

Court File No. CV-24-00002378-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

BARRIE MUNICIPAL NOT-PROFIT HOUSING CORPORATION

Plaintiff/Moving Party

and

LEAH DYCK

Defendant/Respondent

FACTUM OF THE PLAINTIFF/MOVING PARTY

October 4, 2024

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PART I – OVERVIEW

1. This factum is for use at the hearing for interim relief for an interim/interlocutory injunction against the defendant to remove, and cease further posting of, defamatory posts relating to the plaintiff.
2. The plaintiff and moving party, Barrie Municipal Not-Profit Housing Corporation (“Barrie Housing”) seeks to restrain the defendant and respondent, Leah Dyck, from a malicious campaign of online defamation against Barrie Housing, and its employees, which defamatory statements primarily levy unfounded, unsubstantiated, and completely offensive allegations of criminality against Barrie Housing and its employees.
3. The defendant’s campaign of defamation falsely accuses Barrie Housing and its employees of, among other things: theft, corruption, harassment, collusion, fraud, major crimes, covering up of major crimes, promoting human trafficking, deceit, and lying. The

defendant's campaign of defamation also compares Barrie Housing and its employees to the Nazis and states that Barrie Housing, if they could, would turn its properties into concentration camps and death camps.

4. The defendant's campaign of online defamation exceeds 200 posts across in excess of 40 different online groups/webpages since July 2024 alone.
5. Barrie Housing and its employees have been targeted in an exceptional, outrageous, and repetitive manner.
6. Without judicial intervention, it is unlikely that the defendant will cease her campaign of defamation.

PART II – FACTS

7. Barrie Housing is a corporation incorporated pursuant to the *Not-Profit Corporations Act*.¹ Barrie Housing owns and operates various properties in the Barrie area which properties are primarily rented out to tenants who qualify for the rent-geared-to-income regime. The defendant is a tenant of Barrie Housing, pursuant to the rent-geared-to-income regime, and has been since in or about 2009, pursuant to a Tenancy Agreement².

Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, paragraphs 1-13

8. The defendant's campaign of online defamation appears to be rooted in two conspiratorial theories or otherwise on false assumptions, namely that the defendant having previously overpaid her rent and thereafter receiving a refund is evidence of "theft" by Barrie Housing against *all* Barrie Housing tenants, and that Barrie Housing has intentionally interfered with the defendant's ability to raise funds for her charity. These allegations are denied.

Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, paragraphs 14-15

¹ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "A"*

² *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "B"*

9. The plaintiff delivered to the defendant notice pursuant to the *Libel and Slander Act* on September 7, 2024.³

Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, paragraph 18

10. The specifics of each post authored and published by the defendant are set out in detail in paragraphs 19(a) to 19(o), 20(a) to 20(j), and paragraph 21 of the affidavit of Mary-Anne Denny-Lusk sworn in support of this motion. A summary of the defamatory statements – which allege against Barrie Housing and its employees - express or implied or otherwise by innuendo – the following:

- a. Barrie Housing tenants have no human rights and are living in hell⁴
- b. Barrie Housing are guilty of criminal offences and that a criminal investigation ought to be opened⁵
- c. Barrie Housing are guilty of or are committing fraud⁶
- d. Barrie Housing (and its employees) should be put in jail⁷
- e. That a criminal investigation has been commenced against Barrie Housing⁸
- f. Barrie Housing has been “caught” in its criminal behaviour⁹
- g. Barrie Housing is harassing the defendant¹⁰
- h. Barrie Housing is accused of and/or covering up major crimes¹¹
- i. Barrie Housing is stealing¹²

³ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit “C”*

⁴ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit “D”, “W”*

⁵ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit “E”*

⁶ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibits “E”, “L”, “M”, “P”, “BB”*

⁷ *Ibid*

⁸ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit “G”*

⁹ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit “H”*

¹⁰ *Ibid*

¹¹ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibits “I”, “J”, “M”, “P”, “Q”, “V”, “BB”, “CC”*

