

CITATION: Frederick v. Spence, 2026 ONSC 3167
COURT FILE NO.: CV-20-00002333-0000
DATE: 20260529
CORRIGENDA: 20260603

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MARIUS FREDERICK and ZHIMING
PANG

Plaintiffs

– and –

RHOAN SPENCE and CHRISTINE
GAGNE

Defendants

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)
) Marius Frederick and Zhiming Pang, Self-
) Represented
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) Adrienne Boudreau and Evan Brander for
) the Defendants
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) **HEARD:** September 9, 10, 11, 12, 15, and
) 17, 2025
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REASONS FOR DECISION

(Text of Original Decision Has Been Amended – Change Appended)

S.E. FRASER, J:

I. Overview

A. Nature of the Action

- [1] Living in urban and suburban environments means living near other people. Civility is key to the peaceful enjoyment of properties. The fabric of our neighbourhoods is enriched when there is respect for the diversity of our neighbours, their property and their privacy. Everyone has a role to play.
- [2] Sometimes neighbours do not get along. This is such a case. I must decide whether there is any actionable conduct.
- [3] This action between neighbours arises in the suburban neighbourhood of Stouffville. The Plaintiffs seek damages for nuisance, assault, trespass, intentional infliction of mental

suffering and intrusion upon seclusion among other relief. They also allege that the Defendants' backyard fence encroaches on their property.

- [4] The Plaintiffs allege that the Defendants shattered their peace and health when they moved in next door. They claim that Mr. Pang was the subject of a violent lawn mower attack by Mr. Spence. They also claim that the Defendants have repeatedly trespassed upon their property and/or instigated others to do so.
- [5] The Plaintiffs also allege that the Defendants have made defamatory statements, homophobic taunts, and assertions that they hate children. Finally, they assert that the Defendants have terrorized them and invaded their privacy.
- [6] The Plaintiffs assert that the actions of the Defendants are driven by homophobia and discriminatory beliefs. They allege that they have been targeted, that the Defendants have used family members and friends as proxies in their campaign against the Plaintiffs and that the Defendants monitor their movements.
- [7] The Defendants claim they are bewildered by the allegations and deny them. They state that they had only two short conversations with the Plaintiffs. They claim the Plaintiffs misperceive innocent and ordinary events as intentional acts of wrongdoing and that the Plaintiffs have also disrupted their peace and enjoyment of their property. They assert that they and their children have suffered harm by the stress of the on-going difficulties with their neighbours.

B. Factual Background

- [8] The Plaintiffs have resided in the neighbourhood since 2012. The Defendants moved in on July 4, 2019. The Plaintiffs describe themselves as a same sex interracial couple. Mr. Frederick is Black. Mr. Pang immigrated from China after being present in Tiananmen Square when the tanks rolled in. They took pride in their house, but were also concerned about their safety, so they installed a security camera. The camera creates a geo-fence so that they are alerted when someone steps on their property.
- [9] The Defendants, Rhoan Spence and Christine Gagne, moved into the house next-door with their two daughters and Ms. Gagne's mother. Ms. Gagne's mother was going to construct and occupy a basement suite. They looked forward to a peaceful and quiet neighbourhood where their children could ride bikes. They too identify as a couple of mixed race.
- [10] The Plaintiffs shared a property line with the Defendants which invisibly divided their front yards. The Plaintiffs had a good relationship with their previous neighbour including an agreement about where to put the snow in winter as the small front yard with the shared lot line did not provide a lot of room.
- [11] The Plaintiff, Mr. Frederick, raised this with the Defendant, Mr. Spence, in July 2019 and felt that Mr. Spence was dismissive of him. The Defendant thought the issue could wait as it was only July.

- [12] Concerned about snow and their property line, the Plaintiffs decided to install a small portable fence to divide the front yards. While Mr. Pang was in the process of doing so, Mr. Spence came to the front yard, started his lawn mower, and, without a word, pushed it towards Mr. Pang who quickly moved away.
- [13] The Plaintiffs claim this was an assault and that the Defendants engaged in a campaign of intimidation, hate and discrimination and defamation against them.
- [14] On July 21, 2020, the Plaintiffs' lawyer wrote to the Defendants.
- [15] On July 28, 2020, Mr. Spence came to the Plaintiffs' house and knocked on the door. He made disparaging remarks about the Plaintiffs to another neighbour which were captured on video.
- [16] On July 30, 2022, the Defendants replied to the Plaintiffs' lawyer. The letter set out the Defendants' position, stated that they would be respectful of the Plaintiffs' property and expressed concerns about the way that the Plaintiffs had addressed the problems. It also contained some comments that inflamed the matter from the Plaintiffs' perspective. The letter stated:
- At the same time, Paul also has security cameras on his property. His cameras are setup with two-way audio and there are privacy laws with him listening to private conversations. Mr. Frederick must be aware that if he is recording audio conversations that the law states that he must post a sign stating that he is recording audio. We are aware that he is doing this as the first day we moved in, I was approached by one neighbour who warned us that Paul sits all day watching his cameras and jumps on the intercom asking kids to get off his driveway.
- Furthermore, neighbouring kids said to our daughters that he put up trip wire on his property with a motion sensor scaring one child. The kids in the neighbourhood ride their bikes and scooters (sic) cheerfully zig-zagging in-and-out of all the neighbouring driveways, but they know not to go on Mr. Frederick's. It's sad when our children ask why our neighbours don't like kids, and are scared if they accidentally step on the edge of their grass near the road.
- [17] On August 23, 2020, one of the Defendants' daughters was captured on video spitting on the Plaintiffs' property.
- [18] The action was commenced on August 31, 2020, and the Statement of Claim was amended on January 20, 2021.
- [19] On September 21, 2023, Iris Gagne, the mother of the Defendant, Christine Gagne, walked onto the Plaintiffs' driveway while carrying mail and quickly walked off. The Plaintiffs alleged that she acted as a proxy of the Defendants in doing so.

