Some courts, along with textbook authors and law reform commissions, began to question the philosophical basis of the classical model of illegality.

[36] Justice Smith then referred in more detail to the analysis of Robertson J.A. in *Still*, quoting at para. 26 his conclusion that in its modern form,

[48] the doctrine of statutory illegality in the federal context is better served by the following principle (not rule): where a contract is expressly or impliedly prohibited by statute, a court may refuse to grant relief to a party when, in all of the circumstances of the case, including regard to the objects and purposes of the statutory prohibition, it would be contrary to public policy, reflected in the relief claimed, to do so.

[37] Justice Smith summarized her conclusion as to the modern approach to illegality in this way:

[27] The courts in these cases found the classical approach to illegality to be incoherent and unprincipled and consequently began to develop the modern approach to illegality. That approach was described in *Koliniotis v. Tri Level Claims Consultants Ltd.* (2005), 257 D.L.R. (4th) 297 (Ont. C.A.), paraphrasing the reasons of Saunders J. in *Berne Development Ltd. v. Haviland* (1983), 40 O.R. (2d) 238 (Ont. H.C.J.), as one that balanced "the need to preserve public policy by not enforcing illegal agreements [against] the need to prevent unjust enrichment" by denying recovery (at para. 39).

- [28] the modern approach to illegality was described in *Still and Koliniotis*, and referred to in *Birch* (S.C.), and may be summarized as follows: Contractual or statutory illegality does not create an absolute bar to equitable relief including a claim in quantum meruit where recovery on that basis would not be contrary to the public interest.
- [38] Because the Real Estate Services Act not only determined that an agreement to compensate an unlicensed real estate agent was illegal but also expressly precluded any action to recover compensation in relation to it, it was unnecessary in *Lindsay* to consider the application of the defence to unjust enrichment cases such as the case at bar, where the underlying illegality does not arise from a statute that bars any claim for recovery. That issue must be resolved by a principled application of the modern Canadian cases referred to in *Lindsay*, and the seminal decision of the Supreme Court of Canada in *Hall v. Hebert*.
- [39] The Ontario Court of Appeal judgment in *Koliniotis* cited in *Lindsay* was also a quantum meruit case arising from an illegal contract. The illegality arose because of the provisions of An Act Respecting Champerty, R.S.O. 1897, c. 327, which declared champertous agreements "forbidden and invalid". However, unlike the statute in *Lindsay*, An Act Respecting Champerty did not purport to bar every cause of action arising from a champertous agreement. The question in *Koliniotis* was whether a quantum meruit claim could be advanced in relation to a champertous agreement that was unlawful by reason of the statutory prohibition. The Ontario Court of Appeal held that in some circumstances, such an action could be maintained.
- [40] The Court began its analysis by citing *Holman v. Johnson* for the proposition that courts "have traditionally refused to grant quantum meruit in cases in which the contract was illegal": para. 34. After reviewing several judgments, including *Still*, the Court concluded that:
- [38] Other judicial decisions have engaged in such an examination and have suggested that an absolute bar against quantum meruit recovery where an agreement is found to be illegal lacks coherence and is no longer justified in principle.
- [40] an absolute bar on quantum meruit recovery creates an injustice that is unacceptable when considered in light of the public policy informing the statutory prohibition against champertous agreements. As noted, that policy is to protect the administration of justice from abuse.
- [Emphasis added.]
- [41] The conclusion that there is no absolute bar to quantum meruit recovery in relation to an illegal contract describes the first part of the modern approach to *ex turpi causa*. The limited circumstances in which illegality can bar recovery was the subject of the judgment in *Hall v. Hebert*.

