Court File No. CV-24-00002378-0000

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

BARRIE MUNICIPAL NON-PROFIT HOUSING CORPORATION

Plaintiff / Responding Party

and

LEAH DYCK

Defendant / Moving Party

AMENDED FACTUM OF THE DEFENDANT/MOVING PARTY

PART I - OVERVIEW

1. This factum is for use at the hearing for the Motion to Dismiss the plaintiff's defamation action against the defendant.

2. The plaintiff, the Barrie Municipal Non-Profit Housing Corporation ("BMNPHC"), also known as 'Barrie Housing', is a corporation incorporated pursuant to the *Not-for-profit Corporations Act* of Ontario. The plaintiff 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.

3. The defendant, Leah Dyck, has been a tenant of Barrie Housing since 2009.

4. The defendant 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.

5. The plaintiff alleges the defendant defamed it, pursuant to *Libel and Slander Act*.

6. The defendant says the plaintiff's defamation action is "strategic litigation against public participation" and brings a motion to dismiss the action under s. 137.1 of the *Courts of Justice Act*[1] ("CJA"), often referred to as the "anti-SLAPP" law.

7. The plaintiff is a large and powerful entity that is using litigation to intimidate the defendant, a smaller and more vulnerable opponent, to silence her public expression and her public protests seeking policy changes to the Rent-Geared-to-Income ("RGI") program. Because the public statements complained of relate to a matter of public interest, the analysis in s. 137.1 of the CJA is engaged.

8. The defendant'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 plaintiff.

9. The defendant uses her public platforms, Facebook and her websites: www.FreshFoodWeekly.com and www.vandyckfoundation.com, to publish the actions and behaviours of the plaintiff that she witnesses, to inform the public.

PART II - FACTS

10. Ontario Disability Support Program ("ODSP") beneficiaries, such as the defendant, have the option to have their rent paid directly to their housing services provider. This 'direct pay' service was first offered by ODSP in 2015. Beginning in 2015, the defendant had it set-up for ODSP to pay her rent directly to the plaintiff. As a rule of procedure, ODSP makes direct payments to housing services providers until the beneficiary requests them not to. The defendant didn't become aware of this rule until November 2024.

11. This means that when ODSP beneficiaries get off of ODSP for a period of time because their financial situation has improved, but then get back on ODSP at a later time when their

[1] *Courts of Justice Act,* R.S.O. 1990, c. C.43

financial situation declines, ODSP re-starts paying their rent directly to the housing services provider, without informing the beneficiary.

12. The defendant didn't know ODSP re-started paying the defendant's rent directly to the plaintiff in mid 2017, early 2020, and again in late 2021, and so the defendant also paid her rent to the plaintiff at the same time, which meant the defendant's rent was being paid twice for a total of 16 non-consecutive months without the defendant knowing it.

13. Additionally, in 2018, the plaintiff's employee, Ashley Sutherland, made a mistake in calculating the defendant's rent rates. The plaintiff ignored its calculation mistake, attempted to evict the defendant,[2] charged the defendant a $175 eviction filing fee,[3] and lied about the title of the eviction notice on the defendant's door.[4] The defendant describes this experience as psychological torture.

14. In 2020, the defendant was laid-off due to her employer going bankrupt as a result of the COVID-19 pandemic.

15. On September 28, 2021, the defendant's E.I. ended, and she emailed the plaintiff's employee, Soula White, requesting the amount of her rent rate. Soula informed the defendant there was a credit on her account.[5]

16. The defendant proceeded to ask Soula for the amount of her credit but was ignored. The defendant asked three different Barrie Housing employees about the amount of her credit, on four separate occasions over the course of eight months,[6] and threatened to tell news outlets about the plaintiff's inability to answer these questions,[7] before the plaintiff finally disclosed the amount of the defendant's credit.

---

[2] The defendant's Motion Record ("MR"), Exhibit "C", pg. 59-62.
[3] The defendant's MR, Exhibit "C", pg. 62.
[4] The defendant's MR, Exhibit "H", pg. 74, para. 2.
[5] The defendant's MR, Exhibit "F", pg. 63.
[6] The defendant's MR, Exhibit "F", pg. 63-66.
[7] The defendant's MR, Exhibit "F", pg. 67.

