

CANADA / JUDGMENT

## Akerberg v. Cheng

2025 BCSC 2166

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2166 Akerberg v. Cheng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Akerberg v. Cheng,

2025 BCSC 2166

Date: 20251104

Docket: E66624

Registry: New Westminster

Between:

Lars Olof Rikard Akerberg

Claimant

And

Michelle Arts Cheng

Respondent

Before: The Honourable Mr. Justice Harvey

Reasons for Judgment

Counsel for the Claimant:

D.M. Rogers

Counsel for the Respondent:

T. Affoo

Place and Date of Hearing:

New Westminster, B.C.

June 4, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 4, 2025

## Introduction

- [1] There are cross applications in this family law proceeding.
- [2] The claimant's application seeks: (i) an interim distribution of family property in the amount of \$187,000 (\$37,000 more than was sought in an earlier motion filed one month before); (ii) an order that the litigation fund be paid to him seven days following pronouncement of the order; (iii) a s. 91 restraining order, restraining the respondent from disposing of family property save for the use of bank accounts for ordinary living expenses; (iv) an order requiring the respondent to amend her list of documents and provide those documents listed as Schedule A to the application; (v) an order granting leave to the claimant to amend his previously amended Notice of Family Claim in the form attached to the Notice of Application; and (vi) costs of his application in any event of the cause.
- [3] The respondent seeks to bifurcate the trial and sever the issue of the claimant's disputed status as a spouse under the Family Law Act, S.B.C. 2011, c. 25 [FLA], from the other issues raised in the pleadings.
- [4] After numerous false starts, these applications came on before me on June 4, 2025. An eight-day trial was scheduled to commence June 30, 2025.
- [5] The claimant's primary claim is for relief under the FLA. The amendments sought relate to tort claims for, inter alia, assault, conversion and compensation for alleged family violence.
- [6] The respondent opposes all relief sought and, in a separate application, sought an order that the scheduled trial be bifurcated to determine two threshold questions, specifically: (1) whether the parties or spouses for the purpose of property division and pension division within the meaning of s. 3 of the FLA; and (2) whether the claimant is entitled to spousal support.
- [7] I advised the parties, when I acceded to hear their application after it having been adjourned several times for want of a judge to hear it, that I was unavailable after June 4, 2025, and reasons should not be expected until after my return July 2, 2025. However, given the urgency of the matter because of the approaching trial date, I ruled on the respondent's application and ordered the issue of the claimant's status as a spouse to be a threshold issue, which must have been determined prior to any of the other issues raised by the Notice of

Family Claim.

- [8] Further, because no examinations for discovery had been performed and neither party was able to advise me as to the number of witnesses they intended to call on the issue of whether the parties were spouses, I concluded, on my own motion, that the matter was not ready to proceed to trial. I adjourned it generally.
- [9] Had I not severed the issues as sought by the respondent, there were no expert reports in existence which would have allowed the presider at the scheduled trial to determine the existence and value of family property, given there is a significant claim by the respondent for property excluded from division by virtue of s. 85 of the FLA.
- [10] The matter of the claimant's entitlement to division of property and/or spousal support is further complicated by the existence of a cohabitation agreement which, according to its clear terms, precludes the claimant's entitlement to either property division or spousal support, even if a spousal relationship is determined to have existed until the expiry of five years of cohabitation.
- [11] The essence of the agreement is to entitle each of the parties to retain property registered or owned by them as at the time of entering into the agreement.
- [12] On no view of the evidence have the parties lived together for a period in excess of five years.
- [13] I invited the parties to make further submissions on matters, particularly on the amount of any interim distribution given the bifurcation of the trial issues. Written submissions were subsequently received from both parties.
- [14] In those submissions, I was advised the trial of the matter has been reset for four days, commencing May 4, 2026. The singular issue, according to my earlier oral pronouncement, is whether or not the parties were involved in a marriage-like relationship which, in my view, subsumes the issue of entitlement to spousal support unless determined in favour of the claimant.
- [15] Upon reflection, I leave to the parties to discuss whether the upcoming trial should also deal with the validity/fairness of the cohabitation agreement which, if enforceable, disentitles the claimant to relief regardless of whether he was a spouse under the FLA.
- [16] The stated objection to its enforcement is duress when signing. I note the claimant signed the agreement with legal advice and before a lawyer. The proposed amendment alleges unfairness.
- [17] If unable to agree, the parties may re-appear before me to argue this aspect of the litigation.

