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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.

In that case, the Guelph Police Chief revoked Guelph Taxi’s taxi licence. Guelph Taxi appealed the Police Chief’s decision to the Guelph Police Services Board, which dismissed its appeal and upheld the Chief’s decision. Guelph Taxi then brought an application for judicial review of the Police Services Board’s decision.

In advance of that application being heard, Guelph Taxi brought a motion for an interlocutory injunction mandating the return of its taxi licence, pending the determination of the application for judicial review.

Justice Trimble of the Ontario Superior Court of Justice dismissed Guelph Taxi’s motion, primarily because Guelph Taxi had failed to provide a meaningful undertaking as to damages.

As the Court noted, the *Rules of Civil Procedure* require a party seeking an injunction to give an undertaking as to damages or to obtain relief from the Court for that requirement. Guelph Taxi did not lead affidavit evidence giving an undertaking as to damages; rather, at the hearing of the motion, Guelph Taxi’s counsel orally gave an undertaking on behalf of the company.

Characterizing an undertaking as to damages as an “essential condition” for the issuance of an injunction, the motions judge held that the oral undertaking given by Guelph Taxi’s lawyer was insufficient. The Court held that an undertaking as to damages should be given in an affidavit, “by a person with clear authority to bind the corporation giving it”. Moreover, the Court held that there was no evidence that Guelph Taxi or its principals had sufficient assets to satisfy an award of damages that might ultimately be made.

The Court’s decision is a reminder that, for those who can afford it, obtaining an injunction can be costly. If, as the Court

suggests, an undertaking as to damages is to be more than an afterthought, litigants will be forced to put their assets at risk in order to preserve the status quo.