



**Background paper for the
"Seminar on Strengthening the Enforcement and
Administration of Environmental law in North America."
PANEL 2.- Procedural and evidentiary challenges for effective
environmental law enforcement. (d) Urgent situations.
Author: CEC Secretariat.**

Under common law and equity, the standard injunction requires a finding by the court that: 1) there is a serious question to be tried; 2) the actions of the respondent will lead to irreparable harm (which cannot be compensated in damages); 3) the balance of convenience lies in favour of an injunctive remedy.¹ It is worth noting that this Canadian test justifying an injunction is very similar to the principles relied upon in the U.S.²

Other forms of interlocutory relief are available, such as interlocutory injunctions, prohibitive injunctions and *quia timet* injunctions. Interlocutory injunctions are a provisional remedy to restrain an activity on a temporary basis until the court can make a final decision after trial. In Ontario, s. 101 of the *Courts of Justice Act* provides that an interlocutory injunction or mandatory order may be granted with or without notice where the judge deems it just or convenient to do so. The moving party must give an undertaking regarding damages as a condition of obtaining an interlocutory injunction. In practice, the test is similar to the standard injunction test.

Prohibitive injunctions are prohibitive orders which restrain or prevent the defendant from committing a specified act. The discretion to award prohibitive injunctions is governed by the same test noted above. *Quia timet* injunctions may also be granted before any harm has actually been suffered, and the court is asked to predict that harm, though uncertain in its nature, will occur in the future.

In terms of urgent remedies available under statute, the variety of administrative compliance powers available to provincial and federal officials in emergency situations include control orders³, stop orders⁴, preventive orders⁵, remedial orders⁶. These are generally resorted to after discussion and consultation have failed to resolve an environmental situation and are governed by procedural preconditions. Environmental protection compliance orders are available under the *Canadian Environmental Protection Act, 1999* (CEPA, 1999) in ss. 234-271.

In addition, under CEPA, 1999, injunctions may be sought by individuals and by the government: the Minister is authorized to seek an injunction in order to prevent or stop a violation of the legislation (s. 311), and any person who suffers (or is about to suffer) loss

¹ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. More generally urgent remedies, see Robert Sharpe, *Injunctions and Specific Performance*, Toronto: Canada Law Book, 1983; *Law of Remedies: principles and proof*, Law Society of Upper Canada, Scarborough, Ont.: Carswell, 1995.

² *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396.

³ See s. 7 and s. 124 of the *Ontario Environmental Protection Act, R.S.O. 1990*.

⁴ See s.8 and s. 129 of the *Ontario Environmental Protection Act, R.S.O. 1990*.

⁵ See s. 18 of the *Ontario Environmental Protection Act, R.S.O. 1990*.

⁶ See s. 17 of the *Ontario Environmental Protection Act, R.S.O. 1990*.



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or damage as a result of conduct that contravenes the legislation may also seek an injunction (s. 39). Note that CEPA, 1999, does not give right to a person who has not directly suffered a loss from the damage to a public resource to seek an injunction remedy.

A provincial example of a statutorily-created injunction may be found in Ontario's *Environmental Bill of Rights*, whereby any resident of Ontario may bring an action and seek an injunction against a person who has (or will imminently) contravene an environmental law and has caused (or will imminently cause) significant harm to a public resource.⁷

⁷ *Environmental Bill of Rights*, 1993, c. 28, s. 84 (6) and 93(a).