Ontario

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **2299-22-IO**

Mattamy Homes Limited, Applicant v Bricklayers, Masons Independent Union of Canada, Local 1, Labourers' International Union of North America, Local 183, and Masonry Council of Unions Toronto and Vicinity, Responding Parties

BEFORE: Michael McFadden, Vice-Chair

APPEARANCES: Patrick Groom, Rob Shore, Saadia Naim, Victor Kim, Rachel Wong, Brad Carr and David Starkman appearing for the applicant; Lorne Richmond, Steve Krashinsky, Keerthana Sivapatham, Sam Misra, Graham Williamson, Cesar Rodrigues, Paulo Rodrigues and Carlos Pereira appearing for the responding parties

DECISION OF THE BOARD: January 27, 2023

Introduction

1. This is an interim order application filed under section 98 of the *Labour Relations Act, 1995* S.O. 1995, c. 1, as amended ("the Act"). The interim order application was filed with the Board on January 17, 2023 ("IO Application") and proceeded to a consultation hearing on January 23, 2023.

2. As a very summary description, the IO Application involves an allegation by Mattamy Homes Limited ("Mattamy Homes") that the Bricklayers, Masons Independent Union of Canada, Local 1, Labourers' International Union of North America, Local 183, and Masonry Council of Unions Toronto and Vicinity (when referred to collectively, "the Unions") are in violation of a written settlement dated May 14, 2021 ("2021 Settlement"), which violation has caused work to stop at a large number of residential construction projects currently underway for Mattamy Homes.

3. The Board is satisfied for all the reasons set out below that it is appropriate to issue interim orders that favour Mattamy Homes.

Interim Order Proceeding

4. Mattamy Homes has brought the IO Application in support of an application it filed (also on January 17, 2023) under section 96(7) of the Act in which it seeks enforcement of the 2021 Settlement, that application being captioned under Board File No. 2297-22-U ("ULP Application").

5. In support of the IO Application, as it was required to do under the Board's Rules of Procedure ("the Rules"), Mattamy Homes included with its filing a series of signed declarations (and exhibits attached to those declarations) from persons with direct knowledge of the circumstances described in the IO Application, and comprehensive written legal submissions, all of which it says support the claims for relief it seeks in the IO Application. The Unions filed their response materials within two days of the filing of the IO Application, as they were required to do under the Rules, and included with their response one signed declaration (with attached exhibits) from a person with direct knowledge of the circumstances described in the IO Application, along with comprehensive written legal submissions, all of which they say support their position that the IO Application should be dismissed without any relief being granted to Mattamy Homes.

6. Mattamy Homes filed a further declaration from Mr. Kevin O'Shea after the Unions had filed their response materials ("the Supplemental O'Shea Declaration"). At the outset of the consultation hearing, counsel for the Unions objected to the inclusion of the Supplemental O'Shea Declaration on the basis that it identified new facts and circumstances not identified in the IO Application or the declarations filed in support of it (including a declaration signed on January 17, 2023 by the same Kevin O'Shea), that this is a violation of the Rules and the Board's approach to interim order application declarations, the Unions have not had an opportunity to plead in reply to it, and it would be unfair to permit Mattamy Homes to rely upon it.

7. After hearing from counsel for Mattamy Homes on the issue of the Supplemental O'Shea Declaration, the Board agreed with counsel for the Unions and said it would not consider the Supplemental O'Shea Declaration in making its deliberations and has not done so.

8. As is the custom in interim order applications, the Board commenced the proceedings by identifying the declarants it wished to further question, put questions to those persons (two declarants out of the total group of nine declarants) and then offered an opportunity to each counsel to ask follow-up questions arising from the questions to those declarants posed by the Board. The proceeding then transitioned to the supplemental and further legal submissions of the parties.

9. An interim order consultation is not an evidentiary hearing. In coming to the results in this case the Board has not assessed credibility and has not made findings of fact in respect of material, disputed issues – that is a process and activity to be dealt with at the ULP Application. In this case, as it happens, most of the material facts are not in substantial dispute, and these are set out further below.

