

**ONTARIO SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**LEAH DYCK**

Applicant

*and*

**BARRIE MUNICIPAL NON-PROFIT HOUSING CORPORATION**

Defendant

**FACTUM OF THE APPLICANT**

**INTRODUCTION**

1. The applicant alleges that the defendant, the Barrie Municipal Non-Profit Housing Corporation (“BMNPHC”), also known as ‘Barrie Housing’, has engaged in a fraud scheme by way of Fraud by Concealment, against its Rent-Geared-to-Income (“RGI”) tenants. The applicant alleges that the overcharging of RGI tenants is tortious, a breach of fiduciary duty, and a deprivation of its’ tenants’ security of the person. The applicant is seeking leave to commence a derivative action on behalf of Barrie Housing’s board of directors for the benefit of Barrie Housing’s defrauded tenants.
2. The applicant argues that because she has been defrauded (and has not been returned all of her overcharged monies), an unknown amount of other tenants have also been defrauded in the same ways.
3. Contrary to Barrie Housing’s position, it is permissible and appropriate for the applicant to bring a derivative action under s. 182 of the *Ontario Not-for-Profit Corporations Act*, on behalf of itself. The applicant intends to convince this honourable court that she is a proper person to commence a derivative action against Barrie Housing.

4. A derivative action is the only way to ensure that all of Barrie Housing's tenants are returned their overcharged rent monies and are compensated for the injuries they have suffered as a result of Barrie Housing's misconduct.

## THE PARTIES

5. The applicant, Leah Dyck, has been an RGI tenant of Barrie Housing since 2009.
6. The applicant is also a registered charity: The VanDyck Foundation, with charitable status number 77364 5148 RR0001. The VanDyck Foundation serves and represents a population group of disadvantaged, disabled women, 49 per cent of whom reside in low-income housing.
7. Barrie Housing is a corporation incorporated pursuant to the *Not-for-profit Corporations Act* of Ontario. Barrie Housing is the largest housing services provider in the City of Barrie, and owns and operates 14 properties; 964 units, for the primary purpose of providing safe and affordable housing, to roughly 3,000 tenants.

## THE FACTS

8. On September 28, 2021, Barrie Housing informed the applicant of a credit on her account, and told the applicant not to worry about paying rent in October 2021.<sup>1</sup>
9. The applicant then asked Barrie Housing employee Soula white about the amount of the credit, but was ignored. The applicant ended up asking three different employees, four times, over the course of eight months about the amount of her credit. After eight months of not getting any answers, the applicant threatened to tell news outlets about Barrie Housing's inability to answer these questions.<sup>2</sup>

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<sup>1</sup> Sworn affidavit of Leah Dyck, Exhibit "A" on pg. 11.

<sup>2</sup> Sworn affidavit of Leah Dyck, Exhibit "B" on pg. 12.

10. Between March and April 2022, Barrie Housing informed the applicant it had conducted an audit/review on her housing account file to determine the true amount of the credit, three times.<sup>3</sup>
11. On April 26, 2022, the applicant recorded a phone call between herself and Barrie Housing's CEO, Mary-Anne Denny-Lusk.<sup>4</sup> During this phone call, Mary-Anne informed the applicant that the reason for being overcharged was because the Ontario Disability Support Program ("ODSP") started paying the applicant's rent directly to Barrie Housing, on the applicant's behalf, beginning in October 2021.<sup>5</sup>
12. During this phone call, Mary-Anne also told the applicant she'd be provided with a breakdown that shows how much money would be returned to her and how much money would be returned to ODSP.<sup>6</sup>
13. On May 9, 2022, the applicant received a cheque from Barrie Housing in the amount of \$2,628.53.<sup>7</sup> The applicant did not receive a breakdown. At the time, the applicant did not think Barrie Housing had been dishonest about the amount of the overcharge, or the reason for the overcharge.
14. On June 18, 2024, the applicant discovered an online news article about the New York City Housing Authority ("NYCHA"), titled: 'NYCHA Tenants Sue Over Early Exclusion From State Pandemic Rent Relief', published on May 1, 2024.<sup>8</sup> In this article, it explains that one of the reasons NYCHA tenants were in the process of suing NYCHA is because NYCHA tenants were overcharged on income supplements they weren't entitled to and owed back. The discovery of this article is when the applicant realized Barrie Housing had done the same thing to its tenants.

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<sup>3</sup> Sworn affidavit of Leah Dyck, Exhibit "D" on pg. 14.

