

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KATHY MILSOM

Plaintiff

and

TORONTO COMMUNITY HOUSING CORPORATION and ANDREW
MCKENZIE

Defendants

A N D B E T W E E N:

TORONTO COMMUNITY HOUSING CORPORATION

Plaintiff by Counterclaim

and

KATHY MILSOM and TRANSITUS INC. (c.o.b. as Orchango)

Defendants to the Counterclaim

**STATEMENT OF DEFENCE AND COUNTERCLAIM
OF TRANSITUS INC. (C.O.B. AS ORCHANGO)**

1. The defendant to the counterclaim Transitus Inc. (c.o.b. as Orchango) (“**Orchango**”) admits the allegations contained in paragraphs 18-19, 40-42, 54, 63 and 80-83 of the statement of defence and counterclaim.
2. Orchango has no knowledge of the allegations contained in paragraphs 12-13, 14, 17 (first sentence), 21-38, 48-53, 55, 58-61, 64-67, 79, 95, 96 (first sentence), 97-114, 123-131, 133-140, 153-155, 160, 171 and 174-176 of the counterclaim.
3. Orchango denies the balance of the counterclaim, except as specifically set out below.

OVERVIEW

4. Following her appointment as Toronto Community Housing Corporation's ("TCHC") fifth CEO in seven years, Kathy Milsom found the public housing agency even more dysfunctional than she had expected. Milsom decided to seek outside help in urgently identifying and implementing the necessary reforms.

5. Orchangeo, a boutique consulting firm managed by Edmond Mellina, had previously advised another public agency of which Milsom was CEO. Orchangeo's agility, efficiency and emphasis on capacity-building impressed Milsom, and she phoned Mellina to ask if Orchangeo was up for the challenge of trying to help reform TCHC's organizational culture. Mellina accepted.

6. Even before their initial conversation ended, Mellina got a taste of the dysfunction and fear gripping TCHC. Milsom explained that she was concerned about her written communications being accessed by TCHC employees and, for this reason, asked Mellina to use her personal email address.

7. Mellina soon discovered that Milsom's concern was justified and widely shared. A cabal of senior managers effectively held TCHC hostage, ousting CEOs at will approximately once every two years. The resulting politics and factionalism within TCHC had diverted managers' attention, decimated staff morale and diminished tenants' quality of life.

8. Although Mellina and Milsom had to tread carefully, they made rapid progress towards their shared goal of changing TCHC's culture for the benefit of tenants. In just five months, among other accomplishments, Orchangeo assessed TCHC's corporate culture, facilitated the creation of a business plan, developed protocols for two underperforming divisions and initiated a five-year strategic planning exercise. Orchangeo's plan ultimately included the dismissal of certain senior managers.

9. Mellina and Milsom's momentum caught the attention of the cabal, which reacted as it always did when it perceived a threat: by devising a plan to oust TCHC's CEO. In this case, the cabal obtained confidential procurement-related information and leaked it to a former employee whose identity TCHC tellingly glances over in its pleading. The former employee's subsequent allegations triggered two internal investigations, the baseless termination of Orchango's contract and the firing of Milsom.

10. Milsom and Orchango were therefore the immediate victims of the very dysfunction they had begun to address at TCHC. The ultimate victims, however, are the tenants across Toronto who continue to suffer the daily effects of TCHC's decade-long decay.

FACTS

Background

Toronto Community Housing Corporation

11. TCHC was established in 2002 and owns and manages tens of thousands of housing units city-wide. Over the past 10 years, it has been the subject of several high-profile scandals and faced a revolving door of CEOs:

(a) In 2011, a report by the City of Toronto auditor found inappropriate spending and tendering practices under TCHC's then CEO and her predecessor. The then CEO resigned and her predecessor was terminated from his new position at another municipal agency.

(b) In 2013, TCHC conducted an internal investigation into a possible kickback scheme, resulting in the termination of five employees.