10. Pursuant to section 98(3) of the Act an interim order decision need not be accompanied by reasons. The Board has elected to provide reasons with this decision, but further comments are appropriate. In the interests of time and dispatch the Board has not in this decision recounted all the material facts alleged by the parties nor set out all of their submissions, but instead has set out the background context and the respective submissions of the parties that the Board considered most important in coming to the result in this case. That being said, before completing the decision the Board did re-review all the materials the parties filed and the submissions, both written and those made orally at the consultation hearing.

Background

11. Mattamy Homes is a large-scale residential home builder in Ontario and has been so for many years. The Unions are the employee bargaining party to an accredited, province-wide construction industry collective agreement in the residential sector where the employer bargaining party is the Masonry Contractors Association of Toronto ("MCAT"). The collective agreement just described is currently valid from May 1, 2022 to April 30, 2025 ("MCAT Collective Agreement") and, among other things, covers residential masonry work. Mattamy Homes is not and never has been bound to the MCAT Collective Agreement. The Unions have no bargaining rights with Mattamy Homes.

12. In late 2001 Mattamy Homes filed an illegal strike application at the Board, the ultimate result of which were written minutes of settlement dated March 8, 2002 ("2002 Settlement"). Although none of

the constituent members of the Unions are listed as parties in the title of the 2002 Settlement, the Labourers' International Union of North America, Local 183 ("Local 183"), an individual responding party to this IO Application, is referenced explicitly throughout (using a slightly different name, one which it commonly used to refer to itself at that time). The substantive effect of the 2002 Settlement was that Mattamy Homes agreed to contract or sub-contract all work covered by the collective agreement between Local 183 and the Toronto Residential Construction Labour Relations Bureau ("TRCLRB") in Board Area 8 to employers that are members of the TRCLB and, in the words of the 2002 Settlement, to "… independent employers bound to similar Collective Agreements with Local 183". The 2002 Settlement, among other things, permits Mattamy Homes to utilize non-union contractors to perform masonry work on up to 20 lots at a time, per site, provided certain conditions prevail. Finally, for the present purposes, the 2002 Settlement was explicitly binding for an eight-year period with an expiry date of April 30, 2010. Further, the 2002 Settlement would automatically renew for a one-year period on its expiry date, and then again for a further one-year period on each subsequent April 30 following, unless any party gave written notice of termination at least six months before the April 30, 2010 date or six months before any of the subsequent April 30 anniversary dates.

13. On September 25, 2009 the Labourers' International Union of North America, Ontario Provincial District Council ("LIUNA OPDC"), a council of trade unions of which Local 183 is a constituent member, filed an application for certification at the Board (and an unfair labour practices application under section 96 of the Act) against Mattamy Homes. Those applications were ultimately resolved by written minutes of settlement between LIUNA OPDC and Mattamy Homes dated October 1, 2013 ("2013 Settlement"). Among other things, the 2013 Settlement confirmed that Mattamy Homes remain bound to the obligations to Local 183 it undertook in the 2002 Settlement and that it would not seek to terminate the 2002 Settlement before May 1, 2020. The 2013 Settlement reiterated that the geographic scope of the obligations described in the 2013 Settlement (and by necessary extension, the 2002 Settlement) continue to be as described in the TRCLRB collective agreement, which at the time was limited to Board Area 8.

