

Divisional Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

B E T W E E N:

**SAVE HERITAGE SANDBANKS HOMES INC.**

Applicant

- and -

**MINISTRY OF ENVIRONMENT, CONSERVATION AND PARKS  
AND MINISTRY OF HERITAGE, SPORT, TOURISM AND CULTURE INDUSTRIES**

Respondents

**NOTICE OF MOTION FOR INTERIM STAY**

The Moving Party, Save Heritage Sandbanks Homes Inc., will make a motion to the Court on a date to be fixed by the Registrar, at 130 Queen Street West, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally or, in the alternative, in writing.

**THE MOTION IS FOR:**

1. An interim stay from the date of this motion until the hearing of the applicant/moving party's application for judicial review of the decision of the Ministry of the Environment, Conservation and Parks dated August 31, 2021, to demolish the Hyatt and MacDonald Houses at Sandbanks Provincial Park until the hearing of the applicant/moving party's application for judicial review;
2. The applicant/moving party's costs of this motion; and

3. Such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

4. The applicant/moving party Save Sandbanks Heritage Homes Inc. (“SHSH), brings a motion for an interim stay of the decision of the Ministry of the Environment, Conservation and Parks dated August 31, 2021, to demolish the properties, the Hyatt House and MacDonald House, located in Sandbanks Provincial Park;

5. The Hyatt House (constructed in 1869) and the MacDonald House (constructed in 1878), (collectively the “Properties”) are located within the Sandbanks Provincial Park. Both Properties have significant heritage value. Both Properties are owned by the Province of Ontario (the “Province”);

6. The test for a stay or injunction is well established, and has been defined by the Supreme Court of Canada as follows:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits;

7. In *RJR-MacDonald*, the Supreme Court also held in relation to the serious issue element that, “there are no specific requirements which must be met in order to satisfy this test. The threshold is a low one”. The Court went on to state:

Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable;

8. The failure by a decision-maker to consider relevant evidence constitutes an error of law. Similarly, the failure to follow established procedures, as well as the failure to provide reasons responsive to primary submissions made by a party, constitute further errors of law;
9. Relevant evidence has not been considered by the heritage consultant responsible for the primary review of the Properties, nor has it been properly considered and responded to by the Province;
10. In addition, the requirements under the Province's *Standards and Guidelines for Conservation of Provincial Heritage Properties* have not been properly considered and applied. These appear to be clear errors of law, that are serious issues to be tried;
11. Irreparable harm will occur if a stay is not granted. Demolition of the Properties will be an irreversible act that cannot be compensated for in damages;
12. Likewise, the balance of convenience clearly favours the applicant/moving party. The Properties have been dormant for many years. The applicant/moving party seeks a short stay, to allow for a proper opportunity to ensure that the basic requirements for Provincially owned heritage properties, and the specific requirements that the Province previously agreed to for Sandbanks Provincial Park properties of cultural heritage value, are satisfied, As a result, a stay should be granted;
13. Rules 37, 40 and 68 of the *Rules of Civil Procedure*.
14. Sections 4 and 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, J.1, and
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the

motion:

16. The Affidavit and Supplementary Affidavit of Edwin John Rowse;
17. The Affidavit of Liz Driver; and
18. Such further or other evidence as counsel may advise and this Court may permit.

September 9, 2021

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SANDBANKS HOMES INC.**

- and -

**MINISTRY OF ENVIRONMENT,  
PARKS AND CONSERVATION, and  
MINISTRY OF HERITAGE, SPORT,  
TOURISM AND CULTURE  
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**ONTARIO  
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(DIVISIONAL COURT)**  
Proceeding Commenced at Toronto

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FOR INTERIM STAY**

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