¹² *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit “J”, “N”, “P”, “Y”*

- j. Barrie Housing is lying¹³
 - k. Barrie Housing is illegally evicting tenants¹⁴
 - l. Is intentionally interfering with the defendant's charity¹⁵
 - m. Is promoting or fostering an environment conducive to human trafficking and domestic abuse¹⁶
 - n. Are destroying innocent lives¹⁷
 - o. Barrie Housing are "mafia yes-men"¹⁸
 - p. Barrie Housing is corrupt¹⁹
 - q. Barrie Housing is getting away with murder²⁰
 - r. Barrie Housing is committing white collar crimes, abuse, oppression, and tyranny²¹
 - s. Barrie Housing is as evil as the Nazis and would legally turn their properties into concentration camps/death camps if they could²²
11. In addition, the defendant is disseminating "testimonies" of unnamed individuals purportedly supporting her (without any specifics as to the legitimacy of these "testimonies") or otherwise proffering as "evidence" in support of her allegations, testimonies which are fabricated, false, or otherwise untrue.

Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, paragraph 20(j)

¹³ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "N"*

¹⁴ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibits "O", "AA"*

¹⁵ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibits "R", "T"*

¹⁶ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibits "S", "X"*

¹⁷ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "R"*

¹⁸ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "AA"*

¹⁹ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibits "AA", "BB", "CC"*

²⁰ *Ibid*

²¹ *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "BB", "CC"*

²² *Affidavit of Mary-Anne Denny-Lusk sworn October 4,2024, Exhibit "BB"*

12. The defendant's posts exceed 200 in number, which posts have been disseminated across at least 41 different online web platforms, including 40 different Facebook pages or groups.

Affidavit of Mary-Anne Denny-Lusk sworn October 4, 2024, paragraph 27

13. On or about September 5, 2024, an individual vandalized a Barrie Housing property by writing the words "NO MORE ABUSE!" in chalk on a Barrie Housing property²³. This vandalism was inspired, directly or indirectly, by the defendant's defamatory campaign.

Affidavit of Mary-Anne Denny-Lusk sworn October 4, 2024, paragraph 32

14. Barrie Housing has, and will continue to, suffer reputational harm as a result of the defendant's campaign of defamation.

Affidavit of Mary-Anne Denny-Lusk sworn October 4, 2024, paragraphs 30, 32-37, 41

15. The defendant is attempting, on false pretenses, to have other tenants of Barrie Housing fabricate or otherwise blindly support the defendant in her campaign against Barrie Housing.

16. Barrie Housing, and its individual employees, are distressed and deeply offended by the unfounded allegations levied by the defendant.

Affidavit of Mary-Anne Denny-Lusk sworn October 4, 2024, paragraphs 38-40

Affidavit of Soula White sworn October 4, 2024

Affidavit of Ashley Sutherland sworn October 4, 2024

PART III – LAW AND ARGUMENT

17. Barrie Housing seeks in this motion an interim/interlocutory injunction restraining the defendant from posting and/or publishing further defamatory statements about Barrie

²³ *Affidavit of Mary-Anne Denny-Lusk sworn October 4, 2024, Exhibit "CC"*

Housing, and its employees, as well as the removal of the existing defamatory posts, until the trial of this action has commenced.

Injunctive Relief

18. This court's jurisdiction to grant the relief sought is found in the *Courts of Justice Act*, sections 97, 99 and 101, and the *Rules of Civil Procedure* in rules 1.04, 14.06(d), (e), (g), (h) and 40.01 and 40.03.

