

**CITATION:** Kalbow Restorations Inc. v. Goodbye Graffiti Inc., 2025 ONSC 3696  
**COURT FILE NO.:** CV-25-00744119-0000  
**DATE:** 20250620

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** KALBOW RESTORATIONS INC. Plaintiff

**AND:**

GOODBYE GRAFFITI INC. ET AL. Defendants

**BEFORE:** Parghi J.

**COUNSEL:** *Adrienne Boudreau and Daniel Hamson*, for the Plaintiff  
*Andrew Max, Cori Singer, and Heather Lawson*, for the Defendants

**HEARD:** June 17, 2025

**ENDORSEMENT**

[1] Kalbow Restorations Inc. (“Kalbow”) is a franchisee in the graffiti removal business. It has commenced a breach of contract action against its franchisor, Goodbye Graffiti Inc. (“Goodbye Graffiti”), and associated parties and now seeks urgent interlocutory injunctive relief on the basis that they improperly terminated the franchise agreement (the “Agreement”).

[2] For the reasons below, I dismiss Kalbow’s motion.

**The Legal Test for an Injunction**

[3] A party may seek an interlocutory injunction pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and Rule 40 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[4] The test for interlocutory injunctive relief is well-established: the moving party must establish that their action raises either a serious issue to be tried or a strong *prima facie* case, that they will suffer irreparable harm if an injunction is not granted until the completion of the trial,

and that the balance of convenience favours granting the relief sought because they would suffer greater harm than the responding party if the injunction is not granted (*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at pp. 348-349; *R. v. Canadian Broadcasting Corporation*, 2018 SCC 5, [2018] 1 S.C.R. 196, at paras. 12-13). The three criteria are not to be viewed as self-contained: they are interrelated considerations, and weakness in one may be compensated for by strength in another (*Circuit World Corp. v. Lesperance* (1997), 33 O.R. (3d) 674 (C.A.)).

### **Serious Issue to be Tried or Strong *Prima Facie* Case**

#### **The Applicable Standard**

[5] The parties disagree on the standard to be applied to the first part of the *RJR-MacDonald* test for injunctive relief.

[6] Kalbow calls for the application of the “serious issue to be tried” standard on the basis that they are seeking a prohibitory injunction – that is, they only seek to stop the Defendants from doing what they are currently doing and are not requiring them to perform any new affirmative act. As such, says Kalbow, it need only show that there is a serious issue to be tried in respect of the Defendants’ alleged breach of contract. This less onerous standard is assessed “on the basis of common sense and an extremely limited review of the case on the merits” (*RJR-MacDonald*, at p. 348). Essentially, it requires a determination that the case is not frivolous or vexatious (*RJR-MacDonald*, at p. 337).

[7] Respectfully, I am unable to agree. *Canadian Broadcasting Corporation* makes clear that in determining which standard applies, I must consider the substance and the practical consequences of the injunction sought (at para. 16). In my view, the injunction would, as a practical matter, require the Defendants to take various affirmative acts in order to restore and maintain the franchisor-franchisee relationship, including restoring Kalbow’s access to the computer system and meeting its obligations to Kalbow under the Agreement, including by providing advertising and promotional materials, promotional assistance, training, training materials, sales strategies, bookkeeping assistance, and guidance on operating Goodbye Graffiti’s system.

[8] As such, the injunction is rightly characterized as a mandatory injunction and is subject to the more onerous “strong *prima facie* case” standard, under which Kalbow must show “a case of such merit that it is very likely to succeed at trial” based on the law and the evidence presented (*Canadian Broadcasting Corporation*, at para. 17).

[9] If I am wrong about the appropriate test to be applied, however, I have also applied the “serious issue to be tried” standard in my analysis.

#### **Analysis**

[10] For the reasons below, I find that Kalbow has not demonstrated a strong *prima facie* case that the Defendants improperly terminated the Agreement. As such, I am not satisfied that there is a strong likelihood on the law and the evidence presented that, at the hearing of the action, Kalbow

will succeed in proving its allegations against the Defendants. If I am wrong about the appropriate test to be applied, I find that Kalbow has not raised a serious issue to be tried in respect of its allegations.