Hall v. Hebert

- [42] The theme in *Koliniotis* that the doctrine of illegality should be assessed in each case by reference to the policy underlying the illegality is consistent with *Hall v. Hebert*. In *Hall*, the Supreme Court of Canada explained the principles on which the modern doctrine of illegality rests in relation to tort claims. The majority judgment in *Hall* was discussed briefly by the trial judge for its general principles. I agree with the appellant that *Hall* is specifically directed to claims in tort, but I consider that the principles explained in *Hall* inform the proper approach to be taken in unjust enrichment cases.
- [43] In *Hall*, the plaintiff had been injured in an accident after losing control of a vehicle that he was driving while drunk. The defendant had given him the keys of the car to drive, knowing that the plaintiff was drunk. In an action by the plaintiff for compensation for the personal injuries suffered in the accident, the defendant set up the defence of illegality based on the plaintiff's illegal conduct. The defence was successful in this Court but failed in the Supreme Court of Canada.
- [44] The lead judgment of the Court was written by McLachlin J. (as she then was). Justice McLachlin considered that to be justified, the power to invalidate claims on the ground of public policy must be "placed upon a firm doctrinal foundation and made subject to clear limits": p. 169. The central theme emerging from her analysis is that the doctrine of illegality should be exercised only when it is necessary to preserve the integrity of the legal system by avoiding inconsistency in the Court's treatment of the same conduct. Justice McLachlin expressed the scope of the illegality defence in this way (at p. 169):

My own view is that courts should be allowed to bar recovery in tort on the ground of the plaintiff's immoral or illegal conduct only in very limited circumstances. The basis of this power, as I see it, lies in [the] duty of the courts to preserve the integrity of the legal system, and is exercisable only where this concern is in issue. This concern is in issue where a damage award in a civil suit would, in effect, allow a person to profit from illegal or wrongful conduct, or would permit an evasion or rebate of a penalty prescribed by the criminal law. The idea common to these instances is that the law refuses to give by its right hand what it takes away by its left hand.

[Emphasis added.]

- [45] Justice McLachlin then reviewed a series of decisions in which illegality had been addressed in the tort context and came to this conclusion (at pp. 175-176):

The narrow principle illustrated by the foregoing examples of accepted application of the maxim of *ex turpi causa non oritur actio* in tort, is that a plaintiff will not be allowed to profit from his or her wrongdoing. A more satisfactory explanation for these cases, I would venture, is that to allow recovery in these cases would be to allow recovery for what is illegal. It would put the courts in the position of saying that the same conduct is both legal, in the sense of being capable of rectification by the court, and illegal. It would, in short, introduce an inconsistency in the law. It is particularly important in this context that we bear in mind that the law must aspire to be a

unified institution, the parts of which--contract, tort, the criminal law--must be in essential harmony. For the courts to punish conduct with the one hand while rewarding it with the other, would be to "create an intolerable fissure in the law's conceptually seamless web": Weinrib, *supra*, at p. 42. We thus see that the concern, put at its most fundamental, is with the integrity of the legal system.

[Emphasis added.]

[46] The remedial order sought by a plaintiff will influence the determination whether allowing a claim will "introduce inconsistency into the fabric of the law" (p. 179). Justice McLachlin illustrates this by distinguishing between tort claims that represent compensation for personal injuries and tort claims that benefit the plaintiff in a manner akin to profit. The illegality defence will bar the plaintiff from obtaining a profit from an illegal act, but not from compensation for personal injuries, which are a proxy for the status quo ante. Justice McLachlin expressed the distinction in this way (at pp. 176-177):

At this point it may be useful to consider in more depth the distinction between compensatory damages and damages which amount to profit from an illegal act. The foregoing comments indicate that compensatory damages are not properly awarded as compensation for an illegal act, but only as compensation for personal injury. Such damages accomplish nothing more than to put the plaintiff in the position he or she would have been in had the tort not occurred. No part of the award which compensates injury can be said to be the profit of, or the windfall from, an illegal act. He or she gets only the value of, or a substitute for, the injuries he or she has suffered by the fault of another. He or she gets nothing for or by reason of the fact he or she was engaged in illegal conduct.

[Emphasis added.]

[47] While this analysis is directed to claims for damages in tort, the reasoning, in my view, has direct application to claims for restitution based on unjust enrichment. Where a party has paid money to enter into an illegal contract which has failed, the party might seek to enforce the contract and realize the benefits bargained for, or might seek to unwind the contract to the status quo ante, thereby placing the parties in the position they would have been in had the contract never been entered into. The former claim is analogous to the "profit from an illegal act" that McLachlin J. explained would introduce inconsistency into the law, thereby undermining the integrity of the legal system. On the other hand, restitution for unjust enrichment, like compensation for personal injuries, merely places the plaintiff in the position he or she would have been in had the illegal act not occurred. A restitutionary order based on unjust enrichment does not permit a plaintiff to profit from an unlawful act, but rather to unwind the transaction that was tainted by illegality. This analysis would suggest that illegality will seldom bar a claim in unjust enrichment.

