

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

BETWEEN:

LEAH DYCK

Appellant / Moving Party

and

BARRIE MUNICIPAL NON-PROFIT HOUSING CORPORATION

Respondent

NOTICE OF MOTION FOR LEAVE TO APPEAL

The Appellant, Leah Dyck will make a motion to the Divisional Court for leave to appeal the interlocutory decisions of *the Honourable Justice V.V. Christie* (the “Motion Judge”) dated October 30, 2024 and November 5, 2024.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing, pursuant to subrules 37.12.1(4) and 62.02(2).

THE MOTION IS FOR:

1. An order granting the Appellant leave to appeal the decisions of Justice V.V. Christie dated October 30, 2024 and November 5, 2024;
2. In the event leave to appeal is granted, an order that the Respondent’s costs of this motion and the motion below be stayed and reserved to the appeal Judge;
3. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background and the Motion Below

4. The Respondent, the Barrie Municipal Not-Profit Housing Corporation (BMNPHC), also known as Barrie Housing, is a corporation incorporated pursuant to the Not-for-profit Corporations Act of Ontario. The Respondent owns and operates 14 properties in the City of

Barrie; 964 units, for the primary purpose of providing safe and affordable housing to roughly 3,000 tenants.

5. The Appellant, Leah Dyck, has been a tenant of the Respondent since 2009.
6. The Appellant is also a registered charity: The VanDyck Foundation, with charitable status number 77364 5148 RR0001. The VanDyck Foundation serves and therefore represents a population group of disadvantaged, disabled women—a quarter of whom are elderly, in the City of Barrie and the Township of Innisfil.
7. The Respondent was granted an urgent motion hearing for October 29, 2024, which allowed them to then be granted the following interim and/or interlocutory injunction:
 - a. the Appellant to remove all posts, in any form or in any media whatsoever (including but not limited to Facebook and www.freshfoodweekly.com), all statements about the Respondent (or its employees), directly or indirectly, which are false, misleading and/or defamatory; specifically posts alleging, expressly or impliedly, that the Respondent (or its employees) are criminals, are involved in criminal wrongdoing, are guilty of crimes, or otherwise any statements alleging criminality against the Respondent (or its employees);
 - b. restraining the Appellant from publishing, in any form or in any media whatsoever (including but not limited to Facebook and www.freshfoodweekly.com), any further statements about the Respondent (or its employees), directly or indirectly, which are false, misleading and/or defamatory; specifically posts alleging, expressly or impliedly, that the Respondent (or its employees) are criminals, are involved in criminal wrongdoing, are guilty of crimes, or otherwise any statements alleging criminality against the Respondent (or its employees);
 - c. Costs of this motion on a substantial indemnity basis.
8. The Appellant uses her public platforms, Facebook and her website: www.FreshFoodWeekly.com, to publish the actions and behaviours of the Respondent that she witnesses, to inform the public.
9. The Appellant's tenancy, as well as her role in her charity provides her with qualified privileged access to both first and second-hand accounts of abuse and exploitation of disadvantaged tenants, regularly, by the Respondent.

10. The Appellant's key allegations against the Respondent include but are not limited to:

- (a) Deliberately overcharging Rent-Geared-to-Income (RGI) tenants rent, without the intention of returning the overcharged rent, which is stealing;
- (b) Illegally evicting RGI tenants and masking these evictions as being legal;
- (c) Not fulfilling maintenance requests for RGI tenants, and partially fulfilling some maintenance requests in an inhumanely untimely manner;
- (d) Having no process in place for dealing with complaints of any kind by RGI tenants;
- (e) Treating their RGI tenants with absolutely no respect or dignity whatsoever;

11. The Motion Judge failed to consider the evidence regarding the above allegations, brought to her by the Appellant even though the Appellant properly raised it.

12. The Appellant's primary defence was truth. The following relevant facts and evidence were provided to the Court and Motion Judge, yet was completely disregarded:

- (a) Emails of the Respondent informing the Appellant they were in the midst of conducting an audit on the Appellant's housing account file in April 2022.
- (b) Emails of the Appellant requesting the amount of her rental overcharges on four different occasions: Sept. 28, 2021, Feb. 5, 2022, Mar. 14, 2022, and Apr. 10, 2022, and how each of these requests were ignored by the Respondent, all four times.
- (c) The transcript of the recorded phone call between the Appellant and the Respondent's CEO, Mary-Anne Denny-Lusk, dated April 26, 2022, highlighting the part where Mary-Anne told the Appellant she'd be provided with the financial breakdown of her overcharged rent monies.
- (d) The transcript of the recorded phone call between the Appellant and Mary-Anne Denny-Lusk highlighting the part where Mary-Anne said to the Appellant she'd be returned all of her overcharged rent monies, which she was then told by Mary-Anne would leave her account balance at zero.
- (e) The Appellant informed the Court and the Motion Judge that despite asking the Respondent for this audit multiple times, the Respondent did not provide it to her.

