

**WHEN CERTAINTY AND LEGALITY COLLIDE: THE EFFICACY OF
INTERDICTIONARY RELIEF FOR THE CESSATION OF BUILDING WORKS
PENDING REVIEW PROCEEDINGS**

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Summary

Effective legal redress against unlawful building works or construction activities can be an elusive target. Given the desirability of legal certainty attached to administrative decisions in terms of which building plans are approved, should the practical implications of this principle trump the equally important principle of legality? This article examines the – at times – competing imperatives of certainty and legality in the context of several recent decisions of the Western Cape High Court that related to applications for interdictory relief for the cessation of allegedly unlawful building works. The practical difficulties for an applicant in these circumstances are particularly acute when the relief is sought pending the final determination of an application for judicial review of the impugned administrative decision to grant building plan approval. The article highlights the approach of the Western Cape High Court in three cases to invoking considerations of legality in circumstances where building works had reached an advanced stage and the respondent had effectively achieved what has been described as an "impregnable position". The principal difficulty for an applicant lies in the fact that where interdictory relief is sought against building works that have reached an advanced stage, this potentially renders an eventual successful review application *brutum fulmen*.

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Keywords

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