[*Courts of Justice Act*, R.S.O. 1990, c. C. 43](#), sections 97, 99 and 101
[R.R.O 1990, Reg. 194: Rules of Civil Procedure](#) under *Courts of Justice Act*, R.S.O 1990, c. C. 43, rules 1.04, 14.0(d), (e), (g) and (h), 40.01 and 40.03

Application of Test for Injunctive Relief

19. It is trite law that the test for injunctive relief is articulated in the Supreme Court of Canada authority if *RJR-MacDonald Inc. v Canada (Attorney General)* which test requires the court to consider three factors:

- a. Whether the plaintiff has presented a serious issue to be tried or, in a narrow band of cases, a strong *prima facie* case;
- b. Whether the plaintiff would suffer irreparable harm if the remedy for the respondents' misconduct were left to be granted at trial; and
- c. Where the balance of convenience or inconvenience lie in the granting or the refusing to grant an interlocutory injunction.

[*RJR-Macdonald v Canada \(Attorney Geneal\)*, \[1994\] 1 S.C.R. 311 \(S.C.C.\)](#), at 344.

20. The RJR test has been modified for injunctions in defamation cases. The balance of convenience factor was thought to run contrary to freedom of speech. Thus, the Supreme Court of Canada found that the balance of convenience factor does not apply to injunctions in defamation cases.

[Canada v Canadian Liberty Net, \[1998\] 1 S.C.R. 626](#) at para 49

21. On a motion for an interlocutory injunction in a defamation case, the court must consider, in addition to the first and second branch of the RJR test, a likelihood of a finding of defamation at trial. In order for the injunction to be granted, the words complained of must be so clearly and manifestly defamatory that a reasonable jury would not be able to find otherwise at trial. The words must be impossible to justify such that a trial judge's acceptance of such a defence would of necessity be set aside as a perverse finding on appeal.

[Henderson v Pearlman, \[2009\] O.J. No. 3444](#) at paras 36-38

Serious Issue to be Tried/Strong *Prima Facie* Case

22. Under the first section of the RJR test, the seriousness issue to be tried equates to little more than a viable claim. The threshold is a low one to negate the need for any intensive review of the merits of the claim at the preliminary stage of the litigation.

[RJR-Macdonald v Canada \(Attorney General\), \[1994\] 1 S.C.R. 311 \(S.C.C.\)](#), at 344
[Omega Digital Data Inc. v Airos Technology Inc. 1996 CarswellOnt 5491](#)

23. Defamation is defined as a publication which tends to lower a person in the estimation of right-thinking members of society, or to expose a person to hatred, contempt or ridicule.

[Botiuk v Toronto Free Press Publications Limited, \[1995\] 3 S.C.R. 3](#) at para 62

24. There is factually no dispute that the defendant is the author of the impugned posts and that the posts expressly and/or impliedly, name Barrie Housing (and its employees). The posting of said posts on Facebook and the internet constitutes publication.

25. The defendant's internet postings on Facebook and on her website describe Barrie Housing and its employees as criminals in various capacities, together with associated allegations

of deceit, dishonesty, untrustworthiness, abuse, harassment, and various breaches of other legislation.

26. The posts portray Barrie Housing and its employees in a negative light as, among other things, criminals. This is the defendant's sole purpose and goal. These statements are, objectively, defamatory. Identifying Barrie Housing and its employees as criminals serves to lower the estimation of Barrie Housing and its employees in the minds of right-thinking individuals. This is evidenced by, among other things, the fact that various Facebook users chime in their support of the defendant and otherwise agree with her allegations, at face value.

27. Courts have routinely found that defamatory statements making unfounded allegations of criminality (including allegations of fraud and other criminal activities, corruption, and the cover up of criminal activities) are defamatory and malicious.

[*Ferguson v Ferstay* 2000 BCSC 1183](#) at para 17

28. Barrie Housing's purpose and mission is, *inter alia*, to provide housing and other supports to vulnerable individuals. The defendant's allegations of criminality lowers Barrie Housing's reputation in the eyes of observers. As found in *Connective Support Society v Melew*, words which are designed to suggest that a non-profit does not do what it intends to do serves to lessen the non-profit's reputation in the eyes of an observer.

