SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Husbands v. Middleton*, 2021 NSSM 47

Date: 2021-10-14

Docket: SCCH 505694

Registry: Halifax

Between:

Cherishe Uldine Husbands

Claimant
(Defendant by counterclaim)

- and -

Andrew Middleton

Defendant (Claimant by counterclaim)

Adjudicator: Eric K. Slone

Heard: September 29, 2021 in Halifax, Nova Scotia via zoom

Appearances: For the Claimant, self-represented

For the Defendant, self-represented

BY THE COURT:

[1] The Claimant is suing the Defendant for $25,000.00 in damages, arising out of what she characterizes as an employment relationship with a company known as Shift Human Services Consulting (hereafter referred to as "Shift"), of which the Defendant Andrew Middleton is the majority owner and CEO. She claims that she was wrongfully terminated in May 2019 after a short few weeks of work in the remote community of Fort Smith, Northwest Territories.

[2] Shift is based in St. Margaret's Bay, Nova Scotia, and (as described on its website) manages and staffs complex care facilities in some of Canada's most remote locations including the far north.

[3] Mr. Middleton defended the claim on a number of bases, including the argument that he is not personally responsible for actions taken by his company, Shift.

[4] Also, for what it is worth, he denies that Shift was the Claimant's "employer," but rather contends that she was an independent contractor.

[5] And notwithstanding his disavowal of personal responsibility, he has counterclaimed for $12,000.00 in damages for harm done to Shift's reputation and for what he says was harassing behaviour by Ms. Husbands against the company and its staff after Ms. Husbands's contract was terminated.

[6] While I will examine the merits of the claim, to a degree, I cannot ignore the significant issue that, unfortunately, dooms Ms. Husbands's claim. And that is the fact that she has not demonstrated any claim against Mr. Middleton personally.

Corporate vs. Personal Responsibility

[7] On August 11, 2021, while canvassing dates to schedule the hearing shortly after it was assigned to me, and after reading the Defence which squarely raises the question of Mr. Middleton's (lack of) personal responsibility, I considered it my duty to ask Ms. Husbands to consider whether the right Defendant had been sued. Accordingly, I sent an email to her stating:

> **I would also ask Ms. Husbands to consider whether she has sued the correct defendant, as I understand that Mr. Middleton was not her actual employer. It is not too late to amend the claim, if that is appropriate.**

[8] Shortly thereafter I received a reply:

> **Also, I appreciate the consideration in wondering if my claim is against the right defendant, and I am sure it is Mr. Middleton as his staff hired me to the position, not to mention under his staffs supervision and rules of conduct, such as duties responsibility, care of the children the home, the parents/guardians, school correspondence, groceries, mail pick up, doc visits etc. Also, I was fired from my duties by Mr. Middleton's staff, and apparently with his knowledge. I understand that we were "contracted out," however this was for the purpose of payment only as told to me, and as I understood it to be.** (sic)

[9] During the hearing itself, after having heard some of the evidence about the contractual engagement of the Claimant by Shift, I renewed my question. Even as late as it was in the process, I was prepared to give the Claimant an opportunity to re-think her decision to name Mr. Middleton as the sole Defendant. She was steadfast in her position that Mr. Middleton was the correct party. Mr. Middleton did not weigh in on the question given that Ms. Husbands declined my invitation to consider suing Shift, either in addition to or in substitution for Mr. Middleton. Of course, had she sought to amend her claim I would have had to consider whether that could fairly be done, and whether Mr. Middleton might have a valid objection to such a course of action.

[10] A cursory search of the Nova Scotia corporate registry reveals that Shift Human Services Consulting is a business name owned by Atlantic Youth Consulting Inc., a corporation for which Andrew Middleton is the Recognized Agent. Mr. Middleton candidly admitted at the hearing (and so states in the Defence) that he is the majority owner and CEO of this business.

