

## FEDERAL COURT'S JURISDICTION IS LIMITED

By John McKeown

A recent decision of the Federal Court illustrates that the Court's jurisdiction can be limited.

### The Facts

In an action alleging infringement of two patents, the plaintiff sought to amend the statement of claim to allege that the defendant had been unjustly enriched and sought a declaration that any profits made by the defendant were subject to a constructive trust.

### The Test

The test for determining whether the Court has jurisdiction is relatively clear. Three conditions must be met for the Court to have jurisdiction to determine a cause of action:

- a. There must be a statutory grant of jurisdiction by the federal Parliament;
- b. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction; and
- c. The law in which the case is based must be a "law of Canada" as that phrase is used in the *Constitution Act, 1867*.

There is no doubt that the Court has jurisdiction to entertain actions for patent, trade mark or copyright infringement, but common law causes of action that fail to satisfy the test are beyond the Court's jurisdiction. The Federal Court is unlike the provincial superior courts which are assumed to have jurisdiction.

While the Federal Court has equitable jurisdiction, including the ability to grant injunctive relief, this jurisdiction only allows the Court to apply the rules of equity in cases in which it otherwise has jurisdiction and does not give the Court any general or inherent jurisdiction to consider a civil action seeking equitable claims and remedies.

The plaintiff asserted that its claims for unjust enrichment and constructive trust were made in the context of alleged breaches of the *Competition Act*. That act allows a plaintiff to bring an action for loss or damage suffered as a result of the breach of specified provisions of the *Competition Act*.

In dismissing the motion seeking the proposed amendments, the Court said that the plaintiff had failed to allege actual loss and damage. The *Competition Act* does not provide for a claim for an equitable restitutionary remedy such as unjust enrichment. The remedies available are limited to the recovery of the plaintiff's actual loss and damage.

### Conclusion

While the nationwide jurisdiction of the Federal Court can be a significant benefit, care must be taken to ensure that the claim asserted is within the court's jurisdiction.