## Background

- [18] The claimant, is a 46-year-old electrical installer currently residing in Sweden, his native country.
- [19] The respondent is 48 years of age and is a teacher.
- [20] It is common ground the parties met over a dating application in or about 2018 and began a relationship which became intimate and, in their cohabitation agreement, is described as a "loving relationship" in February 2019.
- [21] A central issue is when they began commencing living together in a marriage-like relationship.
- [22] The claimant alleges the parties began living together at his residence on East 62nd Avenue in December 2018, and thereafter lived together continuously, albeit not always at that address, until their separation in July 2021. The respondent argues that the commencement of cohabitation in a marriage-like relationship did not begin until January 2020, and that the parties separated in May 2021.
- [23] In either scenario, the period of cohabitation was brief.
- [24] In 2019, the parties mutually invested in an enterprise known as Topline Holdings Ltd. ("Topline"), a holding company which acquired a boat and equipment, and operated a fishing charter business. The claimant, according to the evidence, invested \$55,000 in Topline, and the respondent invested \$100,000 in Topline, although the ownership of Topline was 50 shares to the respondent and 49 to the claimant.
- [25] The business operated successfully, according to the claimant, until their separation. The claimant says the respondent has since sold the major asset of Topline, being the boat, for \$62,000.
- [26] There is a child of the relationship, Alexander, who was born January 28, 2021. He is currently under the primary care of the respondent.
- [27] Section 3 of the FLA provides:
- 3(1) A person is a spouse for the purposes of this Act if the person
- (a) is married to another person, or
  - (b) has lived with another person in a marriage-like relationship, and
  - (i) has done so for a continuous period of at least 2 years, or
  - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- (2) A spouse includes a former spouse.

(3) A relationship between spouses begins on the earlier of the following:

- (a) the date on which they began to live together in a marriage-like relationship;
- (b) the date of their marriage.

[28] As noted, I acceded to the respondent's application to bifurcate the trial and adjourned the upcoming trial because it was clear that the scheduled 8-day trial was not ready to proceed on the scheduled date. No examinations for discovery had taken place, the witness list of each party was incomplete, there were no valuations of claimed family property, and the claimant, at the eleventh hour in the application before me, sought significant amendments to his Notice of Family Claim ("NOFC") alleging new causes of action.

[29] The bifurcation of the threshold issue of whether the claimant qualifies as a spouse is a matter of proportionality. On reflection, a determination of the impact of the cohabitation agreement on the claim is also likely a threshold issue.

[30] As evident from the parties' abbreviated trial schedule, the severance of issues of entitlement save time and money.

[31] Whatever the status of the claimant, the relationship between him and the respondent was short by anybody's standards and there appears a genuine issue as to whether the period of cohabitation was sufficiently long to qualify the claimant as a spouse within the meaning of the legislation.

[32] The interim advance sought by the claimant includes \$25,000, being the estimated amount of expert fees, presumably for valuations of various properties and assets owned exclusively by the respondent. The claimant, according to his filed Form 8, has liabilities exceeding his assets.

[33] Much of the claimant's debt arises from personal loans which may or may not be as a result of these proceedings. He is currently employed as an electrical installer making the Canadian equivalent of approximately \$32,000 annually. He is paying approximately \$400 monthly in child support for Alexander. He lives and works in Sweden.

[34] The respondent discloses assets in her Form 8 of approximately \$4.8 million but liabilities, mostly in the form of mortgages, of \$2.8 million. The claimant suggests the respondent's debt is overstated, and that a debt described as a mortgage owing to her parents was in fact a gift to her. If that is so, it would be excluded from property division in any event.

[35] The NOFC contains a claim for division of an asset the parties jointly contributed to, namely Topline, a company in which of the respondent holds 50 of the issued shares and the claimant 49. Presumably, the claimant's entitlement, given his shareholding, is not dependent upon the claimant's alleged status as a spouse.

[36] In the amendments sought, the claimant seeks a 50% of the value of Topline or compensation in lieu of his shareholding. He alleges the respondent has de-valued the company by disposing of its major asset; a boat.

