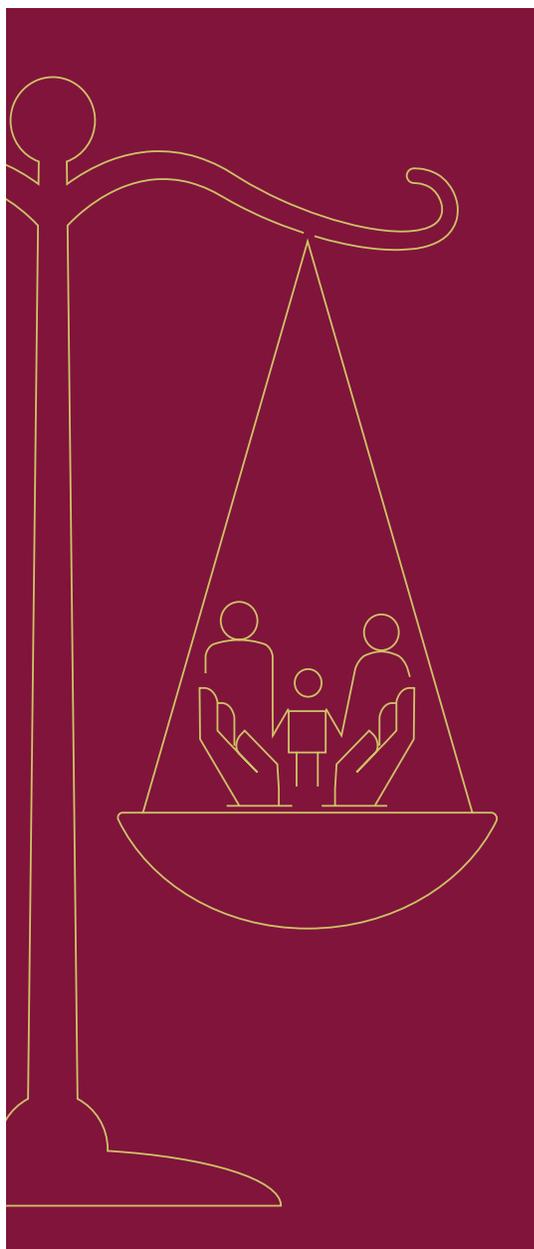


LEGAL BULLETIN

Compensating Victims of Domestic Violence: The Case of *A v. A*: 2022 ONSC 1303.



Introduction

In March of 2022, the Ontario Superior Court of Justice recognized a new tort: the tort of family violence. A tort is a civil wrong that, if proven, can be compensated through a damages award.¹ The purpose of a tort is to compensate for harm. The tort of family violence opens the doors for survivors of family violence to bring an action for damages against their abuser alongside other family law claims. *A v. A* represents the Ontario Court's recognition of the serious harms caused by domestic violence. This case opens the door for reparations for survivors and provides an opportunity to streamline court processes.

Prior to this decision, victims of family violence could seek damages to compensate for harms suffered, but to do so they would have to file a civil claim separate from their family claim.² This meant that a family violence survivor had to juggle their family and civil cases separately, or go through a process called joinder to join their claims, still faced with common barriers to accessing justice such as time and budget. After *A v. A*, these two separate court files can now be filed together as one.³ One goal of this is to streamline access to justice.⁴

It is uncommon for the court to recognize a new tort. As such, it is unsurprising that the decision has been appealed to the Court of Appeal for Ontario.⁵ The Centre for Research & Education on Violence Against Women & Children will continue to follow this case as it proceeds through the appellate courts.

¹ *A v. A*, 2022 ONSC 1303 at para 49.

² *Ibid* at para 47.

³ *Ibid* at para 47; Claire Houston, "Case Annotation: *A v. A*", Case Comment on *A v. A*, 2022 ONSC 1303, (2022) 81 CCLT (4th) 130 at 130.

⁴ *A v. A*, *supra* note 1 at para 67.

⁵ Houston, *supra* note 3 at 133.

What happened in the case?

In *A v. A*, the parties married in 1999 and separated in 2016. The wife claimed that the husband was physically and mentally abusive throughout the relationship.⁶ Alongside her family law claims for property equalization and sole decision-making authority, the wife asked the court for damages for the severe physical and mental abuse she suffered. The wife pointed to specific incidents of abuse as evidence to establish a pattern of coercion and control. This was an important factor in the decision.

Justice Mandhane noted that the while *Divorce Act* recognizes the life-long impact of family violence, it does not currently provide an avenue for victims to seek compensation alongside other

family law relief. This is because the *Act* does not permit judges to consider the fault of the parties when awarding spousal or child support or when they are dealing with property issues.⁸ The tort of family violence helps bridge this gap. By recognizing the tort, the court empowers victims to seek damages for family violence within their family law proceeding.

