

LEGAL BULLETIN

Issue No. 31

Addressing Intimate Partner Violence Through Tort Law

Jane Doe 72511 v N.M., 2018 ONSC 6607

Introduction

The case of *Jane Doe 72511 v N.M.*¹ demonstrates how intimate partner violence can be addressed through tort law. In this case, the plaintiff sought damages arising from her former boyfriend's abusive behaviour and his unauthorized posting of a sexually explicit video of her on a pornographic website. The Ontario Superior Court of Justice (the "Court") not only ruled in favour of the plaintiff, but also recognized the tort of public disclosure of private facts in Ontario. By recognizing this tort, the Court has paved the way for greater protection of individuals' privacy rights, including in cases of family violence, and reaffirmed the need for robust legal mechanisms to address emerging challenges in the digital realm.



Background

The parties in this case, Jane Doe 72511 ("Jane") and N.M., began their relationship in high school in December 2012.² After Jane discovered she was pregnant in May 2013, their relationship began to deteriorate, with N.M. engaging in

increasingly abusive behaviour towards Jane.³ The culmination of N.M.'s abuse occurred in March 2014 when he violently assaulted Jane after she left his parents' home.⁴ N.M. was subsequently arrested and convicted of assault.⁵

¹ 2018 ONSC 6607.

² *Ibid* at para 2.

³ *Ibid* at para 3.

⁴ *Ibid* at para 4.

⁵ *Ibid*.

In June 2016, Jane discovered that N.M. had uploaded a sexually explicit video of her onto a pornography website without her consent.⁶ Despite Jane's efforts to remove the video, it amassed over 60,000 views, with the extent of downloads and sharing unknown.⁷ The public disclosure of the video inflicted profound emotional distress upon Jane, who feared its repercussions on her reputation, relationships, and

professional endeavors.⁸ When Jane confronted N.M. about the video, he admitted to posting it as an act of retaliation for Jane calling the police. He also threatened to post nude photos of Jane online if she took any more legal steps.⁹ Despite N.M.'s threats, Jane sought various forms of damages from him for assault, battery, and public disclosure of private facts.¹⁰

Issues

This legal bulletin focuses on two issues: (1) N.M.'s liability for damages for assault and battery, and (2) N.M.'s liability for damages for posting the video without Jane's knowledge or consent.¹¹

Liability for damages for assault and battery

The tort of battery involves the intentional infliction of unlawful force on another person.¹² The law creates liability for battery to recognize each person's right to control their body and who touches it, permitting damages when this right is violated.¹³ The court must determine that the defendant intended to, and did in fact, make physical contact that was harmful or offensive.¹⁴ In this case, the Court ruled that N.M. repeatedly made harmful physical contact with Jane's body. Despite the absence of medical records showing the extent of the injuries, the Court found Jane's evidence credible.¹⁵ Accordingly, N.M. was liable for battery.¹⁶

The tort of assault, defined as the intentional creation of the apprehension of imminent harmful or offensive contact, was also established.¹⁷ N.M. assaulted Jane on several occasions, including a September 2013 incident where he threatened to kill her, approached her with a knife, and threatened to tie her up in the basement. These actions caused Jane to fear imminent physical harm, thereby satisfying the requirements for the tort of assault.

Notably, when assessing damages, the Court noted the following:

Violence by a partner may in fact be a more traumatic event than violence by a stranger. Spousal

⁶ *Ibid* at para 5.

⁷ *Ibid* at para 6.

⁸ *Ibid*.

⁹ *Ibid*.

¹⁰ *Ibid* at para 7. Jane also sought damages against her former boyfriend's parents but that is beyond the scope of this legal bulletin.

¹¹ *Ibid* at para 32.

¹² *Ibid* at para 33.

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ *Ibid* at para 35.

¹⁶ *Ibid* at para 38.

