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Family Law Newsletters
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— Franks & Zalev - This Week in Family Law

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Waiting for Godot: (A Play by Samuel Beckman)

Waiting for Guffman: (A 1996 Mockumentary Comedy by Christopher Guest and Eugene Levy) (And Well Worth Watching By The Way)

Waiting for Ahluwalia: (What We're All Doing Now)

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Damages in Intimate-Partner Torts

***Doe v. Redmond*, 2025 CarswellOnt 17451 (S.C.J.) — Hurley J.**

With *Ahluwalia v. Ahluwalia* being under reserve since it was argued at the Supreme Court of Canada on February 11-12, 2025, the family bar is stuck in a holding pattern. We still don't know whether the Supremes will revive the idea of a standalone tort of family violence, invent something new, or simply send everyone back to the "existing torts" toolbox that the Ontario Court of Appeal determined was already adequate.

While we wait, Justice Hurley's recent brief decision in *Doe v. Redmond* is worth a careful read. It is not a family law case, but it *is* an intimate-partner violence case, and it shows, with actual numbers, how judges are approaching the difficult task of assessing damages for intentional torts arising in a domestic context.

If *Ahluwalia* leaves us working within the familiar torts (assault, battery, intentional infliction of emotional distress, intrusion upon seclusion, etc.), *Doe* offers a preview of what those claims may look like on the ground. And if the Supreme Court gives us something new, whether a refined version of Justice Mandhane's tort of family violence or an entirely different framework, the reasoning in *Doe* still provides a useful roadmap for framing and quantifying damages in cases involving intimate-partner abuse.

From where we sit — as people who do not litigate tort damages for a living — the process seems more intuitive than technical; more art than science. Judges look at the range the parties argue, glance at the "comparables," and then decide where this case fits in a general sense before choosing a number that feels right and proportionate. And because most family lawyers are not immersed in this type of work, it is essential to bring in someone (either as co-counsel or in an advisory role) to help shape the claim or contain the exposure. You would not ask a tort specialist to run a spousal support case, and the reverse holds true here.

Tortious liability here was not really an issue. The defendant sexually assaulted his intimate partner while she was incapacitated and recorded it. He was later convicted and sentenced to six years in prison. Although he appealed his conviction, he never took steps to pursue it.

In the subsequent civil action brought by the former partner, the defendant didn't file responding material on the summary judgment motion. Liability was a foregone conclusion. The only question was damages.

The plaintiff claimed $325,000 for general (non-pecuniary) and aggravated damages, and $25,000 in damages for loss of income based on loss of competitive advantage.

General and Aggravated Damages

General damages (also known as non-pecuniary damages) cover intangible harms for things such as "loss of enjoyment of life, esthetic prejudice, physical and psychological pain and suffering, inconvenience, loss of amenities, and sexual prejudice": *Cinar Corporation v. Robinson*, 2013 CarswellQue 12345 (S.C.C.) at para. 95.

Aggravated damages are not a separate category of damages. Rather, they operate as an enhancement to the non-pecuniary award when the conduct is particularly humiliating or involves a breach of trust — a common feature in intimate-partner abuse cases: *Norberg v. Wynrib*, 1992 CarswellBC 155 (S.C.C.) at para. 54; *Montgomery v. Kenwell*, 97 R.F.L. (7th) 433 (Ont. S.C.J.) at para. 35; *Barreto v. Salema* (2024), 11 R.F.L. (9th) 31 (Ont. S.C.J.) at para. 434.

Justice Hurley began his analysis with *Zando v. Ali*, 2018 CarswellOnt 13022 (C.A.), where the Ontario Court of Appeal distilled three core principles for assessing non-pecuniary damages in sexual assault cases:

- The purpose of non-pecuniary damages in sexual assault cases is to compensate for pain, suffering, loss of dignity, and the degrading nature of the misconduct.

- The assessment of non-pecuniary damages turns on a number of factors, including "(i) the circumstances of the victim at the time of the events, including the victim's age and vulnerability; (ii) the circumstances of the assaults including their number, frequency and how violent, invasive and degrading they were; (iii) the circumstances of the defendant, including age and whether he or she was in a position of trust; and (iv) the consequences for the victim of the wrongful behaviour including ongoing psychological injuries."