17. The defendant describes the experience of being ignored for eight months while consistently requesting the amount of her credit as psychological torture. Evidence of this torture is seen in the defendant's mental breakdown,[8] in her email to Soula and the plaintiff's CEO, Mary-Anne Denny-Lusk on April 25, 2022.

18. The plaintiff became aware of the defendant's credit in July 2017 but didn't inform the defendant until September 28, 2021.[9] The plaintiff never had any intention of telling the defendant the amount of her overcharge until the defendant threatened to expose the plaintiff to the public via news outlets.

19. When the defendant started fundraising in June 2022, she started interviewing her program recipients regarding their living circumstances. This process allowed the defendant to witness deprivations of the security of the person among her program recipients—the vast majority of whom were disabled and female. Subsequently, the defendant reported these deprivations to the public via 12 Facebook posts.[10]

20. In October 2022, the plaintiff threatened to sue the defendant for defamation[11] regarding these 12 Facebook posts, despite the fact that only three of these posts mentioned the plaintiff, and only four were about the plaintiff's tenants.[12] This is harassment by the plaintiff against the defendant.

21. On October 17, 2022, the plaintiff requested the defendant meet with Mary-Anne, regarding the veracity of the 12 Facebook posts,[13] but when the defendant agreed,[14] the plaintiff ignored the defendant. The defendant describes this experience of being threatened with a defamation lawsuit regarding true reporting as psychological torture, especially because these 12

---

[8] The defendant's MR, Exhibit "F", pg. 67.
[9] The defendant's MR, Exhibit "F", pg. 63.
[10] The defendant's MR, Exhibit "J", pg. 79-93.
[11] The defendant's MR, Exhibit "I", pg. 75.
[12] The defendant's MR, the sworn Affidavit of Leah Dyck dated November 29, 2024, pg. 13 at paras. 15-18.
[13] The defendant's MR, Exhibit "I", pg. 77-78.
[14] The defendant's MR, Exhibit "I", pg. 78.

Facebook posts garnered between $2,000-$3,000 in raised funds, each, which the defendant relied on to feed her starving program recipients.

22. On June 18, 2024, the defendant discovered an article online about the New York City Housing Authority ("NYCHA") overcharging tenants' rent on income supplements they weren't entitled to. NYCHA tenants filed a class action lawsuit against NYCHA.[15] This article made the defendant realize the plaintiff had done the same thing.

23. During the Covid-19 pandemic, there was a period of time when ODSP employees, and Employment and Social Development Canada employees, whom administers CPP Disability, weren't able to physically go to work, which resulted in all disability beneficiaries, including the defendant, receiving the maximum amounts of benefits via automatic deposit, even though they weren't eligible for the maximum amounts. This led all beneficiaries, including the defendant, to receive an overpayment in disability benefits, in which they're paying back each month now.

24. Between June 18, 2024 and July 10, 2024, the defendant reached-out to every governing/ regulatory body/authority she could think of, to report the plaintiff.[16] But no one cared. The defendant describes the experience of reporting the plaintiff's criminal wrongdoings to authorities and being ignored or "brushed off" as humiliating.

25. On July 10, 2024, the defendant filed a Form 1 Application with the Human Rights Tribunal of Ontario ("HRTO")[17] and proceeded to publish relevant content regarding this HRTO case on Facebook and www.FreshFoodWeekly.com.

26. On September 16, 2024, the plaintiff commenced a defamation action against the defendant. The defendant describes the process of being sued for speaking the truth as psychological torture.

---

[15] The defendant's MR, Exhibit "Q", pg. 102-103.
[16] The defendant's MR, Statement of Defence and Counterclaim, pg. 26-29, paras. 22.,a)-h), and Exhibit "ZZ", pg. 174-175.
[17] The defendant's MR, Exhibit "V", pg. 108.

