

KEEPING CURRENT

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Vicarious liability action against employer of defendant struck as vexatious (*Jones-Moore v. Moore*)

By Dara Hirbod and Isabel Yoo

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Vicarious liability is a doctrine in tort law which holds one party responsible for the wrongful acts of another, on the basis of a special relationship between them. A common example is that of an employer and an employee, where the employer is liable for the wrongs of its employee.

To successfully mount a claim of vicarious liability, the plaintiff must establish that the employee's wrongful acts are acts authorized by the employer or are unauthorized acts so connected with the authorized act that they may be regarded as modes of doing an authorized act: *Bazley v. Curry*, [1999 CanLII 692](#) (SCC).

As seen in *Jones-Moore v. Moore*, [2025 ONSC 1425](#), upheld on appeal [2025 ONCA 877](#), a claim of vicarious liability against an employer will be struck as vexatious where it is brought solely for the purpose of embarrassing an employee and there is no connection between an employee's allegedly tortious actions and their employment.

The plaintiff and defendant were former spouses who had been engaged in acrimonious family law proceedings for 18 years. The parties formalized the resolution of their litigation in a final court order in 2023. However, later the same year, the plaintiff initiated a new action against the defendant, raising claims of stalking, invasion of privacy, sexual harassment, and libel and slander.

The plaintiff named the defendant's employer as a co-defendant, asserting that the employer was vicariously liable for an alleged assault committed by the defendant against the plaintiff, committed while the defendant was employed by the employer. The plaintiff also asserted that the employer participated in the defendant's alleged assault and his general abuse of the plaintiff by providing the defendant with "support and resources".

The employer successfully moved to have the claim struck under [Rule 21.01\(1\)\(b\)](#) of the [Rules of Civil](#)

Procedure on the basis that it was frivolous, vexatious, and an abuse of process.

On the motion, the employer argued that the plaintiff's claim lacked the material facts that the plaintiff relied on for her claim, as required by Rule [25.06](#). The motion judge found that it was unclear how the plaintiff connected the employer to the defendant's alleged assault and abuse of the plaintiff.

The defendant argued, and the motion judge agreed, that the plaintiff's inclusion of the employer in the action was merely to embarrass him in his business relationships. It was unclear how the employer could otherwise meaningfully be implicated in the defendant's alleged conduct.

The motion judge considered the hallmarks of vexatious proceedings, which include proceedings that are brought for an improper purpose, such as the harassment and oppression of parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights: *Re Lang Michener and Fabian*, [1987 CanLII 172](#) (Ont. S.C.). The motion judge found that the plaintiff's claim had many of the features typically associated with vexatious proceedings.

The plaintiff's claim against the employer, as well as the defendant, was accordingly [struck](#).

On appeal, the plaintiff argued that the motion judge erred in dismissing the claim against the employer, again seeking to assert her claim of vicarious liability for the defendant's alleged assault of the plaintiff.

The Court of Appeal for Ontario [dismissed](#) this ground of appeal, noting that the plaintiff had attempted to raise the assault claim in the prior family law proceeding against the defendant. Accordingly, the plaintiff was attempting to

resurrect the family law proceeding, which was an abuse of process.

This decision illustrates that claims of vicarious liability must be supported by material facts and specify a connection between an employee's alleged tortious conduct and their employment. Claims against a defendant's employer, brought to embarrass or harass an employee and their business relations, will be struck as vexatious.

Representation by Gardiner Roberts LLP

The employer was represented by Dara Hirbod, a partner in the Dispute Resolution group at Gardiner Roberts LLP.

Mr. Hirbod was assisted in the preparation of his written materials by Isabel Yoo, an associate at the firm.

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