

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Soup Pot Ideas Inc. v. 778938 Ontario Limited*, 2026 NSSC 136

**Date:** 20260428

**Docket:** Hfx No. 550348

**Registry:** Halifax

**Between:**

Soup Pot Ideas Inc., carrying on business  
as Obladee, A Wine Bar

Applicant

and

778938 Ontario Limited, carrying on business  
as Starfish Properties

Respondent

<b>INJUNCTION MOTION DECISION</b>
-----------------------------------

**Judge:** The Honourable Justice Jamie S. Campbell

**Heard:** April 27, 2026, in Halifax, Nova Scotia

**Counsel:** Matthew MacLellan and Daisy Fitzgerald, for the Applicant  
Richard Norman, for the Respondent

### **By the Court:**

[1] Soup Pot Ideas Inc. carries on business as Obladee, A Wine Bar. The Ontario numbered company, 778938 Ontario Limited carries on business as Starfish Properties. Obladee is seeking an injunction to prevent Starfish Properties from evicting them from their place of business on the ground floor of the Tramway Building on Barrington Street in Halifax. They have been there for over 15 years. They are the last remaining tenants in the building. Starfish Properties notified Obladee that they intended to terminate their commercial lease on January 31, 2026. Obladee rejects what it characterizes as Starfish Properties' repudiation of the lease and will seek specific performance of the lease.

[2] On January 23, 2026, Obladee brought a motion for an interim injunction to prevent Starfish Properties from terminating the lease or otherwise evicting Obladee from the building. That motion was heard on an emergency basis, before Justice McDougall on January 29, 2026. On February 2, 2026, Justice McDougall granted a time limited interim injunction. Justice McDougall granted the interim injunction, not until a further motion could be heard, but only until April 30, 2026.

[3] The matter was set down for hearing once again on an emergency basis. Obladee says that that if an injunction is not granted they will almost certainly be evicted on May 1, 2026, and their business will have to cease operation.

[4] This case was heard on Monday, April 27, 2026. The interim injunction expires on Thursday, April 30, 2026.

### **The Test**

[5] An interlocutory injunction is an extraordinary remedy. In granting that relief a court is making an order with respect to the case before the merits of the case have been heard at trial. They often involve the need to preserve the *status quo* pending the trial. Things become more complicated when the *status quo* is not an option.

[6] The three-stage test for interlocutory injunctions is set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. The first question is whether there is a serious question to be tried. The second question is whether the applicant would suffer irreparable harm if the injunction were not granted. The third and final assessment is which of the parties would suffer greater harm from granting or refusing the injunction.

[7] The three parts of the *RJR-MacDonald* test are not each conditions precedent.

In the context of preliminary relief, the test is a relative and flexible one which, it is submitted, necessarily involves an evaluation of the other factors. Indeed, it has been held that an interlocutory injunction may be granted even where “irreparable” harm has not been demonstrated. Similarly, attempts to make irreparable harm a condition precedent, and hence a threshold test, have been rejected. These cases suggest that the “irreparable harm” requirement can only be defined in the context of a risk-balancing exercise. If the plaintiff’s case looks very strong, harm may appear to be more “irreparable” than where the plaintiff has only an even chance of success. While judges seldom explicitly acknowledge that there is an “overflow” effect produced by the strength or weakness of other factors, it cannot be doubted that as a practical matter it exists. The important point is that irreparable harm has not been given a definition of universal application: its meaning takes shape in the context of each particular case. However it is defined, failure to establish irreparable harm is commonly cited as the primary reason for refusing injunctive relief. (Sharpe, Robert, *Injunctions and Specific Performance*, 2025 Thompson Reuters, 69-71)

[8] The three parts of the test should not be seen as “a series of independent hurdles” but as evidence “relevant to the central issue of assessing the relative risks of harm to the parties from granting or withholding interlocutory relief.” (Sharpe, 2-97). The factors relate to each other and strength in one may compensate for weakness in another. They provide a framework within which to assess whether an injunction is warranted and the focus must remain on the equity of the situation. There are interconnections among the three tests and they are not watertight compartments. *Potash Corp. of Saskatchewan Inc. v. Mosaic Potash Esterhazy Limited Partnership*, (2011), 341 D.L.R. (4<sup>th</sup>) 407, at para. 26, [2012] 2 W.W.R. 659 (Sask. C.A.).

