

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

**FACTUM OF THE QUEBEC CLASS ACTION PLAINTIFFS
(Re: QCAPs' Motion for Injunctive Relief - Returnable on
December 9, 2024)**

December 9, 2024

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THE COMMON SERVICE LIST

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PART I - INTRODUCTION

1. By way of their Notice of Motion dated December 8, 2024, the QCAPs¹ are asking this Honourable Court to issue injunctive relief against Actis Law Group and its principal Ms. Andrea Grass (collectively, “**Actis Law Group**”) ordering that they immediately take down a highly misleading website intended to solicit Tobacco-Victims for representation and to cease and desist from soliciting, communicating with, approaching, entering into retainer agreements with, and/or providing information or advice to any Tobacco-Victims, including Quebec Class Members, in connection with the CCAA Plans (including the Quebec Class Action Administration Plan and/or any compensation due thereunder).

2. At the present time, the QCAPs are asking for the relief sought in the Motion to be granted on an interlocutory basis with effect until the Sanction Order is rendered. If the requested injunctive relief is granted, the QCAPs will ask that the interlocutory injunction be made permanent at or before the Sanction Hearing.

PART II – BACKGROUND AND FACTS

3. Quebec Class Counsel have been representing the Quebec Class Members for over 26 years in the context of the Quebec Class Actions, including for nearly six years in these CCAA Proceedings.² As appears from the Court record herein, the CCAA Proceedings commenced as a result of the landmark judgments obtained by Quebec Class Counsel in the Quebec Class Actions.

4. Following an extensive and complex mediation process ordered by the CCAA Court, on October 17, 2024, the Court-Appointed Mediator and Monitors filed the CCAA Plans, which are intended to effect a global settlement of all Affected Claims against the Tobacco Companies, including the Claims of the QCAPs as determined in the Quebec Class Actions.³

¹ All capitalized terms not otherwise defined herein shall have the meanings given to them in the affidavit of André Lespérance dated December 8, 2024 (the “**Lespérance Affidavit**”) or in the CCAA Plans.

² Lespérance Affidavit at para 5.

³ Lespérance Affidavit at para 8.

5. The CCAA Plans provide that an amount of \$4.25 billion will be allocated to the QCAPs, of which \$4.119 billion is to be paid in settlement of the *Blais* Class Action (eligible Quebec Class Members diagnosed with a Tobacco-Related Disease) and \$131 million is to be contributed by the QCAPs and allocated to the Cy-Près Foundation in settlement of the *Létourneau* Class Action.⁴

6. The CCAA Plans further provide that the amounts allocated to the *Blais* Class Members will be distributed pursuant to the Quebec Class Action Administration Plan.⁵

7. Quebec Class Counsel are the only legal counsel who have represented the Quebec Class Members in the Quebec Class Actions and in the CCAA Proceedings for more than a quarter of a century.

8. As appears from the Meeting Order issued by the CCAA Court on October 31, 2024, Quebec Class Counsel have also been appointed as sole proxy for all Quebec Class Action Plaintiffs, and as appears from the Quebec Class Action Administration Plan (which is a schedule to each of the CCAA Plans, and an integral part thereof), Quebec Class Counsel have a continuing and exclusive role to represent the interests of Quebec Class Members until the claims and distribution process is complete.

9. Indeed, the Quebec Class Action Administration Plan provides that Quebec Class Counsel will continue to represent Quebec Class Members throughout the duration of the claims and distribution process and, more particularly, that they have mandated Raymond Chabot to assist *Blais* Class Members every step of the way.⁶

10. Quebec Class Counsel, directly and through Raymond Chabot, are in regular contact with Quebec Class Members through the dedicated and continuously updated QCAP Website and the Mailing List. Potential Quebec Class Members on the Mailing List have been advised that a team has been put together in order to assist them with the

⁴ Lespérance Affidavit at para 10.

⁵ Lespérance Affidavit at para 11.

