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Family Law Newsletters

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

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Note: We will be taking off the week of June 29, 2026. We will return with the next edition of *TWFL* the week of July 6, 2026.

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That Land Looks "Interesting"

***Sidhu v. Jain*, 2026 CarswellOnt 2913 (C.A.) — Sossin, Copeland and Madsen JJ.A.**

Ontario has a split limitations regime. With limited exception, most causes of action are subject to the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (the "*LA*") and the general two-year limitation period. Claims for an interest in land, however, remain subject to the *Real Property Limitations Act*, R.S.O. 1990, c. L.15 (the "*RPLA*") and a 10-year limitation period.

As a result, some litigants, realizing they have missed the 2-year limitation period for claiming relief, may try to wedge their claim into the more generous 10-year limitation period of the *RPLA*. This was one of those situations. But was the claimant successful? Let's see . . .

The case involved a dispute over a property ("Lot 16") purchased in 2004 by the Respondent wife, the Respondent husband, and the Appellant through a corporation. The Respondent wife claimed that she was entitled to a one-third interest in Lot 16, as documented in a 2006 agreement. Following the separation of the Respondent wife and Respondent husband in 2016, Lot 16 was sold by the Appellants without accounting to the Respondent wife for her share.

As a result, in 2016, the Respondent husband commenced an action against the Appellants, claiming breach of contract and unjust enrichment in relation to Lot 16. However, the Respondent wife did not commence her own action; she thought that the action started by the Respondent husband would protect her interests. In 2024, after learning that there may be some procedural issues with the action that had been started, the wife started her own action with respect to Lot 16 (the "2024 action"). In that action, she claimed that she was the beneficial owner of one third of Lot 16 and that the corporate Appellants were trustees. She claimed damages flowing from breach of trust following the sale and subsequent mortgage of Lot 16.

Below, the Appellants argued that the wife had no standing in the 2016 action and that the 2024 action was statute-barred because it was governed by the *LA* rather than the *RPLA*. The Appellants' motion sought summary judgment solely on the ground that the wife's claim was statute barred as brought outside the applicable limitation period. The basis on which the Appellants advanced the limitation period argument was that the wife's claim was not for recovery of real property, but was for monetary recovery.

The motion judge rejected the Appellants' argument that the wife's claim was statute barred. He concluded that the *RPLA* was the applicable limitation regime, rather than the *LA* (such that the 10-year limitation period applied) because the claim was related to an ownership interest in land. To the extent that the claim sought damages, it was only as a remedy for the alleged

breach of the wife's contractual and trust interest in Lot 16. This was because, were the wife to prevail in her claim, it may not have been possible to grant a 1/3-ownership interest due to the sale of the property.

He further found that the fact that Lot 16 had been sold before the wife started her action did not oust the application of the *RPLA* to her claim.

The issue on appeal was whether the motion judge erred in finding that the *RPLA*, rather than the *LA*, applied to the wife's claim?

The Appellants were not arguing from a position of strength.

In *McConnell v. Huxtable* (2014), 42 R.F.L. (7th) 157 (Ont. C.A.), the Ontario Court of Appeal held that a trust claim over real property is "an action to recover any land" within the meaning of s. 4 of the *RPLA*. The Court of Appeal further held that an *alternative* claim for monetary compensation based on a trust entitlement to real property was *also* within the scope of s. 4 of the *RPLA*.

Furthermore, in *Studley v. Studley* (2022), 78 R.F.L. (8th) 410 (Ont. C.A.), the Court of Appeal clarified that a claim to a trust interest still attracts the 10-year limitation period in the *RPLA* even if the property in question was already sold.

To the Court of Appeal here, it was pretty clear that the wife's claim as pleaded fell within these cases. Therefore, the Court of Appeal had no problem concluding that the *RPLA* applied because the claim was for an interest in land — a one-third interest in Lot 16 — or damages *in lieu* of that interest.

The lesson here for pleading — at least in Ontario — if there is any question as to the timeliness of an action, be sure to plead an interest in land and for damages only in lieu thereof.

Loose Lips, Costly Ships: A \$75,000 Lesson in Privacy Law

***E.L.R. v. D.M.S.* (2026), 27 R.F.L. (9th) 303 (Ont. S.C.J.) — J.P.L. McDermot J.**

In *E.L.R. v. D.M.S.*, the court awarded \$75,000 in damages for intrusion upon seclusion in a family law proceeding — one of the largest awards for that tort in the family-law context. But much of the conduct that grounded the award — emails to third parties, social media posts, disclosure of confidential arbitration materials, publication of information courts had ordered remain private — looks less like "intrusion" and more like "dissemination." The distinction between *obtaining* private information and disseminating that information frames much of what follows.

The wife is a lawyer. The parties separated in early 2018 and have one daughter.