- [48] The one circumstance in which illegality might bar a restitutionary claim for unjust enrichment is the circumstance described in *Koliniotis*; a claim will be barred when giving effect to the claim would undermine the policy that creates the illegality. Justice McLachlin explained this refinement in the tort context (at p. 177):

There may be cases where the principle of *ex turpi causa* should be invoked to prevent tort recovery which do not fall under the category of profit from illegality. Professor Weinrib, *supra*, suggests that the defence of *ex turpi causa* may properly be invoked to prevent the "stultification of the criminal law" or "evasion of the consequences of the criminal law": at pp. 52-53.

- [49] Stultification is the term used to describe events that defeat or frustrate the underlying policy behind the illegality. A remedial order arising from an illegal act may frustrate the policy underlying the illegality to such an extent that to make the order would be seen as creating an inconsistency. In those circumstances, it may be appropriate to refuse the remedial order in order to preserve the integrity of the legal system, whether or not giving effect to the claim would enable the plaintiff to profit from the illegality.
- [50] Applying this refinement to unjust enrichment claims would lead to this principle: illegality will not bar a claim in unjust enrichment unless restitution will defeat or frustrate the policy underlying the illegality, leading to inconsistency in the law and thereby undermining the integrity of the legal system. This is the modern principle of unjust enrichment that apex courts from other jurisdictions have determined sets the proper balance in the application of the *ex turpi causa* defence to claims in unjust enrichment.

United Kingdom

- [51] In 2016, the application of the doctrine of illegality to claims of unjust enrichment received detailed consideration by the United Kingdom Supreme Court in *Patel v Mirza*. The illegality in this case was quite straightforward. Mr. Patel transferred £620,000 to Mr. Mirza in order to receive insider information that would allow him to trade profitably in the shares of the Royal Bank of Scotland. The insider information did not materialize and no trading occurred. Mr. Patel asked for his money back, but Mr. Mirza refused. Mr. Patel sued in unjust enrichment. Mr. Mirza set up a defence of illegality in the underlying contract.
- [52] The agreement between Mr. Patel and Mr. Mirza amounted to a conspiracy to commit an offence of insider trading under the Criminal Justice Act 1993, and hence was an illegal contract as that term has been used in explaining the illegality defence. However, Mr. Patel was not seeking to enforce the contract but to unwind it. The nine judges of the UK Supreme Court rendered six judgments with two broad lines of analysis. Though varying in their analytical approach, the six judgments had two things in common. Each of the six judgments relied expressly on the statement of principles set out in the judgment of McLachlin J. in *Hall v. Hebert*. And each of the judgments agreed that Mr. Patel should get his money back, despite the unlawful purpose that led to his transfer of the funds to Mr. Mirza.

- [53] The reasons of the justices were not entirely consistent, but all distinguished the restitutionary consequences of unjust enrichment from the enforcement of contracts or other causes of action tainted with illegality that lies at the heart of the illegality defence. Lord Toulson, writing for the majority, pointed out (at para. 115) that "Mr. Patel is seeking to unwind the arrangement, not to profit from it" and concluded that:
- [121] A claimant, such as Mr. Patel, who satisfies the ordinary requirements of a claim for unjust enrichment, should not be debarred from enforcing his claim by reason only of the fact that the money which he seeks to recover was paid for an unlawful purpose.
- [54] In developing the principles applicable to claims in unjust enrichment, Lord Toulson expressly adopted the approach of McLachlin J. in *Hall* that the focus of the illegality analysis should be on "the question whether allowing recovery for something which was illegal would produce inconsistency and disharmony in the law, and so cause damage to the integrity of the legal system": para. 100.
- [55] Lord Toulson summarized the rationale for the illegality defence generally in these terms:
- [120] The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system. In assessing whether the public interest would be harmed in that way, it is necessary a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate.
- [56] The considerations identified by Lord Toulson can also be found in Canadian case law. As already noted, the courts in *Koliniotis* and *Still* spoke of the need to consider the public policy informing the illegality that gave rise to the defence. As well, the concept of stultification, or frustration of public law, was one of the factors identified in *Hall* as supporting a judicial bar to enforcement of an otherwise valid claim. The second factor, a consideration of other relevant public policies which may be rendered ineffective by denial of the claim, has particular resonance in unjust enrichment. If illegality is used to deny an otherwise valid claim in unjust enrichment, the result will be that a party to the illegality will be enriched for no valid juristic reason. This factor was addressed directly in *Tsoi v. Lai*, 2012 BCSC 1082, where Bowden J. expressed the view (at para. 22) that "in the circumstances of this case my concern about an unjustified windfall or unjust enrichment overrides my concern about the nature of the illegality." The final factor, proportionality, was specifically

addressed in *Still*, where Robertson J.A. recognized that the object of the statutory prohibition was a compelling one, but concluded that denial of the benefits claimed would be a disproportionate response to the breach.

