Court of Queen's Bench of Alberta

Citation: ES v Shillington, 2021 ABQB 739

Date: 16092021
Docket: 1803 11192
Registry: Edmonton

Between:

ES

Plaintiff

- and -

Thomas Shillington

Defendant

Judgment
of the
Honourable Madam Justice Avril B. Inglis

Introduction

[1] The Plaintiff asks this court to recognize the tortious act of "Public Disclosure of Private Facts" in Alberta. She seeks judgment that the Defendant's actions of publishing private images of the Plaintiff on the internet is a tort, separate from the torts of violence against her. She further seeks judgment for breach of confidence.

[2] The Plaintiff also seeks an assessment for damages for the torts of Public Disclosure of Private Facts, breach of confidence, as well as assault, sexual assault, battery, and intentional infliction of mental distress.

[3] Finally, she seeks injunctive relief requiring the Defendant to remove from the public domain and not repost any of her private images.

Legal proceedings

[4] The Plaintiff commenced her action on June 5, 2018. The Defendant was noted in default on September 20, 2019, and personal service of that was made on September 30, 2019.

[5] On October 18, 2019, this Court granted judgment for the Plaintiff's claims of assault, battery, sexual assault and intentional infliction of mental distress. On the same day this Court directed the damages for those torts would be determined at a special chamber's application, as would her application for injunctive relief and the Court's rulings on the alleged new cause of action, the breach of confidence claim, and any damages that would flow from it.

[6] Service of notice of that hearing was challenging for the Plaintiff. While the initial claim and the finding in default had been served personally, it proved to be difficult to locate the Defendant with the subsequent procedural orders for the hearing. Counsel made efforts to contact the Canadian Armed Forces base where the Defendant was last serving, including seeking the assistance of legal counsel serving for the Forces, however was provided with no real assistance to personally serve the Defendant with the materials for this hearing. The inability to serve the Defendant postponed the hearing. This Court directed substitutional service, however the COVID-19 pandemic delayed the hearing again.

Facts

[7] As the Defendant was noted in default, all allegations contained in the Statement of Claim from the Plaintiff are deemed to be true. The facts that form the basis for the legal findings are based on the allegations in the Statement of Claim, the Plaintiff's affidavit evidence, and her *viva voce* testimony at the damages hearing.

[8] Between 2005 and 2016 the Plaintiff and the Defendant were partnered in a romantic relationship and they have two children together. The parties moved to New Brunswick in 2015 when the Defendant, an officer in the Canadian Armed Forces, was transferred there.

[9] This relationship was marred by the Defendant committing multiple acts of physical and sexual assault against the Plaintiff. In August 2016, the Plaintiff left the Defendant to live in a shelter for women at risk. Attempts at reconciliation failed and the relationship ended in November 2016.

[10] The Plaintiff testified that prior to this relationship she was a happy person, and was loving and appreciated her sexuality. As part of her relationship with the Defendant she shared with him photographs of her in which she was in various states of undress and engaging in sexual activity. These were shared with her partner as a private gift to him. One of the reasons she provided him these images was due to their separation caused by his military deployment. It was understood between them that he would not distribute these images in any way.

[11] While he was deployed, near the end of their relationship, the Defendant confessed to the Plaintiff that he had posted her images online. Through accessing the Defendant's social media

accounts the Plaintiff was able to track some of these postings and was disturbed to find many of those private, explicit images available on the internet at pornography sites. At no time did the Defendant have the Plaintiff's consent to publish these images. The Defendant admitted that he had posted photos as early as 2006, and the Plaintiff has located images posted as late as 2018. As recently as early 2021 the Plaintiff was able to find some of these images online.

[12] The availability of these photos, including the fact that the Plaintiff is identifiable in some images, resulted in the Plaintiff being recognized in them by a neighbour that spoke to her sexually, having seen her likeness on a website. She has experienced significant mental distress and embarrassment as a result of the postings. She suffers nervous shock, psychological and emotional suffering, depression, anxiety, sleep disturbances, embarrassment, humiliation, and other impacts to her wellbeing.

[13] The relationship was also marred by abuse. The final instances occurred on November 11, 2016, when the Defendant violently sexually assaulted the Plaintiff in a public Legion in front of bystanders. He grabbed her by the throat and pressed her up against a wall and then ripped open her shirt and roughly handled her breasts. While trying to leave the Legion and simultaneously convince the Defendant to not go to his parents' home (where their children were) the Defendant punched the Plaintiff in the stomach while in the parking lot. Following this, in the vehicle on the drive home, with other people present in the car, the Defendant pulled down the Plaintiff's pants and attempted to insert his fingers in her vagina. He then exposed his penis and tried to push the Plaintiff's head into his lap. Upon arriving home, the Defendant forced the Plaintiff to remove her clothes and then attempted to force intercourse, but she was able to escape from him.

[14] Following this series of events, the Plaintiff suffered bruising and soreness to the abdomen, nervous shock, psychological and emotional suffering, sleep disturbances, post traumatic stress disorder, public embarrassment, and humiliation.

[15] After this incident she sought assistance from the base chaplain to leave the Defendant. With the Force's help, she was able to pack her children and bare belongings and flee New Brunswick to Alberta on a weekend that the Defendant was out of town. She has remained in Alberta with her children. She has worked continuously to try to repair the harm done to her during the relationship while raising her family alone and attending school in order to better be able to support herself and her children

[16] The Plaintiff's psychologist provided affidavit evidence describing the extensive treatment schedule the Plaintiff required following these incidents described. She described the Plaintiff's anxiety, inability to emotionally engage with a romantic relationship, and other significant ongoing symptoms that negatively affected the Plaintiff's life. Her therapy includes focus on coping and self-regulation, boundary setting skills, and Eye Movement Desensitization and Reprocessing to help the Plaintiff address these traumas. Dr. Stillar noted that while the Plaintiff has benefitted from the work she did during her therapy sessions, as of March 2020 she still suffered many of the negative effects of her past experiences with the Defendant.

[17] The Plaintiff herself described the ongoing significant impact to her personally subsequent to her relationship with the Defendant. Between the treatment she requires and

raising her children she is not able to attend school full time. She remains anxious and nervous; she is unable to enjoy a social life; she is unable to engage romantically with anyone. The Plaintiff carries a great deal of shame and guilt. She requires weekly therapy and medications. She remains insecure and reactive, and finds that she is yet unable to enjoy life.

