

# Injunctions

Both obtaining and responding to extraordinary legal remedies such as injunctions require the support of a highly skilled and experienced legal team. We have extensive experience and knowledge in this specialized practice area and have successfully obtained and responded to a variety of injunctions on an urgent basis, across a wide variety of industries and practice areas such as commercial litigation, employment law, public law, and intellectual property.

Our team has the expertise and know-how to deal with the multi-faceted risks posed by all types of injunctive relief, including prohibitive, mandatory, and temporary Injunctions, as well as Mareva, Anton Piller, and Norwich Orders. We have represented individuals and organizations in high profile, and multi-jurisdictional matters. Our broad experience in dealing with complex and urgent matters in this area provides us with the exceptional ability to coordinate strategies and tailor our approach in the most efficient and effective manner based on our clients' needs.

## SELECT CASES

- **Max Aicher (North America) Realty Inc v Stelco Inc** – Counsel to a supplier of hot rolled steel bar products in successfully obtaining an interlocutory injunction preventing the termination of a supply agreement for a period of time.
- **7912854 Canada Inc v Sunprotection Group Inc et al** – Counsel to leading window coverings designer and manufacturer, Altex, in a trademark infringement, passing off, false advertising, trade libel and unfair competition action in the Federal Court of Canada.
- **Wyse Meter Solutions Inc v Carma Corp** – Counsel to the responding parties in successfully obtaining the dismissal of a motion brought by an employer seeking an interlocutory injunction to prevent a former employee from continuing to work for their competitor.
- **Li et al v Barber et al** – Agent for class counsel in a class proceeding by residents, employees, and businesses in Ottawa against the Freedom Convoy organizers. Successfully obtained an *ex parte* Mareva order freezing donations made to Freedom Convoy organizers and preserving the funds for the benefit of Ottawa residents, employees, and businesses.
- **Aon Reed Stenhouse Inc v Iannetta** – Counsel to the successful corporate Defendant in an action seeking injunctive and other extraordinary relief arising from the departure of a former employee of the Plaintiff. Successfully obtained costs against the Plaintiff and resisted the injunctive and other relief as against the corporate Defendant.
- **Zap Holdings Ltd v Roman Cheese Products Ltd** – Counsel to the defendants in an oppression claim arising from historic share issuances.

Successfully resisted as injunction seeking various mandatory orders.

- **Petrochemical Commercial Company International Ltd v Nexus –** Counsel to individual respondents in an application relating to a worldwide and multijurisdictional Mareva injunction, including Malaysia, Cyprus and Australia.
- **Northrop Grumman Corp v OpenText Corp –** Counsel to the responding party on an interlocutory injunction relating to an alleged business disruption from the termination of software license agreements.
- **Healthy Body Services Inc v Raytek Communications –** Counsel to the plaintiff in the trial and appeal of an action to recover proceeds of fraud alleged to have been knowingly received from a convicted fraudster.
- **Cambridge Elevating v Niagara Belco –** Counsel to the plaintiff employer in an action and an injunction to restrain former employees from the misuse of misappropriated confidential information.
- **Faas v Centre for Addiction and Mental Health Foundation –** Counsel to the respondent Centre for Addiction and Mental Health Foundation in an application and appeal by a donor to have an investigation conducted by the Public Guardian and Trustee into how the Foundation had used his donation. The Foundation was successful in resisting the relief sought at the application stage, and in having that decision upheld at the Court of Appeal for Ontario.
- **Cardinal v Cleveland Indians Baseball Company –** Counsel for Douglas Cardinal in proceedings to restrain the use in Canada of the Cleveland baseball team's name and logo on human rights grounds.
- **Google Inc v Equustek Solutions Inc –** Counsel to Google in an appeal to the Supreme Court of Canada from decisions of the Supreme Court of British Columbia and British Columbia Court of Appeal in a novel case regarding the limits to be placed on injunctions granted against non-parties.
- **York University v Markicevic –** Counsel to plaintiff University in a successful trial of an action arising from fraud by senior university executives in connection with construction and maintenance work.
- **Ferrero SpA v 218587 Ontario Limited –** Counsel to the defendant in a proceeding relating to the sale of food products containing the plaintiff's trademark. Successfully opposed an interlocutory injunction to restrain the sales of those products.
- **SG Air Leasing Limited v Inchatsavane Company (Proprietary) Limited –** Counsel to the successful applicants in an application to recognize and enforce a worldwide freezing order in respect of an aircraft.
- **Canadian National Railway Company v Canadian Pacific Railway Company and Shnerer –** Counsel to CN in respect of an injunction seeking non-solicitation and non-use orders against a departing employee who removed and misused confidential information.
- **Thyssenkrupp Industrial Services Canada Inc v DBS Hearn Inc –** Counsel to employee defendants in an action alleging conspiracy and theft of confidential information.
- **Best Theratronics Ltd v Canadian Nuclear Laboratories Ltd –** Counsel to Best Theratronics on an interlocutory injunction motion relating to a commercial contract dispute.
- **Estate Trustee During Litigation for the Estate of Paul Penna v Landen –** Counsel to Estate Trustee During Litigation of the Paul Penna Estate in a series of proceedings, including two appeals to the Ontario