- [57] While the approach in *Patel* has been criticized for departing from a more formal rules-based analysis, it is noteworthy that even as the *Holman* rule was being pronounced, the English courts recognized that unjust enrichment claims stood in a different position from the enforcement of agreements tainted by illegality. In *Neville v. Wilkinson*, (1782), 1 Bro. C.C. 543 at 547-48, decided a mere seven years after Lord Mansfield's seminal judgment in *Holman*, the Lord Chancellor declared his opinion that:

in all cases where money was paid for an unlawful purpose, the party, though particeps criminis, might recover at law; and that the reason was, that if courts of justice mean to prevent the perpetration of crimes, it must be not by allowing a man who has got possession to remain in possession, but by putting the parties back to the state in which they were before.

- [58] Mr. McPhee points out quite correctly that this Court is not bound by the UK Supreme Court, and submits that the judgment of the Singapore Court of Appeal in *Ochroid Trading Ltd v Chua Siok Lui* hews more closely to the Canadian approach to the application of the doctrine of illegality to claims in unjust enrichment. The Singapore Court of Appeal considered that the Court in *Patel* had been prepared to apply a balancing exercise across the board in all cases of common law illegality, a position the Singapore Court rejected in favour of a more traditional rule against recovery for illegal contracts. However, in considering how illegality would affect a claim in unjust enrichment, the Court concluded (at paras. 139 and 145) that "restitutionary recovery of benefits conferred under an illegal contract would, in principle, be available where the ordinary requirements of a claim in unjust enrichment are made out notwithstanding the illegality of the underlying contract" unless allowing the claim "would undermine the fundamental policy that rendered the underlying contract void and unenforceable in the first place."

Australia

- [59] The High Court of Australia also rejected the automatic bar to recovery in restitution of moneys advanced on an illegal contract in *Nelson v. Nelson*, (1995) 184 CLR 538. In a passage cited by Lord Toulson in *Patel*, McHugh J. addressed at pp. 612-613 both the underlying policy of the illegality and the proportionality of the proposed order:

It is not in accord with contemporaneous notions of justice that the penalty for breaching a law or frustrating its policy should be disproportionate to the seriousness of the breach. The seriousness of the illegality must be judged by reference to the statute whose terms or policy is contravened. It cannot be assessed in a vacuum. The statute must always be the reference point for determining the seriousness of the illegality .

[60] In *Equuscorp Pty Ltd v Haxton*, [2012] HCA 7, the Court considered in greater detail the application of *ex turpi causa* to unjust enrichment claims. The issue arose in relation to a claim for return of moneys advanced under loan agreements that were found to be unenforceable for illegality, having been made in furtherance of an illegal purpose. One of several questions the Court addressed was whether a claim in restitution could be made to recover the funds advanced. The lead judgment of French C.J., Crennan and Kiefel JJ. formulated the central question in this way:

[25] In this case, the answer to the question whether it would have been open to [the claimant] to pursue claims for money had and received under the loan agreements depends upon a number of factors but critically upon whether vindication of those claims would have frustrated or defeated, or have been inconsistent with, the statutory purpose of the provisions of the Code relating to the issue of prescribed interests. The requirement of coherence in this area of the law is not satisfied by the mere exclusion of an implied legislative intention to render unenforceable a contract made in furtherance of a contravening purpose. Unenforceability flows from the application of the common law informed, *inter alia*, by the scope and purpose of the relevant statute.

[Emphasis added.]

[61] The Court explained the rationale for this principle by reference to an article by Professor Birks, which echoes the approach taken by McLachlin J. in *Hall*:

[37] Professor Birks, in an article published in 2000 ["Recovering Value Transferred Under an Illegal Contract", (2000) 1 *Theoretical Inquiries in Law* 155 at 203], proposed as a criterion for the grant or refusal of restitutionary relief in relation to an illegal contract:

"Would allowing that cause of action to be maintained make nonsense of the refusal to enforce the contract?"