Seven years of litigation followed, eventually consumed by disclosure disputes. An 18-day "focused hearing" — that Justice McDermot later described as "a focused hearing that was completely unfocused" — ended with the husband's pleadings being struck. Two unperfected appeals followed. By the time of the uncontested trial, the husband was no longer entitled to participate.

The parties had chosen arbitration from the outset, in part because of privacy concerns, and their Arbitration Agreement included confidentiality provisions. The court later ordered that the parties' names be initialized.

But that did not stop the husband.

Justice McDermot had previously found him to be a "querulous litigant" — one who does "not seek redress, but instead vengeance, public humiliation and punishment against those that oppose them." He engaged in a years-long pattern of conduct involving the dissemination of private information, attacks on the wife's reputation, and repeated disregard for confidentiality protections. Broadly speaking, the (mis)conduct fell into three categories.

First, breaches of confidentiality orders and arbitration secrecy: emails to family and friends accusing the wife of alienation; identifying her profession; disclosing arbitration details and affidavits regarding the child to a mutual friend; dissemination of the focused-hearing endorsement to court staff and to his employer.

Second, public dissemination and online attacks: social-media posts and direct messages to strangers; membership in alienation-advocacy groups; impersonation of the wife and the child online; a civil action naming the wife and the child in full; opposition to anonymization at the Court of Appeal.

Third, conduct involving the child: surreptitious recordings of conversations between the parties, distributed to contractors and school staff; surreptitious recordings of reunification-therapy sessions; social-media commentary on the criminal proceeding in which the child was the complainant (ending in an acquittal).

The tort of intrusion upon seclusion was recognized by the Ontario Court of Appeal in *Jones v. Tsige* (2012), 6 R.F.L. (7th) 247 (Ont. C.A.). To succeed, the claimant must prove three things: (a) the defendant's conduct was intentional or reckless; (b) the defendant invaded, without lawful justification, the plaintiff's private affairs or concerns; and (c) a reasonable person would regard the invasion as highly offensive and causing stress, humiliation, or anguish.

In *Jones*, the defendant, a bank employee, accessed the plaintiff's bank records more than 170 times. The Court of Appeal awarded \$10,000 in general damages, declining to award punitive or aggravated damages, and held that in cases involving no pecuniary loss, damages should be "modest but sufficient to mark the wrong that has been done" — ordinarily up to \$20,000.

The court adopted the following criteria for fixing damages: (1) the nature, incidence, and occasion of the wrongful act; (2) its effect on the plaintiff's health, welfare, social, business, or financial position; (3) the relationship between the parties; (4) any distress, annoyance, or embarrassment; and (5) the conduct of the parties before and after the wrong.

Justice McDermot found that all of the husband's actions "appear to be within the definition of the tort of intrusion upon seclusion as described in *Jones v. Tsige*." The court found them to be clearly intentional, done with knowledge of the wife's interest in preserving her reputation, invasive of her privacy as part of "an apparent and relentless campaign to prove that the [wife] had alienated the parties' child," and "extremely offensive and, in light of the [wife's] profession, harmful to her."

The court placed particular weight on the husband's knowledge of the wife's privacy concerns, as embodied first in the arbitration agreement and then in the initialization order.

With respect to damages, the wife sought \$200,000 in special, aggravated, and punitive damages, claiming that the husband's conduct caused her to lose work. She did not quantify that loss and offered no proof of pecuniary harm, so special damages were unavailable. The court instead relied on evidence from the wife's treating therapist to establish psychological harm and its impact on her professional functioning.

The general damages remained modest — \$15,000, comfortably within the \$20,000 ceiling contemplated in *Jones v. Tsige*. What pushed the total to \$75,000 was \$30,000 in aggravated damages, grounded in the proven psychological harm, and \$30,000 in punitive damages aimed at denouncing and deterring the husband's campaign.

But was this really "intrusion upon seclusion"?

Here is the question that makes this case worth discussing: does the conduct described in this decision actually fit within the understood boundaries of intrusion upon seclusion?

The tort as recognized in *Jones v. Tsige* was designed to address a specific wrong: the act of unlawful intrusion into someone's private affairs. The classic case is one party accessing another's private information — bank records, medical files, emails, etc. The harm is the intrusion itself, not what happens next. The lower damages in some of the other cases involving intrusion upon seclusion that Justice McDermot considered — *Chen v. Huang*, 2025 CarswellOnt 9707 (S.C.J.) (\$5,000) and *Saulnier v. Postma*, 2025 CarswellOnt 9807 (S.C.J.) (\$8,000) — reflect that pattern: someone unlawfully and improperly accessed information.

But much of what the husband did is better characterized as *dissemination* rather than *intrusion*. He did not hack into the wife's accounts. He did not access her files without authorization. He took information that he already had — about the litigation, the arbitration, and the family dynamics — and distributed it more broadly. He shared recordings. He emailed friends. He posted

on social media. He disclosed details to court staff. He commenced a public lawsuit using names that courts had ordered be kept private.