<sup>4</sup> Sworn affidavit of Leah Dyck, Exhibit "E" on pg. 15.

<sup>5</sup> Sworn affidavit of Leah Dyck, Exhibit "F" on pg. 16, at time stamp 12:28.

<sup>6</sup> Sworn affidavit of Leah Dyck, Exhibit "F" on pg. 17, at time stamp 17:05.

<sup>7</sup> Sworn affidavit of Leah Dyck, Exhibit "G" on pg. 20.

<sup>8</sup> Sworn affidavit of Leah Dyck, Exhibit "P" on pg. 38.

15. On July 10, 2024, the applicant filed an Application Form 1 with the Human Rights Tribunal of Ontario (“HRTTO”), against Barrie Housing (and others). The applicant proceeded to publish evidence of Barrie Housing’s fraud scheme on Facebook and her website. In January 2025, the applicant withdrew her application from the HRTTO for various reasons, one of these reasons being that the HRTTO told her it doesn’t have jurisdiction over allegations of fraud.
16. On August 28, 2024, Barrie Housing provided the applicant with a tenant ledger<sup>9</sup>.
17. On September 4, 2024, Barrie Housing commenced a defamation action against the applicant, denying all allegations of criminal wrongdoing, including fraud. On September 16, 2024, Barrie Housing served the applicant with its Statement of Claim. Para. 21 of this Claim states the applicant’s rent was overcharged due to receiving income supplements she wasn’t entitled to.<sup>10</sup> This is the first time the applicant was told she was overcharged for receiving income supplements she wasn’t entitled to.
18. Between October and December 2024, the applicant requested a copy of the audit/review document from the audit/review Barrie Housing conducted on the applicant’s account from 2022, over 10 times.
19. On November 1, 2024, Barrie Housing confirmed the audit referenced to the applicant in 2022 was a review, but denied the existence of the review document.<sup>11</sup>
20. On November 8, 2024, the County of Simcoe provided the applicant with a ‘Notice of Refusal’<sup>12</sup> in response to the applicant’s *Municipal Freedom of Information and Protection of Privacy Act* Request (“MFIPPA”) request that sought the production of the audit/review document, stating “no such records exist”.

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<sup>9</sup> Sworn affidavit of Leah Dyck, Exhibit “H” on pg. 21-26.

<sup>10</sup> Sworn affidavit of Leah Dyck, Exhibit “I” on pg. 27.

<sup>11</sup> Sworn affidavit of Leah Dyck, Exhibit “J” on pg. 28.

<sup>12</sup> Sworn affidavit of Leah Dyck, Exhibit “K” on pg. 29-31.

21. On November 30, 2024, the applicant emailed Barrie Housing's lawyer, Riley Brooks, with her Notice of Intent to prosecute.<sup>13</sup>
22. On December 16, 2024, the County of Simcoe provided the applicant with a copy of the Service Manager Delegation Agreement ("the Agreement") between the County of Simcoe and Barrie Housing<sup>14</sup> in response to a different MFIPPA request from the applicant.

***Method of Fraud #1***

23. Barrie Housing's fraud scheme involves two distinct methods of fraud. Barrie Housing's first method of fraud is not telling tenants that ODSP is paying their rent on their behalf, and allowing tenants to continue paying their rent.
24. ODSP beneficiaries have the option to have their rent paid directly to their housing services provider. This 'pay direct' service was first offered by ODSP in 2015. As seen in the correspondence between the applicant and her ODSP case worker, Ashley Walker, as a rule of procedure, ODSP makes direct payments to housing services providers until the beneficiary requests them not to.<sup>15</sup>
25. This means that when ODSP beneficiaries get off ODSP for a period of time, ODSP stops paying their rent, but when they get back on ODSP at a later time, ODSP re-starts paying their rent without informing the beneficiary. The applicant didn't know ODSP had continued paying her rent, though, so the applicant also paid her rent, which resulted in the applicant's rent being paid twice, 16 non-consecutive times.

***Method of Fraud #2***

26. Barrie Housing's second method of fraud is charging its RGI tenants on income supplements they wrongfully received (at no fault of their own), and whom are now paying back those income supplements to ODSP and/or CPP Disability.

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<sup>13</sup> Sworn affidavit of Leah Dyck, Exhibit "L" on pg. 32.

<sup>14</sup> Sworn affidavit of Leah Dyck, Exhibit "M" on pg. 33-35.