14. In May of 2021 Mattamy Homes filed an illegal strike application at the Board against the Unions. This illegal strike application was settled by the parties under the terms of the 2021 Settlement. In

exchange for Mattamy Homes withdrawing the illegal strike application, the parties agreed (among other things) to the following terms:

> (i) masonry, stucco, Tyvek behind masonry (Tyvek is a brand-name of house wrap) and tarping performed on a Mattamy Homes project would be sub-contracted to contractors bound to the MCAT Collective Agreement until at least May 12, 2026 (paragraph 6 of the 2021 Settlement);
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> (ii) the 2002 Settlement would be continued and binding on the parties until at least May 12, 2026 (paragraph 5 of the 2021 Settlement);
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> (iii) the Unions would inform the MCAT member contractors and their own members that Mattamy Homes "…is now in compliance with LOU 8 [of the MCAT Collective Agreement]…and shall tell the Contractors and its Members to return to Mattamy sites" (paragraph 3 of the 2021 Settlement); and
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> (iv) the 2021 Settlement is enforceable under section 96(7) of the Act (paragraph 13 of the 2021 Settlement).

15. The "LOU 8" referenced above was appended to one of the declarations and has been reviewed by the Board. LOU 8 has also been the subject of discussion in several prior Board decisions. The basic mechanics of LOU 8 are that the Unions are entitled to direct that an MCAT contractor re-deploy its work force away from the project(s) of a "non-union builder" to the projects of a unionized builder. Under LOU 8, a failure to re-deploy forces from a non-union builder to a union builder when directed to do so may lead to a damages claims pursuant to a grievance or grievances filed against the MCAT contractor not in compliance with LOU 8. Under the current terms of LOU 8, the damages claimed by the Unions can be $15,000.00 for each day the contractor is in breach, plus $1,000.00 per day for each worker the contractor has assigned to the job in violation of LOU 8 (this description of LOU 8 may be found in a slightly different form at *Westbank Projects Corp.* 2022 CanLII 69116 (ON LRB) at paragraph 43).

16. At the time the 2021 Settlement was signed Mattamy Homes had many substantial new home projects underway in the Greater

Toronto Area, most of those in Board Area 8, and substantial new home projects underway in or near the City of Ottawa (Board Area 15).

17. There are at least two projects that Mattamy Homes has underway outside of Board Area 8 and not in the Ottawa area in respect of which Mattamy Homes has assigned the masonry work to a contractor bound to the MCAT Collective Agreement. One of these projects is located at Kitchener and the other one at Bracebridge. A declaration dated January 17, 2023 made by Mr. Jeff Schnurr was filed in support of the IO Application. Mr. Schnurr is a Senior Vice-President of Construction Operations for Mattamy Homes and says that his responsibility includes the geographic area from Kitchener in the west to Bracebridge in the north. The Board put several questions to Mr. Schnurr, including why Mattamy Homes contracted with the contractor bound to the MCAT Collective Agreement to perform work at the Bracebridge project. Mr. Schnurr said that the contractor in issue is a Toronto-based masonry contractor well-known to Mattamy Homes from many prior projects completed in the GTA, is a preferred contractor to Mattamy Homes, and so sometimes Mattamy Homes contracts with that contractor to complete projects "up north", as he put it.

18. In response to questions from counsel for the Unions, Mr. Schnurr said he was somewhat familiar with the 2002 Settlement, but not with the 2021 Settlement, and does not think he was even aware of the 2021 Settlement prior to the events giving rise to the filing of the IO Application in the past few weeks.

19. In his declaration dated January 17, 2023 Kevin O'Shea, who has been employed by Mattamy Homes with responsibility for projects in the Ottawa area since 2015, states that to his knowledge Mattamy Homes has had continuous new home construction projects in operation at or near Ottawa since at least 2010. In answer to the Board's questions on this topic, Mr. O'Shea said that he personally could only estimate the Mattamy Homes volume of new home construction in the Ottawa area since 2015 when he began to occupy his current position, and then went on to say that between 2015 and 2021 Mattamy Homes constructed approximately 3500 new homes in the Ottawa area.

20. Mr. O'Shea said in response to questions from counsel for the Unions that while a contractor bound to the MCAT Collective Agreement has in the past performed some work on Ottawa-area homes being constructed by Mattamy Homes, to his knowledge no contractor bound to the MCAT Collective Agreement has performed any such work on a

Mattamy Homes construction project in the Ottawa area since 2019. In response to a further question of counsel for the Unions, Mr. O'Shea said he was not familiar with the 2021 Settlement and did not know of its existence before the preparation of the IO Application in the past few weeks.

