CITATION: Jennings Lodge Inc. v. Canadian Mental Health Association, 2025 ONSC 6810
BARRIE COURT FILE NO.: CV-24-00002819-0000
DATE: 20251204

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
JENNINGS LODGE INC. Plaintiff	Soumya Roop Sanyal, for the Plaintiff/Moving Party
– and –	
CANADIAN MENTAL HEALTH ASSOCIATION, SIMCOE COUNTY BRANCH Defendant	Emily C. Durst, for the Defendant/Responding Party
	HEARD: November 25, 2025

REASONS FOR DECISION

CHARNEY J.:

[1] The Plaintiff, Jennings Lodge Inc. (Jennings Lodge), brings this motion for an interlocutory injunction to restrain the Defendant, Canadian Mental Health Association, Simcoe County Branch (CMHA), from implementing the terms of the Notice of Termination dated September 24, 2024 (Notice of Termination), until the resolution of the Plaintiff's action.

[2] The Plaintiff also seeks an order directing the Defendant to continue the performance of the Community Homes for Opportunity Transfer Payment Agreement that was terminated by the Defendant on January 22, 2025, pursuant to the Notice of Termination,

Facts

[3] Jennings Lodge operated for 38 years as a Home for Special Care ("HSC") in Penetanguishene, Ontario.

[4] The Defendant, the CMHA is a non-profit charitable corporation funded by the Ontario Ministry of Health (the "Ministry"), offering a range of services, advocacy and education for people seeking to improve their mental health.

[5] Jennings Lodge was formerly licenced, funded, and governed by the *Homes for Special Care Act*, R.S.O. 1990, c. H.12 (the Act). In October, 2018, the Ministry of Health began to wind down the Homes for Special Care program and created a new program called the Community Homes for Opportunity (CHO) program. The Act was not repealed. CHO homes do not operate under the Act but rather as a Ministry program.

[6] Under this program, rather than being licensed, homes that were licensed under the Act were required to enter into a Transfer Payment Agreement with a community agency running the program. The community agency for Jennings Lodge was the Canadian Mental Health Agency – South Simcoe Branch (CMHA).

[7] The Ministry transitioned Jennings Lodge from the HSC Program to the CHO Program in September, 2022.

[8] The Ministry provides funding to CMHA to pay for supportive housing at third party residences and to provide outreach and support services to CHO Program participants, including specialized mental health and addiction services.

[9] As part of the transition to the CHO Program, CMHA entered into a Transfer Payment Agreement with the Ministry (the "Ministry TPA"). The Ministry TPA provides the framework for which CMHA receives public funds from the Ministry for the purposes of administering the CHO Program. Likewise, CMHA and Jennings Lodge entered into a Community Homes for Opportunity Transfer Payment Agreement, dated September 1, 2022 (the "TPA").

[10] The TPA essentially replaced the regulatory and licencing scheme that had previously operated under the *Homes for Special Care Act.*

[11] Both the Ministry TPA and the TPA with Jennings Lodge are standard contracts prepared by the Ministry. All community agencies across the province, including CMHA, are required to execute the Ministry TPA and a TPA with the community agency to receive funds from the Ministry through the CHO Program.

[12] The TPA with Jennings Lodge provided that CMHA shall provide funding for a maximum of 19 CHO Program beds at Jennings Lodge as well as funding for various supports provided to residents. Jennings Lodge was required to adhere to specific standards with respect to housing, staffing, and resident care as set out in the TPA. CMHA was responsible for ensuring those standards were met.

[13] Article 10 of the TPA provides both parties with the option to terminate the TPA on 90 days' Notice to the other party:

> **10.1**. **Termination on Notice**. [CMHA] or [Jennings Lodge] may terminate the [CHO] Agreement at any time upon giving at least 90 days' Notice to the other party.

> **10.2 Consequences of Termination on Notice**. If either [CMHA] or [Jennings Lodge] terminates the Agreement pursuant to section 10.1, [CMHA] may take one or more of the following actions;
>
> a) cancel all further instalments of Funds;
>
> b) demand the repayment of any Funds remaining in the possession or under the control of [Jennings Lodge]; and
>
> c) determine the reasonable costs for [Jennings Lodge] to wind down the Program, and do the following:
>
> i. subject to the availability of Funds, provide Funds to [Jennings Lodge] to cover such costs.

[14] Notice is defined in Article 15 as "Notice in Writing". There is no dispute that the Notice in this case was properly given by email and mail.