That conduct may well be tortious. But is it *intrusion upon seclusion*? We think not. Is it not more properly understood as the tort of public disclosure of private facts? The difference matters because the elements are different, the damages frameworks have developed differently, and the distinction between *obtaining* and *disseminating* information has been treated in the case law as far more than academic.

The issue is not that the claim necessarily failed to fit within *Jones v. Tsige*. Some aspects of the husband's conduct support an intrusion-upon-seclusion analysis. Rather, the more difficult question is whether the conduct that appears to have driven the size of the award was better characterized as dissemination to the public than intrusion into the private.

Public disclosure of private facts is *not* simply another label for intrusion upon seclusion. It is a distinct tort. Ontario courts first recognized it in cases involving the non-consensual dissemination of intimate videos, most notably *Jane Doe 464533 v. N.D.*, 2016 CarswellOnt 911 (S.C.J.) and *Jane Doe 72511 v. N.M.*, 2018 CarswellOnt 18310 (S.C.J.). As discussed in the June 14, 2021 (2021-23) and October 11, 2021 (2021-39) editions of TWFL, the tort generally requires publicity of genuinely private facts, publicity that would be highly offensive to a reasonable person, and the absence of any legitimate public concern justifying the disclosure. Unlike intrusion upon seclusion, which focuses on the act of obtaining private information, the focus of the public disclosure tort is on the harm caused by making that information public.

The distinction matters not only in law, but in dollars. Unlike intrusion upon seclusion, where *Jones v. Tsige* contemplated modest damages generally capped at \$20,000, public disclosure cases have often attracted substantially higher awards because the harm flows from the publicity itself. As Justice Kristjanson observed in *Yenovkian v. Gulian*, 2019 CarswellOnt 21614 (S.C.J.), intrusion upon seclusion "does not involve publicity to the outside world." But public disclosure of private information does; a very significant difference. It is the difference between a person unlawfully learning of private information; and a person publicizing private information to the masses. The damages compensate for the invasion itself, not the separate and often more significant harm caused by dissemination. As we noted in TWFL 2021-23 and 2021-39, it is far from clear that the *Jones* damages guidepost applies to public disclosure claims at all.

One likely explanation for why Justice McDermot did not consider the tort of public disclosure of private facts is that the claim was pleaded and argued as intrusion upon seclusion. Once the husband's pleadings were struck and the matter proceeded uncontested, the court was left to decide whether the pleaded tort was made out on the record before it. That may explain why the analysis stayed within the *Jones v. Tsige* framework rather than asking whether the facts fit more naturally within public disclosure of private facts. At the same time, the Supreme Court's recent emphasis in *Ahluwalia v. Ahluwalia*, 2026 CarswellOnt 7706 (S.C.C.) on "substance over form" is a useful reminder that labels do not *invariably* control outcomes. The real question is whether the facts satisfy the elements of the tort being invoked, regardless of what the tort is called.

To be fair, not all of the husband's conduct was purely about dissemination. The record also included impersonation, surreptitious recordings, and the obtaining or reuse of private materials in ways a reasonable person would regard as highly offensive. Those features provide a more natural fit with the traditional *Jones* framework, even if the more significant harm ultimately flowed from dissemination.

Justice McDermot appears to have recognized this tension. The endorsement discusses the *Jane Doe* cases and their higher damages, and notes that other cases have tied liability and damages to dissemination. The result is an award that draws on both lines of authority, which have different elements and damages postures, while remaining within an intrusion-upon-seclusion framework. On these facts, a disclosure framing might have provided a cleaner doctrinal fit, but the court proceeded on intrusion and grounded the award accordingly.

The significance of a tort claim lies not in its punitive effect, but in what it was designed to compensate. Costs address litigation conduct. Restraining and confidentiality orders seek to prevent future harm. None of those remedies directly compensates a

spouse for the psychological and reputational harm caused by the misuse and dissemination of private information. In *E.L.R.*, the tort claim appears to have been directed at that harm.

Whether one welcomes this development or not, *Ahluwalia* confirms that tort claims are now part of the family-law landscape. *E.L.R.* illustrates that the trend extends beyond the new tort of Intimate Partner Violence. Here, the court used an established privacy tort to compensate harm arising from family breakdown that could not easily be addressed through costs, support, property, or parenting remedies. The question after *Ahluwalia* is no longer *whether* torts belong in family law; it is *when*, and *what* role they should play once they get there.

While *Jones* set a modest up to \$20,000 guidepost for damages in intrusion cases without proven pecuniary loss, this decision illustrates how aggravated and punitive damages can move the total well beyond that figure in appropriate cases — a development worth watching.

From a pleading perspective, intrusion and disclosure are different torts with different elements, different authorities and different damages. Where the facts may support both, counsel should consider pleading in the alternative.

But no matter how one slices it, the message is now clear: there can be serious financial consequences for weaponizing private information in family litigation.

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