Issues

1. Public Disclosure of Private Information tort

[18] The Plaintiff argues that the tort of Public Disclosure of Private Information ("Public Disclosure") should exist as a separate cause of action in Alberta.

2. Liability re: Public Disclosure tort

[19] The Plaintiff argues that the Defendant committed the tort of Public Disclosure by publishing private, deeply personal, and highly sexualized photos of the Plaintiff on the internet where those images were available to the public.

3. Liability re: Breach of Confidence

[20] The Plaintiff argues that the Defendant also committed the tort of breach of confidence by posting the images of the Plaintiff.

4. Injunctive relief

[21] The Plaintiff asks this court to issue a permanent injunction against the Defendant preventing him from reposting any private images of the Plaintiff and requiring him to remove the images he has already published.

5. Damages

[22] The Plaintiff seeks damages for each of her causes of action, including the acts of violence against her.

Recognition of new tort of Public Disclosure of Private Facts

[23] The Plaintiff asks this Court to find that the proper test for liability under the Public Disclosure tort should be:

1. The defendant publicized an aspect of the plaintiff's private life;
2. The plaintiff did not consent to the publication;
3. A reasonable person in the same position as the plaintiff would be highly offended by the publication; and
4. The publication was not of legitimate concern to the public.

[24] The Supreme Court held in ***Nevsun Resources Ltd v Araya***, 2020 SCC 5 at para 237 (***Nevsun***) that there are three required elements in order for a court to recognize a new tort:

> Three clear rules for when the courts will not recognize a new nominate tort have emerged: (1) The courts will not recognize a new tort where there are adequate alternative remedies (see, for example, *Scalera*); (2) the courts will not recognize

> a new tort that does not reflect and address a wrong visited by one person upon another (*Saskatchewan Wheat Pool*, at pp 224-25); and (3) the courts will not recognize a new tort where the change wrought upon the legal system would be indeterminate or substantial (*Wallace v United Grain Growers Ltd*, [1997] 3 SCR 701 (SCC), at paras 76-77). Put another way, for a proposed nominate tort to be recognized by the courts, at a minimum it must reflect a wrong, be necessary to address that wrong, and be an appropriate subject of judicial consideration.

[25] The Supreme Court cited ***Jones v Tsige***, 2012 ONCA 32 (***Jones***) as an example of the correct application of these principles when the court determined that a new tort should be declared for the action of intrusion upon seclusion. In ***Jones***, the defendant used her position as a bank employee to access and view (but not disseminate) the financial records of the former spouse of a man the defendant was in a relationship with. Once the test for a new tort had been met, the court then outlined the rationale for it, the elements of the tort, its limitations, and then considered the damages for that particular cause of action.

[26] The Plaintiff argues that she has met these criteria, citing one case in Canada that has declared this cause of action to exist. In ***Jane Doe 72511 v Morgan,*** 2018 ONSC 6607 (***Jane Doe #2***) the defendant also posted sexually explicit content of the plaintiff on a pornographic website without her knowledge or consent; he also committed acts of assault and battery. The court recognized that there was no law in Ontario establishing the right of action for the posting of intimate images without consent. The court considered both ***Jones*** and a prior case, ***Jane Doe 464533 v D(N)***, 2016 ONSC 541 (***Jane Doe #1***), where the tort of public disclosure of embarrassing facts was recognized, however the default judgment in that matter was subsequently set aside.

[27] ***Jane Doe #1*** considered key elements of the cause of action, and recognized the need for responsiveness to privacy breaches to be fulsome in the internet age. All three of ***Jones, Jane Doe #2*** and ***Jane Doe #1*** considered arguments from William L. Prosser, "Privacy" (1960), 48 Cal L R 383, an article which shows significant prescience. Citing from ***Jones*** at para 18:

> Professor Prosser's article picked up the threads of the American jurisprudence that had developed in the seventy years following the influential Warren and Brandeis article. Prosser argued that what had emerged from the hundreds of cases he canvassed was not one tort, but four, tied together by a common theme and name, but comprising different elements and protecting different interests. Prosser delineated a four-tort catalogue, summarized as follows, at p. 389:
>
> 1. Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs.
> 2. Public disclosure of embarrassing private facts about the plaintiff.
> 3. Publicity which places the plaintiff in a false light in the public eye.
> 4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

[28] ***Jones*** not only confirmed the tort of intrusion upon seclusion but also confirmed that appropriation of name or likeness was already an actionable cause of action in Ontario.

[29] In ***Jane Doe #2*** Justice Gomery held that the cause of action sought here (the second in the above list) was made out on the facts before that court, at para 96:

> I conclude that Jane has a cause of action against Nicholas for the public disclosure of private facts without her consent. In *Jones v Tsige*, the Court of Appeal recognized the need for civil remedies to protect the privacy of personal information. I see no reason why this protection should not extend to prevent the unauthorized publication of intimate images, given the privacy rights at stake and the serious harm caused by such publication.

[30] The facts in that case are similar to the facts before this court. The motivation of the defendant in that matter was one of revenge and there are more discrete posts in this matter, however neither of those differences matter when considering the determination of the cause of action. That case is not binding upon this court, but very persuasive.

[31] Relying on ***Jones*** and others, in ***Racki v Racki,*** 2021 NSSC 46, 52 RFL (8th) 1 (***Racki***), Coughlan J recognized the tort of Public Disclosure of embarrassing public facts. In ***Racki*** the defendant self-published a memoir and disclosed that the plaintiff, his ex-wife, had suffered addiction and had made suicide attempts. The plaintiff agreed that the history cited in the book was correct but that she was humiliated by the public disclosure of her private life. The court noted at para 25:

> Today a person's privacy is a precious commodity which is becoming harder to protect. Modern life infringes on all aspects of personal privacy. Technology, which changes rapidly, has made it possible to track all aspects of a person's life. We live in a world much different from just a decade or two ago. As society changes the law must evolve to meet changing circumstances. Existing causes of action, such as defamation with the defences available to such a claim, do not address the circumstances arising from the public disclosure of private facts. Considering all of the foregoing, it is appropriate to find the existence in Nova Scotia of the right of action for public disclosure of private facts of another.