- [20] On March 21, 2024, at a case conference, the parties consented to an interim order that they not enter the property of the other and since that time, they have been prohibited from entering the other's property. The Plaintiffs ask that I permanently enjoin the Defendants.
- [21] On August 25, 2024, one of the Defendants' daughters ran onto the Plaintiffs' property with another child. Mr. Pang came out of his house and yelled at them, "get the fuck off my property, one step over the line, you are going to jail you fucking bitch".
- [22] On October 28, 2024, Justice Sutherland made a further order, following a case conference, restraining the parties from entering the property of the other and specified that this included all family members, friends or any acquaintances of the Plaintiffs and Defendants. The Plaintiffs now seek to make the interim order permanent.
- [23] For the reasons set out below, I dismiss the bulk of the Plaintiffs' claim. I find that the Defendant, Rhoan Spence, assaulted Mr. Pang and defamed both Plaintiffs. I find no evidence of a campaign of hate and discrimination or that any of the Defendants' actions were homophobic.
- [24] To the extent that the Plaintiffs' neighbours now treat them differently, I find that their own actions likely contributed to this.

II. Issues

- [25] The Plaintiffs allege that the Defendants and their proxies committed several legal wrongs. I will deal with each of them in turn, setting out the governing legal principles and applying the facts to them.

III. Analysis

A. *Evidence*

- [26] The Court received documentary evidence, including video and photographic evidence, and heard from the parties. There were also read-ins. I do not summarize all the evidence, although I have considered it.

(i) Background

- [27] The Plaintiffs have been married for 20 years and lived in their residence since approximately 2013. They describe having no problems with their neighbours. Mr. Frederick worked for GO Transit and would leave early in the mornings. When working, he would go to bed very early in the evening.
- [28] The Plaintiffs installed a geo-fence around their property. It digitally marks the boundaries of the property. Mr. Frederick said that, in his work, there would sometimes be threats on his life, and for this reason they installed this security system. There are data charges associated with the triggering of the system. When it is triggered by someone coming across the geo-fence, a bell will ring, and the camera records.

- [29] Mr. Pang has never spoken with the Defendants. Only Mr. Frederick has spoken with the Defendants. There were a few conversations. The first conversation, which was a few days after the Defendants moved in, was a short conversation from their backyard porches. Mr. Spence said that they complimented Mr. Frederick on his deck. The second conversation was about snow in about July 2019. Mr. Frederick also spoke to Mr. Spence to complain about vehicles turning around in their driveway and workers at the Spence/Gagne house leaving cigarettes behind.
- [30] The first conversation on the back porch was cordial by the account of those present: Mr. Frederick and the Defendants.
- [31] The impressions about the second conversation differ between Mr. Frederick and Mr. Spence. The Plaintiffs and their former neighbours used to put all the snow together between the houses. When Mr. Frederick discussed this with Mr. Spence, he felt Mr. Spence was dismissive. On video, the conversation looks and sounds friendly, although not all the words can be made out. For Mr. Spence, it clearly looked like it was not a priority.
- [32] In his testimony, Mr. Spence said that he told Mr. Frederick that he would be respectful and courteous but stated that they could deal with the issue when they actually had snow.
- [33] The properties slope downwards to the backyard, and the Defendants intended to install a walkway on their side to the entrance of the basement apartment unit.

(ii) Snow and the Lawn Mower Incident

- [34] Mr. Frederick and Mr. Pang became concerned about drainage and their property line when they learned of the Defendants' plan to put in a walkway between the houses to accommodate a suite for Ms. Gagne's mother.
- [35] Mr. Pang and Mr. Frederick decided that they would extend the fence from the gate between their house and the neighbours to the front of the home to protect the property line. They decided to put up a small fence which Mr. Pang described as a snow fence. He stated that while he was doing this, the Defendant, Mr. Spence, came over and pushed his lawn mower towards him. This is depicted on video from the Plaintiffs' house. It captures both audio and video.
- [36] Mr. Pang walked away. He testified that no words were spoken. He waited until the Defendant was finished mowing, about 20 to 30 minutes later, before he went back outside to finish his work. The lawn mower did not touch him. He was not hit by stones. This is the alleged assault.
- [37] Mr. Pang testified that he was in Tiananmen Square in China when protesters were killed. He said that what he learned is that if threatened, escape. If there is no place to hide, if you cannot hide, fight. He explained that this is why he walked away. He states that the pushing of the lawn mower was an assault. He did not seek mental health or other supports afterwards. He testified that he was denying what he was experiencing for a long time. He

has since sought counselling but did not do so for at least two years after the incident. The Court was provided with no opinion evidence about his injuries.

- [38] The Plaintiff, Mr. Frederick, recalls Mr. Pang coming in as flustered. He contacted the police. However, Mr. Pang did not want Mr. Spence to be charged as he came to Canada for a peaceful life. The police told them to keep a good record, and if there was an incident of concern, to notify the police. The Plaintiffs, at this point, began keeping a log of issues of concern.
- [39] Mr. Frederick took notes. He has dyslexia so he would take a picture and get a date stamp from the event. Eventually, he began recording events in this fashion in a spreadsheet.