[11] The Agreement provided that if Kalbow committed “any single Incurable Material Default or any other single Material Default which is not cured within its relevant period of time,” Goodbye Graffiti could terminate the Agreement “forthwith upon written notice”. “Incurable Material Defaults” were defined to include Kalbow doing any of the following:

- a. selling “any service or product that is not authorized” by the Agreement, the Goodbye Graffiti Manual, or the “prior written consent of” Goodbye Graffiti, or “that is supplied by anyone not designated or approved in advance in writing by” Goodbye Graffiti;
- b. “using” Goodbye Graffiti’s trademarks, “systems, methods of operation or format ... in a manner ... not authorized in advance in writing by” Goodbye Graffiti; or
- c. “operating” its “[b]usiness in any dishonest, illegal or unethical manner”.

[12] Kalbow has not persuaded me that there is a strong *prima facie* case that the Defendants improperly terminated the Agreement. In my view, the record supports the Defendants’ position that Kalbow committed an Incurable Material Default, as defined in the Agreement, and that they were accordingly authorized to terminate the Agreement forthwith upon providing written notice.

[13] The principal of Kalbow, Brent Bowman, gave evidence that, on its own, defeats Kalbow’s request for injunctive relief. Mr. Bowman’s evidence, much of it from cross-examination, was as follows:

- a. He asked Goodbye Graffiti for permission to change one of its products by adding in a chemical supplied by an unapproved vendor called Superchem. He made this request because the Goodbye Graffiti product on its own was not, in his view, adequately removing graffiti. Goodbye Graffiti did not grant Mr. Bowman permission to add in the product from Superchem. Mr. Bowman nonetheless proceeded to mix in the Superchem product into the Goodbye Graffiti product. He used this mixture “over many years”.
- b. Mr. Bowman did not know the name of the unauthorized product from Superchem, its chemical composition, or its chemical concentration. He consulted no one about the safety of mixing it with Goodbye Graffiti’s products. He did not know the proper first aid protocol to follow if there were an accident involving the mixed product. He did not know the toxicological properties of the resulting mixed chemical or what would happen if it were ingested or inhaled.
- c. He also purchased a second chemical, hydrochloric acid, from Superchem and it was mixed into Kalbow products and used when providing customer services. He did not know when Kalbow stopped using this second unauthorized product

(although his employee gave evidence that it remained in use up to the day of the audit and inspection in May 2025).

- d. The new mixed product was labelled as 710 Goodbye Graffiti gel, but in fact it was a mixture of actual 710 Goodbye Graffiti gel and the unauthorized Superchem chemicals.
- e. Kalbow did not tell customers that it was using a graffiti removal product different from 710 Goodbye Graffiti gel.
- f. Mr. Bowman had unauthorized product delivered from Superchem in May 2024.
- g. Mr. Bowman did not tell Goodbye Graffiti that he was ordering products from Superchem, which was an unauthorized supplier.

[14] I find that, by purchasing unauthorized products from Superchem, Kalbow sold a “service or product ... that is supplied by” a supplier “not designated or approved” by Goodbye Graffiti. This is an Incurable Material Default under the Agreement.

[15] By mixing the unauthorized products with Goodbye Graffiti products and using the mixed product to provide Kalbow’s services, Kalbow sold a “service or product that is not authorized” by the Agreement or Goodbye Graffiti’s prior written consent. It also used Goodbye Graffiti’s “systems [and] methods of operation ... in a manner ... not authorized in advance in writing by” Goodbye Graffiti (and in the case of the first unauthorized product, expressly prohibited by Goodbye Graffiti). These, too, are Incurable Material Defaults.

[16] By labelling the mixed product as a Goodbye Graffiti product when it was not one, and by concealing from customers that the product was not a Goodbye Graffiti product, Kalbow operated its business in a “dishonest ... manner”. This is also an Incurable Material Default.

[17] Kalbow argued before me that whatever uses it was making of unauthorized chemicals ended two years ago. Based on the record before me, I am not so persuaded. Mr. Bowman’s own evidence was that he did not know when he first ordered or last ordered the first Superchem product and did not know when he stopped using hydrochloric acid. Notably, he did not search Kalbow’s records for copies of receipts or other documents relating to Kalbow’s orders for graffiti removal products or chemicals from Superchem, or request such documents from Superchem, even though the Defendants asked Kalbow for such documentation. On the other hand, he acknowledged that he had product delivered from Superchem in May 2024, which strongly supports the inference that as of May 2024, the unauthorized chemicals were indeed being used. I also observe that another representative of Kalbow gave evidence that Kalbow used hydrochloric acid up to the time of the May 2025 audit and inspection.