[32] In ***Yenovkian v Gulian***, 2019 ONSC 7279 Justice Kristjanson cited ***Jones***, ***Jane Doe #1***, and ***Jane Doe #2*** as well as Professor Prosser's article, and noted that ***Jones*** cited ***Athans v Canadian Adventure Camps Ltd***, [1977] OJ No 2417 (Ont HC), where the Prosser privacy tort of appropriation was recognized. Justice Kristjanson went on to recognize the fourth remaining Prosser tort, stating, at para 170:

> With these three torts all recognized in Ontario law, the remaining item in the "four-tort catalogue" of causes of action for invasion of privacy is the third, that is, publicity placing the plaintiff in a false light. I hold that this is the case in which this cause of action should be recognized…

[33] With these cases in mind, the next step is to consider the ***Nevsun*** principles

Rule one: Necessity

[34] ***Nevsun*** states that there can be "at least three alternative remedies: another tort, an independent statutory scheme, and judicial review. If any of these alternatives address the wrong targeted by the proposed nominate tort, then the court will decline to recognize it": at para 238.

[35] The statutory schemes relevant to the image publication aspect of the Plaintiff's claim (both provincial statute and criminal) are addressed below. However, the civil statute did not exist at the time of the Defendant's actions or the discovery of them.

[36] I note that the Plaintiff has not claimed, broadly, "breach of privacy." That said, I refer to Justice Goss in ***Al-Ghamdi v Alberta***, 2017 ABQB 684 at para 160:

> Breach of privacy is controversial. The British Columbia Court of Appeal in *Mohl v University of British Columbia*, 2009 BCCA 249 (BCCA), leave to appeal refused [2009] SCCA No 340 (SCC), held that there is no common law claim for breach of privacy and the claim must rest on the provincial legislation; in BC that is the *Privacy Act*, (RSBC 1996, c 373). Veit J in *Scherf v Nesbitt*, 2009 ABQB 658 (Alta QB), at para 24, referenced *Mohl*, suggesting the possibility of such a tort in Alberta based on, again, provincial legislation, legislation which does not exist in Alberta. The Federal Court in *Pinder v Canada (Minister of Environment)*, 2015 FC 1376 (FC) (at para 107), aff'd on other grounds, 2016 FCA 317 (FCA), held that there is no common law tort for breach of privacy outside of such legislation.

[37] The recent case of ***Caplan v Atas,*** 2021 ONSC 670 confirmed the cause of action of harassment. At the time the statements of claim were filed, that cause of action had been recognized at the trial level in Ontario. However a subsequent Court of Appeal decision overturned that earlier decision, noting that on the acts before them another tort (intentional infliction of mental suffering) provided a remedy to the plaintiffs, and that no foreign judicial authority to support the recognition of that new tort had been cited (***Merrifield v Canada (Attorney General)*** 2017 ONSC 1333 and ***Merrifield v. Canada (Attorney General)*** 2019 ONCA 205).

[38] In ***Caplan*** the court held that there was no other tort that sufficiently addressed the harm caused by the significant internet publications aimed at harming the plaintiffs, noting at 168-169:

> In my view, the tort of internet harassment should be recognized in these cases because Atas' online conduct and publications seek not so much to defame the victims but to harass them. Put another way, the intent is to go beyond character assassination: it is intended to harass, harry and molest by repeated and serial publications of defamatory material, not only of primary victims, but to cause those victims further distress by targeting persons they care about, so as to cause fear, anxiety and misery. The social science literature referenced above makes it clear that real harm is caused by serial stalkers such as Atas.
>
> The tort of intentional infliction of mental suffering is simply inadequate in these circumstances: it is designed to address different situations. The test is set out in *Prinzo v Baycrest Centre for Geriatric Care*. The plaintiff must prove conduct by

> the defendant that is (1) flagrant and outrageous, (2) calculated to produce harm, and which (3) results in visible and provable illness. The third branch of the test must be understood in the context of the broad range of behaviour that may be caught by the first two branches of the test. It is not part of the test that the conduct be persistent and repetitive.

[39] This first consideration before this Court is whether or not it is necessary to recognize the new tort of Public Disclosure to address the Defendant's conduct, namely publishing the images of the Plaintiff without her consent. Importantly, "a difference merely of damages or the extent of harm will not suffice to ground a new tort": ***Nevsun*** at para 216.

[40] Each of the courts in the ***Jane Doe*** cases recognized that the distribution of private images in a similar context as is before this court "cry out for a remedy." At para 73 of ***Jane Doe #2***, the court discussed ***Jones***, noting:

> Finally, the Court invoked the longstanding principle that there is no right without a remedy. Had it not accepted the existence of a tort of intrusion on seclusion, Jones would have been deprived of any recourse in the face of an intentional breach of her privacy rights by Tsige:
>
> > Finally, and most importantly, we are presented in this case with facts that cry out for a remedy…

[41] In Alberta the relevant civil statute, *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*, SA 2017, c P-26.9, has been in force since August 4, 2017 (the *Act*) (see discussion under "rule three", below). The rule against retrospective application of statutes prohibits this Plaintiff from relying on this cause of action. Without recognition of this tort in common law, the Plaintiff has no civil remedy given the date of the conduct complained of, even though it is now recognized as conduct requiring a legal response.

[42] Further, the *Act* only protects distribution of intimate images, and the term "intimate image" is narrowly defined, limiting the availability of this remedy to those images defined as where the victim is nude, exposing their genital or anal regions or breasts, or is engaged in sexual activity: *Act*, section 1(b). While that definition would apply to the Plaintiff in this matter, the proposed tort could protect information not contemplated by this legislation even if the distribution occurred after it came into force (for example, the facts in ***Racki***, above). The Plaintiff correctly points out that the *Act* does not protect privately sharing such images, which is also a potential gap in the statutory framework.

[43] The Province of Alberta has recognized that other existing torts do not offer a remedy to the particular conduct complained of. For example, in order to establish the tort of breach of confidence, a plaintiff must prove the following:

> (a) the information conveyed was confidential;
> (b) the information was communicated in confidence;
> (c) the information was misused by the party to whom it was communicated.
>
> (***Hutton v Canadian Broadcasting Corp***, 1992 ABCA 39 at para 15, citing from *LAC Minerals Ltd v International Corona Resources Ltd*, [1989] 2 SCR 574)

[44] The Plaintiff is correct that imposing an obligation upon a victim to prove that their shared image was both confidential and communicated in confidence creates an unnecessary barrier to a remedy.