27. The words complained of are based on facts because the evidence shows the plaintiff is engaged in a fraud scheme involving two distinct methods of fraud. The plaintiff's first method of fraud is: overcharging subsidized tenants on income supplements they're not entitled to and are now paying back.

28. The plaintiff's second method of fraud is: Not telling tenants that ODSP is paying their rent on their behalf, and allowing tenants to continue paying their rent also, resulting in their rent being paid twice each month. This is fraud by concealment.

29. When the plaintiff finally told the defendant the specific dollar amount of her overcharge in April 2022, it deliberately withheld the fact that the defendant had been overcharged for seven years. The defendant only found out she had been overcharged for seven years on October 31, 2024,[18] because she received a response from ODSP regarding her *Freedom of Information and Privacy and Protect Act* ("FIPPA") request that sought her ODSP ledger.[19]

30. On April 26, 2022, the plaintiff told the defendant she'd be given a financial breakdown of how much money was being returned to her and how much was being returned to ODSP.[20] But the plaintiff never did that either. On November 1, 2024, the defendant's ODSP case worker, Ashley Walker, told the defendant that the plaintiff never reimbursed ODSP with any money at any time.[21]

31. On August 28, 2024, the plaintiff gave the defendant her first tenant ledger ever. The plaintiff claims this tenant ledger is the financial breakdown it said it would give the defendant in April 2022.[22] But it's not.

32. The defendant has asked other tenants in receipt of ODSP if they were returned any overcharged rent monies and they weren't. They weren't even told they were overcharged.[23]

---

[18] The defendant's MR, Exhibit "PP", pg. 146.
[19] The defendant's MR, Exhibit "QQ", pg. 147-151.
[20] The defendant's MR, Exhibit "H", pg. 72.
[21] The defendant's MR, Exhibit "TT", pg. 162.
[22] The defendant's MR, Exhibit "UU", pg. 164, para. 7.
[23] The defendant's MR, the sworn Affidavit of Leah Dyck dated November 29, 2024, pg. 19, at para. 54.

33. Furthermore, the plaintiff has acknowledged that it conducted a review/audit on the defendant's housing account file on four separate occasions.[24] But the plaintiff denies the existence of this review/audit document.[25] Since the plaintiff claims this document doesn't exist, it won't provide it to the County of Simcoe for the defendant's *Municipal Freedom of Information Protection and Privacy Act* ("MFIPPA") request seeking the production of it.[26] The defendant describes the experience of being consistently lied to by the plaintiff—-whom owes the defendant a fiduciary duty to—as psychological torture.

34. When the plaintiff allows its tenants to over-pay their rent, its tenants are forced to sacrifice their basic interests in physical and psychological well-being. By allowing its tenants to over-pay, especially for seven years, the plaintiff has deprived its subsidized tenants of their right to security of the person, contrary to section 7 of the *Canadian Charter of Rights and Freedoms* (the "Charter"). Neither the plaintiff nor the County of Simcoe comprehend the wrongfulness of this fraud and the wrongfulness of withholding and misrepresenting material facts to the plaintiff. The County of Simcoe and the plaintiff are treating disabled persons as subordinate, and are conceptualizing their shared interests as less worthy of concern.

PART III - THE "ANTI-SLAPP" LAW

35. Courts have struggled for years to find the right balance between free expression and the protection of private reputation, especially in areas of public controversy.[27] As the Supreme Court of Canada noted in 2008 in *WIC Radio*:

> [15] The function of the tort of defamation is to vindicate reputation, but many courts have concluded that the traditional elements of that tort may require modification to provide broader accommodation to the value of freedom of expression. There is concern that matters of public interest go unreported because publishers fear the ballooning cost and disruption of defending a defamation action. Investigative reports get "spiked", the Media Coalition contends, because, while true, they are

---

[24] The defendant's MR, Exhibit "F", pg. 65, 66, 67, and Exhibit "UU", pg. 164 at para. 9.
[25] The defendant's MR, Exhibit "UU", pg. 164 at para. 11, and Exhibit "XX", pg. 172 at para. 3.
[26] The defendant's MR, Exhibit "II", pg. 141.
[27] WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40, at par. 15.