[11] But is that enough to make him personally responsible for actions taken, or wrongs committed by his company? Such a position may be arguable in some situations where it is a one-person company, and every action is done by that one individual. Such companies are sometimes referred to as “alter-ego companies”

and in such cases it can be difficult to distinguish personal from corporate acts, because they look the same. Even so, one of the main reasons that people incorporate is to put some distance between acts that are corporate in nature and those that are purely personal.

[12] In the case here, the evidence was clear that many other individuals were

involved in the hiring and firing of Ms. Husbands, whether in the employment sense or as an independent contractor. Mr. Middleton was not part of her interview; nor does it appear that he had much involvement with her day to day work until he began to receive reports about how she was conducting herself. Mr. Middleton may be the boss, but this is not a one-person operation. In fact, the company's website reveals a significant list of corporate officers and other employees. It looks to be a significant operation and there is no evidence that Mr. Middleton intermingled his personal affairs with that of Shift.

[13] What Ms. Husbands is asking the court to do, is what is colloquially referred to as "piercing the corporate veil." This is an issue that comes up from time to time in this court, and it can be a tricky concept for ordinary people to understand. Corporations are legally separate entities from the people who incorporate them. That is not just a technicality; it is a foundational principle of corporate law.

[14] A decade ago in *Encom Alternative Energy Solutions Ltd. v. Enermax Homes Construction Ltd.*, 2011 NSSM 62, I had occasion to review at some length the law in this area. Referring to (then) recent Nova Scotia Court of Appeal writings[1] on the issue, I concluded by saying:

> 9 What I draw from this is that the corporate veil may be lifted where:
>
> a. The corporation is clearly acting as an agent for its principal, namely the shareholder;
>
> b. Where the corporation is the "puppet" of the individual (which may be slightly different from agency);
>
> c. Where to treat the two as separate entities is too flagrantly opposed to justice;
>
> d. Where the corporation has been used to conceal or facilitate an unlawful act or purpose;

[15] As I later observed in *Aguilar Capital Markets Ltd. v. FlatC Marine Offshore Ltd.*, 2017 NSSM 57:

> [12] Directors and officers of a limited company are shielded from personal liability in the absence of special circumstances that might allow the "corporate veil to be pierced,"

[1] 1See in particular *Globex Foreign Exchange Corp. v. Launt* 2011 CarswellNS 494, 2011 NSCA 67, *White v. E.B.F. Manufacturing Ltd.*, 2005 NSCA 167,

> as it is often expressed. The Claim states that "FlatC management (Messrs Boakye and Norteye) willfully misread the clause pertaining to our compensation claim in order to avoid paying us the $15,000 USD owing." It goes on to suggest that such management "believe they can operate in this manner without consequence….."
>
> [13] In my opinion, there is nothing in these statements or elsewhere in the Claim that would raise a personal claim against Boakye and Norteye. Corporations such as FlatC are legal entities. It is virtually impossible for a corporation to take any type of action that does not have some human agency behind it. An employee or manager of the corporation necessarily makes a decision and the corporation then acts. If every decision - no matter how wrong - by an employee or manager exposed him or her to personal liability, there would be no such thing as a corporate veil.

[16] Based on these principles, I conclude that Ms. Husbands has chosen the wrong Defendant to target for her claim. I appreciate that she is a self-represented party and has no apparent legal training, but she was given unsubtle hints by this adjudicator that she may have chosen the wrong Defendant. My duty to assist self-represented litigants does not extend so far as to direct that she must sue a different party.[2]

[17] I repeat: this is not just a mere technicality. The Small Claims Court is a court of law that strives to make justice accessible to self-represented litigants, but it does not have a licence to ignore basic legal principles such as the question of who bears legal liability in any given situation. Section 2 of the *Small Claims Court Act* states:

> 2 It is the intent and purpose of this Act to constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but **in accordance with established principles of law and natural justice**. (Emphasis added)

[18] As stated by Justice Boudreau of the Supreme Court of Nova Scotia in *Gold Star Realty v. Grant*, 2008 NSSC 180 (CanLII) at para 12:

> ..... The intent and purpose of the *Small Claims Court Act* is to "constitute a court wherein claims up to but not exceeding the monetary jurisdiction of the court are adjudicated informally and inexpensively but in accordance with established principles of law and natural justice" (emphasis added.) (See *Small Claims Court Act*, s.2) Elsewhere, the court is referred to as "a court of law and of record...". (See *Small Claims Court Act*, S. 3(1). It is well established that "[t]he Small Claims Court is a court of law and the **principles of law are part of the make up that is imposed upon the litigants** and those

[2] Even had she chosen to change course in this manner, she might have faced an argument that it was too late, and that *the Limitation of Actions Act* precluded a claim after more than two years.

that hear the case." (Emphasis added)

[19] There are many other statements to similar effect in the case law. The upshot is that it was incumbent upon Ms. Husbands to put forward a case that is sound in law.

[20] Against this backdrop, I listened to all of the evidence to see if there was any basis to hold Mr. Middleton personally responsible for the actions of Shift. Such evidence was completely lacking. Ms. Husbands's beliefs about Mr. Middleton and his relationship to the company are irrelevant, if not backed up by solid evidence. Whether he was justified, or not, or fair or not, it appears from the evidence that Mr. Middleton acted in the ordinary capacity of a CEO, making decisions that he believed were in the interest of his company. There is no evidence that he had any personal animus or grudge against Ms. Husbands, that caused him to act outside of his role as a CEO of Shift.

[21] I am left wondering why Ms. Husbands refused to take the broad hint from the court to the effect that she may have been suing the wrong party. In the end, it is not the responsibility of the adjudicator to decide who should be sued and shouldn't be sued. Ms. Husbands made a decision and she must live with the consequences of that decision.

Facts

[22] While the above may be enough to dispose of Ms. Husbands's claim, in the event that I am wrong, in law, and because it may be useful for the parties to hear my thoughts on the matter, I will briefly consider the facts.

[23] Ms. Husbands applied for a position as a live-in Child and Youth Caregiver (CYCG) with Shift in about February 2019. She has a background in early childhood education and a diploma from St. Joseph's College dating back to 1996. She told the court, and no doubt conveyed the same in her interview, that she has a passion for child and youth care. She understood that the position she was applying for would be in a remote community working for a 12-week rotation. The pay scale started at $20.00 per hour, but would increase in $1.00 increments up to $24.00 with each rotation.

[24] Ms. Husbands described this as her dream job, and I have no doubt that she very much wanted it to work.

[25] On March 19, 2019 she was presented with a fairly lengthy and comprehensive Associate Consulting Agreement to sign. Mr. Middleton was forceful in his argument that the relationship between "the consultant" (so described) and Shift was that of an independent contractor. Consultants would bill Shift for the services provided, by way of a monthly invoice, and would be paid without the usual employee deductions such as income tax, CPP and EI. He insisted that consultants could have their own offices and were free to incur (and deduct) business expenses. The following provisions were pointed out:

> 3.1 The Consultant certifies that the Services are being provided by them as an independent consultant and not as an employee, agent or representative of Shift and, as such, statutory employment deductions do not apply.
>
> 3.2 The Consultant certifies that they are not currently an employee of Shift, and that nothing contained in this Agreement authorizes or designates the
>
> Consultant to act in any capacity on behalf of Shift without a prior specific request and the consent of Shift.
>
> 3.3 The Consultant shall perform all the services personally, and shall not subcontract or delegate any portion of this Agreement, or the Services required hereunder.
>
> 3.4 The Consultant shall use their own office, equipment and tools in providing services to the clients of Shift. The Consultant shall use their own vehicle and/or arrange for their own means of transportation unless otherwise directed by Shift.

[26] I will return later to the nature of the relationship, but need to focus first on some of the other provisions of the contract.