[18] Based on the above, I am of the view that Kalbow has not demonstrated a strong *prima facie* case that the Defendants have breached the Agreement. As such, I am not satisfied that there is a strong likelihood on the law and the evidence presented that, at the hearing of the action, Kalbow will succeed in proving its allegations against the Defendants. If I am wrong about the

appropriate test to be applied, I find that Kalbow has not raised a serious issue to be tried in respect of their allegations of breach of contract.

[19] I pause to observe that the motion materials address a number of other allegations, including that Kalbow falsified records relating to its purchase of unauthorized chemicals and failed to properly dispose of wastewater, contrary to legal requirements. Given my findings on the issue of the unauthorized use of chemicals, above, it is not necessary for me to consider those additional allegations here. I will say, however, that even after reviewing the record in respect of those additional allegations, I remain of the view that Kalbow has not established a strong *prima facie* case or, in the alternative, a serious issue to be tried.

### **Irreparable Harm**

[20] I must also assess whether irreparable harm will result if the injunction is not granted. The burden is on Kalbow to place sufficient evidence before me to show that it will suffer irreparable harm, which is harm that “either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other” (*RJR-MacDonald*, at p. 341). The word “irreparable” describes the nature of the harm, rather than its magnitude (*RJR-MacDonald*, at p. 341). I am to consider the question of irreparable harm in the context of the specific facts of this case. That context includes my assessment that Kalbow has not demonstrated a strong *prima facie* case or a serious issue to be tried in respect of their breach of contract claim.

[21] I find that irreparable harm will not result if I refuse to grant the injunction. This finding flows necessarily from my finding that there is no strong *prima facie* case and no serious issue to be tried in respect of Kalbow’s claim that the Defendants improperly terminated the Agreement.

[22] Additionally, I am not persuaded that Kalbow will experience harm of the nature that cannot be quantified in monetary terms: if Kalbow succeeds at trial, its own financial records will enable the court to calculate estimated foregone profits for any time period in respect of which the Agreement is found to have been improperly terminated. In the same vein, any loss of market share will be compensable in damages.

[23] Any loss of goodwill is in fact borne by Goodbye Graffiti, not Kalbow, under the Agreement, which provides that goodwill accrues only to Goodbye Graffiti and that Kalbow may not assert any claim to it by virtue of its licensed use of the Goodbye Graffiti brand or system.

[24] Additionally, the evidence is that Kalbow will be able to recover any such award from Goodbye Graffiti.

### **Balance of Convenience**

[25] Finally, I must assess the balance of convenience. The Supreme Court of Canada has held that the question to be asked at this stage of the inquiry is which of the two parties will suffer the

greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits (*Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110, at p. 129).

[26] I find that the balance of convenience favours not granting the injunction. I am not persuaded that there is a serious issue to be tried in respect of breach of contract, or a strong *prima facie* case of such breach. Moreover, if an injunction is not granted and Kalbow succeeds at trial, it can be made whole via damages, as discussed above. By contrast, if an injunction is granted and Kalbow loses at trial, Goodbye Graffiti will have been required to let Kalbow carry on business under its name and trademarks for years, and, based on the record before me, will almost certainly not be able to collect from Kalbow.

[27] It is therefore appropriate for the parties to continue on as they are, pending trial.

### **Other arguments raised by Kalbow**

[28] Kalbow asserts that Goodbye Graffiti conducted its May 2025 inspection and audit in an improper way that resulted in a business disturbance. Kalbow concedes that Goodbye Graffiti was authorized by the Agreement to conduct unannounced inspections and audits. However, it says that Goodbye Graffiti behaved improperly during the audit.

