THE INTERLOCUTORY INJUNCTION

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Having accepted the task of preparing a paper for this conference it appeared to me that the best approach in order to promote discussion would be to set forth, in summary form, the general principles which apply in the granting or denial of interlocutory injunctions. Of necessity this paper is not a complete compendium of all of the considerations necessary but it is an attempt to outline the more significant matters involved.

I have briefly set out the origin of the injunction, the jurisdiction for granting same in Nova Scotia, which I presume is essentially similar throughout the common law provinces, followed by a discussion of both the prohibitory and mandatory injunctions. I did not venture into the topic of the enforcement of injunctions as that would constitute the subject of a discussion on its own.

Initially the granting of injunctions was one of the inherent powers of courts of equity and perhaps its most important as it was through this remedy that courts of equity were able to maintain their position against the common law courts. The remedy itself arose out of equity's concern with the conscientiousness of particular behavior of a defendant and was directed towards the unconscionable setting up of rights at law and the unconscionable performance

of other acts.

Until the passage of the Common Law Procedure Act in 1854, in England, courts of common law had no power to grant injunctions. Section 79 of that Act provided:

> *In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may, . . . claim a writ of injunction against the repetition or continuance of such breach of contract, or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress.*

The principle upon which an injunction was to issue was set forth in Section 81 as "as justice may require". Section 82 provided for the ex parte injunction.

While the common law courts could have developed a different set of discretionary principles for the granting of an injunction it appears that that was not done and the equitable discretionary principles were adopted.

It is unnecessary to pursue this in any detail as, in 1883, with the passage of the Judicature Act, a single court was conferred with jurisdiction, among other things, to grant injunctions both of the common law courts and of the courts of equity.

Section 38 of the Judicature Act, Chapter 2, Statutes of Nova Scotia 1972 confers upon the Supreme Court of Nova Scotia both legal and equitable jurisdiction.

Rule 43 of the Nova Scotia Civil Procedure Rules provides as follows with regard to injunctions.

43.01 (1) An application for an injunction may be made by a party before or after the commencement of a proceeding, whether or not the claim for the injunction was included in the party's statement of claim, counter-claim, third party notice or originating notice.

(2) Except in a case of urgency when an application for an injunction may be made ex parte, an application for an injunction shall be made upon notice.

(3) When an urgency exists, an intended plaintiff may make an application for an injunction before the commencement of a proceeding, and an interim injunction may be granted on terms providing for the commencement of the proceeding and such other matters as are just.

(4) An application for an interim or interlocutory injunction may be granted, refused or otherwise dealt with by the court on such terms as are just.

(5) On two days' notice or on such shorter notice as the court may prescribe an opposing party may apply for the dissolution or modification of an order for an interim injunction, and the court shall hear and determine the application as expeditiously as is just.

43.07 *Where on the hearing of an application under Rule 43 it appears to the court that the matter in dispute can be better dealt with at an early trial, the court may make an order accordingly, including fixing the time, place and mode of trial, and giving such other directions as are just.*

Nova Scotia has another provision in its Judicature Act which may not be common to the other provinces. This arose out of a period of considerable labour unrest when the ex parte injunction was the subject of the wrath of the labour movement. Section 40 of the Judicature Act states:

40(1) *In this section*

(a) "injunction" means an injunction granted by an interlocutory order or judgment and includes an interim injunction;

(b) "labour-management dispute" means a dispute or difference affecting an employer and his employees or a trade union as defined in the Trade Union Act.

(2) *Subject to subsection (3), no injunction to restrain a person or a trade union from any act in connection with a labour-management dispute shall be granted ex parte.*

> *(3) The court may grant an injunction ex parte in a labour-management dispute if it is satisfied that the case is a proper one for the granting of an injunction and*
>
> *(a) a breach of the peace, an interruption of an essential public service, injury to persons or severe damage to property has occurred or is about to occur; and*
>
> *(b) reasonable attempts have been made to notify the persons or the trade union affected by the application.*

While most Judicature Acts confer the jurisdiction of the common law and equity courts held by those courts prior to 1884, they also confer special powers which did not exist prior to 1884. For example, Section 39(9) of the Nova Scotia Act provides:

> *A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be*

> *restrained, under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.*

It is generally accepted that special powers such as in 39(9) do not go to jurisdiction but merely affect the exercise of the court's discretion in areas where courts of equity customarily refused to exercise its discretion prior to 1884. As to jurisdiction, the jurisdiction to grant injunctions has remained the same, since, given jurisdiction over the person of the defendant, in courts of equity it has always been without limit, and could be exercised either in support of any legal right, or in the creation of a new equitable right, as the court thought fit in the application of equitable principles.