[27] Several other key provisions were pointed out:

> 2.2 Shift reserves the right to terminate this agreement immediately and without recourse in the event of gross negligence, violation of policy and procedure, criminal activity or other misconduct or problematic behaviours.
>
> 8.2 The Consultant further acknowledges that the Consultant or other individuals associated with the Consultant have no entitlement and shall not have any claim against Shift for any compensation or benefits including, without limitation, overtime pay, vacation pay, public holiday pay, notice of termination (or termination pay in lieu thereof), severance pay, retirement benefits, employment insurance, Canada Pension Plan, workers' compensation, disability, health or life insurance premium payments or benefits, wages, bonus or incentive compensation.
>
> 8.4 The Consultant acknowledges the nature and location of the work and the inherent

> risks associated with it including working directly with persons with severe behavioural challenges as well as working in remote locations amid extreme weather.

[28] The very detailed job description in Appendix A to the agreement described the types of situations where the consultant might be sent, and set out a list of objectives. I will not quote directly from that provision, but suffice it to say that Shift had very clear expectations for how its programs would be delivered.

[29] Right at the end of the agreement there is a provision that states:

> Consultants who leave or who are asked to leave before the end of their shift rotation are responsible for the costs and arrangements of their own travel home. Additionally, $1,000.00 may be taken from their last invoice to offset costs incurred relating to flying in their replacement.

[30] As part of the process Ms. Husbands underwent a rigorous set of reference and document checks, and signed a number of ancillary documents. She was also provided with, and expected to familiarize herself with, a detailed policy manual.

[31] Ms. Husbands organized her affairs and travelled at company expense to Fort Smith on April 15, 2019. She was taken to the site where she would be one of the staff responsible to run a small home for children in foster care. She described it as covering ages 2 to 12, though Mr. Middleton stated that it could have had residents up to age 18.

[32] Ms. Husbands described the work as very challenging. Although she was being paid for an 8-hour work day, she said that the job was really 24 hours because issues could arise at any time of the day or night.

[33] I can summarize a lot of the evidence by noting that it was the entry into the home of a particularly challenging 9-year old boy that seems to have led to Ms. Husbands's eventual termination. It was Ms. Husbands's view that the home was ill-suited to a child exhibiting his particular behaviours. She says that this child physically assaulted her, and had to be physically restrained.

[34] Despite this, Ms. Husbands thought she was integrating well into the community and had no inkling that her contract would be terminated, as it was after less than three weeks and upon only three hours' notice. She was basically told in a morning phone call with staff in Halifax that arrangements had been made for a plane to fly her out that afternoon, and she was directed to pack up and get ready to leave.

[35] Ms. Husbands maintains that she did nothing wrong, had no warnings or discipline, or even criticism of her performance.

[36] In the end, she was flown back to Halifax at company expense, and had to try to put her life back together. She spent the next year caring for an ailing parent, and has not otherwise worked since being terminated by Shift. She says she is still grieving the loss of this job.

[37] Not surprisingly, Mr. Middleton tells a different story.

[38] The home to which Ms. Husbands was assigned is called Polar Crescent, and the job of the CYCG is essentially that of a "house parent." Shift has very definite views on how the task is done, which he referred to as a "relational practice approach." This is contrasted with what is sometimes referred to as a "behavioural approach," which I gather is more punitive. To be successful, all staff need to have the same approach so they are not working at cross-purposes.

[39] As Ms. Husbands's time in the job proceeded, Mr. Middleton (who was at all times in Nova Scotia) began to receive reports from Ms. Husbands's supervisor about how she was doing. It was felt that she was too behavioural in her approach and that she could not keep pace with the demands of the work. She was also accused of using inappropriate language to describe fellow staff members. Mr. Middleton claims, though Ms. Husbands vehemently disputes this, that there was feedback from someone within the territorial government to the effect that they wanted Ms. Husbands removed from Polar Crescent. In any event, the decision was made to terminate her. Under the circumstances, they did not ask her to pay her own airfare but did deduct from her final invoice the $1,000.00 which the agreement allows them to do.