⁶ Lespérance Affidavit at para 13.

claims process, and that legal advice (and notarial advice) will be made available as required at no additional out-of-pocket cost to them.⁷

11. As appears from the CCAA Plan (section 14.9 (g)), the fees of Raymond Chabot are to be paid from the Quebec Class Counsel Fee (approval of which will be sought at the end of the Sanction Hearing), such that *Blais* Class Members will not pay any additional amounts to obtain assistance from Quebec Class Counsel or Raymond Chabot in connection with asserting claims and obtaining compensation under the Quebec Class Action Administration Plan.⁸

12. The Quebec Class Action Administration Plan has furthermore been designed (Quebec Class Counsel working closely with the Court-Appointed Mediator and the Monitors) with simplicity in mind⁹ in a non-adversarial process. By way of example only:

- a. The Claim Forms have been prepared in easy to understand language, and are accompanied by clear instructions;
- b. The primary method for proving the diagnosis of a Tobacco-related illness is through Official Confirmations which are to be obtained by the Claims Administrator directly from the Quebec Cancer Registry and/or the MED-Echo database. Accordingly, it will not be necessary for most individual claimants to obtain or submit medical records in order to prove their claims;
- c. Fill in the blank affidavits, together with a checklist of required documents, have been prepared to assist Succession Claimants; and
- d. Throughout the Quebec Administration Plan, and directly on the Claim Forms, claimants are reminded of the assistance being provided by Quebec Class Counsel and Raymond Chabot and by the Claims Administrator (via a dedicated website, call-center and email). Notaries to assist Succession Claimants in the

⁷ November 21, 2024 letter to Quebec Class Members, Exhibit A to the Lespérance Affidavit.

⁸ Lespérance Affidavit at para 14.

⁹ Lespérance Affidavit at para 12.

completing and filing of Claim Forms and commissioners of oaths to swear any required affidavits will be made available at no charge to individual claimants.

13. On December 5, 2024, Mr. André Lespérance, one of the Quebec Class Counsel lawyers, first became aware of the existence of the Actis Website upon learning of the same from Raymond Chabot, who was itself informed by a potential class member.¹⁰

14. The Actis Website falsely suggests that Actis Law Group are somehow responsible for the Quebec Class Actions, that Quebec Class Members must “register” with Actis Law Group in order to participate in the Quebec Class Actions, and that the fees of Actis Law Group are contingent on the success of the litigation, when in fact Actis Law Group has no legal right to be paid anything based on the success of the Quebec Class Actions in which they played no role whatsoever.¹¹

15. The Actis Website contradicts the ongoing communications that Quebec Class Counsel have had (and continue to have) with their clients in respect of the claims process under the Quebec Class Action Administration Plan.¹² It presents a misleading and inaccurate picture of the CCAA Plans and the process for asserting claims under the Quebec Class Action Administration Plan and the PCC Compensation Plan, which misleads and creates confusion for Tobacco-Victims.¹³

16. By way of example, Actis Law Group suggests that \$32.5 billion will be available for distribution to smokers and former smokers when, in fact, a total of \$7.639 billion has been allocated under the CCAA Plans to indemnify Tobacco-Victims, including the *Blais* Class Members, the Pan-Canadian Claimants and the Cy-près Foundation.¹⁴ This suggests that the Actis Law Group hadn’t even read the CCAA Plans before creating the Actis Website.

¹⁰ Lespérance Affidavit at para 16.

¹¹ Lespérance Affidavit at para 17 and Appendix “B”, being the print-outs of the Actis Website.

¹² Lespérance Affidavit at para 18.

¹³ Lespérance Affidavit at para 19.

¹⁴ Lespérance Affidavit at para 20.

17. The Actis Website also does not mention the role that Raymond Chabot and Quebec Class Counsel will continue to play to assist potential *Blais* Class Members in the claims process (or the corresponding role of Epiq in connection with the PCC Administration Plan).¹⁵

18. In essence, the Actis Website is nothing other than an egregious predatory attempt to take advantage of vulnerable Tobacco-Victims and to induce them to sign up for unnecessary legal representation and to then charge such individuals for clearly unnecessary and useless legal “services”.¹⁶

19. Upon learning about same, Quebec Class Counsel immediately called upon Actis Law Group to remove the Actis Website. In response to such request, Actis Law Group, through its principal, Ms. Andrea Grass, advised that they would take the Actis Website down “*for the time being*” but advised that they may decide to put it back up in the future. They also failed to commit to cease communicating with Quebec Class Members. On the contrary, they tried to justify their actions, describing their attempt to solicit persons and charge them for legal services, which are already being provided without any additional out-of-pocket costs, as a “legitimate offering”.¹⁷

20. This behavior contravenes Quebec’s *Code of Professional Conduct of Lawyers*,¹⁸ and risks causing irreparable prejudice to Tobacco-Victims and the claims administration process under the CCAA Plans.¹⁹ It is not only unacceptable behavior perpetrated against vulnerable victims, it is also an attack against the CCAA process and all of the efforts made over the past six years to enable Canadian victims to obtain compensation in simplified claims processes intended to maximize recoveries to them.