[*Connective Support Society v Melew*, 2024 YKSC 15](#) at para 25

29. Barrie Housing submits that the first branch of the test, the serious issue to be tried/strong *prima facie* case, has been met.

Irreparable Harm

30. The court, in *RJR MacDonald* stated that

“‘Irreparable’ refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. (*R.L. Crain Inc. v Hendry* (1998), 48 DLR (4th) 228 (Sask. QB)); where one party will suffer permanent market loss or removal damage to its business reputation...”

[*RJR-Macdonald v Canada \(Attorney General\)*, \[1994\] 1 S.C.R. 311 \(S.C.C.\)](#), at para 59

31. On a motion for an injunction in defamation cases, courts will consider the likelihood of irreparable harm that will occur if an injunction is not granted. Courts have recognized the unique characteristics and potential for harm of internet defamation. Internet communication is instantaneous, seamless, interactive, blunt, borderless and far-reaching. The impersonal and anonymous nature of internet communication may increase the risk that defamatory speech originating there is believed.

[*Barrick Gold Corp. v Lopehandia*, \[2004\] O.J. No. 2329 \(C.A.\)](#) at para 32

32. The potential harm created by internet defamation is significant. The extraordinary capacity of the internet to endlessly replicate a defamatory message lends credence to the notion that the truth never catches up with a lie.

[*Barrick Gold Corp. v Lopehandia*, \[2004\] O.J. No. 2329 \(C.A.\)](#) at para 39

33. Internet based defamation has a unique ability to cause harm. In *Lavallee*, similar to the case at bar, the court addressed the immediate, damaging impact caused by social media campaigns orchestrated by a young, thoughtless defendant who saw herself as an activist, and granted a permanent injunction against her.

[*Lavallee et al. v Isak* 2021 ONSC 6661](#)

34. Barrie Housing is a charitable entity. It does not seek to be commercially successful. It does value its ability to carry out its non-profit mission and its reputation for peaceful conduct. The defendant is intentionally interfering with Barrie Housing's ability to carry out its mission in a peaceful manner. Barrie Housing is not like a for-profit corporation which could be recompensed for monetary losses by an assessment of damages.
35. Barrie Housing risks losing community sponsors and partners who assist in the funding of Barrie Housing's mission on the basis that those partners are skewed by the defendant's defamation or otherwise due to the risk of being "caught up" in her campaign. The financial losses are important, but secondary. The defendant, as evidenced by her posts, seeks to name individually anyone who disagrees with her or otherwise takes a position contrary to hers.
36. In addition, Barrie Housing risks losing its current employees, as well as being restricted in hiring new employees, given that the defendant has shown a pattern of personally naming various employees in her publications. There is a legitimate risk that Barrie Housing will lose or otherwise be unable to hire new employees due to fear of being "caught up" in the defendant's campaign.
37. Irrevocable damage to business reputation is traditionally considered irreparable harm. In the case of Barrie Housing, that principle applies to its reputation for peaceful conduct and truthful messaging in service of its non-profit mission.
38. The likelihood of the plaintiff sustaining irreparable harm need not be established beyond a reasonable doubt or even on a balance of probabilities. All that must be shown as a real risk of consequences for which damages will be of little or no comfort.

Matrix Photo Catalytic Inc. v Purifics Environmental Technologies Inc. (1994), 58 CPR (3d) 289 (Ont. Gen. Div) at para 77

39. The defendant's posts have reached thousands of viewers, if not more, and contain content which has done, and has the real risk of doing, very serious harm to the valuable reputation of Barrie Housing and its employees. Reputational harm has encouraged the vandalism of Barrie Housing's properties, on at least one occasion.
40. Barrie housing suffered irreparable harm during the defendant's campaign of defamation and, if no injunction is granted, is likely to suffer further irreparable harm.
41. Barrie Housing submits that the second branch of the RJR test, the irreparable harm branch, has been satisfied.