[40] There can be no doubt that the termination affected Ms. Husbands profoundly. Unfortunately, this manifested in her lashing out at Mr. Middleton and other staff in emails and texts which might be construed as harassing and abusive. It was actually a bit of a challenge getting her to leave Fort Smith on the day of her termination, though she finally agreed to board the plane.

[41] Ms. Husbands continued her angry outbursts after she arrived back in Halifax and to this day she is quite bitter about how she was treated by Shift and in particular Mr. Middleton. At one time she took to Facebook (as disgruntled people

sometimes do, these days) to criticize Shift and some of its employees.

[42] For his part, Mr. Middleton argued that the decision to terminate Ms. Husbands was not taken lightly. It was a conclusion arrived at by staff to the effect that Ms. Husbands did not perform up to expectations both in terms of handling the workload and demonstrating an understanding of Shift's

methodology and/or philosophy. I have no doubt that the decision to terminate Ms. Husbands was not taken lightly. Shift itself had invested in Ms. Husbands and would have wanted her to succeed, if only to protect that investment.

[43] It seems that the core critique of Ms. Husbands was that she was too "behavioural" in her approach, which goes against Shift's service model.

[44] Mr. Middleton testified that the departure of Ms. Husbands brought about a positive change at the home where she had been assigned, and he believes that it was the right decision to terminate her.

[45] I do not expect that anyone, least of all I, would be able to convince Ms. Husbands that she did anything wrong in her three weeks with Shift. She is convinced that she was doing well under challenging circumstances and that the children and other stakeholders accepted and liked her. But in cases like this, it is not for her to decide whether she was performing well. It was clearly the prerogative of Shift to decide whether she was a good fit for the job.

[46] In some types of employment, there are objective measures of performance, and if it can be shown that someone met those objective expectations then it becomes questionable when that person is dismissed, or even criticised. But working in a busy if not chaotic group home setting with indigenous children, many of whom have special needs, is a different matter. The service provider (here Shift) must be able to control how its services are delivered and needs to have staff who work well together and provide a consistent type of service. There are no legal principles that require the employer to continue working with someone who it believes, in good faith, does not fit into its service model. The only issue is what, if anything, it has contractually bound itself to do.

[47] Under the strict terms of this contract, particularly article 2.2, Shift reserved the right "to terminate this agreement immediately and without recourse in the event of gross negligence, violation of policy and procedure, criminal activity or other misconduct or problematic behaviours." I expect it would say that Ms.

Husbands violated policy and procedure, and/or demonstrated problematic behaviour.

[48] As I have observed, it is Shift, and not Ms. Husbands, who was in the better position to grade Ms. Husbands's performance. It is not for an outsider, like this court, to second-guess that management assessment. The most that can be said is that nothing that I heard convinces me that Ms. Husbands engaged in any deliberate conduct that was a breach of her obligations. She simply failed to fit in with Shift's expectations.

[49] In an employment context, absent some truly blameworthy behaviour, an employee is typically entitled to reasonable notice of termination. This enforces what is considered to be an implied term in most employment contracts, particularly verbal ones. In performance cases, employers have the burden to demonstrate that the employee was told about their perceived shortcomings and given a reasonable opportunity to improve and meet those expectations. The employer must actively help the employee in their quest to improve their performance.

[50] Here it appears that Shift has gone to great lengths to create something that it can argue is not an employment relationship. It has chosen to structure the relationship as that of an independent contractor, which they refer to as a Consultant. The hiring of independent contractors rather than employees is hardly a novel concept; it has been around for more than a century. And for various reasons, courts have been sceptical of such contracts. The reason they are sceptical is that, in many situations, employees who are asked to sign on as independent contractors do so against their interest because they need the work. Although independent contractors ostensibly enjoy certain benefits, such as tax advantages, in many instances they lose out on the benefit of protective legislation such as (in Nova Scotia) the *Labour Standards Code* or (in federal sectors) the *Canada Labour Code*, or common law remedies such as the law of wrongful dismissal.