¹⁵ Lespérance Affidavit at para 21.

¹⁶ Lespérance Affidavit at para 22.

¹⁷ Lespérance Affidavit Appendix “C”; Extract of the *Code of Professional Conduct of Lawyers*, [CQLR c B-1, r 3.1](#), art [119-120](#) and [129](#) [*Code of Professional Conduct*].

¹⁸ Lespérance Affidavit at para 23.

¹⁹ Lespérance Affidavit at para 34.

PART III – ISSUES, LAW AND ARGUMENT

A. The CCAA Court has the Inherent Jurisdiction to Grant the Relief Sought

21. To control increasingly complex restructurings, the CCAA, skeletal in nature, provides a wide range of tools to deal with most issues that may arise, including tools to preserve the *status quo*.²⁰ While the CCAA explicitly provides for certain orders, Section 11 sets out the Court’s broad discretionary authority to render orders that are just and appropriate.

22. The general language of the CCAA should not be read as being restricted by the availability of more specific orders. Accordingly, the Court benefits from wide discretionary power, which must be exercised with the requirements of appropriateness, good faith, and due diligence as baseline considerations.²¹ In *Callidus*, the Supreme Court of Canada aptly described the nature and limits of the Court’s discretion under the CCAA:²²

[47] One of the principal means through which the CCAA achieves its objectives is by carving out a unique supervisory role for judges (see Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, at pp. 18-19). From beginning to end, each CCAA proceeding is overseen by a single supervising judge. The supervising judge acquires extensive knowledge and insight into the stakeholder dynamics and the business realities of the proceedings from their ongoing dealings with the parties.

[48] The CCAA capitalizes on this positional advantage by supplying supervising judges with broad discretion to make a variety of orders that respond to the circumstances of each case and “meet contemporary business and social needs” (*Century Services*, at para. 58) in “real-time” (para. 58, citing R. B. Jones, “The Evolution of Canadian Restructuring: Challenges for the Rule of Law”, in J. P. Sarra, ed., *Annual Review of Insolvency Law 2005 (2006)*, 481, at p. 484). The anchor of this discretionary authority is s. 11, which empowers a judge “to make any order that [the judge] considers appropriate in the circumstances”. This section has been described as “the engine” driving the statutory scheme (*Stelco Inc. (Re) (2005)*, 2005 CanLII 8671 (ON CA), 253 D.L.R. (4th) 109 (Ont. C.A.), at para. 36).

[49] The discretionary authority conferred by the CCAA, while broad in nature, is not boundless. This authority must be exercised in furtherance of the remedial objectives of the CCAA, which we have explained above (see *Century Services*, at para. 59). Additionally, the court must keep in mind three “baseline considerations” (at para. 70), which the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence (para. 69).

²⁰ *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#) at para [60](#) [*Century Services*].

²¹ *Ibid* at para [70](#).

²² *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#) at para [47-49](#) [*Callidus*].

23. In the present case, the orders sought by the QCAPs are appropriate and made in good faith with due diligence.

24. The orders sought are appropriate in that they seek to preserve the integrity of the distribution processes contemplated under the CCAA Plans, and to ensure that the vulnerable victims that such plans are intended to compensate are not exploited by the predatory practices of opportunistic lawyers with no involvement whatsoever in the Quebec Class Actions, the CCAA Proceedings or the claims processes themselves.

25. It is clear that the Actis Website does nothing whatsoever to assist Tobacco-Victims. To the contrary, it grossly misleads them by providing inaccurate information, seeks to induce them to pay for services that are already provided without additional cost to them under the CCAA Plans, and seeks to confuse them as to who the lawyers are who have been acting on their behalf throughout the Quebec Class Actions and the CCAA Proceedings.