#### The Interim Distribution

[37] The claimant relies upon s. 89 of the FLA ,which reads:

If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution,
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[38] In his original Notice of Application filed April 2025, the claimant sought an interim distribution of \$150,000. That amount rose to \$187,000 in the application filed May 22, 2025; the application I heard June 4, 2025.

[39] In subsequent submissions following my ruling bifurcating and adjourning the scheduled trial, the amount sought has been reduced to \$63,000, reflecting the absence of expert reports and the lesser amount of legal energy expended towards the conclusion of "trial one".

[40] The respondent opposes any interim distribution arguing the issue of the claimant's entitlement to a division of family property and/or spousal support is a threshold issue to be determined at trial. Even if the claimant establishes a spousal relationship, the cohabitation agreement, if enforced, precludes his claims for property division and spousal support.

[41] The respondent also notes the clamant is impecunious and resides in a foreign jurisdiction. Were an advance ordered and the claim dismissed in its entirety, the respondent argues she will be unlikely to recover any sum advanced the claimant to fund the litigation.

[42] The respondent, in opposing the interim distribution sought, relies upon a decision of Associate Judge Nielsen in *Lister v. Bal* (19 April 2024), New Westminster E63811 (B.C.S.C.). In *Lister*, as here, the issue of whether the parties were in a spousal relationship was an issue. In denying the application for an advance under s. 89 of the FLA to the applicant, Associate Judge Nielsen noted the following at para. 14:

[14] In my view, in order to trigger the right to make an interim application for the distribution of property, it is necessary to establish that a spousal relationship existed pursuant to the definition provided in s. 3 of the Family Law Act. In my view, that threshold has not been met here. In no way does this bear on whether or not there was a marriage-like relationship. That is an issue to be decided at trial. However, in order to bring an interim application to

the distribution of property, the requirement of section 3 of the Family Law Act must be met, and I find here that it is not. On that basis, the application for an interim advance of \$50,000 is dismissed.

[43] The respondent argues the same applies here. The assertion of a spousal-like relationship, in the face of the respondent's denial, does not establish it.

[44] In response, the claimant referred me to *Jadavji v. Khadjieva*, 2021 BCSC 2267, where, commencing at para. 9, the principles applicable to interim distributions were set out:

[9] Section 89 of the FLA allows the court to make an order for interim distribution of family property to provide money to fund a family law proceeding. In *Etemadi*, the Court of Appeal recently set out the principles applicable to s. 89 interim distribution orders at paras. 50-53. Those principles, written in the dissenting opinion of Justice Butler, were adopted by the Court. They are:

1. A chambers judge must determine whether the applicant is economically disadvantaged in relation to the prosecution of the litigation or otherwise in pursuit of dispute resolution. If so, then it may be appropriate to make an order that "levels the playing field" or provides for "balanced participation" in dispute resolution.
2. The judge must go through a preliminary assessment of the circumstances that considers both of the s. 89 requirements: namely, whether the applicant can show that it would not be harmful to the interests of the other spouse and it is necessary for the purpose of funding dispute resolution.
3. Whether an interim distribution is necessary involves careful consideration of the quantum required. A judge should not order distribution in an amount greater than what is necessary.
4. The judge must always exercise the discretion conferred by s. 89 on the basis of whether it is in the interests of justice to grant the order sought.

[10] Where a party raises a threshold issue on the merits, the applicant must show that there is a reasonable prospect of success on that threshold issue: *Bartch v. Bartch*, 2018 BCCA 271 at para. 19 citing *I.F. v. R.J.R.*, 2015 BCSC 793 at paras. 190-194.

[45] Here, the respondent argues she has demonstrated that "there is a reasonable prospect of success on that threshold issue". Unlike in *Jadavji*, the claimant here faces the additional hurdle of setting aside, other either on the basis of duress or unfairness, a cohabitation agreement entered into between the parties with the apparent provision of independent legal advice provided to the claimant.

[46] Another factor is the brevity of the relationship. Regardless of whether the parties' relationship was spousal in nature, it lasted, on the best blush of the evidence from the claimant's position, for 2.5 years.