13. The Respondent's lawyer, Riley Brooks, told the Motion Judge that the audit was not a "CRA audit" and therefore, it was irrelevant. The Motion Judge failed to understand that this audit was the crux of the Appellant's defence.

14. The Appellant's secondary but equally important defence was qualified privilege. The following relevant facts and evidence were provided to the Court and Motion Judge, yet they were completely disregarded:

(a) The Appellant's Amended Response to Motion included the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) request submitted to the County of Simcoe that sought the audit documents conducted on the Appellant's account file in April 2022, which are in the sole possession of the Respondent.

(b) The MFIPPA request to the Ontario Ministry of Children, Community and Social Services (CCSS) asking for the Appellant's entire Ontario Disability Support Program (ODSP) file to be released to her so she could become aware of the payments made by ODSP directly to the Respondent.

(c) The Appellant's spoken statement regarding the CCSS's release of only some parts of the Appellant's ODSP file instead of all of it on October 28, 2024. The CCSS left out the ledger that detailed the payments made directly to the Respondent for her rent. These details state the amount of each payment and the date of each payment made.

15. On November 8, 2024, the Appellant successfully filed a Notice of Appeal with the Divisional Court in Oshawa. However, on November 12, 2024, the Notice of Appeal was quashed by the Honourable Mr. Justice R.E. Charney because the Appellant did not follow the procedural steps correctly.

16. The Appellant is self-represented because she cannot afford legal counsel. The Appellant apologizes to the Court for wasting their time and resources and asks for patience as she learns how to navigate the legal system for the first time on her own.

17. The Honourable Mr. Justice R.E. Charney advised the Appellant to include his Endorsement when the Appellant brings a motion for leave to appeal. The Appellant will include his endorsement with this motion.

The Applicable Test

18. Leave to appeal may be granted (a) where there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is desirable

that leave to appeal be granted, or (b) where there is good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that leave to appeal should be granted.

19. There is good reason to doubt the correctness of the Motion Judge's decisions. The proposed appeal involves matters of such importance that leave to appeal should be granted.

There is Good Reason to Doubt the Correctness of the Decision

20. The Motion Judge erred (all definitions not otherwise defined herein have the meaning set out in her Endorsements dated October 30, 2024 and November 5, 2024):

a. In granting the orders;

b. In finding that consideration in whether the words complained of are so manifestly defamatory that any jury verdict to the contrary would be considered perverse, being guided by the seriousness of the issue requiring little more than a viable claim - a low threshold;

c. In exercising her discretion to receive the written and spoken word of the Respondent's lawyer, Riley Brooks, instead of the evidence presented to her, the Motion Judge has fundamentally misunderstood the facts and the evidence altogether;

d. The decision to believe the Respondent was clearly wrong because it contradicted the facts and evidence brought forth. The Motion Judge focused solely on the Respondent's own motivations.

21. When the Appellant brought up the audit to the Motion Judge, she replied by saying: "what audit?" The Respondent's lawyer was quick to jump in and say it was not a CRA audit and therefore wasn't relevant.

22. The Appellant insisted that it was relevant and the Motion Judge threw her hands in the air and stated: "that's not what this is about!" The Motion Judge out-rightly refused to accept the audit as relevant, let alone being the most incriminating evidence against the Respondent in this entire defamation lawsuit.

23. The Respondent's lawyer, Riley Brooks, is the Treasurer of the Simcoe County Law Association. While the Appellant was waiting to be heard in the urgent motion hearing on October 29, 2024, she Googled the Motion Judge and discovered that the Motion Judge promotes and attends events hosted by the Simcoe County Law Association.

24. It is reasonable to conclude that the Motion Judge and the Respondent's lawyer are well-acquainted. It is also reasonable to conclude that the Motion Judge took it upon herself to forfeit the veracity of the Appellant's claims due to her own bias' regarding the Respondent's lawyer.
25. It is the Appellant's position that the Motion Judge discriminated against the Appellant for being a low-income, single mother living in receipt social housing and a disability benefit. It is the Appellant's position that, due to this discrimination, the Motion Judge made the decision to not read the evidence and facts provided to her by the Appellant.