(c) In 2014, the City of Toronto’s ombudsperson issued a report describing a “culture of fear” at TCHC and stating that TCHC executives ran the agency “as though it was their own personal fiefdom”. TCHC’s third CEO and two other executives resigned.

(d) In 2015, John Tory established the Mayor’s Task force on Toronto Community Housing. In 2016, the Task Force issued a report describing TCHC as being at “the centre of a crisis” and recommending its abolition and replacement by an independent non-profit organization.

(e) In 2017, TCHC’s fourth CEO resigned suddenly in circumstances that remain unclear.

12. TCHC is currently on its sixth CEO in a decade. During that time, TCHC’s CEOs have served for an average of just *two years*. Each firing and hiring has entrenched factions among TCHC managers allied with, or opposed to, a given chief executive. Infighting between those factions has fueled the agency’s notorious “culture of fear”.

Mellina and Milson’s past work together

13. Milsom was named CEO of TCHC in September 2017. She quickly discovered first-hand the extent of the agency’s dysfunction, and decided to seek outside help as she took on the urgent challenge of identifying and implementing necessary reforms.

14. Orchango was top of mind for Milsom. In 2011 and 2012, she had been impressed by the change management services it rendered to the Technical Standards & Safety Authority (“TSSA”), a public safety agency of which she was then CEO.

15. Milsom's very positive impression of Orchango had endured despite their comparatively brief business relationship and the fact that she and Mellina had communicated a total of only two or three times in the intervening five years.

Orchango's change management expertise

16. Orchango (or, as it was then called, Transitus) was co-founded by Mellina in 2002. He is an officer and director and its main service-provider to clients.

17. Before co-founding Orchango, Mellina had distinguished himself as a specialist in complex strategic transformations across a range of sectors:

- (a) He started his career with France's Trade Commissions (now Business France) in northwestern Europe during the modernization of their IT operations.
- (b) Mellina moved to Canada in 1995 and led the Canadian technology operations of the Hay Group, a management consulting firm.
- (c) He then transferred to Delta Hotels, serving as head of technology and business transformation during the rise of online travel booking services such as Expedia and Travelocity as well as Delta's 1999 acquisition by CP Hotels. When CP proceeded to also acquire Fairmont, Mellina co-led the merger and strategic transformation of Fairmont's IT functions.
- (d) In 2000, Mellina joined Sage Information Consultants, a strategy and IT consulting firm, as it was being acquired by Envoy Communications, an international group of design and marketing agencies. Mellina was named Vice President of Corporate Development (Canada/USA) and General Manager (USA), and was based in New York. He helped lead Envoy through the economic challenges of the dot-com collapse and the 9/11 attacks.

18. Apart from its size, Orchango differs from the large consulting firms, such as McKinsey, and the established change management research and training firms, such as Prosci, in its approach. Orchango collaborates closely with clients, does not rely on junior consultants, and emphasizes knowledge-transfer and capacity-building. Its approach is nimble and pragmatic and therefore better suited to the increasingly fast-paced and disruptive nature of change.

19. Orchango's success and prominence is out of proportion to its size. It has provided change management services to large public- and private-sector clients around the world, including the Islamic Development Bank, SunLife Financial, De Beers and the Province of British Columbia.

Mellina's commitment to social housing

20. Although Milsom did not know it at the time, there was another way in which Orchango was ideally suited to help reform TCHC: he spent the first five years of his life in social housing in France, and again lived in social housing during his university studies. Based on his personal and family history, therefore, Mellina could relate deeply to the life challenges that may lead to social housing tenancy, and he felt a particular passion for tenants' well-being.

TCHC's Sole-Source Engagement of Orchango

21. On October 16, 2017, Milsom phoned Mellina and arranged to speak to him at length later that day. She told Mellina that while TCHC's field staff were diligent, TCHC was experiencing serious dysfunction at the managerial level. She asked if Orchango might be able to help her reform the agency's organizational culture and shift its focus from internal politics to tenant service.