- [47] Given the claimant has no assets and is indebted to others, any division of property will come from accretion to the respondent's excluded property together with his entitlement, which is apparently not denied, to Topline.
- [48] In *McFarlane v. Ponds*, 2019 BCSC 544, the Court explored the concept of "harm" to the non-applicant's spouse. Beginning at para. 13 Master Elwood, as he then was, noted:
- [13] In general terms, the applicant must demonstrate that (a) an advance is necessary to challenge the other's position at trial, and (b) the advance will not jeopardize the other party's claim: *Mckenny v. Mckenny*, 2015 BCSC 1345, at para. 57.
- [14] In *I.F. v. R.J.R.*, 2015 BCSC 793, Madam Justice Ballance explained the purpose of s. 89 in terms of promoting access to justice with an eye to the overall objectives of the FLA, as follows:
- [192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets. Application of s. 89 calls for a purposive interpretation, where the need of the applicant spouse to receive an interim distribution and the potential entailing harm to the other spouse are evaluated contextually with an eye on the larger objectives endorsed by the FLA.
- [15] The balancing consideration in s. 89, of whether the interim distribution would be "harmful to the interests of a spouse", is broader in scope than simply the ability of the responding spouse to mount a defence to the family law claim. As Madam Justice Ballance explained in *I.F.*:
- [193] Determination of the presence of harm requires the court to reasonably anticipate and then assess the consequences that may flow from the interim order being sought. That approach, in turn, invites a highly individualized component to the inquiry. For example, would the distribution being sought in the particular case require a sale of property or of the encumbering of assets; what income tax ramifications might be triggered and what other transactional costs would arise? The concept of harm under s. 89 would also encompass economic implications such as whether the distribution would adversely impact the other spouse's lifestyle or effectively undermine or prejudice his or her argument for reapportionment.
- [16] In *I.F.*, the respondent's position in the underlying litigation was that a marriage agreement precluded the claimant from entitlement to family property under the FLA, which is somewhat analogous to Mr. Ponds' position in this case that his relationship with Ms. MacFarlane was not marriage-like. In these circumstances, Madam Justice Ballance held, the interests of the responding spouse may be harmed if the court required funding of an unmeritorious claim. A reasonable way to "attenuate that manifestation of harm" is to require the applicant to show there is a reasonable prospect of success on the threshold issue of entitlement: *I.F.*, at para. 194.

- [17] A further factor that must be considered is whether the applicant will be able to repay the amount distributed in the event the family law claim is dismissed. This is not to say the court should be satisfied the applicant can repay the advance immediately. Requiring an ability to repay the advance immediately would effectively put s. 89 beyond the reach of most spouses in need of its assistance. An interim distribution will only result in the kind of "enduring" harm that s. 89 guards against if the applicant cannot repay the advance even over a reasonable period of time: I.F., at para. 196-197.
- [49] Here, it is apparent that the claimant is insolvent and is unlikely to be able to repay anything made by way of an advance if his claim for asset division fails.
- [50] Given the combination of: (i) the dispute over the length of the parties' relationship and, thus, the claimant's status as spouse; (ii) the cohabitation agreement disentitling the claimant to any relief, either property division or support; and (iii) the impecuniosity of the claimant causing me to conclude there is little likelihood the claimant could repay the respondent the requested advance were either of the defences raised successful, I decline to order an advance of funds to sustain the litigation.
- [51] That portion of the claimant's application is dismissed with liberty to re-apply after judgment is delivered on the threshold issue(s).

#### Section 91 Restraint of Disposition

[52] Section 91 of the FLA reads:

91 (1) On application by a spouse, the Supreme Court must make an order restraining the other spouse from disposing of any property at issue under this Part or Part 6 [Pension Division] until or unless the other spouse establishes that a claim made under this Part or Part 6 will not be defeated or adversely affected by the disposal of the property.

(2) The Supreme Court may make one or more of the following orders:

- (a) for the possession, delivery, safekeeping and preservation of property;
  - (b) for the purpose of protecting the applicant's interest in property from being defeated or adversely affected,
  - (i) prohibiting the other spouse from disposing of, transferring, converting, or exchanging into another form, property in which the applicant may have an interest, or
  - (ii) vesting all or a portion of property in, or in trust for, the applicant.
- (3) The Supreme Court may make an order under this section before notice of the application is served on the other spouse, or may order that notice of the application be served on the other spouse.
- (4) Despite section 215 (2), the Supreme Court may change, suspend or terminate an order made under this section.