[45] In ***Jane Doe #1*** the element of communication in confidence was proved, and the plaintiff was reassured that no one else would see her video before she provided it to the defendant. However, in ***Jane Doe #2***, there was no explanation for how the defendant came into possession of the video in issue and as such the court had to reject the breach of confidence claim.

[46] Breach of confidence, given that express requirement, is not a sufficient remedy for situations such as the one before this court. The element of specific confidentiality at the time of the sharing of the information bars many scenarios, and protects a distributor of private images provided he acquires those images without any communication or implied confidentiality owed to the person whose privacy is vested in the information.

[47] The Plaintiff also argues that the tort of Intentional Infliction of Mental Distress also fails to provide an adequate remedy for plaintiffs harmed by the publication of intimate images. That tort requires a defendant to have subjective intention to cause harm. The elements for a plaintiff to prove are:

> 1) flagrant or outrageous conduct;
> 2) calculated to produce harm; and
> 3) resulting in a visible and provable illness.
>
> (***Rahemtulla v Vanfed Credit Union*** (1984), 51 BCLR 200 (Sup Ct) at paras 50-57)

[48] The Plaintiff argues that elements two and three may bar a victim from relying on this tort in the case of non-consensual publication of intimate images for the following reasons: "Calculated to cause harm" creates a hurdle a victim must clear in establishing the subjective intent of the Defendant. That element is not a barrier in this case as the plaintiff here received judgment for intentional infliction of mental distress in October 2019, however it is easily imagined as a bar to many other fact scenarios where a victim would otherwise have significant harmful actions to complain of. Further, a "provable illness", although no longer requiring a psychiatric diagnosis, may require proof of something beyond the anxiety, stress, and humiliation a victim may suffer upon discovery of the public sharing of their intimate images.

[49] In ***Mustapha v Culligan of Canada Ltd***, 2008 SCC 27 at para 9, the Supreme Court of Canada noted the following about personal injuries compensable in law:

> This said, psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness: see *Hinz v Berry*, [1970] 2 QB 40 (Eng CA) at p 42; *Page v Smith*, at p 189, Linden and Feldthusen, at pp 425-27. The law does not recognize upset, disgust, anxiety, agitation or other mental states that fall short of injury. I would not purport to define compensable injury exhaustively, except to say that it must be serious and prolonged and rise above the ordinary annoyances,

> anxieties and fears that people living in society routinely, if sometimes reluctantly, accept. The need to accept such upsets rather than seek redress in tort is what I take the Court of Appeal to be expressing in its quote from *Vanek v Great Atlantic & Pacific Co of Canada* (1999), 48 OR (3d) 228 (ONCA): "Life goes on" (para 60). Quite simply, minor and transient upsets do not constitute personal *injury*, and hence do not amount to damage. (*Emphasis* in ***Mustapha***)

[50] Given the timing of the wrongdoing in this case, there are no fulsome alternative remedies for this plaintiff to the proposed tort.

Rule two: Response to a wrongdoing

[51] The three recent cases of ***Jones, Jane Doe #1,*** and ***Jane Doe #2*** cite the same extensive academic writings that focus on the importance of privacy historically, prominently including Professor Prosser's 1960 article, and the need for tort law to respond to breaches of privacy. It is trite to say that the information age has made both access to and dissemination of private information an even greater concern since that time: "For over one hundred years, technological change has motivated the legal protection of the individual's right to privacy. In modern times, the pace of technological change has accelerated exponentially…": ***Jones*** at para 67.

[52] In the United Kingdom privacy was not considered as a separate cause of action until the last few decades. The courts there established "misuse of private information" in ***Campbell v Mirror Group Newspaper Ltd,*** [2004] UKHL 22 (***Campbell***). In that matter, the court identified that the pre-existing tort of breach of confidence, predicated on a confidential relationship of the information holder and receiver, relied on an artificiality by requiring that relationship in order for information to be confidential and that privacy in personal information requires protection regardless of the circumstances of its sharing.

[53] In ***Jones***, the court observed that the *Charter* "recognizes privacy as a fundamental value in our law and specifically identifies, as worthy of protection, a right to informational privacy that is distinct from person and territorial privacy": at para 66.

[54] Finally, the Defendant's actions here, which are similar to ***Jane Doe #2***, are acts of deliberate wrongdoing with significant foreseeable harm as a consequence.

Rule three: Appropriate for judicial adjudication

[55] Right to privacy is recognized internationally and within Canada; it is enshrined in the *Charter*, the *Criminal Code*, statute, and tort law. Further, the increased use of new technologies has created rapid societal change that has created new possibilities for privacy breaches that require adequate legal protection.

[56] In ***Jones*** at para 43, the Ontario Court of Appeal noted that "reputation is intimately related to the right to privacy which has been accorded constitutional protection" (citing from ***Hill v Church of Scientology of Toronto***, [1995] 2 SCR 1130 at para 121). The court in ***Jones*** also noted that the *Charter* treatment of privacy in Canada accords with the *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810, (1948) and article 17 of the *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171.

[57] The *Criminal Code of Canada*, RSC 1985, c C-46 now criminalizes this conduct:

> Publication, etc., of an intimate image without consent
>
> 162.1 (1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty
>
> (a) of an indictable offence and liable to imprisonment for a term of not more than five years; or
>
> (b) of an offence punishable on summary conviction.