> based on facts that are difficult to establish according to rules of evidence. When controversies erupt, statements of claim often follow as night follows day, not only in serious claims (as here) but in actions launched simply for the purpose of intimidation. Of course "chilling" false and defamatory speech is not a bad thing in itself, but chilling debate on matters of *legitimate* public interest raises issues of inappropriate censorship and self-censorship…[28]

36. The anti-SLAPP law is primarily designed to deal with genuine SLAPP suits – that is "lawsuits initiated against individuals or organizations that speak out or take a position on an issue of public interest."[29] As the Supreme Court explained in *Pointes Protection*:

> [2] SLAPPs are generally initiated by plaintiffs who engage the court process and use litigation not as a direct tool to vindicate a bona fide claim, but as an indirect tool to limit the expression of others. In a SLAPP, the claim is merely a façade for the Plaintiff, who is in fact manipulating the judicial system in order to limit the effectiveness of the opposing party's speech and deter that party, or other potential interested parties, from participating in public affairs.[30]

37. The Supreme Court noted in *Pointes Protection* that the broader concern of the anti-SLAPP provisions is to provide a statutory mechanism "to screen out *lawsuits that unduly limit expression on matters of public interest* through the identification and pre-trial dismissal of such actions."[31]

38. The complained of public statements made by the defendant relate to a matter of significant public interest, and therefore, the s. 137.1 analysis is engaged.

The Applicable Test

39. Sections 137.1-137.5 of the *CJA* provides a process by which a defendant can seek the early dismissal of an action that has been commenced against her, if the action constitutes an attempt to unduly limit expression on matters of public interest.

---

[28] WIC Radio Ltd. v. Simpson, [2008] 2 S.C.R. 420, 2008 SCC 40, at para. 15
[29] 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 2.
[30] *Ibid*.
[31] *Ibid.*, at para. 16 (Emphasis added).

(i) Does the proceeding arise from an expression that relates to a matter of public interest (the threshold question)?

(ii) Are there grounds to believe that the proceeding against the defendant has substantial merit and that they have no valid defence to the claims against them (the merits-based hurdle)?

(iii) Is the harm suffered by the plaintiff as a result of the defendants' expressions sufficiently serious that the public interest in permitting the action to continue outweighs the public interest in protecting that expression (the public interest hurdle)?

(iv) Should damages be awarded to the defendant under s. 137.1(9)?

Analysis

Public Interest

40. To have the proceeding dismissed, the defendant must first "[satisfy] the judge that the proceeding arises from an expression made by the [defendant] that relates to a matter of public interest."[32]

41. In the recent decision in the Court of Appeal in *Benchwood Builders, Inc. v. Prescott*:

> [36] The Supreme Court said in *Grant v. Torstar Corp*. that: To be of public interest, the subject matter "must be shown to be one inviting public attention, or about which the public has some substantial concern because it affects the welfare of citizens, or one to which considerable public notoriety or controversy has attached": The case law on fair comment "is replete with successful fair comment defences on matters ranging from politics to restaurant and book reviews"…[33]

---

[32] Anti-SLAPP Legislation: A Backgrounder (February 23, 2024) Centre For Free Expression <https://cfe.torontomu.ca/guidesadvice/anti-slapp-legislation-backgrounder>

[33] *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA at para 36.

> [41] This court noted in *Grist*, at para. 19, that "the resolution of purely private disputes between more or less equals – disputes that have no immediate bearing on the rights or obligations of others – can seldom be a matter of public interest."[34]

42. The dispute in this defamation action is between a delegated government actor (the plaintiff) and thousands of vulnerable citizens, whom the plaintiff owes a fiduciary duty to (including the defendant).

43. The words complained of are matters of public interest because they allege:

a) misuse of government-administered funds to a protected social class of citizens, amounting to fraud by concealment;

b) discrimination, harassment, psychological torture and conspiracy against a group of disadvantaged, disabled and marginalized citizens protected by enumerated or analogous grounds; and

c) gross infringement of human rights, and breaches of the *Charter*.