(iii) Involvement of Legal Counsel and the Doorbell Incident

- [40] Mr. Frederick remained concerned and retained a lawyer, Mr. Ken Wise. By a letter dated July 21, 2020, Mr. Wise wrote to the Defendants stating that he had been retained by Mr. Frederick to address recurring issues including irresponsible contractors, a land survey and the Defendants' vocal complaints about it, intimidating behavior by the Defendants such as the lawn mower incident with Mr. Pang, the installation of cameras that aimed directly into the windows of their house and trespassing.
- [41] The letter advised that Mr. Frederick was eager to engage in constructive dialogue and that he preferred not to engage in legal action. It did note that the Defendants could be jointly and severally liable in a civil proceeding. The letter concluded that he looked forward to hearing from them or their lawyer.
- [42] While the letter is sent naming only Mr. Frederick, Mr. Pang testified that they both decided to send the letter. He was having panic attacks. No medical evidence was tendered at trial to support this.
- [43] On July 28, 2020, after receiving the letter, Mr. Spence came to the Plaintiffs' front door. He rang the doorbell and left when no one answered. The video captured his attendance at the door.
- [44] Before arriving at the door, Mr. Spence can be heard yelling up and down the street. Mr. Spence is seen pacing in his driveway, walking on the sidewalk and then approaching the Plaintiffs' front door. He is heard telling a person who is off camera that "I'm gonna lose my mind" and that "I got a letter from this guy's lawyer" and that he would let him read the letter. Asked by the neighbour where he was going, he said he was going to talk to him, meaning Mr. Frederick. He sounded upset, irritated and angry. The neighbour says something like "I don't want to know", to which Mr. Spence replied, "yes you do, because you are going to get one too". When no one answered the door at the Plaintiffs' residence, Mr. Spence left in the opposite direction of his house and off-camera, his voice can be heard saying, "such weasels, such fucking weasels".
- [45] When asked in cross-examination why he went to the door rather than calling Mr. Wise, Mr. Spence said that he went to them as a respectful neighbour, trying to see what they did

wrong, how to correct this, find out how they could move forward and that Mr. Pang chose not to open the door. I did not believe this answer because his conduct before and after clearly undermined his statements. He was behaving neither respectfully nor calmly. His statements clearly disparaged the Plaintiffs. He referred to them as weasels, even though, on his own evidence, he had never spoken with Mr. Pang.

- [46] His words, spoken to another neighbour, suggested that the Plaintiffs were weasels who would involve lawyers for no reason. As he did not names, he implicated both Plaintiffs.

(iv) The Spitting Incident

- [47] Mr. Pang testified that in August 2020 or 2021, a date which he could not recall specifically, he saw the mother and the two girls walking by their property. The daughter stepped on his walkway, looked at their door and spat. The audio of the video shows that an adult quickly told the child, as if to correct her, “[Child’s name!]”¹, we don’t do that, we’re not allowed to”. The two adults, who would be identified as Ms. Gagne and her mother, and the children, continued to walk by.
- [48] Mr. Pang claims that there was a cheer before she spat. No cheer is heard or seen on the video.
- [49] Mr. Pang stated that spitting is an international sign of hate towards the 2SLGBTQI+ community and that this was targeted hate. It was then that he decided that they had to fight the hate, no matter the cost. Mr. Pang stated that this was a situation of another trespass by the Defendants.
- [50] Mr. Pang spoke of concerns about the Defendants’ vehicles turning into their driveway and setting off the alarm. He did not ask the Defendants to stop this.
- [51] In cross-examination, Mr. Pang acknowledged that while the Plaintiffs complain of trespassing, there are no “No trespassing” signs in their driveway. He acknowledges that he did not ask the Defendants to stop turning around in their driveway.

(v) Other Incidents

- [52] During his testimony, Mr. Pang complained about other things he heard Mr. Spence yell. Once, Mr. Spence yelled loudly “I can park my car anywhere” which appeared to be in response to the Plaintiffs’ concerns about vehicles.
- [53] On another occasion, Mr. Spence yelled, “I love kids, kids can play at my house anytime”. Mr. Pang suggested that Mr. Spence was implying, by this comment, that the Plaintiffs did not love children.
- [54] Mr. Pang states that the Defendants’ lawyer defamed them by suggesting in a letter that the Plaintiffs hate children. Mr. Pang states that it is a homophobic trope that gay men hate

¹ I have omitted the child’s name to protect her privacy.

kids. He claimed that this was reinforced at examinations for discovery when the Defendants' lawyer repeatedly asked them "do you hate kids".

[55] The Plaintiffs complain that Iris Gagne, the mother of Christine Gagne, has put garbage in their bin without asking for permission.

[56] Mr. Frederick and Mr. Pang testified that they were driving and were followed by Mr. Spence until they lost him. Although Mr. Pang testified to this event, no other evidence was called and I find that I cannot rely on his memory.

(vi) Ball in the Driveway

[57] After the March 21, 2024 Order came into effect, the geo-fence alerted him of someone on his property. The Defendants' daughter was playing with friends and came into the upper part of the Plaintiffs' driveway, running after a ball. Mr. Pang claims this was a further trespass. Mr. Pang stated that he came out of his house, told the girls that there is an order and that they will go to jail.