Court of Appeal and a contempt trial, arising out of a massive fraud perpetrated by former Estate Trustee in his administration of the Estate.

- **East Guardian v Mazur** – Counsel to the applicant lender. Successful in obtaining a Mareva injunction and receivership over the respondent, a guarantor of the loans.
- **SCM Insurance Services Inc v Medisys Corporate Health LP** – Counsel to the plaintiffs, SCM Insurance Services Inc. and Cira Medical Services Inc., in an action for an Anton Piller order and an injunction restraining the sale of an independent medical examinations business.
- **Polar Wireless Corporation v Roberts** – Counsel to the successful plaintiff on a motion for an interlocutory injunction preventing former fiduciaries from unfairly competing with their former employer using confidential business information.
- **Canpages Inc v Quebecor Media Inc** – Counsel for the defendant on a motion for injunctive relief to prevent the defendant from soliciting and competing with customers of the plaintiff.
- **Canadian National Railway Company v Holmes** – Counsel to CN in a complex dispute involving employee fraud, accounting of profits, abuse of process, defamation and negligent exercise of statutory dispute. In the course of the proceedings, obtained Anton Pillar and Mareva injunctions in order to protect evidence and assets related to the alleged employee fraud.
- **Motion Picture Distribution Inc v Loewy** – Counsel for the plaintiff on a motion for injunctive relief enjoining defendant from using confidential information, competing with or soliciting employees from the plaintiff.
- **Operation 1 Inc v Phillips** – Counsel to a defendant in an action relating to the exercise of a power of sale on a mortgage. Successful motion to set aside Anton Piller and Mareva injunctions.
- **Berkshire Funding Initiatives Ltd v Trinity Capital Corp** – Counsel in a proceeding opposing an injunction for breach of fiduciary duty and theft of confidential information.
- **Trade Capital Finance Corp v Cook** – Counsel to a defendant in an action alleging receipt of fraudulently obtained funds, which included a motion and appeal relating to contempt of court.
- **Brantford (City) v Montour** – Counsel as amicus to the Superior Court in an application brought by The Corporation of the City of Brantford for an interlocutory injunction to prevent work stoppages on municipal sites within the City, and a motion brought by the respondents, First Nations' individuals, seeking to set aside two by-laws passed by the applicant prohibiting the blockage and disruption.
- **Confidential Fraud Recovery** – Counsel for a personal holding company targeted in a multi-million dollar fraud. Retainer included obtaining a Mareva injunction against fraudster, their family and related holding companies, in addition to locating and recovering assets purchased with the proceeds of the fraud. (*Prior to joining Lenczner Slaght.*)
- **Albert Gelman Inc v Pantziris** – Counsel for a Trustee in Bankruptcy in fraudulent conveyance, transfer at undervalue and oppression claim against relatives and associates of a bankrupt to satisfy a multi-million dollar judgment. (*Prior to joining Lenczner Slaght.*)
- **Farrell v Kavanagh** – Counsel to mortgagee in action seeking to validate a \$5 million mortgage registered on commercial properties against allegations of the borrower/owner that the mortgage was

fraudulent and unenforceable. (*Prior to joining Lenczner Slaght.*)

- **Michael L Goguen v Amber Laurel Baptiste** – Counsel to the plaintiff commencing an action to enforce a foreign judgement and obtaining a Mareva injunction in support of the action, ensuring that the defendants do not sell or dissipate any of their assets in Canada.

