

Citation: *Lavoie v. Stevenson*, 2026 YKSM 10

Date: 20260826
Docket: 26-S0028
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Judge Cairns

DEAN LAVOIE

Plaintiff

v.

CHRISTINA STEVENSON
AND TED JENNINGS

Defendants

Appearances:

Gary Whittle

Christina Stevenson (by Videoconference)

Ted Jennings (by Videoconference)

Counsel for the Plaintiff

Appearing on her own behalf

Appearing on his own behalf

REASONS FOR JUDGMENT

[1] This is an application to strike a Counterclaim. The relevant background is set out briefly below.

[2] The Plaintiff in the Claim, Mr. Lavoie (the “Plaintiff”), filed a claim seeking \$14,350 in outstanding rent. The Defendants, Ms. Stevenson and Mr. Jennings (the “Defendants”), filed a Reply disagreeing with the Claim and a Counterclaim for \$25,000, alleging financial abuse, mental/emotional abuse, harassment, lost wages, and court costs. Shortly after the Court questioned whether the Small Claims Court had jurisdiction over residential tenancy disputes, the Plaintiff withdrew the Claim and brought this application to strike the Counterclaim.

Issues

[3] Should the Counterclaim be struck in its entirety or should leave be granted to amend the Claim?

Legal Framework

[4] The legal test to be applied when considering an application to strike pleadings is well established. As recently articulated by the Court of Appeal of Yukon (“YKCA”) in *38274 Yukon Inc.(c.o.b. Super Save Propane) v. Borealis Fuels & Logistics Ltd.*, 2024 YKCA 17, at para 11, the striking of pleadings:

... plays a valuable housekeeping function by weeding out “hopeless claims” from those that have “some chance of success”: *R. v. Imperial Tobacco Canada*, 2011 SCC 42 at paras. 19–20. The approach to determining whether a claim is “hopeless” or has “some chance if success” is well understood. So long as it is not plain and obvious the claim discloses no reasonable cause of action, has no reasonable prospect of success, or is certain to fail, it should not be struck: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980, 1990 CanLII 90; *Imperial Tobacco Canada* at paras. 17, 21. The pleaded facts are taken to be true, unless they are “manifestly incapable of being proven”: *Imperial Tobacco* at para. 22.

[5] The YKCA further confirmed that the threshold for striking a claim is high, as claims must be read generously, reviewing courts should “err on the side of permitting a novel but arguable claim to proceed to trial”, and, in determining whether a claim is bound to fail, it “ought to be considered as it might reasonably be amended” (*Borealis*, at para. 12). As is often said, if there is a chance the claimant might succeed, they should not be “driven from the judgment seat” (*Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at para. 22).

[6] Section 46(4) of the *Small Claims Court Regulations*, O.I.C. 1995/152 (the “*Regulations*”) governs when this Court may strike or amend a pleading.

46(4) The court may strike out or amend a pleading, or anything in a pleading, on the grounds that

- (a) it discloses no reasonable cause of action or defence
- (b) it is scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial of the action, or
- (d) it is otherwise an abuse of the court's process,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, or may impose such terms as are just.

[7] Further, section 2 of the *Regulations* sets out what is required to be included in a claim:

2(2) A claim shall contain, in concise and non-technical language, the following information:

...

- (b) the nature of the claim with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based;

[8] In this case, the difficulty is that the Counterclaim pleadings contain neither certainty nor detail, and fail to provide dates, places, or nature of the occurrences on which the claims are based.

Counterclaim

[9] The Defendant's Counterclaim makes the following claims:

- Financial Abuse
- Mental/Emotional Abuse
- Harassment
- Lost Wages
- Court costs

[10] Following that list, the Counterclaim says, “Please see Statement Attached”.

[11] In numbered paragraphs, the attached Statement repeats the claims with only minor wording changes, as follows:

1. Financial Abuse – Dexavier Lavoie-Stevenson, Christina Stevenson
2. Mental and Emotional Distress – Dexavier Lavoie-Stevenson, Christina Stevenson, Ted Jennings and Lanaya Jennings
3. Harassment - Christina Stevenson and Ted Jennings
4. Lost Wages – Christina Stevenson
5. Court Costs – Christina Stevenson, Ted Jennings

[12] The Statement then continues, “Evidence provided through the following statement”. The subsequent pages set out a lengthy narrative with multiple attachments.

Analysis

[13] In these reasons, I will address the following issues:

1. Whether Dexavier Lavoie-Stevenson and Lanaya Jennings are properly included in the Counterclaim;
2. Whether financial abuse is a cause of action;
3. Whether mental/emotional abuse or, as otherwise worded, mental and emotional distress, is a cause of action;
4. Whether harassment is a cause of action;
5. Whether lost wages are a cause of action, and
6. Court costs.

1. Are Dexavier Lavoie-Stevenson and Lanaya Jennings properly included in the Counterclaim?

[14] No. Neither Dexavier nor Lanaya are parties to this action. Further, the Defendants confirmed that Dexavier and Lanaya are children under the age of 18. As such, they are persons under a legal disability. Section 6(1) of the *Regulations* requires, with some exceptions, that an action on behalf of a person under a legal disability be commenced by a litigation guardian. There is no suggestion that the Defendants are litigation guardians for Dexavier and Lanaya.

[15] Where the Counterclaim purports to be made on behalf of, or include, Dexavier and/or Lanaya, it is struck.