[15] Since Jennings Lodge became a CHO Program home, CMHA maintained regular communication regarding compliance with the TPA. Upon assuming oversight of Jennings Lodge in October 2022, CMHA took steps to address ongoing non-compliance issues in order to mitigate concerns relating to resident health and safety. In July 2024, CMHA issued a Compliance Plan which was intended to ensure that residents of Jennings Lodge were living in a safe and healthy environment and to reduce risks to residents.

[16] Following issuance of the Compliance Plan, members of the CHO Program team at CMHA met regularly with the owner/operators of Jennings Lodge to monitor and evaluate progress toward compliance. Despite these ongoing efforts, CMHA was of the view that little progress was made during August and September 2024, and in certain respects, the risks to resident safety increased during that period.

[17] In light of the ongoing concerns for the health and safety of CMHA clients residing at Jennings Lodge, CMHA determined it was in the best interests of clients to terminate the TPA with Notice and to work with clients to relocate to alternative housing providers in the region.

[18] On September 24, 2024, CMHA delivered Notice to Jennings Lodge that the TPA would terminate, effective January 22, 2025 (the "Termination Notice").

First Interlocutory Injunction

[19] On October 30, 2024, Jennings Lodge served a Statement of Claim seeking:

a. A declaration that the Defendant had breached its contractual obligations to the Plaintiff;

b. General Damages for loss of business in the amount of $1 million;

c. Special and aggravated damages.

[20] The Statement of Claim did not seek an injunction prohibiting the Defendant from terminating the contract on January 22, 2025.

[21] Jennings Lodge also served a Notice of Motion seeking injunctive relief to "enjoin CMHA from directly or indirectly, by any means whatsoever, relocating any residents of Jennings Lodge until resolution of the claim or the Termination Date [January 22, 2025], whichever is earlier".

[22] When the First Injunction was served, CMHA was actively working with other facilities in Simcoe County to accommodate residents of Jennings Lodge who elected to relocate. CMHA took the position that 17 of the 18 residents had expressed their intention to relocate. CMHA opposed the First Injunction so that CMHA could continue to provide relocation assistance to its clients prior to the Termination Date.

[23] The First Injunction motion was heard on November 14, 2024 before Fraser J. On November 19, 2024, Fraser J. granted an interlocutory injunction, ordering that CMHA be enjoined from taking any steps to relocate clients until the Termination Date, being January 22, 2025: *Jennings Lodge Inc. v. Canadian Mental Health Association*, 2024 ONSC 6426.

[24] Fraser J. concluded that the Plaintiff met the three part test for an interlocutory injunction set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada*, [1994] 1 SCR 311: is there a serious issue to be tried, will the Plaintiff suffer irreparable harm if the injunction is not granted, and where the balance of convenience lies. The balance of convenience requires the Court to examine which party will suffer the greater harm from the granting or the refusal of an interlocutory injunction.

[25] Fraser J. accepted that there was no argument that CMHA had breached the terms of the TPA; it gave 90 days notice in accordance with Article 10.

[26] Fraser J. found that the Plaintiff had met the low threshold of "serious issue to be tried", because the TPA was "a contact of adhesion"; the terms of the TPA were imposed unilaterally by the Ministry as a "take it or leave it agreement".

[27] She also found that there was a serious issue with respect to whether the termination clause in the agreement was void for unconscionability because there was inequality of bargaining power and an improvident bargain resulting from the inequity: *Uber v. Heller*, 2020 SCC 16, at para. 65. She stated:

> The Plaintiff has shown a serious issue with respect to both. CMHA's take it or leave it position demonstrates the first prong of the two-part test in *Uber v. Heller*, supra. Jennings Lodge had no power to alter the agreement and could not alter the agreement. On the evidence before me, there is a serious issue with respect to whether Jennings Lodge struck an improvident bargain. This is evident as Jennings Lodge, which has operated for approximately 40 years is forced to close on 120 days' notice.

[28] Fraser J. found, at para. 35, that "the Plaintiff has demonstrated that the termination could result in damage to its business reputation and a permanent loss of its operation" and this met the test for irreparable harm. She also concluded that there could be irreparable harm to the residents "in the obvious lack of consultation with them… Once notified of the decision, the residents were given no real choice and forced to choose between staying, without CMHA paying rent or providing support, or move to a place to be determined. That is not a real choice."

[29] Finally, on balance of convenience, Fraser J. concluded:

> Jennings Lodge faces the loss of its business and the residents face the loss of their home. In my view, the balance of convenience lies with the Plaintiff as it will suffer the greatest harm.