- Courts decide non-pecuniary damages by situating the case within the range of comparable awards and choosing an amount that fits the specific circumstances.

The defendant argued that non-pecuniary damages should be capped at $180,000 because the plaintiff had pre-existing addictions and mental-health challenges — essentially, that the assault did not materially worsen her already-difficult life.

Justice Hurley rejected this argument. He accepted the plaintiff's evidence that the assault fundamentally altered her psychological landscape, taking away her sense of safety, joy, trust, and self-worth — "fundamental pillars of a good life." He also criticized the defendant for cherry-picking medical records to downplay the harm.

After reviewing comparable cases including *J.B. v. R.B.*, 2021 CarswellOnt 1525 (S.C.J.) ($275,000), *BE v. OR*, 2024 ONSC 6193 ($375,000), and *Upton v. Carson*, 2024 CarswellOnt 8917 (S.C.J.) ($175,000), Justice Hurley fixed the plaintiff's non-pecuniary damages, including the aggravated component, at $225,000.

Pecuniary Loss: Loss of Competitive Advantage

Loss of competitive advantage compensates a plaintiff whose ability to compete in the labour market has been weakened by the injury, even if their income has not yet declined: *Ali v. Irfan*, 2023 CarswellOnt 8060 (S.C.J.) at para. 25.

No expert evidence is required. It is a forward-looking assessment based on a "real and substantial possibility": *L.P. v. S.P.*, 2019 CarswellOnt 4518 (S.C.J.) at para. 45.

Here, the plaintiff — a bartender whose income depends heavily on tips — experienced significant anxiety interacting with customers, which was expected to affect her future earnings. Despite her uneven work history, Justice Hurley assessed this loss at $25,000, which he considered a reasonable lump-sum figure on the evidence.

Doe underscores that intimate-partner tort claims are no longer operating at the margins. As this body of law develops — depending in part on what the Supreme Court says in *Ahluwalia* — family lawyers will need to deepen their understanding of how damages are assessed in these cases. They are difficult files in every sense. They are technically complicated and emotionally devastating for clients who may have to revisit their trauma in detail and face cross-examination by their former partner. These are not cases to run on instinct or improvisation, and they are certainly not for "dabblers". Expert assistance is a "must."

Part of competent representation is knowing the limits of our own experience and bringing in the right support when needed, both to safeguard the client and to manage the very real stakes involved. Law has become specialized. True litigation generalists are a dying breed. We would not expect a non-family law lawyer to sort out a spousal support claim (and even then, they would at least have the SSAGs to anchor the analysis). Here, there is no equivalent framework. Damages remain highly discretionary and depend heavily on how the case is framed, presented, argued and compared. That makes it all the more important to recognize when specialized tort-damages expertise is required, and to ensure clients are not navigating these cases without it.

Following this advice will help you avoid the most troublesome tort of them all: solicitor's negligence.

It is Invariably the Cover Up that Kills You

***Ko v. Li*, 2025 CarswellOnt 20049 (S.C.J.) — Myers J.**

Warren Buffett is credited with saying: "It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently."

Or, maybe you prefer Ben Franklin: "It takes many good deeds to build a good reputation, and only one bad one to lose it."

Much has already been written about *Ko v. Li*. It has circulated widely in legal media and on social platforms as the latest cautionary tale about AI-generated hallucinations finding their way into court filings, facta and submissions. That framing captures the surface problem, but misses the deeper one.

This decision is not really about artificial intelligence. It is about candour. It is about what happens when a court extends grace and compassion in response to a professional failure, only to discover later that the foundation for that compassion was, itself, untrue.

Ko v. Li is far from the first case to confront courts with a factum containing non-existent authorities generated through AI tools such as ChatGPT and similar large language models. These models are lightning-fast, very persuasive, highly confident; and often completely and totally wrong. As discussed further below, this overconfidence is a feature of how these systems generate text: they produce fluent predictions of what should come next, whether or not it is true. Hallucinated cases are not outliers; they are an inherent risk.

