

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** LEAH DYCK, Applicant

AND:

BARRIE MUNICIPAL NON-PROFIT HOUSING CORPORATION,  
Respondent

**BEFORE:** The Hon. Justice S.E. Fraser

**COUNSEL:** Leah Dyck, Self-Represented Applicant

Riley Brooks, for the Respondent

**HEARD:** April 17, 2025

**ENDORSEMENT**

**I. Nature of the Application**

- [1] The Applicant seeks leave to bring a derivative action on behalf of Barrie Municipal Non-Profit Housing Corporation (“Barrie Housing”) against the Respondent Barrie Housing and for other relief.
- [2] The Applicant is a tenant of Barrie Housing which is a not-for-profit housing provider in the City of Barrie. Barrie Housing owns and operates 14 properties with 964 units serving approximately 3,000 tenants.
- [3] The Applicant alleges that Barrie Housing has been overcharging tenants and that she and other tenants have been defrauded as a result of Barrie Housing’s actions. She seeks leave under s. 182 of the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c.15 (“the Act”) asserting that a derivative action is the only way to ensure that the tenants receive compensation from Barrie Housing and that it returns to tenants’ funds obtained by Barrie Housing when it overcharged them.
- [4] The Applicant alleges a fraudulent scheme by Barrie Housing and claims that it does not tell its tenants that when their rent is directly paid by the Ontario Disability Support Program (“ODSP”). She also claims that Barrie Housing has acted fraudulently when it based rent for its rent-geared-to income tenants on income supplements they wrongly received during a period of time in the COVID-19 pandemic. She also claims that the Respondent, Barrie Housing, has not accommodated her under the *Human Rights Code*.

- [5] After hearing submissions of the Applicant, I dismissed the Application, with reasons to follow, without hearing from the Respondent. These are my reasons.
- [6] Below I address the single issue in this Application, whether leave should be granted under s. 182, analyze that issue, and then set out the disposition of the Application.

## **II. Issue**

- [7] The single issue on this Application is whether leave to bring an action should be granted.

## **III. Law and Analysis**

- [8] I first address the statutory provisions. Then I examine whether the Applicant is a complainant within the meaning of the statute. As there has been little judicial consideration of s. 182, I examine similar provisions set out in the *Business Corporations Act*, R.S.O. 1990, c. B. 16 ("OBCA"). I then consider whether the statutory principles for bringing a derivative action are met in this case.

### ***A. Statutory Provisions***

- [9] Ontario's *Not-for-Profit Corporations Act, 2010* provides at s. 183 that:
- (1) 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.
  - (2) 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 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.
  - (3) The court shall not make an order under subsection (1) if the court is satisfied that the corporation is a religious corporation



[10] A complainant is defined in s. 182 of the Act:

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 of 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 of 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.

***B. Is the Applicant a Complainant?***

[11] I now examine whether the Applicant fits the definition of complainant in s. 182.

[12] The Applicant is not a member, officer or director of Barrie Housing and is not a person who has ceased to be a member, officer or director in the last two years. Therefore, she does not meet the first two categories set out in s. 182. If she is to be a complainant, I must exercise my discretion to find that she is a proper person under s. 182 (3).

[13] The Applicant argues that she should be made a complainant as there is no other person to bring this action. She claims that neither the County of Simcoe nor the Ministry of Municipal Affairs and Housing have held Barrie Housing accountable.

[14] The Applicant acknowledges that there is no Canadian precedent for a renter holding a housing provider accountable. She relies on American examples. I do not find them persuasive.

[15] In *Mississauga Majors v. Provincial Women’s Softball Association*, 2024 ONSC 4986, Justice Chozik considered the scope of discretion to grant complainant status under s. 182(3) of the Act which appears to be the first time this Court has considered the question. The case was about a decision by the Provincial Women’s Softball Association to deny the Mississauga Majors membership.

[16] Justice Chozik applied decisions made under s. 245 of the OBCA in interpreting ss. 182(3) and 191 of the Act. She held at para. 54 that the purpose of s. 182(3) is to allow a “proper person” who is not a member, director or officer, but who is closely related and dependant on that non-for-profit corporation to apply for remedial protection to the court. She summarized the case law under the OBCA as follows at paras. 52-53:

The authorities establish that the discretion for this court to grant status as a complainant under s.245 of the OBCA is “broad” and “unfettered”: *Olympia & York Developments Ltd. (Trustee of) v. Olympia*

*& York Realty Corp.* (2003), 2003 CanLII 25511 (ON CA), 68 O.R. (3d) 544 (C.A.), at para. 45; *Foglia et al v. Grid Link Corp. et al*, 2021 ONSC 703, at para. 20. Overall, flexibility is essential for the broad remedial purpose of the legislation: *Foglia*, at paras. 20-21.