#### *Serious Issue for Trial*

[9] Much of the evidence on this motion related to the first part of the test. That is an assessment of the merits of the case. That assessment does not involve resolving conflicts of evidence or deciding “difficult questions of law”. *Yang v. Optimo Group Inc.*, 2023 NSSC 161, para. 46. The issue at this stage is not which party is right. It is whether there is an arguable case and to some extent how arguable that case is.

[10] The dispute relates to the terms of the commercial lease. It also hinges on the deteriorating condition of the Tramway Building and the extent to which that

affects the part of the building occupied by Obladee. Obladee started renting the property in 2010. That lease was extended to December 31, 2026. When Starfish Properties bought the Tramway Building, they had knowledge of the lease. There had been some issues with the façade of the building and Orders to Comply had been issued by the municipality. They were issued on July 4, 2023, July 24, 2023, April 19, 2024, February 24, 2025, May 9, 2025, and September 9, 2025. The last of those was the first order issued after Starfish Properties had bought the property. That September 25, 2025 Order to Comply required Starfish Properties to immediately submit a building permit to secure and replace faulty exterior elements. That would require a proposal from a qualified architect or engineer and was required to include a formal schedule showing a time for completion. Starfish Properties was required to maintain the existing scaffolding and covered walk way and protect the public from falling elements until the work was completed.

[11] Starfish Properties says that in the development of those plans they found out that there were other structural problems with the building. Starfish Properties developed a plan to do all the work required to deal with the problems with the façade as well as the other issues. That involved both internal and external renovations that would take months to complete.

[12] Ivor MacDonald is a structural engineer with BMR Structural Engineering. He was retained by Starfish Properties to oversee the structural work required by the September 25, 2025 Order to Comply. In addition Mr. MacDonald noted, the work was required because the Tramway Building's envelop, or façade, is in poor condition and failing. The failure of the building envelop would have several effects. Pieces of concrete may fall off the building and injure someone below. Water may enter the building and had in fact entered one part already. The envelop is load-bearing and forms part of the structural system for the building. The system has deteriorated because of the entry of water and the corrosion of reinforcing steel. That compromises the ability to resist applied loads. The exterior elements of the Tramway Building are not just "isolated exterior elements". The exterior concrete and reinforcing steel are continuous and interconnected with the interior system. They function as what Mr. MacDonald called an "integrated structural system". Limiting façade work to the exterior face of the building would not address the full extent of the deterioration of the structural system.

[13] Mr. MacDonald says that repairing the building envelop involves several stages of work. The first is exterior work. The next stage would involve interior demolition. That is required because the exterior structural components are cast

integrally with the interior components. After the interior remediation work is completed the final stage would be the completion of the exterior envelop by installing architectural finish.

[14] On September 29, 2025, Starfish Properties gave written notice of termination of the lease to Obladee. On October 9, 2025, Obladee acknowledged receipt of the letter but denied that Starfish Properties had the right to terminate the lease. On November 24, 2025, Starfish Properties gave Obladee another notice of termination and offered to help Obladee in moving to a new location. Obladee responded on December 12, 2025, saying that there was no contractual basis for the termination. Starfish Properties replied that the lease would terminate on January 31, 2026. That gave rise to these proceedings.

[15] Starfish Properties argues that they had the right to terminate the lease under the terms of that commercial lease. Obladee says that they did not.

[16] Section 12.02 of the lease says that if the premises or a substantial part of the premises are damaged or rendered untenable “by fire or other cause” and the damage cannot be repaired within 90 days, either party may within 60 days, elect to terminate the lease. Starfish Properties says that the Order to Comply constitutes an “other cause” and the Tramway Building cannot be occupied when the required remediation work is being done. That will take more than 90 days.