[58] Mr. Pang claimed this was an act of intimidation and a breach of the Court Order which was amended to include that the Defendants make reasonable efforts to control anyone from their home from entering onto their property. He stated multiple times that the Defendants had used proxies to violate the Court Order and that he was on his property when he shouted at the children.

[59] When the Defendants' video of this incident dated August 24, 2024 was played in cross-examination, Mr. Pang can be seen saying "get the fuck off my property, one step over the line, you are going to jail you fucking bitch". Mr. Pang claimed that this was not the whole video.

[60] Police attended at the Plaintiffs' residence after this incident.

[61] Mr. Pang states that the failure of the Defendants to obey the Court Order has caused him mental stress.

[62] Mr. Pang has never spoken to the Defendants. To the extent that he was bothered by the Defendants' vehicles turning into his driveway, he never spoke with them.

[63] In addition, he claims that the Defendants caused damage to their property and that they had to resod their property. They also had to plant trees to put some privacy protection between their house and the Defendants'. They claim the cost of those changes.

B. Burden of Proof

[64] The Plaintiffs must prove their case on a balance of probabilities.

C. Credibility and Reliability

- [65] Credibility is about the honesty or veracity of a witness' testimony. Reliability has to do with the accuracy of a witness' testimony which is often assessed by the witness's ability to observe, recall and recount the events at issue: *R. v. Sanichar*, 2012 ONCA 117, at paras. 69 – 70 per Laskin J.A, as adopted by the Supreme Court of Canada (2013 SCC 4, [2013] 1 S.C.R. 54).
- [66] As set out in *R. v. Kruk*, 2024 SCC 7, 489 D.L.R. (4th) 385, at para. 81, when assessing credibility and reliability of the evidence of a witnesses, I must remain grounded in the totality of the evidence. At the same time, I must evaluate the testimony of each witness and make determinations that are entirely personal and particular to that individual.

D. Did the Defendant, Mr. Spence, Assault the Plaintiff, Mr. Pang?

(i) Governing Principles

- [67] Assault is a tort. To prove assault, the Plaintiffs must show that the Defendant intentionally caused another to fear imminent contact of a harmful or offensive nature. Imminence of the harmful or offensive conduct is essential to proving the tort. See: *Barker v. Barker*, 2022 ONCA 567, 162 O.R. (3d) 337, at paras. 138, 170-171.

(ii) The Lawn Mower

- [68] The video depicts Mr. Pang working away on his lawn in a crouched position. As he we doing so, Mr. Spence comes to the front yard, starts his lawn mower and pushes it directly toward Mr. Pang. Mr. Pang gets up and walks away.
- [69] Mr. Pang and Mr. Spence were the only persons involved. There is also video evidence taken before, during and after the incident.
- [70] Mr. Spence denied any attempt to threaten or intimidate Mr. Pang. However, I do not accept his evidence.
- [71] His story does not hold together.
- [72] Mr. Spence said that he had been mowing his lawn in the backyard when his mother-in-law came to tell him that Mr. Pang was putting up a fence. He finished mowing in the back and then went to the front lawn. He stated that he did the boulevard first, which took about six to seven minutes, and then went to where Mr. Pang was. He stated that he took a step towards Mr. Pang, pulled the mower back and then Mr. Pang walked away.
- [73] He stated there was no danger to Mr. Pang because his lawn mower is enclosed so that no debris can come out. Mr. Spence denies that he used the lawn mower to intimidate Mr. Pang.

- [74] Mr. Spence's account does not make sense. It does not make sense that after learning about the fence from his mother-in-law, that he would go to the front yard, not say a word to Mr. Pang (with whom he had never spoken with), start his lawn mower and push it right at him.
- [75] Other evidence suggests that he was upset by the fence. In his letter to Mr. Wise dated July 30, 2020, Mr. Spence said that days before the fence was put up, he arrived home to see a red line running across the lawn and learned that his neighbour, Paul (Mr. Spence referenced in this letter that Paul is presumably Mr. Frederick), had his property surveyed. In the letter, Mr. Spence stated that when his mother-in-law alerted him to the fence installation, he told her that "Paul is putting up a fence because he is assuming the worst of us by thinking we will shovel snow on his property." The letter discusses how they are the only property in Stouffville with a fence dividing the front properties.
- [76] Second, given the small size of the boulevard, his evidence that it took him six to seven minutes to mow the boulevard is not credible.
- [77] Further, his account is undermined by video taken minutes before he pushed the mower towards Mr. Pang and after. Garbage is seen on the boulevard both before and after the incident which would not have survived Mr. Spence mowing the boulevard.
- [78] He stated that his type of lawn mower is closed such that a person near it could not be injured by flying debris. Mr. Pang could not have known that.
- [79] I find that Mr. Spence intentionally pushed his lawn mower towards Mr. Pang. I find that he intended to do so because he was upset at Mr. Pang and Mr. Frederick for installing the fence. The Plaintiffs have therefore proven that the Defendant, Mr. Spence, intentionally caused Mr. Pang to fear imminent contact of a harmful nature.

E. Trespass

(i) Governing Principles

- [80] In *Calandra v. Parasco*, [1998] O.J. No. 4716 (C.J. Gen. Div.), Justice Hoilett cited with approval the elements of the cause of action for trespass set out in *Linden on Torts*, at para. 13:

The tort of trespass to land is committed by entry upon, remaining upon or placing or projecting any object upon land in the possession of the plaintiff without lawful justification. To be actionable, the defendant's act must be voluntary, but it need not be intentional. Trespass may be committed either intentionally or negligently. The interference with the plaintiff's property must be direct, not indirect or consequential.