He characterised the question as one about self-stultification of the law. As he correctly pointed out on such an approach:

"The inquiry is constantly an inquiry into consistency and rationality, not into turpitude."

[62] The Court also referenced at para. 38 the proposition set out in the *Restatement of the Law, Third: Restitution and Unjust Enrichment*, (2011) §32(2) at 505-506, that:

Restitution will also be allowed, as necessary to prevent unjust enrichment, if the allowance of restitution will not defeat or frustrate the policy of the underlying prohibition.

The Modern Principle in Canadian Law

[63] I conclude that, having in mind the evolution of the modern approach to the *ex turpi causa* defence explained in *Still* and *Lindsay*, as well as the principled approach to the defence set out in *Hall*, there is no general rule that a claim for unjust enrichment will fail if it is based on an illegal contract. A claim for restitution based on unjust enrichment that derives from

an illegal contract will only be barred by illegality when the restitution will defeat or frustrate the policy underlying the illegality, thereby leading to inconsistency in the law and undermining the integrity of the legal system.

- [64] Because the usual remedial order for unjust enrichment is a restoration of the status quo ante, it will be seldom that such an order will be seen as introducing inconsistency in the law. Nevertheless, it will be necessary in each case where an illegality defence is raised to consider the legal policy at issue, the conduct of the claimant and the proportionality of the result in light of the illegality in order to determine whether restitution in a given case will frustrate the policy underlying the illegality.

Application to this Case

- [65] The trial judge found that the purpose of the agreement to fund the operating expenses of the restaurant to the knowledge of both parties was to avoid immigration requirements. He also found that Ms. Kim had lied on her resume and the submission of supporting documents with the intention of misleading the immigration authorities. After reviewing the evidence of the immigration consultant Ms. Kim consulted, the judge commented:
- [132] In this dispute, there were many individuals involved in avoiding or subverting Canada's immigration requirements. I conclude that there were many hands involved in avoiding the immigration requirements.
- [66] Ms. Choi submits that pursuant to s. 127 and 128 of the Immigration and Refugee Protection Act, it is an offence punishable by a fine or imprisonment, or both, to misrepresent or withhold material facts that could induce an error in the administration of the Act. She argues that the effect of the judge's findings is that Ms. Kim was engaged in an illegal scheme to deceive the immigration authorities, and to grant Ms. Kim restitution of her funds would undermine the policy reflected in s. 127 and 128.
- [67] The policy underlying these statutory provisions reflects the need in a self-reporting system for the immigration authorities to be able to rely on the honesty of immigrants who seek status in this country. In *R. v. Hupang*, 2008 BCCA 4 at para. 10, Prowse J.A. recognized the serious nature of lying to immigration authorities to gain entry to Canada:
- [10] I accept the submission of counsel for the Crown that this type of offence is serious, particularly because it arises in the context of a self-reporting system which is dependent on the honesty of applicants for student visas and other entrance documents for it to work effectively. In that sense, a person who attempts to circumvent the system through falsification of documents, as occurred here, participates in a form of breach of trust.
- [68] The trial judge also recognized the seriousness of the conduct, and commented at para. 220 that if Ms. Kim had made the payment to pursue permanent resident status and had her application denied, she would not have a claim for the return of the funds. But the judge pointed out that matters had not proceeded that far.