Manifestly Defamatory

42. In lieu of the balance of convenience test, the amended RJR test for an interim/interlocutory injunction in defamation cases engages the following test:
 - a. The plaintiff must demonstrate that the impugned words are manifestly defamatory such that a jury finding otherwise would be considered perverse. To do so, the plaintiff must establish that:
 - i. The impugned words refer to them, have been published, and would tend to lower their reputation in the eyes of a reasonable observer; and
 - ii. It is beyond doubt that any defence raised by the respondent is not sustainable.
 - b. If the first element has been made out, the court should ask itself whether there is any reason to decline to exercise its discretion in favour of restraining the respondent's speech pending trial.
43. For the second part of the test, the full context of the case needs to be considered. A non-exhaustive list of factors to be considered at this second stage include:

- a. The credibility of the words at issue;
- b. The existing reputation of the plaintiff;
- c. Whether the plaintiff will suffer irreparable harm;
- d. Whether the respondent is likely to continue to publish the words at issue.

[Connective Support Society v Melew, 2024 YKSC 15](#) at para 25

44. In dealing with the first branch of the manifestly defamatory test, specifically subbranch 1, being that the impugned words refer to Barrie Housing, that the words have been published, and that the words would tend to lower Barrie Housing's reputation in the eyes of a reasonable observer, Barrie Housing submits that this branch has been satisfied as submitted in paragraphs 24 to 26 of this factum.

45. In dealing with the first branch of the manifestly defamatory test, specifically subbranch 2, being that it is beyond doubt that any defence raised by the respondent is not sustainable: the available defences for defamation, as set out in *Connective Support Society*, are as follows:

- a. Fair Comment;
- b. Truth as justification;
- c. Qualified privilege;
- d. Absolute privilege; and
- e. Responsible communication.

Defence of Fair Comment

46. The test for the fair comment defence was summarized by the Supreme Court of Canada in *WIC Radio v Simpson*, wherein:

- a. The comment must be on a matter of public interest,

- b. The comment must be based on fact;
- c. The comment, though it can include inferences of fact, must be recognisable as comment;
- d. The comments must satisfy the following objective test: could any person honestly express that opinion on the provided facts?
- e. Even though the comment satisfied the objective test the defence can be defeated if the plaintiff proves that the defendant was subjectively actuated by express malice.

[WIC Radio Ltd. v Simpson 2008 SCC 40](#) at para 28

47. The Supreme Court of Canada held that “*a comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made*”. This is because the audience must have the facts so that they can make up their own minds about the comment. If the factual foundation is not there, it is stated, it is unknown or it turns out to be untrue, then the fair comment defence is not available.

[WIC Radio Ltd. v Simpson 2008 SCC 40](#) at para 31

48. The defendant’s allegations of criminality against Barrie Housing are not captured in the defence of fair comment for the simple reason that *none* of the defendant’s allegations are based on fact. The defendant routinely states that her allegations are factually supported, but has provided no evidence (as none exists) to substantiate any factual basis for her allegations. Without a factual foundation, the words are presented as assertions or facts, so they cannot be subject to the fair comment defence. Some of the defendant’s allegations are merely her opinions and are therefore not capable of being supported by fact. It would be perverse for a jury to find that the defendant has made out the defence of fair comment.

Defence of Truth as Justification

49. The defence of truth as justification requires proof. The comments that Barrie Housing are “mafia yes-men”, are getting away with murder, are as evil as the Nazis and that it would turn their properties into concentration camps/death camps are subjective assessments, on their own not capable of proof. No facts have been provided (as none exist) to support these assertions. In addition, the allegations of criminality have not been supported by any facts (as none exist). It would be perverse for a jury to find that the defendant has made out the defence of truth as justification.

Defence of Absolute Privilege

50. The defence of absolute privilege reflects an acknowledgment that in some circumstances and environments, a higher value is placed upon unfettered communications because “common convenience and welfare of society” requires it. Absolute privilege extends to the publication of statements made in the course of judicial or quasi-judicial proceedings, for statements made in the course of proceedings in parliament and its committees, and for certain statements made by senior government officials to each other in the course of performing their duties.

