BLOG

Competing claims between former partners turns on credibility (R.C. v. S.Y.S.)

Evidence | Litigation | Litigation & Dispute Resolution

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Claims of intimate partner violence and/or sexual assault often turn on the parties' competing accounts of what happened. Because such events frequently take place without witnesses, aside from the parties involved, the credibility of the parties is key to determining the truth.

The recent decision of *R.C. v. S.Y.S.*, 2026 ONSC 2799, provides a helpful review of the law on credibility and how trial judges assess credibility to determine the truth of alleged facts underlying a claim. The decision serves as a baseline refresher on the distinction between witness credibility and reliability, particularly in the context of trial testimony. For trial counsel, the practical lesson is that credibility is determined holistically. In cases that turn on competing testimony, the most persuasive narrative will be the one that is most consistent and reliable when considered in the context of the record as a whole.

Generally, credibility findings must also be assessed in light of the presumption of the correct application of the law, particularly regarding the relationship between reliability and credibility. The jurisprudence often stresses the distinction between reliability and credibility, equating reliability with the witness' ability to observe, recall, and recount events accurately, and referring to credibility as the witness' sincerity or honesty: see*R. v. G.F.*, 2021 SCC 20, at paragraph 82, citing *R. v. H.C.*, 2009 ONCA 56, at para. 41.

In *R.C.*, a former couple brought competing claims against each other, one for malicious prosecution and the other for sexual assault and battery.

The plaintiff brought a claim for malicious prosecution against the defendant for making a complaint to police alleging that he had physically and sexually assaulted her. Based on these complaints, the police charged the plaintiff with four counts of assault/sexual assault. However, the charges were later stayed unconditionally.

The defendant brought a counterclaim against the plaintiff for four instances of assault and sexual assault, which had formed the basis of her police complaint.

The court ultimately found that the defendant's evidence lacked both credibility and reliability and dismissed her claim in its entirety.

Credibility deals with whether a witness is honest, whereas reliability considers whether a witness' testimony is accurate. A witness may be credible but not reliable, and vice versa.

The court explained that credibility is not an exact science. A court will use traditional criteria such as a witness' demeanour, inherent probability in the circumstances, and internal and external consistency to assess the witness' evidence. Credibility is determined on the totality of the evidence. A court may accept none, some, or all of a witness' testimony and can attach different weight to different parts.

Notably, where there is conflicting evidence, a court's finding that one witness' evidence is credible may be conclusive of an issue because that evidence is inconsistent with that of the other party.

In this matter, the court found the defendant's testimony was often exaggerated and strained belief. The defendant often embellished her case with untrue statements and refused to accept objective evidence which conflicted with her testimony, such as historical weather records. She further claimed ignorance of critical dates or facts in a manner that appeared manufactured rather than genuine.

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Critically, the court noted an incident during the defendant's testimony where she asked for a bathroom break and was seen taking materials with her. She initially said she only brought her agenda with her to confirm certain dates and questioned the court when it asked her to retrieve the materials. The materials were far more extensive than an agenda and included several pages of her testimony in chief and her statement to the police, as well as handwritten notes that appeared to cross-reference her statements at trial with other statements she had made. The defendant did this when she was confronted during cross-examination about an alleged incident of sexual assault. The court found that the defendant did this to shore up her evidence and refresh her memory on what she previously said about the incident. The court held that this conduct was damaging to the defendant's overall credibility.

Conversely, the plaintiff was found to be credible and reliable. His testimony was straightforward and internally and externally consistent. He was not combative and did not appear to reveal any enmity toward the defendant. The court held that where the parties' testimonies conflicted, it preferred the plaintiff's and ultimately found that, on a balance of probabilities, the defendant had not proven her claim of assault and sexual assault.

With respect to the plaintiff's claim for malicious prosecution, the court found that all four elements of the tort were made out:

a. Did the defendant initiate the proceedings?
b. Were the proceedings terminated in the plaintiff's favour?
c. Did the prosecution lack reasonable and probable cause?
d. Did the defendant act with malice or for a primary purpose other than carrying the law into effect? (*Miazga v. Kvello Estate*, 2009 SCC 51, [2009] 3 S.C.R. 339, at paragraph 3)

First, the police officer who interviewed the defendant and arrested the plaintiff testified at trial, explaining that he had no discretion to not lay charges when faced with allegations of intimate partner violence that, on their face, contained reasonable and probable grounds. The officer was required to take the defendant's statements at face value and, based on her statements, found that the plaintiff had to be arrested and charged. Accordingly, the court found that the defendant initiated the proceedings.

Further, given that the charges against the plaintiff were stayed unconditionally, the court found that the proceedings terminated in his favour.

Finally, the court held that, based on its overall assessment of the defendant as a witness and its rejection of various aspects of her narrative, the defendant knew that her allegations against the plaintiff were false when she made them to the police. The evidence showed that the parties had an extremely vitriolic fight the day before the defendant went to the police to make her complaint. Among other things, the defendant felt insecure about the plaintiff's growing friendship with her friends and felt financially insecure following the parties' break-up. The court found that she was sufficiently angry that she made up false allegations to try to get back at the plaintiff. In the circumstances, the defendant was found to have acted with malice or for an improper purpose.

The defendant's actions proved costly. Based on the plaintiff's successful claim of malicious prosecution, the defendant was ordered to pay him $25,000 in damages for harm to reputation and pain and suffering, $50,000 in punitive damages, and over $172,000 for special damages consisting of legal fees and forensic accounting fees incurred in his defence of the criminal charges and for therapy costs.

In reaching this decision, the court noted that the defendant's conduct warranted significant denunciation, having initiated a criminal proceeding by making false statements, and weaponizing the legal system to get revenge on the plaintiff. Further, it noted her deceitful actions during trial as warranting judicial sanction.

This decision offers a detailed examination of how courts assess witness credibility in civil proceedings, particularly in cases where the parties provide conflicting accounts of private events and there is little or no independent corroborative evidence. Credibility findings are not based on isolated inconsistencies but are instead informed by a cumulative assessment of the evidence, including the consistency, reliability, and plausibility of a witness' account, as well as the witness' overall conduct throughout the litigation. At the same time, the court recognized that credibility findings must be made without resort to stereotypes, myths, or unfounded assumptions about how a complainant of sexual assault is expected to behave, and must instead rest on the totality of the evidence and the specific circumstances of the case.

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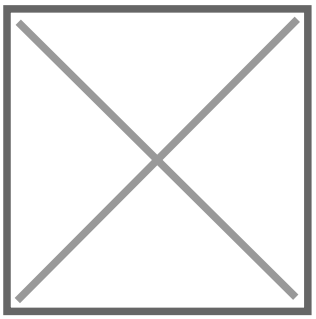
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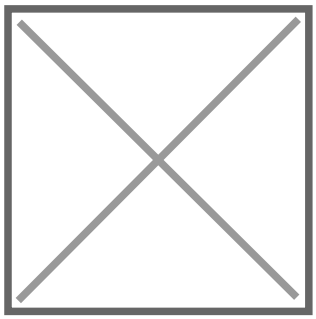
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