[58] The following comment is also applicable here:

> In instances of revenge porn, damages ought to be assessed in the "Internet context" and take into account the fact that the intimate images are instantly available to an unknown number of recipients. The pernicious effect of online dissemination should set it apart from other forms of invasion of privacy. Technology has created new forms of communication and with it, new forms of abuse. There is a real need for an effective remedy to the growing number of victims of revenge porn, which would deter potential perpetrators from engaging in this prevalent form of abuse that, until recently, attracted no real legal consequences.
>
> *(*P. Voula Kotoulas and Sienna Molu, "***Sexual Aggression and the Civil Response***", Annual Review of Civil Litigation 2018 (WL Can))

[59] In ***Jane Doe #2***, the court noted, at para 85, that Parliament's criminalization of publication of intimate images without consent recognized that this behaviour is highly offensive and the same misconduct should give rise to civil remedy. Further, at para 87:

> The adoption of this tort is consistent with *Charter* values. In *R v Dyment* [1988 Carswell PEI 7 (SCC)], a case cited in *Jones*, La Forest J stated that "privacy is essential for the well-being of the individual. For this reason alone, it is worthy of constitutional protection, but it also has profound significance for the public order". As observed by Justice L'Heureux-Dubé, privacy is "an essential component of what it means to be 'free'".

[60] Provincial legislators have also recently recognized the need for legal response for this type of conduct. Manitoba was the first province to enact legislation to the create a statutory tort, *The Intimate Image Protection Act*, CCSM c 187 (*IIPA*), which came into force on January 15, 2016, creating a cause of action for those who are victimized by publication of intimate images. The *IIPA* states that, "A person who distributes an intimate image of another person knowing that the person depicted in the image did not consent to the distribution, or being reckless as to whether or not that person consented to the distribution, commits a tort against that other person": section 11(1). The *IIPA* empowers the court to award damages to a plaintiff, to issue an injunction on publication of the image, to prohibit publication of the name of the person depicted in the image, or to make any other order as required by the interests of justice.

[61] As mentioned above, in Alberta, the *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*, came into force on August 4, 2017 (the *Act*). The *Act* creates the tort of non-consensual distribution of images and provides recourse for victims who have had their intimate images distributed without consent: section 3. There is no requirement of proof of damages: section 4. The *Act* is applicable when the image is *taken* with the consent of the subject, or *provided* by the subject of the image, but then *distributed* without consent. This distinction is important, as it exposes the importance of not just privacy interests but of consent regarding distribution.

[62] The conduct complained of by the Plaintiff clearly meets this third test; it is appropriate for judicial adjudication. The change sought of this court is a determinate and substantial change that recognizes the inherent harm done by dissemination of private content. When conduct attracts legislative and parliamentary attention, its wrongfulness is apparent. From ***Jane Doe #2*** at para 88: "…Failing to develop the legal tools to guard against the intentional, unauthorized distribution of intimate images and recordings on the internet would have a profound negative significance for public order as well as the personal wellbeing and freedom of individuals."

Conclusion re cause of action for Public Disclosure of Private Facts

[63] The existence of a right of action for Public Disclosure of Private Facts is thus confirmed in Alberta. To do so recognizes these particular facts where a wrong exists for which there are no other adequate remedies. The tort reflects wrongdoing that the court should address. Finally, declaring the existence of this tort in Alberta is a determinate incremental change that identifies action that is appropriate for judicial adjudication.

Elements of Public Disclosure tort

[64] What are the elements of this new tort? In the UK, the House of Lords in ***Campbell*** specifically rejected the formulations similar to American tests that include a requirement that the information in question be "highly offensive to a reasonable person", recognizing that information does not have to be offensive for it to attract the right of privacy. What is required to qualify for protection is simply that the information in question be private.

[65] ***Jane Doe #2*** relied on ***Jane Doe #1***'s statement of the elements of this particular cause of action at para 99, (again, with some variation to the original application of the word "offensive"): The elements of the cause of action, as set out in ***Jane Doe #2*** at para 99, are as follows:

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.

(Emphasis added).

[66] In ***Racki,*** Justice Coughlan explained that the plaintiff does not need to prove actual damages, likening the heading of general damages in defamation, which "are presumed by the publicity of the private facts and are awarded at large": at para 28. He held that the tort had three elements:

> (a) There must be publicity of the facts communicated to the public at large to become a matter of public knowledge; (b) The facts are those to which there is a reasonable expectation of privacy; and (c) The publicity given to those private facts must be considered, viewed objectively, as highly offensive to a reasonable person causing distress, humiliation or anguish.

[67] In ***Campbell***, the House of Lords noted that the "reasonable person" to be considered in these circumstances is not the viewer of the publication, but rather the person affected by the publication. As such, that part of the test should read "the matter publicized or its publication would be highly offensive to the reasonable person in the same position as the plaintiff." That is an appropriate distinction.

[68] Therefore, in Alberta, to establish liability for the tort of Public Disclosure of Private Facts, 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 in the position of the plaintiff; and,
> (d) the publication was not of legitimate concern to the public.

[69] All three cases - ***Jones, Jane Doe #1,*** and ***Jane Doe #2*** - recognize the privacy interests inherent in financial and sexual matters. Relationships and health records also fit into the category of "private life" matters. If publicized information does not match one of these groups, the test from ***Campbell*** (at paras 94-96) is an appropriate starting point to determine the issue of whether or not the information in question is private arises: "What would a reasonable person feel if they were place in the same position as the claimant faced with the same publicity?": at para 99.

Assessment of Defendant's liability for Public Disclosure

[70] In ***Jane Doe #2***, the court made detailed findings of fact of the defendant's conduct, and only brief consideration was required for the court to find the defendant liable for this tort. The court noted at paras 100-101:

> Jane has proved all of the elements of the tort. In posting the sexually explicit video of her, Nicholas publicly disclosed an aspect of her private life. She did not consent to this. A reasonable person would consider the posting of the video highly offensive, because the video showed Jane's face and body and allowed strangers to see her engaged in sexual activity. The title given to the posting was also degrading and racist. There was nothing about the video that gave the public a legitimate interest in its publication.
>
> I accordingly conclude that Nicholas is liable to Jane for his public disclosure of her private information.

[71] Like the Defendant in the case at bar, the defendant in ***Jane Doe #2*** had been noted in default. He published the images of the plaintiff on various publicly accessible websites that

depicted her in states of undress and/or participating in sexual activity without her consent, all of which was alleged in the statement of claim.

[72] In the matter before this court, the application of the tortious principles is equally straightforward. By uploading the Plaintiff's explicitly sexual images to accessible websites the Defendant publicized an aspect of her private life; the Plaintiff did not consent to this action; the publication of the images is highly offensive to a reasonable person in the position of the Plaintiff; and, there is no legitimate concern to the public that warranted the publication.

[73] The Defendant is liable for this tort against the Plaintiff.