22. When Mellina agreed to do so, Milsom made an unusual request: she asked Mellina to direct follow-up emails to her personal email account, explaining that she did not want to risk

TCHC employees viewing their communications. This was Mellina's first hint of the extraordinary fear and paranoia gripping TCHC, and in the coming weeks and months another TCHC official would communicate with him by personal email while a third did so from his cellular phone. The former was Kevin Marshman, chairman of TCHC's board of directors (the "**Board**"); the latter was Andrew McKenzie, Senior Director for Service Integration and Delivery.

23. Throughout October 2017, Milsom and Mellina had increasingly detailed phone calls about the scope and practicalities of Orchange's assistance to TCHC. On November 3, 2017, Milsom told Mellina that his key day-to-day contact at TCHC would be McKenzie, and Milsom prepared an initial budget estimate of \$440,000 for three years of work by Orchange. Mellina understood this to be within Milsom's delegated procurement authority as CEO, and Milsom authorized Orchange to start work within this budget (the "**Sole-Source Engagement**").

24. Mellina's first day on-site at TCHC was November 9, 2017. As he began to interview employees in order to identify necessary reforms, Mellina realized that the cabal was effectively holding TCHC hostage. The resulting culture of fear surpassed what Milsom had described and, in Mellina's mind, was akin to a toxin that had spread throughout the system. Mellina updated Milsom by phone and email about his findings and Orchange's expanding scope of work. Milsom authorized Orchange's fees by email, constituting a contract in writing between Orchange and TCHC.

25. Mellina also provided regular updates to McKenzie, including, at McKenzie's request, through text messages. McKenzie was therefore the second of three TCHC executives to ask Mellina to communicate via personal channels.

The Board requests an RFP

26. By the end of November 2017, the scope of work required at TCHC far exceeded what Milsom and Mellina had anticipated. Milsom met with a committee of the Board and, between December 7 and December 11, 2017, expressed frustration to Mellina that the Board had requested the solicitation of a change management consultant through a request for proposals (the “**RFP**”).

27. Mellina believed that Orchango’s efficiency, agility and emphasis on capacity-building positioned it better than any potential competitor to identify and implement the urgent reforms needed by TCHC. Indeed, Orchango was already in the process of doing exactly that, and Mellina was relatively confident it would prevail on its merits.

28. Milsom told Mellina that the RFP would culminate in a decision in February or March 2018 and that, in the meantime, Orchango should continue its urgent work under the Sole-Source Engagement.

Orchango’s achievements during the Sole-Source Engagement

29. On February 6, 2018, Mellina met with Marshman and presented a slide deck summarizing Orchango’s findings from its first three months at TCHC. Mellina described to Marshman a “highly political environment” marked by “infighting”, where the “focus [was] hijacked”, “energy sucked up” and “passion watered down”. In addition, Mellina described an “us-vs-them” mentality between divisions, between field staff and headquarters, and between staff and management. Put differently, TCHC was seriously dysfunctional and in distress.

30. The Sole-Source Engagement concluded in April 2018, following the RFP process described in more detail below. In just five months, Orchango had achieved the following:

(a) In November and December 2017, Orchango facilitated the urgent development and implementation of a business plan for TCHC in circumstances where TCHC had an approved budget but no associated business plan for the fiscal year due to begin in a matter of weeks;

(b) In November and December 2017, Orchango designed and held three very well received half-day business planning sessions for TCHC executives, managers and directors;

(c) Between November 2017 and January 2018, Orchango worked with two underperforming divisions of TCHC to increase their accountability and employee engagement and develop new protocols and plans;

(d) In February and March 2018, Orchango assessed TCHC's corporate culture;

(e) In February and March 2018, Orchango initiated a five-year strategic planning exercise, including facilitating a strategic planning session with executives; and

(f) In February and March 2018, Orchango developed a high-level transformation strategy, to be executed by whoever might win the RFP.