21. In his declaration, Mr. O'Shea says that since approximately May of 2021 up to the filing date of the IO Application, Mattamy Homes has undertaken approximately 2400 new housing starts in the Ottawa area and none of the work associated with them has been undertaken by a contractor bound to the MCAT Collective Agreement.

22. On December 20, 2022, Mr. Cesar Rodrigues, among other things the Sector Coordinator for the Unions (and the declarant the Unions relied on in their response materials to the IO Application), wrote to Mattamy Homes alleging that it was in breach of the 2021 Settlement because it had sub-contracted masonry work under the MCAT Collective Agreement to non-unionized contractors ("Dec. 20 Letter"). Among other things, the Dec. 20 Letter said that the Unions would seek to enforce the 2021 Settlement under section 96(7) of the Act and would seek damages for its breach calculated on a *Blouin Drywall* basis. The Dec. 20 Letter attached a schedule that identified the Mattamy Homes project sites in which the breaches were said to have occurred, all of them being Ottawa-area projects.

23. On January 4, 2023, counsel for Mattamy Homes wrote to Mr. Rodrigues, acknowledged his Dec. 20 Letter, and went on to state that Mattamy Homes would reply further by January 20, 2023 due to the intervening holiday season.

24. On January 11, 2023, Mr. Rodrigues on behalf of the Unions issued letters to all the masonry contractors bound to the MCAT Collective Agreement working on Mattamy Homes projects in the Greater Toronto Area ("GTA"). These letters stated that the Unions consider Mattamy Homes to be a "non-union builder" for the purposes of LOU 8. The letters went to request that any such contractor working on Mattamy sites move their workers to "union builder" sites. Finally, the letters all state that any contractor that denies the request of the Unions as just described and continues to perform work on a Mattamy Homes project will face a grievance from the Unions relying on LOU 8, and in particular, the damages provisions of LOU 8.

25. In response, on January 11 and 12, 2023, Mattamy Homes sent its own letter to all these same contractors stating that it had a written agreement with the Unions confirming that it was in compliance with LOU 8 (meaning the 2021 Settlement), referred to the letters that the Union had sent to these same contractors after the parties signed the 2021 Settlement (the letters sent in fulfillment of paragraph 3 of the 2021 Settlement, referred to above at paragraph 14 (iii)), and said nothing had changed with respect to the business practices of Mattamy Homes since then. The Mattamy Homes letters urged the contractors to not withdraw their respective forces and continue performing their respective work.

26. All the masonry contractors bound to the MCAT Collective Agreement almost immediately de-mobilized from the Mattamy Homes projects, withdrawing their respective workforces, and (in many cases), removing from the projects the heavy equipment they use to perform their work (telehandlers and forklifts, for example).

27. In a declaration dated January 17, 2023, Mr. Brad Carr, the chief executive officer of Mattamy Homes, states that the withdrawal of the masonry contractors has put the timely completion of approximately 1400 new homes (with a market value of approximately 1.4 billion dollars) at serious and material risk, so much so that Mattamy Homes may not be able to deliver the homes to the home buyers at the closing date specified in the agreement of purchase and sale for each home, which in every case is prior to the end of September, 2023. Mr. Carr states in his declaration that an undue delay in the closing may put the binding character of the agreement and purchase and sale at risk, among other potentially severely deleterious effects on Mattamy Homes. Mr. Carr goes on to sate that these risks pose a substantial reputational risk to the standing of Mattamy Homes amongst new home buyers, and with trade contractors and suppliers (other than the contractors bound to the MCAT Collective Agreement), the latter of whom have contracted with Mattamy Homes for years and have come to depend on a reliably timely delivery of work and supply contracts to them. Mr. Carr also states that it is not realistically possible for it to replace the masonry contractors bound to the MCAT Collective Agreement with masonry contractors not so bound, leaving aside the further legal jeopardy it may face (from the Unions, for example) were it to do so, as the state of the industry is such that there are too few such contractors to make up for the sudden loss of all the contractors bound to the MCAT Collective Agreement.