- [81] It is actionable without proof of damage.
- [82] However, where it is accompanied by aggravating circumstances, the plaintiff is entitled to punitive damages. See: *Calandra v. Parasco*, *supra*, at para. 14.

(ii) *Application*

- [83] The Plaintiffs argue that there have been trespasses by the Defendants by their proxies: the Defendants' daughter (spitting and ball-playing) and by Ms. Gagne's mother. It is true that the daughter projected an object (spit) onto the Plaintiffs' property and that Ms. Gagne's mother put garbage in their bin and walked on their property, albeit briefly.
- [84] I appreciate that the Orders of Justice Sutherland required the Defendants, their acquaintances and family to stay off the Plaintiffs' property. However, I cannot find that they did so at the direction of the Defendants and I do not have sufficient information to make such an inference.
- [85] Even if I am wrong in this regard, I would award no damages as I consider them *de minimis*, meaning too small to be meaningful.

F. Defamation

(i) *Governing Principles*

- [86] In *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, the Supreme Court of Canada set out at para. 28 what a plaintiff must prove to obtain judgment and damages in an action for defamation:
- a. that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person;
 - b. that the words in fact referred to the plaintiff; and
 - c. that the words were published, meaning that they were communicated to at least one person other than the plaintiff.
- [87] The Court held that if these elements are established on a balance of probabilities, falsity and damage are presumed. Slander, however, requires proof of special damages, unless the impugned words were slanderous. The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless. The tort is thus one of strict liability.
- [88] If proven, the onus shifts to the defendant to advance a defence. These defences include truth and that the statement was made in a protected context (privilege). See: *Grant v. Torstar*, *supra*, at paras. 32-24.

(ii) *Application*

- [89] I find that the Defendant, Mr. Spence, defamed the Plaintiffs.
- [90] First, Mr. Spence stated to the neighbour that he was going to get a letter from the Plaintiffs' lawyer too. These words implied that the Plaintiffs sent lawyer letters for no reason and implied that they were unreasonable. Combined with the statement "fucking weasels",

these words would lower the reputation of the Plaintiffs in the eyes of the neighbour who is off camera. The words related to the Plaintiffs and were communicated to the neighbour.

- [91] There is no legal defence in respect of these statements. I do not find the argument that the Plaintiffs have complained about other officials to be a defence of truth to the defamatory statements made here. There is no privilege that attaches to the defamatory words.
- [92] With respect to the argument that the Defendants have stated that they hate kids, I find no support for this proposition. First, I cannot conclude that Mr. Spence's statements that "he loves kids" and that kids can play at his house any time to be evidence that can support the Plaintiffs' theory. In short, I cannot infer from this statement that what the Defendant is saying is that because he loves kids, that the opposite is true of the Plaintiffs. It is too much of a stretch.
- [93] I also find that the Defendants' statements in their letter to Mr. Wise are not defamatory. The statement "neighbouring kids said to our daughters that he put up trip wire on his property with a motion sensor scaring one child" is not defamatory. The statement is made to the Plaintiffs' lawyer. It repeats a statement that the Defendants heard. In my view, the words taken as a whole would not lower the Plaintiffs' reputation in the eyes of reasonable person.
- [94] It is true that at examinations for discovery, the Defendants' lawyer asked, "Do you hate kids?". In my view, this question is not actionable. It is subject to qualified privilege. It would be necessary for a lawyer, representing a defendant, in a defamation action, to explore truth as a defence. I find the Plaintiffs were not defamed in this way and that if they had been, the statements would be the subject of qualified privilege.

G. Intimidation and Discrimination

- [95] The Plaintiffs claim that they have endured six years of harassment which has caused irreparable harm, job loss, financial ruin and PTSD. Despite the broad claims made out in the statement of claim and at trial, I find no evidence of discriminatory actions by the Defendants.
- [96] Mr. Pang's testimony was read-in where he was asked to identify incidents of homophobia, anti-gay comments or activities. Mr. Pang alleged that the Defendants used the children to spread hate among the entire neighbourhood. He noted that before the Defendants moved in, children used to draw on people's sidewalks and driveways and that now the children do not paint in front of their house and that their house, "the gay house", is clearly singled out. However, when asked, he provided no facts to support his conclusions.
- [97] I acknowledge the historical discrimination towards the 2SLGBTQI+ community which includes harmful statements that gay men are dangerous to children. I accept Mr. Frederick and Mr. Pang's evidence that members of their community have historically been the subject of prejudice and discrimination and that that includes based on the discriminatory belief that they are harmful to children. Society has made efforts towards equity and

inclusion but these discriminatory beliefs persist. See: *R. v. Whatcott*, 2023 ONCA 536, for example.

- [98] However, I can find no evidence that prejudice and discrimination motivated Mr. Spence's actions and I find no actionable behaviour on Ms. Gagne's part.
- [99] The Plaintiffs have also not proven that the friends and relatives of the Defendants have acted as proxies.
- [100] The Plaintiffs have not proven on a balance of probabilities that the Defendant, Mr. Spence, followed them by car.
- [101] The Plaintiffs have suggested that Ms. Gagne cheered on her daughter when she spit on their property. This is not a reasonable interpretation of what is seen on video.
- [102] Mr. Spence did assault Mr. Pang, defamed them and behaved rudely, foolishly and obnoxiously towards the Plaintiffs, starting from the lawn mower assault and continuing at least to when he was captured on video disparaging the Plaintiffs before the neighbour.
- [103] I accept that the children may now avoid their house, and in my view this is likely the consequence of police being called to the house and Mr. Pang yelling at children.
- [104] However, I can find no evidence, other than the lawn mower assault of intentional intimidation which in my view is addressed through the tort of assault in this case.

