



## Article

### Family Law

February 2022

# Father awarded more than \$675,000 in costs after epic five-year fight over kids

By Adam N. Black

After five years of litigation, culminating in a 39-day trial and an award of costs in excess of \$675,000, a father was finally able to restore his relationship with his five- and seven-year-old sons despite their mother's unrelenting attempts to extinguish it.

The trial in the Ontario Superior Court of Justice, which was one of the longest parenting trials in the court's history, brought into clear focus the mother's misguided campaign to cause the children to reject their father.

With false allegations of physical and sexual abuse and reports to the police and various child protection agencies, the mother's efforts seemingly had no boundaries.

Immediately following the parents' separation in July 2016, the children had no contact whatsoever with their father for thirteen months. In the five months leading up to trial, the children had spent a total of nine hours with their father. For many visits with the father, the mother had directed the children that there were to be "no hugs and kisses" and that birthday parties with cakes were not allowed. Left unchecked, the mother's efforts would have surely caused a permanent fracture in the father's relationship with his sons.

After considering the evidence, Justice Heather McGee was left with one option: to immediately transfer primary care of the children to the father and to give the father decision-making authority.

Recognizing the importance of children having relationships with both parents, Justice McGee crafted a parenting schedule designed to repair the damage and restore meaningful and healthy relationships. During the first 90 days of the parenting schedule, the children are to have no parenting time with the mother, with the exception of two 30-minute Zoom calls each week and up to ten hours in-person each week, provided the visits are supervised by a child and family therapist.

Thereafter, the mother's parenting time will gradually increase, with the children ultimately being in each parent's care equally on a week-on, week-off basis.

While the emotional costs of the conflict cannot be overstated, particularly for the children, the financial costs of the litigation have been calamitous.

According to Justice McGee, the "family law dispute has cost the parents in the range of \$1.7 million, an amount that well exceeds their personal savings and their equity in a jointly owned home."

Grounded in his success at the trial, the father sought an order for costs in the amount of \$937,510. The mother resisted, stating that she was of limited financial means and should pay the father no more than \$50,000.

Justice McGee disagreed. In what is likely a landmark decision in family law litigation, the mother was ordered to pay the father costs of \$677,610.

Simply winning the case was not enough to entitle the father to costs.

"Success alone is not a sufficient basis for an award of costs because the measure of success belongs to the child. It is the child's success that is the object of the proceeding," Justice McGee wrote.

Rather, she carefully considered the offers to settle each party made prior to the trial – one benchmark that courts use when deciding whether to award costs.

In this case, the judge's ruling was even more favourable to the father than his initial offer, meaning he was entitled to costs. Given the mother's conduct, however, the analysis didn't end there.

According to Justice McGee, the mother "acted in bad faith because she purported to support the boys having a full and healthy relationship with their father while she intentionally took steps to sever their sons' affection, sense of safety and self while with their father. She caused the boys to suffer emotional harm."

"Success alone is not a sufficient basis for an award of costs because the measure of success belongs to the child. It is the child's success that is the object of the proceeding," Justice McGee wrote.

Rather, she carefully considered the offers to settle each party made prior to the trial – one benchmark that courts use when deciding whether to award costs.

In this case, the judge's ruling was even more favourable to the father than his initial offer, meaning he was entitled to costs. Given the mother's conduct, however, the analysis didn't end there.

According to Justice McGee, the mother "acted in bad faith because she purported to support the boys having a full and healthy relationship with their father while she intentionally took steps to sever their sons' affection, sense of safety and self while with their father. She caused the boys to suffer emotional harm."

*This article was originally published in the Financial Post.*

## Author

**Adam N. Black**  
Partner

Adam is a partner at [Torkin Manes](#) and practises in all aspects of family law.

Tel: 416 643 8808  
[ablack@torkinmanes.com](mailto:ablack@torkinmanes.com)

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.