<sup>15</sup> Sworn affidavit of Leah Dyck, Exhibit "T" on pg. 50.

27. During the Covid-19 pandemic, there was a period of time when ODSP employees, and Employment and Social Development Canada (“ESDC”) employees, whom administers CPP Disability benefits, weren’t able to physically go to work, which resulted in all disability beneficiaries receiving the maximum amount of benefits via automatic deposit, even though they weren’t eligible for the maximum amounts. This led to all beneficiaries receiving an overpayment in disability benefits. The applicant’s list of income supplements received in 2020<sup>16</sup> shows that the applicant received monetary benefits from both ODSP and ESDC at the same time.
28. Although beneficiaries can be on both the ODSP and CPP Disability program at the same time, beneficiaries cannot receive monetary benefits from both programs. Consequently, the applicant owes all CPP Disability payments back, as well as a portion of the ODSP payments. The reason someone would want to be on both programs, though, is because one provides medical and dental coverage (ODSP), and the other provides tax benefits (CPP Disability).

### ***The Fraud by Concealment***

29. In paragraph 8 of the Factum of the Defendant, dated January 27, 2025, it states:

*“The true nexus of this dispute is that in May 2022, the applicant had overpaid her rent and received a credit for such overpayment...”*

30. This statement is false because the applicant did not overpay her rent in May 2022. The applicant overpaid her rent every year between 2015 and 2022.
31. Barrie Housing’s CEO, Mary-Anne Denny-Lusk, fraudulently concealed the fact that the applicant had been overcharged for two reasons. On April 26, 2022, Mary-Anne told the applicant she was overcharged for double-paying her rent<sup>17</sup>, but on September 16, 2024, Barrie Housing’s Statement of Claim states the applicant had been overcharged for receiving

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<sup>16</sup> Sworn affidavit of Leah Dyck, Exhibit “Q” on pg. 40.

<sup>17</sup> Sworn affidavit of Leah Dyck, Exhibit “F” on pg. 16 at time stamp 12:28.

income supplements she wasn't entitled to.<sup>18</sup> Mary-Anne fraudulently concealed all the reasons for the applicant's overcharge in 2022.

32. Mary-Anne also fraudulently concealed the time frame in which the applicant had double-paid her rent. Mary-Anne told the applicant that ODSP started paying her rent in October 2021, but the applicant's ODSP ledger<sup>19</sup> shows ODSP re-started paying the applicant's rent directly to Barrie Housing beginning in July 2017, March 2020, and again in November 2021.
33. When Barrie Housing finally told the applicant the specific dollar amount of her overcharge in 2022, it deliberately withheld the material fact that the applicant had been overcharged for seven years, and it deliberately withheld the material fact that the applicant had been overcharged on income supplements she wasn't entitled to.

#### ***Discovery of Unlawful Charges***

34. When the applicant received her ODSP ledger on October 31, 2024, she was able to breakdown the majority of her overcharge. The applicant's ODSP ledger shows the 16-double payments of \$152 each, amounting to a total of \$2,432.00, but the applicant's tenant ledger doesn't account for the remaining \$196.53 of her overcharge. However, the applicant's April 2018 rent rate was calculated at \$116.53. April 2018 is the only month the applicant's rent has ever been calculated to include cents. All her other rent charges were set at a specific dollar amount and zero cents. Clearly, the applicant's April 2018 rent was returned on May 9, 2022, which means there's still \$80.00 not accounted for.
35. Since the applicant's April 2018 rent was clearly returned to her, this means that Barrie Housing employee, Ashley Sutherland, made a mistake in calculating the applicant's rent in 2018. Barrie Housing ignored this miscalculation, attempted to evict the applicant because of it, charged the applicant a \$175 eviction filing fee<sup>20</sup>—which still has not returned to her—

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<sup>18</sup> Sworn affidavit of Leah Dyck, Exhibit "I" on pg. 27.

<sup>19</sup> Sworn affidavit of Leah Dyck, Exhibit "R" on pg. 41-42.

<sup>20</sup> Sworn affidavit of Leah Dyck, Exhibit "S" on pg. 45-46.

and when the applicant finally spoke to Mary-Anne about it during the recorded phone call on April 26, 2022, Mary-Anne lied about the title of the eviction notice the applicant found on her door.<sup>21</sup>

36. Furthermore, Barrie Housing randomly charged the applicant a parking fee each month of 2020, with no explanation, despite the fact that the applicant has been parking her car since 2016.