2. Is financial abuse a cause of action?

[16] No. In simple terms, a cause of action is a set of facts that provides the basis for an action in court, and which entitles a person to obtain a remedy against another person from the Court. The elements of a cause of action are the specific components that must be established to prove a legal claim. Identifying a cause of action involves several steps, including establishing a legal right, a corresponding duty, a breach of that duty, and resulting damages.

[17] I am aware that the Supreme Court of Canada has acknowledged that financial abuse can be part of a pattern of coercive and controlling behaviour within the context of the recently recognized tort of intimate partner violence (*Ahluwalia v. Ahluwalia*, 2026 SCC 16); however, there is no stand-alone tort of financial abuse.

[18] I agree with the Plaintiff that financial abuse is not a cause of action. Where the Counterclaim alleges financial abuse, it is struck as disclosing no cause of action.

3. *Is mental/emotional abuse or, as otherwise worded, mental and emotional distress, a cause of action?*

[19] While there is no cause of action for mental/emotional abuse or distress, there is a tort of “intentional infliction of emotional distress” (see *Ahluwalia v. Ahluwalia*, 2026 SCC 16, at para. 345). Recognizing that the Defendants are non-lawyers representing themselves, and that the Small Claims Court allows for reduced formality, I accept that the language used by the Defendants approximates an existing tort.

[20] However, the Defendants have entirely failed to set out the nature of the claim for mental/emotional abuse or distress in the pleadings with reasonable certainty and detail, and further failed to include the dates, places, and nature of the occurrences on which the claim is based. In short, the elements of this tort have not been articulated in the pleadings. The Plaintiff cannot know the case to meet based on the language used in the Counterclaim.

[21] In relation to the claim for mental/emotional abuse or distress, which I interpret as being the Defendants’ way of expressing the “tort of intentional infliction of emotional distress”, the Defendants are granted leave to amend the Counterclaim to meet the requirements of section 2 of the *Regulations*. If the Defendants choose to amend the Counterclaim consistent with these reasons, the amendment must be filed with the Court and served on the Plaintiff within 30 days of these reasons being issued.

4. Is harassment a cause of action?

[22] The Plaintiff argues that there is no cause of action at law or in equity for “harassment”. With respect, I disagree.

[23] The existence of a tort of harassment is controversial, there being conflicting caselaw on whether it exists. The Ontario Court of Appeal in *Merrifield v. The Attorney General of Canada et al.*, 2019 ONCA 205, held that the tort of harassment does not exist in Ontario; similarly, the Saskatchewan Court of Appeal in *McLean v. McLean*, 2019 SKCA 15 held that the tort of harassment was entirely encompassed by the tort of intentional infliction of mental suffering and so need not be recognized as a distinct tort. The Courts in British Columbia have followed the same path (see *Ilic v. British Columbia (Minister of Justice)*, 2023 BCSC 167, at para. 196). Further, I am not aware of any caselaw from this jurisdiction that supports the existence of a tort of harassment.

[24] However, on the other hand, a tort of harassment was recognized and the elements defined in *Alberta Health Services v. Johnston*, 2023 ABKB 209, at para 107.

[25] In this case, the Defendants have entirely failed to set out the nature of the claim of harassment in the pleadings with reasonable certainty and detail, and further failed to include the dates, places, and nature of the occurrences on which the claim is based. The Plaintiff cannot know the case to meet based on the language used in the Counterclaim.

[26] I acknowledge that the YKCA has held that courts should “err on the side of permitting a novel but arguable claim to proceed to trial” (*Borealis*, para. 12). As such, while making clear that there is no certainty as to what position a Yukon court would take on the existence of a tort of harassment, the Defendants are granted leave to amend the Counterclaim to meet the requirements of section 2 of the *Regulations*. If the Defendants choose to so amend the Counterclaim, the amendment must be filed with the Court and served on the Plaintiff within 30 days of these reasons being issued.

5. Are “lost wages” a cause of action?

[27] No. I agree with the Plaintiff that, while “lost wages” may be awarded as damages in some cases, they are not a standalone cause of action. Where the Counterclaim alleges lost wages, it is struck as disclosing no cause of action.

6. Court costs

[28] While costs may be awarded in some circumstances post-trial (*Regulations*, ss. 57-59), costs of applications are addressed in section 38:

38(1) No costs are recoverable in respect of an application except that, where the court is satisfied that an application should not have been brought or should not have been opposed or was necessary because of the default of a party, the court may fix the costs of the application and order for them to be paid immediately.

In relation to this application, I do not find that any of the exceptions in s. 38 of the *Regulations* apply. Further, success in respect of the application was divided. No costs are recoverable in respect of the application.

Conclusion

[29] The Counterclaim is struck, without leave to amend, where it alleges claims on behalf of Dexavier and Lanaya, where it alleges “financial abuse”, and where it alleges “lost wages”.

[30] The Defendants are granted leave to amend the Counterclaim where it alleges mental/emotional abuse or distress, and harassment. If the Defendants elect to amend the Counterclaim, the amended Counterclaim must conform to s. 2 of the *Regulations* and must be filed and served within 30 days of these reasons being issued.

[31] No costs are awarded for this application.

[32] If the Defendant elects not to amend, file, and serve the Counterclaim within 30 days of these reasons being issued, it will be struck in its entirety.

CAIRNS T.C.J.