Remedies for Public Disclosure of Private Facts

Injunctive relief

[74] The Plaintiff asks this court for a permanent injunction prohibiting the Defendant from publicly sharing any images of the Plaintiff; a mandatory injunction requiring the Defendant to return all images of the Plaintiff to her; and, a mandatory injunction requiring the Defendant to remove all images of the Plaintiff shared by the Defendant.

[75] A permanent injunction is relief that is only to be granted after a final adjudication of the parties' legal rights. While there is not an established test for permanent injunctions (compared to interlocutory injunctions, for example) one dissent from the Supreme Court of Canada held that the test requires a party to establish: (1) its legal rights; and (2) that damages are an inadequate remedy; and 3) that an injunction is an appropriate remedy: see ***Google Inc v Equustek Solutions Inc***, 2017 SCC 34 at para 66. However, an injunction is an equitable remedy and therefore discretionary, subject to the considerations that govern the exercise of that discretion.

[76] In ***Jane Doe #1*** the court also issued a mandatory injunction ordering the defendant to immediately destroy any and all intimate images or recordings of the plaintiff in his possession, power or control. In addition, a further order was issued permanently prohibiting the defendant from publishing, posting, sharing or otherwise disclosing in any fashion any intimate images or recordings of the plaintiff. The defendant was also permanently prohibited from communicating with the plaintiff or members of her immediate family.

[77] Here, the Plaintiff has established that her legal rights to privacy and confidence have been violated and likely continue to be violated. When she last conducted a search, she located some of the images complained of still publicly available.

[78] The test for a mandatory injunction is found in ***Poole v City Wide Towing and Recovery Service Ltd,*** 2020 ABCA 102 at paras 14-17. The Plaintiff must show a strong *prima facie* case; the Plaintiff will suffer irreparable harm if the injunction is refused; and on a balance of convenience it must be determined which party would suffer greater harm from the granting or refusal of the remedy.

[79] Given the findings of this decision, the first step is established. The irreparable harm to the Plaintiff is clear: given the ongoing impact to her privacy rights as well as her overall well-

being, the ongoing presence of these images in the public arena, or the control of these private images in the hands of the Defendant, are significantly damaging. There is no apparent inconvenience to the Defendant to take the steps sought from the Plaintiff to attempt to undo what he has done.

[80] The Defendant is required to make all of his best efforts to return all images of the Plaintiff in his possession and to make all of his best efforts to remove any images of the Plaintiff that he posted wherever the images are found.

[81] While civil and criminal legislation now govern publication of many of the images complained of, and this decision and the others referenced above clarify the tortious nature of the Defendant's actions, the Defendant is prohibited by this court from sharing any private images of the Plaintiff publicly in the future. This is a permanent injunction that binds the Defendant beyond the statutory restrictions. Given the harm done by his actions to this point in time, materials not necessarily caught by existing statute could potentially be posted and cause further suffering to the Plaintiff. That suffering cannot be reversed by an order of damages, and she has significant common law and statutory rights to be preserved from further infringements on her privacy and dignity. There is no apparent hardship to the Defendant to be constrained in this way. Further, the previous tortious acts by the Defendant have created the need for this type of order. Where general common sense and decency failed to prevent his conduct in the past, hopefully this explicit prohibition will be effective in curtailing him from repeating his behavior.

Assessment of Defendant's liability for breach of confidence

[82] The Plaintiff's claim describes the following allegations, now proven facts, which establish the Defendant's breach of confidence: the Plaintiff was the subject of private, personal and intimate images; she allowed the Defendant to have them in confidence under the express understanding that they would not be disclosed by him; and, the Defendant published the images to various publicly accessible websites.

[83] These facts establish that the publication of the Plaintiff's images was also an act of the breach of confidence for which the Defendant is liable.

Damages

[84] The Plaintiff has judgment for assault, battery, sexual assault, intentional infliction of mental distress, breach of confidence, and public disclosure of private facts. The Plaintiff agrees that there is overlap of damages between the last three causes of action.

[85] These torts are intentional torts; the Defendant's liability is not restricted to foreseeable consequences: ***Norberg v Wynrib,*** [1992] 2 SCR 226 at para 54.

[86] The evidence provided shows that the Plaintiff has suffered physical, mental, and emotional harm and those consequences are ongoing.

Public Disclosure of Private Facts, Breach of Confidence, Mental Distress

[87] The Plaintiff seeks general damages of $80,000; aggravated damages of $25,000; and, punitive damages of $50,000.

[88] In ***Jane Doe #1*** and ***Jane Doe #2*** the court awarded general damages for the internet publication of the plaintiffs by the defendants. In each of those cases, a single video was posted; the amount of time the images were available was known; and in ***Jane Doe #2*** the evidence showed that the video was viewed 60,000 times before the Defendant acted to remove it. In each of those cases the court awarded $50,000 in general damages, $25,000 in aggravated damages and $25,000 in punitive damages.

[89] Given the novelty of the tort in question, ***Jane Doe #1*** relied on cases that considered damages for sexual battery and the court noted, at para 53, and citing from *G(BM) v Nova Scotia (Attorney General)*, 2007 NSCA 120 at para 128 noted: "… it cannot be forgotten that a sexual assault is very different from other assaults. It is true that it, like all the other forms of assault, is an act of violence. Yet it is something more than a simple act of violence…. It is an assault upon human dignity". Here, given the sexual nature of the privacy infringement, those observations apply. The Plaintiff's privacy and dignity have been attacked.

[90] This distinction is made repeatedly throughout case law, statute, and criminal law. The particular impact of sexually-based wrongdoing is well recognized to cause significant and long-lasting harm to victims in ways that other actions may not.

[91] In ***Jones***, the Ontario Court of Appeal determined that if the plaintiff in a privacy tort case has not suffered a pecuniary loss, general damages should range from $0 and $20,000, and set out the following list of factors to assess where in the range a particular case should fall:

1. the nature, incidence and occasion of the defendant's wrongful act;
2. the effect of the wrong on the plaintiff's health, welfare, social, business or financial position;
3. any relationship, whether domestic or otherwise, between the parties;
4. any distress, annoyance or embarrassment suffered by the plaintiff arising from the wrong; and
5. the conduct of the parties, both before and after the wrong, including any apology or offer of amends made by the defendant.