The foregoing sets forth the jurisdictional and procedural basis for the granting of injunctions in Nova Scotia. It is presumed that the situation is similar in the other common law provinces of Canada. If there are differences they can be easily distinguished and considered accordingly.

Injunctions are classified into three categories:

Interim

Interlocutory

Permanent or Perpetual.

The interim injunction is one which lasts for a limited, and usually brief, period of time and is usually, though not necessarily, obtained ex parte.

The interlocutory injunction is granted to insure that particular acts do not take place until the final determination by the court of the rights of the parties and, as a result, subject to further order of the court, continues up to the determination at trial. It is only obtained on notice and after a hearing.

The permanent or perpetual injunction is one which is determinative of the final settlement and enforcement of the rights of the parties after trial.

Each of the foregoing may be dissolved at any time by the court which granted them should it become appropriate to do so.

Since this paper is directed to the interlocutory injunction the other classifications will not be considered although the principles for the granting of each type are essentially the same and any differences are largely those of degree.

Historically, in order to obtain an injunction a plaintiff had to establish:

(a) the existence of a legal right;

(b) that he would suffer irreparable harm;

(c) that the wrong was of a continuing nature; and

(d) that the balance of convenience or inconvenience was in his favour.

As well, since the remedy was a discretionary one it was necessary to cause the court to exercise that discretion. That introduced a number of considerations in addition to those listed although some might be included in the consideration of the balance of convenience or inconvenience. Since the remedy came from equity, the maxims of equity were ever present in the exercise of discretion.

Although the maxims are well known it is worthwhile to list them here. They are as follows:

(1) Equity will not suffer a wrong to be without a remedy.

(2) Equity follows the law.

(3) Where there is equal equity, the law will prevail.

(4) Where the equities are equal, the first in time shall prevail.

(5) He who seeks equity, must do equity.

(6) He who comes into equity, must come with clean hands.

(7) Delay defeats equity.

(8) Equality in equity.

(9) Equity looks to the intent rather than to the form.

(10) Equity looks on that as done which ought to be done.

(11) Equity imputes an intention to fulfill an obligation.

(12) Equity acts "in personam".

Clearly, it is the first maxim which gives the court its expansiveness and its ability to adapt to and meet the needs of an ever-changing society. Of the most immediate concern in the exercise of judicial discretion, though not in any order of importance are maxims 1, 5, 6, 7, 9, 10, 11 and 12. Some of these will be considered later when discretionary matters are considered.

In Spry, The Principles of Equitable Remedies, 2nd Ed. at page 417 an interlocutory injunction is defined as follows:

> *An interlocutory injunction is an injunction which is directed to ensure that particular defined acts do not take place pending the final determination by the court of the rights of the parties; and accordingly it issues in a form which requires that, in the absence of a subsequent order to the contrary, it continues up to but not beyond the final hearing of the proceedings. The two matters with which the court is concerned in granting such an injunction are, first, the maintenance of a position which will most easily enable justice*

> *to be done when its final order is made, and secondly, an interim regulation of the acts of the parties which is, in other respects, most convenient and reasonable in all the circumstances.*

The most usual, though not the only, basis for the grant of an interlocutory injunction is the preservation of the status quo. On occasion, however, a court may be called upon to establish a position different from the status quo such as to establish an earlier position before wrongful acts took place. This latter may involve the issuance of a mandatory injunction to cause certain works to be removed.

For clarity it should be noted that injunctions are classified as prohibitory and mandatory and the distinction is obvious and needs no further comment.

The first consideration of a modern court on an injunction is whether or not the applicant, generally, though not necessarily, the plaintiff, has established a "prima facie case". Until quite recently it was felt that the burden was to prove a prima facie case of success at the final hearing. This was sometimes referred to as the "probability of success". Cotton, L.J. in Preston v. Luck (1884) 27 Ch. D. 497 at p. 506 said the court must be satisfied:

> *that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the plaintiffs are entitled to relief.*

This view seems to suggest a fixed degree of proof and led to attempts to establish distinctions as to the degree of proof required to establish the existence of a right and that required to establish its infringement. All of this is quite inconsistent with the way a court of equity acts for there are other varying considerations which are an inherent part of the picture, such as the magnitude of the impending injury and the balance of hardship, which, necessarily, are in conflict with a fixed degree of proof. In fact, the practice of the courts over the years was inconsistent with these notions.