[29] Because this allegation is not squarely relevant to the question of whether the test for injunctive relief has been satisfied, I do not consider it in detail here. I note, however, that Kalbow was obligated by the Agreement to let Goodbye Graffiti inspect and take its business records, to provide Goodbye Graffiti with computer system access upon request, and to let Goodbye Graffiti enter the premises to inspect the location and operations and confer with Kalbow employees to determine compliance with the Agreement and the Goodbye Graffiti manual. By calling the police to the premises twice during the audit, ringing the alarm over a repeated time period, and telling employees not to cooperate with the audit, Kalbow, through Mr. Bowman, did not comply with these obligations. To the extent there was a business disturbance, it was caused at least in good part by this conduct on the part of Kalbow.

[30] Kalbow states that other franchisees also used unauthorized products. I do not find this claim persuasive or relevant. The claim is grounded on hearsay evidence from a former franchisee describing discussions with other former franchisees who also used unauthorized products before 2018. In any event, whether other franchisees were engaged in acts that arguably violated their respective agreements with Goodbye Graffiti is not relevant to the underlying question of whether Goodbye Graffiti was entitled to terminate the Agreement with Kalbow.

[31] Finally, Kalbow alleges bad faith on the part of Goodbye Graffiti and says that Goodbye Graffiti had decided, even before starting the audit, to try to take Kalbow over because it is a profitable business that had rebuffed Goodbye Graffiti's previous overtures to purchase it.

[32] I do not agree. If Goodbye Graffiti wished to part ways with Kalbow or position itself to purchase it in the future, it could simply have declined to renew the Agreement. Moreover, the timeline does not bear out Kalbow's claim. Goodbye Graffiti's expressions of interest in buying

Kalbow dated back to 2021. Its audit post-dated its April 2025 receipt of the whistleblower email. Goodbye Graffiti offers a reason for having conducted the inspection without notice – namely, that it was concerned that Kalbow would hide the unauthorized products if it notified Kalbow ahead of time of the inspection. It is uncontested that Goodbye Graffiti was authorized under the Agreement to conduct inspections without notice.

### **Conclusion**

[33] For the reasons above, I find that Kalbow has not demonstrated a strong *prima facie* case, or a serious issue to be tried, in respect of a breach of the Agreement; that irreparable harm will not result if the injunction is not granted; and that the balance of convenience does not favour granting the injunction. Accordingly, I dismiss Kalbow’s motion.

[34] I dismiss Kalbow’s alternative request for relief from forfeiture pursuant to section 98 of the *Courts of Justice Act*. In my view, for the reasons discussed above, the termination of the Agreement does not constitute or give rise to a forfeiture or penalty that warrants relief.

### **Costs**

[35] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, I may consider the factors enumerated in Rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[36] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal for Ontario restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors as applied to the costs claimed, and then “step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”.

[37] Applying these criteria here, I note the following:

- a. The Defendants were successful on the motion. It is therefore appropriate that they recover their costs, based on the principle of indemnity.
- b. The issues in the proceeding were of significant importance to the parties.
- c. The matter unfolded on a very tight timeline, at the request of Kalbow and despite the request of the Defendants for more time. On June 4, 2025, the injunction hearing was scheduled for June 17, 2025. The Defendants accordingly had less than two weeks in which to assemble their materials, including multiple affidavits, a factum, a book of authorities, and a photo and video compendium, and to prepare for and conduct Kalbow’s cross-examinations and prepare for and attend their own affiants’ cross-examinations. It is understandable and reasonable that, in these time-

pressed circumstances, they had to deploy a larger team of counsel and students than would typically be required. This no doubt resulted in higher costs. However, in the circumstances, those higher costs should still be recoverable. It was within Kalbow's reasonable expectations that the compressed timeline would result in increased costs, particularly to the responding parties.

- d. The Defendants' materials on this motion were of assistance to the court.
- e. Counsel's hourly rates are reasonable. Work was appropriately allocated among students and among counsel team members having regard to their seniority.

[38] The Defendants seek costs on a substantial indemnity basis, but no explanation is given as to why costs are sought on that scale, and in my view, there is no basis on which to award such costs. In my view, costs on a partial indemnity basis are appropriate. I accordingly award the Defendants \$100,000.00 in costs, inclusive of HST and disbursements. Stepping back and viewing the matter as a whole, I consider this a fair and reasonable result.

**Date:** June 20, 2025

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Parghi J.