[30] Fraser J. issued the following Order:

> I order that CMHA shall be restrained and enjoined from directly or indirectly, by any means whatsoever relocating any residents of Jennings Lodge at 38 Church St., Penetanguishene until either the resolution of the Plaintiff's claim or until January 22, 2025, whichever is earlier.

[31] It is significant for the purposes of my analysis that this interlocutory injunction was granted on November 19, 2024. It did not purport to forestall the termination of the agreement on January 22, 2025. Indeed, the injunction, as sought and granted, would end - at the latest - on January 22, 2025, just two months after it was granted.

[32] The CMHA sought leave to appeal and brought a motion to seek a stay of the interlocutory injunction to permit it to continue to work with clients who chose to move prior to the Termination Date, which, on a literal interpretation of interlocutory injunction, the CMHA was prohibited from doing.

[33] On December 4, 2025, the parties participated in a Divisional Court case conference and agreed to stay the November 19, 2024 Order on the following terms pending the determination of CMHA's motion for leave to appeal:

> a. CMHA shall not coerce residents into relocating from Jennings Lodge prior to January 22, 2025. Likewise, Jennings Lodge shall not coerce residents into remaining at Jennings Lodge until or beyond January 22, 2025.
>
> b. This agreement is made without prejudice to any further Order of the Court and shall not be construed as acceptance by Jennings Lodge of the termination notice, dated September 24, 2025.

[34] On December 19, 2024, the parties came to the following agreement regarding the stay and the appeal:

a. CMHA shall not coerce residents into relocating from Jennings Lodge prior to January 22, 2025. Likewise, Jennings Lodge shall not coerce residents into remaining at Jennings Lodge until or beyond January 22, 2025.

b. This agreement is made without prejudice to any further Order of the Court and shall not be construed as acceptance by Jennings Lodge of the termination notice, dated September 24, 2025.

c. The stay agreement as between CMHA and Jennings Lodge shall be extended and remain in place until January 22, 2025.

d. CMHA shall withdraw its appeal of Justice Fraser's Order, currently before the Divisional Court.

e. The costs related to the appeal shall be determined in the cause.

f. The costs of the injunction shall be determined by an order of Justice Fraser.

[35] As a result of this agreement, the motion for leave to appeal was abandoned on January 7, 2025.

[36] Ultimately, all of the CHO Program residents at Jennings Lodge elected to relocate and transitioned to another home prior to the Termination Date. As of the Termination Date, Jennings Lodge had no residents and has no residents as of the date of the hearing of this motion.

Second Interlocutory Injunction

[37] On January 12, 2025, just two weeks before the Termination Date, Jennings Lodge served the second motion for an interlocutory injunction seeking an order enjoining CMHA from "directly or indirectly, by any means whatsoever, implementing the terms of the Notice of Termination dated September 24, 2024 until the resolution of the Applicant's claim".

[38] The Notice of Motion also seeks an Order "directing the Respondent (*sic*) to continue the performance of the Community Homes for Opportunity Transfer Payment Agreement executed between the parties on September 1, 2022".

[39] At the hearing of the motion, counsel for Jennings Lodge confirmed that Jennings Lodge was not seeking an order that would require the former residents to vacate their current homes and return to Jennings Lodge.

[40] In support of this motion, the Plaintiff relies on the affidavit of Jeremy Eastmond, sworn on January 10, 2025. This affidavit is substantially identical to the October 27, 2024 affidavit relied on in the motion before Fraser J. The only additions to the affidavit, at paras.

18 – 24, deal with the proceedings before Fraser J. and the settlement of the leave to appeal motion.

[41] This second motion was case conferenced by Fraser J. on January 27, 2025 and February 6, 2025, by which time the urgency for the motion had passed because the contract had already been terminated on January 22, 2025, and all of the residents had been relocated. A timetable for the exchange of motion material and cross-examinations was established and the motion was placed on the long motion running list to be heard on a date after July 7, 2025. The motion was finally reached on November 25, 2025.

Termination of the TPA

[42] The TPA was terminated on January 22, 2025, in accordance with the Notice of Termination. All of the CHO Program participants resident at Jennings Lodge elected to relocate and successfully transitioned to another home prior to January 22, 2025.

[43] Since the TPA terminated on January 22, 2025, CMHA has not advanced any funds to Jennings Lodge and all activities under the TPA have ceased.

[44] CMHA currently receives funding from the Ministry for 65 CHO Program participants, all of which is currently allocated to clients in the CHO Program across the Simcoe County region. Although CMHA was receiving funding for a maximum of 19 CHO Program beds at Jennings Lodge, that funding has been reallocated to other CHO Program homes and community residences which are now housing former residents of Jennings Lodge.

