

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

NOTICE OF APPEAL TO THE COURT OF APPEAL

B E T W E E N:

LEAH DYCK

Appellant

and

BARRIE MUNICIPAL NON-PROFIT HOUSING CORPORATION

Respondent

FRESH EVIDENCE TENDERED BY APPELLANT

PART I - NATURE OF THE MOTION

1. The Appellant in the proposed Appeal (“Appellant”) seeks to adduce fresh evidence regarding events that have occurred since the urgent motion hearing dated October 29, 2024 in Barrie, Ont. The fresh evidence details the truth defence of the Appellant. The Appellant respectfully submits that this evidence is highly relevant to the issues raised within the appeal, and addresses the motive of the Respondent in refusing to provide, and now denying the existence of the audit documents pertaining to the audit they conducted internally on the Appellant’s housing account file in April 2022. In order order to fairly determine the issues in this proceeding, the fresh evidence should be admitted. Furthermore, the Appellant was very diligent in obtaining this evidence, and would have had it admitted already if the process of obtaining this privileged evidence wasn’t so daunting.

PART II - THE FACTS

Chronology of Proceedings Below

2. The Appellant repeats and relies upon the facts as plead in the factum on the proposed appeal, which will be filed within the requisite time frame. For ease of reference, the relevant facts from the proceedings pertaining to the fresh evidence in issue are briefly reproduced below.
3. On September 28, 2021, the Appellant was informed by the Respondent that there was a credit (credit also referred to as “overcharge”) on her housing account file.
4. Between September 28, 2021 and April 10, 2022, the Appellant asked the Respondent for details pertaining to this overcharge four times to three different employees of the Respondent, and it wasn’t until April 26, 2022 when the Respondent finally gave her an answer, and only after the Appellant threatened to tell news outlets.
5. On April 13, 2022, the Appellant was informed by the Respondent that they were conducting an audit on her account file to ensure her credit was a true credit.
6. On April 26, 2022, the Appellant recorded a phone call between herself and the Respondent’s Chief Executive Officer (CEO), Mary-Anne Denny-Lusk. The Appellant transcribed this recorded phone call and admitted it as evidence. The Respondent submitted the audio recording as evidence in their Motion Record as Exhibit K on page 70, as a DropBox file. The following statements were made by Mary-Anne Denny-Lusk during this recorded phone call at the following time stamps:
 - i. Time stamp 1:04: *“But there is a large credit and a significant portion we can absolutely release before we even talk about that; the ODSP piece.”*
 - ii. Time stamp 12:48: *“... this is all you making overpayments because if you’re double paying on your rent, we owe you that money back to you, not to ODSP.”*

iii. Time stamp 13:06: *“And I see the BMO payments come in and the ODSP payments came in...”*

iv. Time stamp 17:05: *“Yeah, and we’ll just communicate that with you. Like, we’ll break-it-down; this is how much is going to you, this is how much is going to ODSP, and then by the end of this, your balance should be zero.”*

7. On May 9, 2022, the Respondent issued a cheque in the amount of \$2,628.53. At that time, the Appellant did not suspect the Respondent of being dishonest about the amount of the credit.
8. Between October 2022 and June 2024, the Appellant endured and witnessed a significant amount of abuse, exploitation, breach of contract, breach of privacy and discrimination by the Respondent. This led the Appellant to file an Application 1 Form with the Human Rights Tribunal of Ontario (HRTO), whom served the Respondent, among others, on July 26, 2024. Between July 26, 2024 and November 22, 2024, the Appellant has asked the Respondent for the audit documents they conducted on her housing account file in April 2022. The Respondent continues to ignore the Appellant’s request for the audit documents to this day.
9. On October 4, 2024, the Appellant submitted her Statement of Defence and Counterclaim. The Appellant’s counterclaim includes, among other things, a request for an order to assign a Federal Housing Advocate to launch a criminal investigation into the Respondent’s business operations regarding all monies they’ve received from any level of government since 2016.
10. On the afternoon of October 28, 2024, the Ontario Ministry of Children, Community and Social Services (CCSS) responded to the Appellant’s Ministry Freedom of Information Protection and Privacy Act (MFIPPA) request for the release of her entire Ontario Disability Support Program (ODSP) file, which should have included the Appellant’s “ODSP ledger” and would have made known all the payments made by ODSP directly to the Respondent, including the amount of each payment and the date each payment was made. However, the CCSS did not include this information in their response. Consequently, the Appellant emailed

the CCSS employee who provided the release of her ODSP file and asked her to send the ODSP rental payment ledger that shows the amounts paid directly to the Respondent. The Appellant also asked her if the Respondent had reimbursed ODSP for any overpayments they may have made at any point in time.