[17] The argument made by Obladee is that the Order to Comply did not make the building untenable. They acknowledge that remediations are required. But they say that it is not clear how the Order to Comply makes their space in Tramway Building untenable. It has its own entrance and is not connected with the ventilation system for the rest of the building. Section 12.02 says that should the premises or a substantial part of them “be damaged or rendered untenable by fire or other cause” and “the damage” cannot be repaired within 90 days “after such fire or other cause” either party can elect to terminate the lease. The wording of the section suggests that “other cause” would be something that happened to the building that makes it unsafe or inappropriate in some other way for the tenant to occupy. The Order to Comply was not something that happened to the building, like a fire or flood. Moreover, there have been Orders to Comply issued since 2023 and the building has been occupied since then. They have not made the building untenable.

[18] The parties also disagree on whether it will take 90 days or more to complete the remediation of the building façade which is the subject of the Order to Comply.

Obladee argues that Starfish Properties has not provided substantial support for the claim that the façade remediation alone will take more than 90 days.

[19] This is not a case in which the eventual outcome of a trial can or should be predicted. The case will likely involve expert opinions and a substantial volume of evidence about the nature of the repairs that are required. At this stage in the process Obladee has not brought any evidence from an engineer or architect to dispute what Ivor MacDonald described as the condition of the building and the requirement for significant interior demolition and remediation. That would be a matter for the trial.

[20] The case brought by Obladee is an arguable one. It may be, as they claim, that the extent of the structural work said by Starfish Properties to be required and the need to have Obladee out of the building while the work is performed is a pretense for triggering section 12.02 of the lease. It may be that the work could be done safely within 90 days while Obladee continued to operate on the ground floor. On the other hand, it may be that the Tramway Building has structural issues that cannot be safely addressed while Obladee occupies the ground floor operating as a space that is open to the public.

### *Irreparable Harm*

[21] The second part of the *RJR-MacDonald* test for granting an injunction is whether the party seeking the injunction will suffer irreparable harm if the injunction is not granted. In that case the Supreme Court defined irreparable as referring to the nature of the harm rather than its magnitude. It is harm that cannot be quantified in monetary terms or cannot be cured usually because one party cannot collect damages from the other. The court gave as examples instances where one party will be put out of business by the court's decision or where a party will suffer permanent market loss or irrevocable damage to its business reputation.

[22] Obladee argues that the location in the Tramway Building has become synonymous with the business. The loss of market share and goodwill would constitute irreparable harm. They say that the business would not survive an eviction.

[23] Obladee cited three Ontario cases in which injunctions were granted at the request of commercial tenants facing eviction. In *2261358 Ontario Inc. v. Kompter*, 2020 ONSC 2931, the tenant operated a restaurant and bar in a building owned by the landlord. The landlord planned to sell the building and terminated

the lease. They locked the tenant out of the building. The tenant sought and obtained an interlocutory injunction requiring the landlord to let them back in. The act of the landlord in locking the restaurant out of the building would effectively have put an end to the business. The balance of convenience was found to favour the applicant because if the injunction were not granted they would be out of business, but the landlord would have received precisely what they contracted for when they signed the lease.

[24] In *12814307 Canada Inc. (c.o.b. Hymus Sports) v. 2700688 Ontario Inc.*, 2025 ONSC 4951, a new building owner refused to honour an agreement that the tenant had with the previous owner. The new owner delivered a notice of termination, and the tenant sought an injunction. The court found that the tenant in that case had an ongoing public facing business at the premises. If other suitable space could not be found the business would be destroyed and the damages would not be readily susceptible to quantification. Even if the tenant could move to a new location its goodwill with its customers would be harmed and that may not be adequately remedied in damages.

[25] In *6056628 Canada Inc. v. 2350894 Ontario Inc.*, 2019 ONSC 1329, the tenant leased premises where they operated a restaurant. The landlord bought the property 11 years after the lease had started. The landlord sought to terminate the lease when a dispute happened about the terms. The tenant obtained an interlocutory injunction and the landlord sought to have it set aside. The tenant argued that they had devoted 17 years to the development of the business and if they were required to move the business would be destroyed. The court found that to be irreparable harm.

[26] The Ontario caselaw adopts the principle set out by the Ontario Court of Appeal in *1465152 Ontario Ltd. v. Amexon Development Inc.*, 2015 ONCA 86. That case found that injunctions are strongly favoured when there is an interference with property rights, including those acquired by lease. That principle has not been adopted in Nova Scotia, where the discretionary nature of the injunction as a remedy means that the balancing of the rights is dealt with as part of the balance of convenience. *Maxwell Properties Ltd. v. Mosaik Property Management Ltd.*, 2017 NSCA 76. There are property rights to be considered for both parties.