- [69] The trial judge relied on a further factor sometimes referenced in the case law, the degree of blameworthiness of Ms. Kim for the illegal scheme relative to Ms. Choi. The judge found that Ms. Kim was less at fault and characterized this factor as an exception to relieve a plaintiff of the consequences of an illegal agreement. This characterization is challenged by Ms. Choi in this Court, but there was evidence from which the judge could reasonably have come to this conclusion. The real question is what are the consequences of a finding that the plaintiff was less at fault.
- [70] Characterizing relative fault as an exception is not entirely consistent with the modern approach to illegality described in *Lindsay*. Relative fault (or what is sometimes awkwardly referred to as "not in *pari delicto*") was developed as an exception to the rule that contracts tainted with illegality were unenforceable, but the modern approach considers illegality on a principled basis rather than as a set of rules. Illegality associated with the plaintiff's restitutionary claim provides a basis on which a court may refuse to give a remedy to which the plaintiff would be otherwise entitled, but only if granting the remedy would be so inconsistent with the policy underlying the illegality that the integrity of the legal system would be undermined. Relative fault may in some circumstances contribute to the analysis, but is not in itself a decisive factor.
- [71] It follows from this that I do not consider the distinction made by Lord Sumption in *Patel* that was urged on me by Ms. Choi to affect the outcome in this case. Lord Sumption stated that the term *in pari delicto* does not refer to relative blameworthiness but whether the parties were on the same legal footing. It is not necessary for the purposes of this appeal to explore the use of the term *in pari delicto* in illegality cases. It is sufficient to say that relative blameworthiness, in the sense in which that term was used by the trial judge, may be a factor that assists in determining whether awarding restitution would introduce an inconsistency in the law, but in most cases will not be a very significant factor.
- [72] Here Ms. Kim was an active participant in the scheme to mislead the immigration authorities. The fact that she was less at fault than Ms. Choi is not particularly significant. The central question is not who is more at fault as between the parties, but whether granting restitution that restores the status quo ante will amount to what McLachlin J. described in *Hall* as "giv[ing] by its right hand what it takes away by its left hand": p. 169. The focus of the analysis is on the effect on the integrity of the legal system of granting a remedy arising from conduct tainted by illegality.
- [73] In these circumstances, would an order of restitution defeat or frustrate the policy underlying s. 127 and 128 of the Immigration and Refugee Protection Act, leading to an inconsistency in the law that would undermine the integrity of the legal system? In my opinion, it would not. In this case, Ms. Kim will not profit from the restitutionary order returning her own funds to her, either financially or in relation to her immigration application. She is seeking to unwind the transaction in a manner comparable to Mr. Patel's effort to recover his funds when the insider trading agreement failed. By contrast, to refuse restitution in these circumstances would allow Ms. Choi to profit from her wrongful act of

misrepresenting the expenses of the restaurant. Denying restitution when the elements of unjust enrichment have been otherwise proven in this case would be a disproportionate response to the illegal purpose of the parties' scheme.

[74] I conclude that the trial judge did not err in refusing to give effect to the defence of illegality in this case. For these reasons, I would dismiss the appeal.

The Cross-Appeal - Unconscionability

[75] Ms. Kim cross-appeals from the decision of the trial judge not to award her restitution of the \$93,000 paid for Ms. Choi's restaurant. She argues that because of her vulnerability, the purchase agreement was unconscionable and should be set aside. Since the juristic basis for refusing restitution for the purchase funds was the purchase contract, she argues that if the contract is set aside as unconscionable, her unjust enrichment claim for the purchase price stands on the same footing as the claim for the overstated expenses that were returned to her by the trial judge's order.

[76] Thus the cross-appeal raises the single question whether the trial judge erred in failing to set aside the contract for the purchase and sale of the restaurant as unconscionable.

[77] The trial judge did not make an express finding on this claim. This is understandable, as it is mentioned only briefly in the Sixth Amended Notice of Civil Claim, which framed the action in misrepresentation, breach of contract, unjust enrichment, monies had and received, and accounting and tracing. Far from seeking an order setting aside the contract to purchase the restaurant, Ms. Kim sought orders enforcing the agreement. In Part 2 of the Sixth Amended Notice of Civil Claim, Ms. Kim stated her claims as including an accounting of profits, a declaration that she has an interest in the restaurant, a certificate of pending litigation against the restaurant property, an injunction to prevent Ms. Choi from selling the restaurant, damages for misrepresentation, damages for breach of contract, restitution for unjust enrichment, reimbursement of funds provided to Ms. Choi, general damages, special damages and punitive damages.

[78] The test for unconscionability was summarized by Goepel, J.A. in *Do v. Nichols*, 2016 BCCA 128:

[25] The test for unconscionability was set out by this Court in *Loychuck v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122:

[29] The language used to express the test for unconscionability has varied over the years. It was put this way by Mr. Justice Davey, as he then was, in *Morrison v. Coast Finance Ltd.* (1965), 55 D.L.R. (2d) 710 at 713 (B.C.C.A.):

[A] plea that a bargain is unconscionable invokes relief against an unfair advantage gained by an unconscientious use of power by a stronger party against a weaker. On such a claim the material ingredients are proof of inequality in the position of the parties arising out of the ignorance, need or distress of the weaker, which left him in the power of the stronger, and proof of substantial

unfairness of the bargain obtained by the stronger. On proof of those circumstances, it creates a presumption of fraud which the stronger must repel by proving that the bargain was fair, just and reasonable: [citations omitted].