- [53] The respondent, other than generally opposing the making of the order sought, cited no specific prejudice that might accrue if the order sought were made.
- [54] The wording of s. 91 is mandatory unless the opposing party establishes the claim for property division will not be defeated or adversely affected by the disposal of the property.
- [55] In *Hollett v Collingwood*, 2019 BCSC 1591, the Court stated:
- [23] With respect to the application for a restraining order under s. 91(1), such an order is mandatory unless Mr. Collingwood establishes that any claim Ms. Hollett has in the property "will not be defeated or adversely affected by the disposal of the property." However, the court may make exceptions as appropriate for particular assets: see, for example, *J.W.L.P. v. A.J.P.*, 2017 BCSC 1898.
- [56] There is no suggestion the respondent intends to dispose of any of the assets set out in her Form 8. She has not, in my view, made any attempt to satisfy the burden described above in *Hollett*.
- [57] Accordingly, it is proper to make the order sought: the Respondent is restrained and enjoined from disposing of, encumbering, assigning, hypothecating, pledging, or in any similar manner dealing with alleged family property, or of any property in which the Respondent has, or may have, an interest, pending final determination of this action, without the consent in writing of the Claimant or further order of the court save and except for ordinary living expenses with respect to personal bank accounts.

## Document Production

- [58] Given the bifurcation of the trial to deal with the claimant's spousal status under the FLA, document production will initially be restricted to those documents relevant to the parties' status as 'spouses', as well as any documents in the possession of the respondent relevant to the validity of the agreement challenged by the claimant.
- [59] All of the documents listed in the "Document Requests" appended to the Notice of Application related to financial matters and have little, if any relevance to the status of the parties, specifically the length of cohabitation. The requested documents do not relate to the validity of the agreement relied upon by the respondent to deny the claimant's entitlement to either support or property division, regardless of whether or not he qualifies as a spouse within the meaning of the FLA.
- [60] If further specificity is required, there will be liberty to apply following delivery by the respondent of an updated list of documents including those financial documents set out in the claimant's Notice of Application.
- [61] Further document production may be sought following delivery of reasons for judgment in the upcoming trial.

## The Proposed Amendments

- [62] This application is the second attempt by the claimant to substantially alter the pleadings from the first amended NOFC by adding claims for both defamation and breach of privacy.
- [63] The respondent, in the first attempt at amendment, argued the proposed amendments failed to disclose a reasonable cause of action and sought to have the proposed amendments struck.
- [64] At the same time, the respondent sought to withdraw an admission.
- [65] The application was heard by Justice MacNaughton sitting in this Court on January 23, 2025. Reasons were issued on March 6, 2025, and cited as *Akerberg v. Chen*, 2025 BCSC 382.
- [66] Commencing at para. 26, MacNaughton J. (as she then was), noted:
- [26] The applicable test for striking a pleading on the grounds that it does not disclose a reasonable cause of action was set out in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17 [Imperial Tobacco]. A claim will only be struck if, assuming the facts pleaded to be true, the pleading discloses no reasonable cause of action. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial: *Imperial Tobacco* at para. 21.
- [27] The issue in this case is whether Mr. Akerberg's claims that Ms. Cheng libelled or slandered him, or that she breached his privacy, plainly and obviously do not disclose a reasonable cause of action.
- [28] I accept that as currently pled, Mr. Akerberg's pleading of defamation is deficient in a number of ways. For example, the words and/or writing complained of have not been specifically pled.
- [29] I also accept that Mr. Akerberg's breach of privacy claim, a tort, is not properly pled and that some of the conduct he complains of is not, in fact, a breach privacy.
- [30] However, the application before me is not to strike or to force an amendment of certain pleadings but to strike the causes of action as a whole under R. 11-2. I have concluded that Mr. Akerberg's claims of defamation and breach of privacy are ones that may be made in this action because they are related claims that may be joined under R. 3-1(5) involving the same parties. As pled, they may relate to Mr. Akerberg's ability to earn an income and to his claims for division of property. In any event, there is good reason to have all the issues alleged between the parties to this marriage dealt with in one proceeding. This is the case with pleadings in family cases that have included claims for compensation for injuries suffered as a result of family violence.