In England the notion of the "prima facie case" was finally rejected by the House of Lords in American Cyanamid Co. v. Ethicon Ltd. (1975) A.C. 396. In that case the Court of Appeal, from which appeal was made, considered that there was a rule of practice so well established as to constitute a rule of law that precluded them from granting any interim injunction unless on the evidence adduced by both parties at the hearing the applicant had satisfied the court that on the balance of probabilities the acts of the other party sought to be enjoined would, if committed, violate the applicant's legal rights. In the House of Lords decision, Lord Diplock

reviewed the whole area of the granting of an interlocutory injunction. First at page 406 he states:

> *My Lords, when an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction; but since the middle of the 19th century this has been made subject to his undertaking to pay damages to the defendant for any loss sustained by reason of the injunction if it should be held at the trial that the plaintiff had not been entitled to restrain the defendant from doing what he was threatening to do. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies.*

Then, after considering that the evidence at an interlocutory hearing is incomplete and rejecting the notion that there should be a preliminary trial on evidential material different from that at the trial so as to establish the "prima facie case" notion of Preston v. Luck, supra and following cases he said at page 407,

> *Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as a probability, a prima facie case, or a strong prima facie case in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.*
>
> *It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages on the grant of an interlocutory injunction was that it aided the court in doing that which was its great object, viz abstaining from expressing anu opinion upon the merits of the case until the hearing. So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.*

As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason this ground to refuse an interlocutory injunction.

It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo. If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark on a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial.

Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application some disadvantages which his ultimate success at the trial may show he ought to have been spared and the disadvantages may be such that the recovery of damages to which he would then be entitled either in the action or under the plaintiff's undertaking would not be sufficient to compensate him fully for all of them. The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies; and if the extent of the uncompensatable disadvantage to each party would not differ widely, it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence adduced on the hearing of the application. This, however, should be done only where it is apparent on the facts disclosed by evidence as to which there is no credible dispute that the strength of one party's case is disproportionate to that of the other party. The court is not justified in embarking on anything resembling a trial of the action on conflicting

> *affidavits in order to evaluate the strength of either party's case.*
>
> *I would reiterate that, in addition to those to which I have referred, there may be many other special factors to be taken into consideration in the particular circumstances of the individual cases.*

While the foregoing statements constitute a primer on the considerations a court should enter upon on an application for an interlocutory injunction, some further comment is necessary.

Clearly an interlocutory injunction will not be granted if the risk of irreparable harm is insignificant or illusory. There must be a real question between the parties or a substantial question to be determined at the final hearing but this can only be a minimal requirement. If not satisfied then interlocutory relief will be refused, but, if satisfied, relief will not necessarily be granted. It may be necessary for an applicant to establish different degrees of probability according to other relevant circumstances such as the degree of hardship on the other party if an injunction is granted and the degree of inconvenience which he, himself, will suffer if no injunction is granted. For example if the applicant's risk of loss or injury is great he may only have to establish a case which requires serious consideration but if the converse

he might be required to establish his rights to a high degree of probability.

A conflict in the evidence or a dispute on the facts which may make the court unable to reach a confident conclusion does not necessarily lead to the refusal of relief. The balance of justice, in such cases, may still call for the relief sought, subject always to the hardship considerations. It must always be remembered that this remedy is temporary and may not be the result of the final hearing. The degree of investigation of the court will depend on the circumstances of each case. According to Spry, The Principles of Equitable Remedies, supra at page 435 the comment of Lord Diplock in the American Cyanamid case that the court is not justified in embarking upon anything like a trial of the action upon conflicting affidavits:

> *. . . should be regarded as merely stating a common position, to be departed from where the proper exercise of equitable discretions so requires.*

At its minimum, therefore, American Cyanamid replaces any fixed consideration of prima facie case with a serious question to be tried and this may relate to the right claimed or its alleged infringement. While

this is the present state of the law in England, American Cyanamid has been accepted and followed in a number of the Canadian jurisdictions. It is submitted that Lord Diplock's exposition of the law in this area is clear, correct and in accordance with historical equitable principles.

