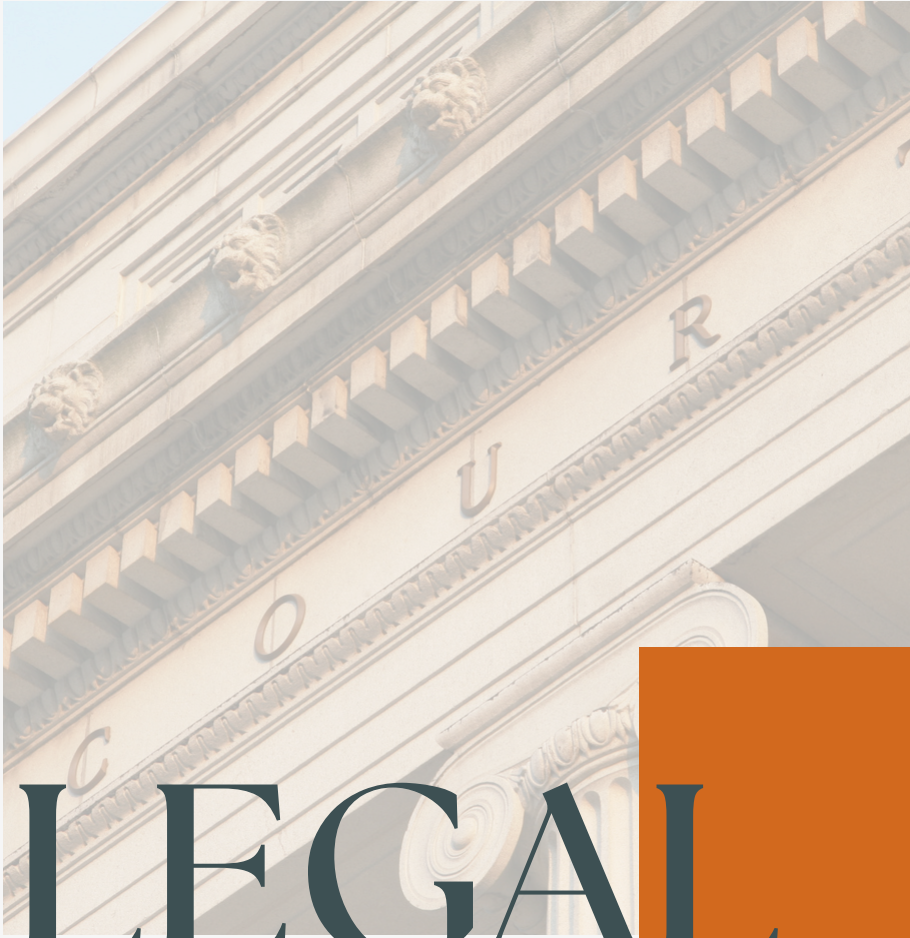




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LEGAL INSIGHT

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Mastering the Clock : Effective
Advocacy in Urgent Injunctions

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INTRODUCTION



Injunction applications are often a race against time; They are court orders compelling a party either to refrain from a particular act (a **prohibitory injunction**^[1]) or to perform a specific act (a **mandatory injunction**^[2]). Whether it's to freeze assets (**Mareva Injunction**), to enter another's premises to secure evidence (**Anton Piller Order**), or to restrain a breach of contract (**Quia Timet Injunction**), urgency governs every stage of the process, from the drafting of papers to oral submissions before the court.

In the Malaysian context, where the courts attach significant weight to procedural propriety and the duty of full and frank disclosure, effective advocacy in urgent injunctions requires more than mere speed. It demands preparation, structure, and an unwavering commitment to candour and precision.

This article examines **the essential elements of effective advocacy in urgent injunction matters, focusing on how counsel can act swiftly without compromising credibility, clarity or ethical duty.**

[1] S.52 Specific Relief Act 1950

[2] S.53 Specific Relief Act 1950



RATIONALE & GOVERNING PRINCIPLES

The grant of an injunction is a discretionary remedy, never automatic. This is where the Court will refer to the long-established **American Cyanamid principles**^[3], which require the applicant to demonstrate that: -



1. There is a serious question to be tried;
2. Damages would not be an adequate remedy;
3. The balance of convenience lies in favour of granting the injunction; and
4. An undertaking as to damages^[4] is provided to compensate the respondent should the injunction later prove to have been wrongly granted.



The overarching objective is to preserve the status quo and prevent irreparable detriment pending trial or determination.