44. The task of the motion judge under s. 137.1(3) is to determine "what the expression is really about".

> [40] …Huscroft J.A. noted in *Sokoloff*, at para. 32: The task of the motion judge under s. 137.1(3) is to determine "what the expression is really about", bearing in mind the purpose of s. 137.1: protecting expression relating to matters of public interest and safeguarding the fundamental value of public participation in democracy…
>
> [64] The closer an expression is to any of the fundamental values of s. 2(b) of the *Charter* – freedom of thought, belief, opinion and expression – the greater the public interest will be in protecting it. The cases have identified several factors:… The presence of "classic SLAPP" indicia, which include: whether the plaintiff has a history of using litigation or the threat of litigation to silence critics; a financial or

[34] *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA at para 41.

power imbalance that strongly favours the plaintiff; a punitive or retributory purpose animating the action; and minimal or nominal damages suffered by the plaintiff.[35]

45. The defendant has clearly engaged in an online campaign pleading for help from the public. The defendant pleads that the right to security of the person for the plaintiff's tenants is being deprived, deliberately, by the plaintiff. The plaintiff has clearly threatened to gag the defendant's freedom of expression in the past (October 2022), continues to do so today, has a strong financial and power imbalance against the defendant, and has damaged the defendant psychologically and financially over the course of 10 years (2015-2025).

Valid Defence

46. The plaintiff must satisfy the court that there are grounds to believe that the defendant has no valid defence. In *Pointes Protection*, the Supreme Court paraphrased this requirement as follows: the Plaintiff has the burden to show that there are grounds to believe "that the defences have no real prospect of success."[36]

47. The elements of the fair comment defence were set down by the Supreme Court of Canada in *WIC Radio Ltd v Simpson* as follows:

(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 inference of fact, must be recognizable as comment;

(d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?

(e) the defence can be defeated if the plaintiff proves that the defendant was subjectively actuated by express malice, in the sense of improper motive. The defendant must prove

[35] *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA at paras 40 and 64.
[36] 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 60.

> the four elements of the defence before the onus switches back to the plaintiff to establish malice.[37]

Fact

48. In *Thompson v Cohodes*, Justice Kristjanson held:

> [18] To establish the defence of truth, or justification, the defendant must prove the substantial truth of the "sting", or main thrust of the libel complained of…[38]

49. The words complained of are based on fact because the evidence shows that:

(a) The defendant made a total of 16 non-consecutive double-rent payments in the amount of $152.00 each, for a total of $2,432.00, between 2017 and 2022;

(b) the Plaintiff did not provide the defendant with the financial breakdown regarding how it determined the defendant's overcharge of $2,628.53. The plaintiff claims the tenant ledger,[39] which was provided to the defendant on August 28, 2024, is the financial breakdown, despite the fact that it only shows the 16 double-payments and does not account for the remaining $196.53 of the disclosed overcharge;

(c) The plaintiff deliberately withheld the fact that one of the reasons for the defendant's overcharge was due to the plaintiff miscalculating the defendant's rent in April 2018, because the defendant's overcharge included 53 cents, and April 2018 was the only month in which her rent was calculated to include cents (all other rent charges were set at a specific dollar amount and zero cents);[40]

---

[37] *WIC Radio Ltd v Simpson*, 2008 SCC 40 at paras 1, 52.
[38] *Thompson v. Cohodes*, 2017 ONSC 2590 at para. 18.
[39] The defendant's MR, Exhibit "EE", pg. 123-128.
[40] The defendant's MR, Exhibit "H", pg. 71.

(d) In April 2022, Mary-Anne Denny-Lusk deliberately withheld the fact that the plaintiff had also overcharged the defendant's rent on income supplements she was not entitled to,[41] which she admitted later in October 2024;[42]

(e) In April 2022, the plaintiff deliberately withheld the fact that it had overcharged the defendant for seven years, and the plaintiff deliberately withheld this fact again now;

(f) Mary-Anne lied to the defendant on April 26, 2022, when she said the eviction notice on the defendant's door in 2018 was specifically not an eviction notice;[43]

(g) The plaintiff segregates its most vulnerable tenants into select housing projects;[44]

(h) The defendant has never enticed anyone to falsify concerns or complaints about the plaintiff; and

(i) The defendant's House of Commons' petition didn't mention the plaintiff.