## SELECT PUBLICATIONS AND PRESENTATIONS

- **Ottawa and the Emergencies Act: A Big Round Table** – Monique participated in a roundtable presented by Osgoode Hall Law School on how the *Emergencies Act*'s invocation and measures relate to associated developments, particularly the Ottawa residents' class action lawsuit against the Freedom Convoy protesters and the resulting injunctions.
- **A Deep Dive into Injunctions and Extraordinary Remedies** – Sana Halwani spoke at the Ontario Bar Association's program titled A Deep Dive into Injunctions and Extraordinary Remedies. She shared her expertise on *Mandatory Injunctions and Norwich Orders*.
- **The Advocates' Society: Winning Injunctions** – Monique Jilesen once again served as faculty for The Advocates' Society professional development workshop *Winning Injunctions* on November 24, 2017. Monique discussed the skills and strategies required to seek and oppose injunctive relief.
- **The Advocates' Society: Winning Injunctions** – Monique Jilesen served as faculty for The Advocates' Society skills workshop *Winning Injunctions* on December 5, 2016.
- **Injunctions Primer for Litigators** – Monique Jilesen spoke at the session on *Injunctions Primer for Litigators* at the Donald Lamont Learning Centre on November 1, 2016.
- **The power and peril of a Mareva injunction** – Monique Jilesen's article on remedies for corporate victims of fraud appears in the March 13, 2015 issue of the *Lawyers Weekly*.
- **Anton Piller Orders in the Electronic Age: Normative and Practical Considerations** – Matthew Sammon's article appeared in the *Annual Review of Civil Litigation*, December 20, 2013.
- **Anton Piller Awards in the preservation of electronic evidence** – Matthew Sammon presented at the Law Society of Upper Canada program on Mastering the Art of Complex Civil Motions.
- **Injunctions: Anton Piller Orders Advice Privilege & Other Risk Factors** – Osgoode Professional Development, April 19-20, 2010

## BLOG POSTS

- **Patent Injunctions: "Anything but Unusual"** – The popular Canadian pastime of snowmobile litigation has turned up yet another interesting decision (*Bombardier Recreational Products Inc v Arctic Cat Inc, 2020 FC 946*) – this time on the topic of injunctions. This decision of Justice Roy arose from the moving parties' attempt to vary an Order issued by the Federal Court in *Bombardier Recreational Products Inc v Arctic Cat Inc, 2020 FC 691*. As Justice Roy noted, the Order itself was "anything but unusual," and was representative of injunctions issued in patent cases time and time again. Given this and the existing jurisprudence, it was perhaps a predictable result that the parties were denied any relief.
- **The Disaster Plaintiff: The Best Worst Litigation Strategy Created by and Starring Tommy Wiseau** –

The legacy of the movie *The Room*, Tommy Wiseau's infamously terrible 2003 cult classic, reached new heights (or lows depending on your point of view) last week when it made its mark on Canadian law in Justice Schabas' decision in *Wiseau Studio, LLC v Harper*. A movie lovingly advertised as providing a viewing experience akin to "getting stabbed in the head" prompted copyright litigation and, in the process, has provided a new story of the risks of pursuing an ill-advised litigation strategy through trial.

- **Hundreds of walnuts: Just annoying, or a nuisance?** – Lawyers sometimes describe cases as being like a law school problem. Sometimes that means that the case raises difficult and complicated questions of law and fact that are nearly impossible to resolve. And sometimes it means that the case raises an obscure issue that seems more like a dispute between property owners in 19th century England. *Gallant v Dugard* squarely falls into the latter category.
- **Want an injunction? It could cost you** – An interlocutory injunction is a valuable tool to maintain the status quo between parties, pending the resolution of litigation. Most disputes over whether an interlocutory injunction should be granted will depend on whether there will be "irreparable harm" if an injunction is not granted. However, as *Guelph Taxi v Guelph Police Service* shows, it is also critical that the party seeking an injunction give a meaningful undertaking to pay damages if the injunction is granted but the party is ultimately unsuccessful.
- **Freezing your own funds: How to vary your Mareva injunction** – What happens when you take the unusual step of freezing your own assets with a Mareva injunction, but later find you need to access the funds? In *Yan v. Chen, 2015 ONSC 4149*, the Ontario Superior Court considered an unusual request — a motion by the plaintiffs to vary a Mareva injunction they obtained in respect of their own bank account.
 