26. The Motion has been brought in good faith and with due diligence.²³ The Quebec Class Action Plaintiffs have brought this matter before the CCAA Court as quickly as possible after the Actis Law Group's conduct was brought to the attention of Quebec Class Counsel.²⁴

27. As such, this Court can and should use its broad discretionary authority to render orders that are required to protect vulnerable stakeholders in the CCAA process, as well as the integrity of the CCAA process itself.

B. The Criteria for the Issuance of Interlocutory Injunctive Relief Are Met

28. In the context of CCAA proceedings, the Court can issue an injunction against third parties "*where it appears to a judge of the court to be just or convenient to do so*".²⁵

²³ Lespérance Affidavit at para 5.

²⁴ *Ibid* at para 16 and 24ff.

²⁵ *Courts of Justice Act*, [RSO 1990 c C.43](#), s [101](#); See *Original Traders Energy Ltd. (Re)*, [2024 ONSC 325](#), as an example.

29. The criteria for the issuance of an interlocutory injunction is well settled. In *RJR-MacDonald*, cited numerous times by Canadian courts, the Supreme Court of Canada held that for an interlocutory injunction to be issued, an applicant must generally demonstrate (i) a serious question to be tried (ii) irreparable harm and (iii) that the balance of inconvenience lies in its favour.²⁶

30. In the case of a mandatory interlocutory injunction (e.g., an order to remove content from a website), the first prong of the test is higher in that the applicant must show a strong *prima facie* case.²⁷ According to the Supreme Court of Canada in *Canadian Broadcasting*, this higher standard means “*that upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out*”.²⁸

31. The QCAPs submit that the state of the law is such that the fundamental question in each case is whether the granting of the injunction is just and equitable in all the circumstances.²⁹ Moreover, the criteria set forth above are not watertight compartments, the “*strength of the moving party’s argument on one stage may compensate for its weakness on another*”.³⁰

32. Although not decided in a CCAA context, the *Moushoom*³¹ case provides a precedent for the order sought by the QCAPs herein.

33. In that case, the Federal Court was asked to order Consumer Law Group (the former law firm of Ms. Andrea Grass, the principal of Actis Law Group) to take down websites containing communication to the vulnerable class members in such proceeding and to cease communicating with such class members. Much like in the present case,

²⁶ *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#) at 347ff.

²⁷ *R v Canadian Broadcasting Corp.*, [2018 SCC 5](#) at para 15 [*Canadian Broadcasting*].

²⁸ *Ibid* at para 17.

²⁹ *Amer Sports Canada Inc. v Adidas Canada Limited*, [2024 BCSC 3](#) at para 28 [*Amer Sports Canada*].

³⁰ *Circuit World Corp. v Lesperance*, [1997 CanLII 1385 \(ON CA\)](#).

³¹ *Moushoom v Canada (Attorney General)*, [2022 FC 1212](#) [*Moushoom*].

after news of a large financial settlement broke, Consumer Law Group put up a misleading website seeking to solicit class members to join. The Court explained:³²

[7] In the meantime, and prior to the FSA receiving Court approval, CLG, who are not class counsel and who have had no involvement in these proceedings, put information on two websites about the “settlement” and invited class members to “Join this Class Action”. Their websites offer contingency fee retainers and request that class members provide personal information - including information about “damages or symptoms experienced”.

34. The Court issued an interim and interlocutory injunction ordering that the misleading websites be removed and that no legal professionals, other than the class counsel appointed by the Court and the claims administrator, were permitted to communicate to class members concerning the proceedings without the prior approval of the Court. The Court considered this relief was necessary, in particular, in light of the fact that the official notices from class counsel had not yet been issued, and therefore “*allowing non-class legal counsel to provide information on the proposed FSA in a manner that is outside the Court’s purview poses a serious risk to the class proceedings*”.³³

35. In this present case, and for many of the same reasons identified by the Federal Court in *Moushoun*, the QCAPs unequivocally meet all of the criteria for the issuance of the injunctive relief sought in their Notice of Motion.

(i) *A serious question to be tried/strong prima facie case*

36. Actis Law Group has no right to purport to be involved in the Quebec Class Actions or to represent Tobacco-Victims, including Quebec Class Members.