[51] As such, courts and labour tribunals have engaged in an analysis to determine whether the relationship is truly independent contracting, or simply employment masquerading as contracting. Into that analysis an intermediate category has been added, that of "dependent contractor" which has elements of both contracting and regular employment.

[52] This is an important development in the law, and was discussed at length in the Ontario case of *Fisher v Hirtz*, 2016 ONSC 4768 (CanLII):

[21] Under employment law, the significance of a finding that a worker is an “employee” or a “dependent contractor,” as distinguished from an “independent contractor,” is that if the worker is dismissed without cause, then he or she is entitled to reasonable notice of termination or compensation in lieu of reasonable notice. As foreshadowed in the introduction to these Reasons for Decision, my conclusion is that Ms. Fisher was an independent contractor, and from that conclusion it follows that her relationship with Group Five could be terminated without reasonable notice. It further follows that she had no claim for damages and thus there are also no issues about the reasonable notice period or about mitigation. The reasoning for my conclusion follows.

[22] The determinative issue in this case is: what was the legal classification of the relationship between Ms. Fisher and Group Five at the end of that relationship. Because the law recognizes that employment relationships are dynamic and can and do change, the classification of a particular relationship requires a contextual examination over its entire course, but the relationship’s classification at the end is what ultimately matters.

[23] At one time, historically, in the context of work relationships, the law recognized just two types or classes of workplace relationships; namely (1) employer-employee (master-servant); and (2) contractor-independent contractor, and, as I shall explain below, the law developed criteria or factors for the courts to consider to differentiate the employee from the independent contractor. However, in 1936, the Ontario Court of Appeal recognized the existence of an "intermediate" position "where the relationship of master and servant does not exist but where an agreement to terminate the arrangement upon reasonable notice may be implied": *Carter v. Bell & Sons (Canada) Ltd.*, 1936 CanLII 75 (ON CA), [1936] O.R. 290 (C.A.).

[24] The relationship intermediate between the employee and the independent contractor is the “dependent contractor,” and thus courts across the country recognize three classes of work relationships. (Cases cited)

....

[26] In *McKee v. Reid’s Heritage Homes Ltd.*, supra, the Court of Appeal described the methodology or analytical approach to the determination of the worker relationship. The first step is to determine whether or not the worker is an employee or a contractor in accordance with the established methodology and criteria for differentiating an employee from an independent contractor. The analysis of the classification of the relationship ends if the worker is determined to be an employee. However, if the worker is determined to be a contractor, the second step of the analysis is to determine whether he or she is a dependent or an independent contractor.

[27] The leading cases for the first step of differentiating employees from contractors, be they independent or dependent contractors (which is the focus of the second step of the analysis) are: *Montreal v. Montreal Locomotive Works Ltd. et al.*, 1946 CanLII 353 (UK JCPC), [1947] 1 D.L.R. 161 (P.C.); *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*,

> 2001 SCC 59 (CanLII), [2001] 2 S.C.R. 983; *Belton v. Liberty Insurance Co. of Canada* (2004), 2004 CanLII 6668 (ON CA), 72 O.R. (3d) 81 (C.A.); *Braiden v. La-Z-Boy Canada Ltd.*, *supra*.
>
> [28] The employee versus contractor cases establish that there is no litmus test or formula for making the classification of the worker and rather there is a non-comprehensive list of relevant criteria or factors which should be analyzed on a case-by-case basis to determine the true legal nature of the relationship. The court must consider: (a) the intentions of the parties; (b) how the parties themselves regarded the relationships; (c) the behaviour of the parties toward each other; and (d) the manner of conducting their business with one another: *Charbonneau v. A.O. Shingler & Co.*, [2000] O.J. No. 4282 (S.C.J.) at para. 12; *Wyman v. Kadlec*, supra, at para. 28.
>
> [29] In *Montreal v. Montreal Locomotive Works Ltd. et al.*, *supra*, Lord Wright indicated a fourfold test would be appropriate to differentiate an employee from an independent contractor; namely: (1) control of the work; (2) ownership of tools; (3) chance of profit; and (4) risk of loss. He stated that posing the question "Whose business is it?" would also serve, in some cases, to answer the question of the nature of the parties' relationship.