Comment

50. There is no basis for the plaintiff's submission that these statements lacked a factual backdrop. To qualify as comment, the background facts must be well-known and already understood by the audience:

> [31] It is true that "[t]he comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made"; Brown, vol. 2, p. 15-36, and *Gatley on Libel and Slander* (10th ed. 2004), at para. 12.12. What is important is that the facts be sufficiently stated or otherwise be known to the listeners that listeners are able to make up their own minds on the merits of Mair's editorial comment. If the factual foundation is unstated or unknown, or turns out to be false, the fair comment defence is not available (*Chicoutimi Pulp*, at p. 194).[45]

---

[41] The plaintiff's MR, Exhibit "K", pg. 73.
[42] The defendant's MR, the sworn Affidavit of Mary-Anne Denny-Lusk dated October 4, 2024, pg. 39 at para. i.
[43] The defendant's MR, Exhibit "H", pg. 74 at para. 2.
[44] The defendant's MR, Exhibit "BBB", pg. 179-192.
[45] *WIC Radio Ltd v Simpson,* 2008 SCC 40 at para 31.

51. When the defendant made the words complained of, the evidence of the plaintiff denying the defendant's requests for the amount of her overcharge for eight months, the recorded phone call between the defendant and Mary-Anne Denny-Lusk, the cheque of the overcharged monies, and the defendant's numerous requests for the financial breakdown was published online. In other words, the 'background facts' requirement is easily satisfied.

52. The words complained of are recognized as comments. Words that may appear to be statements of fact may, in pith and substance, be properly construed as comment.[46] What is comment and what is fact must be determined from the perspective of a "reasonable viewer or reader."[47] The notion of "comment" includes "deduction, inference, conclusion, criticism or judgment"[48] and is "generously interpreted."[49]

53. Considering the facts and evidence before this Honourable court, there is a strong likelihood that the defendant does indeed have a real prospect of showing at trial that the words complained of are true.

54. The plaintiff has not shown that the defence of fair comment has no real prospect of success. This alone is enough to dismiss this defamation action.

55. *Could honestly be made by any person?* As the Supreme Court noted in *WIC Radio:*

> "The common law judges long ago decided that the gravamen of the defence of fair comment [was] whether the comment reflected honest belief."[50] Honest belief requires "the existence of a nexus or relationship between the comment and the underlying facts."[51] There must be a linkage or connection.

56. The defendant's initial evidence was her reasonable reliance on the refusal of the plaintiff to provide the financial breakdown showing how it calculated the overcharged rent monies. It was

---

[46] *Ibid.*, at para. 26.
[47] *Ibid.*, at para. 27.
[48] *Ibid.*, at para. 26.
[49] *Ibid.,* at para. 26.
[50] *Ibid.*, at para. 37.
[51] *Ibid.,* at para. 40.

in the defendant's honest opinion, based on this refusal, that the plaintiff had been dishonest regarding the amount of the defendant's overcharge. This is, to be sure, compelling evidence of the required linkage or connection.

57. The defendant has obtained additional compelling evidence, which is her ODSP ledger, retrieved from ODSP on October 31, 2024. This evidence shows the plaintiff overcharged the defendant for seven years, and lied about the timeframe of the overcharges[52].

58. Further compelling evidence includes the plaintiff's refusal to admit it made a mistake in calculating the defendant's rent in 2018, which led to the defendant being unlawfully threatened with eviction in 2018, and unlawfully charged a $175 eviction filing fee, which has still not been returned to the defendant.

Belief

59. The defendant believes the words complained of are true because the evidence shows that the words complained of are true.