31. By the end of the Sole-Source Engagement, during which Orchango invoiced TCHC a total of \$190,065, TCHC was on track for the urgent reform it required. Orchango had created lasting value regardless of the outcome of the RFP.

TCHC prepares the RFP process

32. Although Milsom expressed growing doubts about his competence, McKenzie was appointed to organize the RFP process by virtue of his responsibility for the change management file. In over his head, McKenzie emailed Mellina on January 13, 2018, to ask for his help in preparing a preliminary draft RFP.

33. As in response to every other request McKenzie had made during the Sole-Source Engagement, Mellina provided what assistance he could. Mellina was very concerned about McKenzie's draft, which appeared to have been adapted from an earlier RFP unrelated to change management services. While Mellina believed Orchango was likely to prevail on the RFP, he recognized that the process had to play out properly. Among other comments on McKenzie's draft, Mellina wrote that "it might be worth clarifying / expanding a little so that the other vendors get it too", and "I tried to make sure the type of services listed were vague/generic enough for other firms to have a good shot at it."

34. When Mellina wrote to McKenzie that "with the original wording you would end up with Prosci, not a firm like Orchango ;)", Mellina was using "Prosci" as shorthand for conventional consulting firms, whose phased, template-heavy approach he viewed as ill-suited to the nature and pace of change today and to turning around a deeply dysfunctional organization. The alternative change management philosophy championed by Orchango and certain other small consulting firms, inevitably informed Mellina's responses to McKenzie's requests. Mellina (like Milsom and McKenzie, apparently) was convinced that Orchango's alternative change management approach was best suited to TCHC.

35. Given Orchango's extensive work in commencing the process of change at TCHC, it is not surprising that McKenzie's first inclination was to desperately turn to Mellina to help him figure

out how to draft the RFP. Although clearly compromising the purity of the RFP process, Orchango cannot be faulted for answering this request *by TCHC*. And while doing so might appear in retrospect to have been naïve of Mellina, he worked towards trying to make the RFP as fair as possible.

Mellina responds to the RFP

36. On February 9, 2018, TCHC published the RFP on its website.

37. On February 10, 2018, Milsom sent Mellina a text message saying “please don’t email me *at my work email* regarding the RFP. I don’t want to raise any concerns regarding integrity” [emphasis added].

38. Mellina sent a total of four emails about the RFP to Milsom during the RFP process:

(a) On February 9, 2018, Mellina forwarded to Milsom the email he had received from TCHC announcing the issuance of the RFP, simply writing “FYI”.

(b) On February 12, 2018, Mellina sought Milsom’s guidance about how the conflict of interest declaration applied to Orchango in light of Orchango’s ongoing Sole-Source Engagement. Milsom replied telling Mellina to state simply that Orchango has a “prior working relationship with TCHC”.

(c) On February 14, 2018, Mellina told Milsom that he would temporarily be working remotely while preparing Orchango’s detailed response to the RFP, adding, “[t]he good news is that, even if we don’t win the contest, TCHC will have in our response a valuable roadmap for the next 2 to 3 years”.

(d) On February 22, 2018, Mellina emailed Milsom to tell her that Orchange's proposed fees and scope could be negotiated. This is a standard reminder Orchange gives to all prospective clients. In accordance with the rules governing the RFP process, Mellina did not reveal the estimated price of Orchange's services.

39. Milsom was not the only TCHC executive who invited RFP-related communication from Mellina during the RFP process. On February 14, 2018, McKenzie texted Mellina to say "let me know if you have any questions on it" after Mellina told McKenzie he would be working from home to draft Orchange's response to the RFP.

40. Any restrictions on communications with TCHC during the RFP process were much more difficult to apply to Orchange. On Milsom's instruction, Orchange was continuing the Sole-Source Engagement during the RFP process such that Mellina had to, and did, communicate with TCHC employees on a regular basis.