Once the previous matter is established the court must consider the question of irreparable harm or damage. Simply put "irreparable damage" is that which cannot be compensated with any other remedy available to the court, either legal or equitable. Smallness of damage is not a basis for refusal of itself although it may very well be a factor when considering the balance of convenience. This is a particular consideration dependent on the facts of each case and does not usually present a difficult problem to a court. The most common consideration is whether damages are an appropriate remedy. This, for example was the basis for refusal of an interlocutory injunction in cases involving the sale of Sport Select tickets in at least three provinces in Canada; namely, Nova Scotia, Saskatchewan and British Columbia.

A consideration of damages is necessary for two reasons. First, if damages are an adequate remedy then

an applicant will be confined to his legal remedy, as the basis for equitable intervention does not exist. Secondly, damages must be considered when the court is weighing hardship and convenience as between the parties for if an applicant can be substantially recompensed by damages the court may refuse to exercise its discretion.

Another remedy frequently considered is an undertaking of the defendant not to perform the acts complained of. Relief will not be refused on this basis unless it is clearly shown that the plaintiff will be sufficiently protected by the undertaking or unless the plaintiff is prepared to accept the undertaking. Where there is an undertaking, however, it should be stated with clarity and precision.

After considering irreparable harm the court then moves into the area of balance of convenience and of hardship. In this area the court considers the harm or injury which may be suffered both on the grant and refusal of the relief, particularly irreparable harm. Here also, the court must consider whether there is more than an insignificant or illusory risk of irreparable harm. If a plaintiff is able to establish clearly the imminence of serious injury to him, it is only in the most exceptional circumstances that the defendant is able to show sufficient hardship on his own part to induce the court to exercise its discretion by refusing to grant interlocutory relief. Where the right exists and

the breach is clear and serious injury is likely to arise from the breach, it is the duty of the court to interfere before the trial to restrain the breach.

In these considerations the court considers not only the hardship to the parties but also any hardship caused to third parties. It is well established that courts of equity will not ordinarily and without special necessity interfere by injunction, where the injunction will have the effect of very materially injuring the rights of third persons not before the court (see Hartlepool Gas and Water Co. v. West Harlepool Harbour and Ry. Co. (1865) 12 L.T. 366).

Where, of course, a defendant is able to show that the granting of an interlocutory injunction would involve the risk of hardship to him so far outweighing the risk of impending injury or hardship to the plaintiff that it is unjust that the court should intervene, due account being taken of the protection to the defendant by an undertaking as to damages by the plaintiff, then no interlocutory relief should be granted.

Despite American Cyanamid, when forced into this consideration of balance of convenience a critical factor is often the degree of probability with which it appears that the plaintiff will subsequently succeed at the final hearing. However, in this regard all evidence of hardship really is a matter of weight and the weight of any particular

evidence of hardship by the defendant may be considerably reduced by other circumstances such as the fact that the acts in question are clearly wrongful or that the defendant has wantonly or recklessly acted in disregard of the rights of the plaintiff.

In all applications for an interlocutory injunction the court considers the availability of other remedies. The first and most obvious is, of course, damages. Others include early trial, undertakings not to perform the alleged wrongful acts, the keeping of an account by the defendant (of his profits). It must be remembered that a plaintiff will not be forced to accept a defendant's undertaking or the keeping of an account unless the hardship to the defendant outweighs any possible risk of injury to the plaintiff unless it appears that he will be sufficiently protected thereby.

In the discretionary area laches or delay may also be considered. Such are not fatal to an application but they may affect the outcome where the court is satisfied that the delay has made it unjust to grant the remedy sought. As well, the court may conclude that it is unjust to grant one remedy in these circumstances yet grant another, e.g. refuse the injunction and direct either the undertaking not to perform certain acts or the accounting if it is appropriate.

Courts of equity have always used its power to require undertakings by the plaintiff where interlocutory injunctions were sought. The one which, though invented for ex parte application, has gained universal acceptance in almost all interlocutory injunctions is the undertaking of the plaintiff as to damages. This is the area of protection for the defendant who may have had little time to establish his case and also satisfies the court that justice will prevail where decisions must be made where the evidence is incomplete.