28. In his response declaration signed on January 19, 2023, Mr. Rodrigues states (among other things), that:

> (i) there is a severe shortage of skilled masonry workers in Ontario and LOU 8 is designed and intended to address that shortage;
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> (ii) because Mattamy Homes is not bound to the MCAT Collective Agreement it is a "non-union builder" for the purposes of LOU 8;
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> (iii) prior to his signing the 2021 Settlement on behalf of the Unions, Mr. Rodrigues was aware that Mattamy Homes was operating in the Ottawa-area on a non-union basis (that is, not using contractors bound to the MCAT Collective Agreement) and had been so operating since at least 2019; and
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> (iv) Mr. Rodrigues is of the view that the 2021 Settlement requires Mattamy Homes to utilize contractors bound to the MCAT Collective Agreement on a province-wide basis, including in the Ottawa area, and its failure to do so after May 14, 2021 has placed it in breach of the 2021 Settlement, which has the effect of making the Unions' earlier statements to the contractors (the letters referenced above at paragraph 14 (iii)) of no further effect.

Submissions

29. Counsel for Mattamy Homes began his submissions by stating what this IO Application is not, namely, that it is not an illegal strike application and is not (itself) a challenge to the legality of LOU 8. Further, counsel said, the IO Application is not a collateral attack on the "free speech" rights of the Unions or any of their members and executives. Counsel said he was starting with this submission because all the submissions made by the Unions in connection with these topics are just red herrings that the Board should ignore.

30. Counsel for Mattamy Homes said that the IO Application is relatively simple and straightforward in its central claims, which he summarized as these:

(i) that the 2021 Settlement requires Mattamy Homes to apply the MCAT Collective Agreement to masonry work in Board Area 8, which it has been doing continuously since 2002;

(ii) that the Unions are bound to the commitments and statements they made in the 2021 Settlement;

(iii) that the Unions agreed in the 2021 Settlement at paragraph 3 that Mattamy Homes is in compliance with LOU 8, and confirmed that further in letters that the Unions issued to all the contractors bound to the MCAT Collective Agreement immediately after the signing of the 2021 Settlement;

(iv) that the circumstances in effect at the time the parties signed the 2021 Settlement, including that Mattamy Homes did not apply the MCAT Collective Agreement to its projects at Ottawa, all remain unchanged since then;

(v) that the 2021 Settlement remains binding on the parties until at least May 12, 2026;

(vi) that the issuance of the letters by Mr. Rodrigues on behalf of the Unions to the contractors bound to the MCAT Collective Agreement on January 11, 2023 telling those same contractors that Mattamy Homes is a non-union builder for the purpose of LOU 8 and that the Unions will file grievances and seek damages under LOU 8 from any contractor that does not withdraw its workforce from an Mattamy Homes project is a clear violation of the statement to the contrary as set out at paragraph 3 of the 2021 Settlement; and

(vii) all the relevant factors the Board typically does and should consider in the context of an interim order application, including the risk of irreparable harm, favour granting Mattamy Homes the remedies it seeks.

31. Counsel for Mattamy Homes submitted that the assertion by the Unions that the 2021 Settlement was intended to require Mattamy Homes to apply the terms of the MCAT Collective Agreement in the Ottawa area is obviously wrong. In this respect, counsel submitted, the 2021 Settlement does not say that paragraph 6 (which commits Mattamy Homes to having the expanded description of masonry work described there performed by a contractor bound to the MCAT Collective Agreement) applies to the Ottawa area, and it defies labour relations practice and sense that the parties would agree, without explicitly saying so, to expand the geographic scope of Mattamy Homes' obligations in respect of the MCAT Collective Agreement. Further, where the Unions have entered into settlements with builders where those builders have agreed to apply the terms of the MCAT Collective Agreement on a province-wide basis, it has always explicitly included that geographic scope in such settlements. Counsel in this regard pointed to the "template settlement" that Mr. Rodrigues included with his declaration and which he says formed the basis of some 100 plus such settlements over the past several years. Finally, and most importantly, counsel noted that the parties agreed in the 2021 Settlement to continue to be bound by the terms of the 2002 Settlement, which explicitly limits the geographic scope of its application to Board Area 8.