[Grant v Torstar Corp. 2009 SCC 61](#) at para 30

51. The defendant’s postings/comments do not avail themselves to circumstances or on occasion that would attract immunity from liability through absolute privilege. Some of the defendant’s posts include or otherwise relate to allegations made by the defendant in the course of an existing Human Rights Tribunal Proceeding. That itself does not avail the defendant to the defence of absolute privilege as the associated commentary is, in isolation,

defamatory. It would be perverse for a jury to find that the defendant has made out the defence of absolute privilege.

Defence of Qualified Privilege

52. The defence of qualified privilege requires the defendant to prove that her posts were made while performing a social, moral, or legal duty where there was a reciprocal interest shared by the people making and receiving the statement. If the plaintiff establishes that the defendant acted with malice, a qualified privilege defence (once established) would be defeated.

[Connective Support Society v Melew, 2024 YKSC 15](#) at para 39

53. It is not sufficient for the defendant to subjectively and unilaterally believe that she is some social, moral, or legal martyr for all tenants of the social housing regime. Barrie Housing submits that the defendant cannot make out a defence of qualified privilege.

54. If a defence of qualified privilege is made out, a finding that the defendant acted with malice will defeat such a defence. Malice is found if the plaintiff can show that the publisher knew she was not telling the truth or was reckless in that regard.

[WIC Radio Ltd. v Simpson, 2008 SCC 40](#) at para 23

55. In addition, the Supreme Court of Canada has defined malice to include, in addition to spite or ill-will, an indirect motive or ulterior purpose that conflicts with the sense of duty or the mutual interest which the occasion created. Malice may also be established by showing that the defendant spoke dishonestly, or in knowing or reckless disregard for the truth.

[Hill v Church of Scientology of Toronto 24 OR \(3d\) 865](#) at para 145

56. Barrie Housing submits that the defendant knew, or ought to know, that she is not telling the truth. Barrie Housing further submits that truth is not a subjective analysis and even if

the defendant truly believes she is telling the truth, she has been reckless in disseminating posts without investigating, whatsoever, the truth of her allegations.

57. In addition, the defendant's own postings indicate, among other things, that she hates Barrie Housing and its employees, that Barrie Housing's employees need to be in jail, or otherwise removed from their positions. The defendant's "purpose" is not a matter of public interest, but a vendetta against her housing provider which is live-streamed on the internet. The sheer volume, repetitiveness, and number of locations in which the defendant posts is evidence of her malicious intent. One need not look further than the fact the defendant posts about Barrie Housing (who own and operate properties *only* in Barrie) in several Facebook groups which are completely unrelated, unconnected, or otherwise have no connection to Barrie.

58. The defendant's posts are based on pure speculation and falsehoods. She has stated that she, as well as several other individuals, are "victims" of Barrie Housing's "crimes" but has not (and cannot) provide details as to the identities of these other victims. It would be perverse for a jury to find that the defendant has made out the defence of qualified privilege.

Defence of Responsible Communication

59. The defence of responsible communication has two elements: the publication must be on a matter of public interest and the defendant must show the publication was responsible in that she was diligent in trying to verify the allegations. In determining whether a communication was responsible, the court considers the following:

- a. The seriousness of the allegation;
- b. The public importance of the matter;
- c. The urgency of the matter;

- d. The status and reliability of the source;
- e. Whether the plaintiff's side of the story was sought and accurately reported;
- f. Whether the inclusion of the defamatory statement of was justifiable;
- g. Whether the defamatory statement's public interest lay in the fact that it was made rather than its truth; and
- h. Any other relevant circumstance.