- [31] I cannot conclude that Mr. Akerberg's defamation and breach of privacy claims should be struck because they do not disclose a reasonable cause of action. I note that both such were successfully brought in *Nesbitt v. Neufeld*, 2010 BCSC 1605, aff'd 2011 BCCA 529, and a breach of privacy claim was brought in conjunction with family law litigation in *Bradford v. Bradford*, 2023 BCSC 877.
- [32] There are, however, pleading deficiencies. The family law action in this case is scheduled to go to trial in June of this year. The addition of the defamation and breach of privacy claims may well mean that the trial will not proceed as scheduled. As currently pled, these claims are deficient, and amendments may be sought. A responsive pleading will also have to be filed. The parties are encouraged to resolve these issues to preserve the trial dates.
- [67] The effect was to acknowledge the propriety of expanding the scope of the litigation but disallow the proposed amendments as they were deficient.
- [68] The respondent's application to withdraw an admission was allowed and an earlier date was substituted in the response to NOFC.
- [69] The proposed amendments, if allowed now, will considerably expand the scope, and therefore the time required for the now scheduled May trial. They are, similar to the proposed amendments sought earlier, in my view, deficient in many respects.
- [70] For example, the claimant seeks to amend the NOFC to seek damages for:
14. Tort Claims (including but not limited to, General damages, Aggravated, exemplary, special, non-pecuniary, and punitive damages);
    - a. Damages - Tort of Family Violence: The Claimant seeks damages for the ongoing pattern of emotional and physical abuse and financial control from the Respondent during the relationship and post-separation. This includes the Respondent's violent and threatening behaviour and pattern of coercive and controlling behaviour, which caused the Claimant significant injury, loss, and to fear for his own safety and the safety of others.
    - b. In the alternative, Civil Damages - Tort of Spousal Assault and Intentional Tort of Battery: The Claimant seeks, inter alia, punitive and aggravated damages for the domestic physical violence inflicted on the Claimant by the Respondent, causing the Claimant significant injury and loss.
- [71] The proposed particulars of the "Tort Claims" are set out in para. 18 of the proposed amendments as follows:
18. With respect to the Tort Claims, the Respondent conducted the following actions:
    - a. Telephone calling the Claimant's friends and stating false allegations about him, such as falsely alleging that the Claimant sexually assaulted her and abandoned her with their child;

- b. On March 14, 2023, the Respondent sent out an email to the whole Vancouver Salmon Fishing Guides Association (hereinafter referred to as the VSFGA) and made-up false allegations about the Claimant and telling the members not to assist the Claimant; and
- c. During the Spring of 2022, the Respondent told a top client that was attempting to book a charter that the Claimant has abused her and left her.

(Collectively, the "Statements")

[72] The amendments previously sought, respecting allegations of defamatory statements, have seemingly been abandoned but, nonetheless, the claimant notes in para. 20:

20. The Defamatory Statements have further had an impact on the Claimant's life in the following ways:

- a. The Claimant alleges that he lost all of his friends here in British Columbia;
- b. The Claimant alleges that he was removed from the VSFGA board due to the Respondent's allegations; and
- c. The Claimant alleges that he lost his business and career opportunities in the fishing industry - no other charter companies want to work with the Claimant.

[73] There are no specifics with respect to the alleged "Tort of Family Violence", nor are there specifics with respect to the alleged tort of spousal assault and the intentional tort of battery.

[74] In general, the amendment sought failed to properly set out the factual basis on which the allegations are founded.

[75] In my view, the only allowable amendment sought, which relates to the upcoming trial, is respecting the cohabitation agreement relied upon by the respondent, where the claimant is alleging it is unfair and ought to be set aside.

[76] Thus, I allow the amendment as follows:

At the time of signing the cohabitation agreement, the respondent took improper advantage of the claimant's vulnerability. The claimant experienced consistent and significant family violence from the respondent in the form of physical, emotional and financial abuse and was extremely fearful of what the respondent would do if he did not sign the cohabitation agreement. The cohabitation agreement is also significantly unfair and entirely favours the respondent's interest over the claimant's.

[77] Otherwise, the application to further amend the amended notice of family claim is adjourned, generally, and may be re-set following judgment in the scheduled May trial.

[78] The outcome of the trial may cause many of the sub-issues raised in the proposed amendments to be rendered moot.

[79] Costs of the applications shall be costs in the cause.

"Harvey J."

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Prepared on 26 October 2026 · Esheria