37. Indeed, this Court has recognized that Quebec Class Counsel are the sole authorized counsel to represent the QCAPs. Quebec Class Counsel have represented the QCAPs throughout the Quebec Class Actions, these CCAA Proceedings and in the mediation which ultimately led to the contemplated settlement under the CCAA Plans. In addition, Quebec Class Counsel are the sole proxy for all of the QCAPs in order to vote

³² *Ibid* at para 7.

³³ *Ibid* at para 18.

on the CCAA Plans as ordered in the Meeting Order, and they have a continued role to represent the QCAPs and provide them with legal advice throughout the claims process.

38. Conversely, Actis Law Group are not in any way whatsoever involved in the Quebec Class Actions or in these CCAA Proceedings, and have no role to play whatsoever in the claims process in respect of which it is trying to solicit “clients”.

39. Actis Law Group’s actions in this regard are tantamount to the common law tort of “passing off” – whereby no person may pass their goods or services as those of another.³⁴ Actis Law Group is trying to pass themselves off as Quebec Class Counsel. In *Car-Wal Garage*, this Court held that the essence of the tort is deceit by the defendant that the defendant’s product is the plaintiff’s product, which thereby causes confusion in the minds of consumers.³⁵ In that case, an interlocutory injunction was ordered because (i) the defendant’s conduct would damage the plaintiff’s goodwill if clients were confused about the relationship between the two parties and (ii) such harm would be difficult to translate into monetary terms.³⁶ That reasoning applies in this case – the decades’ long representation of the QCAPS by Quebec Class Counsel could be undermined in the eyes of the general public and of Tobacco-Victims should Actis Law Group’s conduct of providing inaccurate information concerning the settlement and claims process be permitted to continue.

40. Quebec Class Members, and indeed all members of the public, have the right to not be misled by legal professionals, and must be protected from predatory practices which bring the profession into disrepute.³⁷

41. Accordingly, Quebec Class Members have a strong and clear *prima facie* right to have the Actis Website taken down, for Actis Law Group to cease and desist from trying

³⁴ *Car-Wal Garage Doors Inc. v On Track Door Systems Canada Inc.*, [2018 ONSC 6078](#) at para 38 [*Car-Wal Garage*].

³⁵ *Ibid* at para [40](#).

³⁶ *Ibid* at para [57](#).

³⁷ *Code of Professional Conduct, supra*, art [119-120](#) and [129](#).

to mislead them into signing up for unnecessary representation, and for the other related relief requested in the Notice of Motion.

(ii) Irreparable Harm

42. The relief requested by the QCAPs in the Notice of Motion is required in order to prevent serious and irreparable harm to Tobacco-Victims and the claims administration processes contemplated under the CCAA Plans.

43. The Actis Website and the communications to Quebec Class Members contained therein constitute false and misleading attempts to lure individual victims to pay for legal services in order to participate in the distributions under the CCAA Plans, when such process was specifically designed to not require individual claimants to pay any out-of-pocket costs for assistance during that process.

44. The Actis Website and the efforts of the Actis Law Group to solicit Quebec Class Members may result in eligible claimants entering into retainer agreements that would deprive them of a meaningful portion of their entire rightful compensation.

45. As a result of such unlawful conduct, Quebec Class Members may be misled to sign up with Actis Law Group, instead of through the QCAP Website, thereby also depriving them of receiving crucial communications concerning the Quebec Class Actions and the Quebec Class Action Administration Plan.

46. Allowing this practice to continue would furthermore entice others to engage in similarly predatory behavior to the detriment of Tobacco-Victims across Canada.

(iii) Balance of inconvenience

47. In a case such as this where the right of the moving party is so apparent, the balance of inconvenience need not be considered.

48. Nevertheless, the balance of inconvenience also clearly favours the QCAPs. By virtue of their court-ordered exclusive representation, any losses suffered by Actis Law

Group – which are nonexistent – would be self-inflicted, as Actis Law Group has proceeded with its eyes wide open in spite of multiple warnings.³⁸

C. The Court Should Dispense the QCAPs from Providing an Undertaking as to Damages

49. Given the particular circumstances of this matter, including the strength of the QCAPs' case and, in particular, the status of Quebec Class Counsel, an undertaking as to damages should not be required.