Thus the purpose of this undertaking is to enable the court to recompense a defendant temporarily enjoined for the damage he has suffered where he succeeds at the trial in showing that he ought not to have been enjoined or was enjoined contrary to his rights.

A significant consideration here is whether the plaintiff is able to respond to the undertaking if required. If it is obvious he cannot then, of course, the undertaking is worthless, a factor considered in the exercise of the court's general discretion.

As well, a court may impose other conditions upon a plaintiff such as payment into court of security (frequently done where plaintiff not in the jurisdiction). Indeed the power of the court to impose any condition is

unlimited and the court, in particular circumstances, may consider any condition which would be just in those circumstances, always keeping in mind the claim of the plaintiff and the position of the defendant and the possibility of the final outcome of the case being against the plaintiff.

In opposing interlocutory injunction applications the matter of delay or acquiescence by the plaintiff is often raised. To succeed in this, however, the defendant must establish that the plaintiff has not only delayed but delayed unreasonably and by so doing it would be unjust to grant the injunction either absolutely, conditionally or in some limited form. Delay then, is a matter of weight in the balance of convenience. Delay is explicable. A plaintiff could delay to better establish his case by obtaining further facts, or his delay could be that he has just come to realize the full effect of the injury he may suffer. There are many possible acceptable explanations. The general principle is that delay is not of itself a bar. Combined with other circumstances it may sometimes call for a denial of the remedy or an adjustment to the relief sought.

Where, on an application for an interlocutory injunction futility or impossibility of performance is

raised, unless clearly established, these again go into the mix of the balance of convenience.

Finally, in some circumstances, fraud and unclean hands may be considered. It is not sufficient merely for the defendant to show that the plaintiff has been guilty of inequitable or even dishonest conduct but it must be further shown that such have an immediate and necessary relation to the equity sued for, or that the wrong complained of is brought into existence or induced by some unconscionable conduct of the plaintiff, so that the protection he claims involves the protection of his own wrong. Again, where there is uncertainty as to the fraud or unclean hands these also go into the mix of determining the balance of convenience or the justness of granting the remedy.

While the foregoing cover most of the matters involved in the granting of interim injunctive relief there are many other discretionary matters, depending upon the circumstances of each case. Ultimately, however, the issue is whether in the particular circumstances of any case the most just course is to restrain the defendant from carrying out the acts which are apprehended until the matters in issue between the parties can be finally disposed of by court.

Materiality of any fact depends upon its relevancy to that issue. According to Spry, supra, at page 464, material considerations fall into three classes.

> *(1) all matters which affect the relative claims of the parties as against each other, such as hardship, unfairness, laches, etc.;*
>
> *(2) all matters which affect the interests of persons not before the court; and*
>
> *(3) matters of policy, such as where a party misleads the court or fails to disclose matters which in the particular circumstances it is his duty to disclose.*

A special type of interlocutory interim injunction is the "Quia Timet" injunction. Here the same considerations apply but the court here attempts to balance the magnitude of the evil against the chances of its occurrence. Since in most injunctions the court is concerned with future conduct, the considerations here are not substantially different except a greater inquiry is made into the likelihood of the occurrence of the events suggested as about to occur. Where a plaintiff satisfies the court of the reasonable probability of the occurrence of the events, a substantial risk of imminent and serious injury, the balance of convenience in his favour, with all the factors already explained, then it would only be in exceptional circumstances of over-riding prejudice to the defendant that an interlocutory

injunction would not be granted.

Not all interlocutory injunctions are sought to last to the final hearing or further order. Some are issued to a named date or further order. These are called interim injunctions. Generally it is contemplated that on the named date the applicant may seek a further order. Ex parte injunctions are usually granted in this manner. The granting of the interim injunction depends upon two considerations. First it must be shown that in all the material circumstances the plaintiff requires immediate protection. Secondly it would be unjust to grant the protection beyond the named date. Again all the foregoing considerations come into play. They may be extended from time to time to further named days if the circumstances so warrant.

It must be always remembered that the court, in exercising its discretion, may grant the interlocutory or interim injunction absolutely, or limited or conditionally and may also include such terms as it deems just.

Interlocutory injunctions may also be mandatory, i.e. compelling the performance of particular acts as opposed to a prohibitory order preventing the performance of particular acts. Here, as well, all the foregoing considerations are an integral part of the deliberations