[27] Obladee relies on evidence from Christian Rankin, who has spent 17 years in the restaurant industry and 15 years as the owner and manager of Obladee. He has

been described in counsel's brief as "best qualified to predict the impact eviction would have on the business". Mr. Rankin says that it would take 12-18 months to relocate the business if they were evicted. They would need to find substantial capital investment. A suitable location would be required. That would have to be designed and built. They would need to carry out launch marketing and hire and train staff.

[28] Mr. Rankin says that the premises in large part drives Obladee's business model. People respond to how the restaurant and bar have been customized to that location. It is a public facing business. Obladee argues that that they cannot just relocate. It has been "built, refined and improved" over 15 years and their goodwill is inextricably linked to the premises.

[29] It should be noted though that Obladee occupies a rental location. It is a tenant. It could not reasonably expect to occupy the premises in the Tramway Building indefinitely. The lease expires at the end of 2026 with an option to renew for 5 years, but even if Obladee's very existence depends on its location in that building, it has no guarantee of a permanent location.

[30] Mr. Rankin's view that without the Tramway Building Obladee could not exist and that the requirement to leave that location would spell the end of the business is no doubt his honest opinion. But it appears to be based only on his sense that the Tramway Building is a uniquely good fit for Obladee's business model. There has been no evidence provided about why a move to another location downtown Halifax would spell the end of an otherwise well established and highly regarded business.

[31] In his decision to grant an interim injunction on an emergency basis Justice McDougall commented on the affidavit that Mr. Rankin filed. He said that Mr. Rankin attempted to create the impression that Obladee was so integrally connected to its location that it could not exist if forced to relocate. He said that he had no doubt that the owners would suffer financially if forced to close, even temporarily but he was not persuaded that they would have no recourse but to cease operations entirely or that they would be unable to quantify their losses if they were to succeed in proving that Starfish Properties were responsible for those losses. He was not persuaded that Obladee would suffer irreparable harm. The evidence filed since then confirms the difficulties that Obladee would encounter if required to relocate but it does not change the situation in any significant way. It will be difficult and costly, and the quantification of those costs will not be a

simple matter if it is found that Obladee was wrongfully forced to leave its premises. But Justice McDougall found that those damages can be calculated.

[32] Whether harm is irreparable is a question that may require a nuanced answer. Money cannot compensate for some losses. Damages are awarded as compensation but in some cases, no amount of money will repair the loss. This case involves a business, which after more than 15 years means more to its owners than just corporate documents and financial statements. Money paid by Starfish Properties after a law suit would not repair that loss. But if it were to be lost as a result losing its space in the Tramway Building the financial losses could be calculated.

[33] The nature of the loss that will be suffered must be considered in the next part of the test dealing with the balance of convenience.

#### *Balance of Convenience*

[34] The balance of convenience part of the test involves deciding which of the two parties will suffer the greater harm from granting or refusing to grant an interlocutory injunction.

[35] Obladee says that it will be put out of business. The success of the business is inextricably tied to its location in the Tramway Building. The loss would be significant. It is not like a restaurant business operating in a shopping mall parking lot, that does not identify with its location. It is not a certainty that Obladee could not function somewhere else. It is Mr. Rankin's firmly and honestly held opinion.

[36] But this case is also not like a tenant seeking an injunction in a dispute about rent. In those cases if the injunction is granted the landlord continues to receive rent and the tenant remains in the location until the dispute is resolved. There is a *status quo* to be preserved. In this case there is no *status quo* that can be preserved. Starfish Properties would be put in a different position if the injunction is not granted. They say that if the injunction is not granted they will be compelled to violate the *Building Code*. A public safety hazard has been identified on a busy downtown street. The only evidence with respect to how long remediation work will take is that it will be more than 90 days. The only evidence about how that work can be done is that it will require Obladee to vacate the premises while the work is completed.

