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INJUNCTIONS and SPECIFIC PERFORMANCE The Honourable Mr. Justice Robert J. Sharpe Release No. 1, November 2025
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What's New in this Update:

***Ex Parte* injunctions – setting aside for material non-disclosure**

1964769 Alberta Ltd. v Eltayeb, 2025 ABKB 173 (Alta. K.B.), set aside an *ex parte* injunction where “there was material non-disclosure to an extent that undermined the integrity of the *ex parte* proceeding, notwithstanding the continued existence of grounds for the order’s issuance” (at para. 124).

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Interlocutory injunctions – undertaking in damages

There is a discretion to waive the undertaking if the injunction is sought on behalf of a class: *Li et al. v. Barber et. al.*, 2022 ONSC 1176 (Ont. S.C.J.) at para. 38; *Imperial Tobacco Limited*, 2024 ONSC 6885 (Ont. S.C.J.) at para. 33.

Where the defendant is unlikely to suffer damages, the plaintiff may be relieved from giving an undertaking: *MacDonald v. Canada (Public Safety)*, 2025 FC 1202 (F.C.).

Where there is an issue of the plaintiff’s ability to satisfy the undertaking, the injunction may be granted subject to an inquiry as to the plaintiff’s means and the likely damages to be suffered by the defendant: *Repchinsky v. Saskatchewan (Government of)*, 2024 SKKB 158 (Sask. K.B.).

Injunctions: homeless encampments

Matsqui-Abbotsford Impact Society v. Abbotsford (City), 2024 BCSC 1902 (B.C. S.C.), leave to appeal allowed 2025 BCCA 78 (B.C. C.A.) at para. 214, refused an injunction to prohibit the dismantling of a homeless encampment but “on the condition that the City implement a phased approach to gradually reduce and relocate the number of encampment residents... Displacement should only occur when adequate shelter options, including access to harm reduction services, are available.”

Injunctions and criminal law

The British Columbia Court of Appeal held that it is an error of law to refuse an injunction to protect the rights of a private party on the ground that resort to the criminal law is possible: *Teal Cedar Products Ltd. v. Rainforest Flying Squad*, 2022 BCCA 26 (B.C. C.A.), leave to appeal refused 2022 CarswellBC 2684 (S.C.C.).

Injunctions to enforce municipal by-laws

An injunction was granted in Ontario against “persons unknown” under a “nuisance party” bylaw to restrain an unauthorized St. Patrick’s Day party organized by social media as there was evidence of previous similar events involving nuisance behaviour, property damage, road blockages and public safety risks that left the municipality with hundreds of thousands of dollars of uncoverable costs: *City of Waterloo v. Persons Unknown*, 2025 ONSC 1572 (Ont. S.C.J.).

Interlocutory injunctions in Charter cases

An Ontario judge who had reserved his decision after a full hearing of the application granted an interlocutory injunction pending the release of his final decision to restrain the application of a law requiring the removal of bicycle lanes, holding that “presumption in favour of the government may be overcome if the applicant has a particularly strong case and will suffer irreparable harm – both of which involve giving more weight to the first two *RJR* factors”: *Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 2424 (Ont. S.C.J.) (permanent injunction granted 2025 ONSC 4397 (Ont. S.C.J.)). On an earlier motion, an interlocutory injunction was refused: *Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 1650 (Ont. S.C.J.).

In *Kerber v. Alberta*, 2025 ABKB 98 (Alta. K.B.), the court granted an interlocutory injunction suspending the operation of a Ministerial order that required students with complex needs at home or on a rotating in-school basis due to a strike involving school-support workers. The court found that the “exclusion of vulnerable people in the delivery of service is contrary to [the] public interest” (at para. 129) and that “the relative strength of the applicants’ case, considered in combination with the nature and extent of potential harm arising from the facial discrimination of the Ministerial Order outweighs the public interest in the enforcement of legislation in this case” (at para. 151).

An Ontario case granted an exemption pending the release of a final decision in a case involving a Charter challenge of a statute requiring the closure of supervised injection sites from a law requiring the closure of such sites located within 200 metres of a school or daycare: *The Neighbourhood Group et al. v. HMKRO*, 2025 ONSC 1934 (Ont. S.C.J.).

Injunctions: nuisance

The British Columbia Court of Appeal held that an injunction is still the presumptive remedy for nuisance and that the balance of convenience test for interlocutory injunctions does not apply. At the same time, however, the remedy is discretionary, and it is open to a trial judge to find that a damages award, combined with ameliorative measure to reduce the harm, is an appropriate remedy: *Hill v. Herd*, 2025 BCCA 173 (B.C. C.A.).

Injunctions: end of life cases

The United Kingdom Supreme Court held that there is broad power to grant injunctions to protect the privacy interests of patients and clinicians involved as well as the integrity of the court’s process in proceedings of this kind: *Abbasi v. Newcastle upon Tyne Hospitals*

NHS Foundation Trust, [2025] UKSC 15 (U.K. S.C.).

Statutory injunctions

Regional Municipality of York v. DiBlasi, 2014 ONSC 3259 (Ont. S.C.J.) at para. 62: “In seeking a statutory injunction, the factors that would normally be considered in an application for an equitable injunction do not apply. Irreparable harm and balance of convenience do not need to be considered because the public authority is presumed to be acting in the best interests of the public and a breach of the law is considered to be irreparable harm to the public interest”.

Natural England v. Cooper, [2025] EWCA Civ 15 (Eng. C.A.) at para. 105: “If a public body is given responsibility for performing public functions in a particular area, it will usually be implicit that it is entitled to apply for an injunction to protect its special interest in the performance of those functions.”

Contempt of Court: sanctions for civil contempt

Castillo v. Xela Enterprises Ltd., 2024 ONCA 141 (Ont. C.A.) at para. 89: “. . . ensuring compliance with court orders also engages important public law issues, including respect for the authority and dignity of the courts and for the rule of law... As a result, punishment has been added as a secondary purpose of sentencing for civil contempt for breach of a court order.”

Specific Performance: employment contracts

The United Kingdom Supreme Court upheld an injunction in favour of unionized employees who were terminated and offered reinstatement on other terms as part of a scheme by the employer to alter their entitlement to the “retained pay” component of their compensation. The court agreed that the injunction amounted to an order of specific performance but held it to be a proper remedy. The employer retained confidence in the employees and damages would be inadequate. Assessing damages would require speculation on how long the employment would have continued under the altered terms and damages for wrongful dismissal do not ordinarily reflect non-pecuniary losses for loss of job satisfaction or upheaval: *Tesco Stores Ltd v. Union of Shop, Distributive and Allied Workers and others*, [2024] UKSC 28 (U.K. S.C.).

Specific performance: sale of shares

The case for specific performance of the sale of shares in a private company is strengthened where there is a shotgun clause, a provision “designed to quickly separate shareholders from each other while keeping the business intact”: *Zaldin v. Goldstein et al.*, 2025 ONSC

453 (Ont. S.C.J.) at para. 49.

Specific performance: tender

A purchaser claiming an abatement of the purchase price who attempted to close by tendering a reduced amount was held not to have made a valid tender as there is no authority to support the proposition that “a purchaser can unilaterally withhold a portion of the purchase price where there is a dispute about what the purchase price is”: 1785192 *Ontario Inc. v. Ontario H Limited Partnership*, 2024 ONCA 775 (Ont. C.A.) at para. 57.