[30] That test was recently discussed in *McNeill v. Vandenberg*, 2010 BCCA 583, and *Roy v. 1216393 Ontario Inc.*, 2011 BCCA 500. In *McNeill*, Madam Justice Garson stated:

[15] In order to set aside a bargain for unconscionability, a party must establish:

- (a) inequality in the position of the parties arising from the ignorance, need or distress of the weaker, which left him in the power of the stronger; and
- (b) proof of substantial unfairness in the bargain.

This test was articulated in *Harry v. Kreutziger* (1978), 9 B.C.L.R. 166 (B.C.C.A) at 173 and reiterated in *Klassen v. Klassen*, 2001 BCCA 445.

[31] In *Roy*, Mr. Justice Tysoe (at para. 29), quoted the following from the judgment of Madam Justice McLachlin, as she then was, in *Principal Investments Ltd. v. Thiele Estate* (1987), 12 B.C.L.R. (2d) 258 at 263 (C.A.):

Two elements must be established before a contract can be set aside on the grounds of unconscionability. The first is proof of inequality in the position of the parties arising out of some factor such as ignorance, need or distress of the weaker, which leaves him or her in the power of the stronger. The second element is proof of substantial unfairness in the bargain obtained by the stronger person. The proof of these circumstances creates a presumption of fraud which the stronger must repel by proving the bargain was fair, just and reasonable: *[Morrison] v. Coast Fin. Ltd.* (1965), 54 W.W.R. 257, 55 D.L.R. (2d) 710 (B.C.C.A.); *Harry v. Kreutziger* (1978), 9 B.C.L.R. 166, 95 D.L.R. (3d) 231 (C.A.).

Mr. Justice Tysoe went on to state (at para. 30), that in *Tercon*, Binnie

J. was "not intending to signal a departure from the usual test for unconscionability."

[26] In order to set aside a bargain for unconscionability, a party must establish:

- (a) inequality in the position of the parties arising from the ignorance, need or distress of the weaker, which left him in the power of the stronger; and
- (b) proof of substantial unfairness in the bargain.

The onus lies on the party seeking to establish that a bargain was unconscionable.

[79] The trial judge made findings concerning Ms. Kim's vulnerability that are capable of meeting the first test, but made no findings that there was substantial unfairness in the agreement to purchase the restaurant. Although Ms. Kim led evidence that the fair value of the restaurant was significantly less than the purchase price she paid, the trial judge concluded that her purchase of the restaurant was intended to advance her residence application and that she did not rely on any statements of Ms. Choi concerning the

profitability of the restaurant. The judge's main findings concerning the purchase of the restaurant were these:

- [175] Ms. Kim was determined to provide a better life for her children and to be away from her husband. Permanent residency in Canada was a way to satisfy her goals. She was prepared to pay for permanent residency.
- [176] Ms. Kim was aware that a skilled worker application was the fastest route to achieving permanent residency. Her purchase of the restaurant provided an environment where she would be regarded as a skilled worker.
- [177] I conclude that she purchased the restaurant in order to secure enhanced access for permanent residency. Therefore, the initial investment of \$93,000 was a business venture connected to Ms. Kim's desire to gain permanent residency.
- [178] I conclude that Ms. Kim was aware that the immigration authorities had the final say. She understood and accepted the risk that regardless of what Ms. Choi said, the final decision lay with the hands of the proper authorities. I am satisfied that Ms. Kim was not listening or attentive to any representations that may have been made about the profitability of the restaurant. She was intent on getting the process started for permanent residency. Therefore, I am not convinced that Ms. Kim relied on representations to her detriment when she purchased the restaurant.
- [80] Ms. Kim bore the burden of proof that there was substantial unfairness in the purchase agreement. The judge made no finding to that effect, but rather concluded that the investment was a business venture on the part of Ms. Kim in order to gain permanent residence. I cannot conclude on this record that the trial judge erred in failing to set the purchase agreement aside as an unconscionable transaction.
- [81] For these reasons I would dismiss the cross-appeal.

Disposition

- [82] I would dismiss the appeal and the cross-appeal.

"The Honourable Mr. Justice Hunter"

"The Honourable Chief Justice Bauman"

"The Honourable Mr. Justice Butler"

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