32. Counsel for Mattamy Homes urged the Board to grant the remedies sought in the IO Application with a view to "restoring the *status quo ante*", as he put it, that was clearly in place up to the day before Mr. Rodrigues issued his letters to the MCAT contractors on January 11, 2023. During his submissions counsel for Mattamy Homes referred to several prior Board cases (and the other case law) and had an opportunity to comment on the legal authorities referenced by counsel for the Unions. The Board has considered these submissions in the present case.

33. Counsel for the Unions submitted that the Board should dismiss out of hand the "irreparable harm" submissions made on behalf of Mattamy Homes, both in its written materials and at the consultation hearing. Counsel for the Unions submits those submissions are misplaced, because the central problem the entire industry in Ontario faces is the significant shortage of skilled masonry workers, a problem for the Unions as much as for any other party. In the face of such a shortage, counsel continued, the question becomes "who should have access to the unionized masonry workers?", and that question is answered (in part) by LOU 8. In this respect, counsel for the Unions noted that LOU 8 does not require all builders to be bound by the MCAT

Collective Agreement, and treats those who are so bound and those who are not so bound but who agree to apply the terms of the MCAT Collective Agreement in its explicit geographic scope (that is, the entirety of the province) as being equally entitled to access the skilled masonry workers the Unions can supply, who are their members. In short, in the submission of counsel for the Unions, Mattamy Homes has chosen not to apply the terms of the MCAT Collective Agreement where it explicitly applies, unlike (for example) the 100 plus builders that Mr. Rodrigues referred to in his declaration, and it should not obtain a "special deal" different from those other builders who are not bound to the MCAT Collective Agreement but who have agreed to apply its terms in all of Ontario.

34. Further, counsel for the Unions says that very plainly the 2021 Settlement did not create any such special deal, because the operative clause (paragraph 6, which requires Mattamy Homes to perform the masonry work described there through MCAT contractors) does not exempt Ottawa, and Mattamy Homes in effect is requesting that exemption be read into the paragraph, a request the Board should definitely decline, especially in the context of it being made in an interim order application.

35. Counsel for the Unions also submitted that Mattamy Homes is advancing a set of theories that negate themselves. Either Mattamy Homes is correct that the 2021 Settlement was intended to and indeed does apply to just Board Area 8, in which case it necessarily does not apply to Board Area 15 (that is, the Ottawa area), and so the Unions are clearly correct to describe Mattamy Homes as a non-union builder for the purposes of LOU 8 and take the steps they did; or, the 2021 Settlement does apply to Board Area 15, in which case Mattamy Homes is clearly in breach of paragraph 6 of same because it does not assign masonry work there to contractors bound to the MCAT Collective Agreement, and so the Unions are clearly correct to describe Mattamy Homes as a non-union builder for the purposes of LOU 8 and take the steps they did.

36. Counsel for the Unions also submitted that the remedies sought by Mattamy Homes in this case are problematic and the Board should decline its discretion to grant the remedies requested. First, counsel for the Unions stridently disagrees that the *status quo ante* on January 10, 2023 was as counsel for Mattamy Homes described it. Rather, that *status quo ante* includes that the Unions have discovered that Mattamy Homes is in breach of its obligations under the 2021 Settlement and

consequently has declared it to be a non-union builder under LOU 8 and taken the steps under the MCAT Collective Agreement it is entitled to take on behalf of its members. Counsel for the Unions emphasized that Mattamy Homes is not a party to, and indeed is a complete stranger to, the MCAT Collective Agreement, and so cannot be permitted to direct what should or should not occur under its terms. Further, the masonry contractors bound to the MCAT Collective Agreement are not parties to the IO Application (or the underlying ULP Application), and the Board cannot issue directions binding on any of them concerning where they or any one of them should deploy their workforces. Neither, for that matter, can the Unions so direct the masonry contractors, and so no order or direction should issue directing the Unions to so instruct the MCAT contractors. In the submission of counsel for the Unions, any remedial direction by the Board in this IO Application will only lead to industry confusion and chaos, and so the Board should decline to do so.