In genuinely urgent circumstances, the applicant may proceed by way of an ex parte application^[5] through a certificate of urgency and supporting affidavits. This is to indicate to the Courts that the matter is urgent and a need to obtain a hearing date earlier. This is where the **applicant must show that delay would defeat justice, either by rendering a future judgment ineffective or by causing harm that cannot be remedied by monetary compensation.**

[3] American Cyanamid Co v Ethicon [1975] 1 All ER 504

[4] Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 AMR 373; [1995] 1 MLJ 193

[5] Order 29 rule 1(2) Rules of Court 2012



COMMENCING AN URGENT APPLICATION — AND KEY INGREDIENTS IN AN EX-PARTE HEARING

While seeking ex parte relief, particularly injunctive relief, the urgency must be supported by evidence, not adjectives. Courts are more persuaded by a dated chronology than by emotionally charged or dramatic language.

Procedural steps

To commence an urgent ex parte application, the Applicant must file an ex-parte Notice of Application together with an Affidavit in Support^[6] stating material facts, urgency and undertaking as to damages and the precise relief sought by the Applicant.

Key Ingredients at Ex-Parte Stage

1. **Full and Frank Disclosure^[7]** – the applicant must disclose all relevant material facts, including those facts which may lead the Court not to grant the ex-parte application^[8];
2. **Clear Legal Basis** – identify whether the injunction is interlocutory, mandatory, or Mareva and the correct legal test applicable;
3. **Evidence of Urgency** – Mere assertion of urgency is insufficient. There must be a demonstrable immediate risk of irreparable harm, dissipation of assets or other prejudicial consequences that justify departing from inter partes procedures; and
4. **Undertaking as to Damages** – A mandatory safeguard in most injunction cases. The Applicant must undertake to compensate the Respondent if it is later found that the injunction was wrongly granted.

[6] Order 29 rule (2A) Rules of Court 2012

[7] East Coast Economic Region v Development Council v Inai Kiara Sdn Bhd & Anor and other appeals [2019] 12 MLJ 143

[8] Order 29 rule (2A)(e) Rules of Court 2012

It is imperative to remember that an injunction is a discretionary remedy granted by the Courts. The Court places great weight on the applicant's conduct. Selective presentation of facts or material non-disclosure may not only result in the injunction being discharged, but may also undermine the applicant's credibility and lead to adverse cost consequences. The duty of full and frank disclosure is not a mere formality, but it is a substantive obligation essential to the integrity of the ex parte process.



AFTER THE ORDER – SERVING THE INJUNCTION

Securing the injunction is only the beginning. Its effectiveness depends heavily on proper service and strict adherence to procedural timelines. Execution, not just the grant, is what gives an injunction its teeth.

Service of the Order

Once the ex parte order is granted, prompt service is critical. An ex-parte interim injunction must be served in **seven (7) days** of the date of order^[9]. This is because such interim injunction will automatically lapse **twenty one (21) days** from the date it was granted^[10].



[9] Order 29 rule (2BA) Rules of Court 2012

[10] Order 29 rule (2B) Rules of Court 2012

THE INTER-PARTES STAGE — SUSTAINING THE INJUNCTIVE ORDER

Once the Courts granted the order, the Courts will fix a date to hear the application inter-partes within **fourteen (14) days** from the date of the order^[11]. This is where the respondent of the ex-parte order will appear in Court to contest the continuance of the injunction.

At this stage, the emphasis shifts from urgency to substantive justification. The Applicant must now convince the Court why the injunction should be maintained until the final disposal of the matter.

Key Steps at the Inter-Partes Hearing:

Review the Respondent's Affidavit in Reply

- i. Identify disputed facts, legal objections, or challenges to the grounds of urgency. Be prepared to respond point-by-point with evidence and case law.

Refine your narrative

- ii. Ensure consistency between the ex parte affidavit and your reply. Address factual disputes with clear documentation and credible testimony.

Maintain Focus on Legal Thresholds

- iii. Reiterate the applicable legal test (e.g. serious question to be tried, balance of convenience, irreparable harm). Emphasise the ongoing risk if the injunction is lifted prematurely.

Be Prepared for Conditional Orders

- iv. The Court may vary the order, impose undertakings, or direct timelines for filing pleadings or discovery.

[11] Order 29 rule (2BA) Rules of Court 2012



CONCLUSION

The inter partes hearing is the true battleground for sustaining interim relief. With urgency no longer the primary concern, the Court expects a measured, fact-based and legally sound justification. Adherence to procedural timelines and clarity in legal reasoning are essential to preserving the advantage gained at the ex parte stage.

The views expressed herein are those of the author and do not necessarily reflect the views of the firm. Should you have any legal queries, corporate or otherwise, please feel free to reach out to the firm for further assistance.



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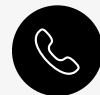


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