Analysis

[45] Since the TPA was terminated on January 22, 2025, the Plaintiff is requesting that the TPA be reinstated as of today. This is a request for a mandatory injunction compelling CMHA to reinstate a contract that was terminated almost one year ago. CMHA argues that such an Order would impose new contractual obligations upon CMHA—obligations that CMHA does not have the funding to perform.

Issue Estoppel/Abuse of Process

[46] CMHA argues that this motion is barred by issue estoppel and/or abuse of process.

[47] I will deal with the abuse of process argument, which, in my view, more appropriately applies to the circumstances in this case.

[48] The doctrine of abuse of process attempts to prevent a multiplicity of proceedings re-litigating issues that were either determined in earlier proceedings or should have been raised in those earlier proceedings.

[49] The doctrine of abuse of process extends to situations where the plaintiff attempts to advance an issue that was or could have been raised in previous proceedings. In *Kenderry-Esprit (Receiver of) v. Burgess, MacDonald, Martin & Younger*, 2001 CanLII 28042 (ON

SC), 53 OR (3d) 208, Molloy J. summarized the law in relation to abuse of process (at paras. 30 – 32):

> The court's authority to dismiss an action which it determines to be an abuse of process is rooted in its inherent jurisdiction as well as in rule 21.01(3). One of the classic situations in which the principle is invoked is to prevent a multiplicity of proceedings or the re-litigation of issues already decided so as to avoid the danger of inconsistent verdicts… This includes a situation where the person now raising an issue before the court might have raised it in earlier proceedings, but chose not to do so…
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> As was stated by Finlayson J.A., writing for the majority in *Canam Enterprises Inc. v. Coles* (2000), 2000 CanLII 8514 (ON CA), 51 O.R. (3d) 481, [2000] O.J. No. 4607 (C.A.) at para. 31 [p. 490 O.R.]:
>
> > Abuse of process is a discretionary principle that is not limited by any set number of categories. It is an intangible principle that is used to bar proceedings that are inconsistent with the objectives of public policy. The doctrine can be relied upon by persons who were not parties to the previous litigation but who claim that if they were going to be sued they should have been sued in the previous litigation.
>
> One of the factors identified by the court in *Canam Enterprises Inc. v. Coles*, supra, as supporting a finding of abuse of process is whether the same evidence is needed to support the issues in both cases…

[50] In the present case, the Plaintiff previously brought a motion for an interlocutory injunction, seeking an injunction that would end, at the latest, on January 22, 2025. The Plaintiff did not ask the Court to issue and injunction prohibiting the Defendant from terminating the contract on January 22, 2025, and the injunction granted did not forestall the termination of the agreement on January 22, 2025.

[51] The Plaintiff has now returned to court, using the same affidavit evidence as before, seeking an order enjoining CMHA from implementing the Notice of Termination. Given that the first motion for an interlocutory injunction was brought just three months before the January 22, 2025 Termination Date, it is not clear why the Plaintiff waited until January 12, 2025 to bring this second motion. Given that the evidence relied on by the Plaintiff on this motion is substantially the same as the evidence in the first motion, the order sought in this proceeding could have been sought in the first proceeding.

[52] This is litigation by installment, and, in my view, constitutes an abuse of process.

Mandatory Injunction

[53] The Plaintiff is no longer seeking an injunction to maintain the status quo. The TPA was terminated on January 22, 2025, the residents have all been relocated, CMHA has not advanced any funds to Jennings Lodge and all activities under the TPA have ceased.

[54] The Plaintiff is now seeking a mandatory order to reinstate the terminated contract and directing the CMA "to continue the performance of the Community Homes for Opportunity Transfer Payment Agreement executed between the parties on September 1, 2022".

[55] Where the Plaintiff seeks a mandatory interlocutory injunction, as opposed to a prohibitive interlocutory injunction, the first test is not the low threshold "serious question to be tried", but the much higher threshold "strong prima facie case" test.

[56] In *R. v. Canadian Broadcasting Corp*., 2018 SCC 5, the Supreme Court of Canada stated, at para. 15:

> In my view, on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR — MacDonald* test is not whether there is a serious issue to be tried, but rather whether the applicant has shown a strong prima facie case. A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the status quo, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting from the court staying its hand until trial". The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR — MacDonald* as "extensive review of the merits" at the interlocutory stage. [Citations omitted.]

[57] The Court explained, at para. 17, that a "strong *prima facie* case" imposed:

> a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.