That reliance on AI here, and the resulting problem of case hallucinations, justified a "show-cause" hearing and raised obvious concerns about the administration of justice.

But that was not where the matter ended. What followed was more unusual — and more serious.

The May 1st Hearing

On May 1, 2025, the lawyer appeared on a routine estates motion and relied on multiple case authorities that turned out to be wholly incorrect or non-existent. Hyperlinks in the factum led to unrelated decisions, error pages, or no legal authority at all.

When questioned, the lawyer could not locate the cases, provide hard copies, or confirm whether the factum had been prepared using AI.

Justice Myers identified several potential breaches of duty: failing to verify authorities, citing cases that do not exist, inadequate supervision, and the absence of human review of potentially AI-generated material.

The Initial Show-Cause Requirement

Given the seriousness of the issue, Justice Myers ordered the lawyer to show cause why she should not be cited for contempt. For those not familiar with the concept, a requirement to "show cause" is not a finding of contempt. It is a procedural step: the court signals that the conduct *may* amount to contempt and directs the person to appear and explain why a contempt finding should not be made. As the Supreme Court of Canada explained in *R. v. K. (B.)*, 1995 CarswellSask 593 (S.C.C.) at paras. 11 and 15, the principles of natural justice require notice of the allegation, an opportunity to seek and obtain legal advice or representation, and, if contempt is ultimately found, a further opportunity to make submissions on an appropriate sanction.

A scheduling Case Conference was set for May 16, 2025 to determine next steps. At that attendance, the court was offered what *appeared* to be a candid explanation. The offending factum was withdrawn. Regret and contrition were expressed. Responsibility was framed — critically — as shared or delegated. The lawyer told the court that a student had prepared the factum and that she learned AI had been used from an assistant in her office. On that basis, Justice Myers concluded that any contempt had been purged.

As Summer Turns to (the) Fall: The September 30th Admission

Months later, however, in an unsolicited letter dated September 30, 2025, sent directly to Justice Myers and filed with the court, the lawyer admitted that this explanation provided was not true. She then admitted that she — not a student — drafted the factum, personally used ChatGPT, failed to verify the citations, and then deliberately misled the court out of fear and embarrassment.

Justice Myers treated this not as a clarification, but as a new and distinct possible incident of contempt: deception of the court during a contempt proceeding. He also rejected the idea of reopening the earlier disposition under Rule 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, concluding instead that the lawyer's dishonesty was a fresh act requiring a separate contempt process.

The first involved recklessness. The second involved deliberate untruthfulness intended to blunt the court's supervisory authority. This is where the familiar maxim applies with force: the cover-up was worse than the crime.

The Second Show-Cause Proceeding

After receiving the September 30th letter, Justice Myers wrote to the lawyer on October 6, 2025. He required her to show cause again — this time for contempt arising from misleading the court. He referred carriage of the new contempt allegation to the Attorney General of Ontario and scheduled a Case Conference for December 2, 2025 to ensure the Crown could advise on next steps and that a fair process was established.

On November 28, 2025, the Crown confirmed it would take carriage. It alleged that the lawyer committed contempt by filing and relying on the initial factum, that her failure to check citations amounted to "indifference akin to recklessness", and that attempting to purge the first contempt with an untruthful narrative compounded her wrongdoing and constituted an effort to obstruct the administration of justice.

Despite the Crown's position, at the December 2 Case Conference, the lawyer again sought to purge the new contempt by apologizing, noting remedial steps, and asking that the matter be resolved without further hearing or penalty.

Justice Myers strongly encouraged the lawyer to retain counsel, emphasizing the need for a proper record, proof beyond a reasonable doubt, and a fair, orderly process. Given the unusual circumstances (and the lawyer's reluctance to obtain

representation) Justice Myers appointed *amicus curiae* and directed the Crown to schedule a further Case Conference by the end of January on notice to all parties, once they had agreed on a process or identified any outstanding issues.