The two couples involved in the action - the plaintiffs, Yan and Wang, and the defendants, Chen and Szeto - each alleged that the other defrauded them of millions of dollars. The dispute gave rise to multiple criminal, quasi-criminal and civil proceedings.

In December 2013, the plaintiffs applied for injunctive relief in respect of accounts owned by them and the defendants. Based on the evidence, the defendants had access to the plaintiffs' account and had attempted, albeit unsuccessfully, to transfer funds from that account into their own. To prevent future attempted transfers, the plaintiffs included their account as part of the Mareva injunction. The Court granted the injunction, freezing that account, as well as various assets and accounts owned by the defendants.

The plaintiffs subsequently brought a motion to release funds from their frozen account to pay legal fees. The defendants brought a cross-motion to release funds from their own account for the same reason.

The test to be applied in varying a Mareva injunction to permit frozen funds to be used for living and legal expenses is set out in *Waxman v Waxman, 2007 ONCA 326*. However, the Court determined that different considerations apply when it is the plaintiff seeking the release of his or her own frozen funds. The plaintiff must first establish that he or she has a proprietary right to the funds. If the plaintiff satisfies this burden, the Court will go on to consider such factors as why the monies were frozen in the first place, the status of the action, the proposed use of the funds, and any competing claims to the funds.

Here, the Court granted both motions, finding that each party had established a proprietary right to the funds in their respective accounts. However, given the credibility issues and the particular circumstances of

the litigation, the Court released only a portion of the funds requested by the parties and ordered that the money was to be held in trust by their respective solicitors, to be used only for legal fees. The Court also specifically ordered that the funds were not to be used by the defendants to pay any costs awards to the plaintiffs.

In addition, the Court stayed all civil proceedings between the parties pending a determination of the issues in the action. The Court noted that the plaintiffs had access to significant funds to pay legal expenses. However, instead of proceeding with the action, they launched a series of other proceedings, both civil and criminal, incurring significant legal fees and requiring motions for access to additional funds to pay the fees.

This case, while peculiar, provides an important lesson: if you freeze your own bank account, keep your litigation costs under control and avoid engaging in multiple lawsuits. Otherwise, you may not be able to fund your own lawsuit.

- **Relying on an exclusion clause in a contract requires a careful approach** – The Ontario Court of Appeal recently had a chance to consider the law regarding exclusion clauses in the lease context.

### SELECT NEWS ARTICLES

- **Battle over convoy cash continues as freeze order extended to May** – CBC quotes Monique Jilesen on her recent court appearance, which extended the Mareva injunction freezing the funds donated to the Freedom Convoy protest and status of the digital currency. Monique says that the extension is to ensure all the money involved in the protests included in the civil case has been moved to the escrow account.
- **Digital currency donations for Freedom Convoy evading seizure by authorities** – CBC Ottawa interviewed Monique Jilesen comments on our recent Mareva injunction freezing the funds donated to the Freedom Convoy protest and status of the digital currency.
- **'Freedom Convoy' assets to remain frozen through end of March** – Monique Jilesen was quoted by CBC Ottawa on the status of the cryptocurrency that was frozen by Lenczner Slaght in a precedent-setting Mareva Injunction.
- **Freedom Convoy crypto holdings to remain frozen and in escrow pending lawsuit by Ottawa residents** – Monique Jilesen was quoted by Law Times on her recent court appearance on Monday, February 28 at the Superior Court of Justice where the Court ordered that crypto holdings donated for the freedom convoy protest remain frozen and placed into an escrow account pending the court's final decision on a proposed lawsuit against the convoy by Ottawa residents.
- **Ontario froze \$20 million in Freedom Convoy assets—now what? We asked Monique Jilesen, the Toronto-based lawyer who filed the injunction** – Monique Jilesen features in Toronto Life as the woman responsible for separating the leaders of the Freedom Convoy from millions of dollars in assets. She is interviewed about her recent success in obtaining a Mareva injunction, an extraordinary legal remedy, on behalf of the law firm representing the residents of Ottawa in a \$300-million class-action lawsuit against the convoy leaders and protestors.
- **Court extends rare order to freeze up to \$20M in crypto, cash donations to 'Freedom Convoy'** – A CBC Ottawa article mentioned Lenczner Slaght's successful involvement in the Mareva injunction issued on Feb. 17 by Justice Calum MacLeod. Lenczner Slaght brought this motion forward, acting for Champ & Associates, the law firm representing Ottawa residents in a proposed class-action lawsuit against