37. In the circumstances, counsel for the Unions requested that the IO Application be dismissed. During his submissions, counsel for the Unions also referred to several prior Board cases (and other legal authorities) and had an opportunity to comment on the legal authorities referenced by counsel for Mattamy Homes. The Board has considered these submissions in the present case.

Decision

38. There is no dispute between counsel as to the relevant legal principles that apply to the instant case. In determining an interim order application, while always remaining cognizant that the Board is not finally determining any fact or issue in dispute, the Board tends to ask itself if granting the relief requested (or any part of it) makes labour relations sense in all the circumstances, and tends to focus on these analytical factors to answer that question:

(i) The purposes of the Act;

(ii) The nature of the interim order sought;

(iii) The urgency of the matter;

(iv) The apparent strength of the applicant's case and defence that the responding party may have;

(v) The balance of convenience/inconvenience;

(vi) The balance of labour relations and other harm;

(vii) Whether the alleged damage is irreparable or not;

(viii) Delay; and

(ix) Any other labour relations considerations.

(see, for example, *National Judicial Institute*, 2018 CanLII 51312 (ON LRB) at paragraph 38)

39. In any specific case, the Board may tend to emphasize one or more of these factors rather than the others (see, for example, *Delta Beverages Inc.*, 2022 CanLII 75606 (ON LRB) at paragraph 31).

40. The parties are also agreed that not only does the Board have the jurisdiction to enforce settlements under section 96(7) of the Act, it should not hesitate to do so where the terms of settlement are clear and unambiguous (see, for example, *Brantwood Nursing Homes Ltd.* [1984] O.L.R.B. Rep. 415 at paragraphs 12 and 13), because stable labour relations depends on parties being bound by the agreements they make.

41. In the Board's view, the urgency of the matter, the apparent strength of the central claims of Mattamy Homes, the risk of irreparable harm to Mattamy Homes and the balance of convenience are the most important factors in this case and militate in favour of granting interim orders in favour of Mattamy Homes.

42. In respect of the urgency of the matter, it is not in dispute that the circumstances described in this case have led directly and quickly to the cessation of work on a substantial number of new homes in the GTA. In respect of the risk of irreparable harm, the Board is satisfied that it is substantial from a reputational perspective as set out in the declaration of Mr. Carr, as summarized at paragraph 26, above.

43. The apparent strength of the central claims made by Mattamy Homes is not as clearly obvious to the Board as is the urgency and risk of irreparable harm, but on balance favours Mattamy Homes. In the 2002 Settlement Board Area 8 is identified as the applicable geographic scope. The 2021 Settlement explicitly binds the parties to the entirety of the 2002 Settlement, but itself explicitly identifies no geographic scope on its face. Given the apparent scale of house construction by

Mattamy Homes in Ottawa before and up to May of 2021, and the knowledge by the Unions that since at least 2019 Mattamy Homes had been performing masonry work in that area but not under the terms of the MCAT Collective Agreement, the Board is satisfied that Mattamy Homes may successfully establish that the 2021 Settlement did not require it to perform masonry work in the Ottawa area under the terms of the MCAT Collective Agreement. While it is true that Mattamy Homes engaged contractors bound to the MCAT Collective Agreement to perform masonry work at its projects at Kitchener and Bracebridge, that is, outside the geographic scope of Board Area 8, since 2021, there is nothing in the materials that leads the Board to think this was likely because Mattamy Homes viewed itself as required to assign masonry work to those MCAT contractors outside of Board Area 8. Rather, it appears to have occurred because Mattamy Homes wished to contract with those masonry contractors at those projects.