¹⁷ *Ibid* at paras 36–37.

violence violates the trust that we are taught to have in our partners. It often involves repeated verbal and physical abuse. It typically occurs at home, the place where we should feel the most safe and secure. A battered spouse may be left not only with bruises but with an inability to trust other people or ever really feel safe.¹⁸

Ultimately, the Court concluded that Jane was entitled to the full amount of general damages that she claimed from N.M., which

was \$20,000.¹⁹ Significantly, the Court noted that it would have awarded her up to \$25,000 if the amount had been sought.²⁰ The damage award was high for a case that did not involve any permanent physical injury. However, the Court explained that the amount was appropriate because of “the repeated, ongoing nature of N.M.’s physical and verbal abuse and Jane’s vivid evidence on the terrifying nature of the incidents.”²¹ The Court further noted that a lesser award would not adequately compensate Jane for what she had experienced.²²

Liability for damages for posting the video without Jane’s knowledge or consent

The Court also granted Jane damages for N.M.’s unauthorized posting of the sexually explicit video without her consent. At the time the case was heard, Ontario law did not specifically recognize a right to sue for the posting of intimate images without consent. In awarding Jane damages, the Court adopted a new tort of public disclosure of intimate facts. The Court based its decision in part on the fact that Parliament had criminalized the publication of an intimate image without consent in 2014. It therefore made sense that there should be a civil remedy for the same wrong.

The Court also determined that recognizing the tort was consistent with *Charter* values:

It is difficult to conceive of a privacy interest more fundamental than the interest that every person has in choosing whether to share intimate or sexually explicit images and recordings of themselves. Every person should have the ability to control who sees images of their body. This is an important part of each individual's personal freedom to decide how they share the most intimate aspects of themselves, their sexuality and their bodies. A cause of action which protects this privacy interest is rooted in our deepest values as a society. Failing to develop the legal tools to guard against the intentional, unauthorized distribution of intimate images and recordings on

¹⁸ *Ibid* at para 117.

¹⁹ *Ibid* at para 120.

²⁰ *Ibid*.

²¹ *Ibid*.

²² *Ibid*.

the internet would have a profound negative significance for public order as well as the personal wellbeing and freedom of individuals.²³

The Court explained that to establish liability for the tort of public disclosure of private facts in Ontario, the plaintiff must prove that,

- a. the defendant publicized an aspect of the plaintiff's private life;
- b. the plaintiff did not consent to the publication;
- c. The matter publicized or its publication would be highly offensive to a reasonable person; and
- d. The publication was not of legitimate concern to the public.²⁴

Upon careful review of the evidence presented, the court ruled that Jane had established all of the elements of the tort:

1. N.M.'s act of posting the sexually explicit video of Jane constituted a blatant disclosure of her private life without her consent;
2. The nature of the video, depicting Jane's face and body engaged in sexual activity, was undeniably offensive and invasive to a reasonable person; and

3. There was no legitimate public interest served by the dissemination of such intimate material.²⁵

As a result, N.M. was found liable. In assessing damages, the court noted:

The internet never forgets. [Jane's] dignity and personal autonomy have been, and will continue to be, compromised by [N.M.'s] actions. [T]he damages award must "demonstrate, both to the victim and to the wider community, the vindication of these fundamental, although intangible, rights which have been violated by the wrongdoer".²⁶

The Court awarded Jane \$50,000 in general damages, \$25,000 in aggravated damages, and \$25,000 in punitive damages.²⁷ The Court noted that N.M. aggravated the damage to Jane's reputation by posting the video to a pornographic website, giving it a degrading and racist title, and sharing it with his friends.²⁸ The Court also found that N.M. added to Jane's distress by taunting her after she discovered the video, and by threatening to post further nude images of her online.²⁹ In awarding punitive damages, the Court held that N.M.'s conduct was highly offensive, since "revenge porn is an assault to the victim's personal agency and sense of self-worth."³⁰

²³ *Ibid* at para 88.

²⁴ *Ibid* at para 99.

²⁵ *Ibid* at para 100.

²⁶ *Ibid* at para 132.

²⁷ *Ibid* at para 139.

²⁸ *Ibid* at para 138.

²⁹ *Ibid*.

³⁰ *Ibid* at para 142.

Conclusion

This case is significant because it exemplifies different avenues of redress for intimate partner violence in tort law, and because it established an important precedent for the protection of privacy rights. By recognizing the tort of public disclosure of private facts, the court has underscored the fundamental importance of individual autonomy and dignity in controlling the dissemination of intimate images. Through its trauma-informed analysis, the court has sent a clear message about the gravity of such violations and the necessity of upholding fundamental privacy rights in the face of evolving technologies. This decision ultimately strengthens legal protections for victims of intimate partner violence by expanding the forms of redress available through tort law.

This bulletin was prepared by:
Sofia D'Amico-Frigerio



Western
Centre for Research & Education on
Violence Against Women & Children



Department of Justice
Canada

Ministère de la Justice
Canada