convoy leaders and protesters.

- **'Freedom Convoy' donations frozen, could flow to Ottawa residents** – Monique Jilesen was quoted by CTV News Ottawa on how freezing the funds donated to the Freedom Convoy protest will benefit Ottawa residents and businesses affected by the protest if a proposed class action is successful.
- **Superior Court freezes millions in cash and crypto donations raised by freedom convoy organizers** – Law Times interviewed Monique Jilesen on the legal test for a Mareva injunction, the implications of a successful freezing order on the Freedom Convoy leaders' assets, and the next steps for extending the order.
- **Rare legal move freezes cash, crypto tied to Ottawa protest** – Monique Jilesen was interviewed on CBC News: The National discussing her recent success in a rare legal move freezing the bitcoin and cryptocurrency of Freedom Convoy leaders. Click here for a clip of the interview.
- **A civil law “nuclear bomb” to freeze organizers’ assets** – Monique Jilesen is quoted in a La Presse article to discuss Lenczner Slaght's success in securing a Mareva order freezing the bitcoin and cryptocurrency of Freedom Convoy leaders to help benefit Ottawa class members.
- **Court Freezes Millions in Canadian Trucker Convoy's Donated Cash and Cryptocurrency** – Law.com International interviewed Monique Jilesen for her role in obtaining the first Mareva injunction freezing cryptocurrency in Canada for the benefit of Ottawa class members who are suing for damages against the leaders of the Freedom Convoy.
- **Citizens group wins court-ordered freeze of convoy protest accounts, cryptocurrency** – In the Toronto Star, Lenczner Slaght lawyers, Monique Jilesen, Madison Robins, and Sarah Bittman are mentioned for their role in acting for Champ Law in a precedent-setting Mareva injunction that froze the bitcoin and cryptocurrency assets of the Freedom Convoy leaders.
- **Investors say millions are missing and a businessman can't be found. How an alleged Ponzi scheme played out** – CBC interviewed Monique Jilesen for her expertise in civil fraud and injunctions. She comments on how a Mareva injunction is a "powerful legal tool" to trace where and to whom money has been sent within Canada.
- **The Fight Against Cleveland's Baseball Team Name and Logo in Ontario Continues** – World-renowned Canadian activist for Indigenous Peoples, Douglas Cardinal, is continuing the fight against the Cleveland's baseball team's name and logo.
- **Meet the man behind fight to keep Indians logo out of Canada** – Paul-Erik Veel was quoted in the USA TODAY Sports article *Meet the man behind fight to keep Indians logo out of Canada* on June 28, 2017 regarding Douglas Cardinal and his discrimination case against the Cleveland team name and logo.
- **Battle Over Cleveland MLB Team Name and Logo Moves to the World Series** – Monique Jilesen is quoted in the New York Times article *Battle Over Indians' Name and Logo Moves to the World Series* on October 22, 2016.

- **Rejection of injunction doesn't address whether logo and name are discriminatory** – Rebecca Jones and Paul-Erik Veel were quoted in the Canadian Lawyer article *Rejection of injunction doesn't address whether logo and name are discriminatory* on October 19, 2016.
- **Activist seeks injunction against Cleveland MLB team name and logo** – Monique Jilesen is quoted in the Canadian Press / TSN article *Activist seeks injunction against 'Cleveland Indians' name and logo* on October 16, 2016.
- **Talking the Best Solution: Injunction Case: Neutral lawyers gives advice to judge** – Will McDowell, amicus curiae, advises talking the best solution in injunction case against native protestors.