[58] The Court, at para. 18, summarized the modified *RJR - MacDonald* test for a mandatory interlocutory injunction as follows:

> (1) The applicant must demonstrate a strong prima *facie case* that it will succeed at trial. This entails showing a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice;

(2) The applicant must demonstrate that irreparable harm will result if the relief is not granted; and

(3) The applicant must show that the balance of convenience favours granting the injunction.

[59] The Plaintiff has met none of these tests.

[60] The Plaintiff did not attempt to demonstrate a strong *prima facie* case, but continued to rely on the lower threshold of serious issue to be tried.

[61] The Plaintiff has not raised a strong *prima facie* case that the termination clause in the agreement was void for unconscionability. To establish unconscionability, a party must demonstrate both: (1) an inequality of bargaining power that prevents a fair negotiation of the contract; and (2) that this inequality resulted in an improvident bargain, meaning a transaction that unduly advantages the stronger party or unduly disadvantages the weaker one: *Uber*, at paras. 64 – 65.

[62] In considering unconscionability, it is important to look at the context: *Uber*, at para. 75. This is not a commercial contract between two commercial entities negotiated for profit, or a contract between a commercial entity and a consumer, where it can be said that the stronger party is seeking to exploit the weaker party: *Uber*, at para. 72. This is a contract designed and imposed by the Ministry, which is not a party to these proceedings, to replace a regulatory regime setting out the conditions upon which a community agency – the CMHA - may provide public funds to service providers.

[63] There is no inequality of bargaining power between Jennings Lodge and CMHA. Both parties were operating within a framework designed and administered by the Ministry. The TPA is a standard-form government contract applied uniformly across Ontario to ensure consistency, accountability, and oversight in the disbursement of public funds. The mere fact that Jennings Lodge did not negotiate its terms does not establish inequality of bargaining power within the meaning of *Uber*.

[64] Second, there is no improvident bargain. The TPA does not confer an undue benefit on CMHA, nor does it impose an undue burden on Jennings Lodge. There is no evidence that CMHA has been "unduly enriched" by the TPA or that Jennings Lodge did not understand or appreciate the meaning and significance of these contractual terms: *Uber*, at paras. 76 – 77.

[65] Accordingly, the Plaintiff has not met its burden to show a case of such merit that it is very likely to succeed at trial.

[66] Nor has the Plaintiff demonstrated irreparable harm at this stage in the proceedings. The irreparable harm found by Fraser J. in the first interlocutory injunction was twofold: that the "termination could result in damage to its business reputation and a permanent loss of [Jenning Lodge's] operation'" and that the residents "were given no real choice and forced

to choose between staying, without CMHA paying rent or providing support, or move to a place to be determined."

[67] Assuming these harms to be irreparable, the motion for an interlocutory injunction comes too late; the irreparable harm has already occurred. The TPA was terminated on January 22, 2025, and the residents were moved to other facilities before that date. There is no evidence that granting the injunction at this stage will repair the damage to the Plaintiff's business reputation and operation. Indeed, if it could repair the damage, the damage was not, by definition, irreparable. Nor is there evidence that any of the former residents wish to return to Jennings Lodge.

[68] Jennings Lodge argues that an independent appraisal valued the facility at $1.4 million with the CHO license and $315,000 without it, resulting in $1.1 million in unliquidated damages

[69] Whether characterized as lost income or a diminution in the value of its business, this alleged harm to Jennings Lodge is purely financial in nature. Irreparable harm refers to harm that cannot be quantified in monetary terms: *R.J.R.-MacDonald*, at para. 341. Lost income and lost value are compensable through an award of damages—the very remedy Jennings Lodge seeks in its Statement of Claim.

[70] Finally, the balance of convenience favours CMHA at this stage of the proceedings. Granting the relief sought would compel CMHA to re-engage in a contractual relationship terminated almost one year ago and that it can no longer fund because all of the funds allocated by the Ministry are currently allocated to other clients in the CHO Program. Such an order would not preserve the status quo but would fundamentally alter it, contrary to the equitable principles governing interim relief.

Conclusion

[71] The Plaintiff's motion is dismissed.

[72] If the parties cannot agree on costs, the Defendant may serve and file costs submissions of no more than 3 pages, plus costs outline and any offers to settle, within 30 days of the release of this decision. The Plaintiff may serve and file responding costs submissions on the same terms within a further 20 days. Costs submissions should be uploaded to Case Center and emailed to my Judicial Assistant at Robyn.Pope@Ontario.ca.

Justice R.E. Charney

Released: December 4, 2025

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