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Bullying spouse gets harsh reprimand

Dispute culminates in full indemnity costs, mental distress damages

By Cristin Schmitz

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Clients who might be tempted to emotionally harass or torment their ex-spouses to get a leg up in litigation should acquaint themselves with a new judgment against an Ontario man ordered to pay his ex-partner \$15,000 for intentionally causing her mental distress, plus \$228,500 for the legal costs he forced her to run up during their matrimonial dispute.

Ontario Superior Court Justice Alison Harvison Young's June 8 ruling is unusual, if not unique, in matrimonial litigation because, as her judgment notes, it orders one spouse to pay damages for intentionally inflicting mental suffering on the other — without there having been accompanying "assaultive conduct" such as battery or forcible confinement.

Rather, the judge awarded mental distress damages against photographer Darko Danicic for his "harassment" and emotionally abusive behaviour towards his ex-common law spouse, Traci McLean, which included making McLean fear for her own and her lawyers' safety and threatening to send her "Nana" intimate sexual photographs of the pair.

In another uncommon move, Justice Harvison Young granted orders vesting ownership in McLean of a house and cottage owned by Danicic. The judge did so because Danicic's track record of repeatedly flouting court orders meant that McLean would otherwise be unable to collect on the judgment.

Although McLean asked for vesting orders under s. 34(1)(c) of the *Family Law Act* (which permits vesting orders to secure support), the judge instead relied on s. 100 of the *Courts of Justice Act* as authority for securing the \$76,125 *quantum meruit* damages she awarded for McLean's 10,000 hours of hard labour on, and monetary contributions to, Danicic's two properties.

Danicic's "outrageously unreasonable conduct" had caused a previous judge to strike out his pleadings in 2007. Yet the undefended trial (during which Danicic hurled abuse at McLean's lawyers) still lasted five days because of the extensive evidence put forward of Danicic's misconduct.

As found by the court, his misbehaviour ranged from his "extremely hurtful," and manifestly false, denial of the couple's six-year spousal relationship (he called her a "tenant") to him sending McLean threatening letters, and vexatiously seeking the disbarment of one of her lawyers, in an effort "to threaten and intimidate" McLean. (He presently awaits trial on criminal charges of extorting and threatening McLean).

"Mr. Danicic has pursued a relentless campaign of harassment against the applicant," found Justice Harvison Young. "I find that Mr. Danicic caused Ms. McLean to suffer acute anxiety, fearfulness and great distress. She continues to be fearful for herself and others, including her legal counsel and her family."

The judge held that the three elements of the tort of intentional infliction of mental suffering were made out: Danicic engaged in (1) "flagrant and outrageous conduct" that (2) was "calculated to harm" McLean and (3) resulted in "a visible and provable illness," as evidenced by McLean's need for medical assistance and anti-anxiety medication.



Lawyer Georgina Carson represented the woman who was awarded the unusual costs and damages. [Paul Lawrence for *The Lawyers Weekly*]

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Justice Harvison Young emphasized that the \$15,000 award of “compensatory and aggravated damages for intentional infliction of mental suffering and emotional distress” (plus interest) was also intended to express “society’s outrage at this conduct.”

The judge also assessed full indemnity legal costs against Danicic of \$200,000, on top of about \$28,500 from previously ordered, but yet-unpaid, costs.

“It is hard to imagine a stronger case than this for the imposition of full recovery costs on the basis of bad faith,” observed Justice Harvison Young. “He embarked on a campaign of threats and intimidation designed to coerce her into abandoning her claims. At the very least, Mr. Danicic’s conduct was calculated to obstruct the process and increase Ms. McLean’s legal fees.” She granted the requested sum, leaving McLean to pay \$23,884 of her total \$252,384 legal bill.

Georgina Carson of Toronto’s MacDonald & Partners, who represents McLean along with Michael Stangarone, noted there has “been a gap in the available remedies for people who have suffered, as Ms. McLean did in this case, a campaign of harassment and torment.”

However Carson told *The Lawyers Weekly* she believes spouses need not show misconduct as extreme as this to make out the tort of intentional infliction of mental distress in matrimonial cases.

“This is a cautionary tale for those who seek to harm their spouses emotionally and financially,” she remarked. “The chilling effect of bullying behaviour by spouses after separation is widespread, and often under-reported, in part because of victims’ fear and their consequent desire to walk away.”

“This case reminds us that courts will not ignore harassment and other obstructionist tactics in family law. We can tell our clients to keep their chins up and to maintain the strength of their convictions.”

Carson acknowledged there were “dark moments” for both client and counsel during the tumultuous case, which has dragged on since 2004. “We were certainly tempted to walk away, given the harassment, threats and fear,” she admitted. “But we kept reminding ourselves that Canada is not a lawless country where this type of behaviour will be condoned. On the contrary, this case sends out the strong message that consequences will follow strong-arm tactics, and people will face sanctions for thumbing their nose at the justice system and their spouse’s rightful claims.”

Carson said she doesn’t foresee a flood of future mental distress claims for post-breakup, garden-variety spousal misbehaviour during litigation. “I think it provides a much needed remedy for extreme cases only,” she said.

The judgment itemizes a long list of egregiously bad behaviours by Danicic, even by the low standards of high-conflict breakups.

The pair were in their 20s when they met in 1998. They quickly got engaged and spent most of their five years together working hard renovating his house and building a cottage from scratch. She paid half the expenses, including mortgage expenses. They behaved, and held themselves out, as spouses. The evidence of their spousal relationship was “simply overwhelming,” the judge found.

Danicic sent McLean “To My Wife” birthday cards. He collected health benefits as her spouse. He wrote her a love letter pledging his heart and “sole” forever. Instead he put the boots to her—emotionally, not physically—after she became seriously ill and couldn’t work. He complained she was “dragging him down.” He angrily pressured her to “figure something out” to keep up her half of the mortgage and other monthly bills. She eventually borrowed money from her parents. McLean moved out in October 2003 following what she testified was a year of verbal and emotional abuse.

The pair remained on reasonable terms after the split, until McLean asked Danicic for a cash settlement to reimburse her for her work on his properties.

According to the judgment, he became enraged and stomped out of the coffee shop, telling her to “be careful.” That evening he sent her an e-mail informing her of his disappointment “in your attempt to blackmail me today” and warning her that pursuing the matter would “be a waste of energy” and “may end up costing YOU money.”

Thus began “the downward spiral” of Danicic’s conduct, said the judge. Before his pleadings were struck, he changed lawyers three times. There were 18 court appearances and 23 endorsements, almost all caused by his conduct.

But Justice Harvison Young based McLean’s mental distress award only on incidents involving “frightening” and “hostile” letters Danicic sent that were “clearly designed to threaten and intimidate” his ex-spouse.

After the separation, Danicic sent McLean a letter, purporting to be from Danicic’s new girlfriend, telling McLean that Danicic “freaked out” and hit the new girlfriend. The purported writer said she was afraid to go to police because “I know what he is capable of.” Added the writer, “he has talked to me allot [sic] about what he plans to do to you. He was [sic] constantly said that he will ‘personally put a bullet in her head’ and ‘make sure she suffers first.’ I couldn’t stand this kind of talk, and when I told him so, that’s when he hit me and told me that if I ever told anyone he would ‘smash my brains in.’”

Two other notes, written in extremely crude and abusive terms, threatened to disseminate the accompanying sexual photographs to friends and family “every time you piss us off further.” They also warned that sometime unspecified in the months or years ahead she could expect more abuse “out of the blue... this time its much worse.”

Reasons: *McLean v. Danicic*, [2009] O.J. No. 2356.

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