11. The Respondent scheduled an urgent motion hearing for October 29, 2024 at 9:30 AM. However, the parties weren't heard until 2:15 PM.
12. During the October 29, 2024 urgent motion hearing, the Appellant told the Motion Judge of the efforts she made to obtain the ODSP ledger, and why it wasn't already admitted as evidence.
13. The Respondent's lawyer told the Motion Judge that the audit at issue wasn't a 'CRA audit' and therefore, it wasn't relevant to the proceeding. When the Appellant insisted the audit documents was absolutely relevant, the Motion Judge effectively silenced the Appellant and told her the audit wasn't what this hearing was about.
14. On November 5, 2024, the Motion Judge ordered the Appellant to pay the Respondent's substantial indemnity costs of \$7,500.00. The Motion Judge stated in her Endorsement / Order dated November 5, 2024 that the Respondent attempted to resolve the issue of costs by making an offer to the Appellant of \$6,000.00. The Motion Judge then stated within her Endorsement / Order that the Appellant's behaviour was worthy of a sanction.

Fresh Evidence: Category 1

15. The fresh evidence presented as 'fresh evidence category 1' is described as meeting all four of the criterium generally permitted to admit fresh evidence on appeal;
16. On the morning of October 29, 2024, the County of Simcoe delivered a letter by email to the Appellant informing her that it is a matter of policy to not get involved in lawsuits between private parties.
17. On October 30, 2024, the CCSS released the Appellant's ODSP ledger to the Appellant.

18. On November 1, 2024, the Appellant's ODSP case worker, Ashley Walker, informed the Appellant that she confirms the Respondent did not reimburse ODSP with any overcharged rent monies as the Appellant's entire ODSP file did not reveal any such reimbursements.
19. The Appellant then downloaded all her bank statements as far back as she could go, which was only back to November 1, 2017.
20. The Appellant then cross-matched her payments made directly from her personal bank account, with the payments made directly by ODSP, and the tenant ledger provided by the Respondent.
21. This curated data was used by the Appellant to create her own version of a tenant ledger and determined the Respondent was grossly negligent in reporting payments made in the tenant ledger they provided to the Appellant in August 2024.
22. The Appellant's curated data reveals the Respondent still owes the Appellant between \$1,814.20 and \$2,289.20, which amounts to a total credit and overcharge of around \$5,000.00, and not the \$2,628.53 the Respondent continues to claim.
23. The above curated data doesn't include the overcharges made on the Appellant's account file from the extra income she received during the 2020 pandemic and in which she's now paying back slowly each month. The Appellant cannot calculate the above rental charges without knowing the percentage of income charged by the Respondent, which is usually 30 percent but is not necessarily 30 percent.
24. On November 1, 2024, the Respondent's lawyer delivered by email to the Appellant a letter in response to the Appellant's recent findings regarding the 'Leah's Version Tenant Ledger'.
25. On November 5, 2024, the Motion Judge issued an Endorsement / Order ordering the Appellant to pay \$7,500.00 to the Respondent. The Appellant was dumbfounded and shocked that such a perversion of justice could have happened. The Appellant proceeded to email the Minister of Municipal Affairs and Housing of Ontario.

26. On November 13, 2024, the Appellant delivered by email to the Respondent's lawyer a Request to Admit form.

27. On November 14, 2024, the Respondent delivered to the Appellant by email their Response to Request to Admit form and outrightly denied the existence of the audit documents at issue, and also denied the authenticity of the transcript of the recorded phone call between the Appellant and the Respondent's CEO Mary-Anne Denny-Lusk, even though Mary-Anne Denny-Lusk already confirmed many statements she made within this recorded phone call in several of her own affidavits from October 2024.

28. On November 15, 2024, the Community Housing Policy Branch of the Ministry of Municipal Affairs & Housing responded to the Appellant's November 5th email. The Appellant consequently replied to the Ministry that afternoon.

Fresh Evidence: Category 2

29. The fresh evidence presented as 'fresh evidence category 2' is described as meeting three out of the four criterium generally permitted to admit fresh evidence on appeal;

30. The fresh evidence the Appellant is requesting to admit in subsequent paragraphs no. 29-32 could have been admitted by the Appellant previously. The Appellant is asking the Court to allow her to submit it now because:

- i. Between the HRTO matters and this matter, the Respondent and the Appellant have collectively submitted well over 1,000 pages of documents and the Appellant thought the below fresh evidence had been previously submitted in this matter. Upon further review, the Appellant realized an email document referenced below was only submitted to the HRTO by the Appellant;
- ii. This fresh evidence will not come as a surprise to the Respondent as they've referenced the email at issue many times throughout this Superior Court of Justice matter (and conveniently left it out);

- iii. The category 2 fresh evidence proves the allegations made by the Respondent are not true. There was no evidence provided at any time to prove the Respondent's allegations regarding the contents of the email at issue. The Appellant seeks to prove herself as a truth-teller regarding every single erroneous allegation made about her by the Respondent;
- iv. If the requested category 2 fresh evidence is not permitted to be admitted as fresh evidence now, the Appellant understands. This fresh evidence does not prove or disprove the Respondent's mass-scale fraud scheme but rather proves they lied about the contents of an email.