60. In the defendant's view, no reasonable journalist or member of the public would have taken the defendant's statement that the plaintiff "is a group of thieving witch Nazi's" as meaning that in actual fact, the plaintiff practices witchcraft and murders people with guns and gas chambers. In any event, the defendant publicly stated: *"I don't think they practice witchcraft"*, which the plaintiff does not dispute.

Malice

61. The defence of fair comment can be defeated by evidence of malice.[53] Malice can be established in two ways: (i) by showing that the defendant's dominant purpose in making the

[52] The plaintiff's Statement of Claim, pg. 4, at para. 5.
[53] *WIC Radio Ltd. v. Simpson*, 2008 SCC 40 (CanLII), [2008] 2 SCR 420, <https://canlii.ca/t/1z46d>, retrieved on 2025-03-09, at para. 63.

words complained of was to injure the plaintiff; or (ii) by showing that the defendant made the statements knowing they were not true or did so with reckless indifference to their truth.[54]

62. There is no evidence to support either of the two prongs of possible malice. There is no evidence that the defendant's dominant purpose in stating the words complained of was to harm the plaintiff. The defendant has repeatedly stated that her intention of stating the words complained of were to get an investigation for the public accountability of government-administered funds.[55]

63. The allegation made by the plaintiff about the defendant disseminating letters to recruit other tenants to fabricate complaints against it are not factual statements, and the plaintiff has not—and cannot—provide evidence regarding this statement to be factual. The plaintiff made-up this allegation to establish malice, falsely.

64. Suffice it to say, for the reasons just stated, the "dominant purpose" prong of the malice test cannot succeed.

Responsible Communication

65. The plaintiff next argues that the defendant was reckless in disseminating posts without investigating, whatsoever, the truth of her allegations.

66. The elements of the public interest responsible communication defence were set down by the Supreme Court of Canada in Grant v Torstar Corp, 2009 SCC 61 as follows:

> [98] …the defendant must show that publication was responsible, in that he or she was diligent in trying to verify the allegation(s), having regard to all the relevant circumstances.[56]

---

[54] *Ibid.* Also see Hill v. Church of Scientology of Toronto, [1995] 2 S.C.R. 1130, at para 145–147 and Canadian Standards Association v. P.S. Knight Co. Ltd., 2019 ONSC 1730, at para 104.
[55] The defendant's MR, Statement of Defence and Counterclaim, pg. 24 at para. 15, and Exhibit "FF", pg. 130.
[56] *Grant v Torstar Corp*, 2009 SCC 61 at para 98.

67. The defendant agreed to meet with the plaintiff in 2022, to go over the veracity of the 12 Facebook posts.[57] But it was the plaintiff who declined to meet with the defendant. To help the public comprehend the similarities between NYCHA and the plaintiff, the defendant wrote and published a comparison article[58]. The defendant requested the audit/review document from the plaintiff +10 times but was denied it.[59] The defendant requested her audit/review document via MFIPPA request from the County of Simcoe, who is supposed to have control over every review and financial document produced by the plaintiff pertaining to its housing services rendered, pursuant to the Service Manager Delegation Agreement, but this MFIPPA request was denied too.[60] The defendant received her ODSP ledger[61] from ODSP via a FIPPA request, which proves the defendant double-paid her rent between 2017 and 2022, and proves the plaintiff withheld material facts from the plaintiff since 2017. All of this is corruption and conspiracy with the County of Simcoe.

68. Given the absence of any evidence of malicious purpose or reckless interpretation, the fair comment defence has a real prospect of success. This alone is enough to dismiss the defamation action.

69. Even if the fair comment defence failed, though, the defendant would still prevail regarding the weight of the public interest.

Harm

70. The final step under s. 137.1(4)(b) requires the plaintiff to satisfy the court that the harm suffered by the plaintiff as a result of the defendant's expression is sufficiently serious that the public interest in permitting the plaintiff's action to continue outweighs the public interest in protecting that expression.