In *A v. A*, the wife was awarded \$150,000 in damages as a result of the husband's "extreme breach of trust" and pattern of controlling behaviour. This award was made in addition to awarding the mother the proceeds from the sale of the family's home and ongoing child and spousal support.⁹

Implications

Generally speaking, the family law system is designed to prevent the court from considering the fault of the parties. This is done to reduce conflict and focus on resolution.¹⁰ However, Justice Mandhane points out that this approach is flawed where there are serious allegations of family violence. Instead, the court must recognize that there are times when the family law system must consider the parties' conduct. Specifically, the court must consider the impact of family violence. The Court in *A v. A* notes that the resolution of financial issues in family proceedings does not account for the harms that "flow directly from family violence that go well-beyond the economic fall-out of the marriage."¹¹

Justice Mandhane canvassed domestic and international law and stated that harms caused by domestic violence include the following:

[A]cute and chronic health issues (*i.e.*..., soft-tissue injuries, broken bones, chronic pain); mental, psychological, and social problems (*i.e.*..., low self-esteem, depression, anxiety, PTSD), underemployment and absenteeism, low career advancement, substance abuse, self-harm, suicidal ideation, death by suicide, and femicide.

Under tort law, these types of harms are regularly compensated. Following *A v. A*, they may also be compensated within a family law proceeding.

Making a Family Violence Claim

In the decision, Justice Mandhane sets out the elements of the tort of family violence. The plaintiff (who is the person bringing the claim) must first establish that the violence was performed by a family member within the context of a family relationship.¹³ Then, the plaintiff must establish that the conduct:

1. Is violent or threatening; *or*
2. Is part of a pattern of coercive and controlling behaviour; *or*
3. Causes the plaintiff to fear for their own safety or the safety of another person.¹⁴

⁶ *Ibid* at paras 1, 96.

⁷ *Ibid* at paras 46, 54, 119.

⁸ *Ibid* at paras 44-46.

⁹ *Ibid* at para 6.

¹⁰ Houston, *supra* note 3 at 3.

¹¹ *A v. A*, *supra* note 1 at para 46.

¹² *Ibid* at para 66.

¹³ *Ibid* at para 52.

¹⁴ *Ibid*.

Note that the plaintiff has three opportunities to establish family violence. It is sufficient that one of the above types of conduct can be established.

To support the claim, the plaintiff *must* use specific examples to establish a “long-term, harmful pattern of conduct that [was meant] to control or terrorize.”¹⁵ A pattern of coercion and control is at the heart of this tort. In *A v. A*, the wife pointed to three specific instances of abuse to establish a pattern of coercion and control: one in each of 2000, 2008, and 2013. These main incidents involved the father becoming physically and verbally violent when drinking. The father also routinely berated the mother’s appearance; gave her the silent treatment for months at a time, ending only when she agreed to intercourse; and threatened to leave her and their children without financial support.

Reception

The *A v. A* decision has been described as “groundbreaking.”¹⁸ The decision is important because it recognizes that “[s]cientific research on trauma and how it impacts our lives is evolving” and that our laws should evolve alongside our knowledge. The tort has been aptly described as a social advancement. It is a step forward, addressing speculation about why survivors stay in abusive relationships or fail to alert police.²⁰

Takeaways

Survivors of domestic violence can now claim compensation for the serious abuse suffered alongside other family law relief, such as property equalization, child support, and spousal support. The plaintiff making the claim will need to show their case as a very serious example of family violence.

It is necessary to include specific, detailed examples when making a claim for damages from family violence. According to *A v. A*, examples may include incidents of “physical abuse, forcible confinement, sexual abuse, threats, harassment, stalking, failure to provide the necessities of life, psychological abuse, financial abuse, or killing or harming an animal or property.”¹⁶ The plaintiff must prove their claim on a balance of probabilities, which means they must prove the defendant was a probable cause of the injuries.¹⁷

Further, it should be noted that the Court in *A v. A* focused on the unique facts of this case. This, coupled with the significant evidentiary requirements requiring details of specific instances of abuse amounting to a pattern of coercion and control, suggest there is a high bar for making this claim.

Western Law Professor Claire Houston noted that even in the face of an appeal, “strong condemnations of family violence by courts are not enough to help victims/survivors of family violence.”²¹ Compensation is useful, but public supports for women in abusive relationships are also necessary, she writes.

To make out the claim, the plaintiff must prove that a family member was violent or threatening, or coercive and controlling, or caused the plaintiff to fear for their safety or another’s. Additionally, to establish the tort, the plaintiff must provide evidence of specific, detailed events. Stay tuned for an update after the case is heard by the Court of Appeal for Ontario.

¹⁶ *Ibid* at para 55.

¹⁷ CED 4th (online), *Torts*, “Principles of Liability: Burden of Proof” (11.7) at § 32.

¹⁸ Heather Douglas, “New Tort of Family Violence in Ontario” (9 March 2022), online: *Slaw* <<https://www.slw.ca/2022/03/09/new-tort-of-family-violence-in-ontario/>>

¹⁹ *Ibid*

²⁰ Braelyn Rumble, “Ahluwalia v Ahluwalia, Putting a Cost of Family Violence in Divorce Proceedings” (18 March 2022), online: theCourt.ca <<https://www.thecourt.ca/ahluwalia-v-ahluwalia-putting-a-cost-on-family-violence-in-divorce-proceedings/>>

²¹ Houston, *supra* note 3 at 133.

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