Orchange prevails on the RFP

41. On March 23, 2018, Milsom phoned Mellina to tell him that Orchange had won the RFP but that its fees would have to be lowered. The total fee set out in Orchange's RFP submission was \$1,350,000 for the first two years, with an optional third year at a cost of \$300,000.

42. On March 24 and March 25, 2018, Mellina and Milsom negotiated a reduction of the scope of services Orchange was to provide. They agreed on \$1,059,825 for the first two years of the contract (\$57,407.19 per month for year one, and \$30,911.56 per month for year two), with an optional third year at a cost of \$215,300.

43. These fixed fees are not comparable to the \$440,000 preliminary estimate for the Sole-Source Engagement which had been prepared in October 2017. The post-RFP fees reflect a

more labour-intensive scope of services informed precisely by the assessment Orchange had completed during the Sole-Source Engagement. In addition, they include intellectual property licensing fees arising from Orchange's years of research and development of its change management model.

44. On March 29, 2018, Mellina received an email from TCHC formally advising him that Orchange had been awarded a contract following the RFP.

45. Orchange began work in accordance with the RFP on April 1, 2018, and, on April 24, 2018, TCHC and Orchange executed the Consulting Services Agreement (the "**Contract**").

Orchange performs the Contract

46. In late May 2018, Mellina arranged a second meeting with Marshman to keep him (and, through him, the Board) informed about Orchange's ongoing change management services. In making those arrangements, Marshman asked Mellina to use his personal email. Marshman therefore became the second TCHC executive, after Milsom, to communicate with Mellina through personal channels.

47. Throughout the remainder of 2018, Orchange continued its change management work at TCHC. Mellina was entirely devoted to the project, and in the course of that year Orchange's achievements included the following:

- (a) Culture model: TCHC developed and deployed a culture model based on interviews with TCHC employees, senior management and tenants to create a set of critical behaviours and priorities for changing the culture at TCHC. Orchange also developed recommendations for improved management systems, organizational policies and employee incentives to make the culture model a reality;

(b) Strategic business planning: Orchango worked with senior management to develop long-term business plans and core principles for TCHC. Orchango also provided regular sessions at which TCHC leadership and employees could reflect on progress; and

(c) Tenant-Centric Leadership Academy: Orchango developed, piloted and presented a year-long training academy for TCHC leaders to implement the culture model and improve accountability, employee engagement and tenant service.

48. Orchango prepared a slide deck for Milsom to present to the Board on December 6, 2018. The presentation included anonymized feedback given by TCHC staff and managers in late 2017, including that “the whole organization is a political game” and “the ongoing joke is that becoming a manager is the first step towards being fired”. The presentation contrasted this with feedback from late 2018, at which point a tenant commented that “many tenants are starting to see the light at the end of the tunnel” and a TCHC superintendent stated, “I was supposed to retire three months from now but I have decided to put it off because I like what I see”.

49. Mellina took great pride in the value Orchango was contributing to TCHC. The biggest and most sensitive challenge was still to come, however, and in late 2018 Mellina and Milsom, in consultation with another TCHC executive, finalized plans for a major reorganization to take place in January 2019. Their plan called for the dismissal of three TCHC senior managers who Mellina had identified as leaders of the cabal. The plan was so drastic that Mellina and Milsom equated it to removing a “cancer” and so sensitive that they discussed it with only one other executive: Ismail Ibrahim, TCHC’s General Counsel.

TCHC investigates and terminates the Contract

50. In September 2018, according to TCHC’s statement of defence and counterclaim, a woman named Lisa Murray contacted TCHC saying that the RFP process had been conducted improperly.

Murray was not even employed by TCHC when she made this allegation. In fact, Murray did not work at TCHC at any time during Orchango's involvement there or during any part of the RFP process. She was a former employee who was clearly fed confidential corporate information about the RFP, and was successfully used to orchestrate the elimination of Milsom and Orchango.