[53] Applying this analysis, it is difficult to conclude that the relationship between Ms. Husbands and Shift was truly that of an independent contractor. She was not running her own business. She was working in Shift's business. In almost every respect it more closely resembles the dependent contractor model. As such the court would imply a provision that the contractor would be entitled to reasonable notice of termination.

[54] The express terms of the contract may attempt to prevent such a claim, such as paragraphs 2.2 and 8 (2), but this contract falls into the category of contracts of adhesion, drafted without negotiation by the more powerful party and imposed on a "take it or leave it" basis. In such cases, the contract is interpreted in favour of the weaker party. And it is more than arguable that such provisions do not apply, on the facts, in the absence of any deliberate breach of the contract by Ms. Husbands.

[55] As such, the decision to terminate the services of Ms. Husbands with no notice is contrary to the implied term that reasonable notice would be given.

[56] There is no doubt on the facts that Ms. Husbands was taken by surprise by her termination, which reinforces the fact that she had no inkling it might happen, let alone so quickly. The evidence did not disclose anything in the nature of a written warning to the effect that she was doing something wrong, and that she had to change her ways. And the evidence of verbal warnings was weak and lacking in

specificity.

[57] While the gesture to pay her airfare was some recognition by Shift that it would be unfair to force her to leave so quickly, at her own expense, in my view it did not go far enough to recognize Shift's obligation to Ms. Husbands.

[58] Given that the case fails on other grounds, and any case against Shift is almost certainly statute-barred, I will not spend too much time discussing damages. If I were assessing her damages, I would have awarded her an additional four weeks of pay, totalling $4,200.00.

[59] Shift would not be held responsible for the fact that Ms. Husbands had chosen to give up her apartment prior to being deployed. There is no evidence that it knew, let alone encouraged this. Ms. Husbands had to have understood that she would be back in Halifax after the initial 12-week placement, and that she might not deploy again for some weeks or months later.

[60] Nor was it foreseeable that she might not be back working more than two years later.

The counterclaim

[61] The counterclaims made by Mr. Middleton must all be dismissed on the basis that he is not the party who might have such claims. It is understandable that Mr. Middleton, having pleaded that he is not personally responsible for Ms. Husbands's claims, might still bring the counterclaim in case his defence was not sustained.

[62] The claims advanced in the counterclaim include:

a. $5,000.00 for violation of contract, resulting in financial losses connected with the effort to secure and fly in a replacement.

b. $3,000.00 for libel for various defamatory emails, messages and Facebook posts.

c. $2,500.00 for pain and suffering endured by staff.

d. $1,500.00 for legal costs.

[63] On their merits, each of these claims would have difficulty, but in particular items b, c, and d. The Small Claims Court has no jurisdiction to deal with cases of defamation: s.10 (c) *Small Claims Court Act*. Pain and suffering are in the nature of general damages, which may only be allowed up to $100.00: Act s.10 (e). And legal costs are similarly not allowed, except for costs incurred to file and serve the claim: s.15 (1) *Small Claims Court Forms and Procedures Regulations*. The cost of consulting lawyers is not allowable: Reg. s.15 (2).

[64] The claim for damages for violation of the contract would require a finding that Ms. Husbands deliberately sabotaged her own employment, thus causing the company to have to scramble to find a replacement. The evidence did not come close to establishing that.

[65] In any event, Mr. Middleton cannot succeed on any of his counterclaims.

[66] The end result is that both the claim and counterclaim are dismissed. I make no order as to costs.

Eric K. Slone, adjudicator