Some of the factors courts look at to decide whether to exercise discretion to grant status to an applicant include the connection of the applicant to the corporation at issue, the applicant's interest in how the corporation is managed, its interest to right a wrong to itself or others, as well as other courses of action available to obtain an adjudication or remedy: *Larmon v. Synergy Hospitality Inc*, 2004 CanLII 2562 (ON SC), [2004] O.J. No. 3013, at para. 33; *Joncas v. Spruce Falls Power & Paper Co.*, [1999] O.J. No. 2359, at para. 7; *1217174 Ontario Ltd. v. 141608 Canada Inc*, 2017 ONSC 7698, at paras. 35-38; *Jeffrey v. London Life Insurance Co.*, 2011 ONCA 683, at para. 142.

- [17] I have considered these factors. Applying them to the facts in this case, the Applicant has provided no support for the proposition that what happened to her is widespread. No other tenant has come forward to support her. The Applicant is being sued by Barrie Housing for defamation in an action that I am case managing. An anti-SLAPP brought by her is under reserve. She has recourse available through the courts if she wishes to bring an action against Barrie Housing. In my view, she is not a proper person to be a complainant.
- [18] While the Applicant's charitable foundation, the VanDyck Foundation, is not a party to this Application, I find no support for it being a proper person or that it represents who might be a complainant group.
- [19] My determination on the issue of whether the Applicant is a complainant should dispose of the Application. However, in the event that I am wrong, I now examine whether the Applicant meets the criteria under s. 183(2).

***C. Is the Court satisfied that grounds exist under s. 183(2)?***

- [20] The Applicant has given the notice required by s. 183(2)(a). I next examine whether the Applicant is acting in good faith and whether it appears to be in the interests of Barrie Housing that the action be brought, prosecuted, defended or discontinued.
- [21] I am not satisfied that the Applicant is acting in good faith. There is an injunction in place arising out of the defamation action, leave to appeal from which was denied by the Divisional Court on January 24, 2025. Justice Christie's Reasons set out that the Applicant's social media posts have made unsubstantiated allegations against Barrie Housing including of criminality.
- [22] In support of this proposed action, the Applicant makes wide-ranging claims about a fraudulent scheme impacting many tenants without evidence. It is true that the Applicant overpaid her rent. Once the error was discovered, Barrie Housing provided a cheque equal to the overpayment. The Applicant disputes that she has been fully repaid.



- [23] Despite Ms. Dyck's claim that she is not pursuing this action in her self-interest, I cannot find on the facts before me that she is acting in good faith. I reach that conclusion because of the breadth of the litigation between the Applicant and the Respondent and her personal interest in this action. I find no evidence on this record that her claims represented an intentional practice by Barrie Housing or that she represents the interests of others. I find that she has ulterior motives. See *Hevey v. Wonderland Commercial et al.*, 2021 ONSC 540, at para. 34, citing *2538520 Ontario Ltd. v. Eastern Platinum Limited*, 2020 BCCA 313, at paras. 29-33.
- [24] I am also unable to conclude that it is in the interests of Barrie Housing for leave to be granted. Rather, it is not in the interests of Barrie Housing. Barrie Housing should not be saddled with the legal costs associated with a derivative action driven by a person with ulterior motives. She is not seeking to pursue a right of Barrie Housing. Rather, she is looking for a way to find Barrie Housing accountable for perceived wrongs, against her and others.
- [25] In my view, the Applicant has not satisfied the criteria in s. 183.

**D. Disposition**

- [26] The Application is dismissed.
- [27] Barrie Housing is presumptively entitled to its costs. If the parties cannot agree on costs, I will decide the costs by way of written submissions. The Respondent shall provide written costs submissions limited to two double-spaced pages exclusive of any offers by May 8, 2025 and bill of costs. The Applicant shall provide her written submissions subject to the same limits by May 21, 2025. There shall be no reply without leave. They shall be filed through the portal, uploaded to Case Center and a copy sent to my Judicial Assistant [REDACTED] at [REDACTED]@ontario.ca.



---

Justice S.E. Fraser

**Date:** April 29, 2025