51. In response to Murray's allegation, TCHC retained Rubin Thomlinson LLP to investigate the RFP process. Orchango fully participated and cooperated in the investigation that followed.

52. On December 17, 2018, Ibrahim wrote to Orchango explaining that TCHC was terminating the Contract without notice in view of Orchango's allegedly incomplete conflict of interest declaration and allegedly improper communications during the RFP process.

53. As of December 17, 2018, TCHC had paid Orchango \$190,065 for work during the Sole-Source Engagement and \$459,257.52 for work performed since the awarding of the RFP to December 1 (for a total of \$649,322.52). Under the Contract, Orchango was entitled to another \$600,567.48 worth of work over the following year and a half, with an additional \$215,300.00 for a third year.

54. From December 2018 to February 2019, TCHC continued its investigation into the RFP process using Bennett Jones LLP. On February 21, 2019, TCHC issued a further press release about the results of the investigation and announced that Milsom had been fired as CEO.

TCHC issues a new RFP

55. On May 1, 2019, TCHC issued an RFP which referenced and included as appendices components of Orchango's previously completed work product, including the culture model, the strategic plan, and a variant of the Tenant-Centric Leadership Academy. TCHC is paying someone else to implement Orchango's plans.

DEFENCES

No breach of contract

56. Orchango fulfilled its part the Contract. It properly included a conflict of interest declaration in its response to the RFP, acknowledging its past work with TCHC (and its access to confidential information). That was, in substance, the very declaration Milsom told Mellina to make, after consulting with TCHC's Chief Financial Officer Rose-Ann Lee, when he enquired of her about that section of the RFP form.

57. To the extent that Milsom and McKenzie did not report other direct interactions with Orchango internally, that was, of course, a failing of TCHC, not Orchango.

No damages from breach of contract

58. Even if Orchango had breached the Contract, TCHC suffered no damages. TCHC contracted for and received high quality consulting services from Orchango. Any damages suffered as a result of conducting an internal investigation or undertaking a second RFP process are the result of TCHC's own decisions and factionalism.

TCHC should be estopped from recovering for breach of contract

59. If Orchango breached the Contract and TCHC suffered resulting damages, TCHC should be estopped from relying on the Contract. Through (at least) Milsom and McKenzie, TCHC knew of and was responsible for all of Orchango's actions. During the RFP process, Milsom told Mellina to use her personal email address for any RFP-related questions, and McKenzie similarly invited Mellina to text him with any such questions. Even before the RFP process began, McKenzie sought Mellina's assistance in drafting the RFP to ensure continuity between Orchango's achievements under the Sole-Source Engagement and the next phase of the change management project.

60. Any alleged breach by Orchango would have been insignificant. Orchango neglected to disclose information which (according to TCHC's own version of events) two out of three members of the RFP review panel already knew. Similarly, to the extent that Orchango engaged in improper communications about the RFP process, it did so at the invitation of two of the three members of the RFP review panel.

61. TCHC should not be permitted to recover for a breach resulting from its own flawed internal processes.

No fraudulent or negligent misrepresentation

62. Insofar as Orchango's conflict of interest declaration was incomplete, any omission by Orchango cannot be construed as a misrepresentation because TCHC, through Milsom and McKenzie, already knew the material facts.

63. Further, to the extent that there was a misrepresentation, it could not have been fraudulent. TCHC senior management were already aware of any facts that could possibly give rise to a conflict of interest.

No reliance on misrepresentation

64. If Orchango misrepresented by omission, TCHC did not rely on that misrepresentation. According to TCHC's own version of events, two of the three members of the RFP review panel knew about Orchango's input into the draft RFP and communications with TCHC executives. In other words, the RFP review panel knew the substance of the alleged misrepresentation and nevertheless chose Orchango.