H. Intrusion upon Seclusion

- [105] The Plaintiffs complain that the Defendants' video cameras point at the house and that they cannot privately enjoy their property as the neighbours are surveilling them. They contrast this with their own cameras, which record only their own property and into the street.

(i) Governing Principles

- [106] The tort of intrusion upon seclusion is about intrusion into the private affairs or section of another person. It is about liability for an invasion of privacy. A plaintiff proves the tort when they prove:
 - a. That the defendant acted intentionally or recklessly;
 - b. That the defendant invaded, without lawful justification, the plaintiff's private affairs or concerns; and
 - c. A reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish. See: *Jones v. Tsige*, 2012 ONCA 32, 108 O.R. (3d) 241, at para. 71.
- [107] Proof of harm to a recognized economic interest is not an element of the cause of action. See: *Jones v. Tsige*, *supra*.

[108] In recognizing the right to sue for invasion of privacy, the Court of Appeal found that:

A claim for intrusion upon seclusion will arise only for deliberate and significant invasions of personal privacy. Claims from individuals who are sensitive or unusually concerned about their privacy are excluded: it is only intrusions into matters such as one's financial or health records, sexual practises and orientation, employment, diary or private correspondence that, viewed objectively on the reasonable person standard, can be described as highly offensive.

(ii) Application

[109] The Plaintiffs have not proven the required elements of the tort. The evidence does not establish intrusions which are highly offensive. Rather, the Defendants' cameras mainly capture only elements of the exterior of the Plaintiffs' property which would be visible from the street or from the Defendants' property. The exception to this is the part of the Plaintiffs' backyard which is pointed towards the side yard. It does not capture the Plaintiffs' side yard as the trees obscure it. The backyard is partially captured.

[110] There is no evidence that the cameras are able to record events inside the house.

[111] I do not accept, as proven, that this is an invasion of the Plaintiffs' private affairs or concerns. What occurs in the backyard would be noticeable from the back balcony of the Defendants. There is no proven intent to intrude. Further, nothing in the evidence demonstrates that a reasonable person would consider these security cameras as highly offensive, causing distress, humiliation or anguish.

[112] I am struck by the Plaintiffs' inability to see how their own efforts might intrude on the privacy of others. While they claim that the police told them to take notes, the Plaintiffs developed a spreadsheet tracking the movements of their neighbours over a lengthy period.

I. Nuisance

(i) Governing Principles

[113] Private nuisance concerns interference with an owner's use of private lands. It is established on a two-part test. The interference must be both substantial and unreasonable. Substantial means non-trivial. If a plaintiff can establish that interference is non-trivial, then the Court must examine whether it was also unreasonable. See *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2013 SCC 13, [2013] 1 S.C.R., at para. 19.

(ii) Application

[114] None of what the Plaintiffs allege as nuisance come close to substantial interference. A child spitting. A child chasing a ball. A mother-in-law putting garbage in a neighbours' garbage pail. They do not meet the threshold of substantial interference.

- [115] The Plaintiffs originally complained of cars turning around in their driveway. However, the only incident pursued at trial involved Ms. Gagne turning ever so slightly into the Plaintiffs' driveway in a manner that did not even cross the sidewalk. The evidence showed that the street side of the sidewalk is the public side of the driveway. Even if this was not the case, I would not find this to be anything more than trivial interference.
- [116] I note that part of the Plaintiffs' complaint is that they are alerted every time there is an interference with the geo-fence. This means that if someone puts a toe over the geo-fence they are disturbed with an alert. It raises the question of the value of the type of security that they have chosen.

J. Intentional Infliction of Mental Distress

(i) Governing Principles

- [117] As set out in *Ahluwalia v. Ahluwalia*, 2023 ONCA 476, 167 O.R. (3d) 561, at para. 69 (overturned on other grounds, *Ahluwalia v. Ahluwalia*, 2026 SCC 16), the Plaintiff must prove three things to prove the tort of intentional infliction of mental distress:
- a. the defendant's conduct was flagrant and outrageous;
 - b. the conduct was calculated to harm; and
 - c. conduct caused the plaintiff to suffer a visible and provable illness.

(ii) Application

- [118] The Plaintiffs have not proven this tort. They have offered no evidence of a visible and provable injury. I have received no expert evidence on injuries. Putting that aside, I also find that they have not proven that the Defendants' conduct was flagrant and outrageous or calculated to harm.
- [119] I accept that they are fearful and concerned, but I find that they allowed early conflict with the neighbours to taint their view of every action and inaction of the Defendants.

K. Damages

- [120] The Plaintiffs tendered no evidence of damages. The Defendants read-in their testimony from examinations for discovery. In the read-in relating to Mr. Pang, Mr. Pang agreed that he never missed any work because of the Defendants' conduct, although he stated that he does not feel comfortable going out or seeing the Defendant, Mr. Spence. He states that when he goes to work, he has had to look back every time to see if someone was following him or might attack him from behind. Mr. Frederick testified to Mr. Pang's panic attacks. However, I have no opinion evidence that would assist me in determining what caused them or whether what he describes is a panic attack.