[37] In September 2025 HRM issued an Order to Comply to Starfish Properties. That required Starfish Properties to prepare a proposal for a permit to immediately remedy the issues with the façade and to provide a timeline for the completion of the work. The remediation is a complex process because the building envelop is load-bearing. Work must be done to both the interior and the exterior of the building. HRM required that the work be done as quickly as possible to ensure that the building meets the *Building Code* requirements. Having scaffolding on the building creates risks and that was another reason given for having the work done promptly.

[38] The evidence from Cyril Huntley, a level II building official with HRM, was that the structural work could not be done while a tenant occupied the building. The interior work related to the building envelop would require major interior demolition and it would not be safe or advisable for the public to enter the building while that work was being done over the next several months.

[39] If the injunction is not granted, Obladee will have to relocate its business. That will involve substantial costs. There is the potential that the business will not be able to find a new suitable space. There is a potential that if a new space is found the business will have lost the goodwill in the community that it now enjoys and it will never come back to what it is now. Those are potential outcomes.

[40] If an injunction is granted, Starfish Properties will have a significant problem on its hands. That injunction would prevent the eviction of Obladee from the Tramway Building. There is no evidence at this stage to support the contention that Starfish Properties could simply do the work with Obladee in the building or that the work could be done in less than 90 days. Starfish Properties would still be subject to the Order to Comply, facing fines and penalties for its failure to comply yet it would be unable to comply with Obladee in the building. HRM would be seeking to enforce the Order to Comply. The court will have made an order that creates a stalemate on an issue that HRM has determined has public safety implications. That is an untenable situation.

## **Conclusion**

[41] The three parts of the *RJR-MacDonald* test are not each considered in isolation and nor are they individual hurdles. They are considered together as factors in determining whether an equitable remedy should be granted. Deciding whether an injunction should be granted involves an assessment of risk. There is an element of prediction in that. It means assessing the merits of the case without

having heard it in full and weighing those merits against the potential consequences of granting or not granting the injunction at a time when those consequences are potential and not yet real. The chances of being wrong are not insignificant. Courts have been hesitant to make decisions that rely on prediction when those decisions have what could be drastic consequences and there is another option. That option is an award in damages. Damages are not always an option because they may not be able to compensate a party for what they have lost. But when damages can compensate a party, courts have generally favoured an approach by which the merits are finally determined, and any damages are then assessed.

[42] Whether Starfish Properties was entitled to evict Obladee under the terms of the lease will eventually be determined at trial. At this stage it can only be said that Obladee's case is an arguable one. It may be proven that the façade work that is required could be done within 90 days and that the other work that Starfish Properties says must be done can be done without disrupting the tenancy. It may be proven that Starfish Properties used the façade issue to try to get Obladee out of the Tramway Building. On the other hand, it may be proven that Starfish Properties is faced with repair issues that involve safety concerns that must be addressed and if they are not Starfish Properties will face serious consequences from HRM. One of those positions is right and the other is not. That uncertainty plays in to the other parts of the test.

[43] The consequences for the parties of granting or not granting the injunction must be considered in light of that uncertainty with respect to the ultimate outcome. If an injunction is not granted Obladee will have to move. That could have very serious consequences for the business. It has become associated with and perhaps identified with the Tramway Building. It may not even be able to relocate, and it is possible that it will have to stop operating. Those are potential outcomes but not certain ones. If an injunction is granted, preventing Starfish Properties from removing Obladee from the building, Starfish Properties could be facing legal consequences from HRM for failing to remedy public safety issues with the building. That is also a potential outcome but not a certain one.

[44] Granting an injunction would require a principled assessment of an equitable solution in the face of uncertainty with respect to the ultimate outcome and potential consequences. Sometimes that must be done. Here, it would be inappropriate to make such an order when there is another option. That option is waiting until the merits have been determined after a trial and damages are

assessed in the face of less uncertainty. Damages are not a perfect remedy. There are many things that money does not and cannot fix. But the losses that would be potentially suffered by Obladee if the business is evicted from the Tramway Building are compensable in damages because they can be calculated. I agree with Justice McDougall in making that finding.

[45] When all three parts of the *RJR-MacDonald* test are considered together, it would not be equitable in this case to order an injunction.

[46] If the parties are not able to agree on the matter of costs, they should contact the court within 30 days of this decision.

Campbell, J.