65. Orchango's success in the RFP is explained by its position as an industry leader in change management, not by any supposed misrepresentation. Orchango had developed a unique remedial plan for TCHC which it was best suited to implement.

No harm caused by misrepresentation

66. Further, TCHC suffered no harm as a result of any actions of Orchango. As explained above, Orchango provided high quality consulting services with demonstrated results. Any damages suffered as a result of issuing a new RFP and conducting an internal investigation follow solely from TCHC's own decisions and factionalism.

No conspiracy

67. There was no conspiracy between Mellina, Milsom and/or McKenzie. Orchango had no inside information as to who would review the RFP submissions or how they would be reviewed.

68. Other than the facts pleaded above, Orchango did not materially communicate with Milsom about the RFP process (much less with a view to influencing it).

Limitation of liability

69. Section 3.6.1 of the RFP, which is part of Schedule B to the executed Contract, states that "neither the Proponent nor TCHC shall have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a response to the RFP." All of TCHC's claims are rooted in the RFP process and the events that led to Orchango being awarded the contract.

70. TCHC's counterclaim against Orchango is therefore barred, and Orchango requests that the counterclaim be dismissed with costs.

COUNTERCLAIM

71. Orchango claims against TCHC:

- (a) damages in the sum of \$786,237.92 for breach of contract;
- (b) damages in the sum of \$29,629.56 for unjust enrichment;
- (c) punitive damages in the sum of \$250,000.00;
- (d) pre- and post-judgment interest under the *Courts of Justice Act*; and
- (e) the costs of this proceeding.

72. Orchango relies upon the allegations in the statement of defence above in support of the counterclaim.

TCHC breached the Contract

73. Orchango expected to receive \$786,237.92 from TCHC for its services from mid-December 2018 through March 2021. As explained above, Orchango did not breach the Contract and there was no “cause” for which TCHC could terminate it.

74. The Contract contains a detailed “early termination” clause, which would have allowed TCHC to terminate the Contract “for convenience” on 60 days’ written notice. However, TCHC provided no such notice.

75. The fact is that TCHC terminated the Contract neither “for cause” nor “for convenience”. Instead, at the instigation of the cabal, it terminated the Contract in bad faith to protect vested internal interests and/or to provide a scapegoat following the publicization of its internal dysfunction.

TCHC has destroyed Orchange's record of success

76. TCHC's dishonest termination of the Contract has destroyed what was otherwise an untarnished record of success for Orchange. Orchange's business development model relies heavily on testimonials and referrals from former clients. However, due to its improper termination by TCHC, Orchange clients have become reluctant to associate with it, including by providing testimonials. One prominent former client has gone so far as to ask that Orchange remove all website references to their work together, and the flow of new clients has all but dried up.

77. TCHC's conduct has not only caused Orchange losses but impeded its ability to mitigate them.

TCHC has been unjustly enriched by Orchange's December 2018 work

78. TCHC has not compensated Orchange for the work it performed diligently from December 1, 2018 until the Contract was terminated on December 17, 2018. TCHC should have done so even if its termination of the Contract was for cause.

79. The value of Orchange's work in December 2018 constitutes enrichment to TCHC and a corresponding deprivation of Orchange, for no juristic reason, in the amount of \$29,629.56.

TCHC has acted in bad faith towards Orchange

80. TCHC terminated the Contract to protect the careers of members of the cabal, in disregard for Orchange's rights. Its conduct was high-handed and warrants condemnation through an award of punitive damages to Orchange.

July 19, 2019

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KATHY MILSOM
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-and- TORONTO COMMUNITY HOUSING CORPORATION et al.
Defendants

-and- KATHY MILSOM et al.
Defendants to the Counterclaim

Court File No. CV-19-00615933-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF DEFENCE AND
COUNTERCLAIM OF TRANSITUS INC. (C.O.B. AS
ORCHANGO)**

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