- [121] At his examination for discovery, Mr. Frederick testified that he does not feel safe in his own home or on his property because of Mr. Spence's conduct. However, he did not consult a doctor about the issues, has not sought any treatment or consulted a therapist.
- [122] Whether the Plaintiffs have sought care is not the end of damages assessment. A person can quite reasonably fear another person. If the person has reason to fear another person, medical treatment will not put an end to that reasonable fear. However, I am also aware that Mr. Pang's past experiences made him vulnerable to feeling under attack, specifically his experiences at Tiananmen Square.
- [123] Once Mr. Spence came at Mr. Pang with the lawn mower, it destroyed Mr. Pang's peace and security in his house. I find that he has been injured as a result of Mr. Spence's conduct. I cannot find the same for Mr. Frederick. I do not find the harm claimed by Mr. Frederick to have sufficient proximity to the assault. In addition, the Plaintiffs did not plead damages for loss of care, companionship or guidance under the *Family Law Act*, R.S.O. 1990, c. F.3, as amended.
- [124] It would be easy to say that the Plaintiffs should just move. The same might be said for the Defendants. Putting aside that moving is costly, each is entitled to the peaceful enjoyment of their property.
- [125] The amount awarded for non-pecuniary damages will depend on the facts of the case. The Plaintiff is entitled to "fair and reasonable compensation" for damages that he sustained and will continue to sustain including for physical and mental pain and suffering, loss of amenities and enjoyment of life. See: *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC), [1978] 2 S.C.R. 229, at pp. 261-264.
- [126] As noted by Justice Leach in *D.M. v. W.W.*, 2013 ONSC 4176 , at paras. 122 – 124:

That "one figure" may be augmented in appropriate cases if the circumstances warrant "aggravated damages"; for example, where the defendant's conduct has been "particularly high-handed or oppressive", thereby increasing a plaintiff's "humiliation, anxiety, grief, fear and the like". Such aggravated damages are compensatory in nature, and "take into account the additional harm caused to the plaintiff's feelings". See *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at paragraph 188.

However, "aggravated damages" usually are not awarded separately or "in addition to" general damages. Rather, general damages normally are assessed "taking into account any aggravating features of the case and to that extent increasing the amount awarded". See *Norberg v. Wynrib*, *supra*, at paragraph 53, and *Doe v. Dell*, 2003 CanLII 64220 (ON SC), [2003] O.J. No. 3546 (S.C.J.) at paragraph 279.

Our courts generally have emphasized that the assessment of such non-pecuniary losses is functional; to provide alternative sources of satisfaction

and solace, instead of making a futile attempt to put a money value on what has been lost. See *Andrews v. Grand & Toy Alberta Ltd.*, *supra*, at pp. 261-264, and *B.M.G. v. Nova Scotia (Attorney General)*, 2007 NSCA 120 (CanLII), [2007] N.S.J. No. 506 (C.A.), at paragraph 120-126.

[127] The facts of the case are unusual. This is an assault, not a battery. There was no physical contact. However, I find Mr. Spence's intention was to scare and challenge Mr. Pang, to leave him unsettled, which it did. I have found no comparable case.

[128] The case law that I have reviewed includes:

- *Costantini v. Constantini*, 2013 ONSC 1626, where the Court awarded general damages in the amount of \$15,000 involving physical violence in the marriage without permanent or prolonged harm.
- *Grech v. Scherrer*, 2021 ONSC 6740, where the plaintiff and defendant were neighbours involved in an ongoing dispute that eventually escalated into physical altercations. Justice McKelvey awarded \$50,000 in general damages for physical and psychological injuries, along with \$960 for lost income, and \$10,227.25 for medical expenses. The Court noted that the injuries were relatively short-term. Claims for aggravated and punitive damages were rejected, as the defendant's conduct was not malicious or egregious. I note that there was medical evidence called to support the injuries.
- *Morris v. Morris*, 2025 ONSC 2483, wherein McCarthy J. found the respondent's conduct including physical and emotion abuse to constitute as assault, battery, and intentional infliction of emotional distress. The Court awarded \$50,000 in general damages and \$25,000 in aggravated damages, but declined to award punitive damages, finding that although the conduct was outrageous, it did not warrant further penalty.
- *Jane Doe 72511 v. N.M.*, 2018 ONSC 6607, wherein Gomery J. found that the conduct (six months of physical and emotional abuse by an intimate partner including choking, dragging and threats, posting a sexually explicit video without consent) constituted assault and battery and caused significant psychological harm. Given the repeated and degrading nature of the abuse, the Court awarded \$20,000 in general damages along with other damages.
- *Smith v. Cammack*, 2025 ONSC 3162, the Court awarded \$175,000 in non-pecuniary damages as well as special damages and future care costs in an action involving a brutal assault in the plaintiff's backyard. The injuries were supported by medical evidence and included serious physical injuries and psychological harm, including PTSD, and forcing her to relocate.

[129] It is clear that the assault has disrupted Mr. Pang's enjoyment of his life and property. He has become more fearful when he used to enjoy his property. I have no medical evidence.

However, the loss of enjoyment of life issues are clear and will likely continue. This was an unprovoked assault. The lawn mower presented a danger notwithstanding its safety features. These are aggravating facts, and I award damages in the amount of \$40,000 payable by Mr. Spence.

