

CITATION: Barrie Municipal Non-Profit Housing Corporation v. Dyck, 2024 ONSC 6264
OSHAWA DIVISIONAL COURT FILE NO.: DC-24-1596
DATE: 20241112

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BARRIE MUNICIPAL NON-PROFIT HOUSING CORPORATION, Plaintiff

AND:

LEAH DYCK, Defendant

BEFORE: The Hon. Mr. Justice R.E. Charney

COUNSEL: Riley Brooks, Counsel for the Plaintiff

Leah Dyck, Self-Represented

HEARD: In Writing

ENDORSEMENT

- [1] On November 7, 2024, the Defendant, Leah Dyck, filed a Notice of Appeal from the decisions of Christie J. dated October 30, 2024 and November 5, 2024.
- [2] In the October 30, 2024 Decision, Christie J. granted the Plaintiff's motion for an interlocutory injunction requiring the Defendant to remove all posts about the Plaintiff or its employees which are misleading and/or defamatory, "specifically posts alleging, expressly or impliedly, that the Plaintiff (or its employees) are criminals, are involved in criminal wrongdoing, are guilty of crimes, or otherwise any statements alleging criminality against the Plaintiff (or its employees)". The interlocutory injunction also restrained the Defendant from publishing such statements "in any form or in any media whatsoever".
- [3] The November 5, 2024 Decision was a costs order, in which Christie J. ordered the Defendant to pay costs of the motion in the all-inclusive amount of \$7,500.
- [4] There is no dispute that the October 7, 2024 Decision of Christie J. was an interlocutory order.
- [5] The test of whether an order is final or interlocutory is set forth in *Hendrickson v. Kallio*, 1932 CanLII 123 (ON CA), [1932] O.R. 675. The Ontario Court of Appeal stated [at p. 678 O.R.]:

The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties -- the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the application, but it is interlocutory if the merits of the case remain to be determined.

See also: *1476335 Ontario Inc. v. Frezza*, 2021 ONCA 822, at para. 7.

- [6] In this case, the Defendant argues that the interlocutory injunction violates her rights under *Charter* s. 15, and she should not, therefore, be required to bring a motion for leave to appeal. This position must be rejected. The Supreme Court of Canada concluded in *Mills v. The Queen*, 1986 CanLII 17 (SCC), [1986] 1 SCR 863, at para. 262, that the *Charter* does not change procedural or jurisdictional requirements. Even *Charter* claims must be fitted into the existing scheme of legal procedure.
- [7] 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.
- [8] In the alternative, the Defendant asks that her motion for leave to appeal be heard at the same time as her appeal.
- [9] That is not how it works. The Defendant must follow the process set out in Rules 61.03 and 62.02 and may appeal only if leave to appeal is granted by the Court.
- [10] Motions for Leave to Appeal are heard in writing in Toronto, and must be filed in the Divisional Court in Toronto: Rule 62.02 and Consolidated Practice Direction for Divisional Court Proceedings, available on the Court's website at: <https://www.ontariocourts.ca/scj/practice/div-court-pd/>
- [11] The Defendant did serve and file her Notice of Appeal within the time required for filing a motion for leave to appeal. As such, while the Notice of Appeal must be quashed, I will extend the time for the Defendant to file her motion for leave to appeal in Toronto. If the Defendant does bring a motion for leave to appeal, this Endorsement should be included with it.
- [12] This Court orders:
- a. The Defendant's Notice of Appeal is quashed, without prejudice to the Defendant's right to bring a motion for leave to appeal as provided in the Rules.
 - b. The Defendant is granted an extension of 15 days from the date of this Endorsement to serve and file her motion for leave to appeal.



Justice R.E. Charney

Date: November 12, 2024