(***Jones*** at para 87, cited in ***Racki*** at para 47).

[92] In ***Racki*** the court considered the misconduct and the defendant's refusal to remove the private information from the book and awarded general damages of $18,000, along with $10,000 in aggravated damages (as the motive appeared to be malice). The private content in question was not photographs nor sexual in nature.

[93] That award and the range that Racki cited does not parallel these three causes of action or the facts in this case. The torts here are not just breaches of privacy or confidence. The Defendant attacked the personal and sexual integrity of the Plaintiff in a grossly public way with disregard for her dignity and the potential and real consequences she experienced. He appears to

have done so repeatedly and there is no evidence to suggest he has taken steps to rectify what he has done.

[94] In ***L(TK) v P(TM***), 2016 BCSC 789 a stepfather breached the Privacy Act by secretly taking (not publishing) videos of his stepdaughter while she was showering. Considering Jane Doe #1 the court awarded $85,000 in general damages, which included $25,000 to account for aggravating features of the case.

[95] The Plaintiff argues that the following facts must be considered to assess damages here: a significant number of images were disclosed and published extensively; the images were explicit; the Plaintiff is identifiable in many of the images; the Defendant abused a position of trust (of course, the confidentiality issue is a required element for liability); the distribution and identifiable aspects of the photos led to a direct interaction with someone who had seen the images, recognized, and approached the Plaintiff; and, the significant psychological impact on the Plaintiff.

[96] Punitive damages are also appropriate for these three torts. In Jane Doe #1 the court noted at para 60: "Such an award may be appropriate where the defendant has acted in a high-handed or arrogant fashion or has recklessly disregarded the plaintiff's rights or the potential impact of the defendant's intentional conduct." The Defendant's prolific publication of these images is "highly reprehensible misconduct that falls outside the standards of decent behavior": Jane Doe #2 at para 140.

[97] I award the Plaintiff $80,000 in general damages. The pain and suffering she has experienced are significant. The continued availability of her images publicly has extended that suffering more than either plaintiff in the Jane Doe and Racki cases. Further, the nature of the embarrassment is much higher than contemplated by Racki. The number of images posted is much higher than in either Jane Doe and the breach of a position of trust is similar to that as in ***L(TK).***

[98] The Defendant's conduct is worthy of significant condemnation. His actions were intentional and appear to have been done repeatedly. His confession made to his partner when he was deployed to a high-risk situation after acting secretly shows that he was aware of the distress his choices would cause the Plaintiff, and he attempted to clear his conscience. He abused a position of trust for unknown reasons. The conduct is notably now criminal in nature in Canada, and regardless of when the actions occurred, they are worthy of punitive measures from this court.

[99] The Defendant is liable for $50,000 in punitive damages. Compared to the single act by the defendant in ***Jane Doe #2***, this Defendant is significantly more blameworthy and punitive damages shall reflect the same.

[100] With respect to aggravated damages, courts often require the existence of malice or malicious behaviour or conduct before awarding aggravated damages. For example, in ***Jane Doe #2***, the court discussed aggravated damages in cases of battery and libel, and noted, at para 136-138:

> Justice Cory went on to say that a court awarding aggravated damages must find that the defendant was "motivated by actual malice, which increased the injury to the plaintiff, either by spreading further afield the damage to the reputation of the plaintiff, or by increasing the mental distress and humiliation of the plaintiff."

> Based on the test I have adopted, liability for public disclosure of private facts requires the court to find that the defendant's conduct was "highly offensive". This element of the tort does not mean that an aggravated damages award will be appropriate in every case where the cause of action is made out. There must be something more.
>
> In this case, I conclude that there was something more. Nicholas was motivated by actual malice. His conduct increased Jane's humiliation and anxiety. He aggravated the damage to Jane's reputation by posting the video to a pornographic website, giving it a degrading title (….) and showing it or sharing it with his friends. He further added to Jane's distress after she discovered the video by taunting her and threatening to post further nude images of her online.

[101] Like the court in ***Jane Doe #2***, I similarly find that the Defendant here was motivated by malice. His conduct was intended to, and did increase the Plaintiff's humiliation and anxiety. The publication of her private images is another form of the domestic abuse she otherwise experienced. His conduct exhibits malice.

[102] For these privacy torts, the punitive and general damage awards do not fully reflect the Defendant's liability to the Plaintiff. Similar to Jane Doe #1, the images where shared by the subject on the explicit basis that they would be kept private. The nature of the relationship between the parties is also aggravating to the torts committed. The same award, $25,000 for aggravated damages, is appropriate here.

Assault and Battery, Sexual Assault

[103] In ***Jane Doe #2*** the plaintiff was in long term abusive relationship with the defendant, the father of her child. Abuse continued while she was seven months pregnant. There was verbal abuse and "unprovoked rages." She required psychotherapy subsequently. After an assessment of several other Ontario cases, Justice Gomery identified the repetitive nature of the assaults over the course of six months, the non-permanent physical injuries, the emotional consequences of fear throughout that period, and the degrading conduct of the defendant as factors when deciding to award the plaintiff $20,000 in general damages, the amount that was claimed. Notably the court commented that $25,000 would have been awarded had it been sought.

[104] In that case, the assaults were more severe and repetitive than established here. Here, the Defendant committed primarily (general abusive behavior was claimed, but one incident was clearly articulated) a serious but singular assault in public and sexual assault (both publicly and privately).

[105] The Plaintiff was in a committed relationship with the Defendant; they lived in a trust relationship and shared two young children together. These assaults forced her to flee her home and left her suffering PTSD, depression, anxiety, and difficulty sleeping. Her *viva voce* evidence about the ongoing impact on her personal life, including her confidence and sexuality, and ability to function generally is striking. The effects of the abuse she experienced are long-lasting and severe. Her treatment for these conditions are time-consuming and expensive, and have substantially slowed her progress academically (and, thus, postponed any professional pursuits).