The Proposed Appeal Involves Matters of Utmost Importance

26. The proposed appeal involves matters of utmost importance to the practice of rights and freedoms of Canadian citizens and to the administration of justice as a whole.
27. Matters to be raised in the proposed appeal involve violations of the Appellant's individual equality before the and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on sex and disability, which includes the right to have the Appellant's evidence read and heard by the Motion Judge.
28. The endorsements / orders of the Motion Judge will definitely prohibit the Appellant from proceeding to a trial as the Appellant is incapable of paying the Respondent's substantial indemnity costs of \$7,500.00.
29. On November 6, 2024, the Respondent served the Appellant again, informing the Appellant that they are entitled to bring a motion to strike her defence and counterclaim if she does not pay their substantial indemnity costs of \$7,500.00. Since the Appellant is not capable of paying this, the Appellant will indeed have her defence and counterclaim stricken.
30. The Respondent was also informed in this letter of the Respondent's intention to bring a subsequent contempt motion to be served in due course.
31. On November 12, 2024, the Respondent's lawyer emailed the Appellant again, to notify her that they're seeking an urgent motion hearing date to serve the Appellant a contempt motion. The order and cessation of a trial will undoubtedly allow the Respondent to continue overcharging and thereby steal from their poorest tenants who cannot afford legal counsel (which is all of them).

32. By denying this leave of the court to seek an appeal, this entire matter will diminish and thereby strip thousands of innocent and extremely vulnerable tenants of any chance of getting their money back and therefore, any chance of getting justice.
33. Furthermore, the Area Service Manager does not monitor its housing services providers. On the morning of October 29, 2024, the County of Simcoe's Head of Legal Department informed the Appellant that it is their policy to not be involved in civil disputes between private parties.
34. Consequently, the Area Services Manager does not intend to bring a proceeding against the Respondent pursuant Rule 14.05(2) of the Rules of Civil Procedure in Ontario.
35. The appeal concerns issues important to the administration of justice as a whole, specifically whether:
- a. Steps taken in a defamation proceeding would have the effect of compromising the Appellant's rights and freedoms of informing the public of matters of extreme public interest and importance as the monies in question are public funds since they are administered social assistance benefits; and,
 - b. The equitable remedy of court-ordering the Appellant to pay for costs resulting from defaming the Respondent should never have happened because the Appellant did not defame the Respondent as the Appellant was publishing the truth, which was clearly evident to the Motion Judge if she had bothered to read or even listen to the evidence and facts presented to her.
36. The appeal is prima facie meritorious because the Motion Judge made a number of factual and legal errors in reaching the conclusion that it was just and equitable to grant an interim / interlocutory injunction when there was indeed facts and evidence presented to her and the Court that the Respondent seeking relief **knowingly** acted in bad faith;

Applicable Rules and Statutory Provisions

37. The order being sought for leave to appeal from is interlocutory.
38. Interlocutory appeals are governed by the appeal process established under the *Courts of Justice Act*, R.S.O. 1990, Chap. C.43 and the *Rules of Civil Procedure*. Section 19(1)(b) provides that appeals from interlocutory orders of the Superior Court require leave to appeal as provided in the Rules. Rules 61.03 and 62.02 set out a detailed procedure for bringing a motion for leave to appeal to the Divisional Court.

39. Pursuant Rule 62.02 (4), leave to appeal from an interlocutory order shall not be granted unless, (b) there appears to the panel hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in the panel's opinion, leave to appeal should be granted. R.R.O. 1990, Reg. 194, r. 62.02 (4); O. Reg. 82/17, s. 14 (2, 3); O. Reg. 536/18, s. 4 (2).

40. Such further and other grounds as the self-represented Appellant may seek and this Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

41. Statement of Defence and Counterclaim of the Appellant, Leah Dyck, dated October 4, 2024.

42. Response to Motion and Factum of the Appellant, dated October 16, 2024.

43. Amended Response to Motion (Supplementary Responding materials) of the Appellant, dated October 17, 2024.

44. Amended Response to Motion (Supplementary) of the Appellant, dated October 28, 2024.

45. Motion Judge Justice V. V. Christie's Endorsement / Order, dated October 30, 2024;

46. Motion Judge Justice V. V. Christie's Endorsement / Order, dated November 5, 2024;

47. The Honourable Mr. Justice R.E. Charney's Endorsement, dated November 12, 2024, to be filed with this Notice of Motion;

48. Respondent's Tenant Ledger, dated August 7, 2024;

DATE: November 15, 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*

Appellant / Moving Party

Respondent

Court File No. DC-00-00000000-ONEW

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

Notice of Motion for Leave to Appeal

LEAH DYCK
November 15, 2024

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Self-represented Appellant

RCP-E 4C (September 1, 2020)