***Duty to Accommodate***

37. Section 2 of the *Ontario Human Rights Code* requires accommodation providers to accommodate persons with disabilities. As seen in the correspondence between the applicant and her ODSP case worker, Ashley Walker, when the applicant inquired to Ashley regarding her ODSP payments, Ashley gave the applicant a ‘Client Accommodation Questionnaire’.<sup>22</sup>
38. Barrie Housing (and the County of Simcoe) also have a Duty to Accommodate the applicant since the applicant has a disability. However, Barrie Housing (and the County of Simcoe) refuse to accommodate the applicant in her requests for the financial breakdown that explains how the applicant’s overcharges were determined.<sup>23</sup>

**LAW AND ARGUMENT**

39. The within application engages sections 182, 183 and 184 of the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15.
40. The applicant must first satisfy the court that she is a proper person (i.e. complainant) to commence the proposed derivative action. Thereafter, the applicant must satisfy the court that the applicant is operating in good faith with respect to the proposed derivative action, and that the proposed derivative action is in the best interests of Barrie Housing.
41. The applicant submits that she can satisfy all of those requirements.

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<sup>21</sup> Sworn affidavit of Leah Dyck, Exhibit “F” on pg. 19, at time stamp 20:55.

<sup>22</sup> Sworn affidavit of Leah Dyck, Exhibit “T” on pg. 47-50.

<sup>23</sup> Sworn affidavit of Leah Dyck, Exhibit “J” on pg. 28 and Exhibit “K” on pg. 29-31.



***The Applicant Meets the “Complainant” Threshold***

42. Section 182 of the *Not-for-Profit Corporations Act* sets out the factors to determine who may bring an action under section 183. Section 182 provides as follows:

182 – Complainant

The following persons may bring an action under section 183 or make an application under section 191 in respect of a corporation and if they do so, are referred to in this part as a “complainant”:

1. A member, officer, or director of the corporation or any of its affiliates.
  2. A person who not more than two years previous ceased to be a member, director, or officer of the corporation or any of its affiliates.
  3. Any other person who, in the discretion of the court, is a proper person to make an application under this part.
4. The applicant relies upon s. 182(3), seeking the court’s discretion to find her a proper person to make an application for leave to commence a derivative action.
5. The language used in the *Not-for-Profit Corporations Act* does not require complainants to own the corporation, nor does it require complainants to be on the board, or even be a past or present employee. Rather, the language used says that it is in the discretion of the court to determine what a proper person is.
6. Derivative actions recognize that persons other than the corporation have a standing to initiate an investigation of management. The applicant has not found any case laws in which a tenant of a not-for-profit housing corporation sought leave to commence a derivative action. However, the applicant has found some American case law, though, in which she believes may be valuable to this case. The Kentucky Law Journal describes the derivative action as a way to enforce fiduciary obligations:

The ability to enforce fiduciary obligations (and to recover damages for failure in their discharge) has its roots in trust law and the later treatment of the assets of a venture as a cestui que trust for the benefit of the owners.[9] As such, the ability to enforce fiduciary obligations has its basis in equity rather than in positive statutory law.[10] A derivative action recognizes that persons other than the entity have standing to initiate an investigation of management and the propriety of its actions, an important mechanism of enforcement of fiduciary duties. The Connecticut Supreme Court described this mechanism, stating that:

[i]f the duties of care and loyalty which directors owe to their corporations could be enforced only in suits by the corporation, many wrongs done by directors would never be remedied.[11]

As such, the derivative action serves an important policing function in providing a mechanism by which those charged with management and control of a venture may be called upon to demonstrate that they are in fact discharging the obligations they have voluntarily undertaken. Ergo, in response to Juvenal’s famous query, “Who will watch the watchers?,”[12] it will be the court acting at the instigation of those with a relationship with the venture other than through control. The New York Court of Appeals decision in *Tzolis v. Wolff*, before considering whether a derivative action may be brought in a New York organized LLC notwithstanding that a derivative action provision had been deleted from that state’s draft LLC Act, addressed the history of the derivative action:

The derivative suit has been part of the general corporate law of this state at least since 1832. Chancellor Walworth recognized the remedy in *Robinson v. Smith*, because he thought it essential for shareholders to have recourse when those in control of a corporation betrayed their duty. Chancellor Walworth applied to a joint stock corporation — then a fairly new kind of entity — a familiar principle of the law of trusts: that a beneficiary (or “cestui que trust”) could bring suit on behalf of a trust when a faithless trustee refused to do so. Ruling that shareholders could sue on behalf of a corporation under similar circumstances, the Chancellor explained:

