

# **PRESERVATION OF RIGHTS IN PENDING LITIGATION**

## **RULE 40**

### **INJUNCTIONS AND MANDATORY ORDERS**

#### **HOW OBTAINED**

**40.01** An interlocutory injunction or mandatory order under sections 44 and 45 of the *Judicature Act* may be obtained on motion to a judge by a party to a pending or intended proceeding.

#### **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.

##### **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.

(3) An extension may be granted on a motion without notice for a further period not exceeding ten days.

##### **Labour Injunctions Excepted**

(4) Subrules (1) to (3) do not apply to a motion for an injunction in a labour dispute under section 45 of the *Judicature Act*.

#### **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.

### **Early Dissolution of Injunction**

**40.04** 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 injunction obtained without notice.

### **FACTA REQUIRED**

- 40.05** (1) On a motion under Rule 40.01, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party.
- (2) The moving party's factum shall be served and filed, with proof of service, at least seven days before the hearing.
- (3) The responding party's factum shall be served and filed, with proof of service, at least four days before the hearing.

*Hawker v. BNS*, 2021 PESC 21

The court dismissed a motion to extend an interlocutory injunction, as there were serious questions to be tried, no irreparable harm was demonstrated, and the balance of convenience did not favour the injunction.

*Diversified Metal v. Trivett*, 2014 PESC 25

The defendant sought an order compelling the plaintiff to comply with an undertaking to pay any damages arising from the granting of an interlocutory injunction.

The Court denied the motion stating it is only after a full airing of the issues at trial and a determination of the plaintiff's ultimate success or failure that it would be appropriate for the Court to turn its attention as to whether the plaintiff ought to be held to the undertaking given and to determine what damages actually flow from the undertaking.