For those that may question whether all of these procedural formalities were really necessary, we note that this careful insistence on procedural fairness is consistent with what we wrote back in our September 15, 2025 commentary on *Miner v. Cooke* (2025), 19 R.F.L. (9th) 265 (Alta. C.A.) in "No Contempt for You!!!" — where the Alberta Court of Appeal set aside a contempt finding despite clear non-compliance with a parenting order because the process was defective. As we emphasized there, contempt is exceptional, quasi-criminal, and demands strict adherence to safeguards such as proof beyond a reasonable doubt, bifurcation of liability and penalty, and a meaningful opportunity to obtain counsel. In a contempt matter all the rules of *strictissimi juris* ("of the strictest right") apply. T's must be crossed; i's must be dotted: *Jackson v. Honey* (2009), 64 R.F.L. (6th) 88 (B.C. C.A.). This is not remotely making a mountain of a molehill.

The Broader Lesson

There is a broader professional lesson running through this decision.

Learning how to use AI in legal practice is no longer optional. If it is not already part of baseline competence, it likely soon will be, just as earlier technological shifts, from typewriters to word processors and from paper files to electronic records, eventually became unavoidable. Each advance brought real efficiencies. Each also carried risks. And each required lawyers to understand not only how to use the tool, but where its limits lie.

AI is different in one critical respect. It does not merely transmit or format information. It generates it. And sometimes, it generates it in stunningly wrong fashion.

"Hallucinations" are not at all rare. They are an expected and known feature of generative AI systems, which produce fluent predictions of what text is likely to come next — not verified legal authorities. These systems can invent cases, fabricate citations, distort holdings, and present unsupported propositions in authoritative language. The systems are designed to provide answers — and sometimes, they think a wrong answer is better than no answer.

Treating AI output as authoritative rather than provisional is the functional equivalent of treating a first-year law student's draft memo as ready-to-file, but with one major difference. A first-year law student is unlikely to fabricate entire cases out of thin air, present them with complete confidence, and give no signal at all that the authority is fictitious. Generative AI will do exactly that.

AI is best understood as a junior staff member: fast, tireless, and helpful if relied on correctly — but incapable of professional responsibility. Unlike real staff, AI cannot be trained through supervision, does not learn from correction, and never hedges its certainty. It produces output that looks polished and authoritative, even when it is wrong, because it is driven by statistical likelihood rather than truth. Every output must therefore be verified. Every citation must be checked. Every legal proposition must ultimately be owned by the lawyer who advances it.

It reminds us of a common Philip Epstein saying: "I may not always be right; but I'm always certain."

AI also lacks professional judgment. It does not understand context, proportionality, credibility, or strategy. It cannot assess when restraint is wiser than argument, when silence is tactical, or when pressing a weak point risks undermining credibility. It cannot be treated as a substitute for judgment by simply generating text and adopting it as one's own.

This case did not arise because AI was used. It arose because AI output was relied upon without verification — and, more seriously, because the court was misled when that failure was exposed. The initial resolution depended on candour. When candour failed, so did the resolution.

Courts can adapt to new tools. What they cannot — and should not — tolerate is a loss of candour. Unbridled candour is a mark of good advocacy. You want to be the lawyer (dare we say "person") that is always believed just because *you* said it.

Whether the lawyer is ultimately found in contempt on the second allegation remains to be seen. But regardless of the outcome, the admission has already reshaped the boundaries of what courts can — and cannot — accept.

The lawyer in this case has undoubtedly suffered, and we do not comment on this case in an effort to "pile on." But, again, there is a broader professional lesson running through this decision. Sometimes being a lawyer is not easy. And anyone is under significant pressure may find themselves, even if only rarely, perhaps flirting with a knowingly improper, but easy way out. The trick is to make sure that your inner Jiminy Cricket wins that fight: "Always let your conscience be your guide."

And should you ever find yourself having given in to temptation, remember the words of Pete Rose: "If somebody is gracious enough to give me a second chance, I won't need a third."

Mistakes may be forgivable.

Deception is not.

Thus endeth the lesson.

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