*“The directors are the trustees or managing partners, and the stockholders are the cestui que trusts, and have a joint interest in all the property and effects of the corporation. . . . And no injury the stockholders may sustain by a fraudulent breach of trust, can, upon the general principles of equity, be suffered to pass without a remedy. In the language of Lord Hardwicke, in a similar case [Charitable Corp. v.*

*Sutton], ‘I will never determine that a court of equity cannot lay hold of every such breach of trust. I will never determine that frauds of this kind are out of the reach of courts of law or equity; for an intolerable grievance would follow from such a determination.’”<sup>24</sup>*

7. The applicant is asking this court to act at the instigation of someone with a relationship with Barrie Housing other than through its control. If a tenant isn’t allowed to hold Barrie Housing accountable, then who will? The County of Simcoe won’t, and neither will the Ontario Ministry of Municipal Affairs and Housing (“MMAH”).
8. In the State of Florida, unit owners within condominium associations are members and shareholders of their not-for-profit corporation by virtue of their ownership of a unit within the condominium association, and can therefore bring derivative lawsuits in the right on the condominium association.<sup>25</sup>
9. Although the applicant (Leah Dyck) wasn’t able to find case laws about a renter commencing a derivative action against its not-for-profit housing corporation provider, the applicant has found a similar case in Florida.
10. In October 2020, Tara Ezer (“Ezer”), a member and shareholder of the Hollywood Condominium Association, Inc., initiated a shareholder derivative action on behalf of Hollywood Condominium Association, Inc. The lawsuit stemmed from a disagreement between Ezer and the Association based on purported violations of the Association’s Declaration of Condominium; namely, allegations relating to “certain material alterations, modifications, and improvements to the Common Elements at the Condominium Property...”
11. Ezer requested equitable relief by way of a declaratory judgment, an injunction and appointment of a receiver. Ultimately, Ezer’s derivative action was dismissed because an independent investigative Committee investigated the facts surrounding Ezer’s claims,

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<sup>24</sup> “Who Will Watch the Watchers?: Derivative Actions in Nonprofit Corporations” *Thomas E. Rutledge* (April 22, 2015) Kentucky Law Journal <<https://www.kentuckylawjournal.org/online-origins/index.php/2015/04/22/who-will-watch-the-watchers>>

<sup>25</sup> FLA. STAT. § 617.01401 (2023).

formed good faith and reasonable conclusions in a prepared final report, and determined that it was not in the best interests of the Association to proceed with a derivative action.<sup>26</sup>

12. In para. 8 of Barrie Housing's Factum, it states:

*"No court (civil nor criminal), nor any tribunal, regulatory body, or any party whatsoever, have found Barrie Housing guilty and/or liable for any of the sweeping allegations made against it."*

13. This statement is false. No one has conducted an investigation into Barrie Housing, and that's why no criminal wrongdoing has been discovered in regards to Barrie Housing's other tenants. The evidence provided to this honourable court clearly shows that the applicant has been defrauded by Barrie Housing. Reasonable logic/thinking leads to the likelihood that the same criminal wrongdoings have been perpetrated against its other tenants who're unable to access material evidence because Barrie Housing won't produce it.

***The Applicant is Acting in Good Faith***

14. Section 183 of the Not-for-Profit Corporations Act provides as follows:

183(1) – Derivative Actions

On the application of a complainant, the court may make an order granting the complainant leave to bring an action in the name of and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on its behalf.

183(2) – Grounds

The court may not make an order under subsection (1) unless the court is satisfied that,

- a) The complainant has given notice to the directors of the corporation or its subsidiary, as the case may be, of the complainant's intention to apply to the court under

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<sup>26</sup> "Florida Derivative Litigation in the Context of Condominium Associations, and the Court's Deference to the Best Interests of the Corporation" *Craig Minko* (2023) CSK Legal <[https://www.csklegal.com/media/publication/18\\_Florida\\_Derivative\\_Litigation\\_in\\_the\\_Context\\_of\\_Condominium\\_Assoc.pdf](https://www.csklegal.com/media/publication/18_Florida_Derivative_Litigation_in_the_Context_of_Condominium_Assoc.pdf)>

subsection (1) within 14 days before bringing the application, or as otherwise ordered by the court, if the directors of the corporation or its subsidiary do not bring the action, prosecute or defend it diligently or discontinue it;

- b) The complainant is acting in good faith; and
- c) It appears to be in the interests of the corporation or its subsidiary, as the case may be, that the action be brought, prosecuted, defended or discontinued.

