

Supreme Court of Canada Clarifies the Test for a Mandatory Interlocutory Injunction

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The Court began its analysis of the proper test for a mandatory injunction by noting that **the framework established in RJR-MacDonald is a general framework, that admits of exceptions.** Accordingly, rather than the "serious issue to be tried" test, the Court wrote that in the cases of mandatory injunctions, the appropriate inquiry at the first stage of the **test is into whether the applicants have shown a strong prima facie case.** The Court also noted the rationale for a higher threshold in such circumstances, writing that (i) because mandatory injunctions direct a defendant to undertake a positive course of action which is often costly or burdensome; and (ii) because such orders are generally difficult to justify at the interlocutory stage as restorative relief can usually be obtained at trial, the potentially severe consequences to a defendant which can result from a mandatory interlocutory injunction demand an "extensive review of the merits" at the interlocutory stage.

The Court then restated the proper test to be applied in such cases to be as follows:

- (1) **The applicant must demonstrate a strong prima facie case that it will succeed at trial. This entails showing 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 in the originating notice;**
- (2) **The applicant must demonstrate that irreparable harm will result if the relief is not granted; and**
- (3) **The applicant must show that the balance of convenience favours granting the injunction.**

While the Court's pronouncement on the applicable test for mandatory injunctions is not new in law, as courts have been inconsistent in the application of the threshold to such injunctions, this decision provides welcome clarification to litigants.

By

[Alannah Fotheringham](#)

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BLG Offices

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Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
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T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

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1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

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1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
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Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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