44. As to the balance of convenience, this also favours Mattamy Homes. The Board takes from all the material before it that the purpose of the 2021 Settlement from the perspective of Mattamy Homes, at least, was to establish peace and stability with the Unions in connection with construction of new homes in the GTA until at least May of 2026. That peace and stability arose directly from the statement by the Unions that Mattamy Homes is in compliance with LOU 8. The Dec. 20 Letter from Mr. Rodrigues to Mattamy Homes stated that the Unions would seek to enforce the terms of the 2021 Settlement pursuant to section 96(7) of the Act. If the Unions had pursued that enforcement route, they might have found their position vindicated (and might yet, of course, the Board reiterates that in this decision it makes no determination on the parties' respective positions on the geographic scope of the 2021 Settlement) and advanced their *Blouin Drywall* damages claim, all without disrupting the work being performed by masonry contractors bound to the MCAT Collective Agreement at Mattamy Homes project sites until their position had been vindicated. Instead, the Unions wrote the January 11, 2023 letters to the masonry contractors described at paragraph 24, above, which led to an immediate cessation of a huge volume of Mattamy Homes project work and all the potential irreparable harm to it already described. It weighs in the balance of convenience in favour of Mattamy Homes that when the 2021 Settlement was signed in May of 2021 Mattamy Homes performed masonry work in the Ottawa area without applying the terms of the MCAT Collective Agreement to that work, the Unions knew that at the time, but took no further action before December 20, 2022. It is the Board's view that sound labour relations sense in all the circumstances favours an interim order that

may encourage a return to the stability that prevailed prior to January 11, 2023.

45. It is therefore appropriate for the Board to issue an interim order that may limit the effect of the Unions' letter to the masonry contractors of January 11, 2023. In consequence, the Board is prepared to issue interim orders to that effect, but that is the extent of what it is prepared to do at this time in the absence of a final disposition of the ULP Application after an evidentiary hearing. This is because there is some merit to the submissions of counsel for the Unions as to the relatively limited scope of the orders the Board can and should issue at this time.

46. The Board will not, indeed cannot, issue directions or orders binding on the masonry contractors themselves. Those masonry contractors are not parties to the IO Application. And while the reason any particular masonry contractor may have de-mobilized from its Mattamy Homes project site may be inferentially obvious from all the foregoing, the Board has no determined facts before it about that.

47. At the consultation hearing counsel for Mattamy Homes, when acknowledging (in effect) that the Board had no jurisdiction to issue orders or directions binding on the masonry contractors in this proceeding, said that a direction by the Board that Mattamy Homes is in compliance with LOU 8 would permit his client to re-engage those same masonry contractors concerning their prompt return to Mattamy Homes work sites.

Interim Orders

48. The Board declares on an interim basis that the letters that the Unions issued to the masonry contractors on January 11, 2023, referenced further at paragraph 24, above, to the extent they state that Mattamy Homes is not in compliance with LOU 8 of the MCAT Collective Agreement, have no legal effect or force.

49. To further clarify, until such time as the Board declares otherwise, Mattamy Homes is in compliance with LOU 8 of the Collective Agreement.

50. The Board hereby also directs as follows:

(i) that by no later than **January 31, 2023** the Unions shall post a copy of this decision on all relevant notice boards (or equivalent locations) at its offices where this might come to the attention of the employees covered by the MCAT collective agreement, and on their website, for a period of at least 45 days from the date of this decision;

(ii) that by no later than **January 31, 2023** the Unions shall provide a copy of this decision under cover of its letterhead to all the masonry contractors to which it sent the letters dated January 11, 2023 referenced further at paragraph 24, above; and

(iii) that each of the letters described at item (ii) above is to be copied on its face to counsel for Mattamy Homes.

"Michael McFadden"
for the Board