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

March 01, 2018

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.

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