15. Barrie Housing agrees that the applicant did deliver notice under section 183(2)(a).

16. In the case of 1719349 Alberta Ltd v 1824766 Alberta Ltd, the Alberta Court of Kings Bench commented on the ‘good faith’ requirement:

Justice Bensler highlighted that the primary concern when determining the existence of good faith is whether the proposed derivative action is frivolous or vexatious. A certain level of self-interest by the party proposing the derivative action is permissible, so long as this interest aligns with the interests of the corporation. Animosity alone is also not enough to determine that a complainant lacks good faith. In this instance, although the principals of 171 were potentially motivated by a personal vendetta against the principal of 182, it did not escalate to a level indicating bad faith. As a result, the good faith requirement was satisfied.<sup>27</sup>

17. Barrie Housing has accused the applicant of seeking leave in retaliation for its defamation action, but this cannot be true. The applicant understands the concept of derivative actions. They are not for personal grievances. The applicant has already delivered her Notice of Intent, along with her Draft Statement of Claim, to the Ministry of the Attorney General, to sue the MMAH for vicarious liability of Barrie Housing’s personal attacks on her, including the tort of fraud by concealment. The sole purpose in the applicant’s desire for leave to commence a derivative action is to get an investigation into Barrie Housing so all of Barrie Housing’s defrauded tenants can get their overcharged monies back, and for the applicant to get her own overcharged monies back **in full**.

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<sup>27</sup> *1719349 Alberta Ltd v 1824766 Alberta Ltd*, 2023 ABKB 207

18. The applicant is risking the possibility of being ordered to pay Barrie Housing's nearly \$5,000.00 costs of responding to this application, if she's denied leave. That's nearly half a year's income for her. The only person who would risk that is a completely selfless person.
19. In the case of *Luo v 9477322 Canada Inc.*,<sup>28</sup> one corporate director was successfully granted leave to commence a derivative action. There were three directors; Weng, Li and Luo:
20. In 2017, two of the directors, Luo and Weng, incorporated a numbered company, 258, for the purpose of purchasing a property for a project in Oakville. 258 entered into an Agreement of Purchase and Sale in June 2017, and in July 2017, the directors advanced a \$500,000 loan from 947 to pay 258's purchase deposit. By November 2017, the property transaction fell through.
21. Weng and Li, two directors of 947 negotiated, without Luo, to arrange for the return of the majority of the deposit funds to 258. In lieu of returning the funds to 947, Weng and Li added themselves as directors of 258 and distributed the returned funds between themselves and other partners of 947. They did not share any of these funds, which they described as "profits," with Luo.
22. In December 2019, Luo started a derivative action against 258, along with others who had been excluded and counsel of 947. In January 2020, Weng and Li, as majority directors of 947, passed a resolution that Luo had commenced the action without the corporation's authority. Weng and Li directed counsel for 947 to discontinue the action.
23. Weng and Li submitted to the court that Luo had not been acting in good faith, or in the interests of 947, in bringing this action. The Court found that it was in fact Weng and Li who were not acting in good faith or in the interests of 947. The Court explained its reasoning as follows:

*"I find that, by diverting the funds away from 947, and by adding themselves as Directors to 258, and thereby deliberately excluding Luo from involvement in the*

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<sup>28</sup> *Luo v. 9477322 Canada Inc.*, 2022 ONSC 5728 (CanLII), <<https://canlii.ca/t/jsg2c>>, retrieved on 2025-03-20

*distributions of the returned funds, Weng and Li preferred their own interests to those of 947. They did not act in the interests of 947, nor in good faith with respect to their obligations as Directors to act in the best interests of 947.”*