50. There is authority that such an undertaking should not be required from a representative plaintiff acting for the benefit of a class.³⁹ There is also authority that it is appropriate to waive the undertaking in cases which have broad public interest significance.⁴⁰

51. Here, the QCAPs are acting as representatives of a wide class and in the public interest and protection of said class. The QCAPs should therefore be relieved of the requirement to provide an undertaking as to damages pursuant to Rule 40.03 of the *Rules of Civil Procedure*. If the Court were to conclude otherwise, the QCAPs would seek leave to address the Court further on this point.

PART IV – RELIEF REQUESTED

52. Accordingly, the QCAPs seek an interlocutory injunction as proposed in the draft Order in the motion record.

All of which is respectfully submitted.

³⁸ See for example *Amer Sports Canada, supra* at para [58](#) and [65](#).

³⁹ *Li et al. v Barber et al.*, [2022 ONSC 1176](#) at para [38](#).

⁴⁰ *Ibid.*

Monday, December 9, 2024

Fishman Flanz Meland Paquin
FISHMAN FLANZ MELAND PAQUIN LLP

Trudel Johnston & Lespérance
TRUDEL JOHNSTON & LESPÉRANCE

Lawyers for the Quebec Class Action Plaintiffs

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#).
2. *9354-9186 Québec inc. v Callidus Corp.*, [2020 SCC 10](#).
3. *Original Traders Energy Ltd. (Re)*, [2024 ONSC 325](#).
4. *RJR-MacDonald v Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#).
5. *R v Canadian Broadcasting Corp.*, [2018 SCC 5](#).
6. *Amer Sports Canada Inc. v Adidas Canada Limited*, [2024 BCSC 3](#).
7. *Circuit World Corp. v Lesperance*, [1997 CanLII 1385 \(ON CA\)](#).
8. *Moushoom v Canada (Attorney General)*, [2022 FC 1212](#).
9. *Car-Wal Garage Doors Inc. v On Track Door Systems Canada Inc.*, [2018 ONSC 6078](#).
10. *Li et al. v Barber et al.*, [2022 ONSC 1176](#).

SCHEDULE "B"

TEXT OF STATUTES & REGULATIONS

Companies' Creditors Arrangement Act, RSC 1985 c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Courts of Justice Act, RSO 1990, c C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

Terms

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

Rules of Civil Procedure, RRO 1990, Reg 194

RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER

How Obtained

40.01 An interlocutory injunction or mandatory order under section 101 or 102 of the *Courts of Justice Act* may be obtained on motion to a judge by a party to a pending or intended proceeding. R.R.O. 1990, Reg. 194, r. 40.01.

Where Motion Made without Notice

Maximum Duration

40.02 (1) An interlocutory injunction or mandatory order may be granted on motion without notice for a period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (1).

Extension

(2) Where an interlocutory injunction or mandatory order is granted on a motion without notice, a motion to extend the injunction or mandatory order may be made only on notice to every party affected by the order, unless the judge is satisfied that because a party has been evading service or because there are other exceptional circumstances, the injunction or mandatory order ought to be extended without notice to the party. R.R.O. 1990, Reg. 194, r. 40.02 (2).

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days. R.R.O. 1990, Reg. 194, r. 40.02 (3).

Labour Injunctions Excepted

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under section 102 of the *Courts of Justice Act*. R.R.O. 1990, Reg. 194, r. 40.02 (4).

Undertaking

40.03 On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party. R.R.O. 1990, Reg. 194, r. 40.03.

Code of Professional Conduct of Lawyers, CQLR c B-1, r 3.1

DIVISION III

DUTIES TO A PARTY OR THE PARTY'S LAWYER

119. A lawyer must not act in such a manner as to mislead a party or the party's lawyer, or in such a manner as to abuse their good faith.

120. A lawyer must not communicate in a matter with a person whom he knows to be represented by a lawyer, except in the presence or with the consent of that lawyer or unless he is authorized to do so by law. In the event of an unsolicited or accidental communication, the lawyer must promptly inform the person's lawyer of the circumstances and content of the communication.

Subject to the first paragraph, a lawyer may seek information from any potential witness, but he must disclose the interests of the person for whom he is acting.

129. A lawyer must contribute to preserving the honour, dignity and reputation of his profession and to maintaining the public's confidence in the profession.

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**SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

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