[106] Factors to consider when awarding damages for sexual assault are listed in ***Zando v Ali***, 2017 ONSC 1289, a decision about sexual assault by a colleague the plaintiff had invited into her

home. In that case the defendant attempted to force intercourse upon the plaintiff and eventually masturbated in front of her against her will in her home. The plaintiff did not lead evidence of ongoing trauma. The trial justice, at para 93, listed the following considerations:

1. The circumstance of the victim at the time of the events, including factors such as age and vulnerability;
2. The circumstances of the assault(s) including the number, frequency and how violent, invasive and degrading it was;
3. The circumstances of the defendant, including age and whether he or she were in a position of trust; and
4. The consequences for the victim of the wrongful behavior, including ongoing psychological issues.

[107] The trial justice held that the range of damages in case law with such conduct as occurred in that case was $144,000 to $290,000. The Court of Appeal affirmed both the list of considerations and the range of damages (***Zando v Ali***, 2018 ONCA 680).

[108] In ***B(CC) (Litigation Guardian) v B(I)***, 2009 BCSC 1425 the court stated that the range of general damages (at that time) for sexual abuse was $129,000 and $226,000. The court noted at para 54:

> In the leading case *Y(S) v C(FG)* (1996), 26 BCLR (3d) 155, [1997] 1 WWR 229 (BCCA), the British Columbia Court of Appeal stated that the application of the "cap" on non-pecuniary damage awards set out by the Supreme Court of Canada in the trilogy *Andrews v Grand & Toy Alberta Ltd*, [1978] 2 SCR 229, 83 DLR (3d) 452 (SCC), *Teno v Arnold*, [1978] 2 SCR 287, 83 DLR (3d) 609 (SCC), and *Thornton v Prince George Board of Education*, [1978] 2 SCR 267, 83 DLR (3d) 480 (SCC), is not appropriate for intentional torts of a quasi-criminal nature, such as sexual abuse.

[109] However, in ***R v A(W)***, 2003 ABQB 50 (***A(W)***), at paras 108-130, Justice Veit considered the ***Y(S)*** decision and that court's determination that the cap does not apply to sexual assault. In that thorough assessment, she identified flawed reasoning in it that led to ***B(CC)*** which considered principles from damages in defamation (which are presumed and also difficult to prove) and damages in sexual assault. Ultimately, Justice Veit concluded that ***Y(S)*** was an outlier and the long-standing and oft-cited principles of ***Andrews v Grand & Toy Alberta Ltd***, [1978] 2 SCR 229 setting caps on non-pecuniary damages apply to sexual assault cases. That reasoning and conclusion are adopted here.

[110] The Plaintiff's claim for damages does not approach the cap re-confirmed by ***A(W)***. She seeks non-pecuniary damages of $175,000.00; aggravated damages of $50,000,00; and punitive damages of $50,000.00.

[111] The Plaintiff cited several cases to support the damages sought. Notably, several of those cases were brought by plaintiffs for repeated sexual abuse inflicted upon them in their childhoods by their fathers or father figures. There are fewer cases of spousal sexual assault reported.

[112] The case of ***Petrie v Lindsay***, 2019 BCSC 371 outlines several cases where damages were awarded in intimate partner abuse cases (not all of them included sexual abuse claims), starting at para 179:

(a) *Dhaliwal v Dhaliwal*, [1997] OJ No 5964 (Ont Gen Div) — years of ongoing physical and emotional abuse, but three specific incidences of the wife being hit with a closed fist resulted in $5,000 general damages, and $5,000 in aggravated and punitive for total of $10,000;
(b) *M(A) v O(S)*, 2014 BCSC 4 (BCSC) — although allegations of sexual abuse dismissed, a single incidence of slapping which caused the female spouse to lose balance resulted in her receiving $20,000 for pain and suffering;
(c) *Constantini v Constantini*, 2013 ONSC 1626 (Ont SCJ) — emotional abuse pre-separation and aggressive assault and premeditated break-in post-separation, which resulted in PTSD, but no permanent disability. The female spouse was awarded $15,000 in general and aggravated damages; and
(d) *C(N) v B(WR)*, [1999] OJ No 3633 (Ont SCJ) — multiple instances of sexual, physical, verbal and emotional abuse in a six-year relationship, resulting in the female spouse feeling powerless to leave the relationship due to the systematic erosion of her self-esteem, and suffering PTSD. She was awarded $65,000 in general damages and $25,000 in punitive damages.

[113] The claim here is more similar to the claims in ***Jane Doe #2*** and ***Zando***, and damages are appropriately comparable to those cases. For the violence perpetrated against her by the Defendant, the Plaintiff is owed non-pecuniary damages of $175,000; aggravated damages of $50,000; and punitive damages of $50,000. The criminal aspects of the attacks against the Plaintiff in the supposed safety of her partnership warrant significant recognition by this court.

[114] The Plaintiff also made a special damages claim, largely related to her journey from New Brunswick to Alberta and the ongoing medical expenses she incurs. She provided receipts for medical costs, childcare expenses (limited to the time period where she transitioned back to Alberta), necessities of life, having left her home urgently. She has made a claim for her schooling costs to support a claim for loss of future opportunity, given that she is only able to attend school part time due to her treatment schedule and ongoing mental illnesses. While these costs were well-outlined by the Plaintiff, the direct causation link to the torts was not fully developed, particularly related to the delays in her schooling and potential future loss of income. As such, only a portion of the special damages claimed will be ordered: $30,000.

Conclusion

[115] The conduct of this Defendant through the course of his bonded, committed familiar relationship with the Plaintiff is appalling and warrants a significant response from the court. His physical and sexual abuse of the Plaintiff destroyed his family unit and significantly damaged the mother of his children. Those actions were traumatizing, humiliating and frightening to the Plaintiff. Also significantly traumatizing were the breaches to her privacy. The Defendant's actions are inexplicable and inexcusable. His actions were meant to control, degrade and humiliate the Plaintiff. While she has shown significant strength by leaving the relationship, seeking extensive treatment, carrying on with her life including single-handedly raising her

children and successfully pursuing an education, the impact the Defendant has had remains present. It is most certain this his conduct will continue to affect the Plaintiff and her children for the foreseeable future.

[116] Counsel's conduct throughout has been most fair, measured and helpful.

Costs

[117] Counsel may address costs via memo to this Court within thirty days.

Heard on the 8th day of April, 2021.
Dated at the City of Edmonton, Alberta this 16th day of September, 2021.

Avril B. Inglis
J.C.Q.B.A.

Appearances:

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No one appearing
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