24. There was a conflict between Weng and Li’s obligations as directors of 947, their personal interests and those of 258.
25. Likewise, the applicant (Leah Dyck), received income supplements she wasn’t entitled to. This can be similarly compared to Lou and Weng (258)’s Agreement of Purchase and Sale that fell through in 2017: 258 owed the money back to 947. Without speaking to Lou, though, Weng and Li distributed the funds (profits) among themselves and other directors, and not with Lou.
26. In this case (Dyck v Barrie Municipal Non-Profit Housing Corporation), the applicant owes money back to ODSP and CPP Disability, but Barrie Housing held the applicant’s ODSP and CPP Disability overpayments until the applicant threatened to tell news outlets. Barrie Housing has only returned the 16 double-payments and none of the overcharges from income supplements she wasn’t entitled to. Barrie Housing’s employees have preferred their own interests to those of the applicant, whom it owes a fiduciary duty to.
27. The applicant seeks leave to commence a derivative action against Barrie Housing to reveal how many other tenants it has done this to.
28. It is the applicant’s understanding that when seeking leave to commence a derivative action, she doesn’t need to make out her whole case yet, but rather, she needs to show that this proposed derivative action should be commenced and why she should be granted leave to commence it.
29. It is a well-established fact of contract law that there is an implied covenant of good faith and fair dealing in every contract. The applicant, and all of Barrie Housing’s other tenants, entered into rental agreements to rent from Barrie Housing, and are in contractual privity with Barrie Housing as a result.

30. Barrie Housing has a positive legal duty to use reasonable care to perform its legal obligations to its tenants, including, but not limited to supplying safe and affordable housing, free from fraud by the landlord. Barrie Housing also has a fiduciary duty to its tenants.
31. The applicant has tendered the evidence showing that Barrie Housing fraudulently concealed the following material facts from the applicant:
- a) that Barrie Housing overcharged the applicant **for seven years**;
  - b) the amount of the applicant's overcharge for eight months despite the fact that the applicant had requested this information on four different occasions throughout an eight-month period;
  - c) that Barrie Housing had been overcharging the applicant for two distinct reasons, the first being; 1) double-paying her rent each month and the second being; 2) receiving income supplements she wasn't entitled to at no fault of her own;
  - d) that the calculated rate of **the applicant's rent for April 2018 was not \$116.53** and that this miscalculation resulted in the wrongful determination of the applicant's total rent owed in 2018, which led to the applicant being charged a \$175 filing eviction fee, and the unlawful attempt to evict the applicant in February 2019;
  - e) that the applicant was being charged a parking fee each month in 2020; and
  - f) that the audit/review document Barrie Housing produced in relation to its housing services rendered to the applicant did not exist.
32. These false representations are a breach of Barrie Housing's fiduciary duty of good faith, fair dealing and honest performance to the applicant.
33. Barrie Housing has engaged in fraudulent misrepresentations by committing the following acts against the applicant:
- a) attempting to unlawfully evict the applicant in 2019;



- b) failing to address its attempted unlawful eviction of the applicant in 2019;
  - c) charging the applicant with a \$175 eviction filing fee, claiming the applicant still owed rent money several days after instructing the applicant not to pay rent because she didn't owe money;
  - d) claiming the notice titled, 'Application to Evict a Tenant' that Barrie Housing left on the applicant's door in 2019 was specifically not an eviction notice;
  - e) failing its Duty to Accommodate the applicant by providing her with the financial breakdown that Mary-Anne told the applicant she'd be provided with;
  - f) claiming the applicant overpaid her rent in or about May 2022;
  - g) miscalculating the applicant's rent for seven years and denying its on-going miscalculations, and its refusal to return all of the applicant's overcharged rent monies; and
  - h) alleging a portion of the applicant's overcharge needed to be returned to ODSP, when in fact, Barrie Housing did not return any portion of the applicant's overcharge to ODSP.
34. These acts of fraudulent misrepresentation have led to and resulted in the applicant being defrauded on multiple occasions, and are a breach of Barrie Housing's fiduciary duty of good faith, fair dealing and honest performance to the applicant.
35. Barrie Housing breached its duty of care to the applicant by negligently supplying "safe and affordable" housing and by failing to ensure that housing services were fit for its intended purpose. The aforesaid loss suffered by the applicant was caused by this negligence, particulars of which include, but are not limited to, the following:
- a) failing to properly implement the RGI program such that, under normal conditions, the applicant experienced discrimination from Barrie Housing, including attacks. These attacks include, but are not limited to, threats of lawsuits, actual lawsuits, harassment,

fraud by concealment, intentional infliction of severe emotional distress, negligent infliction of emotional distress, and conspiratorial acts;

- b) failing to properly operate housing services to subsidized renters such that, under normal conditions, the applicant experienced discrimination;
- c) failing to properly market the RGI program such that the applicant's overcharged rent occurred via a deficient process of rent monies collection, which resulted in deprivation of the security of the person, to the applicant;
- d) failing to accurately, candidly, promptly and truthfully disclose the defective nature of the RGI program;
- e) failing to disclose to and/or to warn the applicant that the way it had been collecting rent monies was defective when knowledge of the defects became known to it;
- f) failing to establish any kind of procedure to inform other renters of this defect;
- g) failing to change its implementation of the RGI program; and
- h) continuing to fail in fulfilling its ongoing obligations.

