

The Civil Injunction Cheat Sheet



Injunctions are a powerful remedy that are sought and granted in a wide range of disputes.

An employer might seek an injunction to stop a former employee from soliciting the employer's clients. A business may seek an injunction to stop a competitor from unfairly using a registered trademark. Your neighbour may seek an injunction to stop you from cutting down that hideous tree in your back yard that provides oh-so-much shade and privacy for your neighbour, or perhaps they may seek a mandatory order requiring you to cut down that same hideous tree that they view as an eye-sore.

A [recent Court of Appeal decision](#) provides a quick overview on (almost) everything you wanted to know about civil injunctions.

Here is your injunction cheat sheet, courtesy of Justice Gillese who wrote the decision for the unanimous court.

An Interim Injunction

Can be requested with or without notice to the opposing party. Argument in front of the judge is usually quite limited. If the injunction is granted it is typically for a brief, specified period of time. When an interim injunction is granted without notice it usually requires the party seeking (and obtaining) the injunction to return to court (on notice to the opposing party) to have the interim injunction continued. In practice, interim injunctions are often used to preserve the status quo for a short period of time until an interlocutory injunction can be argued.

An Interlocutory Injunction

Like the interim injunction, the interlocutory injunction is a form of pre-trial relief. An interlocutory injunction is an order restraining the defendant from engaging in conduct for a limited period of time, such as until the trial or other disposition of the lawsuit. Argument in front of the judge is typically more thorough than that for an interim injunction and the duration is generally longer than that of an interim injunction.

A Mandatory Injunction

A type of injunction that requires the defendant to act positively. Mandatory injunctions are rarely ordered and must be contrasted with the usual type of injunctive relief, which prohibits certain specified acts as opposed to imposing an

obligation to act positively. Due to their nature, mandatory injunctions are often permanent.

A Permanent Injunction

Interim and interlocutory injunctions are imposed in ongoing cases. Permanent injunctions are granted after a final adjudication of rights.

The Legal Tests

For lawyers, the legal test for interim and interlocutory injunctions is well known and was set out by the Supreme Court of Canada 20 years ago (the “*RJR-Macdonald Test*”). The court must decide (1) is there a serious issue to be tried; (2) would the moving party otherwise suffer irreparable (i.e. not compensable with \$\$\$) harm; and (3) does the balance of convenience favour granting the injunction.

Justice Gillese clarified that the test for a permanent injunction is *not* the same as the *RJR-Macdonald Test*. The Ontario Court of Appeal adopted a test set out recently by the British Columbia Court of Appeal. In short, in order to obtain final injunctive relief, a party is required to establish its legal rights. The court must then determine whether an injunction is an appropriate remedy. Irreparable harm and balance of convenience are not, *per se*, relevant to the granting of a final injunction, although those issues may come into play.

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