31. In the Respondent's Motion Record, the Affidavit of Soula White references Exhibit A, dated October 4, 2024, which includes an email from a tenant, Yanet Montero, who was also a recipient of the Appellant's food security program for nearly three years. Yanet referenced an email blast from the Appellant and delivered to tenants and non-tenants in July 2024. The email blast requests recipients to sign a petition with the House of Commons. The Respondent claims this email blast entices other tenants to fabricate concerns regarding the Respondent. The Respondent, as well as tenant Yanet Montero, claim the contents of this email are about Barrie Housing, when in fact, it was about the Ministry of Municipal Affairs and Housing of Ontario (it didn't even mention Barrie Housing). The Respondent did not provide evidence of this email because it would have shown the email was about the Ministry of Municipal Affairs and Housing Ontario). If anything, the email suggests the Respondent enticed Yanet Montero to falsify concerns regarding the Appellant since no person with a grade 3 reading level could conclude that it entices anyone to do anything, let alone fabricate or falsify concerns about anyone.

32. In the Respondent's Form 2 Response to the Appellant's Application 1 Form filed with the HRTO on August 28, 2024, paragraph 28 accuses the Appellant of enticing other tenants to falsify and fabricate concerns regarding the email blast the Appellant delivered to tenants and non-tenants asking them if they would sign her petition launched through the House of Commons' website.

33. Also in the Respondent's Form 2 Response to the HRTO, TAB A is the first tenant ledger the Appellant ever received from the Respondent in the entire 15 years she's been residing at 380 Duckworth Street in Barrie, Ontario.

34. In the Respondent's Form 2 Response to the HRTO, TAB E is the letter of Yanet Montero addressed to Soula White that falsifies the contents of the email blast. This evidence clearly demonstrates the Respondent thinks they own the Appellant and have the authority to prevent her from executing a petition through the House of Commons' website regarding the Ministry of Municipal Affairs and Housing Ontario. Even if the petition was about the Respondent—which it is not—the Respondent does not control the actions of the Appellant. The Appellant requires a judge to order the Respondent to stop trying to control the Appellant because the Appellant is a Canadian citizen and as a Canadian citizen, the Appellant is entitled to have rights and freedoms, including the right and freedom to run a petition through the House of Commons' website, regardless of who the petition is about.

35. The above noted facts are recited in the Affidavit of the Appellant, Leah Dyck sworn November 21, 2024.

PART III - ISSUES AND THE LAW

36. Subsection 134(4)(b) of the Courts of Justice Act, R.S.O. 1990, c. C.43 ("CJA"), permits this Honourable Court to admit fresh evidence on an appeal. It provides:

134. (4) Unless otherwise provided, a court to which an appeal is taken may, in a proper case, ...

(b) receive further evidence by affidavit, ... or in such other manner as the court directs;

...

to enable the court to determine the appeal.

R61.16(2) A motion under clause 134 (4) (b) of the CJA (motion to receive further evidence) shall be made to the panel hearing the appeal.

In addition, s. 21(3) of the CJA specifies that a single judge of the Divisional Court “shall” hear and determine motions “unless otherwise provided by the rules of court.”

37. The four-part test for admission of fresh evidence on appeal was set out by the Supreme Court of Canada in 1980:

R. v. Palmer, a 1980 Supreme Court of Canada decision established the test for the admission of fresh evidence on appeal:

- i. The evidence should not be admitted if, by due diligence, it could have been adduced at trial, but this general principal will not be applied as strictly in criminal cases as in civil cases;
- ii. The evidence must be relevant in the sense that it bears on a decisive or potentially decisive issue;
- iii. The evidence must be credible in the sense that it is reasonably capable of belief; and
- iv. The evidence must be such that if believed, it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

PART IV - PRECEDENCE

38. While it may be unusual to admit fresh evidence on appeal which was not in existence at the time the matter was originally heard, an exception was articulated by McKinlay J.A. in *Sengmueller v. Sengmueller* at paragraph 10:

- i. Most of the cases dealing with the admission of fresh evidence on appeal involve evidence which, though in existence prior to trial, for some reason other than lack of diligence, was not tendered at trial. This case involves fresh evidence (category 1) which did not exist prior to trial. One obvious problem with admitting on appeal

evidence which did not exist at the time of trial is that such evidence could not possibly have influenced the result at trial.