[Grant v Torstar Corp. 2009 SCC 61](#) at para 126

60. Here, the allegations are serious as they predominantly relate to criminal wrongdoing and are of public importance, given the role of Barrie Housing in its community. Urgency is not apparent (in the context of the defendant's posts). Due to the complete absence of factual grounding or context, the defendant provides no reliable source. The only attempt to seek out Barrie Housing's "side of the story" is in respect of the defendant's recorded phone call with Mary-Anne Denny-Lusk wherein the defendant completely, and intentionally, misreports the contents of said phone call. The defendant's statements are not justifiable. There is no public interest associated with the making of factually baseless statements or otherwise statements without any notion of truth associated thereto. The defendant has not conducted herself in a responsible nor diligent manner, in any reasonable sense of the phrase. It would be perverse for a jury to find that the defendant has made out the defence of responsible communication.

No Sustainable Defences

61. Accordingly, in assessing subbranch 2 of the manifestly defamatory test, Barrie Housing submits that none of the available defences to the defendant are sustainable in this case and that it would be perverse for a jury to find otherwise.

62. Where the plaintiff has satisfied its burden of showing that the statements are clearly defamatory and the defendant has not filed a statement of defence nor indicated an intention to justify the statements, an interlocutory injunction ought to be granted.

[Henderson v Pearlman, \[2009\] O.J. No. 3444](#) at para 40

63. Any “justification” the defendant may have for the content of her postings does not fit any court recognized defence to a claim of defamation. That is because, among other things, her allegations are entirely false and baseless.

64. There is absolutely no proof, whatsoever, of any criminal wrongdoing by Barrie Housing nor its employees. The basis of all of the defendant’s allegations are false – and she knows, or ought to know – that is the case.

65. Barrie Housing has been, and still is through the posts which remain accessible, defamed. The volume of false, defamatory behaviour, and large audiences reached by the posts, demonstrate that Barrie Housing’s claim in defamation is a serious triable issue.

66. The second branch of the manifestly defamatory test requires the court to consider any reason to decline to exercise discretion in favour of restraining the respondent’s speech pending trial. The list of factors are:

- a. The credibility of the words at issue;
- b. The existing reputation of the plaintiff;
- c. Whether the plaintiff will suffer irreparable harm;
- d. Whether the respondent is likely to continue to publish the words at issue.

67. The defendant is not credible and, therefore, nor are her words. She has no evidence to support her allegations.

68. Barrie Housing’s positive reputation in the community it serves is objectively clear.

69. Barrie Housing has, and will continue to, suffer irreparable harm, in that:
- a. Members of Facebook are quick to side with the defendant as a result of her posts;
 - b. Barrie Housing has been vandalized as a result of the defendant's posts;
 - c. Employees are concerned for their safety and wellbeing;
 - d. Barrie Housing is concerned about its ability to retain employees and to hire future employees;
 - e. Barrie Housing's community partners are disturbed by the defendant's postings.
70. The defendant is unlikely to stop posting. She has publicly stated her intention to "never stop posting".
71. None of the defendant's posts seek to engage in a debate of public importance. The substance of her posts is sabotage. The specific intent of the defendant is to hurt Barrie Housing's reputation. The defendant has no regard for the severity of the criminal and other serious allegations which she flaunts without any consideration for the facts and the truth, nor the consequences to the real people targeted by her allegations.
72. The defendant's blatant targeting of Barrie Housing and use of defamatory rhetoric and techniques justify a strict order.
73. If the interim/interlocutory injunction is refused, Barrie Housing reasonably anticipates the continuation, if not amplification, of the defendant's defamatory campaign.
74. To allow the defendant to continue would violate the rule of law.

PART IV – ORDER SOUGHT

75. Barrie Housing seeks interim/interlocutory injunctive relief requiring the defendant to remove existing defamatory posts and to cease the publication of further defamatory posts pending trial, as set out in the Notice of Motion and draft order, filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th day of October, 2024.



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BARRIE MUNICIPAL NOT-PROFIT HOUSING CORPORATION
Plaintiff

-and- LEAH DYCK
Defendant

Court File No. CV-24-00002378-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
BARRIE

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