- [130] I also make an award of punitive damages in the amount of \$10,000 payable by Mr. Spence as I find that Mr. Spence's conduct represents a marked departure from the "ordinary standards of decent behaviour". See: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595. In awarding punitive damage, I appreciate that punitive damages are the exception rather than the rule. Mr. Spence's behaviour must be condoned by the Court given its marked departure from the standards of ordinary decent behaviour. It is conduct that must be denounced and deterred.
- [131] The Plaintiffs also claim the cost of the trees for dividing the property and landscaping. However, these were not properly pleaded as special damages and in my view the Plaintiffs have not lead sufficient evidence to make them rationally connected to the issues. This is partly due to even on the Plaintiff's evidence, they were going to undertake landscaping to mark the property line. There is no proper claim for loss of income. In short, the evidence does not allow for an award of special damages.
- [132] The Plaintiffs are also entitled to damages for Mr. Spence's defamatory comments. However, in my view these damages should be nominal. The comments were made to one person. They do not appear to have been repeated. I award each of Mr. Pang and Mr. Frederick \$2,500 in general damages payable by Mr. Spence.
- [133] So that it is clear, I do not condone how Mr. Pang yelled at the Defendants' child in the summer of 2024. However, this came years after the Defendant Mr. Spence's defamatory comments made at the Plaintiffs' doorstep.

L. The Property Line

- [134] The Plaintiffs have called insufficient evidence for me to decide the property line and whether there are encroachments on it by the Defendants. They have not met their burden and I dismiss the relief sought in this part of their claim.

M. Permanent Restraining Order

- [135] A permanent injunction is an extraordinary remedy. The framework for a permanent injunction was set out by the Court of Appeal for Ontario in *Labourers' International Union of North America, Local 183 v. Castellano*, 2020 ONCA 71, 444 D.L.R. (4th) 183. There, the Court of Appeal adopted Newfoundland Court of Appeal's approach to a permanent injunction. In *NunatuKavut Community Council Inc. v. Nalcor Energy*, 2014 NLCA 46, 358 Nfld. & P.E.I.R. 123, at para. 72, the Court of Appeal of Newfoundland and Labrador summarized the approach and what the Court must consider:

- (i) Has the claimant proven that all the elements of a cause of action have been established or threatened? (If not, the claimant's suit should be dismissed);
- (ii) Has the claimant established to the satisfaction of the court that the wrong(s) that have been proven are sufficiently likely to occur or recur in the future that it is appropriate for the court to exercise the equitable jurisdiction of the court to grant an injunction? (If not, the injunction claim should be dismissed);
- (iii) Is there an adequate alternate remedy, other than an injunction, that will provide reasonably sufficient protection against the threat of the continued occurrence of the wrong? (If yes, the claimant should be left to reliance on that alternate remedy);
- (iv) If not, are there any applicable equitable discretionary considerations (such as clean hands, laches, acquiescence or hardship) affecting the claimant's prima facie entitlement to an injunction that would justify nevertheless denying that remedy? (If yes, those considerations, if more than one, should be weighed against one another to inform the court's discretion as to whether to deny the injunctive remedy.);
- (v) If not (or the identified discretionary considerations are not sufficient to justify denial of the remedy), are there any terms that should be imposed on the claimant as a condition of being granted the injunction?
- (vi) In any event, where an injunction has been determined to be justified, what should the scope of the terms of the injunction be so as to ensure that only actions or persons are enjoined that are necessary to provide an adequate remedy for the wrong that has been proven or threatened or to effect compliance with its intent?

[136] I am not satisfied that a permanent injunction should be issued. The Plaintiffs have not proved that the events are likely to reoccur.

[137] The Plaintiffs read in testimony from Ms. Gagne's examinations for discovery wherein she was approached by Mr. Frederick when her roof was being repaired. She was apologetic as some debris had fallen. Mr. Frederick stated to her "Don't worry, we are neighbours. If there is ever an issue, knock on my door. This is what neighbours do." She was surprised and said thank you very much.

[138] This tells me that the parties can move forward.

[139] I decline to grant a permanent injunction.

IV. Disposition

[140] The action as against Christine Gagne is dismissed.

- [141] Judgment shall issue in favour of the Plaintiffs as against the Defendant Rhoan Spence in accordance with these Reasons.
- [142] The Plaintiffs are presumptively entitled to their costs. I urge the parties to try to resolve costs. If the parties are unable to, I will decide by way of written submissions.
- [143] The Plaintiffs shall provide written costs submissions limited to three double-spaced pages exclusive of any offers or supporting documentation by June 22, 2026. The Defendants shall provide their written submissions subject to the same limits by July 12, 2026. There shall be no reply without leave. They shall be filed through the portal, uploaded to Case Center and a copy sent to my Judicial Assistant Robyn Pope at Robyn.Pope@ontario.ca.

Justice S.E. Fraser

Released: May 29, 2026

Amendment

1. Paragraph [132] has been amended from its original text:

The Plaintiffs are also entitled to damages for Mr. Spence's defamatory comments. However, in my view these damages should be nominal. The comments were made to one person. They do not appear to have been repeated. I award each of Mr. Spence and Mr. Frederick \$2,500 in general damages payable by Mr. Spence.

To now read as follows:

The Plaintiffs are also entitled to damages for Mr. Spence's defamatory comments. However, in my view these damages should be nominal. The comments were made to one person. They do not appear to have been repeated. I award each of Mr. Pang and Mr. Frederick \$2,500 in general damages payable by Mr. Spence.

CITATION: Frederick v. Spence, 2026 ONSC 3167

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MARIUS FREDERICK and ZHIMING PANG

Plaintiffs

– and –

RHOAN SPENCE and CHRISTINE GAGNE

Defendants

REASONS FOR DECISION

Justice S.E. Fraser

Released: May 29, 2026