- ii. It is argued for the appellant that admitting such evidence on appeal would result in there being no finality to the trial process, that it would tend to turn appeal courts into trial courts, and that it would unacceptably protract legal proceedings.
- iii. All of these objections are valid and compelling. However, in a case where the evidence is necessary to deal fairly with the issues on appeal, and where to decline to admit the evidence could lead to a substantial injustice in the result, it appears to me that the evidence must be admitted. In my view in the particular and unusual circumstances of this case, this is such a case. The court admitted evidence not in existence at the time of trial in *Mercer v. Sijan* (1976), 14 O.R. (2d) 12 at p. 17, 72 D.L.R. (3d) 464 (C.A.), stating: *“The competing considerations, on the one hand, are the public interest in finality to litigation, and, on the other hand, the affront to common sense involved in a Court shutting its eyes to a fact which falsifies the assessment.”*

39. Thus, where the evidence did not exist at the time of the original hearing, this Honourable Court will exercise its discretion to admit the fresh evidence where:

- i. The evidence is necessary to deal fairly with the issues on appeal; and
- ii. To decline to admit the evidence could to a substantial injustice in the result.

40. The Appellant requests that the category 2 fresh evidence be submitted now because the Motion Judge did not look at, read, or hear the spoken words of the Appellant and therefore, the Motion Judge dismissed all the evidence presented to her (since the Respondent produced no evidence).

41. Although this proposed appeal is not a formal re-trial, it would essentially be an informal re-trial because all the evidence produced by the Appellant at the original hearing would be viewed for the first time by the appeal judge.
42. The fresh evidence in this proposed appeal that is sought to be admitted relates to the conduct of the Respondent prior to and after the Motion Judge heard the proceeding on October 29, 2024. The fresh evidence regarding the Respondent's conduct is detailed in two affidavits of the Appellant.
43. This Honourable Court is entitled to examine the motives behind the commencement of any proceeding, including a proceeding intended to silence a bona fide whistleblower such as the Appellant in this proceeding. The fresh evidence (both category 1 and 2) sought to be filed by the Appellant will assist this Honourable Court in assessing the motives of the Respondent in commencing the original proceeding and pursuing a "gag order" on the Appellant.

PART V - ORDER REQUESTED

44. The Appellant requests an order admitting into evidence the following documentary fresh evidence: category 1;
- i. The Appellant's ODSP ledger, dated October 30, 2024;
 - ii. The County of Simcoe letter to the Appellant, dated October 29, 2024;
 - iii. The email exchanges between the Appellant with her ODSP case worker Ashley Walker, dated November 1, 13 and 21, 2024;
 - iv. Screenshots of the Appellant's bank statements between November 1, 2017 and March 31, 2022, titled, 'Leah's Payments';
 - v. The Appellant's Version Tenant Ledger, dated October 31, 2024;
 - vi. Ledger Notes, dated October 31, 2024;

- vii. The Respondent's letter emailed to the Appellant, dated November 1, 2024;
 - viii. The three emails exchanged between the Appellant and the Ministry of Municipal Affairs and Housing, dated November 5, 2024 and November 15, 2024;
 - ix. The Appellant's Request to Admit, dated November 13, 2024;
 - x. The Respondent's Response to Request to Admit, dated November 14, 2024;
45. The Appellant requests an order admitting into evidence the following documentary fresh evidence: category 2;
- i. The Appellant's email blast regarding a petition with the House of Commons, dated July 19, 2024;
 - ii. Paragraph 28 of the Respondent's Form 2 Response submitted to the HRTO, dated August 28, 2024;
 - iii. TAB A of the Respondent's Form 2 Response submitted to the HRTO, dated August 28, 2024;
 - iv. TAB E of the Respondent's Form 2 Response submitted to the HRTO, dated August 28, 2024.

DATE: November 21, 2024

Leah Dyck

Self-represented Appellant

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RCP-E 61A (February 1, 2021)

Courts of Justice Act

BACKSHEET

LEAH DYCK

-and-

*BARRIE MUNICIPAL NOT-PROFIT
HOUSING CORPORATION
Respondent*

Appellant / Moving Party

Court File No. DC-24-00000700-00ML

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

Fresh Evidence Tendered by the Appellant

LEAH DYCK
November 21, 2024

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Self-represented Appellant

RCP-E 4C (September 1, 2020)