***The Proposed Derivative Action is in the Best Interests of Barrie Housing***

- 36. The primary motive of the applicant is objectively clear on the face of the record before this court: to seek an investigation to reveal the full extent of Barrie Housing's fraud scheme, in order for it to return all the overcharged monies back to tenants, to whom Barrie Housing owes a fiduciary duty to.
- 37. The fiduciary duties of not-for-profit housing corporations are owed to its tenants. Barrie Housing's tenants are too poor to hire lawyers and have no access to legal resources for civil matters. The applicant seeks leave to commence a derivative action because there are no other options that result in an investigation, which is mandatory to determine the full extent of Barrie Housing's fraud scheme.

38. Barrie Housing's mission is to provide safe and affordable housing. Barrie Housing's decision to overcharge its' RGI tenants bares no relationship with the goal of making rent affordable. Overcharging tenants is arbitrary, and contrary to the principles of fundamental justice.
39. Once the full extent of Barrie Housing's fraud scheme is known, the applicant will seek damages for *Charter* breaches and systemic negligence on behalf of all Barrie Housing's defrauded tenants.
40. A derivative action, at its core, serves as a mechanism to allow person(s) with a financial (or other legitimate) interest in a corporation to commence and/or defend a legal position on behalf of the corporation with the specific purpose of furthering that corporation's best interests.
41. The applicant ran a charitable foundation that fed thousands of hungry residents within the City of Barrie and the Township of Innisfil from 2021-2024, on a weekly, bi-weekly and monthly basis (depending on the year). When the applicant stopped providing this service, due to the County of Simcoe's refusal to support the program, 49 per cent of the program's recipients resided within public housing, the majority of whom resided in the defendant's residential complexes.
42. In conclusion, the applicant and her charity was the best thing that ever happened to Barrie Housing because she advanced Barrie Housing's mission. The applicant is the worst thing that ever happened to Barrie Housing's board of directors because she's seeking to prevent them from being unjustly enriched at the expense of its impoverished tenants. Through the applicant's charitable activities, the applicant is the only person who's **actually demonstrated** an invested interest in Barrie Housing's tenants' wellbeing. The applicant isn't just a Barrie Housing tenant. She's also a service provider and she's the only person whose ever looked out for Barrie Housing's tenants.
43. The proposed derivative action seeks to serve Barrie Housing's tenants, and is aligned with Barrie Housing's interests. The proposed derivative action seeks to advance the best interests

of Barrie Housing by addressing the wrongs committed by Barrie Housing's board of directors.

**ORDER SOUGHT**

44. The applicant seeks an order granting her leave to commence a derivative action on behalf of the defendant corporation, the Barrie Municipal Non-Profit Housing Corporation, against the Barrie Municipal Non-Profit Housing Corporation, pursuant to s. 183(1) of the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15, for the purpose of prosecuting the action, which arises from:

- a) Negligence: Breach of Contract and Breach of Fiduciary Duty
- b) Fraudulent Misrepresentation and Fraudulent Concealment
- c) Discrimination (Failure of its Duty to Accommodate)
- d) Deprivation of the Security of the Person

45. The applicant seeks an order granting the applicant reasonable legal costs incurred by the complainant (applicant) in connection with the derivative action, pursuant to s. 184(d) of the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15.

46. The applicant seeks an order authorizing the complainant (applicant) to control the conduct of the derivative action, pursuant to s. 183(a) of the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15.

47. The applicant seeks an order giving directions for the conduct of the derivative action, pursuant to s. 184(b) of the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15.

**DATE:** March 21, 2025

**Leah Dyck**

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RCP-E 61A (February 1, 2021)

*Courts of Justice Act*

***BACKSHEET***

***LEAH DYCK***

*-and-*

***BARRIE MUNICIPAL NOT-PROFIT  
HOUSING CORPORATION***

*Applicant*

*Defendant*

***Court File No. CV-24-00003257-0000***

ONTARIO  
SUPERIOR COURT OF JUSTICE  
  
PROCEEDING COMMENCED AT  
BARRIE

Factum of the Applicant

LEAH DYCK  
March 21, 2025

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RCP-E 4C (September 1, 2020)