---

[57] The defendant's MR, Exhibit "I", pg. 78.
[58] The defendant's MR, Exhibit "Q", pg. 102-103.
[59] The defendant's MR, the sworn Affidavit of Leah Dyck dated November 29, 2024, pg. 17 at para. 42.
[60] The defendant's MR, Exhibit "LL", pg. 140-141.
[61] The defendant's MR, Exhibit "PP", pg. 146-151.

71. In *Pointes Protection*, the Supreme Court noted that before the weighing exercise begins, the plaintiff must show two things: (i) the existence of some harm and (ii) that the harm was caused by the defendant's expression.[62]

72. The defendant submits that there is no evidence of either harm or causation. That is, the plaintiff has led no evidence of any personal or economic harm or any damage to its reputation as a result of the defendant's public statements that are alleged to be defamatory.

73. There is also no evidence of any resulting financial or economic harm. There is no evidence that the plaintiff was disciplined by any authoritative body whatsoever because of the defendant's allegations (which is a crime in itself), or that it lost income. The claim of potential lost employees because of the defendant's allegations is also without support.

74. The plaintiff's allegation against the defendant alleging the defendant inspired vandalism at the Coulter Glen housing project is not factual, and no evidence was produced to support this claim. The plaintiff made-up this claim to establish harm, falsely. If any harm was actually sustained by the plaintiff, it flows from the plaintiff's actual abuse and exploitation of its tenants.[63]

75. The plaintiff has not cleared the threshold of showing harm and causation.

Applicable Rules and Statutory Provisions

76. Dismissal of proceedings that limits debate are governed by s. 137.1-137.5 of the *Protection of Public Participation Act*. Pursuant to Rule 137.1 (1), the purposes are,

(a) to encourage individuals to express themselves on matters of public interest;

(b) To promote broad participation in debates on matters of public interest;

---

[62] *1704604 Ontario Ltd. v. Pointes Protection Association,* 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 68.
[63] The defendant's MR, Exhibit "II", pg. 133-135.

(c) To discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and

(d) To reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

77. Pursuant to s. 137.1 (2), the definition of "expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.

78. Pursuant to s. 137.1 (3), on motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest. 2015, c. 23, s. 3.

79. Pursuant to s. 137.1 (4), a judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

(ii) the moving party has no valid defence in the proceeding; and

(b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. 2015, c. 23, s. 3.

80. Pursuant to s. 137.1 (5), once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of. 2015, c. 23, s. 3.

81. Pursuant to s. 137.1 (6), unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

    (a) in order to prevent or avoid an order under this section dismissing the proceeding; or (b) if the proceeding is dismissed under this section, in order to continue the proceeding. 2015, c. 23, s. 3.

82. Pursuant to s. 137.1 (7), if a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances. 2015, c. 23, s. 3.

83. Pursuant to s. 137.1 (8), if a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances. 2015, c. 23, s. 3.

84. Pursuant to s. 137.1 (9), if, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper purpose, the judge may award the moving party such damages as the judge considers appropriate. 2015, c. 23, s. 3.

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

DATE: March 10, 2025

Leah Dyck
Self-represented defendant
507-380 Duckworth St.
Barrie, ON L4M 6J8
Tel: (705) 718-0062
Email: Leah.dyck@icloud.com

TO: **HGR Graham Partners LLP**

Lawyer of the plaintiff
190 Cundles Road East, Suite 107
Barrie, ON L4M 4S5
Tel: (705) 737-1249 ext. 171
Email: RBrooks@hgrgp.ca

RCP-E 61A (February 1, 2021)

Court File No. CV-24-00002378-0000

Courts of Justice Act

BACKSHEET

BARRIE MUNICIPAL NOT-PROFIT HOUSING CORPORATION	*-and-*	*LEAH DYCK*
Plaintiff		*Defendant / Moving party*

Court File No. *CV-24-00002378-0000*

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BARRIE

Factum of the Defendant

LEAH DYCK
March 10, 2025

Leah Dyck
507-380 Duckworth St.
Barrie, ON L4M 6J8
Tel: (705) 718-0062
Email: leah.dyck@icloud.com

Self-represented defendant

RCP-E 4C (September 1, 2020)