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## When Revenge isn't Sweet

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### SPRING 2016

As a result of what appeared to be a misguided attempt to “get even” with his (ex-)wife for calling the police following a domestic assault in 2013, a Guelph man has been ordered to pay his (ex-)wife’s legal costs of \$82,373.66.

Mr. Justice C. Herold ordered the self-represented (ex-)husband to pay the wife’s legal costs at the conclusion of a five-day trial in the Guelph Superior Court of Justice on October 16, 2015. The wife was represented by James Peluch of SorbaraLaw’s Guelph office, who was retained just days after the husband was arrested by the police in May, 2013 for an altercation that occurred at the couple’s Guelph residence. The husband was subsequently released, following a bail hearing, but for the next two and one-half years, their divorce proceeding could not reach a negotiated settlement on the main issues, which included the division of marital property, spousal support, child support and section 7 expenses for their two adolescent children and a variety of other minor items. The divorce itself was the only matter that the parties could, in fact, agree on.

The husband initially had legal representation in the divorce matter. The case went through a number of case management hearings where the husband often saw fit to bring the adolescent male children to Court. The Office of the Children’s Lawyer was ordered by the Court to represent the children’s views and preferences (despite them being ages 17 and 15 at the time) regarding custody and access. It quickly became apparent that the father had influenced the children to be in close alignment with his own personal beliefs. The mother was essentially being blamed for leaving the relationship and allegedly abandoning the children, when, in fact, all she wanted was an “ordinary” relationship with her children without the abuse and domination that the husband had exercised over the course of their 18-year marriage.

The Office of the Children’s Lawyer could not be of assistance under the circumstances and the mother’s relationship with the boys continued to deteriorate. The children continued to live in the

former matrimonial home following her departure. She went to a nearby neighbourhood home to live with some of her relatives. Although the husband was released on a Recognizance of Bail, the wife did not wish to remain at the matrimonial home out of fear for her personal safety. She sought counselling for herself and her two sons, but since the boys would only participate on terms dictated by the father, the relationship she had with them suffered significantly post-separation.

Prior to the civil trial, the husband’s criminal trial was held in 2014. He entered a “not guilty” plea. The criminal Court trial judge convicted the husband of the domestic assault from 2013 and sentenced him to a 30-day period of incarceration which, unfortunately, did not seem to have any moderating effect on the husband’s views in the divorce proceeding. Despite the recommendations from the Settlement Conference judge in the family law proceeding, and offers from the wife to divide their assets equally, the husband wanted a greater share of the assets and sought child and spousal support payable by the wife to him.

At the conclusion of the family law trial, the Court divided the parties’ modest net family property into two very similar sized shares. The wife was not required to pay spousal support to the husband; however, he was required to pay her spousal support at the rate of \$500 per month since she was trying to upgrade her academic credentials to become more employable in the workforce. Further, the two adolescent sons were deemed to be no longer “children of the marriage.” The wife’s income at the time of the trial was sufficiently modest to not attract the Child Support Guideline table amount in any event, even if the children had been considered “children of the marriage.”

Due to the husband’s intransigence, the Court ordered the husband to pay the wife’s legal costs, which exceeded his share of the property settlement. Had the husband been more conciliatory and receptive to the wife’s earlier Offers to Settle, it would not have been necessary to have a five-day trial, from which he came away unsuccessful on all fronts. The husband and his family law counsel



parted ways early in 2015. Had the husband retained another lawyer or perhaps listened more sincerely to what the Court and his first lawyer had to say, he might not have incurred such a significant costs award.

Congratulations Jim on an excellent result, and kudos to his two administrative assistants, Tammy Smith and Jessica Chyc, without whose efforts he could not have succeeded!

### **About the Author** **Jim Peluch**

James Peluch is a lawyer at SorbaraLaw, practising predominantly family law in the firm's Guelph office.